SENATE.

THURSDAY, *June 1, 1916.*

(Legislative day of Wednesday, May 31, 1916.)

The Senate reassembled at 12 o'clock meridian, on the expiration of the recess.

PUBLIC BUILDING AT TAYLOR, TEX.

Mr. CULBERSON. I ask leave, out of order, to submit a report from the Committee on Public Buildings and Grounds.

The VICE PRESIDENT. Is there objection? The Chair hears none.

Mr. CULBERSON, from the Committee on Public Buildings and Grounds, to which was referred the bill (S. 5447) providing for the erection of a public building at Taylor, Tex., reported it with amendments.

TREATMENT OF TUBERCULOSIS (S. DOC. NO. 453).

Mr. FLETCHER, from the Committee on Printing, to which was referred Senate resolution 206, submitted by Mr. OVERMAN on the 20th ultimo, reported it without amendment, and it was considered by unanimous consent and agreed to, as follows:

Resolved, That the manuscript submitted by the Senator from North Carolina [Mr. OVERMAN], entitled "Animal Experiments Upon the Acquirement of Active Immunity by Treatment with Von Ruck's Vaccine Against Tuberculosis," by Frank J. Clemenger, M. D., Asheville, N. C., and Dr. F. C. Martley, A. M., M. D., Cambridge, England, be printed as a Senate document.

LOUISVILLE & NASHVILLE RAILROAD CO. (S. DOC. NO. 461).

Mr. FLETCHER, from the Committee on Printing, to which was referred Senate resolution 207, submitted by Mr. LEA of Tennessee on the 31st ultimo, reported it without amendment, and it was considered by unanimous consent and agreed to, as follows:

Resolved, That the manuscript submitted by the Senator from Tennessee [Mr. LEA] entitled "Hearings Before Interstate Commerce Commission Relative to Financial Relations, Rates, and Practices of the Louisville & Nashville Railroad Co., the Nashville, Chattanooga & St. Louis Railway, and other carriers," be printed as a Senate document.

MILITARY TRAINING IN PUBLIC SCHOOLS (S. DOC. NO. 452).

Mr. FLETCHER, from the Committee on Printing, reported the following resolution (S. Res. 208), and it was considered by unanimous consent and agreed to:

Resolved, That the manuscript submitted by the Senator from Washington [Mr. POINDEXTER] on May 17, 1916, entitled "Outline of Plan for Military Training in Public Schools of the United States," prepared by the War College Division, General Staff Corps, War Department, together with the Wyoming plan of military training, be printed as a Senate document.

COMMITTEE ON PUBLIC HEALTH AND NATIONAL QUARANTINE.

Mr. LEA of Tennessee. I ask unanimous consent for the present consideration of Senate resolution 114, authorizing the Committee on Public Health and National Quarantine to hold hearings.

Mr. CHAMBERLAIN. If it does not lead to discussion, I shall not object.

Mr. LEA of Tennessee. It is merely a formal resolution to allow the committee to hold hearings.

There being no objection, the resolution was read, considered by unanimous consent, and agreed to, as follows:

Resolved, That the Committee on Public Health and National Quarantine, or any subcommittee thereof, be, and hereby is, authorized during the Sixty-fourth Congress to send for persons, books, and papers, to administer oaths, and to employ a stenographer, at a cost not exceeding $1 per printed page, to report such hearings as may be had in connection with any subject which may be pending before said committee, the expenses thereof to be paid out of the contingent fund of the Senate, and that the committee, or any subcommittee thereof, may sit during the sessions or recess of the Senate.

COMMITTEE ON THE CENSUS.

Mr. LEA of Tennessee. I ask unanimous consent for the consideration of Senate resolution 176, to permit the Committee on the Census to employ an additional clerk.

The Senate, by unanimous consent, proceeded to consider the resolution, which had been reported from the Committee to Audit and Control the Contingent Expenses of the Senate, with an amendment, in line 4, after the word "period," to strike out the words "of 90 days from and after May 10, 1916," and insert "lasting until the end of the present session of the Sixty-fourth Congress," so as to make the resolution read:

Resolved, That the provisions of the resolution of the Senate of March 9, 1916, authorizing the Committee of the Census to employ an additional clerk for 60 days, are hereby extended for a period lasting until the end of the present session of the Sixty-fourth Congress.

The amendment was agreed to.

The resolution as amended was agreed to.

Mr. LEA of Tennessee subsequently said: I move to reconsider the vote by which the Senate agreed to Senate resolution 176, extending the resolution of March 9, 1916, authorizing the Committee on the Census to employ an additional clerk.

The motion was agreed to.

Mr. LEA of Tennessee. I move the following substitute as an amendment, and I ask unanimous consent for its present consideration.

The VICE PRESIDENT. The question is on the substitute proposed by the Senator from Tennessee.

The substitute amendment was read, considered by unanimous consent, and agreed to, as follows:

Resolved, That the Committee on the Census be, and it is hereby, authorized to employ an additional clerk, at the rate of $100 per month, to be paid out of the contingent fund of the Senate for a period lasting until the end of the present session of the Sixty-fourth Congress.

ADDRESS BY SECRETARY M'ADOO.

Mr. TAGGART. Mr. President, I have in my hand a copy of a speech delivered by Secretary McAdoo before the Chamber of Commerce of Raleigh, N. C., Wednesday night, May 31. Instead of reading it, I ask unanimous consent that it may be printed in the RECORD.

The VICE PRESIDENT. Is there objection? The Chair hears none, and it is so ordered.

The speech referred to is as follows:

"The United States is enjoying the greatest era of prosperity in its history, and the outlook for the future of the country was never so bright. Unlike all previous periods of great business activity, the present ascendancy in all lines of industrial endeavor possesses all the elements of permanence, provided we avail of the opportunities which are being literally thrust into our hands, with that intelligence, energy, and enterprise so characteristic of the spirit of the American people.

"Prosperity has permeated every corner of the country. Every line of business is pulsating with it. Every industry is driving at top speed of profitable activity. Labor is employed throughout the land at the highest wages ever known, and the demand for labor in all parts of the country seems to be in excess of the supply. Never in American history have conditions been so favorable to American business and American industry. We have not alone the full dinner pail, but the overflowing dinner pail.

"Agriculture, which is the basis of all prosperity, is experiencing a most wholesome growth. The farmers of the United States never in their history have enjoyed such splendid rewards for their toil, and never before have the economic conditions and the laws already enacted by a Democratic administration so justly favored them. The rural-credits bill, which will soon be passed and approved by the President, will emancipate the farmer from many of the most serious ills he has so long endured and provide the long-time credits, at low rates of interest, so essential to the remunerative and productive development of the farming industry.

"Money and credit are abundant; the ghost of panic has been securely laid. In the midst of a war-torn and war-worn world, with adversity crumbling the economic foundation of almost every other great power, the financial, commercial, and industrial conditions in the United States are phenomenally sound and exceptionally strong. This is due not to transitory war orders or ephemeral trade, but to the amazing economic strength of the United States.

"The Federal reserve act, which is now generally conceded to be the most constructive measure placed upon our statute books in a half century, is the greatest contributing factor in this happy condition. The Federal Reserve System has been in operation less than two years, during which time the Nation has passed through the greatest crisis and strain the world has ever seen. We have successfully withstood the shock of the European cataclysm, and have rebounded into the most unexampled prosperity any nation has ever known. The Federal Reserve System has provided the elastic and responsive credit resources required for the expansion and growth of the business and the development of our country.

"The straight-jacket in which the business and industry of the United States have been cramped and limited by the old financial laws of the Republican Party has been shattered, and the country may grow without restriction to the full limit of healthful and legitimate expansion. Not only has the reserve system provided ample credit resources and strengthened the financial structure of the country immeasurably, but it has caused a more equitable diffusion of credits, has reduced rates of interest, and has mitigated already, and in great measure, the abuses of usury in those parts of the country where usury has been a serious handicap to business and enterprise. What this means to the business men and all classes of our people is too obvious to describe.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

"It is a significant fact, and it is an achievement of which the administration may well boast, that when the country was on the verge of appalling panic at the outbreak of the European war in 1914, it was the decisive and adequate measures taken by the Government at Washington that prevented this panic and laid a secure foundation for the great prosperity we are now enjoying. It was the leadership and action of the Government at Washington that saved the country in this great crisis. This is said in no spirit of depreciation of the important cooperation the leading bankers and business men of the country gave to the Government in that critical time.

"What a contrast this is to the ineffectiveness of the Republican administration at Washington during the panic of 1907, which left the country prostrate for many years and brought immeasurable disaster upon the American people.

"Nothing is more indicative of the amazing growth of the country than the condition of the banks. The Comptroller of the Currency states that in March, 1916, the resources of the national banks amounted to $13,838,000,000, exceeding by $370,000,000 the greatest resources ever shown in the history of the national banking system. The resources of the national banks were $2,271,000,000 greater in March, 1916, than in March, 1915.

"This marvelous increase in one year exceeds, the comptroller states, the entire resources of the Reichsbank of Germany, as reported in February, 1916.

"The aggregate resources of the national banks of the United States now exceed by approximately $3,000,000,000 the combined resources of the Bank of England, the Bank of France, and the Bank of Russia, the Reichsbank of Germany, the Bank of the Netherlands, the Swiss National Bank, and the Bank of Japan. The total deposits of the National banks in March, 1916, amounted to $10,790,000,000, an increase in three months of $411,000,000 and an increase over March, 1915 (one year), of $2,198,000,000.

"These figures are so prodigious as to be almost unbelievable. They reflect infallibly the degree of prosperity as wide and deep as it is amazing and gratifying. One can not speak of this record without superlatives. Even the infallible and sanctified Republican Party could not have done better. Perhaps it is heresy to say this, but may the Democrats not reasonably claim that since the Republican Party has never done anything like so well for the country when for many years it had control of the Government it would not have done better than the Democratic Party has shown by these impressive figures and by the results which are visible to every man, woman, and child in America to-day? Has the Republican Party ever done even as well?

"Judge Gary, head of the United States Steel Trust and a leading Republican statesman, in a recent speech in New York had bewailed the fact that the high protective tariff, which is the sanctified doctrine and cure-all remedy of the Republican Party, has not been in force at this time, and he almost weeps as he appeals to the country to restore this Republican system of subsidies, conferring upon the great manufacturers of this country the right to tax the people for their own benefit. If this is a sample of Republican statesmanship, then it may well be asked whether or not the Republican Party could have handled the affairs of the country so well as the Democratic Party has during the past three years.

"In the face of the greatest prosperity ever known in the history of the iron and steel industry—the prosperity brought about under the Democratic tariff law enacted in 1913, and with the coffers of every iron and steel industry in the country overflowing with plenty, Judge Gary seriously asks the people of this country to restore the high protective policy and subsidy system of the Republican Party. What is there in the present conditions to justify such an appeal? How can the people be convinced that the iron and steel industry should be given new advantages and additional subsidies in the light of the huge profits they are now earning?

"The present tariff law—the Underwood-Simmons Act—made a reasonable reduction in the customs duties, transferring a part of the burdens of taxation from the backs of the masses of the people to the ample shoulders of wealth, which has never under the Republican system borne its just proportion of the burdens of government. The Democratic system is the just system. The Republican system is the privilege system. The people will not repudiate the former and deliberately readopt the latter in view of the demonstrated fallacy of the claim of protected industries that they need to tax the people for their own benefit in order to make a profit. Every reasonable man wants industry to thrive and prosper, and every reasonable American citizen is willing that enterprise shall have a just and fair opportunity, but while conceding this to enterprise and business, democracy claims that like treatment should be accorded to the masses of the American people.

"The prosperity of the country is strikingly reflected in the surplus reserves of the national banks. These reserves are now so great that they give the national banks a further loaning power of three to four billion dollars. If we add to this the loaning power of the State banks and trust companies of the country, we have an aggregate approximating the astounding total of $6,000,000,000.

"These great resources carry with them both opportunity and responsibility—opportunity to serve the Nation's needs in the highest degree and to extend assistance to our splendid neighbors of South and Central America, who are suffering severely for the resources needed for their own development; responsibility to so use these resources that they will be employed in legitimate and wholesome enterprise and development, and not for speculation or inflation.

"The duty devolves upon the bankers of the United States, because the responsibility rests primarily upon them to curb speculation and to restrain inflationary tendencies. The Federal Reserve Board, at Washington, will use its great power to assist in the wholesome use of the great credit resources of the country and to prevent unhealthful tendencies; but the banks themselves have the chief power and responsibility; the Federal Reserve Board can only contribute toward this result to the extent that the law gives it the necessary authority.

"When I speak this word of caution about speculation and inflation I must at the same time express my lack of sympathy with the views so strenuously put forward, and I think for selfish motives primarily, by some people and by many partisans for political purposes, that the United States must face a period of serious depression, if not possible disaster, upon the conclusion of peace in Europe. Some people are undoubtedly honestly impressed by these claims and are genuinely apprehensive about the future. Aside from the partisan purpose of this propaganda, unreasonable fear alone seems to me to be at the basis of all honest apprehension on this score.

"An analysis of the conditions in the United States and of the possible economic effects of the war in Europe does not, in my opinion, give the slightest justification for any fear for our prosperity. A Democratic Congress, however, out of deference to any honest apprehension that may exist in the minds of business men, will enact legislation against the dumping of cheap European goods in our markets, and will prohibit by law unfair competition by foreign competitors with American business men and manufacturers. While I do not believe these measures are essential, I favor them simply as a precaution and as an assurance to the timid and hesitating.

"When I contrast the enormous financial and economic strength of the United States, and the extraordinary skill and creative genius of its people, with the depleted resources and the weakened economic power of the great European nations, and the destruction of so much of their skilled labor and manhood, I feel somewhat ashamed of the fright and timidity manifested by some people of the United States whom we have been accustomed to regard as really strong.

"When peace is restored to Europe the belligerent nations will find themselves burdened with an almost insupportable load of debt. Taxation, both oppressive and excessive, must be borne to pay the interest on these debts. Taxation is an important factor in the cost of production and adds materially and will seriously affect the competitive capacity of Germany, France, England, and the other industrial nations of Europe. Many of their skilled workmen have been lost and new ones must be created; many of their industries have been destroyed and must be reconstructed. Their credit resources are seriously impaired. Other serious difficulties must be overcome if they are to regain their foreign markets. Against these formidable handicaps and terrible conditions is it believable that the American people, with their highly developed industries and skilled labor, matchless resources, exceptional creative genius and productive capacity, are unable to sustain themselves in a fair contest for their share of the world's markets? Can it truthfully be said that our economic safety and prosperity will have to face any real peril? It is almost discreditable to our intelligence to have to argue such a proposition.

"There are those who say that the loss of war orders after peace comes in Europe will seriously affect the industries of our country. This is absurd. The percentage of war orders, as contrasted with the entire domestic and foreign commerce of the United States, is insignificant. When war orders cease—and God grant that the necessity for them may cease soon—we shall receive orders, even from Europe, for the restorative pur-

poses of peace, for the reconstruction of ruined industries and cities, and for the relief of the stricken markets of Germany and Austria, which have been closed to us for the full period of the war. Our trade to Austria and Germany alone for the last year prior to the outbreak of the war amounted to $367,500,000. All this trade will be regained, and in addition to that, if we are in the least intelligent and enterprising, the great markets of South and Central America, which have been clamorously seeking us for the past two years, will more than offset any possible loss of war trade. The total imports of South America alone, exclusive of those received from the United States during the last year of available statistics prior to the outbreak of the European war, were something like $700,000,000.

"Here is a great field for American enterprise and business; a field which we would already have securely occupied if it had not been for the disastrous action of the Republican Members of the Senate, aided, I regret to say, by a few Democrats, in filibustering to death the bill introduced by the administration in September, 1914, for the purchase of $40,000,000 of merchant ships to be used by the Government of the United States for the protection of our commerce with all the nations of the world. The failure to buy these ships was a fatal and irretrievable mistake. It is a striking example of narrow partisanism. If we had bought in the fall of 1914 or the early days of 1915 $40,000,000 worth of merchant vessels, which could have been had at that time at the low prices of from $40 to $60 per gross ton, those same vessels to-day could be sold by the Government for at least $80,000,000. In one year these same vessels could have earned fifty to one hundred million dollars of net revenue, while at the same time carrying American products for the farmer, the manufacturer, and the business man at one-third of the existing extortionate ocean freight rates.

"When the historian of the future studies this period he will say that the failure of the United States Government in the fall of 1914 to buy merchant vessels for the protection of American commerce was one of the monumental and inexplicable blunders of the time.

"The necessity for the creation of an American merchant marine, for the regulation of ocean freight rates, and for the establishment of a shipping board is just as imperative now as it was then. A Democratic House has passed such a bill, carrying with it an appropriation of $50,000,000 for the construction and purchase by the Government of a merchant marine to be utilized both as an essential naval auxiliary in time of war and for the uses of our commerce in time of peace. If we are going to have any genuine preparedness, about which there is so much talk on the part of our Republican friends, how can they be justified in voting against this measure, which is just as essential to a strong and effective navy as the guns on the decks of the battleships or the coal which must be put in the bunkers of our war vessels? And yet most of them have voted against this essential measure.

"I believe this bill will soon pass the Senate of the United States and receive the approval of the President. When this happens another great constructive measure for the prosperity and prestige of our great country, second only in importance to that of the Federal reserve act itself, will have been secured for the American people. The Stars and Stripes will again be seen upon the high seas. The safety of our commerce will no longer be jeopardized by reliance upon foreign flags. The lives of American citizens who must travel upon the high seas will no longer be endangered upon the ships of belligerent flags because there are no American ships to protect them; and the efficiency of our Navy will no longer be imperiled for want of the necessary naval auxiliary to supply our fighting units with the coal and provisions and ammunition which can not be supplied to them in case of war except through an efficient auxiliary merchant marine.

"The flag of our country, whether we wish it or not, has a meaning beyond our own territorial limits. By the decree of God and by destiny we have been thrust into a position of power, carrying with it world-wide responsibilities and forcing upon us in all probability a measure at least of world-wide dominance. That flag must never stand for a failure to meet any domestic or world-wide responsibility; that flag must forever continue to represent the true spirit and courage and genius and ideals of the American people, and above all, it must stand for truth and justice and fair dealing with all the world. It must stand for peace—peace which reflects the heaven-given light of truth and justice; a peace we shall never be willing to disturb except in a cause whose shield is truth and honor, emblazoned by a light of such radiance and purity that every American citizen will be eager for the glorious privilege of shedding his blood in defense of it."

OREGON & CALIFORNIA RAILROAD LAND GRANTS.

The Senate as in Committee of the Whole resumed the consideration of the bill (H. R. 14864) to alter and amend an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon," approved July 25, 1866, as amended by the acts of 1868 and 1869, and to alter and amend an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," approved May 4, 1870, and for other purposes.

Mr. NORRIS. Mr. President, I rise for the purpose of making some remarks on the pending bill. I will yield, however, if there is any other Senator who wishes to present routine business.

The VICE PRESIDENT. The morning business has closed.

Mr. NORRIS. Mr. President, the real contention in this bill is whether or not the Senate will pass the bill substantially as it passed the House, or whether it will approve the amendments proposed by the Committee on Public Lands. The effect of those amendments, if agreed to, will be to liberalize the bill, as far as any payments are concerned to the State of Oregon.

Yesterday the senior Senator from Oregon [Mr. CHAMBERLAIN], at considerable length, reviewed the situation, and I have no intention of repeating the history surrounding this proposed legislation. I think the Senator from Oregon stated it very fairly, and, although at the time, because I wanted the bill to go over until to-day in order that I might examine into it somewhat, a request that I made not only on my own behalf but for several other Senators, he was impressed with the idea that I was opposed to the legislation. I want to say, Mr. President, that, like the Senator from Oregon, there are some things in the bill, even as it passed the House, that I would like to have changed if I thought under the decision of the Supreme Court we could enact legislation along those lines that to my mind would give justice to all persons interested. But we are hedged about somewhat by the legal situation and by the construction placed upon the original act by the Supreme Court of the United States. It is conceded, as far as I know, by every person who has given the question any examination that the railroad company in this case failed to comply with the spirit and the letter of the law as passed by Congress by which the Government gave quite a number of years ago to this railroad company several million acres of public land in the State of Oregon.

I wish simply to note in passing that the district court, in the case on behalf of the Government seeking to have a forfeiture declared in regard to these lands, agreed with the position taken by the Attorney General, and rendered a decree forfeiting the lands to the United States because the railroad company had failed to comply with the law, and the circuit court of appeals affirmed this decision, but the Supreme Court of the United States reversed it, and this legislation has been necessary because of that reversal.

I can not help but notice, too, that notwithstanding the failure of the railroad company to comply with the law has caused all the difficulty and trouble, the immense amount of loss in a financial way to the Government of the United States, to the State of Oregon, and to a great many citizens of the State of Oregon; but in order to stay within the limits prescribed by the Supreme Court the bill as it passed the House, notwithstanding this fact, gives to the railroad company the payment of $2.50 an acre for all the land involved. I presume that is necessary on account of the legal situation in which we find ourselves.

So I am just as much in favor of legislating on this subject and bringing the delayed and needed settlement to a final determination as is the Senator from Oregon. The only difference between us is as to just how the State of Oregon should be treated in the legislation. It is perhaps natural and perhaps laudable that the Senators representing the State of Oregon should desire to obtain just as liberal treatment as possible; and yet it seems to me that the Senate of the United States, representing the Federal Government, and being as such representative in part the custodian of the public funds and the public land, ought not to go further than justice and liberal treatment would demand.

When this bill is enacted into law there will be several million acres of land now claimed by the railroad company that will become public land of the United States. The bill as passed by the House, after providing for the payment of all the expenses and the taxes that are unpaid on this land, all the taxes

going to the proper authorities in the various counties in the State of Oregon, divides up the remainder as follows: It gives 20 per cent of the remainder to the State of Oregon for school purposes. It gives 30 per cent to the counties in which the land is situated for roads and bridges. That makes 50 per cent of the net proceeds. But we must remember that even out of the gross proceeds, before this division is made, the State of Oregon gets $1,565,458 for taxes now standing against the land and unpaid.

Then, after that 50 per cent of the proceeds has been given, either directly to the State or to the counties in the State, 40 per cent is paid into the reclamation fund. It must be borne in mind in this connection that Oregon shares with the balance of the country in whatever benefits may be derived from the increasing in this way of the reclamation fund.

Mr. CLARK of Wyoming. It is the bill as passed by the House that the Senator is speaking of?

Mr. NORRIS. It is that bill that I am speaking of. That accounts for 90 per cent of the proceeds of these sales. The other 10 per cent is given to the United States. This other 10 per cent will not much more, if any more, than pay the expenses, directly and indirectly, to which the United States has been put on account of the difficulties of the situation. There have been several suits, and there perhaps will be several more that it will be necessary for the United States Government to prosecute. Special agents have been sent by the department, and they have made a careful investigation of the land and of all the other conditions surrounding it.

It seems to me, Mr. President, that this distribution of the fund is extremely liberal to the State of Oregon. Ordinarily the State would have no such claim. The public lands, or the proceeds from the sale of the public lands, are not divided up ordinarily under the general law in that way. So, Oregon is getting 50 per cent directly, and her interest in the reclamation fund of 40 per cent more, besides being paid, before any of these per cents are reckoned, a little over a million and a half dollars for taxes.

Mr. CLARK of Wyoming. Mr. President——

Mr. NORRIS. I yield to the Senator.

Mr. CLARK of Wyoming. Has the Senator made any estimate as to the value of this land and the amount that will go to the State in bulk?

Mr. NORRIS. Yes; I am coming to that.

Mr. President, what claim can the State of Oregon have that would exceed that treatment? Under what possible construction of all the circumstances in the case could Oregon demand a more liberal treatment? No public land anywhere that I am aware of has been disposed of where the State has been treated as liberally as the House treated Oregon in this particular instance.

I can conceive of but one claim, and that is not a legal one. I can conceive of but one circumstance that would give to Oregon even any equitable right to claim any of this money, and that is that these lands that have been taxed by the State of Oregon, while they were claimed to be owned by this railroad company, will not be taxable after this bill becomes a law, because the lands become public lands again and will not be taxable until the lands are disposed of as provided for in the bill.

I can see how there will necessarily be on at least a portion of the land several years perhaps before the State would be able to tax some of the land. As soon as the bill becomes a law the provisions of it will be effective and the land will be disposed of, and as fast as disposed of it will be again taxable; but for all the years that Oregon has been taxing these lands the amount of tax will be nowhere near the amount of money that she would get under the terms of the bill as passed by the House.

Now, what do the amendments proposed by the committee do? There are one or two amendments having nothing to do with the amount of money that will be disposed of, and I am not speaking of those. I am speaking now of the Senate committee amendment which provides for a different distribution than the one I have outlined as being provided by the House. If the Senate committee amendments are agreed to on that subject, this will be the disposition of the fund.

Ten per cent will go to the United States Government. That is just the same as goes to the United States Government under the bill as passed by the House. Ten per cent will go to the reclamation fund, whereas the House bill gives 40 per cent to the reclamation fund. The Senate committee amendment, giving only 10 per cent to the reclamation fund, provides further that all of that 10 per cent must be spent in the State of Oregon. So that 10 per cent in reality goes to Oregon.

Then it provides that in counties having port districts 30 per cent shall go to those counties for the purpose of building roads and bridges and 20 per cent directly to the port districts in such counties; that in counties having no port districts 35 per cent shall be given for roads and bridges; and the balance of the fund shall be paid to the State of Oregon for school purposes.

Eliminating the 10 per cent that goes to the reclamation fund, the State of Oregon gets 80 per cent of the money, but inasmuch as the amendment provides that the 10 per cent which goes to the reclamation fund must be spent in Oregon, it follows that 90 per cent of the proceeds of these lands goes to the State of Oregon and 10 per cent to the United States. I say the State of Oregon, but perhaps I ought to modify that. It goes either to the State or to the counties in which the land is located and where the port districts are situated.

I want to say just a word about these port districts. It is said that these port districts have bonded themselves for the purpose of improving harbors within the port districts, and that, therefore, they are sadly in need of assistance because some of this land will not be taxable while it remains Government land.

In the first place, when this bill is passed we shall pay one million and a little over five hundred thousand dollars in taxes, most of which will go into these counties. In the second place, under the House bill, 30 per cent of the entire amount will be paid to these counties for roads and bridges. That certainly will relieve from taxation those counties to the extent of the money that is paid there from this fund.

I might digress here to remark that in reading the record of the proceedings when this bill was under consideration in the other House, one of the members of the Committee on the Public Lands, in referring to these port districts, offered, if the Representatives from Oregon preferred it, to have this 30 per cent paid directly to the port districts instead of to the counties. They did not avail themselves of that offer. So far as I am concerned here, if the Senator from Oregon [Mr. CHAMBERLAIN] would say that he preferred under the provision of the House bill that this 30 per cent which it is provided shall go to the counties for bridges, should be paid to the counties or to the port districts, I should have no objection to that kind of an amendment, and I do not believe any other Senator would.

Mr. CHAMBERLAIN. May I interrupt the Senator for a moment?

Mr. NORRIS. Yes.

Mr. CHAMBERLAIN. On what page of the hearings is found the statement to which the Senator has referred?

Mr. NORRIS. That statement was made on the floor of the House of Representatives. I can give the Senator the page of the RECORD on which it appears.

Mr. CHAMBERLAIN. Then, I shall be glad to have the Senator refer to the page of the RECORD.

Mr. NORRIS. It is on page 8599 of the CONGRESSIONAL RECORD of May 24, 1916, in the right-hand column, near the top of the page.

Mr. SUTHERLAND. Mr. President, may I interrupt the Senator from Nebraska?

Mr. NORRIS. I yield to the Senator from Utah.

Mr. SUTHERLAND. Mr. President, unfortunately I was detained from the Senate yesterday while this bill was under consideration, but the analysis of its provisions in so far as the disposition of the fund arising from the sale of these lands is concerned to my mind is perfectly astounding. Does the Senator from Nebraska mean to say that this bill in substance donates to the State of Oregon 90 per cent of the proceeds of the sales of these lands?

Mr. NORRIS. It would do so if the Senate amendments are agreed to, with the exception, the Senator from Utah must remember, that of that 90 per cent 10 per cent goes to the reclamation fund, which, however, an amendment provides must be spent in Oregon.

Mr. SUTHERLAND. But it is equivalent to the complete donation to the State of Oregon of 90 per cent of these valuable public lands.

Mr. NORRIS. I think so. I call it a "donation." Of course the Senator from Oregon does not call it a donation; but that is what the bill provides.

Mr. CHAMBERLAIN. Mr. President——

Mr. NORRIS. I yield to the Senator from Oregon.

Mr. CHAMBERLAIN. Let me say to the Senator from Utah that, based on the analysis of the matter as made by the Senator from Nebraska [Mr. NORRIS], it does look large; but I have not interrupted the Senator from Nebraska to correct the statement he has made. I shall be able to show, however, to the Senate that the United States has already received very large sums, and that under the House provision the Government of the United States, while on the face of the bill is advancing the taxes, yet an analysis of the bill will show that the Government of the United States does not pay the taxes at all.

Mr. NORRIS. Perhaps I had better review the bill just a little. The bill provides that this land shall be sold, and it provides how it shall be sold. That is in the House bill, and there is no amendment to it and no controversy over it. The bill divides the land up into classes and provides that out of the proceeds, after paying the expenses, consisting in part of $2.50 an acre for the land, which must be paid to the railroad company from whom the land is taken, the United States then pays the taxes that are now unpaid on the land which the railroad company has not paid.

Mr. SUTHERLAND. Let me understand, as the Senator from Nebraska proceeds. Out of the funds arising from the sale of the land the railroad companies are first to be paid $2.50 per acre?

Mr. NORRIS. Yes.

Mr. SUTHERLAND. Then, how is the remainder of the fund to be disposed of?

Mr. NORRIS. Then the taxes are paid; and I think that accounts for about all the expense there is. Then the balance is divided up, as I have stated.

Mr. BORAH. Mr. President——

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

Mr. NORRIS. I yield to the Senator from Idaho.

Mr. BORAH. Mr. President, what better use does the Senator from Utah think could be made of this money than to donate it to the uses which are specified in this bill within the State where the land is situated. If we should put the money into the National Treasury, we would appropriate it for some other ports, or for an inaugural ball, or soldiers, or something of that kind. This is all proposed to be donated to purposes which will have to do with the welfare of the people of the State of Oregon. It is directed in its application in such a way that it must necessarily inure to the public welfare and to the public benefit within that State.

These lands are situated within the State of Oregon; they are, according to my contention, a part of the natural resources of the State of Oregon, which ought to be applied to the upbuilding of the State of Oregon. It seems to me that we could not make any better use of the money than to direct its use so that it will really reach the people. If it gets into the National Treasury, there is a grave doubt whether or not it ever will reach the people at all in any way which will be of benefit. As I have observed, the appropriations for the last few weeks, I conclude that our capacity to waste is only limited by our capacity to find the money with which to carry on the waste. I think this money is so appropriated that it will help the people of Oregon, and I am willing for them to have it, since it is derived from lands intended in the original grant for the benefit of Oregon.

Mr. NORRIS. Well, Mr. President, I have no doubt that if this money were given to the State of Oregon for the purpose of building roads and bridges it would be used for that purpose and would do the people lots of good. If, however, the argument of the Senator from Oregon is good, then we must repeal all our land laws, and we must begin with the repeal of the reclamation act, because the House bill provides that 10 per cent of this money only goes into the Public Treasury; 40 per cent of it goes into the reclamation fund, and under a general statute creating the reclamation fund and the Reclamation Bureau all the proceeds of the sales of public lands in the United States, with some little exceptions, are declared by law to be sacred funds for the purpose of keeping up the reclamation fund. That is where this money ought to go. It will be the proceeds of the sales of public lands; and under the general statute, if no other provision were made for it, that is where it would go.

Mr. WORKS. Mr. President——

The VICE PRESIDENT. Does the Senator from Nebraska yield to the Senator from California?

Mr. NORRIS. I shall yield in just a moment.

Mr. President, if this controversy had never arisen and this land were now put on the market and sold to actual settlers, as the law provided that the railroad company should sell it, the proceeds, under the general statute, would go into the reclamation fund. That is the principal difference between the House bill and the Senate amendments. The Senate amendments give practically all the money to the State of Oregon, while the House bill gives 50 per cent of it to Oregon and puts 10 per cent of the 40 per cent into the reclamation fund.

Mr. BORAH. I desire to say that if the National Government would release to the settlers, under such laws as the settlers could make settlement and live, the other lands which have been tied up for an indefinite period in the State of Oregon, the State of Oregon could well afford to turn all this money into the National Treasury in compensation for it; but there are counties in the State of Oregon, the same as there are in my State and in other States of the West, where they have been compelled to go down into their individual pockets to maintain their schools, to maintain their courts, and their other public institutions, because they have no property within those counties to tax. It is reserved and dedicated to eternal silence. For this reason it is absolutely necessary that the Western States have some method of raising money, and this is the only method it seems practicable under these conditions to work out to give them anything in compensation for this denial.

Mr. NORRIS. Mr. President, this is not a question of reserving these lands from settlement. The House bill itself provides—and there has been no attempt to amend that provision—that this land shall be disposed of, and it provides a method for its disposal.

Mr. BORAH. Exactly.

Mr. NORRIS. And that must be done. There is no way out of that, as I understand. We could not give this land away to settlers, unless the Government itself paid the lien which, under the decision of the Supreme Court, the railroad company has.

Mr. BORAH. I was speaking of the large acreages which have been and are withheld under forest reserves, so called.

Mr. NORRIS. That has not anything to do with this bill.

Mr. BORAH. It has this to do with it, that the withholding of those lands has prevented the development of a large area of country in the Western States, has prevented taxation, and has imposed upon the western people an extraordinary burden, and therefore there should be some compensation coming back to them, to enable them to take care of their bridges and their ports and their county expenses and their schools, and so forth, as this bill in the case of Oregon undertakes to do.

Mr. NORRIS. Mr. President, the House bill gives them 50 per cent for those purposes, and I do not believe the Senator can cite a single instance in the United States where the Congress, in the disposition of public lands, has been as liberal with the States where the land is located as the House bill is in this case to the State of Oregon.

Mr. SUTHERLAND. Mr. President——

Mr. NORRIS. I will yield first to the Senator from California, who wanted to interrupt me a while ago.

Mr. WORKS. Mr. President, I merely wanted to ask the Senator from Nebraska if he realized that a very large proportion of the reclamation fund, which he says is a sacred trust, is being used for the irrigation of private and not public lands?

Mr. NORRIS. I take it that under the law it is not illegal to use it for the irrigation of private land.

Mr. WORKS. I am not so sure about that, but does the Senator know that there are some of these projects which are devoted entirely to the irrigation of private lands?

Mr. NORRIS. I dc not think that any of them are devoted entirely to the reclamation of private lands.

Mr. WORKS. In some instances there is not a foot of public land under the project.

Mr. NORRIS. That may be; but I know that in practically every project, at least every one of which I have personal knowledge, there is a large amount of land that is privately owned, and that will necessarily be so. We can not refuse to use the fund for the irrigation of private lands unless we confine the operation of the law entirely to localities where there are no private lands, which would be a practical impossibility; but the owners of the private land have to pay just the same as a man who takes up public lands under an irrigation project.

Mr. WORKS. Does the Senator think a project of this kind for the sole purpose of providing for the irrigation of private lands is legal?

Mr. NORRIS. Yes; but that question has not anything to do with this matter.

Mr. WORKS. It has a good deal to do with it, in view of the fact that the Senator is referring to the irrigation fund as "a sacred fund" in the remarks he is making to the Senate.

Mr. NORRIS. I do not think it has anything to do with it. The only possible thing that it can have to do with it, is that out of the proceeds of the sale of these public lands the House bill gives 40 per cent to the Reclamation Service, when, under the general law, 100 per cent would go there, less 5 per cent, I believe, for educational purposes, which goes to the State.

Mr. SUTHERLAND. Mr. President——

Mr. CHAMBERLAIN. Mr. President, may I interrupt the Senator?

Mr. NORRIS. I yield first to the Senator from Utah.

Mr. SUTHERLAND. I simply want to say to the Senator that the position of the Senator from Idaho [Mr. BORAH] with reference to the disposition of public lands for the benefit of the States in which they are situated would have my hearty

concurrence if the observations were made with reference to a bill which proposed to treat all the public-land States alike; but I ask the Senator from Nebraska what justice there is in permitting Oregon to have 90 per cent of the proceeds of the sales of the public lands of that State for her especial benefit when no other public-land State is given the same privilege?

Mr. NORRIS. I see no justice in it whatever, I will say to the Senator.

Mr. CHAMBERLAIN. Mr. President——

Mr. SUTHERLAND. In other words, if the Senator will permit me to finish my thought, the public lands in the State of Idaho are sold, and the proceeds are paid into a common fund for the benefit of all the arid-land States, while the proceeds of these public lands in Oregon are dedicated to the especial and sole benefit of the State of Oregon to the extent of 90 per cent.

Mr. CHAMBERLAIN. Mr. President——

Mr. NORRIS. I yield to the Senator from Oregon.

Mr. CHAMBERLAIN. Mr. President, on the statement of the Senator from Nebraska [Mr. NORRIS] there is much reason in the argument of the Senator from Utah [Mr. SUTHERLAND], but let me call attention to this fact: These lands occupy a different position from any public lands in the United States, as I undertook to show on yesterday. The United States gave them away once and then took them back, and received large sums of money before this bill was introduced, and is going to receive a large sum of money now.

Let me call attention to what I mean. The House bill provides that the United States shall pay the taxes. They have done that as a sort of an act of charity, because the suits have bankrupted the counties involved. It will be seen that, while the Government of the United States advances this $1,500,000, approximately, to pay the delinquent taxes, yet when it comes to settle with the railroad company it deducts the taxes it has advanced and receives them back. That is one proposition.

Mr. NORRIS. Does the Senator see anything wrong in that?

Mr. CHAMBERLAIN. No; but the Senator is claiming that Oregon is getting the taxes.

Mr. NORRIS. Well, Oregon is getting them.

Mr. CHAMBERLAIN. I say that, while Oregon gets the taxes by direct appropriation out of the Government funds, the Government gets them back from the railroad company. The State does not get any benefit from them.

Mr. NORRIS. The State gets the taxes.

Mr. CHAMBERLAIN. The State would get the taxes anyhow.

Mr. NORRIS. What does the Government get out of that? Where does the Government make anything?

Mr. CHAMBERLAIN. It advances the taxes and collects them from the railroad company when it pays the company $2.50 an acre.

Mr. NORRIS. And the Government pays the amount so collected to the State or to the counties of the State.

Mr. CHAMBERLAIN. Let me call attention to another proposition. I want to show the Senator from Utah that the Government is not faring so badly. The Government of the United States has received $928,840.18 under the act passed by Congress in 1912, which authorized the Department of Justice to compromise with illegal purchasers at $2.50 per acre, so that the men who had bought in excess of 160 acres of land at a price in excess of $2.50 per acre got title from the Government of the United States on payment to the Government of $2.50 an acre. That realized to the Government $928,840.18, which it has already obtained. In addition to that, while this suit was pending, a receiver was appointed, and he sold lands to the extent of about $190,000, and the House bill appropriates that to the Government fund.

That is not all, Mr. President. I am trying to show, if the Senator will excuse me for a moment, that these lands occupy a different position from any public lands in the United States. When this grant was made, public land was selling at $1.25 an acre. Just as soon as the railroad company was permitted to charge the double minimum price of $2.50 an acre for the odd sections within the limits of the grant the Government of the United States raised the price of the even-numbered sections to the double minimum price and got $2.50 an acre for them.

Mr. NORRIS. Does the Senator object to that?

Mr. CHAMBERLAIN. I am not complaining; I am showing that by virtue of the terms of this grant the United States has already received more than it usually receives from the sale of public lands in any other State in the Union.

Mr. SUTHERLAND. Will the Senator from Nebraska permit me to ask the Senator from Oregon a question?

Mr. NORRIS. Yes.

Mr. SUTHERLAND. Let me ask the Senator from Oregon——

Mr. CHAMBERLAIN. Just one moment further. I want to show another amount the Government is going to get. Section 7 of the House bill, and of the Senate bill also, so far as that is concerned, authorizes an accounting between the Government of the United States and the railroad company for the excess price charged. For instance, the railroad company has received large sums from purchasers on illegal sales in excess of 160 acres to an individual, and for a price in excess of $2.50 per acre. The Government of the United States under the bill gets that excess payment.

Mr. SUTHERLAND. Mr. President, may I ask the Senator——

Mr. NORRIS. First, let me say something in regard to the question of excess payments which the Senator from Oregon has mentioned. It is still a question whether the Government will ever get anything because of the excess payments. In order that the Senator from Utah may get the idea right, I will state that the law giving this land to the railroad company provided that the railroad company should sell it to actual settlers in amounts not exceeding 160 acres at a price not exceeding $2.50 an acre. As a matter of fact, they sold the land in larger quantities than 160 acres, not to persons who were actual settlers on the land, but to timber companies, and got higher prices than $2.50 an acre. This bill provides that there shall be an accounting through the medium of litigation, which is provided for, to determine the excess amount for which the railroad company sold this land above $2.50 an acre, and the Government is to be given credit for that amount in computing the amount which the Government under this bill must pay to the railroad company at $2.50 an acre for the remaining land. So that the question will arise at once, and will undoubtedly go to the Supreme Court and finally be passed on—admitting those facts, and they are undisputed, that the railroad company did get sums in excess of $2.50 an acre for the land—whether the Government is entitled to that land or whether the people who purchased the land are entitled to that surplus. It is a question that will yet have to be determined—whether the Government will get a penny of that money or whether, if it is due to anybody, it will not be due to the men who bought the land and paid the railroad company more than $2.50 an acre for it.

Mr. SUTHERLAND. However that may be, all of this deprived the State of Oregon of nothing.

Mr. NORRIS. Oh, no; nothing whatever.

Mr. SUTHERLAND. If the land had never been forfeited to the Government at all, but had remained in the ownership of the railroad company, subject to its disposition, the State of Oregon would have gotten nothing out of it.

Mr. NORRIS. Nothing whatever.

Mr. SUTHERLAND. Except the taxes on the land.

Mr. NORRIS. Except the right to tax the land.

Mr. SUTHERLAND. The State of Oregon is deprived of nothing, because the Government of the United States takes over the land.

Mr. NORRIS. No. I do not see why the State of Oregon has any right to complain even though the Government made some money out of the transaction, if they did not take any of that from the State of Oregon or keep any money that ought to go to the State of Oregon.

Mr. SUTHERLAND. As I understand the situation, the only thing that the State of Oregon possibly has been deprived of is the right to tax the lands.

Mr. NORRIS. She has not been deprived of that yet. She will be if this bill becomes a law.

Mr. SUTHERLAND. At any rate, the State has not received the tax.

Mr. NORRIS. She has received a good many taxes, some two or three millions of taxes, but there is some that is unpaid.

Mr. SUTHERLAND. That is what I meant.

Mr. NORRIS. The railroad company has not paid any taxes.

Mr. SUTHERLAND. It is to that extent only that the State of Oregon can be said to be deprived of anything, and for that the United States proposes to reimburse her.

Mr. NORRIS. That the United States is going to pay her.

Mr. LANE. Why, Mr. President, the State of Oregon was deprived of every opportunity of opening the territory, the business that would result therefrom, and the prosperity and increased taxation owing to increased values of the land. The State of Oregon has been shut up like a corked bottle. The heart of the country west of the Cascade Range was held away from settlers, from people who would have lived there and builded homes and reared families to the third generation.

Mr. SUTHERLAND. So have we all, under the forest-reserve system.

Mr. LANE. Not by a contract whereby you agreed with another person that they would allow it to be opened up for settlement, and for the promise on their part and the pledge that they would open it up for this prosperity, and for this population which the country required you gave way and granted and agreed to part with your land.

Mr. NORRIS. The contract to which the Senator refers, I suppose, is the contract that in effect was made by the railroad company when it accepted the grant.

Mr. LANE. Yes.

Mr. NORRIS. And which provided that the railroad company must dispose of this land to actual settlers only, in quantities not exceeding 160 acres, and at a price not exceeding $2.50 an acre.

Mr. LANE. Yes.

Mr. NORRIS. And of course the railroad company did not do that.

Mr. LANE. No.

Mr. NORRIS. Now, the Government of the United States has been doing the best it could to compel the railroad company to do that, and this legislation is the result of that attempt.

Mr. LANE. Mr. President, the Government has done nothing. It slept on its rights for 40 years, when it should have been busy forcing the carrying out of the contract, compelling the railroad company to throw that land open for settlement. Instead of doing that, it slept on its rights, until it has become a question whether it has any rights at all or not.

Mr. NORRIS. Mr. President, there is a good deal in what the Senator says, I know. Perhaps the Government has not been as diligent as it ought to have been.

Mr. LANE. It has not been.

Mr. NORRIS. But at least this bill is an attempt on the part of the Government, and those who represent the Government, to do the right thing.

Mr. LANE. A tardy effort.

Mr. NORRIS. It is true that suits were commenced against the railroad company by individuals, a great many of them, attempting to compel the railroad company to give them this land at the price of $2.50 an acre. A great many people settled on the land under the law, and then went into court to compel the railroad company to give them a deed, and tendered the money at $2.50 an acre; but the courts held that that could not be done. I remember that several years ago a good many people in my State were interested in these lands. I think some of them invested money. There was a good deal of fraud perpetrated. There were a good many real estate agents who advertised that they could get this land, and they sold it around at various places, or at least got a commission or a fee, and they made application to the railroad company, and they had a suit pending. They perhaps intended and believed that they would win it, but they did not. They lost; and however much we may regret those conditions—I do as much as anyone—they can not be helped, so far as I can understand. The courts held with the railroad company, and we must obey the mandate of the courts.

Mr. BORAH. Mr. President, it would be more fair to say, would it not, that the courts interpreted the law?

Mr. NORRIS. Well, they did; yes. I am not saying that the court was corrupt, or anything of that kind. I presume that would be a better statement; they interpreted the law. There is not any doubt that when Congress passed the law they supposed that actual settlers would occupy these lands, or I presume they did. It was a good many years ago. I presume they supposed that actual settlers would occupy this land and pay the railroad company $2.50 an acre for it. While, as the Senator from Idaho said, the court was interpreting the law, I never believed that it interpreted it right; but what I thought about it does not make any difference.

Now, Mr. President, coming to the amount of money, of course that is an estimate only. The records show that this land was taxed in some instances as high as $40 an acre by the taxing authorities of Oregon. I believe the average was from $8 to $10 an acre. Here is another equity that the Senator from Oregon has not discussed, and that I want to call to the attention of the Senator from Utah, who has shown an interest in it.

The railroad company under that law never had an interest in that land in excess of $2.50 an acre. That has been the contention of the Government all the time. The original law provided that they could not sell it for more than $2.50 an acre; so that if you were going to tax the railroad company it seems to me that as a matter of law you could not tax it in excess of its real interest in the land, which was $2.50 an acre. The railroad company was interested in having the State tax it higher, because it was claiming that it had the land, and could sell it for any amount it saw fit. So that there were paid, while the railroad company was paying taxes to the State and counties of Oregon, taxes on a valuation of more than double what the railroad company owned in these lands; and under the House bill we are paying a little over a million and a half of taxes to the State of Oregon on that kind of a valuation. So that I think again we are extremely liberal with the State of Oregon. I do not believe, as a matter of law, that the State of Oregon ever had the right to tax the railroad company to a greater extent than the value of $2.50 an acre for the land; but that is all away, and the payment is based on the valuation that the taxing authorities put on the land.

Mr. LANE. Now, I should like to ask the Senator, with the railroad refusing to sell the land at $2.50 an acre or any other price, and surrounding land, adjoining sections, being worth $40 an acre, what was the State of Oregon to do? What could it do but tax it at the higher valuation?

Mr. NORRIS. I can answer that question by saying this: Suppose the adjoining land was worth $100 an acre——

Mr. LANE. It was, some of it.

Mr. NORRIS. And the Government of the United States owned this land. They could not tax it. They would not own any taxes in it.

Mr. LANE. No; but here was an agreement to sell it at a certain price.

Mr. NORRIS. Suppose the Government of the United States sold to the Senator a half interest in a certain quarter section of land, and the taxing authorities should come along and say, "Why, the adjoining land is worth $100 an acre, and as you have a half interest or a third or a tenth interest in that land, we will tax you on the full value of that land." I do not believe any court would sustain that.

Mr. LANE. Mr. President, I do not think that is a fair comparison. Here was land, the price of which was settled at $2.50 an acre under an agreement that the railroad company would sell it to people for $2.50 an acre, and let them make it worth the $100 or $1,000 an acre, as they did in the case of adjacent land, some of them—$1,000 an acre, if you please. I have seen it sell for more than that an acre. With a corporation sitting tight on other similar land, under a pledged agreement that it would sell it for $2.50 an acre, withholding it from sale, would you then still tax it at $2.50 an acre?

Mr. NORRIS. Yes. Now, the Senator's contention is——

Mr. LANE. It is not a contention; it is a fact.

Mr. NORRIS. The Government, under the House bill, is paying the taxes at the figures that the taxing authorities of Oregon put on it. I only mention that to show that, in my judgment, it is a liberal payment to the State of Oregon of these taxes. It seems to me that when the State of Oregon claims it had the right to tax this land at $40 an acre, and on the other hand is demanding of the railroad company that it sell it for $2.50 an acre, it is occupying a position that can not be sustained in any court of law; but that is all away. I only mention it in passing.

The value, of course, is a matter of speculation. I believe it was stipulated in the litigation that the value of these lands in dispute that are left was $35,000,000. I do not know that that is entitled to any particular weight, because it was not a material proposition in the litigation, so I suppose they were not careful about putting a value on it. But the valuations run up as high as $50,000,000; and I think, from what little examination I have made of the record—I have not had time to go into it fully—that the great preponderance of the estimates made by men who have made examinations of it put it away beyond $35,000,000. Assuming that it is $35,000,000, let us see what, in money, the State would get.

Under the Senate bill, after getting its taxes—now, they are not counted in that; we pay them as part of the expenses—if the Senate amendment were agreed to, the State of Oregon, either directly or through its counties, would get $26,325,000.

Mr. SUTHERLAND. On a valuation of what?

Mr. NORRIS. On a valuation of $35,000,000, and I think that is low. Taking the same valuation, under the House bill the State of Oregon would get $14,625,000. In each case the taxes are in addition to that amount which they get, because the taxes are paid before there is any distribution made of the fund.

Mr. President, I do not want to be unfair. I want to be liberal. I have always thought that we ought to be liberal with all the States in dealing with the public-land question; and it seems to me that the House bill is extremely liberal with the State of Oregon. We can not relieve a great many individuals who have suffered on account of this condition. If you gave to the State of Oregon all of the money, you would not relieve a great many individuals who have suffered and who honestly went upon the land and spent money in litigation trying to get title.

The House bill gives a preferential right to those who settled on the land. That is another thing that, it seems to me, is very just. It fixes the date at the time of the decree of the lower court when, as I remember, it declared a forfeiture of these lands; and all those who had settled up to that time, who had made applications for homesteads, are entitled to a preferential right over the ordinary person.

Mr. LANE. I should like to ask the Senator, before he goes further, if he does not consider, as an element in equitably disposing of this property or settling this case, the fact that the State of Oregon during all this time gave police protection to the property of the company? They helped them protect their holdings by fighting fires. They gave them protection to life and every protection that they gave to every other citizen; and yet at the same time the company were refusing to sell the land at the price which they had agreed upon, the price limited in the act of Congress.

Mr. NORRIS. I am not defending the company. I have always said that in my judgment the court erred in not compelling them to sell it. I think it erred again in not declaring a forfeiture. It seems to me the violation of the law was so plainly admitted that the railroad company was not entitled to any consideration. But the same thing is true everywhere in this country. The police authorities, if any protection is demanded, give it. They do that all over the United States. They do that regardless of the ownership of property, regardless of the payment of taxes, regardless of anything. Other western States having public lands that are disposed of, where the proceeds all go into the reclamation fund, do the same thing. They have the same police protection, and protect people and corporations the same as Oregon has done. Oregon in this case, under the House bill, gets 50 per cent of the proceeds of all this land.

It is said that in the case of some of the land that was sold a number of years ago Congress passed an act validating the sale, and that the Government got some money out of that. Why, that has not anything to do with those remaining lands. The Government has never received a single penny that I know of from the lands that are in issue in this bill—not a cent from any source. It has been a continual expenditure on the part of the Federal Government, as far as these lands are concerned.

There is another amendment that I want to mention briefly. It will save some time when the amendment comes up. There is another Senate amendment providing for the sale of these lands which changes the provisions of the House bill. The House bill provides that the timber on these lands may be sold on time. It is conceded, I think, by everybody that it will take large corporations, or men of large means, to handle economically the timber on these lands, the same as most other lands where they are taking off the timber. The House bill provides as nearly as it can, it seems to me, for giving the poor man a chance to buy the timber. It provides for the sale of the timber on 10 years' time, and the deferred payments are to draw not to exceed 6 per cent interest.

The Senate committee bill provides that this land shall be put up for sale and sold for cash. I do not believe it will bring as much, in the first place, as if it were sold on time and in payments with interest at not to exceed 6 per cent. If it is put upon the market and sold for cash, it means that no one except men of immense wealth will have any opportunity to buy any of the timber, and for the same reason, there being fewer bidders, necessarily the tendency would be to sell it for a less price. If we sell it on time and let the deferred payments draw interest at some rate that the Secretary of the Interior will fix—not exceeding 6 per cent—in the first place, we will get a larger bid for the timber, and, in the next place, that interest will bring in an income that will be profitable itself, because it will be higher than the State would have to pay if it were in the market and borrowing money directly.

Now, Mr. President, I do not care to proceed further.

Mr. SUTHERLAND. May I ask the Senator before he takes his seat——

Mr. NORRIS. I yield to the Senator.

Mr. SUTHERLAND. It is contemplated, I understand, that the timber shall be sold separately from the land; that it shall be taken off the land and the land shall be swept clear of the timber.

Mr. NORRIS. Yes.

Mr. BORAH. And after the timber is cut off, I understand, those lands will be subject to homestead entry.

Mr. SUTHERLAND. I merely wanted to understand the situation.

Mr. NORRIS. They sell the timber.

Mr. SUTHERLAND. The idea is to clear the land of timber and turn it over to agricultural uses?

Mr. NORRIS. Yes. The testimony shows, and, as far as I know, it is uncontradicted, that the timber on this land is already overripe and it is not worth now as much as it was a few years ago; it ought to have been cut before. There was read yesterday—and it appears in the RECORD to-day—a long report, made by Mr. Williams, of the Department of Justice, who went out and inspected the land and went all over it. He calls attention to the fact, and it appears at several other places in the reports, that the timber is overripe.

Mr. SUTHERLAND. The land, I take it, is far more valuable for agricultural uses than it possibly could be as a reservation to grow timber for the future.

Mr. NORRIS. Some of it is; but it is all kinds of land. There is land that is not worth anything and land, as the Senator from Oregon stated, that is probably worth $100 an acre. The bill as passed by the House provides—and there is no Senate committee amendment which changes it—that the lands and the water-power sites shall be classified by the Department of the Interior. There are some valuable water-power sites on some of this land, and I understand they will be classified, then the timberland and the agricultural land. Then it provides that the timber shall be sold. The bill as passed by the House provides that it shall be sold on bids, and that 10 years' time, as I remember the provision, shall be given for the payment of the money.

Mr. SUTHERLAND. There are to be 10 years within which the timber is to be removed.

Mr. NORRIS. I do not know that that is fixed. I am not sure as to whether that is in the proposed law, or whether the Secretary of the Interior in the contract will fix that.

Mr. POINDEXTER. It prohibits the removal of the timber until after patent is issued.

Mr. NORRIS. After patent is issued for the timber. Let me explain it to the Senator. The bill as passed by the House provides that the Secretary of the Interior shall sell it in quantities that in his judgment will bring the most money, and then the purchaser has 10 years' time. He has payments to make and interest to pay. He takes a 40-acre tract out of his entire purchase and pays for all that 40-acre tract, and he is then allowed to take all that timber, and he gets a patent when he pays that money for the timber, and when the timber is taken off, then the land becomes subject to entry.

Mr. SUTHERLAND. He can not remove any timber before he has paid for the land?

Mr. NORRIS. Not the land, the timber.

Mr. SUTHERLAND. The timber, I mean.

Mr. NORRIS. Yes. He must pay for the timber before he can remove it.

Mr. SUTHERLAND. So it may be that cases will arise where the timber is bought and none of it can be taken off for a period of 8 or 10 years, and none will be taken off.

Mr. NORRIS. I doubt whether the Secretary would make that kind of a contract. He would provide that they could take a certain portion of it off every year.

Mr. TOWNSEND. Mr. President——

Mr. NORRIS. I yield to the Senator from Michigan. He has the amendment before him.

Mr. TOWNSEND. The Senate committee amendment provides that the "timber thus purchased may be cut and removed at any time within the discretion of the purchaser."

Mr. NORRIS. That is the Senate committee amendment?

Mr. TOWNSEND. That is the Senate committee amendment.

Mr. NORRIS. Mr. President, I do not see that there is any disposition on anyone's part to do any injustice. I regret that I have felt compelled to take a view of the situation that is different from that of the Senator from Oregon. It does seem to me as I read the bill and the Senate committee amendments that the bill as passed by the House is liberal. I do not believe it is any defense here to say that because there is a large forest reservation in a State like there is in Oregon, and this land is not included, with no attempt to put it in a forest reservation, therefore we should deal with these public lands any different than though we were dealing with them if they were in some other State. In all other States practically all the money that is paid for public lands goes into the reclamation fund, and we ought to do that with Oregon, or at least we ought to do it to the extent of 40 per cent, as provided in the bill as it passed the House.

Mr. President, let me say if we commence now to prevent the money received from the public lands from going into the reclamation fund we might just as well repeal the law providing for the Reclamation Bureau. If we are going in this case to turn all the money over to the State of Oregon, and that is what the amendment of the committee practically means, keeping it all out of the reclamation fund, then we will have

established a precedent that in all cases in every other State where there are public lands demands will be made that they be treated as liberally as Oregon, and that means the end of the reclamation business in this country.

Mr. WALSH obtained the floor.

Mr. O'GORMAN. Mr. President, will the Senator yield to me for a moment?

Mr. WALSH. I yield to the Senator.

FOREIGN-BUILT DREDGES.

Mr. O'GORMAN. In behalf of the Senator from Louisiana [Mr. RANSDELL] I ask unanimous consent to submit a favorable report on a bill and to ask unanimous consent for its immediate consideration. It is substantially a bill which was passed here a week ago and a motion entered to reconsider it. At the suggestion of the Senator from Rhode Island [Mr. LIPPITT] a modified bill was introduced. We have made the modification so as to meet the view of that Senator.

The PRESIDING OFFICER (Mr. HITCHCOCK in the chair). Is there any objection? The Chair hears none, and the report will be received.

Mr. O'GORMAN. For the Senator from Louisiana [Mr. RANSDELL], from the Committee on Commerce, I report back favorably with an amendment the bill (S. 6239) authorizing the Commissioner of Navigation to document as vessels of the United States two dredges built of American material and owned by James Stewart & Co. (Inc.), a citizen of the United States, and I submit a report (No. 514) thereon. I ask for its present consideration.

The PRESIDING OFFICER. Is there objection?

Mr. GALLINGER. I should like to know what the amendment is that has been agreed upon.

The SECRETARY. The amendment is, in line 6, to strike out the word "as" and insert "a," so as to read "James Stewart & Co. (Inc.), a citizen of the United States."

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

Mr. SUTHERLAND. Let us hear the bill read.

Mr. CHAMBERLAIN. If there is going to be any discussion upon it I must object, because the pending Oregon and California land-grant bill will have to be disposed of to-day or to-morrow.

Mr. LIPPITT. I do not believe there will be any discussion on the bill. It will not take more than a minute or two.

The PRESIDING OFFICER. The Secretary will read the bill.

The Secretary read the bill as proposed to be amended, as follows:

Be it enacted, etc., That the Commissioner of Navigation is hereby authorized and directed to cause to be documented as vessels of the United States two dredges built of American material and owned by James Stewart & Co. (Inc.), a citizen of the United States.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

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

The PRESIDING OFFICER. The question is on the amendment proposed by the committee.

The amendment was agreed to.

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

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

OREGON & CALIFORNIA RAILROAD LAND GRANTS.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 14864) to alter and amend an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon," approved July 25, 1866, as amended by the acts of 1868 and 1869, and to alter and amend an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," approved May 4, 1870, and for other purposes.

Mr. WALSH. Mr. President——

Mr. CLARK of Wyoming. Mr. President, a parliamentary inquiry. What is the business now before the Senate?

The PRESIDING OFFICER. The pending bill is House bill 14864.

Mr. CLARK of Wyoming. Another parliamentary inquiry. How does it happen that the bill is before the Senate at this time?

The PRESIDING OFFICER. It is before the Senate for the reason that the Senator from Alabama [Mr. BANKHEAD] permitted the Post Office appropriation bill to be temporarily laid aside for the purpose of considering this bill.

Mr. CLARK of Wyoming. But have we not considered another bill, which displaces the bill which was before the Senate?

The PRESIDING OFFICER. By unanimous consent that was done. The Senator from Montana will proceed.

Mr. WALSH. Mr. President, it is exceedingly unpleasant for me to find myself obliged to differ from my esteemed friend the Senator from Oregon, who has charge of this bill, and particularly so to find myself differing with him concerning the disposition of public lands in his own State. But the provision of the bill which has given rise to so much of the discussion as has thus far taken place is, in my humble judgment, wholly indefensible, and is so palpably unjust to my own State as well as to every other public-land State that I should not feel that I was discharging my duty here to my constituents if I did not register a protest against the distribution of this fund as it is provided in the bill.

I trust the bill will pass, and pass speedily. In its general aspects it is in every way, it seems to me, a commendable measure. But the reasons that condemn that distributive provision of the bill are so altogether persuasive and unanswerable, as it appears to me, that I find it a little strange that any Senator from the western country should feel that a provision of this kind ought to be asked from the United States Senate. I hope the Senators from Oregon will be prevailed upon to withdraw this amendment and allow the House provision at least to stand.

Mr. President, if we were considering here a question of general policy as to whether all the avails and proceeds of the sales of public lands, or the major portion of such proceeds, should go to the States, respectively, from which they come, I might not be heard to object. Indeed, I have no doubt that a measure of that kind would receive quite general concurrence from the western Senators. But, Mr. President, a rule is established by law quite contrary to that, namely, that all of the proceeds and avails of the sales of public land shall go to the general reclamation fund for the purpose of constructing works wherever it may seem desirable to construct them. Money derived from the sales of lands in the State of Montana are used for the purpose of constructing reclamation work down in the State of Arizona and in the State of New Mexico and in other States throughout the Union, and eventually such money will be used for the construction of reclamation works in the State of Oregon. So moneys derived from the sale of public lands in the State of Colorado are employed for the purpose of constructing works on reclamation in the State of Montana.

Now, it is proposed that Oregon, as to a considerable portion of her lands, and lands of very great value, running from $30,000,000 to $50,000,000, shall be exempted from the operation of that general rule, and that while the rest of us shall still be compelled to put all of the avails of the sales of public lands in our various States into the general pot, that the moneys derived from the sale of these lands in the State of Oregon shall be devoted practically in their entirety to the State of Oregon itself.

Mr. President, I might say in this connection that a more or less general misapprehension exists concerning the advantages which the State of Montana has derived from this act. The balance is still in our favor. We contributed upward of $10,000,000 to the general fund. We have had expended in our State something over $9,000,000. We have still a balance of $1,000,000 to our credit. So we have no particular fault to find. Now, the fact about the matter is that the State of Oregon up to the present time has contributed very much more to the reclamation fund than she has derived from it, the aggregate contributions being in the neighborhood of $12,000,000, while only somewhere between $2,000,000 and $3,000,000 have been expended in that State.

But, my friends, the law provides that every 10 years this thing shall be equalized, so that hereafter we shall not be able to get appropriations for further reclamation works in the State of Montana until Oregon balances us up. In other words, for the future our money is going to go to the construction of reclamation work in the State of Oregon. Let me call your attention to the provision of the law. I read from section 9 of the act of June 17, 1902, as follows:

SEC. 9. That it is hereby declared to be the duty of the Secretary of the Interior in carrying out the provisions of this act, so far as the same may be practicable and subject to the existence of feasible irrigation projects, to expend the major portion of the funds arising from the sale of public lands within each State and Territory hereinbefore named for the benefit of arid and semiarid lands within the limits of such State or Territory: *Provided*, That the Secretary may temporarily

use such portion of said funds for the benefit of arid or semiarid lands in any particular State or Territory hereinbefore named as he may deem advisable, but when so used the excess shall be restored to the fund as soon as practicable, to the end that ultimately, and in any event, within each 10-year period after the passage of this act, the expenditures for the benefit of the said States and Territories shall be equalized according to the proportions and subject to the conditions as to practicability and feasibility aforesaid.

Mr. WORKS and Mr. BORAH addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Montana yield, and, if so, to whom?

Mr. WALSH. I yield to the Senator from California.

Mr. WORKS. I should like to know whether the Senator from Montana thinks it is practicable to carry out that provision of the statute? Suppose there are States where there is no project that can be practically carried out there is no provision for dividing the funds in any way.

Mr. WALSH. I am simply anticipated by the question. I do not care to discuss the question as to what would happen with reference to the State in connection with which no feasible project can be found. The Senator from Oregon tells us that, and that is in accordance with the record, that Oregon does not stand in that situation. He tells us, and it is no doubt true, that there are a million acres of land in the State of Oregon that are capable of reclamation and that ought to be reclaimed through this fund. That means an expenditure of from $25 to $50 an acre, meaning that Oregon could justly claim eventually anywhere from $25,000,000 to $50,000,000 out of this fund for the reclamation of her lands.

Mr. WORKS. That may be true as to the State of Oregon; but this is a practical question, and one that will have to be solved at some time. I am unable to see myself how that provision of the statute equalizing the amounts to be expended in that way can be carried out.

Mr. WALSH. Mr. President, I desire to say to the Senator that the question suggested by the Senator from California [Mr. WORKS] is, of course, an exceedingly important one and when it confronts us it will probably be more or less difficult of solution. For the present, however, it is purely academic. Oregon does not stand in that situation.

Mr. CHAMBERLAIN. Mr. President——

The PRESIDING OFFICER. Does the Senator from Montana yield to the Senator from Oregon?

Mr. WALSH. I do.

Mr. CHAMBERLAIN. The Senator from Montana read section 9 of the reclamation act of 1902 as it was originally passed. The Senator, however, will remember that that act has been repealed, and now the appropriations for irrigation purposes are made directly by Congress.

Mr. WALSH. Oh, no. The new act, Mr. President, as the Senator from Oregon will quite distinctly recall, does not affect this provision at all. All the change that has ensued with respect to the matter to which the Senator has referred is that under the old act as the funds came in they were assigned to the various reclamation projects without any action whatever on the part of Congress. Two years ago that was changed, and the reclamation extension act, which was passed two years ago, provided that hereafter no money should be assigned to any project except upon appropriations made by Congress. That is the only change, so far as I can recall.

But, Mr. President, that is the situation of affairs. The Senator has stated, however, as I have suggested, that there are a million acres of land in the State that ought to be reclaimed, and which undoubtedly will be reclaimed just as soon as there is money enough in the fund in order to carry on the work. When that time comes and we are desirous of having another project carried on in the State of Montana, and Oregon has an equally feasible and desirable project, and the two stand in other respects upon exactly the same footing, under this proposed law the Secretary of the Interior must take up the Oregon project until the expenditures in the State of Oregon reach the amounts that were contributed by that State, or at least until the proportion contributed by her is no greater than that contributed by any other State relative to the expenditure therein.

Take the State of Idaho, for instance. The State of Idaho has contributed about $5,000,000 to the reclamation fund and has had expended in that State $8,000,000. Every one of the men who have taken land under the Idaho project will be obliged to pay back the amount of the construction charge—$25 or $30 an acre, as the case may be—and Idaho, having already had more than she contributed, could not hope to compete against Oregon in the future in reference to projects. So the Idaho people will be contributing to the construction of this reclamation project in the State of Oregon every dollar that comes out of the sale of lands in that State. Under the provisions of this bill Oregon will be exempted from providing a fund as to this great extent of valuable land.

Mr. President, the State of Arizona is in the same situation. The State of Arizona has had of this reclamation fund something like $16,000,000; and, regardless of what anybody may say about the matter, I have not the slightest doubt in the world that the greater portion of these investments will eventually be returned to the fund and that the State of Arizona will be obliged to turn back into the fund that $16,000,000, and it will go to the construction of reclamation works in the State of Oregon; and yet Oregon is to be exempted under the provisions of this bill from any contribution for reclamation at all, except to the extent of 10 per cent; and that money must be expended for the construction of reclamation projects in the State of Oregon and nowhere else.

Mr. President, it is said that this case is sui generis; that these lands do not belong in the same category as do the general body of public lands open to general appropriation; but why do they not? In what respect are they different? These lands belonged to the Government of the United States. The people of Oregon contended that the railroad company to whom they were granted had forfeited its title to them, and that the title had reverted to the people of the United States. A suit was instituted with that idea in mind. It was contended that by reason of the failure on the part of the railroad company to observe conditions subsequent, they had lost their title, and that these lands had reverted to the Government of the United States. A suit was instituted, and the lower court took that view of it; but the matter went to the Supreme Court of the United States, and that court held that that was true apparently only in part; that the railroad company was entitled to get $2.50 an acre out of the land. So this bill provides that the title to all these lands shall be revested in the United States, subject, however, to the right of the railroad company to have $2.50 an acre for each acre of these lands. It is then provided that the lands shall be classified into agricultural lands, timber lands, and mineral lands. The agricultural lands are to be open to homestead entry. With respect to timber lands, the timber is to be sold off, and then subsequently the lands are to be opened to homestead entry. The mineral lands are to be open to mineral entry. In what respect, then, do these lands differ from ordinary public lands?

Why, Mr. President, it is not an extraordinary thing at all that the Government shall have parted with its title to certain public lands, and, for some reason or other, that title is vacated and divested, and the lands again drop back into the general body of the public lands.

Some years ago a suit was started in my State to annul patents secured by the Northern Pacific Railway Co. to valuable coal lands in the State of Montana to which they had obtained patent; they had held them for nearly five years; the statute of limitations had almost run against them. A suit was instituted to annul the patent to those lands, and it was annulled. Those lands have since that time been valued; they have been classified, and estimated at anywhere from $30 to $105 an acre. They are coal lands which are open to appropriation now to anybody who comes along to buy them. Some of them have been appropriated at that price, and the money has gone into the general reclamation fund. What is the difference between that case and this? None that I can see. This situation, I repeat, is not extraordinary at all.

There is hardly a State in the West in which actions have not been begun to divest grantees of the title to lands which had passed to them, and judgments have been entered, and many of those lands have been reconveyed without the institution of a suit at all; they have gone back into the general body of the public lands for disposition just exactly the same as these lands in Oregon have gone back, for such disposition as Congress may see fit to make of them.

Likewise, it was suggested, and very properly so, that this situation is different in this respect, that under this proposed law the timber upon the lands is to be sold separately, and that there is no law providing for a separate disposition of timber upon the public lands in any of the other States, except in the case of timber within the forest reserves; and in the case of timber within the forest reserves the money does not go into the reclamation fund. All that is true; but, Mr. President, what difference does that make?

Let us take coal lands. The Government has executed leases of coal lands in Alaska, or is prepared to execute such leases, and more or less of the coal may be taken out of the land by virtue of these leases. Would it be asserted for a single moment that proceeds derived from that source would not and ought

not to go into the general reclamation fund, and that it would be possible that that should be diverted, with justice to the other States, allowing the denuded land to remain for distribution to swell the reclamation fund? I apprehend that that would not be asked for.

Now, Mr. President, these lands are not included within a forest reserve because the people of Oregon do not want them included within a forest reserve. God knows there is enough land within forest reserves now. All of us feel in that way about it. There is not anybody here who wants to suggest any such disposition as that; but when they are left outside of the forest reserves for disposition under the general laws, all the avails of them ought in justice to go into the reclamation fund, just the same as the avails of sales of lands in other States.

Why, Mr. President, there is in the State of Montana a large body of the most productive farm land, I undertake to say, that can be found anywhere in the West, which has upon it a very heavy growth of timber. I suppose that probably there are 50,000 acres in the Kootenai Valley of as productive land as there is anywhere in this country. There are a series of benches in a beautiful valley, which runs all the way down that river, covered with a very heavy growth of commercial timber; and yet, Mr. President, it is not an exaggeration at all to say that, if that timber were cut off and that land put under cultivation, as it would be if it were open to sale, the crops raised from that land annually would more than equal all the value of the timber there is on it. It is a matter easily susceptible of computation.

I undertake to say that on these 50,000 acres of land there would be probably 2,000,000 feet of timber upon a quarter section. At a very high estimate that is worth $2 a thousand; in other words, there are $4,000 worth of timber on a quarter section of land. If you cut that timber off, you could sow the land to alfalfa or wheat and get more than $4,000 worth of stuff off of it every year; and yet the Agricultural Department here proposes to hold that land in just exactly that condition until eventually they get ready to sell the $4,000 worth of timber off of it, and then allow it to be homesteaded.

Mr. President, there was much in what was said by the Senator from Iowa [Mr. CUMMINS] yesterday, that there is an obligation resting upon the Government of the United States to help the man who wants to clear a piece of woodland and put it under tillage and cultivation, just as much as there is to help a man who wants to go out upon the prairie and take a piece of arid land. Why should not a man who wants to do so take that 160 acres of land with $4,000 worth of timber on it? He could not clear it for any such price as that; and why should he not be offered that 160 acres of land by the Government of the United States, timber and all, of course safely guarded, so that the law would not be used simply for the purpose of fraudulently acquiring timberland? So, the people of Oregon very wisely insist that these valuable lands should not be put into a forest reserve, but that they should be held out as an inducement to settlers to come there and take them.

Why, Mr. President, we would be exceedingly glad to have an act passed providing for the opening of the lands to which I have referred in the Kootenai Valley, and we would not ask a dollar of the money that was derived from the sale of them. We would be only too glad to allow the money to go into the reclamation fund. If we could open them up in any way, the people of Montana would be only too happy to have these lands opened up to settlement.

So, Mr. President, there is no reason at all why the amount that is available should not go into the reclamation fund, so long as the avails from other lands go into that fund. I can not understand why there should be any distinction with reference to these lands. These lands have been held in private ownership for some years, and they have been subject to taxation; taxes have been assessed against these lands, and all of that money goes to the localities under the provisions of the House bill, which is perfectly proper; but when they get that, Mr. President, I can not see any good reason at all why every dollar of the remainder should not go into the reclamation fund. Certainly on any just consideration of this measure the Senators from Oregon are asking more than the Congress of the United States ought to concede to them.

Mr. BORAH. Mr. President, I agree with very much that the Senator from Montana [Mr. WALSH] has said, and especially the latter portion of his remarks find a hearty response in my mind; but these public lands in Oregon are treated as being in a different condition and situation from other public lands. The bill itself recognizes that all the way through. The legislation is based upon the theory that these lands are sui generis. We are not undertaking to deal with them in any particular as we deal with other public lands. If we were to deal with them as we deal with other public lands, we would simply put them back in a forest reserve or would reserve them, to be disposed of as the other public lands are disposed of. We start out, if we are in favor of the bill at all, on the theory that there is a distinct and marked difference in the situation with which we are dealing as compared to the situation which relates generally to the public lands. I have felt that the difference was such that I could very agreeably support this bill.

The distributive clause of the amendment reported to the bill provides as follows:

Of the remainder 10 per cent shall be paid into, reserved, and appropriated as a part of the fund created by the act of Congress approved June 17, 1902, known as the reclamation act, to be expended on approved projects within the State of Oregon—

It is conceded that Oregon has put into the reclamation fund a very much larger sum than has yet been expended out of it for the benefit of the State. This would not equalize that. Of course, it is said—and the basis of the argument is a correct one—that the reclamation fund is held as a unit for the benefit of all the States, and equalizations are to take place every 10 years; but there is a sufficient difference and distinction in this situation to merit, it seems to me, consideration of the equity of this provision.

The amendment continues—

10 per cent of such remainder shall become a part of the general fund in the Treasury of the United States; 30 per cent of said remainder of the proceeds arising from the sales of land and timber in the counties of Coos, Douglas, Lane, Tillamook, and Multnomah, in the State of Oregon, shall be paid to the treasurers of the said respective counties for the construction of roads, highways, and bridges, and 20 per cent thereof shall be paid to the proper officer of the respective port districts within the counties named, for the purpose of reducing the bonded indebtedness of such districts and for general harbor improvement, and, where there is more than one port district in any county, the county court of such county shall determine what portion of the fund shall be credited to the several port districts therein; 35 per cent of said remainder of the proceeds arising from the sale of lands and timber within counties other than the counties of Coos, Douglas, Lane, Tillamook, and Multnomah shall be paid to the treasurers of the respective counties for the construction of roads, highways, and bridges; and the entire balance remaining in said Oregon and California land-grant fund, from whatever source derived, shall be paid to the State of Oregon for its irreducible school fund for the support of the common schools of the State

The original grant of this land, Mr. President, had for its object and purpose the development, the special benefit, and the special advantage of the State of Oregon. It was designed especially and particularly to aid in the development of that particular region of country in which the land was situated. In the first place it contemplated the building of a railroad, which was for the purpose of development; and in the second place it contemplated the sale of the lands for a small sum per acre, so that the lands would pass into settlement and into the development of the State, become subject to taxation, and contribute to the upbuilding of the different institutions of the State. Had that grant been carried out as it was intended to be carried out by Congress this bill would not be here and the State of Oregon would have received long ago far more in the way of development and advantage from the carrying out of the grant than it will receive from these donations, as they are called, to the State of Oregon in the final disposition of the lands now.

If the railroad had complied with the terms of the grant, these lands would have been disposed of to settlers at the price named in the grant and the settlers during all these years would have been upon the land, paying taxes, and helping to build up the State. These bridge funds would not be starved, and the port funds would not be starved, and the other institutions in the State so essential to the upbuilding of the State would not be starved as they are now. But that grant was not carried out in good spirit and in good purpose. The development of the State was retarded. For a longer time than some of us have lived these lands have been lying there idle by reason of the failure to carry out the purpose of the grant.

What is the result? The United States takes hold of this matter and undertakes in a measure to do equity to the situation. It undertakes in a measure to put Oregon into the position which Oregon would have occupied if the grant had been faithfully carried out in the first instance.

Does it not appeal to the Senate that that is a distinction and a situation different from that of disposing of those lands, the title to which has always been in the United States, and which were never designed to be used for any particular purpose or for the advantage of any particular State?

It has seemed to me, Mr. President, that when you go back and take into consideration the original grant, the benefit which that grant would have been to the State had it been carried out, and the advantage which the State would have derived from the carrying out of that grant, it does place Oregon in a little different position than that which Idaho occupies with reference to her public land, or that which the great State of

Montana occupies with reference to her public land. For that reason it has seemed to me that if we turn over to the State of Oregon these proceeds, as we propose to do, we shall not have done more than equity to the State of Oregon or to the situation in which we find ourselves.

Now, Mr. President, further, let me call attention to the figures which have already been referred to.

Mr. STERLING. Before the Senator passes to that point, will he allow me to ask him a question?

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from South Dakota?

Mr. BORAH. Yes.

Mr. STERLING. Does the Senator think that conditions of this kind were ever in the contemplation of Congress when it passed the reclamation act?

Mr. BORAH. No. I was going to refer to that.

Mr. STERLING. Does not the Senator think that 90 per cent of the $2.50 per acre realized from the sale of the agricultural lands by the Government will be equal to the reclamation fund herein provided—10 per cent of these proceeds? Or perhaps it would be better to put it the other way—that 10 per cent of the proceeds of sales of these lands would equal the 90 per cent which would go to the reclamation fund under ordinary conditions, where the land was sold at $2.50 an acre.

Mr. BORAH. Yes; I think there is much in the suggestion of the Senator. But, as I said a moment ago, the entire bill is founded upon the proposition that this situation is different from that which obtains with reference generally to the disposition of the public lands. The bill would not be here if we did not recognize that proposition. We would not vote for the bill at all if we did not recognize that situation. If we were not disposing of public lands which do not stand in the same relation to the National Government and the people as other public lands, we would not support the bill at all.

Mr. President, reference has been made to the supposed equalization of the reclamation fund every 10 years. Indeed, it will be a most difficult problem when we come to administer that particular portion of the law—so difficult that I have no idea in the world that it ever will be administered with any degree of accuracy as to the letter or even the spirit of the law. But let us assume, if we may, that we can approach with some degree of accuracy the administration of this particular provision of the law. Nevertheless we have a situation here with which we are dealing now; and in view of the things which have transpired or failed to transpire in the last 50 years, and the peculiar relationship of this grant to the particular State of Oregon, and of Oregon being retarded by reason of the failure to carry out this grant in this way, we have a situation which is accentuated by the figures which I will give you.

Mr. WALSH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from Montana?

Mr. BORAH. I yield to the Senator.

Mr. WALSH. To get at the facts, I want to ask the Senator from Idaho if it is not a fact that there were millions of acres of land in the State of Oregon in exactly the same situation as these lands prior to the time the forest reserves were created; and does not the argument which the Senator makes find its application only in the last 10 years, and not the last 50 years? In other words, there were other lands that the homesteader could go and take under existing laws, as well as these, without paying even $2.50 an acre; and is it not because there were other lands open to the homesteader that these were left during all this period?

Mr. BORAH. I do not so understand it, but the Senator may be better informed as to that than myself. I do not, however, so understand.

Mr. LANE. Mr. President, if the Senator will allow me, that was not the case. These lands were in the heart of the richest and most fertile part of the State of Oregon; and when they were taken they took the most valuable resource in the way of lands that were at that time located in Oregon. They were the only accessible lands, and the man who went beyond them went over a trail through the country, if you please, where there was no road and where he could not get out to the market with his produce nor get into his place with his provisions to open his claim without carrying them upon his back or upon a packhorse.

Mr. WALSH. I want to ask the Senator from Oregon if this was the usual grant giving the odd-numbered sections to the railroad?

Mr. LANE. It was the original Oregon & Central Railroad grant, giving every other section to the railroad.

Mr. WALSH. So that the even-numbered sections remained in the Government?

Mr. LANE. The even-numbered sections did, but they have been settled up rapidly.

Mr. BORAH. I have always understood, living neighbor to Oregon, that this grant, lying there as it has for a great number of years, has been essentially and vitally and substantially retarding the development of the State. If it had been public land in the sense that other public lands were, undoubtedly it would have been settled up.

Mr. WALSH. Let me ask the Senator a question. Was not the retardation because you had to pay $2.50 an acre for this land, when you could go right alongside of it and secure land for nothing?

Mr. BORAH. I do not so understand, Mr. President.

Mr. LANE. If the Senator will allow me, you could not buy these lands at $2.50 or any other price per acre. The railroad refused to sell them; and there is where the Government were at fault, for the reason that they slept on their rights and helped perpetrate the wrong upon Oregon.

Mr. BORAH. As I understand, the railroad ceased to sell them at $2.50 an acre, and refused to sell them for any such figure at all.

Mr. WALSH. But in comparatively modern times.

Mr. BORAH. Well, comparatively, but for the last 20 years; and, as the Senator from Montana knows, 20 years in the life of one of our Western States is equivalent to about 150 years for one of the Eastern States. We grow out there even against the tremendous handicaps which these blanket withdrawals have been.

Mr. WORKS. Mr. President——

The PRESIDING OFFICER (Mr. MYERS in the chair). Does the Senator from Idaho yield to the Senator from California?

Mr. BORAH. I do.

Mr. WORKS. I suppose one of the conditions of the grant was that this road was to be constructed?

Mr. BORAH. That was one of the conditions.

Mr. WORKS. That condition has been complied with. Does not the Senator think that has been of great advantage to the State of Oregon, and an immense aid in populating it?

Mr. BORAH. Certainly that has been an advantage; but that was only a portion of the advantage which was intended to inure to the State of Oregon under the grant. In my judgment, a great advantage to the State of Oregon was in having these lands turned over to settlers at a low figure, so that the State of Oregon could be settled up. For many, many years it was of more benefit to the people living in the East who wanted to go to the Pacific coast to have that railroad built than it was for the people of this particular portion of Oregon, which could not be inhabited.

Mr. WORKS. It might be in that immediate neighborhood; but it would not be so as to the whole State of Oregon, because the future of that State has been aided very materially, as we all know, by the construction of this railroad.

I only called attention to that because I thought, in taking account of the whole situation, the Senator was overlooking that very important feature of it.

Mr. BORAH. No.

Mr. CHAMBERLAIN. Mr. President, may I make a suggestion right there to the Senator?

Mr. BORAH. Yes.

Mr. CHAMBERLAIN. The railroad was not completed into Oregon until the seventies, so that it did not help very much up to that time. President Hayes, when he went out there in 1880, rode from Marysville, Cal., to Roseburg in a stage.

Mr. BORAH. Of course the building of the railroad did come as an advantage to the State; but that was only one of the elements of advantage which was contemplated by the grant.

Mr. WALSH. Mr. President——

Mr. BORAH. Just a moment. I do not think it is a vast amount of advantage for a State to have a transcontinental railroad running across it if that State is dedicated to the life of a desert. It is of magnificent advantage to those who want to ride from ocean to ocean and who will observe upon the western people as they pass along in their Pullman cars, and who will come back East and write the laws under which the western people are to develop their States.

I now yield to the Senator from Montana.

Mr. WALSH. I thank the Senator for giving me an opportunity to make this remark, suggested by the remark just now made by the Senator from Oregon. I think it seriously open to question whether the great grants to Pacific railroad companies expedited the construction of any of the roads by 10 years. The Northern Pacific was built through in 1882 with its great grant. It was less than 10 years thereafter—and I feel that it is proper to say it at this time—when the Great Northern Railroad, under

the superb management of Mr. Hill, whose regrettable death has just been announced, was constructed through practically the same territory without a dollar of subsidy from any source whatever.

Mr. BORAH. Yes; I agree with the Senator in that respect, too. I think if we had not made an acre of grant to this railroad it would have been built anyhow, likely within a reasonable length of time of the time when it was built.

But now let us look at the reclamation fund which this bill is designed to help in the State of Oregon; and in so far as it builds up the reclamation projects in the State of Oregon, it to a certain extent relieves the fund from a flow in that direction, so that it does aid the other States to a certain extent in that respect. In other words, if the reclamation projects in the State of Oregon are taken care of out of this fund it will not be necessary to draw upon the general fund to take care of them, and to that extent the State of Idaho and other States will have more to distribute.

Arizona has contributed $1,318,630, and there has been expended in that State $16,964,394. Now, no one regrets this expenditure. I presume no one feels envious or jealous of the fact that it has been thus expended; but it does create an equity so far as this particular grant is concerned, because, I maintain, it stands upon a different basis.

The State of Idaho has contributed $5,482,210, and has had expended in the State some $15,912,000. I do not feel that I can object to the State of Oregon having a very large portion of this fund set apart for the development of her arid lands, in view of the fact, as I say, that originally this grant was certainly intended for the special advantage of the State. I would not favor at this time, certainly, a general distribution of the public-land fund with reference to the amount which was required by each State; that is to say, confining the amount realized in the State to the amount which should be expended in the State. But if a peculiar situation should arise in my State by which some grant which had been intended specifically for the benefit of the State should revert to the National Government, I would feel that the National Government was not establishing a bad precedent to enable me to get the equity of the situation by an enlarged amount of the fund for the benefit of the State.

For that reason, Mr. President, I do not find it difficult to support the distribution which is provided for upon page 16 of the bill. I am not afraid of its becoming a precedent. I do not believe it will result in the repeal of the reclamation act, or in its practical emasculation. But there is another feature of this bill which concerns me quite as much as or more than the feature which we have been discussing, and that is found upon page 9, section 5. It provides there:

That nonmineral lands of class 3 shall be subject to entry under the general provisions of the homestead laws of the United States, except as modified herein, and opened to entry in accordance with the provisions of the act of September 30, 1913. Fifty cents per acre shall be paid at the time the original entry is allowed and $2 per acre when final proof is made.

Of course, that is necessary by reason of the conditions which, as I say, make the disposition of these lands different from the disposition of other public lands, and all those things necessitate some change.

The provisions of section 2301, Revised Statutes, shall not apply to any entry hereunder and no patent shall issue until the entryman has resided upon and cultivated the land for a period of five years.

I shall move at some time during the consideration of the bill, I think, to reduce that to three years. The supposition is, I presume, upon the part of those who urge five years that the parties will have longer in which to acquire the $2 per acre with which to pay for the land, which payment they must make when they come to make their final proof. But, Mr. President, that has not proved to be true with reference to other homesteaders. The longer a homesteader stays upon his homestead without his title as a basis for his security and standing in the credit world, the poorer he gets, nine times out of ten. He is generally better fitted to take care of any cash payment when he goes there than he is after he has been there some two or three years, and especially five years. It is practically impossible for a man, unless he has credit elsewhere, unless he has a standing in the credit world otherwise, to have any credit or standing unless he has title to the property upon which he is expending his labor or to which he is giving up his time.

If he does get credit, he must necessarily pay a higher rate of interest and must necessarily deal under conditions that make it more onerous upon him than the man who is beside him with his title in his possession. If you will make this three years, it will, I believe, bring it under taxation that much more quickly, and thereby benefit the State, but it will certainly, in my judgment, be much to the benefit of the settler. I should like to see that change made.

Again, the bill says:

The area cultivated shall be such as to satisfy the Secretary of the Interior that the entry is made in good faith for the purpose of settlement and not for speculation.

I think perhaps that provision ought to have more consideration than we are in the habit of giving these provisions which provide for such unlimited discretion with reference to what constitutes good faith or what constitutes a sufficient act on the part of a settler to get title. I do not suppose there is a man in this Chamber who would go out and expend his time and his labor, if Senators should ever indulge anything of that kind, upon the theory that we must at last submit to the unlimited discretion of some one else as to whether we have done enough to earn our title or compensation for our effort. Yet we ask the settlers to go upon these lands without law providing what they shall do and having done it know they shall have their title, but leaving it to the discretion of some one to say whether or not they have acted in good faith and whether or not they have done sufficient to satisfy the law. Congress ought not to abdicate, it ought not to give over its solemn duty of prescribing what shall constitute a sufficient compliance with the law.

Mr. WALSH. Mr. President, the suggestion of the Senator opens a rather interesting inquiry. I quite agree with him that there is not any very good reason for extending the period from three years to five years. If the Senators from Oregon prefer to have a period of three years, I should be glad to join in a suggestion of that character. Upon the measure the Senator is addressing himself to now I should like to understand exactly what his attitude is. The old homestead law reposed an absolute discretion in the Secretary of the Interior to determine what amount of cultivation would satisfy the requirement of bona fides. The new law makes an absolute requirement that one-eighth shall be cultivated.

Mr. FALL. The Senator does not mean to say that the old homestead law required any amount of cultivation?

Mr. WALSH. The three years' homestead law requires one-eighth.

Mr. FALL. The three-years' law, but the old law did not require it.

Mr. WALSH. That is what I am saying.

Mr. FALL. It did not leave anything in the matter to the discretion of the Secretary.

Mr. WALSH. Exactly; the old law left the matter entirely in the discretion of the Secretary, exactly as this proposed law provides in express terms. What provision would the Senator like to see there?

Mr. BORAH. Mr. President, I am opposed to lodging such unlimited discretion in the departments here with reference to the enforcement of public-land laws. I understand to what the Senator refers when he says that the present law requires the cultivation of a certain area. I understand perfectly the hardship of that provision, and I have understood it for some time.

I introduced a bill here some two years ago providing that in lieu of the cultivation of a certain area a certain amount of development or improvement should be made, estimated at so much an acre, 75 cents or a dollar, or whatever it was, I have forgotten. That gives the entryman a reasonable rule by which he can conduct his efforts, a rule by which he can know with some degree of certainty that when he shall have complied with it patent must issue to him. I have not been successful in getting that bill enacted into law, but it has passed the Senate.

Mr. NORRIS. Mr. President——

Mr. BORAH. I yield to the Senator.

Mr. NORRIS. I wish to say to the Senator I agree with him, and if we can change this proposed law so as to avoid giving discretion we ought to do it; but it occurred to me that possibly there might be some reason in this case. I do not know that there is. The Senator from Oregon would probably know. As far as I am concerned I think we ought to consider in these homestead matters and in regard to this particular land the fact that the homesteader has to pay $2.50 an acre for his land, and therefore we ought to be more liberal as far as the requirement of improvements and cultivation are concerned than we would if he did not pay that amount.

Mr. BORAH. I agree with that.

Mr. NORRIS. I would be glad to have the Senator or the Senator from Oregon suggest an amendment that would obviate what I think myself is a difficulty.

Mr. BORAH. If I had my way, I would give every homesteader a patent just as soon as he had shown sufficient evidence of the fact that he was there to acquire a home, with such safeguards thrown around the transaction as to prevent fraud or to prevent the acquisition of title by those who desired it for the purpose of speculation. I would give the homesteader his

patent, as I say, as soon as his good faith could be evidenced. As the Senator from Nebraska says, the payment of $2.50 an acre ought to be taken into consideration as one of the items of good faith, although not sufficient, of course, because that would leave a certain class of men able to deal with the situation because of the fact that they had the money.

We have an illustration of this rule of discretion coming up in a day or two, or shortly after this bill is disposed of, in the Post Office appropriation bill. There they are proposing to lodge a certain amount of discretion in the Postmaster General with reference to the carrying of printed matter, magazines, and so forth. I am not in favor of that discretion, but I would infinitely rather see the Postmaster General given the discretion to deal with such a subject as that than to leave unlimited the discretion of the man who is going to pass upon the efforts of a settler who is trying to make a home. Nine times out of ten the public officer has no appreciation or no conception of the sacrifices suffered and the adversities to be endured by a man who has undertaken to make a home in the arid West or upon public lands as they now exist in the United States.

The time was when settlers could go out and acquire a home easily, comparatively speaking, when the lands were available, when it did not require very much effort; but the man who goes out now for the purpose of making a home upon any part of the public land knows when he goes there that it requires sacrifice; that it requires patience and labor, such as men will not make nor undertake to make who have not that indescribable yearning for a home which nine public officials out of ten have never experienced.

I should, therefore, like to see this provision eliminated or changed, and I shall offer an amendment to that effect.

Let me read, Mr. President, a paragraph from a letter which I received only this morning, especially for the benefit of some of our eastern friends who think we have made it easy for the settler to acquire a home, as all the western Senators have had it said to them. We are giving these people 160 acres of land for going out and sitting down upon it. Let me give you a glimpse of the sacrifice which is involved upon the part of such efforts as are now required to get a home. This letter is written by a gentleman who is well known to other Senators than myself and he is entirely familiar with western conditions. He says:

> Hundreds, if not thousands of original settlers are falling by the wayside because of reclamation conditions and reclamation uncertainties, and unless something is done very soon, thousands more are going to fall.

I do not want it to be understood that I am reading this as a reflection upon the particular administration of the law at this time. I am referring to the exacting conditions which surround the settler under the laws that we have passed, assuming that they are executed in the spirit and in the letter of the law.

> I have spent thousands of dollars in my endeavors to improve the relations between the settlers and the Government and think it has been well spent, but actual results are vitiated by red tape and delay purposely brought about to force the settlers into acquiescing in matters and charges they never agreed to and are contrary to reclamation law.

That last, Mr. President, might seem a reflection upon the officers; but the officers, of course, must execute the law as they find it. They are supposed to get back this money and must at times, of course, deal harshly in order to get it apparently; but do the best we may and exercise the best judgment possible, we know that hundreds and hundreds of men who go upon these lands and undertake to reclaim them from the desert spend one or two or three years and then, as this letter says, fall by the wayside not by reason of any fault of theirs but because of the fact that in these days, to carve out of the desert a home means a vast amount more sacrifice than characterized our forebears when they had all of Illinois and Michigan and Kansas and this great and wealthy land to draw from. In this day there ought not to be put into the law with reference to the acquisition of homesteads other than that which will test the good faith of the settler. The United States could well forbear the enforcement of the payments, which are being enforced at this time until such conditions should prevail upon these projects as to enable the settlers to do so without the suffering and the hazard and the loss which must necessarily characterize them under the present law.

Mr. THOMAS. Mr. President, as I was a member of the subcommittee of the Public Lands Committee of the Senate to which was referred this measure and joined with the chairman of that subcommittee in approving the amendments, it is perhaps only proper that I should confirm what the Senator from Oregon [Mr. CHAMBERLAIN] has said regarding them, and to give in brief the reasons for my approval of the bill as it stands. That, however, has been done so admirably and so much better than I could do it myself by the Senator from Idaho [Mr. BORAH], who has just taken his seat, that my task is now comparatively easy.

I know that there is abundant material for argument on both sides of this proposition, and very much that has been urged against the amendments and in favor of the House bill in regard to the distribution of funds realized from the sale of these lands is sustained by the general spirit, so to speak, of the reclamation law and the manner of its administration, and by the tendency to cover into that fund as many as possible of the sources of revenue derived from public lands. Personally I have great sympathy with that policy and naturally want to see that fund so large that its benefits may be as widely extended as possible.

But this is a very extraordinary situation, one with which we have never before been confronted, and one which may not require congressional action again. It involves a land grant which instead of being administered by the immediate beneficiaries of the grant as required by its condition was not administered at all. It involves the execution of a decree of the Supreme Court of the United States by congressional legislation, a task which is unusual and which in some respects has been made, I think, extremely difficult by the peculiar nature of the decisions of which it is the sequel. The bill was filed originally against the Oregon & California Railway Co. to enforce a forfeiture of its grant because of the disregard by the grantee of conditions subsequent, and upon a full hearing the court below sustained the position of the Government and issued a decree accordingly.

The Supreme Court of the United States by a process of reasoning which is entirely logical reached the conclusion that there had been no forfeiture because the recitals of the grant were not conditions subsequent but were covenants which could still be enforced. Had the decree been rendered in strict accordance with the logic of the decision I do not think Congress would have had anything to say upon the subject. But the decree, while denying a forfeiture, seems to me to have proceeded upon the theory that Congress would virtually assume one and then provide for the execution of the details of the decree in appropriate legislation.

That is the first difficulty with which we are confronted. It is true the bill declares that title shall revert to the Government of the United States. That is doubtless necessary in order that the decree can be profitably covered by legislation of this character; but it also provides, which would be impossible if the forfeiture had been declared, that the original sum of $2.50 per acre for which the grantee was required to sell this land to actual settlers, should be paid into the coffers of the railroad company. We are concerned with the distribution of the remainder.

That of itself is unusual in the sale of public lands. It is unprecedented. It would be impossible if these were public lands in the strict sense of the term. It is a recognition of the fact, and a necessary recognition to my mind, that we are required by the Supreme Court of the United States to substitute the Government for the railroad company and then execute the original terms of the grant as nearly as possible in accordance with it and dispose of the fund in a way which is made necessary because of the original failure. I do not regard, and I am unable to regard, this land as being public land. I sympathize fully, as I have stated, with the spirit and with the logic which assuming it to be public land would require a different distribution of this surplus fund.

Mr. President, the fact remains that if this grant had been administered as Congress required that it should be administered when 50 years ago it enacted it, if the railroad company had sold these lands or even attempted to sell them at the maximum price of $2.50 an acre to actual settlers, it unquestionably without regard to the abundance of public lands in other parts of the State would have disposed of a great many of them, and as a result the population of Oregon would have been proportionately increased, a benefit to any Commonwealth which can not be measured in terms of money, a benefit which has been until recently perhaps it has been the object of the Government to secure, the dissemination of title to public lands among citizens anchored to the soil, and thus taking an interest and the deepest of all interests in the welfare and the perpetuation of the Commonwealth.

If that had been done doubtless thousands upon thousands of men, women, and children would long ago have been established upon these lands. The lands would have been brought into taxation according to their value and the added distribution of the resources of the State by this added population would, to my mind, be very largely in excess of all the moneys

that we now realize from these lands to be paid as provided by the terms of the Senate committee amendment.

Consequently, the attitude taken by the Senator from Oregon, who has charge of the bill, it seemed to me, and now seems to me, to be precisely that which I would take and insist upon were this grant located in my State instead of his own. I think the interests and welfare of the State of Oregon with regard to this particular body of land ought to be the first consideration in the distribution of the fund that is to be realized in excess of the amount to be paid back to the railroad company, and this bill seeks to do it. While the rest of the country may have a legal right, I do not think it has what can be termed a moral right to the distribution of this fund as provided by the bill as it passed the House.

I say that as I before intimated with the most profound respect for the views of Senators who disagree with me and with whose logic I can not quarrel, but when we consider, as the Senator from Idaho has so forcibly and clearly stated, that we are dealing with a subject that is sui generis, one in which the Government is seeking at this belated day to perform a contract which it made with other people, and which those other people ignored, it ought to be performed, as far as we can do so, in such a manner as that its effect will bring reparation and compensation to those who, if the contract had been performed by those whose duty it was to do so, would have received it.

I hope, therefore, the bill will be enacted into law.

Mr. LANE obtained the floor.

NATIONAL CAPITAL PREPAREDNESS PARADE.

Mr. SMITH of Maryland. I ask permission to introduce a joint resolution, and I ask consent for its present consideration.

The PRESIDING OFFICER. The joint resolution will be read, and then the Chair will ask if there is objection.

Mr. CHAMBERLAIN. That was done awhile ago by unanimous consent, and quite a question was raised about it among Members. I do not want to lose the place this bill has before the Senate now.

Mr. SMITH of Maryland. I will say to the Senator that I have to attend the meeting of a subcommittee, of which I am chairman. Otherwise I would wait. It is important that this joint resolution should be passed. I hope the Senator will hear it read.

Mr. CHAMBERLAIN. I will not make any objection if it is understood that it will not displace the pending bill.

The PRESIDING OFFICER. Let it be read, and then the Chair will ask if there is objection to its consideration.

The joint resolution (S. J. Res. 137) authorizing the Commissioners of the District of Columbia to make special regulations for the occasion of the National Capital preparedness parade on the 14th day of June, 1916, and for other purposes incident to said parade, was read the first time by its title and the second time at length, as follows:

Resolved, etc., That the Commissioners of the District of Columbia are hereby authorized and directed to make all reasonable regulations necessary to secure preservation of public order and protection of life and property, and to fix fares to be charged by public conveyances, and to make special regulations respecting the standing, movements, and operation of vehicles of whatever character or kind, including street cars, on the occasion of the National Capital preparedness parade on the 14th day of June, 1916. Such special regulations shall be published in one or more of the daily newspapers of the District of Columbia, and no penalty prescribed for the violation of such regulations shall be enforced until three days after such publication. Any person violating any of such regulations shall, on conviction thereof in the police court of said District, be punished by a fine not exceeding $100, and in default of the payment thereof shall be imprisoned in the workhouse (or jail) of said District for a period not exceeding 60 days.

SEC. 2. That the Secretary of War is hereby authorized to grant permits to the citizens' executive committee in charge of said preparedness parade for the use of any reservation or other public space in the District of Columbia on the occasion of said parade which, in his opinion, will inflict no serious or permanent injury upon such reservations or public spaces or statuary therein; and the Commissioners of the District of Columbia may designate for such and other purposes on the occasion aforesaid such streets, avenues, and sidewalks in said District of Columbia as they may deem proper and necessary: *Provided, however*, That all stands and platforms that may be erected on the public spaces aforesaid shall be under the supervision of the said citizens' executive committee and in accordance with plans and designs to be approved by the Commissioners of the District of Columbia.

The PRESIDING OFFICER. Is there objection to the present consideration of the joint resolution?

Mr. THOMAS. Mr. President, it seems to me that the joint resolution would be complete if it also provided for the erection of recruiting stations along the line of the parade so that we could fill up the ranks of the Army to the extent, at least, of the 20,000 provided for by the special act passed a few weeks ago.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the joint resolution?

There being no objection, the joint resolution was considered as in Committee of the Whole.

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

Mr. CHAMBERLAIN. I will say now, Mr. President, that from this time until the pending bill is disposed of I must object to anything but the regular order.

OREGON & CALIFORNIA RAILROAD LAND GRANTS.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 14864) to alter and amend an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon," approved July 25, 1866, as amended by the acts of 1868 and 1869, and to alter and amend an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Portland to Astoria and McMinnville, in the State of Oregon," approved May 4, 1870, and for other purposes.

Mr. LANE. Mr. President, I should like to call to the attention of Senators a little of the history of this country and of this land grant which was made to what was then known as the Oregon & California Railroad. In the early days pioneers, trappers, principally the Hudson Bay Co. trappers, who were engaged in gathering furs for that great company, wandered over on the Pacific coast, and they found favorable winter quarters, where the grass grew and the trees were green all the year around; where there never was any deep snow nor any very cold weather. Thereafter they made their winter headquarters in that country.

That was the Willamette Valley. When their term of service with the Hudson Bay Co. expired many of them went up that valley, some 50 miles south of the city of Portland, in what is now called French Prairie, for the reason that these men were French Canadians. They married into the Indian tribes and settled. They were the first settlers in the State of Oregon. They sent out word to their friends and other trappers and hunters, and pioneers and adventurers came into that country. Word was sent back to St. Louis, to St. Joseph, Mo., and then on here, that there was a good country there, a rich country, a beautiful and fertile country, with a mild climate, and with the spirit of adventure which followed along after the discovery of gold in 1849 there came an exodus, a great immigration to the Pacific coast and into the State of Oregon. In 1848 my father tramped across that country over the Sante Fe trail. In 1852 my mother, a girl from Virginia, walked from Virginia behind an ox team to get into that country in order to make a home. She, with her father and mother, my father and his father and mother, made their homes there and lived and died there. They went there for the reason that it was a beautiful country with a mild and equable climate, but it was far removed from the centers of civilization and from a market for produce.

In 1865 we had but one steamer a month coming in through the mouth of the Columbia River to the city of Portland. When it came within 3 miles of the city it fired a cannon, and everybody suspended business; shops and stores were closed, and the people rushed to the lone wharf to see who had come in from the "States," as they called this eastern country.

Overland we went first on mules and horseback or on foot on the trail; then by stage through the Willamette Valley in Oregon down into California, and then worked our way east or took the steamer at San Francisco to the Isthmus of Panama, so as to get into the eastern country to buy the things that we needed. Others went around the Horn by ships.

The people who came there wanted to open up the country. There were but few settlers, and when a man came in representing a railroad company which proposed to build a railway, we were glad to see him and glad to give him large inducements to come in to help us open up the country with a ready means of transportation in order that we might build up a community and have settlers around us. Where the city of Portland now is, on the site where now is located one of the largest high schools in the country, when I was a boy I have heard the panther scream at night—scream and scream until you thought it was some one in distress, but when you went out to relieve him, or her, rather, and you got within a hundred feet of the beast and it then set up one of its yells, you found you were mistaken, and you went home promptly, and in something of a hurry. [Laughter.]

Right in the center of the city of Portland, which now has 250,000 inhabitants, I have seen bears come right up to the side of my father's house and drive the dogs under the house in an effort to capture what little live stock we had upon the place.

In the deep woods the trees were 6 feet through, and some of them were 8 feet. You gentlemen, who now want to take the proceeds from the sale of our timber and go out and open up your sagebrush country, will hardly believe that in many places the woods were so thick that the sun never shone through, and yet the timber itself had no value at all; it was a curse to the land. The trees were so big that it took you half a day to chop one down; then they were cut into lengths sufficient in size to roll into a pile and burned. Then the stumps had to be removed, and it took hard, laborious work for from five days to a week to get one of the largest out of the ground.

Another point that I want to impress upon you is that where the timber grows thickest, where it is of the greatest size, where the great firs, hemlocks, and other trees grow 6, 8, 10, and even 12 feet through, if you please, the land is the richest; while, where the timber is small or does not grow, in the country west of the Cascade Range the land is hardly fit for cultivation; it is poor land, lean land.

Those were the conditions. The railroad representatives came to us and made an offer. We concluded a bargain with them to the effect that if they would put a line of railway through the State, connecting us as soon as they could with a line then at Sacramento, Cal.—the old Central Pacific, I think, was its name—we would give them every other odd section of land remaining in the Willamette, the Rogue River, and the Umpqua Valleys, 20 miles on each side of the railway tracks. They were three consecutive valleys running right through the heart of the western portion of the State, that being the richest portion of the State, while the land which lay over in the eastern portion of the State was known as a desert. It was not supposed to be able to raise grain. Nobody would have believed it to be fit for agricultural purposes. Afterwards it proved to be among the richest of our lands and produced more grain than any other section. But it was not known at that time. It was a sagebrush country. At any rate, we made a fair bargain with the railroad company, that, if they would open up that country, we would give them every other section of land. The timber was not worth anything; it had no value at all; it did not enter into the transaction. Nobody considered it in connection with the bargain, except that it was a curse to the settlers of the country. They cut it; they labored; they got rid of it to the best advantage that they could. After putting in a hundred or two hundred dollars' worth of labor to the acre to get rid of it, to get at their land—and only by doing so could they use the land upon which to raise crops—they also set fire to it in the fall when the wind was right. After a long, dry spell, when the ferns and underbrush were dry and when the wind was right, they burned it over thousands of acres. I have seen them do it. This was done in order that sheep and cows and horses might graze upon it. To-day it is the principal source of value in a great portion of that country.

The bargain, then, was distinct and plain and simple. It was for the land. The Government land was selling at $1.25 an acre. We allowed the railroad company to charge $2.50 an acre, and they agreed to sell it for $2.50 to actual settlers. They did not keep their bargain. They may have parted with a little of it, but when the timber began to be valuable, when the adjoining lands had been opened up and had become valuable to the community and had correspondingly raised the value of the railroad land, then they refused to sell it; and the men who went and made application for the land, offering their money to pay for it, were refused title; they were refused by the company the right to pay their money and to receive a tract of land.

Right there the Government failed in its duty to the State of Oregon. If after the first refusal of the railroad company to keep the terms of its grant—its plain bargain—the administrative department of the Government had done its duty, it would have stepped right in at that time and compelled them to make the sale. If they had made the sale, this question would not be before Congress at this time; the country would have been settled; there would have been thousands, and probably hundreds of thousands, of people living there who to-day are denied the right to go upon that same property, and can not do so without committing a trespass.

That is the situation which confronts Oregon; that is why the situation differs from the public-land question generally, and the sale of lands for reclamation purposes in other States. It was a distinct grant for the benefit and for the sole purpose of opening up the Oregon country. The people consented to it with that distinct understanding, and entrusted to this body or to our predecessors, and to those in the other House and to the executive departments of the Government, the duty to see that the contract was kept by the railway company, which had secured the grant, which it failed to do. We did our duty. We builded up the country; we builded towns; we opened up our harbors; we builded roads and schools and churches; we builded up municipalities; we cleared the timber off our lands and made them tillable, and have made a good country of that region. The railroad company stalled and blocked the development, and the Government, or this body, as I have said, and other departments of the Government failed in their duty by not forcing the other party to the contract to do their duty. Those facts must be taken into consideration.

Now, when we come here and ask that the bargain be carried out to completion—under different circumstances, I will allow, under changed conditions; conditions in which the timber now has become more valuable—we expect the Government to stand on the original proposition, to carry out the original bargain—the plain, fair, honorable compact that it entered into with the people of that State.

Thirty-five million dollars for the timber and the land! The State of Oregon has lost $130,000,000 through the failure of the other party to the contract to carry out their agreement. We have lost in population. We have been marooned and have paid excessive rates for freights on account of the contract which we made with a corporation, which, if they had done their duty, would have been a blessing to us. They have kept their contract in no particular where it paid them to break it.

The State of Oregon, then, has this situation now confronting it. We have been for 50 years left in this condition. Now, we want the opportunity to use those resources for the benefit of Oregon, and Senators from other States come in and make us a counter proposition that if our timber is sold the proceeds of the sale shall go to the reclamation of the desert and barren lands of their State. They overlook the fact that where the timber grows heaviest the land is the most valuable for farming; that after the timber is removed there remain stumps upon the land, and before the land can be used for settlement, for homesteads, before it will be of value to the settler, it must have the stumps removed from it. In other words, it will cost the people of that country, the settlers, not less than a hundred dollars and from that on to $200 an acre to do that work of reclamation. The funds from the sale of this timber Senators now desire to place upon their lands, which no more need reclamation than do some of ours, and leave the lands from which the money has been derived to be reclaimed at the expense of the settlers of our State.

It is not a fair proposition. If it is a matter of reclaiming arid lands, we have such lands. These timbered lands, however, are not arid lands. If they were arid lands, they would not have this valuable timber upon them. Just east, however, just over the range, where they have an annual rainfall of but from 7 to 12 inches—and that is as little as they have in most of the arid States—we do need water. Those people need help just as much as do the people in any other State in the Union. To the west of this land-grant land the people have mortgaged themselves, they have bonded their little holdings in communities where they are completely isolated by forest reserves and by these land grants, and have opened harbors in order to reach the sea with such products as they can raise. They need encouragement. The people on the eastern slope of the mountains have in many cases put up dollar for dollar with the Government in the attempt to reclaim their arid lands. These things should be taken into consideration.

I do not want to do any injustice to this railroad company, and I do not think any will be done to it if it receives $2.50 an acre for this land; but it will be an injustice to Oregon if the money derived from the sale of these lands and from the sale of this timber, which will be needed to clear the lands and for other improvements which ought to have been made years and years ago, and which would have been made but for the loss which it has suffered because of failure to carry out the agreement on the part of the other party to the contract, is not allowed to go to the benefit of that State.

It is different from the ordinary reclamation scheme. It is different from the conditions that exist in Montana, in Idaho, in Arizona, and in New Mexico. This land would have needed no reclamation if allowed to take care of itself. It would have builded up upon its own merits; it has an abundance of water, and yet from the fact that it has been kept out of the hands of the people it has suffered to an enormous extent.

It is, then, as I have said, a question which should be viewed from a different angle; and, inasmuch as the grant was originally made for the benefit of that State, to open up that country, a country difficult in some parts to open, I see no difference between the condition which existed then and that which confronts the Senate or the Congress at this time.

I am not in favor of some of the provisions even of my colleague's amendments, and I want to have a full hearing on the amendment which the Senator from Idaho [Mr. BORAH] is

going to offer to the bill. My main interest in the question is to get for the settler more than I think he is getting at this time. The value of the timber has become the object of the contest between the differing parties. There lies the value, and upon that I wish to be heard further when the amendments are discussed.

Mr. JONES. Mr. President, I want to ask the Senator from Oregon a question or two about some of the provisions of this bill. These lands are divided into three classes. Class 1 includes the power-site lands. Class 2 includes timber lands, and timber lands are such lands that have a growth of "not less than 300,000 feet board measure on each 40-acre subdivision," which would be 1,200,000 board feet to the quarter section. Class 3 includes agricultural lands. The lands of class 2—that is, the nonmineral lands of class 2—are not to be disposed of until the timber is cut off. Section 5 provides for the disposal of the lands of class 3. It provides for their disposal by homestead entry. The second proviso on page 10 reads:

Provided further, That during the period fixed by the Secretary of the Interior for the submission of applications to make entry under this section any person duly qualified to enter such lands who has resided thereon, to the same extent and in the same manner as is required under the homestead laws, since the 1st day of December, 1915—

Where is the provision in this bill authorizing the Secretary of the Interior to fix the time for submitting applications? Does the Senator from Oregon remember any such provision?

Mr. CHAMBERLAIN. I do not recall any provision fixing the time within which applications for entry shall be filed.

Mr. JONES. I want to suggest to the Senator that in the first part of section 5 it is provided that these lands—

shall be open to entry in accordance with the provisions of the act of September 30, 1913.

That is an act authorizing the President to restore lands which have been withdrawn and provide for their entry, and he fixes the time within which those who have settled on them may acquire preference rights. There is no reference in that act—and I take it that that is the act that is really referred to here under which the period for the submission of applications is fixed—to action by the Secretary of the Interior. So it seems to me, if that is the act to which this part of the bill refers, that we ought to put in the word "President" instead of the words "Secretary of the Interior," because——

Mr. CHAMBERLAIN. At what point and to what page does the Senator refer?

Mr. JONES. Page 10.

Mr. CHAMBERLAIN. Line 6?

Mr. JONES. Yes. Because the act cited in the first part of the section, under which the President restores these lands, only refers to action by the President, and not to action by the Secretary of the Interior at all.

Mr. CHAMBERLAIN. If the Senator offers that as an amendment, I have no objection at all to it.

Mr. JONES. I wanted to make that suggestion. Here is a more important matter, however, to which I want to call the attention of the Senator. As I understand, the provision of section 5 with reference to entry only refers to nonmineral lands of class 3; but there is a provision contained in section 5 that—

any person duly qualified to enter such lands who has resided thereon, to the same extent and in the same manner as is required under the homestead laws, since the 1st day of December, 1915, and who has improved the land and devoted some portion thereof to agricultural use, and who shall have maintained his residence to the date of such application, shall have the preferred right to enter the quarter section upon which he was so residing where such quarter section does not contain more than 1,200,000 feet board measure of timber.

None of the lands covered by section 5 can, under the previous provisions of the bill, contain that amount of timber.

Mr. CHAMBERLAIN. Because the timber has been cut off?

Mr. JONES. No; whether it has been cut off or not. None of the lands entered under section 5 can have more than twelve hundred thousand feet of timber to the quarter section, because if they do have more then they come under clause 2 and are excluded from the provisions of section 5.

Mr. CHAMBERLAIN. I will say to the Senator that the bill as originally prepared and introduced by me did not have that provision in it at all. It was put in by the House committee, and I really do not know the purpose of it.

Mr. JONES. I wanted to call that to the Senator's attention, because it might make it very uncertain as to what this provision really accomplishes.

Then it goes on to say that if the quarter section contains more than 1,200,000 feet board measure, the applicant can enter and secure title to 40 acres upon which his improvements are located.

Mr. NELSON. Mr. President, will the Senator allow me to interrupt him?

Mr. JONES. Certainly.

Mr. NELSON. I think this is an exception to the general rule laid down as to the lands embraced in class 2.

Mr. JONES. That is what I wanted to get at.

Mr. NELSON. And the exception is to give title to those who are already on the land and have made homes on it. They are made an exception to the rule laid down as to lands of class 2.

Mr. JONES. No.

Mr. NELSON. Yes; I think that is the effect of it.

Mr. JONES. I want to call the attention of the Senator to the fact that under section 2 all the lands that contain 1,200,000 feed board measure to the quarter section are classified as timberlands.

Mr. NELSON. I understand that.

Mr. JONES. And no exception is made with reference to settlement on those lands.

Mr. NELSON. No; but here an exception is made.

Mr. JONES. That is the question, whether or not it is intended to protect the settlers who are already on the lands of class 2.

Mr. NELSON. I think that is the intention.

Mr. JONES. That is what I want to ascertain.

Mr. NELSON. The exception is intended to protect those who are occupying lands of class 2, except where the timber exceeds the amount described in the provision.

Mr. JONES. No; if the lands contain timber less than twelve hundred thousand feet board measure they do not belong to class 2 at all.

Mr. NELSON. No; but here a rule is laid down which, it seems to me, is perfectly clear.

Mr. JONES. I want to call the Senator's attention to the fact that section 5 starts out as applying only to lands of class 3.

Mr. NELSON. I know; but here is a proviso, commencing in line 5, page 10, which reads:

Provided further, That during the period fixed by the Secretary of the Interior for the submission of applications to make entry——

Mr. JONES. "Under this section"——

Mr. NELSON. Yes; then it proceeds:

under this section any person duly qualified to enter such lands who has resided thereon, to the same extent and in the same manner as is required under the homestead laws, since the 1st day of December, 1915, and who has improved the land and devoted some portion thereof to agricultural use, and who shall have maintained his residence to the date of such application, shall have the preferred right to enter the quarter section upon which he was so residing, where such quarter section does not contain more than 1,200,000 feet board measure of timber.

I think that would apply to all classes of land except water-power land.

Mr. JONES. I want to call the Senator's attention to this point: This section starts out by providing for the disposal of nonmineral lands of class 3. Those are the agricultural lands. Those are the lands the timber on which amounts to less than 1,200,000 feet; and then there follows the proviso:

That * * * to make entry under this section—

That is, entry of lands of class 3—

any person duly qualified to enter such lands—

That is, lands of class 3; and those are the only lands referred to. I agree that it looks as if it is an effort to protect persons who may have settled upon lands of class 2, because those are the only lands that contain over 1,200,000 feet of board measure to the quarter section.

Mr. CHAMBERLAIN. Mr. President, if I may interrupt the Senator, I recall now that Mr. Williams in his report says that there are a number of settlers who went on the land between the date of the suit and the time when the decree was rendered, and this provision is intended to protect those people who went on in good faith and who are living there now as actual settlers. He said they have homes built there, and they have been cultivating the land in good faith.

Mr. JONES. That is, they went upon lands which probably would come under class two?

Mr. CHAMBERLAIN. Yes; on lands which might come under class 2.

Mr. JONES. Does not the Senator think we ought to put that exception in section 4, possibly, so as to make it clear that we intend to protect every settler who went upon lands of class 2?

Mr. CHAMBERLAIN. When the Senator comes to the question of the settler he gets on to pretty dangerous ground, for I think that if there was any part of the bill that was studied more carefully than any other part it was that which relates to the settler. It is unnecessary to discuss it, it seems to me, but it was discussed in the House. There are 16,000 or 18,000

people who claim to be settlers. The provisions of the bill were prepared in order to protect the men who were there and had been there; but they are very few in number.

Mr. JONES. But I want to call the Senator's attention to the fact—and this is what I am trying to get at—that section 5, under which this exception is placed, purports to relate only to lands of class 3 or nonmineral, or agricultural lands. It relates only to what we have defined as agricultural lands. Then there is a provision which looks as if it were designed to protect settlers who went on lands of class 2. What I want to know is, whether or not we are trying to do that? If we are trying to do it, we ought to make it clear.

Mr. NELSON. When you come to figure it mathematically, there is no difference. Class 2 includes timberlands, "which shall include lands bearing a growth of timber not less than 300,000 feet on each 40-acre subdivision."

Mr. JONES. That is twelve hundred thousand feet on a quarter section.

Mr. NELSON. That is the same limitation as is provided in section 5, as applying to a quarter section, the limitation for a quarter section being 1,200,000 feet board measure.

Mr. JONES. I understand that.

Mr. NELSON. There is no difference in the amount.

Mr. JONES. I think the Senator is mistaken in his contention.

Mr. NELSON. Four times 300,000 would be twelve hundred thousand.

Mr. JONES. But the bill says that where the land does not contain twelve hundred thousand feet of timber, board measure, the settler shall have his preference right. Of course, where it does not contain 1,200,000 feet it is agricultural land, according to the terms of the bill. Then section 5 proceeds, and it looks as if it were designed to protect the man who has gone onto land of class 2, when all the preceding part of the section relates to lands of class 3. What I am trying to get at is, whether or not it is the intention of this bill to protect settlers who have gone onto lands of class 2. That is what I want to know.

Mr. CHAMBERLAIN. Mr. President, I think it is intended to protect those men who were on the land in good faith prior to 1915 and are living on it.

Mr. JONES. On lands of class 2?

Mr. CHAMBERLAIN. On lands of class 2 and on lands of class 3 as well.

Mr. JONES. Then we ought to put a provision in that section which refers to lands of class 2, because I doubt very much if the provisions of section 5 would protect anybody who has gone on lands of class 2. It does not purport to do so in express terms. It purports in express terms to protect only those who have entered upon lands of class 3, and then there is thrown in the provision that, if the land has more than twelve hundred thousand feet board measure, the settler can get 40 acres.

Mr. CHAMBERLAIN. That clearly indicates that the reference is to lands of class 2, because the bill provides what shall be included within lands of class 2; in other words, it protects those who have gone on lands of class 2 by allowing them to take a certain subdivision of a section.

Mr. JONES. So the Senator is satisfied that that is not only the intention of this provision but that it does protect those who have gone on lands which are previously classified as lands of class 2?

Mr. CHAMBERLAIN. I think so.

Mr. JONES. Now, I want to ask the Senator——

Mr. POINDEXTER. Mr. President, if my colleague will permit an interruption, I rather agree in my colleague's view of that matter. I will say in that connection that there are a number of people in our State who are interested in the matter in a general way on account of having made applications to purchase, and there are some who have settled upon portions of the land in our State. The report said the other day that there were only a few hundred acres. I got the impression from correspondence that it was more than that. But, however that may be, there is not any right of entry given in this bill to lands of class 2. On the contrary, the section of the bill expressly gives the right of entry upon lands in class 3. There can not be any right of entry except upon the lands in class 3, because that is what the section says.

Mr. JONES. We do not provide for the entry of any lands except those of class 3, and, although you apparently try to make an exception down here, I myself do not believe that you do it. I was just going to inquire about that, and I hope the Senator will examine into that carefully, because I know he wants to make it clear, before the bill finally passes.

I wanted to refer to what my colleague has just referred to. I have some letters from a gentleman at Vancouver, in my State, in which he states that several persons settled upon lands along the Columbia River in Clarke County, and he makes this statement:

> The settlers I refer to and have previously written about were actual settlers over 30 years ago, who, by the fear of losing their homes—

And so forth, were compelled to pay large sums to the railroad. As I understand from his letter, they were persons who settled upon lands and then went to the railroad company and made contracts with the company to purchase these lands, in many cases contracting to pay the company more than $2.50 an acre. He says here they were required to enter into contracts of that kind; they have paid more than $2.50 an acre to the railroad company, and then they paid taxes for quite a while. The burden became so great that they could not pay the additional amount. The railroad insisted upon their paying not only their contract price but the taxes that had been levied upon the land, and they were unable to do it. He says that in one case there is one of these original parties who is still upon the land; that in the case of others their heirs or assigns are upon the land. He thinks these people ought to be protected. The railroad company has already gotten out of it more than the $2.50 an acre. These people have paid that, but they are afraid now that they are going to lose all this land. Now, is there anything in this bill that would protect persons in cases of that kind?

Mr. CHAMBERLAIN. Mr. President, I do not think there is, except in a case where the individual is an actual settler. I have received a great many letters of that kind myself, and there is such a conflict amongst individuals as to their rights, either by virtue of having paid the railroad company or by virtue of having made applications to the railroad company and having those applications turned down, that I have advised most of those who have written to me that the first thing to be accomplished was the adjustment of this grant, the larger question, and those who had valid equitable or legal claims would have no trouble about getting their rights adjusted by subsequent legislation. I still think that is the only way which can be followed.

Mr. POINDEXTER. Mr. President——

Mr. JONES. I yield to my colleague.

Mr. POINDEXTER. I wanted to ask the Senator from Oregon a question. He seems to recognize equitable claims arising from applications to purchase or actual purchase by individuals of land under the terms of the act of 1870. The Senator says he has had a good deal of correspondence about it and that he has advised his correspondents that the first thing to do is to settle the larger question, and that later on their claims can be adjusted. Now, I should like to ask the Senator from Oregon how the claims are going to be adjusted later on when the entire disposition of the land is provided for in this bill? If this bill becomes a law, all the rights to the land are settled. It will be too late then for these people whom the Senator recognizes as being entitled to consideration to be considered at all. The subject matter will have been disposed of.

Mr. CHAMBERLAIN. I do not think so, Mr. President. Personally I feel that I had rather see this legislation fail than for Congress in this bill to undertake to adjust the conflicting claims of and to protect settlers. In all cases of this kind where the settlers have some defect in the title, or have failed to secure the title for one reason or another, Congress has always intervened to protect them on the public domain; and I have not any doubt but that Congress could do it and would do it here. Then there would be an opportunity to test out each case and see just what a man's claims were.

Mr. JONES. Would the Senator have any objection to a provision in substance like this, that purchasers might perfect their titles by appearing at the local land office and tendering the statutory price per acre, or showing by the usual proofs its former payment to the railroad company?

Mr. CHAMBERLAIN. Mr. President, I am frank to say that I would be unwilling to accept such an amendment without the most careful scrutiny and examination. I think the Senator, by such an amendment, would open up a Pandora's box that would appear to haunt us for a long time to come.

Mr. JONES. If we had a provision of that kind, it would not haunt us so much as it would the land-office people.

Mr. CHAMBERLAIN. Well, it might work great detriment and harm to the Government.

Mr. JONES. If we do not get something of that kind, then we are likely to be haunted with it for a good while.

Mr. CHAMBERLAIN. I had rather appear in Congress with a bill for the relief of some particular individual, such as the

Senator seems to have in mind, or set or class of individuals, than to undertake to open the door with doubt as to who might enter.

Mr. JONES. I can see the difficulties, of course, that we would be laboring under.

Mr. NELSON. Mr. President, will the Senator yield to me?

Mr. JONES. Certainly.

Mr. NELSON. I want to say to the Senator from Oregon and to the Senator from Washington that shortly after we passed the joint resolution of 1908, instructing the Attorney General to commence suit about this land grant, I was flooded with letters from my State recommending that certain land agents out there in Oregon wanted the writers to make homestead applications, asking them for a certain fee. I am satisfied from the correspondence I received that a great many people were foolish enough to send money to these agents. I have seen in a report the name of one of them of a rather unsavory memory—Mr. Puter. I see his name in the RECORD. I must have had a hundred of those letters, and in every instance I wrote to the people who wrote to me, and told them: "This matter is in litigation and controversy, and do not you invest a dollar of money or make any effort about it."

There is no telling how many of these poor victims are lying loose and may try to get in under this cover if we extend it. Therfore I think we are wiser to take the course that the Senator from Oregon indicates; for there were a lot of those people that were brought in, in one way or another, by these officious land agents.

Mr. JONES. There is not any question about that. I received a good many letters along the same line that the Senator has referred to from people in my State, and I gave the same advice that he gave. But what I have in mind here particularly, and what this gentleman writes about, is the case of persons who actually bought the land from the railroad company. He refers to some who went on these lands thirty-odd years ago and made their contracts with the company and actually settled upon the land. They paid the company more than $2.50 an acre, but were unable then to complete their contracts, some of them.

Mr. CHAMBERLAIN. The Senator will remember that the Department of Justice recommended an amendment to the section in the bill I prepared that would protect some of these executory contracts, and notably one into which the former governor of Minnesota was drawn, Gov. Lind. That was in exactly the same situation as some of which the Senator speaks. That raised a storm of protest throughout the West, and yet, I think, no one questioned the integrity of Gov. Lind. It was claimed that it opened up a door that might have been disastrous to the Government, and the House committee, after a most thorough investigation, left out of their bill this very provision which affected one man, and which the Senator proposes to make general.

Mr. NELSON. Mr. President, I am informed by a gentleman who has investigated this matter thoroughly that there are homestead applications on file for the purchase of nearly all of this timber.

Mr. JONES. Of course I am not referring to, and do not have in mind, a provision that would take care of these people who came in through the agents the Senator referred to a few moments ago, after this litigation was started, or after it was brought up, who tried to acquire the rights to these lands then. I have not those people in mind at all. I would not want any provision that could be construed as taking care of them. I remember the provision in the House to which the Senator from Oregon refers, and I know that they did have very extensive hearings with reference to that matter, and, as I understood, they finally did leave it out. I just wanted to get the Senator's views with reference to a proposition of that kind, and as to whether or not the Senate committee considered that phase of the matter and decided that it was best not to try to incorporate in this bill a provision of that kind.

Mr. CHAMBERLAIN. We thought, in view of the investigation of the House committee, and what they had done, that we had better not undertake to adjust these matters any further than they did.

Mr. JONES. Mr. President, I will ask the Senator another question or two, while I have the floor, with reference to one of the amendments proposed by the committee. The committee provides for the sale of this timber, and in the amendment on page 8 it says:

> Timber thus purchased may be cut and removed at any time within the discretion of the purchaser, his heirs or assigns.

Does the Senator think that is a wise provision?

Mr. CHAMBERLAIN. Mr. President, I discussed that yesterday to some extent, and I am frank to say that I am not entirely satisfied with the solution of it. The House bill authorizes the sale on a credit of 10 years. Under it a man can cut the timber off as he pleases and pay for it as he has cut the timber, but the land in the meantime is not subject to taxation, nor the timber, either. The Senate amendment provides for a cash sale of the timber, and immediately upon the sale of it it goes on the assessment roll. The timber is assessable, but it leaves the purchaser his own time to take it off. He may take 5 years, he may take 10 years, he may take 100 years if he wants to; but all the time this timber that he has purchased is on the assessment roll, and it is assessed up pretty well. No man can afford to hold it indefinitely, when the assessment runs up from ten to forty dollars an acre, without utilizing it in some way; and it can only be utilized by taking the timber off and selling it on a normal market.

That method was at first approved by the Secretary of the Interior. He thought that was the proper way to dispose of it, and approved of the Senate provision in the first instance. Then, after the House committee had prepared a bill that had a sort of a combination of option of cash sale or credit sale, he was satisfied with that provision. But I still think that the Senate amendment is better.

Mr. JONES. I think there is considerable force in the suggestion of the Senator. I did not hear the Senator's discussion of the matter yesterday, and I did not know it had been discussed; so I will not take any further time on it now.

Mr. CHAMBERLAIN. Mr. President, I ask for a vote on the committee amendments, if nobody desires to address the Senate at this time.

Mr. POINDEXTER. Which committee amendment is the Senator asking for a vote upon?

Mr. CHAMBERLAIN. The committee amendments to the House bill, in the order in which they appear.

Mr. POINDEXTER. All of them?

Mr. CHAMBERLAIN. Yes, sir.

The PRESIDING OFFICER (Mr. HUSTING in the chair). The order has already been made that the Senate will first consider the committee amendments.

The SECRETARY. The first committee amendment is on page 4, line 20, where it is proposed to strike out the words "withdrawal and," so that, if amended, it will read:

> Class 1. Power-site lands, which shall include only such lands as are chiefly valuable for water-power sites, which lands shall be subject to such use and disposition as has been or may be provided by law for other public lands of like character.

Mr. NORRIS. Mr. President, I shall take only a few minutes on this particular amendment.

Mr. CHAMBERLAIN. May I just suggest to the Senator the reason that was changed?

Mr. NORRIS. Yes.

Mr. CHAMBERLAIN. The reason the committee cut that out was that it was simply undertaking to add a power that I think the Government already had and place it in exactly the same category as other power sites are placed.

Mr. NORRIS. The reason why I am opposed to the amendment is for the same reason that the Senator has said that he is in favor of it. I am not sure, of course, but that he is right; but I want to leave these power sites in exactly the same condition in which every other power site on public land would be left. Under existing law, other power sites are subject to withdrawal, and I fear that if we strike out these words and make them subject to withdrawal, these particular power sites on this particular land would not be subject to the law applying to other power sites. They might be subject to homestead entry, however. Anyone could get them under any other law.

Mr. WALSH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Nebraska yield to the Senator from Montana?

Mr. NORRIS. I yield.

Mr. WALSH. I think the apprehension of the Senator from Nebraska is without any foundation at all. It is true that we now have a special statute authorizing the withdrawal of power sites, but, of course, the Supreme Court of the United States has held that it is not necessary; that the power to make withdrawals exists without any statute at all.

Mr. NORRIS. If the words "withdrawal and" are stricken out it will read—

> Power-site lands, which shall include only such lands as are chiefly valuable for water-power sites, which lands shall be subject to such use and disposition as has been or may be provided by law for other public lands of like character.

I suppose that it was the idea of the Senator from Oregon, and he may be right in it, that they would be subject to withdrawal even with those words stricken out. They could not be any more than subject to withdrawal if the words were left

in; so, to avoid any difficulty, it seems to me they ought to be left in.

Mr. WALSH. Let me make another suggestion to the Senator. The act provides that they shall be classified in the first place, and every power site is set aside and put in class 1.

Mr. NORRIS. Yes.

Mr. WALSH. The act itself provides for the withdrawal.

Mr. NORRIS. These power sites are classified under this law.

Mr. WALSH. Yes.

Mr. NORRIS. Is that what the Senator had reference to?

Mr. WALSH. Yes. Every tract of land that is suitable for use as a power site is taken out of the general body of the lands and put into a class.

Mr. NORRIS. The Senator's contention, as I understand, is that these words that the amendment seeks to strike out have no effect whatever. Is that the Senator's contention?

Mr. WALSH. That seems to me perfectly clear upon two grounds. One is that the act itself is a withdrawal. The act itself puts into a separate class every power site.

Mr. NORRIS. Yes; but the act itself specifically says—

Subject to such use and disposition as has been or may be provided by law for other public lands of like character.

Now, if one of these power sites should be a homestead, if it should be held that the striking out of these words would make it impossible to withdraw them, the entryman might get a valuable power site under the guise of taking a homestead.

Mr. WALSH. Why, he could not possibly do so. The lands classified as power sites are not open to homestead entry at all. He would not be permitted to file on them.

Mr. NORRIS. Yes; but he would take a homestead that had a power site on it. He would not take a power site.

Mr. WALSH. Mr. President, the lands are all classified. Every power site is put into a certain class, and no lands in that class are open to homestead entry at all; so he could not possibly have a homestead entry on it.

Mr. NORRIS. Even if the Senator's contention is right, what is the objection to providing in the law that these power sites shall be subject to withdrawal the same as all other power sites are subject to withdrawal?

Mr. WALSH. The plain answer is that the act itself withdraws them.

Mr. CHAMBERLAIN. I have the same purpose in mind as the Senator.

Mr. NORRIS. I think the Senator does. I am not questioning that at all, and I am not even saying that the Senator is wrong about it, but it seemed to me that there could not possibly be an objection to words that would specifically give authority that everybody concedes ought to exist if the same authority exists in regard to other power sites elsewhere.

Mr. STERLING. Mr. President, I remember very well the discussion of the amendment in the subcommittee. We simply considered that these words here were so much surplusage. The bill itself classifies these lands, and excludes power sites from homestead entry; and it is obviously unnecessary to have those words in the bill. That is the sole purpose of the amendment.

The PRESIDING OFFICER. The question is on the amendment of the committee.

Mr. WALSH. I ask which is the amendment now under consideration?

The SECRETARY. On page 4, line 20, the amendment striking out the words "withdrawal and."

The amendment was agreed to.

The SECRETARY. The next amendment of the committee begins on page 6, line 10, in section 4, where it is proposed to strike out, beginning with line 10, all of the bill down to and including line 3, page 8, and to insert in lieu thereof the following:

As soon as may be after classification the timber on lands of class 2 shall be sold by the Secretary of the Interior for cash to citizens of the United States, associations of such citizens, and corporations organized under the laws of the United States or any State, Territory, or District thereof, in such quantities and under such plan of public competitive bidding as in the judgment of the Secretary of the Interior may produce the best results: *Provided*, That the Secretary shall have the right to reject any bid where he has reason to believe that the price offered is inadequate and he may reoffer the timber until a satisfactory bid is received.

Persons purchasing under the provisions of this section shall be given patents conveying to them the timber and expressly reserving the land to the United States. Timber thus purchased may be cut and removed at any time within the discretion of the purchaser, his heirs or assigns, and until it shall be removed the land upon which it stands shall be subject to the possession and control of the owner of the timber: *Provided*, That the owner of the timber shall make no use of the land except for the purpose of protecting the timber or cutting and removing it.

The sales of timber herein provided for shall be made according to the smallest legal subdivision of land upon which the timber is growing, and any bid may include one or more such tracts, but where more than one such tract is included in such bid the bid must contain a separate offer for each smallest legal subdivision included therein.

All timber sold under this act shall be subject to the taxing power of the States apart from the land.

Mr. POINDEXTER. Mr. President, there are a great number of different propositions involved in that amendment, and I ask for a separate vote on each paragraph of the motion to strike from the House bill that has just been read by the Secretary. Each one of them embodies a different question.

The VICE PRESIDENT. The Chair does not see how that can be done. A motion to strike out and insert is not divisible.

Mr. POINDEXTER. I should like to call the Chair's attention to the rule.

The VICE PRESIDENT. There is not any doubt that when a proposition contains several questions any Senator is entitled to a division of the question and a separate vote upon each question; but the Chair understands this is an amendment offered by the committee to strike out a certain portion of the bill and to insert in lieu thereof another proposal. Under the same rule there is a proviso that the portion to be stricken out and the portion to be inserted are separate questions, each of which may be amended before being voted upon, and that the portion stricken out shall be first amendable.

The Chair thinks the Senator from Washington can not have separate votes upon this question; but he can tender amendments to either the motion to strike out or the motion to insert and reach the same result in accordance with the rule.

Mr. POINDEXTER. The Chair has quoted from memory a rule to which I was just going to call attention; and my understanding of the rule was, treating the motion to strike out as a separate question, that it would then be subject to division. I should like to submit that to the Chair. If the Chair does not sustain that view, I will undertake to reach the proposition by an amendment.

I should like to call the Chair's attention to the difficulty there is in voting upon this matter as a whole. For instance, the first paragraph on page 6, which has a line drawn through it—partly on page 6 and partly on page 7—involves a separate question, the very important question of the manner in which payments shall be made for timberlands, whether they shall be sold on time, as provided in the House bill, or whether they shall be sold for cash, without any restrictions as to when the timber shall be removed, as provided in the Senate amendment, and so on through. Each one of these paragraphs contains an important question of that kind. For instance, in the second paragraph, stricken out on page 7, there is the question as to whether or not any period shall be fixed for the removal of this timber or whether or not the Secretary, in making the contract for the sale, shall fix a period for its removal. The third paragraph in this part to be stricken out is an entirely different question, providing that the timber shall not be removed until after patents for it have been issued, and the fourth paragraph proposed to be stricken out deals with the question of the taxing power of the States.

It seems to me that to vote upon all of those different questions as one amendment would deprive the Senate of an opportunity of deciding, independently of each other, each one of these important questions.

The VICE PRESIDENT. The Chair can never be responsible for the way in which a committee proposes an amendment. The reasoning of the Senator from Washington is good from a logical standpoint, but it is not good from the standpoint of the rules of the Senate. Rule XVIII clearly covers this question:

If the question in debate contains several propositions, any Senator may have the same divided, except a motion to strike out and insert, which shall not be divided.

This can not be anything else but a motion to strike out and insert, so it can not be divided. A subsequent clause gives the Senator from Washington ample protection for any views he may desire to present and any vote he may wish to have on this question.

Mr. POINDEXTER. I move to amend the amendment by excluding from the portion to be stricken out the first paragraph on pages 6 and 7, leaving the remainder, and in support of that I will say that that is the paragraph which authorizes the timber to be sold in 10 annual installments.

The only objection to that that was urged by the Senator from Oregon [Mr. CHAMBERLAIN] yesterday was that if it was sold in installments the State would be deprived of its taxing power. But that, Mr. President, is not a valid objection. This very bill itself in section 9, on page 13, provides for the payment of taxes to the State which were levied by the State upon this land while it was held by the railroad company. In the same manner that the bill undertakes to protect the State in the collection of its taxes under those circumstances it can protect

the State in the collection of taxes upon timber which is sold on the installment plan.

If it ever becomes necessary for the Government to take back the timber on account of the failure of the purchaser to pay the installments, the Government, as part of its action of recapturing the timber, can make provision for the collection by the State of Oregon of its taxes. So that objection, it seems to me, is not tenable.

On the other hand, there is an advantage to the Government and to the people to give them an opportunity to buy this timber on credit. This timber is not limited in the amount which may be sold in one sale and to one purchaser, and if cash payments are required one great lumber company can acquire it all practically at its own terms.

Mr. CHAMBERLAIN. May I interrupt the Senator for a moment?

Mr. POINDEXTER. Yes.

Mr. CHAMBERLAIN. I call attention to the fact that the small purchaser is protected by practically giving him a preference on the small subdivision. So whereas the rich timber company bids on the larger tract of land the man who bids for a smaller tract has the opportunity to take it.

Mr. POINDEXTER. How is the man bidding on the smaller tract given preference over the man bidding on the large tract?

Mr. CHAMBERLAIN. In the discretion of the Secretary.

Mr. POINDEXTER. Each one has the same privilege of bidding on any number of small tracts.

Mr. CHAMBERLAIN. I call the Senator's attention to this language in the amendment of the committee:

The sales of timber herein provided for——

Mr. POINDEXTER. On what page, Senator?

Mr. CHAMBERLAIN. On page 9.

The sales of timber herein provided for shall be made according to the smallest legal subdivision of land upon which the timber is growing, and any bid may include one or more such tracts, but where more than one such tract is included in such bid the bid must contain a separate offer for each smallest legal subdivision included therein.

Mr. POINDEXTER. That is true, but that does not put any limitation on the number of the small subdivisions which one man may purchase, and the consequence is that the company which can command any amount of cash would be the only one which would be in a position to bid upon them. It seems to me that the incentive to enterprise and the distribution of opportunities among men who want to assist at least in capitalizing a project for the cutting of this timber by putting their energies and their initiative into it along with their capital and make the business itself and the timber itself help to pay for the carrying through of their project ought to have it given them by the terms of the bill.

Mr. NELSON. Mr. President, I wish to say merely a word in connection with this matter. I think the provision of the Senate committee on this subject is a wise one. Some years ago I had occasion to look up the early history of our land laws and I found that in the early days shortly after we took possession of the Northwest Territory and at the time we adopted our present system of surveys they had a plan of selling public lands on credit. I do not remember the details, but our experience under that law proved an utter failure, so much so that in a very short time the Government felt compelled to abandon the scheme.

In reference to this timber, as the Senator from Washington well knows, living out there in that timber country, and as we all know who come from a timber country, such heavy forests are subject to destruction from wind storms and from great fires. If the timber is sold on time and a small payment is made and a forest fire goes in there and destroys it, the man will not wish to pay; he will abandon his tract, give it up and relinquish it, and the Government will be deprived of that money.

Where there is a cash sale the Government gets the money, it is sure of what it gets, and it is to the interest of the purchaser to protect that timber. If that timber is destroyed by fire or in any other way it is his loss and not the loss of the Government, whereas on time payments, as I said a moment ago, a man might make a partial payment under a 10-year contract and after he had made one or two payments and cut off a little of the timber a fire might go through it and ruin the forest, and then he would give up his contract. He would say, "There is no use for me to pay for this any more, the timber is destroyed," and he would abandon his contract; the Government would be the loser and nobody would get any benefit out of it at all.

For this reason, Mr. President, I am heartily in favor of this provision.

Mr. NORRIS. Mr. President, I wish to offer an amendment to the text, but before I do so I wish to say just a word on the Senate committee amendment. I think it is conceded here that we are all trying to do the same thing, and that is to provide a method of sale that will bring in the most money. To do that we want as many bidders as possible. In my judgment we will get more bidders and get a higher price if we sell it on time. If we sell it for cash, necessarily the bidders will be confined to people or corporations of very large means.

The State of Oregon, which is getting most of the money, will not be the loser if it is sold on time. I think it will be the gainer because, in the first place, I believe it will get a higher bid for the timber, and, in the next place, on the deferred payments it will be getting interest at a rate that will be profitable to the State; and what little goes to the Government or if the other amendment is defeated and 40 per cent goes to the reclamation fund, then the reclamation fund will be the gainer. We will undoubtedly get more money by selling it according to the House provision than by the Senate committee provision.

The Senator from Minnesota [Mr. NELSON] says, and it is, of course, very true, that there might be a forest fire which would destroy the timber, and he thinks that a man who has bought it on partial payment will not take as good care of the timber and prevent forest fires as the man who bought a large tract for cash. To my mind, the reverse is true. I believe the man or corporation that buys a large amount of timber for cash and gets it all at once will expect to get rid of that timber at the very quickest possible moment, and the tendency would be that danger from fire would not be spread over many years. He would not take the same precaution because he would expect to get the timber off. On the other hand, the man or the corporation who buys it on time, knowing that for their own protection they must protect it against forest fires, would take extraordinary precaution.

But let us assume that a man buys it for cash. He pays a large sum for a tract of timber, pays it all down, and the next day after he does it a forest fire comes along and burns it all up. What would happen? The very next thing that would happen would be a bill in Congress to reimburse that man, and the argument could be made and it would be made, and it is very plausible, too, that he had expended his money and had gotten nothing in return; that he had lost in addition to the money he had paid the expense of cutting the timber and sawing it and so forth, and the probabilities are that all of us would feel inclined to return that man's money. He was not to blame for the fire because he had paid his money and got nothing. The forest fire might destroy it in either case.

But, Mr. President, the senior Senator from Oregon [Mr. CHAMBERLAIN] made in his argument a statement which appealed to me, and I think we ought to guard against it if we can. He said that under the laws of Oregon the tax attaches the 1st of March; that the purchaser on time under the House provision would be able to buy a tract of timber, 40 acres at a time, the 1st of April, pay for it, and then being subject to the tax he would get it off before the 1st of March came around the next year. Hence there would be nothing left to tax. He could perform the same operation year after year and thus avoid taxation.

Of course, we all want to avoid anything of that kind. It is probably somewhat imaginary to think that that might occur, but I can see that it might happen as the Senator from Oregon said. I want to move to amend the text on page 8, lines 2 and 3, by striking out the following words, "patents are issued as provided for herein," and insert in lieu thereof "said timber is sold," so that it would read if amended:

All timber sold under this act shall be subject to the taxing power of the States apart from the land as soon as said timber is sold.

Mr. CHAMBERLAIN. I will state to the Senator that if that is an amendment to the House text——

Mr. NORRIS. Yes.

Mr. CHAMBERLAIN. I have no objection to it; but that does not carry with it my assent to abandon the Senate committee amendment.

Mr. NORRIS. Oh, no; I did not expect that.

Mr. CHAMBERLAIN. I think it ought to be added.

Mr. STERLING. Is not that very idea found in lines 7 and 8 on page 9 in the Senate committee amendment?

Mr. NORRIS. Yes.

Mr. STERLING (reading)—

All timber sold under this act shall be subject to the taxing power of the States apart from the land.

Mr. NORRIS. But the Senator understands the parliamentary situation is such that we can offer an amendment either to the committee amendment or to the House text, and

that before we vote on the committee amendment we can move to perfect the text.

Mr. STERLING. That is true.

Mr. NORRIS. The effect of this amendment is to put into the House text the same provision that is in the Senate committee amendment on that taxing proposition; in other words, the State authorities would have a right to tax as soon as the timber is sold, and not wait for patent to be issued on a particular part of it. I can not see any objection to it.

Mr. CHAMBERLAIN. So far as I can consent, I am willing to have that amendment made.

Mr. BORAH. Mr. President, has the amendment been disposed of?

Mr. CHAMBERLAIN. The question is on the amendment of the Senator from Nebraska.

The VICE PRESIDENT. There can be no doubt about a motion to amend the part to be stricken out having precedence, and the motion of the Senator from Nebraska to amend is in order.

Mr. CHAMBERLAIN. I have no objection to the amendment.

Mr. NORRIS. I do not understand that anyone objects to it.

The VICE PRESIDENT. The question is on agreeing to amendment proposed by the Senator from Nebraska [Mr. NORRIS].

The amendment was agreed to.

The VICE PRESIDENT. The question recurs on the amendment of the Senator from Washington [Mr. POINDEXTER].

Mr. CHAMBERLAIN. Mr. President, may I express the hope that we can finish this measure in some way before the Senate is compelled, under the unanimous-consent agreement, to go into executive session?

Mr. NORRIS. If the Senator will allow me, I should like to have a roll call on two amendments, or at least on one of them, and that will come last. The one on the distribution of the money I consider to be the most important, and I should like to have one on this question. However, I do not want the bill to go over.

Mr. CHAMBERLAIN. I may be mistaken, but I fear there may be some difficulty about getting a quorum; that is all. Otherwise I have no objection to a yea-and-nay vote.

Mr. NORRIS. There will have to be a quorum to-day after the Senate goes into executive session. There can not be any doubt about securing a quorum.

Mr. CHAMBERLAIN. I am not going to resist a demand for the yeas and nays. I am ready to follow the usual course.

The VICE PRESIDENT. The question is on the amendment of the Senator from Washington [Mr. POINDEXTER] to the amendment of the committee.

Mr. JONES. Let it be read.

The VICE PRESIDENT. It will be stated.

The SECRETARY. In the part proposed to be inserted by the committee, beginning on page 8, line 4, the Senator from Washington [Mr. POINDEXTER] proposes to strike out the first paragraph—all the matter embraced in lines 4, 5, and 6 down to and including line 14 on page 8.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Washington to the amendment.

The amendment to the amendment was rejected.

Mr. POINDEXTER. Mr. President, I move to strike out the portion proposed to be inserted by the committee on page 8, the second paragraph, beginning at line 15, down to the bottom of the page; and in support of that, without delaying the passage of the bill, which I do not want to do, I wish to point out that it involves the proposition as to whether or not the people who purchase this timber shall have to remove it in any definite time or whether they will have an indefinite period of time in which to remove it, thereby keeping it from taxation and keeping it from development, very much as many large tracts of timber are at the present time kept in my own State.

I will say to the Senator from Oregon that the power of taxation of the State, which he says he thinks would compel them, if properly exercised, to sell the timber within a reasonable time, does not operate that way. If you go across the northwest corner of that map there, where the mouth of the Columbia River is, into the State of Washington, you can find a duplication there—counties similar to the counties in the southwestern portion of the State of Oregon largely taken up by forest reserves—except that in the State of Washington they are taken up by private reserves. In the county of Pacific, in the State of Washington, a few years ago, when I had the matter examined three-quarters of the county was owned by one timber company, who refused to sell the land and used their political and financial influence in defeating the taxes levied upon the land by the State and county; and after delaying it for years they would come in and compromise. That can very readily exist under the provisions of this section if you give these people an unlimited time in which to remove their timber. I prefer the provision of the House in that regard, which authorizes the Secretary of the Interior to fix a certain reasonable, definite time in which the timber must be removed.

Mr. CHAMBERLAIN. I wish to call the Senator's attention to even a more dangerous proposition than that in the House provision. Under the Senate committee provision which the Senator is attacking they will have to pay the taxes or lose the timber. The House provision provides that the timberland may be sold at such time, in such quantities, and under such plans, and so forth, with the result that if the Secretary of the Interior, under this reserve system that they have out there, concludes that it would not be a good time to sell next year, or 5 years, or 10 years, or 20 years from now, he could postpone the sale and they would have an absolute right to withdraw this land from any sale at all.

Mr. POINDEXTER. There is no question of withdrawal involved in it. It is the question of requiring the private owner of the timber or the purchaser of the timber to sell it. It is not Government timber; it is timber which is to be sold to private parties. How can the Secretary of the Interior withdraw that? What motive would he have for withholding it from sale? It will have passed out of the hands of the Government.

Mr. CHAMBERLAIN. The Senator misunderstands me. That question is not involved in the Senate committee amendment; it is involved in the House provision, which authorizes the Secretary to sell it at such time or in such manner as he sees fit. So he may practically withdraw it by not offering it for sale on the ground that it is not the right time to sell.

Mr. POINDEXTER. That is an entirely different matter from the one which I was speaking about. That is simply whether or not the purchaser of the timber shall be required to remove it within a reasonable time. I am not speaking about the conditions which might exist if the timber is not sold. That has nothing to do with this amendment.

The VICE PRESIDENT. The question is on the amendment of the Senator from Washington to the amendment of the committee.

The amendment to the amendment was rejected.

Mr. LANE. I wish to offer an amendment. In line 6, page 8, after the word "cash," I move to insert:

or payment in not exceeding 10 annual installments, with interest on such deferred payments as the Secretary of the Interior may prescribe, not to exceed 6 per cent per annum.

In relation to this I wish to say that if we demand cash for this land we will exclude nine-tenths of the people of the country from bidding upon it for the lack of cash with which to do it. If we protect the States by allowing them to tax the land in addition to this, men of limited means will be able to put in, say, small portable sawmills and attend to the wants of the small community in which they reside and we will open the timber up to the public more generally and get a better price and do our duty by all the people instead of a few of the minority class, who will be able to go in if they desire to do so and control the situation.

Mr. NORRIS. May I interrupt the Senator? From the reading of his amendment, it seems to me the effect of it would be really to make the Senate committee amendment conform——

Mr. LANE. To the House provision.

Mr. NORRIS. To the House provision.

Mr. LANE. Yes, sir.

Mr. NORRIS. The Senator could accomplish that same thing if the Senate committee amendment were voted down.

Mr. LANE. I should like in some way——

Mr. NORRIS. Is there anything else in the House text that ought to be stricken out?

Mr. LANE. There may be. My attention was attracted more particularly to this matter. Just lately we had an experience in the sale of the lands of the Osage Indians, with which I am fairly familiar. There was no competition, practically, and the Indians suffered a great and unnecessary loss.

Mr. NORRIS. I agree with the Senator. The reason why I opposed the Senate committee amendment was because it did not contain such a provision as the text of the bill does as passed by the House. If the text of the bill is satisfactory and means the same, and we did not amend this at all, it would go from the Senate to the President and would become a law a great deal more quickly than if we amended it. If the Senator's amendment is put on, as I gather from its reading it would really make the Senate committee amendment the same as if it was stricken out.

Mr. LANE. Practically that may be, but it is a Senate committee amendment, and I wish to make an amendment to the Senate committee amendment. I thought it might have more favorable consideration for that reason.

The VICE PRESIDENT. The amendment will be stated.

The SECRETARY. In the committee amendment, on page 8, line 6, after the words "for cash," insert:

Or payment in not exceeding 10 annual installments with interest on such deferred payments as the Secretary of the Interior may prescribe, not to exceed 6 per cent per annum.

The VICE PRESIDENT. The question is on agreeing to the amendment of the Senator from Oregon [Mr. LANE] to the amendment of the committee.

The amendment to the amendment was rejected.

The VICE PRESIDENT. The question is on agreeing to the amendment of the committee as amended.

Mr. NORRIS. Upon that I ask for the yeas and nays.

Mr. ASHURST. I should like to have the amendment stated.

The VICE PRESIDENT. It is the committee amendment found on pages 8 and 9 as printed. The Senator from Nebraska requests the yeas and nays.

The yeas and nays were ordered, and the Secretary proceeded to call the roll.

Mr. JONES (when his name was called). I have a pair for the day with the junior Senator from Virginia [Mr. SWANSON]. I do not know how he would vote on this amendment. Therefore I withhold my vote, but I ask to be counted.

Mr. OVERMAN (when his name was called). I have a general pair with the Senator from Wyoming [Mr. WARREN] and therefore withhold my vote.

Mr. SIMMONS (when his name was called). I transfer my pair with the junior Senator from Minnesota [Mr. CLAPP] to the Senator from Ohio [Mr. POMERENE] and vote "yea."

Mr. THOMAS. I have a general pair with the senior Senator from North Dakota [Mr. MCCUMBER], which I transfer to the senior Senator from Virginia [Mr. MARTIN] and vote "yea."

Mr. THOMPSON (when his name was called). I have a pair with the senior Senator from Illinois [Mr. SHERMAN]. In his absence I withhold my vote.

Mr. TILLMAN (when his name was called). I transfer my pair with the Senator from West Virginia [Mr. GOFF] to the Senator from Tennessee [Mr. SHIELDS] and vote "yea."

Mr. WALSH (when his name was called). I inquire if the Senator from Rhode Island [Mr. LIPPITT] has voted?

The VICE PRESIDENT. He has not.

Mr. WALSH. I have a pair with that Senator, which I transfer to the Senator from New Jersey [Mr. MARTINE] and vote "yea."

Mr. LODGE (when the name of Mr. WEEKS was called). My colleague [Mr. WEEKS] is absent from the city. He has a general pair with the Senator from Kentucky [Mr. JAMES].

Mr. WILLIAMS (when his name was called). I have a standing pair with the senior Senator from Pennsylvania [Mr. PENROSE]. From a conversation with his colleague [Mr. OLIVER], I think I am at liberty to vote upon this particular proposition. I therefore vote. I vote "yea."

The roll call was concluded.

Mr. JAMES. As has been stated, I have a general pair with the junior Senator from Massachusetts [Mr. WEEKS]. I have, however, just had a consultation with his colleague [Mr. LODGE], and I feel at liberty to vote on this question. I vote "yea."

Mr. SMITH of Maryland. I have a general pair with the Senator from Vermont [Mr. DILLINGHAM]. In his absence I withhold my vote.

Mr. CURTIS. I wish to announce the following pairs:

The Senator from Maine [Mr. BURLEIGH] with the Senator from Arkansas [Mr. ROBINSON];

The Senator from North Dakota [Mr. GRONNA] with the Senator from Maine [Mr. JOHNSON];

The Senator from Delaware [Mr. DU PONT] with the Senator from Kentucky [Mr. BECKHAM];

The Senator from Rhode Island [Mr. COLT] with the Senator from Delaware [Mr. SAULSBURY]; and

The Senator from New York [Mr. WADSWORTH] with the Senator from New Hampshire [Mr. HOLLIS].

Mr. SUTHERLAND (after having voted in the negative). Mr. President, I came into the Chamber hurriedly and voted without observing that the Senator from Arkansas [Mr. CLARKE], with whom I am paired, was absent. I now withdraw my vote for that reason.

The result was announced—yeas 44, nays 14, as follows:

YEAS—44.

Bankhead	Broussard	Fall	Harding
Borah	Chamberlain	Fletcher	Hardwick
Brady	Culberson	Gallinger	Hitchcock
Brandegee	Cummins	Gore	Hughes
James	Oliver	Simmons	Thomas
Kern	Overman	Smith, Ariz.	Tillman
Lea, Tenn.	Owen	Smith, Ga.	Underwood
Lewis	Phelan	Smith, Mich.	Vardaman
Lodge	Pittman	Smith, S. C.	Walsh
Myers	Ransdell	Sterling	Warren
Nelson	Reed	Stone	Williams

NAYS—14.

Ashurst	Husting	O'Gorman	Sheppard
Chilton	La Follette	Page	Townsend
Clark, Wyo.	Lane	Poindexter	
Curtis	Norris	Shafroth	

NOT VOTING—38.

Beckham	Gronna	Martin, Va.	Smoot
Bryan	Hollis	Martine, N. J.	Sutherland
Burleigh	Johnson, Me.	Newlands	Swanson
Catron	Johnson, S. Dak.	Penrose	Taggart
Clapp	Jones	Pomerene	Thompson
Clarke, Ark.	Kenyon	Robinson	Wadsworth
Colt	Lee, Md.	Saulsbury	Weeks
Dillingham	Lippitt	Sherman	Works
du Pont	McCumber	Shields	
Goff	McLean	Smith, Md.	

So the amendment was agreed to.

Mr. BORAH. Mr. President, will the Senator from Oregon for a moment waive the procedure which has been agreed upon in reference to the consideration of the pending bill and permit me to offer an amendment on page 9? It is not a committee amendment. I shall be compelled to leave the Chamber in a few moments.

Mr. CHAMBERLAIN. I have no objection.

The VICE PRESIDENT. Is there objection on the part of any Senator to the request of the Senator from Idaho? The Chair hears none.

Mr. BORAH. On page 9, line 21, before the word "years," I move to strike out "five" and to insert "three," so that it will read:

The entryman has resided upon and cultivated the land for a period of three years.

I move, also in line 22, before the word "years," to strike out "seven" and to insert "five."

The VICE PRESIDENT. The amendment proposed by the Senator from Idaho will be stated.

The SECRETARY. On page 9, line 21, before the word "years," it is proposed to strike out "five" and to insert "three," and in line 22, before the word "years," to strike out "seven" and to insert "five," so as to read:

The provisions of section 2301, Revised Statutes, shall not apply to any entry hereunder, and no patent shall issue until the entryman has resided upon and cultivated the land for a period of three years, proof of which shall be made at any time within five years from date of entry.

The VICE PRESIDENT. The question is on the amendment proposed by the Senator from Idaho.

The amendment was agreed to.

The reading of the bill was resumed.

The next amendment of the Committee on Public Lands was, on page 10, line 11, after the words "nineteen hundred and," to strike out "thirteen" and to insert "fifteen," so that it will read:

Since the 1st day of December, 1915.

The amendment was agreed to.

The next amendment was, on page 12, line 20, after the word "In," to insert "making this determination in" so as to read:

In making this determination in the aforementioned suit or suits the court shall also determine, on the application of the Attorney General, the amount of the taxes on said lands paid by the United States, as provided in this act, and which should in law have been paid by the said Oregon & California Railroad Co.

And so forth.

The amendment was agreed to.

The next amendment was, on page 15, line 9, after the name "United States," to insert the words: "after which all other moneys received from the sales of land and timber shall be distributed as follows," so as to read:

After the said railroad company, its successors or assigns, and the lien holders shall have been paid the amount to which they are entitled, as provided herein, an amount equal to that paid for accumulated taxes, as provided in section 9 hereof, shall be deposited in the Treasury to the credit of the United States, after which all other moneys received from the sale of land and timber shall be distributed as follows:

And so forth.

The amendment was agreed to.

The next amendment was, on page 15, line 18, after the word "act," to strike out to and including the name "United States," in line 5, page 16, as follows:

Thirty per cent of the remainder shall be paid to the treasurer of the county for the construction of roads, highways, and bridges; 20 per cent shall be paid to the State in which the county is located for the establishment and support of common schools; 40 per cent shall be paid into, reserved, and appropriated as a part of the fund created by the act of Congress approved June 17, 1902, known as the reclamation act; and the balance remaining in said Oregon and California land-

grant fund shall become a part of the general fund in the Treasury of the United States.

And in lieu thereof to insert:

Of the remainder 10 per cent shall be paid into, reserved, and appropriated as a part of the fund created by the act of Congress approved June 17, 1902, known as the reclamation act, to be expended on approved projects within the State of Oregon; 10 per cent of such remainder shall become a part of the general fund in the Treasury of the United States; 30 per cent of said remainder of the proceeds arising from the sales of land and timber in the counties of Coos, Douglas, Lane, Tillamook, and Multnomah, in the State of Oregon, shall be paid to the treasurers of the said respective counties for the construction of roads, highways, and bridges, and 20 per cent thereof shall be paid to the proper officer of the respective port districts within the counties named, for the purpose of reducing the bonded indebtedness of such districts and for general harbor improvement, and where there is more than one port district in any county the county court of such county shall determine what portion of the fund shall be credited to the several port districts therein; 35 per cent of said remainder of the proceeds arising from the sale of lands and timber within counties other than the counties of Coos, Douglas, Lane, Tillamook, and Multnomah shall be paid to the treasurers of the respective counties for the construction of roads, highways, and bridges; and the entire balance remaining in said Oregon and California land-grant fund, from whatever source derived, shall be paid to the State of Oregon for its irreducible school fund for the support of the common schools of the State.

Mr. WALSH. Mr. President, I ask for the yeas and nays on that amendment.

The yeas and nays were ordered.

Mr. CLARK of Wyoming. Mr. President, I am inclined to vote for this amendment, but solely on the ground that I believe it will serve as a precedent for future general legislation along the same lines, covering our whole public-land States. I say this simply to explain my vote.

The Secretary proceeded to call the roll.

Mr. JONES (when his name was called). I again announce my pair with the junior Senator from Virginia [Mr. SWANSON] and therefore withhold my vote. I will let this announcement stand for the day.

Mr. SIMMONS (when his name was called). Making the same transfer of my pair as on the former vote, I vote "yea."

Mr. SUTHERLAND (when his name was called). I inquire whether the Senator from Arkansas [Mr. CLARKE] has voted?

The VICE PRESIDENT. He has not.

Mr. SUTHERLAND. I have a pair with that Senator, which I transfer to my colleague [Mr. SMOOT], and vote "nay."

Mr. THOMAS (when his name was called). Announcing my pair and its transfer as on the previous roll call, I vote "yea."

Mr. TILLMAN (when his name was called). Announcing the same pair and its transfer as I did before, I vote "yea."

Mr. WALSH (when his name was called). Announcing the same pair and transfer as on the previous roll call, I vote "nay."

The roll call was concluded.

Mr. JAMES. I transfer the general pair I have with the junior Senator from Massachusetts [Mr. WEEKS] to the senior Senator from Indiana [Mr. KERN] and vote "nay."

Mr. THOMPSON. I have a pair with the senior Senator from Illinois [Mr. SHERMAN]. If permitted to vote, I should vote "nay," but as the Senator from Illinois is absent I withhold my vote.

Mr. BECKHAM. I have a pair with the Senator from Delaware [Mr. DU PONT]. As he is absent, I withhold my vote.

Mr. SUTHERLAND. I announce the unavoidable absence of my colleague [Mr. SMOOT]. This announcement may stand for the remainder of the day.

Mr. WILLIAMS. I transfer my pair with the senior Senator from Pennsylvania [Mr. PENROSE] to the Senator from Tennessee [Mr. SHIELDS] and vote "yea."

The result was announced—yeas 37, nays 22, as follows:

YEAS—37.

Bankhead	Fall	Oliver	Stone
Brady	Fletcher	Owen	Taggart
Brandegee	Gallinger	Page	Thomas
Chamberlain	Harding	Phelan	Tillman
Chilton	Hardwick	Simmons	Vardaman
Clark, Wyo.	Hughes	Smith, Ariz.	Warren
Culberson	Lane	Smith, Md.	Williams
Cummins	Lea, Tenn.	Smith, Mich.	
Curtis	Lodge	Smith, S. C.	
Dillingham	Nelson	Sterling	

NAYS—22.

Ashurst	La Follette	Overman	Sutherland
Broussard	Lewis	Poindexter	Townsend
Gore	Myers	Ransdell	Underwood
Hitchcock	Newlands	Reed	Walsh
Husting	Norris	Shafroth	
James	O'Gorman	Sheppard	

NOT VOTING—37.

Beckham	Clarke, Ark.	Johnson, Me.	Lippitt
Borah	Colt	Johnson, S. Dak.	McCumber
Bryan	du Pont	Jones	McLean
Burleigh	Goff	Kenyon	Martin, Va.
Catron	Gronna	Kern	Martine, N. J.
Clapp	Hollis	Lee, Md.	Penrose
Pittman	Sherman	Swanson	Works
Pomerene	Shields	Thompson	
Robinson	Smith, Ga.	Wadsworth	
Saulsbury	Smoot	Weeks	

So the amendment was agreed to.

The next amendment was, on page 17, line 15, after the word "fund," to strike out "hereinbefore" and to insert "in this section," so as to make the proviso read:

Provided, That none of the payments to the States and counties and to the reclamation fund in this section provided for shall be made until the amount due the Oregon & California Railroad Co., its successors or assigns, has been fully paid, and the Treasury reimbursed for all taxes paid pursuant to the provisions of section 9 of this act.

The amendment was agreed to.

Mr. POINDEXTER. Mr. President, in this bill the Oregon & California Railroad Co., which violated every provision of the grant, is protected to the full extent of the value which it was to receive under that grant; but the applicants to purchase lands under the terms provided in the grant are not taken care of; in other words, the party who violated the grant is protected, while the parties who lived up to it are entirely neglected. I see no reason why people acting in good faith, who made application to purchase the amount of land that they were entitled to purchase at a price at which they were entitled to purchase under the granting act, should not be protected in this bill which we are now proposing to pass. For that purpose I offer the amendment which I send to the desk.

The VICE PRESIDENT. The amendment proposed by the Senator from Washington will be stated.

The SECRETARY. On page 11, after line 17, it is proposed to insert the following:

Any qualified homestead entryman who, prior to April 30, 1908, made application to purchase any of said land, not exceeding 160 acres, and made tender of the purchase price thereof as provided in the act of May 4, 1870, shall, during a period of six months next following the passage of this act, have a preference right to make homestead entry of the lands for which said application was made, whether the same shall be in class 2 or class 3, as defined in this act, and shall receive a patent therefor on complying with the provisions of the five-year homestead law and payment of $2.50 an acre therefor: *Provided*, That any residence or cultivation which said applicant has made upon said land shall be credited to him in making proof thereunder: *Provided further*, That all payments made to the Oregon & California Railroad Co. by such applicant shall be credited on the payments hereinbefore provided for.

Mr. CHAMBERLAIN. Mr. President, I do not care to discuss the subject of settlers on this land, because it would open up a field that might be extended over weeks of discussion. The Supreme Court of the United States in its decision held that these so-called settlers did not have any rights or equities in the matter. The very amendment which is now suggested here would open the door to 65 people of whom I know, who, it is claimed, were fraudulent settlers. I know the Senator from Washington does not intend to open a door for them; but it is a complicated proposition. All of these alleged settlers can have their rights adjudicated and adjusted later.

Not only are there these 65 claimants, but we might open the door to men embraced in a list of 16,000 or 18,000 so-called settlers. They claim, or some of them do at least, to be settlers, and they extend from Maine to the Gulf of California, and from Portland, Oreg., to Florida; they are not merely confined to this country, but are found in Canada as well. So that I hope the Senate will vote down the amendment and let these rights be adjusted in some other forum than in this bill.

Mr. POINDEXTER. Mr. President, I only have a word to say in regard to that. The amendment speaks for itself. The matter is more or less familiarly known in the country, and I have no way by which I can do more than to present the matter to protect these people. If there are 35 or 6,500 who complied with the terms of that grant, they are entitled to the benefits which the grant conferred.

So far as being "so-called settlers" or acting in bad faith, they would be compelled to comply with the homestead law and to make their proof at the land office, and if they are acting in bad faith they can not make such proof. Nobody but a settler in good faith can get the benefit of this amendment.

The VICE PRESIDENT. The question is on the amendment proposed by the Senator from Washington. [Putting the question.] By the sound the "noes" seem to have it.

Mr. POINDEXTER. I ask for the yeas and nays.

The yeas and nays were not ordered.

Mr. POINDEXTER. I ask for a division.

The VICE PRESIDENT. The Senator from Washington asks for a division on the amendment. Those in favor of the amendment will rise. [A pause.] Those opposed will rise. [A pause.] Clearly the decision of the Chair was correct, and the amendment is rejected.

The bill is in the Senate, as in Committee of the Whole, and open to amendment.

Mr. JONES. I desire to offer an amendment as a new section, and I simply want to say that the amendment is in line with that offered by my colleague [Mr. POINDEXTER] except that it is made to apply only to lands in the State of Washington. According to the report there are about 200 acres, but according to some letters I have received I think there are more. I will not take further time to discuss it.

The VICE PRESIDENT. The amendment will be stated.

The SECRETARY. It is proposed to add as a new section of the bill the following:

SEC. 13. That any actual settler who contracted with the railroad company for the purchase of any of the lands in the State of Washington covered by this act, at a greater price than $2.50 per acre, and has been unable to secure title shall be entitled to a patent upon submitting satisfactory proof to the Interior Department that he has paid as much as $2.50 per acre for said lands and has otherwise complied with the homestead laws of the United States as to settlement and cultivation.

The VICE PRESIDENT. The question is on the amendment proposed by the Senator from Washington.

The amendment was rejected.

Mr. JONES. I desire to offer an amendment to section 4, page 6, after the word "class," in line 9.

The VICE PRESIDENT. The amendment will be stated.

The SECRETARY. In section 4, page 6, line 9, after the word "class," it is proposed to insert:

Provided, That any person duly qualified to enter such lands under the homestead laws who has resided thereon to the same extent and in the same manner as is required under the homestead laws since the 1st day of December, 1915, until the date of his application to make entry, such person may enter the 40-acre tract, or lot or lots containing approximately 40 acres, upon which his improvements, or the greater part thereof, are situated.

Mr. JONES. I want to say to the Senator in charge of the bill that I am trying to make plain the object which I understand was sought to be accomplished by the proviso in section 5 with reference to the classes of land. I do not believe that the provision in section 5 covers the point which I raised a while ago.

Mr. CHAMBERLAIN. Does the amendment of the Senator only cover applications since 1915?

Mr. JONES. It relates to the taking of land the timber upon which exceeds 1,200,000 feet board measure per quarter section, and only covers cases where the settlers have resided on the lands since 1915; and permits them to take only the 40 acres on which their improvements are placed.

Mr. CHAMBERLAIN. Personally I have no objection to the amendment.

The VICE PRESIDENT. Without objection, the amendment is agreed to.

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

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

The VICE PRESIDENT. Does the Senator from Oregon desire the preamble to stand?

Mr. CHAMBERLAIN. I have no objection to it standing, Mr. President. I think it would be an index to follow in tracing the statutes.

The VICE PRESIDENT. Without objection, the preamble is agreed to.

Mr. CHAMBERLAIN. I move that the Senate request a conference with the House on the bill and the amendments and that the Chair appoint the conferees on the part of the Senate.

The motion was agreed to, and the Vice President appointed Mr. CHAMBERLAIN, Mr. THOMAS, and Mr. STERLING conferees on the part of the Senate.

REVOLT IN IRELAND.

Mr. STONE. Mr. President, in behalf of and at the direction of the Committee on Foreign Relations, I ask unanimous consent to report back favorably Senate resolution 196, submitted by the senior Senator from Indiana [Mr. KERN] and referred to the Committee on Foreign Relations. I should like to have the resolution read as proposed to be amended.

The VICE PRESIDENT. Without objection, the Secretary will read the resolution.

The Secretary read as follows:

Whereas it is represented that at the time of the recent revolt in Ireland there were, and are yet, many American citizens in districts in which martial law was proclaimed and in which armed conflicts occurred, and whereas the relatives and friends in this country of such American citizens whose safety has been thus endangered are apprehensive lest their lives and property have been imperiled: Therefore be it

Resolved, That the Secretary of State be, and is hereby, requested to cause inquiry to be made as to the safety and well-being of American citizens in Ireland, and what steps, if any, may be necessary and proper, consistently with the recognized law of nations, for the safeguarding and protection of their lives and property.

Mr. KERN obtained the floor.

Mr. FALL. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator will state his inquiry.

Mr. FALL. I simply want to understand what the status of this report is. It is just a report that has been submitted, as I understand?

The VICE PRESIDENT. Yes.

Mr. FALL. Is it to be considered?

Mr. STONE. I have just submitted it.

Mr. FALL. I understand that the report has been received by unanimous consent. Is it to be considered?

Mr. STONE. It is not to be considered. The Senator can ask for its consideration.

Mr. FALL. I have no objection to the report being made at this time.

Mr. KERN. I ask unanimous consent for the present consideration of the resolution. It has been favorably reported, as I understand, by the unanimous vote of the committee.

Mr. FALL. Mr. President——

Mr. BRANDEGEE. I rise to a parliamentary inquiry.

The VICE PRESIDENT. The Senator will state it.

Mr. BRANDEGEE. I simply want to know what is before the Senate. Has the Senator asked unanimous consent to make this report out of order?

Mr. STONE. I asked unanimous consent to make the report.

The VICE PRESIDENT. That was granted.

Mr. STONE. That was granted, and I made the report. The report has been read by the Secretary. The Senator from Indiana rises and asks unanimous consent for its present consideration.

The VICE PRESIDENT. Is there any objection?

Mr. FALL. Mr. President, I have no objection to the present consideration of the resolution, except that the Senate, under a unanimous-consent agreement, is to consider other matters at 5 o'clock, and I shall desire to discuss this resolution, and I think there will not be time to discuss it before the Senate proceeds to the consideration of other business. Therefore I think possibly the resolution had better go over. I do not desire to make any objection to the Senator's request to take it up. [A pause.] I shall object, however, to granting unanimous consent.

The VICE PRESIDENT. There is an objection. The resolution will have to go to the calendar.

Mr. FALL. I have no desire to have it go to the calendar.

Mr. STONE. I would rather it did not go to the calendar. If the Senator desires to discuss it and would like to have it either lie on the table or to be called up to-morrow morning, I will withdraw it and present it at that time.

Mr. FALL. That was my purpose in simply asking the question. I did not desire to enter a formal objection.

Mr. STONE. I ask, then, that the report may lie on the table.

The VICE PRESIDENT. It is a report. It will either have to go to the calendar or be withdrawn.

Mr. STONE. Then I will ask to withdraw it under the objection of the Senator from New Mexico.

Mr. FALL. I object to its withdrawal, Mr. President. I think the matter is one that is deserving of consideration by this body, and I shall not object to the passage of it. In fact, I shall vote for the adoption of the resolution. The report has been made. It is in the Senate, and I can not see why it should not simply lie over by unanimous consent on the table.

Mr. STONE. Mr. President, all I care for is that the resolution may be brought before the Senate to-morrow morning. It is immaterial whether it is brought before the Senate in one way or another. I will ask leave to withdraw the report, and I will present it again to-morrow morning.

Mr. LODGE. Mr. President, a report from a committee has to lie over one day for consideration, if objection is made.

Mr. STONE. Why, to be sure.

Mr. LODGE. It does not carry it to the calendar until it has had its second day.

Mr. STONE. But this is a committee report.

Mr. LODGE. Certainly; and it would go over under the rule, upon the objection of the Senator from New Mexico, for one day, and then it comes up to-morrow on call, and then goes to the calendar if the morning hour expires before it is disposed of.

Mr. STONE. I understood the Chair to state——

The VICE PRESIDENT. The Chair would like the Senator from Massachusetts to point to any such rule which states that the report of a committee lies over on the table and does not go to the calendar.

Mr. LODGE. Senate resolutions? I did not know they went to the calendar on the first day.

The VICE PRESIDENT. They have been going there ever since the present occupant of the Chair has been here.

Mr. LODGE. But a Senate resolution——

Mr. STONE. Mr. President, is there any objection to my withdrawing the report?

Mr. FALL. I have no objection whatsoever, under the Senator's statement.

Mr. STONE. Very well. I ask leave to withdraw the report.

Mr. FALL. I have no objection, under the statement made by the Senator that he will offer this report to-morrow morning.

Mr. STONE. I expect to present it to-morrow morning; and I am doing this in the economy of time, to prevent discussion on a parliamentary proceeding.

The VICE PRESIDENT. Is there any objection? The Chair hears none.

Mr. LODGE. Mr. President, if the Chair will allow me, on page 16, Rule XIV, section 5, reads as follows:

All resolutions shall lie over one day for consideration, unless by unanimous consent the Senate shall otherwise direct.

The VICE PRESIDENT. Yes; that is an introduced resolution. It has not gone to the committee. That is always the rule.

Mr. LODGE. But this is a resolution—a Senate resolution—and it is reported back from the committee.

The VICE PRESIDENT. Certainly; and when reported back from the committee it has always gone to the calendar since the present occupant of the chair has been here, at least.

Mr. LODGE. The rule says all resolutions shall go over one day.

The VICE PRESIDENT. Oh, certainly; but we can not pick out a single rule and decide this question by one rule.

Mr. LODGE. Mr. President, the point is made that it comes from a committee. The rule is that reports of committees shall go over one day.

The VICE PRESIDENT. Certainly. Well, where does it go? Are all these things on the table here, or are they on the calendar?

Mr. LODGE. Those are the bills and joint resolutions. This is a Senate resolution.

The VICE PRESIDENT. The rule does not say so. It says "reports of committees."

Mr. LODGE. I think a Senate resolution occupies a different place from a joint resolution. It is not named with them, and I think it is covered by section 5.

SHIPMENT OF FOOD SUPPLIES TO POLAND.

Mr. HITCHCOCK. Mr. President, I submit a report from the Committee on Foreign Relations, and I will ask to have it read, and then I shall ask unanimous consent for its present consideration.

The VICE PRESIDENT. Is there any objection? The Chair hears none.

Mr. HITCHCOCK. It is reported with certain amendments. I ask that the resolution be read as amended. That will be sufficient for the information of the Senate.

The resolution (S. Res. 148, Rept. 517) as proposed to be amended was read, as follows:

Resolved, That the President be, and he is hereby, requested to furnish to the Senate information as indicated below, if not incompatible with the public interest:

First. What is the present attitude of the belligerent Governments concerning the shipment of food supplies and other necessaries of life to the suffering people of Poland? Do the belligerents permit such supplies to be sent without interruption or delay from the United States to Amsterdam or any other neutral port in Europe.

Second. If the belligerent Governments make limitations or conditions or require guaranties from each other, what are the conditions and restrictions, and what are the terms of the guaranties thus required.

Third. What action, if any, have said belligerents taken toward giving the guaranties that may have been required.

Fourth. To what committees or authority in Poland may supplies be forwarded and consigned.

Fifth. To what extent is the actual work of relief in Poland being carried on and under whose supervision and control.

Sixth. What are the facts at the present time as to the shipment, transportation, receipt, and distribution of supplies? Can these proceedings be taken or are they delayed by pending negotiations with the countries involved or either of them.

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

Mr. WILLIAMS. Mr. President, when that resolution was reported from the Committee on Foreign Relations I thought it was to be amended by including Belgium and Servia and Armenia in the resolution. I finally consented to have it reported with that understanding in my own mind. I thought that was in the mind of the committee.

I do not see any reason why Poland should be singled out alone for this inquiry. The suffering in Armenia under Turkish tyranny and oppression has been infinitely worse. There has not only been starvation there, but there has been assassination; and the atrocities committed in Belgium were still worse, and the sufferings of the people of Servia have been equally as bad.

Since the resolution was reported to the Senate, however, I have seen the senior Senator from Massachusetts [Mr. LODGE], who assures me that I was wrong about the understanding that I thought the members of the Committee on Foreign Relations had with one another. I therefore shall not object to the immediate consideration of the resolution; but I do consider it a part of my duty to protest that while the condition of Poland is being examined the condition in Armenia and in Servia and in Belgium is being neglected. If the United States Senate or Congress or the United States Government is to inquire into either, it ought, in order to be absolutely impartial and neutral, to inquire into all.

With this explanation, conditioned upon my misunderstanding of what I thought was the understanding between the members of the Committee on Foreign Relations, I shall make no objection to the present consideration of the resolution.

Mr. LODGE. Mr. President, I desire to call the attention of the Chair to Rule XXVI, section 2:

All reports of committees and motions to discharge a committee from the consideration of the subject and all subjects from which a committee shall be discharged shall lie over one day for consideration—

Now, "lying over" means leaving the subject precisely in the same position in which it was when it was reported.

The VICE PRESIDENT. Then every bill and every report and every joint resolution and everything else is lying on the table now.

Mr. LODGE. Most assuredly, if objection is made.

The VICE PRESIDENT. And if objection is not made?

Mr. LODGE. It goes by unanimous consent to the calendar.

The VICE PRESIDENT. To the calendar?

Mr. LODGE. To the calendar. That is the ordinary course of a bill or joint resolution.

The VICE PRESIDENT. Where is the rule for that? This is all an academic discussion upon the rules.

Mr. LODGE. I call the Chair's attention to a precedent.

Mr. HITCHCOCK. Mr. President, can I get the consent of the Senator from Massachusetts for the consideration of this report?

Mr. LODGE. Mr. President, I will dispose of this first, if the Senator pleases. I thought I had the reference here, but I do not find what I thought I had. I think that has been the usual practice. In Jefferson's Manual, to which Rule XXVI refers, speaking of a bill, it says:

The chairman * * * then delivers it at the Clerk's table, where the amendments reported are read by the Clerk without the coherence; whereupon the papers lie upon the table until the House, at its convenience, shall take up the report.

Our rule says it "shall lie over one day" and then, under the other general rules, it goes to the calendar.

The VICE PRESIDENT. What general rule?

Mr. LODGE. The general rule applying to bills and joint resolutions. They go to the calendar.

The VICE PRESIDENT. Where is there any distinction in the rules between bills and joint resolutions and Senate resolutions?

Mr. LODGE. There is no need of any distinction, because this says "all reports from committees"——

Mr. STONE. Mr. President, I rise to a question of order.

The VICE PRESIDENT. The Senator from Missouri will state it.

Mr. STONE. There is a matter pending before the Senate, to wit, a resolution reported from the Committee on Foreign Relations, and unanimous consent has been given for its present consideration.

The VICE PRESIDENT. Not yet. The Chair was about to inquire whether or not there was objection to its present consideration.

Mr. STONE. Then the question is, Shall unanimous consent be given?

The VICE PRESIDENT. Yes.

Mr. STONE. And, under the leadership of the distinguished Senator from Massachusetts, we are——

Mr. LODGE. I have no objection to its present consideration, but I can not be taken from the floor.

Mr. STONE. We are discussing a parliamentary question that has absolutely nothing to do with this resolution, but re-

lates to a subject that is already passed—a report I made, and which, with the consent of the Senate, I withdraw, and which is no longer before the Senate.

Mr. LODGE. The Senator from New Mexico [Mr. FALL] objected to its withdrawal.

Mr. STONE. Well, I have withdrawn it.

Mr. LODGE. Can the Senator withdraw it without unanimous consent?

Mr. STONE. No; but I will ask the Chair what the situation is in that respect.

The VICE PRESIDENT. The Senator withdrew his objection, and the report is entirely out of the way.

Mr. STONE. The report has been withdrawn. It is not before the Senate.

Mr. GALLINGER. I call for the regular order.

Mr. LODGE. It certainly is not before the Senate.

Mr. STONE. And I can not see that a discussion of a matter of that kind has anything to do with this. I ask the Chair to put the question. I ask for the regular order.

Mr. LODGE. Mr. President, speaking to the resolution, for the consideration of which unanimous consent has been given, I suppose——

Mr. STONE. The question of giving unanimous consent is not subject to discussion.

The VICE PRESIDENT. Is there any objection to the present consideration of the resolution? The Chair hears none, and the resolution is before the Senate.

Mr. LODGE. Now, Mr. President, addressing myself to the resolution, for the present consideration of which unanimous consent has been granted, I merely wish to say to the Senator from Missouri that I appreciate the force of his objection that no one in the Senate should ever speak upon a matter not before the Senate or a matter which has been disposed of by the Senate. That is a rule that the Senate always strictly observes. My purpose was to bring a parliamentary point to the consideration of the Chair; and, now that I have done so, perhaps at some future time he and I may come to an agreement upon it.

In the meantime I have said all that I desire to say, and I accept the point of order that we are talking, as the Senate never does, about something not before it.

The VICE PRESIDENT. The question is on agreeing to the resolution as amended.

The resolution as amended was agreed to.

PETITIONS AND MEMORIALS.

Mr. PHELAN presented a petition of the Chamber of Commerce of Los Angeles, Cal., praying for the creation of a permanent tariff commission, which was referred to the Committee on Finance.

He also presented a memorial of sundry citizens of Berkeley, Cal., remonstrating against the enactment of legislation for compulsory Sunday observance in the District of Columbia, which was ordered to lie on the table.

He also presented a petition of sundry citizens of San Bernardino County, Cal., praying for the enactment of legislation to prohibit interstate commerce in the products of child labor, which was ordered to lie on the table.

Mr. DU PONT presented petitions of sundry citizens of Newark, Del., praying for the adoption of an amendment to the Constitution granting the right of suffrage to women, which were ordered to lie on the table.

Mr. TOWNSEND presented a memorial of sundry citizens of Gladwin County, Mich., remonstrating against the enactment of legislation for compulsory Sunday observance in the District of Columbia, which was ordered to lie on the table.

Mr. PAGE presented petitions of the Woman's Christian Temperance Union of North Bennington and of the congregations of the Methodist Episcopal Church of Waterbury and of the First Congregational Church of Hinesburg, all in the State of Vermont, praying for national prohibition, which were referred to the Committee on the Judiciary.

Mr. HUGHES (for Mr. JOHNSON of Maine) presented petitions of sundry citizens of Maine, praying for the enactment of legislation to grant pensions to widows and orphans of veterans of the Spanish-American War, which were ordered to lie on the table.

He also (for Mr. JOHNSON of Maine) presented petitions of sundry citizens of Maine, praying for national prohibition, which were referred to the Committee on the Judiciary.

He also (for Mr. JOHNSON of Maine) presented a memorial of the Society of Friends of South Durham, Me., remonstrating against an increase in armaments, which was ordered to lie on the table.

He also (for Mr. JOHNSON of Maine) presented a petition of Manila Camp, No. 1, United Spanish War Veterans, National Military Home, Kans., praying for the enactment of legislation to grant pensions to certain survivors of Indian wars, which was ordered to lie on the table.

REPORTS OF COMMITTEES.

Mr. OVERMAN, from the Committee on the Judiciary, to which was referred the bill (H. R. 6097) to ratify the compact and agreement between the States of Oregon and Washington regarding concurrent jurisdiction over the waters of the Columbia River and its tributaries in connection with regulating, protecting, and preserving fish, reported it without amendment and submitted a report (No. 513) thereon.

Mr. SMITH of Maryland, from the Committee on the District of Columbia, to which was referred the amendment submitted by Mr. BANKHEAD on the 22d ultimo proposing to appropriate $4,140 to pay Thomas W. and Alice N. Keller for ground taken and damages on account of condemnation proceedings in square No. 2838 in the city of Washington, reported it without amendment and moved that it be referred to the Committee on Appropriations and printed, which was agreed to.

THE NAVY AND MARINE CORPS.

Mr. TILLMAN. On May 16 the Senator from Virginia [Mr. SWANSON] reported from the Committee on Naval Affairs the bill (H. R. 12835) to authorize and empower officers and enlisted men of the Navy and Marine Corps to serve under the Government of the Republic of Haiti, and for other purposes, and it was placed on the calendar. I move that the bill be taken from the calendar and referred to the Committee on Foreign Relations.

The motion was agreed to.

BILLS AND JOINT RESOLUTION INTRODUCED.

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

By Mr. FLETCHER:

A bill (S. 6242) authorizing the counties of Nassau, Fla., and Charlton, Ga., to construct a bridge across the St. Marys River between Florida and Georgia; to the Committee on Commerce.

By Mr. MYERS:

A bill (S. 6243) to provide for the purchase of a site and the erection of a public building thereon at Anaconda, in the State of Montana; and

A bill (S. 6244) to provide for the purchase of a site and the erection of a public building thereon at Havre, in the State of Montana; to the Committee on Public Buildings and Grounds.

By Mr. PHELAN:

A bill (S. 6245) transferring to the active list of the United States Navy John Morris Ellicott, now a captain on the retired list of the Navy; to the Committee on Naval Affairs.

A bill (S. 6246) waiving the maximum age limit fixed by law for appointment of second lieutenants from civil life in the case of Harry B. Sepulveda; to the Committee on Military Affairs.

A bill (S. 6247) to amend an act entitled "An act to provide for the lading or unlading of vessels at night, the preliminary entry of vessels, and for other purposes," approved February 13, 1911; to the Committee on Commerce.

A bill (S. 6248) granting a pension to Willis S. Harris, alias Charles E. Sanders;

A bill (S. 6249) granting a pension to Mary E. Dollard; and

A bill (S. 6250) granting a pension to Thomas G. Cockings; to the Committee on Pensions.

By Mr. OLIVER (for Mr. PENROSE):

A bill (S. 6251) to remove the charge of desertion from the military record of John F. Kelly; to the Committee on Military Affairs.

By Mr. SHIELDS:

A bill (S. 6252) granting a pension to Alfred C. Williams (with accompanying papers); to the Committee on Pensions.

By Mr. DU PONT:

A bill (S. 6253) granting an increase of pension to William H. Bradley; to the Committee on Pensions.

By Mr. O'GORMAN:

A bill (S. 6254) for the relief of the Adams Express Co. (with accompanying papers); to the Committee on Finance.

By Mr. TAGGART:

A bill (S. 6255) granting an increase of pension to Isaac W. Hallock; and

A bill (S. 6256) granting an increase of pension to William Hart; to the Committee on Pensions.

By Mr. LEWIS:

A bill (S. 6257) granting a pension to Bertha Pratt;

A bill (S. 6258) granting an increase of pension to Elizabeth J. Pinckard; and

A bill (S. 6259) granting an increase of pension to John Luther Skinner; to the Committee on Pensions.

By Mr. HUGHES (for Mr. JOHNSON of Maine):

A bill (S. 6260) granting a pension to Josefa Stoneman (with accompanying papers);

A bill (S. 6261) granting a pension to Aravilla Strout (with accompanying papers);

A bill (S. 6262) granting an increase of pension to Horace G. Maloon (with accompanying papers);

A bill (S. 6263) granting a pension to Archibald S. McPheters (with accompanying papers);

A bill (S. 6264) granting an increase of pension to John H. Lowell (with accompanying papers);

A bill (S. 6265) granting an increase of pension to Leroy Harding (with accompanying papers);

A bill (S. 6266) granting an increase of pension to Elden B. Maddocks (with accompanying papers);

A bill (S. 6267) granting a pension to Alphonzo Penley (with accompanying papers);

A bill (S. 6268) granting an increase of pension to Charles R. Stuart (with accompanying papers);

A bill (S. 6269) granting an increase of pension to George H. Crowley (with accompanying papers);

A bill (S. 6270) granting an increase of pension to James H. Stinson (with accompanying papers);

A bill (S. 6271) granting an increase of pension to Eliakin Byard (with accompanying papers);

A bill (S. 6272) granting an increase of pension to Maria A. Leland (with accompanying papers);

A bill (S. 6273) granting a pension to Thomas Dagnan, alias Thomas Degnan (with accompanying papers);

A bill (S. 6274) granting a pension to Hannah M. Flaherty (with accompanying papers); and

A bill (S. 6275) granting an increase of pension to Helen F. Goodwin; to the Committee on Pensions.

By Mr. JONES (by request):

A joint resolution (S. J. Res. 138) directing the Commissioners of the District of Columbia to withdraw their petition in the Supreme Court of the District of Columbia concerning the condemnation of land for the extension of Central Avenue; to the Committee on the District of Columbia.

AMENDMENTS TO APPROPRIATION BILLS.

Mr. CUMMINS. I submit an amendment in the nature of a substitute for the committee amendment intended to be proposed by me to the Post Office appropriation bill (H. R. 10484), which I ask may lie on the table and be printed.

The VICE PRESIDENT. The amendment will be printed and lie on the table.

Mr. STONE submitted an amendment proposing to appropriate $196,641.43 for readjustment of National Zoological Park boundaries, etc., intended to be proposed by him to the sundry civil appropriation bill (H. R. 15836), which was ordered to be printed, and, with the accompanying papers, referred to the Committee on Appropriations.

ADDRESS BY PRESIDENT WILSON.

Mr. THOMPSON. Mr. President, I ask to have printed in the RECORD the eloquent and patriotic address of the President of the United States, delivered at Arlington on Memorial Day, May 30.

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

The address referred to is as follows:

THE PRESIDENT'S ADDRESS.

"Whenever I seek to interpret the spirit of an occasion like this I am led to reflect upon the seas of memory. We are here to-day to recall a period of our history which in one sense is so remote that we no longer seem to keep the vital threads of it in our consciousness, and yet is so near that men who played heroic parts in it are still living, are still about us, are still here to receive the homage of our respect and our honor. They belong to an age which is past, to a period the vital questions of which no longer vex the Nation, to a period of which it may be said that certain things which had been questionable in the affairs of the United States were once for all settled, disposed of, put behind us, and in the course of time have almost been forgotten.

"It was a singularly complete work that was performed by the processes of blood and iron at the time of the Civil War, and it is singular how the settlement has ruled our spirits since it was made. I see in this very audience men who fought in the Confederate ranks. I see them taking part in these exercises in the same spirit of sincere patriotism that moves those who fought on the side of the Union, and I reflect how singular and how handsome a thing it is that wounds such as then were opened should be so completely healed and that the spirit of America should so prevail over the spirit of division.

"It is the all-prevailing and triumphant spirit of America, where, by our common action and consent, Governments are set up and pulled down; where affairs are ruled by common counsel; and where, by the healing processes of peace, all men are united in a common enterprise of liberty and of peace.

"And yet, ladies and gentlemen, the very object for which we are met together is to renew in our hearts the spirit that made these things possible. The Union was saved by the processes of the Civil War. That was a crisis which could be handled, it seems, in no other way, but I need not tell you that the peculiarity of this singular and beloved country is that its task—its human task—is apparently never finished; that it is always making and to be made.

CRISIS WHICH THREATENS.

"And there is at present upon us a crisis which seems to threaten to be a new crisis of division. We know that the war which is to ensue will be a war of spirits and not of arms. We know that the spirit of America is invincible and that no man can abate its power, but we know that that spirit must upon occasion be asserted, and that this is one of the occasions.

"America is made up out of all the nations of the world. Look at the rosters of the Civil War. You will see names there drawn from almost every European stock. Not recently, but from the first, America has drawn her blood and her impulse from all the sources of energy that spring at the fountains of every race, and because she is thus compounded out of the peoples of the world her problem is largely a problem of union all the time, a problem of compounding out of many elements a single triumphal force.

"The war in Europe has done a very natural thing in America. It has stirred the memories of men drawn from many of the belligerent stocks. It has renewed in them a national feeling which had grown faint under the soothing influence of peace, but which now flares up when it looks as if nation had challenged nation to a final reckoning, and they remember the nations from which they were sprung and know that they are in this life-and-death grapple. It is not singular, my fellow citizens, that this should have occurred, and up to a certain point it is not just that we should criticize it. We have no criticism for men who love the places of their birth and the sources of their origin. We do not wish men to forget their mothers and their fathers, their forbears running back through long, laborious generations which have taken part in the building up of the strength and spirit of other nations. No man quarrels with that.

SOURCE OF INSPIRATION.

"From such springs of sentiment we all draw some of the handsomest inspirations of our lives. But all that we do criticize is that in some instances—they are not very numerous—but in some instances men have allowed this old ardor of another nationality to overthrow their ardor for the nationality to which they have given their new and voluntary allegiance. And so the United States has again to work out by spiritual process a new union, when men shall not think of what divides them but shall recall what unites them; when men shall not allow old loves to take the place of present allegiances; when men must, on the contrary, translate that very ardor of love of country of their birth into the ardor of love for the country of their adoption and the principles which it represents.

"I have no harshness in my heart even for the extremists in this thing which I have been trying in moderate words to describe; but I summon them, and I summon them very solemnly, not to set their purpose against the purpose of America. America must come first in every purpose we entertain, and every man must count upon being cast out of our confidence, cast out even of our tolerance, who does not submit to that great ruling principle.

PURPOSES OF AMERICA.

"But what are the purposes of America? Do you not see that there is another significance in the fact that we are made up out of all the peoples of the world? The significance of that fact is that we are not going to devote our nationality to the same mistaken aggressive purposes that some other nationalities have been devoted to; that because we are made up, and consciously made up, out of all the great family of mankind, we are champions of the rights of mankind.

"We are not only ready to cooperate, but we are ready to fight against any aggression, whether from without or from within. But we must guard ourselves against the sort of aggression which would be unworthy of America. We are ready to fight for our rights when those rights are coincident with the rights of man and humanity. It was to set those rights up, to vindicate them, to offer a home to every man who

believed in them, that America was created and her Government set up. We have kept our doors open because we did not think we in conscience could close them against men who wanted to join their force with ours in vindicating the claim of mankind to liberty and justice.

WANTS NO ADDITIONAL TERRITORY.

"America does not want any additional territory. She does not want any selfish advantage over any other nation in the world, but she does wish every nation in the world to understand what she stands for and to respect what she stands for; and I can not conceive of any men of any blood or origin failing to feel an enthusiasm for the things that America stands for, or failing to see that they are indefinitely elevated above any purpose of aggression or selfish advantage.

"I said the other evening in another place that one of the principles which America held dear was that small and weak States had as much right to their sovereignty and independence as large and strong States. She believes that because strength and weakness have nothing to do with her principles. Her principles are for the rights and liberties of mankind, and this is the haven which we have offered to those who believe that sublime and sacred creed of humanity.

"And I also said that I believed that the people of the United States were ready to become partners in any alliance of the nations that would guarantee public right above selfish aggression. Some of the public prints have reminded me, as if I needed to be reminded, of what Gen. Washington warned us against. He warned us against entangling alliances. I shall never myself consent to an entangling alliance, but I would gladly asset to a disentangling alliance—an alliance which would disentangle the peoples of the world from those combinations in which they seek their own separate and private interests and unite the people of the world to preserve the peace of the world upon a basis of common right and justice. There is liberty there, not limitation. There is freedom, not entanglement. There is the achievement of the highest things for which the United States has declared its principle.

TOUCHES UPON PREPAREDNESS.

"We have been engaged recently, my fellow citizens, in discussing the processes of preparedness. I have been trying to explain to you what we are getting prepared for, and I want to point out to you the only process of preparation which is possible for the United States. It is possible for the United States to get ready only if the men of suitable age and strength will volunteer to get ready.

"I heard the president of the United States Chamber of Commerce report the other evening on a referendum to 750 of the chambers of commerce of the United States upon the question of preparedness, and he reported that 99 per cent of them had voted in favor of preparedness. Very well, now, we are going to apply the acid test to these gentlemen, and the acid test is this: Will they give the young men in their employment freedom to volunteer for this thing? I wish the referendum had included that, because that is the essence of the matter.

"It is all very well to say that somebody else must prepare, but are the business men of this country ready themselves to lend a hand and sacrifice an interest in order that we may get ready? We shall have an answer to that question in the next few months. A bill is lying upon my table now, ready to be signed, which bristles all over with that interrogation point, and I want all the business men of the country to see that interrogation point staring them in the face. I have heard a great many people talk about universal training. Universal voluntary training, with all my heart, if you wish it, but America does not wish anything but the compulsion of the spirit of America.

COMPULSION OF PUBLIC OPINION.

"I, for my part, do not entertain any serious doubt of the answer to these questions, because I suppose there is no place in the world where the compulsion of public opinion is more imperative than it is in the United States. You know yourself how you behave when you think nobody is watching. And now all the people of the United States are watching each other. There never was such a blazing spotlight upon the conduct and principles of every American as each one of us now walks and blinks in.

"And as this spotlight sweeps its relentless rays across every square mile of the territory of the United States, I know a great many men, even when they do not want to, are going to stand up and say, 'Here.' Because America is roused, roused to a self-consciousness and a national self-consciousness such as she has not had in a generation.

"And this spirit is going out conquering and to conquer until, it may be, in the Providence of God, a new light is lifted up in America which shall throw the rays of liberty and justice far abroad upon every sea, and even upon the lands which now wallow in darkness and refuse to see the light."

POSTAL SAVINGS BANK.

Mr. SHEPPARD. Mr. President, on yesterday, at the conclusion of my remarks in reference to the bill (S. 6224) to increase the utility of the postal savings bank, to encourage savings among the people, to secure the largest returns for such savings consistent with adequate security, to provide for the loans of such savings for the promotion of agriculture and other useful, productive industries, and for the promotion of home building and home improvement in the rural districts and elsewhere, I intended to ask permission of the Senate to have the bill printed in full in the RECORD. I desire at this time to ask for such permission.

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

The bill introduced by Mr. SHEPPARD May 31, 1916, and referred to the Committee on Post Offices and Post Roads, is as follows:

Be it enacted, etc., That the short title of this act shall be the industrial savings act.

SEC. 2. That a board of trustees is hereby created for the administration of this act, consisting of the Secretary of the Treasury, the Postmaster General, the Secretary of the Interior, the Secretary of Agriculture, the Attorney General, the Secretary of Commerce, and the Secretary of Labor, all acting ex officio, to be known as the industrial savings board.

SEC. 3. That for the proper and efficient organization and conduct of the business of the industrial savings board, it shall appoint, under the rules of the Civil Service Commission a first chief, a second chief, and a third chief, having such powers and duties as the board may designate; also such other assistants, attorneys, and other employees as the board may consider necessary. The compensation of the persons so appointed shall be such as the industrial savings board may authorize, and shall be paid from the profits of the postal savings bank.

SEC. 4. That the industrial savings board shall, as soon as possible, take over the control of the existing postal savings bank, the details of its administration to continue in connection with the post offices throughout the country, under the direct supervision of the Postmaster General acting for the board.

SEC. 5. That as soon as arrangements can be made therefor, every post office, postmaster, and all letter carriers and other post-office employees shall hereafter be made to serve the people through the postal savings bank as they now serve them for letters, money orders, registered letters, and parcel post, without limitations as to amount of deposits, as letters and parcels are without limitation, the manner of such service being as in this act provided.

SEC. 6. That of the funds which are now or may hereafter be deposited in the postal savings bank, not to exceed 25 per cent of the balance in hand at any time, may be invested in the bonds of the United States, bought in the open market at the lowest obtainable price or bought at such price from the Treasurer of the United States. Any portion of said bonds may, in the discretion of the industrial savings board, be sold in the open market at the highest obtainable price or sold to the United States Treasurer at such price.

SEC. 7. That no other investment of the funds deposited shall be made, with the exception of a working reserve, the amount of which shall be determined by the industrial savings board; the balance of the funds shall be loaned at the highest obtainable rate of interest on what, in the discretion of the industrial savings board, is considered as adequate security, in manner as follows and in this act provided:

(a) Loans to be made only for uses provided in the title of this bill.

(b) Demands for loans being in excess of loanable funds, preference shall be given—

(1) To small loans over large loans.

(2) To short-time loans over long-time loans.

(3) Loans adequately secured by readily marketable collateral over loans on real estate or other less-readily marketable security.

(c) In accordance with the above the board shall, from time to time, fix the rate of interest to be charged according to the supply of and demand for loanable funds, the profit and security of the depositors being the basis of decision.

SEC. 8. That the industrial savings board shall give clear and ample publicity to its rulings as to character of securities required for loans and the terms of such loans under the following limitations:

(a) Loans not to exceed 95 per cent of the market value of United States bonds or the bonds of States.

(b) Not to exceed 90 per cent of the market value of such other securities as are admissible investments under the existing laws of New York or Massachusetts for savings banks, or as are estimated by the industrial savings board as of equivalent good standing.

(c) Not to exceed 85 per cent of the market value of wheat, cotton, or other nonperishable products, so-called, in safe, adequately insured public storage.

(d) And other securities and terms in the discretion of the board deemed adequate.

SEC. 9. That not to exceed 50 per cent of the balance of deposits may be loaned to an amount not exceeding one-half appraised value on unincumbered real estate in States and Territories where laws for the protection of creditors are by the Industrial Savings Board deemed adequate and fair in manner as follows:

(a) Through any national bank or other incorporated bank or corporation whose business is dealing in or guaranteeing real-estate mortgages and which is subject to the examination and control of the United States Treasury or of the banking department of any State, in the estimation of the Industrial Savings Board adequately protecting depositors, loans may be made to an amount at one time outstanding not to exceed ten times the capital and surplus of the bank or corporation, which shall be required to guarantee the prompt payment of the principal and interest of the loans made through said bank or corporation.

(b) The bank or corporation shall be entitled to a commission of 5 per cent of the interest paid on such loan by the borrower, who shall not be subject to any other charge except the necessary expense of examination of title and drawing papers, which charge may be fixed by rules of the Industrial Savings Board.

SEC. 10. That personal loans without requirement of collateral security may be made in manner as follows:

(a) The borrower to make written statement showing his assets and liabilities; the amount of loan not to exceed $1,000; the length of time, which shall not exceed one year; the purpose for which the loan is to be used, which shall be in accordance with the stated purpose of this act; which statement shall be attached to the borrower's negotiable note.

(b) The principal and interest of the loan to be guaranteed prompt payment by a bank or corporation, as in section 9, which shall be entitled to a commission of 5 per cent of the interest paid thereon, the borrower being subject to no other charge, and the total of such loans at one time outstanding not to exceed five times the capital and surplus of the guarantor.

(c) The limit of the loans specified in (a) of this section, if after two years' trial it is deemed too small for the best results, may be extended by the board from time to time to larger specified sums, the terms to be uniform throughout the United States.

SEC. 11. That to induce the largest possible savings and serve the greatest possible convenience, security, and economy of use to depositors and to the postal savings bank, the Industrial Savings Board shall cause to be prepared and issued certificates of deposit of the size and form, but different in color and appearance, of customary bank currency, the said certificates being of the following tenor and in manner indicated:

(a) "The United States Postal Savings Bank has received from (here the depositor will write his own signature and address in ink, thus identifying his signature on the back when he passes the same) $10 (or other specified sum), and will pay the same after three months from date of issue, together with interest earned hereon as estimated by the Industrial Savings Board, the interest compounded semiannually, on surrender hereof properly indorsed."

(b) This certificate to be duly executed, dated, and recorded where issued, as done in case of money orders.

(c) Certificates in this form shall be issued in denominations of $10, $50, $100, $1,000 and larger, as the Industrial Savings Board may order.

(d) Certificates similar, but payable to bearer and bearing no interest, shall be issued in denominations of $1, $2, and $5.

(e) To encourage the beginning of deposits, and also serve the convenience of those who desire them in preference to coin money, certificates payable to bearer, without interest, shall be provided in denominations of 5 cents, 10 cents, 25 cents, and 50 cents, of size and form similar to United States fractional currency issued in 1862 and later.

(f) Simple printed instructions for their use may appear on the front or back of each of the various certificates.

(g) These certificates shall not be legal tender nor in any way indicated as "money," but may pass from hand to hand by mutual agreement, as is done in the case of "certified" or other bank checks.

SEC. 12. That at the county seat of every county in the United States or similar civil divisions otherwise called, and in such larger cities as the Industrial Savings Board shall deem wise, one or more post offices shall be designated by the Industrial Savings Board as postal savings banks of issue and redemption, and shall be adequately equipped and placed in charge of competent persons qualified by sufficient bank experience.

(a) Such banks of issue and redemption shall issue and record as required by the Industrial Savings Board certificates of deposit as described in section 11 hereof in exchange for bankable funds as per regulations made by said board, and shall redeem the same whether issued by itself or by other similar banks of issue and redemption either in money or in new certificates of deposits, as the applicant may desire.

(b) Each depositor in said banks shall record his signature and address with the bank on a record provided, as is customary by commercial banks, so that indorsement of signatures on backs of certificates may be verified when desired.

SEC. 13. That the industrial savings board shall designate 12 or more districts covering the United States, in a central city of each of which shall be organized a district bank, which shall act as clearing and reserve banks for all the banks of issue and redemption within the district, in accordance with rules and regulations of the industrial savings board.

SEC. 14. That the industrial savings board shall further organize in the city of Washington, D. C., in the Post Office Department, a central postal savings bank, which shall act as clearing and reserve bank for the 12 district banks, and may have direct dealings with and oversight of all the county banks of issue and redemption as the industrial savings board shall order.

SEC. 15. That every smaller post office and every letter carrier may, in accordance with regulations made by the industrial savings board, adequate bonds for safety being required as convenient, keep in hand limited amounts of certificates of deposit, secured from the local county banks of issue and redemption, to be given to local-known applicants in exchange for bankable funds to be forwarded to the county bank of issue and redemption, and may also redeem small certificates of deposit as they can conveniently. Such post offices and letter carriers shall also give proper receipts to any applicant for bankable funds or for certificates of deposit, to be sent to the county bank of issue and redemption in exchange for money or other certificates of deposit, and deliver the same to said applicant in exchange for their own receipt originally given to the applicant.

SEC. 16. That each county bank of issue and redemption and each district bank shall keep in hand such working balance as the industrial savings board shall direct, the county bank forwarding any surplus to its district bank, and the district bank any surplus to the national central bank, and each of said banks shall make loans as authorized by the industrial savings board, the county bank also drawing on its district bank and the district bank drawing on the national central bank as the industrial savings board may direct.

SEC. 17. That existing savings banks of the United States, which desire and will submit to satisfactory examination and supervision of the industrial savings board and is found of standing satisfactory to the board, may be made agents of the postal savings bank, to receive deposits and pay certificates in accordance with regulations made by the board, and shall be allowed as compensation for such service a commission of 5 per cent of the net earnings of the deposits, as estimated by the industrial savings board, which said existing savings bank secures through its agency.

SEC. 18. That in lieu of the principal of amortization (which may be applied when the borrower desires) loans secured by real estate or other collateral may be made as follows:

The mortgage or other paper shall be drawn to secure any sum due from the borrower not exceeding the amount named therein for any time not longer than the longest time therein specified, the borrower thus being permitted to adjust the amount of his loan from time to time according to his needs and opportunities.

SEC. 19. That postmasters and other employees in service at the time of the transfer of the postal savings bank to the industrial savings board shall continue in office until the board finds from experience that any are inefficient, when such of them may be removed, according to rules and regulations which the board shall establish, with the approval of the Civil Service Commission, and their successors appointed under the rules of the Civil Service Commission.

SEC. 20. That the industrial savings board shall test the safety and practicability of making small and short-time loans to farmers and other producers in manner as follows:

(a) After the total balance of deposits in the postal savings bank shall have reached the sum of not less than $1,000,000.

(b) The board shall select not to exceed 10 counties in various parts of the United States to make the trial for a period of not less than one year, after which time, if in the opinion of the board the plan is successful, the method may be extended to many or all other counties.

(c) All persons desiring to borrow, without collateral security, any sum not to exceed $500 for a time not to exceed one year, each shall make a statement showing the amount of his assets and liabilities, with their nature, in manner approved by the board, the amount of the loan desired, its length of time, and the purpose for which it is to be used, in accordance with this act, which statement shall be attached to the applicant's negotiable note.

(d) These applications shall be referred for approval or rejection to a committee of three persons elected by the applicants, and also to a committee of three persons elected by the depositors in the postal savings bank within the county, in manner provided here following: Loans to be allowed shall be approved by not less than two-thirds of the weight of vote of each committee, and also by one or more experts appointed by the board, which may be the postmaster of the county bank of issue and redemption, or other person or persons.

(e) The two committees to be elected in manner as follows: The postmaster to prepare printed ballots and send the same with return envelope to himself, and send to each applicant and to each depositor in the county bank of issue and redemption having then and three months previously outstanding deposits at the time of $50 or more. Each elector shall be entitled to three votes, which he may cast for three, two, or one person of his choice. The persons so chosen, each having weight of vote according to the number of votes by which he is chosen, shall, upon notice of the postmaster, meet and choose three of their number to act as the committee, the electors balloting repeatedly as may be necessary to reduce the number to three. The committee thus elected each shall have weight of vote according to the cumulative number of votes by which he is chosen.

(f) The members of the committee chosen shall have compensation for services in passing on loans at the rate of 20 cents an hour, the time to be approved by the postmaster.

(g) Applicants whose loans are accepted shall give the bank their negotiable notes for the amounts and time approved, the same to be discounted by the bank at double the rate of interest current in postal savings bank for loans secured by collateral, the applicant being given the proceeds less his pro rata expense of passing on the loans. After the end of one year, when all of the loans shall have matured, any profits to the bank on the total of the loans in excess of the current rate of interest for secured loans shall be paid in rebate to those whose loans were promptly and fully paid, so that the net cost of the loan to the borrower may be reduced to approximately the same as secured loans.

(h) If after ample test such method of loaning is found safe and profitable, the amount to be loaned to each applicant may be increased beyond $500, the increase to be uniform throughout the United States. If some counties prove to be habitually unprofitable while other counties prove habitually profitable, the board may withhold, temporarily or longer, permission to make such loans from the unprofitable counties.

SEC. 21. That commercial banks may make deposits in and draw upon county banks of issue and redemption to such extent as said county banks may be able conveniently to serve them, but may, without limitation, deal direct with the district banks and national central bank as per regulations of industrial savings board, and certificates of deposit in the postal savings bank may be counted as part of the legal reserve of all national banks.

SEC. 22. That the board shall cause to be prepared and printed for the general public simple tables showing the value of $10 or larger sums at compounded interest for days, months, and years at various rates of interest, such as will be useful to depositors.

SEC. 23. That needless and expensive records and statistics shall be avoided, but the board shall provide for such as may materially serve the interests of depositors and enable the board to annually report to Congress such information and recommendations as may be of service to Congress.

SEC. 24. That to the extent that the mails shall be used in facilitating the business of the postal savings bank, either by the bank itself or by its patrons, the board shall provide special stamps for free use of the mails, keeping records so that approximately the actual cost of the Postal Service shall be paid by the postal savings bank to the Post Office Department.

SEC. 25. That the sum of $1,000,000 is hereby appropriated for any necessary expense, in the discretion of the board, in the rapid development of the postal savings bank, the sum used to be considered only as an advance and to be repaid to the Treasury, with interest thereon, from the profits of the postal savings bank, which is to be made self-sustaining, without subsidy or other charge against taxpayers.

SEC. 26. That all provisions of an act to establish postal savings, etc., approved June 25, 1910, and of amendments thereto not inconsistent with this present act, shall continue in force, and all other provisions are accordingly modified or repealed, as are all other acts of Congress inconsistent herewith.

SEC. 27. That to the extent that certificates of deposit in postal savings banks crowd out of use forms of paper money now in use, causing the depreciation of the market price of bonds of the United States used to secure their circulation, below par, the Treasurer of the United States shall purchase or redeem such bonds at par issuing, so far as may be necessary to do so, other bonds of the United States bearing higher rate of interest and marketable at or above par.

EXECUTIVE SESSION.

Mr. STONE. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to, and the Senate proceeded to the consideration of executive business. After 30 minutes spent in executive session the doors were reopened.

NOMINATION OF LOUIS D. BRANDEIS.

The injunction of secrecy was removed from the following proceedings in executive session:

UNANIMOUS-CONSENT AGREEMENT, MAY 26, 1916.

That not later than Thursday, June 1, 1916, the majority members of the Committee on the Judiciary and the minority members thereof may file reports upon the nomination of Louis D. Brandeis to be an Associate Justice of the Supreme Court of the United States, which reports shall forthwith be printed in confidence for the use of the Senate; that, on the said day—Thursday, June 1, 1916—at not later than 4.55 o'clock p. m., the Senate shall proceed to the consideration of executive business, and that at 5 o'clock p. m., on the said day, the Senate shall proceed to vote, without debate, upon the said nomination to a final conclusion.

It is further ordered that, after the said vote, the said reports and the proceedings upon the vote shall be printed in the RECORD, and the injunction of secrecy removed from all matters in relation to said nomination.

Vote on the question of advising and consenting to the appointment of Mr. Brandeis. Yeas and nays asked by Mr. CHILTON.

YEAS—47

Ashurst	Hughes	Overman	Smith, Ariz.
Bankhead	Husting	Owen	Smith, Ga.
Beckham	James	Phelan	Smith, Md.
Broussard	Kern	Pittman	Smith, S. C.
Chamberlain	La Follette	Poindexter	Stone
Chilton	Lane	Ransdell	Taggart
Culberson	Lea, Tenn.	Reed	Thomas
Fletcher	Lee, Md.	Saulsbury	Thompson
Gore	Lewis	Shafroth	Underwood
Hardwick	Myers	Sheppard	Vardaman
Hitchcock	Norris	Shields	Walsh
Hollis	O'Gorman	Simmons	

NAYS—22.

Brady	du Pont	Nelson	Sutherland
Brandegee	Fall	Newlands	Townsend
Clark, Wyo.	Gallinger	Oliver	Warren
Cummins	Harding	Page	Works
Curtis	Lippitt	Smith, Mich.	
Dillingham	Lodge	Sterling	

NOT VOTING—27.

Borah	Goff	McLean	Smoot
Bryan	Gronna	Martin, Va.	Swanson
Burleigh	Johnson, Me.	Martine, N. J.	Tillman
Catron	Johnson, S. Dak.	Penrose	Wadsworth
Clapp	Jones	Pomerene	Weeks
Clarke, Ark	Kenyon	Robinson	Williams
Colt	McCumber	Sherman	

Announcing the vote, the Vice President stated that the resolution of confirmation had been agreed to, and announced that the nomination had been confirmed.

Mr. FALL. I have a general pair with the Senator from New Jersey [Mr. MARTINE]. I transfer my pair to the Senator from Utah [Mr. SMOOT] and vote "nay." If the Senator from New Jersey [Mr. MARTINE] were present and not paired he would vote "yea."

Mr. HOLLIS. I have a pair with the junior Senator from New York [Mr. WADSWORTH]. I transfer that pair to the Senator from Maine [Mr. JOHNSON]. If the Senator from Maine were present he would vote "yea." If the Senator from New York [Mr. WADSWORTH] were present he would vote "nay." I vote "yea."

I also desire to state that if the Senator from Minnesota [Mr. CLAPP] were present he would vote "yea." He is paired with the Senator from Iowa [Mr. KENYON], who would vote "nay."

Mr. JONES. I have a pair with the junior Senator from Virginia [Mr. SWANSON] and therefore withhold my vote.

Mr. LA FOLLETTE. The Senator from Idaho [Mr. BORAH] is paired with the Senator from North Dakota [Mr. GRONNA]. If the Senator from Idaho were present he would vote "nay," and the Senator from North Dakota would vote "yea."

Mr. THOMAS. The Senator from Virginia [Mr. MARTIN] is necessarily absent. If he were present he would vote "yea."

Mr. HUGHES. My colleague [Mr. MARTINE] is necessarily absent from the Senate. If present he would vote "yea." He is paired with the Senator from New Mexico [Mr. FALL].

Mr. OWEN. I have a pair with the Senator from New Mexico [Mr. CATRON]. I transfer that pair to the Senator from Florida [Mr. BRYAN] and vote "yea."

Mr. JAMES. I desire to announce that the Senator from Ohio [Mr. POMERENE] is paired with the junior Senator from Massachusetts [Mr. WEEKS]. If present the Senator from Ohio would vote in favor of the confirmation of Mr. Brandeis and the Senator from Massachusetts would vote against the confirmation.

Mr. SAULSBURY. I am paired with the junior Senator from Rhode Island [Mr. COLT]. I transfer that pair to the Senator from South Dakota [Mr. JOHNSON] and vote "yea." If the Senator from South Dakota were present he would vote "yea."

Mr. SUTHERLAND. I have a general pair with the senior Senator from Arkansas [Mr. CLARKE], who is absent, but I am at liberty to vote on this question and I vote "nay."

Mr. THOMAS. I have a general pair with the Senator from North Dakota [Mr. MCCUMBER]. I transfer that pair to the senior Senator from Virginia [Mr. MARTIN] and vote "yea."

Mr. LODGE. I desire to announce that my colleague [Mr. WEEKS] is paired with the senior Senator from Ohio [Mr. POMERENE]. If my colleague were present he would vote "nay."

Mr. WILLIAMS. I have a general pair with the senior Senator from Pennsylvania [Mr. PENROSE]. If present he would vote "nay" and I would vote "yea," if I had the privilege; but I withhold my vote in consequence of my pair.

Mr. THOMPSON. I have a pair with the Senator from Illinois [Mr. SHERMAN], but under an arrangement with the Senator from Illinois, if his vote is not controlling, I am permitted to vote on this nomination. I therefore vote "yea." I am requested to announce that if he were present he would vote "nay."

Mr. TILLMAN. I have a pair with the junior Senator from West Virginia [Mr. GOFF]. If I were at liberty to vote I would vote "yea."

Mr. CURTIS. I have been requested to announce that the Senator from Maine [Mr. BURLEIGH] is paired with the Senator from Arkansas [Mr. ROBINSON].

Mr. NEWLANDS (after the result of the vote had been announced). Regarding my vote, I should like to say that I have great admiration for Mr. Brandeis as a propagandist and publicist, but I do not regard him as a man of judicial temperament, and for that reason I voted against his confirmation.

On motion of Mr. CHILTON it was—

Ordered, That there be printed as part 2 of volume 2 of Senate Document No. 409 the additional evidence (part 22 of the hearings) taken before the subcommittee of the Committee on the Judiciary, and the report of the Committee on the Judiciary to the Senate, with the views of the minority, on the nomination of Louis D. Brandeis; that 1,000 extra copies thereof be printed for the use of the Senate, to be distributed through the folding room, and that 500 additional copies be printed for the use of the Committee on the Judiciary.

[Ex. Rept. No. 2, pt. 1, 64th Cong., 1st sess.]

NOMINATION OF LOUIS D. BRANDEIS.

Mr. CHILTON, from the Committee on the Judiciary, submitted the following report:

The Committee on the Judiciary, to whom was referred the nomination of Louis D. Brandeis, of Massachusetts, to be Associate Justice of the Supreme Court of the United States, vice Joseph Rucker Lamar, deceased, beg leave to report it back with the recommendation that it be confirmed.

The nomination was referred to the Committee on the Judiciary on January 28, 1916. On January 31 the committee referred it to the following as a subcommittee: Messrs. CHILTON (chairman), FLETCHER, WALSH, CLARK of Wyoming, and CUMMINS.

The subcommittee held hearings, made necessary by a protest against confirmation of the nomination, which began on February 9, 1916, and continued from time to time until March 15, 1916. On February 16 Mr. WORKS was appointed on the subcommittee in the place of Mr. CLARK of Wyoming.

On April 3 the subcommittee made a favorable report to the entire committee, recommending confirmation of the nomination. There was a minority report, however, against confirmation, made by Messrs. CUMMINS and WORKS. The majority views of the subcommittee are set out at length in the separate reports of the majority members of the subcommittee. Mr. CHILTON'S views were concurred in by Mr. FLETCHER, and Mr. WALSH filed a separate report.

All of these views of the members of the subcommittee are printed in Senate Document No. 409, Sixty-fourth Congress, first session, and your committee herewith adopts the statements and views of Mr. CHILTON and of Mr. WALSH and makes the same a part of this report, as follows:

Mr. CHILTON, from the subcommittee of the Committee on the Judiciary, submitted the following views:

To the COMMITTEE ON THE JUDICIARY,
UNITED STATES SENATE:

As heretofore announced to the Committee on the Judiciary, your subcommittee decided to have open hearings, which were begun on February 9, 1916, and continued from time to time until March 15, 1916.

Very soon after your subcommittee was organized a protest against the confirmation was filed, signed by the following-named gentlemen:

Charles S. Rackemann, Harrison M. Davis, Joseph Sargent, A. Lawrence Lowell, John Noble, Charles F. Adams, I. Tucker Burr, C. Minot Weld, Nathaniel H. Stone, Felix Rackemann, Arthur Lyman, Henry S. Grew, George P. Gardner, Roger Walcott, Pierpont L. Stackpole, Francis Peabody, Edmund K. Arnold, William B. Luther, Charles A. Williams, Moses Williams, Reginald H. Johnson, Henry Ware, J. L. Thorndike, Julian Codman, Richard C. Storey, Fred C. Bowditch, W. L. Putnam, Prof. Edward H. Warren, Roger S. Warner, James M. Newell, William S. Hall, Clifton

L. Bremer, Lawrence Minot, Henry E. Edes, Hollis R. Bailey, Edward S. Dodge, F. Walker Johnson, George B. Dabney, Francis R. Boyd, J. A. Lowell Blake, Louis Bacon, Lawrence P. Dodge, George B. Harris, Eugene J. Fabens, Charles H. Fiske, jr., Harold Jefferson Coolidge, P. T. Jackson, jr., Augustus P. Loring, William W. Vaughn, Samuel D. Parker, Thomas N. Perkins, R. W. Boyden, Henry L. Shattuck, A. R. Graustein, James D. Colt, Edmund A. Whitman, William C. Indicott, Albert E. Pillsbury, William V. Kellen, and Frederic M. Stone.

Mr. Austen G. Fox, assisted by Mr. Kenneth M. Spence, appeared on behalf of those signing the petition, and the committee requested Mr. George W. Anderson to represent the committee in bringing out the facts. Quite a number of other protests and many letters of commendation of the nominee were filed before the committee in the shape of letters and telegrams, some to the committee and some to different members, all of which are made a part of the report.

As to every charge made against the nominee by the protesting committee or contained in rumor or which in any way came to the knowledge of your committee, we have sent for those alleged to have knowledge and have examined such witnesses. All the testimony of the 43 witnesses examined was taken down by a stenographer, was printed, and is contained in one volume of 1,316 pages, which is now before the committee. The evidence relates to various charges reflecting upon the professional conduct of the nominee, as well as his standing and general reputation.

On pages 884 to 887, 933 and 934, and 1225 and 1226 may be found a summary of the matters as to which the proof, outside of opinion evidence, relates. These charges will now be taken up, one at a time, and the proof relating thereto analyzed.

WARREN CASE.

It is charged that Mr. Brandeis consciously advised and assisted Samuel D. Warren in a breach of trust in fraud of his brother, Edward P. Warren. This charge is wholly unfounded, and was recognized to be by the leading counsel for Edward P. Warren in the suit concerning this trust (284, 860, 1164). The propriety of Mr. Brandeis's conduct in this case was also recognized by one of his leading opponents who was counsel for other beneficiaries of the trust (278). In May, 1888, Samuel D. Warren and Mr. Brandeis were partners in the practice of law and had been for about 10 years. In May, 1888, Mr. Warren's father, Samuel D. Warren the elder, died, leaving a widow and five children, entitled under his will to his property in their own right without the intervention of any trustees—the widow to five-fifteenths and each child to two-fifteenths.

Mr. Warren the elder owned paper mills in Maine, valued at nearly $2,000,000. These paper mills were conducted by the firm S. D. Warren & Co., composed of himself and Mortimer B. Mason, who had been with him for 18 years and a partner for 6 years. One son, Fiske Warren, was employed in the business and had been for about five years. Warren & Brandeis had been attorneys for S. D. Warren & Co. before the elder Warren's death, and were counsel for the executors of his will. They had no other connection or relation with Edward P. Warren, a son, then 20 years of age.

The Warren family was believed to be entirely harmonious at this time, and to desire to keep the mills intact as a family property. There was no member of the family fitted by temperament or desire to take the active headship of the business except Samuel D. Warren. They all lived in or near Boston except Edward P. Warren, who was in England. Mr. Mason was regarded by all as essential to the business because of his experience and ability. He was receiving one-sixth of the profits of operation of the mills, and believed that he should receive under the changed condition one-fourth of the profit. He had earned in the last two year $76,000 and $68,000, respectively, as his share of the profits. This is a larger amount than he averaged during the ensuing 20 years under the plan that was adopted. This plan was to have the real estate vested in trustees who should lease to an operating concern which should pay a fixed rental of 6 per cent and an additional amount equal to one-half the profits of the operating concern. The trustees selected were Samuel D. Warren and Mr. Mason and Mrs. Warren, the widow. The operating concern was a new partnership of Samuel D. Warren & Co., composed of Mr. Mason, with one-half interest; Samuel D. Warren, with one-third interest; and Fiske Warren, with one-sixth interest. The plan was elaborately discussed (842, 858) among the members of the family, all of whom were persons of intelligence, and was agreed to before the trust was created. The papers to give legal effect to the plan were drawn and executed the end of May, 1889, and sent to Edward P. Warren in a letter explaining these terms (844). He executed them, and the business was carried on in accordance with this arrangement for a period of over 20 years.

Full accounts were rendered annually, and they show the profits resulting to the partnership from operating the mills under this lease and the income resulting to the trust (858, 519–607).

Mr. Warren retired from the practice of law and from the firm of Warren & Brandeis in 1889. Mr. Brandeis and his firm continued to be the legal adviser of the firm of Samuel D. Warren & Co. and of the trustees throughout the ensuing 20 years. They also advised and acted for the various members of the family from time to time, and it was well known to all that they were so acting. No dissension arose until after the death of Mrs. Warren in 1901. This left a vacancy in the board of trustees. Henry Warren, next in age to Samuel D. Warren, had died. The declaration of trust provided for the appointment of a trustee, preferably from among the children of the elder Warren, and not a member of the firm. This limited the preference to Edward P. Warren or his sister, Cornelia Warren. Mr. Mason and Mr. Samuel D. Warren believed that Edward P. Warren, on account of his temperament and the fact that he was living in England, was not a desirable trustee, and it was proposed immediately after the mother's death that Cornelia Warren be appointed a trustee, but Edward P. Warren opposed this. The next year it was proposed that Fiske Warren be appointed. This was also opposed by Edward P. Warren. Fiske Warren had retired to a considerable extent from active business, and his proportion of the profits had been reduced from 16⅔ per cent to 5 per cent, and soon thereafter to 2½ per cent.

In 1903 Edward P. Warren retained William S. Youngman, who has testified in the present hearing (461–518, 1286–1296, 1306–1307). He soon after began investigations, and in 1906 rendered an elaborate report to Edward P. Warren thereon (861), approving the details of the accounts, but claiming that the plan had worked too much to the advantage of Samuel D. Warren & Co., that too much of the income of the trust had been devoted to the improvement of the properties instead of to the payment of the beneficiaries, and commenting on the division between the repair account, which was a charge of operations, and the improvement account, which was a capital charge against the trust.

The trust instrument originally provided that the trustees might retain one-third of the net income for improvements. This was found to be inadequate, and by informal agreement reached in 1890 the amount was increased to one-half. All the beneficiaries had agreed to this. The fact was recited in the reports from year to year.

The profits which the partners had received from the operation of the mill had not exceeded on the average those to be expected from the condition of the business as it had been estimated in 1889 in the estimates submitted to the beneficiaries before the plan was agreed to (842).

The division between repairs and improvements had been fairly and honestly made (862).

After 1906 negotiations continued relative to the appointment of a new trustee, but no satisfactory agreement could be reached. Edward P. Warren, after having urged his own appointment, urged the appointment of Mr. Youngman. Outsiders also were suggested.

At the end of 1909 suit was brought by Edward P. Warren against Samuel D. Warren, seeking an accounting and the removal of Samuel D. Warren as a trustee (894–933). Cornelia Warren, whose interests were the same as Edward P. Warren's, and Fiske Warren, whose interests were nearly the same, opposed the suit, as did their counsel (915). Brandeis, Dunbar & Nutter acted for Samuel D. Warren, and one of the members of the firm tried the case up to the death of Samuel D. Warren, who was the first witness. Nothing developed to the discredit of Mr. Warren or Mr. Brandeis in any way, and any lack of good faith on their part was disclaimed in the suit itself by counsel for Edward P. Warren (277, 284, 860, 1164). Some months after the death of Mr. Warren the others in interest bought out the share of Edward P. Warren in the estate at what was believed by them to be no more than the share was worth, making no allowance for any claims made in the suit (278, 867).

Samuel D. Warren was a man of high character and intelligence. The drafts of the original papers for the formation of the trust and the lease were in his handwriting (841). Mr. Brandeis advised about the matter and took part in the conveyances which were made. The negotiations between the different members of the family were conducted directly between them. Apparently all communications with Edward P. Warren were from Samuel D. Warren or other members of the family. No occasion arose for the intervention of counsel between the different members of the family at the time the trust was created or at any time up to the time that Mr. Youngman was employed by Edward P. Warren. The original agreement was a fair one (277, 278) and worked out fairly and was justly and honestly administered, and the share of Edward P. Warren increased enormously under the administration of his brother and the other trustees (867, 915).

Mr. Brandeis exerted no improper influence in the matter (881).

When what was believed to be a wholly groundless and unwarranted attack was made upon Mr. Warren and his removal as trustee sought, it was certainly the province of counsel for the trustee, who had been such during the entire administration of the trust, to support him as counsel in defending the integrity of his administration of the trust (1259). Such knowledge as counsel for the trustee and his firm had came to them from the trustee and his firm in that employment, and the trustee and his firm were entitled to the full benefit of that knowledge. If they had employed new counsel, they could rightly ask that everything known to their existing counsel should be communicated to the new counsel. It would have been virtually a desertion if the counsel for the trustee and his firm had failed to act (1259).

Three out of the four beneficiaries opposed the litigation and desired the retention of Mr. Warren as a trustee.

No claim was ever made in the case but that the defense ought to be made by Brandeis, Dunbar & Nutter on Mr. Warren's behalf (1298).

As to the transactions which led up to the suit, the leading counsel for the plaintiff said that he did not claim that the arrangement was ever gotten up, either by Mr. Brandeis or Mr. Warren, for the purpose of violating a trust (1164).

In order to condemn Mr. Brandeis for anything done in this whole matter one must emphasize every suspicion and minimize the prominent facts shown by the weight of the evidence. I agree with Mr. Whipple, the leading trial lawyer for Edward P. Warren, the complaining heir, that if Mr. Brandeis thought that Edward had assented (and how could a reasonable man assume otherwise?), "there was no violation of trust; and there was no moral wrong" (284).

NEW YORK & NEW ENGLAND RAILROAD MATTER.

It is charged that Mr. Brandeis was engaged at the instance of the New York, New Haven & Hartford Railroad to wreck the New York & New England Railroad Co. The facts do not sustain this charge.

At about the beginning of 1892 Austin Corbin, of New York, was the president and director of the New York & New England Railroad (404). The railroad was in a very bad financial condition and already wrecked. Corbin took the presidency with a view to rehabilitating it. He also got friends to invest in stock of the company and he expected them to become directors (405). Several of the directors whom he thought were acting improperly declined to resign. These directors were represented in the later litigation by Mr. Storey (405). Accordingly, Mr. Corbin decided to resign, himself, as he refused to stay on the board of directors with them. He believed they were using their position to benefit themselves at the expense of the road (405). On resigning, Mr. Corbin consulted William J. Kelly, his attorney, who is now one of the judges of the Supreme Court of New York. Mr. Kelly employed Mr. Brandeis to institute suits to have the railroad put in the hands of a receiver in Massachusetts, Connecticut, and New York. These suits were never filed, because the action of the directors necessitated other proceedings. They declared they were about to pay unearned dividends, and the suits were immediately brought and injunctions were obtained to prevent this (405). They also attempted to issue bonds beyond the legal limit, and suits were brought to prevent this. These also prevailed (405). Suits also were brought to prevent leases made to the company by these directors of railroads claimed to be owned by these directors and leased at an improper rental (409). These suits were brought on behalf of all stockholders, of whom Mr. Corbin was one, and particular stockholders were selected as plaintiffs in order to give the Federal courts jurisdiction (411). Mr. Corbin's connection with the suits was well known. The hostile directors knew it well (411). He indemnified the plaintiffs (411).

All the suits were brought between April and August, 1892 (422). It was alleged in the suits that they were brought at the expense of persons other than the plaintiffs and to depress the credit of the railroad, and this was held to be immaterial (427).

Subsequently, in an investigation before a committee of the Legislature of Massachusetts in May, 1893, it was claimed on behalf of the New York & New England Railroad Co., by Mr. Moorefield Storey, that these suits had been instigated by the New York, New Haven &

Hartford Railroad Co. or in its interests. Mr. Brandeis then testified that he had no knowledge of any such connection. Mr. Josiah H. Benton, the attorney for the New York, New Haven & Hartford Railroad Co., stated that there was no such connection (439).

Judge Kelly now says that in the latter part of 1893 he learned from Mr. Corbin that he had concluded that the chance of reorganizing the road was gone, and that the first mortgage was inevitably going to be foreclosed, and that he was disposed to give up the litigation; and later he learned from Mr. Corbin that certain men interested in the New York, New Haven & Hartford Railroad Co., which was interested in the first-mortgage bonds, had expressed a desire that litigation should not be given up and that they would reimburse Mr. Corbin for expenses thereafter (412).

Mr. Brandeis was not employed to wreck the New York & New England Railroad (406), and had no knowledge that the New York, New Haven & Hartford Railroad Co. was interested in the litigation when he testified in May, 1893. His last substantial work in the cases was done in June, 1893 (700). He was paid by Judge Kelly, who received the money therefor from Mr. Corbin (408).

It was said in the present hearing that the suits were begun at the instance of the New York, New Haven & Hartford Railroad Co. (267, 415), and that the United States, in the recent suit against the directors of the New York, New Haven & Hartford Railroad Co., had so contended. The fact is to the contrary. The Government's contention was in accordance with the foregoing statement from Judge Kelly, namely, that they were started by Mr. Corbin, and that subsequently the directors of the New York, New Haven & Hartford Railroad Co. took them over (419, 700).

There was nothing to indicate that the suits were not meritorious or brought for the purpose for which they purported to be brought. They were found to be well grounded as far as they progressed. Since it appears that the Massachusetts Legislature investigated this matter 23 years ago, and that now Judge Kelly, chief counsel, acquits him of any purpose to wreck the railroad, and that Josiah H. Benton, chief counsel of the New Haven & Hartford Railroad, testifies that that railroad had no connection with the suits brought by Mr. Brandeis, I can find neither reason nor excuse to justify anything but an unequivocal vindication of the nominee from this charge.

DINGLEY BILL WOOL DUTY.

No charge touching Mr. Brandeis appears to have been suggested in this matter.

In 1908 charges were made that William Whitman had, in 1897, secured an exorbitant duty on wool tops, to the detriment of other woolen manufacturers in the association which Mr. Whitman represented (962).

Mr. Whitman did not know Mr. Brandeis in 1897 or have anything to do with him prior to 1905 (690), and Mr. Brandeis has never acted for Mr. Whitman in any tariff matters (973).

When the charges above stated were made against Mr. Whitman in 1908, he consulted with Mr. Brandeis with reference to making an answer to these charges. Mr. Whitman stated his case to Mr. Brandeis, and Mr. Brandeis assisted him in preparing a reply (961). In view of the testimony of Mr. Whitman in the lobby investigation (of 1913), the committee, on its own motion, subpœnaed Mr. Whitman and Mr. Ingersoll in order to find out all the facts concerning Mr. Brandeis's appearance before the congressional committee having in charge the Stevens bill, and the true history of Mr. Whitman's defense to what are known as the "North charges."

I fail to find anything in either which reflects upon the nominee.

LEGISLATION CONCERNING INTOXICATING LIQUORS.

No charge has been made against Mr. Brandeis with respect to this matter. It appears that 25 years ago he appeared in opposition to certain legislation relative to the sale of intoxicating liquors, and in support of certain other legislation then under consideration before the Massachusetts Legislature, and that this appearance was in behalf of associations engaged in the sale of liquor (1055).

This was in a State that never has had a prohibitory law, but has long had laws regulating the liquor traffic. There is nothing to indicate that Mr. Brandeis's attitude was or is favorable or adverse to a prohibitory law in a community where public sentiment wants it.

There is nothing to indicate that his attitude 25 years ago was in any way favorable to the intemperate use of liquor (1057), or that the legislation which he sought was morally wrong from the viewpoints of that period.

Public sentiment upon the question of prohibition has undergone radical change in the last 10 years, not to say 25 years. The argument of an attorney 25 years ago is not even persuasive of his views now. Generally speaking, it is unfair to make one's views, within legitimate limits, the test of a vote on his confirmation as judge. The honest, capable judge only construes the law, and it should be assumed that the good lawyer, "wet" or "dry," when elevated to the bench, will not presume to legislate. Only a dishonest judge would distort a record or evade a reasonable conclusion, whether it suited him or not.

UNITED SHOE MACHINERY CO.

The United Shoe Machinery Co. has charged that Mr. Brandeis has been guilty of unprofessional conduct in acquiring information while connected with that company and using it at a later date in the interest of other clients. This charge involves a history of the company as well as the evolution of trusts and the laws applicable to them.

The tying-clause system, so called, of the United Shoe Machinery Co. was not created by Mr. Brandeis. He severed his relations with the company because of his disapproval of this system. Three and one-half years elapsed after his resignation from the company before he advised any other client on the subject. In this advice and in all subsequent action which he took he made no use of any confidential information; but, on the contrary, the facts seem to have been public property well known to the shoe manufacturers (703, 747).

The United Shoe Machinery Co. was organized early in 1899 and acquired the business and assets or a majority of the stock of Goodyear Shoe Machinery Co. (and other Goodyear companies), McKay Shoe Machinery Co., Eppler Welt Machine Co. (and another Eppler company), Consolidated & McKay Lasting Machine Co., and Davey Pegging Machine Co. (703).

About a year before the organization of the United Co. negotiations had been undertaken to bring these companies together, and Mr. Brandeis had opposed this in the belief that on the terms then proposed it was better for the McKay Co. to remain as it was (703).

The negotiations for the consolidation, which went through in 1899, were conducted principally by Mr Elmer Howe, Mr. James J. Storrow, and Mr. Winslow (703). Mr. Howe was an experienced lawyer and for all practical purposes in charge of the Goodyear Co. Mr. Storrow was of the firm of Fish, Richardson & Storrow, one of the leading firms of patent lawyers of the country. They were counsel for the Eppler Co., the Consolidated & McKay Co., and the McKay Co. Mr. Storrow had or represented a large interest in the McKay Co. (703).

The companies had for a long time put their machines out on leases containing restrictive conditions as to their uses, tying clauses, so called (174, 704, 734), similar in form to those afterwards continued by the new company.

A complete investigation indicates that Mr. Brandeis was not asked nor did he render an opinion as to the legality under the Sherman antitrust law of these clauses of the leases or of the consolidation itself at any time prior to 1906 or 1910 (704, 733, 745, 744).

Before the consolidation the matter of working agreement between the companies was considered, but Mr. Howe thought that this might be contrary to the Sherman law and that there should be a new company which should acquire a full title to the property or stock of the old companies (704).

It should be noted that after the decision in the Knight case (156 U. S., 1) in 1895, and at least until the decision of the Northern Securities case (193 U. S., 197) in 1904, and of the Wall Paper case (212 U. S., 227) in 1909, many lawyers believed that the Sherman antitrust law did not prohibit the acquisition by one company within a single State of the assets of a competitor, even if the manufacturers of both were going into interstate commerce.

Mr. Brandeis joined with the eight other directors of the McKay Co. in signing the circular to the McKay stockholders recommending that they exchange their stock (255, 704).

Mr. Howe at once became the leading counsel (182, 178, 704, 733) for the United Co., and he became also a member of the executive committee. Mr. Brandeis became a director. He never became general counsel for the company or legal or business advisor on the general policies of the company (704). He was concerned with the general policies of the company only to such extent, if any, as Mr. Winslow or others talked with him about them as a director (184).

Mr. Brandeis and his firm were employed from time to time in specific matters for which specific charges were made (705). The last employment was in a matter begun in 1906, and the only matters which lasted after January 7, 1907, were two begun in 1904 or earlier.

In the winter and spring of 1906 legislation was proposed in Massachusetts to prohibit anyone from imposing in the lease or sale of a patented machine a condition that the lessee shall not use the machines of another, and from offering unreasonable discounts which would prohibit such use (218, 705, 713). This proposed legislation was believed to be aimed at the United Co., and to emanate from one or more machinery manufacturers (1153) and not from shoe manufacturers.

Mr. Brandeis believed on the information which he then had, or which he was given by Mr. Winslow, that the methods of the United Co. were beneficial particularly in that their leasing system and uniform terms to all worked to the advantage of the small shoe manufacturers (217, 705), and that the shoe manufacturers were content with the terms of the leases. At this time Mr. Coolidge, one of the counsel for the United Co. and who was experienced in legislative matters, was ill and Mr. Winslow requested Mr. Brandeis to act (221, 705). He did so, and in April, 1906, he appeared before a committee and argued (232) against the proposed legislation, adopting the facts furnished him by Mr. Winslow (187). He stated that he was counsel for a large number of shoe manufacturers (228) and Mr. Winslow then knew of this fact (228, 179).

He, Mr. Winslow, denied it emphatically (181) on February 16, 1916, until confronted with the statement (228).

In May, 1906, Mr. Brandeis undertook to secure the assistance of some of these shoe manufacturers, Mr. McElwain, Mr. Jones, and Mr. Bliss, to support the opposition to the proposed legislation (218, 714). He then learned that they objected to the tying clauses in the leases (218, 715). Nevertheless, it was arranged that they would join in the opposition, but upon the understanding that Mr. Winslow would take up the adjustment of the differences, by conference with them, without legislation (176, 717). Mr. McElwain asked Mr. Winslow to appoint a time for the conferences, and Mr. Winslow expressed the desire to postpone them until fall, as he was about starting for Europe, and this was satisfactory to Mr. McElwain (218, 722). The bill in the legislature failed to pass.

In September, 1906, Mr. Brandeis wrote to Mr. Howe, counsel and member of the executive committee, calling to his attention the great significance of the decision rendered August 22, 1906, by Judge Seamans in Indiana Manufacturing Co. *v.* J. T. Case Thrashing Machine Co. (148 Fed., 21), holding that there might be a monopolistic combination of patents contrary to the Sherman antitrust law (723).

Mr. Winslow says that Mr. Brandeis before his resignation and acceptance of other employment never gave any "intimation" that there was "any legal or moral" wrong in the company's organization or methods (240).

On October 5, 1906, Mr. Brandeis, in response to a letter of criticism from Mr. Erving Winslow, a stranger to the company, wrote him reciting what he had ascertained the preceding spring and defending the company's methods (162).

On October 6, 1906, Mr. Erving Winslow replied, saying that even on the facts stated he thought that the company was open to criticism (724).

After Mr. Winslow's return from Europe, about October (181), some conferences (228) took place between Mr. Winslow and Mr. Jones and Mr. McElwain, in which they disclosed more fully the objections to the exclusive use, full capacity, and tying clauses, but nothing was accomplished toward the removal of any of these clauses (221), and Mr. Winslow did not discuss the matter much (227, 725, 727).

Mr. Brandeis became convinced by these new disclosures that the company's policy was questionable, and also that nothing was going to be accomplished (221) and that he must either take the matter up in the board of directors and fight, probably unsuccessfully, with Mr. Winslow and his associates or retire from the company (221). On December 6, 1906, Mr. Brandeis resigned from the board of directors, without assigning this difference of opinion as a reason in his letter of resignation (163), but Mr. Winslow understood perfectly that Mr. Brandeis's desire not to be a party to the existing policy of the company was the reason. Mr. Winslow telephoned him on December 11, before his resignation had been accepted, and said: "I am very sorry to have you go, and don't want you to feel that there need be any embarrassment on your part; but, of course, if you think, in view of what may be called up this winter, you would rather not be there, we do not want to insist upon it" (726). Mr. Brandeis replied that it might be embarrassing both to Mr. Winslow and to him, and that if they did not agree as to the course to be pursued he might, if he were a director, feel called upon to bring the matter up before the board (726). It had been announced already (179) that there would be an effort in the

coming winter to get legislation against the practices of the company (726).

Efforts to get the company to make some changes continued and Mr. Winslow had long conferences with Mr. Brandeis on January 2 and January 7, 1907 (726), at which Mr. Brandeis urged his objections at length to the tying and other clauses, but Mr. Winslow was unwilling to make any change (177, 178, 179, 180, 730). Mr. Brandeis told him that by making the changes they could avoid trouble (182). Later (735), in a letter to Mr. Winslow referring to this interview, Mr. Brandeis speaks of the "radical differences between your opinion and mine when we last met" (237). Mr. Winslow replied the next day, saying, "We value your opinion in these matters very highly, even if we do not decide that we can follow same at this time" (735). Mr. Brandeis had become convinced by this time that, while the policy and methods of the company had on the whole operated beneficially up to that time, they must, if pursued, eventually prove injurious both to the community and the company's interest; and he urged most strenuously upon Mr. Winslow and the officials who participated in the conference with him that these methods be changed, that the policy of monopoly be abandoned, and particularly that the tying clauses be eliminated from the leases (219).

Mr. Winslow testified on direct examination that he knew of no reason for Mr. Brandeis's resignation except that expressed in the letter (175), and that at the later conference of January 7, 1907, "he expressed a desire that the United Co. make changes in its leases, but he made no concrete suggestion, though asked to do so," and left the inference clear that his severance of relations with the company had nothing to do with this (163). In his widely published attack on Mr. Brandeis in the spring of 1912 he said that during the time that Mr. Brandeis was director and counsel "there entered his mind no doubt whatever of the propriety and legality" of the company's policies and methods. In his published letter of January 19, 1912, attacking Mr. Brandeis, to Senator CLAPP, as chairman of the Committee on Interstate Commerce, he says that up to the day that Mr. Brandeis accepted employment by clients having hostile interests he never gave any "intimation" of any legal or moral wrong in the company's organization or methods, and nowhere in the letter does he refer to the fact that Mr. Brandeis had suggested any changes of policy. In his published letter of February 29, 1912, to Senator CLAPP he refers to the fact that Mr. Brandeis's letter of resignation shows "no uneasiness in Mr. Brandeis's mind as to the soundness of the company's policy or the propriety of its methods."

At the time of testifying on direct examination and at the time of these publications Mr. Winslow had in his possession the letters of September 12 and 13, 1907, and Mr. Brandeis's narrative of the facts (221, 227). His answers on cross-examination showed his full consciousness of the stand which Mr. Brandeis had taken (177, 178, 179, 180, 182, 237).

After January 7, 1907, Mr. Brandeis never acted as counsel for the company and no new matters were taken to his firm. One of the members of the firm continued to act in one litigation which involved no question of tying clauses or monopoly (731). This litigation was begun to secure the return of certain machines claimed to be the property of the company. This was tried in December, 1906, was argued on exceptions in November, 1907, and decided in January, 1908 (734). Other suits followed as a result of this decision, and the company retained other counsel for them. Incidental services were rendered in this connection until 1909.

In the legislative proceedings in 1907, and in all new matters, the company employed other counsel (183, 734).

Mr. Brandeis's termination of relations with the United Shoe Machinery Co. was due to his unwillingness to be identified longer with their policies, which he then expressly disapproved, because of the objections pointed out by the shoe manufacturers and others in the fall of 1906 (219) which came to him after he had expressed to Mr. Howe the possible significance of the decision of Judge Seamans in the legal situation (723) His severance of relations meant the loss of a client (727) and was without expectation of advantage to himself, financial or otherwise.

During the following three and one-half years he had nothing to do with shoe machinery matters (219), and in 1907 declined to act for Mr. Plant (735), a potential rival of the United Co. (222).

On April 30, 1907, the supreme judicial court gave to the legislature, in response to its request, an opinion that an act of the kind proposed aimed against certain of the clauses in use by the United Co. in its leases would be constitutional (220) (193 Mass., 605). Such an act was passed on June 1, 1907 (219–222). The company attempted to avoid the prohibition by adding to its leases a provision, in substance, that any provisions in the lease which were unlawful should not be deemed to be binding, and also a provision reserving to the company the right to cancel the lease on 30 days' notice (222). A use of new machines in contravention of the language of the tying clauses involved thereafter to the shoe manufacturers the double danger of a decision that the clauses were valid and of a 30-day termination at the will of the company (222, 737).

In June, 1910, Thomas G. Plant, the owners of two-thirds of the stock and the executive head of the Thomas G. Plant Co., a large shoe manufacturer, claimed to have perfected a complete line of shoe machinery which was installed in the shoe factory of the company. Other shoe manufacturers had this examined in their interest and received a favorable report. Mr. Charles H. Jones, of the Commonwealth Shoe & Leather Co., who had been a client of Mr. Brandeis and his firm for over 15 years, asked Brandeis, Dunbar & Nutter for an opinion as to whether he could legally take the new machines or whether the leases were enforceable to prevent them (223, 736).

They reached the conclusion that under the conditions which then existed and in the light of the decisions rendered, notably the Wall Paper Trust decision (212 U. S., 227), rendered February 1, 1909 (219), that the company was then a combination in restraint of trade and that the leases were unlawful as essential parts in perpetuating its monopoly, and were in themselves restraints of trade, and that the fact that the machines were patented did not relieve the leases of this objection, because designed to create a monopoly in excess of the patent. They so advised Mr. Jones (163, 736). Other manufacturers received the same advice from able counsel (223).

When this opinion was given the leases were public property, the opportunities, theoretic and practical, of getting shoe machinery from the United Co., or from any other source, and the practical possibilities of installing and using an entire new line of machinery at one time were known to the shoe manufacturers. The essential facts for forming the opinion rendered were not obtained from the United Co., confidentially or otherwise (744).

Mr. Winslow, on direct examination and in his published letters, used language and made omissions calculated to create a contrary impression (160, 164); but he was unable to think of a single fact in support of the unfounded insinuation (185, 249), and when the question showed that he perceived the truth, Mr. Winslow receded to the point that his real criticism of Mr. Brandeis was untruthfulness, not use of private information.

He said, "I do not criticise Mr. Brandeis's acting for anyone if he had at all times scrupulously, or I might say, fairly, confined himself to statements that were correct or true" (202).

When this opinion was rendered to Mr. Jones, Brandeis, Dunbar & Nutter were as free in right and propriety to render it as any lawyers at the bar, and it was rendered to one who had been their client from a time before the United Co. existed or was thought of. They received compensation for this opinion (1154).

It was given to Mr. Jones for his guidance and not as an advertising weapon. Mr. Jones has testified that he showed it to Mr. Plant and Mr. Plant published it. Neither Mr. Brandeis nor his firm had any part in any scheme of Mr. Plant's, if any there was, to force the United Co. to buy him out (253).

At about this time—summer of 1910—Mr. Brandeis, in response to a question in casual conversation from Mr. Barbour, a member of the executive committee of the United Co., told him that in his opinion it would be unlawful suppression of competition for them to buy out Plant or his patents (219, 223).

The company bought out Plant on September 23, 1910, and at a time when a group of large shoe manufacturers from St. Louis were considering the purchase.

Two of these manufacturers, Mr. Jackson Johnson and Mr. Milton S. Florsheim, then conferred with Mr. Winslow. He says that they proposed that they be permitted to acquire stock in the United Co. on unduly favorable terms, and be given better terms on their shoe machinery than was accorded to other manufacturers (196, 191). They deny this (192, 193).

During the following fall and winter (200) these and other manufacturers formed the Shoe Manufacturers' Alliance, designed to secure an opportunity to acquire shoe machinery, whether by purchase or lease, on terms that left the shoe manufacturers free to choose one or more machines at a unit price (163); that is, without tying or exclusive-use clauses. Their object was to get the freedom which Mr. Brandeis had advised the United Co. four years before that they ought to give.

Apparently the information which started the proceedings of the United States against the United Co. came from sources disconnected with this alliance and before Mr. Brandeis acted for them (739).

On January 4, 1911, a resident of Fall River, Mass., wrote the Attorney General about the matter. In consequence, on January 11, 1911, the Department of Justice asked the United States attorney for Massachusetts for information on the subject, and by March the representatives of the Government were making investigations at the offices of the company (201).

On May 3, 1911, the Western Shoe Manufacturers related to the Senate Committee on Finance the alleged monopolistic position which the United Co. had attained (Senate Hearings on the Tariff, 1–5, 1911, p. 3, Cong. Lib. H. F. 1756–a3–1911).

On May 4, 1911, in debate on the farmers' free list, in the House, Mr. Thayer, of Massachusetts, quoted the act passed in Massachusetts in 1907 and severely attacked the United Co. as a trust (Cong. Rec., 62d Cong., 1st sess., vol. 47, pt. 1/2, 953–954). This was followed by his introducing a bill on June 8 (pt. 2, p. 1808).

On May 9, 1911, Senator GORE introduced a resolution for an investigation into the use of patents in the creation of monopolies (pt. 2, p. 1072) (740).

The subject matter of the proposed legislation was the betterment of conditions as they existed in 1911, and not an attack upon past acts. The same is true of the equity suit brought by the Government and the indictment was limited to offenses committed since 1908.

On May 22, 1911, for the first time, representatives of the Shoe Manufacturers' Alliance consulted Mr. Brandeis, and he said that he was willing to act if what they were after was not special terms but freedom in the acquisition of shoe machinery for themselves and their competitors. They were in accord with this purpose and showed no hostility to the United Co., but the reverse (224, 737).

One of the first steps taken by Mr. Brandeis was to endeavor to ascertain what sources for shoe machinery were in existence (738).

In response to the request of the shoe manufacturers, Mr. Winslow apparently for the first time submitted to them a scheme for separating the different departments so that they would be independent of each other (201–260).

About this time, the Standard Oil decision (221 U. S., 1), having been rendered in May, Mr. Matz, one of the directors of the United Co., requested Mr. Winslow to bring the relations of the Government before the directors and to have Mr. Brandeis and Mr. James A. Garfield, his friend and lately Secretary of the Interior, talk to the directors. It was known that Mr. Brandeis was acting for the Shoe Manufacturers' Alliance (200). On June 17, 1911, Mr. Matz had sought advice from Mr. Brandeis and he had advised him to resign, as he, Brandeis, had done in 1906 (227, 741). Mr. Garfield advised Mr. Matz to bring the matter before the directors, and this was done on July 12, 1911 (221). At this time Mr. Brandeis stated fully to the directors his own course in severing his connection with the company at the end of 1906, his reasons therefor and his belief as to the effect of the company's course as a suppression of competition (221, 227).

When Mr. Winslow attacked Mr. Brandeis in his published letter of January 19, 1912 (217), to Senator CLAPP, Mr. Matz gave Mr. Brandeis permission to write to Senator CLAPP what Mr. Brandeis had said at this meeting, concerning his own course, and Mr. Brandeis did so (217, 221), omitting any reference to the fact that he had attended at Mr. Matz's request. Mr. Winslow, well knowing this fact (201), described the meeting in his published letter of February 29, 1912, to Senator CLAPP as a "part of the same campaign," i. e., that for the Western Alliance of Shoe Manufacturers.

In the following December (14, 15, and 16), 1911, Mr. Brandeis in the course of a three-day discussion before the Senate Committee on Interstate Commerce as to trusts, made reference to the United Shoe Machinery Co. as an illustration of the ultimate effect of a monopoly however innocently created and prudently managed (741).

In these remarks Mr. Brandeis made no point of the advantage of his former connection with the company.

Mr. Winslow in his testimony says that Mr. Brandeis's words carried added weight because of his known former connection (165, 202). In his letter to Senator CLAPP, January 19, 1912, Mr. Winslow criticized

Mr. Brandeis for failing to disclose this former connection and promptly himself gave the added weight, if any.

On January 26, 1912, before the Judiciary Committee of the House, in the hearings on the Thayer bill, the Lenroot bill, and the Peters bill (743, p. 13), and on February 16, 1914, before the Judiciary Committee of the House, he spoke on the same subject.

The statements made in these hearings (1025–1050), which Mr. Winslow says are false (166–168), are statements of inferences fully warranted by the information furnished by shoe manufacturers and others familiar with the real situation, and by the fact that these manufacturers do not know where they can get sufficient equipment of the necessary machines, except from the United Co. (746).

Some of the leases of what are regarded as essential machines provide in substance that on failure to observe the conditions of the exclusive use, additional machinery, or tying clauses of that or any other similar lease from the company, the company may terminate not only the particular lease but all other leases from the company.

Mr. Brandeis's statements concerning the effect of the United Co. upon Mr. Plant's credit were clearly expressed to be his own inferences (167). The hostility of the United Co., with its great power, would tend to reduce and perhaps to destroy Plant's credit, even if the company did absolutely nothing. Mr. Plant, who did not testify in the suit of the United States against the United Co., had said, in August, 1910, that the company had cut off his credit in Boston, and that he must therefore try New York (746). He says there was a definite basis for this belief. In New York negotiations were taken up with Mr. Evans and Mr. Wallace, of New York, and in the course of them Mr. Wiggin, of Chase Bank, a director of the United Co., spoke to Mr. Evans about the matter. It appears that Mr. Wiggin brought one of the attorneys for the United Co. into communication with Mr. Evans and Mr. Wallace (747). He says that he did not discourage the financing, but Mr. Plant did not know that and did not learn that they were in communication.

It is not possible to try out in detail the accuracy of Mr. Brandeis's statements, but enough has been said to show that there is no warrant for any of Mr. Winslow's assertions that they were not scrupulously truthful.

These services have been without compensation to Mr. Brandeis (742).

The most significant fact in this case is that Mr. Brandeis voluntarily and with no prospect of profit to himself gave up his connection with a profitable client as soon as and because he became convinced that the policy which it was pursuing and would not change was wrong. Four years later, and again without desire for profit to himself, he gave his assistance to the effort to stop what he believed would be the future and increasing effect upon the community of that wrong policy. It may well be asked, How long does an employment mortgage the lawyer's conscience? After all, what "private information" was divulged? I can not see that there was any.

GILLETTE CASE.

It is urged that the action of Mr. Brandeis, taken for Mr. Gillette in the organization of the Gillette Securities Co., was unprofessional because of its effect upon Mr. Joyce. (Richardson, 355 to 371; Williams, 372 to 384.) This contention seems to me to be far-fetched, if there can be found, indeed, the slightest reason to urge it.

Mr. Brandeis and his firm acted as counsel for Mr. Gillette, beginning about 1901 (887). In 1906 suits were brought against Gillette, Joyce, Curran, Holloway, and Heilborn (888), claiming that they had conspired to obtain, and in consequence had obtained, stock of several stockholders of the Gillette Safety Razor Co. by false representations, and that the defendants had also, as directors of the company, paid Gillette, Joyce, and Holloway excessive salaries. The defendants made a joint defense, and Brandeis, Dunbar & Nutter acted for them in so doing.

During the pendency of the suits Mr. Gillette and Mr. Holloway became convinced that Mr. Joyce was cooperating with another stockholder in measures to oust Mr. Holloway and possibly Mr. Gillette from their official positions in the company (889). Mr. Joyce probably had other counsel (889). Mr. Gillette and Mr. Holloway obtained the cooperation of other stockholders to guard against the ousting of Holloway and Gillette. In order to obtain a majority of the stock it was necessary to secure the stock or the cooperation of Mr. Stewart and Mr. Flaccus, plaintiffs in the pending litigation (889) and believed to be the clients of Mr. Richardson, with whom Mr. Williams was supposed to be cooperating, because he had clients having a similar interest (888).

Mr. Brandeis acted for Mr. Gillette in some of the conferences with Mr. Richardson, which resulted in the purchase by Mr. Gillette of Mr. Flaccus's stock and an agreement between Mr. Gillette and Mr. Stewart whereby Mr. Stewart exchanged his stock for stock in a holding company which was formed to acquire a majority of the stock of the razor company (889).

There was nothing in the proceedings that bore any relation to the pending suits, except that the sale of Mr. Flaccus's stock involved his giving up the pending suit, and this was by so much to the advantage of Mr. Joyce (891).

The facts of this matter became known to Mr. Joyce about January, 1907. Brandeis, Dunbar & Nutter continued the defense of the pending cases for all of the defendants and obtained a decision wholly favorable to all the defendants except Mr. Heilborn. Before this decision had become final, other suits had been brought against Mr. Heilborn and Mr. Joyce, not including Mr. Gillette or Mr. Holloway. In these Mr. Joyce's counsel, Hurlbut, Jones & Cabot, appeared for Mr. Joyce. They also appeared in the Stewart case, Mr. Jones, of that firm, having stated that Mr. Joyce thought that his interests might differ from those of Mr. Holloway, so that he wanted to be separately represented (892).

In connection with negotiations with Mr. Stewart to have him join in exchanging his stock for stock in the holding company, Mr. Gillette agreed to cause him to be elected an officer of the company. Mr. Gillette subsequently did all that he could to carry out this agreement, through action by the board of directors in which he and those in sympathy with him did not have a majority of the votes. Before the next annual meeting, Mr. Gillette bought Mr. Stewart's stock and so terminated his obligation by agreement with Mr. Stewart (986).

At a later date, Mr. Joyce purchased Mr. Holloway's stock in the holding company and then brought a suit to dissolve the holding company or to convert his holding company stock into stock in the razor company, which would have given him a majority of the stock in the razor company (893). Subsequently, in December, 1911, Mr. Joyce bought Mr. Gillette's stock, or a substantial part of it, and thereby secured control and the suit was dismissed (893).

There was nothing to criticize in Mr. Brandeis's connection with the matter at any point (883).

ILLINOIS CENTRAL RAILROAD PROXIES.

It is charged that Mr. Brandeis misrepresented his relation to the procuring of the proxies for the meeting of the stockholders of the Illinois Central Railroad Co. in the fall of 1907. (Peabody, 754.)

On May 19, 1908, Mr. Joseph B. Warner, the chairman of the commission on commerce and industry, in committee of the Massachusetts Legislature, in supporting the position taken by the majority of that commission in favor of the New York, New Haven & Hartford Co. against the opposition of the minority (638, 639), referred to Mr. Brandeis, who opposed the position taken by the majority of the commission. In the course of his remarks Mr. Warner referred to Mr. Brandeis's activities in connection with the obtaining of proxies for the meeting of the stockholders of the Illinois Central Railroad Co. On the same day, May 19, 1908 (697), Mr. Brandeis wrote to the chairman of the committee a precise statement of the exact relation of himself and of his firm to these proxies (352).

In the fall of 1907 Mr. Brandeis's partner, Mr. Nutter, was requested by Mr. Catchings, of the firm of Sullivan & Cromwell, New York, to supervise the solicitation in and about Boston of proxies in the interest of the existing board of directors of the Illinois Central Railroad Co., of which Mr. Harrahan was the president and Mr. E. H. Harriman an important member. The opponents in this contest were a faction headed by Mr. Fish. Mr. Nutter appealed to Mr. Brandeis before taking the matter up, to assure himself that there was nothing in it that would conflict in any way with the work Mr. Brandeis was doing in connection with the attempted so-called merger of the Boston & Maine Railroad with the New York, New Haven & Hartford Railroad. Mr. Brandeis made special inquiries to assure himself that there was no conflict and that the side which was advocated by Mr. Catchings, in the internal difficulties of the company, was one which appeared to be for the best interests of the stockholders (340). There was nothing to indicate, and there is nothing now to indicate, that either side in this controversy had any relation to the railroad situation in New England. Mr. Brandeis "was expected to do nothing, and he did do nothing," in this matter (342), and the evidence is consistent with the statement in the letter of Mr. Brandeis to the chairman of the House Committee on Railroads (352). It would seem that anyone looking at the evidence (353–354) and the letter signed by Alfred Jaretzki, and noting the failure to produce Mr. Jaretzki, could not fail to dismiss this charge as wholly unsupported.

LENNOX CASE.

The claim asserted in this matter is that Mr. Brandeis was guilty of unprofessional conduct in accepting employment as counsel for P. Lennox & Co., or James Lennox, and then acting against them.

P. Lennox & Co., a partnership consisting of Patrick Lennox and his son, James T. Lennox, and doing a large tanning business in Lynn, Salem, and Peabody, Mass., found themselves seriously crippled financially at the beginning of September, 1907. At this time the active partner was James T. Lennox. His father had been inactive in the business for about 10 years. This financial embarrassment led James T. Lennox to send for Mr. Stein of the Abe Stein Co., of New York (1104), who was a creditor (Whipple, 286). Mr. Stein and his counsel, Mr. Stroock, reached Boston on the night of September 3, 1907; and on the morning of September 4 they had a conference with James T. Lennox; Mr. Spaulding, of the Columbia Kid Co., conducting a selling agency (778) for P. Lennox & Co., and Mr. Coburn, treasurer of the Tracy Bros. Leather Co., in which James T. Lennox owned an interest (770; Stroock, 311). On learning of the financial situation, Mr. Stroock suggested that as he was counsel for Mr. Stein and not a Massachusetts lawyer, Mr. Lennox ought to have counsel (1073, 1114). He suggested Mr. Brandeis, and he being satisfactory to Mr. Lennox, Mr. Stroock called on Mr. Brandeis on the morning of September 4 (1074) to arrange an interview.

The subject under consideration at this time was the possibility that Mr. Stein might make Mr. Lennox a further loan, if the prospects were such that this was safe and likely to bring success. (Stroock, 315; Whipple, 286; Brandeis letter, 289, 1099.) Mr. Stein was ready to make the loan (1105).

Mr. Stroock arranged (1076) with Mr. Brandeis for an interview, and soon after 10 in the morning of September 4 (Stroock, 310, 1014), Mr. Stein, Mr. Stroock, Mr. Lennox, Mr. Coburn, and Mr. Spaulding called together on Mr. Brandeis. He had never met Mr. Stroock or James T. Lennox (Stroock, 312), and never has met Patrick Lennox.

Shortly after the interview began (Stroock, 311), or in the afternoon, a stenographer was called in and took notes of the interview (1014; stenographer's report, 775). The first thing dictated was a form of letter which apparently Mr. Stroock desired to send to certain concerns holding leather received from P. Lennox & Co., to which Mr. Stein asserted title under the terms of certain trust receipts (Stroock, 313), under which he had originally supplied the skins to P. Lennox & Co. (788, 1014). This was dictated in the presence of all (1077, 1112).

The interview lasted into the afternoon, or, as Mr. Stroock put it, consisted of two interviews on that day, at both of which all the same persons were present (Stroock, 310). Mr. Stroock's recollection is that it was at the afternoon interview that the stenographer was present first (311) and that the morning conference lasted but a few moments (311). Mr. Stroock says that it was at the afternoon interview that Mr. Brandeis said, for the first time, that he could take the matter up (312), notwithstanding his firm's sometime relation to a creditor, Weil, Farrell & Co. The stenographer's report indicates convincingly that this remark did not occur until the following morning (788). She has no reference to such a statement on the afternoon of September 4 (775–787), and has one on the following morning inconsistent with the question's having been settled the day before (788). Other remarks which Mr. Stroock attributes to the afternoon of September 4 (312) do not appear in the stenographer's notes of that interview (775–786), but do in those for September 5 (790), notably Mr. Stroock's statement that—

"I said that I saw no reason why Mr. Brandeis could not go over the matter and work out *the whole situation* for the benefit of all the parties, because it seemed to me that this was a situation where the *interests of the debtor* and the *interests of the creditors* were alike" (312). [Italics not in original.]

Mr. Lennox says that the stenographer was present when Mr. Brandeis said he would take the case (1119), and that the first day, September 4, Mr. Brandeis said that he would not give his decision about undertaking his case until the following day (1131), and that on the following day he said that he would act as his counsel. This shows clearly that Mr. Lennox is testifying to the same things which

appear in detail and with precision in the stenographer's notes of September 5, hereafter referred to.

The conversation on September 4 was conducted openly in the presence of all and without any private communications between Mr. Lennox and Mr. Brandeis. Mr. Lennox was at no time alone with Mr. Brandeis. Mr. Stein was a creditor, Mr. Spalding a debtor, Mr. Coburn was a business associate and adviser (785). The conversation was long. The names of the principal creditors and the amounts of their claims were stated, and also the character and value of the assets (775–787). Mr. Lennox said that the partnership consisted of Patrick Lennox and himself (775), and it was not intimated, even remotely, that there was any question about it (Stroock, 313, 314). Mr. Lennox now says that the partnership consisted of his father and himself (1128). Mr. Lennox's statement of his assets and his liabilities showed clearly the insolvency of the partnership (775–786).

Mr. Brandeis then said:

"Well, now, I think it perfectly clear that you ought to discuss this matter with your father. He has unfortunately not had any information up to now, but he ought to have it now, and he ought to know fully the situation, and he ought to consider whom he would like to have represent him" (774, 786).

Mr. Lennox said that his father would leave it all to him, and that as notes were coming due every day it was imperative that he do something (786).

Mr. Brandeis said that the situation was much more serious than he had supposed from what Mr. Stroock had said in the morning, and that he had very little doubt that it would be necessary to make an assignment to trustees for the benefit of creditors (786). Mr. Lennox was a man of 30 years' experience in business and accustomed to business in a large way and understood what an assignment for the benefit of creditors was (1119, 1123).

The interview closed with Mr. Brandeis repeating that Mr. Lennox should talk the matter over with his father, who might have some preference in the matter of counsel, and asking Mr. Lennox to make up a more detailed statement of assets and liabilities, and suggesting another conference early the next morning (787).

On the following morning, September 5, Mr. Lennox and Mr. Stroock called on Mr. Brandeis. Mr. Stroock says that the others were present also (311). The stenographer's notes do not show this (791). Mr. Lennox began by reporting that he had talked with his father, and that he had no suggestion to offer (791, 1122). Then, after a short talk about assets and liabilities, Mr. Brandeis said:

"Well, now, Mr. Stroock, I should think that the question that we ought to decide now is whether I should act for Mr. Lennox in this matter or not. I of course understand you came to me after conference with Mr. Lennox to ask me whether I would act for Mr. Lennox."

To this Mr. Stroock replied:

"May I ask you this question, Mr. Brandeis: From all you know, do you believe that you could remain in the case in view of your firm's position with Weil, Farrell & Co.?"

To this Mr. Brandeis replied:

"Yes; I think I could. The position that I should take if I remained in the case for Mr. Lennox would be to give to everybody, to the best of my ability, a square deal" (792).

It seems clear that this conversation is the one which Mr. Stroock, testifying after eight years, has placed as occurring on the preceding day (312).

It is apparent that it was still being considered whether Mr. Brandeis should act in the matter at all. He followed this by saying that the only course for Mr. Lennox was absolute squareness and frankness to creditors, each to have whatever his legal rights might be. He said:

"I should, if I acted for Mr. Lennox, see that he got his legal rights—no more and no less" (793).

Next he repeated that he thought an assignment for the benefit of creditors would be advisable. Mr. Stroock suggested the possibility of bankruptcy if the assignment was made. Mr. Brandeis said it was a possibility, but he thought that the creditors would want to avoid bankruptcy (793). Then Mr. Stroock suggested Mr. Brandeis's acting for Stein rather than as "attorney for trustee of the Lennox family" (793). Mr. Brandeis favored the latter course and said:

"I should feel if I were acting for Mr. Lennox as trustee that it was the duty of the trustee to see that everybody got his legal rights as nearly as we could make it."

And in cases of doubt—

"I should feel that we ought to have a committee of the creditors with whom the trustee could confer; and if there are any questions of doubt in adjustment, that we get the advice of that committee and through them make the proper settlement" (793).

This is followed by repetitions of the same ideas in other words, with an explanation that an assignment would transfer all the property to the trustee for the purpose of liquidation and distribution to creditors (794); that the trustee could employ Mr. Lennox and that the trustee would have to determine with the creditors whether the business should be continued. This part of the discussion closed with Mr. Lennox's inquiry:

"You are speaking now of Mr. Brandeis acting as my counsel?"

To this Mr. Brandeis replied:

"Not altogether as your counsel, but as a trustee of your property" (795).

These are the conversations that determined the only understanding upon which Mr. Brandeis took this matter up; that is, as a trustee of this property for the benefit of the creditors and the debtors (1121). Mr. Lennox, Mr. Stroock, and Mr. Brandeis then agreed and now agree that the interests of the creditors and of the debtors were common and to realize as much as possible on their property, and not in conflict. (Stroock, 312; Whipple, 289; Lennox, 791, 1126.) Mr. Lennox asserted that his father also wanted to pay his creditors in full (791). They desired Mr. Brandeis's assistance to bring about this result.

All agreed, and now agree, that an assignment to a trustee for the benefit of creditors was the wisest course. (Stroock, 314, 795, 1088.) Indeed, there was no other course open except immediate bankruptcy proceedings.

Instead of Mr. Brandeis acting personally as trustee, it was agreed that Mr. Nutter should do so. (Stroock, 313.)

Up to the time that the assignment was made there had been no private communications between Mr. Brandeis and Mr. Lennox. They had never talked together alone. No papers had been shown or delivered to Mr. Brandeis. The attorney of the creditors was there all the time. There was no reason to suppose that the facts concerning the condition of the business could be longer concealed or that there was any desire or intention to conceal them.

Whatever may have been the occasion for coming to Mr. Brandeis in the first place, the only employment which he accepted was that of trustee for the benefit of creditors or as attorney for such trustee (827, 828). He was free to act. He was under no obligation to become or remain counsel for Mr. Lennox in opposition to this trust. He was not employed by any other client in this matter. He gave the only sound advice that could be given at that time, and everything which he did thereafter was consistent with, and required for, the performance of that trust (834).

The assignment was in the printed form (796) in use in the office. It described the assignors as Patrick Lennox and James T. Lennox, copartners as P. Lennox & Co., and the assignee as George R. Nutter. James T. Lennox signed it and gave Mr. Nutter a letter to his father, Patrick Lennox (314, 801). Mr. Nutter called on Patrick Lennox and told him that this was an assignment for the benefit of creditors, and told him what an assignment was (802). Patrick Lennox was in full (1122) possession of his faculties and in physical condition to be at his place of business the following day.

September 5, 1907, Mr. Nutter arranged with an audit company to begin work the next day to find out the exact financial condition.

On that day, pursuant to prior arrangement with Mr. Stroock and Mr. Lennox (795), Mr. Brandeis talked with numerous creditors, and told Mr. Lennox, Mr. Spaulding, Mr. Nutter, Mr. Stein, and Mr. Stroock that he had told those creditors that the assignment had been executed but that they would like to avoid recording it (803–804).

Then followed lengthy interviews for the information of the trustee as to the condition of the accounts, assets, and liabilities (804).

On September 6, 1907, Mr. Nutter went to the office of P. Lennox & Co. Before entering he met Patrick Lennox and he asked him how things were getting along, and Mr. Nutter said all right (804). This was the second and last time (805) that Mr. Nutter ever saw Patrick Lennox. Mr. Nutter learned that the books had not been balanced since 1902 and did not cover many outside business transactions and were meager (293, 804).

The employees of the audit company called to Mr. Nutter's attention two checks for $5,000 each, apparently drawn on September 3, to pay notes, and that no notes to be paid on that day could be found (804).

On September 7, 1907, Mr. Brandeis, Mr. Nutter, and Mr. Lennox had an interview, in which Mr. Nutter asked Mr. Lennox what had become of these two checks for $5,000 each, drawn on September 3 (804). Mr. Lennox said finally that he had the money in the safe of another man in Lynn (804). He then agreed to bring the money to the assignee, and did so on September 9. Nothing by way of lack of frankness to Mr. Brandeis and Mr. Nutter on Mr. Lennox's part had been noticed by them before this (805).

On September 9 it became apparent that an extension by the creditors was out of the question and the newspapers published a statement that the firm was financially embarrassed (314, 805, 1102). On that day Mr. Nutter told Mr. Lennox that hope of an extension was out of the question and that it was necessary to record the assignment. Mr. Lennox assented to this (805) before it was recorded (1169).

On September 10, 1907, Mr. Nutter recorded the assignment.

On September 10, 1907, Mr. J. P. Leahy called upon Mr. Nutter and said that he acted for Mr. Patrick Lennox, and from that time he continued to appear in that capacity in this matter for two or more years (805, 806). This showed a clear understanding that Mr. Brandeis was not counsel for Patrick Lennox, and there was nothing to distinguish between Patrick and James T. in that respect.

Patrick Lennox took a position of opposition immediately (291), and it was this opposition more than anything done by James T. Lennox that rendered bankruptcy proceedings inevitable (1130, 1133, 1134).

On September 11, 1907, Mr. Stroock and Mr. Stein called on Mr. Brandeis and asked him to act particularly for Mr. Stein, and Mr. Brandeis told them that he could act for Mr. Stein only, as for all the creditors equally, and that he had no objection to their getting independent counsel to act for them specially (819, 820). They decided not to do so for the time being (823). This interview as a whole shows that there was a clear understanding that Mr. Brandeis was acting for the trustee for creditors only (815, 828, 1097).

From September 4, 1907, to September 18, 1907, the interviews between James T. Lennox and Mr. Brandeis and Mr. Nutter were almost daily. On September 18 Mr. Lennox declined to go on with the matter and help the assignee in discovering the assets and liabilities unless he received $500 per week (1131, 1127). Mr. Nutter said that this sum was unreasonable and would not be approved by the creditors, but that he would pay him $100 per week, and perhaps could get approval of something better. This was declined by Mr. Lennox, and he rendered little or no assistance to the assignee thereafter (828, 1127, 290).

Mr. Brandeis took substantially no active part in the matter after this, and Mr. Lennox did not consult him in any way or ask him to do anything (290). He last saw him in the matter on September 19, 1907 (828).

On October 4, 1907, Mr. Nutter submitted to Mr. Leahy a draft of his proposed report to creditors, and at Mr. Leahy's request he inserted in it a statement that for some years Patrick Lennox had not been active in the business, and made some other changes until they agreed upon the form of the report (825). No objection was made to the part of the report which stated that P. Lennox & Co. was composed of Patrick Lennox and James T. Lennox.

On October 24, 1907, Mr. Nutter learned for the first time, and from Mr. Leahy, that it was claimed that Patrick Lennox was not a partner in P. Lennox & Co. (826). This put Mr. Nutter in a position where he was compelled by his duty as trustee to establish the fact of the partnership (831). Creditors to the amount of about $380,000 had assented to the assignment (829).

During September and October, 1907, the investigations into the business were continued by Mr. Nutter, and he had several interviews with Mr. Leahy about possible terms of composition.

Mr. Nutter was unable to get from Mr. Lennox adequate information concerning the property covered by the assignment (303, 314), and the creditors insisted that bankruptcy proceedings were necessary. Mr. Lennox was aware of this (832), and Mr. Nutter wrote him to this effect (1130). Mr. Lennox raised no objection to bankruptcy proceedings.

Mr. Nutter made repeated requests for information from Mr. Leahy as to the property of Patrick Lennox, but did not secure it (291, 1130). He became convinced that bankruptcy proceedings were necessary.

On October 31, 1907, Mr. Nutter, Mr. Herrick—representing Lee Higginson & Co., large creditors—and Mr. Leahy had a conversation, at which it was stated by Mr. Nutter that bankruptcy proceedings seemed inevitable (829). He reported this to James T. Lennox by letter on November 9, 1907 (1130), and informed him that, under the circumstances, if a composition was to be effected it would necessitate bankruptcy (1130).

On November 11, 1907, Mr. Nutter issued a report to the creditors, stating that the estate could be administered in bankruptcy better than under the assignment (830).

Under the Massachusetts law a voluntary assignee has no power to compel the assignor to submit to an examination as to the property covered by the assignment.

Between November 13, 1907, and January 4, 1908, several petitions in bankruptcy were filed on behalf of different creditors. The one on which Brandeis, Dunbar & Nutter appeared was brought first and by Allen Lane & Co. and other creditors (830). No compensation was paid by these (836, 847) creditors.

Mr. Lennox says that Mr. Nutter told him that he was assignee for the benefit of his creditors and not his counsel. Mr. Nutter told Mr. Lennox that he had better get independent counsel (836, 1126). This was prior to October 21, as Mr. Nutter saw him last on October 21 (290, 836, 1132).

On November 18, 1907, Mr. Sherman L. Whipple began to act as counsel for James T. Lennox, and continued to do so for two years or more (290). He promptly saw Mr. Brandeis and told him that Mr. Lennox claimed that Mr. Brandeis had undertaken to act as his counsel. Mr. Brandeis at once told him the facts (289).

In the bankruptcy proceedings an answer was filed alleging on behalf of Patrick Lennox that he was not a partner in P. Lennox & Co. and that the assignment had been obtained by fraud (834). The manifest duty of the trustees was to maintain the integrity of the assignment and the existence of the partnership which had made it.

No evidence was offered in support of the allegation that the execution of the assignment had been obtained by fraud.

Mr. Lennox said that his only criticism of Mr. Brandeis or of Mr. Nutter was that Mr. Nutter would not pay him at the rate of $500 per week (828, 1131).

The stenographer's transcript of the interview defining Mr. Brandeis's relation to the matter was offered in evidence in the hearings in bankruptcy (1164).

The case was heard before a referee in bankruptcy, who found that the partnership existed (847). This was followed by a trial before a jury, at which the court directed a verdict (1167), and then the case was taken by Patrick Lennox to the circuit court of appeals, without success (847).

Mr. Nutter, Mr. Herrick, and Mr. Hall became trustees in bankruptcy (830, 1170). The administration as assignee and trustee took four years (1144).

Counsel for Mr. Lennox and the trustees negotiated for a composition offer and finally one was made by which the firm creditors received 40 per cent and the individual creditors 100 per cent, and the bankruptcy was closed (839).

Neither Mr. Brandeis nor Mr. Nutter ever deviated from the course which Mr. Brandeis outlined as the only one upon which he would act in the matter, that of trustee for the benefit of all the creditors alike, and of counsel for the trustee. Only the surplus, if any, was to go to the debtor. All the steps taken were necessary to protect the creditors and were taken in performance of the duty incurred. No compensation was received from any source, except out of the trust fund (847, 1145).

No retainer or other payment for services was ever made to Mr. Brandeis or his firm by Patrick Lennox or James T. Lennox, Weil, Farrell & Co., or any other creditors (315, 847, 1113, 1145).

When the assignment was made there was no reason to suppose that there was the slightest conflict of interests between the debtor and the creditor (289, 312). It was understood that Mr. Brandeis was to act as counsel for the trustee. In that sense he was to act for the creditors and for the debtors in common (289, 312) to the point where either had any interests adverse to those of the trustee. The trustee and his counsel and the debtors had the common moral and legal duty of discovering, disclosing, and getting into the possession of the trustee all the property. They must perform that duty. When the debtors unexpectedly failed (303, 1134) to perform this duty, their conduct necessitated legal proceedings. They, and not the trustee or his counsel, were the ones who acted adversely to the common understanding on which the matter had been undertaken (289). Only that adverse action made the bankruptcy proceedings necessary (289, 834, 1130). The trustee and his counsel were not relieved (299, 300) from performing their affirmative moral and legal duty by the fact that the debtors then took an adverse position, contrary to the understanding upon which the assignment was made. If the debtors withheld property, the assignee must take action to get it. If the debtors would not disclose their property, the assignee must take action to discover it. The examinations of James T. Lennox were in pursuance of the duty of the trustees to ascertain about the property of the debtors (820, 822, 823, 1007, 1170). This was the only action taken. No unwarranted feeling of embarrassment or taste (296) could justify the assignee or his counsel in neglecting the performance of this duty (290, 834).

When criminal proceedings were instituted against Mr. Lennox, the assignee and his counsel were under no duty to prosecute. They were asked to do so and declined (297, 304, 305, 837, 1145, 1170).

Mr. Whipple, who was his adversary, saw clearly that Mr. Brandeis's conduct was upright throughout (299).

Neither Mr. Brandeis nor Mr. Nutter declined to act for Mr. Lennox so far as it was consistent with the duty of a trustee for creditors (1131), and Mr. Lennox makes no criticism of either, except that Mr. Nutter would not pay him a salary of $500 per week (1132).

The events in this case were due entirely to the fact that the debtors went back on the plan to which they agreed and under which the matter was taken up, namely, to devote their property fully and without hesitation to the payment of their debts. They were never deserted in any way. When they refused their assistance, and one of them denied a partnership which unquestionably existed and failed to turn over assets and charged fraud, of which there was no evidence whatever, they were deserting, and it would have been dishonorable in the trustee and his firm to assist in the attempt or to fail to take all necessary steps to secure the performance of the trust. Such a course would have been inexcusable, and the one pursued was the only possible one. The debtors were fully informed of everything and were never refused any assistance consistent with the trust. The course pursued by Mr. Brandeis and his firm was consistent and honorable throughout. No better one can be suggested (833). With Lennox's knowledge and consent, Mr. Nutter became assignee. It is inconceivable that Mr. Brandeis would thereafter desert his partner.

GLAVIS APPEARANCE.

It is charged that Mr. Brandeis was guilty of unprofessional conduct in appearing for Louis R. Glavis at the expense of Collier's Weekly, and concealing the source of his compensation from the select committee engaged in the investigation of the Department of the Interior and of the Bureau of Forestry. (Senate 719, 61st Cong., 3d sess., 1072.)

On August 18, 1909, Louis R. Glavis, then Chief of Field Division of the General Land Office, made a report to the President setting out facts which, if true, indicated that Secretary Ballinger was not a fit official for his high position. On September 13, 1909, the President rendered a decision exonerating Mr. Ballinger and authorizing the dismissal of Mr. Glavis, which immediately followed. On September 20, 1909, Mr. Glavis wrote the President of his intention to make public the charges leading to what he believed was his unwarranted dismissal. (Investigation 888.) On November 13, 1909, the charges were published in Collier's Weekly (330.) On January 19, 1910, the resolution was passed by Congress for the investigation. This resolution contained a provision that "Any official or ex-official of the Department of the Interior, or of the Bureau of Forestry in the Department of Agriculture, whose official conduct is in question, may appear and be heard before the said joint committee or any subcommittee thereof, in person or by counsel" (988).

Collier's Weekly having taken the legal and moral responsibility of presenting Mr. Glavis's charges to the country, felt it imperative to see that all proper steps were taken to have these charges verified before the committee (453–460; Sullivan, 325–335, 385). Collier's accordingly asked Mr. Brandeis to act for Glavis (455) and undertook to pay him therefor, and subsequently did pay him. No pretense was made that Mr. Brandeis was acting as unpaid counsel or for the public, and it was probably assumed by the committee that he was to be paid (994) and that Glavis was not in a position to pay for five months of continuous work by a man of Mr. Brandeis's standing and ability. (Senator FLETCHER of that committee, 994.)

It was thought by Collier's Weekly that it was not seemly to attempt to get the credit of conducting the investigaion (455), but no attempt whatever was made by anyone to conceal the fact that Mr. Brandeis was to be paid by Collier's (330, 332, 455). It was freely talked about (332, 455). It was known to members of the Interior Department who were in opposition (455). When occasion arose, the fact that Collier's Weekly was paying Mr. Brandeis was referred to in the paper itself (706).

Mr. Brandeis's efforts in the case were directed toward establishing the truth of the Glavis charges. He made no effort to have his own position or any belief that he was acting merely as a friend give any added weight to these efforts; and no occasion arose on which there would have been any propriety in his parading the fact that some one other than Glavis was the source of his compensation. That fact was assumed generally. If it were improver to give or to take compensation for such services except from the party of record, no poor man could ever have competent counsel in any extensive proceedings. These investigations are not social functions, but serious affairs. The truth is the goal to be attained. The facts are the same no matter who may have paid the lawyers. The committee did not ask Mr. Brandeis who was paying his fee, because then it made no difference. The fact that during the trial Mr. Finney, of the Interior Department, knew that Mr. Brandeis was employed by Mr. Hapgood, of Collier's (455), seems to me to demonstrate that those interested knew the situation then as well as they do now. This incident has nothing in it detrimental to the nominee.

MR. THORNE'S OPPOSITION.

Mr. Brandeis was employed to represent the Interstate Commerce Commission in the Five Per Cent Advance Rate case of 1913, and worked in the matter for about a year. His letter of employment was as follows:

"We are of course aware of the fact that the carriers will not fail fully to present their side of the case, and the commission has felt that every effort should be made in the public interest adequately to present the other side. Would you care to undertake that burden? As you are already aware, in a number of cases of large importance and wide interest special counsel have been retained by the commission. As a matter of fact, that has not been their real relation in these controversies. They have been retained by the commission not as advocates or to support any special theory of the issues involved but as a means by which the commission might be advised of all the facts and not have to decide the issue upon a record made up largely in one interest. It is with this general thought in mind that the commission has reached the conclusion that in the Rate Advance case special counsel should be retained, and I have been asked to ascertain whether your engagements and inclinations are such as to permit you to undertake the task of seeing that all sides and angles of the case are presented of record, without advocating any particular theory for its disposition. In making this last observation you will of course understand that you will be expected to emphasize any aspect of the case which in your judgment, after an examination of the whole situation, may require emphasis. The commission, however, wishes to avoid a record based solely on a particular view or theory."

His duties were (1) to get before the commission those facts omitted by the carriers which might help the other side (2) to see that all sides and angles of the case were presented and (3) to emphasize any aspect of the case which in his "judgment" required it (8).

Mr. Thorne was employed by a number of railroad or public utilities commissions of several States and by organizations of shippers, some having general and some special and peculiar interests (7, 48, 53, 90).

Mr. Brandeis acted for the commission and not as a partisan (78, 87). He collected (76), formulated, and presented his evidence through the employees of the commission (51), and by the examination or cross-examination of the railroad employees and their witnesses (79) and not in connection with Mr. Thorne or any other counsel for particular interests (82).

Mr. Thorne prepared and presented his evidence in his own way "independently," as the witness puts it (80, 82).

The other attorneys for the railroads and for the shippers did the same.

The hearings for the reception of evidence began in October or November, 1913 (80), and closed on April 7, 1914, and the case was then set for the filing of briefs and the beginning of arguments on April 27, 1914 (15).

Counsel separated and prepared their briefs and arguments without conference or communication with each other concerning them (17, 50, 61, 82).

On April 27, 1914, they gathered, the briefs were filed, and it was arranged that the shippers' counsel should close their arguments first, with Mr. Thorne as the last, then Mr. Brandeis, and then counsel for the railroads.

On April 27 or 28 (76) Mr. Thorne asked Mr. Carmalt, the examiner attached to Commissioner Harlan's office and now chief examiner for the commission, what Mr. Brandeis's position in argument would be,

and Mr. Carmalt told Mr. Thorne that Mr. Brandeis "would take the position that the net operating income of these carriers was not adequate, with especial stress on the lines in Central Freight Association territory, but that he would take the further position that the methods which the carriers had pursued to obtain greater revenues, namely, a horizontal increase of 5 per cent, was not the proper method of increasing their revenues" (19, 76, 81, 83, 84). Mr. Thorne also asked Mr. Brandeis on that day and received substantially the same information as to his position (19).

This brief was understood to take substantially the same position (20, 61).

It was two or three days later, on April 30, that Mr. Thorne began his argument.

He was followed by Mr. Brandeis, who opened by saying that he had reached the following conclusion:

"First, that on the whole the net income, the net operating revenues of the carriers in official classification territory are smaller than is consistent with their assured prosperity and the welfare of the community, and that this is notably true of the C. F. A. lines, and it is true practically as to other lines also, because of the C. F. A. scale.

"In view of this it is desirable that steps should be taken as promptly as reasonably may be to increase those net revenues.

"Secondly, that the method proposed by the carriers for increasing these net revenues is essentially unsound; that it is, except as to a small part of the tariffs that have been submitted, entirely too low, and would, if approved, involve the exceeding of the powers vested by Congress in this commission; and as to that small part of the tariffs as to which it would be legal to approve them, it would be extremely unwise, both for the carriers and for the commission, to grant that approval.

"Third, that there is nothing in the conditions of the carriers which should prevent the adoption of those methods of increasing their revenues which are conformable to and in accordance with their interests and that of the community, and that there exists, as has been indicated on this record, adequate means of increasing those revenues without resort to the unsound, largely illegal, and undesirable method of the horizontal increase (33)."

Mr. Brandeis had developed in evidence with great diligence and skill the facts (77) which might bear adversely (84) on the railroads. The evidence as a whole had convinced him of the soundness of the conclusions stated. He would have been derelict in his duty to the commission employing him if he had concealed this from his employers (62, 63, 64, 66, 68, 84, 92). His conclusions should be those which he could advise the commission to write into an opinion. They could accept or reject his advice, but were employing him for such help as he could give (63, 71).

On the merits of his conclusion, the difference between Mr. Thorne and him appears to be that Mr. Thorne grouped (32) the net revenues of a whole body of carriers and struck an average which was, of course, not available to the many carriers who were below that average and some of them below zero, whereas Mr. Brandeis stated these revenues in detail in his brief (p. 55) and classified them into four classes—(1) above 12 per cent, (2) 6 to 12 per cent, (3) 0 to 6 per cent, and (4) below 0 (988).

Rates fixed by the average of revenues derived from different and not comparable services, would not save the community (66) from receiverships over those roads performing a necessary service and having too small net revenues or none at all (988).

Counsel for shippers and their clients recognize the correctness of Mr. Brandeis's position (14, 88, 89).

Mr. Brandeis opposed the increase and filed an eleborate brief (11, 89), and argued in opposition, taking the position that even if the "net revenues" of some of the railroads were inadequate the rates sought to be raised did "yield an adequate return to the common carriers, the railroads operating in official classification territory" for the services rendered, so that the first question laid down by the commission (12–13) should be answered in the affirmative.

Mr. Brandeis's remark as to the surplus was elicited by Mr. Thorne's inquiry and was not a part of his argument (32). It is to be read in the light of his argument that rates were not to be fixed by reference to surplus earnings but that if the rates were fixed at such an amount that railroads properly managed had an adequate return and no more, any excess produced by extra skill and diligence should not be taken from them by adopting a fixed limit to allowable earnings. He desired to increase the incentive for greater efficiency (31).

The increase in rates sought by the carriers was denied on the grounds urged by Mr. Brandeis (36).

Later, in the light of the new conditions created by the European war, a part of the increase sought was granted, against his opposition (36).

Mr. Brandeis performed his duty fully and with due regard for all parties and counsel interested, and for the commission which retained him as their counsel.

No complaint has been made by the commission, nor by any member of it, that I am aware of. Suppose Mr. Brandeis had taken the opposite view and had "decided" every point according to the view of Mr. Thorne, would he then have considered such a course wrong? The fact that the commission adopted Mr. Brandeis's view forces the conclusion that if Mr. Brandeis was culpable so is the commission. If he, as their attorney, advised them to do wrong and they did it, we must conclude that they indorsed the wrong or are incompetent, a conclusion which would shock the judgment of the country. In my opinion this charge is without any merit whatever.

FREDERICK M. KERBY.

It is suggested, rather than charged, that it was improper for Mr. Brandeis to receive information from Mr. Kerby because he was in the employ of Mr. Ballinger (650). This refers to the Ballinger case.

Kerby was in the employ of the United States, was paid by the United States, and his duty of fidelity was as much to the United States as to his immediate superior. It is not necessary to go further on that point. He was a stenographer assigned to work under Mr. Ballinger when he was the Secretary of the Interior.

On August 18, 1909, Louis R. Glavis, then Chief of Field Division of the General Land Office, made a report to the President setting out facts which, if true, indicated that Secretary Ballinger was not a fit person for his high position. On September 13, 1909, the President rendered a decision exonerating Mr. Ballinger and authorizing the dismissal of Mr. Glavis, which immediately followed.

On January 19, 1910, a joint resolution was passed for an investigation of the Department of the Interior and of the Bureau of Forestry.

In the investigation which followed, the main issue was whether Mr. Ballinger or Mr. Glavis was wrong. Upon this issue Glavis suffered from the inevitable presumption that the President's decision was right. It therefore became important to show the fact that the decision had been drafted, in substantial respects, in Mr. Ballinger's office after an ex parte presentment of the facts by Mr. Ballinger, and had been rendered in an unwarranted reliance upon him and his subordinates, and that Mr. Ballinger and his subordinates were disingenuous in their statements.

In September, 1909, Oscar Lawler, Assistant Attorney General, assigned to the Interior Department, drafted a letter of decision for the President to sign, condemning Glavis and exonerating Mr. Ballinger. He dictated this in part to Kerby.

Shortly after the publication of the President's letter exonerating Mr. Ballinger, Hugh A. Brown, a friend of Kerby's, asked him what he thought of the President's letter, and Kerby informed him that it was practically written in the Secretary's office (988; S. Doc. 719, 61st Cong., 3d sess., pp. 4395–4489, 4398). In response to a similar inquiry, Kerby also told another acquaintance, Arnold, who represented the United Press (4398). These communications were supposed to be confidential (4398). At some time Brown told Mr. Garfield that the draft had been prepared in the Secretary's office. Brown had been private secretary to Mr. Garfield when he was Secretary of the Interior.

In February, 1910, Brown told Kerby that Mr. Garfield knew that the letter had been prepared in the Secretary's office, and that he might be called as a witness (665). Kerby, apparently recognizing the right of the investigating committee to have the truth and his own duty to disclose it, feared that he might be dismissed as Glavis had been, and he therefore sought an interview with Mr. Garfield to see if there was not some way in which the information could be brought out without his being called. (S. Doc. 719, 4397, 4441.) Brown undertook to arrange this meeting for a particular evening, between February 10 and 15, at the house of Mr. Gifford Pinchot, where Mr. Garfield was staying. Kerby, supposing Brown had made this appointment, called on Mr. Garfield (665) and told him of his desire to avoid being called if the fact could be brought out in some other way. Mr. Garfield asked him to talk with Mr. Brandeis, who was at the house at the time, and he did so. This was the first time that he had met Mr. Brandeis (666).

After this conference Mr. Brandeis made several calls for papers, evidently seeking production of the Lawler memorandum (648).

On or about May 8, 1910, Arnold introduced Robert S. Wilson, of the Newspaper Enterprise Association, to Kerby (S. Doc., 4400) and Wilson sought to get a statement of the facts for publication and assured Kerby of a position if he was dismissed; but Kerby declined to give it, as he had a family dependent upon him (S. Doc., 4413). Later, on reading Mr. Ballinger's testimony (S. Doc., 4415, 4456), and seeing that the memorandum was not produced in response to the calls (S. Doc., 4419, 4443, 4449, 4460), and being sure that it was known that there was a copy of the letter in the department (S. Doc., 4419, 4429, 4448, 4452), and observing that a majority of the committee had declined (S. Doc., 4493) to call on the President for the production of the draft letter, he decided to publish the facts and so to force the production of the letter (649).

He had an interview with Mr. Brandeis at Wilson's office, in which Mr. Brandeis told him that he thought it was impossible for him to get the facts before the committee, but declined to advise him whether or not to publish the story (651).

This was the second and last time that Mr. Brandeis ever talked with him (S. Doc., 4448). In neither interview did Mr. Brandeis urge him to make the disclosure or offer him any inducement (S. Doc., 4431).

Kerby decided to publish the facts, and they appeared in the newspapers of May 14. On May 17, at the suggestion of the chairman of the committee, Kerby was called as a witness and examined by Mr. Ballinger's counsel and by Mr. Brandeis and testified in detail as to these facts (650, 667). There are no limits to suspicion, but there are rules of evidence, as well as just ways for determining the probatory effect of facts. Shall we ignore the proved facts and indulge a suspicion in order to condemn the nominee? I can not. The facts in this matter leave no stain upon Mr. Brandeis.

FAIR TRADE LEAGUE.

No charge has been suggested against Mr. Brandeis in connection with this league.

Mr. Brandeis has spoken in support of the price-maintenance principle and of the provisions therefor embodied in the Stevens bill. This has been without compensation and because of his belief in the principle underlying the bill (812, 976).

The evidence under this head was brought out at the instance of the committee for the same reason as stated under the heading "Dingley bill wool duty."

EQUITABLE POLICYHOLDERS' PROTECTIVE COMMITTEE.

It is charged that Mr. Brandeis, or his firm, was paid for his services as counsel for this protective committee, and subsequently accepted employment by the Equitable Life Assurance Society in a manner that was unprofessional (886).

From 1901 to the present time, Brandeis, Dunbar & Nutter have acted from time to time in different matters for the Equitable Life Assurance Society when that society had occasion to employ counsel in Boston (690).

In 1905 strife developed between the different officers of this society; and thereupon a number of large policyholders formed a protective committee to investigate and determine what, in their opinion, should be done for the best interests of the society, and Mr. Brandeis acted as unpaid counsel for this committee. He and the committee criticized the methods which had been pursued by the officers (669) and made many suggestions for improving the methods of this and other life insurance companies (689, 696). The committee continued as long as its services were of value (698). One of its members became a director (971). The committee was not designed to be antagonistic to the society, but for its protection and benefit (972). Mr. Brandeis rendered faithful, diligent, and satisfactory services to the committee (971). His employment by the company was that of attorney in specific cases, having nothing to do with the company's management. He had no retainer, but was paid for what he did. I can see nothing to criticize in his conduct.

NEW YORK, NEW HAVEN & HARTFORD RAILROAD CO. MERGER.

It is charged that Mr. Brandeis was in some way responsible for the destruction of the financial condition of the New York, New Haven & Hartford Railroad Co. (123). This charge is without foundation (271).

In 1907 and thereafter Mr. Brandeis did a large amount of public-spirited work in attempting to prevent the acquisition or retention by the New York, New Haven & Hartford Railroad Co. of the control of the Boston & Maine Railroad Co. and other transportation facilities in New England, tending, as he then claimed, to produce artificial transportation monopoly and suppression of normal railroad competition (809).

He investigated and made public the financial condition of this railroad (271, 618, 627). He was bitterly assailed for this (618, 620, 627, 642). The correctness of his position is now generally conceded (271, 638, 639, 645, 641). This extensive work was done without compensation (991).

WILLIAM F. FITZGERALD.

It was insinuated that Mr. Brandeis counseled an improper method for obtaining additional finances for the Old Dominion Copper Mining & Smelting Co., improperly concealed a report from stockholders, and went over to interests adverse to those of the Old Dominion Copper Mining & Smelting Co. because of the money to be obtained thereby (1225).

These insinuations were so entirely unwarranted that the entire committee thought it unnecessary to hear the facts in reply (1231).

From January 9, 1902, to April 2, 1902, Mr. Brandeis acted for Mr. Fitzgerald, Mr. Smith, and others in obtaining sufficient proxies to elect a new board of directors for the Old Dominion Copper Mining & Smelting Co. in place of the board favorable to Albert S. Bigelow, then president of the company (1246) (1228). On April 2, 1902, the new board was elected and Charles Sumner Smith was by it elected president of the company, and has remained the president ever since. The board of directors selected Mr. Brandeis as the counsel for the company, and he never was counsel for Mr. Fitzgerald in this matter thereafter (1247) (1231). He instituted suits against Mr. Bigelow and Mr. Lewisohn to discover alleged promoters' profits taken by them in the organization of the company in 1895 (1247).

In the late summer of 1903 it became apparent that the company must have additional funds. A plan was formed to secure these funds by having the company issue bonds to the extent of $750,000 with a bonus of stock to a securities company, the stock of which should be subscribed for by all of the stockholders in the Old Dominion Copper Mining & Smelting Co. Mr. Fitzgerald testified that this plan failed because only about one-third of the stockholders availed themselves of the opportunity to subscribe (1248).

At this time, in October, 1903, negotiations were taken up between the company and men connected with Phelps, Dodge & Co., owners of the stock of the United Globe mines, a corporation owning mines adjacent to those of the Old Dominion Copper Mining & Smelting Co.

These negotiations finally resulted in a plan for the formation of a holding company, organized under the laws of the State of Maine, called the Old Dominion Co. This company was to acquire the stock of the United Globe mines and the stock of such of the stockholders in the Old Dominion Copper Mining & Smelting Co. as wished to exchange their shares for shares in the new company.

This plan involved the consideration of the advantages which would result from this connection with the United Globe mines, in the value of the mines and the known financial strength and mining ability of Phelps, Dodge & Co.

The entire board of directors of the Old Dominion Copper Mining & Smelting Co., including a partner of Mr. Fitzgerald, was favorable to the plan. Mr. Fitzgerald desired to have a receiver appointed for the company and Mr. Smith opposed this (1250, 1282).

Mr. Smith requested a mining engineer to examine the United Globe mines (1281). He made an examination involving only a few hours (1281) and made a report to the effect that the United Globe mines property did not have a value as high relatively to those of the Old Dominion Copper Mining & Smelting Co. as the proportion of stock which it was proposed should go to the stockholders of the United Globe mines had to the value of the stock which it was proposed should be received by the stockholders in the Old Dominion Copper Mining & Smelting Co. Mr. Smith did not feel that the report of this cursory examination was of any value and believed that the connection with the stockholders in the United Globe mines had a value greatly in excess of what was to be gained from the acquisition of the properties which they owned (1281). Mr. Smith announced that the engineer's report was at the company's office, and many stockholders did come in and see the report and were given an explanation of its value (1281). He believed that the report alone, if published, would be misleading rather than helpful to stockholders (1281, 1283). He accordingly did not publish this report. In this he acted on his own initiative, and Mr. Brandeis was not responsible for its not being published (1282). At the end of October Mr. Fitzgerald requested the publication of the report (1252). It was published on November 11, 1903 (1254).

The agreement under which the Maine company was formed was made after this, and the holders of a very large proportion of the stock in the Old Dominion Copper Mining & Smelting Co. exchanged their stock, and the enterprise has since been very successful and to the advantage of the stockholders who exchanged their stock and to those who did not (1284, 1236).

As a part of this new organization, it was provided that whatever the Maine company received in dividends from the New Jersey company, resulting from the suits against Bigelow and Lewisohn, and certain other assets amounting to about $94,000, should be paid over by the Maine company to trustees for the benefit of the existing stockholders in the Old Dominion Copper Mining & Smelting Co., who transferred their stock to the Maine company, or to those persons to whom they might transfer their rights, the trustees to receive as compensation an amount not exceeding 5 per cent of the funds handled (1280). The trustees selected were Mr. Smith and Mr. Hoar, who was then a partner in Brandeis, Dunbar & Nutter. The purpose of this arrangement was to have these proceeds go to the benefit of the existing stockholders in the New Jersey company, and not go to those stockholders in the Maine company who had become such by reason of having been stockholders in the United Globe mines (1272).

At this time the litigation against Mr. Bigelow had been going on for more than a year without any specific arrangement having been made as to the amount to be charged by Brandeis, Dunbar & Nutter as counsel. This situation continued for three years more, and until the suits had passed the stages of demurrers and the greater part of the evidence in support of them had been taken.

In the fall of 1906, four years after the suit was started, the board of directors desired to have some specific agreement made as to the liability which they were incurring for the services of counsel. This resulted in an arrangement that the payments on account of these should be not exceeding 6 per cent on the fund of $94,000 (1275)—that is, $5,500 a year (1279)—and that in addition there should be paid as a balance for these services an amount not exceeding 10 per cent of the judgment or settlement obtained in the cases (1276). This amount was suggested by Mr. Smith (1275) and approved by the board of directors, who believed that this would be a reasonable arrangement (1276). The company considered a settlement at one time of a hundred thousand dollars (1285), subsequently five hundred thousand dollars, and then a million dollars, but ultimately about two million dollars was obtained (1276). The litigation incident to this claim or growing out of it has been conducted during about 13 years in about 15 courts (1256). The payments which have been made have been based upon the agreements, and everything has apparently been entirely satisfactory to all parties (1274).

There is no evidence whatever that Mr. Brandeis did anything but what was entirely commendable. Mr. Fitzgerald, notwithstanding the questions urging to the contrary, said that he was not prepared to charge any irregularity in the matter (1245) and that he did not mean in any way, shape, or manner to suggest that Mr. Brandeis was working for the Phelps-Dodge interest or conspiring to do anything in that way, because he knew he was not (1246), and that to his mind Mr. Brandeis advised him that his best interests would be to go into the reorganization (1239).

EDWARD R. WARREN.

The charge, if any, to which Mr. Warren's testimony related was that Mr. Brandeis had misrepresented to a committee of the Massachusetts Legislature the attitude of the State board of trade concerning certain legislation as to the Boston Consolidated Gas Co.

This company, or the interests which were consolidated into it, were urging to be allowed a capitalization of $24,000,000 (808). The Public Franchise League opposed this (1309). Mr. Warren was the chairman of the executive committee of this league, which consisted of 12 or 14 men, and Mr. Brandeis acted as its counsel. The State board of trade cooperated in this opposition (1309).

At or shortly before the beginning of May, 1905, it became evident that the legislation which the Public Franchise League wanted, namely, a general law concerning the consolidation of gas companies, could not be passed (1315), and that the company could be persuaded to accept a capitalization of $15,124,600 (1315) (808). This was somewhat higher than the Public Franchise League desired.

Mr. Brandeis urged upon the league that they should support the bill for the capitalization of $15,124,600, and the executive committee voted unanimously, with the exception of Mr. Warren, to support this bill (1309). Mr. Sprague, representing the State board of trade, did not concur in this position (1309).

The charge made against Mr. Brandeis was that he represented to the committee of the legislature that the State board of trade did concur. No evidence in support of any such charge has been offered, and on the contrary, it appears that Mr. Brandeis informed the legislative committee that the State board of trade could not favor this compromise bill, and was opposed to it (1315). This fact was reported to Mr. Warren and to Mr. Sprague the same day (1315).

These are all the charges, and embrace every matter as to which the evidence related except the opinions evidence.

I yield to none in respect for that "greatest judicial tribunal," our Supreme Court. Its importance in our scheme of government is manifest; and that the appointing power has always looked upon the selection of the justices of that court as involving a sacred duty is proved by the great ability and probity of certainly a very large majority of its membership at all times in our history. Nevertheless, its membership must be recruited from the people, and anyone measuring up to the required standard in ability would be suspected at once of a lack of initiative and personal force if he had not made some enemies and had not engendered an opposition, which could, if it felt so inclined, make a plausible fight against his confirmation. The nominee whose name is before us now has been an active, forceful quantity in his city, State, and country. He has enjoyed a large, lucrative law practice almost ever since he was admitted to the bar. He has been for many years a member of the bar of the Supreme Court, a member of the American Bar Association, and of similar associations in his home State; a member of the board of visitors of Harvard Law School; a writer upon law as well as general subjects; a public speaker and lecturer with pronounced views, and with exceptional powers for impressing those views upon the public; the unpaid counsel of labor organizations, protective associations, and other civic bodies; the paid counsel in many of the most important legal contests before the courts and other public tribunals; an arbitrator in strikes and labor disputes; and the special counsel of the Interstate Commerce Commission.

Such a man, so prominently active in public and private life and at the period when the construction of the Sherman law, the awakening of the States to their duty concerning industrial combinations, and the determination of the dividing line between State and National power, is bound to have been engaged in contests before the courts and before legislative bodies more or less bitter; and he would indeed be a human prodigy if he had not aroused some bitter antagonisms. It is in evidence that there was a systematic campaign of advertisement to injure him in the estimation of the public. I must therefore either decide that the active, earnest, fearless man who might, in the discharge of his duties in his own way, arouse such opposition, is forever debarred from judicial appointment, or else inquire into the grounds of the opposition and determine whether or not such opposition is based upon good and sufficient reasons or otherwise. Anyone who reads the protests made against Mr. Brandeis must come to the conclusion that the opinion expressed by those who undertake to give his reputation is based upon some one or the other of the charges heretofore discussed at length, and since I find that no fault can be attributed to the nominee as to any of those charges in the light of the facts brought before us, then I am bound to say that those who express the adverse opinion have been erroneously influenced by the advertising campaign carried on against him.

To give an idea of the character of the campaign which has been waged against Mr. Brandeis, I clip from the Wall Street Journal, of March 27, 1916, under the heading, "Sacredness in confidences," the following:

"No lawyer can faithfully serve a client without gaining knowledge of that client's peculiarities, strength in parts and weakness in parts, which would make him doubly valuable as a counsel to his opponent.

"When an attorney has accepted the confidence and compensation of one side and then gone over to the compensation and confidences of the other side, and the President and Senate of the United States place him upon the Supreme Bench of the land, a new era has dawned for the priest, the physician, and the advocate, or there is condemnation for both bench and bar, for a Senate of lawyers, for a President, and for a party and its politics.

"When James Lennox in the presence of several witnesses unbosomed himself to his attorney and later found his $10,000 credited against the $48,000 received from the other side with the denial that his attorney was ever his attorney, what can we think of honor at the bar?

"But when that attorney goes to the United States Supreme Bench, what can the world say of honor within the United States with both bench and bar?

"Brandeis at the bar may represent individual wrongs, but Brandeis on the bench puts the United States before the world below even the present standards of his Teutonic ancestors."

If the writer of the above will read the record of the evidence taken before the subcommittee I do not doubt that he will be ashamed of having penned it. It is absolutely false to say or intimate that Mr. Lennox ever paid Mr. Brandeis a cent, much less $10,000, for any services to be performed by the latter, or for any other purpose, and Mr. Lennox never made any such claim; and yet the average person would infer from the above editorial that Mr. Lennox had paid Mr. Brandeis as a retainer the sum of $10,000.

The testimony of Mr. Barron, to which I have already referred, shows that he fostered an advertising campaign against Mr. Brandeis, and yet when he was brought before the committee and asked for the facts upon which his campaign was based, and after the committee had examined every witness suggested by him, obtainable, we find that there is nothing in the conduct of Mr. Brandeis to warrant Mr. Barron's opinion, and absolutely nothing to reflect upon Mr. Brandeis's character as a man or a lawyer. It is suggested in the brief of counsel of the protestants that if a doubt shall be raised concerning the ethical conduct of the nominee, he should not be placed upon the Supreme Court. If that theory shall obtain, then it is possible, by a campaign of slander, to bar the best men and the best lawyers in the country from the judicial office. I am not willing to indorse a campaign of slander, whether it was intended to be slander or not, when promulgated.

If after full investigation I find, as I do, that Mr. Brandeis is not guilty of the things charged against him by his enemies, then it is my duty to say so and to give him the benefit of a pure life and his upright conduct, regardless of the slander.

Judicial temperament is a thing of which it is not for man to judge except by actual experience on the bench. No one can tell whether a great lawyer will be a great judge until he has been tried. It seems to me that there is more in the life of Mr. Brandeis as shown by this record to incline one to the belief that he has the qualities of a good judge than there is to the contrary. It is remarkable that friend and foe alike speak of his ability as a lawyer. The late Chief Justice Fuller advised one seeking a lawyer in the East, as follows: "Go to Boston and see Mr. Louis D. Brandeis, as I consider him the ablest man who has ever appeared before the Supreme Court of the United States. He is also absolutely fearless in the discharge of his duties."

It is impossible to give in detail the testimonials to Mr. Brandeis's fitness and his high character, and it is unfortunate that there are so many of these coming from every part of the United States, from lawyers, judges, college professors, business men, labor leaders, and people in all walks of life, that it would be almost impossible to print them. I do not doubt that if one takes the pains to look at the protests upon the one side and the indorsements upon the other, in the light of the evidence in this case upon both, my conclusions will be found by him to be reasonable and fair. I therefore voted with the majority of the subcommittee to recommend confirmation.

W. E. CHILTON.

I am authorized by Senator FLETCHER to say that he concurs in the above.

W. E. C.

APRIL 3, 1916.

Mr. WALSH, from the subcommittee of the Committee on the Judiciary, submitted the following views:

To the COMMITTEE ON THE JUDICIARY,
United States Senate:

The unusually grave character of the duty with which this committee has been charged quite fully justifies, if it does not require, from each member thereof an expression of the course of thought through which he has arrived at the conclusion in consequence of which he assumes the responsibility for the recommendation he makes.

The testimony taken by the committee is voluminous. In the infinite multiplicity of the duties devolving upon Senators it is quite vain to hope that any considerable number, except those upon whom the burden ot investigation has been directly imposed, will read it all or read any of it.

Outside of the Senate opinion will be based in very small part upon anything more trustworthy than a résumé of the evidence collected by the committee. I assume the task of reviewing it with a just sense, as I hope, of the importance of the office to which it relates in our scheme of government. The interest in the nomination in respect to which we are called upon to act, manifested alike by the citizen in the humble walks of life and by those whose influence is nation wide, reveals the universality of the conviction that in large measure the liberties and the destiny of the American people have been intrusted to the great court to fill a vacancy in which the President has named Louis D. Brandeis.

It so happens that the nominee has awakened unrelenting enmities and fast friendships. He is the object of unrestrained admiration on the one hand and of fierce vindictiveness on the other. The qualities that evoke the just praises of those who believe in him need not engage our attention. It is conceded on all hands that in intellectual equipment and professional attainments he easily measures up to all requirements—indeed, in that respect his qualifications are superb.

His character is assailed, however, as too perverse to justify the Senate in advising or consenting to his appointment. His private life appears to be blameless. It is not charged that he is corrupt, at least by anyone not moved by reckless malevolence. The accusations, if they may be so called, relate entirely to alleged disregard of ethical standards in his professional relations. Singularly enough, there is very little opportunity for dispute in respect to the facts constituting the incidents which the committee deemed worthy of its notice.

There is wide divergence of view touching the significance of the facts disclosed. Interpreted by those bent on finding something to criticize or ready by prepossession to attribute discreditable motives to Mr. Brandeis, they assume a sinister aspect. Men of the highest character, frank admirers of that gentleman, who participated in the transactions in respect to which he is denounced, insist that his conduct was either irreproachable or altogether honorable. It is particularly important in this quite curious situation, in order to form a just estimate of the conduct and character of the nominee, to guard against the insidious influence of detraction and calumny.

Long before his name came to the Senate for the high office of associate justice of the Supreme Court efforts were made through the public press and by means of circulars widely distributed to bring him into disfavor and disrepute. Not unlikely some impression such as it was hoped might be conveyed may remain on the minds of some Senators who fell under the influence of these and like attacks. Moreover, it is scarcely to be expected that one unacquainted with local conditions, who has not followed with scrupulous care the inquiry as it proceeded, would be wholly uninfluenced by the fact that a considerable number of the members of the bar of Boston, the home of the nominee, have protested against the confirmation of his nomination and have organized to oppose it, and that some of them have testified that he is regarded in that community as untrustworthy. These conditions make it imperative, before attempting to survey the particular transactions to which reference is made as justifying the ill opinion thus expressed, to have in mind some incidents in the career of Mr. Brandeis which may have predisposed those by whom it is entertained.

It is clear that he has been a vigorous, aggressive, relentless antagonist in all his legal battles. Moreover, he has been successful. In illustration: One of the lawsuits in connection with which some misconduct was charged is referred to as the "Old Dominion case." The nature of the dereliction with which he was accused need not be adverted to. It was utterly puerile, the testimony drawing from a member of the committee [Senator CUMMINS] a public declaration that it was valueless. Mr. Brandeis had been employed to assist in securing stock or proxies sufficient to take the control of the Old Dominion Copper Mining Co. from the hands of one Bigelow and associates, who had promoted the company. The effort was successful and a new board elected, through which suits were brought in the name of the company by Brandeis as its attorney to recover of Bigelow the value of a large block of the stock of the company which it was averred they had fraudulently converted. The litigation was bitterly contested in the courts of Massachusetts, New York, and New Jersey, repeatedly reaching the reviewing courts and eventualy the Supreme Court of the United States. Judgment was finally rendered against Bigelow for two and a quarter million dollars, on which, after a contest lasting 14 years, payment of upward of $2,000,000 has been enforced. It may well be assumed that any man of whom a judgment in excess of $2,000,000 can be collected is one whose influence is felt even in a city the size of Boston, at least in the banking center and in financial circles. Those who know something of the development of the copper-mining industry with which Boston has been long and creditably identified are aware of how commanding that influence was. It is quite reasonable to suppose that his social standing was in keeping with his great wealth and the magnitude of the enterprises with which he was associated. It was bad enough to be required to give up $2,000,000, but to be branded as having misappropriated so much of the property of the stockholders who had been induced to come into a corporation organized by him was a grievance that very naturally rankled. It is altogether probable that Mr. Bigelow would not express himself in complimentary terms concerning Mr. Brandeis if he were moved to speak of him.

No wretch e'er felt the halter draw
With good opinion of the law,

and few with good opinion of the lawyer. So it is likely that all Mr. Bigelow's friends, or most of them, share the ill opinion which he may be excused for holding of Mr. Brandeis, if he does cherish such.

The part that Brandeis had in exposing the malefactors of great wealth who, in insolent contempt of the law, monopolized the transportation facilities of New England, merging them in the New York, New Haven & Hartford system, and milking the properties in the process is more generally known. These were the very high priests in the temple of Mammon. Boston was the New England as New York was the western terminus of that system. The fight was waged before the Legislature of Massachusetts and the railroad commission of that State long before it engaged the attention of the National authorities. Among many public-spirited citizens who, singly and through local organizations, attempted to prevent the absorption of the Boston & Maine by the New Haven, Brandeis was conspicuous. Before legislative committees and officials of the State government, in public addresses, he declaimed against the consolidation. He not only attacked through pamphlet and the public press the design to impose a transportation monopoly on that highly industrial region, but he investigated and laid bare the financial condition of the company, in consequence of which its stock, a few years later, dropped spectacularly, and the system was brought to the verge of bankruptcy. He asserted that its securities were not a safe or proper investment for savings banks, by which they were held in great quantities. The timid deprecated his assaults and the guilty assailed him with unrestrained venom. He was placarded through paid advertisements in the press as a public enemy.

It will be remembered that the merger was accomplished; that afterwards suit was brought to dissolve under the Sherman Act, which was soon dismissed; that subsequently, pursuant to a resolution of the Senate, the affairs of the New York, New Haven & Hartford were investigated by the Interstate Commerce Commission; that the hearing revealed a state of affairs at which the country stood aghast; that a new dissolution suit was instituted, resulting in a "consent" decree; that the directors participating in the merger transactions were indicted and upon trial some were acquitted and as to others the jury disagreed. We need not concern ourselves as to whether Mr. Brandeis was right or was wrong in the warfare he thus waged. It may be that the absorption of the New England lines was a benevolent assimilation and not a criminal conspiracy. It may be that his elaborate figures touching the financial condition of the New Haven were not fully and altogether justified by the investigation conducted six or seven years afterwards by the Interstate Commerce Commission. I am endeavoring now merely to bring to mind some idea of the atmosphere breathed by those who speak in disparagement of him. To enforce this point I quote from testimony elicited on cross-examination of two of them—both very honorable gentlemen—Mr. Storey and Mr. Hutchins, of the Boston bar. In the testimony of the former will be found the following:

"Senator WALSH. Is it your opinion that the conduct on the part of Mr. Brandeis was calculated unjustly to injure the New Haven road?

"Mr. STOREY. I do not know that I can or ought to express any opinion on the subject. The feeling was that there were better ways of conducting that matter than were adopted. The undoubted result was

apparent. The truth, of course, is that the New Haven Railroad under that administration was spending money recklessly, incurring liabilities recklessly, and doing various things which were most unfortunate for the property. There is no question that Mr. Brandeis called the attention of the public to those facts; but for some reason or other I think they did not make the impression on the public that they would have made if they had come from another source.

"Senator WALSH. But his communications through the public press at that time did direct the public mind to what afterwards was disclosed to be a rather questionable system of operation in finance?

"Mr. STOREY. I have no doubt that is correct. (Hearings, 270–271.)

"Senator WALSH. I judge from what you say that people associated with that organization exercise a very powerful influence, socially, politically, and financially, in your community?

"Mr. STOREY. They did, certainly, at one time. (Hearings, 272.)"

Mr. Hutchins being on the stand, the following colloquy took place:

"Mr. ANDERSON. Mr. Hutchins, I should like to ask you a few questions. Mr. Joseph B. Warner was chairman of the commission of commerce and industry, if I have the name correctly, which wrote a report about 1908 which was quite a factor in the New Haven fight, was it not?

"Mr. HUTCHINS. I think so; yes.

"Mr. ANDERSON. And there was a pretty sharp controversy at that time relative to the statistics and figures which Mr. Warner and Mr. Charles F. Adams, jr.—I have forgotten the other members of the commission—had accepted and published as accurate, and what Mr. Brandeis alleged were the actual facts?

"Mr. HUTCHINS. Yes.

"Mr. ANDERSON. And the subsequent history of the New Haven tended, at least in the minds of a great many, to show that those gentlemen were led into grave error. Is not that so?

"Mr. HUTCHINS. I really can not speak of the merits of that controversy; that is, I mean as to the report of the commission, etc.

"Mr. ANDERSON. You did not go into that in any detail?

"Mr. HUTCHINS. I did not go into that.

"Mr. ANDERSON. But there was a good deal of bad blood engendered in and about Boston in that New Haven fight, was there not?

"Mr. HUTCHINS. Yes; a good deal.

"Mr. ANDERSON. A lot of people maintained for years that there was nothing but a wicked drive being made on the New Haven, and that everybody who criticized the New Haven was a destroyer of properties and values, and the facts as they later appeared did not justify that criticism, did they?

"Mr. HUTCHINS. I do not know about the justification of the criticisms, but there was certainly a great deal of sentiment of the kind that you express in your question.

"Mr. ANDERSON. Assuming that the Interstate Commerce Commission investigation developed something approaching the truth, the atmosphere against Mr. Brandeis in 1908 and 1909 was an atmosphere of harsh and unwarranted criticism, was it not?

"Mr. HUTCHINS. The criticism was harsh. Whether it was unwarranted or not I do not feel competent to judge."

It is quite proper to say here that no one save one Barron, a newspaper publisher, shown to have acted as publicity agent for the New Haven road in the course of the long struggle being outlined, ventured to question the purity of the motives which actuated Mr. Brandeis therein, however the soundness of his judgment as to the methods he pursued or the conclusions he drew might be questioned. No one has suggested that he had any private interest to subserve, and he received no compensation from any source.

One circumstance in this connection would not be mentioned but that it helps to a correct solution of his conduct in the Lennox case, hereafter to be noticed.

Those who think of him as grasping and avaricious, if there are any such, may find one hue in his acts in that case; those who believe him a man of high ideals or as not afflicted with an inordinate love of money may give them quite a different color. Not only was he paid nothing for the herculean labors he performed in the New Haven fight, involving him in a torrent of abuse and villification, but he declined employment by parties holding Boston & Maine securities in a large amount who, like him, were opposing the merger, preferring, as the subject was one of public concern, to be untrammeled. And then, because he had deprived his firm of a lucrative engagement, he paid into it $25,000, a sacrifice that was not so great as it might seem to some in view of the volume of business the firm was doing and the fees it was accustomed to receive. (Hearings, 991, 995.)

Seven members participated in its earnings and it employed a house full of clerks, stenographers, accountants, and other like subordinates. The record discloses another instance in which he pursued, in substance, the same course.

Just how far the animosities engendered by the New Haven fight, considering the infinite ramifications of its interests and of those vitally concerned in effecting its purposes and in concealing the unstable character of its finances, may have influenced the minds of those about Boston who protest against this appointment is a matter of speculation. Doubtless most of the wealth and culture of the community were arrayed on its side.

While it stands out most prominently in the public mind, because of the vast interests involved and the standing in the financial world of the chief figures in it, the New Haven fight was not singular. Perhaps less is known yet much has been told of his warfare on the United Shoe Machinery Co., a corporation with a capital stock of $25,000,000, with headquarters at Boston. When, in 1910, four years after he ceased to be a director of that company, it was about to acquire control of the Thomas G. Plant Co., then threatening to become a formidable rival, he declared that the penitentiary would yawn for anyone concerned in the consolidation. Indictments were found against the officers of that company, the Department of Justice being satisfied that there was sufficient foundation for a prosecution, though the indictments were afterwards quashed. A deep-seated hatred was aroused against him on account of his criticisms of that company that is still virulent, and not the less so that Congress, by the agitation, was moved to insert provisions in the Clayton law and the trade-commission law which it is hoped may correct some of the evils most intimately associated in the public mind with the operations of that company.

The Consolidated Gas Co. of Boston, whose career is not as sweet smelling as might be wished, found Brandeis a serious obstacle in the way of getting everything it wanted from the Massachusetts Legislature. It was the central figure in another protracted fight which has vexed the Boston people. Indeed, the public-service corporations of that city exhibited such a disposition to lay hands on anything they could secure that the people organized themselves to resist their exactions and propensities. The Public Franchise League came into existence to protect the public. Brandeis was a prominent member of the organization, as was George W. Anderson, afterwards a member of the Massachusetts Utilities Commission and at present United States district attorney for the district comprising that State.

It is not without excuse, whatever reason they may have, that some Boston people do not like Mr. Brandeis. A number of the members of the bar of that city sent a protest against his confirmation, reciting that his reputation among the lawyers of that city is that he is untrustworthy. One of the signers wrote a letter setting out why in his opinion such a view was entertained and giving his own judgment of the merits and demerits of Mr. Brandeis's character. It is so judicial in spirit, so keenly analytic, that I venture here to insert it:

BOSTON, MASS., *February 24, 1916.*

GEORGE W. ANDERSON, Esq.,
85 Devonshire Street, Boston, Mass.

MY DEAR ANDERSON: You have asked me to write you a letter giving my views on Mr. Brandeis and on his appointment to the Supreme Court and on the way in which that appointment would be viewed by the Boston bar. I am not seeking to be involved in this controversy any further than necessary, but I do not feel that anyone asked for such an opinion has a right to refuse.

First, then, so far as ability goes, there can be no question as to Mr. Brandeis's professional standing. He is universally acknowledged to be one of the ablest men at our bar, both in point of legal learning and of effectiveness, and if the question was of intellectual ability alone, his appointment would be generally approved.

There is, however, equally little question that he is not generally popular with the bar, and that among a considerable proportion of the lawyers here he has the reputation of not being a man with whom it is pleasant to deal in business matters, and one who is unscrupulous in regard to his professional conduct. Just how far there is any solid foundation for such a reputation it is extremely difficult to say. So far as specific charges go, all of any consequence of which I have ever heard have been or will be brought to the attention of the committee at Washington, and of those it is unnecessary that I should speak, especially as I can add nothing of my personal knowledge.

The general reputation remains, and it is certainly one which is worthy of consideration, in estimating the fitness of an appointment to the bench. Indeed, I think in the existing state of the feeling here that no one can be fairly criticized for opposing the appointment. Many of his opponents are my personal friends and I understand and respect their point of view, though I believe they are mistaken. At the same time, I believe that the reputation to which I have referred is not founded so much on anything that Mr. Brandeis has done as it is on other causes. He is a radical and has spent a large part, not only of his public but of his professional career, in attacking established institutions, and this alone would, in my judgment, account for a very large part of his unpopularity. It would be difficult, if not impossible, for a radical to be generally popular with Boston lawyers, or to escape severe adverse criticism of his motives and conduct. Certainly I have never heard of anybody, from Joseph Story down, who has ever succeeded in doing so. The fact, too, that Mr. Brandeis has been the object of constant attack, and in particular of a very skillful and long-continued press campaign engineered on behalf of the New Haven management by Mr. C. W. Barron, has probably increased the feeling against him, for such advertising inevitably produces effect, by mere repetition, upon people who are not conscious of its influence. When you add to this that Mr. Brandeis is an outsider, successful, and a Jew, you have, I think, sufficiently explained most of the feeling against him.

Undoubtedly he is a merciless antagonist, fighting his cases up to the limit, and with great technicality, and taking every advantage which the law allows him, without perhaps always a keen regard for fair play. So far as I am aware, nothing more than this could be fairly considered as proved against him. On the other hand, there is, except among a comparatively small number of people, a general recognition that Mr. Brandeis has rendered public service to the community of extraordinary value, and that in doing so he has been actuated by disinterested motives. He lives with great simplicity, and has throughout his career devoted to unpaid public works a very large proportion of his time and energy. With the opportunities that have been open to him, he could, by following more conservative courses, have been a much richer man than he is to-day. I do not think it can fairly be doubted that he deliberately chose to serve the public rather than to devote himself entirely to making money, nor do I think it can be fairly questioned that in doing this he was actuated by high motives.

Throughout his career he has shown unusual interest in and sympathy for those classes in the community upon whom economic conditions bear hardly, and has devoted a large part of his time and energy to measures which he believed would help them. The work which he has done along these lines has been sanely planned and carefully worked out, and he has acquired in doing it an unusual grasp of those social and economic conditions which underlie many of the most important questions with which the Supreme Court will have to deal. I believe he will bring to the consideration of these problems not only great legal acumen and deep sympathetic insight, but a power of careful analysis and an ability to see facts and law in their larger relations, which will make him a great judge. Once on the bench the things which have injuriously affected his standing at the bar will cease to be important and his strong qualities, his great ability, his knowledge not only of law but of economics and social conditions, and his capacity for taking a broad judicial view of any questions to which he applies his mind, will be of inestimable value.

Of his fundamental honesty of purpose and his deep moral enthusiasm I feel absolutely sure. His qualifications for the position of Supreme Court Judge far outweigh, in my judgment, anything which can fairly be urged against him. For these reasons I sincerely hope his nomination will be confirmed.

I ought, perhaps, to add that I have never had any legal or other business either with Mr. Brandeis or against him, and have no reason to expect that I ever will have such business. I have known him for many years, but never intimately, and I entirely disagree with his political opinions. My knowledge of him is simply that which I have gained in 20 years' practice at the same bar. I have no reason to desire his appointment except the interest which every citizen, and particularly every lawyer, has, to wish that the best possible man should be selected. It is only because I know no one in this community whom I consider so well fitted for the position that I hope he will be confirmed.

Yours, sincerely, ARTHUR D. HILL.

(Hearings, 619, 620.)

[N. B.—Mr. Hill was not one of the protestants, as erroneously stated above. He ardently supported Mr. Brandeis.—T. J. W.]

In the light afforded by what has been said, I proceed to consider the several matters in connection with which the nominee is said to have shown himself unworthy of the high honor with which the President desires to invest him. I pass directly to the two apparently deemed most grave—the Lennox case and the Warren case. Astonishing as it may seem, the leading counsel in both of these cases, representing the parties whose cause Brandeis is charged with abandoning, completely exonerates him from any misconduct worse than an error of judgment. In respect to the Lennox case, Mr. Sherman L. Whipple, who, as the attorney for James T. Lennox, developed in certain proceedings in bankruptcy the exact facts touching the relations which Mr. Brandeis had sustained to his client (the stenographic notes of the interviews out of which the alleged employment rose having been read), asserted that in his opinion Brandeis acted from most honorable motives and with a high ideal of the duty of a lawyer in the premises. Later his exact language will be quoted.

THE LENNOX CASE.

The business of the firm of Lennox & Co., tanners, had been developed by Patrick Lennox, who, at the time of the occurrences to be narrated, was nearly or quite 80 years of age. For 10 years his son James T. Lennox, the other member of the firm, had managed the business. Its transactions amounted to about $1,000,000 a year. The firm property and private assets of the partners exceeded that sum. In the panicky season of 1907 the firm became embarrassed, and a creditor, one Stein, was called to Boston from New York by James T. Lennox. With his lawyer, one Stroock, he met Lennox, who, in detailing his situation, disclosed that if not actually insolvent he was dangerously near being so. Stroock suggested that he, Lennox, ought to consult a lawyer, and, mentioning Brandeis, Lennox assented. The three waited on Brandeis, under whose questioning, which was exhaustive, going in detail into assets and liabilities, the condition referred to was more clearly exhibited. Stein was friendly. Another creditor participated to some extent in the conferences and it was determined that a general assignment without preferences should be made and that Brandeis should try to work out some general agreement among the creditors—for an extension or a composition, as the progress of negotiations might suggest. This was done, one of Brandeis's partners, George R. Nutter, being named as assignee. It was canvassed in the course of the conference whether Brandeis should become attorney for Stein or for Lennox, but it was agreed eventually that the plan could be worked out most effectively if Brandeis did not represent Stein or any other creditor and that he would represent Mr. Lennox in the manner stated. Stroock having asked Brandeis whether, in view of relations which his firm had sustained to a creditor, Weil, Farrel & Co., he could act for Lennox, the latter said:

"Yes; I think I could. The position I should take if I remained in the case for Lennox would be to give everybody, to the best of my ability, a square deal." (Hearings, 792.)

And he continued:

"I should, if I acted for Mr. Lennox, see that he got his legal rights; no more, no less." (Hearings, 793.)

Again, he said:

"I should feel if I were acting for Mr. Lennox as trustee that it was the duty of the trustee to see that everybody got his legal rights as nearly as we could make it." (Id.)

And then Lennox, referring to some comment by Stroock, remarked:

"You are speaking now of Mr. Brandeis acting as my counsel?"

Whereupon Brandeis interjected:

"Not altogether as your counsel, but as trustee of your property." (Hearings, 795.)

It is plain from the foregoing that Brandeis proposed (whatever may have been the understanding of Lennox) that the latter and his father should turn over to him, Brandeis, all their property, he to deal with the situation with justice to everybody and in the hope of making an adjustment that would be satisfactory to all concerned, or, in the event that such a solution could not be reached, to apply the assets to the liquidation of the indebtedness.

The assignment was made in pursuance of that plan, and Brandeis immediately got into communication with the other creditors with a view to carrying it out. When the assignee went to take possession under the assignment he learned, through accountants who had been directed to examine the books, that James T. Lennox had but recently cashed checks to the amount of $10,000, the avails of which did not appear. Inquiry revealed that he had the cash in his possession. On being questioned in the present hearing he stated that he needed the money. The assignee required him to surrender it, which he did, though reluctantly. A short time after a controversy arose between him and the assignee concerning the compensation he was to receive for assistance which he was rendering pursuant to request in attempting to straighten out the tangled affair—the books being fragmentary and the business having been run without much system. He demanded $500 a week; the assignee refused to allow him more than $100. Meanwhile, on September 10, the assignment having been made on the 5th and recorded on the 9th, one J. P. Leahy, of Lynn, where the Lennoxes lived, called upon Mr. Nutter, representing, as his counsel, Patrick Lennox. He conferred with Nutter and forwarded his work for some time, but toward the close of October Patrick Lennox through Leahy, set up the claim that he was not a member of the firm of Lennox & Co. and that he had never signed the instrument making Nutter assignee or that his signature had been obtained fraudulently or without full understanding of its purport. When Nutter refused to hire James T. Lennox at $500 a week he ceased to assist actively in carrying out the trust, and much difficulty was encountered on account of his indifference or apathy and the claims of the elder Lennox referred to. Meanwhile the creditor, Weil, Farrel & Co., was threatening to proceed criminally against James T. Lennox on an alleged fraudulent statement of his financial condition and sought to employ the Brandeis firm to conduct the prosecution, but they declined. An indictment was afterwards returned. The execution of the trust with which Brandeis had charged himself through the assignment proving impracticable, on account of the attitude of the Lennoxes, it was resolved to see it carried out through bankruptcy proceedings, to which various creditors had recourse. Several petitions were filed, one by the Brandeis firm. An adjudication went, the court holding that the assignment was duly made and constituted an act of bankruptcy. In the original conference it had been mentioned that it was such and would require an adjudication, if asked, but the hope was expressed that the creditors would assent to the assignment. (Hearings, 788.)

The thing worked out as was originally contemplated. A composition was effected under which the individual debts of the partners were paid in full and the firm creditors got 40 cents on the dollar. There is no doubt that the making of the assignment, though an act of bankruptcy, was the wise course to pursue under the circumstances. None of the parties involved are making any complaint. Mr. Leahy was not called to express any complaint on behalf of the elder Lennox, and it will be borne in mind that an organization of protestants was represented at the hearing by counsel who undertook to present to the committee the names of any witnesses his clients deemed it advisable to call. James T. Lennox came in response to a subpœna, but was excused on his request on saying that he could add nothing to what had been said by Mr. Stroock and Mr. Whipple. He was later called, at the instance of a member of the committee, but he showed no hostility to Mr. Brandeis. Whipple was employed to resist the bankruptcy proceedings. He is the head of a leading firm of Boston lawyers, said without dispute to be one of the ablest trial lawyers in New England, an enviable reputation which those who heard him testify will agree he doubtless fully merits. When the story was told him of how the Lennoxes employed Brandeis in their troubles only to find that his firm had filed a petition in bankruptcy against them, he did the manly and fraternal thing. He called on Mr. Brandeis. Let him tell the story of the interview. Introducing the subject which gave rise to his call he said:

"They say that you advised an assignment to your partner, Mr. Nutter, and took all of Mr. Lennox's property, and that you now claim that you are not and never have been his counsel, and I thought, Mr. Brandeis, it would be better for me to come right to you and talk over a situation which seemed to me to be serious, because if you did agree with the Lennoxes that you would act as their counsel, and now are acting in a position hostile to them, through this assignment, you will agree with me that a rather serious situation is presented." (P. 287.)

The witness continues:

"He said, 'Of course it would be,' or he said, in substance, 'Of course, that would be a serious situation, but it is not the situation at all; I did not agree to act for Mr. Lennox when he came to me. When a man is bankrupt and can not pay his debts, Mr. Whipple, he is a trustee for his creditors; he has no individual interest; he finds himself with a trust, imposed upon him by law, to see that all his property is distributed honestly and fairly and equitably among all his creditors, and he has no further interest in the matter. Such was Mr. Lennox's situation when he came to me, and he consulted me merely as the trustee for his creditors, as to how best to discharge that trust, and I advised him in that way. I did not intend to act personally for Mr. Lennox, nor did I agree to.' 'Yes,' I said, 'but you advised him to make the assignment. For whom were you counsel when you advised him to do that, if not for the Lennoxes?' He said, 'I should say that I was counsel for the situation,' I said, 'Yes, but you advised an assignment of all his property, so that your firm became possessed of it, because Mr. Nutter was your partner.' He said, 'Yes; and I knew no one better in the city of Boston than my partner, Mr. Nutter, to execute such a trust as that. He stands high; he has everybody's confidence, and that is why I advised it.' I said, 'I must say, Mr. Brandeis, it looks to me very much, according to your principles, as if when a man was bankrupt and went to a lawyer, and the lawyer advises him to make an assignment for the benefit of his creditors, he assigns his lawyer with it, very much in the way a covenant runs with land.' He said, 'Mr. Whipple, I think that is a very unkind and very ungenerous statement for you to make. It impugns my motives, and I can only assure you that I had no such motive in doing it. I was merely occupying myself with seeing that this property, which was brought into my office in this way, was equitably and fairly distributed among the creditors, and I was looking after the interests of everyone; I was looking after any interest that Mr. Lennox had, if any, if anything should be left after the settlement with his creditors, but, in the first place, looking after the interests of the creditors.'" (Hearings, pp. 287-288.)

The impressions Mr. Whipple took away are expressed by him as follows:

"Mr. WHIPPLE. You see, my belief was, at the time, that there was a misunderstanding. My belief was at the time, and is now, that Mr. Brandeis was misunderstood. That is, I preferred then, and prefer now, not on account of any personal friendship or feeling, but my view was that there was a misunderstanding. I think Mr. Brandeis was so much absorbed in the question of caring for the situation, and so much interested in the development of his ideas as to how this estate should be administered, that he unconsciously overlooked the more human aspect of it, which would perhaps have appeared to another, but here was a man confronted with perplexities and charges and troubles, who wanted his personal and individual care and attention. But I think Mr. Brandeis looked upon it as a problem of distribution.

"He did not view Mr. Lennox, with his difficulties and troubles and desires, in quite the human way that certainly some lawyers would. He took a broader view, as it seemed to me, that he was charged with the duty and responsibility, not merely of looking to Mr. Lennox, or to Mr. Lennox alone, but that he owed a larger and broader duty to all the interests involved. Now, I felt then, and I feel now, that that was a mistake, but it does not mean, to my mind, that Mr. Brandeis was culpable; that he deserted a client; that he neglected a duty to a client, because, as it seemed to me—and I will say it frankly—at first he was going with the property and had a more lucrative job. I was convinced from my talk with Mr. Brandeis and from my knowledge of his character that the mercenary motive did not exist; that the thought of deserting Mr. Lennox's case and interest did not enter his head. I thought then, and I think now, that he made a mistake in this, at least, that he did not make it clear, so that a layman would understand just what he was talking about. When a lawyer talks to a business man about being charged with the responsibility of an equitable division of the estate among all who may be interested, such talk, I think, goes right over the head of the ordinary business man, who does not understand clearly the fiduciary duties of a man in that position, and who does not understand the clear and fine definition of the fiduciary duty in its different aspects."

To this he added:

"I was convinced of his sincerity, his devotion to a thought and an idea with regard to the administration of this estate, which was credible—credible because it is true that a man when he is a bankrupt is the trustee for his creditors, and he has no right to try to keep money from his creditors or to prevent an equitable and fair distribution or

to prefer them. That is true. It is a high and proper ideal of practice. A lawyer who is charged with the duty of advising under those circumstances has a duty not only to the debtor who comes to him but to every creditor, and he must and ought to be scrupulous in his discharge of it. But, of course, his scrupulous discharge of that duty to all the others must not permit him to neglect his duty to the one who needs his help the most." (Hearings, 300–301.)

These observations prompt me to inquire what a man wants with an attorney anyway after he has made a general assignment for the benefit of his creditors? All his property is gone, and there is nothing an attorney can do except to see that the trust is managed to the best possible advantage, so that the property will go as far as may be to discharge the claims of creditors or possibly satisfy them in full, leaving a residue which becomes his again. The best thing a lawyer can do for him—the only thing he can do—is to become attorney for his assignee and aid him in administering the trust. There can be no diversity of interest so long as the assignor purposes and seeks to have the trust carried out. He needs no lawyer except the attorney for the assignee. It is the universal practice, accordingly, for the attorney who draws the deed of assignment to become counsel to the assignee. Lennox must have known—it was impossible that he could fail to know—that the Brandeis firm would become the attorneys for Nutter, the assignee. He could not by any possibility have imagined that in a contest of any character arising between him and the assignee Mr. Brandeis or the Brandeis firm was going to counsel him, except as both he and Nutter were counseled; or that if, perchance, any difference between him and the assignee found its way into court Brandeis or his firm was to represent him as against the assignee, Nutter. He never paid the Brandeis firm anything and no charge was ever made against him. When he put himself in an attitude of hostility to Nutter he knew that he could not count on Mr. Brandeis as his personal legal representative. It is an embarrassment to a lawyer who has drawn an assignment and become attorney for the assignee to make a choice should a disagreement unhappily arise between him and the assignor. He could, perhaps, not be blamed whichever way he determined lay his duty. But, as Mr. Brandeis's partner was the assignee there was no choice open to him. Nor was there, apparently, any choice open to the assignee, when it became evident to creditors that the trust was not being carried out and could not be carried out in view of the hostile claims being made, but to resort to the bankruptcy court or watch the assets pass out of his control through proceedings in that court instituted by creditors who would not sit idly by while the assignors were perhaps getting away with the property. Mr. Brandeis apparently resolved that an obligation rested upon him to carry out the trust in the only way open to do so. Some may differ with him as to what ought to be done in a case so rare, but no one who does not view the proceedings with a jaundiced eye can doubt that he acted conscientiously in the course which was taken.

THE WARREN CASE.

On leaving college Brandeis formed a partnership with a classmate, one S. D. Warren, the son of a successful paper manufacturer, S. D. Warren, sr. After the youths had been in business in Boston under the firm name of Warren & Brandeis for about 10 years the elder Warren died, about 1888, leaving three other sons, Edward, Henry, and Fiske, a daughter, Cornelia, and a widow, their mother. The children, of whom S. D. was the eldest, had all reached their majority. The law firm had so successfully established itself by that time that Warren was drawing out of the business about $10,000 a year. The property which had enriched the family was left by the will of Warren, sr., to his widow and children. Warren & Brandeis became the attorneys for the executors. It was the desire of all that the business be kept in the family, and yet Edward was in Europe most of the time, devoted to antiquarian research and the collection of antiquities; Henry was a student in feeble health, who died not many years after; Fiske was a youth without much experience. The ladies were cultured, but their capabilities in a business way had not been put to the test. It was in mind that those who undertook to run the business should assume the risk and that the other members of the family should be relieved of personal responsibility. It was planned that the property should be conveyed to trustees, and these trustees should lease the property to those who undertook to manage it. One Mason, a relative, had long been associated with the elder Warren in the business. He, S. D. Warren, and Fiske Warren took it over, the old firm name continuing. The mill property was conveyed to trustees, Mrs. Warren, S. D. Warren, and Mr. Mason, the deed reciting the trusts and authorizing the trustees to lease to a firm of which any of the trustees might be members. It was then leased to the new firm, which agreed to pay to the trustees 6 per cent on the valuation placed upon it and one-half the profits. The movable property appurtenant to the mills was taken over by the firm and the value of the respective shares credited on its books to each beneficiary. Substantially, the firm bought this property and became indebted for it. S. D. Warren, who had given some attention to the business during the later years of his father's life, severed his relations with the law firm and thereafter devoted himself to the paper business, though the firm name of Warren & Brandeis was carried for a number of years thereafter.

The firm of which Mr. Brandeis was the head after the retirement of S. D. Warren became attorneys for the trustees and for the firm of S. D. Warren & Co., their fees being paid in part by each, respectively. Edward Warren was abroad when the instruments mentioned were prepared and the deeds had to be sent there to him for execution. With the letter went a list of the accompanying instruments, as follows:

"1. Deed of Cumberland mills and other property, from the residuary devisees under father's will to John E. Warren.

"2. Deed of Copsecook mill, same to same. The property covered by both these deeds will be conveyed by deed of even date to the trustees named in—

"3. Declaration of trust by Susan C. Warren, Samuel D. Warren, and Mortimer B. Mason, of which I send you a copy.

"4. Deed of Forest Paper Co. property to Louis D. Brandeis. This will be conveyed by him at once to the purchasers of the property, Mortimer B. Mason and Samuel D. Warren.

"5. Bill of sale, residuary legatees, to new firm of S. D. Warren & Co.

"6. Brief explanation of proposals, showing the reasons for the various transfers." (Hearings, 843.)

The letter, after giving directions concerning execution of the instruments, continued:

"I do not send you at the moment detailed figures of the condition of the estate, such as I have submitted to the other children, for two reasons—first, because I do not like to have them go out of my possession and run any chance of going astray, and, secondly, because I have found so much explanation necessary to their comprehension by the other children that I do not think you would understand them without explanation. All the others have been carefully into the matter and approve of the proposed arrangement; and I shall have to ask you to take my word for it so far as you do not understand it. When you return in the fall, I will go into all details to your satisfaction.

"The upshot of the whole matter is that the Forest Paper Co. is sold to Mortimer and myself at what I think is a fair price for the one-half interest of the estate (viz, $90,000), the other half being owned by George W. Hammond. The assets of the old firm of S. D. Warren & Co. are sold to the new firm at a fair valuation. The Cumberland and Copsecook mills and other real property in Maine are conveyed to the trustees for 33 years to be dealt with for the benefit of the residuary devisees in the proportions in which they are interested under the will. For the present the rental allowed to the firm of S. D. Warren & Co. for the use of these mills will be 6 per cent per annum on the value of the plants at any time plus 50 per cent of the net profits of these mills. This I think an extremely favorable arrangement for the devisees.

"I should add, lest you get an inflated idea of your income, that the profits of last year (in which you had a larger interest than those of this) were larger by a considerable sum than they will be this year, or than they ever were before; 1888 was the high-water mark in profits.

"Please execute these papers as soon as convenient and return them immediately on execution, care S. D. Warren & Co., 220 Devonshire Street, in a waterproof envelope clearly addressed.

"Your affectionate brother,

"SAMUEL D. WARREN."

(Hearings, 844.)

Edward did return in the fall, and came to this country at intervals thereafter. The liveliest affection had always, until differences unhappily afterwards arose, obtained among the various members of the family. Even on the eve of starting suit against his brother S. D., in the year 1909, Edward wrote him as follows:

"MY DEAR SAM: I have had to file the bill, because otherwise it would have been difficult to obtain a satisfactory before Monday next, but—

"First. I hope that you will make me contented to withdraw it; and

"Second. The phrases are such as in a legal document I have felt obliged to sign, but are very far from representing my feelings toward you aside from the business or my desire for unanimous fraternal procedure.

"Let us try to agree: it would be much pleasanter.

"Your affectionate brother,

"E. P. WARREN."

"BELLEVUE HOTEL, BOSTON,
"December 13, 1909."

(Hearings, p. 860.)

Annual statements were sent to all the beneficiaries and remittances or settlements made. In 1902, after the plan had worked without friction for 13 years, Edward exhibited some dissatisfaction. He employed a lawyer, one William Youngman, who several years thereafter brought a suit for Edward, asking that his brother S. D. be removed as trustee, for a decree annulling the lease, and for an accounting. Issue was joined. S. D. Warren was examined at length before a master, the examination being conducted by Sherman L. Whipple, heretofore referred to. S. D. Warren died before his examination was completed, and a settlement of the litigation was effected, under which the interest of Edward Warren was acquired. Mr. Moorfield Storey was employed by Fiske Warren and represented him in the litigation. Mr. Storey appeared before the committee as a protesting witness. He signed a remonstrance as an ex-president of the American Bar Association, appearing in the record. He appeared to tell that Brandeis had been employed to wreck the New England Railroad, to be hereafter referred to, and that the reputation he bore at the bar of Boston was not good. Asked about the Warren case, he said:

"Mr. STOREY. The position is this: When Mr. Samuel D. Warren, sr., was alive he owned the mills and was the controling partner in the firm. The firm sold the goods, and there was some arrangement between the firm and Mr. Mason, personally, for a division of the expenses and profits. When he died that situation existed, and something had to be done in order to carry on the business, and an arrangement was made whereby the property formerly held by Mr. Warren, personally, was vested in trustees, and Mr. Samuel Warren took his father's place in the firm, and Mr Fiske Warren was also in the firm, but with a smaller interest. Mr. Edward Warren was in Europe engaged in the study of arts and curiosities and was not in active business.

"The arrangement which was made seemed to me, as I examined it, a perfectly fair arrangement. It probably, in view of what happened afterwards, would have been better if Mr. Edward Warren had independent advisers to counsel him. But the thing was submitted to him and agreed to by him, and I saw nothing in the arrangement as to which he could complain. I sat through the trial, which had begun, and Mr. Warren was on the stand, as I remember, about six weeks, and during that time was cross-examined by Mr. Whipple. There were about six weeks more, as I understand it. It looked as if the cross-examination might last longer, when Mr. Warren died. During the cross-examination nothing developed which reflected upon Mr. Samuel D. Warren in any way or upon Mr. Brandeis.

"As I say, I saw nothing in the case up to the time the case ended of which Mr. Warren could be in any way ashamed. It seemed to me he had treated his brother with great fairness. I should have done, perhaps, very much as Mr. Brandeis did if I had been in his place. It would have been a matter of caution, however, to have independent counsel, but apparently the family united——

"Mr. ANDERSON. Was there any more reason for suggesting independent counsel for Mr. Edward D. Warren than Mrs. Warren—I mean at the outset?

"Mr. STOREY. I do not know that there was.

"Mr. ANDERSON. Was there any more reason for suggesting separate counsel for Edward Warren than for Fiske Warren?

"Mr. STOREY. They were all of age, and Fiske Warren, up to that time, had not been very active as a business man, any more than Edward Warren, but he was on the ground and was in a position to employ counsel. Mr. Edward Warren was on the other side of the water. At the time, as I say, there was nothing in the relations between the different members of the family to suggest that there was any divergence of interests, or any reason why they should not act harmoniously, as they did." (Hearings, 277, 278, 279.)

Perhaps that is all that need be said about the Warren case.

If Mr. Storey, with his opportunity to know the facts, and he was obliged to investigate them in order properly to advise his client, found nothing to criticize, the quest is not likely to yield much.

Mr. Hollis Bailey was associated with Youngman in the litigation. He is likewise an adverse witness.

The following indicates his view of Brandeis's wrongdoing:

"Senator WALSH. So far as the Brandeis firm are concerned and Mr. Brandeis's connection with it, as I understand you, the complaint which you make against him is that this firm acted during this period at one and the same time for the lessors and for the lessees in these arrangements?

"Mr. BAILEY. Yes; and that should rightly have suggested to him, when there were conflicting interests, that independent counsel would have been quite proper to act.

"Senator WALSH. The point you make is that it was the duty of the Brandeis firm to have suggested to your client, as soon as differences arose, that he should get independent counsel?

"Mr. BAILEY. Independent advice. (Hearings, 149.)

"I think, further, that if Mr. Brandeis had properly considered the rights and interests of Mr. Edward Warren he would have said to him, 'Your brother, Samuel, while he is trustee, is getting these very large sums for carrying on the business under the lease.'

"Senator WALSH. That is to say, that when the lease was made originally you think Mr. Brandeis should have advised Edward that he ought not to consent to that lease or enter into it because his brother, Samuel, was getting a better bargain than he ought to get?

"Mr. BAILEY. Not to do it, in any event, without having the advice of independent counsel. Those are the main points." (Hearings, 150.)

But why should Brandeis advise Edward Warren that he ought to get independent counsel? Would not such a suggestion from him be an affront, and a perfectly gratuitous affront, to S. D. Warren, who might be presumed by anyone knowing him, and particularly by his law partner, to give his brother such information as the conditions might seem to require? Edward was at the time 30 years of age—a graduate of Oxford. If Brandeis ought to have advised him to employ an independent lawyer, certainly he owed the same duty to Mrs. Warren and to Cornelia and to Fiske and to Henry. It would be an absurdity as a business proposition to bring into a family settlement of that character a lawyer for every member or even one representing each diverse interest, and there were at least three.

As to advising Edward when differences arose to get another lawyer, he forthwith employed Youngman, and it was unnecessary to give him any advice on that point.

But it was suggested at the hearing, perhaps by a member of the committee, that when suit was begun against S. D. Warren, the Brandeis firm ought not to have acted for him, because it had been attorney for Edward Warren in the transactions under investigation in that it had been attorney for the trustees to whom he stood in the relation of cestui que trust. That is a startling doctrine. Certainly Edward Warren had disclosed nothing to the firm, confidential or otherwise, which could be used against him. The firm had learned nothing and could have learned nothing that each beneficiary was not entitled equally to know. Can it be that when the title of the trustee or his administration of the trust is attacked by one of the beneficiaries the attorney for the trustee can not represent him, because, forsooth, the former has been drawing pay out of funds which belong equitably in part to the suing cestui? Is an attorney for a corporation precluded from defending its directors when assailed in court for maladministration? Is the attorney for an executor or administrator? The suggestion must have been made unreflectingly.

The suit was founded upon the supposition that the lease fell within that class of contracts which equity avoids, not because of any fraudulent purpose, but because of a public policy springing from a desire to remove the temptation to defraud.

Here is what Mr. Whipple has to say of this affair:

"The question was then whether all parties who were involved—all the beneficiaries—knew it and assented to it, fully advised and with their eyes open, and it was contended in behalf of Mr. Edward Warren, who was at the time abroad and whose information all came by correspondence; that he intrusted the whole matter to Mr. Brandeis and was not fully informed, so that that was the ground of the position which we took in the litigation and with reference to which my cross-examination of Mr. Samuel D. Warren proceeded; but Mr. Bailey, as I noticed by the public press, stated, in response to a question by one member of the committee, that he believed that Mr. Brandeis intentionally framed this lease and other papers so as to give Mr. Warren this opportunity to make private profit. That belief I do not share with Mr. Bailey. I cross-examined Mr. Warren at length, and I was then impressed, and so expressed myself, that the idea of defrauding his brother or the other members of his family, or securing a personal advantage to which he was not entitled, did not enter his head; that the entire transaction was free from any taint of dishonest motives or intentional fraud.

"I had the feeling with regard to Mr. Brandeis somewhat like Mr. Storey has just expressed, that he was possibly careless in not making very, very clear to Mr. Edward Warren just the whole transaction and its possible effect upon his rights, but I felt at the time, and I feel now, that Mr. Brandeis, who has been the family counselor and been trusted for many years, thought that there was a perfect understanding and accord among all the members of the family; that Mr. Samuel D. Warren, who, by the death of his father, became the head of the family, should be charged with the responsibility of handling and operating this large property and should have what he could make out of it. Of course, if that was so, and all parties assented, there was no violation of trust, and there was no moral wrong. Therefore I reached the conclusion that there was a legal wrong; that there was a violation of that principle of law with regard to trusts which I have just pointed out, but that there was no reprehensible motive to secure a personal advantage secretly or in any way like that." (Hearings, 283–284.)

Mr. Youngman, referred to, overwhelms Mr. Brandeis with accusations in connection with this case, but it may be said in charity that his employment by Barron to gather up the material for a newspaper campaign against Brandeis probably warped his judgment touching the acts of that gentleman.

THE BALLINGER INQUIRY.

The essential facts in reference to this matter are well known. Glavis, a subordinate in the Interior Department, had laid before President Taft charges affecting the administration of that department under Secretary Ballinger and had been dismissed from the service. It was claimed, among other things, that by a laxity or liberality in the practice of the department the Secretary was permitting the coal lands of Alaska to be fraudulently appropriated. Complicity in the general purpose, or at least toleration of it, was understood by many to be implied. The incident intensified a suspicion of the Secretary entertained by the so-called "conservationists," headed by Gifford Pinchot, Chief Forester. Collier's Weekly, an advocate of the ideas of the "conservationists," printed the Glavis charges. A congressional investigation into the causes of the removal of Glavis was ordered. Collier's Weekly employed Brandeis to appear at the investigation. Upon consideration it was determined that he should appear for Glavis, their contributor, and not seek to introduce the paper as a party to the proceedings.

Glavis was presumably quite willing to have so able a lawyer as Mr. Brandeis. He announced to the committee that he appeared for Mr. Glavis, and as his attorney conducted the inquiry. Collier's paid him $25,000 for his services, which extended over a period of five months. He is accused of unprofessional conduct in not announcing to the committee that he was employed and paid by Collier's.

It is asserted and not denied that it was common knowledge at the time that he was employed by Collier's. He never was asked who hired him or by whom he was paid. The committee, perhaps, thought it quite immaterial. They could scarcely have believed that an impecunious Government clerk was feeing one of the first lawyers in the country.

Be that as it may, were it not for the views of some members of the committee, I should unhesitatingly declare the charge absurd. It presents the question of whether a lawyer may with propriety have his name entered in a cause as attorney for a party who pays him nothing under employment by another, but with the assent of the party he nominally represents. I assert that it is a practice of daily occurrence, not only tacitly approved but recognized by the courts. Can not a mother employ an attorney to defend her son charged with crime? Must he announce in entering his appearance who employed him and where he gets or expects to get his pay?

The stock association of my State frequently employs a lawyer to aid county attorneys in the prosecution of cattle-stealing cases. The local prosecutor is usually glad to have his assistance. Is he disqualified for judicial honors if he does not announce to the court that the State did not hire him and does not intend to pay him? I venture to assert that scarcely a term of the Supreme Court passes during which some lawyer does not have his appearance entered on the invitation, or by the assent of the counsel already of record, being employed by some one not a party to the suit, but who is interested in the principle involved. The court would stare at a lawyer who under such circumstances, in beginning his argument, took its time to announce that he was not hired and did not expect pay from the party for whom he spoke.

If this is professional misconduct the bar needs regeneration.

Another charge in this connection is answered by the undisputed evidence of the record.

THE NEW ENGLAND CASE.

Barron told the committee that Hon. Moorfield Storey could tell that Brandeis had been employed in 1902 to wreck the New England Railroad. It was the conclusion of that gentleman that he had been so employed. The facts were that Brandeis had been retained by one William Kelly, a reputable lawyer of New York City, now a supreme court justice, to bring suits against the directors of the New England road, charging misconduct on their part, to restrain the payment of dividends, alleged to be illegal because there were no profits from which to pay them, and to restrain the issuance of bonds because the bonding power of the corporation had been exhausted. A receivership was contemplated and a bill drafted. Separate suits were started in the States through which roads comprising the system ran. They represented a contest between Austin Corbin, Kelly's client, and the board in control of the road. He had been president, but had resigned, possibly under pressure. The suits were started in the name of Goldsmith, a liquor dealer of Boston, who was a stockholder. The season of financial depression was on. After carrying on the litigation with success, so far as it progressed, Corbin, in 1893, quit and directed Kelly to give no further attention to it on his account, advising him that the New Haven, which had meanwhile acquired the property in foreclosure proceedings, would take care of the litigation. He insists that Corbin was in no way associated with the New Haven at the time the suits were commenced, that Corbin indeed was fighting that system, running a rival road. Be that as it may, there is not a breath of testimony that Brandeis knew or had any reason to suspect that Corbin was acting for the New Haven, if he was, nor is it intimated that the suits were without foundation, so palpably baseless as to suggest to an ordinary lawyer that they were malicious.

In 1893 the Massachusetts Legislature inquired whether the New Haven had not forced the New England into insolvency with a view to the monopolization of transportation facilities. The examination was conducted by Mr. Storey. He called Mr. Brandeis and interrogated him concerning the suits and his employment. Brandeis quite deferentially declined, in the first place, to tell, claiming the privilege and the duty of counsel, but later told, as herein set out, about the matter. The litigation had evidently engendered bad blood between these two lawyers, as evidenced by the examination referred to. I should be loathe to believe that Mr. Storey carried to this day the animosity thus aroused, but the opinion of a man often defies analysis.

Another protesting ex-president of the American Bar Association, Simeon E. Baldwin, was counsel in Connecticut in that litigation for the directors of the New England road, which Corbin charged with misdeeds of many kinds. This affair narrows down to the question of the offense of Brandeis in bringing the suit in the name of Goldsmith, who was fully indemnified by Corbin. Goldsmith afterwards sued the Corbin estate to recover on account of expenses incurred in the litigation. It was not asserted that the court held that his agreement with Corbin was contrary to public policy or good morals.

It is conceded that whatever right Corbin had to maintain the actions, Goldsmith had the same right. The question is akin to that presented in the Ballinger case.

The Supreme Court of the United States held, in Wheeler v. Denver (229 U. S., 342), that a taxpayer could maintain a suit in the Federal court, though it was brought by his permission by the attorneys for a corporation which could not sue therein, which had indemnified him against costs and damages, provided the attorneys, and borne all the expenses.

A fight was waged in my home city for years between the municipality and a water company. On a number of occasions when action was taken by the city which the company thought inimical to its rights or interests, and which in its opinion would justify a taxpayer's suit, it got some friend, possibly a director of the company, to bring suit; that is, started suit in the name of the taxpayer under an indemnity to him. The most high-minded lawyers at our bar have pursued this course, and it never occurred to me that they were subject to disbarment or open to censure for having appeared as they did. What harm is done? What evil is to be feared? Isn't it true that the law is no respector of persons? The "saloon keeper" Goldsmith looked to the court quite like the capitalist Corbin. It does not appear why Corbin preferred not to have the suit brought in his name, but, as in the Ballinger case, it was generally known that he

was back of them. They were referred to as "the Corbin suits." That is immaterial. It was of no consequence to the court in the determination of the suits whether Goldsmith proceeded on his own motion or at the instigation of some one else. Neither the facts nor the law could be affected.

THE ILLINOIS CENTRAL.

This complaint simmers down to a question of whether Mr. Brandeis dissimulated or prevaricated in a statement made in a letter in relation to his being or having been the attorney for E. H. Harriman. The letter having been read and the facts having been developed by testimony, Senator CUMMINS, a member of the committee, addressed the following question to Mr. Fox, who was conducting the case for the protestants:

"Senator CUMMINS. I would like to know, before we go further, your view of Mr. Brandeis's statement or letter to Mr. Walker. Wherein do you think it shows false? Wherein do you think that it departs in any degree from the truth?" (Hearings, 354.)

To this he got no answer; presumably because Mr. Fox was able to give none. Neither am I.

THE SHOE MACHINERY CO.

Mr. Winslow, president of the Shoe Machinery Co., heretofore referred to, made bitter complaint against Brandeis. Prior to 1899, when that company was organized, the latter had been the representative—business rather than legal, apparently—of the Henderson family, of Chicago, owning interests in one of the companies uniting to form the Shoe Machinery Co. Brandeis became one of 19 directors in view of the interest referred to and had such part in the work of the board as a director not immediately concerned with the management of the business ordinarily has, being 1 of 19.

Perhaps more, because his business capacity is perhaps not much less marked than his talent as a lawyer. His firm, though not the general counsel for the company, was frequently employed by it. In 1906 an attempt was made before the Massachusetts Legislature to have an act passed declaring void so-called "tying clauses" in leases under which the company let out its machinery. At the request of Mr. Winslow, the president, Mr. Brandeis appeared before a committee and made an argument against the bill. It will be noted that the bill proceeded upon the assumption that the tying clauses were perfectly legal. It proposed to outlaw them. Up to that time the legality of the clauses in question had not been the subject of any special comment, and nothing appears to show that the Brandeis firm had ever been called upon to express an opinion on the subject. In the effort to defeat this legislation the Shoe Machinery Co. had the cooperation of a number of the shoe manufacturers, clients of Brandeis, whose sympathy and help had been enlisted partly, at least, through his efforts.

The controversy directed attention in a special way to the specific provisions of the leases and the legislation failed, due to some extent at least to a promise secured by Brandeis from Winslow to confer with the shoe manufacturers concerning certain provisions of the leases to which, as the contest proceeded, they expressed a decided objection. These conferences took place in the fall, Brandeis insisting that the leases should be changed, but without convincing Winslow. Thereupon Brandeis resigned as a director of the company. Some lawsuits then pending, apparently of no great consequence, in which his firm represented the company, were afterwards tried, but save for that work all his relations with the company ceased.

In 1907 the Massachusetts Legislature passed an act outlawing tying contracts. The bright legal minds which then guided the affairs of the Shoe Machinery Co. found it easy to circumvent the law, as they thought, by inserting a provision in the lease authorizing the company to cancel it at will. A lease could be avoided, then, against any man who appealed to the new law.

In 1911 the Supreme Court affirmed the decisions in the Standard Oil and American Tobacco Co. cases. Other decisions were rendered shaking the faith of many people that a combination, the basis of which was patent rights, was immune under the Sherman law. Enlightened by these cases the Brandeis firm gave an opinion to the effect that the tying clauses were void under the Sherman Act, of course with respect to insterstate business.

Meanwhile the Thomas G. Plant Co. was acquired by the Shoe Machinery Co., as heretofore recited. Thereafter at hearings before congressional committees and in public addresses to illustrate some point he was making in connection with the trust problem, Brandeis frequently referred to the oppressive tying clauses of the Shoe Machinery Co.—which, by the way, were a growth dating from 1861—and to practices of that company, all of which he roundly denounced. It is not claimed that he ever disclosed any facts concerning its business not long public property, of which he might have learned either as director of the company or as casual attorney for it. Indeed, the things of which he complained had already been communicated to the Department of Justice, and had been the subject of comment by representatives of the shoe manufacturers before committees of Congress.

Mr. Winslow seems to be possessed with the idea that because Brandeis had taken fees from the Shoe Machinery Co. he bound himself forever not to criticize its policy or its practices—that in a way he had violated his fealty. It is not an uncommon view on the part of those who manage great industries and command many men that they may insure the support of lawyers on public questions by putting them on the pay roll or paying them from time to time for legal services. In the case of Brandeis the assumption seems not to have been well founded. In that he did something to dispel that notion, he deserves well of his profession.

It is claimed that in some respects his position in realtion to questions in which that company was concerned was inconsistent. Doubtless he finds it easy to reconcile whatever differences may appear or he may frankly admit that on at least one occasion he was in error. What if he was inconsistent? Is it forbidden to a man that he change his mind?

If in the impetuosity of attack or the ardor of advocacy he was led sometimes into giving too vivid a hue to the facts touching the methods of business of Mr. Winslow's company or drew unwarranted conclusions from them, there was no such obliquity of mind disclosed or faults of character revealed as would in anywise unfit him for judicial duties. It is impossible in reason to attribute his attitude toward the Shoe Machinery Co. after he parted company with it to any but the most creditable motives. There had been no quarrel, no heated interchanges, when the separation came that might have bred some deep-seated resentment to satisfy which the subsequent accusations were made by Brandeis. He was moved either by a sincere purpose to serve the public interest or he was playing the part of a demagogue. Few who plead the cause of the great public escape the imputation from those whose privilege they seek to curtail of pandering to popular prejudice.

In the Illinois Central matter he was getting proxies in New England for what may be called the Harriman interests as against the Fish interests while he was fighting the merger of the Boston & Maine. In these matters, too, it is said he occupied positions that were wanting in consistency. It would serve no useful purpose to inquire whether the local fight was an attempt to "Harrimanize" New England or whether the ousting of Fish was to be desired notwithstanding the influence of Mr. Harriman would be extended.

THE GILLETTE SAFETY RAZOR CASE.

I shall not enter into the details of this matter. Brandeis's firm was employed to defend the directors of that company in a maladministration suit, and to resist actions brought by various parties against the directors to rescind sales of stock sold them without disclosing the true value of it and the condition of the company.

While these actions were pending the defendants quarreled. Certain of them, including Gillette, the inventor of the device, fearing a plot on the part of others to oust them from the directory, went to Brandeis and employed him to help them to secure enough outstanding stock to give them control. He did so, and the firm continued to defend them all, in the actions in which they were employed, until they were finally disposed of. None of the parties are complaining, but the plaintiff in one of the annulment suits had some stock. Brandeis besought his attorney to induce his client to sell. He did so, and the stock was acquired. Now, the attorney for another claimant prosecuting a similar suit, but who owned no stock of record, had been associated on the record as counsel for the plaintiff. The original attorney asserts that Brandeis asked him in the course of the negotiations not to mention the matter to the attorney for the other claimant who had thus been associated. He bore no relation whatever to the directors to whose interests it is suggested Brandeis was not faithful. They are, as stated, not complaining, nor does it appear that they ever did complain.

THE ADVANCE RATE CASE.

Mr. Brandeis was employed by the Interstate Commerce Commission to resist the application of the railroads made in 1913 for a 5 per cent increase in freight rates. He had appeared for certain shippers in a similar application which had been made in 1910, and which had been denied.

Clifford Thorne, one of the railroad commissioners of the State of Iowa, appeared for various shippers and for the State authorities for a number of the Central Western States, who naturally resisted any raise.

The inquiry involved two questions; first, as to whether the net revenues of the railroads as a whole were adequate—that is, without any new economies or change of business methods; and, second, if they were not, how were the net revenues to be increased, and particularly whether they were to be increased by a general raise.

The shipper is not ordinarily concerned, or, at least, not so deeply concerned about what the rate is going to be on any commodity except his own. It may be that the rates as a whole do not produce the requisite revenues and that something additional ought to be raised by an increase on his particular line of goods.

An attorney to represent all interests, as one employed by the commission must, approaches the proposition from a slightly different angle from that from which the attorney for the shipper views it.

It was assumed, however, that the railroads would be represented by able counsel who might be relied upon to bring out all facts helpful to their side of the case.

Mr. Thorne, whose diligence and fidelity, not to speak of his talents, which are undoubtedly of high order, can not be too much commended, in his testimony and in his argument before the commission advanced that the net revenues on the whole were sufficient to pay the companies a reasonable return on their investment.

Mr. Brandeis, in closing the case, declared that in his opinion they were not on the whole sufficient. He then proceeded to tell how by making readjustments here and instituting economies there they could be made sufficient without any raise in general rates. The increase was denied. It is said that Brandeis should not have made the admission that he did. Naturally it was disappointing to Mr. Thorne, but no one suggests, not even Thorne, except from his manner, that Brandeis had not reached the conclusion he announced after a thorough and painstaking inquiry, bringing to bear on the subject his masterful faculty in the analysis of accounts. But it is asserted that he might have said, "If it be conceded, etc.," or "I shall assume for the purpose of the argument, etc."

Mr. Brandeis's critics are hard to please. In the Ballinger and Goldsmith cases it is said he should have been more frank with the court; in this case, that he should have been less so.

The remainder of the matters submitted to the committee do not seem to require notice. It would be useful, perhaps, if time permitted, to outline them in order to show the frivolous character of most of them—indicating a straining after results and a consciousness that the case made on the matters reviewed is a weak one.

The real crime of which this man is guilty is that he has exposed the iniquities of men in high places in our financial system. He has not stood in awe of the majesty of wealth. He has, indeed, often represented litigants, corporate and individual, whose commercial rating was high, but his clients have not been exclusively of that class. He seems to have been sought after in causes directed against the most shining marks in it. He has been an iconoclast. He has written about and expressed views on "social justice," to which vague term are referred movements and measures to obtain greater security, greater comfort, and better health for the industrial workers—signifying safety devices, factory inspection, sanitary provision, reasonable hours, the abolition of child labor, all of which threaten a reduction of dividends. They all contemplate that a man's a man and not a machine. A letter addressed to me by Hon. David I. Walsh, concerning his activities in a public way in the State of Massachusetts, affords some light on the opposition to this nomination. It is made an appendix hereto.

It is said that it is to be regretted that any such controversy as this in which we are involved should arise over a nomination of a justice of the Supreme Court. So it is. But when it is said further that one might better be chosen over which no such bitter contention would arise, I decline to follow. It is easy for a brilliant lawyer so to conduct himself as to escape calumny and vilification. All he needs to do is to drift with the tide. If he never assails the doer of evil who stands high in the market place, either in court or before the public, he will have no enemies or detractors or none that he need heed. The man who never represents the public or the impecunious citizen in any great forensic contest, but always the cause of corporate wealth,

never has these troubles. It is always the other fellow whose professional character is a little below par.

The bar is still the bulwark of the liberties of the people. To it they must look in the future as they have looked in all of our history for fearless champions. Discouragements enough beset the ambitious youth who resolutely sets out upon the path of devotion to duty and to the cause of justice, who strives to render some real public service. I do not care to warn him to abandon the hope of reaching the summit of his profession by that route.

My vote is for the confirmation of the nomination of Louis D. Brandeis for associate justice of the Supreme Court.

Respectfully submitted.

THOMAS J. WALSH.

APRIL 3, 1916.

APPENDIX.

WASHINGTON, D. C., *February 7, 1916.*

MY DEAR SENATOR WALSH: It seems to me a public duty to write to you in regard to the appointment of Mr. Louis D. Brandeis, of Massachusetts, as a justice of the Supreme Court of the United States. During the two years I was governor of Massachusetts, and in the years preceding them, I had repeated occasions to observe this man and his high ideals and common sense; his wide practical knowledge of the law; his extensive understanding of the business, economic, and social problems of our time; his sound judgment and ardent devotion to the public welfare. As you know, we are justly proud of the number and ability of our public-spirited men in Massachusetts, and it would be difficult to point out a better example of generous, unpaid, diligent constructive work upon the side of the public interests than that which has been done by Mr. Brandeis.

On numerous occasions, beginning at least as far back as 1896, whenever the creation and control of the Boston subways was before the legislature, he has been, as a private citizen, a tireless and successful leader against powerful opposition in support of the principle that the value of the subway franchises should be kept for the public, after giving to the operating company a reasonable return for services rendered. He declined to accept any compensation for his long-continued and very valuable constructive work during all these years in this cause.

When the gas situation in Boston appeared to be in a hopeless condition he urged again as a private citizen the plan by which the dividends of the gas company were made dependent upon the price charged for gas to the consumers. This has resulted in a reduction in the price of gas to the public and in a corresponding increase in dividends to stockholders of the company.

When the insurance investigations occurred he devised and successfully pressed for legislation in Massachusetts permitting, for the first time in this country, our savings banks to issue small-payment life insurance policies. This has resulted in an opportunity for our working people to insure themselves at much lower rates than were being charged by the industrial insurance companies, and has led these companies to make lower rates. To my personal knowledge, Mr. Brandeis has given annually thousands of dollars to further the work of bringing to the working people of our State this opportunity for less costly insurance. For more than 20 years prior to the Massachusetts law there had been no reduction in the cost of industrial insurance, but since the passage of the law so successfully advocated by Mr. Brandeis in Massachusetts, the premiums of the old-line companies have been reduced on an average 20 per cent, thus saving to the people of this country insured in industrial companies from $15,000,000 to $20,000,000 annually and to the people of Massachusetts about $1,000,000.

The system of arbitration which he devised for the New York Garment Workers is an equally significant example of his judicial qualities and his public service in other fields.

In 1906 the people of New England began to awaken to the fact that the New Haven Railroad was apparently successfully seeking to create a New England transportation monopoly. The event which focused public opinion most sharply was the acquisition of the controlling interest in the Boston & Maine Railroad. Mr. Brandeis, again as a private citizen, commenced an exhaustive study of this railroad problem, and made public an analysis of the financial condition of the New Haven Railroad, pointing out for the first time to the people of New England the inevitable disaster sure to result from the course of mismanagement and waste then being pursued. His advice was unheeded, his warning derided, and his motives impugned. But time has shown that his conclusions were based upon carefully ascertained facts, to which he applied the clearest and most cogent reasoning power. Three years ago what he prophesied nine years ago became apparent to all and is now a matter of public knowledge and of record in Senate documents and elsewhere.

I instance these, among many public services covering a long period of years, as illustrative of the work done as a private citizen in the service of the public interest without compensation, at a large expenditure of his own time in the midst of a very active professional life.

Indeed, in extensive acquaintance with public men, I know of no one who, without emolument or honors of public office, has given so much of the valuable constructive service of a trained lawyer to the public weal as Mr. Brandeis.

I have written mainly of Mr. Brandeis's public work for the past 20 years, but I would not have you overlook that before he engaged in these public activities out of which have grown results for which he is entitled to the gratitude of the American people, he had achieved already a position at the Massachusetts bar which would well have warranted his appointment to the Supreme Court at the age of 40. He is a great lawyer and a great citizen. Is not this a combination for a great judge?

Were I not hastening on a far journey I would seek a personal interview with the committee, but failing such opportunity, I venture to emphasize and perhaps to repeat some of the things I said to you orally, and I hope that you will communicate them to your committee, together with my very best respects.

Very sincerely, yours,

DAVID I. WALSH, *Boston, Mass.*

Hon. THOMAS J. WALSH,
The Senate, Washington, D. C.

On May 10, 1916, the Committee on the Judiciary appointed the same subcommittee, with the exception that Senator BORAH took the place of Senator CUMMINS (absent), to take further evidence regarding the matter brought to the attention of the committee by a member of the committee concerning the relation of Mr. Brandeis with a drug merger.

This subcommittee met on May 12, 1916, and heard the testimony of Mr. Louis K. Liggett, Mr. Frederick E. Snow, and Mr. George W. Anderson, and also heard the testimony of Hon. James S. Harlan, member of the Interstate Commerce Commission, all of which evidence was printed as a part of the record.

It seems that there was a holding company formed to take over certain drug companies, and Mr. Brandeis was consulted as to the legality of the corporation and proposed combination.

There was nothing in the employment out of the ordinary, and since the evidence was taken no one has suggested that there was anything improper in the employment or anything to be criticized in what Mr. Brandeis said or did. It was a proper employment, and, unless this committee is to supervise the private practice of the law, there is nothing regarding the charges to discuss.

This supposed charge is one of many which come under the notice of an honorable member of the committee, and he in good faith brought it to the attention of the committee, which, regarding its source, felt called upon to take the evidence.

We venture to introduce further comment upon this nomination with the following from an address made by Mr. Brandeis on May 4, 1905, before the Harvard Ethical Society, as follows:

"It is true that at the present time the lawyer does not hold as high a position with the people as he held 75 or, indeed, 50 years ago; but the reason is not lack of opportunity. It is this: Instead of holding a position of independence, between the wealthy and the people, prepared to curb the excesses of either, able lawyers have to a large extent allowed themselves to become adjuncts of great corporations and have neglected the obligation to use their powers for the protection of the people.

"The leading lawyers of the United States have been engaged mainly in supporting the claims of the corporations; often in endeavoring to evade or nullify the extremely crude laws by which legislators sought to regulate the power or curb the excesses of corporations.

"For nearly a generation the leaders of the bar have, with few exceptions, not only failed to take part in constructive legislation designed to solve, in the public interest, our great social, economic, and industrial problems, but they have failed likewise to oppose legislation prompted by selfish interests."

No doubt the distinguished audience which heard this address, as well as the bar and public generally, approved it; that the distinguished author of it deigned to put it into actual practice should go to his credit rather than to his prejudice.

The Five Per Cent Rate case was somewhat illuminated by the testimony of Hon. James S. Harlan, member of the Interstate Commerce Commission, found in part 22 of the hearings at page 157. This evidence makes it clear that the charges brought by Mr. Thorne against Mr. Brandeis are certainly not taken seriously by the Interstate Commerce Commission. Mr. Harlan reviews the whole circumstances concerning the employment, and we quote from that part of his evidence, as follows:

"Senator WALSH. Mr. Harlan, I want to ask you a question or two. I should like to inquire of you whether it had ever occurred to you or to any of the members of the commission, so far as you are permitted to speak for them, that Mr. Brandeis had been faithless to the commission or to the public in the discharge of the duties which he undertook?

"Mr. HARLAN. Senator, I feel assured that I represent the views of my colleagues when I say that no such thought ever occurred to any of us. So far as I am concerned personally, if I may express a personal view, I can not associate such an idea with Mr. Brandeis. It is not consistent with my view of him or with the impressions that I have formed from a long acquaintance with him.

"Senator WALSH. Doubtless you know, Mr. Commissioner, the nature of the complaint made in this connection. It appears to be that, the questions involved being, first, whether the net revenues of the railroads as a whole, without any economies or change of business methods, were adequate; and, second, if they were not, by what means they should be made adequate. Mr. Brandeis, in opening the discussion before the commission, made the statement in effect that, in his opinion, the revenues of the railroad companies were not on the whole adequate, considering the needs of the railroads and the general welfare of the community. Do you recall the statement to which I allude?

"Mr. HARLAN. Yes; I do, Senator.

"Senator WALSH. In a general way, at least?

"Mr. HARLAN. Yes; I do.

"Senator WALSH. What was your view as to the propriety or the impropriety of Mr. Brandeis expressing any such opinion as that to you in the course of his discussion of the matter as he had investigated it?

"Mr. HARLAN. It never occurred to me that there was any impropriety in it. On the contrary, as I view the situation, it was precisely the sort of view that we looked to counsel to express as the result of his study of the case and the record as it lay before us. I do not mean, in saying that, that we had expected him to reach that conclusion on the record before us; I mean to say that it was that sort of judgment that we wanted from all the counsel discussing that case, and particularly from Mr. Brandeis. He had, of course, been in the case from the beginning. We wanted him to develop the facts—all the facts—that might bear upon the public interest, and I know of no more important fact in such a case than precisely that question. If the revenues of the carriers, the net incomes of the carriers, were not sufficient, that was something that we ought to know. It was one of the questions that the commission undertook to investigate. Having retained Mr. Brandeis to bring out all the facts of value, as I have explained, I do not see how he could have failed, when discussing the record, to advise us of any conclusion he had reached from his study of the testimony and evidence adduced, and to point out from the record, as he did, the reasons for that conclusion. We were entitled to have the views of those who had studied the record. As far as I know, the impropriety of the statement by him, to which you refer, has never occurred to any of my colleagues. But in saying that, and in what I have said or shall say, I speak only for myself.

"Senator WALSH. That is all.

"Senator WORKS. Mr. Harlan, that admission, if we call it an admission, practically covered the whole case, did it not?

"Mr. HARLAN. Why, no, Senator.

"Senator WORKS. The very question you had before you was whether these rates should be increased as asked for by the carriers, was it not?

"Mr HARLAN. Well, whether the net revenues were adequate in the public interest was a very different question from the reasonableness of the rates which were then in existence, or the rates which were proposed by the carriers."

Of Mr. Brandeis, Mr. Harlan said further in his testimony:—

"Mr. HARLAN. I do not believe that I am prepared to make any response to that question. I will say that, as far as my experience goes with Mr. Brandeis, he is a man who showed at all times great consideration for others. I do not believe that Mr. Brandeis would consciously have done an unfair thing. I am perfectly certain that in saying what he did he was moved by a sense of duty, upon the record, to the commission. No other thought about it has ever occurred to me, and I never have heard any of my colleagues indicate any criticism of it, or that they were surprised by it. Now, that may not be responsive to your question."

Again, in answer to a question by Senator FLETCHER, the following occurred:

"Senator FLETCHER. And no matter what Mr. Brandeis or any of the counsel may have stated in argument, the commission itself had the whole record before it and all the facts were collected, and there has been no claim that any shipper or any other interest was omitted in the collection of the facts?

"Mr. HARLAN. No; I have heard no criticism of that kind, and I do not think there is any basis for such criticism. I want to say also that I do not think the commission ever dealt with any case that engaged the personal attention of each commissioner more deeply and for a greater length of time than did the Five Per Cent case."

Again, in answer to a question by Senator WORKS, Mr. Harlan said:

"Senator WORKS. I believe it was testified at this hearing with respect to this particular case, by one of those attorneys that you had previously employed, that he never assumed to give any such advice or opinion respecting such a matter as this but simply developed the facts?

"Mr. HARLAN. I do not know who that was; but my own recollection is, and my understanding is, that we expect those who are retained by the commission for this purpose to be of aid to the commission not only in developing the facts but after weighing the record in pointing to the conclusions that the record seems to justify; and as I have said before, I say again, that I heard no comment or criticism in the commission of Mr. Brandeis's course upon the argument.

"Senator FLETCHER. I understand that there was in your mind in writing the letter that presenting the other side meant in the argument of this case and when the facts were collected?

"Mr. HARLAN. When the broad record was made.

"Senator FLETCHER. As you expressed it further down in the letter: 'And I have been asked to ascertain whether your engagements and inclinations are such as to permit you to undertake the task of seeing that all sides and angles of the case are presented of record,' etc. Was there any claim or suggestion that he failed or neglected to do that?

"Mr. HARLAN. I have heard none at all.

"Senator FLETCHER. Even Mr. Thorne, in complaining about the statement made by Mr. Brandeis, never contended that Mr. Brandeis had failed in the effort to collect all the facts in the case?

"Mr. HARLAN. I do not recall that he made that criticism, Senator.

"Senator FLETCHER. Then, when you announced one issue in the language mentioned 'Do the present rates of transportation yield an adequate return to common carriers?' is not that a different question than whether or not the net income of the railroads—the net operating revenues of the railroads—are sufficient?

"Mr. HARLAN. I regard it, of course, as a very different question.

"Senator FLETCHER. Yes.

"Mr. HARLAN. I mean there is a very distinct difference between the two questions.

"Senator FLETCHER. A very distinct difference?

"Mr. HARLAN. Yes.

"Senator FLETCHER. So that when an admission is made that the net operating revenues of a railroad company are insufficient, or the net income is insufficient as the road is being operated, it is not an admission that the rates are inadequate?

"Mr. HARLAN. No; by no means. The adequacy of net operating revenues brings up questions of credit, adequate facilities, efficient service, extension of tracks, and matters of that kind. Whether the rates are adequate brings into view their reasonableness and related questions. As I have before pointed out, the commission held in the first report in the Five Per Cent case that the net operating revenues of the carriers were inadequate in the public interest, but at the same time we denied the increased rates demanded by the carriers and permitted an increase in central freight association territory only in connection with a finding that those rates were unduly low when compared with rate structures elsewhere in the country.

"Senator CHILTON. It therefore follows that Mr. Brandeis's admission did not answer and conclude the first proposition that you presented?

"Mr. HARLAN. Well, it certainly did not conclude it with the commission."

At another place in the evidence Mr. Harlan says:

"But I do not understand that Mr. Brandeis was on either side. He was there in the public interest."

At another place, speaking for the commission, he said that the services of Mr. Brandeis were "eminently" satisfactory.

It seems to us that this evidence makes it perfectly clear that the charge of Mr. Thorne can not be sustained, but that on the contrary the conduct of Mr. Brandeis in this matter was honorable, in every way satisfactory to the commission, and showed fidelity to a most important trust.

In view of the fact that some citizens of great prominence have protested against this nomination, reference may properly be made to certain letters concerning Mr. Brandeis. One is a letter from the President of the United States in answer to a letter from Mr. Culberson, chairman of the Committee on the Judiciary, which letter and the reply thereto follow:

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D. C., May 5, 1916.

DEAR MR. PRESIDENT: As you are aware, the Committee on the Judiciary of the Senate has under consideration the nomination of Mr. Louis D. Brandeis for Associate Justice of the Supreme Court of the United States.

In response to the formal and usual request of the committee made to the Attorney General for all papers in the possession of his department touching this nomination, he replied that there were no such documents in his department.

Inasmuch as this request usually results in the presentation to the Committee on the Judiciary of papers showing the reasons which actuated the President in making the nomination, I would be glad to have you state these reasons, for the benefit of the committee, in case you see no objection to so doing.

Very sincerely, yours,

C. A. CULBERSON.

To the PRESIDENT,
The White House.

THE WHITE HOUSE,
Washington, May 5, 1916.

MY DEAR SENATOR: I am very much obliged to you for giving me an opportunity to make clear to the Judiciary Committee my reasons for nominating Mr. Louis D. Brandeis to fill the vacancy in the Supreme Court of the United States created by the death of Mr. Justice Lamar, for I am profoundly interested in the confirmation of the appointment by the Senate.

There is probably no more important duty imposed upon the President in connection with the general administration of the Government than that of naming members of the Supreme Court; and I need hardly tell you that I named Mr. Brandeis as a member of that great tribunal only because I knew him to be singularly qualified by learning, by gifts, and by character for the position.

Many charges have been made against Mr. Brandeis; the report of your subcommittee has already made it plain to you and to the country at large how unfounded those charges were. They threw a great deal more light upon the character and motives of those with whom they originated than upon the qualifications of Mr. Brandeis. I myself looked into them three years ago when I desired to make Mr. Brandeis a member of my Cabinet and found that they proceeded for the most part from those who hated Mr. Brandeis because he had refused to be serviceable to them in the promotion of their own selfish interests and from those whom they had prejudiced and misled. The propaganda in this matter has been very extraordinary and very distressing to those who love fairness and value the dignity of the great professions.

I perceived from the first that the charges were intrinsically incredible by anyone who had really known Mr. Brandeis. I have known him. I have tested him by seeking his advice upon some of the most difficult and perplexing public questions about which it was necessary for me to form a judgment. I have dealt with him in matters where nice questions of honor and fair play, as well as large questions of justice and the public benefit, were involved. In every matter in which I have made test of his judgment and point of view I have received from him counsel singularly enlightening, singularly clear-sighted and judicial, and, above all, full of moral stimulation. He is a friend of all just men and a lover of the right; and he knows more than how to talk about the right—he knows how to set it forward in the face of its enemies. I knew from direct personal knowledge of the man what I was doing when I named him for the highest and most responsible tribunal of the Nation.

Of his extraordinary ability as a lawyer no man who is competent to judge can speak with anything but the highest admiration. You will remember that in the opinion of the late Chief Justice Fuller he was the ablest man who ever appeared before the Supreme Court of the United States. "He is also," the Chief Justice added, "absolutely fearless in the discharge of his duties."

Those who have resorted to him for assistance in settling great industrial disputes can testify to his fairness and love of justice. In the troublesome controversies between the garment workers and manufacturers of New York City, for example, he gave a truly remarkable proof of his judicial temperament and had what must have been the great satisfaction of rendering decisions which both sides were willing to accept as disinterested and even-handed.

Mr. Brandeis has rendered many notable services to the city and State with which his professional life has been identified. He successfully directed the difficult campaign which resulted in obtaining cheaper gas for the city of Boston. It was chiefly under his guidance and through his efforts that legislation was secured in Massachusetts which authorized savings banks to issue insurance policies for small sums at much reduced rates. And some gentlemen who tried very hard to obtain control by the Boston Elevated Railway Co. of the subways of the city for a period of 99 years can probably testify as to his ability as the people's advocate when public interests call for an effective champion. He rendered these services without compensation and earned, whether he got it or not, the gratitude of every citizen of the State and city he served. These are but a few of the services of this kind he has freely rendered. It will hearten friends of community and public rights throughout the country to see his quality signally recognized by his elevation to the Supreme Bench. For the whole country is aware of his quality and is interested in this appointment.

I did not, in making choice of Mr. Brandeis, ask for or depend upon "indorsements." I acted upon public knowledge and personal acquaintance with the man, and preferred to name a lawyer for this great office whose abilities and character were so widely recognized that he needed no indorsement. I did, however, personally consult many men in whose judgment I had great confidence, and am happy to say was supported in my selection by the voluntary recommendation of the Attorney General of the United States, who urged Mr. Brandeis upon my consideration independently of any suggestion from me.

Let me say, by way of summing up, my dear Senator, that I nominated Mr. Brandeis for the Supreme Court because it was, and is, my deliberate judgment that of all the men now at the bar whom it has been my privilege to observe, test, and know, he is exceptionally qualified. I can not speak too highly of his impartial, impersonal, orderly, and constructive mind, his rare analytical powers, his deep human sympathy, his profound acquaintance with the historical roots of our institutions and insight into their spirit, or of the many evidences he has given of being imbued to the very heart with our American ideals of justice and equality of opportunity; of his knowledge of modern economic conditions and of the way they bear upon the masses of the people, or of his genius in getting persons to unite in common and harmonious action and look with frank and kindly eyes into each other's minds, who had before been heated antagonists. This friend of justice and of men will ornament the high court of which we are all so justly proud. I am glad to have had the opportunity to pay him this tribute of admiration and of confidence; and I beg that your committee will accept this nomination as coming from me quick with a sense of public obligation and responsibility.

With warmest regard, cordially and sincerely, yours,

WOODROW WILSON.

Hon CHARLES A. CULBERSON,
United States Senate.

We submit also the following letter from Prof. Charles W. Eliot, emeritus president Harvard University:

CAMBRIDGE, MASS., *May 17, 1916.*

DEAR SIR: I have known Mr. Louis D. Brandeis for 40 years, and believe that I understand his capacities and his character. He was a distinguished student in the Harvard Law School in 1875–1878. He possessed by nature a keen intelligence, quick and generous sympathies, a remarkable capacity for labor, and a character in which gentleness, courage, and joy in combat were intimately blended. His professional career has exhibited all these qualities, and with them much practical altruism and public spirit. He has sometimes advocated measures or policies which did not commend themselves to me; but I have never questioned his honesty and sincerity or his desire for justice. He has become a learned jurist.

Under present circumstances, I believe that the rejection by the Senate of his nomination to the Supreme Court would be a grave misfortune for the whole legal profession, the court, all American business, and the country.

Sincerely, yours,

CHARLES W. ELIOT.

Hon. CHARLES A. CULBERSON.

Also the following letter from Charles B. Greenough:

262 WASHINGTON STREET,
Boston, Mass., May 19, 1916.

Hon. CHARLES A. CULBERSON.

DEAR SIR: In reading the report of the hearings before the subcommittee of your committee on the question of approval of the nomination of Mr. Brandeis it has seemed to me that the testimony of some of the lawyers from this city as to the reputation of Mr. Brandeis did not do him justice.

I think I am able to speak with some authority, as I have been secretary of the bar association, treasurer, member of the council, vice president, and president from 1902–1905. These positions gave me an excellent opportunity of knowing the character and reputation of the members of the bar. I was also chairman of the grievance committee of the bar association for 15 years, and during these years there had not been to my knowledge any complaint against Mr. Brandeis's character or method of practice.

I know there is among a number of our leading attorneys a strong feeling of antagonism to Mr. Brandeis, which I attribute entirely to two causes: First, the vigorous and, I think, outrageous attacks upon him for his opposition to the United Shoe Machinery Co. in 1909. Thousands of pamphlets were sent to members of the bar. I myself received several, and I have no doubt many received their impressions from these public repeated attacks, which could not be as widely answered. The second reason was his attack on the New York, New Haven & Hartford Railroad Co. All holders of the stock resented his attacks, and he was called a liar, a railroad wrecker, and many other similar names. As every trustee in New England held the stock—I held a lot of it myself, and was for a time inclined to resent his action—I have no doubt the distrust of him was increased thereby. That he was right, and conclusively shown to be so, came too late to dissipate the impression already formed.

At all times, however, and now his firm has the very best of reputation, and is the one most sought by students from the Harvard Law School.

I think I am justified in saying that a large number of the members of the bar to-day have a great respect for his ability and for his remarkable devotion to the public good, and would retain him without hesitation and with entire confidence in any matter relating to their own interests.

Very truly, yours, CHARLES B. GREENOUGH.

An impression has gone abroad that a great majority of the lawyers of Boston and vicinity are protesting against this nomination. That is a great mistake, as may be shown, and we, therefore, attach some letters from prominent lawyers and eminent citizens of that community as an appendix to this report. It will be noted that among that number are the following:

Roscoe Pound, new dean of Harvard Law School and eminent juridical scholar.
George B. Dorr, friend of Samuel D. Warren.
Joseph B. Eastman, member of Public Service Commission, Massachusetts, formerly secretary Public Franchise League.
David I. Walsh, recently governor of Massachusetts.
A. S. Hall, lawyer, practicing in Boston during Brandeis's entire career.
W. T. A. Fitzgerald, register of deeds, Suffolk County, Mass.
Lionel Norman, lawyer, characterizing narrowness of opposition.
J. M. Head, lawyer, knowing Brandeis 40 years.
Richard H. Dana, lawyer, long prominent leader in Civil Service Association.
John W. Cummings, a leading lawyer, Bristol County, bar, supposed to have been offered and declined appointment to superior court.
Melvin C. Adams, former United States district attorney.
Joseph C. Pelletier, State district attorney.
John A. Coulthurst, member of the city council and candidate for mayor.
George U. Crocker, member finance commission.
Samuel K. Hamilton, president Middlesex Bar Association.
Roger Sherman Hoar, former Assistant Attorney General.
James P. Magenis, finance commission.
Frederick W. Mansfield, former State treasurer.
Robert W. Nason, former assistant district attorney.
W. R. Sears, of Whipple's firm.
John R. Thayer, of Worcester.
James H. Vahey, formerly candidate for governor.
George Wigglesworth.
Arthur D. Hill, professor in Harvard Law School.
Prof. William Z. Ripley, of Harvard.
Rev. Edward Cummings, successor of Edward Everett Hale.
Bernard J. Rothwell, former president, chamber of commerce.
Henry S. Dennison, vice president, chamber of commerce.
Robert A. Woods, license commissioner.
William Lloyd Garrison.
Mark de Wolfe Howe, editor Harvard Bulletin.
President Bumpus, of Tufts College.
Robert N. Washburn, brother of Representative Charles G. Washburn, of Worcester.

It has been urged that in view of the fact that these charges have been made, and, at best, there may be still a doubt in the minds of many as to the truth of some of them, this nomination should be rejected.

For the reasons stated in the report of the majority members of the subcommittee, we can not concur in this view, but there are many other considerations which make such a proposition unthinkable. First, the precedents of the Senate are against any such theory. The appointment of Chief Justice Marshall and Justice Story, Justice Taney, and Justice Matthews were viciously attacked.

There were no ex-presidents of the American Bar Association to give their testimony as to the first two, but they did not lack critics of such high position as to impair their reputation at the time, and the criticisms from those of a different political faith were in nowise confined to political opinion.

Of Marshall, Thomas Jefferson said:

"Never will chicanery have a more difficult task than has now been accomplished to warp the text of the law to the will of him who is to construe it.

"The judge's inveteracy is profound and his mind of that gloomy malignity which will never let him forego the opportunity of satiating it on a victim.

"An opinion is huddled up in conclave perhaps by a majority of one delivered as if unanimous, and with the silent acquiescence of lazy or timid associates by a crafty judge who sophisticates the law to his own mind by the turn of his own reason.

"It (Marshall's Life of Washington) is written, therefore, principally with a view to electioneering purposes It will consequently be out in time to aid you with information, as well as to point out the perversions of truth necessary to be rectified."

These opinions from this respectable source were of a man of whom William Wirt said, "Marshall was justly pronounced one of the greatest men of the country"; and William Pinckney said, "A man born to be the chief justice of any country into which Providence should have cast him"; and John Quincy Adams said, "He was one of the most eminent men that this country has ever produced."

Chief Justice Marshall was elevated from the bar and held no judicial position before becoming Chief Justice of the United States.

Of Mr. Justice Story, Josiah Quincy, jr., said:

"I remember my father's graphic account of the rage of the Federalists when 'Joe Story, that country pettifogger, aged 32,' was made a judge of our highest court."

On the other hand, John Quincy Adams says:

"The Associate Judges from the time of his (Marshall's) appointment have generally been taken from the Democratic or Jeffersonian Party. Not one of them excepting Story has been a man of great ability."

In his "Memoir of Joseph Story, LL. D.," 1868, George S. Hillard says:

"Mr. Story, when he went upon the bench, was only 32 years old, a very early and, with the exception of Mr. Justice Buller, an unprecedented age for a lawyer to be advanced to a seat upon the highest judicial tribunal of his country. When we call to mind his youth and remember how earnest and conspicuous he had been on the unpopular side in politics, it will not be a matter of surprise to learn that the news of his appointment fell with something like consternation upon the elder, the more apprehensive, and the more conservative portion of the people of New England. His merits as a lawyer could be scanned only by his professional brethren; his sweet and generous nature could be appreciated only by his friends. The public knew him as an enthusiastic partisan; and it is not too much to say that with many there was an apprehension that, in his hands, rights and property would hardly be safe. It is hardly necessary to add, that the existence of such fears was a striking proof of the truth of Mr. Jefferson's saying, 'How much we suffer from misfortunes that never happen.' From the moment he assumed his judicial office he shook the dust of politics from his feet, and he bore himself with such absolute impartiality that it is literally true that there was no act of his judicial life from which it could have been known to which of the two great parties which divided the country he had previously belonged."

Roger B. Taney was nominated by President Jackson in January, 1835, to be an Associate Justice.

Chief Justice Marshall interested himself in support of the confirmation.

History records the following:

"At the last moment of the session the nomination of Mr. Taney was brought up in the Senate, and was indefinitely postponed, which was equivalent to a rejection."

"It is sad to a reflecting man to witness in an august body like the Senate, composed at that time of men who, by their eminent abilities, would give the highest dignity to any legislative assembly in the world, the unreasoning domination of party spirit, making it do an act of which every Member was afterwards ashamed." (Memoirs of Roger Brooke Taney by Samuel Tyler, p. 242.)

Chief Justice Marshall died in the summer of 1835, and on December 28 President Jackson nominated Taney for Chief Justice. There was violent opposition, particularly by Clay and Webster. On March 15, 1836, the nomination was confirmed by a majority of 14 votes.

The contest over the confirmation of Mr. Justice Stanley Matthews shows how easily mistaken conceptions concerning the predisposition of a judge upon questions of law or policy may develop into an unwarranted attack upon his moral qualities.

He was nominated by President Hayes early in 1881 on the retirement of Mr. Justice Swayne.

Charles Theodore Greve in his Life of Matthews (Great American Lawyers, Vol. VII, pp. 418–420) says:

"That his confirmation was bitterly opposed particularly by many in the East is a matter of public history. He had taken a most active part in one of the bitterest conflicts of modern politics and had been most conspicuous among the members of the bar as a representative of corporations and capital. To the objections that might have been urged as the result of mere differences of judgment were added as always happens in such cases the calumnies of personal enemies. Even a most unfair version of the old Connelly case of a quarter of a century before was made to do service. The opposition was sufficient to prevent confirmation during the few remaining weeks of President Hayes's term, but promptly after the inauguration of Garfield he, at Hayes's request, sent the nomination once more to the Senate. The opposition continued for some time but this extraordinary proof of confidence, the selection by two Presidents, each from his own State and each familiar with his entire career, finally led to his confirmation on May 12, 1881. He took his seat upon the bench of the Supreme Court on May 17, and soon came to be recognized as one of its strongest members. Whatever opposition may have been manifested at the time of his nomination was soon shown to be without foundation and those that led that opposition

were glad to acknowledge their error. Principal among these was Senator Edmunds, who later bore testimony that 'the grounds upon which many Senators (myself among others) thought it unfit that he should be called to this particular public service, turned out to be entirely mistaken, and in the public respect toward which our solicitudes were directed, his opinions delivered in this court and his assent to opinions upon that class of questions delivered by other judges, justified the President of the United States in insisting upon his appointment and convinced me, and I think no doubt all the other Senators who were opposed to him at the time, that it was our mistake and not that of the President of the United States.' Senator McDonald, also a member of the Senate committee to which the nomination was sent, took occasion to brand as false any insinuations as to his conduct during the crisis of 1876–77, at which time he, McDonald, was one of the 'visiting statesmen' on behalf of the Democratic national committee."

The Connelly case, just referred to, gave ample opportunity for unjust criticism. In 1859, when Matthews was United States attorney for the southern district of Ohio, it became his duty to prosecute Connelly, the reporter of a local newspaper, who was indicted for aiding in the escape of fugitive slaves. Matthews was then believed to be sympathetic with the antislavery cause, and the prosecution was regarded as an unwarranted persecution by many influential citizens.

Another occasion on which Matthews found himself at the point where conflicting principles met was created by a resolution passed by the board of education of the city of Cincinnati, which provided:

"That religious instruction and the reading of religious books, including the Holy Bible, are prohibited in the common schools of Cincinnati, it being the true object and intent of this rule to allow the children of all sects and opinions, in matters of faith and worship, to enjoy alike the benefit of the common-school fund."

Suit was brought to restrain the execution of this resolution. Matthews was at the time a pronounced Calvinistic Presbyterian. Nevertheless, he accepted employment to defend the board of education. His biographer says of him:

"Matthews's appearance for the defense in this case shows as no other act of his life can show more plainly the liberal character of the man as well as his high conception of a lawyer's duty."

In arguing the case, Matthews said:

"It is easy to swim with the tide, to go with the current, to follow in the wake of the multitude. To do things that are popular is not hard. But to stand by a man's individual moral convictions, in opposition not to enemies but to friends, tries a man. If your honors please, it tries me."

The New York Sun had many violent editorials against Stanley Matthews from January to May, 1881, most of them by reason of his alleged connection with the Pacific railroads or Jay Gould. They appear on these dates: January 27, February 1, 2, 4, 7, 9, 11, 12, 16, 19, March 7, 19, 23, 24, 29, May 12 and 13.

Those of February 1 and 4 refer to the Anderson letters and indicate on their face that Matthews had been the custodian of papers that showed that Anderson had forged false return to get the necessary Hayes count in Louisiana, and show clearly that Matthews after he had this paper in his possession was active in endeavoring to get Anderson a Federal position. Matthews had stated in his testimony before the investigating committee that he understood that this paper was got up for blackmailing purposes, and that Anderson had not in fact been guilty of fraud in connection with the returns. These editorials refer to the committee as a "whitewashing" committee.

The February 7 editorial sets out the virtual trade that was alleged to have been made by Matthews on behalf of Hayes, not to interfere with the local State governments in control of the Democrats in certain States if the filibuster was stopped against the acceptance of the report of the Electoral Commission as to the presidential count. This editorial and some others refer to Mr. Justice Harlan's appointment on the Supreme Court bench as having been a reward for his help in the fraudulent counting in of Hayes.

Stanley Matthews was active in the Hayes-Tilden campaign of 1876 and visited Louisiana as an observer of the count. Subsequently one James E. Anderson made statements which led to an investigation by a select committee of the Senate: Allison, Ingalls, Hoar, Davis of Illinois, Whyte, and Jones of Florida, to determine what connection Matthews had had with real or pretended frauds in Louisiana and any promise of rewards that had been made to Anderson in connection therewith. Anderson was apparently a Republican election officer. They had heard and considered Anderson's testimony and Matthews's testimony and decided that Matthews's statement was correct; that is, that he had had nothing to do with inducing Anderson to suppress testimony or to give false testimony. But it did appear from Matthews's statement that he had exerted himself to get an appointment in the Federal service for Anderson, apparently merely because he was, in Matthews's view, a worthy and needy Republican. The committee, after absolving Matthews from guilt in any other respect, concludes its report:

"* * * We can not but regard his action with respect to James E Anderson's effort to obtain an appointment to office, under the circumstances, as wrong and injurious to the public interest." (Report, Mar. 1, 1879, vol. 2 of 1879, 45th Cong., 3d session., S. Rept. 867.)

Thus it may be seen that Mr. Brandeis will not be the first distinguished lawyer to serve upon the Supreme Court of the United States after having been criticized most severely.

It is easy to make charges, and there is too much proof in this case of a preconcerted effort to weaken the power of Mr. Brandeis before the public, to think of permitting insinuations and inuendoes to take the place of reasonable proof. We should be certain to have an honest, capable man upon the bench, but unless one be appointed who has not had the capacity and the courage to take part in the discussions of the last quarter of a century, which have been pregnant with constructive legislation and decisions, as well as undergoing a revolution in public sentiment regarding many questions, then it would be hard to find one, whom either malice or interest could not easily disqualify. For instance, take such an eminent man as Senator Root, now the president of the American Bar Association. We take it that practically everyone who has protested against Mr. Brandeis would gladly accept Mr. Root as the kind of a man and the kind of the qualified lawyer who would adorn the Supreme Bench. Yet it is the irony of the present situation that in a report published in 1902 entitled "Root's Record in Philippine Warfare," Mr. Moorefield Storey, who has been most prominent in fighting the nomination of Mr. Brandeis, joined in summing up conclusions, among others, as follows:

"That the statements of Mr. Root, whether as to the origin of the war, its progress, or the methods by which it has been prosecuted, have been untrue.

"That he has shown a desire not to investigate, and, on the other hand, to conceal the truth, touching the war and to shield the guilty, and by censorship and otherwise has largely succeeded."

Since that time Mr. Root has occupied many positions of trust and responsibility, among them the position of Secretary of State and United States Senator from New York and president of the American Bar Association. His preeminent position as a citizen is a guaranty that nothing which we quote now from Mr. Storey in 1902 can possibly do any injury, but if he had had less prominence and power, and disappointed railroads and other special interests had so desired, the above-quoted report would be certainly as substantial a foundation upon which to build a structure of doubt as formidable, in any view of the situation, as is the one which is now sought to be interposed against the nomination of Mr. Brandeis.

The active life of the people, the bitterness and intensity of political, legal, and civic controversies have made many prominent men the object of attack from large sections of the people or some particular communities. Instances of this could be multiplied, but we do not care to take liberties with others' names, preferring to let the illustration of one of the very distinguished members of the bar, which we have given, and who can not possibly be injured thereby, suffice.

Since 1907 Mr. Brandeis has been the object of bitter attack from those interested in defeating his opposition to the transportation monopoly sought by the New York, New Haven & Hartford Railroad Co. (620, 751, 615, 640, 499, 510). Before this time his efforts in behalf of what he believed to be the interests of the community had exposed him to the enmity of other public-service corporations, and the banking interests allied therewith (810, 613, 618).

But it was at the end of 1907 that the systematic efforts to discredit him began. This was done through inspired news articles and editorials, and finally through extensive advertising (620, 640, 664, 239). This was placed to some extent through Clarence W. Barron (134), the editor of a financial paper called the Boston News Bureau, and Wall Street Journal, and some of the advertisements were approved by Mr. Charles F. Choate, jr., the counsel for the railroad and a son of one of its directors (640, 643). This advertising was put out under such headings as "Brandeis the Railroad Wrecker." It was not the sporadic outburst of spite. It was a systematic policy of defamation to break down the power of his opposition, which was effective because of his high repute, and could be broken only by attacking his reputation. The method adopted was to spread the idea that he was not acting disinterestedly for the benefit of the community, but under pay and for hostile private interests (640, 660). This is of particular significance when considering the nature of the alleged bad reputation. It is not that he is unfaithful to his clients or false to the courts; it is that he is not entirely "trustworthy" (153), is "ruthless" in the attainment of his objects, and not "scrupulous" in the methods he adopts (271); that he works "under cover" (653); that he is not "straightforward" (611), and not always truthful, and sails under "false colors" (750). This was the very reputation which an extensive and skillful campaign was conducted to give him (620). The meaning of the witnesses is still further defined by their illustrations, namely, that of his being paid by Collier's for appearing for Glavis (614, 269), and the false charge that he was knowingly acting for the New York, New Haven & Hartford Railroad Co. in bringing the Corbin suits against the New York & New England Railroad Co. (415).

The coincidence of the beginning of this alleged evil reputation with a systematic campaign to create it is well shown by the testimony of Mr. Peabody, one of the hostile witnesses, who says that he has a wide acquaintance at the Boston bar, and for years has been a member of the same club with Mr. Brandeis, and yet the first that he heard by way of criticism of Mr. Brandeis's good faith was when he attacked the New Haven Railroad Co. in 1907 (753), and this was an attack to which Mr. Peabody was personally opposed (751).

This was an attack, as Mr. Storey says, upon people, many of whom exercised a very powerful influence, socially, politically, and financially, so that a man would not be in high favor with some of the best citizens of Boston who was engaged in exposing the shortcomings of these people (272).

Outside of this small circle and the influences of the hostile campaign, Mr. Brandeis's reputation is not only above reproach but is that of a man who is conspicuous for high standards of action, personally and in his profession.

With 38 years of practice in the Boston bar, Mr. Melvin O. Adams says of his reputation:

"If I may analyze it, as I observe it, there is a group of men of high standing, like Gen. Peabody, in the community, who are in the network of State Street, which is our financial street, who state and think that Mr. Brandeis is not straightforward in his practice. I think these opinions, when traced, run into some one of these pockets of more or less publicity, namely, the Lennox case, the United Shoe Machinery case, the wrecking of the New England—those allegations. That is a fair statement as to that group. On the other hand, there is a large body of the bar, who, coinciding with what I have said as to his being a very able lawyer, a man of profound learning, also believe that he is actuated by lofty purposes, is honest and trustworthy" (766).

Mr. Thomas J. Boynton, lately attorney general of Massachusetts, says:

"That reputation, so far as I know it, is good. Down to the time this appointment was made I think the only thing that had ever come to my attention in any way reflecting upon Mr. Brandeis was certain printed matter circulated by the United Shoe Machinery Co. With that exception, I do not think I ever heard anything reflecting in any way upon his character as a man or as a lawyer" (771).

The testimony of Mr. French and Mr. Walker are cumulative on this point.

Of his national reputation, Mr. Stephen S. Gregory, formerly president of the American Bar Association, says that "his reputation is excellent as a lawyer of ability and character" (711).

Hon. Newton D. Baker, Secretary of War, says that he knows Mr. Brandeis's reputation among social workers, and that among them he is regarded as not only the greatest lawyer of their group of aids but as a detached and spiritual and high-minded man (762).

This is emphasized by a memorial in Mr. Brandeis's favor signed by many well-known men (761).

Mr. Whipple, already quoted, says:

"As a lawyer, Mr. Brandeis is able and learned. As a man, he is conscientious and high minded. The feature of his career which is the most striking and remarkable has been his unselfish and unswerving devotion to the social, moral, and industrial uplift of the lowly and less fortunate of our people. I believe that on the Supreme bench

of the United States he will exert a strong influence in establishing the ideals to which he has devoted his recent years." (282.)

It is evident that the standing Mr. Brandeis's firm in the public esteem can not rise above his own. Mr. Whipple says that it is a reputable firm, generally so regarded, one of the leading firms of the city (285), one to which go men of superior excellence in their work in the Harvard Law School.

Mr. Hutchins says that the firm is one of the high-standing firms of the city to which for 20 or 30 years a good many of the high-class men from Harvard have gone, and that it has done a large and varied business, dealing on terms of good fellowship and general respect with the entire bar (621).

Without going further into details it may be said that the testimony of Mr. French, Mr. Walker, and others convinces your committee that the high standing of the law firm is not open to doubt.

The unfreality of the strictures upon Mr. Brandeis's reputation is strikingly demonstrated by the treatment which has been accorded to him by some of the very men who now make these assertions. Among his critics are several of the overseers of Harvard College and members of that corporation. They are charged with the duty of maintaining the high moral standard of that institution, and of putting in places of prominence only those whose example will be elevating to the student body. Year after year these men have appointed Mr. Brandeis a member of the visiting committee to the Harvard Law School—a committee made up of such men as Mr. Justice Hughes, of the Supreme Court of the United States; Mr. Justice Loring, of the Supreme Court of Massachusetts; Mr. Justice Swayze, of the Supreme Court of New Jersey; Hon. James T. Mitchell, some time chief justice of Pennsylvania; Hon. Robert Grant, judge of the probate court in Boston; Hon. Henry L. Stimpson, some time Secretary of War; James C. Carter, leader of the American bar; Charles C. Beaman, member of the distinguished firm of Evarts, Choate & Beaman, a partner of Joseph E. Choate, lately ambassador to Great Britain; Francis C. Lowell, United States judge for Massachusetts; Charles J. Bonaparte, lately Attorney General; Jeremiah Smith, formerly justice of the Supreme Court of New Hampshire and one of its most distinguished citizens and professor in the law school after 1891; Charles S. Fairchild, formerly Secretary of the Treasury under Mr. Cleveland; Charles P. Greennough, formerly president of the Boston Bar Association; Robert M. Morse, one of the leaders at the Boston bar for the last 40 years; John Noble, clerk of the Supreme Judicial Court of Massachusetts; James J. Storrow, Edmund Wetmore, Henry W. Putnam, William Rand, George Putnam, Langdon P. Marvin, and Chandler P. Anderson.

Some of the members of the board of overseers of Harvard College, which has appointed Mr. Brandeis a member of the visiting committee to the law school, are the following:

Henry Cabot Lodge, Senator from Massachusetts; George F. Hoar, formerly Senator from Massachusetts; Roger Wolcott, formerly governor of Massachusetts; Moorfield Storey, one of the protestants; Francis C. Lowell, United States circuit judge, cousin and former partner of A. Lawrence Lowell; John D. Long, formerly governor of Massachusetts and Secretary of the Navy; William C. Loring, justice Supreme Judicial Court of Massachusetts; Winslow Warren, collector of port under Mr. Cleveland, father of Charles Warren, Assistant Attorney General of the United States; Frederick P. Fish, a protestant; John Noble, clerk of Supreme Judicial Court of Massachusetts and father of a protestant; Robert Grant, judge of the probate court, Suffolk County, Mass.; Robert M. Morse, one of the leaders at the Boston bar for the last 40 years; Solomon Lincoln, formerly a leader of the Boston bar; Moses Williams, a protestant; George O. Shattuck, formerly a leader at the Boston bar; James J. Storrow, Charles R. Codman, Henry W. Putnam, Leverett Saltonstall, Edmund Wetmore, Louis A. Frothingham, and George Wigglesworth.

It will not do to oppose the nomination of a man like Mr. Brandeis and then, after a complete investigation, admitting that the charges are not supported, ask that the nomination be rejected because of the charges rather than of their truth. This would be an injustice to the nominee and to the court, and would be out of line with that sense of justice which pervades all classes of people. Having failed in the charges and admitting the eminent ability of the appointee, it would be the manly thing to concede the evident error in making the charges and ask for a confirmation.

APPENDIX.

HON. WILLIAM E. CHILTON,
United States Senator, Washington, D. C.

DEAR MR. CHILTON: I am venturing to write you the impressions of one who has come into this community from without and may perhaps have been able to judge Mr. Brandeis more fairly than it seems to me he is judged here. His friends, as it seems to me, make a great mistake in urging as his chief qualification his views upon social questions and the eminent services he has performed in the public interest. Important as these matters are, their importance does not lie immediately in the direction of qualification for the bench. What is not so generally known is that Mr. Brandeis is in very truth a very great lawyer. At the beginning of his career his article in the Harvard Law Review on the right of privacy did nothing less than add a chapter to our law. In spite of the reluctance of many courts to accept this, it has steadily made its way, until now it has a growing preponderance in its favor. All the cases upon this subject concur in attributing the origin of the doctrine to Mr. Brandeis's paper. The promise thus given has been amply fulfilled. One might instance the revolution which his brief in Muller *v.* Oregon achieved in the matter of arguing cases involving the constitutionality of social legislation. The real point here is not so much his advocacy of these statutes as the breadth of perception and the remarkable legal insight which enable him to perceive the proper mode of presenting such a question. Since I came to Cambridge, not quite six years ago, I have had many opportunities of observing Mr. Brandeis, and do not hesitate to say that he is one of the great lawyers of the country. So far as sheer legal ability is concerned, he will rank with the best who have sat upon the bench of the Supreme Court.

As to the charge that he is lacking in judicial temperament and would be a partisan upon the bench, it seems to me that those who urge this know very little about him and base their opinions upon newspaper accounts of the vigorous battles which he has fought as an advocate. Of course the newspapers are not interested in the purely legal side of his activities. Only those causes involving more or less sensational public interest attract general notice. In these causes he has appeared as a vigorous and sometimes radical advocate. But those who conceive him disqualified because of his advocacy of those cases make the same mistake as is made by others who have so often objected to putting sound and well-qualified lawyers upon the bench because they had often been engaged in advocating the cause of great corporate interests. Moreover it is well proved by experience that a great advocate may easily become a great judge also. A notable example is to be seen in the case of Sir Henry Hawkins the greatest advocate probably of his generation. When he was appointed to the bench fear was expressed that he would carry his habits of advocacy into the judicial station. On the other hand, when he retired it was universally acknowledged that he had been a fair and sound trial judge in the very class of cases in which he had so often been engaged in the forum. One might instance also the late Lord Russell, easily the greatest advocate of his time, who filled acceptably the post of Chief Justice of England. In the case of Mr. Brandeis the very qualities that have made his advocacy so effective would, I think, make his study of a controversy as a judge equally effective in achieving a sound legal result.

As to the charges of unprofessional conduct which are so much in the air here, I have no first-hand information. But I may call your attention to one circumstance which seems to me conclusive. At least from 1910 (when I came here) to the present Mr. Brandeis has been one of the committee appointed by the board of overseers of Harvard University to visit the law school. That is, the board of overseers have appointed him as one of a committee to inspect the work of teachers and students, and to advise as to the conduct of the school. At different times between 1910 and the present he has been associated on this committee with Mr. Justice Hughes, of the Supreme Court of the United States; Mr. Justice Loring, of the Supreme Court of Massachusetts; Mr. Justice Swayze, of the Supreme Court of New Jersey; Hon. James T. Mitchell, sometime chief justice of Pennsylvania; Hon. Robert Grant, judge of the probate court in Boston, and Hon. Henry L. Stimson, sometime Secretary of War. During this period, in which Mr. Brandeis has been reappointed from time to time to serve with lawyers of the caliber of those just enumerated, the following lawyers have been members of the board of overseers by whom he has been so reappointed: Hon. Henry Cabot Lodge, United States Senator from Massachusetts; the late John D. Long; Mr. Justice Loring, of the Supreme Court of Massachusetts; Hon. James T. Mitchell, sometime chief justice of Pennsylvania; Mr. Justice Swayze, of the Supreme Court of New Jersey; William A. Gaston, Esq., of the Boston bar; Robert F. Herrick, Esq., of the Boston bar; Frederick P. Fish, Esq., of the Boston bar; Judge Robert Grant; and L. A. Frothingham, Esq., of the Boston bar. It can not be that these gentlemen would have appointed him along with such colleagues to a position of such importance had they then believed him deficient in professional honor or guilty of professional misconduct. Nor can it be asserted that the eminent members of the Boston bar who participated in the appointment and reappointment were ignorant of what is now charged, for these charges are not new. Conceding, as one must, the absolute sincerity of these gentlemen one is driven to the conclusion that the objections now urged against Mr. Brandeis at the Boston bar by his colleagues are the unconscious product of fear of his political views and aversion to his social and public activities.

Yours, very truly,

ROSCOE POUND.

SOMERSET CLUB,
Boston, March 21, 1916.

To the CHAIRMAN OF THE SENATE JUDICIARY SUBCOMMITTEE,
Washington, D. C.

DEAR SIR: Having followed with interest the report of evidence submitted to your committee in regard to the President's nomination of Mr. Brandeis for the Supreme Court vacancy, I find myself impelled, as a personal friend of his early partner, Mr. Warren, and as one of a now older group of Boston and Harvard men who have watched Mr. Brandeis's legal career develop from its commencement, in usefulness and distinction—to say that while well acquainted with the views of those who now oppose his confirmation and giving weight in other matters to the opinion of some among them, I believe them to be prejudiced and wrong regarding this.

Mr. Brandeis is a man of keen intelligence, but high ideals, possessing also a rare creative quality of imagination that, combined with fearless courage of convictions, has brought him at times, to the public benefit, in conflict with vested interests and established points of view. We need such a man as this on that high bench to keep it open to the ever-changing thought and sentiment of the world and Nation, recognizing these in their changes and passing judgment on them through the decisions that it renders.

I trust accordingly, for the country's sake, that the Senate may confirm his nomination. And I remain, with respect.

Very faithfully, yours,

GEORGE B. DORR.

THE COMMONWEALTH OF MASSACHUSETTS,
PUBLIC SERVICE COMMISSION,
February 26, 1916.

HON. WILLIAM E. CHILTON,
Chairman Subcommittee on Brandeis Appointment,
United States Senate, Washington, D. C.

DEAR SIR: I have followed the press accounts of the hearings before your subcommittee in the Brandeis matter with a great deal of interest. After it has probed his record to the bottom, as I hope it will, I feel very sure that the committee will favor his confirmation. My confidence does not rest upon what others have told me about him but upon personal knowledge.

Before I became a member of the Public Service Commission of Massachusetts I was, for some years, secretary of an organization in Boston known as the Public Franchise League. It was made up of a group of business and professional men of standing, who thought that they could be of service as citizens by making a disinterested study of some of the important questions that arise from time to time in regard to the public-service corporations of every community and by presenting the results of their study to the public bodies which have to deal with these questions. Mr. Brandeis was one of the members of this league and I saw a great deal of him and worked with him intimately.

If your committee would care to have it, I should be glad to furnish you with a statement, in some detail, of what this league did in connection with street railway, railroad, gas, and electric matters, for its work was, in my judgment, of great public importance and value. It would also help you, I think, to understand the attitude which Mr. Brandeis has taken upon such public questions and the antagonisms

which have been aroused. As you probably appreciate, it is impossible in a conservative community like New England for a man to speak plainly in the public interest upon such questions (especially if he also speaks forcefully) without creating enemies, some of whom are sincere but influenced by a prejudice which is often quite unconscious.

Louis D. Brandeis is a man of very unusual ability and power and a man of great moral courage. Furthermore, he is an indefatigable worker and student. The impression which some have that he is merely a brilliant advocate and addicted to reckless and extreme statements is not warranted. I have never known him, in any matter in which I was associated with him, to take a position before he was well grounded in the facts. This was particularly true in the New Haven Railroad matter. That he is honest and sincere I think no one who really knows him will doubt. I have no hesitation in expressing the opinion that he will make a very valuable addition to the Supreme Court, and I believe that you will feel the same after you have completed your investigation. My own feeling is illustrated by the fact that since I have been a member of this commission I have frequently consulted with him upon important matters.

It is, I think, hardly necessary to say that this letter is not an official communication, but the expression of my personal views.

Yours, very truly,

JOSEPH D. EASTMEN.

—

FEBRUARY 16, 1916.

Hon. WILLIAM E. CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

DEAR SIR: It is my desire to record my indorsement of Louis D. Brandeis, who is nominated as Associate Justice of the Supreme Court of the United States.

I have been a lawyer in active practice in the city of Boston more than 21 years and have been district attorney for more than 6 years. Previous to that time I served as civil service commissioner for the Commonwealth for 4 years and have held other nonelective public positions.

I want to speak of Mr. Brandeis's reputation at the Suffolk bar. I note that, according to the press, a gentleman recently claimed to represent the bar association of the city of Boston, of which I have been a member for many years. While as an officer he may have certain rights, or some committee may have given him authority, I want to call your attention to the fact that no meeting of the bar association has been held and the matter of Mr. Brandeis's indorsement has never been considered by the body as a whole.

I believe that in my private practice and in my official capacity I have been in a position to know much about the bar and the standing of its members. Few men come in contact with more men in active practice, and, as you will appreciate, it is inevitable that the estimate of members of the bar, one toward the other, soon becomes known and a matter of current gossip, criticism, or praise. I have never heard the slightest criticism of Mr. Brandeis, but, on the contrary, he has always been admired and looked upon as one of our most brilliant trial lawyers and one of the best jurists at the bar, learned in the law, and skilled in its practice. I never have heard the slightest intimation that he was anything but honest and upright, as he is capable and energetic. He has never hesitated to take a strong public position on public matters and it is never difficult to place him.

He seems to have been a man who always had an ambition to do something to better the conditions of the people.

It is not unusual for a man of his large experience and long years of turmoil in the courts and out to have displeased many, and perhaps offended them very deeply, and this is true of any man of his years and of his activity.

I am confident that if a vote of the Boston Bar Association were to be taken, or if a vote of the members practicing at the Suffolk bar, many of whom are not members of the association, was to be had, Mr. Brandeis would receive almost a unanimous vote, and, regardless of individual feelings, the lawyers would indorse him as an honest man, well fitted by training and experience to hold a place on the bench of the Supreme Court of the United States.

I have seen in the press a protest against the appointment of Mr. Brandeis signed by some members of the Suffolk bar. These are all estimable men, but, almost without exception, men of one class and one kind. I see there few names of the active trial members of the bar. I see there few names of men who have had to struggle to attain success. I see there few names of men engaged in general practice. This is not to be taken as any reflection upon these men, but merely as calling your attention to the fact that the list of names which I saw published was far from representative of the Boston bar, where we have all races and creeds, whose opinion is worth while and whose standing is beyond question and who are perhaps much nearer to the people than those in the list I have mentioned.

I do not want to accuse anyone in particular, but I think I express the notion of the majority of the people of Boston when I say that there is a feeling that the underlying opposition to Mr. Brandeis is more because he is a Jew than that he is unfit by reason of anything he has ever done. I know that your committee will have this in mind and that such a thought and such a reason will have no harbor and no merit in your honest consideration of this case.

Very truly, yours,

JOSEPH C. PELLETIER.

—

WASHINGTON, D. C., *February 7, 1916.*

MY DEAR SENATOR WALSH: It seems to me a public duty to write to you in regard to the appointment of Mr. Louis D. Brandeis, of Massachusetts, as a Justice of the Supreme Court of the United States. During the two years I was governor of Massachusetts, and in the years preceding them, I had repeated occasions to observe this man and his high ideals and common sense; his wide practical knowledge of the law; his extensive understanding of the business, economic, and social problems of our time; his sound judgment and ardent devotion to the public welfare. As you know, we are justly proud of the number and ability of our public-spirited men in Massachusetts, and it would be difficult to point out a better example of generous, unpaid, diligent, constructive work upon the side of the public interests than that which has been done by Mr. Brandeis.

On numerous occasions, beginning at least as far back as 1896, whenever the creation and control of the Boston subways was before the legislature, he has been, as a private citizen, a tireless and successful leader against powerful opposition in support of the principle that the value of the subway franchises should be kept for the public after giving to the operating company a reasonable return for services rendered. He declined to accept any compensation for his long-continued and very valuable constructive work during all these years in this cause.

When the gas situation in Boston appeared to be in a hopeless condition he urged, again as a private citizen, the plan by which the dividends of the gas company were made dependent upon the price charged for gas to the consumers. This has resulted in a reduction of the price of gas to the public and in a corresponding increase in dividends to stockholders of the company

When the insurance investigations occurred he devised and successfully pressed for legislation in Massachusetts permitting, for the first time in this country, our savings banks to issue small-payment life insurance policies. This has resulted in an opportunity for our working people to insure themselves at much lower rates than were being charged by the industrial insurance companies, and has led these companies to make lower rates. To my personal knowledge Mr. Brandeis has given annually thousands of dollars to further the work of bringing to the working people of our State this opportunity for less costly insurance. For more than 20 years prior to the Massachusetts law there had been no reduction in the cost of industrial insurance, but since the passage of the law so successfully advocated by Mr. Brandeis in Massachusetts the premiums of the old-line companies have been reduced, on an average, 20 per cent, thus saving to the people of this country, insured in industrial companies, from $15,000,000 to $20,000,000 annually, and to the people of Massachusetts about $1,000,000.

The system of arbitration which he devised for the New York garment workers is an equally significant example of his judicial qualities and his public service in other fields.

In 1906 the people of New England began to awaken to the fact that the New Haven Railroad was apparently successfully seeking to create a New England transportation monopoly. The event which focused public opinion most sharply was the acquisition of the controlling interest in the Boston & Maine Railroad. Mr. Brandeis, again as a private citizen, commenced an exhaustive study of this railroad problem and made public an analysis of the financial condition of the New Haven Railroad, pointing out, for the first time, to the people of New England the inevitable disaster sure to result from the course of mismanagement and waste then being pursued. His advice was unheeded, his warning derided, and his motives impugned. But time has shown that his conclusions were based upon carefully ascertained facts, to which he applied the clearest and most cogent reasoning power. Three years ago what he prophesied nine years ago became apparent to all and is now a matter of public knowledge and of record in Senate documents and elsewhere.

I instance these among many public services covering a long period of years as illustrative of the work done as a private citizen in the service of the public interest without compensation, at a large expenditure of his own time in the midst of a very active professional life.

Indeed, in extensive acquaintance with public men, I know of no one who without emolument or honors of public office has given so much of the valuable constructive service of a trained lawyer to the public weal as Mr. Brandeis.

I have written mainly of Mr. Brandeis's public work for the past 20 years, but I would not have you overlook that, before he engaged in these public activities out of which have grown results for which he is entitled to the gratitude of the American people, he had achieved already a position at the Massachusetts bar which would well have warranted his appointment to the Supreme Court at the age of 40. He is a great lawyer and a great citizen. Is not this a combination for a great judge?

Were I not hastening on a far journey I would seek a personal interview with the committee, but failing such opportunity I venture to emphasize and perhaps to repeat some of the things I said to you orally; and I hope that you will communicate them to your committee, together with my very best respects.

Very sincerely, yours,

DAVID I. WALSH.

Hon. THOMAS J. WALSH,
The Senate, Washington, D. C.

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FEBRUARY 1, 1916.

To the members of the Judiciary Committee
of the United States Senate.

GENTLEMEN: I have practiced as a member of the Boston bar ever since the admission of Louis D. Brandeis. I have known him well and watched him with interest through all these years, though not connected with him in any way. If confirmed by the Senate, as I have no doubt he will be, I am satisfied he will be an acquisition of the highest value to the Supreme Court. His mind is clear, analytic, exact, incisive, and sound. There is in my acquaintance no surer, saner, more exact and reliable mental macanery than is found in him. I know of no lawyer anywhere who could better assist in the correct solution and conclusion of the involved legal propositions coming before our highest court than Mr. Brandeis. He is versed in nearly all departments of the law. He is acquainted with all sections of the country. He knows all human conditions and has regard for them. His purpose is noble and untrammeled. His spirit and habit are modest, considerate, and kind. He is never obtrusive, but he never hesitates to take the consequences of his convictions. He accomplishes an enormous amount of work in a day, and he is ripe in wisdom, sense, and courage.

Mr. Brandeis is thoroughly judicial in temperament and habit. He is never hasty or extreme, but is calm, mathematical, incisive, and careful in his ready reasoning. His judicial analysis and conclusion in the numerous public issues with which he has been connected are often taken as controversial, because he sees the wrong sooner than others do, and then lays it bare to the world's inspection in the succinct, clear, unanswerable terms which the courts employ. His words are few; he never reiterates. He enunciates propositions which the courts and laymen adopt.

I have never known Brandeis to be assailed, except for turning on the truth. For instance, in the conduct of the New York, New Haven & Hartford Railroad all the attorneys general, district attorneys, and administrators of governments in the three States traversed by the railroad knew for years that the corporation was proceeding ultra vires and regardless of law. By enormous expenditures it quieted agitation, and New England thought it well enough for that railroad to be superior to law. Finally Mr. Brandeis alone made plain that its unlawful monopoly and wasteful aggrandizement were bringing financial ruin as well as moral abasement; that from $100,000,000 to $250,000,000 had been lost in its unlawful courses; and that all would yet be lost unless the policy were changed. The stockholders of that corporation are to-day indebted to Mr. Brandeis alone for effectuating the halt and

turning about which have saved them whatever value they have left in the New Haven Railroad. For his stand against ruination, voluntary to be sure, some writers, like the editor of the Boston News Bureau, who received $104,000 from the railroad company to place among newspapers for advertising, have defamed Mr. Brandeis shamefully and relentlessly, claiming he ruined the credit of the road, whereas he saved the remnants of its value for restoration by a law-abiding management.

The Supreme Court and the country, now that the opportunity is given, should have the benefit of this plain, sincere, and remarkable personality in the position for which he is most signally qualified. Massachusetts could not make a better contribution to any department of the Government.

Respectfully, yours,

A. S. HAL.

FEBRUARY 18, 1916.

Senator WILLIAM R CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

MY DEAR SENATOR: This letter is written to urge the confirmation of Louis D. Brandeis as associate justice of the Supreme Court of the United States.

To identify myself to your committee, in order that you may know what opportunity I have had to pass upon the qualifications of Mr. Brandeis, I would say that I have been a member of the bar, practicing in Boston, for the past 18 years. In politics I am a Democrat, and have served in the Boston City Council, Massachusetts House of Representatives, and the Massachusetts Senate, and have been register of deeds for Suffolk County since 1907. I was president of the Democratic city committee of Boston from 1902 to 1905, inclusive, and a vice president of the Democratic State committee for several years. I was a delegate to the national Democratic convention at St. Louis in 1904 and an alternate at the Democratic national convention in Baltimore in 1912.

I first met Mr. Brandeis 20 years ago, when I was a delegate to the Boston Municipal League, an organization composed of representatives from many improvement societies and other bodies who were interested in improving the civic welfare of the city and obtaining better laws for the benefit of the whole people and opposed to any privileged class, political or otherwise.

I recall that Mr. Brandeis was counsel for the league and had done considerable work for the organization; and I remember distinctly that it was a great surprise to me as a law student at that time when Mr. Brandeis presented to the league a receipted bill for $500, with his compliments, and declined to receive any compensation whatever or to make any use of the appropriation that had been made for counsel fees.

On many occasions since that time I know that Mr. Brandeis has acted in behalf of the public, and has represented civic and charitable organizations without compensation. I have seen him in action before legislative committees and at great gatherings of citizens discussing public questions. I have seen him in court in the trial of cases, and I have never known a man that possessed a keener or more logical mind. I consider him the equal, if not the superior, of any man at the bar in this part of the country.

At a meeting of the Boston City Club about two years ago Mr. Brandeis made the ablest presentation of an antitrust argument that has ever been heard in this city, and it was the unanimous opinion of the members, of all shades of political opinion, that no more scholarly or logical address had been made at the club during its history, and our speakers have included Presidents Wilson and Taft, Hon. William J. Bryan, Hon. Champ Clark, many United States Senators and Congressmen, Cabinet officers, the governors of many States, college professors, eminent pulpit orators, and many leading lawyers of the United States, as well as members of the English Parliament.

At the dinner that preceded this address at the City Club brief speeches complimentary of Mr. Brandeis were made by representative citizens of Boston, and as a vice president of the club I was asked to speak. I said that I agreed with all the speakers, and with the entire community, in fact, that Mr. Brandeis was an exceedingly able lawyer and a good citizen, but that I had been trying for many years to make up my mind whether he was a deep-dyed schemer who had been carefully laying his plans to become mayor of Boston or governor of Massachusetts or whether he was simply an honest man.

I felt that the time had come to make a decision, and, inasmuch as he had stood the test for nearly 20 years and had not declared himself a candidate for office, I had come to the conclusion that he was simply an honest man, sincere in all his endeavors in behalf of the common people, and that he had absolutely no ulterior motive in devoting his magnificent talent on many occasions to the public without compensation. I still adhere to that opinion, and believe that his confirmation would add great strength to the Supreme Court.

Many a man is loved for the enemies he has made, and I believe that Mr. Brandeis is to be congratulated for some of the enemies he has made, although there may be a few of his opponents who sincerely believe his confirmation unwise, but I think they do it because they can not see outside of their own sphere of influence and because Mr. Brandeis has attacked their interests.

These men, however, do not represent the general opinion of this community, and I have no doubt that a poll of the citizens of Boston would be overwhelmingly in favor of the confirmation of Mr. Brandeis.

Respectfully, yours,

W. T. A. FITZGERALD.

[Lionel Norman, attorney and counselor at law, 200 Devonshire Street.]

BOSTON, *February 19, 1916.*

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: I understand that you are chairman of the subcommittee having the matter of the confirmation of Louis D. Brandeis for the Supreme Court of the United States under consideration. While my law practice in the past has not been an extensive one, still I have had more or less trust matters, involving large sums of money, to attend to, and in this connection have had some contact with Mr. Brandeis's firm. One case involved a matter of $168,000, which was referred to Mr. Brandeis personally. The matter was dealt with in a manner showing great integrity and consideration, when it might easily have been dragged out for years and cost the estate a great deal of money. The fee charged to the estate and the whole attitude in the premises made a very deep and favorable impression upon me.

Outside of the few hereabouts in Boston who represent what we call "God's own anointed," but who do not always practice God's precepts, Mr. Brandeis is regarded as a man of very high principles as well as of very great ability and deep legal learning. Possibly, if there is any criticism of him which I might be inclined to make, it would be that instead of being overpractical, as he has been accused of, he is too idealistic.

Yours, very truly, LIONEL NORMAN.

BOSTON. *February 1, 1916.*

Senator W. E. CHILTON,
Washington, D. C.

DEAR SIR: I see from the daily papers that you are the chairman of the Senate committee which is to inquire and report as to the advisability of confirming the nomination of Mr. Brandeis to fill the vacancy in the Supreme Court.

Having known Mr. Brandeis as a student at the Harvard Law School in 1876, watched his career as a lawyer, and having lived in Boston for the past 12 years, I desire to urge your committee to recommend his confirmation.

Mr. Brandeis was certainly one of the leading men, if not the leading man, in his class at Harvard, and since his admission to the bar in Boston has gradually forged his way to the front until he is now, and for several years has been, recognized as one of the ablest lawyers in this city. His standing as a man and as a lawyer is the best, but like all leading men in his profession has necessarily made some enemies in attaining his present position. He is a lawyer who thinks for himself and is not afraid to express his convictions, and who realizes that the law must grow to fit existing conditions rather than undertake to apply precedents which have arisen out of conditions which no longer exist to present-day problems.

I hope you will find it consistent with your duty as a Senator to vote for and urge his confirmation as a member of the Supreme Court, as I confidently believe that the appointment of a man of his ability an character to the Supreme Court at this time is both wise and judicious.

Very truly, yours,

J. M. HEAD.

FEBRUARY 23, 1916.

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: I address you as chairman of the subcommittee on the question of confirming the nomination of Louis D. Brandeis, Esq., to the United States Supreme Court. If it is proper at this time to make a statement of opinion, as many eminent persons have recently done pending the investigation, let me say that I was in the law school with Mr. Brandeis and knew him well, and have kept up a friendship with him ever since.

Of late years I have retired from active practice and wholly withdrawn the last four years. I have, however, followed his course with great interest, have the highest opinion of his intellectual and moral qualities, and would not hesitate to entrust my affairs in his hands, feeling sure that if I did so he would look after them with the greatest intelligence and loyalty, and I believe his large knowledge of sociological questions would be of distinct benefit to the Supreme Court. Believe me,

Respectfully, yours,

RICHARD H. DANA.

FEBRUARY 16, 1916.

Hon. WILLIAM E. CHILTON,
United States Senate, Chairman Subcommittee,
Washington, D. C.

DEAR SIR: I am glad to support the nomination of Louis D. Brandeis. I believe that he is an accomplished, able lawyer; that he has been zealous and faithful in his office as attorney; that he is in every way trustworthy and reliable and eminently qualified for the office of justice of the Supreme Court of the United States.

Very truly, yours,

JOHN W. CUMMINS.

COPY OF RESOLUTIONS ADOPTED BY TAUNTON BAR ASSOCIATION.

[Prepared by Silas D. Reed and Louis Swig.]

Whereas the due consideration and formal expression of the Bar Association of the City of Taunton is proper and becoming upon such subjects as may specially and intimately concern the profession of the law, the said Bar Association of the City of Taunton at a special meeting and after due notice, in which was included reference to the subject of these resolutions—

Resolved, That it unqualifiedly and unreservedly indorses Louis D. Brandies, Esq., of Boston, for appointment to the Supreme Bench of the United States. We regard that Mr. Brandies's learning in the law, his training in its science, and his wide and reputable experience with men and affairs, eminently and becomingly qualify him for the honorable and learned service demanded of the justices of the Supreme Bench. We also voice the opinion that Mr. Brandeis eminently represents the spirit of the times and the democracy of the age. Popular government has a right to expect that such expression be represented in the judiciary as well as in the executive and legislative: Be it further

Resolved, That an attested copy of these resolutions be sent by the secretary of the association to the Senate of the United States, and that they be entered upon the records of the association.

FEBRUARY 16, 1916.

Hon. WILLIAM E. CHILTON,
United States Senate, Chairman Subcommittee,
Washington, D. C.

DEAR SIR: I hope that the nomination of Mr. Louis Brandeis to the office of Justice of the Supreme Court of the United States will be confirmed. He is an able lawyer in good standing, and he has the confidence of the community.

Respectfully, yours. CHARLES R. CUMMINGS.

FEBRUARY 26, 1916.

Senator WILLIAM E. CHILTON,
Subcommittee, United States Senate, Washington, D. C.

DEAR SIR: Apropos of the appointment of Mr. Louis D. Brandeis, of Boston, for Associate Justice of the United States Supreme Court, I feel that I should be remiss in my duty as a citizen of this Commonwealth were I not to say at least a word of commendation and assist the good cause so well begun by His Excellency the President.

I have known Mr. Brandeis for 30 years and have had ample opportunity to study him at close range. Having been a public servant, in that I served in the governor's council several terms, and was lieutenant governor of the Commonwealth of Massachusetts, I feel qualified to judge of the pulse of the people with regard to public officers. Consequently, I feel safe in saying that the appointment is one of the greatest acts which the President has done yet, to show that he intends to have as servants of the great American public, men who really will serve the public. The general public feels that no wiser move for the advancement and behalf of the so-called common people has yet been made by His Excellency.

Again I beg to state that I heartily indorse the appointment, and trust that no petty opposition arising from the disgruntled opponents whom Mr. Brandeis has unmercifully beaten in litigation will stand in the path of so worthy an appointee.

Sincerely, yours,

E. P. BARRY.

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FEBRUARY 10, 1916.

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: This letter is intended as an indorsement of Louis D. Brandeis, who has been nominated as Associate Justice of the Supreme Court of the United States.

I may be identified as a lawyer in practice in Boston for 35 years and more, who is and has been a Republican, and who was United States attorney for this district in 1905–6, resigning then by choice and not by request while there was a Republican administration at Washington

I have known Mr. Brandeis since he was called to the bar, and I became then and have remained through the continuing years his friend and admirer.

I have differed from him in many questions of politics and policy.

I do not recall that I have ever been associated with him in legal matters and causes, but I am sure he has many times represented interests which were adverse to those for which I appeared.

I have naturally known many men and many lawyers, but he to me seems supereminent in so ordering his life that with his splendid mental equipment and his great acquisition of learning there were always time and energy to recognize and pay his obligation to the State and the people as he in his vision saw it.

Of course, one can not assert that he has high judicial qualities without a trial, but of such as he great judges have been made, and therefore I think he should be confirmed. I am,

Very respectfully, yours,

MELVIN O. ADAMS.

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FEBRUARY 24, 1916.

WILLIAM E. CHILTON, Esq.,
Chairman of Subcommittee of the United States Senate,
Washington, D. C.

DEAR SIR: I have read with dismay the press reports of the testimony given by Moorefield Storey and Hollis R. Bailey before the subcommittee of the Senate regarding Mr. Brandeis. In view of my knowledge of Mr. Brandeis it did not seem to me possible that these men and others would unite in an effort to prevent his appointment to the Supreme Court and to go to the limits they have gone in maligning him. I am thoroughly convinced that the ring behind this fierce and totally unwarranted opposition to Mr. Brandeis are the representatives of predatory wealth and vested interests, and those who are not directly the representatives of these interests have been influenced in their course by these interests.

My familiarity with conditions in Boston, where I have lived all my life and where I have actively practiced law for more than 15 years, convinces me that this chain of men and interests opposing Mr. Brandeis has been forged together from links which have been closely united for generations in this Commonwealth. These men think more or less alike and have a common purpose. Their thoughts and purposes have been in direct conflict with Mr. Brandeis's thoughts and in direct opposition to the purposes which Mr. Brandeis has made the precepts of his life. The present opposition to him is due entirely to the fact that he has been a vigorous opponent of their interests and that he has laid bare their business methods in a way which did not put them in any very enviable light. It is now their purpose "to get back" at him, and that weight should be given to their testimony (especially in so far as their testimony merely gives their opinions, and that is all the testimony seems to amount to) as would be given to anyone's testimony who has been injured and who has thereby become vindictive.

Their opinions of Mr. Brandeis are entirely unfounded and their testimony as to his standing and reputation is entirely conjured up as the result of their bitter feeling against him. The young men practicing law in Boston have held him up as the ideal of what a lawyer should be—courageous, honest, faithful, and zealous in representing his clients, and in the performance of his duties as a citizen most unusual and unselfish. The accusation that he does not think honestly is to me so absurd, so unwarranted, in view of his public acts and of his splendid accomplishments in the public's behalf, that it seems incredible that men of any type can even give utterance to, let alone think, such things about Mr. Brandeis.

The accusation that the majority of the bar, or of a very large number of the bar, in Boston have no faith in him is to me the most astounding charge, in view of the fact that his office is now, and has been for years, one of the most prominent law offices in this city, and that Mr. Brandeis's firm is constantly coming in contact with numbers of members of the bar. I have yet to hear any lawyer call the conduct of Mr. Brandeis or his associates to account, except in those instances which have already been made public and which have been known for years. As to these accusations, it should be borne in mind that every lawyer's conduct is capable of being misinterpreted. A lawyer is frequently placed in a position where it is difficult for him to know what to do and where his conscience is the sole test as to whether he has done his full duty to all concerned. This must necessarily be the situation in the cases in which Mr. Brandeis was called upon to represent the apparently harmonious but to some extent conflicting interests. Those who know Mr. Brandeis as I do feel that he has conscientiously fulfilled his duty as he saw it to all concerned. Unfriendly persons are likely to misinterpret his conduct in that regard. To my mind the lawyer who endeavors to reconcile the apparently conflicting interests, thus preventing wasteful and annoying litigation, serves all interests best and renders at the same time a great public service. There are many times when it is unwise for him to attempt such a course, but when all parties consent and the lawyer does his best for the time being, if all his foresight and sense of justice fail to accomplish this purpose, is he to be condemned for it?

The accusation that Mr. Brandeis is the sort of man who would betray his clients is not borne out by anything which I have ever heard of him from his numerous clients, many of whom I know intimately, who are substantial business men and have been his clients for years. They have to a man always spoken of him in the most praiseworthy way.

I feel certain that if any of the men who have testified before the committee had been present at any of the gatherings at which Mr. Brandeis was either a speaker or a guest and saw the wonderful receptions which he received from people of every walk in life, from the humblest to the most prominent, that not even their vindictiveness would have given them the courage to have given the testimony before the committee which they gave. I have never witnessed more genuine enthusiasm of a public man anywhere than I have witnessed at large gatherings at which Mr. Brandeis was either a speaker or a guest. I have heard men in every walk of life praise Mr. Brandeis in terms which, in his presence, I am sure frequently embarrassed him, and it is inconceivable that the man who has the "reputation" which has been testified to before the committee should be so lauded and praised.

I was attorney for one of the creditors in the Lennox case, and I was active in that matter. There was nothing in the Lennox case with which any creditor or any party interest could complain of as against Mr. Brandeis. If he purported to represent "the situation" (which is not uncommon practice), he and his associates did it in a masterful and an entirely proper way. This is attested by the fact that for months after Mr. Nutter was appointed common-law assignee, and months after the involuntary petition was filed, not a single creditor made a move to ask for the appointment of receivers to take the place of Mr. Nutter or to serve with him as receiver, which they had a right to do. It has been suggested that the filing of the involuntary petition by Mr. Brandeis's office was not proper. If an involuntary petition had not been filed by Mr. Brandeis's office I feel quite certain, from what I know, that others would have filed such a petition, and, as a matter of fact, the records will show that two other petitions were filed after the petition was filed by Mr. Brandeis's office.

It is my opinion that every attorney, including those who have testified against him, would trust Mr. Brandeis and his office to keep any agreement which he or any of his associates would make. I have heard judges of our courts speak of Mr. Brandeis and his associates in the very highest terms, and I have never heard any attorney outside of this small coterie say anything derogatory of Mr. Brandeis or speak of him in any terms except the highest. There is a feeling here in Boston that if you want to know what an attorney thinks of Mr. Brandeis you must first find out what his affiliations and associations are. If they are with the type of lawyers who testified against him the chances are that they will stand with Mr. Storey and Mr. Bailey. If, on the other hand, they are with the every-day lawyer who does not represent vested interests, large corporations, or predatory wealth or the so-called "Back Bay crowd," I am quite sure that to a man they will stand with Mr. Brandeis and urge his appointment. The latter class constitutes by far the great majority of the bar, and with them Mr. Brandeis's reputation is to be envied.

I have felt that the real issue before your committee is not Mr. Brandeis's character, his standing, his reputation, or his ability, but as to whether Mr. Brandeis's service to the people of the country shall be condemned and as to whether the powerful interests behind the opposition shall be condoned for their wrongful acts. Shall Mr. Brandeis, who has altruistically given his efforts for the welfare of the rank and file of the country, be crucified so that the opposition may say to men of his type, "There hangs the man who was broken on the wheel because he attacked us"? Shall the Senate of the United States say that dishonest business, those who violated trusts and who break laws, may continue in their course, and those who attempt to interfere with them are doomed to destruction?

Mr. Brandeis's works are milestones in the progress of the country. He has labored to make the law a living, vital force for the equitable benefit of all and he has tried to correct it as a force which serves only a few and makes the public subservient to their interests. His grasp of government, his understanding of the conflicting social and economic forces, his genuine sympathy for all mankind, his extraordinary experience, his prodigious capacity for work can not but help make him one of the greatest judges of all times. If the Senate rejects him, I am satisfied that the great majority of the bar and the public will feel that the Supreme Court will have lost the services of a great man, one of the greatest of our time.

Yours, very truly,

ARTHUR BERENSON.

—

CRAIG HALL,
Atlantic City, N. J., March 13, 1916.

To United States Senator OSCAR W. UNDERWOOD,
Washington, D. C.

DEAR SIR: The day you left Atlantic City I called at the Dennis to say a few words on the matters about which I am now writing.

I wanted to say that I hoped Mr. Brandeis would be confirmed, for I have had a casual acquaintance with him dating back 35 years. I attended a part of the hearings in Washington and heard the evidence in the New England Railroad, the Warren Will, and the United Shoe Machinery cases. Judging the other allegations by these, I did not see any need to hear them. From what I heard in the above cases I rated the testimony as simply the whining of whipped dogs.

My brother, who has just retired from 40 years of law practice at Boston to our old plantation in Alabama, was in the Harvard Law School with Mr. Brandeis and knows his record in Boston. He has written an open letter strongly urging his confirmation.

The Boston & Maine and the New Haven Railroads were looted by a group of lawyers, bankers, and promoters in Boston with strong copartners in New York. It is these men who are the real opponents of Mr. Brandeis. I know personally a majority of the Boston lawyers who appeared before the Senate committee, and they were simply responding to their personal environment. The same may be said of President Lowell of Harvard, who, I have the strongest reasons for believing, did not represent the prevailing sentiment of Harvard alumni when he signed the protest of the Boston lawyers against the confirma-

tion of Mr. Brandeis. The Harvard sentiment on that point is expressed in an editorial in the New Republic of February 26. A copy of this I have sent to the Senate committee.

If the Government shipping bill ever reaches the Senate, I hope that will pass. The shipping question I have studied for a number of years, because I had an interest as a shipper in that direction. I do not believe under world conditions of to-day that we can build up a merchant marine without the aid of the Government's credit. Our private capitalists are nearly all associated with the foreign ship monopoly that is fighting the bill. That makes any new private shipping concern almost an impossibility. The plan of aid provided in this bill seems to me much better than that of granting subsidies. My reasons for that position you will find stated in my remarks before the House Committee on Merchant Marine.

Yours, truly,

THOMAS P. IVY.

BOSTON, *February 23, 1916.*

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: I write this letter to urge the confirmation of Louis D. Brandeis, who has been nominated as Associate Justice of the Supreme Court of the United States.

I feel it my duty to address you because I am a lawyer in practice in Boston for more than 30 years and am still in active practice here. I have known Mr. Brandeis during the entire period.

It may be proper for me to state that I was for some years connected with the district attorney's office in this county, and, after that, before entering into general practice, was for some years first assistant city solicitor of the city of Boston.

I have always considered and now regard Mr. Brandeis as a man of great intellectual attainment of the highest character, whose motives are pure and noble.

It would be impossible for a man who has taken such decided stands and expressed what in this conservative end of the world may be called "advanced views" not to be criticized by some large interests.

It is my belief that our people as a whole have confidence in him and wish to see his nomination followed by his confirmation.

Very respectfully, yours,

ROBERT W. NASON.

MARCH 1, 1916.

Hon. WILLIAM E. CHILTON,
Chairman of the Subcommittee on Judiciary Appointment,
Washington, D. C.

DEAR SIR: From reports of the testimony already submitted to your committee appointed to consider the appointment of Louis D. Brandeis to the Supreme Court of the United States, I have learned that certain unfavorable opinions have been placed before your committee regarding the reputation in this community of the man you are considering.

These opinions are, to my knowledge, not representative of the general opinions of the reputation of Mr. Brandeis.

During my experience as a practicing attorney in Boston I have had brought to my attention on numerous occasions the general reputation of Mr. Brandeis. On every occasion that I have heard mention made of Mr. Brandeis it has always been in commendation of Mr. Brandeis, praising him for his standards of honesty, trustworthiness, fidelity, and profound knowledge of the law. I know these opinions are shared by a substantial majority of the lawyers of this community.

I sincerely hope that Mr. Brandeis will be recommended by the committee for appointment to the Supreme Court of the United States, and I feel that the esteem in which the Supreme Court of the United States is held by the people will thereby be greatly increased.

Respectfully, yours,

LOUIS ABRAHAMS.

FEBRUARY 19, 1916.

Senator WILLIAM E. CHILTON,
Chairman Subcommittee, Washington, D. C.

MY DEAR SENATOR: The nomination by the President of Louis D. Brandeis, of the Boston bar, for the position of Associate Justice of the Supreme Court of the United States meets with my approval.

I have practiced law in Boston for 15 years. The senior member of our firm has practiced in Boston since 1872. Our firm has had frequent matters with Mr. Brandeis's firm. The senior member of our firm, who at present is ill and unable to address you, has many times been interested in matters in which Mr. Brandeis was interested, one side or the other.

Our relations have been cordial, and we have had great respect for Mr. Brandeis and his firm throughout all these years.

From what I hear of the talk of other lawyers, I wish to say to you that I do not believe that the recent protest by certain Boston lawyers in any way represents the feeling of the Boston bar in reference to this nomination.

Yours, truly,

JOSEPH W. BARTLETT.

[From the office of Maurice Bergman, attorney and counsellor at law, Old South Building, Boston, Mass.]

FEBRUARY 29, 1916.

Senator WILLIAM E. CHILTON,
Chairman Subcommittee, Washington, D. C.

MY DEAR SIR: I have been in practice in this State since August 31, 1909, and during this period have constantly had before me as an example of success in legal attainment the career of the illustrious Louis D. Brandeis, whom I believe to be a true champion of the people of these United States, and that he stands for honor and integrity and constantly strives to achieve equality for all and special privilege to none.

Having these sentiments in mind, I take the liberty of addressing this communication to you.

Very respectfully, yours,

———— ————.

BOSTON, MASS., *March 4, 1916.*

Hon. WILLIAM E. CHILTON,
Chairman Subcommittee on the Judiciary,
Washington, D. C.

DEAR SIR: In re Louis D. Brandeis. Permit me as a humble member of the Boston bar to add my bit to the many other which you must have received indorsing the appointment of Mr. Brandeis to the Supreme Court.

I have met Mr. Brandeis personally on several occasions and have found him a man of high ideals. His reputation among the members of the Boston bar, notwithstanding the report given by the self-constituted committee of "State Street lawyers," is most excellent, both as to his personal character and to his legal ability.

I wish I could say as much of several of the remonstrants.

Very truly, yours,

HARRY BERGSON.

MARCH 1, 1916.

Hon. WILLIAM E. CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

DEAR SIR: Permit me to add my indorsement to those of many others, which I am sure you have received in the matter of Mr. Louis D. Brandeis as Justice of the United States Supreme Court. I have had occasion to know Mr. Brandeis quite thoroughly, both as a lawyer and as a man, and though I could give many details of his worth and fitness for the high office to which he has been nominated, I will not encroach so unnecessarily upon your time.

Let me, then, merely summarize by saying that as a lawyer of almost 20 years' practice I would stake my reputation upon the prophecy that Mr. Brandeis will do honor and credit to his country as a Supreme Court Justice.

Respectfully, yours,

WM. M. BLATT.

BOSTON, MASS., *March 6, 1916.*

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: As a native and lifelong citizen of Boston and a practicing member of the Massachusetts bar for more than a dozen years, I can not too strongly urge the confirmation by your honorable committee of the nomination of Louis D. Brandeis, Esq., as Associate Justice of the Supreme Court, as I know him to be admirably equipped with the very qualities requisite for such office.

Respectfully, yours,

ABRAHAM BLUMENTHAL.

FEBRUARY 29, 1916.

Senator WILLIAM E. CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

MY DEAR SENATOR: Permit me to express the hope that your committee will report favorably on the confirmation of Louis D. Brandeis as Associate Justice of the Supreme Court of the United States.

I have known Mr. Brandeis for a number of years. I first met him when he appeared before some of the committees on which I had the honor to serve as a member of the Massachusetts Legislature, and I know that even in those days he was considered one of the shining lights of the Massachusetts bar and a man whose integrity and honor was above suspicion. Since then I have known Mr. Brandeis more intimately both as a member of the bar and in philanthropic work and learned to admire and appreciate his many great qualities.

I have no doubt that as a member of the chief tribunal of our great country he will fill the place with honor.

Very truly, yours,

SAMUEL H. BOROPSKY.

[Massachusetts Catholic Order of Foresters, Joseph T. Brennan, high chief ranger.]

17 WORCESTER STREET,
Boston, February 25, 1916.

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

SIR: As the executive head of the largest fraternal insurance organization in this State, having an active membership of 42,000 adults; as an attorney practicing in the Federal and State courts for 12 years; as a citizen who has endeavored to keep in close touch with industrial, social, and legal, and political conditions, I have had an extraordinary opportunity to observe the sentiment of the people of this community for and against the confirmation of Louis D. Brandeis as Justice of the Supreme Judicial Court. Outside of a few individuals, with personal or biased motives, and irrespective of class, creed, or race, the unanimous opinion is that the nomination should be confirmed.

I therefore beg to add my name to the long list of those who have already indorsed Mr. Brandeis, and trust that the honorable committee of which you are chairman will report favorably.

Respectfully,

JOSEPH T. BRENNAN.

FEBRUARY 23, 1916.

Hon. WILLIAM E. CHILTON,
Chairman Subcommittee of Senate Judiciary,
United States Senate, Washington, D. C.

DEAR SIR: In view of the fact that several of my associates at the bar have seen fit to protest against the appointment of Louis D. Brandeis, I wish to go on record in favor of his appointment.

I believe that Mr. Brandeis's presence as a member of the United States Supreme Court will greatly strengthen that body.

Yours, very truly,

LAWRENCE G. BROOKS.

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40 COURT STREET,
Boston, Mass., February 24, 1916.

Senator WILLIAM E. CHILTON,
Chairman Subcommittee United States Senate,
Washington, D. C.

DEAR SIR: This letter is intended as an indorsement of Louis D. Brandeis, who has been nominated as Associate Justice of the Supreme Court of the United States.

I have been practicing law in the city of Boston 12 years and have been a member of the city government of the city of Boston and of the Massachusetts Legislature, and I feel that the opposition that has been shown toward the confirmation of Mr. Brandeis comes from such a circle that opposes anything that tends toward democracy. I assure you that the different lawyers who signed the petition opposing his confirmation are not the men that rub elbows with the everyday lawyer who practices in our Massachusetts courts.

I think that the addition of Mr. Brandeis to the Supreme Court of the United States would be a great step toward the advancement of ideas that have long had a place in the history of our country.

Very truly, yours,

A. M. BURROUGHS.

—

FEBRUARY 19, 1916.

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: Referring to the matter pending before the Judiciary Committee of the United States Senate on the confirmation of Hon. Louis D. Brandeis as Associate Justice of the Supreme Court of the United States, permit me to say, in view of the report of the evidence which I have seen in the local newspapers, that in my opinion Mr. Brandeis has the respect and confidence of this community.

I am writing as an attorney admitted to the bar of Massachusetts and practicing at Boston since July, 1894, and now occupying the position of a special justice of the municipal court of the city of Boston.

I know Mr. Brandeis and have met him professionally and in matters relating to civic and social welfare of this city.

I am in favor of the confirmation of the nomination.

Very respectfully, yours,

A. K. COHEN.

—

FEBRUARY 29, 1916.

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: As a member of the Massachusetts bar and practicing attorney for the past four years, I beg the liberty of registering my heartiest and sincere approval of Louis D. Brandeis, Esq., as Associate Justice of the Supreme Court of the United States, earnestly believing in his sterling qualities, judicial temperament, and national demonstrative ability. I believe I am expressing the sentiments of impartial and unbiased thinkers of this community to whom he has endeared himself through his sympathetic knowledge and wide experience in the needs of our present financial and business organization in its relation to social organization.

Respectfully, yours,

EMANUEL COHEN.

—

FEBRUARY 29, 1916.

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

HONORABLE SIR: Having been born in Boston and educated in its public schools, and having received two degrees from Harvard University, I write you with a deep sense of my responsibility as an American citizen indorsing Mr. Louis D. Brandeis for the position he has been recently named to by our President.

I realize that a man requires not only exceptional ability but unquestioned integrity in order adequately to fill a position in the United States Supreme Court.

I have known Mr Brandeis for several years, and have met him socially and in a business way. Though of the opposite political party, I indorse Mr. Brandeis most highly. I know him to be a man of absolute honesty, unquestioned integrity, and marked ability, and I am positive that he, if confirmed, will fill the position with dignity and to the entire satisfaction of all the people of the United States. I know that I reflect the consensus of opinion of the Boston bar in these statements.

In conclusion, I thank you for giving this letter your attention.

Respectfully, yours,

FRANKLIN M. COHEN.

—

MARCH 3, 1916.

Hon. WILLIAM E. CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

MY DEAR SIR: As a member of the Massachusetts bar and a member of the general court of this State for several years, I wish to attest as to the qualifications, ability, and character of Mr. Louis Brandeis, now under consideration by your committee, as the appointee of President Wilson to the Supreme Court of the United States.

While my professional associations with Mr. Brandeis have not been over an extended period of time, nevertheless whenever I have had occasion to transact business with him I have always found him to have been a man of the highest type, and, as a result of my observations of him, I take pleasure in saying that I have the utmost confidence in him and feel that he is thoroughly qualified in every particular to fill the high office to which he has been appointed by the President.

I am, sir, very truly, yours,

WILLIAM N. CRONIN.

—

SOMERSET CLUB,
Boston, March 21, 1916.

To WOODROW WILSON, *President,*
Washington, D. C.

MR. PRESIDENT: In the thought that possibly an added word, not idly said, by one possessing personal knowledge in regard to a high nomination lately made by you may not prove superfluous, I write as an older Boston and Harvard man who has followed Mr. Brandeis's career with interest from its early stage, and who has known intimately his friends and those of greatest weight who now oppose him, to say that, with full knowledge of the aims of these, I know the best regard the nomination as a singularly happy one. Mr. Brandeis, if his appointment be confirmed, will bring to that high court strong human sympathies and a creative intelligence, as well as legal knowledge, courage of convictions, and clear, quick apprehension. And that he will be adequately conservative in the presence of that great responsibility I have no fear.

I trust, accordingly, for the country's sake, that this appointment may, in despite of opposition, be confirmed, and with an expression of high personal respect, I remain,

Yours, truly,

GEORGE B. DORR.

—

MARCH 1, 1916.

Senator CHILTON, *Chairman,*
Washington, D. C.

MY DEAR SENATOR: As an attorney practicing in Boston since 1912, and as a social worker of many years, I desire to take the opportunity of going on record in favor of the appointment of Louis D. Brandeis as Associate Justice of the Supreme Court of the United States.

Mr. Louis D. Brandeis is known in this community as a man of great ability and sterling character. His reputation for honesty and uprightness is a matter of common knowledge among all the members of the bar, who have had occasion, disinterestedly, to watch his conduct in the many important causes with which he has been connected. Words of reproach against the reputation of Louis D. Brandeis as a member of the bar can come only from those persons who represent the vested interests and have had occasion very frequently to feel the force of his attacks.

Our country will indeed be fortunate if this learned jurist is placed upon the highest legal tribunal of this land, and that august and majestic body will be increased in strength by his membership.

Very truly, yours,

HARRY E. DUBINSKY.

—

FEBRUARY 16, 1916.

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: I take the liberty of writing the following letter in support of the nomination of Louis D. Brandeis as Associate Justice of the Supreme Court of the United States.

My practice has been in the State as well as the United States courts the last 16 years, and in 1914 and 1915 served as assistant attorney general of the Commonwealth of Massachusetts, and since have returned to private practice, and have been more or less active in public affairs and public questions.

Mr. Brandeis has been known to me personally and professionally during the last 16 years, and ever since I first met him he has appealed to me as the ideal lawyer and public man. I have been with him in many cases, and notably a large bankruptcy case in 1904, where his conduct with reference to fairness, wisdom, and integrity has ever remained with me as one of the pleasant memories of a lawyer whose practices were far higher than what one is wont to expect. I have differed from him in many questions of public policy, but even in those cases had a feeling that he represented more of the right attitude than I did.

His confirmation to the bench of the United States Supreme Court will be a distinct accession in dignity, force, and learning, and I prophesy that the time will come when his opinions and influence will be regarded as one of the influences of the early twentieth century in the decisions of that tribunal.

I have read of the opposition to his confirmation; I know it comes from a class in our community which, like the old Boston mob, so wonderfully described by Wendell Phillips, were the proponents of slavery, which mob was constituted of the best citizens, so-called, of Boston, because of their fear that some tradition of conservatism might be effected, and yet that very class, as you will remember, became the heroes in the war which followed. This class feels—and it is a very small minority of the community, both at the bar and out of it—that unless a man is of the bone and sinew of Massachusetts he should not have high place, however useful, sincere, and effective his career has been. Privately they will admit the almost incomparable attainments of Mr. Brandeis, but they fear the things he seeks to criticize; but they will be the first to realize 10 years later that his criticisms and work are the foundations of a new and better order. Their opposition, therefore, ought not be regarded too seriously. Their fears discolor their better judgment. The great voice of the country wish the confirmation to be made.

Very respectfully, yours,

L. R. EYGES.

—

MARCH 9, 1916.

Hon. WILLIAM E. CHILTON,
Chairman Subcomittee, United States Senate,
Washington, D. C.

DEAR SIR: I have been an assistant corporation counsel of the city of Boston for the last 11 years, and during that time have had several cases with the office of Mr. Brandeis. He is, to my knowledge, well known at the bar as a lawyer of great learning who has given very largely of his time and abilities to public questions.

I have never heard anyone question his great ability and his capacity for public service. I am of opinion that the real sentiment of the community favors his confirmation as a member of the Supreme Court of the United States, and believe that Mr. Brandeis is a lawyer of great ability whose presence on the Supreme Bench would greatly strengthen it with the people as well as with members of the bar.

I am, very respectfully, yours,

GEO. FLYNN,
Assistant Corporation Counsel.

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[Crigler & Frank, attorneys at law, suit 1117, Third National Bank Building, St. Louis.]

MARCH 16, 1916.

CHAIRMAN OF THE SENATE JUDICIARY SUBCOMMITTEE,
Washington, D. C.

DEAR SIR: I had occasion to notice yesterday in the press dispatches that a letter has been written to you by some of the leading men of this country, among whom were Elihu Root and William H. Taft, the letter in substance stating that it was their painful duty to say that they did not believe Mr. Louis D. Bradeis a fit person for membership in the Supreme Court of the United States.

I wish to call your attention to the fact that during the Glavis-Ballinger investigation Mr. Brandeis was counsel for Glavis; that in the course of the investigation he made Attorney General Wickersham admit that certain papers submitted by the White House to the Senate, at their request, had been antedated by him; that the White House, after denying the antedating, admitted the truth of this fact; that the White House again admitted later certain misrepresentations that it had made with reference to Lawler, a subordinate of Ballinger, and Kerby, Lawler's stenographer.

These decisions plainly show that the White House in response to the Senate's request had sent to Congress an important paper not relied on by the White House, and omitted to send another important paper on which the White House's previous decision relied, but from which only portions were copied. I have as my authority for this a preface, by Ernest Poole, to the book Business a Profession, by Louis D. Brandeis, and published by Small, Maynard & Co., Boston, page xxxix et seq. In connection with Ballinger's grilling examination by Brandeis, Mr. Root intervened with certain questions, showing his interest in the affair.

I have no doubt but that the Senate records of this investigation will bear out these assertions. A President is primarily responsible for

the conduct of members of his administration, and perhaps this incident will throw a little light upon why Mr. Taft and Mr. Root are so "pained" to write the above letter to you.

If you doubt the truth of any of my statements above, I believe a little investigation on your part will reveal the fact that they are true. I am sending a copy of this letter to President Wilson.

Trusting that you will give the above due consideration, and that the real motive behind the letter written will be seen by you, I beg to remain,

Yours, very truly,

MALCOLM I. FRANK.

[Max M Fritz, attorney and counselor at law, 40 Court Street.]

BOSTON, MASS, *March 1, 1916.*

Hon. WILLIAM E. CHILTON,
Chairman Subcommittee, Washington, D. C.

DEAR SIR: I have been a member of the Massachusetts bar for the past nine years, and have always looked upon Louis D. Brandeis as the ideal type of a lawyer. I have always heard none but the highest comment concerning his practice at the bar and his willingness to offer his services to the people at all times.

I respectfully urge you and your committee to submit a favorable report in the matter of the appointment by the President of Louis D. Brandeis as Associate Justice to the Supreme Court of the United States.

Very truly, yours,

———— ————.

MARCH 1, 1916.

Hon. WILLIAM E. CHILTON,
Chairman of Subcommittee, Washington, D. C.

DEAR SENATOR CHILTON: As a member of the Massachusetts bar practicing in Boston for nearly 16 years, and familiar with the reputation of all our big lawyers and the nature of their practice, I desire, in the interest of justice, to write to your committee strongly urging the confirmation of Louis D. Brandeis as a member of the Supreme Court of the United States.

The criticisms of Mr. Brandeis, of which I have read in the daily papers, all come from business men whose methods and interests have been attacked by Mr. Brandeis or from lawyers who represent the so-called "vested interests," whose methods have been so ably exposed by Mr. Brandeis in the public interest. I have looked in vain among the names of the men who are opposing Mr. Brandeis for a single one whose interest it has been to promote the public welfare, and in the last analysis it seems to me that the objection to Mr. Brandeis on the part of his opponents is that he would not be very friendly to illegal combinations in restraint of trade. So far from being an objection this strikes me as being a splendid recommendation for an appointee to the Supreme Court of the United States.

Neither Mr. Bailey nor any of the attorneys representing the large corporations, who have appeared before your committee to oppose the confirmation of Mr. Brandeis, represents the opinion of the Massachusetts bar as to the reputation of Mr. Brandeis for "straightforwardness" and "fair dealing." The rank and file of the bar who know anything about Mr. Brandeis, either by reputation or from business relations with him, believe him to be a high-minded, conscientious, honorable lawyer, and I believe it would be for the best interests of the country that Mr. Brandeis should be confirmed.

Very truly, yours,

FRANCIS P. GARLAND.

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18 TREMONT STREET,
Boston, March 1, 1916.

United States Senator WILLIAM E. CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

DEAR SIR: As an active member of the Boston bar for the last 10 years, I have been in close touch with many matters in which Louis D. Brandeis, Esq., of Boston, has been interested. I feel it my duty, therefore, to call to the attention of your honorable committee and the Members of the United States Senate that it is my belief that there is no more honorable member of the Massachusetts bar. He has the highest respect of all those with whom I have come in contact, not only for his ability but for his honesty and integrity.

I most heartily approve that his nomination by President Wilson as a Justice of the United States Supreme Court be confirmed.

Respectfully, yours,

EDWARD E. GINSBURG.

[Nathaniel Golden, counselor at law, 40 Court Street, Boston.]

FEBRUARY 29, 1916.

Senator WILLIAM E. CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

DEAR SIR: As a graduate of Harvard College, 1912, and of Harvard Law School, 1914, and as a member of the Suffolk bar of the Commonwealth of Massachusetts, I beg to add my hearty approval of the confirmation of the appointment of Louis D. Brandeis, Esq., as a Justice of the United States Supreme Court.

Though my personal acquaintance with Mr. Brandeis is but a recent thing, my knowledge of his unselfish and illy recompensed devotion and service to the cause of the mass of people extends back for many years. When I recall a conversation that I had with President Lowell some three years ago anent Mr. Brandeis, who had a few days previously delivered a lecture in Cambridge on one of the many humane things to which he has so long given of his time and money, I can not help but form the conclusion that the sincerity and purity of motives of the signers of the petition of protest, of whom President Lowell was one, must be impugned, and that it is predicated upon some ulterior purpose.

The general public has long recognized and admired Mr. Brandeis's profound mentality and his courageous love for the truth, and I am certain that the general sentiment is overwhelmingly in favor of his confirmation.

Yours, very truly,

———— ————.

FEBRUARY 28, 1916.

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: I am writing you this letter as an indorsement of Louis D. Brandeis, who has been nominated as Associate Justice of the Supreme Court of the United States.

I am a member of the bar; and although I am a former member of the Republican city committee of Chelsea, I would not permit politics to enter into my indorsement of Mr. Brandeis.

I have been personally acquainted with Mr. Brandeis for several years, and he has impressed me as a possessor of keen intellect. He engages both in public and private activities with sincerity of purpose, and I have always considered him a rare man.

I believe that the opposition to his confirmation comes from sources that may be classified under the category of special privilege, and it would indeed be lamentable for the progress of this Government if the moneyed interests should influence the appointment of any man to the greatest court in the world.

Permit me to assure you that I am heartily in favor of the confirmation of Mr. Brandeis. I am,

Very respectfully,

GEO. E. GORDON.

FEBRUARY 23, 1916.

Senator WILLIAM E. CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

HONORABLE SIR: I take the liberty of indorsing the appointment of Louis D. Brandeis, Esq., as Associate Justice of the United States Supreme Court.

I have discussed this appointment with a large number of lawyers and people in this community and can unhesitatingly say that this appointment meets with the approval of a great majority of the legal profession in this city and the people of our community.

From my observation and study of this controversy I am led to the conclusion that no small part of the opposition is due to racial prejudice, and that the rest of the opposition can be attributed to hostile corporation or privileged interests.

I have been a member of the Massachusetts bar for over 10 years and have practiced in the United States courts for several years. I have served my community in our city government and the Massachusetts Legislature, and by reason of such service and in the course of my practice I have had occasion to meet Mr. Brandeis and consider his attitude on many important public questions.

I know Mr. Brandeis to be a man of sterling character, of excellent standing in the legal profession and our community, possessed of a profound knowledge of the law, and one of the leading lawyers of our State. By reason of his knowledge of the law, ability to regard weighty and vital problems with keen and sagacious discernment, his experience with and knowledge acquired in important labor controversies, and participation in so-called "people's conflict with railroads, gas companies, and monopolies," and other questions and matters vitally affecting the people of our country, he is as thoroughly equipped for that honorable body as any man in the public eye to-day, if not more so.

I feel that failure on the part of the United States Senate to confirm this appointment would almost amount to a public calamity, and I strongly urge your honorable committee to make a favorable report in his behalf.

You are at liberty to make as much use of this letter as you deem advisable or necessary.

Respectfully, yours,

ISAAC GORDON.

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17 MILK STREET,
Boston, Mass., March 3, 1916.

Hon. WILLIAM CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: In view of the so-called "Boston petition," and the wholly unexpected quarter from which the voice of the people appears to have emanated, possibly the opinion of an inconspicuous member of the Boston bar, but one who has had many dealings with Mr. Brandeis, may be of some interest.

During the past 13 or 14 years I have been general counsel for the Boot and Shoe Workers' Union, an organization composed of 40,000 men and women shoe operatives throughout the United States and Canada. In many important matters affecting the shoe industry Mr. Brandeis represented the shoe manufacturers, and in conference serious difficulties were often averted by the sound judgment, the keen insight, and the absolute fairness of Mr. Brandeis. In several controversies affecting the union where the interests of Mr. Brandeis' clients were not involved I retained him as senior counsel, notwithstanding the fact that this gave him information which had he been unscrupulous or untrustworthy could have been used to our disadvantage. My selection of Mr. Brandeis as senior counsel in these matters was always approved by the general officers of the union, and our implicit confidence in his integrity remains unshaken.

I have known Mr. Brandeis for 20 years. Until the New York, New Haven & Hartford Railroad inquiry I never heard from professional or business men any expression but of the highest admiration. I know many of his clients, men of high standing in business, who have been advised and guided by him for years, and who, I am confident, would intrust their entire personal fortunes and their business honor in his keeping.

I believe Mr. Brandeis has the complete confidence of this community excepting only those whose enmity he has incurred in his efforts to correct abuses, and I trust the nomination of the President will be confirmed.

Respectfully, yours,

EDWARD S. GOULSTON.

MARCH 1, 1916.

Mr. WILLIAM E. CHILTON,
Chairman of Subcommittee, Washington, D. C.

DEAR SIR: As a member of the Massachusetts bar I feel it my duty to express my views relative to the confirmation of the appointment of Louis D. Brandeis as Associate Justice of the Supreme Court of the United States.

I have known Mr. Brandeis for the past 20 years, and I feel justified in saying that his reputation as to honesty and integrity is above reproach and that the attempts to stain his trustworthiness are the result of unfairness and undue prejudice.

I am fully convinced that Mr. Brandeis is especially qualified for the position, as I know him to be a man of high ideals, one who will exercise his own best judgment regardless of fear or favor, one who can not erroneously be influenced even for personal gain, but will, if necessary, sacrifice his own interests for those of the public.

I am fully confident that the confirmation of Mr. Brandeis's appointment will add an important link to the chain of the administration of justice of our judicial department. He will be a protection not only to the prestige and honor of the Supreme Court itself but a protection also to the people and the great masses of the country.

Very truly, yours,

ISAAC H. GREENBERG.

[Elisha Greenhood, attorney at law, 604-5 Pemberton Building.]

BOSTON, *March 1, 1916.*

Hon. W. E. CHILTON,
Chairman Subcommittee of Judiciary Committee,
Washington, D. C.

DEAR SIR: Having been in very active practice at the Boston bar for the past 31 years, I feel I should furnish your committee with whatever light I may have respecting the confirmation matter now pending before it.

I do not suppose there is a practitioner at our bar who knows and has come in contact with a greater percentage of all possible subdivisions of our bar of 3,200 members than I, and I suppose it is obvious to every lawyer of any substantial experience—

First. That the individual constituents of no class of men are so thoroughly dissected within its own ranks as those of the legal profession.

Second. That, particularly if successful and originating in other than the prevailing nationality or creed, they are very likely to be the victims of jealousy, mistrust, and misunderstanding, with the usual concomitants of prejudice and enmity.

Having these two important facts in mind, along with my lengthy experience and unusually extensive professional acquaintance, I desire to say that, notwithstanding Mr. Brandeis's long and highly successful professional activities here, his prominence as a publicist in many necessarily friction-making movements, and his nationality, it is true that never before the nomination which you are considering did I hear, even in a whisper, a single word tending to indicate the slightest variation on his part from the highest standard of professional honor and ethics, and that the attacks now made upon him are to me as thunder out of a clear sky.

I must admit that my professional experiences with him have not been very many, but I do flatter myself with knowing the general reputation of the members of our bar; and I must express the opinion that the supposed general reputation which his opponents are presenting to your committee must be simply the prejudiced opinion of a comparatively small and very localized section of our bar, which honestly believes itself to be the bar, and that its sentiments—usually originating in and propagated by one of its small circle—are those of the entire community.

You will pardon me if, in closing, I add that some 30 years ago I was for over a year editor in chief of the Central Law Journal, and that about that time I wrote the treatise "Greenhood on Public Policy in the Law of Contracts," besides editing two columns of Federal decisions in constitutional law, and being a rather extensive contributor otherwise to legal literature in my early law days.

I have the honor to remain, yours, very truly,

———— ————.

FEBRUARY 18, 1916.

Senator WILLIAM E. CHILTON,
Chairman of Subcommittee, Washington, D. C.

DEAR SIR: In the interest of fair play, I do not think that the testimony of Hollis R. Bailey, Esq., and others as to Mr. Brandeis's reputation in Boston should remain uncontradicted. I have been practicing law here for 12 years or more and during that time I have never heard Mr. Brandeis's fair-mindedness or integrity attacked except by those representing "special interests" who were engaged in a controversy with him or by newspapers known to be controlled by those "special interests" or suspected to be under their influence.

He has here the reputation of being ever ready to see the right irrespective of the person it is attached to, and of being able to demonstrate that right in the face of overwhelming opposition, but most conspicuously I think he stands in our community as a man who, after his great ability has been proved, has continued to be willing to serve, and who has served with remarkable success, those who needed service, but who were not strong financially nor powerful otherwise.

Respectfully, yours,

LOUIS E. GUILLOW.

MARCH 2, 1916.

Senator WILLIAM E. CHILTON,
Chairman Subcommittee on Judiciary,
United States Senate, Washington, D. C.

DEAR SIR: I beg to register my name as being in favor of the confirmation of the appointment of Louis D. Brandeis to the Supreme Court of the United States.

From 1905 to September, 1908, I was secretary and assistant to the late Prof. Frank Parsons, who, as an eminent lawyer, law text writer, sociologist, and economist, is undoubtedly known to you and your committee. As an expert for the National Civic Federation and head of the National Municipal Ownership League, and in many other capacities, Prof. Parsons was very closely connected with Mr. Brandeis in his work. I learned from Prof. Parsons to regard Louis D. Brandeis as a lawyer of exceptional ability, as a man of the highest integrity, and as a public-spirited citizen of the finest type.

Since 1908 I have watched Mr. Brandeis's work, particularly his public work, and I desire to say that I know of no man who is more honest or public-spirited or who has greater ability as a lawyer. I believe that Mr. Brandeis as a member of the Supreme Court of the United States would be a great addition to that already great tribunal.

It is my opinion that there are two reasons for the strong opposition which has developed against Mr. Brandeis's confirmation.

First, the fact that he has always stood for the public against the vested interests, even when to do so meant great loss to himself.

Secondly, and I consider this to be the stronger reason for this opposition, that Mr. Brandeis is a Jew.

I desire most earnestly to urge upon your committee the recommendation that Mr. Brandeis's appointment be confirmed.

Very respectfully, yours,

HARRY N. GUTERMAN.

[Hall & Hagerty, attorneys and counsellors at law, Taunton, Mass.
Frederick S. Hall, Charles C. Hagerty.]

TAUNTON, MASS., *February 21, 1916.*

Hon. WILLIAM E. CHILTON,
Chairman Subcommittee, Washington, D. C.

MY DEAR SIR: I notice from the papers and from other sources that the nomination by the President of Louis D. Brandeis, of Boston, for a seat on the bench of the Supreme Court of the United States has created quite a widespread discussion.

Being interested in the man, having watched his movements, and having had a number of years' experience with his office in connection with large interests, I think I can truthfully say that personally I have never known him to do or say anything which was not in strict accordance with strict legal propriety, and until this nomination came up I have never heard him criticized. A man of such wide knowledge and legal attainments would naturally make enemies, but it seems to me, from what I have observed, that there is nothing which would in any way disqualify him from filling this most important position to which he has been nominated.

Respectfully, yours,

CHARLES C. HAGERTY.

FEBRUARY 21, 1916.

Hon. WILLIAM E. CHILTON,
United States Senate Subcommittee of Judiciary,
Washington, D. C.

DEAR SIR: It gives me great pleasure to write in regard to Louis D. Brandeis.

I understand that a number of prominent Boston lawyers have said that Mr. Brandeis is not respected by the Boston bar. I think you will find upon investigation that almost all of these men have been bitterly opposed to Mr. Brandeis on some financial or public question. He has naturally tread on the toes of a great many conservative men and men tied up in large interests, such as the New Haven Railroad. I think, therefore, that their statements must be taken with a grain of salt.

It seems to me that Mr. Brandeis's chief qualities for a position on the Supreme Court Bench are his broad point of view in regard to present-day economic questions and his very great knowledge of the facts and conditions of our modern economic industrial world.

There are many other lawyers in Boston who feel as I do about this matter, and I hope that you will not consider the opinions expressed by Mr. Moorfield Storey as binding upon the rest of us.

Very sincerely,

MATTHEW HALE.

BOSTON, *February 9, 1916.*

Hon. LEE S. OVERMAN,
Acting Chairman Judiciary Committee, Washington, D. C.

DEAR SIR: It has been my great privilege to have known Louis D. Brandeis intimately for 15 years, during which time he has been my personal and business counselor. I never knew his to advise or suggest anything that was not founded on the highest ethical grounds. I have no doubt of his confirmation, as it is inconceivable to me that any objection worthy to be seriously considered can be offered or that would weigh in the balance against the great addition he would be as an Associate Justice of the Supreme Court.

In my judgment there is no man living who is more the perfect embodiment of what he will be sworn to administer—justice.

Very truly, yours,

C. B. HALL.

WAUKESHA, WIS., *March 14, 1916.*

Senator GEORGE W. NORRIS.

DEAR GEORGE: Without intending or wishing in any way to influence your judgment, but only to give you a few facts as they have come to me, I will say that you, of course, remember that Lois's mother had something of an estate left her in Boston by her father.

This was, as I think I explained to you at the time, left in quite a complicated condition. I have never seen any of the firm, but I wrote to Brandeis, Dunbar & Nutter and asked them to look after Lois's interests, which they did. They got very good results, and they are still looking after this estate. Their charges were very modest, considering the work and the results they got, and in view of the attack on Mr. Brandeis I thought that in justice to him I would give you these facts.

Very truly, yours, H. H. HARRINGTON.

MARCH 1, 1916.

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: Believing the appointment of Louis D. Brandeis to the United States Supreme Court to be most fitting and proper, I respectfully request that you add my name to the multitude indorsing the appointment.

I assert resolutely, from my long acquaintanceship with Mr. Brandeis professionally and publicly, that there is no higher type of citizen or public servant in our country, notwithstanding the attacks his candidacy has evoked. I know of no man in our city who is held in higher esteem or regarded with greater reverence and respect than the appointee.

I am aware of the importance, influence, and standing of the United States Supreme Court, the highest court in the world, and I believe that Mr. Brandeis would adorn this venerably body.

Respectfully, yours,

ISAAC HARRIS.

JOSEPH M. HERMAN SHOE CO.,
159 Lincoln Street, Boston, Mass., February 25, 1916.

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SENATOR: I have known Mr. Louis Brandeis since he entered upon the practice of law. I have come into close contact with him in his personal and social life, in his professional career, and in his public civic activities. It is because of a long and intimate knowledge of the man that I, a member of an opposing political party, heartily indorse

President Wilson's selection of him to be an Associate Justice of the Supreme Court of the United States and earnestly urge the Senate to confirm his appointment.

Mr. Brandeis is one of the few lawyers of our time in this country who has willingly sacrificed lucrative pecuniary returns to an ideal conception of public service. His ability as a lawyer, his luminous and keenly trained intellect, his untiring industry and abnormal capacity for work, would have brought to him permanent retainers from all the great corporate interests in New England had he not voluntarily chosen to forego such retainers in the interest of his own independence of thought and action.

The Nation has always needed the services of men of the Brandeis type, and the confidence of the people in the Nation's highest tribunal can not help but be strengthened by the selection of such a man for a place on its bench.

Of Mr. Brandeis's private life I need not speak, for it has never needed commendation. In temperament he is dignified, calm, and dispassionate; and unless fearlessness in announcing the right as he sees the right can be said to deprive a man of what is called judicial temperament, then Mr. Brandeis possesses that temperament to the highest degree.

Yours, very respectfully,

JOSEPH M. HERMAN.

—

FEBRUARY 16, 1916.

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: May I add a word in favor of confirmation of the nomination of Louis D. Brandeis?

I am a Democrat, and have been president of the National Democratic League of College Clubs and vice chairman of the State committee of Massachusetts. In 1911 I was a member of the State senate, and declined renomination. In 1914 and 1915 I was second, and then first, assistant attorney general of the Commonwealth, retiring with the change of administration. I am now engaged in private practice. I am a director of the Massachusetts Farmland Bank and of several manufacturing corporations. I am a member of the National Council of the American Judicature Association.

For two years I served in the office of Brandeis, Dunbar & Nutter, and came into personal contact with Mr. Brandeis on legislative matters while in the senate. I do not believe that I am prejudiced in his favor, but I do know from personal experience that his office maintains an unusually high standard of legal ethics. Mr. Brandeis has not been content with being merely personally incorruptible, but he and his associates have insisted that the subordinates in their office adhere to the same high standard.

With the exception of a few lawyers in the certain restricted district, I believe the sentiment of the Boston bar to be distinctly in favor of the Brandeis appointment.

Yours, very truly,

ROGER SHERMAN HOAR.

—

BOSTON, *March 2, 1916.*

Hon. WILLIAM E. CHILTON,
Chairman of the Subcommittee on Judiciary,
Washington, D. C.

DEAR SIR: From reports of the testimony already submitted to your committee appointed to consider the appointment of Louis D. Brandeis to the Supreme Court of the United States, I have learned that certain unfavorable opinions have been placed before your committee regarding the reputation in this community of the man you are considering.

These opinions are to my knowledge not representative of the general opinion of the reputation of Mr. Brandeis, and it is for that reason that I take time to write to you to inform you of my knowledge regarding the reputation of this candidate.

I am a practicing attorney, having offices in Boston and vicinity. I have had brought to my attention on many different occasions the general reputation of Mr. Louis D. Brandeis. On every occasion that I have heard mention of him it has always been a recommendation of Mr. Brandeis, praising him for the standard of honesty, trustworthiness, fidelity, and profound knowledge of the law to which he adheres. All these opinions have been expressed by lawyers, members of the same club to which I belong, and who I had reason to believe had personal knowledge and acquaintance with Mr. Brandeis.

I sincerely hope that Mr. Brandeis will be recommended by the committee for appointment to the Supreme Court of the United States.

Respectfully, yours,

M. H. HORBLITT.

—

FEBRUARY 25, 1916.

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: I take the liberty of addressing this communication to you for the purpose of indorsing Louis D. Brandeis, who has been nominated by President Wilson as Associate Justice of the Supreme Court of the United States.

I am a lawyer with offices in Boston, and I have been in active practice for eight years.

I am president of the Associated Young Men's Hebrew Associations of New England, an organization comprising 45 young men's Hebrew associations scattered throughout the New England States, with a total membership of over 15,000 men. In my capacity as president of this organization, for the past two years, I have had occasion to travel throughout the district, coming in contact with large numbers of our citizens, and I can say that everywhere I have heard only the highest words of praise and commendation of Mr. Brandeis.

At a number of large public meetings that I have been present, addressed by Mr. Brandeis, the reception accorded him far surpassed any that I have ever witnessed received by any private citizen.

Ever since his nomination I have talked to many members of the Massachusetts bar, and I have heard the appointment generally discussed. In no instance have I heard anything but approval, and in no instance have I heard anything unfavorable.

There is no question in my mind but that the opposition to his appointment comes from a very small and narrow circle, and that the opinions that they express are their own and not those of the general public or of the large majority of the members of the Massachusetts bar.

I heard of Mr. Brandeis even before I became a member of the bar, and for the past two years I have come in contact with him personally. He has always impressed me as being a man of high ideals and principles, possessing a keen and analytical mind and a close student of social and economic problems. He unquestionably possesses all of the qualifications that should go to make of him a great jurist.

I am, very respectfully, yours,

ALBERT HURWITZ.

—

FEBRUARY 24, 1916.

Hon. C. S. THOMAS.

MY DEAR SENATOR: I have known and contacted with Brandeis for over 25 years and have never known or heard of his being guilty of unprofessional conduct.

As his ability is conceded, it is merely a matter of judicial temperament, and that is another term for viewpoint and perspective. He possesses it as much as Milburn or Cromwell or men who would be named by them, and very much more than A. L. Lowell, president of Harvard University, who, having selected a Jewish holy day for examinations last summer, refused to allow Jewish students another day for taking the examinations and advised them to dictate the work to hired stenographers.

We need men on the bench who will not measure and limit rights and liberties of this century by precedents and opinions of the mediæval ages.

Very respectfully,

H. J. JAQUITH, LL. B.

—

FEBRUARY 19, 1916.

Hon. WILLIAM E. CHILTON,
Chairman Senate Subcommittee, Washington, D. C.

DEAR SIR: In view of the suggestion made to your committee—that an unfavorable opinion of Mr. Brandeis held by a portion of this community should in itself prevent his confirmation—I take the liberty of stating my dissent from this opinion of him and from the position so suggested. Mr. Brandeis's talents and legal learning are undisputed. These, with his wide experience, his study of public questions, and especially his readiness and resourcefulness in recognizing and meeting changing industrial conditions, enable him to make a contribution to public service as a Justice of the Supreme Court which possibly no other man in the country could make. I have been in the practice of law in Boston since 1898, have known Mr. Brandeis during most of that time, and have heard his character frequently discussed. While I have known of the unfavorable opinion of him entertained by a considerable number of lawyers, including men of character and standing, nevertheless I have not heard from lawyers any specific charges of unprofessional or dishonorable conduct made with personal knowledge, and I think I have not heard from lawyers specific reference to cases upon which an unfavorable opinion was based outside of those which have been mentioned before your committee. Considering the many heated controversies, private and public, in which Mr. Brandeis has been engaged, testimony as to his reputation can have little weight except so far as it is shown to rest upon facts. My own acquaintance with Mr. Brandeis for some 15 years leads me to believe him to be a man honorably and sincerely devoted to the public interest.

Respectfully, yours,

ELIOT N. JONES.

—

WORCESTER, MASS., *March 4, 1916.*

Senator WILLIAM CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

DEAR SIR: During the 12 years I have been in business it has been my good fortune to come in personal contact with the Hon. Louis D. Brandeis, whose appointment to the Supreme Court is being considered by your committee, and it gives me pleasure to state that I have always found him to be a man of the highest integrity and ideals. My contact with him and knowledge of him gives me every reason to believe him absolutely honest and straightforward in business dealings and in his public life.

Whatever opposition to his confirmation may develop must, it seems to me, come either from a very narrow circle of attorneys or else from the interests which Mr. Brandeis has necessarily (and not unworthily) antagonized during his public career.

Such opposition certainly does not represent the sound sentiment of the community, which, to the best of my belief, is strongly in favor of Mr. Brandeis's confirmation.

For all these reasons, and for the best interests of the common weal, I trust you may speedily report in favor of Mr. Brandeis's confirmation.

Very truly, yours,

MAURICE L. KATZ.

—

801–805 TREMONT BUILDING,
Boston, February 18, 1916.

Hon. WILLIAM E. CHILTON,
Chairman Subcommittee, Washington, D. C.

DEAR SENATOR CHILTON: Respecting the appointment of Hon. Louis D. Brandeis to the Supreme Court of the United States, I want to say as a lawyer, 47 years old, as a member of the bar association of the city of Boston, and as a member of the American Bar Association, that I consider Mr. Brandeis not only an able attorney, but a man above reproach, who will add ability, integrity, grace, and dignity to the great bench to which he has been appointed. He is an honest man, conscientious to a marked degree, who has raised himself above the sordidness and show of mere wealth, and looks to the character and worth of the individual as the better elements of our citizenship aside from mere accumulation of cash. Louis D. Brandeis is a man with a vision of the American people and the Nation's possibilities. He will hew to the line for the future of the great Republic and the rights of all of its citizens.

Perhaps I should add as a means of identifying myself, that I served three years as a member of the Boston school committee, a board of five; and I am now a member of the Boston finance commission, a board of five, appointed by the governor of our Commonwealth to supervise the finances of the city of Boston.

I am, respectfully, yours,

JAMES P. MAGENIS.

—

FEBRUARY 18, 1916.

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: I venture to write to you on behalf of Louis D. Brandeis and express the hope that his appointment may be confirmed.

I have been a member of the Massachusetts bar since 1902 and am a member of the Boston Bar Association and the Massachusetts Bar As-

sociation. For the last 10 years I have been prominently identified with labor interests, and have represented labor unions and the American Federation of Labor officially as their attorney during practically all that time. In the course of my practice I have had occasion to meet Mr. Brandeis professionally many times, and from the standpoint of labor I do not hesitate to say that his conduct has been admirable. He has been fearless in his championship of the people's rights and has never hesitated to take up the cause of a labor union or even of unorganized workers when he thought that cause was just. He stands very high in the estimation of the labor men of New England, and I know of nothing which would afford them greater satisfaction than his confirmation as a judge of the United States Supreme Court.

I venture to say that most of his enemies have been made by his championship of the people's rights, and I know of no instance where a whisper has been raised against him by the "people" themselves. I am very sure that he will make a strong, able, fearless, and impartial judge, and that, high and august as the United States Supreme Bench is, Louis D. Brandeis would grace it.

Yours, very truly, FREDERICK W. MANSFIELD.

—

MARCH 2, 1916.

Hon. W. E. CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

DEAR SIR: As a member of the Massachusetts bar of many years' standing, I consider it my duty to express my opinion regarding the appointment of Louis D. Brandeis to the Supreme Court of the United States. That I am not influenced by political motives or partisan considerations is evidenced by the fact that I am and always have been a Republican.

It is, however, a pleasure to advocate the confirmation of a lawyer who possesses not only legal ability of the highest order but also a judicial mind and foresight such as was possessed by the framers of the Constitution of our country. His untiring efforts in behalf of the rights of his fellow citizens and indomitable courage in opposing wrong has won him hosts of ardent friends, and, naturally, bitter enemies.

The general sentiment of the public in Massachusetts is unquestionably with Mr. Brandeis, and with the exception of the interests which have reason to fear his unflinching and unswerving fidelity to the public welfare, it is the desire of Massachusetts that he be confirmed. The confirmation of Mr. Brandeis as a justice of the United States Supreme Court would be a distinct addition in character, legal knowledge, and judicial ability, and will surely add to the respect and esteem in which this highest judicial body of the Nation is held by the great masses of its citizens.

Respectfully, yours, HENRY I. MORRISON.

—

FEBRUARY 23, 1916.

Hon. WILLIAM E. CHILTON,
Chairman of Subcommittee on Judiciary,
United States Senate, Washington, D. C.

DEAR SIR: I wish to record my earnest desire that the appointment of Mr. Brandeis as a judge of the Supreme Judicial Court be confirmed.

I am not and never have been a Democrat, but write because from some personal knowledge of what Mr. Brandeis has done I think he is inevitably qualified for the position.

Respectfully, yours, FRANK H. NOYES,
73 Tremont Street, Boston, Mass.

—

MARCH 1, 1916.

Hon. WILLIAM E. CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

DEAR SIR: I am sending this letter as an indorsement of Louis D. Brandeis, who has been nominated as a Justice of the United States Supreme Court. I have practiced in Boston for about eight years and have always been identified as a member of the Republican Party.

The general opinion concerning Mr. Brandeis which has come to my attention and knowledge has been that he is one of the ablest attorneys practicing in this country. I have never heard his character assailed or integrity questioned by any except a few of the financial interests who may have suffered somewhat by Mr. Brandeis's activity as a friend and counsel of the general public.

I sincerely trust that Mr. Brandeis will receive the confirmation of the United States Senate which he justly deserves.

Yours, respectfully, MAX L. LEVENSON.

—

MARCH 2, 1916.

Hon. WILLIAM E. CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

DEAR SIR: I wish to record my indorsement of Louis D. Brandeis, recently nominated as a Justice of the United States Supreme Court. As a member of the Massachusetts bar for about 14 years I have had some opportunity of judging Mr. Brandeis, both from a professional and personal standpoint, and I wish to say that I have nothing but the highest regard for his integrity, honesty, and ability. I feel sure that his many years of activity and practice before all courts and commissions of this country have given him a vast experience and unquestioned judicial temperament.

My residence is in Chelsea, Mass., the home city of Congressman Ernest W. Roberts. I have always been identified as a member of the Republican Party, having had the privilege of being a member of the Republican city committee and a member of the school board of the city of Chelsea for several years. I am now representing the fifth Suffolk district as a member of the Massachusetts Legislature.

I am sure that any opposition which may be brought to your attention against the confirmation of Mr. Brandeis comes from a small circle of people who are biased either because of narrowmindedness or because they may have suffered financially from Mr. Brandeis's activity in the public welfare.

Trusting that Mr. Brandeis will receive the confirmation of the United States Senate, I am,

Yours, very respectfully, JOSEPH M. LEVENSON.
BOSTON, *March 3, 1916.*

—

Senator WILLIAM E. CHILTON,
Washington, D. C.

DEAR SIR: I graduated from Harvard College in 1903 and from the Harvard Law School in 1906. I passed the Massachusetts bar examination in 1905 and have been practicing at the Suffolk bar ever since.

While at the law school I heard of the fame of Louis D. Brandeis, Esq., and from the time I left the law school to this date I have had considerable opportunity to watch Mr. Brandeis grow in reputation as a lawyer and as a man. I am happy to be able to say that his growth in both respects in the estimation of the community has simply been marvelous. He certainly has been one wonderful example and inspiration for all members of the bar and all other persons in the community. I have never heard any criticisms derogatory to his character or reputation. His wonderful and repeated successes in the most complicated cases and his untiring efforts in behalf of the people at the sacrifice of considerable time and expense to himself have endeared him to the country at large.

It is no wonder that our honorable President of these United States has seen fit to appoint him as the one man fit and able to occupy the exalted position of Associate Justice of the Supreme Court of the United States.

Can it be said that our beloved President has been influenced by anything outside of the highest motive for the welfare of all the people in his appointment of Mr. Brandeis? The whole record of Mr. Brandeis's career must certainly have been reviewed by the President before he exercised the privilege and right under the Constitution to fill the vacancy on the Supreme Bench.

It seems to me that the opposition to Mr. Brandeis's confirmation comes from persons who are envious or jealous of his remarkable rise in the world or to the fact that Mr. Brandeis has so often and so successfully championed the cause of the common people against encroachments by monopolists and monopolistic combinations.

I humbly join in the almost universal desire that our President's appointee be unanimously confirmed.

I have the honor to be, respectfully, yours,

ABRAHAM LEVENTALL.

—

MARCH 7, 1916.

Hon. WILLIAM CHILTON,
Chairman of the Senate Subcommittee, Washington, D. C.

DEAR SIR: As a member of the Women Lawyers' Association of the State of Massachusetts and as a practicing attorney before the bar of this State, I earnestly advocate the confirmation of the nomination of Louis D. Brandeis for the United States Supreme Judicial Court.

Trusting that you will recognize his entire fitness for that great and honorable position, I am,

Yours, truly, ROSAMOND H. LEVY,

—

MARCH 1, 1916.

Senator WILLIAM E. CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

DEAR SIR: Having made a specialty of the patent laws of this country and foreign countries, for the past five years our office has been doing a great deal of associate work on patent matters with the general-law practitioners in and about this city.

We are personally acquainted with Mr. Louis D. Brandeis, the President's nominee for the vacancy in the Supreme Court of the United States of America, and have, since the question of his confirmation has arisen, discussed his qualifications for that office with many of our clients, who are prominent members of the Massachusetts bar. We find their opinions to be absolutely in his favor and are satisfied that the opinions expressed before your honorable committee, as we understand them, by a few attorneys from Boston, to the end that the reputation of Mr. Brandeis is questioned throughout the Massachusetts bar, are positively without foundation.

We sincerely urge the confirmation of Mr. Louis D. Brandeis as Associate Justice of the Supreme Court of the United States.

Very respectfully, DAVID LICHTENSTEIN,
BENJAMIN H. CHERTOK.

—

MARCH 8, 1916.

Senator WILLIAM E. CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

MY DEAR SENATOR: May I express my sincere hope that your committee will report favorably on the confirmation of Louis D. Brandeis as Associate Justice of the Supreme Court of the United States.

As a member of the Massachusetts bar and as president of the Associated Young Women's Hebrew Associations of New England I have had occasion to meet Mr. Brandeis frequently and have found him to be a man of the highest integrity.

I am certain that as a member of the Supreme Bench of the United States Mr. Brandeis will fill the office honorably.

Yours, very truly, S. M. LIPNER.

—

BOSTON, MASS., *March 3, 1916.*

JACOB J. KAPLAN, Esq.,
161 Devonshire Street, Boston, Mass.

DEAR MR. KAPLAN: Inclosed herewith find copies of letters in the Brandeis matter, which I received from Harry H. Guterman, Henry I. Morrison, David Lichtenstein, Benjamin H. Chertok, Harry Silverman, Joseph H. Samuel, Florence F. Sullivan, Israel Ruby, Isaac Harris, Elisha Greenhood, Max M. Fritz, A. E. Pinanski, Louis Abrahams, William E. Blatt, Isaac H. Greenburg, Harry E. Dubinsky, Edward E. Ginsburg, Albert Hurwitz, Eugene M. Schwarzenberg, Adolphus M. Burroughs, Samuel L. Silverman, George E. Gordon, Samuel H. Borofsky, Nathaniel Golden, Maurice Bergman, Emmanuel Cohen, Samuel L. Wolfson, Franklin M. Cohen.

Very truly, yours, DAVID A. LOURIE.

—

FEBRUARY 18, 1916.

Hon. WILLIAM E. CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

DEAR SIR: As a member of the Massachusetts bar for 26 years, 23 of which have been spent in general practice and 3 years as assistant corporation counsel for the city of Boston, and having known and had professional dealings with the firm of Brandeis, Dunbar & Nutter, of which Louis D. Brandeis is the senior member, I indorse his appointment for confirmation as an Associate Justice of the Supreme Court of the United States. I believe that Mr. Brandeis will bring to the high office to which he has been nominated ability, learning, and that sense of unswerving

and impartial justice which has ever been the keystone in the arch of our Government.

Yours, respectfully,

JOSEPH P. LYONS,
Assistant Corporation Counsel.

—

BOSTON, MASS., *March 3, 1916.*

Hon. WILLIAM E. CHILTON,
Chairman Judiciary Subcommittee, United States Senate,
Washington, D. C.

DEAR SIR: By way of introducing myself, I have been in the general practice of law for about 10 years, and have been identified with the Democratic Party since 1896; have also been a delegate to the Democratic National Convention at Denver and an alternate delegate to the Baltimore convention. I am at present connected with the law department of the city of Boston, having charge of the "workmen's compensation" cases.

My practice and connections have brought me in contact with a very large majority of the practicing lawyers of Boston and Massachusetts, generally, and I am delighted to say that I find the reputation of Louis Brandeis to be excellent, as far as honesty and ability are concerned.

I most heartily approve of his confirmation as a member of the United States Supreme Court.

Respectfully, yours,

H. MURRAY PATSUKKI.

—

FEBRUARY 28, 1916.

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: I should like to add my indorsement to the nomination of Louis D. Brandeis, Esq., as Associate Justice of the Supreme Court of the United States.

I am a graduate of Harvard College, 1908, and Harvard Law School, 1910, and have been a member of the Massachusetts bar since January, 1910. For two years after leaving the law school I was in the legal department of the Boston Elevated Railway Co. and for the past three years have been assistant to the general attorney of that company and engaged in the general practice of the law. I have known Mr. Brandeis personally for the past seven or eight years, and I believe that I am familiar with at least his public career of the past 20 years. Although I have been intimately interested in the opposite side of many public, particularly franchise, questions in which Mr. Brandeis has taken an important part, I have always felt and do still feel that he is a man of absolute integrity, exceptional ability and mentality, and unusual fairness.

I believe that I voice the general sentiment of the younger members of the bar when I say that Mr. Brandeis is a shining example of the unselfish, public-spirited citizen, earnest advocate, and profound scholar.

Very truly, yours,

W. E. PINANSKI,
Assistant to the General Attorney.

—

FEBRUARY 16, 1916.

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: I trust that there is no impropriety in the liberty I am taking in writing you this letter indorsing Louis D. Brandeis as an Associate Justice of the Supreme Court of the United States.

I am now and have been practicing law in Boston for 16 years. I was assistant district attorney in Suffolk County in 1909, and in 1906 was appointed a special justice of the Boston juvenile court, a life appointment.

I have known Mr. Brandeis, or of him, since I commenced the practice of the law. I have had matters connected with his office, although I have not dealt with him personally therein.

It is not unnatural that many should differ with Mr. Brandeis. His career has been exceedingly active and fruitful, and it would be impossible to expect that his acts should meet with the commendation of all. I can not believe, however, that the present opposition is viewed with favor by the great mass of our community. To them Mr. Brandeis towers as a man of great intellect and energy, who has unselfishly served the people, and who has accomplished large constructive good in their behalf.

I believe that Mr. Brandeis is preeminently fitted for the position, and, as far as one can foresee, will add genuine strength to the Supreme Court. The President has assumed the responsibility of making the appointment, and I believe he has exercised sound judgment. I hope the United States Senate will see fit to sustain the President in the matter.

Yours, very truly,

PHILIP RUBENSTEIN.

—

BOSTON, *March 2, 1916.*

Hon. WILLIAM E. CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

MY DEAR SIR: Permit me to express my approval of the nomination of Louis D. Brandeis, Esq., as a member of the Supreme Court Bench of the United States. I sincerely trust that your committee will see fit to report favorably on the nomination to the honorable Senate.

I have been engaged in the practice of law for three years, and during that time I have had occasion to discuss the honesty, integrity, and ability of Louis D. Brandeis, Esq., at various times, and the sentiment of opinion always expressed was that he was a credit to our profession, and it is my sincere belief that his appointment to the Supreme Court Bench will add to the same a man who had not only himself at heart but his country and people.

Sincerely, yours,

ISRAEL RUBY.

—

BOSTON, *March 2, 1916.*

Senator WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: In reference to the confirmation of Louis D. Brandeis as a member of the Supreme Court of the United States, now pending before your committee for its consideration, I desire to be placed on record as follows:

I might say at the outset that I am in my fifth year at the bar, active in practice, and of the large number of lawyers with whom I have come in contact a very large majority are in favor of confirmation of the nominee.

I do not personally know him, but so far as I can ascertain—and I have discussed the matter with a number—his reputation at the bar for ability, efficiency, and integrity is good.

I desire to be recorded in favor of confirmation.

Very truly, yours,

JOSEPH H. SAMUEL.

—

[Law offices of Eugene M. Schwarzenberg and Edwin F. Schwarzenberg.]

BOSTON, MASS., *February 25, 1916.*

Senator WILLIAM E. CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

DEAR SIR: As a member of the bar of 12 years' standing and one who has participated somewhat in civic life, having been chairman of the good government association of the town in which I lived for several years, as well as a member of the Republican town committee and town council, I feel it my duty to write to express my position on the treatment being accorded to Mr. Louis D. Brandeis.

I have known Mr. Brandeis, both socially and professionally, for upward of 20 years, and have had a great many dealings with him personally and with his office, and have always found him conscientious, upright, and a man of highest integrity, high ideals, and fine ethics, besides which his ability can not in the least degree be impugned.

I wish to express my unqualified approval of his appointment as a member of the United States Supreme Court, believing that his appointment will add dignity and strength to that body. It is my belief, from what conversations I have had with other attorneys, that the only opposition to him in this section comes from a very narrow circle who are allowing selfish motives to warp their judgment.

With the sincere wish that the action of the committee will be favorable to Mr. Brandeis, I am,

Yours, respectfully,

———— ————.

—

MARCH 3, 1916.

Senator WILLIAM E. CHILTON,
Chairman of the Subcommittee, United States Senate,
Washington, D. C.

DEAR SIR: It is with a great deal of regret that I note the opposition against the confirmation of Louis D. Brandeis as Associate Judge of the Supreme Court of the United States. Personally, I think it is a misfortune to harass and malign a man who, to my judgment, in the words of Shakespeare, "is above suspicion."

I have practiced law since 1904, and have had more or less to do with the office of Brandeis, Dunbar & Nutter, and there never came a time that I could find any fault with the treatment I received from that office.

Mr. Brandeis has been generally regarded as a man of great legal ability. Not only is he recognized as a leader at the bar, but is known as a man who has given a great deal of his time to work for the public good, and is, in a sense, accepted as a leader of men.

His honesty, character, ability, and his general and judicial temperament has never, to my mind, been questioned. Personally, I believe that those who oppose him do so not because he lacks ability or honesty, but because they recognize the superior man.

I believe that this country needs the service of a man of this type, and I am sure that time will make those who now oppose him ashamed of their conduct.

I sincerely hope that the committee will report favorably upon his confirmation.

Respectfully, yours,

SAMUEL SELIGMAN.

—

MARCH 2, 1916.

Hon. WILLIAM E. CHILTON,
Washington, D. C.

SIR: I most respectfully urge the confirmation of Louis D. Brandeis, Esq., as an Associate Justice of the United States Supreme Court. His sterling character, unquestioned ability, fearlessness when fighting for a just cause, and sincerety of purpose in protecting the weak and oppressed are a few of his qualifications which make him eminently fit for this position which he will hold with credit to himself and honor to his country.

Respectfully, yours,

HARRY SILVERMAN.

—

[Samuel L. Silverman, 40 Court Street, Boston.]

FEBRUARY 25, 1916.

Senator WILLIAM E. CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

DEAR SIR: The nomination of Louis D. Brandeis, Esq., of Boston, as Associate Justice of the Supreme Court of the United States is, in my opinion, one of the best nominations that could be made.

I have been a member of the Massachusetts bar since 1899, and I have yet to hear any objection to Mr. Brandeis. It may be that I do not come in contact with that class of attorneys who object to him. The feeling among the everyday members of the bar is that the nomination is a good one and will be a great credit to the United States.

I have had some business with Mr. Brandeis's office, and have found them fair and square.

I have served as a member of the Republican State Committee of Massachusetts for two years, and I have in past years actively participated in politics.

If you know anything about conditions in Boston you will know that the attorneys who oppose Mr. Brandeis are of a certain class who oppose everybody unless they come within their circle.

Very truly, yours,

SAMUEL L. SILVERMAN.

—

BOSTON, *March 2, 1916.*

Senator WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: I am interested in the confirmation of Louis D. Brandeis for the office of Associate Justice of the Supreme Court of the United States.

In the outset let me state that I am a practicing lawyer and have been in active practice for 22 years, and during that time have had daily business relations with a great many lawyers, business men, and a representative element of the general public of this community. From my experience and personal knowledge I find the bar of this city

has among its members several men that seem to possess very deep-seated prejudices along certain lines that are the result of views expressed between themselves and within a somewhat limited circle. For reasons satisfactory to themselves, Mr. Brandeis has incurred the active opposition and personal ill-will of these men.

The standard that seems to have been set by these men for the general bar is of their own creation, unwritten, and, to my mind, very artificial and wholly out of sympathy with the rank and file of the 3,000 lawyers that practice before the courts of this city.

I do not claim to know the candidate, but can state for the information of your committee that the reputation and common speech of other lawyers and business men of this city consider Mr. Brandeis as a man who has elevated his character by his lofty and upright principles, according to a standard of honesty and reasonable application, and who as a lawyer and practicing attorney has distinguished his profession by the result of his achievements.

I believe such a man to be fully capable of calmly weighing matters that might come before him for judicial interpretation, and a man that would do full credit to the high office to which he has been appointed.

Very truly, yours,

F. F. SULLIVAN.

—

FEBRUARY 24, 1916.

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: I want to indorse President Wilson's nomination of Louis D. Brandeis for Associate Justice of the Supreme Court of the United States. I was a member of the Massachusetts Senate in 1907 and 1908 and was the Democratic candidate for governor in 1908 and 1909 and was also a delegate to the Democratic national convention in 1904.

I have been practicing law for 23 years, have always been a Democrat, and have known Mr. Brandeis for 15 years. I have never been associated with him in legal matters or causes, but have frequently been opposed professionally to his firm. While in the senate I was actively interested with him in the establishment of savings-bank insurance and voted for the bill which finally became a law.

I think that he is peculiarly well fitted and qualified for the position of Associate Justice of the United States Supreme Court. His knowledge of law and his breadth and grasp of great public and social questions remarkably fit him for such a high place. I think he has been very much misunderstood by some members of the bar here.

I earnestly hope that his nomination will be confirmed.

Yours, very truly,

JAMES H. VAHEY.

—

BOSTON, MASS., *March 3, 1916.*

Hon. WILLIAM E. CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

DEAR SIR: In the matter of the appointment of Louis D. Brandeis I wish, as a member of the bar of Massachusetts, to express my confidence and trust in Mr. Brandeis's high character and great ability.

In the city of Revere, where I have my residence, I mix in politics and belong to a number of social clubs and political organizations. Discussing Mr. Brandeis's appointment, the unanimous opinion seems to be that the gentlemen from Boston who are opposing him belong to a class who are known as "blue bloods." The people hark back to a time in Massachusetts, not so very long ago, when Catholics of Irish descent met with similar opposition from the same class who are now opposing Mr. Brandeis. They believe that Mr. Brandeis and men of his race and religion are now facing the same kind of prejudice in their fight for recognition, not of "blue blood" but red blood, courage, ability, and character.

The people, and especially the young lawyers of Boston, who are perhaps more familiar with Mr. Brandeis's career and attainments, are waiting with confidence for the confirmation of Mr. Brandeis as a demonstration that the test for high public office in Washington is the test applied by Mr. Wilson and is not influenced by class, race, or religion, but is determined entirely by character and ability for the office.

Very truly, yours,

P. A. WALSH.

—

FEBRUARY 16, 1916.

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: In view of the present discussion as to Mr. Louis D. Brandeis, will you permit me, as one who has known Mr. Brandeis ever since we were together in the Harvard Law School, to say in brief that, although I have not for many years been in active practice, I have had an opportunity to know something of Mr. Brandeis's work in public matters, and that he has shown, in my judgment, not only brilliant ability but public spirit, breadth of view, and generosity both in the matter of time and money in helping on the public work which he has undertaken. As to his integrity, I have entire confidence in it, and would intrust my own affairs to him without hesitation.

Respectfully, yours,

GEORGE WIGGLESWORTH.

—

MARCH 4, 1916.

Hon. WILLIAM E. CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

DEAR SIR: I desire as a practicing attorney of this city, and in the interest of the community, to add my voice in commendation of the character and ability of Mr. Louis D. Brandeis, whose appointment as Justice to the Supreme Court is now awaiting the consideration of the Senate.

I sincerely trust he will be confirmed. I have followed Mr. Louis D. Brandeis's career with great interest, his professional and public activities are known by all men the country over, and I believe there is no one in point of ability or in character more fitted than he to strengthen the great court to which he has been appointed.

The reported sentiment of the Boston bar as unfavorable to Mr. Louis D. Brandeis is, I think, a great perversion of the truth, and it is limited almost wholly to those who have clients identified with vested interests and who are opposed to the measures advocated by Mr. Louis D. Brandeis. The disinterested members of the bar by an overwhelming majority respect him as a man of sterling worth and splendid ability.

Volumes might be written of his worth, but the main facts have already appeared in evidence, and I believe they should be conclusive to his remarkable worth and ability. It is certain that the great masses of the people, both lawyers and laity, will rejoice his confirmation, which is confidently expected.

I have the honor to remain,

Very respectfully, yours,

SAMUEL J. WITKIN.

—

[Law offices of Samuel L. Wolfson, 40 Court Street, Boston, Mass.]

FEBRUARY 29, 1916.

Senator WILLIAM E. CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

DEAR SIR: I am an A. B., Harvard University, and LL. B., Boston University, and have been a member of the Massachusetts bar, Suffolk County, since 1913 and United States district court bar since 1915.

I have been for a great many years an ardent admirer of Mr. Louis D. Brandeis, because I believe him to be one of the foremost Americans of to-day and typical of American principles and democracy. I heartily approve his appointment to the United States Supreme Bench because I feel that he will stand up for what is equitable and just at all times and will make an excellent interpreter of the laws because of his vast legal experience.

I am of the opinion that the opposition to his confirmation is confined to a very small sphere, composed only of those who bear him a personal grudge and see a possible opportunity at hand to satisfy themselves, and it does not represent the voice of the people.

Respectfully, yours,

———— ————.

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A few miscellaneous letters from lawyers outside of Boston or from nonlawyers:

MARCH 30, 1916.

Hon. WILLIAM E. CHILTON,
United States Senate, Washington, D. C.

DEAR SIR: I am taking the liberty of mailing you under another cover copy of an article concerning Louis D. Brandeis, whom I have had the honor of knowing a great many years.

As a citizen of Massachusetts and a former candidate for the nomination of governor and former chairman of the commission of efficiency and economy, I beg to say that in my opinion there is no living American who is more honest and more fearless, and no man that I know has better judgment or is more patriotic.

There are many people in Massachusetts and elsewhere throughout the country who believe that Brandeis resembles Abraham Lincoln in appearance and in character.

Yours, sincerely,

NORMAN H. WHITE.

—

FEBRUARY 9, 1916.

Hon. GEORGE E. CHAMBERLAIN,
Senate Chamber, Washington, D. C.:

Urge the confirmation of Brandeis because he is able, just, and progressive. One of the best appointments President could have made. No one opposing here but reactionaries, special-privilege beneficiaries, and big-business representatives. Opponents here include all who were applauding in advance nomination of Taft as the graceful thing to do.

WILLIAM U'REN.

—

FEBRUARY 19, 1916.

Hon. WILLIAM E. CHILTON.
Chairman Senate Subcommittee.

DEAR SIR: The newspapers report that certain gentlemen from this vicinity have given your committee an unfavorable estimate of the character of Mr. Louis D. Brandeis and of his standing in the community.

I think it is fair to say that the hostile estimates attributed to these gentlemen are not unexpected and occasion little surprise in his locality. We are accustomed to having honorable men, of strong convictions and divergent interests, differ painfully in their estimates of one another. But I think it is also fair to say that these critics of Mr. Brandeis can not speak for the community at large.

I, for example, have known both Mr. Brandeis and some of his critics for many years. Part of this time I was a member of the faculty of Harvard University, as teacher of political economy and sociology; subsequently colleague and successor of the late Edward Everett Hale as minister of the South Congregational Society of Boston. The longer I have known Mr. Brandeis the more I have admired him, not only for his personal qualities but also for his knowledge of economic conditions; his insight and impartiality in regard to the relations of capital and labor; his public spirit and devotion to the general welfare.

I regard him as one of the most conscientious members of his great profession; as one of the sanest, wisest, and most trustworthy citizens of this Commonwealth.

I was glad when the President nominated him to the Supreme Court; first, because I, like many others, am persuaded that he measures up to the highest standards of moral character, of professional equipment, of judicial temper, of patriotic devotion; second, because I believe he will bring to his high office a statesmanlike grasp of the fundamental principles and problems of our social, political, and industrial life.

Sincerely, yours,

EDWARD CUMMINGS.

P. S.—I think I am not identified with Mr. Brandeis either in race, religion, or political party.

—

ANDOVER THEOLOGICAL SEMINARY,
Cambridge, Mass., February 17, 1916.

Senator WILLIAM E. CHILTON,
Chairman Subcommittee of the Senate.

DEAR SIR: May I be allowed the privilege of expressing to you my appreciation of the character and service of Mr. L. D. Brandeis and my judgment of his eminent fitness for the great position for which our honored President has chosen him? I have known Mr. Brandeis for more than 20 years; I have heard him speak on many occasions on large questions, and have been brought into personal relations with him from our mutual interest in the welfare of workingmen. He has impressed me profoundly as a man of sterling character, absolutely devoted to the common welfare, thoroughly convinced that righteousness alone exalteth a nation, and so eager that good be accomplished that he willingly works in the background while others receive the commendation.

In view of the fact that great social problems are coming more and more to the Supreme Court, it seems to me that he is eminently fitted

for wise and humane judgment on these and other matters. From my contact with various classes of men in the community, I judge that his selection strikes others, with the exception of a small minority, as favorably as it does me.

Yours, respectfully,

DANIEL EVANS.

—

BOSTON, MASS., *February 25, 1916.*

Senator WILLIAM E. CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

DEAR SIR: I am writing you to throw what light I can upon the qualifications of Mr. Louis D. Brandeis for service in the Supreme Court. I have never had any business relations with Mr. Brandeis, but have been a close observer of his activities, both locally and nationally.

While I have no authority to speak for any organization with which I am connected, I think it fair to say that because I am connected with various public organizations in this vicinity I have come to know what kind of a man Mr. Brandeis is. As one of the organizers and president of the United Improvement Association, an affiliation of the various local associations throughout Boston, I have been associated with Mr. Brandeis and have seen his breadth of view and self-sacrificing contributions of time and money in the interests of the best civil development. As superintendent of the Wells Memorial Institute, I have become acquainted with his energetic and again self-sacrificing work in the upbuilding of our Massachusetts Savings Bank Life Insurance system. As director of the Boston Chamber of Commerce and an active member of various of its committees, I have had an opportunity to know of Mr. Brandeis's activities in connection with the New York, New Haven & Hartford Railroad. He has received much censure for his actions in this connection, and I believe that much of the opposition to him is based upon that. Let me assure you that such opposition is confined to a very small group of people, though the members of that group are wealthy men whose voices are heard afar. Because Mr. Brandeis discovered the evil financial and managerial situation of the New Haven Railroad and warned the public of it and of the need of an early and drastic remedy, he has been blamed as only the authors of the situation deserve. He is charged with the wrecking of the New Haven Railroad when what he really did was the very useful service of warning us that the railroad would be wrecked unless we took effective means to prevent such a catastrophe. One of our most prominent business men said to me very recently that he believed the opposition to Mr. Brandeis regarding the New Haven activities, which comes largely from the banking interest, is due to the fact that he discovered and made public the real situation of affairs before the bankers themselves had discovered it. It is my deliberate opinion that had Mr. Brandeis not made public the facts regarding the New Haven situation that debacle might have been even more serious than it is.

Finally, may I say that I believe the personal charges against Mr. Brandeis are due to the fact that he refuses to continne as counsel for a company after he becomes convinced that that company is working contrary to the public interest and demands his assistance in securing results which work against essential justice? Such a position is not in keeping with the general practice in the legal profession and is not required by legal ethics. In my opinion, however, it is a step in advance of what is absolutely required by the ethics of the profession; and I believe that in taking such a position he is standing for the higher morality rather than the lower ethics of the particular group. Not being a lawyer, I can not express any opinion of value as to Mr. Brandeis's purely legal contribution to the Supreme Court, but I do know that his intimate knowledge of the actual living conditions and problems of a great majority of the inhabitants of this country will be of inestimable value in giving a human and humanitarian balance to the views of the Supreme Court.

Respectfully, yours,

WILLIAM C. EWING.

—

60 STATE STREET, BOSTON, MASS.,
February 17, 1916.

Hon. WILLIAM E. CHILTON,
Chairman of Subcommittee, United States Senate,
Washington, D. C.

DEAR SENATOR: I write to urge the pending confirmation of Louis D. Brandeis. I am one of those citizens of Massachusetts who conceive Mr. Brandeis to be a great civic asset and potentially a distinct national asset. To many minds he stands as the embodiment of popular intelligence and courage striving for popular rights against selfish corporate aggression. He has a definite record of public achievement unequaled, I believe, by any other member of the bar in this State.

He is essentially a constructive and conservative element in the community, in that he believes in and assists orderly and evolutionary social progress. He is a man with a social vision, but never visionary; a useful servant of the public, but never servile; a profound and brilliant lawyer, who knows that historically the best law is ever expressive of the noblest social aspirations.

Faithfully,

WILLIAM LLOYD GARRISON, Jr.

—

FEBRUARY 17, 1916.

Hon. WILLIAM E. CHILTON,
Chairman Subcommittee, United States Senate,
Washington, D. C.

DEAR SIR: Louis D. Brandeis is, in my opinion, absolutely devoid of all selfish interests. I do not intend to presume upon his dignity by defending his character, but wish to say that during the last 10 years in which he has served as our counsel we have found him to be both conservative and constructive in his advice.

There are embodied in Mr. Brandeis so many of the essential elements that fit him for the Associate Justice of the Supreme Court it is inconceivable that any testimony presented should influence your committee to the extent of robbing this country of the power and quality of justice that Mr. Brandeis will administer.

It is my belief that we voice the opinion of the conservative element of the country.

Yours, very truly,

E. G. HOWES.

—

FEBRUARY 15, 1916.

Hon. T. H. WALSH.

MY DEAR SIR: Inasmuch as so many allegations by petition or personal statement have been presented to the subcommittee to consider the fitness of Mr. Brandeis for the Supreme Court, many of which allege that he is temperamentally unfit to act in a judicial capacity, may I take the liberty of contributing an opinion on the other side. My professional work at Harvard has for many years required that I keep in close touch with transportation and labor matters, and quite aside from personal acquaintance with Mr. Brandeis, it has been in the true line of my work to follow every detail of his career. Two particular events, in my judgment, prove that Mr. Brandeis, far from lacking the judicial habit of mind, is preeminently fitted to exercise it. The first of these is his attitude on the rate-advance cases, wherein, as your committee has already been so fully informed, he was willing to so far do justice to both sides as to concede the need of revenue for the carriers while still fully comprehending the interest of the public, which he represented, in low transportation rates. As a warrant for this judgment, and merely in order to give it weight technically before your committee, I am taking the liberty of inclosing a few citations from reviews of certain books on railroads which I have published during the last few years.

The second instance of marked judicial capacity on the part of Mr. Brandeis is his record in the New York protocol, covering 50,000 or more garment workers, and substituting standardized and orderly conduct of a great business for chaos and incessant strife. The fact that Brandeis should have been chosen as the third member of the arbitration board, which was the capstone of the system, and should in that difficult position have continued to promote orderly intercourse between capital and labor, is no mean achievement. It could by no possibility have been performed by one who did not possess the qualities of fairness and nice discrimination as to human rights in the highest degree. On this subject also my warrant for expression of opinion is based upon a quarter of a century of instruction and writing on labor problems in connection with my work at Harvard.

You will pardon the length of this communication, but it is difficult more briefly to substantiate the claim which the friends of Mr. Brandeis bring forward in behalf of this candidacy.

Believe me, very truly, yours,

WILLIAM L. RIPLEY.

—

FEBRUARY 21, 1916.

Hon. WILLIAM E. CHILTON,
Chairman Committee on Brandeis Nomination,
Washington, D. C.

DEAR SIR: I take the liberty of placing before you copy of telegram which I sent to President Wilson immediately after the announcement of his nomination of Mr. Louis D. Brandeis to vacancy on the bench of the Supreme Court of the United States:

"The PRESIDENT,
"*Washington, D. C.:*

"Your nomination of Louis D. Brandeis affords renewed evidence of your sagacity, is a fine tribute to his splendid qualifications, and a gratifying recognition of the confidence in which he is held by the masses of the American people."

I may add that for several years I have been in position to gauge with some accuracy the views of the people of Boston as a whole and to contrast them with those of a much more circumscribed local group mistakenly disposed to regard its own sentiments as those of the entire community.

Four men chanced to lunch together to-day at one table at one of our principal clubs. One is president of a prominent Boston savings bank, the second is a well-known lawyer occupying a high elective office, the third is one of the leading dry-goods merchants of Boston, the fourth (myself) is president of two flour milling companies. Among other matters the nomination of Mr. Brandeis was discussed. One suggested that those who favor his nomination hold up their hands and all four men held their hands aloft.

This is, I believe, much nearer a correct illustration of the views of the people of Boston—not to go farther from home—than was the petition recently signed here and forwarded for presentation to your committee.

If the matter were submitted to a vote of our citizens among whom Mr. Brandeis has lived and worked the greater part of his lifetime, I believe the majority in his favor would be overwhelming.

Very respectfully, yours,

BERNARD J. ROTHWELL.

—

[J. Russel Marble & Co., Worcester, Mass., also 77 Pearl Street, Boston, Mass. J. Russel Marble, Rufus S. Woodward, Charles E. Eager, Arthur E. Nye.]

WORCESTER, *February 23, 1916.*

Hon. WILLIAM E. CHILTON,
Chairman Subcommittee Judiciary Committee,
United States Senate, Washington, D. C.

DEAR SIR: As a merchant of Boston and Worcester, Mass., and doing a very considerable business with the principal paper, woolen, cotton, and other manufacturers of New England, I want to state that I believe that a large proportion of the people of New England approve of the nomination of Louis D. Brandeis for Justice of the Supreme Court.

I have met Mr. Brandeis frequently in lines of work which are for the uplift and benefit of the people. His ability is recognized and I believe that he has a large degree of judiciary temperament. He is the only lawyer, so far as I know, of any particular prominence who has appeared before the Legislature of Massachusetts in the last 10 years in the interests of the people as a whole. The other lawyers have been there, chiefly representing the interests of corporations, whose interests are sometimes inimicable to those of the people. The Hon. Robert M. Washburn, a Republican, and more than five years a member of the Massachusetts House of Representatives, now a member of the Massachusetts Senate, himself a lawyer, has approved publicly of Mr. Brandeis's confirmation, as per inclosed interview in the Worcester Evening Gazette.

Knowing Mr. Brandeis as I do, and the sentiment of the New England people, I believe the court would be strengthened by his confirmation, and the respect for the court, if possible, increased among a large part of the community.

Very truly, yours,

J. RUSSELL MARBLE.

—

MARCH 3, 1916.

Mr. A. LAWRENCE LOWELL,
President Harvard University, Cambridge, Mass.

DEAR SIR: As a one-time member of the undergraduate body of the university, I feel that I owe it both to the traditions of that institution and to my own sense of duty to add my protest to that of the

undergraduates who have challenged your opinion as stated to the Senate committee of the fitness of Mr. Louis D. Brandeis for service on the Supreme Court of the United States.

I have some personal acquaintance with Mr. Brandeis. I have a good working knowledge of his activities in the public behalf during the past 10 years. There is no man of his time, in my opinion, who has rendered as valuable service to the cause of humanity and progress. He is of Supreme Court stature at all times. Under the conditions that prevail to-day in the United States, I believe him to be peculiarly fitted for services on that bench. President Wilson has made no appointment in his career that so honored him as that of Mr. Brandeis. In such a situation, it shocks me that the head of our most illustrious educational institution should join the clamor of the privileged and predatory interests of the country in defaming the reputation of this great lawyer and citizen.

Again I protest—for myself, for the old university ideals of truth seeking and service to humanity.

Truly, yours,

STILES P. JONES,
Class of '88.

—

HOT SPRINGS, ARK., *March 12, 1916.*

Hon. JOSEPH T. ROBINSON,
United States Senator from Arkansas, Washington, D. C.

MY DEAR SIR: Mr. Malheny, a brother attorney and old schoolmate of yours informed me that I might use his name as reference in writing to you relative to the confirmation of the Hon. Louis D. Brandeis for Supreme Court judge, who was indorsed by our local painters' union, No. 401, and a copy of the resolutions sent to you and Senator JAMES P. CLARKE on February 22 by special delivery. I wrote Senator CLARKE the second time, but have never received a reply to our resolutions nor my letters, and as I am originally from New England and also know ex-Secretary of the Interior Ballinger and many of the ring that attempted to hold up Uncle Sam in Alaska, and know Mr. Brandeis did his whole duty in that case and rendered invaluable services to the United States Government and the people of our country and in that and other cases, and that a large majority of the laboring men and law-abiding citizens are in favor of your early action and confirming the President's appointment, I hereby again ask you and your colleagues to stay by us, and we will stay by you.

Kindly acknowledge the receipt of this and let me know if you duly received a copy of our resolutions, and oblige your humble friend and servant.

E. E. NEAL,
Box No. 28, Hot Springs, Ark.

—

JOHN P. HERRMANN, JR., REAL ESTATE CO.,
St. Louis, Mo., March 15, 1916.

To the MEMBERS SENATE JUDICIARY SUBCOMMITTEE,
Washington, D. C.

HONORABLE SIRS: The inclosed copy of my letter to Senator Elihu Root, a copy of which was mailed to Mr. Barnes, of New York City, explains itself.

With all due respect to the Hon. William Taft, the ex-President of the United States, I beg to call your attention to the fact that he was not above accepting the nomination at the hands of the 1912 so-called Republican convention, and that notwithstanding that the platform on which he was previously elected as President called for a revision of the tariff downward, that in place of that the people who had voted for him on that platform were given Canadian reciprocity instead of a revised tariff.

If the other gentlemen who are so strenuously opposing the confirmation of Mr. Louis D Brandeis are in the same class, it might be well not to lay too much stress on their opinions as to his fitness for that high office. See inclosed editorial from Globe Democrat.

Trusting that you will receive this letter in the friendly spirit in which it is sent and will confirm Mr. Brandeis's appointment, I remain.

Very truly, yours,

A. F. HERRMANN, *1011 Market Street,*
Delegate to the 1912 Progressive Party Convention,
And Chairman Twelfth Congressional District of Missouri.

—

ST. LOUIS, *February 18, 1916.*

Hon. ELIHU ROOT,
New York City, N. Y.

HONORABLE SIR: You will in all probability recognize the following matter as having been printed on postal cards which were received by various representative men of the so-called Republican National Convention held in Chicago in 1912:

"Rather than stain the nomination for the high office of President with fraud and theft, organize a Progressive Party with the Hon. Theodore Roosevelt as its head."

Now that your State, the Empire State, and your party, the Republican Party of your State, has spoken and given you to understand that they did not consider you fit timber to fill the position of President, the most honorable within the gift of the American people, I sincerely trust that the exalted opinion you had of yourself so dogmatically expressed and displayed while chairman of the national Republican Party convention held in Chicago in 1912 has somewhat diminished.

Might does not always make right, and in this case the lesson has been driven home to you by your own people in your own State.

While your nomination for the highest office was a possibility, your election to same is an absolute impossibility, as we, the Progressives in the western section of the United States, have always resented, nor will we ever forget and few of us ever forgive, the treatment you accorded to us while acting as chairman.

Trusting that your forced retirement to private life may be of a pleasant nature, I am,

Very respectfully, yours,

A. F. HERRMANN, *1011 Market Street,*
Delegate to the 1912 Progressive Party Convention,
And Chairman Twelfth Congressional District of Missouri.

—

FEBRUARY 18, 1916.

Hon. WILLIAM E. CHILTON,
Chairman of Senate Subcommittee,
Washington. D. C.

DEAR SIR: Kindly allow me to express my approval of the nomination of Mr. Louis D. Brandeis to the Supreme Court.

It has been my privilege to have had somewhat of an intimate acquaintance with Mr. Brandeis for more than a dozen years, during which time I have observed his work at close range, both in public and private affairs. I have found him to be a man who is keenly active in getting after exact and fundamental facts before making a statement regarding any matter in hand, and subsequent events have usually proved that his judgment has been sound.

I feel sure that his activities have been misinterpreted sometimes as involving a radicalism which he did not feel or express, but, on the other hand, his utterances and actions have been of great value to the community in which he has lived.

Yours, very respectfully,

CHAS. M. COX.

—

FEBRUARY 3, 1916.

Hon. JOHN W. WEEKS,
Washington, D. C.

MY DEAR SENATOR WEEKS: Permit me to express the hope that you will not hinder the confirmation of Louis D. Brandeis even if you should find that you could not vote for him, which I sincerely hope will not be the case.

Yours, respectfully,

GEORGE W. COLEMAN.

—

FEBRUARY 3, 1916.

Hon. HENRY CABOT LODGE,
Washington. D. C.

DEAR SENATOR LODGE: With all my heart I hope you will not find it necessary to oppose the confirmation of the appointment of Louis D. Brandeis. Nothing would please me more than to see you voting for him.

Yours, sincerely,

GEORGE W. COLEMAN.

—

MARCH 10, 1916.

Mr. ELLERY SEDGWICK,
Editor Atlantic Monthly, 4 Park Street, Boston, Mass.

MY DEAR MR. SEDGWICK: The report in this morning's Herald of your suggestion to President Wilson of the social importance of Mr. Brandeis's appointment is most encouraging. With other Harvard men I was mortified by President Lowell's part in a stupid and unfair protest. Such action as yours is welcome, for it sets us right in the eyes of people throughout the country who have been criticizing Bostonians in general, rather unjustly, for the sad showing we made when one of our greatest citizens was given the recognition due him, and recognition is something Mr. Brandeis has never sought. Over the long-distance telephone some of the foremost social workers in New York told me of their indignation at the character of the protest emanating from this city. Fortunately we got every social worker in Boston to sign a petition showing how Mr. Brandeis really stands with the people and with those who are close to the people in this city. Those of us who regard the Atlantic Monthly as an expression of the best in democratic thinking find in your action a new satisfaction in our allegiance.

Sincerely, yours,

MEYER BLOOMFIELD.

—

CAMBRIDGE, MASS., *February 18, 1916.*

Hon. WILLIAM E. CHILTON,
Chairman Subcommittee of Judiciary,
United States Senate, Washington, D. C.

DEAR SIR: The writer of this letter is a clergyman of the Congregational denomination of over 25 years' standing, most of it in actual service in the Commonwealth of Massachusetts; a graduate of Harvard College, and most of his ministry spent within the limits of the city of Boston. From the ministry he went to the professorship of applied Christianity at Tufts College, and for several years now has been engaged purely in private literary and educational activities. You will find his history in Who's Who for 1914–15, up to my resignation as professor at Tufts, since which I have engaged in writing educational books. I am personally known to Senator HOLLIS, Senator GALLINGER, and Senator WEEKS. Any of these gentlemen can give you light as to my standing. I think this is also true of Senator CLAPP, whom I knew early in my career.

In these many years in Massachusetts I have also been something of a publicist and have engaged in many public activities of the nature of social and political reform, the results of which are embodied in my book on "Christianity and the Social Rage." My views on present movements, as they respect courts and judges, will be found in that volume very fully set forth in the chapter entitled "Social Justice on the Curbstone." I think this is sufficient for identification.

I am writing concerning Mr. Louis D. Brandeis. I have known Mr. Brandeis for nearly 16 years, being first attracted to him because of his activities as they related to sociological reforms in which I was interested. I became more closely acquainted with him in the campaign for savings-bank insurance for poor people in this Commonwealth and have kept more or less in touch with him and his activities during this entire period.

In the last 10 years I have lectured extensively in this State, and often speak in the course of a season to between 5,000 and 10,000 people of all kinds and types throughout the Commonwealth. I think I am in a position to know the public estimation of the man as well as almost any man in the State, and perhaps better than most, and I am writing to say that I am myself in favor of his confirmation as a Justice of the Supreme Court, and believe that the vast mass of the people of this Commonwealth, if they were permitted to express an opinion, would be found equally desirous of such action on the part of the Senate. I believe that more than any other man in the State Mr. Brandeis represents the feeling of liberal-conservative men as being a true and honorable embodiment of what has come to be known as "sociological jurisprudence." I believe that confidence in him is general, and perhaps even greater, because of some of the enemies which he has made, some of whom have appeared before your committee. The confirmation of Mr. Brandeis would reassure the people of this State and, as I believe, of the United States that a public man devoted to the popular interest—meaning thereby the public interest as against private and privileged interests—will not debar him from the highest service of the country. His rejection would be a distress signal which would, in my judgment, be damaging to the courts of the land already under fire in all parts of the land.

I think I am in position to understand and properly characterize the opposition to him from Boston and vicinity. It would not be fair to say that it was racial. It would be fair to say that if any man bearing an old New England name and practicing at the bar in Boston had everything which is alleged against Mr. Brandeis—alleged against

him—and were nominated for the Supreme Court, nobody would dream of raising these questions. Many of the interests represented by the protesting gentlemen are now, and have been ever since I have resided in this Commonwealth, against any emergence into public influence and power of anybody not of their number and clan. This is the simple truth.

Long and unchallenged control of everything in the Commonwealth has given many of these gentlemen the perfectly natural feeling that whoever is not approved by them is ipso facto a person who is either "dangerous" or lacking in "judicial temperament." I have met this in almost every form at public hearings of the legislature, of which I have attended a great many. It appears not merely in matters like this, but hardly less in philanthropies, the administration of public institutions, and many other forms of public activity. They simply can not realize, and do not, that a long New England ancestry is not prima facie a trusteeship for everything in New England. That is, in my judgment, the real spring of most of the opposition, though it must be recognized that it is entirely sincere, and the more sincere because never brought to the bar of critical review.

Doubtless your attention has been called to a recent editorial in the Boston Post entitled "A close petition," showing the comparatively narrow range of this opposition. I desire to affirm to your committee that if most of these people were brought into any public relation, as most of them have not, where a popular estimate of them could be registered, the verdict would be so overwhelmingly against them as to leave no doubt in the mind of any reasonable person of the restricted area in which they operate. I believe the real feeling of this community is one of high regard, amounting in some cases to idolized devotion to Mr. Brandeis as a type of man who will bring both honor and justice to the Supreme Court of the United States. They love him for the enemies he has made.

In my personal associations with Mr. Brandeis I have always been impressed with his sincerity, his uprightness of view, and his devotion to his cause. I believe that as a justice of the Supreme Court of the United States he would adorn the bench and add to the glory and renown of the greatest court in the world.

Respectfully yours,

A. A. BERLE.

To the SUBCOMMITTEE OF THE JUDICIARY COMMITTEE
OF THE UNITED STATES SENATE,
Washington, D. C.

GENTLEMEN: We, the undersigned ministers of Congregational churches in Greater Boston, as public-spirited citizens, hereby express to you the esteem in which we hold Mr. Louis D. Brandeis for his great service in behalf of the workers of the country and for the valiant fight which he has so successfully made for civic and corporate righteousness. We wish to bear witness that Mr. Brandeis was bitterly attacked several years ago for an address which he delivered before the Boston ministers' meeting. At that time, in the interests of fairness, we opened our platform to his opponents, that they might reply to his address and answer any questions which might be asked. This offer was declined. In view of the facts, we are glad that time has vindicated Mr. Brandeis in the position which he maintained before our body.

We sincerely trust that attacks from prejudiced quarters will not be allowed to defeat his confirmation as Associate Justice of the Supreme Court of the United States, and that unless evidence of unfitness not now known is produced, he will be so confirmed.

We, the undersigned social workers in Greater Boston, desire personally to go on record in favor of the appointment of Mr. Louis D. Brandeis to the United States Supreme Court.

In the field of social progress—wherein we have had an opportunity to observe and measure Mr. Brandeis's usefulness—we know that his interest and untiring service in connection with the adjustment of labor differences, his social insight, breadth of mind, and unselfish devotion have won him the confidence and respect of hosts of people in this community and elsewhere. To our thinking, he has given evidence of possessing a knowledge and point of view in regard to present-day social conditions which should make him a most useful member of the Supreme Court.

[The Pilgrim Congregational Church, Magazine Street.]

CAMBRIDGE, MASS., *February 22, 1916.*

Senator CHILTON,
Washington, D. C.

HONORED SIR: Pardon a few words on the Brandeis appointment now before you for hearing and report.

Many of us hereabout are delighted that the President has done the exceptionally good thing in his appointment of Mr. Brandeis, and we earnestly hope that your honorable committee will recommend that the Senate confirm the same.

At the time of the country-wide discussion of the New Haven Railroad matter, and when the public mind was agitated by it, our Boston ministers' meeting heard Mr. Brandeis, who presented the subject from his point of view with great fairness, abundant evidence, and brimful and overflowing thoroughness. His presentation was not answered openly, though his opponents were urgently invited to reply before our meeting. The only reply was a printed attack on the man, which was sent to all our ministers. Being cognizant of these facts, I fear that some of those now attacking Mr. Brandeis, were they and their methods under investigation, would hardly stand the light of day. Big business is surely more fully represented on the bench of the Supreme Court already; why should not the common people have on that bench such an eminent example of love for the public weal?

I have the honor to be, cordially and sincerely, yours,

RICHARD WRIGHT,
Pastor Pilgrim Church.

BRUNSWICK, ME., *March 6, 1916.*

Hon. CHARLES F. JOHNSON.

DEAR SIR: I concede that a Senator's conscience should, and in your case will, determine his official act.

I am aware that the sentiment of a single constituent may not be entitled to much consideration and I have hesitated to address you on the subject of this letter; but I have reflected that my sentiment may perhaps offset that of another.

I hope that you will vote for the confirmation of Mr. Brandeis. I think the definition of "a judicial mind" in our political dictionary should not be "one that stands between corporate rascality and the dispensation of justice."

I hope that in future years you may have the satisfaction to reflect that you have helped to make one of the greatest and purest judges of that great court.

Sincerely, yours,

HENRY F. THOMPSON.

[Ex. Rept. No. 2, pt. 2, 64th Cong., 1st sess.]

NOMINATION OF LOUIS D. BRANDEIS.

Mr. CLARK of Wyoming, from the Committee on the Judiciary, submitted the following views of the minority.

The nomination was referred to a subcommittee for hearing and investigation. Full hearings were had in open session and every opportunity given to all to appear and be heard either for or against the nominee. The evidence and proceedings of the subcommittee, including separate reports of its members, have been printed and a favorable report on the nomination of the appointee, by the full committee, has been ordered by a vote of 10 to 8.

In view of the extreme importance of the appointment and the remarkable conditions disclosed at the hearings, the minority members of the committee feel it to be a duty resting upon them to state their views and their reasons for believing that the nomination should not be confirmed.

We concur in the views expressed and the conclusions reached in the separate reports of Senators CUMMINS and WORKS of the subcommittee. Their reports are so full and ample that it is unnecessary now to enter into any extended review of the evidence. We make those reports a part of the views of the minority and annex them hereto and make them part of this minority report.

In addition to this we think it just and right to call the attention of the Senate to the important features of the evidence adduced before the subcommittee and to summarize in a brief way the vital things established by the evidence.

There were 12 separate and distince charges made against the nominee affecting his conduct, standing, and reputation as a lawyer, and his fitness for the high office for which he had been nominated. Besides this, proof was offered of his bad reputation amongst the lawyers of the Boston bar, of which he was and had been a member for many years. In addition to this, numerous protests, signed by men of high character, including lawyers and others, based upon the claim that he is unreliable and untrustworthy, were submitted to the subcommittee. There were 77 of these protests signed by leading and well-known citizens.

Again, the subcommittee had before it a protest signed by William H. Taft, Simeon E. Baldwin, Francis Rawle, Joseph H. Choate, Elihu Root, and Moorfield Storey, as follows:

"The undersigned feel under the painful duty to say to you that, in their opinion, taking into view the reputation, character, and professional career of Mr. Louis D. Brandeis, he is not a fit person to be a member of the Supreme Court of the United States."

The signers of this protest are among the leading and most highly respected lawyers of the country and each of them had been president of the American Bar Association, of which Mr. Brandeis was, and had been for many years, a member.

To summarize the evidence given before the subcommittee, we submit that it establishes against the nominee—

1. That in a most important proceeding before the Interstate Commerce Commission he was appointed to represent the public side of a vital question, and without conferences with or warning to other counsel upon the same side he joined the railroad companies in asserting that the existing revenues were insufficient, thereby betraying the public interest and imposing upon the producers and consumers an unjust burden of millions of dollars every year.

2. That after serving a client and upholding and defending its manner of doing business and the form of its contracts with its customers, he, in the interest of its competitors in business, and, as he claimed, in the public interest attacked the former client and assailed the same contracts he had approved and defended, denounced them as in violation of law, and endeavored to secure legislation against them.

3. That he made believe that he was appearing and contesting these contracts in the public interests and without pay when he was acting directly for and in the interest of private individuals, and his firm, other than himself, accepted and received a large fee for the services rendered by him in this behalf.

4. That he took employment from a client, advised him to make an assignment for the benefit of his creditors, had his own partner appointed the assignee, and afterwards denied that he had ever been employed by the client. That at the time he took the employment and gave the advice he was the attorney of one of the largest creditors of the client, and for whose benefit the assignment was made, and in connection with the question whether the assignment should be made or not was advising another of the large creditors. That later he repudiated his employment by his client and prosecuted a petition in bankruptcy against him, alleging as an act of bankruptcy the making of the assignment that he himself had advised him to make. Out of this course of conduct he made for himself and his firm fees amounting to $43,852.

5. That in the Glavis-Ballinger case he appeared for Glavis, pretending to act without compensation and in the public interest, when he was acting for and in the interest of a private corporation and was paid for his services a fee of $25,000.

6. That he for a long time represented and collected fees from two clients whose interests were diametrically opposed to each other, and when they later went to law over those same conflicting interests he took employment for one of them against the other.

7. That he took employment in the fight for control of the Illinois Central Railroad to secure proxies for one of the parties, by which, in part, proxies sufficient to control the election of officers by his client were procured, and afterwards he denied having acted in the matter.

8. He took employment in the prosecution of actions against the New England Railroad Co., the object of which was to wreck the road and put it under the control of his client. The actions were not prosecuted in the name of his real client, but in the name of dummy plaintiffs, who were paid to bring the action by the real party in interest, whose identity was purposely concealed. The object intended was accomplished by this means and the New England road was absorbed and taken over by the New Haven.

9. That in the case of the Equitable Life Assurance Society he acted for and in the interest of some of the policyholders, without

pay, and in the public interest, and made charges against the society of misuse and misappropriation of funds and other wrongs. And at this very time he was the attorney for the society in a number of cases, and later, an action was brought against the society by one of the policyholders who alleged in his complaint the very wrongful acts that he had denounced in the public interest, to which he filed a sworn answer for the society denying that it had ever committed the wrongful acts with which he had charged it.

10. That in the merger case, while holding himself as acting as a disinterested representative of the public, he was really acting in the interest of a private individual and himself paid the other members of his firm a fee of $25,000 for the services rendered by him, thereby recognizing and treating the service as rendered for a client and not for the public.

11. That he was employed by certain liquor dealers as a paid lobbyist to prevent the passage by the legislature of his State of a bill detrimental to their interests.

12. That he has, on different occasions appeared before committees of Congress urging legislation against combinations and trusts, and among others has vigorously denounced the so-called chain-store combinations, but notwithstanding he accepted employment as counsel to convince the Department of Justice that the persons who promoted and brought about the merger of the Riker & Hegeman Co. chain of drug stores with the United Drug Co.'s chain of stores and upward of 3,500 agents of the National Cigar Stands Co. should not be prosecuted under the antitrust laws, a prosecution which the district attorney had already determined would be justified.

This last charge is not covered by the reports of the subcommittees, for the reason that the evidence was taken on a rereference to the subcommittee for that purpose after those reports were made. It will appear from this evidence that Mr. Brandeis for some time had actively assisted the so-called American Fair Trade League in an effort to bring about the adoption of the Stephens's price maintenance bill which the league had advocated as a means of defense to the small retailer against the chain stores.

At one of the hearings before the House Committee on Interstate Commerce Mr. Brandeis contended that price maintenance "preserves the small retailer as against the great chain stores." In an article which was submitted at these hearings, which Mr. Brandeis wrote for Harper's Weekly, entitled "Cutthroat competition," he said that without price maintenance manufacturers would "combine with existing chains of stores," or establish "new chains of retail stores." This he declared would be an unmitigated evil. He said, "The process of exterminating the small independent retailer already pressed by capitalistic combinations—the mail-order houses, existing chains of stores, and the large department stores—would be greatly accelerated by such a movement."

An examination of what Mr. Brandeis has written and said upon the subject will disclose that his attitude has been one of vigorous opposition to the chain-store system.

In September of last year negotiations were set on foot looking to a merger of the United Drug Co. of Massachusetts, a $20,000,000 corporation, which also controlled a large number of stores. The Department of Justice, through District Attorney George W. Anderson (who, it may be said in passing, represented Mr. Brandeis before the subcommittee), entered upon an investigation to determine whether or not this merger would violate the antitrust laws. Mr. Anderson came to the conclusion that it would be in violation of these laws. Mr. Brandeis was employed to present the matter to Mr. Anderson in behalf of the merger and filed an elaborate brief with Mr. Anderson in an effort to convince him that the proposed merger was lawful.

We quote from the evidence taken before the subcommittee as follows:

"Mr. Louis K. Liggett testified in part as follows:

"Senator WORKS. Mr. Liggett, what is your business?

"Mr. LIGGETT. Manufacturer and retailer.

"Senator WORKS. Of what?

"Mr. LIGGETT. Drugs.

"Senator WORKS. With what companies are you connected?

"Mr. LIGGETT. The United Drug Co. as president, and chairman of the board of directors of the Liggett Co.

"Senator WORKS. What is the connection between these two companies?

"Mr. LIGGETT. That of parent and subsidiary company.

"Senator WORKS. What do you mean by that?

"Mr. LIGGETT. The Liggett Co. is a direct subsidiary of the United Drug Co., the United Drug Co. owning all the capital stock of the Liggett Co.

"Senator WORKS. What other companies are connected with the Liggett Co. or the United Drug Co.?

"Mr. LIGGETT. Several more subsidiary companies—the United Drug Co. (Ltd.) of Canada; the National Cigar Stands Co., of New York; the Guth Chocolate Co., of Baltimore; the Ballard Vale Springs Co., the United Candy Co., and the United Pharmaceutical Co. To the best of my recollection that is all.

"Senator BORAH. Does the parent company control all the stock of all these subsidiary companies?

"Mr. LIGGETT. It owns all the stock of all these companies, with the exception of a small amount of preferred stock in the United Drug Co. (Ltd.) of Canada, a small amount of preferred stock in the Guth Chocolate Co., and a small amount of the preferred stock of the Ballard Vale Springs Co. It owns all the common shares of all the companies.

"Senator WORKS. I have here a memorandum of some alleged facts relating to the connection between these companies, and I want to call your attention specifically to these statements, so that you may either verify them or correct any mistake in connection with them.

"It is said, first, that the merger of the Riker & Hegeman Co. chain of drug stores and the United Drug Co. brings under the same control nearly 200 retail drug stores and 3,500 agents of the National Cigar Stands Co. affiliated with the United Drug Co. Does that state the facts about correctly?

"Mr. LIGGETT. A little less number of retail stores; about 153 is correct.

"Senator WORKS. Instead of 200?

"Mr. LIGGETT. Instead of 200

"Senator WORKS. How about the agencies—3,500 agents?

"Mr. LIGGETT. I could not give the exact number offhand, but it is approximately correct.

"Senator WORKS. Then, again, it is stated that the United Drug Co. of Massachusetts was a $20,000,000 corporation which controlled the United Drug Co. of New Jersey, the F. L. Daggett Co., the National Cigar Stands Co., the L. K. Liggett Co., the United Drug Co. (Ltd.) of Canada, and owned substantial holdings in the Hanson-Jenks Co. and Ballard Vale Co., and had working arrangements with approximately 7,000 other stores throughout the country, and through its cigar department, operated by the National Cigar Stands Co., had 3,500 agencies in various parts of the country. Does that state the facts correctly prior to the final merger that took place?

"Mr. LIGGETT. Approximately correctly.

"Senator WORKS. Then, again, it is stated that the Riker & Hegeman Co. is a $15,000,000 corporation organized in 1912 to take over the chain of stores of William B. Riker & Co., Hegeman & Co., and the Jaynes Co., and owned and operated over 100 stores in New York, Brooklyn, Boston, Hartford, Newark, Philadelphia, Pittsburgh, Washington, and other eastern cities. Does that state the facts correctly?

"Mr. LIGGETT. As far as I know.

"Senator WORKS. How far do you know?

"Mr. LIGGETT. I was not a member of their organization, and I can not state that in 1912 they did take over those businesses.

"Senator WORKS. You have become connected with some of those corporations since?

"Mr. LIGGETT. We have taken over what was the Riker-Hegeman Co. as it existed at the beginning of this year.

"Senator WORKS. We will come to that directly, I think.

"It is stated that in 1913 the control of the Riker & Hegeman Co. stock was acquired by the United Cigar Stores Co. interest, headed by George J. Whelen, and the stock of the company was put into the corporation for R. H. stock which Mr. Whelen and his associates controlled. Mr. Whelen took active charge of the Riker & Hegeman affairs and a number of Mr. Whelen's strongest associates in the United Cigar Stores Co. came over and took hold of the managements of the Riker & Hegeman Co. What is the fact as to that?

"Mr. LIGGETT. My information is to the effect that the United Cigar Stores Co. as an organization had nothing to do with that; that it was simply an individual promotion plan of Mr. Whelen's; that the stock of the Delaware corporation, known as the R. H. Corporation, was not largely held by stockholders of the United Cigar Stores Co. but rather by independent stockholders, and I believe that to be true, because in the purchase of the business I had to check their stock lists. By long odds a majority of the stock was held by investors.

"Senator WORKS. Then we will go to the next statement.

"In September of last year it was announced that the United Drug Co. interest was negotiating with Mr. Whelen, of the United Cigar Stores, and his associates for the control of the Riker & Hegeman chain. On October 17 it was announced that the transfer had been arranged and that a special meeting of the Riker & Hegeman stockholders would be called to ratify the merger. What is the fact about that?

"Mr. LIGGETT. That is about correct.

"Senator WORKS. Then again, soon after it became public that the Department of Justice was investigating the Riker & Hegeman chain of stores to determine whether prosecutions should be begun under the Sherman Antitrust Act on the complaints which had been coming into the Department of Justice from independent retail druggists of different parts of the country. Had you notice of any such investigation being made by the Department of Justice?

"Mr. LIGGETT. No; my only notice came through the action of Mr. Anderson, the district attorney in Boston, and I rather have assumed and believe it to be the fact that this was initiated by him, not on complaints but rather purely on his own initiative.

"Senator WORKS. When were you first made aware of the fact that Mr. Anderson was investigating the situation?

"Mr. LIGGETT. The 1st of October.

"Senator WORKS. What was the state of the negotiations which finally resulted in the ultimate merger, when you first learned of that fact?

"Mr. LIGGETT. As far as the principals controlling the majority of stock of the company was concerned the agreement has been made between them.

"Senator WORKS. Then, again, it was then claimed that the proposed merger of the Riker & Hegeman Co. with the United Drug Co. would combine retail interests estimated to be doing an annual business of $30,000,000, and that the matter was being investigated by the Attorney General. What was the fact about it, as to the interest that would be included if the merger took place?

"Mr. LIGGETT. The volume of retail business for the year 1915, when the business was conducted separately, would of course have made the combined business approximately $20,000,000, not $30,000,000.

"Senator WORKS. How many different stores would be included in the merger?

"Mr. LIGGETT. One hundred and fifty-three.

"Senator WORKS. Where? Located in how many different States?

"Mr. LIGGETT. Located, the largest number, in New York City in one group; the second largest in the New England States, including all States of New England, excepting Vermont, and having but one store in New Hampshire and three stores in Maine. The rest of the business was distributed in New York State, largely in the principal cities along the New York Central Railroad; a few in Pennsylvania, three being in Philadelphia and two in Pittsburgh, one in Scranton, one in Wilkes-Barre, and one in Lancaster; one in Washington, and three in Detroit.

"Senator BORAH. Washington, D. C.?

"Mr. LIGGETT. Washington, D. C. Three in Detroit, two in Columbus, Ohio, two in Toronto, Ontario, and five in Winnipeg.

"Senator WORKS. Since that time has the number of stores under your control been increased?

"Mr. LIGGETT. Decreased by four.

"Senator WORKS. Where?

"Mr. LIGGETT. One in Providence, one in Troy, N. Y., one in Paterson, N. J., and for the minute I can not think where the fourth place is.

* * * * * * *

"Senator WORKS. Next, it is stated that Louis D. Brandeis is understood to have been retained during this period for some of the parties in interest for the purpose of preparing an opinion and taking part in the negotiations with United States District Attorney Anderson and with the Department of Justice. What do you know about that?

"Mr. LIGGETT. In the latter part of October, I think somewhere about the 22d or possibly the 25th of October, one of the two dates, I went to Mr. Anderson's office with my counsel, Mr. Snow, at the request of Mr. Anderson, to make a full statement regarding the merger and the policies of the United Drug Co. previous to, and what they might be following, the merger; going, as we expressed it, to lay our cards on the table.

"Mr. Anderson's point of view at that time was, as I felt, very arbitrary; and as we left his office with Mr. Snow, in answer to some statement that I made regarding Mr. Anderson's position, said that he felt positive that Mr. Anderson was wrong in his view of the case,

and he said, as nearly as I can recall it, that he has always represented the corporate interests in matters of this kind.

"Senator BORAH. That is, Mr. Snow?

"Mr. LIGGETT. Mr. Snow had always represented corporate interests in matters of this kind, and that while he did believe that Mr. Anderson was wrong it was possible that some one else who had represented interests other than corporate interests might have a different viewpoint to give Mr. Snow, and that he thought he would like to consult with some one. I asked him whom he had in mind. His answer was that there was only one man that he cared to put the question up to, and that was Mr Brandeis, and I replied, 'Why don't you get Mr. Brandeis, if that is the case?'

* * * * * * *

"Senator WORKS. Now, you may go on. You were telling us what occurred between you and Mr. Snow, and his determination to consult Mr. Brandeis. Had you concluded that?

"Mr. LIGGETT. I had concluded that.

"Senator WORKS. Was that all the connection you had with it?

"Mr. LIGGETT. That was all the connection I had with it.

"Senator WORKS. Did you come in contact with Mr. Brandeis after that?

"Mr. LIGGETT. I have never seen Mr. Brandeis that I know of.

"Senator WORKS. Did you ever see any paper in the form of an opinion or brief that was prepared by Mr. Brandeis?

"Mr. LIGGETT. Yes, sir; a joint letter signed by Mr. Brandeis and and Mr. Snow.

* * * * * * *

"Senator WORKS. Mr. Liggett, at the time this opinion was furnished by Brandeis, what was the condition of this merger or consolidation, or whatever it might be called? Were all these chains of stores, as we may call them, under your control at that time?

"Mr. LIGGETT. No, sir.

"Senator WORKS. This was before the merger took place—the final merger?

"Mr. LIGGETT. Before the final merger took place. The final merger took place on February 4 of this year.

"Senator WORKS. This is dated, I see, December 16, 1915.

"Mr. LIGGETT. Yes, sir.

"Senator WORKS. And the consolidation took place in February following?

"Mr. LIGGETT. The final merger; yes, sir.

* * * * * * *

"Senator WORKS. What was the amount of the capital stock of the merged company?

"Mr. LIGGETT. Authorized or issued?

"Senator WORKS. You may give us both.

"Mr. LIGGETT. Fifty-two millions authorized stock and approximately thirty-five millions of issued stock.

"Senator WORKS. Let me read this statement which I have here and see whether that is substantially correct:

"'On February 5 the meeting of the Riker & Hegeman stockholders, which had been repeatedly postponed, was finally held and the merger was ratified, and two days later the United Drug Co. (Inc.) of New York was organized under the laws of New York with a capital of $53,100,000, which promptly took over all the Riker & Hegeman chains and all of the United Drug chains; and interests identified with the United Cigar Co. were conspicuous upon the board of the new United Drug Co.'

"Mr. LIGGETT. The last statement is incorrect.

"Senator WORKS. The statement respecting the——

"Mr. LIGGETT. The interests of the United Cigar Stores Co. were not represented then and are not represented now on the board of the United Drug Co. by anyone.

"Senator WORKS. And that concern is controlled by this merger?

"Mr. LIGGETT. Which concern?

"Senator WORKS. The United Cigar Co.

"Mr. LIGGETT. No; it is not—the United Cigar Co.

"Senator WORKS. They have no connection?

"Mr. LIGGETT. They have no connection with us whatever, either in stock ownership or representation or anything else.

"Senator WORKS. And that company is not represented on the board of directors?

"Mr. LIGGETT. No, sir.

"Senator WORKS. Except for that, is that statement correct?

"Mr. LIGGETT. Yes; so far as I can recollect.

* * * * * * *

"Senator BORAH. Do you control any articles or goods by reason of patents or copyrights or anything of that kind?

"Mr. LIGGETT. Only trade-marks.

"Senator BORAH. Trade-marks?

"Mr. LIGGETT. Yes; registered trade-marked goods; but we control no basic patent for manufacturing or control of production at all. We have none.

"Senator BORAH. As I understand you, there are 153 retail stores controlled by this merger?

"Mr. LIGGETT. Yes.

"Senator BORAH. Scattered in 8 or 10 States of the Union at least?

"Mr. LIGGETT. I should think that many or more.

"Senator BORAH. And your own parent company, the stockholding company, controls a sufficient amount of the stock of all the subsidiary companies to dominate those companies?

"Mr. LIGGETT. Exactly. They are subsidiary companies, practically.

"(Hearings, pp. 7, 8, 12, 56, 59.)"

Mr. Snow, mentioned by Mr. Liggett as his attorney, testified that he employed Mr. Brandeis, who joined him in a letter in the form of a brief to the district attorney defending the legality of the proposed merger; that he joined in the brief and was regularly employed as an attorney for that purpose.

The brief will be found in the record of the hearings (hearings, p. 13).

Also the report of the district attorney to the Attorney General (hearings, p. 39).

This combination of drug stores and cigar agencies was the largest in the country. Mr. Liggett testified on that subject as follows:

"Senator CHILTON. What other large retailers are there besides this of yours?

"Mr. LIGGETT. The Owl Drug Co., in California, is just on the Pacific coast.

"Senator CHILTON. What percentage of the business has the Owl Drug Co.?

"Mr. LIGGETT. Of the total business of the United States?

"Senator CHILTON. Yes.

"Mr. LIGGETT. I should not think it represented 1 per cent.

"Senator CHILTON. Is it as large as yours?

"Mr. LIGGETT. Oh, no. It is less than one-ninth the size of ours.

"Senator BORAH. Are there other companies aside from yours which represent a larger per cent than yours in the retail business?

"Mr. LIGGETT. No, sir. There are no other large retail drug businesses. By large I mean business running in excess of a million and a half of dollars. The nearest to it that I think of is the May Stores, of Pittsburgh, who are part of our 7,000 stores, however; we have their agency. Then there are the Marshall Stores, of Cleveland, the Public Drug Co., and the Bath & Raynor chain drug stores in Chicago. They all represent a substantial business running to about $1,000,000 each, or maybe a trifle more.

"Senator WORKS. Do you control any stores on the Pacific coast at all?

"Mr. LIGGETT. No, sir.

"Senator WORKS. The field is covered by the Owl Co.?

"Mr. LIGGETT. By the Owl Drug Co.

"Senator WORKS. The Owl Drug Co.?

"Mr. LIGGETT. We have a small interest in the Owl Drug Co., but that was put in at the time following the earthquake in San Francisco to assist them financially, and it has been profitable, and we left a very small interest in their business.

"Senator WORKS. What territory do they cover?

"Mr. LIGGETT. They cover from San Diego to Spokane, all the principal cities; the large cities, not the smaller cities. They have 22 stores, located in San Diego, Los Angeles, San Francisco, Oakland, Portland, Seattle, Spokane, and one in Sacramento.

"Senator WORKS. They have no stores east of the Rocky Mountains, have they?

"Mr. LIGGETT. No, sir.

"Senator WORKS. You have not gone into their territory?

"Mr. LIGGETT. No; we have not extended our business west of the mountains.

"Senator WORKS. Nor they into yours?

"Mr. LIGGETT. I do not know whether they have or not. We have heard that they were making leases in New York and Chicago.

"Senator WORKS. They have no stores there?

"Mr. LIGGETT. They have no established stores that I know of; only rumor."

Mr. Brandeis's inconsistent position as a defender of the public interests and his practice as an attorney—in the one case denouncing such combinations as illegal and against the public interests and in the other upholding their validity and attempting to defend and protect them from suit by the Department of Justice, is sharply and clearly presented by this transaction.

The facts upon which our conclusions are based are undisputed. They present a condition that should make the confirmation of this man by the United States Senate impossible. Never before in the history of the country has a man been appointed a Justice of the Supreme Court of the United States whose honesty and integrity were seriously brought in question. It must be evident to any thinking and unbiased mind that this appointment has resulted from something other than the qualifications and fitness of the appointee for the office.

We regard it as a great misfortune and a distinct lowering of the standard heretofore maintained in making appointments to this high office that one should be selected for the place whose reputation for honesty and integrity amongst his associates at the bar has been proved to be bad, which reputation has been justified by his own course of conduct. We can not conscientiously give our consent to the confirmation of such an appointment.

C. D. CLARK.
KNUTE NELSON.
WM. P. DILLINGHAM.
GEO. SUTHERLAND.
FRANK B. BRANDEGEE.
WM. E. BORAH.
ALBERT B. CUMMINS.
JOHN D. WORKS.

Mr. CUMMINS, from the subcommittee of the Committee on the Judiciary, submitted the following views.

To the COMMITTEE ON THE JUDICIARY,
United States Senate:

As a member of the subcommittee, appointed to consider the nomination of Louis D. Brandeis as a Justice of the Supreme Court of the United States, I beg to submit the following report:

That Mr. Brandeis is a man of unusual intellectual power and of high legal learning is admitted by everybody. The opposition to his confirmation is not based upon any doubt respecting his general competency as a lawyer.

There have been laid before the committee many opinions, some favorable, some unfavorable, touching his fitness for the office to which he has been nominated, and with regard to his reputation at the Boston bar. It is most unfortunate that such questions should arise concerning one who has been selected by the President for a place upon the most exalted tribunal in the world, and I deplore that phase of the controversy. These adverse opinions are, in the main, founded directly or indirectly upon certain specific acts of alleged wrong-doing or impropriety which the subcommittee has examined, and we are therefore in a position to determine whether Mr. Brandeis has given reason for the distrust which has been expressed.

My conclusions rest chiefly upon the proof submitted to the committee concerning definite charges which have been made respecting the conduct and characteristics of the nominee. From this standpoint it is my purpose, as briefly as may be, to state the effect of the testimony adduced and the impressions it has made upon my mind.

CHARGE RELATING TO THE CONDUCT OF MR. BRANDEIS IN THE PROCEEDING KNOWN AS THE "FIVE PER CENT ADVANCE RATE CASE" OF 1913–1915, TRIED BEFORE THE INTERSTATE COMMERCE COMMISSION.

It is alleged against Mr. Brandeis that in this case he was guilty of unfair, unprofessional conduct, and betrayed the interests of the public.

In commenting upon this charge, as well as upon all others, I desire it to be understood that I will confine myself to the undisputed facts, for my conclusions are not dependent upon the comparative weight of the testimony with regard to any controverted issue. This course will relieve me from extensive quotations from the evidence and in part from references to the pages of the record.

In 1910 the railroads operating in what is known as official classification territory, acting in concert, filed with the Interstate Commerce Commission schedules showing a general increase in rates. Under the

act of Congress of 1910 these rates were suspended and a hearing ensued which resulted in a denial of the proposed increases. In this proceeding Mr. Brandeis appeared as an attorney for a Massachusetts commercial organization in opposition to the increases sought, basing his opposition mainly upon the proposition that if the railroads were efficiently managed they could enlarge their net revenues without advancing their rates. He did not, however, concede or suggest that the net revenues, taken as a whole, were inadequate.

In 1913 the same railroads again filed with the commission schedules of rates advancing them generally but not horizontally, and again the commission suspended the schedules and went forward to another hearing.

The proposed increases were so great that shippers everywhere were alarmed. The State railroad commissions became interested, and these State commissions, together with the business organizations, appeared in Washington for the purpose of preventing, if possible, the advance. In this situation there occurred an incident which had never happened before and which, it is profoundly hoped, will never occur again. The Interstate Commerce Commission, acting through one of its members, employed Mr. Brandeis, and inasmuch as the terms of the employment will become important I quote the material part of the letter. It was dated August 15, 1913 (record, p. 8):

"We are, of course, aware of the fact that the railroads will not fail fully to present their side of the case, and the commission has felt that every effort should be made, in the public interest, adequately to present the other side. Would you care to undertake that burden? As you are already aware, in a number of cases of large importance and wide interest, special counsel have been retained by the commission. As a matter of fact, that has not been their real relation in these controversies. They have been retained by the commission, not as advocates or to support any special theory of the issues involved, but as a means by which the commission might be advised of all the facts and not have to decide the issue upon a record made up largely in one interest. It is with this general thought in mind that the commission has reached the conclusion that in the rate advance case special counsel should be retained and I have been asked to ascertain whether your engagements and inclinations are such as to permit you to undertake the task of seeing that all sides and angles of the case are presented of record, without advocating any particular theory for its disposition. In making this last observation you will, of course, understand that you will be expected to emphasize any aspect of the case which in your judgment after an examination of the whole situation, may require emphasis. The commission, however, wishes to avoid a record based solely on a particular view or theory."

With reference to that part of the letter which states that the commission had theretofore retained special counsel it may be said that the lawyers so employed considered their employment to cover only the development of the facts and no one of them, I believe, ever assumed that it was his function to become for the time being a member of the commission and decide the case, or make an argument for the carriers. (Record, pp. 87, 91, 92.)

It was claimed before the subcommittee that this letter made Mr. Brandeis substantially a member of the commission, and that it was his duty upon the hearing of the case not to make an argument but to render an opinion. If this is the true interpretation of the letter, the employment was not only without authority on the part of the commission but was most discreditable, and no reputable lawyer would have entered into such an undertaking or agreed to sustain such a relation to the commission. I desire, however, to do the commission the justice of saying that while the terms of the communication may be unfortunate, the real meaning can not be misunderstood by a fair-minded man.

Mr. Brandeis was employed to take the public side of the question; that is to say, he was to present the side opposed to the claims of the railroads. It was especially said to him that the railroads would be fully prepared to present their side of the case. What the commission wanted Mr. Brandeis to do was to develop all the facts, whether favorable or unfavorable to any theory, and his appointment was thought to be necessary because the commission has under the law opportunities to secure facts which are not accessible to a lawyer representing either State commissions or shippers. It was enjoined upon him that he was not to advocate any particular theory. Under such direction to Mr. Brandeis he entered upon his duties, and the next inquiry is, How did he perform them?

The hearing was both prolonged and exhaustive. Attorneys from all parts of the country representing shippers appeared with their evidence tending to show that the rates upon the particular commodities in which their clients were interested ought not to be advanced. Several State commissions, concerned not in any particular commodities but in the public welfare alone, took up the fight for the public and finally authorized Mr. Clifford Thorne, chairman of the Iowa Railroad Commission, to appear for them. His sole contention, on behalf of the State commission, was that the net revenues of the railroads in official classification territory, taken as a whole, were adequate; and to sustain it he introduced a very large volume of evidence.

If his position had been sustained, there would have been an end of the case, as in that event the Interstate Commerce Commission would have been compelled to have investigated the affairs of the individual railroads in order to ascertain whether, with respect to any one of them, the proposed increases were reasonable. In taking oral testimony before the commission Mr. Brandeis took his place upon the public side of the table and was in regular conference with the attorneys who represented the State commissions and the shippers. With others, he cross-examined the witnesses who were produced by the railroad companies. He extended to Mr. Thorne the most hearty congratulations upon the showing made intended to prove the adequacy of present revenues. Finally, the testimony being concluded, the time came for an arrangement concerning arguments, both printed and oral, and this is what happened before the commission on that occasion, April 7, 1914. (Record pp. 12, 13.)

The chairman of the commission after some preliminary statements said:

"There are, therefore, two proceedings which, however, the commission has consolidated upon the record. Growing out of the two proceedings were certain hearings respecting rates on certain commodities, and protests having been made by shippers interested in those particular rates, those hearings were conducted independently, but they are also a part of this proceeding now before us.

"The rest of the case has followed the two branches of inquiry propounded by the commission in its first order of investigation, namely:

"Do the present rates of transportation yield an adequate return to common carriers, the railroads operating in official classification territory?

"Second. If not, what general course may the carriers pursue to meet that situation?

"Our investigations under this first question are to be considered as having come to a close to-day, subject to the statement just made about exhibits called for and other matters. With respect to that matter the commission desires an argument and briefs at an early date. The first available date is on the 20th of this month, and it has been the desire and hope of the commission that counsel on all sides might have their briefs in and be ready on that date to commence the oral arguments under the first question. I should like to inquire whether that will meet the convenience of counsel?"

Counsel for the railroads made reply that it is immaterial to quote. Following him Mr. Brandeis addressed the commission as follows (record, p. 13):

"Mr. BRANDEIS. I have conferred with various counsel, and they suggest that the 27th will be a date that will be more agreeable to them than the 20th, as they will have to prepare the briefs as well as go through the record for the purpose."

It was accordingly arranged that briefs were to be filed on April 27, and that the oral argument upon the first question propounded by the commission should begin immediately thereafter. The time for oral argument was divided equally between the public and the railroads, and again Mr. Brandeis ranged himself on the public side, and his time was to be a part of the time allotted to the public. When the time arrived for argument, and after conference between Mr. Brandeis, Mr. Thorne, and other counsel, it was determined that attorneys representing particular shippers should speak first, then Mr. Thorne, and that Mr. Brandeis should close the case for the public. At this point it is important to understand just what occurred between Mr. Thorne and Mr. Brandeis at or about the time the argument began. I quote from Mr. Thorne's testimony (record, p. 17):

"I returned for the oral argument, met Mr. Brandeis in the offices of the commission. He was very cordial in his greeting. He called me into his room (where he worked occasionally, perhaps the bulk of his time, while he was over at the commission's offices) and he said, 'Mr. Thorne'—I am quoting him in substance; I can not remember his exact words, but this was the purport of his statement—'you and I have mastered, or tried to master, this case as a whole. The other representatives are chiefly interested in their specific commodities. I have talked it over with the commission,' or 'with Commissioner Harlan'—he said one or the other—'and it is the desire of the commission that you open the argument, and I will close on behalf of the public. In between will come the arguments of the representatives of special interests, whoever they may be. The railroads will open the case, they having the burden, and will close the case.' I said, 'Mr. Brandeis, it will be impossible for me to open this argument on behalf of the public at this time. I am physically unable to do so. I have been working day and night on the brief.'"

Mr. Thorne further says (record, p. 17):

"I was fearful that the men interested in a special commodity, with all the pressure that was being brought to bear upon the shippers everywhere, would be tempted to concede the main issue that was up for discussion at this time and say, 'But this should not apply to my commodity for the following reasons,' etc."

A little later and before the argument began there was further communication between Mr. Thorne and Mr. Brandeis, which I quote (record, p. 19):

"And I wrote a note to him stating as I understood he was giving special attention to the question of laches, inadequate revenues on particular commodities, as he had stated to me, and that when he came to the shippers they were giving their chief attention to the adequacy of revenues on their particular commodities, I was afraid I was going to be playing a lone hand on the issue that was specifically set down for argument at that time, and asked him if he could arrange for my following the shippers and preceding him. He misinterpreted the purport of my request. He thought I was desirous of displacing him in closing the argument.

"Senator WALSH. Have you that correspondence, Mr. Thorne?

"Mr. THORNE. No; it was just a note written in lead pencil on a sheet of paper at the time. And he said, 'You can make your opening statement and then make an additional argument after the shippers have concluded.' I said, 'No; I do not desire to make more than one argument.' And Mr. Brandeis, as I previously stated, misunderstood the purport of my request, evidently, because he then said, 'Well, I will leave to the commission whether you or I shall close for the public.' And I said, 'No; Mr. Brandeis, I do not desire to displace you in any sense of the word. I am not afraid of you a particle; but it is the person interested in the particular commodities who I fear will be tempted to make an unfortunate concession.' 'All right, then,' he said, 'that will be satisfactory. I think there will be no trouble about arranging that.'"

There is but one conflict in the evidence with regard to the entire subject, and it relates to the knowledge which Mr. Thorne had of the position which Mr. Brandeis was about to take. Mr. Thorne says—and it is not contradicted in any way—that Mr. Brandeis gave him no intimation of the extraordinary thing he was about to do. I quote again from Mr. Thorne's testimony (record, p. 19):

"Later in the day, or the following day—I can not state exactly—I received a copy of his (Brandeis's) brief. I looked through it to see the main positions he had taken. I did not find any statement there that the revenues, as a whole, were adequate or any discussion of such a proposition. I then became anxious to know the situation. Mr. Brandeis, I remember, was leaning forward or listening or talking to some other party—I do not know which. Mr. Carmalt was right between us. Mr. Carmalt was the assistant to Commissioner Harlan, chairman of the commission at that time, and was also assisting Mr. Brandeis. He is now chief examiner, I believe, of the Interstate Commerce Commission. I said to Mr. Carmalt, 'What position is Mr. Brandies going to take in this case?' He said, 'You will have to ask Mr. Brandeis. I think that probably he is going to hold that some of the rates are inadequate on special articles and that there should be a general revision in the central freight association territory.'

"Of course, that did not concern me vitally, and that served to allay my alarm; but to make sure, I asked Mr. Brandeis his position. He said, 'Well, now, Mr. Thorne, I believe that some of the railroads are not earning enough money, and I think that the situation is bad in central freight association territory.' I said, 'Well, Mr. Brandeis, that is all right; I have no objection so far as that is concerned,' and I was entirely satisfied. In the brief he had taken the position, 'If the revenues are inadequate, how could they secure the additional money?' But he had taken substantially the same position in the 1910 case—'If the revenues are inadequate, they should secure additional money through the adoption of scientific management methods.'"

Mr. Carmalt says (record, p. 83) that a day or two before the oral arguments Mr. Brandeis said, in discussing the question with him

(Carmalt), that he intended to take substantially the position which he afterwards did take, and that some time during the argument Mr. Thorne asked him (Carmalt) what position Mr. Brandeis was going to take on the sufficiency of the revenues, and that he (Carmalt) told him (Thorne) what Mr. Brandeis had previously stated.

This is absolutely the only dispute, in fact, and I am quite willing to accept either statement. To me Mr. Carmalt's recollection of the matter reflects much more severely upon Mr. Brandeis than does Mr. Thorne's statement.

Taking up the thread of the story again, I find this situation: After months of testimony the commission, with the concurrence of all who were interested in the subject, propounded, for argument to begin on April 27, one question, namely, "Do the present rates of transportation yield an adequate return to common carriers, the railroads, in official classification territory?" The other branch of the inquiry, namely, "If not, what general course may the carriers pursue to meet that situation?" was reserved for a later hearing.

Counsel representing commercial organizations, shippers, State railroad commissions, and Mr. Brandeis were on one side of the table, presumably to argue in the affirmative. And thus the trial proceeded. The carriers opened the argument. Then came the counsel for the commercial organizations and shippers, then Mr. Thorne, who presented the case he had made on behalf of the State commissions, attempting to show from the evidence which had been adduced that the net revenues of the railroads in official classification territory, taken as a whole, were adequate—sufficient. Then followed Mr. Brandeis. His opening sentences were (record, pp. 20–21):

"May it please your honors, it may be helpful if at the outset I state the conclusions to which a review of the record in these cases has brought me. They are these:

"First, that on the whole the net income, the net operating revenue of the carriers in official classification territory, are smaller than is consistent with their assured prosperity and the welfare of the community, and that this is notably true of the Central Freight Association lines, and it is true practically as to other lines also because of the Central Freight Association scale."

Later in his discussion he (Brandeis) declared (record, p. 21):

"I have said, and I will say again, that, whatever may be true of the rates, the net operating revenues and the net income of these properties are not such as to give assured prosperity to the railroads such as the welfare of the community demands."

It is not strange that when Mr. Thorne, representing the public through the State commission, heard these admissions he was dumbfounded and felt that the labor of months had gone for naught, and that Mr. Brandeis had made an admission which destroyed any hope of defeating the claims of the carriers. Sitting as a judge rather than as an advocate he thus practically decided the suit in favor of the railroads. It must not be understood that Mr. Brandeis admitted that the rates ought to be advanced according to the schedules filed by the railroads. After having made the fatal admission to which I have referred he proceeded to insist that there were other ways of swelling revenues, such as increasing the passenger rates, charging for services rendered without compensation, and the like, but this did not retrieve the disaster. The commission accepted the admission made by Mr. Brandeis. It followed his suggestions with respect to the new method of obtaining additional revenues for the purposes of the case then pending; but shortly thereafter, upon a rehearing, advanced the rates substantially as prayed by the common carriers, and the people are now paying them.

It is not my purpose to enter upon the merits of the issues tried before the commission and I shall express no opinion of the decision under which the carriers are now operating. I have only to do with the quality of the act of Mr. Brandeis. To me it seems utterly indefensible. He was an attorney for the public. Mr. Thorne was an attorney for the public. The only issue between the public and the railroads up for argument at that time was whether the railroads were getting enough money from the public to compensate them for the service rendered to the public. Mr. Thorne had made this the vital point in the most remarkable array of evidence I have ever examined. It had been strengthened by cross-examination conducted by both Mr. Thorne and Mr. Brandeis. No matter how they were appointed, Brandeis and Thorne were associate counsel for the public on this issue. The railroads had argued earnestly and ingeniously for their side. Thorne, in a wonderful discussion, had argued for the public side insisting that the public was paying enough already. Then Mr. Brandeis, who had asserted his right to close the argument for the public, rose and the very first thing he said was that the railroad contention, on the issue then being tried, ought to be sustained. I have heard it said that if Mr. Brandeis honestly believed the railroads were right on this question it was his duty to say so. Any such view is a total misconception of the situation. If he could not honestly argue for the public he ought not to have argued the question at all. He should have left Mr. Thorne to maintain the public rights as best he could. Because he reached the conclusion that the railroads were right, on the issue, is no justification whatever for making an argument for them under the circumstances of the trial.

If he appeared in the case as a judge he should have heard all the testimony and arguments and rendered his opinion in the usual way. If he appeared to see that all the facts that were pertinent to the issues were developed, he ought to have left the argument to those who were advocating their respective claims. If his employment was to advise the commission upon the conclusions or questions of law his place was in the conference room and not at the bar.

I have endeavored in vain to conceive any excuse for the course Mr. Brandeis pursued. Its consequences are emphasized when it is remembered that the testimony introduced by Mr. Thorne had established beyond controversy that the net revenue of the carriers had, during the preceding year, been sufficient to meet all the expenses of maintenance and operation, all fixed charges, including taxes, all interest on the bonded indebtedness, and that there remained enough to pay 8$\frac{1}{10}$ per cent on all their outstanding capital stock. (Record, p. 32.)

The commission had decided in 1910 that 7$\frac{1}{2}$ per cent net was on common stock outstanding was adequate; that is to say, that such a return was sufficient to pay a reasonable dividend upon the stock and create a reasonable surplus. This was the very pith of the claim made by Mr. Thorne, and yet during the argument of Mr. Brandeis before the commission the following colloquy occurred (Record, p. 32):

"Mr. BRANDEIS. While I would much rather it were possible to remove a fact, this fact that Mr. Thorne suggests as being such a peril to the community, I myself rather look with hope to the ultimate working out of this problem by the Supreme Court of the United States, with the aid of the commission and other courts, instead of denying to the railroads to-day that which, in good business judgment, in looking to the immediate future with which we have to deal, is an essential to the health of the railroads.

"Mr. THORNE. Mr. Brandeis, did you understand me to deny any surplus?

"Mr. BRANDEIS. I thought you were rather niggardly as to surplus.

"Mr. THORNE. I allowed the same surplus that the commission did in 1910, and if your remark applies to my allowance it applies to the other."

If, under the circumstances of this proceeding, the most important from every point of view which has taken place in a quarter of a century, a lawyer who appears with other counself in behalf of the public can, after his associates have made their arguments, arise and in open court admit that the carriers were wholly right and the public wholly wrong, upon the immediate question under consideration, without incurring the condemnation which follows betrayal, then I confess that I do not understand either common morality among men or the ethics of the profession to which Mr. Brandeis belongs.

THE UNITED SHOE MACHINERY CO. MATTER.

The facts relating to the charge which grows out of the connection of Mr. Brandeis with the United Shoe Machinery Co. are so fully stated in the separate views of my colleagues, Senators CHILTON and WORKS, that it is unnecessary for me to do more than, first, to state the charge; second, my conclusions respecting the facts; and, third, my opinion of the conduct of Mr. Brandeis.

The charge is that Mr. Brandeis, having been for years a director and counsel for the United Shoe Machinery Co., having approved the terms of its contracts and leases with its customers, and having defended them before a committee of the Massachusetts Legislature, after his relation as director and counsel had ceased, made war upon his former client, not only before committees of Congress, as a citizen, but as an attorney in behalf of certain shoe manufacturers; furthermore, that in his public campaign he did not adhere to the truth, and that in appearing for the manufacturers he attacked the very system he had helped build up.

That Mr. Brandeis was for some years a director and attorney for the United Shoe Machinery Co., frequently advised with respect to the leases and contracts which were afterwards assailed; that he did defend the system before a committee of the Massachusetts Legislature; that some three or four years after he had resigned as director and withdrawn as attorney for the Machinery Co., he did assail his former client in a public way and before committees of Congress as a vicious monopoly in restraint of commerce; that he did accept employment from an alliance of shoe manufacturers for the purpose of overturning the system, is not disputed.

I do not attempt to determine whether the statements made in the public assaults and in the campaign for the manufacturers were truthful or untruthful. It was manifestly impossible for the committee to try that question. Nor do I take into account the fact that in the litigation Mr. Brandeis personally returned to his clients the $2,500 collected by his firm as compensation. This fact seems to me to be immaterial, for if the attorney was not working for pay his clients were looking for pecuniary profit, and Mr. Brandeis had no more right to appear for them without compensation than with compensation. My opinion is that a due regard for professional propriety would have prevented Mr. Brandeis from accepting employment from anyone to attack his former client with respect to the very matters about which he had advised and defended it.

I do not apply the same rule to his efforts, as a citizen, to promote the legislation which he believed to be essential to the public welfare, for every man owes that duty to society; but I am not able to reconcile Brandeis, the attorney for the United Shoe Machinery Co., with Brandeis, the attorney for the Shoe Manufacturers' Alliance.

THE LENNOX MATTER.

In this matter the general charge against Mr. Brandeis is that in quick succession he accepted employment from three clients whose interests were necessarily in conflict and undertook the impossible task of advising all of them at the same time. The defense is that he became the attorney for a "situation," and that he could without offense represent all the interests, inasmuch as he was trying to do the square thing.

In many respects the history of Mr. Brandeis's connection with these several clients is the most remarkable I have ever heard. It was developed in a large volume of testimony, which is well worth reading, but for the purposes of the present report it may be condensed within narrow limits.

P. Lennox & Co., a copartnership composed of Patrick Lennox and his son, James T. Lennox, carrying on a large tanning business in Lynn, Salem, and Peabody, Mass., became financially embarrassed. The Abe Stein Co., of New York was a creditor to the extent of more than $200,000, and was represented by a New York lawyer named Stroock. The younger Lennox, who was acting for the firm, informed the Abe Stein Co. of the trouble early in September, 1907, and asked help of some kind. Thereupon Mr. Stein and his lawyer, Mr. Stroock, started to Boston, and on the way over decided that they would employ Mr. Brandeis on behalf of the Abe Stein Co. Immediately upon reaching Boston they visited Mr. Brandeis and did employ him. They then saw Mr. Lennox, and after some discussion advised P. Lennox & Co. to retain Mr. Brandeis. Mr. Stroock offered to see Brandeis to ascertain whether he would accept the employment, which he did during the same forenoon. Mr. Brandeis assented; whereupon Stein, Stroock, and two friends of Lennox went to the offices of Brandeis, Dunbar & Nutter to go over the affairs of P. Lennox & Co. Brandeis, Dunbar & Nutter already represented Weil, Farrell & Co., a creditor to the extent of something like $300,000. Such was the situation when Brandeis, Stroock, Stein, and Lennox, and the two other gentlemen, whose names are not material, came together in Mr. Brandeis's office for a conference. A stenographer was called in, and what was said upon that occasion was taken down, and a transcript of the stenographic notes is before the committee. An exhaustive inquiry into the affairs of the Lennox firm was made by Mr. Brandeis, unquestionably under his employment by Mr. Lennox. This is evident because the only purpose that Mr. Lennox had in going to Brandeis was to be advised with respect to the proper course to pursue. He wanted somebody to tell him what to do; and to that end laid before Mr. Brandeis a rather minute account of the assets and liabilities of the copartnership. The result of the conference was that Mr. Brandeis advised Mr. Lennox to make an assignment for the benefit of the creditors, and suggested that his partner, Mr. Nutter, should become the assignee. The assignment was immediately prepared, and after a little delay was executed and filed. Mr. Nutter took possession of the property, and the firm of Brandeis, Dunbar & Nutter became his

attorneys. Within a short time a disagreement arose between Lennox and the assignee; whereupon Brandeis, Dunbar & Nutter, as attorneys for certain creditors, filed a petition in bankruptcy against P. Lennox & Co., alleging the assignment for the benefit of creditors which Brandeis had advised and procured as an act of bankruptcy. Other petitions in bankruptcy were filed, alleging other causes, and finally the copartnership of P. Lennox & Co. and its individual members were adjudged bankrupts, and Mr. Nutter became one of the trustees, and his firm the attorneys for the trustees.

Four years later the bankruptcy proceedings ended in a compromise through which the firm creditors received 40 per cent and the individual creditors 100 per cent. The report submitted by Senator Chilton gives copious references to the testimony, and the report presented by Senator Works contains extracts from the record so clearly arranged and so abundant that if I were to attempt the same work it would be a mere duplication. There is no real conflict in the record, although there are some serious differences respecting the conclusions which are to be drawn from the conversations of the various parties to this strange proceeding.

There is absolutely no doubt that Mr. Brandeis was at the very beginning the attorney for Weil, Farrell & Co., Abe Stein Co., and P. Lennox & Co. There is no question that under these circumstances he advised an assignment for the benefit of creditors. It is not controverted that he made the assignment the basis of bankruptcy proceedings, and thus became hostile to his former client. The explanation which his friends present is that what Mr. Brandeis really agreed to do was to take the estate and see that it was distributed lawfully among the creditors. To me it is an unseemly spectacle, and Mr. Brandeis is not the only actor in the scene who deserves censure. When I think of how Lennox, with Stein and Stroock on either side of him, went to Brandeis, the attorney for Weil, Farrell & Co., and the Abe Stein Co., to be advised and guided in the way that would lead to emancipation from the troubles that were harrassing them, I can not understand how reputable men could tolerate even that arrangement; but when I see Mr. Brandeis accepting the relation, acquiring all the information that Lennox had to give, advising an assignment, practically to himself, and then to see him turn on Lennox and charge the very thing that he had counseled and procured as an act of bankruptcy, I am bound to condemn the whole transaction, no matter how distinguished the offenders may be.

THE GLAVIS-BALLINGER INVESTIGATION.

The material facts in this case are not in dispute, and they can be very briefly stated.

Glavis was an employee of the Interior Department. He made a series of grave charges affecting the conduct of the department and the integrity of Mr. Ballinger, the Secretary of the Interior. These charges related to the disposition of the public domain and involved what is generally known as the conservation policy of the United States. They were published in Collier's Weekly, a magazine of wide circulation and great influence. Out of these charges grew an investigation carried on by a joint committee of the two Houses of Congress. The investigation finally took the form of a proceeding which may be described as Glavis *v.* Ballinger. The inquiry broadened until there was brought within its scope the attitude of many public officials, including the President and the Attorney General. Glavis was not only without means, but was somewhat obscure and in and of himself could not have given to the proceedings any considerable force. Collier's Weekly, knowing that it had published statements which, if not true, would subject it to damages in a libel suit, and having a real desire, I have no doubt, to further the public interest and expose what it believed to be corruption in the Interior Department, employed Mr. Brandeis to appear before the committee and sustain the charges. The view of the magazine with respect to its relation to the controversy is clearly and forcibly stated by Mr. Norman Hapgood, who was then its editor:

"Senator WORKS. In the discussion of the matter, was the question raised at any time as to the probable liability of Collier's for the publication it had made?

"Mr. HAPGOOD. It certainly was. There was an enormous liability of every kind—moral and financial. When we undertook to show that the Government was concealing such important facts, we were undertaking a good deal, but we did it with a very large sense of responsibility of every kind.

"Senator WORKS. You understood perfectly that Collier's had a personal interest in the matter, in view of the fact that it might be held responsible in an action for libel for publishing a document of that kind?

"Mr. HAPGOOD. We certainly did understand that. (Record, p. 459.)"

Mr. Mark Sullivan, now the editor of Collier's, then the associate editor, put it in this way:

"Senator WORKS. Then you understood, Mr. Sullivan, that Mr. Brandeis was employed by Collier's Weekly to represent its interests and protect it?

"Mr. SULLIVAN. Certainly. If, when the investigation began, Glavis had been discredited, if the investigation had shown nothing serious, Collier's Weekly was in a position to be very much discredited.

"Senator WORKS. Will you be good enough to answer the question?

"Mr. SULLIVAN. Yes; surely. I meant to.

"Senator WORKS. Read the question, Mr. Reporter.

"The reporter (reading):

"'Then, you understood, Mr. Sullivan, that Mr. Brandeis was employed by Collier's Weekly to represent its interests and protect it?'

"Mr. SULLIVAN. Largely. I should say, though I ought to remind you again that the editor of the paper then was Mr. Hapgood. I was not even present.

"Senator WORKS. I was only asking for your understanding of it. That was your understanding?

"Mr. SULLIVAN. Largely to protect the paper's interests, and largely for public service. (Record, p. 327.)"

It is manifest that Collier's Weekly had as much right to appear before the committee as Glavis had, for they sustained exactly the same relation to the investigation; and as a matter of fact, Mr. Robert Collier was invited to so appear.

After Mr. Brandeis had been thus employed by Collier's Weekly the question came up, and naturally, for whom he should appear before the committee, and it is apparent that it was the subject of serious discussion. Mr. Hapgood says (record, p. 458):

"It seemed perfectly clear to us that if this was going to be kept a conservation movement against such big forces we must not try to get into the foreground; that Mr. Glavis, who was a Government official, as well as our contributor, should be the one person kept in the front in order not to cloud the issue."

Mr. C. E. Kelley was at that time counsel for Collier's Weekly in New York City and attended to its legal business there. He had conferences with Mr. Brandeis concerning the investigation and the substance of his evidence on that point is as follows (record, pp. 389, 392, 397, 398):

"Mr. FOX. Were you thereafter in Washington with Mr. Brandeis, while he was acting in the matter of the Ballinger-Pinchot-Glavis investigation?

"Mr. KELLEY. Yes, sir; I was.

"Mr. FOX. Did you have any conversation with him on the subject of your appearance with him in the matter before the committee?

"Mr. KELLEY. I did.

"Mr. FOX. Will you please state what Mr. Brandeis said in that regard, what you said to him and what he said to you, giving, of course, the substance?

"Mr. KELLEY. I would not undertake to state more than the general substance, because the conversations extended over many days. The substance of the conversation on Mr. Brandeis's part was that he did not care to have me appear with him before the committee, and he also stated in those conversations the reasons for that request.

"Mr. FOX. Will you give the reasons, please, and what he said?

"Mr. KELLEY. He stated in substance that he was going to appear or was appearing—because our conversations extended over some time—before the committee as attorney for Mr. Glavis. (Record, p. 389.)"

Again:

"Senator CUMMINS. In your discussions with Mr. Brandeis with respect to appearance, was it understood that the relation of Mr. Brandeis to Collier's Weekly could not be made known?

"Mr. KELLEY. Really, sir; I doubt my ability to testify as to what was understood. I might venture what the understanding was between Mr. Brandeis and myself, but I would not care to go further than that.

"Senator CUMMINS. That is precisely what I asked you.

"Mr. KELLEY. As between Mr. Brandeis and myself, I think I would have to say that was the understanding.

"Senator CUMMINS. What reason did Mr. Brandeis give, if any, for desiring that course to be pursued?

"Mr. KELLEY. That was a subject of conversation between Mr. Brandeis and myself on many occasions with a view to deciding what was the best policy, in so far as the prosecution of the charges, if I may put it that way, was concerned. I do not think I could state at this date that there was any further reason than one of policy. (Record, p. 392.)"

Again:

"Senator WORKS. The question was considered between you and Mr. Brandeis as to whether Mr. Collier should take advantage of the invitation that had been extended to him to appear in his own name before the committee, or whether Mr. Brandeis should appear in the name of Mr. Glavis; and that was really the matter of discussion between you, was it not?

"Mr. KELLEY. I think so; yes.

"Senator WORKS. Did Mr. Brandeis give any reason why he thought Mr. Collier should not take that course?

"Mr. KELLEY. He gave a reason, later on, as to why he thought Mr. Collier should not appear before the committee personally, namely, that he did not think that Mr. Collier could add anything to what had already been brought out.

"Senator WORKS. I am not asking you about that. I am talking about the question in the first instance as to for whom Mr. Brandeis should appear. Was that matter discussed between you then, as to the propriety or policy of his appearing openly for Mr. Collier, or whether he should appear for Mr. Glavis, who was already openly a party to the proceeding?

"Mr. KELLEY. It was not a subject of any extended discussion, because I accepted Mr. Brandeis's conviction on the matter.

"Senator WORKS. In that immediate connection did Mr. Brandeis give you any reason why he thought Mr. Collier should not appear through him, and why he should appear for Mr. Glavis?

"Mr. KELLEY. I at the present time do not recollect any reasons except his statement, in substance, that he thought it was better that he should appear for Mr. Glavis, or his statement that he was going to appear for Mr Glavis. (Record, pp. 397–398.)"

These extracts from the testimony show beyond any question that the whole subject was considered, and that after the most careful reflection it was decided that Mr. Brandeis, who had been employed by Collier's Weekly, not by Glavis, should appear for Glavis, not for Collier's Weekly, because it was better that Glavis, a subordinate in the department, should be the prosecutor rather than Collier's Weekly, a strong, public-spirited magazine. The decision was carried into effect when Mr. Brandeis appeared before the committee, and I quote the record of the appearance (record, p. 1072):

"Mr. GLAVIS. Mr. Chairman, I was here yesterday ready to proceed. I have brought my attorneys here, and I think that if they will be allowed to examine me that the testimony would proceed more rapidly.

"The CHAIRMAN. Are you ready to proceed to testify?

"Mr. GLAVIS. Yes, sir.

"The CHAIRMAN. Very well. If the committee has no objection to that course, we will have your testimony taken, and your attorney can examine you in chief.

"Mr. MCCALL. I understand that Mr. Louis D. Brandeis is your counsel?

"Mr. BRANDEIS. I am counsel for Mr. Glavis, with Mr. J. P. Cotton, jr., of New York.

"The CHAIRMAN. Have you any statement that you desire to make before we proceed?"

With the several parties occupying the relation toward each other shown in these quotations from the evidence, the hearing before the committee went forward, and for the service rendered by Mr. Brandeis he received from Collier's Weekly a fee of something like $25,000 and his expenses.

Upon these undisputed facts I am called upon, as a member of the subcommittee, to say whether Mr. Brandeis was guilty of impropriety. The suggestion of those who appeared before the committee in opposition to the confirmation is that when Mr. Brandeis appeared before the committee it was his professional duty to state that he had been employed by and appeared for Collier's Weekly and that Mr. Glavis was nothing more than a nominal client, if, indeed, he was a client in any sense. The reply of those who appeared before the committee favoring the confirmation is that there was no attempt to conceal the fact that Mr. Brandeis represented Collier's Weekly and that it was generally known by those who were interested in the investigation.

I have no doubt that both Mr. Hapgood and Mr. Sullivan told many persons that the magazine had employed Mr. Brandeis, nor have I any doubt that the circumstances themselves led many other persons

to believe that the magazine was really conducting the investigation. On the other hand, I am just as clear that the people of the country outside of Washington believed that Mr. Brandeis had undertaken to serve Mr. Glavis, who had no means to employ counsel, because he was interested in the public questions involved in the proceeding and that he was bringing his great abilities into the controversy in order to promote the general welfare.

I have no criticism for Collier's Weekly, for I am thoroughly convinced that its chief purpose was to expose what it sincerely believed to be gross malfeasance in office, and to protect the national resources against the unlawful designs of selfish men.

Mr. Brandeis, however, occupied a wholly different relation to the proceeding. I can not avoid the conclusion that it was his duty to state openly and frankly to the committee the fact that he had been employed by Collier's Weekly, not only to guard against the consequences of a suit for libel, but to carry on the campaign against the alleged wrongdoers in the Interior Department. Not only professional propriety in its technical sense, but the situation in a peculiar sense demanded the utmost candor. Mr. Brandeis failed to recognize his plain obligation; and the skill which he exhibited during the long and important proceeding in which the rights of the public were so vitally involved can not relieve him from just criticism.

THE WARREN ESTATE.

It required hundreds of pages of testimony for the development of this matter. Substantially all of it is immaterial, except for the purpose of informing us of the relation which existed between the several parties. I shall not even refer to the pages of the record for the comparatively few facts out of which the present charge against Mr. Brandeis arises will not be disputed by anybody.

Prior to May, 1888, S. D. Warren, sr., was a paper manufacturer in partnership with M. B. Mason, the latter having a very small interest in the property. Warren died on May 2, 1888, leaving an estate of more than $2,000,000. He left a will devising the estate to his widow and five children. To the former he gave five-fifteenths, to the latter two-fifteenths each. The property connected with the paper mills, which constituted the larger part of the estate, was, through a series of complicated instruments, finally vested in trustees, of whom Samuel D. Warren, jr., was one. The trustees held the property for the benefit of the heirs in the proportions already mentioned, and they acquired it with the understanding that they were to lease it to a copartnership composed of S. D. Warren, jr., and M. B. Mason, who, as lessees, were to continue the business. The trustees represented the widow and the widow and five children, namely, Susan C. Warren, the widow; S. D. Warren, jr.; Henry C. Warren; Cornelia Warren; Edward P. Warren; and Fiske Warren. M. B. Mason was also one of the trustees, so that the lease was in effect an agreement between S. D. Warren, jr., and M. B. Mason as trustee with themselves as lessees. I do not find it necessary to refer to the peculiar terms of the lease or to the controversies to which the conduct of the lessees finally gave rise. It is sufficient to say that the lease was enormously profitable for the lessees, and it may be doubted whether Edward P. Warren, one of the cestui que trustent, fully understood its provisions when he entered into the arrangement, for he was then living in England and continued to live there for many years.

S. D. Warren, jr., had been a law partner of Mr. Brandeis under the firm name of Warren & Brandeis, but upon the making of the lease ceased to practice law and devoted himself to the operation of the paper mills. This situation continued until about 1904, when Edward P. Warren complained of the action of the trustees and the way in which the lessees were keeping the books of the paper business, and employed counsel in Boston to look into the matter. Investigations and conferences followed without result, and on December 19, 1909, he filed a bill against the lessees for an accounting, challenging many things that had been done from the time of the making of the lease to the time of filing the bill. During the progress of the suit S. D. Warren, jr., died, and shortly thereafter there was a compromise, the details of which I think are irrelevant.

During the whole complicated transaction from the death of S. D. Warren, sr., to the time that Edward P. Warren employed independent counsel, about 1903 or 1904, Mr. Brandeis represented everybody connected with the matter; that is to say, the heirs, the trustees, and the lessees; and when the actual controversy arose between Edward P. Warren and the lessees, S. D. Warren, jr., and M. B. Mason, he continued to represent the lessees, and when the bill was filed for an accounting in 1909 his firm appeared as counsel for the defendants and so continued until the compromise was effected.

While there has been some suggestion that it was improper for Mr. Brandeis to represent the heirs, trustees, and lessees in the original arrangement, because there were or might be conflicting interests, I do not think the criticism is well founded. The members of the family sustained to each other the most cordial, friendly relations, and it is quite evident that the widow and the four children had the most implicit confidence in the oldest son, S. D. Warren, jr., who was a man of established integrity and great ability. I dismiss that part of the charge.

The thing which Mr. Brandeis did which, in my opinion, he ought not to have done, occurred when Edward P. Warren, as a cestui que trust, questioned the conduct of the trustees and the lessees. It was at that time the conflicting interests were made clear. Before that time Mr. Brandeis had represented Mr. Edward P. Warren just as he had represented all the cestui que trustent, and when the claim was made against the lessees it seems to me that Mr. Brandeis was not at liberty to defend the lessees against it. The lessees should have sought other counsel, and Mr. Brandeis should have occupied an impartial position between the litigants. I am satisfied that there was no corrupt motive on the part of Mr. Brandeis, but inasmuch as the question is squarely before the committee I can not withhold my judgment.

THE ILLINOIS CENTRAL RAILROAD MATTER.

The testimony with regard to the part which Mr. Brandeis assumed in this transaction fully appears in the record. I will not review it because, in my opinion, there is nothing whatever in it which reflects in the slightest degree upon anybody connected with it.

THE NEW YORK & NEW ENGLAND RAILROAD CASES.

It is difficult for me to disassociate my general information with respect to this matter from the testimony introduced before the subcommittee. Inasmuch, however, as there is nothing in my information, or the testimony, to connect Mr. Brandeis with the conspiracy which I believe was formed to wreck the New York & New England Railroad and turn it over to the New York & New Haven Railroad, the difficulty I have mentioned is not important.

The facts are that in 1892 Austin Corbin, then a well-known capitalist and promoter in New York, who had theretofore been connected with the New York & New England Railroad, but who had lost control, began an attack upon the credit of the company and the conduct of its management. Personally, I have no doubt that this attack was the beginning of a campaign, the end of which was to be the complete control of the New York & New Haven, but there is no direct evidence in the record of this unlawful purpose.

For obvious reasons Corbin did not want to bring the suits in his own name, and he sought small and obscure stockholders to effectuate his design. His attorney in New York was William J. Kelly, then a practicing lawyer, now a judge of the superior court. Kelly employed Brandeis, and also found in Boston a wholesale liquor firm, composed of N. F. Goldsmith and Walter H. Keith, which owned a few shares of the common stock, of very little value. Goldsmith & Co. and one E. H. Knowlton, of New York, the owner of a few shares of the preferred stock, became the plaintiffs in something like 10 suits brought in Massachusetts, Connecticut, and one or two other States against the New York & New England Railroad Co., which had for their ultimate object the appointment of a receiver. The agreement between Corbin and Goldsmith & Co. by which the latter agreed to act as plaintiff was of the most discreditable character. Its terms became known because the New York & New Haven in the course of time assumed the burdens of the litigation. The suits had the desired effect. The New York & New England became hopelessly involved, and the New York & New Haven became its owner.

If Mr. Brandeis had known all that was going on he could not escape the severest condemnation, but there is no satisfactory testimony that he was informed of Mr. Corbin's object, or knew anything about the relation of the New York & New Haven to the conspiracy. So far as we are advised by the evidence, all that Mr. Brandeis knew was that Goldsmith & Co. and Knowlton were not his real clients. He was retained by Mr. Kelly, paid by Mr. Kelly, and while he was aware of the relation between Corbin and Kelly, there was nothing in the record to convict him of complicity in the very questionable undertaking. All that I can say is that it leaves in my mind a doubt concerning the extent of Mr. Brandeis's knowledge of this affair, and I am not disposed to hold him responsible.

I have not referred to the pages of the record, because the material parts are carefully quoted in the separate views of my colleague, Senator WORKS, and anyone who desires to read the testimony will there find the references necessary to a full examination.

THE BOSTON & MAINE MATTER.

When the New York & New Haven Railroad Co. sought to acquire the Boston & Maine there were certain stockholders, among them a Mr. Lawrence, who resisted the merger, and it is to be assumed that the resistance was in part at least to protect what they believed to be their pecuniary interests. There was also resistance from a great many people based solely upon public policy. Mr. Brandeis and his firm were retained by these stockholders, and in connection with the employment a most remarkable incident occurred. It is said Mr. Brandeis felt that he ought to render his service without compensation, but that his partners should not be deprived of the fees which would otherwise have accrued to the partnership. In this situation Mr. Brandeis paid to his partners $25,000 out of his own funds and rendered his service without pay. This payment was not solicited by his partners, but accepted by them rather under protest.

I have not been able to fathom the motive for this transaction. In so far as the stockholders represented by Mr. Brandeis were concerned no one could question the propriety of an appearance by Mr. Brandeis nor the acceptance of compensation. In so far as the public generally was concerned Mr. Brandeis ought not to have represented anybody as an attorney and there should have been no compensation for work done to promote the common good. The controversy was carried on mainly before the Massachusetts Legislature, but in part through the ordinary avenues of publicity.

Personally, I am of the opinion that a lawyer has no right to appear before a committee of Congress or a committee of a legislature as an attorney to urge questions of public policy. He has a right as a citizen to become a part of a movement and to be the spokesman of the movement but in so doing he is not an attorney or representative. He is speaking for the people of whom he is one. In such a situation there ought to be no clients whose pecuniary interests are to be served or protected

All that I can say of the singular performance is that Mr. Brandeis furnished the opportunity for serious criticism and at the best indicated that his view of duties and responsibility was somewhat abnormal. It is not strange that those who looked at the incident from the outside were skeptical and suspicious. I pay no heed to the charge that in the course of the campaign Mr. Brandeis made untruthful statements, for I have thought it impossible to examine at this time the complicated facts which were then in dispute.

OTHER CHARGES.

The subcommittee heard a great deal of testimony concerning a variety of other charges, namely, the relation of Mr. Brandeis to the Equitable Assurance Society of New York, the solicitation of proxies to enable Mr. E. H Harriman to control the Illinois Central Railroad, misconduct in regard to the Gillette Safety Razor Co., the connection with the Old Dominion Copper & Smelting Co., the appearance before the Massachusetts Legislature for the liquor interests, the Consolidated Gas transaction, and the activities for the bill in Congress authorizing manufacturers and producers in certain instances to fix retail prices.

I find nothing in any of these matters to warrant extended comment. There are some things in them which might be regarded as of doubtful propriety, but they admit of fair difference of opinion. All that I care to do is to commend the testimony to the full committee.

CONCLUSION.

In view of all the matters to which I have referred I have been constrained to reach the conclusion that the nomination of Mr. Brandeis as a Justice of the Supreme Court ought not to be confirmed. My conclusion is the result of much reflection, and it is with great regret that I announce it. I am acquainted with Mr. Brandeis, and for the strength of his mind and the scope of his knowledge I have the profoundest admiration. Moreover, I am in sympathy, for the most part, with his sociological and economic opinions, and for the work that he has done in these directions I have nothing but commendation. I can not, however, even seem to approve his course in many of the matters which have been brought to the attention of the subcommittee, through which he has lost the confidence of so large an element of the profession of which he is a member and of the country of which he is a citizen as to vitally impair his usefulness as a Justice of the Supreme Court.

ALBERT B. CUMMINS.

APRIL 3, 1916.

Mr. WORKS, from the subcommittee of the Committee on the Judiciary, submitted the following views:

To the COMMITTEE ON THE JUDICIARY,
United States Senate:

It has often been said that the Supreme Court of the United States is the greatest judicial tribunal in the world. This assertion may well be accepted when we consider the vast and controlling powers of the court—its jurisdiction over a hundred million of people whose lives, liberties, and independence are in its keeping; its control over the business of a great, rich, and powerful Nation and its protecting power to preserve our free institutions and the Federal Constitution even to the extent of nullifying laws enacted by Congress and the States. No such far-reaching powers are vested in any other court in the civilized world. The acts and proceedings of every department and every officer of the Government, from the President of the United States down, is subject to its decrees, and from its decisions there is no appeal. They are final and conclusive.

The appointment of a member of such a tribunal involves the gravest responsibility and should call for the exercise of the highest degree of disinterested patriotism, free from political, religious, or race interests or prejudices. To fit any American citizen to fill this exalted and responsible position his ability must be undoubted, his character above reproach, his integrity beyond suspicion, and his fairness and the judicial character of his mind fully established. It may be that this standard of fitness has not always been maintained in making such appointments, but it is the standard that should guide and influence the appointing power. The President has exercised this power, in the present instance, so far as it rests with him, by appointing Louis D. Brandeis to be a justice of the Supreme Court. The responsibility now rests with the Senate of the United States. Our responsibility, individually and collectively, as Members of the Senate, is just as great as was that of the President in making the nomination. Our duty and responsibility, it may also be observed, is to the country and not to the President.

It is most unfortunate that the nomination of Mr. Brandeis for the office should have given cause in the minds of anyone for an investigation or that any inquiry into his fitness should have become necessary. But the investigation has been called for and has been held. The fullest opportunity has been given to all who had any showing to make, for or against him, to present the facts in their possession and their views. It is my purpose to review here the charges made against him and the evidence given before the subcommittee to support and to refute them.

THE RAILROAD RATE ADVANCE CASE.

The charge is made that Mr. Brandeis betrayed his clients in this proceeding in the Advance Rate case and acted in bad faith toward his associate counsel, and evidence was submitted to support the charge. The position of Mr. Brandeis in the case was a peculiar and anomalous one. He was not employed as attorney for any of the litigant parties, and therefore he had no clients to whom he owed a duty resulting from an employment as such. He was called into the case by the Interstate Commerce Commission, the tribunal before which the case was to be tried, a proceeding well calculated to bring about just such an unfortunate condition as the one that resulted in this case, and one that, in my judgment, should not be allowed in any case. Almost inevitably counsel coming into such a controversy in that way will be given greater consideration and his opinions and admissions given greater weight than those of the attorneys for the adversary parties Mr. Brandeis's authority, so far as it was disclosed at the hearing, was contained in a letter from the commission to him. It was said in the letter:

"We are, of course, aware of the fact that the carriers will not fail fully to present their side of the case, and the commission has felt that every effort should be made, in the public interest, adequately to present the other side. Would you care to undertake that burden? * * * I have been asked to ascertain whether your engagements and inclinations are such as to permit you to undertake the task of seeing that all sides and angles of the case are presented of record without advocating any particular theory for its disposition."

This letter, which constituted the authority of Mr. Brandeis to act in the case, was about as ambiguous as it could well have been made. In the first clause of it he was, in plain and unambiguous terms, made the representative of the interests opposed to the railroads, "in the public interest." In the latter he was expected to "undertake the task of seeing that all sides and angles of the case are presented of record."

But, however that may be, Mr. Brandeis himself construed the letter as imposing the duty on him of representing the interests of the shippers and others opposed to the railroads and aiding them to support their defense against the raising of rates. He took place at the table occupied by the attorneys for the shippers, consulted and acted with them throughout, and in the division of time for argument took a part of their time. In the division of time Mr. Brandeis was given the closing argument on behalf of the shippers. The issues to be discussed were stated by the commission as follows:

First. Do the present rates of transportation yield adequate return to common carriers, the railroads operating in official classification territory?

Second. If not, what general course may the carriers pursue to meet that situation? (Hearings, p. 12.)

After this statement of the issues, 20 days were given all parties to prepare briefs, oral arguments to follow. Mr. Brandeis in the brief prepared by him directed his attention chiefly to the second issue and did not disclose his position on the first. At the oral argument, after the other attorneys for the shippers had made their arguments, and without previous notice to them, he made this broad admission:

"First. That, on the whole, the net income, the net operating revenues of the carriers in official classification territory, are smaller than is consistent with their assured prosperity and the welfare of the community, and that this is notably true of the central freight association lines, and it is true practically as to other lines also, because of the central freight association scale. (Hearings, p. 20.)"

This, as I construe it, was to admit away, as against the interests he was called upon to represent and protect, the first and chief issue in the case. Clifford Thorne, chairman of the State Board of Railroad Commissioners of Iowa, presented this charge against Mr. Brandeis and the evidence to support it. He prefaced his testimony on the merits with this statement:

"In the first place, the gentleman whom you have under consideration, I believe, was guilty of infidelity, breach of faith, and unprofessional conduct in connection with one of the greatest cases of this generation. (Record, p. 8.)"

And in stating the effect upon him of Mr. Brandeis's admission above mentioned he said:

"I was simply dumfounded by this statement. This was not an ordinary case. The railroad had been fighting for four years to get that fact established which I have just read to you before the Interstate Commerce Commission. They had maintained a propaganda, Nation wide in extent, in magazines and newspapers and had made speeches everywhere, and had brought pressure to bear in every conceivable manner. * * * And in the closing argument, after every other party on behalf of the public had concluded, the special counsel for the commission appointed to see that all phases of the case were developed, in the final closing argument on behalf of the public, without any notice or warning to other counsel taking part in the argument, he concedes the very point in issue and set down for argument. (Hearing, p. 21.)"

There can be no doubt of the sincerity of Mr. Thorne's views or his feeling that by the admission made by Mr. Brandeis, under the circumstances, the public interests were betrayed and that the course taken by him was unfair to other counsel and unprofessional.

On the other hand, John M. Eshleman, a very estimable and reliable gentleman, formerly chairman of the Railroad Commission of California, and later lieutenant governor of California, and who died suddenly soon after this testimony was given, and Joseph N. Teal, of Portland, Oreg., an attorney at law, who has had large experience in cases of this kind, gave it as their opinion that Mr. Thorne had no just reason to complain of the conduct of Mr. Brandeis. But both of these gentlemen agreed that his admission was not justified and that the rates were adequate and should not have been increased. And the following extract from Gov. Eshleman's testimony shows that he differed from Mr. Thorne only because their construction of the letter under which Mr. Brandeis acted differed:

"Senator CUMMINS. Governor, it seems to me that there is not much difficulty about the controversy between you, if there is one, and Mr. Thorne?

"Mr. ESHELMAN. We have no controversy, Senator.

"Senator CUMMINS. It all depends, I think, upon the relation which Mr. Brandeis bore to that case. You look upon his appointment as an advisor to the commission, and you look upon his argument before the commission as the delivery of a judicial opinion, whereas, I take it, Mr. Thorne supposed that he was counsel for the general public and was associated with him in the defense.

"Mr. ESHELMAN. I think that is our main difference.

"Senator CUMMINS. That is the real difference?

"Mr. ESHLEMAN. Yes. (Hearings, p. 66.)"

So it is left to the committee and finally to the Senate to determine whether Mr. Brandeis's course in the matter calls for condemnation or not.

There is nothing in the evidence to show that in making the admission complained of Mr. Brandeis was moved by any ulterior or improper motives. Whether he was justified in making it as a result of the evidence could only be determined by a retrial by the committee of the rate case, which is manifestly out of the question. Mr. Thorne maintains stoutly that the evidence did not justify or support the admission. In this conclusion he is supported by both Gov. Eshleman and Mr. Teal. But his final justification must rest upon the decision of the commission, which was in accord with this admission. But, very naturally, Mr. Thorne and others interested with him maintain that the conclusion reached by the commissioners resulted from this very admission made by counsel specially appointed by them. Whether this is so no one can tell, but it is only fair to conclude that such an admission made under such circumstances must have been given weight in the final decision of the case.

As to Mr. Brandeis's duty in the matter, independently of the question whether or not the admission was justified by the evidence, it seems to me that any fair mind must conclude that the wise, the prudent, and the fair thing for Mr. Brandeis to have done when he concluded to make the admission would have been to inform the attorneys with whom he had been acting of his intention and give them an opportunity to meet and refute it if they could. His relations with Mr. Thorne throughout the trial had been intimate and confidential. He had commended Mr. Thorne for the able presentation he had made of the shippers' case. There was no intimation from him that he disagreed with Mr. Thorne as to what the decision should be. To make the admission he did and at the time and under the circumstances was to my mind exceedingly unfair to Mr. Thorne and to the interests he represented; besides, there is a serious question in my mind whether Mr. Brandeis was justified or warranted in making any such admission under any circumstances by virtue of his employment. He was employed "adequately to present the other side" as against the railroads, who "will not fail fully to present their side of the case" and to see "that all sides and angles of the case are presented of record." In short, he was employed to see that the case was fully and fairly presented to the commission for its decision and not to decide it himself.

THE UNITED SHOE MACHINERY CO.

It is charged that Mr. Brandeis was from 1899 to 1906 a director and the attorney of the company. That he represented on the board of directors the large interests of the Henderson family of Chicago. That he participated in and approved the organization of the company and the form of leases made by it and was familiar with all its business and affairs. That, as its counsel, he defended its leases when legislation was sought against them, and that afterwards he acted as counsel for certain shoe manufacturing companies which were opposing the leases and which had formed themselves into an alliance to defeat their conditions. That in that capacity he gave a written opinion assailing the leases that he had formerly approved and in addition appeared at the hearings before committees of Congress and assailed the business of the company of which he had been a director and its attorney, during which time it had conducted its business the same as when his attack was made. The charge and the evidence to support it will be found in the testimony of Sidney W. Winslow, president of the company, commencing on page 160 of the hearings. It consists very largely of quotations from Mr. Brandeis at the hearings while he was connected with the company and afterwards. I think a few extracts from his declarations will present with sufficient accuracy what is claimed to be his equivocal and contradictory positions for and against the company and its mode of doing business. But first let me quote the charges made by Mr. Winslow. He says:

"He acted as counsel for the company in many matters for nearly eight years. In 1906 he took practically entire charge of the com-

pany's opposition to a bill proposed in the Massachusetts Legislature designed to restrict the company's leases. He then expressed the firm conviction not only that the company's leases were legal and that the Legislature of Massachusetts could not constitutionally limit their scope but also that they were of great benefit to the shoe manufacturers. As late as October 5, 1906, he wrote Mr. Erving Winslow a personal letter expressing his moral approval of the Shoe Machinery Co.'s system of business.

"He resigned as director of the company in December, 1906, giving as a reason that he felt he ought not to continue an exception to his general rule of not holding the office of director in any corporation for which he acted as counsel.

"Never during his connection with the company did he express disapproval of any of their acts, methods, or policy. On the contrary, the company's method of conducting business met with his full approval.

"I believe that Mr. Brandeis, since he left our company, has been guilty of unprofessional conduct and of conduct not becoming an honorable man, in the following:

"First. Mr. Brandeis has, at the instance of new clients, attacked as illegal and criminal the very acts and system of business in which he participated, which he assisted to create, and which he advised were legal, and he has persistently sought to injure our business. In so doing his knowledge of our leases and business, acquired while acting as our director and counsel, has naturally been of value.

"Second. Owing to his long-extended connection with our company as director and counsel and his acquaintance with our affairs, Mr. Brandeis's statements as to our methods and business have naturally carried an authority which would not otherwise have been accorded them. An honorable man, when acting for other clients, would, in these circumstances, have been scrupulously careful that any statements made by him were truthful. Mr. Brandeis, however, has made false and misleading statements as to our acts and business, both to committees of Congress and elsewhere.

* * * * * * *

"He spoke before the joint judiciary committee of the Massachusetts Legislature in opposition to the bill. He filed a brief with the chairman of the committee, in which he contended that the proposed act was unconstitutional, and he drafted a letter for the United Co. to send to shoe manufacturers urging them to oppose the bill.

"In his remarks before the joint judiciary committee on April 18, 1906, he strenuously defended the lease system employed by the United Co., and explained how it benefited the shoe manufacturer. He stated that the system then employed was not materially different from the system employed by the predecessor companies which had been merged into the United Co. There has been no substantial change of any kind in the lease system since Mr. Brandeis appeared before this legislative committee."

Then he quotes Mr. Brandeis's own language in support of the leases, as follows:

"'If we do not have this clause in certain of the leases where we have it, we could not sell certain things we do sell. We could not lease certain things which we do lease at as low a price as we do. It is only on account of the volume of business that we are able to undersell other people.'

"Referring to the charge of monopoly brought against the company, he said:

"'It has been said that this is a monopoly. In part it is a legal monopoly absolutely granted, because all the machinery we sell—I mean all that we lease or sell, because some we lease, some we sell, and with some we do both—all of the important machines are patented machines. The Federal law means that we shall have a monopoly of those, and nothing in the State can take it away or limit it. We have also a very large part of the business outside of the necessarily patented machines, and why we have it is because we are able to give to the people those machines cheaper than other people, and that is a complaint that is made against this company, that we are giving them cheaper. That is the main complaint.'

"With reference to the charges as to the character of the company's leases, he said:

"'The terms that these gentlemen say are in the leases are not in the leases, taken down as they say. It is not true that if you take one of our leases you can not use any other machine. That is not true. Take the manufacture of the Goodyear turn shoes, which Mr. Storrow spoke about, where he said there were 96 machines used, that we make, that we lease, or some of them that we sell. You would suppose from statements that have been made that if a man took any of those machines he had to take them all. That is absolutely untrue.'

"He pointed out the benefits conferred on manufacturers by the repair service furnished them by the United Co. He declared that nobody could possibly say that the company was selling things too dear or leasing things too dear 'when the cost in every branch of shoe manufacture has gone up from 33 to 50 per cent over every other department it has actually gone down in ours,' and he declared that the company was able to do this and still make a good profit 'because of the extraordinarily able management of this company and because of the fact that we are doing things wholesale.'

"He then declared that the company was entitled to commendation because 'it is the greatest promoter of competition that there is,' and there was not a manufacturing business in the United States in which there was the same freedom of competition that there was in the shoe-manufacturing business. He said:

"'That happy result is due largely to the method adopted by this shoe-machinery company, and the predecessor companies combined together to form this company * * *. I deem it to be the fundamental or most important fact existing in business that the smallest man who makes 50 or 100 pairs of shoes a day has just as great advantage as the man who makes 20,000 pairs of shoes a day.'

* * * * * * *

"I say that it is the best thing that can happen to the shoe manufacturer because he is able to get on in business. He is able to engage in it without sinking his capital. The little man gets the new improvements just as the big man gets them, and some of the men who are doing a large business thought it was very unfair, because they can buy their leather cheaper, because their credit was better, because they could buy a million dollars' worth at a time, and the only thing in the whole business they can not buy cheaper was their shoe machinery or shoe-machinery material.

"In the letter which Mr. Brandeis drafted to be sent to the shoe manufacturers there occurred the following statements:

"'This bill, which is aimed confessedly only against the United Shoe Machinery Co., attacks the policy hitherto pursued by this company and its predecessors in the leasing of machines, and seeks to prohibit more particularly the practice of this company in supplying to our lessees auxiliary and general department machines on exceptionally advantageous terms.

"'We believe that the methods pursued by our company in the past have been greatly to the interest of shoe manufacturers, and that if this bill is enacted and becomes operative it will compel changes in our methods of dealing with Massachusetts shoe manufacturers which would increase the cost to them of machinery and deny to them facilities enjoyed by their competitors in other States.

"'We believe that the Massachusetts shoe manufacturers would be far more seriously affected than our own company by the enactment of such a bill, and that effort to defeat it should be made by you rather than by us.'"

Mr. Winslow refers to the hearings before the Interstate Commerce Committee of the Senate to show that Mr. Brandeis decided in September, 1910, that he ought, if called upon, to lend his aid in any effort to attack the company. He had then severed his connection with the company and was acting as counsel for the Shoe Manufacturers' Alliance. But prior to that time he had given an opinion to Charles H. Jones, president of the Commonwealth Shoe & Leather Co., in which he said:

"First. The United Shoe Machinery Co. is a combination in restraint of trade, and all contracts made by it, as essential parts of the combination or to carry out the purpose of monopolizing and perpetuating its monopoly of the shoe-machinery trade, are unlawful. The leases used are such contracts and are unlawful.

"Second. The leases are in themselves, aside from the unlawful combinations embodied in the United Shoe Machinery Co., restraints on interstate trade within the Sherman Act.

"Third. The fact that the United Shoe Machinery Co. was formed to deal in patented articles does not prevent the illegality of the combination, nor does the fact that the leases are of patented machines render them legal, since the purpose of the combination and the provisions of the leases are designed to create a monopoly beyond that conferred by the patent laws.

"Fourth. The leases being invalid, you can not be held liable for failure to perform." (Hearings, p. 163.)

Of this opinion Mr. Winslow says:

"It is to be noted that Mr. Brandeis in this opinion not only attacks the form of leases which he had previously approved of, but also attacks the organization of the company, in which he participated, declaring the company to be a combination in restraint of trade.

"The above quoted portion of this opinion was printed presumably with Mr. Brandeis's consent as an advertisement on or about July 8, 1910, in the Boston newspapers, together with other opinions, as a part of Mr. Plant's campaign to force the United Co. to buy his patents.

"The Shoe Manufacturers' Alliance, which Mr. Brandeis represented from 1911 on, was an association of a few large shoe manufacturers, including Charles H. Jones, but most of whom were located in the West. Their platform, as quoted by Mr. Brandeis (see hearings before Committee on Interstate Commerce, United States Senate, 1912, p. 2618), declared:

"'We believe it to be essential that shoe machinery, whether it be leased or sold, be put on such terms as will leave the manufacturer free to take from the United Co. or from any other company one or more of the same or of different machines at a fixed unit price.'

"In other words, these manufacturers, according to their program as quoted by Mr. Brandeis, sought to compel the United Co. to give up the wholesale price which it granted where a series of different machines leased from it, all cooperating in the manufacture of a single pair of shoes, were used. The fact that we offered such a wholesale price instead of a unit price, Mr. Brandeis in 1906, before the joint judiciary committee of the Massachusetts Legislature, had spoken of as the reason why we could offer our machines at such reasonable rates and as of the greatest advantage to the shoe manufacturer.

"From this time on Mr. Brandeis has attacked our company in every way possible." (Hearings, p. 163.)

In addition to this, it is claimed by Mr. Winslow that Mr. Brandeis made many false and unwarranted statements against the company which are specifically pointed out by him in his testimony. (Hearings, 164–168.)

These facts, supported by quotations from Mr. Brandeis, stand undisputed. During the time he was attorney and director for the United Machinery Co., Mr. Brandeis was attorney for certain shoe manufacturing companies unknown to Mr. Winslow, but it does not appear that, up to the time he severed his connection with the United Machinery Co., there was any conflict of interest between them. The open conflict and attack on the machinery company came later.

Mr. Brandeis's statement and explanation of his apparently inconsistent positions in this matter will be found in a letter from him to Senator CLAPP, the chairman of the Interstate Commerce Committee. (Hearings, pp. 217–221.)

The letter is very long, but it is illuminating and should be read in full. I extract here some of its statements:

"First. It is entirely true that in April, 1906, I believed the policies and methods of the United Shoe Machinery Co. were legally and morally unobjectionable and that its activities were beneficial to the public, and as a director of the company I appeared before the Massachusetts Legislature to oppose a bill seeking to compel a change in these methods. I was then of the opinion that under some conditions monopoly in industry could operate beneficially to the public; or, in other words, that there was 'good trusts' as well as 'bad trusts.' I believed, not unnaturally, that this company which was managed by men in whose ability and judgment I then had confidence, and with which I was myself connected, was such a 'good trust.' The particular ground upon which I based my opinion that the shoe-machinery monopoly operated beneficially was that it appeared to help the small manufacturer and thus, while itself a monopoly, promoted competition in shoe manufacturing, as stated in my testimony before your committee on December 14, 1911, page 1160, as follows:

"The United Shoe Machinery Trust, with which Senator Crane is also familiar, presents another example. There is a business monopoly, which was started under conditions the most favorable to serving the public of probably any in the field of industry. In the first place the trust was managed by the men who had made the greatest success of any in the shoe-machinery business. It was practically an acquisition of the leading shoe-machinery businesses by the men who were the ablest, the hardest workers, and, in a certain sense, the furthest seeing of all those engaged in the business. They started out with certain perfectly admirable principles, which, I understand, have been adhered to. In the first place everybody, big and little, was to be treated alike; there were to be no discounts for quantity; so that the small manufacturer had the same chance as the large manufacturer, both in respect to service and to royalty. The company adopted a system of

leasing, which gave an opportunity to the small manufacturer with little capital to go into the business, and the company gave them as good service as the large manufacturer.

"Second. In May, 1906 (about a month after I had appeared before the committee of the Massachusetts Legislature), Mr. W. H. McElwain, president of the W. H. McElwain Co., and Charles H. Jones, president of the Commonwealth Shoe & Leather Co., both able and public-spirited shoe manufacturers, who agreed generally with my views as to the value of the United Shoe Machinery Co. to the community, called my attention to certain features in their leases—notably the so-called tying clauses—which seemed to them objectionable. I was not convinced that their objections were sound; but we were all of the opinion that the proper course to pursue was for the manufacturers to discuss any supposed objections with the officials of the company and not resort to the compulsory processes of legislation to correct defects, which should, if existing, be removed by amicable conference. And President Winslow expressed his readiness to give full consideration to such objections if the pending bill were defeated. Thereupon Mr. McElwain, Mr. Jones, and E. J. Bliss (treasurer of the Regal Shoe Co.), and other leading Massachusetts shoe manufacturers joined with the United Shoe Machinery Co. to secure a defeat of the then pending bill.

* * * * * * * * *

"Third. In consequence of the objections raised by these shoe manufacturers the subject was further investigated in the fall of 1906. I then ascertained facts in addition to those which had been previously furnished me by Mr. Winslow and other officials of the company, and to some extent inconsistent with statements made by them, and new considerations bearing upon the matter were brought to my attention. I was not yet, however, fully convinced that the shoe-machinery company's policy was unsound or its methods improper, but so serious a doubt had been raised in my mind of their methods that I was unwilling to assume responsibility for the company's action; and having reason to believe that Mr. Winslow was not likely to make any change in policy or methods, and having as one of the 19 directors no real control, I therefore concluded, without undertaking to decide definitely whether the criticisms made were sound or not, to quietly retire (without raising the question) from the board of directors, of which I had become a member to represent the large stock interests of the Henderson family in Chicago. I tendered my resignation on December 6, 1906, and it was immediately accepted.

"Fourth. Shortly afterwards, about the 1st of January, 1907, when it became apparent that a bill designed to compel the shoe machinery company to change its methods would be introduced at the coming session of the Massachusetts Legislature, Mr. Winslow resumed with Mr. McElwain and Mr. Jones the consideration of those features of the United Shoe Machinery Co.'s policy and leases deemed by them objectionable. At Mr. Winslow's request I participated as counsel in some of these conferences and discussed the whole subject fully also with him and other officials of the company. The facts then developed and the further consideration given the subject convinced me fully that while the policy and methods of the company had, on the whole, operated beneficially up to that time, they must if pursued eventually prove injurious both to the community and the company's interest, and I urged most strenuously upon Mr. Winslow and other officials who participated in the conferences with me that these methods be changed, that the policy of monopoly be abandoned, and particularly that the tying clauses be eliminated from the leases. Mr. Winslow and his associates gave patient consideration to the views which I expressed, but they were not convinced and refused to adopt my suggestion. Our conferences ended on January 7, 1907, and I then ceased to act as counsel of the company. (I had never been general counsel of the company, but had been requested to act frequentl, as for other clients.)

"Fifth. On June 1, 1907, the Massachusetts Legislature enacted a bill to regulate the sales and leases of machinery in form similar to that introduced in the session of 1906. I took no part whatever in opposing or advocating that legislation, and, indeed, did not express publicly my opinion on it. For three and a half years I took no part whatever in the questions relating to the policy and methods of the shoe machinery company, and specifically refused to act professionally for those who had adverse interests.

"Sixth. By the summer of 1910 the situation had entirely changed from what it was in 1906. In the first place the United Shoe Machinery Co. had shown a determined purpose to ignore or evade the act prohibiting tying clauses in leases passed in 1907 by the Legislature of Massachusetts and declared by its supreme court to be constitutional. In the second place, the Federal Government had shown its purpose of enforcing the Sherman antitrust law as evidenced by the Standard Oil and Tobacco cases, and the Supreme Court of the United States, in 1909, laid down in the Continental Wall Paper Co. case a rule applicable to the United Shoe Machinery Co. business. But the trust's methods remained unchanged. In the third place, and most important of all, Mr. Thomas G. Plant had developed a complete system of shoe machinery, in which the United Shoe Machinery Co. had previously enjoyed a monopoly. The Plant system was declared by Mr. Jones and other leading manufacturers to be equal to that of the Shoe Machinery Trust, and in some respects superior to it. Mr. Plant was purposing to put it on the market at a cost to the manufacturer far below that charged by the Shoe Machinery Trust. When this purpose was announced the United Shoe Machinery Co. declared that the shoe manufacturers would be precluded from using the Plant system by the provisions of their leases with the shoe machinery company. This attitude seemed to me particularly oppressive in view of the fact that the fundamental patents of the Goodyear welt system, from which the Shoe Machinery Trust secured its largest royalties, had recently expired, and the trust had made no reduction in those royalties. The question was raised whether the trust's business could be used to suppress the Plant system.

"It was my opinion that under the rule laid down in the then recent decision of the Supreme Court of the United States in Continental Wall Paper Co. *v.* Louis Voight & Sons Co. (212 U. S., 227, decided Feb. 1, 1909), the leases which had before been believed to be valid would be held invalid under the Sherman law, and I so advised Mr. Charles H. Jones."

It will be seen that Mr. Brandeis, as he says, had received new light since he defended the validity and fairness of the company's leases, and a new statute had been enacted that affected the validity of the company's business methods. It seems, however, that the company's method of doing business had not changed, but that Mr. Brandeis had changed his mind as to the law affecting the validity of those methods. Since then the business methods of the company have been tested by a suit on the part of the Government, which has been decided by three Federal judges in favor of the company, and the case is now pending in the Supreme Court on appeal. (See opinions in that case; hearings, p. 1177 and on.)

In discussing the general subject of trusts and monopolies before committees of Congress, it will be seen that Mr. Brandeis persistently used his former client as an example of the evils of which he complained.

Thus, at the hearing before the Committee on Interstate Commerce, he said:

"Now, take, in the second place, the trusts that have been markedly successful, like the Standard Oil Trust, the Shoe Machinery Trust, the Tobacco Trust. They have succeeded through their monopolistic position. They dominated the trade and were able to fix the prices at which articles should be sold. To this monopolistic power, in the main, and not to the efficiency in management, are their great profits to be ascribed (p. 1148). (Hearings, p. 1025.)"

This was in direct and marked opposition to the contentions he made before the Massachusetts legislative committee, as its attorney and director, in behalf of the shoe-machinery company, which he here denounces as a trust and monopoly.

And it appears from his own statement before the House Judiciary Committee, in dealing with the same subject, that he was not acting in the public interest in the attacks he was making upon his former client. He said on that occasion:

"I represent primarily myself, Mr. Chairman, but I have also acted for a certain number of gentlemen known as the Shoe Manufacturers' Alliance, who had specifically objected to the methods and policies of the shoe-machinery corporation, who are therefore interested in this bill, which undertakes to provide not specifically in regard to that corporation, but generally in regard to trusts and combinations, the present amendments to the law."

So it appears from his own statement that he was representing the Shoe Manufacturers' Alliance, an organization of shoe manufacturers, combined to make this very contest against his former client and against its former course of conduct that he, in the capacity of its attorney and director, had expressly approved and defended.

Attention should also be given to a statement of Mr. Brandeis of the meeting of Mr. Winslow, Mr. Brandeis, and others, in which Mr. Brandeis says he endeavored to induce Mr. Winslow to change the form of the leases, but without success. It is too long to quote here. (Hearings, pp. 221–224.)

This was in 1906, and soon after this Mr. Brandeis severed his connection with the company and took up the affairs of the Shoe Manufacturers' Association. Of this Mr. Brandeis says in this same statement made in 1911:

"On the 24th, I think it was, of May, the shoe manufacturers, a few of the men who came on at that time to see Mr. Winslow, telephoned whether I could see them. I had never seen or heard of them except in a general way—I think Mr. Endicott once introduced me to George Brown, of the Brown Shoe Co.—They came up and wanted to know whether I would advise with them, and I told them: 'Gentlemen, this wholly depends on what you want to do.' I said if this is a matter with you merely of a number of dollars for the next five or more years, this does not interest me at all. I think you are being charged a great deal more than a fair remuneration for the machines, but I don't think it makes any difference, because I think you pass it on to the consumer, and I think it always was and still is the policy of this company, and one of its great virtues, to treat all men alike; the big man has no rights over the little man, and as long as this is true—and it has been Mr. Winslow's policy as long as I have known anything of the company—and as long as you are treated alike in service as well as in rates it seems to me that for a number of years you will not suffer anything if this goes on, but it will be the community which will suffer and not yourselves. It seems to me that you have an obligation, and it seems to me to be particularly up to you as shoe manufacturers not to allow a condition of things to continue which, in my opinion, is not consistent with business freedom, and it is not, in my opinion, consistent with the advancement of the art in which you men are engaged, and I believe nothing can be clearer than the fact, which has now been demonstrated, that the ownership and control of the shoe machinery company by one body of men, even if they have all the virtue and all the ability that Mr. Winslow and the others possess, can not do otherwise than to stifle invention and prevent progress. (Hearings, p. 223.)"

By this it appears that Mr. Brandeis had reached a point where he was willing to attack the company he had served for doing business in a way approved by him as its director and attorney, not in the interests of the shoe manufacturers but in cooperation with them as a public duty. It may therefore have been assumed if he had not stated to the contrary at the hearing that the attacks made by him upon the company's methods and practices were made out of a sense of duty to the public, not in the interest of business adversaries or for mercenary reasons.

One of the most singular features of this whole transaction was the fact that Mr. Brandeis made no charge for the services rendered by him to the shoe-manufacturing people, but that he paid his firm $2,500 out of his own pocket for such services on the theory that he had no right to deprive his partners of a fee for services rendered because he chose to make no charge for what he did. (Hearings, pp. 741, 742.)

But if he could not, neither could his partners who had been with him attorneys for the machinery company.

What construction should be placed upon this course in justice to Mr. Brandeis? It was certainly an act of generosity toward his partners, who seemed not to share his scruples. Manifestly, his purpose was to appear as working disinterestedly for the public good and without pay. This would have been commendable if true, if it did not conflict with his duty as the former attorney of the machinery company. It might well be said that, working as he was in cooperation with the business adversaries of his former clients and in their interests, which led him inevitably to attack the business methods of the company which he had, as its director and attorney, approved and defended, this refusal to accept a fee for his services was evidence that in his own mind such an employment was wrong. That it was an employment as an attorney and not services rendered wholly in the public interest is convincingly proved by the payment by him of the fee to his partners and his own declaration that he was appearing for them. That being so, the fact that he was serving them for nothing would not help the matter.

I am driven to the conclusion that the course of Mr. Brandeis in the whole transaction is far from commendable and shows a lack of appreciation on his part of the duty of an attorney to his client and a due sense of the proprieties so necessary to be observed by members of the profession.

THE LENNOX CASE.

The charge in the Lennox case is that Mr. Brandeis was employed by Mr. Lennox and was by him advised to make an assignment for the

benefit of his creditors. That, at the time he was the attorney for one of the large creditors of Lennox, he also by arrangement with the attorney for another large creditor was engaged to protect the interests of that creditor. That he had his partner made the assignee under the assignment. That subsequently Mr. Brandeis denied that he had ever been employed by or to represent Lennox and claimed he was employed to serve and protect all persons concerned in the settlement of the insolvent estate called by him the "institution." That, later, Mr. Brandeis's firm acting for creditors forced Lennox into involuntary bankruptcy alleging in the petition as an act of bankruptcy the making of the assignment for the benefit of creditors that he had advised him to make. That Mr. Brandeis and his firm collected fees for services rendered the assignee, one of the firm, also for services rendered the petitioners in the bankruptcy proceedings and for services rendered the trustees in bankruptcy, and the fee of the member who served as assignee for the creditors was also turned in to the firm.

To my mind the evidence that Mr. Brandeis was regularly retained and employed by Mr. Lennox to represent his interest is conclusive. It is an admitted fact that his firm was at the time the attorneys for one of the large creditors, of which he had full knowledge. It is shown clearly also that he afterwards denied that he was so employed, and his firm took sides against Lennox and proceeded to force him into bankruptcy. The employment took place under most remarkable circumstances. Mr. Lennox and his firm, P. Lennox & Co., were in financial difficulty. Abe Stein & Co., of New York, was one of the largest creditors. Lennox applied to Stein for the advancement of money to tide him over. Stein and his attorney, Mr. Stroock, went to Boston to look into the condition of Lennox's business. On the way over, on the train, Stein and Stroock concluded to employ Mr. Brandeis to represent Stein's interests in the matter. (Hearings, p. 1108; Stein's testimony, hearings, p. 1105.)

And in pursuance of this determination Mr. Stroock visited the office of Mr. Brandeis to consult him in the interest of Stein. (Testimony of Stroock, p. 1074, and of Stein, p. 1105.)

Later, and during the same forenoon, Stein and Stroock saw Lennox and after ascertaining his financial condition advised him to secure counsel and suggested that he employ Mr. Brandeis, to which he assented not knowing that Stroock had already seen him and retained him to protect Stein's interests. Stroock agreed to make an appointment with Mr. Brandeis, which he did, and Lennox, Stein, Stroock, and two other gentlemen proceeded to Mr. Brandeis's office.

Mr. Stein testifies that he saw Mr. Brandeis first in company with his attorney, Stroock, while Lennox and the others waited in the other room. Of this Stein testified as follows:

"Senator WORKS. Mr. Lennox was not present at the time?

"Mr. STEIN. At that moment he was not. Mr. Brandeis then sent for his stenographer and took down every word and all the explanations and all my claims that I had against P. Lennox & Co., and every part and parcel thereof. The stenographer sat there, I guess, for an hour or an hour and a half. During that time, I think, in order to rectify some statements—or not to rectify it, but to verify it—I said, 'Mr. Lennox is outside, and Mr. Spalding. May they come in here?' I said, 'They may give me some enlightenment.'

"Senator WORKS. Now, let us know, Mr. Stein, at what stage of this conversation Mr Lennox came in.

"Mr. STEIN. I could not tell you.

"Senator WORKS. He was not there at the beginning?

"Mr. STEIN. No, sir; but he came in subsequently. I sent for him. I went out myself and told him to come in. Mr. Lennox was then present for the balance of the testimony which Mr. Brandeis took with the stenographer in the room.

"Senator WORKS. Do you mean to say that the conversation that occurred between you and Mr. Brandeis and your attorney was taken down, or did the stenographer commence when Mr. Lennox came in?

"Mr. STEIN. It was before Mr. Lennox came in. That was all through. Mr. Brandeis said afterwards, 'All right, I will take your case.' He never stated, for one moment, any conditions why he should not do it. He never mentioned it to me. I was a party at interest, and and he would have told me—if he had told me there would be a conflicting interest at the start I would not have given the case to him. I would not have it so that five minutes after I told a man something he could say, 'Get out of here. I know all you know.'

"Senator WORKS. I understand you were employing Mr. Brandeis at that time?

"Mr. STEIN. Yes, sir; and then subsequently to that Mr. Lennox gave his testimony, which was taken down by the stenographer." (Hearings, p. 1106.)

After the interview and alleged employment, Lennox, who knew nothing of this, was called in and with Stein and his attorney and Mr. Brandeis, whose firm represented another creditor, Mr. Lennox was examined and cross-examined as to his business and assets and property. But before that Stein had informed Mr. Brandeis that he claimed for himself some of the goods in the hands of Lennox & Co. by virtue of certain receipts which retained a lien on the property that entitled him to reclaim it as against other creditors, and Mr. Brandeis had dictated the form of a notice to be given by Stein, in his interest, to persons holding or claiming such goods. This had been done at the instance of Stroock for the protection of his client Stein. There is a disagreement as to the time when this notice was dictated. The stenographer in Mr. Brandeis's office says it was done when Stroock was there alone with Mr. Brandeis. (Hearings, pp. 1016, 1077.)

Stroock says it was in the presence of Lennox, Stein, and the other parties. (Hearings, pp. 1074, 1075, 1077, 1095.)

Stroock also testifies that he had an arrangement with Mr. Brandeis that he was to "protect Mr. Stein's interests so long as they did not conflict with some one else's interest" (Hearings, p. 1075.)

The interview that took place in Mr. Brandeis's office when Lennox and the others were present was taken down in shorthand and transcribed So that we have at least a fair recital of what took place at that time. (Hearings, pp. 774–796.)

It will be seen that Lennox was examined in detail. This was being done by two attorneys, each of whom represented creditors claiming half a million dollars against him and his firm. Mr. Brandeis had stated that his firm represented Well, Farrell & Co., who Lennox stated held claims against him amounting to $200,000, and Stein's claim was about $300,000. And Stein, whose special claims growing out of the receipts above mentioned, understood at that very time that Mr. Brandeis was representing him as his attorney, as I have pointed out. He testifies that afterward Stroock, his attorney, told him that Mr. Brandeis had concluded to represent Lennox. (Hearings, p. 1108.)

This is confirmed by the fact that Mr. Brandeis prepared for him the notice above mentioned, and on that day advised as to his right to retain a certain check for $25,000 or $30,000 he had received from Lennox. (Hearings, p. 1107.)

The interviews to which I have referred occurred September 4 and 5, 1907. On the 10th day of the same month Stein and Stroock had another interview, involving Stein's right under his trust receipts. (Hearings, p. 815.)

But at that time, while Stroock and Stein contended that Mr. Brandeis was, under their arrangement with him, to represent Stein specially. Mr. Brandeis then contended that he was representing all the creditors as attorney for the trustee. To that Stroock replied: "I understood that you were going to act for all, but with the understanding always that Mr. Stein's interests should be protected by you under all circumstances." (Hearings, p. 819.)

This was a very natural inference to draw, considering the peculiar circumstances under which Mr. Brandeis came into the case, as above detailed. On the other hand, Mr. Lennox understood that he had employed Mr. Brandeis to represent him. (Hearings, p. 1114.)

Part of the examination of Lennox shows quite clearly that a foundation was being laid for the protection of Stein under his trust receipts. I quote:

"Mr. B. Your indebtedness to Abe Stein is about $200,000?

"Mr. L. Yes, sir.

"Mr. B. And that is all for merchandise?

"Mr. L. And money.

"Mr. B. That is, a note came due, and he gave you a check to take it up?

"Mr. L. No; I sent him over a paper previous to it becoming due.

"Mr. B. How recent have been the most recent of your purchases from Mr. Stein?

"Mr. L. I have got a lot of skins down there now, and was wondering whether to send them back to Mr. Stein.

"Mr. B. Have they been delivered to you?

"Mr. L. They were not delivered yesterday. I think they were this morning.

"Mr. STROOCK. When they are received, where do you hold them?

"Mr. L. At Peabody.

"Mr. S. At your warehouse?

"Mr. L. Yes, sir.

"Mr. B. Well, if they have been delivered, nothing ought to be done with them in any way—don't open them up. Don't touch them. How large an invoice is it?

"Mr. L. About $15,000.

"Mr. B. What was the last one before that?

"Mr. L. The last one before that was within a month.

"Mr. B. How much was that?

"Mr. L. I should say $25,000.

"Mr. B. Did the goods go to Salem or Peabody?

"Mr. L. Both places.

"Mr. B. And what before that?

"Mr. L. $20,000, I should say.

"Mr. B. How long ago was that?

"Mr. L. Ninety days ago.

"Mr. B. Where did that go?

"Mr. L. Both places.

"Mr. B. Before that, what was the last lot?

"Mr. L. I remember quite a lot of chinas—$40,000 worth.

"Mr. B. How long ago?

"Mr. L. About four months

"Mr. B. Where did they go?

"Mr. L. To Salem; or, I think, they were split up—part to one factory and part to another.

"Mr. B. Do you recall the lot before the $40,000 china lot?

"Mr. L. I couldn't go back. I could remember four or five lots, but we would work in a good many skins in between—work in a few hundred dozen.

"Mr. B. What have you got in process now?

"Mr. L. I think a lot of sheepskins of Stein's.

"Mr. B. When were they put into the works?

"Mr. L. Five or six months ago.

"Mr. B. And how large a lot is that?

"Mr. L. I should say it was $10,000 or $12,000 worth.

"Q. What else is there besides the sheepskins?—A. There is a lot which I call 'chinas.'

"Q. Those are Stein's?—A. Yes, sir.

"Q. Are they the $40,000 lot?—A. No; they are $8,000 or $9,000.

"Q. Is that a separate lot?—A. Yes." (Hearings, p. 777.)

These questions certainly show that Stein's interests were being looked after. It may have been the foundation of the notice sent out for his protection dictated by Mr. Brandeis.

For Lennox's account under this examination of his indebtedness, see hearings, pages 1080 and 1081.

Another very significant conversation took place between Mr. Brandeis, Stroock, and Stein, in which Lennox was called in and again catechized in their presence. The conversation took place on September 11, 1907, and was taken down. (Hearings, p. 815.)

Stein and Stroock were still contending that Mr. Brandeis was employed to represent Stein's interests and Mr. Brandeis repudiated it and claimed that he was representing the trustee. But Stein's rights were fully discussed, Mr. Brandeis giving his opinion of them, and in that connection Lennox was called in and questioned at length about his transactions with Stein, and in the presence of Stein and Stroock was advised and directed what to do. (Hearings, pp. 815. 819.)

Amongst other things, Mr. Brandeis said to Mr. Lennox:

"I want to say to you, Mr. Lennox, in Mr. Stein's presence and in Mr. Stroock's, that you must under no circumstances do anything regarding any documents or take any action whatever in regard to merchandise or anything without my knowledge. If anything has been omitted to be done which ought to have been done in the past, it must rest just where it is at this moment. I mean that if you intended to pay a note and didn't pay it, or promised to deliver a deed and did not deliver it, you must not now in any way change the situation.

"(Mr. Stroock and Mr. Stein go out.)

"Mr. B. I said that to you, Mr. Lennox, in their presence; I told you in the first instance when you came in that I would not let you do anything which would prejudice your position.

"Mr. L. I understand that; I am very glad that you took occasion to remind me of it. What is their position?

"Mr. B. Well, they have certain papers; I want to ask you a little more about those trust receipts, etc. (Hearings, p. 821.)"

Then follows a thorough course of questioning Lennox about what he had done that would affect Stein's interests in which both Stein and Stroock participated.

That it was understood that Mr. Brandeis was to act for Mr. Lennox is made perfectly clear to my mind by the testimony. And he did act for and advised him as to the first important step to be taken by him. He advised him to make an assignment for the benefit of his creditors. This was of serious moment to him for two reasons. It put an end to his business; put his property and that of the firm and his father out of their hands, and gave it over to the creditors, and at the same time constituted an act of bankruptcy that Mr. Brandeis's firm and others afterwards used to force him into the bankruptcy court.

A few brief extracts from the testimony will verify what I have said.

Very naturally Mr. Stroock clung to the idea that Mr. Stein, his client, was to be protected. He said:

"Mr. STROOCK. The next suggestion is this: Mr. Lennox has agreed that if possible he wants Mr. Stein protected, and, of course, he will be protected. I think, so far as protection can go under these trust receipts, I think they are reasonably safe. Now, do you think that the interests of all would be better subserved by Mr. Brandeis appearing as attorney for trustee of the Lennox family or as attorney for the Stein Co., so that if need be some strong man will be in a position to assert that right, and then have some other person attorney for Lennox & Co.?"

To this Mr. Brandeis replied:

"I am inclined to think that if we all agree that what we want to do is to distribute this property according to the legal rights of creditors, I could be more useful to that end by acting for Mr. Lennox instead of for Mr. Stein; that is, your rights, whatever they are, are rights which would be developed by a proper investigation of the facts. So far as investigation leaves doubts, that is a matter for a just settlement; that is a compromise of doubts, so far as they exist. I should feel if I were acting for Mr. Lennox as trustee, that it was the duty of the trustee to see that everybody got his legal rights as nearly as we could make it, and if we could not determine actually the question of law and of fact, that ought to be determined by proper settlement, and I should feel that we ought to have a committee of the creditors with whom the trustee could confer, and if there are any questions of doubt in adjustment, that we get the advice of that commitee and through them make the proper settlement."

Then followed, immediately, a discussion between the two attorneys as to Stein's rights. (Hearings, pp. 793, 794.)

Then Mr. Brandeis said:

"Now if Mr. Stein is content to stand upon that, I should feel that probably the best interests of all concerned would be subserved by my acting for Mr. Lennox and carrying out the plan of action which I have stated, and I feel that instead of our relation with Weil, Farrell being a hindrance, it would be a special advantage, because they would at once say: 'Well, those people will see that creditors are properly protected.' Of course, in this matter we should not only act for Weil, Farrell & Co., but we should act as trustees for Lennox, and all we could do would be to say, 'Gentlemen, we are acting for this man, and our friends—people who would otherwise be our clients—are interested all around. We can not act for them here, but we can assure them a good, square deal. That is all, and I feel very clearly that so far as Mr. Lennox is concerned, taking his standpoint alone, the only thing for him to do is to give the squarest deal that he can to his creditors. These statements put him in a position where, aside from his desires, his interests coincide with his desires. Now, I want you and Mr. Lennox to decide what you want me to do.'"

He also explained to Mr. Lennox what would be the effect of making the assignment after he had expressed his desire to escape notoriety such as would result from making the assignment. (Hearings, p. 794.)

If Mr. Brandeis was not acting for Mr. Lennox and advising him in his interest then we have two lawyers representing his creditors persuading the debtor, who was without disinterested counsel, to make an assignment for the benefit of their clients.

Mr. Brandeis gave this advice:

"The course that I should pursue if it were decided that I should act for you would be to at once prepare and complete an assignment, so that it could be used at a moment's notice, getting your father's signature as well as your own, and having it here so that it could be recorded at a moment's notice; then I should send for Mr. Farrell and somebody from Lee-Higginson's, and tell them the situation, and perhaps get some one from the Lynn banks and tell them the situation, and say that we want to consider with them what we had better do. If you could get along without an assignment, that, of course, would be desirable; but if we can not, we could have the papers ready to go on record. It is not our wish, but it is the necessity. I haven't a doubt that if this is done, if an open act occurs, we will have quite a lot of failures right along the line." (Hearings, p. 794.)

Then this further colloquy took place:

"Mr. L. Well, what kind of a position does that leave my father and myself in in the meantime?

"Mr. B. The position you would be in would be this: You would have transferred your property; the trustee would be in a position where he could employ you to assist him and could make you a reasonable allowance.

"Mr. L. Would the business be continued?

"Mr. B. The trustee would have to consider with creditors how far it would be desirable to do that. That would have to be passed upon in his discretion; but the reason for doing this, if we made this trust, would be to prevent somebody else stepping in and doing it, keeping it as nearly as you could in the form in which you would get the better hold. My own feeling is that the best thing for you to do is not to be thinking too much of yourself, but thinking of the best interests of your creditors. If there is plenty there, you have got it safe; if there is not, you will be in the position of having a fair, open, and aboveboard compromise; but I feel that it is for your interests as it is in accordance with good morals that you and your father should be just as frank and fair in the present situation as it is possible to be, and not to do anything that would incite any of the people who have been misled by statements which have been made to take actions which might prove a very serious blow to you and would be a fearful blow to your father. That would be my feeling; Mr. Stroock, I don't know whether you agree with me.

"Mr. S. I do, absolutely; the situation is a very dangerous one to my way of thinking. This concern, as we appear to find it, had over a million dollars assets outside of their business and more than a half million dollars in their business.

"Mr. B. What I should say in regard to this situation would be to simply tell them how I came to be connected with it. I would say that I had never known Mr. Lennox—either of them—nor had anything to do with their business; they came to me with creditors, and we looked into the matter, and it seemed the only thing for all concerned to take this action. Whatever mistakes may have been made or sins committed are past, and the only thing to do now is to deal with absolute squareness and frankness, and we look to that as the best solution for all concerned.

"Mr. STROOCK. Mr. Lennox, we will sum this proposition up. The question is whether your best interests with everybody would be subserved, and I think that Mr. Brandeis's suggestion is the best.

"Mr. L. I think it is.

"Mr. S. Without in any way being a flatterer, I think Mr. Bandeis's reputation in the community would best work this out. We will start out substantially under Mr. Brandeis's reputation for giving a square deal, and in the second place he will virtually represent the large interest to start with.

"Mr. L. You are speaking now of Mr. Brandeis acting as my counsel?

"Mr. B. Not altogether as your counsel, but as a trustee of your property.

"Mr. L. I came to you, and I shall certainly do whatever you say—that is why I came to you. The only thing is, I should like to escape as much notoriety as possible."

Thus, Mr. Lennox put himself completely in Mr. Brandeis's hands and declared his intention to follow his advice. I think there can be no reasonable doubt of the fact that this constituted between the two the relation of attorney and client. Mr. Lennox says, at the hearings:

"I referred everything to Mr. Brandeis. I acted entirely on his—under his direction. Mr. Stein and Mr. Stroock, and what I had heard of Mr. Brandeis, gave me unlimited confidence in Mr. Brandeis, and I acted upon it. (Hearings, p. 1115.)"

It should be said in this connection that Mr. Brandeis made no charge against either Lennox or Stein for services rendered.

The advice given was followed and Mr. Lennox made an assignment to Mr. Nutter, Mr. Brandeis's partner, for the benefit of his creditors. Mr. Lennox employed no other attorney, but relied upon Mr. Brandeis for advice until the firm of Mr. Brandeis commenced bankruptcy proceedings against him, or near that time, when Mr. Nutter informed him that Mr. Brandeis was not his attorney and never had been. Of this, Mr. Lennox says:

"I supposed Mr. Brandeis was representing me up to the time I met Mr. Nutter in the Columbia Kid Co.'s office. I asked him or said something about, 'I had not heard anything from Mr. Brandeis,' and he said, 'Why should you hear from him?' I said, 'As my counsel, I suppose I ought to hear something from him.' He said, 'He is not your counsel and never was your counsel.' That was the first intimation I ever had that Mr. Brandeis was not looking after my interests. (Hearings, p. 1126.)"

This led him to employ Mr. Sherman L. Whipple, of Boston, to represent his interests. (Hearings, p. 285.)

When Mr. Whipple came into the matter, November 18, 1907, he was informed by Mr. Lennox and Mr. Stroock of the relations between Mr. Lennox and Mr. Brandeis. (Hearings, p. 285.)

Mr. Whipple then called upon Mr. Brandeis and recounted what Lennox and Stroock had told him, and then said to Mr. Brandeis:

"They say that you advised an assignment to your partner, Mr. Nutter, and took all of Mr. Lennox's property and that you now claim that you are not and never have been his counsel, and I thought, Mr. Brandeis, it would be better for me to come right to you and talk over a situation which seemed to me to be serious, because if you did agree with the Lennoxes that you would act as their counsel, and now are acting in a position hostile to them, through this assignment, you will agree with me that a rather serious situation is presented. (Hearings, pp. 286, 287.)"

After which this further was said between them:

"Of course, that would be a serious situation, but it is not the situation at all; I did not agree to act for Mr. Lennox when he came to me. When a man is bankrupt and can not pay his debts, Mr. Whipple, he is a trustee for his creditors; he has no individual interest; he finds himself with a trust, imposed upon him by law, to see that all his property is distributed honestly and fairly and equitably among all his creditors, and he has no further interest in the matter. Such was Mr. Lennox's situation when he came to me, and he consulted me merely as the trustee for his creditors as to how best to discharge that trust, and I advised him in that way. I did not intend to act personally for Mr. Lennox, nor did I agree to. 'Yes,' I said, 'but you advised him to make the assignment. For whom were you counsel when you advised him to do that, if not for the Lennoxes?' He said, 'I should say that I was counsel for the situation.' I said, 'Yes; but you advised an assignment of all his property, so that your firm became possessed of it, because Mr. Nutter was your partner.' He said, 'Yes; and I know no one better in the city of Boston than my partner, Mr. Nutter, to execute such a trust as that. He stands high; he has everybody's confidence, and that is why I advised it.' I said, 'I must say, Mr. Brandeis, it looks to me very much, according to your principles, as if when a man was bankrupt and went to a lawyer, and the lawyer advises him to make an assignment for the benefit of his creditors, he assigns his lawyer with it, very much in the way a covenant runs with land.' He said, 'Mr. Whipple, I think that is a very unkind and very ungenerous statement for you to make. It impugns my motives and I can only assure you that I had no such motive in doing it. I was merely occupying myself with seeing that this property which was brought into my office in this way, was equitably and fairly distributed among the creditors, and I was looking after the interests of everybody; I was looking after any interest that Mr. Lennox had, if any, if anything should be left after the settlement with his creditors, but, in the first place, looking after the interests of the creditors.'"

This discloses fully Mr. Brandeis's attitude in the premises.

Subsequently correspondence took place between Mr. Brandeis, Mr. Stroock, and Mr. Whipple, in which Stroock maintained that Mr. Brandeis was employed by Mr. Lennox, and Mr. Brandeis adhered to his position that he was never counsel for Lennox. In his letter Mr. Whipple said, among other things:

"While very likely it may promote no useful purpose further to refer to this unfortunate misunderstanding, yet in fairness I may properly add that both Mr. Coburn and Mr. Spaulding are in accord with Mr. Lennox in his memory of what was said. I am further informed that both Mr. Stroock and Mr. Stein also understood that you undertook to act for Mr. Lennox."

In his reply to this letter, Mr. Brandeis wrote:

"There should be no difficulty in removing the misapprehension from Mr. Lennox's mind. When I was originally consulted by Mr. Lennox,

Mr. Stroock, and Mr. Stein, it was with regard to some proposed dealings between the Abe Stein Co. and P. Lennox & Co. When, however, I looked into the situation it was plainly evident that the firm of P. Lennox & Co. was financially embarrassed, and that no such arrangement could take place between the Abe Stein & Co. and P. Lennox & Co., as was suggested. I told Mr. Lennox and Mr. Stroock that in my opinion the situation was one in which the interests and rights of all Lennox creditors would have to be consulted, and that if they and Mr. Stein so desired, we would undertake to act for all the parties in interest, and it was on that understanding that the assignment was made to Mr. Nutter. It was certainly not made for the benefit of Mr. Lennox, but the parties and their respective rights to be served by us were exactly those stated in the assignment. In accordance with this understanding, my firm has acted for Mr. Nutter and thus for those whom he represented, namely, both the creditors and the assignors in accordance with their respective interests. Consistently with this position, we did not accept any retainer from Mr. Lennox or make any charge to him or to anybody except the assignee. (Hearings, p. 289.)"

It is only necessary to refer to the conversation between the parties at the time of the employment, as taken down by the stenographer, to see that Mr. Brandeis was utterly mistaken as to what was said there and the effect of it, to say nothing of the fact that every other person present, five in number, disagreed with his understanding of it.

That what occurred there made Mr. Brandeis the attorney of Mr. Lennox I think there can be no doubt. But he maintained his position to the last, and acted against Lennox in the bankruptcy proceedings, which, if he was employed by the latter, was clearly in violation of his duty as an attorney. In the bankruptcy proceedings Mr. Whipple after being employed by Mr. Lennox found occasion to question the right of the attorney appearing for Mr. Brandeis's firm to appear against Lennox in the bankruptcy proceedings because of his employment by Mr. Lennox.

Again, Mr. Whipple wrote:

"Since receiving your letter of the 21st Mr. Stroock, in a personal interview with me, confirms Mr. Lennox in his recollection that you stated you would act as Mr. Lennox's counsel.

"In view of the clear and consistent memory of these four gentlemen, Mr. Lennox insists that your own memory must be at fault, and that there is no misapprehension in his own mind.

"He says (and I think you also told me so) that a stenographer was present during all the conversations that you had with the respective parties. We ought to be able to get light on this question from her notes. Will you be good enough to inform me whether they altogether confirm your own memory as to what was said on that occasion of the first two interviews? I will await information on this point before writing further. If you could give it to me some time during the afternoon, before 4 o'clock, it would oblige me, as I shall be absent from the city to-morrow." (Hearings, p. 292.)

The copy of the stenographer's notes was not furnished, although Mr. Brandeis had them. Instead he replied:

"I am quite sure that if Mr. Stroock will go over the matter with me there can be no difference of recollection as to what actually occurred. If you will arrange with Mr. Stroock, I should be glad to see you and him either Wednesday or Friday of this week, if that will be convenient to you." (Hearings, p. 292.)

Mr. Brandeis wrote Stroock asking for a conference and inclosing a copy of his letter to Whipple defining his position. (Hearings, p. 294.)

To this Mr. Stroock replied as follows:

"DEAR MR. BRANDEIS: I acknowledge yours of the 30th ultimo, with which you inclose copy of letter which was sent by you to Mr. Whipple on the 25th instant, and a copy of Mr. Whipple's reply thereto. When I am next in Boston, I shall endeavor to meet you with Mr. Whipple, as suggested in your letter. In the meantime, I may remind you that I have met Mr. Whipple and repeated to him my recollection of the conversation which took place between yourself and the writer and Mr. Lennox, which summarized, amount to that which I have heretofore stated and written to you; that you were retained by and accepted the retainer of the firm of P. Lennox & Co. and of James T. Lennox." (Hearings, p. 294.)

To which Mr. Brandeis replied:

"DEAR MR. STROOCK: I have yours of the 2d. When I have the opportunity of meeting you and Mr. Whipple, I think you will find that there is an error in your recollection that I was 'retained by and accepted the retainer of the firm of P. Lennox & Co. and of James T. Lennox' if that expression is used as meaning anything more than that at their instance I undertook to act in this matter, as I have acted, namely, as counsel for the trustee for creditors and debtor under the assignment.

"I think that you will find that my letter to Mr. Whipple of November 21, of which I inclose you a copy, states accurately the situation." (Hearings, p. 295.)

It is evident that Mr. Whipple was convinced of Mr. Brandeis's employment by Lennox, for he says:

"As the record shows, I afterwards made some pretty vigorous protests on the record as to Mr. Brandeis continuing to act for parties who were hostils to Mr. Lennox. (Hearings, pp. 295, 298.)"

See further on this subject some of the proceedings in the bankruptcy in which Mr. Studley, acting for Mr. Brandeis's firm, appeared against Mr. Lennox, and Mr. Whipple for him. (Hearings, pp. 1007, 1008, 1011.)

In this hearing this colloquy took place:

"Mr. WHIPPLE. If I thought you asked the question in good faith for the trustees, and not in bad faith as representing Weil, Farrell & Co. and the execution of their threat at criminal proceedings, I would withdraw the objection, and it is on the latter ground explicitly that I direct him not to answer.

"Mr. STUDLEY. I should like to have a hearing on that question.

"Mr. WHIPPLE. You will have a lot of them before we get through with it. I propose to summon witnesses to establish the fact. When we have a hearing on that we will have a hearing that will take more than a few minutes to dispose of, because we will examine witnesses, and you know who they will be.

"Mr. STUDLEY. I don't know what you are talking about. Perhaps you do.

"Mr. WHIPPLE. You had better know. When you want a hearing on that, you will have to give more notice than this.

"Mr. STUDLEY. I don't understand you place the objection on the ground the testimony is likely to incriminate him?

"Mr. WHIPPLE. You may infer from what I have said that is the ground, because I have said you are asking that question in order to get your client into jail as further violation of your duty to him as an attorney.

"Mr. STUDLEY. I should suppose you would put it on some ground which the witness had a right to set up.

"Mr. WHIPPLE. That is a right which he has set up, to decline to be cross-examined for the purpose of carrying out a purpose of getting him criminally complained of—you, unfortunately, so far as it appears now, still being his own counsel.

"Mr. STUDLEY. If we are still his counsel, it is a matter of which I am ignorant. I had supposed for more than two years you have acted as his counsel.

"Mr. WHIPPLE. Not discharging your firm from his proper retainer and agreement. Because of your recreancy of your duty, he had to get additional counsel.

"Q. This letter, which I show you, refers to certain morocco factories. Will you tell what you referred to by those?

"Mr. WHIPPLE. That I object to on the same ground. I object to any question.

"Mr. PROCTOR. Would you object if Mr. Hall should ask the question?

"Mr. WHIPPLE. I do not believe Mr. Hall would do it, because he has no retainer to abet any such purpose as disclosed before the referee. He will ask only those questions which he desires to ask in good faith to get information, and not for purposes of criminal prosecution. If there are any questions which Judge Hall wants to ask on the subject matter of that letter or any others, I should like to hear them.

"Mr. STUDLEY. I would like to ask on that one. That did not come from Weil Farrell or through Weil Farrell?

"Mr. WHIPPLE. Anything that is asked for real information, and not for sinister purposes"

It must be remembered, in reading this extract of the proceedings, that Weil Farrell & Co. was the firm for which the firm of Mr. Brandeis was attorney at the time Mr. Lennox claims he retained Mr. Brandeis as his attorney.

Of the activity of Mr. Brandeis's firm in the interest of Weil Farrell & Co., who were his clients when Lennox was advised to make the assignment, Mr. Whipple says:

"Senator WORKS. This same firm, which Mr. Brandeis was representing before the proceedings were commenced, was the active creditor that brought about these criminal proceedings?

"Mr. WHIPPLE. Yes; but let me say that while they were in close touch, as I found by correspondence, with Mr. Nutter, and the creditors whom Mr. Nutter controlled voted for Mr. Farrell for trustee, yet I do not understand that Mr. Brandeis's firm did any active work or took any active interest in connection with the criminal proceedings." (Hearings, p. 304.)

It only remains to inquire what profits accrued to Mr. Brandeis and his firm by his acting as attorney for the "situation" instead of Mr. Lennox. As I have said, he received no compensation from either Lennox or Stein.

The firm did receive the following fees for services in the matter of the Lennox assignment and bankruptcy, as testified to by Mr. McClennen, a member of the firm:

As counsel for the trustee in bankruptcy	$12,000.00
As counsel for the assignee for the benefit of creditors	9,500.00
Through Mr. Nutter, fees as assignee	14,500.00
As trustee	2,852.88
For services from time of commencing proceedings in bankruptcy to the adjudication	5,000.00
	43,852.88
To this was added for office expenses	4,105.00
Making a total of	47,957.88

There is no claim—at least there is no proof—that Mr. Brandeis acted corruptly in this matter. The claim is, and the evidence sustains it, that Mr. Brandeis was employed by Mr. Lennox to protect his interests and that he failed to do so, and finally acted directly against him and procured these large fees that came out of Mr. Lennox's property for such services. It is not shown that the advice given Mr. Lennox to make the assignment was not good advice. It is not questioned that his condition was such that either an assignment for the benefit of creditors or proceedings in bankruptcy was inevitable. It is quite evident that Mr. Brandeis's firm profited largely in fees by the making of the assignment and subsequent enforced bankruptcy. Their fees under the assignment before the bankruptcy proceedings, including the assignee's fees which went to the firm, amounted to $24,000. Such fees in prospect was a strong temptation to advise an assignment. Whether it influenced Mr. Brandeis to advise that course no one can tell.

Of the action of Mr. Brandeis having his partner appointed assignee Mr. Whipple says:

"That is a risk * * * that a lawyer always takes when he advises an assignment to one of his own partners or to himself. That has been a very fashionable and usual thing, but I think it is all wrong when he has clients to take his assignments to himself. If he has a client who wants to administer an estate that is a risk he assumes in having himself appointed as administrator. If there is some important thing to do, it is a risk for him to say, 'I will do it for you.' My idea is that the client or some competent friend of the client should be appointed to his responsible fiduciary position and the lawyer act as his counsel." (Hearings, p. 303.)

It should be said in this connection, in justice to Mr. Brandeis, that while Mr. Whipple was opposing counsel to Mr. Brandeis's firm in the bankruptcy case and in the Warren case, hereafter to be noticed, and declared Mr. Brandeis to have been in the wrong in both cases, he testifies that he believes there was no wrong motive on his part, but these wrongs resulted from mistakes and misunderstandings on the part of Mr. Brandeis. (Hearings, 284, 299.)

He sums up the Lennox case in this way:

"You see, my belief was, at the time, that there was a misunderstanding. My belief was at the time, and now is, that Mr. Brandeis was misunderstood. That is, I preferred then, and prefer now, not on account of any personal friendship or feeling, but my view was that there was a misunderstanding. I think Mr. Brandeis was so much absorbed in the question of caring for the situation, and so much interested in the development of his ideas as to how this estate should be administered, that he unconsciously overlooked the more human aspect of it, which would perhaps have appeared to another; but here was a man confronted with perplexities and charges and troubles, who wanted his personal and individual care and attention. But I think Mr. Brandeis looked upon it as a problem of distribution." (Hearings, p. 299.)

It should be said also in this connection that Mr. Whipple is a supporter of Mr. Brandeis and favors his confirmation. When his nomi-

nation was announced, Mr. Whipple gave out an interview in which he said:

"As a lawyer, Mr. Brandeis is able and learned. As a man, he is conscientious and high minded. The feature of his career which is the most striking and remarkable has been his unselfish and unswerving devotion to the social, moral, and industrial uplift of the lowly and less fortunate of our people. I believe that on the Supreme Bench of the United States he will exert a strong influence in establishing the ideals to which he has devoted his recent years." (Hearings, p. 282.)

The American Bar Association, of which, I believe, Mr. Brandeis is a member, promulgated certain canons of ethics, of which this is one:

ADVERSE INFLUENCES AND CONFLICTING INTERESTS.

"It is the duty of a lawyer at the time of retainer to disclose to the client all the circumstances of his relations to the parties, and any interest in or connection with the controversy, which might influence the client in the selection of counsel.

"It is unprofessional to represent conflicting interests, except by express consent of all concerned, given after a full disclosure of the facts. Within the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.

"The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interests of the client with respect to which confidence has been reposed."

It is a canon well worthy of consideration in this connection.

THE GLAVIS-BALLINGER CASE.

The charge in this instance is that Mr. Brandeis professed and held himself out as the attorney for Glavis and in effect acting in the public interest when he was the paid attorney of Collier's Weekly. This is claimed to have been such an impropriety as should prevent his confirmation.

There is but little dispute about the facts. Glavis, a clerk in the Interior Department, had made grave charges against his superior, Mr. Ballinger, the then Secretary of the Interior. Collier's Weekly published these charges. They were such as to subject the paper to a successful prosecution for libel, if not proved to be true. Collier's, in this emergency, employed Mr. Brandeis to represent it and paid him a fee of $25,000 for his services. Admittedly he was employed to protect Collier's from liability on a libel charge, and to this end to establish the truth of the Glavis charges. But Mr. Brandeis did not appear for Collier's, but for Glavis, although Robert Collier was invited by the committee to appear and make any showing he might desire. This is the appearance of Mr. Brandeis in the hearings as shown by the record:

"Mr. GLAVIS. Mr. Chairman, I was here yesterday ready to proceed. I have brought my attorneys here, and I think that if they will be allowed to examine me that the testimony will proceed more rapidly.

"The CHAIRMAN. Are you ready to proceed to testify?

"Mr. GLAVIS. Yes, sir.

"The CHAIRMAN. Very well. If the committee has no objection to that course, we will have your testimony taken and your attorney can examine you in chief.

"Mr. MCCALL. I understand that Mr. Louis D. Brandeis is your counsel.

"Mr. BRANDEIS. I am counsel for Mr. Glavis with J. P. Cotton, jr., of New York.

"The CHAIRMAN. Have you any statement that you desire to make before we proceed? (Hearings, p. 1072.)"

J. P. Cotton, jr., as counsel with Mr. Brandeis for Mr. Glavis, was also employed by Collier's and represented it.

Mr. Mark Sullivan, now editor of Collier's and then associate editor, gave the committee the facts as he remembered them. (Hearings, p. 325.)

He states the object of Mr. Brandeis's employment by Collier's as follows:

"Senator WORKS. Then you understood, Mr. Sullivan, that Mr. Brandeis was employed by Collier's Weekly to represent its interests and protect it?

"Mr. SULLIVAN. Certainly. If, when the investigation began, Glavis had been discredited, if the investigation had shown nothing serious, Collier's Weekly was in position to be very much discredited.

"Senator WORKS. Will you be good enough to answer the question?

"Mr. SULLIVAN. Yes; surely. I meant to.

"Senator WORKS. Read the question, Mr. Reporter.

"The REPORTER (reading). 'Then, you understand, Mr. Sullivan, that Mr. Brandeis was employed by Collier's Weekly to represent its interests and protect it?'

"Mr. SULLIVAN. Largely, I should say, though I ought to remind you again that the editor of the paper then was Mr. Hapgood. I was not even present.

"Senator WORKS. I was only asking for your understanding of it. That was your understanding?

"Mr. SULLIVAN. Largely to protect the paper's interests and largely for public service." (Hearings, p. 327.)

Mr. Sullivan testified that it was well known that Mr. Brandeis appeared for Collier's. As he put it, "Everybody knew it" at the time and qualified it by saying that he knew it and discussed it freely, that he shared the knowledge, and that the "knowledge he had was general at the time." But he was quite unable to sustain this view by pointing out anyone to whom he had communicated that knowledge. (Hearings, pp. 326, 335.)

Subsequently he returned to the stand and named two persons to whom he had imparted his knowledge. (Hearings, p. 372.)

Mr. Norman Hapgood, then editor of Collier's, also gave his views of this transaction. He gives very clearly what induced Collier's to employ Mr. Brandeis and for what he was being paid. On that subject he testified:

"Senator WORKS. In the discussion of the matter was the question raised at any time as to the probable liability of Collier's for the publication it had made?

"Mr. HAPGOOD. It certainly was. There was an enormous liability of every kind—moral and financial. When we undertook to show that the Government was concealing such important facts we were undertaking a good deal, but we did it with a very large sense of responsibility of every kind.

"Senator WORKS. You understood perfectly that Collier's had a personal interest in the matter in view of the fact that it might be held responsible in an action for libel for publishing a document of that kind?

"Mr. HAPGOOD. We certainly did understand that." (Hearings, p. 459.)

Mr. Hapgood, like Mr. Sullivan, maintained that it was well known that Collier's Weekly was acting in the matter, but there is nothing to show that anybody, except maybe Collier's and their friends, had any knowledge that Mr. Brandeis was acting as the attorney of Collier's Weekly to protect its interests. Mr. Hapgood says there was a discussion as to "how the appearance was to be made" between him and Mr. Brandeis. He says:

"It seemed perfectly clear to us that if this was going to be kept a conservation movement against such big forces we must not try to get into the foreground; that Mr. Glavis, who was a Government official, as well as our contributor, should be the one person kept in front in order not to cloud the issue." (Hearings, p. 458.)

This discloses a deliberate attempt to deceive the committee and the country by keeping Collier's in the background and Glavis in front in order to make it appear to be a "conservation movement" in the public interest and not a defense of Collier's against a threatened libel suit, which was beyond doubt what Collier's were paying for.

That this deception was deliberately intended and carried out is made clear by the testmony of Charles E. Kelley. Mr. Kelley was at the time the regular attorney of Collier's. (Hearings, p. 388.)

He acted with and assisted Mr. Brandeis in the Glavis matter on the outside. He recounts what occurred between him and Mr. Brandeis as follows:

"Mr. Fox. Were you thereafter in Washington with Mr. Brandeis while he was acting in the matter of the Ballinger-Pinchot-Glavis investigation?

"Mr. KELLEY. Yes, sir: I was.

"Mr. Fox. Did you have any conversation with him on the subject of your appearing with him in the matter before the committee?

"Mr. KELLEY. I did.

"Mr. Fox. Will you please state what Mr. Brandeis said in that regard—what you said to him and what he said to you—giving, of course, the substance?

"Mr. KELLEY. I would not undertake to state more than the general substance, because the conversations extended over many days. The substance of the conversations on Mr. Brandeis's part was that he did not care to have me appear with him before the committee, and he also stated in those conversations the reasons for that request.

"Mr. Fox. Will you give the reasons, please, and what he said?

"Mr. KELLEY. He stated in substance that he was going to appear or was appearing—because the conversations extended over some time—before the committee as attorney for Mr. Glavis.

* * * * * * *

"Senator CUMMINS. In your discussion with Mr. Brandeis with respect to appearance was it understood that the relation of Mr. Brandeis to Collier's could not be made known?

"Mr. KELLEY. Really, sir, I doubt my ability to testify as to what was understood. I might venture what the understanding was between Mr. Brandeis and myself, but I would not care to go further than that.

"Senator CUMMINS. That is precisely what I asked you.

"Mr. KELLEY. As between Mr. Brandeis and myself, I think I would have to say that was the understanding.

"Senator CUMMINS. What reason did Mr. Brandeis give, if any, for desiring that course to be pursued?

"Mr. KELLEY. That was a subject of conversation between Mr. Brandeis and myself on many occasions with a view of deciding what was the best policy in so far as the prosecution of the charges, if I may put it that way, was concerned. I do not think I could state at this date that there was any further reason than one of policy." (Hearings, pp. 389, 392, 398.)

This shows the intent and purpose of Mr. Brandeis to conceal the fact that while he appeared of record as the attorney for a public official in the cause of conservation he was in fact appearing for and being paid for appearing for and in the interest of private individuals to protect them from personal liability.

Mr. Kelley also testified to the fact that prior to the commencement of the hearings, Collier's were invited to appear and present evidence. (Hearings, p. 399.)

I have examined with some care the proceedings before the Glavis-Ballinger committee and Mr. Brandeis's course in that hearing, and the manner of his treatment of the committee and the witnesses tends to show the nature of his employment. It does not seem to me to have been the course of a public-spirited citizen seeking to forward the "conservation movement" in the public interest.

I think it is very generally regarded by the profession as an impropriety for an attorney to appear as the attorney for one person when he is employed and paid by another person not a party to the action or proceeding to represent his interests. This seems to me to be an aggravated case of that kind involving the intention and the effort to conceal the true character of the employment. It is made worse, in my estimation, by the fact that the great question of conservation and the conduct of a public official in dealing with that subject was of record and supposed to be in fact the matter under investigation and in the public interest. The element of private interest and the effort to protect a private individual from personal liability was a false issue which was purposely concealed.

Mr. Hapgood, like Mr. Sullivan, declared that it was well known that Collier's Weekly was interested in the investigation. But there is no evidence to show that anyone knew that Mr. Brandeis was employed and paid by Collier's to protect their private interests. Not only so but it is shown that Mr. Brandeis himself concealed or tried to conceal that important fact.

As to the course of Collier's Weekly, Mr. Hapgood testified:

"Senator WORKS. Did Collier's Weekly publish the facts respecting this investigation as it passed along?

"Mr. HAPGOOD. Yes, sir.

"Senator WORKS. Was anything said in Collier's about Mr. Brandeis appearing for Collier's or being paid by Collier's during that time?

"Mr. HAPGOOD. At one time a newspaper which was actively supporting the administration attacked us along various lines, including the statement that we were paying Glavis's lawyer. I wrote a short and rather satirical editorial, merely saying that we certainly were, and we would support any other contributor who got into trouble of that kind through us.

"Senator WORKS. Can you give us a reference to that editorial so that it can be reached?

"Mr. HAPGOOD. I can to-morrow or this afternoon.

"Senator WORKS. I did not expect you to do it now, but if you will furnish us with a copy of it I shall be very glad." (Hearings, p. 458.)

The letter was subsequently produced. (Hearings, p. 706.)

It does not disclose the fact that Mr. Brandeis was appearing for or being paid by Collier's. It assumes that it is legally protecting its contributor, when, in fact, as the evidence of both Mr. Sullivan and Mr. Hapgood shows, that Mr. Brandeis was employed and paid to protect Collier's Weekly and not Mr. Glavis. How it was legally protecting its contributor is not disclosed. But this letter is important as showing the intolerant, uncompromising, not to say bitter and malignant spirit that was being represented and served by Mr. Brandeis in a hearing where he was ostensibly appearing with the commendable purpose of arriving at the truth concerning a matter of public interest and concern. That he and his clients should attempt to conceal the fact is not to be wondered at. The letter accentuates and makes clearer, if possible, the grave impropriety of the whole proceeding.

It must be taken as true, therefore, that Collier's Weekly as well as Mr. Brandeis was concealing the fact that Mr. Brandeis was appearing for or representing it.

The testimony of Mr. Sullivan shows that for his services for Collier's Weekly he was paid by it the sum of $25,000. (Hearings, p. 386.)

Mr. Storey very well said in his testimony:

"If Mr. Brandeis had come before the committee and said he was there in the interests of an illustrated newspaper that was engaged in pushing this case all the way through, he would have occupied a very different position from that which he apparently occupied when he appeared for a man without means to conduct a great public inquiry." (Hearings, p. 269.)

I call attention in this connection to this further canon of the American Bar Association:

PROFESSIONAL ADVOCACY OTHER THAN BEFORE COURTS.

"A lawyer openly, and in his true character, may render professional services before legislative or other bodies regarding proposed legislation and in advocacy of claims before departments of government, upon the same principles of government, upon the same principle of ethics, which justify his appearance before the courts; but it is unprofessional for a lawyer so engaged to conceal his attorneyship, or to employ secret personal solicitations, or to use means other than those addressed to the reason and understanding to influence action."

THE WARREN CASE.

S. D. Warren died May 2, 1888, leaving property consisting mainly of book-paper manufacturing mills of the value of something like $2,000,000. He disposed of the property by will, five-fifteenths to his widow and two-fifteenths to each of his five children. He had a partner, Mortimer B. Mason, in the paper business, whose interest was limited. He was, under the partnership, allowed to draw out of the firm only $15,000 a year, and his interest was terminated at the death of Warren.

"The year Mr. Warren died the property yielded a profit of $460,000, and the business had yielded the year prior over $400,000, and had been up considerably above a quarter of a million, and all the time, I think, above $300,000 for eight years preceding." (Testimony of Youngman, hearings, p. 463.)

Mr. Warren left a widow, Susan C. Warren, and five children—S. D. Warren, jr., Fiske Warren, Edward P. Warren, Henry Warren, and Cornelia I. Warren. The oldest child, S. D. Warren, jr., was a lawyer and the partner of Mr. Brandeis. All of the heirs joined in a bill of sale of the personal property connected with the mills to S. D. Warren, M. B. Mason, and Fiske Warren—one-third to S. D. Warren, one-half to Mason, and one-sixth to Fiske Warren as partners. (Hearings, p. 548.)

Then by conveyance, through John E. Warren, they conveyed the mill property to Susan C Warren, S. D. Warren, and M. B. Mason in trust. The declaration of trust provides:

"Second. The trustees shall themselves manage and conduct the business of said mills and the other property at any time held in trust, with full powers to do all things needful or proper in the conduct thereof, or, in their discretion, they may lease said property or any part thereof; and they are hereby empowered to lease the same, or any part thereof, among others, to a partnership or organization in which they themselves, or some of them, are partners or members, or to some person or persons who shall sublease or assign the lease to such a partnership or organization, on such terms as may be proper for the interests of all the beneficiaries." (Hearings, pp. 549, 550.)

It was also provided that the trust should continue for 33 years, but that the trustees might terminate it at their sole discretion and put an end to the trust and reconvey the property. (Hearings, p. 551.)

No option to terminate the trust was given to the beneficiaries of the trust. So if the business under a lease that was undoubtedly then in contemplation should prove profitable the trust might continue to the end of the 33 years; if not, the property could be thrown back upon the heirs of the estate.

The declaration of trust was executed May 29, 1889, and was signed by the three trustees only.

On the following day the trustees executed a lease of the property to Louis D. Brandeis. (Hearings, p. 553.)

The lease provided:

"To have and to hold the said premises hereby leased unto the said Brandeis and his representatives at the will of the lessors, but subject to be determined by a one year's notice in writing, no shorter notice being allowed except for default of the said Brandeis on his covenants as hereinafter provided.

"Yielding and paying therefor (except only in case of fire and other casualties hereinafter mentioned) yearly as rent a sum equal to the interest at 6 per cent per annum on the value of the premises hereby leased, as they appear in the books of the said trustees at any time (the said part rental for any year or for any period to which the account is made up being the balance of the interest account kept with said properties hereby leased on the books of the trustees after all debits and credits are made), plus a sum equivalent to 50 per cent of the net profits made by the use of the property hereby leased, after allowing a reasonable per cent as commission and guaranty on sales (over and above the interest at 6 per cent hereinbefore provided for).

"It is hereby understood and agreed that the said Brandeis may assign this lease and the interest thereunder to a copartnership consisting of Samuel D. Warren, Mortimer B. Mason, and Fiske Warren, to conduct the business heretofore carried on under the name of S. D. Warren & Co. under the same name." (Hearings, p. 553.)

It is quite evident that these several instruments were executed in pursuance of a previous understanding that this lease should finally be made. Whether the exact terms of the trust and of the lease, neither of which was signed by the heirs of the estate, were understood and agreed upon, the evidence does not disclose.

In pursuance of the authority given in the lease to him, Mr. Brandeis assigned the same to S. D. Warren, M. B. Mason, and Fiske Warren, who took possession of the mills and operated them for many years under the lease.

Subsequently Edward P. Warren became dissatisfied with the transaction and the operation of the mills and brought his action December 19, 1909, against the lessees for an accounting. (Hearings, p. 894.)

The substance of the bill, so far as it affects the question before the committee, is that S. D. Warren and Mr. Brandeis, his partner, devised a scheme for placing the property in trust and for leasing the same to Mr. Warren and others; that Warren's interests under the lease, as he knew, would come in conflict with the other heirs; that in furtherance of the scheme Warren also procured from his brother Edward, plaintiff in the action, a general power of attorney to represent him; that the interests of the beneficiaries under the trust were not properly protected under the trust; that Warren violated his duty as such trustee and committed many breaches of trust, which are enumerated. Amongst other things, it is alleged:

"The plaintiff says that the said trustees, acting under the advice and direction of the said Samuel D. Warren, overlooked the fact that it was their duty to have the advice of an independent attorney owing no duty to any persons having interests adverse to those of the beneficiaries represented by the trustees and employ constantly the same attorney who was employed by the lessees, namely, the business associate and legal adviser of said Samuel D. Warren, Louis D. Brandeis, Esq., and the law firm of which he was the principal member. That said trustees have paid to the said Louis D. Brandeis and to his law firm during the period from 1889 down to the present time upward of $40,000 out of the assets of said trust, and during the said period the said lessees have paid a like amount for services rendered to the copartnership consisting of the same Samuel D. Warren and Mortimer B. Mason, trustees as aforesaid, the other copartner, Fiske Warren, having only a small interest."

And, again:

"In preparing said lease said trustees, under the guidance and direction of the defendant, Samuel D. Warren, having regard chiefly to the personal interests of the said Samuel D. Warren and his copartnership and disregarding the interests of the beneficiaries under said trust, provided that said copartnership should be entitled to receive out of the gross income of the business a commission which should be deducted before arriving at the net profits. Said commission and net profits received by the said Samuel D. Warren and the said Mortimer B. Mason as copartners as aforesaid during the first five years after the creation of the trust, to wit, from 1889 to 1894, amounted to upward of $900,000. The commission alone of said partnership during the period from 1889 down to the present time has amounted to upward of $1,200,000, being an amount entirely disproportionate to any services rendered by said copartnership, or by any member thereof in view of the other sums received by said copartnership and its members in the way of profits and otherwise from the gross income of the business." (Hearings, p. 896.)

And further:

"The plaintiff says that equity considers the substance of matters and not their form. That the scheme planned by the defendant, Samuel D. Warren, and adopted under his guidance, was in substance that the property should be managed and the business carried on by himself and in his cotrustee, Mortimer B. Mason, for the benefit of the widow and children of Samuel Dennis Warren. That under this arrangement it was not permissible that the said Samuel D. Warren and the said Mortimer B. Mason to take for their own services more than a reasonable compensation upward of $2,024,700, being $1,024,700 more than can be considered reasonable in any aspect of the case. That the taking of this excessive amount amounted to a very serious breach of trust. That the plaintiff is informed and believes that the said Samuel D. Warren, his copartner, Mortimer B. Mason, having been incapacitated by reason of his illness aforesaid, resulting in his death during the current year as aforesaid, has planned to take out of the business in the way of commissions and profits (in addition to his share as a beneficiary) upward of $100,000 for the year ending December 31, 1909, and will take said sum or a larger amount at the end of the year 1909 unless prevented from so doing by this court." (Hearings, p. 898.)

There were other allegations of breaches of the trust, but those set out will suffice to show what was the nature of the action.

The case went to trial but before the end of the trial it was compromised by the heirs of S. D. Warren, who had died in the meantime, and others, paying Edward P. Warren, the plaintiff, a large sum of money and taking over his interest in the property and the business.

During all the time after the death of S. D. Warren, sr., until Edward P. Warren brought his action or was preparing to bring it, Mr. Brandeis was the attorney for and representing all the interests concerned including the settlement of the Warren estate, the trustees under the trust, the lessors, and the lessees under the lease, and, as included in these, the interests of all the heirs of the estate and was paid for the services rendered by him for each and all of them and that his firm had received $40,000 for services to the trustees and a like amount from the lessees of said trustees as charged in the bill of complaint. It is not necessary to go into the details of the charges made in this respect. There is no evidence to show that there was any corrupt conspiracy between Mr. Brandeis and his partner, S. D. Warren, to defraud or take any undue advantage of the other heirs of the estate. It was agreed at the hearings, by all parties concerned, that Mr. Warren was a highly honorable and trustworthy man as well as an able lawyer. It does not seem reasonable that such a man would knowingly enter into any scheme to injure his brothers and sisters.

There is no doubt that the lease was very favorable to the lessees but it is only fair to presume, in the absence of evidence to the contrary, that both Mr. Warren and Mr. Brandeis, in good faith, believed the terms of the lease to be justifiable under the circumstances. This leaves the question of the right or the propriety of an attorney representing two wholly adverse and conflicting interests at the same time under retainer and pay of both.

This raises a question about which there may very reasonably be differences of opinion. Mr. Storey, who testified against Mr. Brandeis, did not think it was wrong, and said he might have done the same thing. (Hearings, p. 279.)

But when asked whether it was not the common practice for a lawyer who had the confidence of all the parties to undertake to represent all of them although, eventually, the interests may be disclosed to be in a sense conflicting, he said, "I think it is a common practice but I think a bad practice." (Hearings, p. 279.)

Afterwards Mr. Storey explained and limited this statement by letter.

Mr. Whipple took the position that Mr. Brandeis was "possibly careless in not making very, very clear to Mr. Edward Warren just the whole transaction and its possible effect upon his rights." (Hearings, p. 284.)

His full statement on the subject I have already given.

Mr. Bailey and Mr. Youngman, who represented Mr. Edward Warren in the litigation, both regarded the course taken by Mr. Brandeis as absolutely wrong. (Hearings, pp. 138, 141, 471, 474.)

And Mr. Youngman testified that Mr. Storey was not present except one day during the trial; was only nominally an attorney in the case for Fiske Warren, who was not actually contesting the case one way or the other.

All of these gentlemen are capable and honorable members of the profession. The one thing that appeals to me as the most serious question of not only propriety, but of legal right, is the fact that when a conflict did arise between the parties whom he had up to that time represented and a suit was brought by one of them against the other, Mr. Brandeis should accept employment for one of his former clients against the other. The detailed information that he must have acquired from his long connection with the whole matter from the beginning to the end gave him an immense advantage over opposing counsel. Besides this, his confidential relations with Edward Warren, evidenced by correspondence that had taken place between them as attorney and client, regarding the matters in litigation, should, it seems to me, have excluded him from any participation in the controversy. Up to the time of making the lease I see no serious ground of complaint of Mr. Brandeis's course. When the lease was made the interests of the parties became antagonistic, and they could not be properly and ligitimately served by the same attorney. It was complained that he neglected his duty to Edward Warren by not keeping him fully informed of what was going on and of his rights.

It is not unusual for attorneys to advise a whole family respecting their business affairs when there is no disagreement between them. I think, as Mr. Storey said, it is a bad practice, that may bring an attorney, however conscientious he may be, into an unfortunate and awkward situation and arouse criticism. That was just what happened in this instance, and when it happened the only true course to take was to decline, as soon as the difference arose between his clients, to represent either of them. The failure of Mr. Brandeis to take this course was the gravest mistake he made.

It appears from the testimony of Mr. McClennen, Mr. Brandeis's partner, that for 21 years their firm drew an annual salary from the trustees under the trust, and the lessees from them whose interests were, of course, in direct conflict. The salary was $5,000 a year for part of the time, and then $4,000, amounting in the aggregate to something like $90,000, and was divided between the two. (Hearings, p. 1258.)

This continued up to the time when Edward P. Warren brought his suit, when the firm took the side of one of the interests, by which it had been employed and paid, against one of the beneficiaries under the other, by which it had also been employed and paid.

The real controversy was between one of the beneficiaries under the trust and heir to the estate, also represented by the firm, against the lessees, but if it had been between the beneficiary and the trustees the appearance by Mr. Brandeis would have been equally objectionable.

I can not see how this course of conduct can be justified or excused.

THE ILLINOIS CENTRAL RAILROAD CASE.

A contest was on between Stuyvesant Fish and E. W. Harriman involving the election of a board of directors for the Illinois Central Railroad and the control of the road. They were each making strenuous efforts to secure enough proxies from stockholders to control the situation. Waddill Catchings, representing the Harriman interests, employed the firm of Mr. Brandeis to aid him in securing such proxies. It seems to have been understood that Mr. Nutter, of the firm, should have charge of the work. But Mr. Brandeis was consulted with in the beginning and approved of the employment of the firm for that purpose, was fully advised in the matter, and consented that the firm act in that capacity. (Catchings's testimony, hearings, pp. 396, 342.)

The nature of the employment and the work done is fully explained by Mr. Catchings. (Hearings, p. 342.)

He testified that the sole connection of Mr. Brandeis was to give his approval to the employment of the firm. (Hearings, p. 343.)

But this appears to be a mistake.

Mr. Francis Peabody testified that a young lawyer came to him to get his proxy; that he told him he had already given it to Mr. Fish, and that he did not approve of the effort to remove Mr. Fish and that he replied:

"'Well, Mr. Brandeis says that he is a personal friend of yours,' which was true, 'and he asked me to say to you that he would like to have you give a proxy,' which would have the effect of revoking my former proxy, in the Harriman interests, and that if you are unwilling to do so he personally will come over and see you.' I said, 'My mind is quite made up about it. He said, 'Mr. Brandeis told me to say to you that he would like to come over and see you about it; and may I use your telephone?' I said 'Yes; you can use my telephone, but it is perfectly useless; nothing i am quite certain, that Mr. Brandeis could tell me in the way of argument would induce me to change my proxy, as I have implicit faith in Mr. Fish.'" (Hearings, p. 750.)

So it seems that Mr. Brandeis was taking part actively in the hunt for Harriman votes.

In another matter that will be taken up later Mr. Joseph B. Warner accused Mr. Brandeis of having represented Mr. Harriman as his attorney. In the so-called Merger case Mr. Warner said:

"That was the situation when this report was made. Since that they have done a good deal more. They have acquired the Illinois Central Railroad, the control of it, he has, and I suppose nobody could tell us more definitely about that than the attorney who is managing the anti-mortgage cause, for I understand that it was he who solicited for Mr. Harriman the proxies which enabled him to get the control of the Illinois Central Railroad, so far as Massachusetts stockholders were concerned. So we have the interesting spectacle of the same gentleman declaiming against monopoly in the afternoon and evening, and declaring for it in the morning, in both cases, I assume, without pay, but in each case addressing the people of Massachusetts." (Hearings, p. 635.)

From the manner in which the subject was treated by both Mr. Warner and Mr. Brandeis it must have been regarded as discreditable to have accepted such employment. At all events Mr. Brandeis wrote a letter denying the imputation, in which he said:

"Mr. Warner said, in effect, that I was acting and had acted as counsel for Mr. Harriman. That statement is absolutely untrue in every respect. I have never acted, directly or indirectly, for Mr. Harriman or communicated directly or indirectly with him, or with anyone who represented him directly or indirectly; nor have I acted, so far as I know, directly or indirectly for any company with which Mr. Harriman has ever been connected. No one connected with my firm has ever acted directly or indirectly for Mr. Harriman or for any company with which Mr. Harriman was connected, except as follows:

"On November 22, 1907, a representative of the firm of Sullivan & Cromwell, of New York, for whom we have acted from time to time for nearly 15 years, requested my partner, Mr. Nutter, to aid him in connection with obtaining proxies for the annual meeting of the Illinois Central. Mr. Nutter, in the presence of Sullivan & Cromwell's representative, asked me on that day whether there was anything in my merger fight which should prevent his acting in that matter, and I told him none whatever; that so far as I knew Mr. Harriman had no interest of any kind in the merger question.

"Mr. Nutter did act for Messrs. Sullivan & Cromwell, and either he or persons employed by him solicited in the most open manner during the course of several months proxies, applying, among others, to many gentlemen who were known to be most actively in favor of the merger.

"If the judgment of Mr. Warner and his associates were not entirely obscured by prejudice so as to quite overcrowd their reason, they would have found, in the fact that Mr. Nutter did act most publicly in the matter of soliciting proxies for the Illinois Central meeting, the strongest evidence that in this merger matter I could by no possibility be representing Mr. Harriman, rather than the reverse." (Hearings, p. 352.)

Disconnected with other matters to be considered later, this is the case made in this instance. There might be some question of the propriety of a firm of lawyers accepting employment of that kind, but it seems to me to be rather a question of taste. The other issue is one of veracity.

WRECKING THE NEW ENGLAND ROAD.

The charge is made that the New Haven road undertook to destroy the New England road as a competitor, and finally succeeded. That Mr. Brandeis was instrumental in bringing about that result, and brought a number of suits in different States in the effort to carry out that purpose. Mr. Brandeis's part in it, if that was the object of the suits, is thus stated by Mr. Moorfield Storey, who was then the attorney for the New England road:

"Mr. Brandeis, acting apparently or ostensibly for one N. F. Goldsmith and his partner, Mr. Keith, and one, Mr. Lotham, brought a series of bills, 10 in number, in Boston, in Rhode Island, and in Connecticut, aimed to paralyze the financial operations of the New England Railroad. One suit was brought for the purpose of preventing the payment of the dividends of the preferred stock, another was brought to prevent the issue of mortgage bonds. The New England Railroad had bonds which were paying 5 or 6 per cent and 6 or 7 per cent, and they desired to refund, and one of their purposes was to issue more bonds. Another suit was brought to attack their leases of certain branch lines, and in all 10 suits were brought.

"In the spring of 1893 the Legislature of Massachusetts, first at the instance of certain dealers in produce, and afterwards giving the investigation a broader scope, appointed a committee to consider what the relations between these two railroads were, and I conducted the hearing. Mr. Brandeis testified that he was the main counsel; that the other counsel had acted under his direction. He testified that Messrs. Arling, Webb, and Moorehouse, Connecticut lawyers, were acting under his direction, and that the bills they brought were drawn in his office, and that he was the counsel in charge. He said that scarcely a day passed for six months that he had not had something to do with those suits. The result of it was that the credit of the New England Railroad was destroyed; its financial operations were impaired, and its sources of revenue were cut off, except so far as they came from earnings; and, in the fall of 1893, the corporation went into the hands of a receiver, from which it emerged as a part of the New Haven Railroad. At the investigation I undertook to find out for whom Mr. Brandeis was acting, and he finally said that his client was Goldsmith. I asked who paid the bills, whereupon he declined to answer, saying that was a privileged question. I suggested that it perhaps was not and he cited some authorities and stated he would consider it. That occurred on one day and the next day he was away from Massachusetts, as he testified—I think in New York—and the third day he came back and told us. He began by saying that 'While I am perfectly willing to give this information to the committee, I want it to be agreed by Mr. Storey that it shall not be given out in any other investigation.' Here was his statement:

"'We are willing to give the information to the public so far as the public needs it, or the legislature needs it, but we are not willing to be compelled before this tribunal to give testimony which will prejudice our case in court.'

"He wanted me to sign a written agreement that the testimony he gave there should not be used in these cases. But after I pointed out that I could not very well see how any legitimate statement as to his clients would prejudice his case he decided on the whole that he would not insist upon it. Thereupon it turned out that Mr. Goldsmith was the owner of about 60 shares of stock, worth at that time about $3,000, and by no means in a position to incur the expense of six months' employment of counsel in Massachusetts, in Connecticut, and in Rhode Island in the briging of 10 suits. The bills which were brought forward were bills brought in the name of Goldsmith and such other stockholders as should see fit to join. They stood before the court and were pressing their suits brought by the stockholders in their own interests to prevent transactions which were pending and threatening to injure the value of their stock. It was perfectly apparent. It turned out on examination that a man named Judge Kelly, from New York, had come on there and consulted Mr. Carling (?), who was president of the Magee Finance Co., and they had employed Brandeis. The question arose as to whose name the suit should be brought in, and Mr. Carling ran over the list of stockholders, and they finally applied to somebody, whose name was not disclosed, who refused to allow his name to be used. Then it was that Mr. Goldsmith, a liquor dealer of Boston, was applied to, and apparently they promised him a considerable sum of money for the use of his name. His name was accordingly used. When I asked Mr. Brandeis who was his client, he gave the name of Goldsmith and also gave the name Coburn. When I asked if he ever made any charge to those people on his books, he said no. I asked him to whom he did make his charges and he said he made them to Kelly, or they were paid through Kelly.

"Senator CHILTON. Who was Kelly?

"Mr. STOREY. The lawyer who came on from New York representing somebody.

"Mr. ANDERSON. Now one of the supreme court judges of New York.

"Mr. STOREY. Yes; at that time acting as counsel.

"Senator WALSH. Representing whom?

"Mr. STOREY. His name was William J. Kelly, I think.

"In the fall of 1892 apparently, as the correspondence which I have seen shows, Mr. Kelly seemed to lose his interest in the suit, and Messrs. Arling, Webb & Moorhouse, after writing to him, applied directly to the New Haven road for instructions, and from that time on the litigation was carried on by them. In the course of that litigation it became necessary that a bond should be given to indemnify the defendants where an injunction was to be issued to prevent the registration of certain bonds. The bond was in the sum of $25,000. The New Haven road furnished security, and Mr. Coburn gave the bond, and the security was signed by Messrs. Tuttle—afterwards president—Charles P. Clark, president, and Mr. J. Pierpont Morgan, and Mr. William Rockefeller. From that time on the suits were carried on, not resulting in any hearings, because the company went into the hands of a receiver before the cases came on for hearing." (Hearings, p. 264.)

He says further on this subject:

"It is apparent to me that it was clear to Mr. Brandeis that these ostensible parties were not his clients. He never regarded them as such. He never made any charge to them. He took his directions entirely from somebody representing an outside person. That outside person may have been Coburn or may have been the New Haven Railroad. In any event, it was not the somebody who was the ostensible party he was representing. That somebody was either interested in the New England road or he was not. If he was interested in the New England Railroad, there was no earthly reason why his name should not be used in those suits. If he was not interested in the New England Railroad, then it was clear that some outside influence, some outside person, for a reason unwilling to disclose himself or itself, was working to injure the New England Railroad and working effectively, industriously, persistently." (Hearings, p. 266.)

And again:

"It appeared afterwards and appeared at the trial of the New Haven directors that this agreement, of which I have spoken as made, and I have seen this week that the New Haven Railroad paid Moore, Webb & Arling something like $27,000 for services and expenses in the suit, and that after Mr. Corbin's death and Mr. Goldsmith's death the administrators of the Goldsmith estate brought suit against the Corbin estate, alleging that he had been promised a large and liberal compensation for the use of his name, and the New Haven Railroad settled that case by the payment of $10,000."

It was further shown that in the actions lately brought by the Government against the directors of the New Haven road one of the charges made was that the Goldsmith suits were brought in the interest of the New Haven road for the purpose of destroying its competitor, the New England Railroad. (Hearings, p. 267.)

Mr. Storey summed up his views on the subject as follows:

"In the New England case you have the facts that the suits were calculated to wreck the New England, that they had that effect, that they were paid for by the New Haven; that the ostensible parties were not the real parties, and that Mr. Brandeis was unwilling to disclose who the real parties were." (Hearings, p. 270.)

Extracts from the petition and other proceedings in the United States *v.* New Haven & Hartford Railroad Co. and the criminal action against William Rockefeller et al. were introduced in evidence at the hearings.

They show the prominence that was given to the charges above referred to, including the bringing of the Goldsmith suits as means of wrecking the New England road. (Hearings, pp. 415, 420.)

In the Rockefeller case Mr. Batts, one of the counsel, thus characterized the efforts of the New Haven to destroy its competitor:

"There is also no question that while that competitive condition existed, and by methods that are so very wrong, so entirely without the range of decency and legality, that under the improved morals brought about by the several acts passed by the Congress of the United States, they would not even be thought of at the present time by men engaged even in the railroad business. There is this, at least, to be said about the New England: If these methods had not been pursued, and the New England Railroad had been permitted to do the financing with these suits that Mr. Rockefeller and Mr. Morgan helped to maintain, and by that word 'maintain' I am now using it in a sense which indicates an illegal maintenance—if, I say, the New England road had not been subjected to these illegal, immoral influences, there is at least the possibility at this time that there would have been two active competitors, two efficient roads, serving the people of New York and the people of Boston in matters of passenger service and everything else."

Mr. Brandeis's testimony before the committee of the Massachusetts Legislature regarding this transaction will also be found in the record. (Hearings, p. 421 and on.)

The testimony is very long and can not be inserted here. It deserves the careful attention of the committee as giving fully Mr. Brandeis's account of his connection with the Goldsmith suits. That the New Haven finally took over these suits and became liable for all expenses in connection with them and gave a required bond of $25,000 is clearly shown. The suits, while brought in the name of Goldsmith and others, were in fact instigated and carried on at the expense of one Austin C. Corbin, who obligated himself to pay all of the expenses of the litigation, as I shall presently show. Who Corbin acted for in the beginning is not shown, but that the New Haven finally took his place and made itself responsible for the further prosecutions and management of the cases can not be doubted.

The following correspondence used as exhibits in the Government suits discloses this:

NEW YORK, *January 23, 1893.*

To AUSTIN C. CORBIN,
New York:

We are informed that there is a proceeding or suit in Connecticut, wherein one H. L. Knowlton and N. F. Goldsmith & Co. are plaintiffs, in which it is sought to enjoin the comptroller from registering $2,000,000 of bonds of the New York & New England Railroad Co., and the court will enjoin the registry until the case is decided, on condition that a bond for $25,000 is given to cover any costs or damages that may be awarded to the defendants by reason of the granting of such injunction. We desire to have such bond given, and if you will procure it to be furnished, we agree to pay any costs or damages that may be awarded and will indemnify and save you harmless from all loss by reason of such litigation, we being consulted as to its management.

LUCIUS TUTTLE.
WILLIAM ROCKEFELLER.
J. PIERPONT MORGAN.
CHAS. P. CLARK.

(1630, 1631.)

APRIL 12, 1898.

J. PIERPONT MORGAN, Esq.,
Post-Office Box 3036, New York.

MY DEAR MR. MORGAN: Acknowledging your favor of the 11th instant, I beg to assure you that you need pay no attention to the Corbin suit, as we will assume all care and responsibility in that matter, and it is now in the hands of our counsel, who will give it all the attention the case demands. I am very glad to know of your safe return and good health.

Yours, sincerely,

JOHN M. HALL, *Vice President.*

—

JULY 8, 1898.

Hon. LYNDE HARRISON,
New Haven, Conn.

MY DEAR JUDGE: Referring to your favor of the 5th instant, I beg leave to say that I will endeavor to obtain from Mr. Kochersperger a statement of the dates and the amounts paid by our company on account of the Goldsmith matter, etc., very soon. * * *

JOHN M. HALL, *Vice President.*

—

NOVEMBER 29, 1898.

Hon. LYNDE HARRISON,
New Haven, Conn.

DEAR JUDGE: Answering yours 19th, regarding expenses in the Goldsmith litigation, I would say that Mr. Kochersperger has finally picked them out and the aggregate is $7,074.73.

Yours, truly,

JOHN M. HALL, *Vice President.*

—

AUGUST 4, 1898.

Mr. WILLIAM ROCKEFELLER,
26 Broadway, New York.

MY DEAR MR. ROCKEFELLER: Your statement of purchases and sales of N. H. & N. E. stock was duly received. Please find check herewith to balance that account, and also accept the thanks of the company for the financial assistance rendered by you in bringing this important matter to a successful conclusion.

Time alone can determine the financial benefit accruing to our company by the acquisition of the New England road, which we all agree never should have been built. I am confident any benefits to be derived from its possession will be chiefly the prevention of competition rather than from its operation.

I am clear, however, that the greatest possible economies ought to be exercised in the management of that property in connection with our own and that such a policy will alone prevent the New England Railroad becoming a very serious burden to us. * * *

Yours, very truly,

JOHN M. HALL, *Vice President.*

(1633–1640.)

—

WILLIAM ROCKEFELLER, Esq.,
26 Broadway, New York.

DEAR SIR: * * * There is no reason whatever why Harrison should have troubled you with this matter, and if you will kindly refer him direct to me, I will endeavor to see that this matter is properly disposed of, when it can be done on a fair basis. The claim of these parties is simply a blackmailing scheme, got up after Mr. Corbin's death, to secure money from Mr. Corbin's estate, and incidentally from us, to such extent as we guaranteed Mr. Corbin for disbursements and services in the old suit of Goldsmith against the New England Railroad Co., which was proceeded with to stop the issuance of additional funds of the New England Railroad Co., and which resulted in preventing the New England Railroad Co. from issuing the large number of bonds which we, as purchasers of the New England Railroad Co., would have had to assume if they had succeeded in issuing them. Whatever we pay in settling this suit, even if it amounts to the whole demand, would be justified on account of the benefits secured by the suit in question. * * *

Yours, very truly,

JOHN M. HALL.

(1650–1653.)

(Hearings, pp. 449–452.)

The blackmailing scheme referred to by Mr. Hall evidently refers to an action brought by the estate of Goldsmith against the estate of Corbin to recover advances made by the former to carry on the suits, which will be further noticed presently.

We have then the testimony of Hon. William J. Kelly, then a practicing lawyer, now a judge of the Superior Court of New York. (Hearings, p. 403.)

Judge Kelly was employed by Corbin. For some reason Corbin did not want to bring the suits in his own name. So he, assisted by Judge Kelly, secured Goldsmith and others to bring them, Corbin obligating himself to pay all expenses and protect Goldsmith from liability. Corbin had been a member of the board of directors and president of the New England road. Judge Kelly says, after reciting the difficulties and dissensions between Corbin and other members of the board of directors:

"Mr. Corbin was a very positive man in his ways; he was very much provoked and annoyed; and when he got out of the New England Railroad he said there was only one thing he should do, in view of the condition of the road and in view of the fact that the directors in the road had used their position, and were using it, for the purpose of benefiting themselves at the expense of the road; that there was only one thing to do, and that was to bring proceedings to put the road into the hands of a receiver for the protection of the stockholders and the second-mortgage bondholders. That is when he came to me about these litigations. That is when I saw Mr. Brandeis first. I went to Boston and I saw Mr. Brandeis, and employed him to assist me in the matter. Bills of complaint were drawn in Massachusetts and Connecticut and New York to put this road in the hands of a receiver, in which the charges to which I refer were set forth in detail; the fact that the road was insolvent; that its operating expenses exceeded its earnings long before these suits were started." (Hearings, p. 405.)

So the avowed purpose for which Mr. Brandeis was employed was to put the road in the hands of a receiver, which, under the circumstances, was to wreck it. This being so, it was not surprising that Corbin, who was a man of wealth and influence, should want to conceal his part in it and hide behind a small stockholder.

Their first step was to prevent the company from paying dividends or issuing bonds. The litigation was kept on foot until, in 1894, a

mortgage was foreclosed, when, as Judge Kelly says, "the Goldsmith litigations and all these various Corbin litigations ceased." (Hearings, p. 405.)

Evidently they had served their purpose. Corbin had turned the cases over to the New Haven road, that road guaranteeing the payment of all expenses.

When asked whether, at the time, there was any scheme on foot on the part of the New Haven to wreck the New York & New England, Judge Kelly said:

"I do not know anything about it, sir. I had nothing to do with the New Haven Railroad at all at the time of the beginning of these litigations; absolutely nothing to do with it. Mr. Corbin's position was antagonistic to them at that time. He had expected to carry on the New England Railroad, sir. It was long after that that the New Haven road had anything to do with these litigations. The end of 1893 or 1894 was the first time they had any connection with these litigations, and that was when the foreclosure suit was pending or imminent, when these litigations were of no service to anybody." (Hearings, p. 406.)

He also says that Mr. Brandeis was not employed to wreck the New England Railroad and that "the reason he was employed was to show that the New England Railroad was wrecked at that time and to prevent the further distribution of the corporate assets among certain of the directors," which would amount to practically the same thing in the interest of the New Haven road and accomplished the desired result as above set out. The New England road was wrecked, and it was taken over by the New Haven. The preliminary proceedings involving temporary injunctions tying up the activities of the road were successful, and when this was accomplished the litigation was no longer pushed but waited until the mortgage was foreclosed against which the New England, tied up as it was by the pending litigation, was helpless to protect itself. Whether, if let alone, it could have survived there is no proof nor can anyone tell. But it is certain that it could not with this obstructing litigation pending. It became an easy victim of the New Haven road. And that this was just what was intended is evident from the events as they followed each other, culminating at last in the New Haven taking over the litigation of Corbin's dummy. (Hearings, p. 407.)

Judge Kelly also testifies that Goldsmith's estate sued the Corbin estate for his expenses, and those expenses were paid by the New Haven road. (Hearings, p. 408.)

The suits brought and the nature of them are also explained by him. (Hearings, p. 409.)

It is clearly shown that as soon as the road was reduced to a state of helplessness, Corbin lost interest in it and did not want to put any more money into the litigation. This is quite evident from Judge Kelly's testimony. (Hearings, p. 411.)

Corbin first indemnified Goldsmith to induce him to commence the litigation, and then the New Haven road guaranteed payment of all expenses to induce Corbin to keep it going, and the attorneys were serving them throughout. They were all playing into the hands of the New Haven road and wrecking the New England for the benefit of the New Haven.

That this was the intention of Corbin from the beginning I have no doubt. Everything points in that direction. Judge Kelly says he did not know it. It is only fair to say that Mr. Brandeis did not. But the effect of such litigation was so transparently for the purpose of wrecking the New England road that it should have made a prudent and careful attorney suspicious that his services were being used for an improper purpose. He should have been doubly cautious and on his guard when he knew that the nominal plaintiff was not his client, but that some one else, whose identity was concealed, had employed and was paying him for appearing.

It has been altogether too common, I am afraid, to bring suits in this way. It is a practice that should be condemned. It is a deception on the court and one means of encouraging and promoting litigation. If Mr. Corbin had been compelled to bring the suits in his own name, they probably would not have been brought at all. It would have been a commendable and highly proper thing for his attorney to have said to him, "I will bring these suits in your own name, if you desire it, but I will not accept a retainer from you to prosecute them in the name of another man who is only your dummy and would not prosecute them at his own expense."

THE EQUITABLE LIFE ASSURANCE SOCIETY CASE.

This case presents a remarkable state of affairs. Mr. Fox, one of the attorneys before the committee, thus stated the case:

"Mr. Fox. The situation is this: It develops the utterances by Mr. Brandeis in the speech before a certain organization in Boston, at the time he was acting as and published as being made by 'counsel' to a certain protective association, composed of persons who were policyholders in the Equitable Society, were incorporated in this court paper which he filed, in effect. Among these apparently was Mr. McSweeney, and we find Brandeis, Dunbar & Nutter paid by Mr. McSweeney, one of the policyholders, for services in connection with his policy, a certain amount. We shall, we suppose, through Mr. McClennen, with the aid of Mr. Anderson, prove a little more precisely the organization of this protective association. We then find later that the utterances or the acts which Mr. Brandeis charged in his speech as an individual as being iniquitous, he defends as counsel for the Equitable, taking a position at one time precisely contrary to the position taken later, not only as regards the legality, but the morality." (Hearings, p. 680).

Some of the stockholders of the company, being dissatisfied with the management, organized amongst themselves a protective association, so called. Mr. Brandeis espoused the cause of these complaining stockholders and acted as secretary and adviser of the association without compensation. (Testimony of Whitman, p. 972.)

Mr. Whitman says the action of the stockholders was friendly and for the benefit of the company. As evidence of the state of comity existing and the friendly nature of the movement I quote from a speech delivered by Mr. Brandeis before the Commercial Club of Boston, October 26, 1905:

"Mr. President and gentlemen, eight months ago dissension among guilty officers of the Equitable Life Assurance Society first directed public attention to the conduct of the life insurance business. Since then the disclosures of financial depravity have aroused widespread indignation; but even then the importance of the subject is not generally realized. * * *

"Such is the power which the American people have intrusted to the managers of these large companies. How has it been exercised? Substantially as all irresponsible power since the beginning of the world—selfishly, dishonestly, and in the long run, inefficiently. The breaches of trust committed or permitted by men of high financial reputation, the disclosure of the payment of exorbitant salaries and commissions, the illegal participation in syndicate profits, the persistent perversion of sacred trust funds to political purposes, the cooperation of the large New York companies to control the legislatures of the country—these disclosures are indeed distressing; but the practice of deliberate and persistent deception of the public which the testimony discloses, though less dramatic, is even more serious. * * *

"In the case of common criminals flight is accepted as confession of guilt. With financiers and business men falsification of books has hitherto been considered the strongest evidence of guilt. Yet the falsification of the books of these companies has been a persistent practice. Secret ledgers have been opened in which were entered questionable investments and more questionable expenditures. Hundreds of thousands spent "for legislative purposes" were charged up in real estate account. So elaborate has been the system of fraudulent entries that after months of investigation the particular form of rascality embodied in the Equitable's $685,000 Mercantile Trust Co. so-called "yellow dog" account has not yet been detected.

"The degree of guilt involved in such transactions will be appreciated only when one remembers that the life insurance business beyond all others in the world rests upon confidence—confidence that in the remote, indefinite future the present sacrifice of the policyholder will bring protection to widow and children." (Hearings, p. 668.)

This must have been regarded as a friendly and playful reference to the methods of the company, for Mr. Brandeis was at that time and has been ever since the attorney of the company.

Mr. McClennen, one of the firm, testifies that no complaint whatever was made by the company of Mr. Brandeis's attack upon it. (Hearings, p. 684.)

He testifies also to the continued relation of attorney and client between the company and the firm and names a number of cases in which they appeared for the company all through this trouble and down to this time. (Hearings, pp. 684, 685.)

In one of the cases, namely, Peters *v.* The Equitable Life Assurance Society, the complaint charged some of the very things against the company that Mr. Brandeis so dramatically denounced in his commercial club speech. (See the bill in equity in that case, hearings, p. 670.)

In that case Brandeis, Dunbar & Nutter appeared for the defendant corporation and filed an answer denying all the charges made against it in the bill. (Hearings, p. 676.)

The position of Mr. Brandeis in his public utterances strongly condemning the company and his appearance for the company and his defense of it against like charges seem so inconsistent as to need explanation. Mr. McClennen, a member of the firm, has given his version of it, which is nothing more than a history of the proceedings in the matter without any explanation of their apparently inconsistent positions. (Hearings, pp. 697, 698.)

It appears from his testimony that the case first came to the notice of their firm August 25, 1906, about 10 months after the commercial club speech. It was probably one of the results of that agitation against the company and by rights might well have been prosecuted by Mr. Brandeis to vindicate his charges against the company.

GILLETTE SAFETY RAZOR CO. CASE.

Mr. Brandeis was charged with unprofessional conduct in certain cases concerning the stock of the Gillette Safety Razor Co., and evidence was offered to sustain the charge. I have been unable to see any reasonable ground of complaint of Mr. Brandeis's course in that case, taken as a whole. It was another struggle to get control of a corporation of which so many seemed to fall to the lot of Mr. Brandeis. They generally engender much ill feeling and charges and countercharges of misconduct, as they did in this case.

THE OLD DOMINION COPPER MINING & SMELTING CO. CASE.

This is another case in which Mr. Brandeis incurred the violent displeasure of some of the parties concerned. It began by his employment to oust Mr. Bigelow and his friends from the management of the company on the ground that Bigelow had wrongfully converted to his own use a large and valuable block of the stock of the company. Mr. Brandeis represented the complaining stockholders and his clients were successful in getting control of the company. Mr. Brandeis was then made the general counsel of the reorganized company and Charles Sumner Smith, one of his stockholder clients, became its president. A consolidation or combination of the stock and operations of the Old Colony and the United Globe mines, owned by Phelps Dodge & Co., was proposed and the value of the stock of each of the companies became important. The directors of the Old Colony Co. caused an investigation of the properties of the two companies to be made by an engineer, and received a report from him showing that the stock of the Old Colony Co. was greatly more valuable than the other company. It was claimed that in the effort to induce the stockholders of the Old Dominion Co. to deposit and post their stock with that of the United Globe mines as of equal value this report was concealed for a time from them by the directors, and that this was done with the connivance and under the advice of Mr. Brandeis. There is no evidence to sustain this charge. It appears that Mr. Brandeis had nothing to do with the suppression of the report, and that if he had there was sufficient reason for not making it public at that time, which was done a little later. (See testimony of William F. Fitzgerald and Charles Sumner Smith, hearings, pp. 1227, 1269.)

But another peculiar condition was disclosed in this transaction. After Bigelow was ousted there remained a claim against him for the stock alleged to have been converted by him. In the bringing together of the two companies this claim was not included, but was left to be prosecuted by the Old Colony Copper Mining & Smelting Co. In making the deal a new Old Colony Co. was formed as a holding company with which the stock of the two companies was deposited. Some of the stockholders of the Old Colony Copper Mining & Smelting Co. refused to go into the deal and did not deposit their stock with the holding company. It was left to Mr. Brandeis to work out a scheme that would take care of all parties concerned. In doing so he provided for trustees to handle and pay over to the stockholders the money that might be collected from Bigelow. The president of the Old Colony Copper Mining & Smelting Co., who had been one of Mr. Brandeis's clients in the fight for control of the company, was made one of the two trustees. In the trust agreement it was provided that the trustees should receive for their services 5 per cent of the amount collected on the Bigelow claim. In turn the board of directors agreed with Mr. Brandeis to pay him 10 per cent of any amount collected for his services. The effort to collect from Bigelow was successful, and Mr. Brandeis, with his 10 per cent and some other fees paid him for services in the matter, had received $225,000 for his services and the trustees $45,000 each. Thus the company has paid out for the collection and distribution of this fund to the stockholders $315,000, besides large fees paid to other attorneys employed in New York. (Hearings, p. 1275.)

The trustees had nothing to do with the collection of the money. The suits were brought and prosecuted by the Old Dominion Copper Mining & Smelting Co. All the trustees did was to receive the money and pay it out to the stockholders. The fee received by Mr. Brandeis would seem large, at first blush, but I do not think it was an unreasonable charge. The amount recovered was something over $2,000,000, and the litigation involved the bringing of suits in different State and Federal courts and covered several years reaching the Supreme Court of the United States. But the amount paid the trustees was unconscionable. They had practically nothing to do that could not have been done by any competent clerk or accountant at an expense of a few hundred dollars.

The only reflection that can justly be cast upon Mr. Brandeis in the whole transaction, as I see it, is that he devised this scheme, including the creation of this trust, and himself fixed the compensation of the trustees that has proved to be exorbitant. (Hearings, p. 1274.)

But there is nothing to show and no claim that Mr. Brandeis profited in any way by reason of this fact. He received his own fee, that was, in my judgment, well earned and nothing more.

There is nothing in this charge worthy of serious consideration.

THE MERGER CASE.

The Merger case, so called, was an attempt on the part of the New Haven road to take over and absorb the Boston & Maine. One Mr. Lawrence was a very large stockholder in the Boston & Maine and was opposing the proposed merger and solicited Mr. Brandeis's assistance to prevent it. Mr. Brandeis's position in the matter is thus stated by his partner, Mr. McClennen:

"The desire of the Lawrence interests was to prevent this, I will say, merger, as a short term, to express it. Mr. Brandeis was entirely in sympathy with that, but states that it appeared to him that it was a question of public policy of New England that deeply affected generally New England interests, the interests of the community of New England; that it would involve his taking public positions on the matter, and that he should prefer not to be hampered by being in the state of contemplation. (Hearings, p. 991.)"

So Mr. Brandeis undertook the work as a public duty, but, at the same time, paid the other members of his firm $25,000 out of his own pocket as their fee for the services rendered by him. (Hearings, pp. 992, 995.)

In other words, Mr. Brandeis, by paying his partners a fee, recognized this as services rendered a private individual, but for himself personally he preferred to treat it as a public service that should be rendered without compensation. In this he took precisely the opposite course pursued by him in the Glavis case and one was quite as likely to create suspicion and criticism of his motives as the other. The fact that he was taking this course was concealed as his taking a fee in the Glavis case was concealed. (Hearings, p. 993.)

Naturally, as Mr. Anderson, who acted as Mr. Brandeis's counsel on the hearing though asked to act by the committee, says there "were insinuations in this record that he was appearing in the public interests and also privately." (Hearings, p. 992.)

That was precisely what he was doing. He took up the matter at the instance of Mr. Lawrence, represented his interests, and paid his partners for the services. So far as his appearance for Mr. Lawrence was concerned the situation would not have been in the least different as a matter of principle if Mr. Lawrence had paid the fee to all of the firm instead of his paying it to his partners. The only effect of this course, instead of the unequivocal one of taking compensation from Mr. Lawrence, was that Mr. Lawrence escaped the payment of a fee that was justly due from him and Mr. Brandeis was placed in an equivocal and questionable situation. The natural result was that ostensibly he appeared in the public interests only, and was suspected of bad faith, in that he was believed to be appearing in that way and being paid by private interests. It was just that suspicion that brought the transaction before the committee. On the other hand, if the truth had been made known, as Mr. McClennon now discloses it, the public would have suspected that the money he paid his partners was made up to him in some other way.

It was a position that no attorney should allow himself to occupy, and one that, any way one can look at it, was bound to bring him under suspicion of his motives. Whether such a suspicion was justified or not, it put him in a false situation.

EMPLOYMENT BY LIQUOR DEALERS.

The governor of Massachusetts recommended to the legislature an amendment to the liquor law making it more certain as a means of promoting temperance in that State. Mr. Brandeis "was registered under the law as a" legislative counsel for the Protective Liquor Dealers' Association and the New England Brewers' Association to oppose the legislation. (Hearings, p. 1056.)

This was a long time ago, February, 1891. Public sentiment and individual opinions have greatly changed since then and one can not justly be judged by the present standards in dealing with the sentiments expressed. But the question was not one of prohibition but regulation of the liquor traffic.

Mr. Brandeis offered two drafts of bills favorable to the liquor dealers. (Hearings, pp. 1057, 1058.)

He also delivered a somewhat extended address in favor of his clients. He conceded the great evils flowing from the liquor traffic and that it should be regulated, but contended against the kind of regulation urged by the friends of temperance. (Hearings, p. 1058.)

He said:

"The use of liquor is not a wrong. It is the abuse and not the use which is wrong, and, consequently you must not allow yourself to be carried away by your emotions; you must not be misled by your indignation at the misery which liquor has produced."

He insisted that liquor must and would be sold and drunk, and the only question was, "How can the traffic be conducted with least injury to the inhabitants?" (Hearings, p. 1059.)

And the remedy he insisted upon was, "Make the liquor business respectable."

He said further:

"If you will but recognize facts instead of closing your eyes to them, as these gentlemen of the Law and Order League have done; if you will accept the fact that liquor is desired by a large majority of the voters of the Commonwealth, and consequently that people will sell it; if you will recognize that and will make laws which do not necessarily harrass those engaged in the business; if you will let them conduct it respectably—as a majority of these people desire to conduct their business—if you will permit them to earn, not merely money, but what is more important, the esteem of their fellow men, the whole race of liquor-dealer politicians will soon pass away. The liquor dealers will become as inconspicuous in public life as the butchers and bakers. They will devote their leisure and their means to such enjoyments as others do, instead of seeking to control officials and elections by fair means or by foul. You made the liquor dealers politicians as you made them criminals when you passed laws which were unreasonable and clashed against the habits of the great mass of the people when you made their business precarious; when you selected that class of the community for invidious distinction and persecution. Repeal the obnoxious laws, and, when once you have removed the real cause of this evil—the unhealthy conditions—nature will lend its ever-ready aid, and the body politic will recover." (Hearings, p. 1064.)

The views expressed in this address differ very materially from my own, but I have no doubt they were shared by a very large proportion of the community at that time.

Besides, a man should not be condemned for expressing his views sincerely entertained. The vice of it is that these were not the views of Mr. Brandeis, the citizen, expressed in the public interest. They were the paid-for sentiments of a lawyer advocating a change of the laws of his State in the interests of a business acknowledged by all thinking people to be injurious to the public welfare. It was a great moral question, up for legislation, and upon such no man should appear as the paid attorney of private interests.

PROTESTS.

Many protests against the confirmation of Mr. Brandeis have been received by the committee and recorded in the hearings. First was a list of 61. (Hearings, p. 319.)

Then came 16 others, on separate protests, stating their reasons for objecting to the confirmation. (Hearings, pp. 622, 623.)

They affirm a lack of judicial temperament and that "his reputation among a large number of the members of his own profession and of the people in general is such that he has not their confidence."

Another protest, signed by William H. Taft, Simeon E. Baldwin, Francis Rawle, Joseph H. Choate, Elihu Root, and Moorfield Storey, all of whom have been presidents of the American Bar Association, is in the following language:

"To the SENATE COMMITTEE ON THE JUDICIARY:

"The undersigned feel under the painful duty to say to you that, in their opinion, taking into view the reputation, character, and professional career of Mr. Louis D. Brandeis, he is not a fit person to be a member of the Supreme Court of the United States." (Hearings, p. 1226.)

These protests, coming from men of high standing, many of them lawyers of high rank, should receive consideration in determining our course.

REPUTATION.

The protests to which I have referred placed their opposition in part upon the fact that Mr. Brandeis's reputation among a large part of the members of his own bar and others is not good.

The subcommittee permitted evidence to be adduced bearing upon the question of reputation, but limited the number of witnesses to five on each side. As might be expected, the witnesses differ widely as to this, but all agree that amongst some of the members of the bar and others his reputation is not good. The witnesses for Mr. Brandeis claim that the reputation thus admitted is not general and not well founded. What they say on this subject—all of them admittedly men of standing and integrity, is worthy of attention.

Mr. Bailey gives it as:

"First. That he is a very able lawyer; that he is a man of keen intellect; that he is an able advocate; that he is not entirely trustworthy.' (Hearings, p. 153.)

Mr. Storey:

"I think his reputation is that of a man who is an able lawyer, very energetic, ruthless in the attainment of his objects, not scrupulous in the methods he adopts, and not to be trusted." (Hearings, p. 271.)

Mr. Storey gives the names of a large number of lawyers and others who have expressed themselves unfavorably as to his reputation. (Hearings, p. 273.)

Mr. Whipple, in speaking of the Lennox case, said:

"He was sincere about it, and it illustrates, to my mind, why you have heard about Mr. Brandeis from the Boston bar some things that you have heard. I think they have misunderstood him. That is my personal opinion, and I think if Mr. Brandeis had been a different sort of man, not so aloof, not so isolated, with more of the comradery of the bar; gave his confidence to more men, and took their confidence; said to them, when he was charged with anything that was doubtful, 'Boys, what do you think about it?' and talked it over with them—you would not have heard the things you have heard in regard to him.

"But Mr. Brandeis is aloof; he is intensely centered in carrying out his own ideas and his own ideals, which I believe are pure, which I believe are high-minded; and he does not, so far as I know, consult with anybody or take them into his confidence, and he will do things of a startling character. Nothing could illustrate it better than this Lennox matter." (Hearings, p. 300.)

And, again:

"I think I have stated with sufficient clearness my belief that the opinion which has been expressed with regard to Mr. Brandeis in your hearings is founded upon a misconstruction of Mr. Brandeis's motives, because the thing that colors a man's acts usually is his motive." (Hearings, p. 305.)

And, in speaking of the men who have questioned Mr. Brandeis's reputation, he says:

"As I remember that list, I do not think the motives of one of them could be impugned. I think they misunderstand Mr. Brandeis. I do not think that they are very much in sympathy with a great deal that he does. But I can not think of anyone in the list that I have seen who does not conscientiously believe just the statement which he signed. They are, all of them, very high-minded men. I do not think they are all of them very liberal or progressive men. I think they are conservative, and I think that anything that threatens or menaces the traditions which they revere they think is worse than an iconoclast."

* * * * * * *

"I do not think one of them would sign that paper without the most deliberate and prayerful thought as to whether they were doing Mr. Brandeis an injustice, or whether by so doing they were discharging a public duty, and that they were required to do it. They are all of a class in that respect. Men that would not for the world do a wrong or a harm to anybody else consciously; but, on the other hand, they have their conception of a duty, and that is if anyone is propagating mischievous propaganda that upsets the traditions in the community

that we all revere it is a public duty to abate it." (Hearings, pp. 308–309.)

Mr. Pillsbury:

"His reputation as it has come to me is that of a very active, adroit, and successful business lawyer; a man of unbounded audacity; a man if you wish to go into questions touching integrity—a man, I should say, of duplicity; double-dealing; a man who works under cover so that nobody ever knows where he really is or what he is really about. I have not ever heard him accused of cheating in money transactions." (Hearings, p. 654.)

Mr. Hutchins:

"His general reputation at the bar is that he is a lawyer of great ability, but not straightforward." (Hearings, p. 611.)

Mr. Hall. Mr. Hall's estimate of Mr. Brandeis is in the form of a letter. He says:

"First, then, so far as ability goes, there can be no question as to Mr. Brandeis's professional standing. He is universally acknowledged to be one of the ablest men at our bar, both in point of legal learning and of effectiveness, and if the question was of intellectual ability alone, his appointment would be generally approved.

"There is, however, equally little question that he is not generally popular with the bar, and that among a considerable proportion of the lawyers here he has the reputation of not being a man with whom it is pleasant to deal in business matters and one who is unscrupulous in regard to his professional conduct. Just how far there is any solid foundation for such a reputation it is extremely difficult to say. So far as specific charges go, all of any consequence of which I have ever heard have been or will be brought to the attention of the committee at Washington, and of those it is unnecessary that I should speak, especially as I can add nothing of my personal knowledge.

"The general reputation remains, and it is certainly one which is worthy of consideration in estimating the fitness of an appointment to the bench. Indeed, I think in the existing state of the feeling here that no one can be fairly criticized for opposing the appointment." (Hearings, pp. 619, 620.)

Mr. Hall explains how this reputation has grown up out of his idealism and the constant attacks that have been made upon him, and then says further:

"Undoubtedly, he is a merciless antagonist, fighting his cases up to the limit and with great technicality and taking every advantage which the law allows him without, perhaps, always a keen regard for fair play. So far as I am aware, nothing more than this could be fairly considered as proved against him. On the other hand, there is, except among a comparatively small number of people, a general recognition that Mr. Brandeis has rendered public service to the community of extraordinary value, and that in doing so he has been actuated by disinterested motives. He lives with great simplicity, and has throughout his career devoted to unpaid public work a very large proportion of his time and energy. With the opportunities that have been open to him he could, by following more conservative courses, have been a much richer man than he is to-day. I do not think it can fairly be doubted that he deliberately chose to serve the public rather than to devote himself entirely to making money, nor do I think it can be fairly questioned that in doing this he was actuated by high motives." (Hearings, p. 620.)

He recites the work that Mr. Brandeis has done in the public interest, and especially for the poor, and then says:

"Of his fundamental honesty of purpose and his deep moral enthusiasm I feel absolutely sure. His qualifications for the position of Supreme Court judge far outweigh, in my judgment, anything that can fairly be urged against him. For these reasons I sincerely hope his nomination will be confirmed."

This gives, I think, a fair understanding not only of his idea of Mr. Brandeis's reputation but what Mr. Hall himself thinks about him and his qualifications.

Mr. Gregory. Mr. Gregory lives in Chicago, and knows Mr. Brandeis in a general way and nothing of his reputation among the lawyers of Boston. He was for one year president of the American Bar Association. (Hearings, p. 710.)

He says of his reputation:

"I think it is excellent as a lawyer of ability and character." (Hearings, p. 711.)

Mr. Walker. After reciting at considerable length the "fights" Mr. Brandeis had been in with the financial interests of Boston, he says:

"I have never heard Mr. Brandeis criticized before these various matters that I have just referred to. His firm in Massachusetts certainly stood very high. I know Mr. Brandeis and know the members of his firm." (Hearings, p. 811.)

Mr. Adams had this to say:

"I think there is quite unanimous assent that Mr. Brandeis is a very able lawyer of profound learning, but that upon the question whether he is and has been wholly straightforward in his practice there is a divided opinion. If I may analyze it as I observe it, there is a group of men of high standing—like Gen. Peabody, in the community who are in the network of State Street, which is our financial street—who state and think that Mr. Brandeis is not straightforward in his practice. I think those opinions, when traced, run into some one of these pockets of more or less publicity, namely, the Lennox case, the United Shoe Machinery case, the wrecking of the New England—those allegations. That is a fair statement as to that group. On the other hand, there is a large body of the bar who, coinciding with what I have said as to his being a very able lawyer, a man of profound learning, also believe that he is actuated by lofty purposes, is honest and trustworthy. That is all I have to say." (Hearings, p. 766.)

Mr. Peabody:

"I think his reputation for ability is good. I think he is considered as a conspicuously able man; but, on the other hand, his reputation is that he is not always truthful, and that he is untrustworthy, and that he sails under false colors." (Hearings, p. 750.)

Mr. French:

"Among the rank and file of the Boston bar and the Massachusetts bar, so far as I know them, Mr. Brandeis has, in my experience, the reputation of being a man of integrity, a man of honor, a man who is conscientiously striving for what he believes to be right. There are, of course, differences of opinion as to his beliefs in that respect. But that, in general, has been my experience with reference to the Suffolk bar, of which I am a member, and the Massachusetts bar, regarding his professional reputation. He has made enemies, of course. A man can not be combative as he is, or aggressive as he is, fighting as he has been on the firing line during all his professional career, without making many enemies. (Hearings, p. 770.)"

Mr. Boynton:

"That reputation, so far as I know it, is good. Down to the time this appointment was made I think the only thing that had ever come to my attention in any way reflecting upon Mr. Brandeis was certain printed matter circulated by the United Shoe Machinery Co. With that exception, I do not think I ever heard anything reflecting in any way upon his character as a man or as a lawyer.

"I think I might say that the men of my acquaintance—two or three men who are my personal friends who have been very close to Mr. Brandeis—have spoken most warmly in his favor, and by that I mean before this investigation began. They would speak so now, I know." (Hearings, p. 771.)

I have tried to give as accurately as I can, from brief extracts, what was said by all the witnesses who testified on this subject. I hope none of them have been overlooked.

But this analysis of the evidence of what Mr. Brandeis's reputation is would not be complete without reference to what was said by some of the men who have worked with him in the effort to better social and economic conditions and help the poor.

Edmund A. Whittier testifies to his generous work, without compensation, for the American Fair Trade League, which is a business organization seeking legislation. (Hearings, p. 812.)

Newton D. Baker, since made Secretary of War, spoke very highly of his work for the poor and laboring classes and particularly the National Consumers' League, and submitted a memorial numerously signed in his behalf. (Hearings, pp. 759, 760.)

Henry Moskowitz spoke very earnestly in commendation of Mr. Brandeis's work for the board of arbitration of the garment-working industries of New York, of which Mr. Brandeis was chairman. (Hearings, p. 763.)

It is evident that while Mr. Brandeis has many enemies among business men and lawyers who do not believe in him, he has many friends among the poor and lowly and those who are working to better their condition.

CONCLUSIONS.

I have endeavored to make a fair and full statement and analysis of the evidence. I have done so largely to aid me to comprehend and apply it and thereby reach a just conclusion. It has led me irrisistibly to conclude that the nomination should be rejected. For many reasons I should be glad to find otherwise. I am greatly in sympathy with much of the work that Mr. Brandeis has been doing to better economic, industrial, and social conditions. Much of this I am convinced he has done generously, unselfishly, and for the common good. Much of it he has done in ways and by means that do not appeal to me at all. He has in many instances been intolerant and offensive in his methods, as the evidence shows. He has resorted to concealments and deception when a frank and open course would have been much better and have saved him and his profession from suspicion and criticism. He has defied the plain ethics of the profession and in some instances has violated the rights of his clients and abused their confidence. There is nothing in the evidence that leads me to think he has done these things corruptly or with the hope of reward. His course may have been the result of a desire to make large fees, but even this is not clear. He seems to like to do startling things and to work under cover. He has disregarded or defied the proprieties. It has been such courses as he has pursued that have given him the reputation that has been testified to, and it is not undeserved. It is just such a reputation as his course of dealing and conduct would establish in the minds of men. This reputation must stand as a strong barrier against his confirmation.

If it were Mr. Brandeis alone that is to be concerned, and it should be believed that this reputation is undeserved and unjust, it should have no weight; but the effect of such an appointment on the court is of much greater importance. To place a man on the Supreme Court Bench who rests under a cloud would be a grievous mistake. As I said in the beginning, a man to be appointed to the exalted and responsible position of Justice of the Supreme Court should be free from suspicion and above reproach. Whether suspicion rests upon him unjustly or not his confirmation would be a mistake. It is argued against him that he is not possessed of the judicial temperament. There is just ground for this objection. As some of his friends said, he is radical, and for that reason he has offended the conservatives. That may be no cause of reproach; but the temperament that has made him many enemies and brought him under condemnation in the minds of so many people would detract from his usefulness as a judge. He is of the material that makes good advocates, reformers, and crusaders, but not good or safe judges.

Taking all these things into consideration, I submit that the nomination should be rejected, and so report.

JOHN D. WORKS.

APRIL 3, 1916.

Mr. STONE. I move that the Senate adjourn until 11 o'clock to-morrow.

The motion was agreed to, and (at 5 o'clock and 20 minutes p. m. Thursday, June 1, 1916) the Senate adjourned until to-morrow, Friday, June 2, 1916, at 11 o'clock a. m.

NOMINATIONS.

Executive nominations received by the Senate June 1 (legislative day of May 31), 1916.

PROMOTIONS IN THE ARMY.

MEDICAL CORPS.

Lieut. Col. William P. Kendall, Medical Corps, to be colonel from May 26, 1916, vice Col. Louis Brechemin, retired from active service May 25, 1916.

Maj. Deane C. Howard, Medical Corps, to be lieutenant colonel from May 26, 1916, vice Lieut. Col. William P. Kendall, promoted.

APPOINTMENTS IN THE ARMY.

MEDICAL RESERVE CORPS.

To be first lieutenants with rank from May 27, 1916.

Frederic Hagler, of Missouri.

Ingvald Martinius Josephson Hotvedt, of Michigan.

Hugo Francis Mehl, of Wisconsin.

Roy Herndon Cox, of Illinois.
Lawrence Howard Robles, of Illinois.
Magnus Jacob Myers, of New York.
Edward Percy Eglee, of New York.
Charles Mallory Williams, of New York.
Archie Ewing Gordin, of New York.
Arthur Ward Cutler, of New York.
Abram Schuyler Clark, of New York.
Charles H. Merrill, of Michigan.
James Edwin Dewey, of Missouri.
John Wesley Long, of North Carolina.
George Irvine McKelway, of Delaware.
Albert Sparr Rider, of South Dakota.
William Launcelot Brown, of Texas.
John Francis Ranken, of New York.
Clarence McClellan, of Illinois.
Perry C. Traver, of Indiana.
Austin Charles Wright, of Arizona.
Frank Farrow Simpson, of Pennsylvania.
Clarence Oscar Christian Max, of Missouri.
Charles Hubart Lovewell, of Illinois.
George James Haslam, of Nebraska.
Emil Sebastian Geist, of Minnesota.
George Clymer, of Massachusetts.
Joel Ernest Goldthwait, of Massachusetts.
John Morris Dodd, of Wisconsin.
James Le Roy Campbell, of Georgia.
Edward Bates Block, of Georgia.
Edward Campbell Davis, of Georgia.
William Lee Wilkinson, of Georgia.
Kendall Emerson, of Massachusetts.
Dennis Francis O'Connor, of Massachusetts.
Somers Fraser, of Massachusetts.
John Lewis Bremer, of Massachusetts.
George Cheever Shattuck, of Massachusetts.
Francis William Anderson, of Washington.
Edwin Bruce Rhea, of Washingon.
Willard Samuel Howard, of Oregon.
Barzilla Milton Hutchinson, of Indiana.
Curtis Alban Evans, of Wisconsin.
Albert Martin Farrell, of Wisconsin.
Alford Edward Budde, of Illinois.
Charles Henry Lawrence, of Massachusetts.
George Sherwin Clarke Badger, of Massachusetts.
Walter Asbury Newman, of Virginia.
Lee Walton Verdery, of South Carolina.
Arthur Morris Zinkhan, of the District of Columbia.
Orville Titus Manley, of Ohio.
Augustus Ravogli, of Ohio.

REGISTERS OF THE LAND OFFICE.

Joseph Oker, of Helena, Mont., to be register of the land office at Helena, Mont., vice Joseph Binnard, resigned to take effect June 30, 1916.

Henry Alexander Porter, of Everett, Wash., to be register of the land office at Vancouver, Wash., vice Glenn N. Ranck, term expired.

APPRAISER OF MERCHANDISE.

James Houlahen, of Pittsburgh, Pa., to be appraiser of merchandise in customs collection district No. 12, with headquarters at Pittsburgh, Pa., in place of Bernard B. McGinnis, resigned.

POSTMASTER.

Edward F. Lonergan to be postmaster at Milburn, N. J., in place of George C. Kessler. Incumbent's commission expired January 11, 1916.

CONFIRMATIONS.

Executive nominations confirmed by the Senate June 1 (legislative day of May 31), 1916.

ASSOCIATE JUSTICE OF THE SUPREME COURT.

Louis D. Brandeis to be an Associate Justice of the Supreme Court of the United States.

APPRAISER OF MERCHANDISE.

James Houlahen to be appraiser of merchandise in customs collection district No. 12, with headquarters at Pittsburgh, Pa.

PROMOTIONS IN THE ARMY.

MEDICAL CORPS.

Lieut. Col. Henry S. T. Harris to be colonel.
Maj. James M. Kennedy to be lieutenant colonel.
Capt. William H. Moncrief to be major.

MEDICAL RESERVE CORPS.

First lieutenants.

William Frederick Rice.
Edward Allen Noyes.
Charles Woodward Riley.
Charles George Sinclair.
Charles George Hutter.
Frederick Hensel Petters.
Clarence Searle Ketcham.
Robert Parvin Williams.
Edwin Brooks Maynard.
Harvard Clayton Moore.
Arden Freer.
Paul Adolph Schule.
John Stuart Gaul.

CAVALRY ARM.

First Lieut. George A. F. Trumbo to be captain.
Second Lieut. George S. Patton, jr., to be first lieutenant.

COAST ARTILLERY CORPS.

First Lieut. Henry T. Burgin to be captain.
First Lieut. Nathan Horowitz to be captain.
Second Lieut. George W. Easterday to be first lieutenant.
Second Lieut. George B. Gorham to be first lieutenant.

INFANTRY ARM.

First Lieut. Robert G. Peck to be captain.
Second Lieut. Robert Coker to be first lieutenant.
Second Lieut. William F. Hoey, jr., to be first lieutenant.
Second Lieut. John H. Stutesman to be first lieutenant.

APPOINTMENTS AND PROMOTIONS IN THE NAVY.

Hubert A. Royster to be an assistant surgeon in the Medical Reserve Corps.

Boatswain Gregory Cullen to be a chief boatswain.
Machinist Charles F. Beecher to be a chief machinist.
Pay Clerk Andrew J. McMullen to be a chief pay clerk.
Pay Clerk Alvah B. Canham to be a chief pay clerk.
Pay Clerk Noble R. Wade to be a chief pay clerk.
Pay Clerk Ross B. Deming to be a chief pay clerk.
Pay Clerk Effinger E. Hartline to be a chief pay clerk.

Chaplain James D. MacNair, with rank of lieutenant (junior grade), to be a chaplain with rank of lieutenant.

POSTMASTERS.

ALABAMA.

John M. Graham, Stevenson.

INDIANA.

Walter J. Rierden, Montezuma.
George W. Roy, Wolcottville.
Edward H. Taylor, Knox.

IOWA.

Charles V. Dautremont, Riverside.
Charles E. Dawson, Rockford.
E. F. Main, Hopkinton.
Mary E. O'Connor, Rockwell.

LOUISIANA.

J. A. Melton, Coushatta.

MICHIGAN.

Joseph M. Dodge, Cass City.
C. C. Hopkins, Breckenridge.
William B. Howlett, Jonesville.
Sidney Reynolds, Howard City.

MISSISSIPPI.

George C. Gunn, Agricultural College.

NEW YORK.

Archie Goodfellow, Jamesville.
L. G. Quackenbush, Oneida.

PENNSYLVANIA.

E. R. Criss, New Kensington.
William H. Denlinger, Patton.
Daniel A. McGough, Ebensburg.
Patrick J. Mash, Nanty Glo.
Otis S. Quinby, Springboro.

WITHDRAWAL.

Executive nomination withdrawn June 1 (legislative day of May 31), 1916.

James Houlihan, of Pittsburgh, Pa., to be appraiser of merchandise in customs collection district No. 12, with headquarters at Pittsburgh, Pa.

HOUSE OF REPRESENTATIVES.

THURSDAY, *June 1, 1916.*

The House met at 11 o'clock a. m.

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

We seek Thee, our Father in heaven, for that inspiration which shall disclose to us the real values of life, that we may put our souls into our work and make every thought, every act count for the best interests of mankind, that we may be strengthened to bear the burdens of life and guided to a happy solution of all its difficult problems, and so honor ourselves by honoring Thee in the best use of the gifts Thou hast bestowed upon us; in His name. Amen.

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

LEAVE TO PRINT.

Mr. ADAMSON. Mr. Speaker, I ask unanimous consent to print in the RECORD an abstract of some remarks made by the Secretary of the Treasury last night at Raleigh, N. C.

The SPEAKER. The gentleman from Georgia asks unanimous consent to extend his remarks in the RECORD by printing an abstract of remarks made by the Secretary of the Treasury at Raleigh, N. C., last night. Is there objection?

Mr. MOORE of Pennsylvania. Mr. Speaker, reserving the right to object, does this address print a full résumé of the performances of the Democratic Party during the last few years?

Mr. ADAMSON. No, sir; that could not be done in a short space.

Mr. MANN. They could not get in all the foolish things that the Democratic Party has done. I will ask the gentleman from Georgia is this abstract furnished by the Secretary, so that it is correct?

Mr. ADAMSON. Yes. It is correct. The leading thoughts are Wisdom and Prosperity.

The SPEAKER. Is there objection?

There was no objection.

QUESTION OF PERSONAL PRIVILEGE.

Mr. GARDNER. Mr. Speaker, I rise to a question of personal privilege.

The SPEAKER. The gentleman will state it.

Mr. GARDNER. In its issue of yesterday, May 31, 1916, The Fatherland, a newspaper published in New York, in commenting on my course in Congress, uses the following expression:

> The Hon. AUGUSTUS GARDNER, in other words, is interested in war contracts, and his loud-mouthed patriotism has a string to it.

On those words I base my question of personal privilege.

The article to which I refer is a somewhat long one, but I shall insert it in full in the RECORD. It relates entirely to certain former holdings of mine in the General Electric Co., a corporation which has received ammunition orders from the allies. The article charges that I was forced to admit at a certain hearing before the Committee on Rules that I owned stock in a munition company. It then misquotes the hearing, which took place on January 19, and, furthermore, it states that I did not sell the stock which I used to hold in the General Electric Co. until January 22, three days after the hearing.

The article in full is as follows:

> The Hon. AUGUSTUS P. GARDNER, Member of the House from Massachusetts and son-in-law of Senator LODGE, has strangely subsided since his memorable attack on the German-Americans and his frequent outbursts of righteous indignation at the policy of the Germans during the war. And the reason is not far to seek. GARDNER has been convicted out of his own mouth of being a patriot of the Col. Sellers stripe, who always shouted "for the old flag and a small appropriation." The Hon. AUGUSTUS GARDNER, in other words, is interested in war contracts, and his loud-mouthed patriotism has a string to it.
>
> The unpalatable truth came out in a committee hearing, the proceedings of which have since been printed, but in such small quantities that it is difficult to secure a copy. The revelations came out in the hearing of the Committee on Rules, charged with the consideration of House resolution No. 7, "to inquire into the organization, membership, expenditures, receipts, and sources thereof of the Navy League, Labor's National Peace Council, the National Security League, and the American Defense Society."
>
> The hearing took place on January 19. Representative TAVENNER, of Illinois, who has made two important speeches exposing the workings of the Navy League and other similar organizations, was one of the witnesses examined. Present also was Representative GARDNER, who was examined and made to admit that he owned stock in a munition company, and that his near relatives continue to be interested in the sale of munitions. On page 12 of the committee proceedings, known as "The Peace Propaganda Investigation," the facts are printed, as follows:
>
> "Mr. TAVENNER. I believe that an investigation would reveal that the Navy League originated at 23 Wall Street, in the office of J. P. Morgan & Co.
>
> "The CHAIRMAN. You mean to say that in your resolution you will charge that Members of Congress and Senators own stock in munition-trafficking concerns?
>
> "Mr. TAVENNER. There was an investigation in 1914–15 by a committee of the United States Senate into lobbies, and two Members of the Senate testified under oath that they owned stock in such concerns; others that their relatives owned stock.
>
> "The CHAIRMAN. You want to broaden this resolution?
>
> "Mr. TAVENNER. Yes, sir. I want to broaden this resolution to take in everything, because I realize that nothing would be gained by the public if we investigated only the unimportant part.
>
> "Mr. CHIPERFIELD. Are those Senators present Members of the Senate?
>
> "Mr. TAVENNER. Yes, sir; they are Senators now.
>
> "Mr. GARDNER. Did you ask what the stock was they owned?
>
> "Mr. TAVENNER. Yes, sir; the stock was that of the General Electric Co. and the United States Steel Corporation. The General Electric Co. had drawn down $2,500,000 worth of contracts from the Navy Department, receiving orders every year, and it is reported in the Standard Corporation Service Reports as having profited largely from the European war, and it is so reported in the Wall Street Journal and in Financial America. They all have it down as a war trader. I think the orders from the United States Government were received during the time Senators held stock. If not, let us ascertain when they bought the stock, how long they held it, and all about it.
>
> "Mr. GARDNER. But the other orders?
>
> "Mr. TAVENNER. From these various countries?
>
> "Mr. GARDNER. Yes.
>
> "Mr. TAVENNER. I would not be surprised if there had been some withdrawals since the European war.
>
> "Mr. GARDNER. The General Electric Co. is in my county. I sold out my stock. [Note—Jan. 22, 1916—I am a trustee of certain trusts containing General Electric shares. My wife is a small beneficiary and my married daughter is a substantial beneficiary.]
>
> "Mr. TAVENNER. Did you sell out your stock before the General Electric received contracts from the Navy Department?
>
> "Mr. GARDNER. I never heard until this minute of any contracts with the Navy Department. That is the trouble; a man makes investments and he can not get into everything, but I got rid of my General Electric Co. stock when I found out that they had contracts to make munitions.
>
> "Mr. TAVENNER. I would like to ask you what relation George Peabody Gardner is to you?
>
> "Mr. GARDNER. He is a first cousin.
>
> "Mr. TAVENNER. He is a director in the General Electric Co., which is a J. P. Morgan concern; is not that correct?
>
> "Mr. GARDNER. Yes.
>
> "Mr. TAVENNER. You have called these matters to the attention of the Committees on Naval Affairs and Military Affairs and asked them to make an inquiry?
>
> "Mr. GARDNER. No; because I thought the proper way to do this would be by a special joint committee of Congress."
>
> One interesting feature of the hearing is the insertion, evidently by GARDNER himself, of the statement that he disposed of his General Electric stock on January 22. The hearing was held on January 19, and his statements, taken in connection with the inserted line, indicate a strange state of mental confusion on the part of the witness. It is furthermore interesting to record that the General Electric Co. has a $69,000,000 contract for war munitions, in which Mr. GARDNER'S wife and his married daughter are "beneficiaries," the latter "substantially." Also that he holds an unnamed quantity of this stock "in trust"—for whom?
>
> It is understood, and openly stated here, that Mr. GARDNER'S father-in-law, Senator LODGE, is also a stockholder in General Electric, and that this can be substantiated by his own testimony in the lobby investigation.
>
> These facts are regarded as throwing a glaring light on the causes operating in determining the Senator from Massachusetts and his son-in-law to become the most belligerent Members of either House in denouncing Germany and advocating measures to have the United States enter the war on the side of the allies.
>
> Early in the winter Mr. GARDNER made his famous speech on this subject which at the time created a sensation and brought Representative COOPER to his feet. It caused him to hurl back the retort that the only fitting place for such a speech was the British House of Commons, and caused Mr. STAFFORD, of Wisconsin, to make a sharp retort, in which he said that no man with a drop of German blood in his veins could sit still without answering him in kind—which he proceeded to do in masterly fashion.
>
> There has been comparatively little comment on the committee hearing. There is such a thing as congressional ethics, which estops Members from repeating committee-room secrets; but the cat is out, and the American people now may know what significance to attach to the patriotic outbursts of certain Members of Congress.

Now, the exact facts with regard to my investments are as follows: To the best of my recollection and belief, ever since the General Electric Co. was organized, until August 30, 1915, I have been either a stockholder or a bondholder in the concern. Its second largest plant is situated in the county in which I reside. Last summer I saw in the papers that the General Electric had received orders to make munitions of war for the allies, and on August 22 I was given definite information that war orders amounting to $30,000,000 had been received. Even before the receipt of this definite information I had begun to dispose of my shares of General Electric in view of the fact that I had made up my mind to fight against the propaganda in favor of prohibiting the export of munitions of war. Directly after my daughter's marriage I put in trust as part of her marriage portion 325 shares of General Electric. The balance of my holdings, amounting to 300 shares, was sold through a stockbroker, the last of my interest in the General Electric Co. being disposed of on August 30, 1915. This statement accounts for the entire amount of my interest, direct or indirect, in the General Electric Co., except for 10 shares which, as a cotrustee, I held for the benefit of my wife, among a collection of miscellaneous securities. My wife's trust arose under an instrument executed by my wife's grandmother many years ago.

The existence of these 10 shares of General Electric Co. had escaped my memory until January 20, 1916, when, in response to my telegraphic inquiry, the day of the hearing, I was informed of the facts. I promptly secured consent from my cotrustee, and these 10 shares were sold. I have sent for my agent's accounts and have examined them carefully, and I find to the best of my knowledge and belief that none of the concerns in which I am interested financially are or have been engaged in the manufacture of munitions of war except as described above in the case of the General Electric.

Now, a word as to the origin of this libel. On January 19 the Committee on Rules held a hearing at which Mr. TAVENNER of Illinois, Mr. HENSLEY of Missouri, and I were each of us heard in behalf of our own resolutions for the investigation of the activity of certain organizations and individuals interested for and against the preparedness propaganda.

Without being questioned at all I voluntarily stated that the General Electric Co. was situated in my county, but that I had sold out the stock which I formerly held. In answer to a question by Mr. TAVENNER, I stated the fact that one of the directors of the General Electric Co. is my first cousin, Mr. George Peabody Gardner. Furthermore, Mr. TAVENNER asserted that the General Electric Co. had received over two and one-half million dollars' worth of contracts from the Navy Department, a circumstance which was entirely new to me. I could not help fearing that the imputation was to the effect that I was secretly a beneficiary of these contracts.

The matter having taken the turn which I have described, it occurred to me after the hearing that I had not mentioned the fact that I was a trustee of General Electric for the benefit of my married daughter. It also occurred to me that it was possible that my wife had an interest in the same corporation, either outright or as a beneficiary of some trust. I telegraphed to Boston and found that my wife was interested to the extent of 10 shares, as I have described. Thereupon, on January 22, when I corrected the official report of the hearing, I inserted a statement to the effect that I was trustee for some shares of General Electric of which my wife and my married daughter were beneficiaries. So that there could be no misunderstanding I wrote to Mr. TAVENNER, calling attention to my insertion.

Since that time I have been pestered with misrepresentations of the whole transaction. Evidently the story was told to Mr. William Jennings Bryan in a distorted form, for he telegraphed to me about it. Furthermore, I remember noticing an allusion to the matter in a Bridgeport, Conn., newspaper. I have also heard some rumor that student debaters were prepared to make the accusation that I was interested in munition contracts. Now comes the Fatherland article. I am forced to the conclusion that some one has been systematically misrepresenting me with malicious intent.

As to these General Electric contracts with the Navy Department, after hearing Mr. TAVENNER's statement I wrote to the Secretary of the Navy, and I found that in a period of eight years the Navy Department had paid out two and a half millions of dollars to the General Electric Co. for electrical apparatus, wiring, and so forth, on competitive bids in the ordinary course of business. Furthermore, about a half million dollars more is due, or about to become due, to the General Electric Co., of which some $400,000 is on the contract for the electric wiring apparatus, and so forth, of the battleship *California*.

The letter of Secretary Daniels is as follows:

NAVY DEPARTMENT,
Washington, January 29, 1916.

MY DEAR MR. GARDNER: Replying to your inquiry of January 24, 1916, relative to the total amount of money spent with the General Electric Co. by the Navy Department, payments have been made to that company during each of the fiscal years beginning with the fiscal year ending June 30, 1908, down to this date, as follows:

1908	$263,676.79
1909	421,218.58
1910	434,380.26
1911	452,107.44
1912	347,669.26
1913	165,912.41
1914	158,884.38
1915	182,008.23
1916 to date	85,946.48
	2,511,803.83

The above amount represents machinery, material, and supplies in the electric line manufactured by the General Electric Co. and purchased for the Naval Service. In each case covered by this statement the article called for was duly advertised according to law and the award was made to this company as the lowest satisfactory bidder under the specifications. The statement includes all purchases under formal contract paid for through the Navy disbursing office. It does not include material purchased and paid for through Navy pay offices, but such amounts are comparatively small.

The above amounts represent material already paid for. There are outstanding contracts and contract balances with the General Electric Co. amounting to $513,019.60 for which payment has not been made. Of this amount $409,450 is covered by the contract for the electrical apparatus for battleship *No. 40* the *California*.

Respectfully,

JOSEPHUS DANIELS,
Secretary of the Navy.

Hon. A. P. GARDNER, M. C.,
House of Representatives, Washington, D. C.

H. SNOWDEN MARSHALL.

Mr. MOON. Mr. Speaker, by direction of the select committee appointed to investigate the charge of an alleged breach of the privileges of the House by the district attorney for the southern district of New York, Mr. H. Snowden Marshall, I ask unanimous consent that the report of that matter be taken up for consideration after the reading of the Journal on June 20, and that the debate shall proceed during not exceeding four hours, one half of the time to be given to the chairman of the committee and the other half to the gentleman from Illinois [Mr. STERLING].

The SPEAKER. The gentleman from Tennessee asks unanimous consent that the H. Snowden Marshall contempt case be taken up on June 20 immediately after the reading of the Journal and the disposition of necessary business on the Speaker's table, and that the debate be confined to four hours, one half to be controlled by himself and the other half by the gentleman from Illinois [Mr. STERLING]. Is there objection?

Mr. MANN. Reserving the right to object, I do not see my colleague [Mr. STERLING] on the floor at this time. Has the gentleman from Tennessee conferred with him in reference to this?

Mr. MOON. Yes. The committee met this morning. The gentleman from Illinois [Mr. STERLING] was present, and that was the agreement we came to. All of the members of the committee were present except the gentleman from Wisconsin [Mr. LENROOT], who I am sure will have no objection.

The SPEAKER. Is there objection?

Mr. BUCHANAN of Illinois. Reserving the right to object, Mr. Speaker, I would like to ask the chairman of the special committee why this delay about considering the report?

Mr. MOON. Well, there are two or three reasons for it. To be candid with the gentleman from Illinois, the committee have delayed up to this time because they thought it probably best that the Committee on the Judiciary, which had another matter affecting the same party, should report; but that has not been done, and we have not desired to delay any longer than was absolutely necessary. Gentlemen are going to the Republican convention and to the Democratic convention, and we would like to have the membership of the House present. We take it that until those two conventions are over we can not do very much business anyway, and we thought it best to fix this date.

Mr. PARKER of New Jersey. Reserving the right to object, I should like to ask the gentleman from Tennessee if he would be satisfied not to put a limitation of time on this matter? I do not think that we know yet what the issues are in that case, or what will be done. They will probably be quite simple, and can be disposed of briefly; but I really do not like a limit of time assigned on so important a matter.

Mr. GARNER. The gentleman understands that under the rules and practice of the House the committee could call it up to-day, and take an hour, and go on to a vote on the matter.

Mr. PARKER of New Jersey. I suppose you could; but I know you would do the fair thing, and I am only asking whether it would not be better to leave it as to time until the matter develops.

Mr. MOON. The report has been on file since April 14. Probably the matter ought to have been disposed of before; but for the reason stated it has been delayed. We think that four hours is ample time for the discussion.

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

Mr. MOON. Yes.

Mr. MANN. My recollection is that the report of the committee is a unanimous report.

Mr. MOON. A unanimous report.

Mr. MANN. Some gentlemen, I think, desire to be heard in opposition to the report.

Mr. MOON. I am sure that the gentleman from Illinois, as well as myself, will be glad to divide the time with anybody who wants to be heard in opposition.

Mr. MANN. I assume that anyone who wishes to be heard in opposition to the report, the gentleman from New Jersey or anyone else, would be entitled to a part of that time.

Mr. MOON. Surely. I think we can give you all you want.

Mr. MOORE of Pennsylvania. Will the gentleman yield?

Mr. MOON. Yes.

Mr. MOORE of Pennsylvania. June 20 is the day fixed in the gentleman's request for unanimous consent?

Mr. MOON. Yes.

Mr. MOORE of Pennsylvania. That is not one of the days on which the Democratic convention will be in session at St. Louis?

Mr. MOON. I think not.

Mr. MOORE of Pennsylvania. I am asking because some of us have been talking over the question of those days when the conventions are in session, the Senate having resolved to adjourn for three days at a time, and it having been suggested that the House may remain in session notwithstanding.

Mr. MOON. I understand it is regarded as certain that both conventions will be over by that date.

Mr. MANN. If the gentleman will permit me, it is but fair to say publicly, especially to this side of the House, that the gentleman from North Carolina [Mr. KITCHIN] and myself have reached an agreement, as far as we are concerned, which I think will be observed by the House, that during next week, the week of the Republican convention, business may proceed in the House, but practically by unanimous consent. What will be done during the week of the Democratic convention I can not say. There has been no agreement reached about that yet. Of course we will do whatever the other side of the House wants to do.

Mr. KITCHIN. That is correct. The gentleman from Illinois has made a correct statement about that.

Mr. MOORE of Pennsylvania. Will the gentleman yield?

Mr. MANN. Yes.

Mr. MOORE of Pennsylvania. I think it is fair to say that some Members on this side who may not have spoken to the gentleman from Illinois have been suggesting the propriety of having a quorum present here during the period of the conventions if the House is to remain in session, the Senate having agreed to adjourn every three days.

Mr. MANN. I hope that no gentleman on this side will ask for that. Of course if gentlemen want to be obstreperous, I know of no way to prevent it.

Mr. MOORE of Pennsylvania. It is not necessarily a matter of being obstreperous, it is a question of individual right. The Chairman of the Committee of the Whole the other day refused to entertain a motion on the ground that he was a Member of the House and had a right to object.

Mr. MANN. Here is the situation. There probably will be a quorum in town next week, but it will be mostly on the Democratic side of the House.

Mr. MOORE of Pennsylvania. But that will be reversed during the Democratic convention.

Mr. MANN. This side of the House, in order that Republican Members may attend the convention who wish to go, wish to have some kind of an understanding. No one can prevent a Member over here from asking for a quorum, but probably it would prevent a good many Republicans going to the convention, as they desire, and would probably make it very unpleasant for those who did go. It is a concession from the other side of the House, and I think it is to our advantage to observe it.

Mr. MOORE of Pennsylvania. There has been no unanimous-consent request that the House shall remain in session?

Mr. MANN. There can be no unanimous request made as to that.

Mr. MOORE of Pennsylvania. Very well; I have made the statement as to what some Members on this side think.

Mr. BUCHANAN of Illinois. Mr. Speaker, in explanation of my reserving the right to object, and also my inquiry of the chairman of the committee, I will say that I do not understand that this has anything to do with the proceedings before the Judiciary Committee of which the gentleman from Tennessee speaks. I have been studying the rights and authority of investigating committees of the House of Representatives in impeachment cases, and I find that they are clothed with the same powers and prerogatives as a trial court; in fact, in such cases, where these powers were at all questioned, the House very authoritatively and properly upheld and maintained them. I do not believe a trial court would delay action where a contempt of its orders had been committed until after the termination of the proceedings in which it was sitting; on the other hand, I claim that it is the custom of our courts to immediately take steps against those guilty of contempt. Neither would any court, in my opinion, permit the Bar Association of New York, or other pernicious influences, to delay or obstruct its action against the party guilty of that contempt, as has been done in this case. I have read the proceedings before the special committee and the statement of the party held in contempt, and the whole statement on his part was an attack on the subcommittee and myself. There was nothing said as to why he was not in contempt in the House. In fact, he reiterated a statement which was a malicious, libelous, unjustifiable statement against the subcommittee. Therefore it seems a question whether the House wants to protect itself and its dignity and standing of Members, especially those authorized unanimously by the House to act as investigators, as Members of old did, or whether they are going to dillydally along with a crooked Federal official who has only reiterated his charges against it, that are libelous and contemptible. For my part, I have no patience with delay in matters of that sort. Of course, we know the power that is behind this fellow. I know that the administration is behind him and encourages him in it.

Mr. BORLAND. Mr. Speaker, the gentleman is not reserving his right to object. This is debate. I ask for the regular order.

Mr. BUCHANAN of Illinois. Well, Mr. Speaker, I shall object to the proposition of the gentleman from Tennessee, and will state to the House now that I expect to call up this matter myself in another way.

Mr. MOON. Mr. Speaker, I want to make a suggestion to the gentleman. The gentleman from Illinois is correct that courts sometimes take up contempt proceedings and dispose of them before the trial is over, but in the best-regulated courts that is not done, because they do not want it to affect the trial. This has nothing to do with the gentleman's impeachment matter. He may be guilty or not guilty, it does not affect the guilt of Mr. Marshall in this proceeding.

Mr. BUCHANAN of Illinois. That is exactly my position.

Mr. MOON. I will say that this delay has not been caused except for the reasons I have stated. Under the order made in the House the matter will come up on the motion of the chairman of the committee. I simply made the request to bring it up at the hour designated and divide the time. If the gentleman from Illinois objects, this being a question of the highest privilege, I will call it up on the 20th, and at the end of an hour I will move the previous question unless I want to withhold it for somebody to speak. I see no advantage to the gentleman in his objection.

Mr. BUCHANAN of Illinois. Mr. Speaker, I will withdraw my objection.

The SPEAKER. Is there objection to the request of the gentleman from Tennessee? [After a pause.] The Chair hears none, and it is so ordered, and the order is that on the 20th of June, immediately after the reading of the Journal and the disposition of matters on the Speaker's table, the contempt case against H. Snowden Marshall will be taken up and debated for not more than four hours, one half of the time to be controlled by the gentleman from Tennessee [Mr. MOON] and the other half by the gentleman from Illinois [Mr. STERLING].

NAVAL APPROPRIATION BILL.

The SPEAKER. The House automatically resolves itself into Committee of the Whole House on the state of the Union for the further consideration of House bill 15947, the naval appropriation bill, with Mr. FITZGERALD in the chair.

Mr. PADGETT. Mr. Chairman, I offer the following amendments to correct the amounts of the appropriations incident to the amendments that were agreed to yesterday, which I send to the desk and ask to have read.

The Clerk read as follows:

Page 6, line 19, strike out "$862,000" and insert "$882,940."

The CHAIRMAN. The question is on agreeing to the amendment.

The amendment was agreed to.

The Clerk read as follows:

Page 8, line 24, strike out "$174,600" and insert "$184,477."

The CHAIRMAN. The question is on agreeing to the amendment.

The amendment was agreed to.

The Clerk read as follows:

Page 36, line 22, after the comma after the word "men" insert the following: "And enlisted men of the Hospital Corps, $857,405.75."

The CHAIRMAN. The question is on agreeing to the amendment.

Mr. BUTLER. Mr. Chairman, that figure is changed by reason of the action of the committee yesterday?

Mr. PADGETT. Yes.

Mr. MANN. Let us have the amendment again reported.

The Clerk again reported the amendment.

Mr. MANN. That should be "pay for enlisted men," should it not?

Mr. PADGETT. Yes; insert the words "and pay of" before the words "enlisted men." The word "pay" is in the preceding part, but it would be better to insert it there.

The CHAIRMAN. Without objection, the amendment will be so modified.

There was no objection.

The CHAIRMAN. The question is on agreeing to the amendment.

The amendment was agreed to.

The Clerk read as follows:

Page 36, line 23, strike out "$27,563,988.50" and insert in lieu thereof "$28,421,394.25."

The CHAIRMAN. The question is on agreeing to the amendment.

The amendment was agreed to.

The Clerk read as follows:

Page 67, line 9, strike out "$8,848,933.85" and insert "$9,087,823.85."

The CHAIRMAN. The question is on agreeing to the amendment.

The amendment was agreed to.

The Clerk read as follows:

Page 100, line 4, strike out "$30,707,000" and insert "$33,896,060."

Mr. PADGETT. Mr. Chairman, just at this point I wish to explain that that is on account of the increase of the 30 submarines in armor and armament. Yesterday we inserted for the hull and machinery, but overlooked the armor and armament.

Mr. ROBERTS of Massachusetts. I would like to ask the chairman how he arrived at that figure?

Mr. PADGETT. It is $106,000 for each submarine.

Mr. ROBERTS of Massachusetts. I had in mind other figures given by the clerk of the committee, which included the armor and armament of other vessels besides submarines.

Mr. PADGETT. Yes. This is the amount given by the department.

Mr. ROBERTS of Massachusetts. Submarines alone?

Mr. PADGETT. Yes.

The CHAIRMAN. The question is on agreeing to the amendment.

The amendment was agreed to.

The Clerk read as follows:

Page 100, line 9, strike out "$104,073,378" and insert "$107,262,438."

Mr. PADGETT. Mr. Chairman, yesterday morning the printed figures "$98,859,378" were changed to one hundred and four million and odd dollars, but on account of this addition of three million and odd dollars by the preceding amendment it is necessary to change that figure.

The CHAIRMAN. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. PADGETT. Mr. Chairman, on page 98 of the printed bill, authorizing 20 submarines, there is a provision that 8 of the submarines shall be constructed on the Pacific coast. The Committee of the Whole House increased the total number of submarines to 50. Should that stand, I think it would be equitable to increase the number for the Pacific coast; and I move, in line 23, on page 98, to strike out the word "eight" and to substitute the word "fifteen."

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Amend, on page 98, in line 23, by striking out the word "eight" and inserting the word "fifteen."

The CHAIRMAN. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. PADGETT. Mr. Chairman, I offer the following amendment, which I send to the desk and ask to have read.

The Clerk read as follows:

At the bottom of page 8 add the following:

"*Provided*, That any person who may hereafter enlist in the Navy for the first time shall, if he so elects, receive discharge therefrom without cost to himself during the month of June or December, respectively, following the completion of one year's service at sea. An honorable discharge may be granted under this provision; but when so granted, shall not entitle the holder, in case of reenlistment, to the benefits of an honorable discharge granted upon completion of an enlistment."

Mr. PADGETT. Mr. Chairman, the gentleman from Connecticut [Mr. HILL] desired to offer an amendment, and I will yield to him to offer that amendment at this point, and let the amendment I have just offered be considered pending.

Mr. HILL. Mr. Chairman, I will offer it as an amendment to the amendment. I think that would be entirely proper, and do so.

The CHAIRMAN. The Clerk will report the amendment to the amendment.

The Clerk read as follows:

Amend the amendment by adding the following:

"And in addition thereto, and as an inducement to the prompt recruiting of men heretofore authorized by law and of such additional force as may be authorized by this act, the sum of $3,476,200, to be at the disposal of the Bureau of Navigation during the continuance of the war in Europe for use as bounties for enlistment at the rate of not to exceed $100 for each man enlisted during such period."

Mr. PADGETT. Mr. Chairman, on that I reserve the point of order.

Mr. MOORE of Pennsylvania. Mr. Chairman, a parliamentary inquiry.

Mr. HILL. Mr. Chairman, I ask unanimous consent that I may be allowed to address the committee for 10 minutes.

The CHAIRMAN. The gentleman from Connecticut asks unanimous consent to address the committee for 10 minutes. Is there objection?

Mr. MOORE of Pennsylvania. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman can not take another Member from the floor by a parliamentary inquiry.

Mr. MOORE of Pennsylvania. Mr. Chairman, I respectfully submit that I addressed the Chair and the Chair recognized me before he did the gentleman from Connecticut.

Mr. SHERLEY. Mr. Chairman, the gentleman has no right to recognition.

Mr. MOORE of Pennsylvania. To make a parliamentary inquiry?

Mr. SHERLEY. No. The gentleman from Pennsylvania can not take the gentleman from Connecticut off the floor by a parliamentary inquiry.

Mr. MOORE of Pennsylvania. Mr. Chairman, I submit I addressed the Chair and the Chair recognized me.

The CHAIRMAN. The Chair did not recognize the gentleman. Is there objection to the request of the gentleman from Connecticut that he may address the committee for 10 minutes? [After a pause.] The Chair hears none.

Mr. HILL. Mr. Chairman, I have full confidence in the ability of the Chair, with his parliamentary knowledge, to rule this amendment in order.

The CHAIRMAN. That is to be determined later.

Mr. HILL. I have full confidence, too, in the chairman of this committee—in his wisdom, in his knowledge, and his conservatism—and I shall vote for every good feature of this bill. I have an equal confidence in the ranking member of the minority, and I shall vote for every proposition that he submits; and, gentlemen, I shall vote, if I have the opportunity, for every increase to this bill as it comes from the Senate. I am in favor of the largest Navy in the world. I think the chairman of the committee was mistaken in the statement that he made a day or two ago that he was making this bill for peace. I think that there is an emergency which requires consideration at this time. I have a very distinct recollection of a few years ago when I went to a meeting of the insurgents over here in the rooms which were formerly occupied by the Congressional Library, and I carried a telegram from Marcellus Hartley, of Schuyler, Hartley & Graham, which he asked me to read in the insurgent meeting.

The insurgents consisted of a majority of the Democratic side and a minority of the Republican side, and they controlled the House of Representatives and were determined to force war with Spain. I went into that meeting and read that telegram stating that there was not one pound of smokeless powder in the United States, and that it was necessary to have it in order to load small-arms cartridges, and that there was a consignment of 25 tons on the ocean which should arrive in the port of New York within three days and asking that meeting of insurgents to defer their demand upon President McKinley for intervention until that powder could be landed safely in New York Harbor and escape Spanish cruisers. I am keeping that telegram now among my papers at home as an evidence of unpreparedness in the United States.

Now, a few days ago the gentleman from Illinois [Mr. CANNON] struck the weak spot of this bill, and that was the personnel. What is it—what are the present conditions? A few weeks ago I came from a bed of sickness to Washington to vote to sustain the President of the United States in his ultimatum to Germany, and when I got here I began to inquire about our condition and whether we were ready to back up the President of the United States by something more than votes. I found that of a boasted Navy of 250 or more ships that 70 of them were either on paper or on the stocks in process of construction. I found that in addition to that nearly 70 more were unmanned and unequipped, including craft of all kinds and character. I asked what was necessary in order to equip them and put them in commission ready for business if the President of the United States called upon us to do business, and I found that instead of 10,000 additional men being required to do it, 28,000 were necessary to put the ships that we have now, tied up to the docks, or anchored in midstream, back into working order ready for business.

And I made up my mind that when the time came I would try to do something to get this country prepared immediately, not three or four or five years from now, but to use what facilities we now have to maintain the honor and dignity of my country.

Now, what have we done? We passed an Army bill providing for an army of 175,000 men. We had a most eloquent speech from one gentleman opposing a Regular Army of 250,000 men, for which I voted, on the ground that it was buncombe, that the men could not be procured and that we were deceiving the American people. Well, I have been inquiring about that, gentlemen. Last winter we passed an authorization for 20,000 men to bring the Army up to the standard already provided by law and I found that the recruiting that we have had since has brought an increased army strength of 1,000 men, about, so that on the basis on which we are now recruiting it will take three years and four months to get the Army brought up to the old standard before one man is counted in the new Army bill, and if this new Army bill provides for a minimum of 200,000 men, on the basis of present recruiting it would take 41 years to get them. That is not preparation; that is criminal negligence. [Applause on the Republican side.]

Now, let me apply that thing to the Navy. According to the best authority I can get we are somewhere from 25,000 to 34,000 short of the men necessary to put our existing Navy in commission. You have a choice of leaving it where it is, wholly unprepared, or when the emergency arises of having 34,000 men, one-half of your force, wholly unprepared, undrilled, untrained.

Mr. CALLAWAY. Will the gentleman yield?

Mr. HILL. I will if you give me some time. I can not yield unless I have more time.

It will take, on the same basis of recruiting which is now occurring in the Army, four years and four months to recruit those men whom the chairman of the committee says are necessary for present purposes in time of peace; and when he says that he refers to the manning not of the Navy as such but only to the ships in actual active service.

Now, why should we not offer additional inducements? An amendment passed this House yesterday providing for a 20 per cent bonus to build ships within a record time. That applies to $180,000,000 worth of construction for the expediting of completion of the ships, guns, and so forth, authorized by this bill. That means $36,000,000 under the terms of this bill, possible as a bonus for building ships and making guns and equipping them. I want to give a bonus to the man behind the gun, for he is the man whom we rely on to protect this Nation. [Applause.]

Now, the expenditure under this amendment is not compulsory. I am willing to trust the administration to use it wisely and discreetly. I believe they are just as patriotic as I am or any other Member of either side of this House. I want to authorize this bonus so that the Government, should any necessity arise at any time during the continuance of this war, can get the men and put them upon the ships and drill and train them and keep those ships cruising.

"Oh," but says somebody, "we do not need it." We do. I will tell you what I would do, gentlemen. I would immediately establish a battleship mail-delivery line if I had my way. I am tired, everlastingly tired, of picking up the morning paper and finding that the letters of business men in the United States, sent from a neutral port to a neutral port, are taken into a belligerent port and held up for three, four, and five months. [Applause.] And I would put those battleships into that service, either as mail carriers or convoys to neutral ships carrying our mails under contract with our Government. Why, we took six out of commission week before last in order to get men enough to supply crews for two newer and larger ones. I would man them and start them carrying letters from New York to Norway, Sweden, Denmark, and Holland, and if any belligerent demanded a different delivery of that mail from what we saw fit to give, and attempted to enforce that demand, I would deliver those letters out of the mouth of a 12-inch gun. I do not believe it is consistent or dignified for this great Government of ours to deliberately sit down here and say we have no power in the matter. If, as I believe, absolutely uncontested, acknowledged, international law is being violated every day, it is high time for this Nation not only to assert its rights but to maintain them at any cost.

The CHAIRMAN. The time of the gentleman from Connecticut has expired.

Mr. HILL. Mr. Chairman, I am sorry. I would be glad to make a few further appropriate comments on the article of Lord Cromer in the press of yesterday from which I quote as follows:

It is well that President Wilson should fully realize the fact that the meaningless and misleading phrase invented in Berlin about freedom of seas is generally regarded in this country as the destruction of naval supremacy of Great Britain.

If we emerge victoriously from the present contest, the victory will be mainly due to the British Navy. It is inconceivable that any responsible British Government would listen to or the nation be prepared to accept any proposals having for their object the diminution of the relative naval strength of this country.

The CHAIRMAN. The gentleman from Connecticut asks unanimous consent to extend his remarks in the RECORD. Is there objection? [After a pause.] The Chair hears none.

Mr. HILL. Mr. Chairman, I would like to be heard just a moment on the point of order.

My understanding of the amendment of the chairman of the committee is that it adds certain discretionary provisions to the last paragraph on page 8. That paragraph reads:

Expenses of recruiting for the naval service: Rent of rendezvous and expenses of maintaining the same; advertising for obtaining men and apprentice seamen; actual and necessary expenses in lieu of mileage to officers on duty with traveling recruiting parties, $174,670.

My proposition is, Mr. Chairman, to increase the amount of that appropriation for the specific purposes named herein; in other words, instead of $174,670 with which to obtain seamen, to add a provision providing that it shall be discretionary with the Bureau of Navigation to pay a bonus for enlistments while the war continues. It seems to me that it is strictly in accord with the purpose, the intent, and the provisions of the bill, and that it is wise legislation at this time.

Mr. PADGETT. Mr. Chairman, I insist upon my point of order.

Mr. MANN. Mr. Chairman, may I ask the gentleman what the point of order is?

Mr. PADGETT. The point of order is that it is not germane to the provisions to offer a bounty. I do not think it is legislation germane to the bill.

Mr. MANN. It is germane to the bill; there is no question about that part of it. It may be subject to the point of order that it is not germane to the amendment. I would like to make this suggestion to the gentleman from Tennessee. There are a great many provisions in this bill which are subject to a point of order under the ordinary rules of the House. The majority has brought in a rule making all of those provisions in order. In reasonable fairness the gentleman ought to be willing to let some one on the minority side offer a proposition fully germane to the bill, even if it be subject to a point of order.

Having put so many provisions in, and made them in order under a special rule, the majority ought to be fair, notwithstanding that on a thing of this sort I do not know whether the House wants it or not. I think it ought to be submitted to a vote of the committee.

Mr. PADGETT. I do not want to take any technical advantage. I have been very liberal, I think, in dealing with these matters, but the question of offering a bounty would entirely destroy our enlistments, because no man would enlist after that unless you gave him the bounty. If in time of peace you provide for a bounty, immediately it will go abroad throughout the country that there is a bounty to be had if they will hold out, and nobody would ever enlist at all, and we are having good enlistments, and I see no occasion for it. And the point of order would——

Mr. MANN. The gentleman himself has just offered an amendment subject to a point, to which no point of order was made, but it is not to increase enlistments.

Mr. PADGETT. As we have been dealing liberally, I will withdraw the point of order and let the House determine the matter.

Mr. HILL. Will the gentleman pardon me for just a moment? I want to call the attention of the House to a mathematical proposition. After a careful calculation I think the proposition which the gentleman submits in shortening the enlistment from four years to three will cost the country more than if my amendment were adopted.

Mr. PADGETT. You will notice that this amendment does not give the $100 man the benefit.

Mr. HILL. I understand the ultimate effect of it would be to cost a good deal more.

Mr. PADGETT. It does not cost anything at all.

The CHAIRMAN. The question is on agreeing to the amendment offered by the gentleman from Connecticut [Mr. HILL].

Mr. PADGETT. I want to say, Mr. Chairman, that this bill has authorized something like a little over 10,000 men. The Navy to-day is fully enlisted and has a waiting list. It has not had any trouble to get enlistments so far.

Mr. HILL. Mr. Chairman, pardon me, does he not recognize the fact that the war conditions, where men are getting war wages, stops enlistments, and will during the continuance of the war in Europe?

Mr. PADGETT. It has not so far, and we find that for a year or more the enlistments have continued. We have a full

enlistment. In fact, day before yesterday the Secretary said to me that he was full up, and would have to stop the enlistments for a while unless this bill became a law, so that he would have an outlet for the enlistments.

And the proposition is plain that if we put on here a provision to give a bonus of $100 for enlistments, not another man will enlist unless he gets that $100. It would be a bad policy. It would destroy our enlistments, and all over the land the word would go, "Just wait and you will get $100 for your enlistment." I hope the amendment will be voted down.

The CHAIRMAN. The question is on agreeing to the amendment of the gentleman from Connecticut [Mr. HILL] to the amendment of the gentleman from Tennessee [Mr. PADGETT].

The question was taken, and the amendment to the amendment was rejected.

The CHAIRMAN. The question is on agreeing to the amendment offered by the gentleman from Tennessee [Mr. PADGETT].

Mr. ROBERTS of Massachusetts. Mr. Chairman, I desire to be heard for a moment on the amendment offered by the gentleman from Tennessee [Mr. PADGETT].

I do not know that I am opposed to it, but I would like to ask the chairman of the committee where this amendment came from? It has never been brought up in committee, and, so far as I know, it has never been heard of in committee. What is its real purpose?

Mr. PADGETT. I will say to the gentleman that several days ago the gentleman from Connecticut [Mr. HILL] talked to me about the amendment which he has just offered and which has been voted down. We discussed the matter of attempting to give some stimulus to enlistments. I told him that I would think over the matter very carefully and earnestly, with a view to trying to reach what I thought would be a correct solution of the matter.

The more I thought of it the more I was convinced that it would be improper to offer a bounty; and then I went up and talked with Admiral Blue and with the Secretary of the Navy. We three discussed the amendment submitted by the gentleman from Connecticut, and all of us agreed that it would in effect destroy our enlistments, and out of that suggestion Admiral Blue prepared the amendment which I have offered, giving a one-year enlistment and allowing the privilege to a man at the end of one year to be discharged honorably, but without any charge against him, and without getting any benefit. If he remains longer than a year, why he continues for the full period.

Mr. ROBERTS of Massachusetts. Mr. Chairman, will the gentleman yield? I desire information only on the proposition.

Mr. PADGETT. Yes.

Mr. ROBERTS of Massachusetts. If a man enlists, he enlists for the full period of four years; but under this provision, if it becomes a law, the man who has enlisted for the first time, after one year's service may, in the following June or December—not between those periods, but in those specific months—be discharged on his own application without paying anything?

Mr. PADGETT. He may ask for a discharge at the expiration of one year from the time of his enlistment, to be discharged the following June or December. Those two months were selected for the reason that at that time it would cause less inconvenience. The fleets in those months are less active than in any other months in the year, and it would cause less inconvenience for the changes to take place in those two months.

Mr. ROBERTS of Massachusetts. Now, this is not intended in any way to take the place of the departmental regulation governing discharge by purchase?

Mr. PADGETT. No, sir; it is not; nor the furlough provision that we have included in this bill.

Mr. ROBERTS of Massachusetts. And under this provision the man enlisting for the first time will be given an outfit costing $60, and 12 months after he receives that outfit he can leave the service without reimbursing the Government a penny?

Mr. PADGETT. That is it.

Mr. ROBERTS of Massachusetts. Does he get transportation like other men who are discharged from the service?

Mr. PADGETT. No, sir; I understand not.

Mr. ROBERTS of Massachusetts. Why should he not? There is nothing here to prevent it, as I read the amendment of the gentleman. I think, Mr. Chairman, under the terms of this amendment, if he enlisted at Boston and lived in the eastern part of the country and was discharged at San Francisco, he would have the transportation back to the point of enlistment.

Mr. PADGETT. I suppose he would receive transportation. I do not see anything that would prevent his receiving his transportation back to the point of enlistment. The advantage of the amendment would be that he would get the benefit, but instead of tying himself for four years the young man would have the inducement of knowing that he would get out at the end of a year in an honorable way without any penalties; and then the department believes that if they enlist and get into the service and serve for one year, and become accustomed to it, a very large number of them will continue in the service, and that benefit is given to them in lieu of the proposal for the bounty.

Mr. ROBERTS of Massachusetts. Really, under the working of this amendment, if it becomes a law, would it not be possible for some men to be held 17 months before they can get their discharge under the terms of this act?

Mr. PADGETT. It would run from 1 year to 18 months.

Mr. ROBERTS of Massachusetts. That would depend, of course, upon the time a man enlisted?

Mr. PADGETT. Absolutely so.

Mr. ROBERTS of Massachusetts. So that if a man enlisted in June or the latter part of May, a year from that time he could ask to be discharged in the following month of June, and he would be in only 13 months, and the man who enlisted in January would have to serve practically 18 months before he could get out?

Mr. PADGETT. That would be the way.

Mr. ROBERTS of Massachusetts. That does not seem to me to be fair.

Mr. PADGETT. The law determines the time of his discharge, but not the time at which he shall enlist.

Mr. ROBERTS of Massachusetts. How are you to help your enlistments if you give him the notice that they may wait a certain number of months and get a more favorable time to enlist?

The CHAIRMAN. The time of the gentleman from Tennessee has expired.

Mr. ROBERTS of Massachusetts. Mr. Chairman, I ask unanimous consent that the gentleman's time be increased five minutes. We should have an understanding of this radical legislative proposition.

The CHAIRMAN. Is there objection to the gentleman's request?

There was no objection.

Mr. ROBERTS of Massachusetts. I will say that if there should be a change of law covering enlistments in the departmental regulation, I would be in favor of it.

Mr. PADGETT. Under this provision they can get out without buying their way out.

Mr. ROBERTS of Massachusetts. I understand.

Mr. PADGETT. Then there is another provision in the bill, going along with it, that allows a man to be furloughed and go out of active service into the reserve, and subject to be furloughed without pay in the reserve.

Mr. STAFFORD. Where is that in the bill? I remember reading it, but I can not find it at this minute.

Mr. ROBERTS of Massachusetts. I do not know that I will object to or oppose this provision, but I have grave misgivings about its results.

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

Mr. PADGETT. Yes.

Mr. McKENZIE. I simply desire to ask the chairman whether, under his amendment, a man would pass out into the reserve at the end of the year?

Mr. PADGETT. Not under this amendment. He would under another provision in the bill. If he did not choose to go out under this provision at the end of the year, later under the other provision he could go out into the reserve.

Mr. McKENZIE. Under your amendment we would lose the man's services.

Mr. PADGETT. At the end of 1 year, or 18 months; whatever that period was.

Mr. McKENZIE. One other question. Is it possible for a man to become an efficient seaman in one year's service?

Mr. PADGETT. For many, even most of the ratings, yes; for some of the higher ratings, no.

Mr. McKENZIE. Is it not possible that by the adoption of your amendment we will demoralize the personnel of the Navy rather than improve it?

Mr. PADGETT. I think not. I think if a young man, when he has been in the service a year, is dissatisfied with the service to the extent that he wants to get out of it, the service is not hurt by letting him get out. Many of them when they get in there and get accustomed to it and get into the drill will go right along and continue the four years, and reenlist later.

Mr. BUTLER. Mr. Chairman, the gentleman from Michigan [Mr. CRAMTON] called my attention to a feature of this amendment that had not at first impressed me. It is only intended for the man who enlists for one year. That is, at the completion of

one year he may, at the following June or the following December, resign.

Mr. PADGETT. No; that is not an accurate statement of it. At the end of the year he can ask for his discharge, and the discharge will take place in the following June or December after the completion of his year. But at the end of the year he must make known his desire to take advantage of the relief.

Mr. BUTLER. Does the gentleman think the amendment is broad enough to cover his view or interpretation of it?

Mr. PADGETT. Yes.

Mr. BUTLER. Suppose a sailor man serves two years. He can not take advantage of it then?

Mr. PADGETT. No. Then he comes under the other law.

Mr. BUTLER. I understand. Then, after he serves one year, he may, if this amendment is adopted, elect to retire from the service, but he will not receive his discharge——

Mr. PADGETT. He would get his discharge in the following June or the following December.

Mr. BUTLER. Very well. But then he will not have to serve 18 months.

Mr. PADGETT. It will depend on when he enlisted.

Mr. BUTLER. Very well. Now, there is where I am confused. If a sailor should enlist in the month of January, 1917, his term would expire in January, 1918.

Mr. PADGETT. At that time he would make known his wish to retire under this provision and would retire in the following June.

Mr. BUTLER. Yes; but he still would continue his service in the Navy?

Mr. PADGETT. Yes; until the following June.

The CHAIRMAN. The time of the gentleman from Tennessee has expired.

Mr. PADGETT. I ask for five minutes more.

The CHAIRMAN. The gentleman from Tennessee asks unanimous consent that his time be extended five minutes. Is there objection? [After a pause.] The Chair hears none. The gentleman from Tennessee [Mr. PADGETT] is recognized for five minutes.

Mr. MOORE of Pennsylvania. Mr. Chairman, reserving the right to object——

The CHAIRMAN. It is too late.

Mr. MOORE of Pennsylvania. Reserving the right to object——

The CHAIRMAN. The gentleman from Tennessee has been recognized.

Mr. MOORE of Pennsylvania. The Chair stated the question, and the Chair did not hear me.

The CHAIRMAN. That may be the Chair's misfortune.

Mr. MOORE of Pennsylvania. I reserved the right to object to the request.

The CHAIRMAN. The gentleman is recognized for five minutes.

Mr. MOORE of Pennsylvania. Will the gentleman from Tennessee yield to me?

Mr. PADGETT. When I have yielded to my colleague on the committee [Mr. BUTLER].

Mr. MOORE of Pennsylvania. The committee is occupying the time. I would like to know when the committee does get through.

Mr. BUTLER. I will forego the privilege.

The CHAIRMAN. The gentleman from Tennessee [Mr. PADGETT] has the floor.

Mr. BUTLER. My colleague [Mr. MOORE of Pennsylvania] may have the opportunity of asking the question. I only want information, and I do not want to be criticized for it.

The CHAIRMAN. The gentleman from Tennessee has the floor, not the gentleman from Pennsylvania.

Mr. PADGETT. I have offered to yield to the gentleman from Pennsylvania in every way that I could.

Mr. BUTLER. I am not criticizing the gentleman from Tennessee. I was endeavoring to get some information that I thought would be useful to me in voting upon this, but the question is raised whether the Naval Affairs Committee propose to occupy all the time; therefore I will forego my privilege.

Mr. HILL. Mr. Chairman——

Mr. PADGETT. I yield to the gentleman from Connecticut.

Mr. HILL. I would like to understand this amendment If I understand it correctly it cuts out the bounty for the second enlistment, from these men who retire——

Mr. PADGETT. What we call continuous-service pay.

Mr. HILL. The three months' bonus that is given if a man reenlists?

Mr. PADGETT. That is correct.

Mr. HILL. I think the exigencies would require that the man be paid the bonus to begin with. Now, what I want to know is this: Does it cut out also the extra pay for the second enlistment?

Mr. PADGETT. He would not get that unless he served the four years.

Mr. HILL. Is there anything in the amendment that prevents his drawing $5 a month extra if he reenlists?

Mr. PADGETT. Yes; because he would not be counted as having enlisted for a full period. He does not get it. It says here—

> But when so granted shall not entitle the holder in case of reenlistment to the benefit of an honorable discharge granted upon completion of enlistment.

Mr. HILL. Does that specifically cover anything more than the three months' extra pay for reenlistment?

Mr. PADGETT. Yes; it covers all the benefits of reenlistment.

Mr. STAFFORD. Mr. Chairman, this amendment is a departure from the policy persistently followed by the Military Affairs Committee in their method of enlistment for the Army. I wish to inquire whether the Secretary of the Navy and the Chief of the Bureau of Navigation and the gentleman from Tennessee considered the advisability of having these men who elect to be relieved of service within one year continue as reserves for the balance of their enlistment?

Mr. PADGETT. We have a provision in this bill taking care of that.

Mr. STAFFORD. That does not take care of this identical condition. That provision is found on page 40; that only secures a man's release at the option and discretion of the Secretary of the Navy. I can conceive of many men wishing to enlist in the Navy who will be guaranteed their release under a term of one year and be willing to be a member of the reserve force during the remaining three years. Why should we, under the provision that the gentleman submits, allow a man to be mandatorially discharged after service of one year, with full training, full equipment, transportation paid to his home, without having the Government control his activities in case of an emergency during the remainder of his original enlisted period?

Mr. PADGETT. This provision and the one in the bill takes care of both situations. This provision authorizes enlistment, and at the end of the first year of his first enlistment he may be discharged, and he is completely separated from the service if he does not want to remain in the service. Under the other provision he may during the first year, or after the first year, retire and go into the reserve and remain in the service, so that both situations are cared for.

Mr. STAFFORD. They are not cared for; why should not the Government have control of his activities after he has served one year?

The CHAIRMAN. The time of the gentleman from Tennessee has expired.

Mr. STAFFORD. I ask unanimous consent that the time of the gentleman from Tennessee be extended three minutes.

The CHAIRMAN. The gentleman from Wisconsin asks unanimous consent that the time of the gentleman from Tennessee be extended three minutes. Is there objection?

Mr. MOORE of Pennsylvania. Reserving the right to object, I would like to ask the gentleman from Tennessee if this request is granted, how many more amendments the committee has to offer, five days having been used for the committee and only one day remaining for the rest of the Members of the House?

Mr. PADGETT. I have only two or three amendments to offer, and that is all. I do not know whether other members of the committee may have any.

Mr. MOORE of Pennsylvania. Still reserving the right to object, I would like to know how many amendments the minority of the committee has, since only the committee has offered any amendments?

Mr. ROBERTS of Massachusetts. The minority has no more amendments to offer.

Mr. MOORE of Pennsylvania. Reserving the right to object, I would like to ask the chairman of the committee, the gentleman from Tennessee, whether the other 425 Members of the House, under the rule and the agreement and the peculiar conditions prevailing, will have an opportunity to present amendments at all?

Mr. PADGETT. Yes; I think so. I hope to get through in a very short time.

The CHAIRMAN. The Chair will state that hereafter gentlemen can not indulge in debate under the guise of reserving the right to object to unanimous-consent requests. The Chair will enforce the rule.

Mr. STAFFORD. Does the gentleman believe that it would be a deterrent to enlistment if the amendment proposed by him

had the further provision that he should become a portion of the reserve force in case he elect to be discharged?

Mr. PADGETT. I think it would destroy the purpose of the amendment. This is to afford an opportunity for a man to get out after one year. We have a provision that if he wants to stay in, or if he wants to go into the reserve, he can go in during the first year or after the first year. This is to take care of a man who does not want to go into the reserve. It is to get trained men, believing that after they are once familiar with the service they will continue during the full period.

Mr. STAFFORD. Are not discharges and going into the reserve under the furlough feature contingent on the exercise of the discretion of the Secretary of the Navy?

Mr. PADGETT. Certainly; and it ought to be. You would not want, if the emergency should arise, to have every one of them to say, "I want to go into the reserve."

Mr. STAFFORD. I think this should have a contingent provision that they should go into the reserves.

Mr. PADGETT. I think not.

Mr. ROBERTS of Massachusetts. Will the gentleman from Tennessee permit a question?

Mr. PADGETT. Certainly.

Mr. ROBERTS of Massachusetts. If I understand the purport of the gentleman's amendment, after one year a man can leave the Navy absolutely on the following June or December, irrespective of whether we are in a state of peace or war. Is that correct?

Mr. PADGETT. Yes.

Mr. ROBERTS of Massachusetts. As I read the amendment, he has an absolute right by giving notice to be released from the Navy with an honorable discharge in June or December following his year of service?

Mr. PADGETT. Yes.

Mr. ROBERTS of Massachusetts. He can be discharged whether we are at peace or at war?

Mr. PADGETT. I am going to modify my amendment by putting in "in time of peace."

Mr. ROBERTS of Massachusetts. That will correct it.

Mr. PADGETT. Mr. Chairman, I ask unanimous consent to modify my amendment, in the second line of the amendment, after the word "shall," and before the words "if he so elects," to insert the words "in time of peace," so that it will read:

Provided, That any person who shall hereafter enlist in the Navy for the first time shall, in time of peace, if he so elects—

And so forth.

The CHAIRMAN. Is there objection to the modification as stated by the gentleman from Tennessee?

There was no objection.

Mr. CRAMTON. Will the gentleman from Tennessee yield?

Mr. PADGETT. Yes.

Mr. CRAMTON. As I understand it, if this amendment goes into law, a man who enlists for a four-year period can, at the end of the first year, make application for his discharge on the following June or December and get it without expense.

Mr. PADGETT. Yes.

Mr. CRAMTON. If he served his country two years or three years, he can not at the end of that two or three years get his discharge except by paying for it.

Mr. PADGETT. He can do that and go into the reserve.

Mr. CRAMTON. He will be penalized for his additional service.

Mr. PADGETT. Oh, no; it is not a penalty, but there must be some time fixed, and this is to give the young man that goes in without experience a period of a year to adjust and adapt himself to the service and if he does not like it to retire.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Tennessee, as modified.

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

Mr. PADGETT. Mr. Chairman, I offer the following amendment, which I send to the desk and ask to have read.

The Clerk read as follows:

Page 100, following the amendment inserted after line 9, insert the following:

"In the event the Secretary of the Navy is unable to secure from the shipbuilders contracts for the expeditious construction of the ships herein authorized at a fair and reasonable price, the sum of $6,000,000, or so much thereof as may be necessary, is hereby appropriated to enable the Secretary of the Navy to equip the navy yards at Puget Sound, Philadelphia, Norfolk, Boston, Portsmouth, Charleston, and New Orleans with suitable and necessary machinery, implements, buildings ways, and equipment for the construction of such of the ships herein authorized as may be assigned to such yard for construction."

Mr. PADGETT. Mr. Chairman, I wish to state to the committee that I have offered that amendment because I think it is proper, in view of the amendment which I offered yesterday morning and which was adopted by the Committee of the Whole. It will be recalled that yesterday morning the committee adopted an amendment providing that the Secretary should have authority to pay bonuses not exceeding 20 per cent of the limit of cost of the ships for expeditious construction and for expeditious delivery of material. It occurred to me in reflecting over that that the shipbuilders, with the enormous program that we are authorizing this year, already providing for more than $182,000,000 worth of new construction—yes, $190,000,000 of new construction——

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

Mr. PADGETT. Not just now; I will in a moment—that it would be proper that we should put in the hands of the Secretary the opportunity and the means of preventing a combination among the shipbuilders. For instance, we are authorizing five battle cruisers. If the shipyards that are prepared to build battle cruisers should say, "We will take one apiece and we will make our bids for a long-time period of construction at a price and then ask a bonus to come down to the ordinary period of construction," the Government might be helpless; but if we have in the hands of the Government power to say to these gentlemen, "If you do not submit to us contracts for a proper time and charge reasonable and fair prices we will equip these yards and be ourselves able and ready and prepared to build these ships," we will have a balanced proposition in the bill. You have offered the bounty for the expeditious proceeding of the private yards if they will properly avail themselves of it. If they seek to hold up the Government, the Government will have the opportunity and the power to equip itself to relieve itself from that situation.

I want to state that I did not include the Mare Island Navy Yard and the New York yard for the reason that heretofore we have made an appropriation at a former day in this session equipping the navy yard at Mare Island and also putting in the amount that was necessary to add the additional machinery at the navy yard in New York. They have already been cared for by previous appropriations and those two yards were not included.

Mr. CALDWELL. Why not put them in anyway, for fear there is not enough?

Mr. PADGETT. Oh, they have enough.

Mr. HUMPHREY of Washington. Mr. Chairman, will the gentleman yield?

Mr. PADGETT. Yes.

Mr. HUMPHREY of Washington. I want to ask the gentleman this question: Suppose that the situation should so develop that on the Atlantic coast the Secretary could find private yards for the construction of these vessels, but that on the Pacific coast he could not. Would he be authorized then to equip a yard on the Pacific coast, or would he have to equip all of them if he equipped one?

Mr. PADGETT. I suppose that under this amendment, under a fair and proper interpretation of it, if the private builders in the country submitted bids for expeditious delivery at a fair and reasonable price, he would be justified in accepting those bids and not exercising this discretionary power.

Mr. HUMPHREY of Washington. Will the gentleman yield further? I do not think that the gentleman quite understood the import of my question. What I want to know is whether or not the Secretary could equip one or more or all of the yards if he thought it necessary? Would he have to equip all of them or could he equip as many as he thought necessary?

Mr. PADGETT. If he did not get proper bids and he had ships enough to assign to all of the yards he would equip all of the yards under the provisions of this amendment. It is stated that he shall equip a yard with machinery, implements, building ways and equipment to construct the ships assigned to that yard for construction.

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

Mr. PADGETT. Yes.

Mr. CALDWELL. Does the gentleman not think it would be advisable to include the New York yard for the reason that it may develop from an efficiency standpoint that the department may desire to expend a part of that money for the development of that yard. The gentleman must understand that the Brooklyn Navy Yard is one where they are doing some very very important work at this time.

Mr. PADGETT. Some very very important work, and we have spent some very very large sums to equip that yard, and it is equipped, and they are building and have been building large ships there, and last January we at their request passed an emergency measure taking care of the navy yard at New York. I do not think it is necessary to include it now.

Mr. CALDWELL. For the immediate necessities now.

Mr. PADGETT. Oh, for all that is needed.

Mr. CALDWELL. As I understand it, the purpose of the $6,000,000 appropriation proposed is to take care of something that may happen in the future.

Mr. PADGETT. To equip the yards that are not yet equipped. I think the gentleman ought not to try to gobble up what we are providing for these other yards.

Mr. CALDWELL. We do not want to gobble anything, but we want a square deal.

Mr. PADGETT. You have already had your deal, and these others have been waiting. You have been building ships in New York for years and years.

Mr. CALDWELL. We are trying to square out the points.

Mr. PADGETT. You are trying to take up something that these others get.

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

Mr. PADGETT. Yes.

Mr. NOLAN. Considering the fact that we are now entering upon the largest program that this country ever undertook, does the gentleman not think it advisable to give the opportunity to the two yards already equipped to build dreadnaughts, to build the largest ships that the Navy needs, and, therefore, to give them additional facilities in the way of additional ways, providing the Secretary is confronted with a situation which deprives him from getting satisfactory bids from private contractors, even though these other yards are equipped. I am thoroughly in sympathy with that idea, but does the gentleman not think we ought to give the Secretary of the Navy the right to further equip both the Brooklyn and the Mare Island Navy Yards?

Mr. PADGETT. Well, the Mare Island yard has a ship on the ways at the present time and has another one assigned there that will take it, when this one gets off the ways, a year before they could get that one off.

Mr. NOLAN. That is just what I want to bring out. What we want is to expedite the building program. The committee is considering the offering of a bonus to expedite the building program. We have at the Mare Island Navy Yard and at the New York Navy Yard a certain amount of facilities to build these large, first-class ships. Now, as you want to get this building program through, does not the gentleman think it would be in the interest of efficiency and economy if they should have the authorization to further equip those yards?

Mr. PADGETT. If the House sees fit to put in the New York and Mare Island yards with the idea of putting additional ways to carry on the building of two ships at each yard, if those names are inserted, there ought to be $1,000,000 added, and it ought to be $7,000,000 instead of $6,000,000.

Mr. NOLAN. I would like to see all the yards that have been enumerated here taken care of first——

Mr. GORDON. Especially San Francisco.

Mr. NOLAN. Let them be taken care of first, and in the event the Secretary, after equipping all of those yards, finds he needs additional facilities, then he ought to have the opportunity to enlarge the facilities at both the New York and Mare Island yards.

Mr. PADGETT. I think if that condition arises those two yards could be taken care of at the next Congress.

The CHAIRMAN. The time of the gentleman has expired.

Mr. PADGETT. Mr. Chairman, I would ask for five additional minutes.

Mr. BUTLER. How about fixing the time?

Mr. PADGETT. Mr. Chairman, I withdraw that and submit another request that debate on this continue——

Mr. BUTLER. Mr. Chairman, there are nine gentlemen here who have made requests for time on this amendment. How about an hour on each side?

Mr. PADGETT. That is entirely too much, is it not?

Mr. BUTLER. It would be too much for me if I had to make the speech.

Mr. PADGETT. I do not think we need that much. Say an hour, all told; the gentleman to have half an hour and I to have a half an hour.

Mr. BENNET. We will require at least 45 minutes on this side.

Mr. PADGETT. Mr. Chairman, I ask unanimous consent that debate upon this matter may be limited to an hour and a half, 45 minutes to be controlled by the gentleman from Pennsylvania——

Mr. BUTLER. No; I will not control the time. I suggest the gentleman from Massachusetts [Mr. ROBERTS] control it. I have not been successful in dividing time and will not divide any more.

The CHAIRMAN. What is the request of the gentleman from Tennessee?

Mr. PADGETT. I am trying to secure——

Mr. ROBERTS of Massachusetts. Mr. Chairman, if the minority leader does not wish to control the time, I have no objection.

Mr. PADGETT. Mr. Chairman, I ask that one-half of the time be controlled by the gentleman from Massachusetts [Mr. ROBERTS] and one-half by myself.

The CHAIRMAN. The gentleman from Tennessee asks unanimous consent that all debate upon this amendment and all amendments thereto shall close in 1 hour and 30 minutes, one-half to be controlled by himself and one-half by the gentleman from Massachusetts [Mr. ROBERTS]. Is there objection?

Mr. BENNET. Mr. Chairman, reserving the right to object, what opportunity will be given for offering amendments to the amendment? Does this simply apply to this amendment?

The CHAIRMAN. To the amendment and all amendments thereto.

Mr. BENNET. Any gentleman who obtains the floor can offer an amendment?

The CHAIRMAN. With the understanding that any gentleman who has the floor may offer amendments.

Mr. PADGETT. Amendments to this amendment; yes, sir; to be voted upon at the expiration of that time.

The CHAIRMAN. Is there objection?

Mr. PADGETT. My request embraces the amendment and all amendments thereto. Amendments can be offered now or at the expiration of that time.

Mr. BUCHANAN of Illinois. I just desire to ask the gentleman from Tennessee one question. I want to ask the gentleman if he will not agree, instead of the words "a reasonable price," to substitute the words "at a price not to exceed the cost at Government navy yards"?

Mr. PADGETT. We could not tell what that was, and the bidder could not tell what it was when he submitted bids.

Mr. BUCHANAN of Illinois. They submit bids in the navy yards——

Mr. PADGETT. "Fair and reasonable" covers it.

The CHAIRMAN. Is there objection to the request of the gentleman from Tennessee? [After a pause.] The Chair hears none, and it is so ordered. The gentleman from Tennessee [Mr. PADGETT] is entitled to 45 minutes and the gentleman from Massachusetts [Mr. ROBERTS] is entitled to 45 minutes.

Mr. PADGETT. I will ask the gentleman from Massachusetts if he will not use a part of his time now?

Mr. ROBERTS of Massachusetts. Mr. Chairman, I yield 10 minutes to the gentleman from Washington [Mr. HUMPHREY].

Mr. HUMPHREY of Washington. Mr. Chairman, I had ready to offer an amendment to equip the Bremerton yard for battleship construction, but this morning the chairman of the committee [Mr. PADGETT] informed me that he would offer an amendment that he believed would care for that yard. I am certainly much obliged to the chairman for taking this attitude. The amendment that he has offered, I believe, will assure the equipment of the yard at Bremerton for battleship construction. I know the conditions on the Pacific. I know the desires of the Secretary of the Navy, and I have no doubt whatever that if the amendment that has been offered is adopted the Bremerton yard will be equipped for battleship construction. This will accomplish practically all that the amendment that I had proposed to offer would accomplish. For this reason I shall certainly support the amendment.

I appeared before the Naval Committee and urged an amendment for an appropriation sufficient to equip the Bremerton yard. At that hearing I was much surprised to find that, notwithstanding the recommendation of the Secretary of the Navy, practically all of my Democratic friends on the committee were opposed to such an amendment, and several of my Republican friends were also against it. In view of the attitude at that time, I am more than pleased at the change that has taken place, and that the chairman of the committee now offers an amendment that will give what I was asking for when I was before the committee.

For almost 14 years it has been my duty and my pleasure to work for the upbuilding of the Bremerton yard. I believe—in fact, I know—that, all things considered, it is the best yard in the country. Every session of Congress I have been before the committee asking for appropriations for the yard. It is true that the committee has given what they have always believed to be were liberal appropriations and against the action of the committee I have no complaint. But certainly their appropriations were never more than the yard merited. Outside of the legislation giving us the two dry docks, I believe that this amendment, if passed, as it certainly will be, is of greater benefit to the yard than anything that Congress has yet done for it.

Now, I want to call the attention of the committee to the condition as it exists upon the Pacific coast. It is not a question in this particular case of whether you are going to have Government construction or whether you are going to have private construction. It is a question of whether or not you are going to have any construction at all under the condition upon the Pacific coast, and it is largely the condition upon the Atlantic coast.

As I am informed, to-day upon the Pacific coast there is not a single shipyard but what has contracts for at least two years ahead. If the Government was ready at this hour to let a contract for the construction of a battleship there is not a private yard upon the Pacific coast that could commence its construction inside of two years.

What is the use of making appropriations for building battleships unless we are going to have some place to build them? If there is any necessity for a great Navy at all, it is necessary that we proceed to construct it at once, and we can not do that, at least so far as the Pacific Coast is concerned—I have not given so much attention to the situation upon the Atlantic—unless we equip the Government yards for that purpose. The Bremerton yard can be equipped to build battleships in a few months.

Now, another matter in regard to that yard upon the Pacific, the one at Mare Island has already been cared for. The one at Bremerton, as is known by everyone, is the one yard—to use the statement made by experts—is the one yard in the country that has deep water that can be approached and used at all times and under all conditions.

As to the character of the yard, I will take the time to read a few short statements from experts in regard to it.

Admiral Stanford says that the Bremerton yard is absolutely reliable and can be approached at all times and under all conditions by our largest ships without dredging or work on the channel.

The following are quotations from some of those who ought to know:

Admiral Stanford: "We have only one thoroughly reliable and excellent deep-water station, and that is Puget Sound."

Admiral Blue: "It is an ideal yard, and should be fully developed. Our largest dry dock is located there, and all buildings are new and modern."

Admiral Strauss: "An ideal yard and well protected."

Admiral Taylor: "It is a very satisfactory yard, well located, and should be developed to its fullest capacity."

Admiral Badger: "A very fine yard, and is the only yard that vessels can go into at any time of the day, excepting, of course, a dense fog."

Admiral Winslow: "If you are going to equip any of the yards for construction, this one should be so equipped. A large force of well-trained workmen there would be a great advantage in case of trouble in the Pacific. At this time it is the only place on the Pacific that our largest and deepest draft vessels could be taken into."

Surely it needs no further evidence to satisfy the Members of this House that if any yard is equipped for the construction of battleships it should be the Bremerton yard.

In addition to the authorities above quoted, as I have already stated, Secretary Daniels and Secretary Roosevelt have both said that the yard should be equipped. I feel certain, in the light of all the facts, that the Bremerton yard will be one of the first that the Secretary will proceed to equip.

Now, it does seem to me that the one yard that has every facility, the only yard upon the Pacific coast that has a dry dock that can take one of the modern vessels, ought to be equipped for construction if the Secretary of the Navy thinks it is necessary. And the Secretary, when I first came down to Washington, told me he was in doubt whether he would recommend that the Bremerton yard be equipped for battleship construction. Later on he told me that after making an examination, owing to the condition of the private yard, he thought it was necessary that the Bremerton yard be equipped at once.

And I want to take occasion now to extend to the chairman of the committee [Mr. PADGETT] my appreciation for the action he has taken in this matter. By so doing he has helped to relieve a situation that is really serious upon the Pacific, and I certainly appreciate that help.

I only want to say this much in conclusion: We hear gentlemen continually making arguments on this side and on that side about the cost. Well, I submit, that is one of the arguments that does not appeal to me very strongly when used against preparation for national defense. When it comes to this question of preparedness, I do not believe the people of this country are so much concerned as to the cost as they are to know whether or not it is for the protection of the Nation.

We have heard a great deal said about the tremendous sum of money that has been spent by England for her great navy. I wonder if there is any patriotic citizen in all that great Empire to-day who regrets the tremendous sum of money that England has expended to construct her navy. If it had not been for that great expense, the great British Empire to-day would be crumbling. We talk about the great cost of our Navy. We spend more money in this country by millions of dollars every year for automobile tires than we do for our Navy. Talk about the great cost of the construction of a navy. Why, the cost of a single modern battle would be more than the cost of a great battleship squadron. The cost of a single year of war would keep us prepared for a century. The cost of a single modern war would be greater than to be prepared for a thousand years. When you talk about the question of cost, I want to ask you who is going to stop and ask about the cost in the day of battle? Who is going to measure in money the value of the dead and the dying? Who is going to place a value in money upon the sufferings of the widow and the orphan? What is human blood worth, anyway, measured in money? What patriotic citizen is going to weigh the dollar against the safety of the Nation? It is not a question of cost in the construction of a navy, but the sole question is, Does a great navy tend to produce peace and to protect the country? It is an insult to the patriotism and the intelligence of the American people to prate about the question of cost when the safety of the Republic is being weighed in the balance. [Applause.]

Mr. PADGETT. Mr. Chairman, I want to submit an amendment to this amendment and incorporate it and let it be considered at the time. At the end of the line add:

The navy yards at Puget Sound, Philadelphia, Norfolk, and Boston to be fitted to be equipped for the construction of capital ships.

The CHAIRMAN. The gentleman from Tennessee [Mr. PADGETT] asks unanimous consent to modify his amendment in the manner indicated. Is there objection?

Mr. ROBERTS of Massachusetts. That will be satisfactory, Mr. Chairman.

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

Mr. ROBERTS of Massachusetts. I think, Mr. Chairman, with that amendment in we can obviate this debate. [Cries of "Vote!" "Vote!"]

Mr. SULLOWAY. May I be recognized to ask a question of the gentleman, the chairman of the committee?

The CHAIRMAN. Does the gentleman yield?

Mr. PADGETT. I do.

Mr. SULLOWAY. Why is the Portsmouth yard kept from that amendment? Has not the harbor the deepest water that there is?

Mr. PADGETT. Simply because the yard at Portsmouth is not equipped for battleship construction, but it would be equipped for the smaller ships, the cruisers, the torpedo boats, the submarines, and boats of that kind. The yard is not of that character. The ones that we take up are equipped for battleship construction. The conditions are such that this appropriation would make them so.

Mr. SLAYDEN. Mr. Chairman, I want to ask the gentleman a question.

The CHAIRMAN. Does the gentleman from Tennessee yield to the gentleman from Texas?

Mr. PADGETT. Yes.

Mr. SLAYDEN. I wanted to ask the gentleman if this readiness to surrender the debate that we were so eager for a while ago is not due to an eagerness to take care of certain shipyards and not others? I should think that was so from the inquiry made by the gentleman from New Hampshire [Mr. SULLOWAY] as to the Portsmouth yard.

Mr. PADGETT. This is to equip yards in such a situation that they are suited and adapted for the construction of capital ships.

Mr. SLAYDEN. And also suited to the gentleman——

Mr. PADGETT. That may be true, but that has nothing to do with the question of the yards. Other yards can not be equipped for the construction of capital ships and for that reason they are not put in there.

Mr. WHALEY. I would like to ask the gentleman a question. Under this amendment would the other yards be permitted to build ships of smaller construction?

Mr. PADGETT. Certainly. That is what I stated. They could build the scout cruisers, the torpedo boats, and the auxiliary ships, and submarines. They can take care of those.

Mr. WHALEY. And the only two classes that would be taken out of them would be the battleships and the battle cruisers?

Mr. PADGETT. Yes, sir.

Mr. SLAYDEN. Mr. Chairman——

The CHAIRMAN. The gentleman from Tennessee has control of the floor.

Mr. SLAYDEN. The gentleman yielded and sat down. I wanted to ask the gentleman if I might not have four or five minutes.

Mr. PADGETT. I yield to the gentleman five minutes.

Mr. SLAYDEN. Mr. Chairman, what has happened here in the last few minutes indicates the happy conclusion of a deal. I do not mean to say that it is a deal that is going to be of any particular personal profit to the gentlemen engaged in it. I would not insinuate that, and would not believe it of the gentlemen concerned. But it shows their zeal for the interests of their respective communities, and when they united in one of these combinations and trusts, I will say to my colleague over there, they reached a conclusion that induced them to abandon an opportunity for debate which they were so eager for a few minutes ago. Then comes the gentleman from Washington [Mr. HUMPHREY], with characteristic zeal, hurling his contempt at economy when it comes to the construction of ships of war in his district. He is frank, open, and unashamed in his disregard of economy if his district is to benefit by the extravagance. Always alert and diligent in the effort to line the pockets of his constituents, the gentleman is now smilingly content.

There is one man that is forgotten in all this thing. In the anxiety to build up a shipyard at Brooklyn, or at Mare Island, or at Portsmouth, or on Puget Sound, or some other place, the man who pays for it all has been forgotten, and, I submit, there ought to be some little consideration given to him. He digs in the ground and in the mine; he develops and creates the wealth that we have in this country, and it is his contributions to the Government that support and pay for the extravagant program that we are entering upon; and I say, sir, that in his interest this disgraceful contest between the Pacific coast and the Atlantic, between Mare Island and the eastern shipyards each year, ought to stop, and one line of conduct, and only one, should be adopted and followed, and that is to build these ships for the people who pay for them, at the least possible cost, with due regard to efficiency, and for the purposes for which they were designed. And I think, Mr. Chairman, that so far as the taxpayers are concerned they may well exclaim, and be entirely justified in it, "A plague on both your Houses." You care nothing for the man who supports the whole project. [Applause.]

I never have been able to understand the audacity of Members who year after year stand up here and ask that ships of the Navy be built at greater cost than is necessary to procure them.

If they can be built at less cost and with equal skill on the Pacific than on the Atlantic, why, in heaven's name, build them there and send them to the Atlantic when finished. If they can be built more cheaply on the Atlantic, ordinary common sense and business judgment command their construction there. Then, sir, fairness and justice to the taxpayer demand it. But why talk about justice for the taxpayer when it does not exist in this Hall built for their Representatives.

Mr. PADGETT. Mr. Chairman, I yield to the gentleman from Illinois [Mr. BUCHANAN].

Mr. BUCHANAN of Illinois. Mr. Chairman, I desire to offer an amendment to the amendment of the gentleman from Tennessee, the chairman of the committee.

The CHAIRMAN. The gentleman from Illinois offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment by Mr. BUCHANAN of Illinois: "After the word 'a' in line 3 of the Padgett amendment, strike out the words 'fair and reasonable price' and insert 'not to exceed cost of construction in Government navy yards.'"

The CHAIRMAN. How much time does the gentleman from Illinois desire?

Mr. PADGETT. I yield to the gentleman five minutes.

Mr. BUCHANAN of Illinois. Mr. Chairman, I believe the committee will understand the purpose of that amendment. The Navy Department has had some experience recently in regard to prices in the construction of battleships and the inability to secure the construction of them in private plants at a reasonable price, because the Government navy yards in their bids have bid sufficiently low to justify the Secretary of the Navy in recommending and this Congress in granting the privilege to spend $600,000, I believe it was, for the equipment of Mare Island Navy Yard, because a ship could be constructed cheaper in the Government yard than it could be in the private yard; and instead of putting in there "a fair and reasonable price," it seems to me like this has the same effect.

No one ought to object to this, because the private shipbuilders have been claiming all the time that they build cheaper than they do in the Government yards. Therefore those who are in favor of giving the private yards an opportunity to build should not object to a provision of this kind in the amendment.

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

Mr. BUCHANAN of Illinois. Yes.

Mr. MOORE of Pennsylvania. Would not the effect of the gentleman's amendment be to put private shipyards out of business, since four of the navy yards will now be equipped to build capital ships? Would there be any competition at all?

Mr. BUCHANAN of Illinois. There would be competition between private yards and Government yards, and the representatives of private yards before our committee have stated that they can build cheaper than the Government yards.

Mr. MOORE of Pennsylvania. Would not the effect be to say to the private yards, "Build the ship at our price, or not at all"?

Mr. BUCHANAN of Illinois. Build the ship at a not greater price, or a price not to exceed the cost of construction in a Government navy yard, which it is claimed is greater than that in the private yards.

Mr. MOORE of Pennsylvania. But there would be no competition in the private shipyards if this amendment passed.

Mr. BUCHANAN of Illinois. It makes competition between the Government and the private yards.

Mr. MOORE of Pennsylvania. I think the passage of the gentleman's amendment would mean that the ship should be built in a Government yard or nowhere.

Mr. BUCHANAN of Illinois. It would mean the ships would all be built in a Government yard. There would still be competition between Government yards, as you see in this House the efforts of Members of Congress to get work done in their yards in preference to the yards in another part of the country. That has also been proven beyond any doubt in the construction of the Panama Canal, where one part of the organization engaged in the work on that canal has endeavored to exceed the other part of the organization engaged in the work of construction of that canal; so that by having more than one yard for the construction of these capital ships, that in itself makes competition, and in any event we would have competition. But this amendment that I am offering makes competition between the Government navy yards and the private yards as well as competition between the different Government navy yards.

Mr. PADGETT. Mr. Chairman, I simply wanted to say about this amendment——

The CHAIRMAN. The amendment can be disposed of at the end of the debate.

Mr. PADGETT. All I wanted to say was that the amendment offered by the gentleman from Illinois [Mr. BUCHANAN] is wholly impracticable, to provide that a private yard should not have a contract for building a ship at a price greater than a navy yard would build it. That would make it impossible. We do not know at what figure a navy yard might build it.

Mr. BUCHANAN of Illinois. Mr. Chairman, will the gentleman yield?

Mr. PADGETT. Yes.

Mr. BUCHANAN of Illinois. I wanted to ask the gentleman if it is not a fact that the Secretary of the Navy, in recommending the equipment of the yard, did know what it would cost to build a ship in the yard, or he would not have recommended it?

Mr. PADGETT. He knew what they submitted estimates for, or what they thought they would build it for. They would get a contract for a certain amount and would be penalized if they did not do it for that. The other navy yard simply submits an estimate, and if it costs more, the Government pays more.

Mr. BUCHANAN of Illinois. Has not that been the usual practice in the Government navy yards? I ask the gentleman whether or not the cost has not been greater than estimated by the representatives of that navy yard?

Mr. PADGETT. In a great many cases it has been more.

Mr. BUCHANAN of Illinois. Can the gentleman name one?

Mr. PADGETT. Yes; in the case of the *Louisiana*.

Mr. BUCHANAN of Illinois. How much more, or about how much?

Mr. PADGETT. In the case of the *Florida* it was a million and a half more.

Mr. BUTLER. Yes; about a million and a half more.

Mr. BUCHANAN of Illinois. Was there any case where it was less?

Mr. PADGETT. Yes. There was a case at Mare Island where they built a smaller boat at something under the estimates—about $100,000 less.

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

Mr. PADGETT. Yes.

Mr. MOORE of Pennsylvania. Would not the private shipyards start in handicapped by overhead charges and things of that kind, in excess of charges that would be borne by the Government?

Mr. PADGETT. They could not tell at what figure the Government would build on an estimate of so much. If it did not do it and it took $200,000 or $500,000 additional, it would simply mean that private yards could not do it at all.

Mr. MOORE of Pennsylvania. It is an unfair and impracticable condition.

Mr. PADGETT. That is all I have to say about this amendment.

Mr. BUCHANAN of Illinois. If the gentleman will yield, then if his position is correct, the Secretary of the Navy knew nothing about the facts when he represented to us that he could build these ships more cheaply in navy yards than he could by private construction.

Mr. PADGETT. He submitted to us the fact that the yards had represented to him that they could, but there was no guaranty——

Mr. BUCHANAN of Illinois. And, of course, they did not know anything about it.

Mr. PADGETT. There was no obligation to do it, except that they would try to meet their estimate.

Mr. BUCHANAN of Illinois. If the gentleman's position is correct, it means that after all these years of experience they know nothing about what they can do in Government navy yards in the way of the cost of construction.

Mr. PADGETT. It does not mean that at all.

Mr. BUCHANAN of Illinois. It does mean that the Government navy yards, after years of experience constructing ships, can estimate quite accurately what it will cost to construct a ship, and from information at hand the estimated cost of a Government navy yard would be a reasonable and fair price for the Government to pay a private corporation or firm.

Mr. NOLAN. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The gentleman from California offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment by Mr. NOLAN: Amend the amendment by incorporating the following proviso:

"*Provided*, That the Secretary of the Navy is authorized to provide additional facilities as provided for in the event it is found necessary at the New York and Mare Island Navy Yards."

Mr. NOLAN. Mr. Chairman, I do not represent the congressional district in which the Mare Island Navy Yard is located. It is not in my district and is a considerable distance away from it; but I recognize the fact that this naval bill carries appropriations running into hundreds of millions of dollars—the largest program the Government of the United States ever adopted—a great building program. I do not want to see the navy yards that have been enumerated here deprived of the opportunity to become shipbuilding plants. I think they ought to be taken care of first, before the New York and Mare Island Navy Yards get any additional facilities; but I do not think the Secretary of the Navy should be deprived of the opportunity of putting increased facilities into both Mare Island and New York if he finds it necessary. Now, it may be that before he gets very far he will find that it will take a considerable length of time to equip these four navy yards enumerated in the Padgett amendment, whereas he could for a slight expense in comparison to the other yards provide additional ways at Mare Island and New York, and put on those ways capital ships.

Mr. ROBERTS of Massachusetts. Will the gentleman yield for a question?

Mr. NOLAN. I will.

Mr. ROBERTS of Massachusetts. Does the gentleman think they can provide new ways quicker than they can extend existing ways? And does he not know that there are existing ways in Philadelphia and Boston that can be extended very readily?

Mr. NOLAN. I do know this, that if you want to provide the right kind of ways for the building of a dreadnaught you can not do it by extending the Philadelphia or Boston ways.

Mr. VARE. Oh, yes; you can.

Mr. NOLAN. Because they are not built strong enough to carry dreadnaughts or other capital ships.

Mr. VARE. The gentleman is mistaken.

Mr. NOLAN. I do not want to deprive Boston or Philadelphia of the opportunity of becoming first-class yards, but I want to give the authority to the Secretary of the Navy to extend the facilities at New York and Mare Island; and if you adopt the Padgett amendment as written, the Navy Department will be handicapped.

Mr. PADGETT. Mr. Chairman, I can simplify the matter, so far as I am concerned. I am willing to accept this proviso here, and add some more money to take care of it, if it is necessary to do it, and leave it in the discretion of the Secretary.

Mr. NOLAN. I do not want to deprive New York and Mare Island of any opportunities.

Mr. ROBERTS of Massachusetts. Mr. Chairman, I would like to see that amendment. I want to see how it is worded.

Mr. PADGETT. It provides that the Secretary of the Navy is authorized to provide additional facilities, as provided for, in the event that it is found necessary, at the New York and Mare Island Navy Yards.

Mr. ROBERTS of Massachusetts. If the amendment gives that authority after he has provided for the other yards named, I will accept it.

Mr. PADGETT. Just put that in.

Mr. NOLAN. I do not want to deprive him of the opportunity.

Mr. PADGETT. It leaves it with the Secretary. He is going to take care of the other yards. You need not have any anxiety about that.

Mr. ROBERTS of Massachusetts. I am not sure.

Mr. VARE. For the benefit of the gentleman from California, I should like to say that the plans for the existing shipways at the California navy yard were drawn by the department with the express purpose that they could be enlarged for the purpose of building capital ships.

Mr. ROBERTS of Massachusetts. We have the best of authority for that statement.

Mr. NOLAN. I would like to see your yard equipped immediately, and every yard that is capable of building first-class ships. I do not want to deprive you of that opportunity for the benefit of Mare Island or New York.

Mr. VARE. I want you to know that the existing ways are already planned for that purpose.

The CHAIRMAN. The time of the gentleman has expired.

Mr. PADGETT. I ask unanimous consent that the time be extended five minutes.

There was no objection.

Mr. PADGETT. I yield to the gentleman from Massachusetts [Mr. TAGUE].

Mr. TAGUE. Mr. Chairman, I can not see in the amendment by Mr. PADGETT where any of the yards provided for are going to get any expenditure unless the private shipyards of the country do not come up to the specifications required by the Secretary of the Navy. That is one thing that I, for one, representing the district wherein lies the Boston Navy Yard, have insisted upon—that we do become equipped under this appropriation in order that we may begin the building of battleships in the navy yard. That is what the navy yard was intended for. That is what the navy yards were built for. There is not a country in the world to-day that has so many of its navy yards lying idle and going to rot as this country. Mr. Chairman, under this amendment there is no benefit to be derived by any of the Government yards unless all of the private shipbuilding companies of the country fail to come up to the specifications. I contend that it does not use the people in the different parts of the country fairly. In the district that I represent we have just completed on the ways, appropriated for two years ago, a small supply ship. On the building of this ship alone we have saved the Government over $250,000. The building of the ways cost the Government less than $140,000, and we have saved the Government over $250,000 on one ship.

All we ask is that the ways in the Boston Navy Yard be extended so that we can do the work that ought to be done in large cities. Just think of it: Great cities like Boston and Philadelphia you are asking to build little boats, while in the shipyards not equipped as well as we are they are building big battleships. Our navy yards are lying practically idle. It is a shame and a disgrace to this country to see mechanics walking the streets wanting employment and being deprived of employment in the cities where the navy yards are because the yards are not properly equipped.

Mr. Chairman, I think the time has come while we are making appropriations when these yards should be equipped to build, as far as they are able, the ships of the Navy. We can build them more economically than can private enterprise. We have proven this in our yard and we want an opportunity to prove it further on larger ships. There is at least $20,000,000 in Government property at Boston Navy Yard practically worthless to the Government unless we can utilize it. That is the condition that prevails there. We have built nothing since 1840 until last year, when we took the contract for the building of a supply ship, and this supply ship is now in the water three months ahead of the specified time called for in the contract. [Applause.]

The supply ship is within 50 per cent of completion and we have spent less than half the money appropriated in the original bill. I contend that we are entitled under this appropriation to have our yard equipped, and we will then be in a position where, when the Government needs us to build a battleship or a cruiser or whatever they desire, it can be done.

Mr. Chairman, I have presented this amendment, asking that at least one of the battle cruisers now authorized in this bill shall be built at the navy yard in Boston, Mass.

In a great appropriation bill of the size of this one I feel that I am not asking too much for the people of my district when I ask that one of these ships be built in a navy yard which for more than a century has been recognized as one of the best yards we have. I believe, in fairness to my people, that we are entitled to this consideration.

This institution, the Boston Navy Yard, has for years been neglected in the matter of building ships, without any reason being advanced by those who have been responsible for this condition.

The time has come when it must be decided to what extent our country is to use its navy yards. No other country of the world has ever been known to neglect these institutions in the manner in which the yards of this country have been neglected, and no country to-day in the world would for a moment permit a navy yard situated as this one is to remain in its present condition.

A few months ago I presented a resolution, which was referred to the Committee on Naval Affairs, asking that an appropriation be made in this bill for the equipping of the Boston Navy Yard for the building of battleships. The Secretary of the Navy, for some reason which I can not understand, has written to that committee asking that this appropriation be not included; and I, as a representative of the people of Boston, object, with all the force that I can control, to my district being neglected now, as it has been in the past, in the improvements to which this yard and my State are entitled in the many appropriations that have been made to improve the other sections of the country and in which we have not been permitted to share our equal part.

The question that comes from the people of my district is why Boston shall be overlooked in this great appropriation for the upbuilding of the Navy of our country. All navy yards of the country were established for the building and repairing of ships of the Navy. That is what they were intended for, and it is only because they have been neglected and have not been kept up to the high standard for which they were intended that to-day we find ourselves at the mercy of and competing with private interests, who are telling us what we shall pay for the building of our ships and when they shall be built.

What other country of the world can you point to that is in the same position? In the past the only work that has been done at our yard has been the minor repairs upon the ships of the Navy. This, to my mind, has been more of a detriment to the workingmen of my district than it is of value, for they are deprived of the opportunity of steady employment, and it is a customary thing among them to expect at any time the message of a furlough, which comes when work has been completed.

We are told that we are unable to build our ships as cheaply as can private enterprises, and with this I take issue. In the small amount of work that we have had to do at our yard, namely, the building of a supply ship, which was launched a few days ago, we have proven that we are able, when permitted to do the work, to do our work in a manner that is not only satisfactory to our Government, but is economical to the highest degree.

This supply ship which we are now completing is being built at a figure 25 per cent less than the amounts bid by private shipbuilders, and she is now within 40 per cent of completion. She has been launched in less time than the contract required, and the splendid organization of officers and mechanics who have established such an efficient working force and have worked so earnestly and faithfully have nothing further to do, and the mechanics will be paid for their faithful service by a discharge.

Every yard in this country should be building ships at the present time, and with the building of new ships can be carried on the work of repairs, keeping intact an efficient force which will be able to do all our Government work in an economical and efficient manner.

We are entitled to this consideration and we ask it as a matter of fairness from this Congress that we be given an opportunity to develop the yard at Boston in the manner in which other yards of the country are being advanced. There can be no objection to our request, and to any objection we answer, "Give the mechanics of Boston an opportunity to show what they can do in the matter of shipbuilding, and this country will be able to boast that they have established another branch of their many great institutions that are a credit to the Nation." I contend that there is no better way for us to prepare the men of our country in the handling of the ships of our Navy than by giving them an opportunity to work upon them.

This appropriation is the largest appropriation for the upbuilding of our Navy that has ever been made, and I am proud to be one of those who will vote for it; and gladly would I vote for a larger sum if necessary and give to us a Navy that we can be proud of. We are asking but for a small portion of it, less than $300,000, of this great amount of $240,000,000 to do our share in this great upbuilding. We are told that the control of prices is a most important consideration. We are also told that we are making an appropriation in the interest of the great Steel Trusts. I am not one of those who believe this to be so, and I believe that no better answer to this statement can be given them than that we intend, as far as we are able, to build ships of our own Navy in our own navy yards.

In the last Congress they wisely appropriated the sum of $148,000 for the equipment of the Boston Navy Yard for small shipbuilding. How profitable this has been to our Government is shown when we realize that in the building of one ship it has saved the Government more money than it cost the Government to build these small ways. In the building of modern ships these ways are too small and should be enlarged, and if by the building of one small ship we can save for our Government almost 100 per cent more than the cost of the building of these ways, I believe I am safe in stating that in the extension of these ways the Government will be in a position to build their ships far more economically than ever before.

Mr. Chairman, the people of Massachusetts have always been liberal in their efforts to support improvements in any part of the country that would be for the welfare of the whole country. They have been unwilling to stint any appropriation, but have always been willing that all parts of the country should be developed. In the building up of our own section of the country they have always displayed this same liberality.

We have in Boston one of the best harbors in the country, made so by the liberal expenditure of the money of the people of the State of Massachusetts. From 1825 to 1915, a period of 90 years, the United States has expended $12,668,000, or a total of $143,000 per year, on the harbor of the State of Massachusetts, and in one-half of the time, from 1870 to 1915, 45 years, has expended the sum of $15,000,000. Receipts from the customs of the port of Boston are over $10,000,000 a year, and there was collected in the State of Massachusetts from corporation income taxes $1,853,157.41, and from individual income taxes $2,683,084.53, making up a total paid by the citizens of the State of Massachusetts of $4,536,141.94 last year.

In the past few years we have expended $9,000,000 in building docks, and to-day we are building the largest dry dock in this country. This dock will be built at an expense to the State of Massachusetts of over $3,000,000, and the State has already agreed with the National Government that they will have the privilege of the use of the dock as against any private or commercial business.

We have built, at a great expense out of our treasury, the largest pier on the Atlantic coast, large enough to accommodate six of the largest ships afloat, and at each of these docks they have deepened the water to 40 feet to enable them to accommodate any ships that are now being constructed.

I am quoting these figures to show that Massachusetts is ever ready to do her share in protecting the commercial interests of the Nation by the building up of her harbor, and I believe that every part of the country benefits by these improvements.

The foreign commerce with the port of Boston for the year 1915 was $290,516,803. New England manufactures one-seventh of the entire manufactured products of the Nation and the greater part of this goes out from this port to foreign countries.

I believe that the navy yard, which has not for a long time received any great improvements, should be improved in keeping with the rest of the harbor and it is the duty of the Government to do so. The Charlestown Navy Yard has been a repair yard rather than a yard for construction work, and the great amount of work that has been done in the yard has been repairs on ships sent there.

The property of the Government here is worth in the vicinity of $20.000,000, and the location of the yard is right at the head of Boston Harbor at a point where the Mystic and Charles Rivers meet and close in a water front of almost one-half mile in the most desirable place in the harbor, which for commercial and shipping use would be invaluable.

If we are to depend on repair work entirely, it is only a question of how soon this yard will have to be closed, because any

business man can verify my statement when I say that no enterprise of this kind can exist upon repair work alone and can only be as an investment where construction work will go hand in hand with repair work. If the yard is to be continued, and it is the sentiment of the business interests of my State that it shall be, it should be equipped immediately for shipbuilding, and with this large expenditure now being made, without an additional appropriation or without any further expense to the Government, this could easily be done.

Mr. Chairman, from the earliest days of American history the men of Massachusetts have always been interested in shipping and shipbuilding, and from that day unto this it has been one of the leading ports of the Nation.

Previous to the establishment of the Charlestown Navy Yard a number of vessels had been built in the vicinity of Boston, several of which subsequently became well known. In the very earliest days of the settlement the importance of ships was recognized, and as early as 1629 we find records of six shipwrights having been sent out from London. Gov. Winthrop, who reached Boston Bay in 1630, records in 1631 the launching of the *Blessing of the Bay*, the first ship of the infant colony, and on August 9 of that year states:

> The governor's bark, being of 30 tons, went to sea.

This small vessel was later converted into a cruiser against pirates and may, therefore, lay claim to the honor of having been the first American vessel of war.

The *Massachusetts* was built at Germantown, a promontory in the town of Quincy, in 1789. The frigate *Constitution*, launched in 1797, was built at Hartt's shipyard on the site now known as Constitution Wharf, and the frigate *Boston*—the second of that name—was launched from the same yard in 1799.

It was undoubtedly the work already accomplished in shipbuilding, as well as the importance of the settlement and the facilities offered by the harbor, that suggested Charlestown as a desirable location for a navy yard.

On January 25, 1797, a resolution was reported from the Naval Committee of the House recommending the establishment of a Government dockyard. There seems to have been no direct authority from Congress to purchase a site or build a dockyard; but, on February 25, 1799, an act was passed authorizing the building of six ships of war of not less than 74 guns each, and appropriating $1,000,000 for this purpose. Hon. Benjamin Stoddard, then Secretary of the Navy, recommended the purchase of the site, which was approved by the President. The earliest record of the transaction was a letter from the Secretary of the Navy, dated June 2, 1800, to Dr. Aaron Putnam, of Charlestown—who appears to be the agent selected for negotiating the purchase—stating:

> It is desirable, for the purpose of establishing a navy yard for building ships or vessels of war at or in the vicinity of Boston, to purchase, on account of the United States, from 10 to 50 acres of land, if it can be obtained on reasonable terms.

And inclosing a list of the property referred to amounting to about 47½ acres. A later letter from the Secretary to Dr. Putnam, dated August 13, 1800, states:

> The President having determined that the 37½ acres of ground at Charlestown described in the plat herewith sent should be purchased for a ship and dock yard, I have the honor to request, upon satisfying yourself of the goodness of the titles, you will make the purchase, taking deeds to the United States for same, which, after having recorded, you will be pleased to send to me. * * * I have already remitted you $10,000 on this account, and will remit the residue when I am informed you want it.

In accordance with the above letter the first site of the Charlestown Yard was purchased, the original purchase amounting to about 34½ acres and the purchase price being about $37,356. Further purchases were made, as follows: In 1817, from Isaac Hull, 5,186 square feet, for $3,889.50; in 1862, from Oakman & Eldridge, 115,210⅝ square feet, for $123,100; and in 1867, from A. Hull, 2¾ perches for $7,000. The amount purchased, with the filling in of the marshes and flats, made, in 1880, 87¼ acres, and with the extension of harbor line and further filling in since that time makes the present area of the yard proper about 111 acres, of which 80 acres are land and 31 acres water.

The first commandment of the yard was Capt. (afterwards Commodore) Samuel Nicholson, who remained in office until his death, December 29, 1811. The records show but very few improvements in the yard up to this time. The commandant's house, afterwards the old museum, was built prior to 1808, the exact date not being recorded. There were also erected a brick store, marine barracks, a hospital, a powder magazine, a wharf, and a few temporary sheds.

Commodore Bainbridge was the next commandant, and he took a very active interest in the affairs of the yard and vicinity, surveying the harbor and recommending improvements, but the appropriations were very meager, the expenditures for accommodations and improvements at the yard in 1811 and 1812 amounting to but $5,742.43, although during the year 1812 13 vessels received repairs amounting to $245,225.13. The first vessel launched at the yard was the sloop of war *Frolic*, on September 11, 1813, and the next was the *Independence*, on September 22, 1814, and from that time up to the commencement of the Civil War 21 vessels in all were launched at the yard.

Among these were several of historic fame—the *Cumberland*, which was sunk by the Confederate ironclad *Virginia—Merrimac*—in Hampton Roads in March, 1862; the *Merrimac*, the first steam frigate launched for our Navy was built at the yard in 1854–55. The history of this vessel need hardly be told to any American—how she was left at the navy yard, Norfolk, in 1861, and converted by the Confederates into an ironclad and created such havoc with our vessels until she was defeated by the little *Monitor* in 1862 and was afterwards destroyed by the Confederates.

On January 1, 1858, the keel of the historic ship *Hartford*, the flagship of Admiral Farragut, was laid, and she was launched in November of that year.

The cost of improvements at the yard up to 1859, including the cost of site and Dry Dock No. 1, which was built in 1827–1833, amounted to $3,671,521.

During the Civil War there was great activity at the yard, and between 1861 and 1866, 39 vessels of war were built and 43 purchased vessels were equipped; the number of vessels repaired, provisioned, and so forth, is up in the hundreds. At times there were as many as 5,000 men employed. The *Monadnock*, a double-turreted monitor, launched in 1864, was the first vessel of the kind to go from the Atlantic to the Pacific Ocean, arriving at Mare Island in 1866, and being afterwards rebuilt and converted into the vessel now of the same name.

In 1874 the iron torpedo boat *Intrepid* was launched at the yard, and was the first vessel of that kind added to our Navy.

From 1832 to 1880, inclusive, $10,618,716 was expended for general maintenance of the yard. This does not include the expenditures on ships built or repaired or pay of workmen employed on them. Only one vessel, a small training ship, the *Cumberland*, has been built at the yard since that time.

From 1880 until about 1900 very little was done to improve the buildings in the yard, but from 1900 on until the present time remodeling and building has been continuous.

The estimated value of the property is close to $20,000,000. This includes only the property, building, and plant in the yard proper, and not the value of the hospital and other outlying branches of the station.

During the Civil War as high as 5,000 men were employed, although the facilities were not half what they are to-day. We find at the present time that a force of about 2,000 men is employed, not half utilizing the increased industrial facilities. The effect of this variation in the working force is bad in every way—for the employees in having irregular employment, breeding dissatisfaction and frequently causing distress to honest, hard-working men; for the Government, loss of efficiency, due to deterioration of plant and force, owing to lack of work and the dissatisfaction of employees. The history of this yard calls for some consideration for its employees. One of the means of maintaining a steady working force is by having new construction work—shipbuilding—done at the yard, and it would be to the interest of the Government to place such work at the yard instead of doing it by outside contract, even if the price was higher. But when bids were opened in December, 1913, for a supply ship, the bid of the Charlestown Navy Yard was found to be below all others—navy yards or private establishments.

To build this vessel at the yard it will be necessary to extend the present ways.

Mr. ROBERTS of Massachusetts. Mr. Chairman, I yield five minutes to the gentleman from New York [Mr. BENNET].

Mr. BENNET. Mr. Chairman, I hope the amendment offered by the gentleman from California, Mr. NOLAN, will prevail. I want to say that the members from New York I am quite sure join with me in the spirit of his remarks. There is no reason why any of us should desire to keep another part of the country from being equipped. When I was in Congress before it gave me great personal pleasure to assist in equipping the immigrant stations at Charleston, New Orleans, and Galveston.

Mr. WHALEY. The immigrant station at Charleston has never yet been equipped.

Mr. BENNET. That was not our fault, we voted it and did our best. Now, I want to call the attention of the committee to what this amendment of the gentleman from Tennessee does, as I understand it, and what the amendment of the gentleman

from California proposes, which the gentleman from Tennessee says he is willing to accept.

As I understand it, this simply provides that if the Government is faced with the position that it can not do all of the building it desires in private yards it can go ahead and equip with additional facilities all of these yards. The gentleman from Tennessee says he will provide in the amendment an additional sum to take care of New York and Mare Island if it is necessary to equip the two yards.

This amendment, as I understand it, is not to benefit any particular yard—Mare Island, Philadelphia, Boston, New Orleans, or any other yard—but it is to serve the best purposes of the Government. Am I right?

Mr. PADGETT. I tried to state that as fully and as clearly as I could.

Mr. BENNET. I thought so, but there appeared to be a misapprehension that this was a contest between cities.

Mr. PADGETT. The situation is this: We put a provision in the bill yesterday authorizing the Secretary to make contracts and provide bonuses not to exceed 20 per cent for the expeditious delivery of material and construction. With the enormous program we are authorizing in this bill it would be possible, if it was so desired, for shipbuilders to conspire and apportion among themselves the work and submit their own terms. We did not want the Government to depend on them, and so, in the event that they do not submit bids for the expeditious delivery at a fair and reasonable price, this amount of money is appropriated to equip the yards for the Government to build ships themselves wherever there is this situation.

Mr. BENNET. It seems very clear that we over here, who have been voting for even larger naval programs than most on the other side, should join with those on the other side and vote for this amendment. Otherwise we would be in an inconsistent position. We would be voting for an increase in the Navy, but when the chairman offered additional facilities we would be in a position of voting against it. Therefore, I hope the amendment offered by the gentleman from Tennessee, with the amendment offered by the gentleman from California, will prevail.

Mr. ROBERTS of Massachusetts. Mr. Chairman, I yield to the gentleman from Kentucky [Mr. POWERS].

Mr. POWERS. Mr. Chairman, ours is not only a representative Government but its business is conducted through the agency of political parties.

Four years ago the Democratic Party of the Nation went before the people of this great country upon a platform pledging it to the carrying out of certain principles in the event of election. On account of the unfortunate dissension in our own ranks, the Democrats won; and for more than three years now they have had complete control of all the departments of the National Government. There has been nothing to prevent the Democratic Party from putting into operation Democratic policies and theories of government. They claim to have done so, and are now asking a return to power because they say they have "kept the faith" and have painstakingly carried out all of their promises and pledges to the people, and that the people have been abundantly benefited and greatly blessed thereby. That is their claim. They are asking an indorsement of their record. They say they have accomplished much for which we should indeed be thankful, and that they can and will accomplish more if given a new lease of life. They say that they have given the world a shining example of economy and efficiency in government. I concede that if these claims be true they ought to be returned to power. Let us calmly and dispassionately look into the facts. Democratic, not Republican, performances are on trial.

In order to find out just what pledges the Democratic Party of the Nation has made to the people, we must turn to authoritative sources of information, to wit, the Democratic national platforms. Their acts alone speak as to their performances. The last platform adopted by the Democratic Party was at Baltimore, Md., on July 2, 1912. That is the one upon which President Wilson and the present Democratic régime were elected. Let us turn to some of its planks. Let us see what they are and see whether or not they have been faithfully kept or shamefully broken. The people are entitled to know the truth.

One plank of the labor section of the Democratic platform adopted at Baltimore July 2, 1912, declares that the "organization of industry makes it essential that there should be no abridgment of the right of wage earners and producers to organize for the protection of wages and the improvement of labor conditions" and that such organizations "should not be regarded as illegal combinations in restraint of trade."

In his speech of acceptance, the presidential nominee of the Democratic Party, the Hon. Woodrow Wilson, took occasion to say regarding the working people of America:

> No law that safeguards their life; that improves the physical and moral conditions under which they live; that makes their hours of labor rational and tolerable; that gives them freedom to act in their own interest; and that protects them where they can not protect themselves, can properly be regarded as class legislation.

Believing in the assurances of the Democratic Party and its nominee for President, and accepting them at their spoken and written word, the labor leaders and labor organizations and laboring people generally throughout the country, including the American Federation of Labor, some 2,000,000 in number, went pell-mell into the Democratic camp and became among the most loyal and enthusiastic supporters of the candidacy of Mr. Wilson. They helped to elect him. But for them he would not have been elected. After his election and after the overwhelmingly Democratic House and Senate had settled down to business and undertaken the work, supposedly, at least, of carrying out the Democratic pledges to the country, labor expected the fruition of its dreams in the fulfillment of the Democratic pledges and promises to it. But it had a shock in June, 1913.

The sundry civil appropriation bill which passed both the House and Senate contained a provision setting apart and appropriating the sum of $300,000 for the enforcement of antitrust laws but provided that no part of it should—

> be spent in the prosecution of any organization or individual for entering into any combination or agreement having in view the increasing of wages, shortening of hours, or bettering the conditions of labor, or for any act done in furtherance thereof, not in itself unlawful: *Provided further*, That no part of this appropriation shall be expended for the prosecution of producers of farm products and associations of farmers who cooperate and organize in an effort to and for the purpose to obtain and maintain a fair and reasonable price for their products.

Note the similarity in the language of this provision and President Wilson's speech accepting the Democratic nomination for President. Everybody believed that the President and the Democratic Party was irrevocably committed to the provisions of the bill to which I have just referred. But when the bill was presented to President Wilson for his signature that change of mind, for which the President has since become so widely noted, had come over him and he expressed, in no uncertain terms, his emphatic disapproval of the promised labor and farmer exemptions contained in the bill. He threatened to veto the entire bill on their account and would have done so had the exemptions in any way interfered with the Department of Justice prosecuting either laborers or farmers for attempting to secure, under the provisions of the bill, what they deemed to be their rights, and what was perfectly legal for them to do individually but not collectively.

> I would have vetoed that item—

Said the President—

> because it places upon the expenditure a limitation which is, in my opinion, unjustifiable in character and principle. * * * I can assure the country that this item will neither limit nor in any way embarrass the actions of the Department of Justice—

In dealing with these farmers and labor fellows.

It will be remembered that the Supreme Court of the United States had held in the Danbury Hatters case, reported in Two hundred and eighth United States Reports, page 274, that the Sherman antitrust law did not exempt labor organizations from its operations; that such organizations were combinations in restraint of trade, and therefore unlawful and liable to triple punitive damages.

Both the farmers and the laborers wanted their organizations exempted from the operation of the Sherman law, on the ground that they were not a capitalistic trust organized for predatory profits; but the President said that such exemptions were "unjustifiable both in character and principle," although he had promised in his speech accepting the Democratic nomination for President that—

> no law that safeguards their life (the working people), that improves the * * * conditions under which they live, or that gives them freedom to act in their own interest * * * can properly be regarded as class legislation.

Wonderful how the President changed his mind, and the planks of the Democratic platform were broken.

THE PRESIDENT HAS CHANGED HIS MIND, TOO, ON THE SUBJECT OF IMMIGRATION AND CAUSED THE IMMIGRATION PLANK OF THE DEMOCRATIC PLATFORM TO BE BROKEN.

For a decade immigration to our shores has reached the rate of about 1,000,000 a year. A tremendous influx! There has not been so many since the European war began, but it is on the increase and will doubtless, with the return of peace, far exceed the previous number. The official statistics just given out by the Department of Labor show that in March 11 per cent more

came than in February and 48 per cent more than came one year ago in March. Immigrants of the right sort have always been welcomed among us. For years an attempt has been made to curtail the number, at least, of the undesirable elements that land upon our shores and come into ruinous competition with our own workmen and producers. As a private citizen, as a presidential candidate, as an author and writer of books, it seems that President Wilson was strongly in favor of rigid restriction. In his History of the American People, volume 5, page 212, in speaking of the character of immigrants that come to this country, he said:

They come in numbers which increased from year to year, as if the countries of the south of Europe were disburdening themselves of the more sordid and hapless elements of their population, the men whose standards of life and of work were such as American workingmen had never dreamed of hitherto.

He said that even the unwelcomed, and in some quarters the loathed and hated, Chinamen were more desirable citizens than this "coarse crew" (of immigrants) that come crowding in every year at our eastern ports.

Not only as an author, but as a candidate for the Presidency, on September 4, 1912, in New York City, when he addressed the Association of Foreign Language Newspaper Editors, so called, President Wilson said, among other things:

If we can hit upon a standard which admits every voluntary immigrant and excludes those who have not come of their own motion, with their own purpose of making a home and a career here for themselves, but have been induced by steamship companies or others in order to pay the passage money, then we will have what we will all agree upon as Americans. I am speaking to you as also Americans with myself, and just as much American as myself, and if we all take the American point of view, namely, that we want American life kept to its standards, and that only the standards of American life shall be standards of restriction, then we are all upon a common ground, not of those who criticize immigration, but those who declare themselves Americans. I am not saying that I am wise enough out of hand to frame the legislation that will meet this idea. I am only saying that it is the ideal, and that is what we ought to hold ourselves to. * * * Of course, if the immigrants are allowed to come in uninstructed hosts and to stop at the ports where they enter and there to compete in an oversupplied labor market, there is going to be unhappiness, there is going to be deterioration, there is going to be everything that will be detrimental to the immigrant.

But notwithstanding his writings, notwithstanding his position as a presidential candidate, Mr. Wilson abandoned his position as a restrictionist when called upon to sign and vetoed the immigration bill.

It will be remembered that some few years ago Congress created an Immigration Commission to investigate the whole subject of immigration, particularly the feasibility of the literacy test as a restrictive method.

This commission of nine distinguished members was composed of both Democrats and Republicans, Members of this House and the Senate. It made an extensive investigation both in this country and in Europe. After investigating for a period of four years and spending $1,000,000 it made a voluminous report of 42 volumes and, among other things, said:

A majority of the commission (eight out of the nine) favored the reading and writing test as the most feasible single method of restricting undesirable immigration.

The commission unanimously agreed and reported that there was "an oversupply of unskilled labor in the basic industries of this country."

On April 19, 1912, an immigration bill containing a literacy-test provision passed the Senate of the United States. A bill containing the same provisions was reported to the House by the House Committee on Immigration on June 7, 1912, and the Democratic leaders announced that the bill would be put through when Congress reconvened in December, a special rule having been agreed upon for that purpose.

Woodrow Wilson was nominated for President on July 2, 1912. The Senate immigration bill, with the literacy test therein, was pending before the House during the campaign and became an issue thereof. The Democratic leaders of the House had promised to pass that bill early in December. The Baltimore convention that nominated Mr. Wilson for the Presidency pointed in its platform with pride "to the record of accomplishment of the Democratic House of Representatives in the Sixty-second Congress." "We indorse its action," they said. The House had indorsed the literacy-test provision and the immigration bill. The Democratic platform, upon which President Wilson was elected, indorsed the literacy test as applied to immigrants in approving the House action. But after he was elected the President changed his mind and vetoed the immigration bill, in spite of his writings and his campaign speeches and the platform pledges of his party, although beseeched to sign it by labor leaders, farmers' organizations, and the public generally. The Boston Transcript in an editorial, speaking of the change of front of our President, said:

The somersault of Mr. Woodrow Wilson on the immigration plank should surprise no one. It is only the latest illustration of the politician reversing the position of the historian. For 20 years, as teacher and writer of history, he wrote against the "alien invasion," and brought to bear the heaviest guns of his rhetoric against this "menace." But the President has changed his mind. He has reversed his own position and repudiated the platform upon which he was elected.

Whether the President has changed his position, if not his mind, because of the immense foreign vote in the United States, or for other reasons, I know not. The Democratic Party in its national platform, as far back as 1896, said:

We hold that the most efficient way of protecting American labor is to prevent the importation of foreign pauper labor to compete with it in the home market.

That declaration of principle by the Democratic Party, and since reiterated, has at no time been recalled or reversed; but it does not take President Wilson long to recall and reverse "things" when he changes his mind and decides to break the solemn platform pledges of his party.

MORE BROKEN PLATFORM PLEDGES.

The Democratic platform upon which President Wilson was nominated and elected said:

We favor national aid to State and local authorities in the construction and maintenance of post roads.

It has now been nearly four years since the making of that platform pledge, and still no national-aid road law has been enacted looking to its fulfillment. The prospects, however, seem good for a road law to pass, but the outlook is that when passed it will not go into practical effect for several years, and will benefit but slightly, if at all, people living in the rural districts, where roads are mostly needed, because many of them can be traveled with difficulty, while others can not be traveled at all. I voted for the Federal-aid road bill that passed the House in the hope that when the Republicans came into power it would be so amended as to make it workable and beneficial. For the House bill the Democratic Senate substituted an entirely different proposition. The Democrats are at sea on roads legislation. They feel, however, that they are compelled to pass some sort of a road law before Congress adjourns; otherwise they could not well face an outraged constituency. The road law passed at this late date in the Democratic administration and on the eve of a presidential election can not be tried out before November. The people generally when they vote this fall will not know whether they have been handed a gold brick or not. They will be asked to take the road law "on faith." The passage of some sort of a road law, however, is regarded as a political necessity, and will no doubt be done. The fact remains, however, that the same Democratic Congress, at the instance of the same Democratic President, passed a law two years ago whereby the United States Government is spending $40,000,000 building a railroad in Alaska.

The President tried to put through, and would have put through but for Republican opposition, another bill appropriating $50,000,000 with which to build ships and put the United States in the shipping business for the importers and exporters. It looks like they are going to put that bill through this Congress. They have money for these things, although the pledges of neither of them were contained in the Democratic platform, but so far they have failed to put one dollar into the construction and maintenance of post roads, pledged by the platform upon which the President was elected and which platform the President accepted in toto, saying the pledges were those of "honest men" and "intended to be kept when in office."

PANAMA CANAL TOLLS.

The President and the Democratic Party again broke their solemn promise to the American people on the question of Panama Canal tolls. They said in their Baltimore platform:

We favor the exemption from toll of American ships engaged in coastwise trade passing through the canal.

This is what Democracy declared for in its platform of 1912, and is what the President indorsed, stood for, and argued for in his campaign before he was elected President. President Wilson specifically indorsed this plank in that celebrated speech he made to 2,500 farmers at Washington Park, N. J., on August 15, 1912, in which he said:

Now, at present there are no ships to do that; and one of the bills pending—passed, I believe, yesterday by the Senate, as it has already passed the House—provides for free toll for American ships through that canal.

But after the President was elected, for some unknown reason that the country has never understood, for some mysterious reason that the President has never explained, he came, hat in hand, up on Capitol Hill one day when the House and Senate was in session and practically said: "Boys, we've got to take her back. We've got to break our platform pledges to the country and the people that elected us. Acting under your oaths as legislators, you said that American ships engaged in coastwise trade passing through the Panama Canal should not pay

any toll; that such exemption would tend to keep down railroad rates [which he has since helped get increased]. The Democratic platform upon which I was nominated and elected declared for free tolls. I declared for the same thing in my speeches before election. I have not forgotten what I said to those New Jersey farmers and the country when I was seeking votes, but we have got to take it all back. I can not tell you why this is so, but I have reversed myself on the question of tolls of American ships passing through the canal, and you must reverse yourselves. You made speeches on the floor of the House and on the floor of the Senate until you were red in the face expounding the benefit to the American people, especially the American farmer, to be derived from such a course, and you embodied and passed a bill through both House and Senate declaring for free tolls, a thing specifically promised by our 1912 platform, but you must repeal that law, introduce a new bill charging tolls to American ships engaged in coastwise trade passing through the canal, and make some more speeches, requdiating what you have already said and done and repudiating your and my solemn platform pledges to the American people."

This was done. The repeal law was passed. So it has happened to free sugar and the promised cheapening of the "poor man's" breakfast table. The "crow" was eaten, but few, if any, of the legislators have ever known why it was necessary. The country knows nothing about it on account of the silence and secrecy of the President, although he declared when he came into office that his administration should be one of "pitiless publicity," and the White House doors would swing open to all "forward-looking" men. All the President has permitted the world to know is that he changed his mind and that another solemn contract in the Democratic platform with the people was broken.

RURAL CREDITS.

What I have said tells but a small part of the sad story. The Democratic platform upon which President Wilson was elected declared:

Of equal importance with the question of currency reform is the question of rural credits, or agricultural finance. We favor legislation permitting national banks to loan a reasonable portion of their funds on real estate security.

A rural-credits or farm-loan bill has been passed, or will be before Congress adjourns. I love the country. I was reared on a farm. I have always been interested in legislation looking to the farmers' good. I voted for the rural-credits or farm-loan bill when it was before the House, although I am confident it will prove to be of little benefit to the farmers, especially those in moderate circumstances—those that need help most. The law is a very defective one. It contains no genuine Federal aid. It is passed on the eve of an election, and the Democrats hope the passage of it will help them politically.

The gentleman from Pennsylvania, Representative MCFADDEN, who knows as much about this measure as any Member of the House, said in a speech here concerning it:

It will only benefit well-to-do farmers, but furnish no help for the worthy farmer who has no capital and desires to follow farming as an occupation. * * * This bill is an experiment and has no foundation. * * * The operation of the system as proposed might develop into a political machine.

Representative HENRY, of Texas, one of the Democratic leaders of the House, gave out the following statement when the bill was reported by the joint congressional committee:

In many respects the bill is admirable and has some very strong features.

However, direct Government aid is ignored and excluded. The measure does not provide for the Government guaranteeing or purchasing the farm-loan bonds based on farm mortgages. Without this aid the bill would be worthless to the farmers.

There is no use in mincing words. The fight is on. The real friends of Government aid must rally their forces and prepare for the contest in the House.

It is generally understood here that President Wilson has all along been opposed to putting the Government back of and making available the farmer's credit to the same extent that the Federal reserve act puts the Government back of the business man's and the bankers' credit. This bill as framed and passed by this House on the approval of the President is sufficient proof of that.

It is certain that this bill will not help the man without means. It merely authorizes the farmers to loan money to themselves.

It is not at all certain that the farmers with means will enter into and help form local farm-loan associations, in order to enable them to borrow money under this act, especially in view of the fact that they will be compelled to take stock in the Federal land bank in a sum equal to 5 per cent of their loan and then become liable for 5 per cent more to liquidate the debts of the farm-loan association.

It will be a makeshift law, to say the least of it; but the Democratic Party felt impelled to pass some sort of rural-credits legislation in order to appease the wrath and satisfy the demand of the 12,000,000 farmers in this country. The law can not be tried out before the November election. Its nonworkability can not be demonstrated before that time. Its futility to be of benefit to the farmer who needs it can not before then be made known to many. In the meantime the Democratic spellbinders can boast of the "wonderful blessings" of their rural-credits law.

TRANSPORTATION RATES.

The Democrats also said this in their Baltimore platform:

We favor legislation which will assure such reductions in transportation rates as conditions will permit.

At the time the Democrats made this platform declaration there was a Republican President in the White House and the country was enjoying the fruits of unbounded prosperity. The railroads were making lots of money. The Democratic Party had not been in office long until the country started to the "demnition bowwows." Receivers were appointed for one railroad system after another throughout the country, and the railroads applied to the Interstate Commerce Commission to have rates raised, business was so poor. All sorts of pressure was brought to bear upon the commission to grant increases in rates. Of course, the higher the rates the more the merchant and the farmer has to pay for shipping freight and traveling over the railroads. It is interesting to note whether the President was upon the side of the railroads or upon the side of the people. Just a while before the Interstate Commerce Commission was expected to hand down its decision in regard to this proposed raise of freight rates the President called a number of newspaper reporters about him and authorized the following interview, which was printed by the press of the country on the 1st day of June, 1915:

President Wilson indicated to-day that he would not be dissatisfied if the Interstate Commerce Commission allowed the railroads the 5 per cent freight-rate increase they are seeking. Mr. Wilson left no doubt in the minds of those who talked to him that he was in favor of the increase.

The Interstate Commerce Commission decided in accordance with the President's wishes and granted the increase. He soon reappointed the commissioner who cast the deciding vote. Apparently the habit of the President and the Democratic Party in breaking their platform pledges to the American people has become chronic.

REDUCTION OF OFFICES PLEDGE BROKEN.

The Democrats said in their Baltimore platform—

We demand a reduction in the number of useless offices, the salaries of which drain the substance of the people.

Yet in the face of that pledge the Democrats have created, in less than four years, 30,000 new offices and places at an annual cost of over $36,000,000.

They have increased the annual salaries of the old offices over $4,000,000 every year.

ANOTHER BROKEN PLANK.

I quote the following from the Democratic platform adopted at Baltimore:

The constitutional rights of American citizens should protect them on our borders and go with them throughout the world, and every American citizen residing or having property in any foreign country is entitled to and must be given the full protection of the United States Government, both for himself and his property.

That platform pledge has been shamefully ignored and superseded by "watchful waiting." This administration has not had the merit to go to war nor the courage to stay out of it. Its hatred for Germany and partisanship for England and her allies belies its loud professions of neutrality.

The Democrats declared in their platform that—

American citizens residing or having property in any foreign country are entitled to and must be given the full protection of the United States Government.

Yet in the face of this solemn platform pledge the President of the United States, the Commander in Chief of the Army and Navy, has "watchfully waited," has backed and filled, has hesitated and halted, while Mexico and Mexicans have spat upon our flag, trampled it in the dust, and flung this truthful taunt in the face of red-blooded Americans: "We have outraged your women; we have murdered your children; we have burned your property; we have insulted the flag of your country. Tell us, is there anything we can do to you that will make you stand up and fight like men."

The President's policy in Mexico has not only broken the platform pledge of his party, but has brought a blush of shame and humiliation to every true American, be he native or foreign born.

THE CIVIL-SERVICE PLANK, TOO, HAS BEEN BROKEN.

The Democratic platform adopted at Baltimore, made famous by the number of its broken promises, contained this plank:

The law pertaining to the civil service should be honestly and rightly enforced, to the end that merit and ability shall be the standard of appointment and promotion rather than service rendered to a political party.

Notwithstanding that party declaration and platform pledge, civil service, under this administration, has been utterly debauched in order to find places for "deserving Democrats." The civil-service laws were set aside in the passage of the Underwood Tariff Act, and there were exempted from the civil-service regulations more than 600 agents, deputy collectors, and other income-tax employees. Appointees under new laws like the proposed rural credits are not to be taken from civil service.

One thousand one hundred and forty-five deputy collectors of internal revenue and 176 deputy United States marshals were authorized to be appointed and removed without reference to the civil-service act in the very first general deficiency bill passed by the Wilson administration.

The civil-service laws were violated by the Democrats in the acts of December 17, 1914; December 26, 1914; July 16, 1914; January 28, 1915; March 4, 1913; August 1, 1915. Also in the Federal reserve banking law, the rural-credits law, and other laws passed by this administration.

The 45,000 fourth-class postmasters in this country have virtually been put under the spoils system. Thirty thousand new offices have been created for the faithful. The President by Executive order has waived the civil-service rules 253 times since he has been in office. The spoils system has run riot. Civil-service laws and their pledges to uphold them have been tossed to the winds by the Democrats.

DEMOCRATIC ECONOMY.

But there were two planks in the Democratic platform of 1912 that stood out preeminently above all the others in importance—the ones on which the Democrats most relied for success. One of these reads as follows:

We denounce the profligate waste of the money wrung from the people by oppressive taxation through the lavish appropriations by recent Republican Congresses.

They said that the Republicans were just taxing the people to death; that they had run the annual appropriations up to a billion dollars; and that when they, the Democrats, were placed in power they proposed to have an economical administration, and one of retrenchment and reform. They said that the Republican appropriations were wastefully extravagant. They demanded economy, simplicity, retrenchment, and reform. They said they would abolish all the useless offices that were a drain upon the people's substance and would cut down the salaries of Government officials. They have, as I have said, created 30,000 new offices and have increased the salaries of offices by the millions of dollars. They said that merit and ability should be the standard of appointment to office; that the merit system should be impartially and rigidly upheld, but I have just shown how that pledge was violated. They said they would not spend as much money if they had charge of the Government's affairs as the Republicans had been spending. The first time, however, they got control of the affairs of the country they spent in one year $63,000,000 more of the people's money than had ever been expended by any Republican Congress that has ever been convened in the city of Washington or elsewhere. We turned over to them a total balance of $149,335,710 in the general fund of the Treasury on the 3d of March, 1913. They have spent that. They have spent every cent of money they could rake and scrape from every source of taxation. Notwithstanding this there was a deficiency of $17,575,216.85 on the 29th day of April, 1916. They have invented new ways of taxing the people.

They invented the income-tax system. They figured out that they would collect from the people about $80,000,000 annually from that source. They are now collecting many millions more than that. Then they turned around and invented some more new methods of wringing money from the people, whom they pledged themselves to save and to serve. They saddled on us a war tax, calculated to bring into the Treasury of the United States about $100,000,000 a year. They tax us at the telephone booth and the telegraph office. There never has been such a stamp-licking time in the history of the country. They figured out that there would be a good many notes and a good many mortgages and but very little money passing around under their administration, so they put a stamp tax on notes and mortgages, but did not put any on checks. They knew there would not be very many of them. And so, with all these various forms of taxations, new ones must still be invented. They are puzzling their brains over that now. The Democrats have broken their pledge of economy. This is admitted by all men, denied by nobody.

But the one plank in the Democratic platform of three years ago concerning which the Democrats had most to say was their tariff plank. While the Democrats lambasted the Republicans for the reckless expenditure of the people's money, and while they said many mean things along that line, the most of the abuse that they heaped upon us was concerning the tariff question. They told the people that they were being robbed through the instrumentality of a tariff law that the Republicans had put upon the statute books. They said that the poor man, the laboring man, was staggering under the weight of it and the burden of it. They said that poor men and women all over this land and country were being robbed of the fruits of their labor through the "robber tariff"; that they were pouring their money into the coffers of the rich, especially into the coffers of the rich "tariff barons." They said that the high cost of living was all due to this "robber tariff"; that the Republicans were wedded to and had foisted it upon the many for the benefit of the few. They said that the Republican Party was in bed with the great monopolies of this land and country and was in league with the flesh and the devil.

They said to the laboring man, "Look at this 25 cents you have to pay for a pound of bacon. It was all brought about by the robber protective tariff." They said, "Look at the high cost of the hat on your head and the shoes on your feet, due to this robber protective tariff, fostered and nurtured by the Republican Party." They said, "If you will just put us in power we will put an end to all this. We will revise these tariff laws. We will give you free trade or a tariff for revenue only. We will annihilate the trust and the monopoly. We will reduce the cost of living. We will put the poor man and the laboring man in possession of his rights. We will see to it that as long as we are in power he shall have plenty of work to do at big wages. He shall not have to pay half as much for the necessaries of life as he has been forced to pay under the Republican protective-tariff administration. We are not only going to revise these tariff laws but we are going to do it in such a way as will not injure any 'legitimate industry.' Prosperity will be increased, the trusts destroyed, the high cost of living removed from the backs of labor. The 'crown of thorns' shall be for the laboring man no more." That is what you Democrats said to us, gentlemen; and you now know that not a single one of your promises have been complied with. You said you would revise the tariff down to a revenue or free-trade basis without doing hurt or harm to any "legitimate industry." You did revise the tariff, but not without doing irreparable harm and injury to the legitimate industries of this land and country. You did revise the tariff, but instead of increasing the prosperity of the country, prosperity fled our realms, and is only now returning because of the war in Europe coupled with the immediate prospect of another Republican administration. You did revise the tariff, but instead of reducing the high cost of living it has been getting higher all the time. The average price of the necessaries of life are now 17 per cent more than when you took charge of the affairs of this Government. You enacted your Democratic tariff law in October, 1913. You did away with Republican protection. You were going to enact a tariff law, you said, for revenue only. You said that it was neither your purpose nor your desire to protect any American industry or any American workingman. You said that you had only one idea in view and that was to raise revenue, and a sufficient amount of it to run this Government when its affairs were economically administered; so you passed the Underwood tariff law with that avowed purpose, but it did not raise the needed revenue.

You said the consumer pays the tariff tax. You said take this tariff off of imported goods and they can and will be sold a good deal cheaper than we are getting them in this country. You have preached for years, for example, that free hides means cheaper shoes; free wool, cheaper clothes and cheaper hats. That looks pretty well in theory, but it fails to work out in practice. You said during the 1912 campaign that shoes were entirely too high, and they have been mighty high. You said, "We are going to put hides on the free list and reduce the cost of shoes to the consumer." So you put hides on the free list and the price of shoes have gone up from that day to this. We have lost the revenue. The importer of shoes has kept the price of his shoes at or near the price of shoes produced in this country.

The price of shoes has not been lowered to the consumer. The importer has pocketed the cash while we have lost the revenue.

You said the Republicans had placed a big tariff on sugar and that the tariff on it kept the price of sugar unreasonably high. You said that the poor man who sweetened his coffee with sugar had to pay a double price for the privilege on account of the Republican tariff laws. You said you would put it on the free list and that everybody would get cheap sugar. So in the Underwood law you reduced the tariff on sugar 25 per cent in October, 1913, when the Underwood law became effective and scheduled it to go altogether on the free list in May, 1916. But instead of bringing cheap sugar to the consumer the price of the sweet thing has been soaring toward heaven from that day down to this, or rather to the day when sugar was again put back on the dutiable list. You reversed yourselves and put it back on the dutiable list where the Republicans had placed it. While sugar was on the free list the consumer paid more for it than he had ever done before. The importer pocketed the money. We lost the revenue. We got $50,000,000 a year in revenue by reason of the tariff duty the Republicans laid on sugar. That $50,000,000 annually was used in helping to defray the expenses of the Government. When the Democrats put sugar on the free list we lost the $50,000,000 annually in revenue. It had to be supplied in some other way. It was supplied through the passage of an income-tax law and a war-tax law when this country was at peace with all the world. In the first 10 months of the operation of the Underwood tariff law and before the war in Europe began, 5,000,000 laboring men had been thrown out of employment by reason of it. The railroads alone laid off 120,000 men and cut down expenses $138,000,000 from July 1, 1914, to July 1, 1915. Uninterfered with by the European war, it had brought the country to the verge of ruin and to the homes of many want and starvation.

The Democrats say that the Underwood law is all right, and would be producing ample revenues to run the Government but for the European war. The value of importations coming monthly to our shores—the greatest in the history of the country—and the little revenue collected thereon, however, refutes this charge. We sold during the first year of the war $404,000,000 worth more of our products abroad than we sold the year before the war began. We bought $219,000,000 worth less. The Democrats propose to leave the Underwood tariff law on the statute books, which now admits free of duty about 70 per cent of the goods of foreign countries; and around the tariff issue this fall will be waged one of the fiercest political battles that this country has witnessed in many a day. The Republicans know or feel that they know that when the war in Europe is over and the men now engaged in it return to useful occupations and avenues of productiveness, anxious to retrieve their lost fortunes, this country will be flooded with such an immense quantity of cheaply produced goods as will close down our mines, mills, and factories, and turn millions of our laboring men out of employment, unless the Republicans come back into power and place upon the statute books an adequate protective-tariff law. The Democrats will, no doubt, make many fair promises to the American people; but how can they be trusted in face of the fact that they have violated all of the pledges contained in their last national platform? What will future pledges from such a party be worth? I can not see how fair-minded men can indorse the doings of the Democratic Party or put any faith in any promise its leaders may make.

I am through with my argument, but in order to show conclusively that the President has turned down the chief legislative demand of the 2,000,000 members of the American Federation of Labor, which so enthusiastically supported him four years ago under the apparently mistaken notion that he was their friend and sympathized with them in their efforts to better their conditions, I am appending clippings from recent issues of the official weekly publication of the American Federation of Labor, 100,000 of which go throughout the length and breadth of this land to its local officials and members.

In this as well as other demands of the workingmen, the working people, organized and unorganized, will have to look to the Republican Party for a realization of their expectations and just demands. The Republican Party has always stood for protection, while the Democratic Party has advocated through its present leaders the "open door" and free trade. The Republican Party is for protection against foreign invasion. It stands for true preparedness. It is for protection against foreign pauper-made goods and for protection against the foreign pauper cheap labor itself. It has so declared and will so stand.

The following articles are clipped from the American Federation of Labor Weekly News Letter, printed Saturday, April 8, 1916:

HOUSE PASSES BURNETT IMMIGRATION RESTRICTION BILL—307 TO 87.

WASHINGTON, *April 8.*

By a vote of 307 to 87 the House passed the Burnett immigration bill, with the literacy test, on Thursday, March 30. Prior to this vote, Congressman SABATH moved to recommit the bill "with instructions" to strike out the literacy test. This was defeated on a roll call vote, 284 to 107.

Opponents of the measure presented no new arguments, while the position of its advocates was strengthened by conditions in Europe because of the war. Congressman MANN, the minority leader—who voted for the Sabath amendment, but later voted for the bill—indorsed this position. He said: "And unless those countries (European) by their own legislation can prevent their citizens coming here, we are liable to have a flood of immigration such as no country in the world ever experienced before. I am not willing to take the chances on it."

Advocates of restriction referred to the increasing sentiment in favor of greater effectiveness in every field of activity. They insisted that democracy can not be developed to its highest possible point while we encourage the admission of illiterates who destroy living standards of American labor and who refuse to become a part of our national life.

The literacy test provides that immigrants over 16 years of age must read at least 30 words in some language or dialect, including Hebrew or Yiddish, chosen by the immigrant. Exceptions to this test are made in the case of an immigrant's father or grandfather over 55 years of age; his wife, his mother, his grandmother, or his unmarried or widowed daughter.

Exception to the literacy test is also made where an immigrant flees from religious or political persecution. The latter exception includes "persons convicted, or who admit the commission, or who teach and advocate the commission, of an offense purely political." Under this provision the old-world revolutionist who advocates force to overthrow his government, or who admits the use of force for that purpose, will be admitted to this country regardless of educational qualifications.

The question of immigration restriction by a literacy test has been favorably voted on by almost every Congress since 1896. On three occasions the proposal has been vetoed—by Presidents Cleveland, Taft, and Wilson. In 1897 the House passed the bill over President Cleveland's veto, 193 to 37. This was 37 votes more than the necessary two-thirds vote. The Senate failed to act, owing to a rush of business and Congress adjourning a few hours after the House vote.

In 1913 the Senate passed the bill over President Taft's veto, 72 to 18, but the veto was sustained in the House by a few votes. On February 4, 1915, the House sustained President Wilson's veto, 261 to 136. If any 4 of the 136 that voted to sustain the President had voted with the majority a two-thirds vote would have been secured and the bill passed.

The last vote in favor of immigration restriction—307 to 87, recorded March 30 last—indicates the increasing demand by the people for this legislation.

The bill is now in the Senate. Its passage by that body is conceded if its advocates can overcome the small minority that will take advantage of the rules of the Senate to keep the bill from being voted on.

Trade-unionists and other friends of this legislation are urged to write their two United States Senators and insist that the Burnett immigration bill be voted on at this session of Congress.

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VOTE ON RESTRICTION IN HOUSE ANALYZED.

WASHINGTON, *April 8.*

An analysis of the House vote on immigration restriction, March 30, indicates an increasing demand for this legislation.

Out of a possible 434 votes in the House, only 87 were cast against the bill, 36 were recorded "not voting," and 3 "present." Of these 39 only 13 were paired against the passage of the bill. There was not a single vote against the bill from the following 26 States: Alabama, Arizona, Arkansas, Colorado, Delaware, Florida, Georgia, Idaho, Kansas, Minnesota, Mississippi, Montana, Nevada, New Hampshire, New Mexico, North Carolina, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Vermont, Virginia, Washington, West Virginia, and Wyoming.

Eighteen States were divided in their vote, but in none of these was a majority of the Congressmen against the bill.

In only four States—Connecticut, Michigan, New York, and Rhode Island—did a majority of the delegations vote against the bill on final passage. In these cases the vote was: Connecticut, 4 out of 5 against or were paired against; Michigan, 7 out of 13; New York, 27 out of 43; Rhode Island 3 out of 3.

Rhode Island was the only State whose entire delegation either voted or was paired against the bill, 2 voting "nay" and 1 being paired to vote "nay."

But one-fifth of the total membership of the House voted against the bill, which passed by nearly a 4 to 1 vote by Congressmen fresh from the people, just a year and two months after the President's veto of the same bill, January 28, 1915, when the Chief Executive stated that he doubted whether there was a popular demand for this legislation.

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HOUSE ROLL CALL VOTE ON BURNETT IMMIGRATION RESTRICTION BILL.

THE VOTE EXPLAINED.

Prior to the final vote on the immigration restriction bill Congressman SABATH moved to strike out the literacy test. This was defeated on a roll-call vote, 284 to 107.

The bill was then passed by the vote printed herein.

The names in the "aye" columns, with a star (*) at their left, indicate that these Members first voted to strike out the literacy test, and when the motion to strike out was defeated these Members voted for the bill on its final passage.

ALABAMA.

Aye: Abercrombie, Almon, Blackmon, Burnett, Gray, Heflin, Huddleston, Oliver, and Steagall.

Not voting: Dent.

ARIZONA.

Aye: Hayden.

ARKANSAS.

Aye: Caraway, Goodwin, Jacoway, Taylor, and Tillman.

Not voting: Oldfield and Wingo.

Wingo was paired in favor of the passage of the immigration bill with Cary, of Wisconsin, against.

CALIFORNIA.

Aye: Church, Curry, Elston, Hayes, Kent, Kettner, Nolan, Raker, Randall, and Stephens.

Nay: Kahn.

COLORADO.

Aye: *Keating, Taylor, and Timberlake.

Not voting: Hilliard.

Hilliard was paired in favor of the passage of the immigration bill with Loud, of Michigan, against.

CONNECTICUT.

Aye: Hill.
Nay: Freeman, Glynn, and Oakey.
Not voting: Tilson.
Tilson was paired against the passage of the immigration bill with Edwards, of Georgia, in favor of the passage of the immigration bill.

DELAWARE.

Aye: Miller.

FLORIDA.

Aye: Clark, Sears, Sparkman, and Wilson.

GEORGIA.

Aye: Adamson, Bell, Crisp, Howard, Hughes, Lee, Park, Tribble, Vinson, and Wise.
Not voting: Edwards and Walker.
Edwards was paired in favor of the passage of the immigration bill with Tilson, of Connecticut, against.

IDAHO.

Aye: McCracken and Smith.

ILLINOIS.

Aye: Buchanan, Chiperfield, Copley, Denison, Foss, Foster, Fuller, King, McKenzie, McKinley, *Mann, Rainey, *Rodenberg, Sterling, Tavenner, Wheeler, Williams, T. S., and Wilson.
Nay: Britten, Cannon, Gallagher, McAndrews, McDermott, Madden, Sabath, and Stolc.
Not voting: Williams, W. E.

INDIANA.

Aye: Adair, Cline, Cox, *Cullop, Dixon, *Gray, Moores, Moss, *Rauch, and *Wood.
Nay: Barnhart and Lieb.
Not voting: Morrison.

IOWA.

Aye: Dowell, Good, Green, Haugen, Hull, Kennedy, Ramseyer, Steele, and Sweet.
Nay: Towner and Woods.

KANSAS.

Aye: Anthony, Ayres, Campbell, Connelly, Doolittle, Helvering, Shouse, and *Taggart.

KENTUCKY.

Aye: Barkley, Cantrill, Fields, Helm, Johnson, Kincheloe, Langley, Powers, Rouse, and Thomas.
Nay: Sherley.

LOUISIANA.

Aye: Aswell, Lazaro, Morgan, and Wilson.
Nay: Dupré, Estopinal, and Martin.
Not voting: Watkins.

MAINE.

Aye: Hinds and Peters.
Not voting: Guernsey and McGillicuddy.
McGillicuddy was paired against the passage of the immigration bill with Guernsey in favor.

MARYLAND.

Aye: Linthicum, *Mudd, Price, and Talbott.
Nay: Coady.
Not voting: Lewis.
Lewis was paired in favor of the passage of the immigration bill with Doremus, of Michigan, against.

MASSACHUSETTS.

Aye: Gardner, Gillett, Olney, *Rogers, and *Treadway.
Nay: Carter, Dallinger, Gallivan, Greene, Paige, Phelan, Roberts, Tague, Tinkham, Walsh, and Winslow.

MICHIGAN.

Aye: Hamilton, Kelley, McLaughlin, Mapes, Scott, and Smith.
Nay: Beakes, Cramton, Fordney, James, and Nichols.
Not voting: Doremus and Loud
Doremus was paired against the passage of the immigration bill with Lewis, of Maryland, in favor.
Loud was paired against the passage of the immigration bill with Hilliard, of Colorado, in favor.

MINNESOTA.

Aye: Anderson, Davis, Ellsworth, Lindbergh, Miller, Schall, *Smith, Steenerson, Van Dyke, and Volstead.

MISSISSIPPI.

Aye: Candler, Collier, Harrison, Humphreys, Quin, Sisson, Stephens, and Venable.

MISSOURI.

Aye: Alexander, *Borland, Decker, Dickinson, Hamlin, Hensley, Lloyd, Rubey, Rucker, and Russell.
Not voting: Booher, Dyer, Igoe, Meeker, and Shackleford.
Booher answered "present."
Igoe answered "present."
Dyer was paired in favor of the passage of the immigration bill with Igoe against.
Meeker was paired in favor of the passage of the immigration bill with Booher against.
Champ Clark—Speaker—not recorded.

MONTANA.

Aye: Evans.
Not voting: Stout.

NEBRASKA.

Aye: Kinkaid, Reavis, Shallenberger, *Sloan, and Stephens.
Nay: Lobeck.

NEVADA.

Aye: Roberts.

NEW HAMPSHIRE.

Aye: Sulloway and Wason.

NEW JERSEY.

Aye: Browning, Capstick, Drukker, Gray, Hutchinson, Lehlbach, and Parker.
Nay: Bacharach and Eagan.
Not voting: Hamill, Hart, and Scully.

Hamill was paired against the passage of the immigration bill with Young of Texas in favor.
Hart was paired in favor of the passage of the immigration bill with Graham, of Pennsylvania, against.
Scully was paired against the passage of the immigration bill with Rowland, of Pennsylvania, in favor.

NEW MEXICO.

Aye: Hernandez.

NEW YORK.

Aye: Charles, Danforth, Dempsey, Dunn, Hamilton, Hicks, Husted, Magee, Mott, Parker, Pratt, Snell, Snyder, and Ward.
Nay: Bennet, Bruckner, Caldwell, Carew, Chandler, Conry, Dale, Dooling, Driscoll, Farley, Fitzgerald, Flynn, Gould, Griffin, Haskell, Hulbert, Loft, London, Maher, Oglesby, Patten, Riordan, Rowe, Sanford, Siegel, Smith, and Swift.
Not voting: Fairchild and Platt.

NORTH CAROLINA.

Aye: Britt, Doughton, Godwin, Hood, Kitchin, Page, Pou, Small, Stedman, and Webb.

NORTH DAKOTA.

Aye: Helgesen and Young.
Nay: Norton.

OHIO.

Aye: Allen, Ashbrook, Brumbaugh, Cooper, Emerson, Fess, Gard, Hollingsworth, Kearns, Key, Longworth, McCulloch, Matthews, Mooney, Overmeyer, Ricketts, Russell, Switzer, and Williams.
Nay: Crosser, Gordon, and Sherwood.

OKLAHOMA.

Aye: Carter, Davenport, Ferris, Hastings, McClintic, Morgan, Murray, and Thompson.

OREGON.

Aye: Hawley, McArthur, and Sinnott.

PENNSYLVANIA.

Aye: *Bailey, Beales, Butler, Coleman, Costello, Crago, Farr, Focht, Garland, Heaton, Hopwood, Keister, Kless, Kreider, Lafean, Lesher, Miller, North, Porter, Scott, Steele, Temple, and Watson.
Nay: Barchfeld, Casey, Liebel, Moore, Morin, and Vare.
Not voting: Darrow, Dewalt, Edmonds, Graham, Griest, McFadden, and Rowland.
Graham was paired against the passage of the immigration bill with Hart, of New Jersey, in favor.
Griest was paired in favor of the passage of the immigration bill with Edmonds against.
Rowland was paired in favor of the passage of the immigration bill with Scully, of New Jersey, against.

RHODE ISLAND.

Nay: Kennedy and O'Shaunessy.
Not voting: Stiness.
Stiness was paired against the passage of the immigation bill with Henry, of Texas, in favor.

SOUTH CAROLINA.

Aye: Aiken, Byrnes, Finley, Lever, Nicholls, Ragsdale, and Whaley.

SOUTH DAKOTA.

Aye: Dillon, Gandy, and Johnson.

TENNESSEE.

Aye: Austin, Byrns, Houston, Hull, McKellar, Moon, Padgett, Sells, and Sims.
Not voting: Garrett.

TEXAS.

Aye: Black, Callaway, Davis, Dies, Eagle, Garner, Gregg, McLemore, Rayburn, Slayden, Smith, Stephens, and Sumners.
Nay: Burgess, Buchanan, and Hardy.
Not voting: Henry and Young.
Henry was paired in favor of the passage of the immigration bill with Stiness, of Rhode Island, against.
Young was paired in favor of the passage of the immigration bill with Hamill, of New Jersey, against.

UTAH.

Aye: Mays.
Nay: Howell.

VERMONT.

Aye: Dale and Greene.

VIRGINIA.

Aye: Carlin, Flood, Glass, Hay, Holland, Jones, Montague, Slemp, and Watson.
Not voting: Saunders.

WASHINGTON.

Aye: Dill, Hadley, Humphrey, Johnson, and La Follette.

WEST VIRGINIA.

Cooper, Littlepage, Moss, Neely, and *Sutherland.

WISCONSIN.

Aye: Browne, *Cooper, *Esch, Frear, Lenroot, and Nelson.
Nay: Burke, Konop, Reilly, and Stafford.
Not voting: Cary.
Cary was paired against the passage of the immigration bill with Wingo, of Arkansas, in favor.

WYOMING.

Aye: Mondell.

POLITICAL AND RELIGIOUS REFUGEES ARE NOT BARRED.

The Burnett immigration-restriction bill makes clear provision for the continued admission of political and religious refugees to this country.

Opponents of the bill evade discussing the main purpose of this legislation—to maintain American living standards of workers by debarring illiterates.

As it is unwise to combat this principle, the trusts and other cheap-labor advocates insist that the act would change America's traditions and policy toward those who are forced to leave the Old World because of political or religious beliefs.

The following sections of the bill, however, completely refute these claims:

"That the following classes of persons shall be exempt from the operation of the illiteracy test, to wit: All aliens who shall prove to the satisfaction of the proper immigration officer or to the Secretary of Labor that they are seeking admission to the United States to avoid religious persecution in the country of their last permanent residence, whether such persecution be evidenced by overt acts or by laws or by governmental regulations that discriminate against the alien or the race to which he belongs because of his religious faith.

"Nothing in this act shall exclude, if otherwise admissible, persons convicted, or who admit the commission, or who teach or advocate the commission, of an offense purely political."

Congressman BURNETT, author of the bill, and chairman of the House Committee on Immigration, has repeatedly stated that the friends of immigration restriction would not support legislation that would debar these refugees.

Other advocates of restriction have taken a similar position, which is in line with the innumerable humanitarian declarations of the American Federation of Labor, and which was pointed out by Congressman MEEKER, of Missouri, who made this answer to the claim of anti-restrictionists:

"You speak of the political refugee. If the language is not distinct and plain on that one issue, then I can not understand how it is to be written. The revolutionist, your Kosciuszko, and all those men to whom reference has been made, could enter this country under this provision. This country will always remain the home of the religious and the political refugee, but we would just as well begin now to face that other problem of imported ignorance."

INSIST THAT THE IMMIGRATION BILL BE PASSED AT THIS SESSION—URGE YOUR TWO SENATORS AT WASHINGTON TO FAVOR IMMEDIATE ACTION ON THIS MEASURE—RESTRICTION WILL PROTECT AMERICAN WORKERS' LIVING STANDARDS—INSIST THAT THIS BILL BE PASSED BEFORE CONGRESS ADJOURNS—OPPONENTS OF IMMIGRATION BILL DID NOT DIVIDE ON PARTY LINES.

Opposition to the Burnett immigration bill, which passed the House March 30 by a vote of 307 to 87, was of a nonpartisan character.

On the Democratic side Congressmen SABATH, of Illinois, and GALLIVAN, of Massachusetts, were leaders in defending the cause of cheap-labor advocates. In one of Mr. GALLIVAN'S fervent pleas he declared that "a literacy test will bar from our land its most vital necessity—strong, vigorous, simple, God-fearing peasants."

Mr. SABATH insisted that "reports which have been circulated declaring there is an imperative need for immigration legislation are unfounded and unjustifiable."

Congressman LONDON, Socialist, opposed the bill. Over one-half of the Friday, March 24, speech of this attorney was devoted to an arraignment of the trade-union movement. In a tone that sounded like a spokesman for the National Association of Manufacturers, he declared that:

"The trouble with the average representative of organized labor is that he is incapable of that broader vision which sees above and beyond the narrow needs of the moment. That is the misfortune of the trade-union movement. What lack of intelligence! The politician is afraid to tell them that they are stupid."

In answer to a question Mr. LONDON said he assumed employees in Youngstown steel mills were unorganized, and then made this reference to the trade-union movement:

"But if they were not organized, it was the fault of the narrowness of the trade-union movement that does not know how to reach the masses."

Mr. LONDON is evidently unacquainted with the spy systems of large corporations, with the constant agitation by the American Federation of Labor to organize the unskilled, and with the number of unionists who have been slugged by corporation thugs to prevent organization. He said:

"The union should greet the immigrant as a brother. The union man should teach him unionism. Instead of that, the labor leader looks upon every immigrant as an enemy."

Despite this attorney's claim that he represents the workers, he made it clear that he would be the sole judge of what was best fitted for them. In his second reference to the alleged stupidity of workers, he said:

"I have no faith in the friend of labor who encourages every stupid demand of the worker, checking at the same time every real aspiration of the working class for a greater share in life's joys."

On the Republican side, Congressmen JOSEPH CANNON of Illinois, BENNET of New York, and MOORE of Pennsylvania were among the leading opponents of restriction.

In referring to the literacy test, Mr. MOORE said:

"It casts down utterly the toiler who struggles patiently and laboriously under the burdens imposed upon him by the strong and the heartless."

Mr. CANNON is president of the National Liberal Immigration League, which was exposed last year by President Gompers, who showed that this league was financed by steamship companies, steel, mine, and coal companies, and other large employers of cheap labor. The documents made public by President Gompers proved that this alleged philanthropic organization was the vehicle by which cheap-labor advocates opposed immigration restriction. It was also shown that the league financed delegations of various nationalities to Washington, and that the delegates were not selected by the organizations they alleged to represent.

Congressman W. S. BENNET, another active exponent of restriction, is vice president of the National Liberal Immigration League. In the CONGRESSIONAL RECORD of February and March, this year, Mr. BENNET acknowledged he was attorney for steamship companies; that he defended contract labor violators; and that he opposed increasing, from $50,000 to $100,000, the appropriation for Secretary of Labor Wilson to enforce the contract labor law.

In the CONGRESSIONAL RECORD of February 25, 1916, Mr. BENNET is quoted:

"While I was out of the House, amongst my clients were some steamship companies, and I studied it (immigration restriction) some more."

Mr. BENNET was a member of the United States immigration commission that investigated this question for nearly four years. He was the only member of the commission that dissented from a literacy test and other restrictions favored by his colleagues on the commission.

As an attorney he is most versatile, acting not only as pleader for the steamship companies but for contract-labor-law violators. In the March 25 CONGRESSIONAL RECORD he is quoted:

"The Department of Justice collects thousands of dollars from violators of the contract-labor law. While I was out of Congress on a temporary vacation, I represented a gentleman who had to walk up to the captain's office and pay $6,000 in one of these cases."

TRUSTS ARE PROTECTED FROM FOREIGN PRODUCTS, BUT DEMAND AN UNLIMITED FLOW OF CHEAP LABOR, WHICH DESTROYS AMERICAN WAGES AND IDEALS.

[By Frank Morrison, Secretary of the American Federation of Labor.]

"A high tariff against European cheap-labor products is insisted upon by American trusts, but these trusts are the chief opponents of immigration restriction intended to protect American workers," said Frank Morrison, secretary of the American Federation of Labor, at a recent hearing on this legislation before the House Committee on Immigration. The American Federation of Labor official declared that American manhood can not compete with the living standards of eastern Europe and Asia, and that it "is unwise to expect them to resist the tidal waves of Slavs and oriental onslaught." He further said:

"The proposition to prohibit immigration to the United States of able-bodied men and women because they can not read has a sympathetic viewpoint, where individuals are considered; but, notwithstanding such a viewpoint, the American Federation of Labor, which represents the organized workers of the country, and which is the only method or organization or agency which can with any justification or reason represent the unorganized workers, has repeatedly declared by resolutions in conventions 'that the literacy test is the most practical means of restricting the present immigration of cheap labor whose competition is so ruinous to the workers already here, whether native or foreign.'

"A great deal has been said and published in an endeavor to create the impression that it is necessary to induce immigration to come to this country for the purpose of securing agricultural workers. There is no question in my mind but that such agitation has for its purpose the enticing of immigrants to our country to supply the United States Steel Corporation, the great manufacturing concerns, coal companies, packing houses, and railroads with men willing to work at a cheaper wage than those who are born here.

"The opponents to this test make the argument that common laborers would belong to the class that could not pass the literacy test, and that this country is very much in need of that particular kind of labor.

"The great industrial companies of this country have more men to-day than they can employ, but they want two men for every job. They know that unemployed men must work to live and their necessities will force them to accept any wage set by the companies. Hence the workers' wages are literally held below a living wage by the hunger, misery, and distress of the unemployed.

"The organized wageworkers have declared in favor of restriction of immigration to maintain unlowered the American standard of life. Those who oppose restriction are representatives of companies and associations composed of employers of labor whose dominant interest is the dollar, and associations that depend for their existence upon contributions from the employing class.

"They feel that a reduction of immigration will result in a higher wage for their workers which will disturb the profits and dividends from products manufactured by them, or perhaps they have been informed that if the steamship companies do not receive $60,000,000 a year for transporting aliens they will raise their freight rates.

"This reason will account in a great measure for the opposition of societies of various nationalities composed wholly or partly of business men and the attorneys of business men. Restrictions may interfere with their profits.

"We oppose any attempt to lower the standards of American life. We want to raise them, and we are opposed to the exploitation of millions of aliens with its attending evils to swell the profits of the steamship companies, even if it adds to the resources of those companies $60,000,000 a year, even if it enables the United States Steel Trust to pay dividends and interest on $400,000,000 of stocks and bonds, which never cost that company 1 cent.

"I wish to call your attention to the fact that industry is protected by a tariff, but labor is not; that the products of labor are protected, but we have a free flow of labor coming to our shores all the time; that manufacturers have protection against products manufactured by cheap labor in foreign countries, but labor has not protection against the importation of cheap labor.

The opponents of this measure say that if the products of labor are protected, then labor itself must be benefited, because the manufacturer can sell the products at a much higher price than can be obtained in other countries and will be in a position to pay higher wages to his employees. The protected manufacturer does receive a higher price than the products can be sold for in other countries; and the second contention—that they are thus made able to pay higher wages to their employees—is also true, but the fact is they do not pay higher wages. They pay lower wages.

We find that the most highly protected industries, particularly the industries that are now controlled by trusts, such as the Steel Trust, Rubber Trust, Sugar Trust, packing houses, and textile industry, pay to their employees the lowest wage in the country, and some of them less than a living wage for a family. A high tariff has nothing to do with the wages in these industries.

We hold that limitation of immigration to our country will compel social and industrial reform in the countries from which the immigrants flow. The fact that these countries have an outlet for a great number of their people means that there is an outlet from the oppressive conditions in these countries. For that reason those countries delay social and industrial reforms. As a consequence industrial and social misery is perpetual in those countries, because their citizens are induced to come to this country.

The wage earners believe in an effective regulation of immigration, because they desire to retain the American standard of living. The standard of wages for both skilled and unskilled labor in this country is the result of many years' effort by organized labor. When an immigrant accepts work at less than the standard wage, he not only takes the place of a man working at a higher rate, but he assists in forcing downward the prevailing rate of wages in that industry, which result carries with it a corresponding reduction in the physical, moral, and intellectual standard of American life.

In support of my statement that the American worker can not compete with this induced immigration and support a family on the wages paid, I refer you to the investigation of the Bethlehem Steel Works made by a committee of the Federal Council of the Churches of Christ, representing over 16,000,000 people, and the investigation made by Commissioner Neill, of the Department of Labor, as to wages and conditions in the steel industry.

The committee of the Federal Council of the Churches of Christ, commenting on the wage scale at Bethlehem, said:

"This is a wage scale that leaves no option to the common laborers but the boarding-house method of living with many men to the room. When a man has a family with him, they take in lodgers, or often the

woman goes to work. It is reported that immigrant parents send their children back to the old country to be reared while the mother goes to work. On such a wage basis American standards are impossible."

The literacy test is an expedient which should be adopted now, and time and experience will demonstrate what further legislation will be necessary in the interest and for the safety of the American people, for the improvement of American citizenship and homes, and for the perpetuation of the American Republic.

The American Federation of Labor, at its convention held last November in San Francisco, by unanimous action reiterated the decisions of previous conventions urging the speedy enactment into law of the immigration bill containing the literacy test.

No other single proposed addition to our immigration laws has received the indorsement accorded to the literacy test.

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WHY THE TRADE-UNION MOVEMENT URGES IMMIGRATION RESTRICTION.

[By President Gompers in American Federationist.]

As a people we have barely begun to appreciate the value of those qualities which make for real progress, the necessity to insist and persist in formulating sound policies to redound to the interests of the people of our Nation Indeed for years we have delayed in even formulating a national policy that would protect us against such elements and conditions which act as a barrier to the development of American character and national unity. We have excused this delay on the ground that we were a young Nation; that we had vast public lands and national resources that must be developed, and that we could afford to open our doors to a practically unrestricted immigration in order to increase our population.

But conditions have changed. We are no longer a young Nation. We have wasted much of our national heritage and the frontier has practically disappeared. Recent events that have tested national institutions and men's faith to the uttermost, proved conclusively that we can not hope to be the ideal which America represents, we can not maintain a place of influence in the affairs of the world if we do not plan to carry out those purposes. Haphazard development may do well enough for the ordinary activities from day to day, but will not endure the tests of a great crisis or the slower test of time.

To achieve the best that is possible for our Nation and for our citizens generally, we can not escape the duty devolving upon us of thinking out a national policy that will develop out of the many peoples within our boundaries a homogeneous Nation bound together by common ideals, common customs, common language, and a common culture.

America has not yet become a nation. It is still a conglomerated mass of various and diverse ethnic groups. Hordes of immigrants have crowded into our ports, and have, for the most part, settled in the nearest industrial center. In some cases they have in masses moved farther inland to industrial centers where the nature of the work required comparatively little skill. In many of these cases the coming of the immigrants was due to the activities of managers of industries, who arranged to secure the financial advantages by employing foreign workers who still retained the standards and prejudices of other countries. So we find in many industrial centers sections that are known as "Little Hungary," "Little Italy," etc. The inhabitants of these little nations transplant to American soil the institutions and the standards of their fatherlands. They gain nothing by coming. These communities speak a foreign language, read foreign papers, dress in accord with foreign customs, and bring up their families in accord with foreign standards. There is practically no sustained effort on the part of society or the Nation to assimilate these foreign groups and to make of them Americans. Nor is this condition confined only to the poorer immigrants. There are foreign communities in the resident districts of the large cities. These remain even more exclusively foreign because their wealth enables them to have foreign schools and foreign instruction for their children. Thus the foreign group and alien influence become rooted in the life of the community.

The workers of America have felt most keenly the pernicious results of the establishment of foreign standards of work, wages, and conduct in American industries and commerce. Foreign standards of wages do not permit American standards of life. Foreign labor has driven American workers out of many trades, callings, and communities, and the influence of these lower standards has permeated widely.

For years the organized-labor movement has called attention to these vicious tendencies which affect not only the workers but the whole Nation, for national unity is weakened when the Nation is honeycombed with "foreign groups" living a foreign life.

The labor movement has urged the adoption of a national policy that would enable us to select as future citizens of our country those who can be assimilated and made truly American. The American Federation of Labor has urged a literacy test, which shall be applied to all immigrants. Our Nation has accepted as a fundamental principle that education enables the girl and boy to attain better development and to have better control over their own personal ability and powers. It has been our national purpose to eliminate from our country all illiteracy. It is therefore in accord with this general plan that we should establish the same requirements for foreign-born persons who desire to come and live in our country. It has been urged that this is not a perfect standard. Of course, no standard is perfect, but the literacy test is the most effective and practical. It has been claimed that our greatest criminals are often educated persons. These are, however, only conspicuous failures of education to achieve its desired ideal. Educated criminality is not the fault of education, but is the inherent fault or defect in the nature or the physical make-up of the individual. If it is urged that education tends to criminality it would seem the wisest course to remain in ignorance, a fallacy so patent that its mere statement carries with it its own repudiation. Education can not remedy all the inherent faults of human nature, but it is the greatest instrumentality for human development and betterment.

It has been urged against the literacy test that this standard would make many suffer because they had been denied opportunities. That may be true, but it is equally true that our Nation can not work out all of the problems of all other nations. We can not undertake to educate all of those to whom other countries deny educational opportunities. Each nation must undertake and solve its own educational problems. The adoption of the literacy test by our own country would have a tendency to force nations to establish more general educational opportunities for all of their people. It is only a half truth to say that the literacy test would close the gates of opportunity to illiterate foreigners. As a matter of fact there is very little opportunity for these people in our industrial centers. Usually they have been brought over here either by steamship and railroad companies and other greedy corporations, by employers, or as a result of collusion between these groups. They have been brought over here for the purpose of exploitation, and until they develop powers of resistance and determination to secure things for themselves they have little opportunity here. These same qualities would secure for them within their own countries many of the advantages that later come to them here.

The section of the Burnett immigration bill which establishes the literacy test provides for no unfair requirements. It says:

"All aliens over 16 years of age physically capable of reading who can not read the English language or some other language or dialect, including Hebrew or Yiddish: *Provided*, That any admissible alien, or any alien heretofore or hereafter legally admitted, or any citizen of the United States, may bring in or send for his father or grandfather over 55 years of age, his wife, his mother, his grandmother, or his unmarried or widowed daughter, if otherwise admissible, whether such relative can read or not, and such relative shall be permitted to enter. That for the purpose of ascertaining whether aliens can read the immigrant inspectors shall be furnished with slips of uniform size, prepared under the direction of the Secretary of Labor, each containing not less than 30 nor more than 40 words in ordinary use, printed in plainly legible type in some one of the various languages or dialects of immigrants. Each alien may designate the particular language or dialect in which he desires the examination to be made, and shall be required to read the words printed on the slip in such language or dialect."

An attempt has been made to create the impression that the literacy test will close America as a haven of refuge to political refugees and those persecuted because of religious faith. That this is wholly unwarranted in fact is evident from the following portion of the proposed act:

"That the following classes of persons shall be exempt from the operation of the illiteracy test, to wit: All aliens who shall prove to the satisfaction of the proper immigration officer or to the Secretary of Labor that they are seeking admission to the United States to avoid religious persecution in the country of their last permanent residence, whether such persecution be evidenced by overt acts or by laws or by governmental regulations that discriminate against the alien or the race to which he belongs because of his religious faith: *Provided*, That nothing in this act shall exclude, if otherwise admissible, persons convicted or who admit the commission or who teach and advocate the commission of an offense purely political."

The proposed legislation does not represent a radical change in the policy of our Nation. It is an extention of our educational policy, and is in harmony with the conviction that has been growing recently that we, as a nation, must leave our haphazard methods of development behind and inaugurate a definite sustained national policy that shall promote our best development and shall coordinate and organize all of the resources of our country and plan for their best utilization.

Opposition to the literacy test and to any proposition to restrict immigration has come from steamship companies, steel corporations, coal operators, and other employers whose financial interests were associated with the maintenance of large numbers of workers forced by their helplessness to work for low wages. The activities of these interests have been given a cloak of respectability by many who, for sentimental reasons, were unwilling to indorse any form of restriction of immigration. But selfish interest or sentiment that is contrary to the fundamental principles of national welfare can not frustrate efforts to promote the best interests of our Nation.

The meaning of America lies in the ideal she represents. That ideal is liberty and opportunity. But beautiful as any ideal may be, it becomes of practical value when it has effectiveness in the daily lives of men and women.

Real liberty and opportunity mean a certain mental attitude toward life, certain standards of life and work, and possession of that which secures the enjoyment of opportunities.

America the ideal—the land of the free—exists only when her people are Americans in all things.

Ours has been a most perilous task—to weld together those from other lands who have sought our shores and to make of them homogeneous people—a Nation with common ideals, common standards of living, a national language, and an ideal national patriotism.

The building of a nation is not a thing of chance; it is the result of statesmanship, knowledge of tendencies, a discernment of cause and effect, ability to distinguish the good from the evil.

Too long our national policies have been determined by sentimental emotions, business profits, and political expediency. But there must come a change. These months of terrible warfare have compelled a testing of things that have passed over. "The world is afire"; and we must put our own house in order lest we, too, be caught unawares. We must search out each weakness and strengthen every danger point.

The workers of America make the demand that there shall be restriction of immigration to such as can be readily identified and assimilated with Americans and can become truly American.

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RAILROAD EMPLOYEES AND FARMERS FAVOR IMMIGRATION RESTRICTION.

Railroad train service employees and the millions of organized farmers have repeatedly declared for immigration restriction, and their representatives are cooperating with the American Federation of Labor to secure the enactment into law of the Burnett immigration bill.

Last January, when the House Committee on Immigration held public hearings on this measure, the American Federation of Labor was represented by Secretary Frank Morrison; the railroad men by Val Fitzpatrick, vice president and national legislative representative of the Brotherhood of Railroad Trainmen, and the organized farmers by J. H. Kimble, national legislative representative of the Farmers' National Congress.

Val Fitzpatrick also spoke on behalf of these legislative colleagues: H. E. Wills, assistant grand chief engineer, Brotherhood of Locomotive Engineers; P. J. McNamara, vice president Brotherhood of Locomotive Firemen and Enginemen; W. M. Clark, Order of Railway Conductors.

The railway employees' spokesman referred to a resolution passed on November 20, 1915, at a meeting of the chief executives of the four railway brotherhoods, when it was "unanimously agreed that we indorse the bill on this subject (immigration restriction) approved by the American Federation of Labor." Mr. Fitzpatrick told the committee that "our members have no guaranty that they are going to remain as engineers, firemen, and brakemen," and that the railroads actually dismiss between 30,000 and 40,000 train service men, and these workers are forced to enter other industries, where wages are often reduced because of the large number of illiterates. The speaker read numerous resolutions passed by the various railroad brotherhoods in favor of immigration restriction and the literacy test.

Speaking for the organized farmers, J. H. Kimble denied that agriculturalists favor unlimited immigration. He said:

"The farmers' organizations—and I am an actual farmer and live on a farm and make a living out of a farm—are opposed to any attempt to distribute the present immigration until the laws are stiffened up. * * * There is no demand among the farmers of the country for aliens unable to speak our language or to read their own. A glance at the last annual report of the Bureau of Immigration, which, by the way, gives many reasons for adopting the Burnett bill, shows that very few 'farmers' are coming to this country. Out of a total immigration last year of 434,244 aliens only 9,215 were 'farmers,' and only 29,247 could be classed as 'farm laborers.' Very few 'farmers' or 'farm laborers' come to this country. That is one important reason why distribution of immigrants is a failure. Another reason is that the farmers do not want and can not use the bulk of the kind that comes."

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"UN-AMERICAN" IS FAMILIAR PLEA OF REFORM LEGISLATION OPPONENTS.

[Editorial in the Unpopular Review, January, 1916.]

The assertion that the literacy test is un-American is one which has been urged against many measures of social progress, and which can be employed against any proposition which involves departing from traditional methods or policies—in other words, which recognizes that the world moves and conditions change. When policemen were first introduced into the cities of the United States, the innovation was bitterly opposed on the ground that it was un-American and interfered with the natural rights of the individual. The "penalty clause" by which the cooperative farmers' elevators of the Middle West maintain themselves has been attacked as un-American by those whom it affects unfavorably.

It would seem hardly necessary to consider arguments of this type were they not propounded with so much frequency and earnestness and accepted with so much sobriety. Especially it seems extraordinary that a measure which asks that the foreigner should have the same training for citizenship or residence that we require of our own children should be called un-American. When we spend over half a billion dollars annually on our public schools, and then compel children born in this country to take advantage of them, is it illogical—not to say un-American—to say to the adult foreigner that he should have so much of an education as is indicated by the ability to read?

But it is asserted that an educational test would be un-American, because it would exclude aliens on the basis of opportunity, not of character. Illiteracy, it is maintained, is not a test of ability but of early opportunity. But a test based on opportunity is not un-American. For our immigration law already contains a number of tests which rest, in part at least, on opportunity. Such are the tests excluding paupers, those likely to become public charges, persons with contagious diseases, etc. In fact, when the individual immigrant appears before the inspector little can be gained by trying to separate those of his characteristics which are due to native ability from those which are traceable to environment. The man must be judged as he is on the grounds of his fitness.

In pursuance of the "un-American" argument, however, it is further pointed out that illiteracy can not reasonably be considered a test of fitness for American life, because this Nation was founded by illiterates, and that it has nevertheless done pretty well. The trouble with this argument is that it is not true, and that if it were, it proves too much. It might be said with equal cogency that this Nation was founded by men who made their living by slave labor in the South and the slave and rum trade in the North, and that therefore these good old institutions should have been preserved. All such arguments ignore the fact that the world has progressed during the past three centuries and that illiteracy stands for very different things now from what it did in the days of the Pilgrim fathers or of the Revolutionary heroes.

Another argument which proves too much is that produced so triumphantly and with so great effect in some such words as these: "This measure would keep out a great many people who would be very useful citizens. If it had been in force in earlier years, it would have kept out the mother of Abraham Lincoln, who signed her name with a cross." Certainly the literacy test would keep out some who would be useful. So do many, if not most, of the tests now in force. The futility of such arguments may be illustrated by another reductio ad absurdum. "Booker T. Washington was one of the most useful citizens of the United States. His ancestors on one side were brought over as negro slaves. Therefore it was a mistake to abolish the slave trade."

Such are the arguments of the opponents of the literacy test. Aside from these, their efforts are devoted to countering the claims of the opposite side, which, as has been shown, can be done successfully only with respect to the strictly and temporarily economic aspects—the building up of quick fortunes by questionable and probably dangerous means. There are those who do not regard this as an argument against the literacy test, but for it.

The matter can be rightly understood only by taking the broadest possible view of the relations, not of this generation alone but of the generations to come. The natural destiny of the United States is to be the leader of the nations into the fullest development of the common people. Our duty is to set standards, not to distribute the natural advantages we possess. We can not render our highest service to mankind by hastily and inconsiderately yielding to the demands of a specious humanitarianism and dissipating to-day what should be the heritage of future generations.

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ONLY PRACTICAL TEST OFFERED.

The Toledo Blade, in these few words sums up the agitation for and against the Burnett immigration-restriction bill:

"The literacy test for immigrants has never been advertised as perfect. In operation, it would turn back many aliens who might become worthy citizens. But no other test that promises to restrict immigration in a practical way has been suggested.

"The advocates of this measure are trying only to slow down the stream of foreigners who for so many years poured through our gates. The opponents of the test do not offer a substitute. And for a very good reason. They are not really troubled, as they profess to be, lest an occasional healthy and intelligent, though illiterate, alien be refused admittance. Their concern is lest the supply of cheap labor be restricted."

—

CHICAGO TRIBUNE STATES CASE.

The Chicago Tribune is one of the very few large newspapers in this country that is fearless enough to state the forces for and against the Burnett immigration bill. In an editorial, March 30, 1916, this paper said:

"The literacy test has just one purpose; that is, to reduce immigration into this country.

"Opposition to the literacy test has just one purpose—to prevent any limitation of immigration into this country.

"Proponents of the literacy test believe that the time has come when we must slow up the inrush of foreign blood in order to allow the Nation to assimilate the multitude of strange races now within its borders and in order to limit the competition of pauper labor, which is more and more bearing upon American-born workingmen.

"Opponents of the literacy test desire a broader labor market or they desire to open the benefits of America to foreigners, let the consequences to Americans be what they may.

"People favoring the literacy test wish to reduce immigration into America. People opposing it wish an unrestricted flow of foreigners, literate or illiterate."

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In its issue of March 27, 1916, the Chicago Daily Tribune had the following as its first and leading editorial:

CLOSE THE GATES.

Peace may not bring a new influx of aliens to America. Emigration from Europe may be checked by laws of the countries in need of workers or by the employment of workers at home at high wages.

But even if this prove to be true and war taxes or bitter experience do not drive men and women from the Old World to our shores, the tide may set in from other regions, and these are precisely the sources from which the least assimilable elements are drawn.

The part of common sense and common caution for us is to close our gates for a time. All thinking Americans have become conscious in recent years that the process of Americanization is much slower and more superficial than we have flattered ourselves it was. The amount of foreign nationalism, of unassimilated immigration, is disquietingly if not alarmingly large. It is time to prevent our national composition from being further diluted. It is time to concentrate on an undisturbed process of American nationalism.

There are no signs that the civilized world is entering a period of internationalism. The probabilities are rather that we are to find in the form of new and perhaps larger alliances an intensive nationalism and a more formidable international competition. If this be true we can not afford to be full of domestic divisions and internal distractions, the only clay pot in the stream. We shall need a robust nationalism, a strong unity against the world.

And there is another reason for closing the gates. If we are to enter a period of prosperity, the fruit of our own energy, restraint, and pacific temper, we want that prosperity to be distributed among our own people, among those who have cast their lot with us and contributed to our welfare.

On the other hand, if we are to meet, as many believe, a serious reaction, we do not want to divide our means with millions of aliens. We want what we have for our own people.

The Tribune believes the absolute restriction of immigration would check the consequences of a reaction after the war and insure a widespread prosperity. It would protect our own wage earners from the competition of cheap labor, insure good wages and the American standard of living, and thereby stimulate the home market and bring about the broadest prosperity. If in addition to this measure of patriotism we enact a wise system of commercial laws and provide an adequate naval and military defense, the United States will be virtually invulnerable.

[American Federation of Labor Weekly News Letter, Washington, D. C., Apr. 15, 1916.]

CLERIC-ECONOMIST FAVORS IMMIGRATION BILL—SAYS OPPONENTS ARE SELFISH AND SENTIMENTAL.

WASHINGTON, *April 15.*

Rev. John A. Ryan, D. D., formerly of Minnesota, but now professor of economics, Catholic University, this city, has declared in favor of the Burnett immigration bill. If this legislation is adopted by Congress, he says, "We shall have sufficient legislation to improve the quality, provide for assimilation, and protect the standard of life that is required for decent living."

Rev. Ryan's statement, which includes a history of immigration legislation, has been published by the weekly press service of the social service commission, American Federation of Catholic Societies, and is in part as follows:

"The lowered standard of living is the main justification for restriction, and it is probably the reason behind the greater part of the agitation. Between two-thirds and four-fifths of the adult males of the country receive less than $750 a year, and real wages have declined from 10 to 15 per cent since 1890. The great majority of the new immigrants go into the unskilled industries, thereby overstocking the market for that kind of labor and bringing down wages. They do not become farmers, as so considerably occurred with the old immigration. The supply of unskilled labor should be reduced. The immigration commission was unanimous on this point.

"Among methods of restriction suggested are: The requirement of a contract enabling the immigrant to command living wages, the restriction of the arrivals from any country to a certain per cent of the average emigration from that country during the preceding period of 10 years, the division of the immigration countries in groups and the granting of the privilege of sending immigrants to only one group in one year, and the literacy test. The first three are difficult of administration, while the last was recommended by eight of the nine members of the Immigration Commission as the best single method of restriction. It would exclude about one-third.

"The opposition to restriction is sentimental or superficial or selfish. The sentimentalists want America to be kept a haven for the oppressed; but charity begins at home, and we want to keep it a genuine haven, instead of developing a proletariat, and we want to keep it an example of genuine democracy and of a better distribution of wealth than exists in Europe. Thus we can serve humanity better than by enabling a comparatively small proportion of the oppressed of Europe to better their condition very slightly.

"The superficial objectors find fault with the literacy test because it does not guarantee character, something that it was not meant to do. It is primarily a method of affecting quantity, not quality. Others denounce it as the outcome of bigotry, but this factor is relatively unimportant in the movement; besides, the device ought to be judged on its merits. It is regrettable that Catholics will not consider more the economic argument for restriction. Others object that the country needs to be developed. If that means that a large group will be worse off than before, the objection is baseless. All the rough work generally done by unskilled foreigners would be done by Americans if they were

paid sufficient wages. The immigration commission declared there is a constant oversupply of unskilled labor.

"The selfish persons are those who wish to increase production and profits through cheap labor at less than living wages. They would prefer Chinese and Japanese laborers if they could get them. They do not deserve serious consideration."

[American Federation of Labor Weekly News Letter, May 6, 1916.]

LITERACY OPPONENTS CONTINUE ALARM CRY.

TOLEDO, OHIO, *April 29.*

Under the caption "Still harping on the literacy test," the Evening Blade expresses these editorial views on the Burnett immigration bill now pending in the Senate:

"A number of persons in excellent vocal condition continue to be exercised over the literacy test of the immigration bill. The faults and flaws they find in it are simply amazing. If an earnest-minded citizen confined his reading to these criticisms he would become convinced that this test must be eliminated or the Republic will perish.

"The Immigration Commission, which first made a study of ways to restrict the human flood from Europe, voted 8 to 1 for the literacy test, because it was the only practical method suggested to it. One proposal was that the emigration from any one country should in a single year be confined to a certain percentage of the 10-year average emigration of the country. Another proposal was that immigration be controlled as to groups. In any one year, only a single group should have the privilege of entering the country. There was still another idea, that a contract be required guaranteeing the immigrant's ability to earn a living wage. Plainly, some of the restrictions could not be applied. The commission had to accept the literacy test as the one thing that could be administered day after day without doing grave injustice, conflicting with laws and treaties, and raising the business of examining immigrants to the dimensions of flourishing munitions plants.

"Once the immigration bill is passed and becomes operative, we will hear little more about the shortcomings and oppressions of the literacy test. The agitation has been conducted mostly by people who saw in this test a threatened shortage of cheap labor, an increase in living standards which would make a low standard of wages no longer possible."

[From the Cleveland Press, Cleveland, Ohio, May 16, 1916.]

IMMIGRATION.

This newspaper stands for the further restriction of immigration. Hence we favor the bill now in Congress providing for a literacy test. We have many and important reasons for including this policy in our declaration of principles. We favor restriction, in the first place, for the sake of the immigrant himself who is brought in most cases from a life of lowly simplicity in his native land to a life of deadly isolation, exploitation, and degradation in this country.

Millions of these people are herded to-day in smoke and soot-swept settlements and insanitary slums where, shunned, lonesome, and abused, they learn nothing whatever of the land of their so-called adoption—learn rather to hate it because of the miseries they are compelled to suffer by those who exploit them. It was once America's proud boast that this country was the haven of the poor and oppressed. The evidence is clear and conclusive that the peasant who is poor and oppressed in Europe is still further impoverished and oppressed when, having fled, he finds himself in this haven of his dreams.

We hold that this Nation has not assimilated the thirteen millions odd of immigrants who have landed on our shores since the opening of this century, and that it is high time now to call a halt upon further immigration until we shall have taken this great mass of humanity to our hearts, cheered them with our interest, educated them to our national ideals and made them Americans who will love, and die if need be, for the Nation which has really lifted them from poverty and freed them from oppression. We insist that this process of valid absorption is one of the prime necessities in the making of a new and united American Nation.

We, too, believe, with organized labor, that the practically unrestricted immigration of the past 15 years has been unfair to the working people of this country. The competition of a million new arrivals every year, in addition to the natural native increase of hands that work, was too great.

The entire advantage was with capital—often heartless, ruthless capital. The almost complete cessation of immigration since the beginning of the war has been a double-edged revelation to the American workingman and to those thoughtful citizens who have viewed with anxiety the increasingly serious labor problem in our land. Unemployment has passed. Wages have increased. Working people are more prosperous, their families more comfortable. And, mark this: Although immigration was suspended and the working population was decreased by the half million who returned to Europe to fight, production increased beyond all records, as shown by the official figures of our exports and domestic consumption. Does this not prove that well-paid, regularly employed labor, unhampered by competition flowing from abroad, is a greater producer of national wealth than dissatisfied labor, working half time and suffering from undue competition?

Have we not also the proof before us that a population of 100,000,000 can provide in the natural human increase all the labor needed for the work to be done?

Thus restriction of immigration promises better citizens of our foreign-born, more prosperous, and more contented citizens in our great working classes, better homes, a stronger people in body and mind, greater production of wealth, all of which will combine to cement us into a Nation strong for hearth and country and willing and quick to defend both when the occasion demands.

Mr. PADGETT. Mr. Chairman, I yield 10 minutes to the gentleman from Illinois [Mr. CANNON].

Mr. CANNON. Mr. Chairman, I will state to the gentleman from Tennessee that I would prefer to speak a little later, after I have heard further debate, to get a better conception of the amendment.

Mr. ROBERTS of Massachusetts. Mr. Chairman, I yield to the gentleman from New Hampshire [Mr. SULLOWAY].

Mr. SULLOWAY. Mr. Chairman, it seems to me there have been conversions here during this discussion more sudden than St. Paul's by far. I want to say to the Members of this House that there is but one navy yard in the United States that has 40 feet of water at all times, and that there has never been a penny expended for dredging at that yard and there never will need to be. I refer to the one at Portsmouth, N. H. The yards named here to be equipped for the purpose of building battleships are all subject to dredging, and this bill carries an appropriation of $327,000 for that purpose for the next fiscal year.

Mr. HUMPHREY of Washington. Mr. Chairman, will the gentleman yield?

Mr. SULLOWAY. Certainly.

Mr. HUMPHREY of Washington. My friend is mistaken in respect to the Bremerton yard. We have no dredging there. We have 60 feet of water.

Mr. SULLOWAY. That is the Puget Sound yard?

Mr. HUMPHREY of Washington. Yes.

Mr. SULLOWAY. If the gentleman will look at the bill, he will find that there is an appropriation of $15,000 or $25,000, I forget which, to continue dredging there.

Mr. HUMPHREY of Washington. That is the approach to the dock.

Mr. SULLOWAY. I do not know what it is or what excuse there is for it, but I am taking the bill as it is before us to-day. If the approaches to the dock have but 24 feet of water, as Admiral Stanford stated on page 23 of the hearings, that is the controlling depth, no matter what depth at the dock, but 17 feet less than at Portsmouth. That is true also of every navy yard except the Portsmouth yard, and the appropriations for dredging have mounted to millions upon millions. Admiral Stanford, constructor of yards and docks, has said it would be necessary to continue dredging at all these yards, as they have done in the past. Portsmouth is admitted to be the best yard under our flag and in the United States. There are 40 feet of water there at low tide. A captain can take his craft up that channel without tugging, without pilots, by night or by day. There is no other yard that has that depth of water. On page 27 of the hearings gentlemen will find the different depths of water in each of these yards, and I will put the data in the RECORD. There is not another one that comes within 5 feet of it in depth. There is to-day a dock there of precisely the same size as the one at Boston. They were twins. Gov. McCall and myself were sort of accouching angels at their birth. They were born at the same time and in the same bill. In each of those docks was sufficient room at the time they were authorized to hold any ship constructed or contemplated. It is a remarkable yard. Above it a short distance, not half a mile, is what is known as Great Bay, and within that bay there are thousands and thousands of acres of water from 60 to 100 feet deep.

The navies of the world could swing at anchor and there would not be any such danger of collision as happens in most all of the other yards by ships coming from the sea or going out to it, because it would be at the end of navigation. It is above and beyond the docks. Take, for instance, a yard like Mare Island, with 22 or 23 feet of water, where they are dredging all of the time, with large appropriations for that purpose, and I am not talking against that yard with a view to undoing it. I am stating it as a matter of fact in order that gentlemen of the House may know what they are doing when they locate shipbuilding plants in yards like that, where they have to be dredged perpetually, and then refuse to give to a yard at Portsmouth the same privilege, where dredging will never be needed. The channel is worn and the dock is cut and chiseled out of the solid granite.

Why is the Portsmouth yard excluded from the list of yards on the Atlantic coast by the proposed amendment of the chairman of the Committee on Naval Affairs? Shot in here like a flash of lightning from a clear sky, authorizing the Secretary of the Navy in his discretion to equip certain yards to construct capital ships; never considered by the committee, and by means of the most vicious and infernal gag rule ever presented to a legislative body I am limited to a few minutes to oppose it or to urge that the Portsmouth yard be included in the list.

The answer is patent. No Secretary of the Navy—not even the Hon. George von L. Meyer—would dare refuse to put the Portsmouth yard first on the list, by reason of its superior natural advantages over all other yards. This gag-rule, snapshot legislation will end on March 4, 1917, thank God. And the people will join with Dr. Watts in singing:

Believing, we rejoice to see the curse depart.

[Applause.]

We are in greater need of larger docks than of battleships. Early in this session I introduced a bill that went to the Committee on Naval Affairs, authorizing the construction of a dock at the Portsmouth yard, and I now have an amendment to this bill filed at the Clerk's desk that can never be reached under this gag rule, which prohibits in its working the consideration

of amendments other than those proposed by the 21 members of the Committee on Naval Affairs. More than 400 Members of the House are absolutely denied hearing on matters of great importance to their constituents and, but for this rule, would be able to have the right to be heard in their behalf.

My amendment reads as follows:

On page 20, line 16, after the figures "$3,000," insert "dry dock—limit of cost not exceeding $3,500,000—in all, $3,503,000."

Permit me to quote Rear Admiral H. R. Stanford, Chief of the Bureau of Yards and Docks, in his testimony before the Committee on Naval Affairs, where he gives the depth of water at the several yards and the necessity for big docks—the man who for years has been at the head of said bureau.

The Mare Island yard furnishes a sample illustration of the expense of dredging and the results obtained in muddy-bottom straits, rivers, and channels. On page 48 Admiral Stanford said that yard was located in the early fifties, and at that time there was 40 or 50 feet of water in the straits. On page 30 it appears that $20,000,000 have been expended on that yard; that not one of the battleships built in the last eight years can get in. And on page 27 it appears that the controlling depth now is but 22 feet, with a continual expenditure of money to the amount of $20,000,000, and the loss of from 18 to 28 feet in depth of water in the straits. And this bill provides $50,000 for dikes and dredging for the next fiscal year at that yard.

The dock at Charleston, S. C., is still more fortunate. This bill provides $187,000 for dredging and opening a channel to that dock where the controlling depth of water is 22 feet.

On page 95 Admiral Stanford said:

At this stage of our naval development the construction of additional docks and battleship piers is as essential as the building of the ships. I think our need for large dry docks and deep-water piers equipment for hauling heavy weights is most urgent, both south and north of Hatteras.

Question by Mr. KELLEY:

Would not an expenditure of $15,000,000 in dry docks, piers, wall extension in our various naval stations do more in promoting the efficiency of the fleet than the addition of a single battleship?

The Admiral's answer was:

It's hardly a fair question to put to me.

Page 96:

I did say that my personal view is that the need for big dry docks is most urgent of the Navy ashore.

On page 90 the Admiral said:

During the past few years the appropriations for yards and docks improvements have been greatly reduced and curtailed, so that there is a very great need for more docks.

On page 90 Admiral Stanford said:

In 1913 there was expended, approximately, for yards and docks $9,000,000. During the past year something over $7,000,000.

On page 91:

It is safe to say that appropriations for yards and docks, for several years to come, will be from $7,500,000 to $10,000,000 to develop the additional dry docks that are needed.

On page 97:

I think for the last three or four years, ever since the construction of our superdreadnaughts, we have needed these additional docks.

On page 50:

We have but three dry docks that will admit the 13 ships built, building, or authorized, and the program if carried out will give us 29 of these capital ships and only four docks that will hold them. The department recognizes the need of more big docks to be built at other yards.

On page 41:

The General Board has recommended that we should have 40 feet of water at all the principal yards.

On pages 90 and 91:

Dredging will be required from time to time in every yard we have, excepting Portsmouth and Puget Sound.

On page 99:

There is dependable deep water at the Portsmouth yard, as I stated two or three days ago. The reason I did not refer to that yard particularly is because it is not fitted with a dock large enough to dock a superdreadnaught.

No harbor on the Atlantic coast possesses the depth of water, the natural advantages, the wonderful channel, that never requires dredging, that is so free from sand, silt, and mud, up which a battleship or a dreadnaught can wend its way in high tide and low tide, as the one at Portsmouth, N. H. Worn out of solid rock, with a width practically equal to any channel on the Atlantic coast, with a bottom as smooth as a floor, this great waterway has a controlling depth of 40 feet, sufficient to sail any vessel afloat or under construction, without waiting for favorable conditions or depending upon Omnipotence to provide sufficient waters through the instrumentality of the tides to get a great ship to its dock.

From the birth of this Republic to the present moment Portsmouth has been famous as a shipbuilding center. But it is not on the glorious past of this famous old seaboard city that I would dwell, but upon its great possibilities at this time, when we, as well as all of the people of the earth, are confronted with great questions of proper and adequate preparedness, and when we are called upon to take account of stock, to look over our advantages and our opportunities for national safety and national security. The protection of home and the protection of our liberties and our Government are solemn duties that we must meet, not with hysteria but with calmness, saneness, and judgment. Proper protection is the greatest element of national safety.

No navy yard in the country is so admirably situated as the one at Portsmouth, N. H. Not only does it have the deepest waterway, 40 feet at controlling depth, but is the most defensible harbor on the Atlantic coast. Situated 10 miles at sea from Portsmouth, absolutely commanding the harbor, are the Isles of Shoals, a series of islands which could be fortified and which not only would command Portsmouth Harbor, but also the coast for miles, both north and south. At Portsmouth the opportunity for development is greater than in any other yard in this country. Available land can be bought at prices per acre that in some of the great cities where navy yards are located would be sold by the foot at fabulous prices.

The opportunity for additional dry docks is unsurpassed anywhere for the reason that the natural advantages of the soil make it a natural location for these great resting places for our ships. The great dry dock constructed some years ago, which at that time would take the largest ship of our Navy, would have contained a ship before a single bit of masonry was placed in it. The great basin for this dock was cut out of the solid rock. There has never been a dump cart full of mud or sand washed into it or its approaches from the ocean since it was constructed. It never requires dredging to get ships in, and when a dock is once completed here, outside of the natural wear and tear, there would never be any artificial repairs necessary by the working of the elements that have to be met. Nature provided everything essential at Portsmouth for the greatest naval station in the world. Climatically it possesses advantages unexcelled by any place where a navy yard or a naval station is located in this country.

From a labor standpoint it means much to the thousands of men employed in the way of cheap rents and a desirable place to live. It has tremendous advantages in this respect over the yards in the great cities. There are opportunities there for men to own their homes at a modest price and within the reach of their pay envelope. This means contented workmen, the keeping of skilled labor, for whenever a workingman accumulates enough to build him a home he settles down there usually to spend his days. As a great economic proposition, both to the Government and to the employees, Portsmouth offers wonderful advantages, which any private business concern in the country would seize upon as a great asset.

While cities and places where other naval yards are clamoring year after year for appropriations for dredging to keep the channels of their harbors open so that present-day shipping may dock in safety Portsmouth has deep enough water to safely float our big ships at any hour of the night or day. Every navigation expert who appeared before the House Naval Committee admitted on questioning that Portsmouth had an abundance of water. It was freely stated that this was the only harbor on the Atlantic coast where water conditions are perfect, and, with the single exception of Puget Sound, the only place on either coast.

Much of the expert testimony before the Naval Committee favored new and additional docking facilities, and it was frankly admitted that there would be practically no dry-dock facilities for our big ships of the future when we get them constructed. It is not in line with wisdom or good judgment to construct great and expensive dreadnaughts with no place to repair and dock them, neither is it a wise business policy to expend money for great dry docks in places where the water is not of sufficient depth to get a great vessel of the future into it when it is constructed.

There is no question about Portsmouth, for the water is there now. It is not a gamble or an experiment, but a reality. The cold facts are there, and they are indisputable. Portsmouth has suffered in the past, I regret to say, because it lacked some of the social advantages of Boston, New York, and Norfolk. Unfair and untrue criticisms of the yard have been made by men who placed the pink tea above efficiency; but in spite of this the yard, which 20 years ago, when I came to Congress, was about ready to be abandoned, has been improved, developed, and brought to

a standard that now compels it to be recognized as one of the great yards of the country.

Sentiment, favoritism, and the popularity of its location have not entered into its present high standing. It has come to the front in spite of official handicapping and backbiting, and purely upon its merits and because of its unquestioned natural advantages. Notwithstanding talk of its abandonment from certain sources in times past, it has continued to grow and develop, and will continue to grow and develop until it ranks second to none in this country.

This yard has been designated as a submarine base by the present administration, which was the very least that could be done. The workmen at that yard are to-day constructing undersea craft, but that is only a small part of the work that should be done there. With land already owned by the Government, with much more that is available, the work of the yard must and will be enlarged to meet the natural requirements and the demands of the times. This Congress may not see fit to rise to the occasion and place in the greatest and deepest waterway on the Atlantic coast a great dry dock to meet all the requirements of the future but there are other Congresses coming which will not be so blind to the wonderful opportunities of Portsmouth, and circumstances and demands of the future will absolutely require the greater development of this natural naval base, making it sufficient to meet any emergency and to be properly equipped for any line of naval construction.

Another novel feature of the Portsmouth Harbor is Great Bay, a large body of water up the river from the navy yard, which is of sufficient size and depth, having 100 feet of water in many places, to anchor the navies of the world. This could be made available with a comparatively reasonable expense and at a cost not in excess of many recent river and harbor improvements in various sections of the country. With the development of Great Bay, a naval base and anchorage could be secured that would be far superior to the one at Hampton Roads and other places, because it would be away from the main channel of traffic and there would be absolutely no danger of collisions and accidents by vessels passing to and from the ocean.

Portsmouth has been the scene of the visits of many of the large ships of our Navy of the past, and there are no records of them going aground, as has often happened in the case of some of the other harbors where navy yards are located. Vessels have to come to anchorage at the yard after coming up the harbor under their own steam and without assistance of tugs. The removal of Hendersons Point some years ago took away the only difficulty to navigation that existed and made Portsmouth Harbor and the navy yard dry dock safe and easy of access, a harbor that never freezes in winter and which possesses at all times ample and abundant water to ship any vessel that floats.

Admiral Stanford, Chief of the Bureau of Yards and Docks, in the hearings before the Committee on Naval Affairs of the House said:

There is dependable deep water at the Portsmouth yard. There is difficulty of getting into the New York yard at times. At some times it will happen that you have to lay outside the San Francisco Harbor before entering on account of sea and fog. There is also difficulty in getting over the bar at times at San Francisco. The Philadelphia Navy Yard is 90 miles from the Capes, and there is a portion of the river between these two points which under certain tidal conditions would barely pass our largest vessels. At the Norfolk yard dredging is required in the river in front of the yard and also a widening of the channel is required. It is my impression that Charleston, S. C., can only be entered under favorable conditions. There is good water leading up to the Boston yard.

Speaking further on this same subject, Admiral Stanford said:

At the Portsmouth yard the controlling depth of the water is 40 feet, the controlling width 500 feet, and the range of the tide 7.8 feet. At Boston the controlling depth is 35 feet, the width of the channel 540 feet, and the tidal change is 9.6. At New York the controlling depth is 31 feet, the controlling width of channel is 450 feet, and the mean rise and fall of the tide is 4.2 feet. At Philadelphia the controlling depth is 30 feet, the controlling width from the yard to the sea is 600 feet, and the tidal change is 5.9 feet. At Norfolk the controlling depth is 35 feet, the controlling width is 450 feet, and the mean rise and fall of the tide is 2.8. At Charleston, S. C., the controlling depth is 22 feet, the width of channel is 300 feet, and the mean rise and fall of the tide is 5.2.

This goes to show that of all harbors on the Atlantic coast used for naval purposes Portsmouth has the greatest depth of water. Admiral Stanford also stated that periodical dredging was absolutely necessary at Boston, New York, and Norfolk. This is something that is never necessary at Portsmouth.

To give the country some idea of the cost of dredging in the approaches to the navy yards of this country, let me quote from the present bill. This measure we are now here considering carries $337,000 for the coming fiscal year. It is divided up as follows: Navy yard, Boston, dredging, $10,000; navy yard, New York, to continue dredging, $50,000; navy yard, Philadelphia, to continue dredging, $25,000; navy yard, Charleston, S. C., to continue dredging, $12,000; dredging Cooper River, approach to navy yard, Charleston, S. C., $175,000; navy yard, Mare Island, Cal., maintenance of dikes and dredging, $50,000; navy yard, Puget Sound, Wash., to continue dredging, $15,000. Continually sums aggregating millions have been appropriated during the past decade to keep these harbors of the navy yards of this country open to navigation, on account of the constant filling of the channels with mud, sand, and silt, and for the purpose of getting a deeper waterway. But at Portsmouth it has never been necessary to make these constant appropriations. The depth of the water has been there from time immemorial and will remain as long as the world exists.

Admiral Stanford, in the hearings before the Naval Affairs Committee, pointed out the great need for docks. He stated in his testimony that during the past few years there had been a great curtailment in the amount of appropriations for this purpose. He said:

My personal view is that more dry docks are most urgent. Ever since we began the construction of the superdreadnaughts we have needed these additional docks.

The Admiral was asked by Representative BUTLER of Pennsylvania, a member of the committee, this question: "Would we not be in a bad mess if we should have war now for lack of docking facilities?" "I think so; yes," replied the Admiral.

Admiral Stanford made the astounding admission before the Naval Committee that we have but three dry docks on both the Atlantic and the Pacific coasts that will admit the 13 ships constructed, under construction, or authorized; and if the present program is carried out, it will give us 29 of these capital ships and only three dry docks in the United States navy yards which will hold them. Two of these are located on the Atlantic coast—one at Norfolk, one at New York—the other being at Bremerton, on the Pacific coast. None of these docks are large enough to hold the fast cruisers that are contemplated under the provisions of this bill.

With these indisputable facts in view, with this country embarking upon a program to place its Navy on a footing that will guarantee us national security and national safety, with a view to developing a proper coast defense that will insure the peace and happiness of our people, I appeal to the good judgment and the common sense of this House to place some of these great improvements and means of national defense where nature has given us the greatest advantages and the deepest harbor anywhere on the coast of our great country. In this time of a crying demand for additional docks, the place to put them is where, when they are completed, ships can be brought to them in safety, where the Almighty has already constructed the channel, and where sufficient water exists to-day, without the use of a dredge, to float in safety the mightiest ship within the conception of man. This place is at Portsmouth, in the district which I have the honor to represent.

Let no one think in anything I have said I have thought to belittle any of our navy yards. Far from it; for I am in favor of developing all of them. But in future construction I believe it to be a patriotic duty to build and improve them where nature has ordained they should be. [Applause.]

Mr. ROBERTS of Massachusetts. Mr. Chairman, I yield five minutes to the gentleman from Wisconsin [Mr. STAFFORD].

Mr. STAFFORD. Mr. Chairman, I dislike to voice a discordant note in this family arrangement of providing for all of the yards from Portsmouth on the Atlantic to New Orleans on the Gulf and from Puget Sound on the north down to the other extreme. I think we are going very fast, indeed, when we authorize, even in the discretion of the Secretary of the Navy, the equipment of yards confessedly unsuited for building programs, such as those at New Orleans, Charleston, and other places, under the guise of naval necessity. This bill is fast becoming a public-building bill rather than a naval bill. Yesterday you voted in favor of an ultimate $20,000,000 Government armor-plate project, when there are sufficient existing plants to furnish armor at cost, and with the completion of this 20,000-ton armor-plate plant the result will be that it will drive the private concerns out of business, because there will not be enough armor contracted for to warrant their continuing in existence. You also have in this bill a provision for the establishment of a plant for the manufacture of projectiles, and now under the guise of naval necessity, which, if carried out, will involve this Government to the extent of millions and millions of dollars—not six millions or seven millions, but hundreds of millions of dollars—it is proposed to equip these yards for shipbuilding purposes, this to be done at so-called navy yards which Secretaries of the Navy in times past have condemned as unfit for navy-yard purposes. Where is this trend, this wild rage of Democratic extravagance, going to end? The bill which was brought in here involving two hundred and

sixty-odd millions will leave us ultimately carrying millions beyond that.

But it takes something more than mere buildings to make a proper shipbuilding yard. The Government can order the buildings, but it will take time.

A shipyard that was constituted to repair ships has not the necessary foundries, has not the machine shops, and above all else has not the necessary organization of men that will be required to make it an efficient shipbuilding concern. There is no consideration in this family arrangement of the Government interests. There is no hope of defeating it when you bring in here an omnibus public building bill.

Mr. CRAMTON. Will the gentleman yield?

Mr. STAFFORD. For a short question.

Mr. CRAMTON. Does the gentleman mean to insinuate that there can be such a thing as "pork" in preparedness?

Mr. STAFFORD. Far be it for me to insinuate something that is so patent. So, Mr. Chairman, you are taking away from the Secretary of the Navy the right to determine where these ships in case of necessity can be properly built. Those who wish to get an advantage for yards in their districts by having them created into a large shipbuilding plant are objecting to an obvious business proposal offered by the gentleman from California to equip the New York Yard and the Mare Island Yard, which to-day are the only two yards in the country that have the necessary equipment and the necessary organization to build these capital ships. They are objecting to that because they fear that it will be trenching on their own private preserves, to get, what—not "pork" but "pie." Such a policy can not be too severely criticized when under the guise of naval preparation you are trying to take away from private shipbuilding yards the building of ships that can be more economically and more expeditiously built than in Government yards lacking the material for large shipbuilding purposes. If we are ever going to have a merchant marine, the private yards should be encouraged with construction of naval vessels so long as their prices are fair and right.

We are going wild in our haste to make a showing. Without any investigation as to the fitness of these yards you are directing their conversion into shipbuilding plants upon the ipse dixit of local representatives. When once navy yards are equipped, the hue and cry from local interests will demand their employment regardless of cost or need.

The proposed policy is Government ownership run wild with only combination of local interests to support it. [Applause.]

The CHAIRMAN. The time of the gentleman has expired.

Mr. BUCHANAN of Illinois. Mr. Chairman, I ask unanimous consent to extend my remarks in the RECORD.

The CHAIRMAN. The gentleman from Illinois asks unanimous consent to extend his remarks in the RECORD. Is there objection? [After a pause.] The Chair hears none.

Mr. ROBERTS of Massachusetts. Mr. Chairman, I yield five minutes to the gentleman from Pennsylvania [Mr. VARE].

The CHAIRMAN. The gentleman from Pennsylvania [Mr. VARE].

Mr. VARE. I ask that the Clerk read the amendment offered by the gentleman from Tennessee [Mr. PADGETT].

The CHAIRMAN. The Clerk will read the amendment.

The Clerk read the amendment, as follows:

Page 100, following the amendment inserted after line 9, insert the following:

"In the event the Secretary of the Navy is unable to secure from the shipbuilders contracts for the expeditious construction of the ships herein authorized at a fair and reasonable price, the sum of $6,000,000, or so much thereof as may be necessary, is hereby appropriated to enable the Secretary of the Navy to equip the navy yards at Puget Sound, Philadelphia, Norfolk, Boston, Portsmouth, Charleston, and New Orleans, with suitable and necessary machinery, implements, building ways, and equipment for the construction of such of the ships herein authorized as may be assigned to such yard for construction."

Mr. VARE. Mr. Chairman, I would much prefer that the amendment of the gentleman from Tennessee [Mr. PADGETT] had provided $6,000,000 without any condition; but, however, I find as it is it is a step in the right direction, namely, to give the Secretary of the Navy the discretion to further equip the yards of the country which he regards as efficient.

During the discussion a few moments ago the question arose as to which were the superior, the governmental or private shipbuilding plants. That recalled to my mind an incident that occurred on the floor of this House two years ago. There had been bids invited by the Secretary of the Navy from the various private shipbuilding yards for a transport, since called the *Henderson*, which is being constructed at the Philadelphia Navy Yard. Bids were received from these private shipbuilding yards of the country, and the lowest private shipbuilding bid was from the Newport News Shipbuilding Co., which bid was $1,725,000.

The Secretary of the Navy thought that the bids were excessive. He then invited Government yards to send in estimates. The Philadelphia Navy Yard furnished the lowest estimate, and that estimate was $1,405,069, as against $1,725,000. It was said at the time by the gentleman from Virginia [Mr. JONES], who represents the district in which the Newport News Shipbuilding Co. is located, that that company's bid was backed up by a bond. On the other hand, I said that this was a business proposition, and I had such confidence in the ability of the estimating board of the Philadelphia Navy Yard that I would be willing to back up the estimate of the Philadelphia Navy Yard by my personal bond. There was a difference of $319,930 between those two propositions.

Mr. LOUD. Will the gentleman yield?

Mr. VARE. With pleasure.

Mr. LOUD. Did the Philadelphia bid include insurance, overhead charges, depreciation, and all other incidentals that attach to a private yard?

Mr. VARE. I will come to that in a moment. I report to this Congress to-day that this transport will be launched this month, and that instead of saving more than $200,000, which I then predicted, it will save $400,000 beyond all overhead charges and insurance. [Applause.]

And so it is that I welcome the proposition that the chairman of the committee makes, that the yards of the country be placed upon a competitive basis, and I am quite sure that the great mass of laboring people of Philadelphia will do likewise. I would prefer there be no conditions prescribed in the amendment. I want to say to the Members of the House that I am not one of those who believe in governmental ownership. I do, however, believe that these Government plants ought to be so well equipped as not only to be efficient in order to determine what is a reasonable price in battleship construction, but they ought to be well equipped at all times to meet all emergencies. [Applause.]

Mr. ROBERTS of Massachusetts. Mr. Chairman, I yield five minutes to the gentleman from California [Mr. CURRY].

Mr. CURRY. Mr. Chairman, if the ships provided for in this bill are to be constructed within the time limit, they will have to be constructed in the Government navy yards. You will not receive a bid from a private yard for the construction of one of these ships. At the present time every private yard in the United States has already contracts for the construction of all the ships they can build within the next three years. At the present time there are 368 ships being constructed and construction ordered at these private yards. More than 300 of them are large ships for use in the overseas trade. It will take at least three years to construct those ships, and under the circumstances the battle cruisers and the other ships provided for in this bill, and ships that will be provided for at the next session of Congress, will have to be constructed in the navy yards of the United States. But two of those navy yards at the present time are equipped to construct a battleship, the one at New York and the one at Mare Island. Now, I hope that the amendment of the gentleman from Tennessee, as amended by the gentleman from California, my colleague, Mr. NOLAN, will be adopted. That will provide $7,000,000 to be used in the discretion of the Secretary of the Navy for the equipment of all the navy yards in the United States. Mare Island and New York will need more equipment than they have if they are assigned other ships to build than are assigned to them to-day, and it is right and proper that part of this money should be used in the further equipment of those two yards. I am glad there is a disposition in this House to equip the navy yard at Bremerton. There ought to be two first-class yards on the Pacific coast, fully equipped to do the work of the Navy.

Our friend from Washington [Mr. HUMPHREY] has year after year and year after year tried to impress upon this House the absolute necessity for equipping the Bremerton Yard. All that has been done for that yard has been done by the Congress through his efforts. If Bremerton is equipped every Member of this House knows it will be due to the efforts of Mr. HUMPHREY, who has worked hard and persistently for the adequate equipment of that yard. He has appeared before the Committee on Naval Affairs and has told you on the floor of the House what ought to be done for Bremerton and for Mare Island, the two yards on the Pacific coast. I feel certain that the amendment of the gentleman from Tennessee as amended by my colleague will be accepted by the gentleman from Tennessee and adopted by the House, and that the $7,000,000 will be provided for the absolutely necessary equipment of the navy yards if this building program is put through.

I wish to call the attention of the committee to the fact that Mare Island has an organization that is unexcelled in efficiency. She always turns out first-class work within the estimate and

time limit and has never been compelled to ask for a deficiency on any job that has been assigned to her.

The CHAIRMAN. The time of the gentleman from California has expired.

Mr. ROBERTS of Massachusetts. Mr. Chairman, did the gentleman consume all his time?

The CHAIRMAN. The gentleman consumed four minutes.

Mr. ROBERTS of Massachusetts. How much time has that side remaining?

The CHAIRMAN. Four minutes remaining.

Mr. ROBERTS of Massachusetts. Mr. Chairman, I yield four minutes of that time to the gentleman from California [Mr. STEPHENS].

Mr. STEPHENS of California. Mr. Chairman, I want to call attention to the fact that construction in Government navy yards is sometimes cheaper than in private yards, and as an illustration of that, the bid of the Mare Island Navy Yard for the battleship *California* was $245,000 less than the bid of any private yard, and that bid, although $245,000 less than any private yard, included $500,000 with which to extend the building ways in Mare Island Navy Yard for the building of that and other capital ships. In addition to that it included the furnishing of a number of items for the *California* which private yards excluded from their bids. And the Mare Island Navy Yard, on the Pacific coast, has never yet exceeded its estimates nor the time in which it said it would construct a ship. The Mare Island Navy Yard has proven its character and capability.

Mr. Chairman, at least four of the Government navy yards on the Atlantic coast, as well as the Puget Sound and Mare Island Navy Yards, on the Pacific, should be equipped for largest construction, and especially so when the private yards are unable to meet the requirements of the Government. If ever this Nation engages in naval warfare on the Pacific Ocean we shall need both navy yards there for both repair and construction. Mare Island Yard is now being equipped for the construction of capital ships and the Puget Sound Yard should be similarly equipped at the earliest day possible. I think the amendment proposed is a perfectly proper one and should be adopted. [Applause.]

Mr. ROBERTS of Massachusetts. Mr. Chairman, I suggest that the chairman of the committee occupy some of his time.

Mr. PADGETT. Mr. Chairman, I yield one minute to the gentleman from Virginia [Mr. HOLLAND].

Mr. HOLLAND. Mr. Chairman, I wish to say that I am heartily in favor of this amendment. Under present conditions I believe any scheme of preparedness is absolutely useless which does not, in addition to authorizing battleships, provide the several yards with the facilities necessary for building them.

I ask unanmous consent for permission to extend my remarks in the RECORD.

Mr. ROBERTS of Massachusetts. I yield to the gentleman from Washington [Mr. JOHNSON].

Mr. JOHNSON of Washington. Mr. Chairman, I am well acquainted with the navy yard at Bremerton, know its highly favored location and the present state of its equipment. I know also of the comparative ease with which it can be further equipped for the complete construction of first-class ships. I hope that soon some of the vessels authorized last year, and others now being authorized for the Navy, may be constructed in that yard.

Under the provisions of the amendment about to be voted on, I believe that ships will soon be on the ways at Bremerton. The needs of this yard have been well presented to the committee during its hearings by my colleague Representative HUMPHREY, in whose district the yards lie, and by all of the Members of the delegation from the State of Washington. The people of Bremerton, too, have been active and alive to the matter. They are to be complimented on having sent to Washington my old friend and acquaintance, Mr. J. E. Barnes, with a mass of facts which are not to be controverted. The people of Bremerton do not ask for favors for their yard; they ask that its capacity be utilized. I believe the amendment proposed by the gentleman from Tennessee [Mr. PADGETT] will solve the situation. I shall not take the time of the committee further.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois [Mr. BUCHANAN].

The question was taken, and the amendment was rejected.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. NOLAN].

The question was taken, and the amendment was rejected.

The CHAIRMAN. The question now is on the amendment offered by the gentleman from Tennessee [Mr. PADGETT].

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

Mr. PADGETT. Mr. Chairman, I have an amendment here which I wish to offer.

The CHAIRMAN. The gentleman from Tennessee [Mr. PADGETT] offers an amendment, which the Clerk will report.

The Clerk read as follows:

On page 24, strike out all of lines 14 to 25, inclusive, and, on page 25, strike out all of lines 1 to 7, inclusive. Insert in lieu of the matter stricken out the following:

"Beginning at a point marked by a concrete monument at the southeast corner of the land acquired by the United States from the John Li estate through condemnation proceedings, which point has the coordinates 230.1 feet south and 87.2 feet west from 'Ford No. 5' (Ford No. 5 being marked by a galvanized pipe in a concrete monument stamped 'U. S. 1911,' established by the United States district engineer office, and having coordinates 8,570.99 feet south and 10,087.64 feet west from the Ewa Territorial triangulation station); thence north 23° 12' east 177 feet, more or less; thence north 16° 0' east 66 feet, more or less, to a point on the shore line at high-water mark; thence southerly along high-water mark to a point marked by a concrete monument that is, with reference to the point of beginning, south 51° 0' east 70 feet, more or less, the southwesterly boundary of the said tract being formed by the line joining said last-mentioned point on the high-water line with the point of beginning."

Mr. PADGETT. Mr. Chairman, this is to correct the description of a piece of land. The War Department first furnished the boundaries, and they were inaccurate. They have since notified the Secretary of the Navy of the correct boundaries, as set out in this amendment. It is to exchange the two tracts of land between the two departments. The Navy Department has a small tract of land that the War Department had use for, and the War Department had another small tract that the Navy Department had use for, and it is just authorizing the departments to exchange the use.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Tennessee [Mr. PADGETT].

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

Mr. PADGETT. Mr. Chairman, I offer another amendment.

The CHAIRMAN. The gentleman from Tennessee offers a further amendment, which the Clerk will report.

The Clerk read as follows:

Amendment by Mr. PADGETT: Page 76, after line 19, insert as a new paragraph:

"The sum of $340,000, or so much thereof as may be necessary, is hereby appropriated for a test of the Neff system of propulsion in such submarine as the Secretary of the Navy may designate for the purpose. *Provided*, That should the system prove unsuitable for use in submarines one-half the cost of the equipment shall be borne by the Government and one-half by the owners of the Neff system, and that if any part of the system is considered desirable for retention its value, previously agreed upon, shall be deducted from the cost of the equipment in determining the cost of the experiment to be borne by each party to the contract."

Mr. MANN. Mr. Chairman, I reserve a point of order on that.

Mr. PADGETT. Mr. Chairman, I simply want to make this statement. I have a letter from the Secretary of the Navy that is dated March 10 that I will ask the Clerk to read in a moment.

This matter was considered before the Committee on Naval Affairs, and a number of naval officers testified in regard to it; and I believe that every officer who testified stated that there were three military objections to the proposed engine, which, in their opinion, were almost insuperable. That is the way they expressed it. They expressed themselves very strongly against it.

The effort is to secure an oil internal-combustion engine to operate, submerged, by the use of compressed air. It would be very desirable indeed to secure that if possible. There are many objections and shortcomings to the battery system that we have in our submarines, both in the lead battery that is installed in our submarines and also to the Edison battery, from which we had an explosion, as you will remember, a short time ago in the New York yard, when five men, I believe, were killed, and eight or nine were injured. If it is possible to secure an engine that will operate by combustion of oil to propel the submarines when submerged, it would be a very desirable thing and a very great addition to the usefulness of the submarines. But the naval officers stated to the committee that when the engine was operating submerged, the air used in the combustion of the oil being discharged into the air would produce a wake of air bubbles that would disclose the presence and the trace of the submarine. They gave it as their opinion that that would be a very great objection, and if there was no way of overcoming that it would destroy the usefulness of the engine, because the wake, disclosing the track of the submarine, would destroy the utility of the submarine by making its whereabouts known. The owners of this system insist that the air is discharged in such a way and in such a position with reference to the propeller blades that it is churned up so in the water that it will not produce a wake. That, however, has never been demonstrated, and there is that conflict of claims.

Another claim is that in the discharge from the combustion, when submerged, there is more or less oil that goes out with the

refuse into the water, which will rise to the surface and produce an oil wake, and that would disclose the track and the whereabouts of the submarine. That by the owners is disputed, and they stated it would not.

There is still a third military objection that the naval men submitted, and that was that the operation of the engine would produce so much noise when submerged that the under-water communications—the telephones—would pick up the noise at a distance of several miles and disclose the location or the whereabouts of the submarine.

Mr. COX. Mr. Chairman, will the gentleman permit one question?

Mr. PADGETT. Yes.

Mr. COX. That is very interesting. Does the gentleman know how Germany has overcome that, or any of those objections?

Mr. PADGETT. We have never heard that she has overcome it.

Mr. COX. Why, then, don't they discover the presence and whereabouts of German submarines that are all around England?

Mr. PADGETT. The German submarines are moving down and up, and they are operating in very small waters, and they come in and out of their bases. We know of no way that a submarine is operated except by storage batteries. We are trying to get a system of propulsion under water that will dispense with the batteries, and it would be a wonderful achievement if it could be accomplished.

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

Mr. PADGETT. Yes.

Mr. LOUD. Is it not a fact that the Government has already contracted for two or three installations of the Deisel internal combustion engine on some of our submarines, one of them being the very boat that had the accident some time ago?

Mr. PADGETT. I do not know as to that.

Mr. LOUD. I was informed by the representative of the electric company that sold them that they had placed an order for those boats.

Mr. PADGETT. They had them for surface operation. We use the internal combustion engine or the Deisel engine; we have them on all the boats.

Mr. LOUD. Exactly.

Mr. PADGETT. But they do not operate submerged. They operate on the surface, and while in operation on the surface they charge, when the boat either runs very slowly or stands still; with the oil engine, operating on the surface, they generate electricity that stores the batteries, but the moment that the boat submerges the engines stop. They do not operate under water, and all submerged operation is by electricity from the storage batteries.

Mr. LOUD. I gathered from what the gentleman said before that they had not used those engines. I was quite sure that they had.

Mr. PADGETT. Oh, no. All our submarines are operated on the surface by the Deisel combustion engine.

Mr. WM. ELZA WILLIAMS. Mr. Chairman, will the gentleman yield?

Mr. PADGETT. Yes.

Mr. WM. ELZA WILLIAMS. What is the engine operated with that operates on the surface?

Mr. PADGETT. Oil.

Mr. WM. ELZA WILLIAMS. That is the one that is proposed to be used when submerged?

Mr. PADGETT. Yes.

Mr. WM. ELZA WILLIAMS. Does not the gentleman believe, from the experience of the German submarines in this war, that they have a submarine far superior to anything that we have?

Mr. PADGETT. I do not know. Over there, from what we can get, it seems they advertise their successes. We over here advertise our failures. We do not know anything about their failures or shortcomings.

Mr. WM. ELZA WILLIAMS. But we do know that their successes almost involved the United States in trouble with Germany.

Mr. PADGETT. Well, I do not care to discuss that.

The CHAIRMAN. The time of the gentleman from Tennessee has expired.

Mr. PADGETT. Mr. Chairman, I will ask for five minutes more.

The CHAIRMAN. Is there objection to the gentleman's request?

There was no objection.

Mr. PADGETT. When the matter was before the committee, in consideration of the testimony that was given by the naval officers, which I have stated to the committee here today, the Naval Committee concluded not to recommend this appropriation for experimental purposes upon one of the boats. Since then a number of Members of the House have spoken to me about it. They have heard about it. Mr. Neff has submitted to me a large amount of data on the subject from the department and naval officers which I thought I had here on the table, but it seems it has been removed; but on account of the great desirability and urgent need of some means of propulsion under water, different from storage batteries and which would be more efficient, I thought I would lay the matter before the House.

The complaint has been made sometimes that we do not experiment enough. I do not think there is any very substantial basis for the criticism, because there is a great deal of experimentation done, and we appropriate for experimentation; but I thought I would lay this matter before the House with a statement of the facts and let the House determine whether or not we would make this appropriation.

The statement is made that there are certain parts of this machinery embraced in this appropriation of $340,000 that could be used whether the experiments were successful or not. Allowing for this salvage, it is estimated that it would reduce the loss to something like $100,000 or $150,000 if the experiments in underwater combustion were a failure; and the proposal is that the company shall bear one-half of the loss and the Government one-half. That would involve the expenditure of somewhere from $50,000 to $75,000 on the part of the Government.

Now, with this statement I lay the matter before the House for its consideration and determination as to whether or not under the circumstances the House feels justified in making this appropriation, and in having this experiment made, to see whether or not it is possible to have this thing developed to a successful stage.

Md. MADDEN. Will the gentleman yield?

Mr. PADGETT. I yield to the gentleman from Illinois.

Mr. MADDEN. Is not this a most extraordinary proposition to bring before the House?

Mr. PADGETT. It is out of the usual; yes.

Mr. MADDEN. Is there any justification for a man who pretends to have a machine that he is endeavoring to put upon the market asking to have the Government pay the cost of developing it?

Mr. PADGETT. I think there are cases where the Government has developed——

Mr. MADDEN. They do it in guns, but not in engines.

Mr. PADGETT. In certain things; and if the experiment promises success, the great desirability of the end to be attained would more than justify the expenditure. The question that I hesitated about was that all of the naval officers who testified before our committee were of the opinion that the military objections which were stated were insuperable, and in the committee I was at first averse to recommending it, and the committee left it out and did not recommend it.

Mr. MADDEN. What does the department say about it?

Mr. PADGETT. The Secretary of the Navy has recommended that the experiment be made. I will ask permission to have his letter read, so that we may have it before us and in the RECORD.

Mr. MADDEN. Just a moment, before the letter is read. What will it cost?

The CHAIRMAN. The gentleman's time has expired.

Mr. PADGETT. I ask unanimous consent for five minutes.

The CHAIRMAN. The gentleman from Tennessee asks unanimous consent that his time be extended five minutes. Is there objection?

There was no objection.

Mr. MADDEN. What does this man who controls the engine propose to charge the Government if the experiments are successful?

Mr. PADGETT. He proposes to charge the Government a profit not exceeding 25 per cent on the cost of manufacture.

Mr. MADDEN. What is the cost of manufacture?

Mr. PADGETT. I do not know. He said he would enter into an agreement with the Government that the profit should not exceed 25 per cent of the cost.

Mr. MADDEN. Then, we are buying a pig in a poke if we enter into this thing. Yesterday the House went on record against even buying armor plate from institutions that were already in existence, at a fixed price, or at a price to be fixed by the Secretary of the Navy. Yet, here we come to-day with a proposition that nobody knows anything about, and that a man who has a patent upon an engine is endeavoring to force upon the Government, without anybody knowing anything whatever

about it, and those who pretend to know—the officers of the Navy—talking against it.

Mr. PADGETT. I am not submitting any question with reference to a contract, or the purchase of anything. The only question involved here is the question of experiment as to whether or not the experiments were worth a trial, to see whether or not we can develop this engine. As far as I am personally concerned, I stated before the committee that I was unwilling to include it in the report or to recommend it, and the committee so acted. I am bringing it here and making this full statement without in any way involving the committee and without even my personal recommendation. I am simply laying it before the House, in order that they may have all the facts and determine for themselves whether or not they want to make this experiment.

Mr. TILSON. Will the gentleman yield?

Mr. PADGETT. I yield to the gentleman from Connecticut.

Mr. TILSON. In the opinion of the gentleman, would these experiments go on if the Government did not take hold of the project? Will this gentleman drop his experimenting and let it go by the board if the Government does not take it up?

Mr. PADGETT. I am not prepared to answer that. I have heard that it is owned by some individuals of very limited means. I will just state—it is a statement of private matters—that the other day I got a letter from some gentleman either in Iowa or Illinois, I am not sure which, stating that he had taken some stock in this matter, and that they were calling on him to advance some more money, and that he had hardly any money, and asking me for my opinion. I told him that I had no recommendations to make, that the committee had failed to recommend it, and that I did not know whether Congress was going to do anything or not, and that he must act on his own judgment, that I could not give him any advice.

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

Mr. PADGETT. I yield to the gentleman from Nebraska.

Mr. KINKAID. Can the gentleman inform the committee what is the estimated cost of making the experiments?

Mr. PADGETT. The amount asked for is $340,000. It was estimated, however, as the matter was stated to me, that certain parts of the machinery, the engines, and so forth, are common to all of the submarines, and that with that salvage taken out it would reduce the loss, if it was a failure, to about $100,000 or $150,000, which, if divided between the owners and the Government, would make the loss of the Government somewhere between $50,000 and $75,000.

Mr. GARDNER. Is the gentleman from Tennessee going to vote for his own amendment?

Mr. PADGETT. I am willing to vote for it.

Mr. GARDNER. Are the members of the committee generally going to vote for it?

Mr. PADGETT. I think not, no, sir; and I am not advocating it as a member of the committee. I am not submitting it as a member of the committee. I am simply laying it before the House with this statement of facts, so that the House may have the facts.

The CHAIRMAN. The time of the gentleman has expired.

Mr. MADDEN. Mr. Chairman, I make a point of order against the amendment.

Mr. PADGETT. I ask that my time be extended long enough to have a letter from the Secretary of the Navy read.

Mr. MADDEN. I will withhold the point of order until that is done.

The Clerk read as follows:

NAVY DEPARTMENT,
Washington, March 10, 1916.

SIR: There is transmitted herewith a copy of a letter from Mr. Abner R. Neff regarding the Neff system of propulsion for submarines for which he submitted a proposal to the department September 30, 1915, for its installation in a submarine.

There has been considerable correspondence from time to time between the department and Mr. Neff and his predecessors, the L—A Submarine Boat Co., looking to the installation of such a system in a submarine, and more than a year ago the department offered to place a submarine at the disposal of this company for the purpose, the proposition then being substantially that the Neff Co. would install their system at their expense, and that if it proved satisfactory it would be purchased at a figure to be mutually agreed upon in advance of installation.

In the present case Mr. Neff has not submitted a definite proposition covering responsibility for the efficient operation of his system, although his proposal of September 30, 1915, was made under the same conditions as applied to bidders on submarines as a whole; that is, it covered the guaranties for surface and for submerged speed and for defects that might develop in any part of the system.

There are, however, features of the system which might render its use highly objectionable from a military standpoint and, therefore, make it unsuitable for use in a submarine. These features are not covered in the form of contract on which Mr. Neff bid, nor is any mention of them made in his later correspondence. They refer to the possibility of the presence of the submarine being disclosed by the air bubbles or the oil "slick" from the exhaust of her engines when submerged and also by the noise of her engines.

While the probability is that these conditions would exist, the problem is one which can be definitely determined only by experiment, and as it is extremely desirable to get rid of storage batteries, if a satisfactory substitute can be found, it is believed that there is sufficient merit in the scheme to justify a trial of it. While recognizing that there are objections to the system which may render it unsuitable, the Bureaus of Construction and Repair and Steam Engineering nevertheless recommend that it be tested in order definitely to determine its merits. It is, therefore, recommended that an appropriation be made for the purpose somewhat along the following lines:

"That $340,000, or so much thereof as may be necessary, is hereby appropriated for a test of the Neff system of propulsion in such submarine as the Secretary of the Navy may designate for the purpose: *Provided*, That, should the system prove unsuitable for use in submarines, one-half the cost of the equipment shall be borne by the Government and one-half by the owners of the Neff system, and that if any part of the system is considered desirable for retention its value, previously agreed upon, shall be deducted from the cost of the equipment in determining the cost of the experiment to be borne by each party to the contract."

Sincerely, yours, JOSEPHUS DANIELS.

Hon. L. P. PADGETT, Member of Congress,
Chairman Committee on Naval Affairs,
House of Representatives.

Mr. MANN. Mr. Chairman, may I ask the gentleman from Tennessee, or any other naval expert in the House, a question. I read in the morning paper a statement which, I think, said that a British submarine had been out 46 days without touching port. Of course, I do not believe everything I hear or read, but is that possible?

Mr. PADGETT. I do not know what is possible, but it is not common.

Mr. MANN. I know that it is not common, but I wanted to know whether it was possible.

Mr. ROBERTS of Massachusetts. I think it would be possible for a submarine to stay out that length of time without touching port, if she had supplies brought to her by other vessels, and that is being done.

Mr. MANN. This statement indicated that that was not done, and I wanted to know if it was possible for a submarine to stay out longer than 10 days without touching port or receiving supplies.

Mr. PADGETT. I think 7 or 8 days is about the limit of what we call our coast-defense submarine.

Mr. MANN. What is the power in these submarines?

Mr. PADGETT. It is an oil-burning engine running on the surface and storage batteries, electric batteries, when submerged.

Mr. MANN. How long can they run submerged?

Mr. PADGETT. About 70 miles, if they run at a very slow speed. They can stay under about 14 or 15 hours when running 4 or 5 knots an hour. But if they run 14 or 15 knots an hour they can stay under only an hour or two.

Mr. MANN. Then they have to rise to the surface and charge the batteries.

Mr. PADGETT. Yes.

Mr. MANN. How much oil do they carry?

Mr. PADGETT. I do not know, they have a cruising radius of about 400 or 600 miles.

Mr. MANN. What is the relative comparative power produced by oil whether it be used directly or for the storage of electricity?

Mr. PADGETT. I do not know how much oil is consumed in generating electricity where the boat is standing still, but I would think it would be much less than where she is running. Where they are running nothing but the engine and not carrying the weight and resistance of the boat and just running the engines and developing electricity it must be much less.

Mr. MANN. That is not exactly what I wanted to get at. I wanted to know what is the loss of power in converting oil into electricity.

Mr. PADGETT. I do not know.

Mr. MANN. That is the first question I would ask if I was investigating submarines as to power.

Mr. PADGETT. I do not know the relative power of electricity generated by burning the oil bears to the direct power of the oil operating in the oil engine direct.

Mr. MANN. It may be that some of the other wise experts can answer my question.

Mr. PADGETT. I would be justified in saying this, that in our battleships we use oil for generating electricity for the purpose of running the motor that drives the shaft in the battleship, and in that way get more power than they do by coal burning.

Mr. MANN. That is like a man raising himself by pulling on his boot straps.

Mr. MADDEN. Mr. Chairman, I make the point of order against the amendment that it is not germane, that it is a violation of all the ethics of the House, bringing in something that nobody knows anything about, and it is new legislation.

Mr. PADGETT. I think, Mr. Chairman, it is subject to a point of order.

The CHAIRMAN. The Chair sustains the point of order.

Mr. PADGETT. Mr. Chairman, I offer the following amendment.

The Clerk read as follows:

Page 21, line 16, after the figures "$500,000," insert "to provide structural shop and shop facilities in place of those recently destroyed by fire (limit of cost not to exceed $1,050,000), $450,000."

Mr. MANN. Mr. Chairman, I reserve a point of order on that amendment. I would like to ask the gentleman what it is for?

Mr. PADGETT. It is for a shop at the Norfolk yard on account of one that was burned since the committee reported the bill. It is recommended by the Secretary of the Navy. They had a fire down there and this is to build a new shop.

Mr. MANN. What was the value of the shop destroyed by fire?

Mr. PADGETT. It was nothing like so good as the one proposed to be built here.

Mr. MANN. Was it worth half a million dollars?

Mr. PADGETT. The limit of cost here is $1,050,000.

Mr. MANN. Fifty thousand dollars to replace the old shop and one million for additions.

Mr. HOLLAND. Will the gentleman yield?

Mr. PADGETT. Yes.

Mr. HOLLAND. The purpose is to save as much of the old machinery as possible. It is hard to say what the old shop was worth.

Mr. ROBERTS of Massachusetts. What was the old shop used for?

Mr. HOLLAND. It was a ship-fitters' shop. I would like to say that it was a shop that had been added to from time to time, and it is practically impossible to tell exactly what it was worth. A part of the machinery was exceedingly valuable.

I wish to say that the shop facilities for promptly and expeditiously handling the repair work assigned to the Norfolk Navy Yard are inadequate, as is conclusively shown by the statements of the following naval experts and officials:

First. Secretary Daniels, in a letter dated February 15, 1915, and which can be found on page 2843 of the hearings, said:

Many of the shops at the Norfolk Navy Yard are antiquated and incapable of satisfactory remodeling.

Second. A naval board, composed of Admiral Edwards and others, in a report made to the Secretary of the Navy in 1914, made the following statement:

The Norfolk Navy Yard, being one of the oldest yards in the country, contains many old buildings of a design and construction which, judged from modern industrial needs, are neither adaptable for storehouses nor for manufacturing purposes. While undoubtedly of excellent construction for the period in which designed and have served the purpose for which built, some are now showing signs of weakness, and the life of many of them can not be greatly prolonged. It would undoubtedly promote economy and efficiency to give consideration to the question of erecting new buildings in preference to attempting any important improvement or extension of buildings which were designed for conditions which no longer exist.

Third. Admiral Stanford, on page 193 of his hearing before the Committee on Naval Affairs, said:

The Norfolk yard to-day is one of the principal Navy bases of this country, but is equipped almost exclusively with buildings which were constructed years and years ago and which were designed for work upon wooden vessels of the old Navy. The yard is not equipped at this time, in my judgment, with buildings which enable that yard to most efficiently and economically perform the work which is exacted of it, and as a business proposition it is going to be necessary to provide for modern and ample shop buildings at an early date, and if you can do it at once it would be a good thing.

Fourth. Assistant Secretary of the Navy Roosevelt, on page 3472 of his hearing before the Naval Affairs Committee, declared:

The general situation is that the Navy has, in the various navy yards, a lot of buildings that go back to the earliest day of the Government. They were buildings that were built for wooden-ship construction, sail lofts, mold lofts, etc., purely for wooden ships with very little iron, and where the furnaces, if there were any, or the forges, if there were any, were all very primitive in character, and were in the open air. We have had to use those buildings as the Navy developed, at first into an iron Navy and next into a steel Navy, for purposes for which they were not meant, and the result has been that at the older yards the conditions in some shops are distinctly bad. The conditions at Norfolk are probably worse than at any other place.

Fifth. Naval Constructor R. M. Watt, who, until a short time ago, was Chief of the Bureau of Construction and Repair, and is now industrial manager at the Norfolk Yard, in a letter to the chairman of the Committee on Naval Affairs, on page 3615 of the hearings, wrote, in part, as follows:

Of all the yards in the country the Norfolk Yard is the most antiquated. It has fewer modern improvements and facilities than any other yard belonging to the Government. The reason of this is that appropriations have not been made for new and modern shops and other necessary facilities which go along with it. According to the publication of the Bureau of Yards and Docks, "Public Works of the Navy, July 1, 1912," and the appropriations which have been made for the different yards since July 1, 1911, make a total value of offices, storehouses, and shops for the different yards as follows:

Portsmouth, N. H	$2,555,000
Boston, Mass	2,668,000
New York, N. Y	3,587,000
Philadelphia, Pa	1,975,000
Washington, D. C	3,513,000
Norfolk, Va	1,506,000
Charleston, S. C	1,459,000
Mare Island, Cal	2,728,000
Puget Sound, Wash	1,512,000

You will see from this valuation that the offices, storehouses, and shops at the Norfolk Navy Yard have a less value than of any other yard in the country, with the exception of Charleston, S. C., but the worst of it is that this valuation is placed on old and antiquated and out-of-date shops, which makes the situation very much worse than the figures show it to be.

These statements conclusively show not only the need for new and better shop buildings at Norfolk, but that the facilities there for doing work are worse than at any other station.

Some provision should be made at once for new shop facilities, and for the reasons briefly stated as follows:

First. The old buildings can not be moved or be so remodeled as to make them suitable for modern industrial purposes. They need not be torn down, but, as testified to by Admiral Stanford, they can be utilized for storage purposes and will provide storage facilities which are now very much needed. (See p. 209.) It would be real economy to use them for this purpose, the only purpose for which they are now adapted.

Second. Just treatment to its employees imperatively demands that this yard shall be modernized and improved without delay. Present conditions in these old buildings, most of which were erected before the Civil War, are almost intolerable. They are not properly ventilated; are not adequately heated; are without proper light and also without suitable and sanitary wash rooms and toilets; and are otherwise lacking in the facilities which are essential for the protection of the health and comfort of the men employed therein. Such conditions would not be allowed in any private establishment, and ought not to be permitted in any Government yard. Such buildings are not adapted for present-day industrial uses, and it is impossible for the men, who are compelled to use them, to accomplish the work which might otherwise be expected of them. Until these conditions are changed the men can not render their best service and can not efficiently and economically perform the work which is required of them. This occasions a direct loss to the Government. It would be effecting a real economy to remedy such a condition.

Third. It is unfair to this yard not to provide these new shop facilities at once. Work at the yard is largely secured by competitive bidding, and fair competitive bidding can not be had unless the yards are equally well equipped for the work. It is unfair to this yard to compel it to compete for work with better equipped yards. It is unfair to expect from it the same degree of efficiency and the same good results as from yards with modern buildings and modern conveniences. It is unfair to so neglect such an important station that it can not perform the work which might otherwise be exacted of it. It would be real economy to so equip it that you could secure genuine rivalry and sharp competition between this and other yards and between this and private yards. The policy now being followed is wrong and would eventually bring about the partial abandonment of this station, except for its advantages and its strategical location.

Fourth. It is unfair to the fleet not to make immediate provision for these improvements. By reason of its geographical location and its accessibility at all seasons of the year, this yard has been and must continue to be the great repair and supply station of the Navy. In time of peace it is visited by a larger number of ships and vessels than any other yard. Vessels in distress invariably seek it, and it can be reached when the channels to some of the other yards are closed by ice or by storm or are otherwise inaccessible. In time of war it must, by reason of its location near Hampton Roads and Chesapeake Bay, be the yard of the greatest military activity. If our ships are kept ready for service they must be periodically docked and overhauled. Disabled ships, whether such disability is occasioned by accident or constant use, must be repaired. The maintenance of the fleet in an efficient condition must depend upon the ability of the yards to promptly render it necessary docking and repair service. This service is absolutely essential, and the lack of it might at any time result in greater loss to the Government than the cost of these needed improvements. It is possible for it to result in the defeat of the fleet.

And yet this yard, the great repair station of the Navy, is now without the shop facilities so necessary to enable it to

render in the most economical and most expeditious manner this very essential service. It is unfair to the Navy to keep it in such condition. Such an important repair station should be so developed and equipped as to make it capable of promptly and efficiently meeting any demands which might reasonably be made upon it.

Fifth. The facilities for work at the yard have been rendered still more inadequate since the destruction by fire on May 18 of the ship-fitters' shop, the most important shop of all ship-repair stations. This one shop employed 400 men, and the urgency of their work is best shown by the fact that it was being done in three shifts of eight hours a day. These men are now temporarily housed and employed, but they are badly handicapped in their work. Steps should immediately be taken to provide new shops. If not provided, this yard, conceded to be of the greatest importance for the maintenance of the fleet, can not render the service which must be required of it.

It is useless to provide for the construction of additional ships unless at the same time you make some provision at the several yards for the pressing facilities which the very maintenance of the fleet imperatively demands. This is equally as important, and its neglect is not in the interest of economy nor in the interest of the Navy. Ships are useless unless kept ready for service, and the yard must do the work necessary to keep them ready.

Mr. PADGETT. Mr. Chairman, in this connection I would like to have read a letter of the Secretary of the Navy with reference to this.

Mr. HOLLAND. And I would like to say, so far as the cost of the building is concerned, that it is the amount recommended by the Secretary of the Navy; but if the committee believes that the amount is too large and that the amendment ought to be amended, then let the committee do it, but do not fail to provide at this yard a facility that is absolutely essential to enable it to do necessary work—not only the work which has heretofore been exacted of it but the work which may hereafter be required of it.

Mr. MANN. Mr. Chairman, I suppose this amendment may have been prepared by the Secretary of the Navy. I see that when originally prepared it provided for an appropriation of $450, but before it was offered it was changed in pencil so as to provide an appropriation of $456,000. I think, however, that a little matter like that on the naval bill amounts to nothing.

Mr. PADGETT. That was typewritten, not by the Secretary of the Navy, but the clerk of my committee added corrections to it to correct the shortcomings of the typewriter.

The CHAIRMAN. The Clerk will read the letter referred to by the gentleman from Tennessee.

The Clerk read as follows:

THE SECRETARY OF THE NAVY,
Washington May 22, 1916.

MY DEAR MR. PADGETT: The Norfolk Navy Yard reports that a fire at that yard on May 18, 1916, completely destroyed the yard's ship fitters' shop. The loss of this building will prove a serious handicap to repair work now on hand there and will also delay the completion of destroyer *No. 70*, although all possible arrangements within my power have been made for temporary expediencies to care for the emergency.

I have already brought to your attention, in my letter to you of March 25, 1916, the inadequacy of the shop facilities at the Norfolk Navy Yard for promptly and expeditiously handling the repair work assigned to that yard. If this were so before the destruction of the shop for ship fitting, the most important shop of a ship-repair yard, you will at once realize how much embarrassment will result at this yard in the future unless steps are immediately taken to improve the conditions.

In this letter of March 25 I urged an appropriation for the construction of structural or ship-fitters' shops, and in recognition of the conditions at Norfolk, a few months ago ordered the Chief of the Bureau of Yards and Docks to make an inspection of the Norfolk Navy Yard with the view to informing me as to the urgent and immediate requirements for improving the facilities there. Shortly after his return I directed him to confer with the Chief of Naval Operations and the Chief of the Bureau of Construction and Repair with the view to their submitting to me a joint recommendation, and I am forwarding herewith a copy of a report made by them in accordance with my directions.

I would refer you to paragraph 5 of this report, giving the items recommended by them to be included in the present appropriation act. I understand that the first item, a dry dock, is already included in the preliminary draft made by your committee of the appropriation bill. In view of the destruction of the ship-fitters' shop by fire, I earnestly recommend and urge that a special appropriation be secured for:

"A structural shop (cost not to exceed $1,050,000). $450,000 to be immediately available, of which $50,000 shall be available for salvage of tools and to insure the continuance of structural work until the new shop is completed."

Sincerely, yours, JOSEPHUS DANIELS.

Hon. L. P. PADGETT,
Chairman Committee on Naval Affairs,
House of Representatives.

Mr. MANN. Mr. Chairman, the gentleman from Virginia [Mr. HOLLAND] stated a moment ago that this appropriation was to provide the shop and replace the machinery. Is he correct about that?

Mr. HOLLAND. That is my information—that it is largely for that purpose. I have been furnished no detailed figures.

Mr. MANN. It seems to me that we ought to have some one on the floor, even on an item so small as $1,050,000, who knows something about it, who knows what it is for. Of course, I know that in a lot of these things we do not pay very much attention to such small sums of money, but I would like to ask the chairman of the committee whether this is for the shop—that is, to replace the shop, to replace the machinery, or is it for both?

Mr. PADGETT. It is both.

Mr. MANN. The letter of the Secretary of the Navy asked for $1,050,000, to replace the shop, as I just heard it read. I do not know whether the gentleman has read it or not; but if he has not, what would be the situation under this amendment——

Mr. PADGETT. My information is that it embraced the shop and the fitting out of shop.

Mr. HOLLAND. That is my information.

Mr. MANN. But that is not what the letter reads, as I heard it read from the desk, though I may be mistaken about that. If that be not the case, what is the situation? This is an amendment to provide a structural shop and shop facilities. I take it that shop facilities in this case means the machinery, and so forth.

Mr. PADGETT. That is what I understand.

Mr. MANN. To replace those recently destroyed by fire, limit of cost not to exceed $1,050,000. Under the rules of the House and under the practice of Congress, where you have a limit of cost fixed, whenever that limit of cost is reached and you desire to add anything to it, you must have legislation, or it is subject to a point of order. Under this amendment, having expended $1,050,000, if they desired to add a 20-cent tool down there they could not make an appropriation for it without its being subject to a point of order. There ought never to be a limit of cost fixed upon tools, machinery, at navy yards or anywhere else. There never has been before. I quote from the letter of the Secretary which has just been read:

I earnestly recommend and urge that a special appropriation be secured for:

A structural shop—cost not to exceed $1,050,000.

If that means machinery, then I do not understand the English language.

Mr. PADGETT. The amendment that is offered provides for the shop and the shop facilities, which takes in the machinery that would fit out the shop.

Mr. MANN. Yes; but you put a limit of cost upon the shop and the machinery.

Mr. PADGETT. Yes.

Mr. MANN. And that limit of cost is legislation.

Mr. PADGETT. Yes.

Mr. MANN. And you can not exceed it hereafter.

Mr. PADGETT Of course hereafter we would have to depend upon Congress in dealing with the question, as it was presented then, and the limit of cost as occasion arises is often extended.

Mr. MANN. I do not know that I shall be here, but if I am, and an appropriation is sought to provide additional machinery down there, please remember that it will be subject to the point of order.

Mr. HOLLAND. Mr. Chairman, I want to say that I had a talk with the Chief of the Bureau of Yards and Docks, and unless I misunderstood him the purpose is not only to provide for the shop but also to provide the machinery.

Mr. MANN. How much is the shop to cost, and how much of the appropriation is for machinery?

Mr. HOLLAND. I could not advise the gentleman as to the exact figures.

Mr. MANN. When you make an estimate of $1,050,000—I wonder they did not make it $1,049,999—certainly somebody must have gotten the figures up on those two propositions, and we are entitled to have the information.

Mr. HOLLAND. I have not the figures; they have not been furnished me.

Mr. PADGETT. Here is a letter referred to there, signed by Admiral Benson, Chief of the Bureau of Operations; Admiral Taylor, Chief of the Bureau of Construction and Repair; and Admiral Harris, Chief of the Bureau of Yards and Docks, who made an investigation, and they report for $1,000,000 for the shop and $50,000 is added to that, and in the letter which the gentleman had there he will notice that the Secretary in the estimate which he drafted, stated that $50,000 was for the salvage of the old machinery.

Mr. MANN. I see that plainly enough. That is not for machinery; that is for salvage of the old machinery. That is not

to supply machinery for the shop; and under the gentleman's amendment——

Mr. PADGETT. I understand.

Mr. MANN. You can not put in any new machinery in that shop. You can build a shop and have a roof over it, but you can not do anything in it.

Mr. PADGETT. We are authorizing a shop with machinery to cost $1,050,000, not providing for so expensive a shop as they recommended.

Mr. MANN. Oh, no; you do not know what you are doing. That is the trouble about it.

Mr. PADGETT. Shop and machinery.

Mr. LONGWORTH. Mr. Chairman, I agree entirely with the gentleman from Illinois it would be wise to know the relative proportions of the cost of machinery and the shop. I would like to ask the chairman if he can tell us what was the original cost of the machinery and the shop?

Mr. PADGETT. I stated I could not. That was put in many, many years ago—some of it before the Civil War—and it has come along down with repairs and additions and scrapping and new machinery, and I could not give the gentleman any idea what it was. I will ask unanimous consent that this amendment be passed over until to-morrow, and in the meantime I will get detailed information along the line of the gentleman's request.

The CHAIRMAN. The gentleman from Tennessee asks unanimous consent that this amendment be passed over until to-morrow morning. Is there objection?

Mr. MOORE of Pennsylvania. Mr. Chairman, reserving the right to object, in order to close the matter up now, does the gentleman recall whether an appropriation has yet been made for the burned machine shop at the Philadelphia Navy Yard?

Mr. PADGETT. I do not know. We have made so many appropriations for the Philadelphia Navy Yard, I do not know whether that has been made or not.

Mr. MOORE of Pennsylvania. I rather expected the gentleman to say that. The fact that the Norfolk Navy Yard has about $792,000—practically $800,000—in this bill and the Philadelphia Navy Yard $538,000 answers the gentleman as to that.

Mr. PADGETT. I will state to the gentleman that the Secretary of the Navy recommended very earnestly a dry dock at Norfolk, and did not recommend one at Philadelphia, and the gentleman's committee put in one for Philadelphia at three and a half million dollars without the recommendation of the Secretary of the Navy.

Mr. MOORE of Pennsylvania. We appreciate that, for it was due.

Mr. PADGETT. So it does not lie in the mouth of the gentleman to be captious about the committee.

Mr. MOORE of Pennsylvania. May I ask the gentleman again whether the request for the reconstruction of the burned machine shop at the Philadelphia Navy Yard has yet been complied with?

Mr. PADGETT. I do not know; there has not been any request for several years.

Mr. MOORE of Pennsylvania. It was burned several years ago.

Mr. PADGETT. There has been no request from the department nor from a Member of Congress for several years.

Mr. MOORE of Pennsylvania. This was before the committee at one time. May I ask the gentleman whether any request by the department was made for a floating crane at the Philadelphia Navy Yard?

Mr. PADGETT. Not this year—either by the department or the gentleman himself.

Mr. MOORE of Pennsylvania. I wish to submit to the gentleman that a bill was introduced by my colleague [Mr. VARE] and has been before the committee asking for a floating crane, which is a matter of great necessity, since you are obliged to hire one once in a while at the Philadelphia Navy Yard——

Mr. PADGETT. The matter has not been impressed upon the committee by either the department or the gentleman.

Mr. STAFFORD. Will the chairman of the committee take the general committee into his confidence and tell the committee in how many instances they have departed from the recommendations of the General Board or the Secretary of the Navy and favored some special pet project of a local district?

Mr. PADGETT. We did not favor any special project of a local district. The committee two years ago recommended one at Philadelphia, which went out on a point of order, and——

Mr. STAFFORD. I do not mean a dry dock, but generally speaking.

Mr. PADGETT. Generally speaking, I can not give the gentleman any details.

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

Mr. STAFFORD. Mr. Chairman, reserving the right to object, as we are not considering this bill in the regular order but by special rule, I think it is only due to the committee that the gentleman should indicate how many instances there were when the committee went beyond the recommendations of the department.

Mr. PADGETT. Sometimes we put in more and sometimes less.

The CHAIRMAN. Is there objection to the request of the gentleman from Tennessee? [After a pause.] The Chair hears none.

Mr. HOLLAND. Mr. Chairman, I ask unanimous consent to extend my remarks in the RECORD.

The CHAIRMAN. The gentleman from Virginia asks unanimous consent to extend his remarks in the RECORD. Is there objection? [After a pause.] The Chair hears none.

Mr. BORLAND. Mr. Chairman, I submit an amendment.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Line 26, page 37, add the following:
"*And provided further*, That any retired officer, while on active duty, shall receive the pay and allowances of the grade, not above that of lieutenant commander, that he would have attained in due course of promotion if he had remained on the active list for a period beyond the date of his retirement equal to the total amount of time during which he has been detailed on active duty since his retirement."

Mr. PADGETT. Mr. Chairman, I reserve a point of order against the amendment.

Mr. MANN. Where does that come in?

Mr. BORLAND. At the bottom of page 37.

Mr. Chairman, if the chairman of the committee wants to reserve the point of order I will make a little statement of the amendment first before touching on the point of order. My understanding is that this particular provision occurs in exactly these words, except the change of title, lieutenant commander to major, in the Army bill. It is exactly the language that was carried in the Army bill with reference to Army officers who are detailed for active duty. As I understand the purpose and the practical effect of it is to give the Government the advantage of the work of these retired officers in cases where it can be done and on conditions that are fair to the retired officer. Now, to illustrate that, because an illustration brings it more closely home to my conception and does, I think, to other nonprofessional men—there is a young man of my acquaintance in the Navy, I do not know exactly what his rank is, but it can not be very high, who had his hearing impaired by a gun discharged in the line of duty. He is a splendid, active young man. My impression is that he was appointed from Arkansas, went through the Naval Academy, is a trained naval constructor, and a very efficient man, and he was retired because in the line of his duty his hearing was impaired by this gun discharge. He is in line with a good deal of work, especially with the enlargement of the Navy. In fact, he is detailed for that purpose right now. But the effect of the present law is, as I understand, no matter how long he has been detailed for that work—and I think he ought to be detailed to it as long as he is able to perform competent work in that branch of the service—his retirement grade does not change as the grade of a man in the active service does. He may become more skilled and more efficient, but he has been retired at a very low grade as a young officer in the Army.

Now, that matter has been corrected by the Military Committee by a specific provision in the military bill which provides that the officers under the grade of major, if they are detailed from the retired list to the active list for duties they are able to perform, advance in grade as though they were on the active list. This is a proposed application of the same principles of the Navy, using the rank of lieutenant commander instead of the rank of major. In other words, a man has to be low down on the list before this can affect him at all, and he never can get above the rank of lieutenant commander.

Now, it does seem to me there are cases similar to the one that I have pointed out, where a man's hearing is affected, or perhaps some other defect incurred in the line of duty. A great deal can be done with the technical knowledge with which the Government has educated him to the advantage of the service. Instead of his lying a dead weight upon the retired list of the Army and continuing to draw his pay and do nothing more, he should be given active duty. If he has the technical knowledge that ought to be used, he should be permited to use it. I have not any other information about it, but I have no doubt it will appeal to the fairness of the members of the Naval Committee, it being exactly the proposition the Military Committee put on their bill.

Does the gentleman from Tennessee insist on his point of order?

Mr. PADGETT. It is subject to a point of order, but I want to ask the gentleman a question.

Mr. BORLAND. Yes.

Mr. PADGETT. Is this the identical provision that is contained in the Army reorganization bill passed at the present Congress?

Mr. BORLAND. I understand it is identical, word for word, with the provision, except that the Army bill uses the word "major" as the rank above which they can not go, while this uses the words "lieutenant commander."

Mr. PADGETT. And this puts the two services upon the same basis?

Mr. BORLAND. Precisely. The Advocate General has put his approval upon this wording.

Mr. PADGETT. I will not insist upon the point of order, but let the House vote on the merits of it.

Mr. BUTLER. Mr. Chairman, I reserve the right to object. This provides for a promotion upon the retired list. It may be that the rule has been repealed in the Army, but I do not know that. I had no opportunity, however, to prevent that, but I have one to prevent it here; and I am going to make the prevention, and I will make the point of order.

Mr. BORLAND. Will the gentleman reserve it?

Mr. BUTLER. I certainly will if the gentleman wants to make a statement.

Mr. BORLAND. I call attention to the fact that in no case can the commander receive the pay or allowance above the rank or grade of lieutenant commander.

Mr. ROBERTS of Massachusetts. If this proposition is a fair one for a junior officer who has been retired for disability, why is it not fair for a lieutenant commander? If a commander has been retired for disability and can perform some active service, why cut the line and say that it is fair for the man below and not fair for the man above?

Mr. BORLAND. I think the distinction was made on this account. I will say that this young man I describe was a comparatively young man, barely over 30 years of age. He had his hearing affected by a gun discharge. He had only just come out of the Naval Academy and just received his technical education.

Mr. ROBERTS of Massachusetts. In what grade was he retired?

Mr. BORLAND. I do not know.

Mr. ROBERTS of Massachusetts. That of junior lieutenant, or what?

Mr. BORLAND. I do not know. I could not say.

Mr. ROBERTS of Massachusetts. If he was 30 years old he was probably a junior lieutenant. Now, let me ask the gentleman a question. If he is on active duty he is getting the full pay, is he not?

Mr. BORLAND. Yes; if he is on active duty he is getting full pay; but if he stays on active duty 20 or 30 years he would still be getting what? As I understand it, he would still be getting the active pay of a junior lieutenant.

Mr. ROBERTS of Massachusetts. Is not that better pay than if he were not at work?

Mr. BORLAND. Yes; but I do not see why, if he is doing the work, he should not have the active service counted in his favor.

Mr. ROBERTS of Massachusetts. The objection is to bringing these retired men in and taking all the snore stations—getting all the soft berths.

Mr. BORLAND. There may be a scramble among officers for promotions; but we are considering the payment of bills for the retired officers. We are not considering it from the standpoint of the officer who wants a promotion in the service, but from the standpoint that we are paying for these men anyway, and should not we at least have some benefit from their service?

Mr. BUTLER. I do not agree about the scramble for office. I am opposed to men on the retired list being placed on active duty.

Mr. ROBERTS of Massachusetts. Mr. Chairman, will the gentleman yield there?

Mr. BORLAND. Yes.

Mr. ROBERTS of Massachusetts. The gentleman misunderstands the situation entirely. This law has not the slightest effect on the promotion of a man on the active list.

Mr. BORLAND. That is the gentleman's own statement.

Mr. ROBERTS of Massachusetts. No; I did not say that. I said this would shut out the line officer when he comes on shore from having a proper duty, and the effect would be to keep him at sea indefinitely, because there is no place on shore where he would get relief from sea duty by reason of all the places being filled up with men on the retired list doing active duty.

Mr. BORLAND. That assumes that there is not more work to be done on shore than could be done by the retired officers. I am not sure that we should not use the retired officers in that way, anyway. But I do not think either one of these assumptions is absolutely incontestable.

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

Mr. BORLAND. Yes.

Mr. GARDNER. Does the gentleman know whether the effect of the passage or adoption of this amendment would be to displace any officer who was in the line of promotion? In other words, would an officer under the gentleman's amendment be an active officer of his grade?

Mr. BORLAND. I understand that this could not possibly interfere with the promotion of an officer in the active service.

Mr. PADGETT. This is on the retired list, and there are no extra numbers on the retired list.

Mr. BORLAND. It simply says that the man who is on the retired list and is assigned to active duty shall have——

The CHAIRMAN. The time of the gentleman from Missouri has expired.

Mr. BORLAND. Mr. Chairman, I would like to have five minutes more.

The CHAIRMAN. Is there objection to the gentleman's request?

Mr. BUCHANAN of Illinois. I object.

Mr. GARDNER. Mr. Chairman, I ask for recognition in my own right.

The CHAIRMAN. The gentleman from Massachusetts [Mr. GARDNER] is recognized.

Mr. GARDNER. Mr. Chairman, I wish to ask the chairman of the committee, in connection with this amendment, a question. As I understand it, there is no question of promotion involved except on the retired list?

Mr. PADGETT. That is right.

Mr. GARDNER. Very well. Now, if you say that a man shall have the same promotion as he would have had if he had served that length of time longer on the active list, how do you determine in what grade he is to be promoted?

Mr. PADGETT. Simply by the man in front of him and the man who is behind him at the time he went out. This, as I stated, gives promotion on the retired list. It is subject to a point of order, but I was willing that the matter should be debated. The gentleman from Pennsylvania [Mr. BUTLER] made his point of order.

Mr. BUTLER. I reserved the point of order. I withheld it so that the gentleman from Missouri [Mr. BORLAND] might have an opportunity to make a statement.

Mr. BORLAND. Mr. Chairman, I do not think it is subject to a point of order. It is offered at a place which provides for the pay and accounts of the officers and men of the Navy, and it contains a good many of these provisos. The one immediately preceding it is in the rating of storekeepers in the artificers' branch. There are a number of similar designations there. I do not know upon what theory the gentleman from Pennsylvania [Mr. BUTLER] is making the point of order, unless it is not germane. I do not think that is tenable. I think it is germane to that particular paragraph, and certainly to the bill itself.

The CHAIRMAN. The particular portion of the bill to which the amendment is offered provides for the compensation and rating of enlisted men in active service. The amendment of the gentleman from Missouri [Mr. BORLAND] provides for the compensation of retired officers when assigned to active duty. In the opinion of the Chair it is not germane to the provision of the bill to which it is offered, and the Chair sustains the point of order.

Mr. BORLAND. Mr. Chairman, I reoffer the amendment at page 66.

Mr. MANN. I reserve a point of order on it, Mr. Chairman.

Mr. BORLAND. At page 66, line 10, I reoffer the amendment.

The CHAIRMAN. The gentleman from Missouri reoffers the amendment, and the Clerk will report it.

The Clerk read as follows:

Amendment by Mr. BORLAND: On page 66, line 10, insert: "*And provided further*, That any retired officer while on active duty shall receive the pay and allowances of the grade, not above that of lieutenant commander, that he would have attained in due course of promotion if he had remained on the active list for a period beyond the date of his retirement equal to the total amount of time during which he has been detailed on active duty since his retirement."

Mr. BUTLER. Mr. Chairman, I reserve a point of order.

Mr. MANN. I make the point of order.

Mr. BORLAND. The Chair will observe that the paragraph applies to a great many retired officers, and provides "That the aforesaid officers shall be carried as additional numbers in the grade to which they may be appointed under this act," so that it includes exactly provisions of this character. It seems to me the point of order is not well taken.

The CHAIRMAN. The provision of the bill to which the amendment is offered authorizes the President to appoint on the active list certain officers of the Navy now on the retired list, and provides that they shall, when appointed, be carried as additional numbers. Under the law retired officers may be assigned to duty on the active list, and receive the compensation of the grade they had reached when retired. The gentleman from Missouri proposes that when assigned to the active list they shall receive the compensation of the grade to which they would have been promoted had they remained in active service without retirement. The Chair does not believe that amendment is germane to the provision of the bill authorizing the President to appoint on the active list certain designated officers now on the retired list. The Chair sustains the point of order.

Mr. TOWNER. I desire to offer an amendment.

The CHAIRMAN. The gentleman from Iowa offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment offered by Mr. TOWNER: Page 102, line 15, after the word "plant," strike out the period, insert a colon, and the words and figures following, to wit: "*Provided further*, That if in securing contracts for any of the increases authorized by this act the Secretary of the Navy shall be unable to make contracts within six months from the passage of this act, which shall provide for the completion and delivery to the Government of battle cruisers within 24 months, of scout cruisers within 18 months, and of destroyers and submarines within 1 year from the date of such contracts, within the limits of cost herein provided, the Secretary shall forthwith report such fact to Congress, with a full statement of reasons assigned and conditions existing, together with an estimate of the cost for the enlargement of Government plants to provide for the building therein of all such increases of the Navy herein authorized for which contracts can not be secured for completion within the limits of the time herein specified."

Mr. STAFFORD. I reserve a point of order.

Mr. MANN. A parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. MANN. This is an amendment offered to the proviso on page 102. If this amendment should be agreed to, would it still be in order to move to strike out the proviso as amended or is it necessary to make that motion now or before the amendment is agreed to? Of course, this is to perfect the text, I take it.

The CHAIRMAN. The Chair is of the opinion that the pending amendment is of a distinctly substantive nature.

Mr. MANN. I am not raising the point of order. That is raised elsewhere. In the form in which the amendment was offered it was offered as an amendment to perfect the text.

Mr. TOWNER. The question is whether or not the motion to strike out the proviso in the bill could be made independently or whether necessarily such a motion would include this proviso.

The CHAIRMAN. The Chair will recognize the gentleman to debate the amendment, and will reserve his decision on the question raised.

Mr. MANN. The gentleman from Wisconsin [Mr. BROWNE] desires to make a motion to strike out the proviso and to have that motion pending.

The CHAIRMAN. The gentleman from Wisconsin offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment offered by Mr. BROWNE: After the word "emergency," in line 2, page 102, strike out the following:

"*Provided*, That no part of the appropriations made in this act shall be available for the salary or pay of any officer, manager, superintendent, foreman, or other person having charge of the work of any employee of the United States Government while making or causing to be made with a stop watch or other time-measuring device a time study of any job of any such employee between the starting and completion thereof, or of the movements of any such employee while engaged upon such work; nor shall any part of the appropriations made in this act be available to pay any premium or bonus or cash reward to any employee in addition to his regular wages except for suggestions resulting in improvements or economy in the operation of any Government plant."

The CHAIRMAN. The Chair thinks that amendment will be in order after the amendment of the gentleman from Iowa [Mr. TOWNER] is disposed of.

Mr. MANN. I suggest to the gentleman from Wisconsin that he modify his amendment so as to propose to strike out the proviso, beginning with line 2, on page 102, so that it will be to strike out the proviso as amended, if it shall be amended.

Mr. BROWNE. I assent to that suggestion.

The CHAIRMAN. The gentleman asks unanimous consent to modify his amendment. The gentleman can submit that amendment subsequently.

Mr. BROWNE. I ask that the Clerk modify it according to that.

Mr. GARDNER. Mr. Chairman, does the mere fact that the amendment offered by the gentleman from Iowa—which seems to be totally unrelated to the proviso—is offered following the proviso, make it an amendment to the proviso?

The CHAIRMAN. The gentleman from Iowa moved to strike out the period and insert a colon, and his amendment seems to be an amendment to the proviso.

Mr. GARDNER. I raise the point of order, if it is not too late, that it is not germane to the proviso that it seeks to amend.

The CHAIRMAN. The point of order is pending.

Mr. GARDNER. Why does not the gentleman offer it as a separate paragraph? That will remove the confusion. Obviously the paragraph would have to be completed before you could move to strike it out, and surely the gentleman from Iowa [Mr. TOWNER] has no desire to modify the proviso by his amendment, which is totally unrelated.

The CHAIRMAN. The portion of the paragraph proposed to be stricken out can be stricken out regardless of the action of the committee on the amendment offered by the gentleman from Iowa, and would be in order even if the amendment of the gentleman from Iowa was agreed to.

Mr. MANN. But the way the amendment was offered by the gentleman from Iowa was to strike out the period in line 15 and insert a colon, and then so forth.

Mr. GARDNER. If the Chair will hear me, if the amendment of the gentleman from Iowa [Mr. TOWNER] is adopted, and then the question reverts to the amendment of the gentleman from Wisconsin and that is adopted also, not only is the proviso stricken out which the gentleman from Wisconsin [Mr. BROWNE] seeks to strike out, but also the proviso offered by the gentleman from Wisconsin will be stricken out, under the parliamentary situation which the Chair has declared to exist.

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

Mr. PADGETT. Mr. Chairman, I make the point or order against the amendment offered by the gentleman from Iowa [Mr. TOWNER] that it is legislation, that it changes existing law, and is not germane; and further, the House has already voted on the proposition.

The CHAIRMAN. The amendment is clearly legislation, and the Chair sustains the point of order.

Mr. HAUGEN. Mr. Chairman, I ask unanimous consent to extend my remarks in the RECORD.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. TOWNER. Mr. Chairman, upon the pending amendment to strike out the proviso on page 102, I understand that a specified time is desired for debate. I want to be liberal with gentlemen about it. What time is desired?

Mr. BROWNE. Mr. Chairman, I would like for myself 15 or 20 minutes.

Mr. BUTLER. I do not know of anyone else who desires to be heard on this side.

Mr. MANN. We have some other amendments which we desire to get a chance to offer, and the time is somewhat restricted now.

Mr. PADGETT. Mr. Chairman, I ask unanimous consent that debate on the pending amendment to strike out the proviso on page 102 and all amendments thereto close in 40 minutes, 20 minutes of the time to be controlled by the gentleman from Pennsylvania [Mr. BUTLER] and 20 minutes to be controlled by the gentleman from Colorado [Mr. KEATING].

The CHAIRMAN. The gentleman from Tennessee asks unanimous consent that all debate on the pending amendment and all amendments thereto close in 40 minutes, one-half to be controlled by the gentleman from Pennsylvania [Mr. BUTLER] and one-half by the gentleman from Colorado [Mr. KEATING]. Is there objection?

Mr. MOORE of Pennsylvania. Mr. Chairman, reserving the right to object, I wish to observe at this time that the majority and the minority side of the committee having concluded their amendments some 15 minutes ago, and only 1 hour remaining before adjournment this afternoon, and possibly only 3 hours to-morrow, the gentleman is very liberal in the time allotted for this amendment.

Mr. PADGETT. Oh, the House generally began offering amendments much longer ago than 15 minutes.

The CHAIRMAN. Is there objection?

Mr. MOORE of Pennsylvania. Mr. Chairman, reserving the right to object, I wish to state that at 12 o'clock the gentleman stated that there were two more amendments from his side of the committee, and I think on this side of the House it was stated there would be two more amendments. Three hours have been used in the discussion of committee amendments since

then. Now, when the main body of the House wishes to offer amendments, the gentleman proposes to give 40 minutes to one amendment, with but 1 hour remaining of the day's time.

Mr. PADGETT. I am only expressing the wishes of both sides of the House.

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

Mr. MOORE of Pennsylvania. Mr. Chairman, reserving the right to object——

The CHAIRMAN. Debate is not in order. The committee takes more time in trying to come to an agreement than in discussing propositions. Is there objection?

Mr. MOORE of Pennsylvania. I object.

The CHAIRMAN. The gentleman from Pennsylvania objects.

Mr. BROWNE. Mr. Chairman, I ask unanimous consent that I may proceed for 20 minutes.

The CHAIRMAN. The gentleman from Wisconsin asks unanimous consent to proceed for 20 minutes. Is there objection?

There was no objection.

Mr. BROWNE. Mr. Chairman, the amendment I propose seeks to strike out a provision in this bill which is similar to the bill familiar to a great many here known as the Tavenner bill, which provides that the stop watch or any time-measuring device shall not be used. It also prohibits the premium or bonus system. We are using the time study and the premium systems in several of the departments of the Government, and these systems are giving the best of satisfaction, and the heads of these departments are anxious to retain them. We have both of these systems in use in the Post Office Department and in the Ordnance Department. The question here is whether it is a wise time now to place in this large appropriation bill a provision which may interfere seriously with the administration of the Navy Department. I wish to call attention to just what the stop watch is used for. A great many people look upon the use of the stop watch as an instrument of torture to the laboring man, while, as a matter of fact, the stop watch is used to-day by thousands of manufacturers. It is not used simply to be held over an employee, but it is used more particularly as a time-measuring device, a laboratory instrument, to determine how long it will take to accomplish a certain task. To determine the cost of any article that is manufactured there are three elements that must be determined. First, there is labor, then material, and third, the overhead or managing charges. And the greatest of these three items is the labor that enters into every manufactured article. Now, the greatest scientific experts on efficiency hold that the only way to find out what an article costs is in some way to find out how much labor and how long it takes that labor to accomplish that task, and as a result they take a skilled employee and see how long it takes him to accomplish that task, and they make this time study by the use of a watch. They make many of these experiments to determine the quickest and best way to accomplish the work.

Now, take the Watertown Arsenal, where both the time study and premium system have been established since 1909 by Gen. Crozier. A great many objected to it when it was being established. Some thought it would result in throwing out a large number of laboring men, putting them on the scrap heap, as they expressed it; but what was the result? No man there lost his job on account of it, but they constantly shifted men about until they got men who were adapted to each particular job, and as a result there has been a tremendous saving made, and I will read you some of the testimony of Gen. Crozier later in regard to it.

Mr. KEATING. Will the gentleman yield?

Mr. BROWNE. I want to make my statement first. If the use of a stop watch and the premium system, or any time-measuring device, is a bad thing, then we want to abolish it. We want to abolish it not only in the Navy Department but also in the Military Department and the Post Office Department and other departments; and so, if we vote to retain the provision I seek to strike out, we logically will have to insert a similar provision in the next appropriation bill that comes up—the fortification bill. They are attempting at this time to insert a provision of that kind in the Post Office bill, and the question will come up squarely whether this Government, which is embarking to-day on so many new activities, is going to follow the private manufacturing institutions and adopt efficient methods, or whether it is going to remain at a standstill and prohibit those methods.

Now, take the premium system, which goes along with the time-study system. The premium or bonus system are practically the same thing—technically they are different, but they are used in the testimony of these experts as being synonymous. They take a man in a shop and set him at a job, and they find out how long it will take him to do that job. They try to get as efficient a man as they can. They then add to the time it takes him to complete the task additional time, sometimes 60 per cent, so they will not set an excessively small time, and fix that as the time an ordinary man can do the job. Then they say to the men who are working on similar jobs, "If you can do more than that task in the required time you will get a premium." As a result, that man has an incentive to do the best he can, and as a result of that practice in the Watertown Arsenal every man who is working under the premium system gets on an average over $10 a month premium. He gets, in the first place, the full day's wage, which is the going wage paid in private institutions of that kind, and in addition he gets a premium, and that premium in the Watertown Arsenal averages over $10 a month.

Now, just see what the Government employees in the navy yards and the arsenals are getting. In the first place, this Government gives an eight-hour day, and I am heartily in favor of that. Next, it says to each employee, "You are entitled to 15 full holidays with full pay." Next it says, "You are entitled during the year to seven legal holidays with full pay." Next, the Government gives each employee during the summer months 13 half-holidays—13 Saturday afternoons off. In all this makes 28½ days that the Government employees in the Navy Department, the War Department, and the Post Office Department get with full pay. That amounts to 10 per cent of the working days of the year that every Government employee working in these departments has to himself, with full pay for every day.

So I say that this Government is not treating its employees badly, but is treating them generously, and that is why they like to work for the Government. Now, what do the heads of these great departments that have this efficiency system—the time study and the premium system—say about it? Secretary of War Baker has written a letter to the Speaker of this House testifying in the very highest terms of the way that system has worked in the War Department, and says it would work great injury to the Government to prohibit the use of these efficiency methods. Postmaster General Burleson and the First, Second, Third, and Fourth Assistant Postmasters General, all of them, are unanimous in saying that prohibiting the use of a time study and premium system is going to disorganize their great departments. Now, our Post Office Department competes with the express companies in the parcel post. Our Navy Department, in its shipyards, is going to compete with private institutions, and they want to use the same efficiency methods which their competitors use. Now, there is another thing to which I desire to call attention, and that is about a year ago the President of the United States, cooperating with the Secretary of the Navy, appointed an Advisory Board to the Navy. He sent out to 11 of the great scientific societies in the United States and asked each to select a man from its society to act as an advisory board in the matter of preparing the national defense. Each society selected one of its members by referendum, and they elected Thomas A. Edison as the chairman of the Advisory Board, and in addition to that others were appointed, which made in all 23 to advise the Navy Department. What do these great scientists and experts, men who are disinterested, say of this legislation? I have the opinion of a number of them, and everyone that has expressed himself has emphatically protested against the Tavenner bill, which is incorporated in this naval bill, and I wish just simply to read for a moment from some of these great men upon that subject.

Here is what Thomas A. Edison says:

> In my opinion, the bill introduced by Congressman TAVENNER is based on fallacy. It is an attempt to prevent efficiency and would be disastrous to labor and to the public.
>
> The worst enemy of all workers is an inefficiently managed shop.

Here is another of these men, Lawrence Addicks, of Chrome, N. J., a member of the American Society of Mechanical Engineers, a graduate of the Massachusetts Institute of Technology, and consulting engineer for Phelps, Dodge & Co. He is as strongly against this proposition as is Mr. Edison.

Another man who takes the same position is Elmer A. Sperry, of New York City, member of American Society of Mechanical Engineers; is a graduate of Cornell, class of 1876; designer of electric appliances; and noted inventor (designer of gyroscopic stabilizer for ships and aeroplanes).

Another is A. M. Hunt, of New York City; member of American Society of Mechanical Engineers; is a graduate of Naval Academy of 1879; is consulting engineer and experienced in the development of hydroelectric, steam, and gas plants.

Still another is Alfred Craven, of New York City; member of American Society of Mechanical Engineers; is a graduate of

Naval Academy of 1876; is chief engineer of the Public Service Commission of New York City; and was formerly division engineer in charge of the construction work on the Croton aqueduct and reservoirs.

Another is Frank J. Sprague, of New York City; member of American Society of Mechanical Engineers; is a graduate of Naval Academy of 1888; now is consulting engineer for the Sprague, Otis, and General Electric Companies. He was the founder of the Sprague Electric Railway Motor Co., and was concerned in establishing the first electric trolley system in the United States.

Another is W. R. Whitney, of Schenectady, N. Y.; member of American Society of Mechanical Engineers; is a graduate of Massachusetts Institute of Technology of 1890; is at present director of the research laboratory of the General Electric Co.; has been the moving spirit in the perfecting of metallic electric-lamp filaments and the development of wrought tungsten.

All of these men believe that the Tavenner bill would be disastrous to efficiency and would injure the laborer himself.

Mr. HUMPHREY of Washington. Mr. Chairman, will the gentleman yield for a question?

The CHAIRMAN. Does the gentleman from Wisconsin yield to the gentleman from Washington?

Mr. BROWNE. Yes.

Mr. HUMPHREY of Washington. Has the gentleman the opinion there of Mr. Louis D. Brandeis, recently nominated for the Supreme Court by the President?

Mr. BROWNE. Yes, I have; and Mr. Brandeis favors the time study and premium system and believes that they are necessary to any efficiency methods. I will quote from Brandeis later. Here is the opinion of John F. Wallace. He was formerly chief engineer of the Panama Canal. He resides in New York. He says:

I would say that the Tavenner bill is so obviously to the disadvantage not only of the United States Government, but also to all employers of labor as well as to labor itself that it is difficult to conceive of its finding favor with our Senators and Representatives. The prosperity of the American Nation, outside of the personalities of its broad and progressive citizens, has been due to the introduction of labor-saving machinery and the substitution of brains for manual labor in all classes of human industry, and it should be apparent to employees in the mass as much as to employers that increased efficiency in production has not only bettered the condition of workmen, but also increased the available profits out of which compensation of labor is paid.

Elmer L. Corthell, doctor of science, president American Society of Civil Engineers, says:

It is my decided personal opinion from careful study of industrial conditions in this and other countries, covering many years, that the result of the proposed Tavenner bill will lead fast to industrial and commercial disaster. Every effort should be made to remove rather than increase the burden on our industries. This bill, if enacted into law, will lead to irreparable injury and loss to the industry, commerce, and particularly the foreign trade of this country.

And I could go on with the testimony of all these other men. My friend from Washington [Mr. HUMPHREY] asked me about Mr. Brandeis. I have Mr. Brandeis's statement, and I will read it. When Louis D. Brandeis appeared before the Interstate Commerce Commission a few years ago he made the statement to them that the railroad companies of the United States were losing $1,000,000 a day because they were not efficient, and the railroad companies and the Interstate Commerce Commission both asked him to prove it, and he brought his great efficiency experts before them, and he was days and days introducing evidence, making out his case. He submitted a brief on the subject that will convince anyone who will read it that a time study is necessary to efficient management. Everyone knows that if any man in this country is in favor of labor, a champion of organized labor, it is Louis D. Brandeis. And what does he say?

Mr. KEATING. Mr. Chairman, will the gentleman yield there?

The CHAIRMAN. Does the gentleman from Wisconsin yield to the gentleman from Colorado?

Mr. BROWNE. Yes.

Mr. KEATING. Does the gentleman know of any railroad in the world that has adopted a stop watch?

Mr. BROWNE. I do not know of any.

Mr. KEATING. You do not know of any railroad that has taken the opportunity to save $1,000,000 a day?

Mr. BROWNE. There are hundreds of thousands of men working to-day under the stop-watch and time system that are absolutely contented, and I could stand here and read from now until to-morrow night from the testimony that I have, not only from manufacturers all over the United States that are making use of the time-study and premium system but also the employees working under such system who are heartily in favor of the same. And I have failed to find a single instance where the employees wanted to abolish the system.

SCIENTIFIC MANAGEMENT DEMANDS TIME STUDY.

The results obtained through scientific management depend further on a careful study of each operation with a view to determining, in the first place, what time should normally be taken in performing the operation, and, secondly, whether it can be performed in a better manner than as hitherto practiced. The whole realm of science is brought to the aid of the humblest workman.

Scientific management recognizes also that due appreciation of the actual results of effort must be based upon actual knowledge, and such knowledge is an essential condition to the best performance. The current record of the accomplishment of each individual, of each machine, and of all materials is an indispensable factor in scientific management. Without such a record the tyranny of the foreman, and all the discord which attends it, is inevitable. Without such a record, justice to employer and employee is impossible. Without such a record, waste can not be eliminated.

The CHAIRMAN. The time of the gentleman from Wisconsin has expired.

Mr. BROWNE. Mr. Chairman, I ask to proceed for five minutes more.

The CHAIRMAN. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. BROWNE. These interruptions have taken a great deal of my time.

Mr. NOLAN. Mr. Chairman, reserving the right to object, I would like to have some understanding that those who are opposed to the motion shall have an equal amount of time.

Mr. BROWNE. Mr. Brandeis says further:

FINANCIAL GAINS.

Under scientific management the employee is enabled to earn without greater strain upon his vitality from 25 to 60 per cent more than under the old system.

The larger wages are made possible by larger production; but this gain in production is not attained by speeding up. It comes largely from removing the obstacles to production which annoy and exhaust the workman, obstacles for which he is, or should not be, made responsible.

Mr. Brandeis commends in the strongest manner possible in his brief, both as to time study and the premium system, and Louis D. Brandeis is against the piece system. Organized labor is against the piece system. Yet this bill does not condemn the piece system, but the time system; time study of any kind. It condemns the premium system; and yet organized labor, so far as ever I have known, has never made any public statement where it has condemned the use of the time system or the premium system outside of Government work.

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

The CHAIRMAN. Does the gentleman yield?

Mr. BROWNE. Yes.

Mr. GALLAGHER. I would like to ask the gentleman whether he knows if Mr. Brandeis or Mr. Wallace or any other scientific man that he has cited ever worked under a stop-watch system or knows anything about it?

Mr. BROWNE. They have made a great study of it.

Mr. GALLAGHER. I do not believe they know anything about it.

Mr. BROWNE. Well, the laboring man is not always the best judge of what is best for him. We know that in days gone by the labor men fought every labor-saving device. We know that the Government Printing Office was the last great printing office in the United States that put in linotype machines, because the men in the Government Printing Office thought it was going to hurt them. But it did not hurt them, and never has; but, on the contrary, they were benefited by such inventions.

Now, my friends who are in favor of the Tavenner bill argue that scientific management is subject to abuse. It is. Every system is subject to abuse. If you have the flat day's work system and you have an unscrupulous employer, he may ask a man to do a day and a half's work in a day. All a man has to do is simply to stop working for such employer.

An employer that wants to treat his men badly can do it under one system as easily as another. It is policy and good business sense to treat laboring men fairly and squarely. Now, under this system it has not impaired the health of any employee. I have Gen. Crozier's statement upon that and I have the statement of the Secretary of War on that. He has ascertained that fact very carefully. They say it will overstimulate a man if you give him a premium. Just look at that a moment. If a premium was going to overstimulate a man if that man was working for himself, he would have the same incentive to overwork as he would if working for a premium. A man may sometimes overstimulate himself because he is working for a premium, but such men are exceptions, and laws are not made for the exceptions. Men are not created with equal capacity. A man that can do twice the work of another man ought to get pay for it. I say that a man ought to have the advantage of his talents, of his energy, and of his ability. And this time system and this premium system give him this.

Take, for instance, a paper mill. A paper machine costs $75,000. It is an important thing in that paper mill to have a man working at that machine that can work it most efficiently. Some men may not be adapted to certain work. They may put such a man at some other machine and he may do well at his new work. So they get the square man in the square place, and the result is we have greater efficiency, a greater output. I have testimony here that it would take me hours to read, showing how much the output is increased and how much more the laboring men are getting under it. And although I have not any accurate information about it, I believe that they are using the time study and premium system in a majority of the up-to-date manufacturing plants in the United States, and the evidence shows that where they have this time system, it shows this fact, that in those plants where they have scientific management they have decreased the hours of labor and increased the output, and at the same time they have increased the wages of labor.

Mr. KEATING. Was not the testimony before our committee with regard to the boot and shoe industry as an example, that less than 15 per cent of the boot and shoe manufactories of this country had the stop-watch system?

Mr. BROWNE. I think that is correct. And some lines have it completely. A large proportion of the automobile works have it.

Mr. KEATING. In the young men's clothing business the testimony showed that there was just one concern in the entire United States. Was not that true? It was so testified before our committee.

Mr. GORDON. You are mistaken about it.

Mr. KEATING. I am not mistaken about it.

Mr. BROWNE. Take the clothing industry. A man testified here, a Mr. Fiess. He showed how he had reduced the hours of labor to seven hours a day. He had increased the pay of the employees and increased his output. Just stop and think a minute. We are going into a great many undertakings in this naval bill. We are going to manufacture armor plate, and great emergencies may arise when we will need to use all efficiency methods known to increase and hasten our output, and should it be the policy of our Government at this time to say that we shall not use a system that is almost universally used by the private employers of the United States just because you can find employers who, maybe, are abusing the system? I can go to plants where they have the common day-work plan, where they have an unscrupulous employer who is abusing his laborers. I do not believe that the heads of great Government departments will abuse a system of this kind.

Gen. Crozier, Chief of the Bureau of Ordnance, states that in the various arsenals over which he has charge there are 6,194 employees. These employees work eight hours per day, and each employee has a 15 days' leave of absence each year with full pay, and receives the same wages as are paid for similar work in private works and in addition many receive premiums or bonuses.

Gen. Crozier testified before the Labor Committee that if the Tavenner bill became a law it would have the effect of abolishing all time study and premium work in the Watertown Arsenal, and in his opinion the labor cost would be doubled.

The following questions were asked Gen. Crozier when he testified, and answered by him as follows:

"Mr. DENISON. As a result of this system, have you had a chance to observe whether or not there is a decrease in the vitality of the employees, and whether it has an injurious effect upon the laborers themselves?

"Gen. CROZIER. It has not in the least. As I stated a moment ago, the records show that the percentage of accidents among the premium workers is less than among the day workers.

"Q. Does the application of the system result in eliminating the men or shifting them?—A. We have a great deal of shifting of the men. We have not discharged any man as a direct result of the system. We have never discharged a man because he could not come up to the system. (Hearings p. 169.)

"Q. General, what is your judgment, speaking with reference to these men, as to whether or not this system will result in decreasing their vitality and health?—A. I do not see the slightest reason why it should. You must remember that the effort which is made is only to ascertain what the workmen can do reasonably, or can be reasonably expected to do. In that respect it constitutes a safeguard, because without the system in any effort to establish tasks I do not see that we can do anything but resort to the pacemaker. If you have an employed pacemaker, he may be an exceptional man, and he would furnish the only standard you would have to go by in forming your expectation as to what a man should do. Even under this legislation this kind of a process would not be forbidden.

"Q. Let me ask this question: Do you think that the enactment of this law, if it should be enacted, would result in any embarrassment to the Government or in any decrease in its ability to meet the situation in case we should become involved in a war?

"Gen. CROZIER. I think it would have a great influence on it, because in that case we would have, in the first place, no accurate knowledge of what a day's work should be, what the output of the workman should be, or what we should require him to do, or what we should tell him to do to get a day's work.

"Q. Do you think you could get a factory to a high state of efficiency without the stop-watch system?—A. I think we could not reach a high state of efficiency without it. I do not believe I could have gotten the Watertown Arsenal up to its present state of efficiency without using the stop watch or some other equivalent time-measuring device.

"Gen. CROZIER. When the amendment carrying similar legislation to that which is now proposed was added to the Army bill last year in order to let the employees see what the effect would be, I gave it by order the same effect it would have if it became a law. I thereupon received a petition signed by several hundred employees of the Frankford Arsenal, where the premium payments were made, asking that my action be withdrawn. A part of the petition is as follows:

PETITION OF EMPLOYEES.

"FRANKFORD ARSENAL, *January 28, 1915.*

"CHIEF OF ORDNANCE, UNITED STATES ARMY:

"I believe that this system (referring to the premium system) has been eminently successful because, according to published reports, the manufacture of small-arms ammunition at the Frankford Arsenal presents a decided economy when compared with costs of the same ammunition procured from private manufacturers. Many of us, based upon the premium system of competition, have obligated ourselves to purchase homes, and if the premium rates are abolished, it means the loss of our homes to us.

"It is very probable that branch of Congress which passed this legislation had in view the interests of the employees, but we beg to differ on this very point. While the legislation prohibits rewarding us for our increased efforts which we give the Government, it does not prohibit an officer or foreman from requiring us to work just as hard as we are now working and for very much less compensation.

"The power of your authority, and that of your officers and your foremen to make us work harder, has not been lessened by this legislation, but you have been deprived of the opportunity of paying us for such increased work as you may give to us.

"We therefore ask you to submit this petition to the Secretary of War, with the recommendation that he transmit it to Congress for consideration and, we hope, favorable action.

"Signed by several hundred workmen." (Hearings, p. 163.)

About March 8 premium payments were restored at the Frankford Arsenal. Maj. Shinkle, who was in charge of the cartridge branch of the arsenal, wrote to Gen. Crozier as follows:

"DEAR GENERAL: When your restoration of premium payments was announced in the cartridge factory there was a complete change in the whole atmosphere of the building. Pessimism gave way to optimism, dissatisfaction to complete contentment.

"There never was a better illustration of the fact that the premium system, when administered in the interests of the employees, is one of the greatest stimulus for the moral, physical, and financial well-being of the employees, etc. (Hearings, p. 185.)

GIVING THE MAN A CHANCE, GIVING HIM INSPIRATION, MAKES A MAN OUT OF HIM INSTEAD OF A MACHINE.

"The social gain of the workman from scientific management is greater even than the financial. He secures the development and rise in self-respect, the satisfaction that his work, which in almost every line of human activity, accompanies great accomplishment by the individual. Eagerness and interest take the place of indifference, both because the workman is called upon to do the highest work of which he is capable and also because in doing this better work he secures appropriate and substantial recognition and reward.

BRANDEIS FAVORS BONUS SYSTEM.

"The money reward for the individual workman's high accomplishment is ordinarily and probably most effectively distributed by means of a bonus system. The bonus system under scientific management has proved itself to be perhaps the most appropriate method of securing to labor its proper reward and perpetuating full cooperation between employer and employee.

SCIENTIFIC MANAGEMENT HELPS CONSUMER.

"Experience in trade has shown that except where there is a close unregulated monopoly the public always secures some part of the benefit gained by reduced cost of production. The reduced selling price comes ordinarily, not as a voluntary concession, but because the demand of the consumer for lower prices proves irresistible in competitive or publicly regulated business."

SCIENTIFIC MANAGEMENT AND LABOR UNIONS.

Mr. Brandeis believes in and has been as great a friend of organized labor as any man of this generation. He says in his brief:

"The claim has been made that scientific management and labor unions are inconsistent; that the organization of labor present insuperable obstacles to the introduction of scientific management in railroads and other industries where unionism is potent. This claim, we believe, is wholly unfounded in fact.

"Collective bargaining is alike an important factor under scientific management as under the old system.

"Unionism does not prevent the introduction of scientific management. It is true that unions, in some trades, have bitterly opposed the introduction of the piece rate or the bonus system without scientific management, just as other unions have opposed the day rate system without scientific management. And very intelligent labor leaders have from time to time objected, and objected properly, to ruthless methods of speeding up; but, as shown above, speeding up is not scientific management.

"It will always require tact and patience to introduce radically new methods, whether the persons to be effected are organized or unorganized workers."

SCIENTIFIC MANAGEMENT APPLICABLE TO ALL BUSINESS.

"Experience has already demonstrated that the principles of scientific management are generally in their application, and can be introduced into practically all businesses, and all departments of any business. They have been successfully applied in private competitive business, like machine shops and factories, steelworks and paper mills, cotton mills and shoe shops, in bleacheries and dye works, in printing and book binding, in lithographing establishments, in the manufacture of typewriters and optical instruments, in construction and engineering work."

Mr. Brandeis produced evidence of the success of scientific management in many different industries, and offered to continue further, when Commissioner Prouty of the Interstate Commerce Commission said:

"Mr. Brandeis, you can hardly add anything to your case by calling the representatives of some other industry and showing these same principles have been applied there. It is perfectly evident that if they

have been applied in one case, they can be applied in another analogous case."

Dr. H. S. Person, director of the Amos Tuck School of Administration and Finances of Dartmouth College, Hanover, N. H., writes as follows:

"I have never been in charge of an industrial plant, nor have I practiced management engineering, therefore what I have to say is not based upon that sort of experience. I have, however, in order to acquaint myself with scientific management for the purpose of instruction, visited many plants, talked with workmen, and made observations particularly with respect to the effect of scientific management upon the workmen. My conclusions are as follows, with respect to the Taylor *system of management* in which is used the stop watch for time study and in which is applied some form of premium of bonus wage payment:

"The happiness of the worker is greater than under conventional management.

"The health of the worker seems to average better than under conventional management.

"The statistical record of accidents shows that they are less under the Taylor system of management.

"Wages are greater for a given expenditure of time and energy.

"Hours of labor vary in different plants according to the industry, but for any given industry seem to be less than the average of that industry.

"The output is greater per hour of application of labor.

"The unit cost of the product is less than under conventional management.

"The quality of product is better than under conventional forms of management, for the reason that its method of inspection eliminates defective work."

Tabor Manufacturing Co., Philadelphia, Pa.: Records examined by Mr. Godfrey, now president of Drexel Institute, show 73 per cent increased wages and 25 per cent reduction in selling price.

Eastern Manufacturing Co., Bangor, Me., by Mr. F. R. Ayer, vice president and general manager: Workers more satisfied; weekly earnings for employees increased 25 to 50 per cent; hours reduced from 10 to 9; increase in output, 20 to 75 per cent; cost reduced 10 to 25 per cent; quality of product improved.

Lewiston Bleachery & Dye Works, Lewiston, Me., by Mr. D. N. Bates, agent: Wages increased 25 per cent; rest periods given to workers; women quit work one-half hour earlier than men; accidents decreased; output increased by improved machine and methods, about 60 per cent; by training operators and bonus, 40 per cent; cost reduced about 40 per cent; workers anxious for a bonus.

H. H. Franklin Manufacturing Co., Syracuse, N. Y., by Mr. G. D. Babcock, product manager: Increase in wages, 36 per cent—20 per cent above average wage in locality; hours reduced to 50 per week; reduction in sale price of our product for improved quality, 32 per cent.

Hermann, Aukan & Co., Lebanon, Pa., by Mr. D. J. Walsh, jr.: Labor turnover reduced; sanitary conditions improved; increase of wages of 25 to 75 per cent; increase in production, 150 per cent, largely through the combination of planning and bonus incentive; direct cost of production somewhat reduced; quality bettered. The operators in one department requested that bonus work be established in their department, so as to give them a chance to earn as high wages as the operators now on bonus.

Smith & Furbush Machine Co., Philadelphia, Pa., by C. W. Schwartz, jr., general manager: Twenty to twenty-five per cent premiums earned; output increased; gross cost, including expenses, about the same with much greater uniformity of cost and more accurate cost in detail; quality better; scolding eliminated.

Packard Motor Car Co, Detroit, Mich., by S. S. Beall, vice president of manufacturing: Happiness increased; have been requested by men to set standard times; average premium, 27 per cent of day wages; hours of labor shortened by premium system; output increased; quality of products maintained.

Knox Motors Co., Springfield, Mass., by F. E. Doolittle, superintendent: Happiness of operators greatly increased; better physical and mental condition; more work accomplished in eight hours under bonus system than in nine hours on straight time; output greatly increased; cost considerably cheaper; quality equally good.

Acme Wire Co., New Haven, Conn., by Ralph W. Langley, works manager: Wages of employees increased 25 per cent; records prove no increase in accidents; no injury to health; output increased 25 to 50 per cent; cost diminished; quality of product improved; bonus earnings frequently deposited in savings bank.

Plimpton Press, Norwood, Mass., by A. E. Barter, superintendent: Workers happier through the setting of definite tasks; health improved and accidents decreased; wages increased 20 to 30 per cent, with average wage increased much more than this through the more continuous employment, which is a direct result of time study; capacity of plant increased; standard of quality improved rather than lowered.

New England Butt Co., Providence, R. I., by J. G. Aldrich, president: Employees anxious to have time studies made; accidents less; wages at least 35 per cent higher; output considerably more on work which has been time studied; cost of product considerably less; quality of product is in general better under time-studied work.

Sewell-Clapp Envelope Co., Chicago, Ill., by R. B. Frazer: Wages based on time study increased 15 to 25 per cent; hours of labor planned to be reduced; increase in output up to 100 per cent. In a recent offer of special preferred stock the first purchasers were men who were working on bonuses.

Waverley Press, Baltimore, Md., by Edward B. Passano, president: Increase in production 33⅓ per cent; operatives earning 33 to 50 per cent more; apparently satisfied and in good health.

Clothcraft Shops, Cleveland, Ohio, by Richard A. Feiss, general manager: Happiness improved; health of workers improved, as shown specifically by average of absentees only 1.4 per cent; accidents formerly quite numerous reduced to practically nothing; wages largely increased; hours of labor reduced from 54 to 48 and overtime practically eliminated; output increased; cost substantially lessened, although wages enormously increased; accurate standards of quality have been set through stop-watch observations.

Eaton, Crane & Pike Co., by William N. Eaton, secretary and treasurer: Increase in wages 15 per cent; hours reduced 10 per cent; greater confidence because employee knows task set by scientific study of methods and time is accurate; health benefited through the shorter hours; greater ease in doing work; rest periods and greater happiness because of wage increase; accidents decreased materially; output increased 22 per cent; quality of product improved.

[Col. Wheeler, p. 74.]

REDUCTION IN COST OF LABOR AND MATERIALS DURING DEVELOPMENT OF SCIENTIFIC MANAGEMENT.

During the development of the new scientific management at the Watertown Arsenal, the cost, not only of labor but also of material, in making sets of parts for the alteration of 12-inch mortar carriages (for short guns) was gradually reduced, "so that we have this result, that the direct labor cost per set was reduced from $480 to $275 per set. The shop expense cost was reduced from $335 to $332 per set, and the material cost was reduced from $785 to $362 per set."

[Col. Wheeler, p. 93.]

DECREASE IN COST OF GEARS UNDER PREMIUM SYSTEM.

Referring to a case where a man was required to cut teeth in 17 steel gears: "As a result of the time study on this work, this man was told that the work ought to be done in 71 minutes, and that if it was done in 71 minutes he would get a premium of 33⅓ per cent. * * * Adding 66 per cent to that time made the time 120 minutes per gear within which he could earn a premium, his saving in time being shared by the arsenal. This man completed the 17 gears in 1,356 minutes, whereas his total allowance was 2,040 minutes, and he earned a premium of approximately 25 per cent. In executing this work under this system he reduced the cost of each gear from $2.41 to $1.06, or a saving per gear of $1.35."

[Gen. Crozier, p. 935.]

EMPLOYEES INCREASED EARNINGS AT PIECEWORK OVER DAY RATE, ARSENAL.

At the arsenal in June, 1911, one miller whose day rate was $2 averaged at piecework $3 a day; that is, his percentage of increase averaged 50 over and above his day rate.

Eighteen millers whose day rate was $1.75 each averaged at piecework $2.63 each; that is, their percentage of increase was 50.28.

Four millers whose day rate was $1.50 each averaged at piecework $2.02 each, their percentage of increase being 34.66.

Two millers whose day rate was $1.25 each averaged at piecework $2.23 each, their percentage of increase being 78.40.

In a group of 25 millers the increased earnings at piecework over their day work averaged from 34.66 to 78.40 per cent.

Fifteen millers whose day rate was $2.50 each averaged at piecework $3.09 each, their percentage of increase being 23.60.

Two profilers whose day rate was $2.75 each averaged at piecework $3.12 each, their percentage of increase being 13.45.

Twelve profilers whose day rate was $2.50 each averaged at piecework $3.09 each, their increase being 23.60 per cent.

Two profilers whose day rate was $2.25 each averaged at piecework $2.63 each, their percentage of increase being 16.88.

Another trade, polishers. One polisher whose day rate was $3.25 averaged at piecework $3.60, an increase of 10.76 per cent.

Eighteen polishers whose day rate was $3 each averaged at piecework $3.59 each, their increase being 19.66 per cent.

Eighteen polishers whose day rate was $3 averaged at piecework $3.55, their increase being 18.33 per cent.

The object of that is simply to show, as stated at the time to the witness, that the rates are such that men, by the extra effort intended to accompany piecework, may make this percentage over and above their day rates.

[Gen. Crozier, p. 1198.]

MACHINISTS UNDER NEW SYSTEM ARE REDUCING COST TO A NOTABLE EXTENT—EXAMPLES GIVEN.

With reference to the length of time that is required for making studies by the use of the stop watch, it is now reported from the Watertown Arsenal that the use of the stop watch in setting the time for the turret lathe work has practically ceased, and that the same condition is being approached in reference to the engine lathes—that very few time studies indeed have been made since the 1st of November in the foundry—although I think there are now working in the foundry, and have been for a month or two past, pretty nearly 75 per cent of the molders under the new system, and have given them compensation under that system. In the machine shop they have been working something like 20 per cent of the machinists under the new system. These men have been doing very well. They have reduced the cost of things. They have kept on reducing the cost of things to a notable extent.

[Gen. Crozier, p. 1204.]

EXAMPLE OF FLOOR JOB IN FOUNDRY—REDUCTION OF OVER 41 PER CENT.

Now, I wish to give an example of a little different kind. Mr. O'Leary asked me about a bench job, so I gave him an example about a bench job. Now, here is an example of a floor job in the foundry, the molding of the elevating arms for a 6-inch disappearing gun carriage. The elevating arm is an affair shaped something like this [indicating]. It is intended to raise and lower the breech of the gun It is pivoted at its lower end about an arbor and its upper end embraces the trunnions of a band which is placed on the gun near its breech, so that by raising and lowering this arm the breech of the gun is raised and lowered. It is about 6 or 7 feet long, and the spread is perhaps 20 inches up at the top.

That, of course, was a larger job than the one I mentioned a moment ago, and the cost of it under the day-work method was $42.35. After a time study had been made of it the cost was reduced to $24.87, making a saving of $17.48, which was 41 and something over per cent of the original cost. The saving represented a sum of $9.94 a day to the Government. The man's pay was increased from $3.52 to $5.02, which was an increase of 42⅝ per cent.

OFFICE OF THE POSTMASTER GENERAL,
Washington, D. C., May 18, 1916.

Hon. EDWARD E. BROWNE,
House of Representatives, Washington, D. C.

MY DEAR MR. BROWNE: With reference to your letter of April 28, asking for my views in regard to H. R. 8665, entitled "A bill to regulate the method of directing the work of Government employees," you are informed that it is my opinion that the enactment of the above-mentioned bill into law would be prejudicial to the best interests of the Post Office Department and Postal Service. I inclose herewith copies of memoranda submitted by several of my assistants covering the subject in detail.

Very sincerely, yours,

OTTO PRAEGER,
Acting Postmaster General.

POST OFFICE DEPARTMENT,
FIRST ASSISTANT POSTMASTER GENERAL,
Washington, May 10, 1916.

CHIEF CLERK,
Post Office Department:

It is my opinion that the attached bill (H. R. 8665) should be opposed by the department. It is reactionary in character and, if enacted, would prove a bar to the adoption, in the administration of the service at large as well as in the department, of methods and practices which

are recognized as sound and proper by all progressive and intelligent business executives.

It may be true that the methods and practices against which the bill is directed, if wrongly applied or left to the discretion of inexperienced supervisory officers, might work hardship and injustice on employees, but this is no justification for condemning and proscribing the general scheme and the principles on which it rests.

"Scientific management" rests upon the theory that intelligent and effective supervision of labor is possible only when the supervisory officer possesses definite knowledge of the time which ought to be consumed by a reasonably efficient man, under reasonably efficient conditions, in the performance of a given task. It recognizes, naturally, the variations in capacity that will be found among different workmen. It merely fixes standard times as a result of actual tests under ordinary conditions and presupposes that different employees may fail to attain the standard, may attain the standard, or may exceed the standard, depending upon their ability and the conditions surrounding the particular job. Under scientific management, where properly and intelligently applied, there are usually two standards—(1) the standard of performance which may reasonably be expected of an efficient employee under efficient conditions, and (2) a standard of performance below which no employee may fall without jeopardizing his salary or position, subject, of course, to exception when the inefficiency is due to conditions over which the employee has no control, such as defective machines, tools, etc., or, in the case of the Post Office Service, defective distribution cases, bad light or ventilation, poor space arrangements, etc.

Scientific management not only enables the employer to eliminate the totally inefficient, but enables him to ascertain definitely the employees who are below the standard of efficiency so that he may endeavor to develop them and also to determine the question of adaptability with respect to different employees.

So far as the Post Office Service of this bureau is concerned, there has been no complete application of all of the principles of scientific management, although it is believed that the tendency should be toward the adoption and application of such principles. We have, however, endeavored to apply, in a restricted way, several of the principles and practices—for example, the efficiency rating system promulgated by general circular in November, 1908. This system was the original step in the direction of scientific efficiency ratings but is now obsolete, and the department has had under consideration for several years the question of improving it. Without some standard of performance and method of ascertaining the performance of different clerks and carriers, even the present crude efficiency rating system could not be applied to our service. The time element is most important, and whether a stop watch is used or not, it is necessary to ascertain the time required by a clerk or carrier to handle the mail distributed to him or to perform other duties to which he is assigned. The broad language of the Tavenner bill proscribing the use of a stop watch or "other time-measuring device" appears to prohibit any method of calculating the time taken by the clerk or carrier to perform his work.

In the City Delivery Service we have adopted recently certain standards of work. For example, our system of determining the reasonableness of office time of carriers consists of a comparison of the time required by the carrier actually to perform his work and the time which he ought to have required based upon standards of 16 letters and 6 papers per minute for two-trip carriers and time allowances for miscellaneous duties. Although the comparison is arrived at as a result of a deductive method, it is, nevertheless, a "time-measuring device." With respect to the street work of carriers, the time element is important again, and the average performance of the carrier, for purposes of comparison, is set up against the actual time consumed by the carrier when accompanied by a foreman or roundsman. The foreman frequently uses not only his ordinary watch and a pedometer but frequently, I believe, equips himself with a stop watch as well as a counting device to determine the number of stops, etc., the carrier may make and the time he consumes per stop. These practices in the City Delivery Service, although somewhat crude as compared with the methods and practices employed in modern industrial plants, are of the nature of scientific management and they, as well as improved methods of their kind, are necessary if we are to arrive at anything like good efficiency in the City Delivery Service.

It is believed, moreover, that the tendency should be toward the adoption of a device or method which will more exactly determine the time consumed by both clerks and carriers in the performance of the different kinds of work assigned to them. Standards of work have not been so generally applied in the case of post-office clerks. Even here, however, it has been necessary, in order to comply with the law requiring that promotions be based on efficiency ratings, to conduct case examinations to determine the speed and accuracy of which distributors are capable. These tests are essentially time studies, and the results are used for making up efficiency ratings. The next step will be to make a comparison between the standards established by these tests and the actual day-to-day performance of the clerks. In other words, the "stop watch" or "time-measuring device" principle is already a necessary feature of the management of post-office clerks, and the principles of "scientific management" are the means by which the next great advance in post-office efficiency is to be accomplished.

Time tests are absolutely essential to the determination of intelligent standards, and the more definite and exact the standards are the surer the employee will be of fair treatment. In our service, with its many thousands of employees and hundreds of supervisory officers, it is absolutely necessary, in the interest of fair treatment for the employees, that some definite method be adopted for the ascertainment of output and the determination of standards for comparison with output. Whether the standards are determined according to a definite plan and stated in writing or whether they are merely the ideas of different supervisory officers based upon opinion or judgment, the fact remains that standards are necessary and do exist for comparison with output. Unless the standards are determined as a result of time tests of specific work under a uniform method or plan they will result from the observation and judgment of supervisory officers, and this observation and judgment will be of as many degrees of intelligence and accuracy as there are supervisory officers.

Furthermore, standards are essential to the intelligent administration of the service by the department, for without standards of performance and information as to the measure in which the standards are attained by the employees of different offices the department has no intelligent way to determine whether an office is overmanned or undermanned.

It is my judgment that the enactment of the Tavenner bill would be prejudicial to the best interest of the Post Office Department and the Postal Service.

DANIEL C. ROPER,
First Assistant.

POST OFFICE DEPARTMENT,
SECOND ASSISTANT POSTMASTER GENERAL,
Washington, May 15, 1916.

CHIEF CLERK,
Post Office Department:

Reference is made to the letter dated April 28, 1916, from Hon. EDWARD E. BROWNE, asking the views of the Postmaster General with reference to bill H. R. 8665, entitled "A bill to regulate the method of directing the work of Government employees." The bill, in part, prohibits any person having charge of the work of any employee of the United States Government from making with a "time-measuring device a time study of any job of any such employee between the starting and completion thereof, or of the movements of any such employee while engaged upon such work."

It would be impracticable to satisfactorily administer the Railway Mail Service under such prohibition. The work of the Railway Mail Service consists largely in the distribution of mail on moving trains, and the service must be adjusted to the train operation; therefore it is impossible to organize it on the basis of eight hours' work for every week day on every railway postal clerk's run. There are many long train runs on which the railway postal clerks to properly perform the service must be on duty for considerably more than eight consecutive hours, and this is offset by giving the clerks days off duty alternating with days on duty, the length of the time off duty to depend upon the number of hours of work performed by the clerk during the days when he is on duty. To accomplish this, there must be a "time study" of every railway postal clerk's run, to include the hours when he is on the train, the time devoted at terminals to loading, unloading, going to and from post offices, delivering and receiving registered mail, extra time on account of delayed trains, and extra work to meet emergencies; otherwise it would be impossible to determine what would be a reasonable assignment for a railway postal clerk in any given case. Again, railway postal clerks work in postal cars by themselves, in many cases a long distance from the headquarters of their supervising officials, and in order to determine how many clerks should be assigned to a run a "time study" must be made as to the number of pieces or packages of mail to be distributed and handled within the limit of time available on the particular trains; otherwise too much or too little work might be required of a clerk; and if, by reason of no "time study" having been made, insufficient clerical force was provided, the mail would not be distributed, its delivery would be delayed, and the public service would suffer.

The preamble of the bill indicates that the proposed legislation is intended to be in the interest of Government employees, but if applied to the Railway Mail Service it would be detrimental to the interests of the employees, because without a "time study" of the work and conditions of each railway postal clerk's run there would be danger of employees being placed in assignments requiring of them excessive hours of duty and unreasonable amount of work. On the other hand, they might be placed in assignments where the average number of hours per day and the amount of work performed would fall much below a reasonable standard; therefore I recommend that the bill be not enacted into law, its provisions being contrary to the interests of the public service and of the Government employees as represented by the Railway Mail Service.

OTTO PRAEGER,
Second Assistant.

POST OFFICE DEPARTMENT,
FOURTH ASSISTANT POSTMASTER GENERAL,
Washington, May 17, 1916.

CHIEF CLERK,
Post Office Department:

Referring to bill H. R. 8665, entitled "A bill to regulate the method of directing the work of Government employees," your attention is invited to the inclosed communication from the Superintendent of Rural Mails, the contents of which are indicative of the attitude of this bureau toward the provisions of the bill

It is not the present practice of this bureau to use any time-measuring device in determining the efficiency of any of the employees under its supervision, but the necessity for inaugurating a new system, involving the use of a timing watch, may arise at any moment. This is especially true with respect to accounting, cost keeping, and certain features of the rural-delivery carrier service, and it is exceedingly important that such improvements as may be made in the Postal Service by means of a time-measuring device be not rendered impossible of accomplishment by the enactment into law of the provisions contained in the Tavenner bill.

J. K. PICKETT,
Acting Fourth Assistant.

POST OFFICE DEPARTMENT,
FOURTH ASSISTANT POSTMASTER GENERAL,
Washington, May 17, 1916.

CHIEF CLERK, *Fourth Assistant:*

With reference to the attached bill entitled "A bill to regulate the method of directing the work of Government employees," which in part prohibits any person having charge of the work of any employee of the United States Government from making a time study of any job of any such employee, I have to state that the enactment of any legislation which would divest the executives of the United States Government Departments of all authority to introduce any system intended to determine the amount of work performed by an employee in a given time, or the length of time required by an employee to complete a given job, would have a vicious effect upon the conduct of the public business, since such legislation would place a premium on slothfulness and tend to encourage sluggishness and indifference on the part of employees.

I fully concur in the statements of the First Assistant and the Second Assistant, which appear in the attached communications.

GEO. L. WOOD, *Superintendent.*

Mr. KEATING. I want to ask unanimous consent that my colleague [Mr. NOLAN] may proceed for 15 minutes.

The CHAIRMAN. Is there objection?

Mr. MANN. Can not we limit the debate then on the amendment?

Mr. BROWNE. Mr. Chairman, I ask unanimous consent to extend my remarks in the RECORD.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. MANN. Reserving the right to object to the request of the gentleman from Colorado——

Mr. KEATING. There are about four gentlemen over here that would like about five minutes apiece.

Mr. MANN. I have not any doubt of that. Still, let us see if we can not reach an agreement as to time, anyhow.

Mr. KEATING. I would like to do that, as far as I am personally concerned.

Mr. MANN. Because there are other amendments and the time is limited.

Mr. KEATING. I would like to discuss this matter, but I am perfectly willing to enter into any arrangement that these other gentlemen who are anxious to present their views——

Mr. OLIVER. I would call the attention of the minority leader to the fact that the chairman of the committee, the gentleman from Tennessee [Mr. PADGETT], is absent.

Mr. MANN. I understand, but the chairman of the committee made a request for 20 minutes on a side. That was objected to, and then 20 minutes was given to the gentleman from Wisconsin [Mr. BROWNE] and an additional 5 minutes. I think it was understood then that some time would be occupied on the other side.

Mr. KEATING. That would be 25 minutes on each side.

Mr. PADGETT. Has there been a proposition made as to an agreement as to time?

Mr. MANN. There have been 27 minutes used by the gentleman from Wisconsin [Mr. BROWNE].

Mr. PADGETT. How much time did you want on your side?

Mr. MANN. We want to have a limitation.

Mr. PADGETT. You have used 25 minutes.

Mr. MANN. Twenty-five minutes.

Mr. PADGETT. And they want 25 minutes on this side?

Mr. MANN. So that it can be yielded as you want it.

Mr. PADGETT. Mr. Chairman, I ask unanimous consent for 25 minutes of time.

Mr. SHERLEY. Mr. Chairman, I do not know of any more important matter that is going to come up, because the vote here is going to determine the vote on the fortifications bill and a number of other appropriation bills. There are two or three letters here which I have received from the War Department that I would like to call to the attention of the committee, and I would like to speak at least five minutes. I do not want to delay the committee, but I am sincere in the belief that this matter is important enough to be thrashed out.

Mr. PADGETT. Suppose you take 10 minutes more on your side?

Mr. MANN. I would rather take five. We have some more amendments. I realize the importance of this amendment, and I would like to discuss it the rest of the afternoon.

Mr. PADGETT. There are some over here that want some time on the matter.

Mr. MANN. The gentleman knows that the time is fixed. Various gentlemen are waiting to offer amendments.

Mr. PADGETT. Does the gentleman say the time has been fixed on the bill?

Mr. MANN. Yes.

Mr. MOORE of Pennsylvania. All these amendments will be precluded at 2 o'clock to-morrow.

Mr. PADGETT. It has been suggested that we just let it run for the present.

Mr. MANN. I am willing to agree that there be 30 minutes on that side and 5 minutes on this side.

Mr. PADGETT. Then I ask unanimous consent that we have 30 minutes on this side and 5 minutes additional on the other side, and that the Chair control the time.

Mr. SHERLEY. I do not know what you mean by "this side" and what you mean by "that side." I want to speak on the amendment. I do not care where I get the time so that I get it.

Mr. PADGETT. I suggest that the Chair control the time.

Mr. MANN. Some gentlemen want more than 5 minutes. I suggest that the gentleman from Tennessee [Mr. PADGETT] take 30 minutes and that I have 5 minutes.

Mr. PADGETT. That would give you 30 minutes in all.

Mr. MANN. No; I say 30 minutes to the gentleman from Tennessee and 5 minutes to myself.

Mr. PADGETT. I ask unanimous consent, then, that the debate on this amendment and all amendments thereto close in 35 minutes, 5 minutes to be controlled by the gentleman from Illinois [Mr. MANN] and 30 minutes by myself.

The CHAIRMAN (Mr. WHALEY). The gentleman from Tennessee asks unanimous consent that debate on this amendment and all amendments thereto be closed in 35 minutes, that 30 minutes be controlled by himself and 5 minutes by the gentleman from Illinois [Mr. MANN]. Is there objection?

Mr. KEATING. Reserving the right to object, does that give my colleague from California, Mr. NOLAN, 15 minutes?

Mr. PADGETT. No; it could not give him 15 minutes. I was going to say that I would yield to the gentleman from Colorado 20 minutes of that time, and the gentleman from Ohio [Mr. GORDON] 5 minutes, and to the gentleman from Kentucky [Mr. SHERLEY] 5 minutes.

Mr. KEATING. Under that arrangement the supporters of the arrangement would have 40 minutes and those who support the original proposition of the bill would have only 20 minutes. That is not a fair division.

Mr. MANN. Not quite, Mr. Chairman. If that arrangement was made, I should yield to the gentleman from California [Mr. NOLAN] the five minutes on this side. I do not say that is fair. I am not undertaking to pass upon that.

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

Mr. KEATING. Reserving the right to object——

Mr. PADGETT. Mr. Chairman, if that request is objected to, I do not know of anything except to let it run——

Mr. SHERLEY. I think we can arrange it easily. There ought to be an equal division of time, of course. I understand that gentlemen have had 20 minutes.

Mr. MANN. Twenty-five.

Mr. SHERLEY. Twenty-five by the clock; but there were interruptions.

Mr. MANN. No; he had 25 minutes.

Mr. SHERLEY. Two or three minutes were lost in getting order. How much time does the gentleman from California want?

Mr. NOLAN. I want 15 minutes.

Mr. SHERLEY. And the gentleman from Illinois wants 10.

Mr. KEATING. The gentleman from Illinois, who speaks on the post-office feature of it, wants five, and I should like five myself.

Mr. SHERLEY. If you run it 35 minutes, with 15 minutes additional on the other side, that would make 50 minutes additional time.

Mr. MANN. I submit that that ought not to be done. There are other amendments to be offered, and the committee has an amendment that is coming up to-morrow morning. There are only three hours to-morrow before the vote.

Mr. SHERLEY. I do not care. I simply feel that there are some matters that I ought to present.

The CHAIRMAN. Is there objection to the request of the gentleman from Tennessee [Mr. PADGETT]?

Mr. KEATING. I shall have to object, unless we can get more time.

The CHAIRMAN. Objection is made.

Mr. NOLAN. I renew my request that I be allowed to proceed for 15 minutes.

The CHAIRMAN. The gentleman from California renews his request that he may proceed for 15 minutes. Is there objection?

Mr. MANN. I am not willing to concede that, unless we can fix the time for debate, which, I think, we ought to do, because there are other gentlemen in the House beside these who want to discuss this amendment. They want to offer amendments. I ask unanimous consent that the gentleman from Colorado have 30 minutes and that I have 5 minutes, and that at the end of that time all debate close.

The CHAIRMAN. The gentleman from Illinois asks unanimous consent that all debate on this amendment and amendments thereto close in 35 minutes, 30 minutes to be controlled by the gentleman from Colorado and 5 minutes by himself. Is there objection?

There was no objection.

Mr. KEATING. I yield 15 minutes to the gentleman from California.

Mr. GORDON. Will the Chair please state what that agreement was?

The CHAIRMAN. That debate on this amendment and all amendments thereto close in 35 minutes, 30 minutes to be controlled by the gentleman from Colorado [Mr. KEATING] and 5 minutes by the gentleman from Illinois [Mr. MANN].

Mr. FITZGERALD resumed the chair.

The CHAIRMAN. The gentleman from California [Mr. NOLAN] is recognized for 15 minutes.

Mr. NOLAN. Mr. Chairman and gentlemen, this is a very important section of the naval appropriation bill. A similar provision was included in the Naval and Army appropriation bill in the last session of Congress after considerable discussion. I had the good fortune to sit as a member of the Committee on Labor during the Sixty-third and Sixty-fourth Congresses and to hear the testimony on the Dietrich bill, and in this Congress on the Tavenner bill, which strikes at the stop-watch time study and premium and bonus systems as employed in Government establishments.

During the consideration of the Tavenner bill the efficiency engineers of this country had the opportunity of presenting their case to the House Committee on Labor. It was brought out during the testimony of those gentlemen that the efficiency engineers of this country had formed an organization with headquarters in New York and had solicited funds and started a propaganda campaign throughout this country to prohibit the inclusion in the Army and Navy and fortifications appropriation bills of any prohibition of the stop-watch time study and premium and bonus systems. I do not take issue with those gentlemen. That is their profession. They are making a living at it; but they have started a propaganda throughout this country, and they have Members of Congress deluged with an avalanche of telegrams and letters protesting against this provision in the naval appropriation bill.

Now, these gentlemen testified before the House Committee on Labor, and with all due respect to the gentleman from Wisconsin, I do not know whether he read all of the testimony that took place before the committee or not, but I know that he was not present at most of the hearings and did not have the opportunity to hear the testimony of those in favor of the Tavenner bill. I happened to be present on each and every occasion.

The fact was brought out before the Committee on Labor that not one of the gentlemen who appeared and represented himself as an efficiency expert and a scientific management engineer had ever had any practical shop experience, not one. They were all graduates of some technical institute and took up the question of scientific management after they had their experience in some particular school or institute of technology, but not one had ever had any practical shop experience. If Members of the House had an opportunity to read all of the hearings that took place before the Committee on Labor, I doubt whether there would be a small minority here that would not say that the efficiency engineers were the best witnesses for the Tavenner bill.

I have here some charts prepared by Mr. Minor Chipman from records of work done on different jobs at the Watertown Arsenal. They are included in the hearings before the Committee on Labor. I want to call your attention to these charts. If there is anything in the claim of the gentleman that the stop watch is a scientific device in measuring the element of time as it pertains to the labor of the individual, here is complete evidence that it is not accurate, but inaccurate. Here is a chart of an employee, 2516. It is his record of efficiency for the month of March, 1914, when the system was in full force, and this employee worked on 224 jobs. The highest point he struck that month was 200 per cent, and the lowest 21 per cent. Just imagine; on one job he performed it in half the time and on the other he only performed one twenty-first of it in the time set by the time-study men for scientific management by the stop watch.

I call your attention to it to show the variations. That is supposed to be 100 per cent, this line on the chart. That is the task set; and look at the variation up and down here, shown by this line. That employee was one of the highest skilled men in the Watertown Arsenal, and on one job he gets 200 per cent and in the other 21 per cent. I call your attention to that to show you the inaccuracy of the so-called stop-watch system.

Mr. STAFFORD. Will the gentleman give the average that the man had?

Mr. NOLAN. His average was 121.35. Now, here is the same man's chart, April, 1914, for efficiency on 140 jobs. His highest was 172.9 and his lowest was 45; his average was 121 per cent. That is the chart for the following month.

Here is a chart—and these were taken from the records of the Watertown Arsenal—of an employee that was not listed as a highly skilled mechanic. It is his efficiency chart for one year. The highest point he reached was 149 and the lowest was 33.3, and the average for the year was 96. Now, these gentlemen claim that it was absolutely essential that they should have the use of a stop watch as a time-measuring device for setting the task. This chart shows the inaccuracy of it. If the time-study men were accurate and the stop watch must be accurate, there would be hardly any deviation below or above the line. They would not go to 21 below in one instance and 33.3 in the other.

They have tried to create an impression that this particular time service and abolition of the stop watch and the bonus and premium system in Government establishments is a blow at national efficiency. I want to call attention to this fact. There is nothing in this bill that prohibits any sort of facilities, whether it happens to be machinery or a system of scientific management, applied in a common-sense way. The purpose of this provision in the naval bill is to stop the speeding up of the individual so that they can not take the last ounce of energy and strength away from him without any attention or consideration being paid to fatigue studies or the effect on those human elements involved.

Mr. GORDON. Will the gentleman yield?

Mr. NOLAN. Yes.

Mr. GORDON. How does keeping the measurement of time that a man consumes at a given task speed him up?

Mr. NOLAN. By the stop watch they study every motion that is made, taking time by the one-hundredth of a second; they take the time of the individual selected first and then make the average man come up to it.

Mr. GORDON. How do they make them?

Mr. NOLAN. They set the task and require him to do it or else he loses his job, and they admit they make no provision for the man that falls by the wayside under this system.

Now, let me proceed on the proposition of the bonus and premium. There are many people in the country that object to any restriction on the bonus and premium system. Let me call your attention to what transpired before the committee. A simple example was given the efficiency experts, and I will give it to the House to show you how men are paid. The question was asked the efficiency engineers, Suppose you were called on to install an efficiency system in a shoe factory and you found a group of men were making five pairs of shoes at $8 a day. After applying all the elements of scientific management and efficiency you decided that eight pairs of shoes at $8 a day was a fair task, and eight pairs of shoes was the task. What would you pay the individual for the ninth pair of shoes? That ought to be simple enough. You would think that the workman would get as much for the ninth pair as he got for any one of the eight. Here is the answer: "We would pay him 33⅓ to 50 cents for the ninth pair of shoes." These experts claimed, and the hearings will bear out my statement, that notwithstanding the fact that the employer secured an additional output of three pairs of shoes for the $8, due to the establishment of the efficiency system, that he should be further rewarded by getting anywhere from one-half to two-thirds of additional production over and above the eight pairs of shoes, and that the worker, instead of receiving the same rate for the ninth pair as he received for each one of the first eight, should have his price reduced from 50 to 66⅔ per cent.

That is how the premium and bonus system is applied; that is how it is applied in the Watertown Arsenal, according to the testimony of Gen. Crozier. Talk about employees being satisfied to work under it! In 1911, I believe it was, or 1910, a strike took place against this system at the Watertown Arsenal, and one of my colleagues in the House was a member of the committee that investigated conditions up there. The men were induced to return to work on account of this investigation, and while the committee that conducted the investigation did not denounce the system in its entirety, they called attention to the fact that abuses crept in under it, and they did not think at that time it was necessary to recommend any legislation. Since that time the employees in the Watertown Arsenal have been petitioning and protesting against this system. I have a letter here, not an inspired letter but a letter in which 194 of the lower paid employees of the Watertown Arsenal wrote me indorsing the minimum wage bill which I introduced and which is before this House, and here is what they conclude:

> We believe that you will do your best to make the Nolan bill a law. The 194 petitioners of the Nolan bill, with many others working here, also pray to have the Taylor premium system abolished in this arsenal as being detrimental and a menace to our best mutual good.

I withhold the names of the three men that signed this letter as a matter of protection to them.

According to the proponents of the so-called Taylor system and other systems of scientific management, the underpaid and unskilled workers have a greater opportunity under scientific management than by other day-labor systems, and here are 194 laborers in that arsenal who have not received any of the benefits of it, but who have labored under all of the detrimental features of it, and they are protesting against it.

Reference was made here to a Cleveland clothing dealer who came before the committee, and before I pass on to that I

want to say this: I do not believe that 10 per cent of the men who have petitioned Congress against the Tavenner bill have this so-called efficiency system established in their shops. I know this to be the fact in San Francisco, because their men will not work under it, and it invites trouble.

Mr. BROWNE. Mr. Chairman, I would like to ask the gentleman if there has ever been a strike caused by the time study or premium system?

Mr. NOLAN. Yes.

Mr. BROWNE. Whereabouts?

Mr. NOLAN. In the Government establishment at Watertown.

Mr. BROWNE. In any private institutions?

Mr. NOLAN. Lots of them throughout the country.

Mr. BROWNE. Name one.

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

Mr. NOLAN. For a question.

Mr. TAGUE. For the benefit of the gentleman, I would like to tell him that I have already filed, at the request of the workmen in the Watertown Arsenal, a petition to the Army Department to abolish it.

Mr. NOLAN. There was reference made to a gentleman who testified before the committee who had a clothing establishment in Cleveland, who contended here that he had the most contented group of workers under one roof in America. Here is what developed in his shop. I get this from one who was familiar with the conditions in the shop of Mr. Feiss, who is one of the members of the so-called committee of ten who are protesting:

In one plant it was found that iron standards supporting signs were erected at the bench of every group of workers and that on the signboard, in large figures, was placed the number of pieces which that group must finish to accomplish their day's work, so that each group saw before them when the day's work began what their task would be and every other worker in the room could see what tasks the other groups had performed.

From time to time during the forenoon and the afternoon foremen went from group to group counting up the number of pieces already finished and then hanging up this number under the one indicating how much must be done for the day's work, so that each group were notified numerous times during the day of whether they were behind or ahead and each other group knew whether the rest were ahead or behind, the whole purpose of this scheme being to work competition between the groups and to encourage the greatest possible exertion; in other words, to make a racehorse of the group where the foreman endeavored to beat the records being made by the groups under the other foreman.

That is exactly what scientific management as these gentlemen who explain it undertake to show will do. They have no fatigue studies. Scientific-management experts and efficiency engineers tell us that they make none. They pick the time-study man from men in the shop, and from men who have never had any practical experience in trying to determine the effect of this system on the human beings who must perform the task set. The whole objection to this is that you can not apply a stop watch and the results obtained from a stop-watch system to a human being and make it apply generally, as you can to a race horse or to an athlete upon the athletic field. The human being in the workshop has to work day in and day out under the system, while the race horse is prepared for his race just as the athlete is prepared for what he does on the athletic field, with a rest before and plenty of rest afterwards.

So much has been said about "scientific management" and efficiency that the terms have come to represent something definite in the public mind. Something which is definite; not because of any facts which have been ascertained, but because of the terms used with reference to those systems of management which claimed to increase the efficiency of labor and which have been widely advertised under the name of "scientific management."

For several years the proponents of "scientific management" had a clear field and were able to create certain impressions upon the public mind as to the scientific basis for their systems and the protection which their systems gave to labor, which influenced many prominent men to indorse "scientific management."

It is only within most recent times that any thorough and systematic effort has been made to investigate the conditions which had developed, so far as labor is concerned, in those manufacturing establishments which had introduced any of the so-called systems of "scientific management."

Since an investigation has been made by competent authorities, we discover that the claims of scientific accuracy so far as labor is concerned, vanished into thin air.

It is but natural that a system which claims to deal scientifically with labor so far as the stress of labor and the wages to be paid is concerned, would offer some scientific instrument or basis for measurement and determination, and yet we find after extensive hearings by the Committee on Labor and special committees appointed by Congress to investigate "scientific management" that there is not in existence, so far as "scientific management" is concerned, any thorough studies of human fatigue; that the efficiency engineers have discovered no rule or instrument to determine where the danger point in fatigue begins or when the danger point of fatigue has been reached.

We find, furthermore, that none of the efficiency engineers have as yet worked out any adequate data upon the question of long-time efficiency so far as labor is concerned; that they have no standard measurement to determine what the workers' normal speed or exertion should be; and that they have no standard to determine what the hourly wage rate or the payment for labor should be except what they may find in other establishments in the same locality.

Instead of scientific standards of measurements in these matters, each efficiency engineer's personal opinion becomes the standard, and it is upon this frail basis of one human being's opinion that the only element of scientific knowledge is to be discovered.

Last year an investigation was made of "scientific management" as it affected labor under the authority of the Federal Commission on Industrial Relations. The work was done by Mr. R. F. Hoxie, University of Chicago, as chief investigator, his assistants being Mr. Robert G. Valentine, an expert on employing management, and Mr. John P. Frey, an experienced trade-unionist, these two gentlemen representing the employers and the workers.

Some 35 plants in all were investigated and in addition, Mr. Hoxie spent a year in gathering the facts, and one remarkable feature of the report which he prepared was that, when completed, it met with the unqualified approval of the gentleman who had represented the employers' interests and the trade-unionist who had represented labor. In view of the fact that it was a unanimous report, their findings are entitled to be accepted as authoritative, particularly in view of the fact that since the submission of this report no efficiency engineer has submitted evidence to indicate that any one of the statements contained in the report was inaccurate.

It has been said by more than one authority who has read the report that it is one of the most scientifically prepared documents which has been submitted by any body of investigators. And this report iterates and reiterates the fact that there is but little which could be termed scientific about the conditions found under "scientific management" so far as labor is concerned, while on the other hand many conditions affecting labor were found which not only were unscientific but most detrimental to the wage earners' interest, both physically and mentally.

It may be that nothing could impress upon your minds the utterly unscientific and inaccurate results which have followed the application of "scientific management" so much as a graphic illustration.

One of the features of "scientific management" is the use of the stop watch by the time-study man, and the efficiency engineers claim that through the use of this stop watch, the study of the equipment, material, and the man, an accurate or scientifically accurate time can be set in which the workman should perform the task.

It is not difficult to grasp the fact that if the time in which different work was to be performed was scientifically determined that the workmen would accomplish approximately the same percentage called for on each task, and yet investigation shows that the widest of variations exist in the times required to perform tasks which have been set under "scientific management."

We have heard both in the committee room and on the floor of Congress considerable about "scientific management" as it has been applied in the Watertown Arsenal, and I know of no better illustration of the utter inaccuracy of determining the tasks for workmen than can be found in this arsenal.

I hold in my hand some charts prepared by Mr. Miner Chipman, which are prepared from the records of work performed on different jobs by employees of the Watertown Arsenal. The charts are included in the hearings held by the Committee on Labor on the Tavenner bill.

The first one, which relates to the work of employee No. 2519 for the month of March, 1914, indicates that he was a workman of more than ordinary efficiency. During this month he worked on 224 jobs, and for the month his average efficiency was 121.35 per cent. But whether he had accomplished every task in the exact time allowed for it by the split-second watch time-study man, or whether, owing to his great efficiency, he had reached 121 per cent, the degree of time in which he accomplished each task as set by the time-study man would be approximately the same. Yet what do we find on the one hand? One job he performed in one-half of the time set by the time-study man; on another he was able to accomplish but 21 per cent of the task within the time set.

I have another chart, made up from the performance of the same employee during the month of April, and here he shows that his average efficiency was about the same in being 121 per cent, yet on some jobs he was able to accomplish but 45 per cent of what was required by the time-study man within the time set, while on some jobs his efficiency was as high as 172.9 per cent.

As it might be held that this man because of his higher average efficiency might show a greater variation in his output per job, I would call your attention to the record of employee No. 2681 for the months from October 1, 1912, to September 30, 1913. Here we find for this long period an average efficiency of 96 per cent, or, in other words, that this worker on the average accomplished but 96 per cent of his work in the time set by the time-study man, but we find on some jobs that he was able to accomplish but 39.3 per cent of the task within the time set, while on other work he not only accomplished the task but did so with the rating of 149 per cent efficiency.

While such charts are not an indictment against "scientific management" in itself, they do constitute the most convincing evidence that when put into application those who operate the split-second watches and who make the time studies are unable to determine how long a man should be allowed for the performance of a task with any degree of scientific accuracy. In fact, any foreman in an old-fashioned one-horse shop who would allow such differences in the time in which a workman should do his work would be laughed out of the shop by the workers and employers alike.

While theoretically it has been held that "scientific management" through the use of its so-called scientific methods would prevent any overstrain, overexertion, overfatigue upon the worker's part, the result of the investigations made have indicated that nowhere are there to be found such systems for the remorseless speeding up of labor as exist in establishments applying the methods of so-called "scientific management."

The time set for the performance of a task, or the time in which a piece of work must be done, is determined by the time-study man; then to urge or stimulate the workers to accomplish this task they are paid an additional amount either in the form of a premium or a bonus, and the efficiency engineers frankly inform us that they would not expect to secure the performance of the task if it were not for this additional money inducement which is held out to the worker; but this financial inducement is not considered sufficient, and other features are introduced to speed up labor.

In another plant they had established for some of the day workers a very novel evidence of so-called scientific efficiency.

Here some of the work could not be regulated by pulley wheels and machinery because it must be done by hand, and so, as machinery could not be speeded up which the worker must keep pace with, another method had to be devised, and in front of the worker's bench was a metronome, which was set in motion, and the workers were expected to move their arms backward and forward keeping time with the moving arm of the metronome.

In another plant a peculiarly effective system had been devised for speeding the workers to their limit.

The bonus system of payment was in existence and the foreman of each group of workers received a bonus in addition to his wages, based upon the percentage of the workers under his charge who succeeded in accomplishing the task set for them, or, in other words, of earning their bonus. The larger the number of workers who accomplished their tasks within the time set the higher the foreman's bonus.

The idea of making the bonus an effective part of "scientific management" was carried one step further, and the time-study man, who also set the time in which the tasks must be performed, also received a bonus. But his bonus was based upon the number of workers who failed to accomplish the task within the time set, so that when the tasks were set so difficult that but few of the workers could accomplish them, the time-study man's bonus was increased. In other words, the time-study man's income depended upon setting the task so difficult that but few of the workers could accomplish it, while the foreman's income depended upon his prevailing upon the workers in his charge to accomplish their task within the time set.

Here the workers were between the upper and the nether millstone, between the devil and the deep sea. They were at the mercy of two men, each of whom was stimulated to help out a condition which aimed to secure the last ounce of energy from every worker affected by the system.

These illustrations are taken from an almost countless number which could be given to emphatically disprove the claims that "scientific management" has made relative to its protected influence in preventing overstrain and overspeeding.

We have listened to lengthy statements as to the specific efforts made under "scientific management" to train the workers and to make better mechanics and craftsmen, but when we search for the evidence we find that the efficient workman, the highly skilled specialist which "scientific management" talks about is the man who has been trained to do one simple part in connection with one of the articles which is finally to be assembled into a complete whole.

It is the kind of training which may enable a worker to learn how to screw on a certain size nut upon a bolt more rapidly; which may educate the girl in the garment shop so that she will be proficient in the trade of sewing on buttons or stitching the seam on a collar; it is the kind of industrial or mechanical training which equips the unfortunate worker for no other job than the minutely specialized part of the simple operation upon which he is allowed to work.

I would hesitate to make this statement if it was not so completely borne out by the investigations which have been made, but in view of these I am fully justified in holding that if "scientific management" as it is in operation in the industries to-day could be applied to all of our industries within a year, the training of artisans and craftsmen would cease and the American workers would become a nation of unskilled laborers, or rather laborers skilled in performing but one simple operation in connection with the industry in which he was engaged.

In fact, "scientific management" definitely aims to build up a small body of highly trained men, time and motion study men, instructors, and the head of the planning department, and this little handful of men are to acquire all of the knowledge and to do all of the directing, and there is to be this little group who will do all of the thinking and the immense army of workers who are not to be allowed to think because their thinking would interfere with the unlimited rules and regulations of "scientific management." And we would have in our country a little group with all of the knowledge and all of the directing power in their hands and the masses of laborers dependent upon this group for what meager information they would be allowed to secure as skilled workers.

I have confined myself to a discussion of so-called "scientific management" as it affects labor. It is with this feature that I am particularly interested, because this feature is by far the most important, for it affects the lives of the workers themselves; it would determine the degree of mechanical knowledge which they shall acquire, and establish the standard of living for the masses of our people.

No fact was brought out more clearly in the special investigations made by Congress, in the hearings held by the Committee on Labor, and the investigations made by Mr. Hoxie and his assistants, than that the theory and the practice of this so-called "scientific management" differs on many points as far as the east is from the west.

It has been overwhelmingly proven that as applied in industrial establishments to-day, "scientific management" works in opposition to its theories so far as labor is concerned on many vital points.

In fact, there seems to be but one point where "scientific management" consistently applies its theories in practice, and that is, in the autocratic control which the employer must exercise.

"Scientific management" in its relation to the workers is essentially autocratic; there is no place in it for industrial democracy, no point at which labor can be given a voice in the determination of the terms of employment and the conditions of labor.

In this country we hold, at least, that the wage earner has a right to a voice in determining under what conditions he shall work and what the terms of his employment shall be; and we hold that this right, and the daily exercise of this right, is essential to our American institutions, because without its exercise and where the employer determines terms of employment and conditions of labor to please his fancy, his sympathies, or his desires for profits, he also determines the wage earner's standard of living, because wages determine what kind of a

home the worker shall live in and where this home shall be located; whether it shall be an insanitary two or three room home in a crowded tenement, or whether it shall be a comfortable dwelling place with sufficient room and pure air and sunshine entering into it.

His wages and the degree of vitality which he must daily give up to the employer determine his physical condition, the opportunities which he will have for self-development for a knowledge of the great problems which affect us as a people and determine his value as a citizen. But now, under "scientific management," we find both in the theory and in the practice that labor is to be prevented—in fact, must be prevented—from having an effective voice in these most essential matters, because we are told "scientific management," the systems which it applies, the forms under which it works, are such that they can not be made a subject for conference and agreement between the employers and the workers.

"Scientific management" in theory and in practice is essentially autocratic, and as one American I shall always use all of the influence at my command to oppose the growth of any institution or tendency which will develop autocratic control, whether in our industries or in any other department of our activities as a people.

I insert an editorial from the Washington Post:

[From the Washington Post, Saturday, May 6, 1916.]

TOO MUCH EFFICIENCY.

To a certain order of mind the idea of getting a little more out of a given situation than anyone else can extract from it appeals with irresistible attraction. With these the announcement of a new method of efficiency means that the world has ceased to muddle through and has begun some real progress.

While inclined to give due credit to the efficiency workers for their achievements, it is felt that the line should be drawn somewhere. Both common sense and healthy sentiment join in protest against the latest efforts in this respect, which involve the production of two eggs a day from a single hen. This is brought about by a very simple expedient. The confiding biddy is placed in a darkened room, fitted up with electrical dinguses, which convey the illusion of a double day and night period within a single 24 hours. The outcome is that a hen, all unconscious of the deception, lays her regular egg a day, as she thinks, whereas the brutal taskmaster gathers in a pair with no compunctions of conscience, so far as can be ascertained. On the contrary, the account of the affair implies that he rather boasts of it.

Somehow, we instinctively recognize that it won't do. For a while perhaps there will be an actual gain. But the temporary increment can not mean other than eventual loss. One can readily prophesy an exotic brand of egg produced by the electrical method that will pale its ineffectual yolk when peered at through the shell by perspicacious housewives or later dallied with by the men folk at the breakfast table. Besides, it means no real progress. The substance of albumen and lime and protein and phosphorus must come from somewhere at a definite cost. Why not put two hens on the job?

And while the plea is being made for the hen, why not let the general principles involved apply to humanity as well? The real problem of society to-day is not so much to get the last vestige of available effort out of a given individual as it is to provide that every individual shall find his place, and there do his appointed work in respectable measure, with a little reserve force left over for the enjoyment of playtime and rest at the end of the day's task.

I incorporate in my remarks the following letter, which was received too late to read to the House:

COMMITTEE OF TEN TO OPPOSE LEGISLATION
ANTAGONISTIC TO EFFICIENCY IN AMERICAN INDUSTRY,
New York, May 31, 1916.

To the Representatives in Congress:

The antiefficiency rider on page 102 of the naval appropriation bill if retained will brand everyone responsible for it as a coward. If its principle is sound, Congress should enact the Tavenner bill, which openly embodies it.

If afraid to do this, Congress should be more afraid to seek by indirection what it can not or dare not do directly. The country demands efficiency and will profoundly resent legislation forbidding it.

Scientific management stands for better efficiency, for better working conditions, and for better wages. The opposition to it is based on ignorance of facts and experience and on the selfish interest of exploiters of labor.

We urge you to oppose by vote and voice this attempt to hobble American industries. It can not prevail for long, and its inevitable condemnation, when understood by the people, will include all responsible for it.

Yours, truly,

COMMITTEE OF TEN,
W. HERMAN GRUEL,
Secretary.

This letter will give you an idea of the campaign of intimidation that has been carried on by the so-called "Committee of Ten," representing the "efficiency engineers," who have never made any endeavor to set standards for their own profession nor to correct any of the abuses in so-called "scientific management." Their work in installing "scientific management" corresponds with their actions in writing this and other letters. They attempt to label every Member of Congress who opposes the stop-watch, bonus, and premium systems as a coward, and also threaten, in the last paragraph, the Members of the House who are in favor of the Naval Committee provision with their vengeance. So far as I am personally concerned, I welcome their opposition, realizing that if they do not stand for any better standards in their personal affairs than they do in connection with their business, such opposition is always to be welcomed.

The CHAIRMAN. The time of the gentleman from California has expired.

[By unanimous consent Mr. NOLAN was granted leave to extend his remarks in the RECORD].

Mr. KEATING. Mr. Chairman, I yield five minutes to the gentleman from Illinois [Mr. TAVENNER].

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

MESSAGE FROM THE SENATE.

The committee informally rose; and the Speaker having resumed the chair, a message from the Senate, by Mr. Waldorf, 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. 6239. An act authorizing the Commissioner of Navigation to document as vessels of the United States two dredges built of American material and owned by James Stewart & Co. (Inc.), a citizen of the United States.

NAVAL APPROPRIATION BILL.

The committee resumed its session.

Mr. PADGETT. Mr. Chairman, I yield five minutes to the gentleman from Minnesota [Mr. VAN DYKE].

Mr. VAN DYKE. Mr. Chairman and gentleman of the commitee, I am not interested in this bill particularly because of private manufacturers or private manufacturing establishments, but simply because of the effect it has upon Government employees and the effect upon the service rendered by those employees. In passing, however, I desire to state that my ideas on the issue of a stop watch coincide with the statement made by Senator LODGE in a speech against its use, which is as follows:

The one object of the time measure is to produce speed. Now, speed is not the only thing that the Government or any other employer or manufacturer is seeking for. There is something more important than speed, and that is quality. Speed has nothing to do with quality. Owing to great inventions of our time, owing to steam and electricity, we have carried speed to such an extent in all of our manufactures that certainly in many cases the product has deteriorated in quality as it has advanced in quantity and rapidity of production.

The stop watch and the time measure can tell you nothing whatever about quality. It may be a basis of fixing wages or anything else, but the only thing we can possibly tell by time is speed. We all associate a stop watch with its use for racing horses. I dare say it is used now for racing automobiles, but not by a man buying horses for his ordinary use. In the days before automobiles I used to own horses and be very fond of them and drove them a great deal, but I never put a stop watch on a horse I was going to buy. I wanted to know his qualities; I wanted to try him; but I was not going to buy a horse to use on the track, and therefore I had no use for the stop watch. They use a stop watch to test a horse that is going on the track to race in the Derby, for instance, or in any of our great races. It is of the utmost importance to know what the horse can do on the furlong, or on the quarter mile, or on the half mile, but it does not tell the story of his quality. It will tell the story of speed and the qualities necessary to speed, but there are many qualities it does not tell.

Now, to put the stop watch on human beings may tell how fast they can work, but it can tell nothing of the quality of their work, nor how long they may work. A horse may be very good for a short spurt and absolutely worthless for a 4-mile race. It is a poor test. It is a promoter of the idea that the one thing to do is to turn out just as much as we can just as far as we can. That has gone through everything in this period of ours. It has deteriorated style, it has deteriorated literature, it has deteriorated art. It is deteriorating manufacture.

I do not believe, Mr. Chairman, in standing over men with stop watches to see how far they can go under pressure in securing speed in performing a given piece of work. The very fact of a stop watch implies strain on every faculty, on every physical power, driving the heart and lungs and every muscle to the utmost possible point.

In the days of slavery it was said there was one school of slave owners who believed it was more profitable to work the slaves to the last possible point and let them die than to try and care for them when they were ill and work them reasonable hours and treat them without a stop watch. Those who believed in working them to death, I imagine, were a very small and merciless minority, but there is always that disposition.

I am a thorough believer in the best man getting the best wage and the hard-working man getting what his hard work deserves. I have no desire to see the thriftless and idle paid as well as the industrious, steady, and hard-working men; but I do not believe anything is gained for the Government or for anybody else in standing over a man with a stop watch to see whether under pressure he can do a certain piece of work in a given time. I do not believe it is sound economy.

Reference was made to the Post Office Department in the talk made by the gentleman from Wisconsin [Mr. BROWNE], who told how efficient the system had worked out in that department. I want to show you—and I am giving you this from personal observation—what happens and how this system is taken care of under the Post Office Department. When a letter is dropped in the post office it is handled first by what is known as a post-office clerk—a distributing clerk. Those clerks are given a certain number of letters which they must work within a certain given period of time, which will run, in different places, from 16 to 30 and sometimes 40 letters per minute. The peculiar

part of the system is this, that it is absolutely impossible to create a standard in handling mail. You can easily see that, when you stop to think of the number of different kinds of addresses that are on different letters, some of them written legibly, some typewritten, but no two alike; so without a doubt you will agree with me that no standard can be placed which would be fair to the clerk.

These post-office clerks are required to handle so many a minute, observed, when this system is used, with a watch, and urged to their topmost speed. Then some time afterwards, probably that week or the following week, they are observed from what is known as a secret passage within the post office. This is taken from the testimony before the committee. The clerks are informed that they have not kept up to the speed that they established at the time they were observed; that is quite natural, it is human, in fact, for a man to speed up when his foreman is looking on and telling him he has to produce a required speed at that time. At this point I desire to submit a communication sent to the clerks and carriers of Chicago and extracts from statement of Thos. F. Flaherty, secretary-treasurer of the National Federation of Post Office Clerks, made before the House Labor Committee on the Nolan minimum-wage law; also letter sent to myself after I had introduced a bill to prohibit the use of the stop-watch and time-measuring systems in the Postal Service:

COMMUNICATION SENT TO THE CLERKS AND CARRIERS OF CHICAGO.

POST OFFICE, CHICAGO, ILL.,
Delivery Division, January 29, 1915.

Circular No. 7.
Subject: Rating of clerks and carriers.
Superintendents of stations:

Superintendents of stations will submit as soon as possible, in C. P. O. Form 3990, efficiency ratings for all clerks and carriers assigned to their respective stations on the quantity and quality of work performed during the year ending November 30, 1914.

The next efficiency ratings following the above will be given for the six months from December 1, 1914, to May 31, 1915, and shall be submitted hereafter semiannually, December 1 and June 1, respectively, on C. P. O. Form 3990.

The efficiency rating of each employee from December 1, 1914, on shall be determined on his record for attendance, adaptability, speed, accuracy, and efficiency, and the relative value of each subject shall be charged as follows:

	Points.
Perfect in attendance, one-fifth point off for each day absent	14
Perfect in adaptability	12

Adaptability of clerks shall be determined by their availability for any clerical duty, application, appearance, and courtesy.

Adaptability of carriers shall be determined by periodical tests as to the manner in which they memorize removals and dispose of their "overs"; their application, general appearance, and courtesy in the office and in the field. Maximum in speed, 12 points.

To be given as follows:

Clerk distributing—	
50 cards per minute on examination	12
45 cards per minute on examination	11
40 cards per minute on examination	10
35 cards per minute on examination	9
30 cards per minute on examination	8
25 cards per minute on examination	6
20 cards per minute on examination	3
16 cards per minute on examination (but qualifies)	0
Carriers routing and trying out on exclusive:	
Firm districts—	
40 pieces per minute on test	12
35 pieces per minute on test	11
30 pieces per minute on test	8
25 pieces per minute on test	5
20 pieces per minute on test	2
Under 20 pieces per minute on test	0
Office-building districts—	
35 pieces per minute on test	12
30 pieces per minute on test	11
25 pieces per minute on test	8
20 pieces per minute on test	5
17 pieces per minute on test	2
Under 17 pieces per minute on test	0
Mixed business and residence districts—	
25 pieces per minute on test	12
23 pieces per minute on test	11
20 pieces per minute on test	9
17 pieces per minute on test	6
15 pieces per minute on test	2
Under 15 pieces per minute on test	0
Three-trip residence districts—	
20 pieces per minute on test	12
19 pieces per minute on test	11
17 pieces per minute on test	9
15 pieces per minute on test	6
13 pieces per minute on test	2
Under 13 pieces per minute on test	0
Two-trip residence districts—	
18 pieces per minute on test	12
17 pieces per minute on test	11
16 pieces per minute on test	9
15 pieces per minute on test	7
14 pieces per minute on test	5
12 pieces per minute on test	2
Under 12 pieces per minute on test	0

Accurate observance of the working schedule by carriers, 12 points. To be determined by weekly periods for first trip in each month of the year.

Where a carrier averages schedule leaving and returning on first trip for each weekly period he shall receive 12 points.

For an average of each minute excess of the schedule as outlined above he shall lose one-half of a point.

Accuracy in the distribution of mail by clerks, 12 points.

Standard for maximum points, 99.50 per cent correct on case examination:

99.50 per cent correct	12
99 per cent correct	11
98.50 per cent correct	10
98 per cent correct	9
97.50 per cent correct	7
97 per cent correct	5
96 per cent correct	3
95 per cent correct (but qualifies)	0

Perfection in all of the above subjects shall entitle an employee to 50 points on efficiency, and the net result would give an employee an efficiency rating of 100.

For example, should an employee's record and service be such that it would earn him 13.80 points for attendance, 11 points for adaptability, 11 points for speed, 11 points for accuracy, the points earned for efficiency would be 47, or a sum total of 93.80 points, which would be the rating earned.

All clerks assigned to stations, except those who are engaged entirely in cage work, must be examined on distribution and assigned to the distribution of mail upon receipt of each dispatch. Cage clerks who perform no distribution shall be rated on speed and accuracy, in accordance with the superintendent's judgment and observation as to their ability to perform the duties assigned them.

LE ROY T. STEWARD,
Superintendent of Delivery.

It is a physical impossibility to reach the standard set by the Chicago postal officials and to retain it for any number of years. The strain both mentally and physically is too great and many employees drop from the service or are forced to accept wage reductions others are dismissed for inefficiency.

EXTRACTS FROM STATEMENT OF THOMAS F. FLAHERTY, SECRETARY-TREASURER OF THE NATIONAL FEDERATION OF POST-OFFICE CLERKS, MADE BEFORE THE HOUSE LABOR COMMITTEE ON THE NOLAN $3 MINIMUM-WAGE LAW.

Mr. VAN DYKE. You spoke a moment ago about speeding up in business. Do they use any such thing as a stop watch in your line of business?

Mr. FLAHERTY. The stop watch is used in some offices; yes. In that connection I will read a letter; I won't mention the office, because it might get somebody in wrong, but it is from a large office in the Middle West, addressed to a clerk in the mailing division. It says:

"It is noted that in the January tests you cased 47 pieces per minute unobserved and 61½ pieces observed. With the early return of this communication I would thank you to explain the difference of 14½ pieces per minute."

In other words, while the clerk was being observed, the man stood over him with a stop watch and he cased 61½ pieces of mail. The unobserved test means that the man was being watched unknown to himself, whether from the overhead inspectors' gallery or whether from the adjoining case I do not know. And in that connection, it might be of interest to the committee to know that in every office in the country, any office of any size, at any rate, there is all along the walls a hidden gallery. The inspectors can enter that gallery from the outside, and sometimes they wear black dominoes so they can not be observed from down below. And from these points of vantage they look down and watch the men at work. The reason given by them, of course, is that it is a preventive against rifling the mails; but as a matter of fact, from the report to Congress last year, you will see there were out of 38,000 clerks only 160 of them detected in rifling the mails. The report does not show how many were detected by this particular method, but the report does show there was only 1 man out of 350 that is liable to do that thing. And I do not believe it is in accord with the spirit of our American institutions, particularly our Government institutions, to have men spied upon; to have 349 innocent men spied upon in order to catch one man who might possibly be guilty. I should think that ordinary police methods ought to prevail in detecting a man who would be weak enough to do a crime of that kind.

To return to the speeding-up question, Congressman, the clerk answered by saying that when he threw the 61½ letters per minute he was endeavoring, as requested, to see how many he could possibly case on a five-minute test. He was being tested with a watch, and, of course, he knew it and was going possibly a little beyond his normal speed. Then he says:

"This is a pace that it would be absurd to think of maintaining for eight hours. I do not know the conditions under which the 47 pieces per minute were cased, but am of the opinion that that is a reasonable rate of speed."

He did not know when he was observed when he cased the 47 letters per minute.

I will say in this connection—and you know it, Mr. Van Dyke—that mail is not uniform. Some of it is typewritten—that is, the addresses—and some of them are almost illegible; and you can not maintain a fair speed or as high speed on letters poorly addressed as you can on those typewritten or on business letters of business men.

The reply to that clerk's answer was "with a little effort you can maintain or exceed standard at all times, and I expect your future tests to show this."

In other words, by the use of a stop watch they were expecting to maintain more than a normal speed; and in that connection, too, here is something that might be of interest to the chairman of the committee, because it pertains to the New York office. A letter here from a clerk in the money-order division of the New York office—and he mentioned and gives the names of three men, and he says that these men have gone insane through the speeding-up methods that are in vogue there. He gives their names—I do not believe that I had better give them for the record, but the committee can read them if they so desire. It tells when they entered the service and when they resigned; and he said one of them committed suicide and killed his daughter, due to nervousness. Another was a nervous wreck.

He says that the above men were not always nervous, but since the pushing tactics were used during the past four or five years the men have changed.

That is in the money-order department of the New York office, in which, as you are aware, they operate a great many of these machines. He says:

"One sheet can not be paid properly in one hour, the time given by the superintendent. Some do it in less than one hour, but they do not check or examine the sheets, which is against the rules of the money-order department. Each machine is numbered, and a record is taken when the clerk sits down at the machine; also the number of the machine he is working on. This week he has ceased timing, but he is watching, and if anyone takes over an hour on a sheet he will surely get—"

He leaves that blank.

LETTER SENT TO CONGRESSMAN CARL C. VAN DYKE AFTER HE HAD INTRODUCED HIS BILL TO PROHIBIT THE USE OF THE STOP-WATCH AND TIME-MEASURING SYSTEMS IN THE POSTAL SERVICE.

NATIONAL FEDERATION OF POST OFFICE CLERKS,
Washington, D. C., February 17, 1916.

Mr. CARL C. VAN DYKE,
House of Representatives, Washington, D. C.

DEAR SIR: Permit me to thank you in behalf of the National Federation of Post Office Clerks for having introduced H. R. 8677, a measure to prevent the use of the stop-watch or time-measuring device or system in the Postal Service, reading as follows:

"*Be it enacted, etc.*, That it shall be unlawful for any officer, superintendent, foreman, or other person having charge of the work of any employee of the Postal Service to make or cause to be made with a stop-watch or other time-measuring device or system a time study of the movements of any such employee.

"SEC. 2. That it shall be unlawful for any officer, superintendent, foreman, or other person having charge of the work of any employee of the Postal Service to use the results or records obtained by a stop-watch or other time-measuring device or system in determining what amount of work or labor is to be done in a given time by such employee.

"SEC. 3. That any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not more than $500 or by imprisonment for not more than six months, or by both such fine and imprisonment.

"SEC. 4. That this act shall take effect upon its passage."

The use of the stop watch in timing postal workers at their tasks has long been a source of complaint for the railway mail clerks, post-office clerks, and letter carriers. Some measure of relief has come to the railway mail clerks since the elimination of the so-called "speed test" instituted by former General Superintendent A. H. Stephens, but the clerks and carriers are still subjected to the obnoxious practice of having a supervisory official time their movements at work. Legislation is therefore sought to have this inhumane system abated entirely in the Postal Service.

Organizations of postal employees have repeatedly passed resolutions at their conventions protesting against the timing systems and speeding-up methods in operation in the service. The department has frequently been memorialized by the service workers to stop the practice of timing them to determine their speed, yet this unjust method of harassing the employees is still in vogue in the post office.

The National Federation of Post Office Clerks, assembled in convention in San Francisco September 6 to 10, 1915, unanimously adopted these resolutions:

"Whereas a system of timing clerks to determine their speed at distributing mail is in effect in many post offices; and

"Whereas this system is unjust and unfair and detrimental to the workers' welfare and the efficiency of the service: Therefore be it

"*Resolved*, That we, the National Federation of Post Office Clerks, in convention assembled, protest against this inhumane method of determining an employee's fitness and capabilities; and be it further

"*Resolved*, That our officers present this protest to the department in the strongest possible manner."

Under date of October 16, 1915, the executive committee of the National Federation of Post Office Clerks transmitted to the Postmaster General this protest:

PROTEST AGAINST TIMING DEVICES.

"We voice our emphatic objection to the use of timing or clock devices to determine the speed at which a postal employee must work. The installation of such a system is a gratuitous affront to the supervisory officials, who have heretofore managed the forces under them sufficiently well to insure the expeditious dispatch of the mails.

"A clerk's record on scheme examination, together with the manner in which he performs daily the duties to which he is assigned, should suffice to determine his fitness for promotion or retention in the service. To harass him to maintain abnormal speed by timing his movements is not conducive toward increasing his efficiency. On the contrary, such methods tend to impair efficiency.

"We ask the department's advocacy of legislation to prohibit the use of timing devices in ascertaining the amount of work performed, or to be performed, by postal employees."

The National Association of Letter Carriers, in convention at Omaha, Nebr., September 6 to 11, 1915, adopted without a dissenting vote this resolution:

"Whereas the Post Office Department has during the past fiscal year introduced the speeding-up system; and

"Whereas this speeding-up plan is detrimental to the service, to the public, and to the employees; and

"Whereas the speeding-up plan is frowned upon and has been ordered discontinued in some departments by the Congress of the United States of America: Therefore be it

"*Resolved*, That our national officers are instructed to use all means in their power to secure the abolition of the speeding-up system."

Despite the appeals of the employees, the department sanctions the practice of "efficiency experts" and "desk" economists, who prowl around with watches in hand seeking to discover what fractional part of a minute a carrier has wasted in casing his mail or whether the clerks engaged in distribution are maintaining the standard of speed—a standard frequently set by the fastest man.

I received recently a letter from a Chicago clerk, who wishes his name withheld, which clearly expressed the injustice of timing a mail distributor to ascertain the amount of work he is doing. He says:

"The officials of the Chicago post office have arranged and instituted a speeding-up system absolutely on a par with the so-called Taylor efficiency system, condemned by the House Labor Committee after exhaustive hearings. Holding a watch to ascertain how many letters per minute a clerk or carrier is distributing is an unpracticable and unjust method: First, because the penmanship on various letters and postal cards varies to such an extent that it is impossible to standardize time for distribution. The clerk or carrier may receive a run of mail that contains a typewritten letter addressed to every person in the block, and distribution of them can be made speedily. Second, the effect of a speeding system on the human being is the same no matter in what industry it is attempted. It results quickly in a nervous breakdown, and particularly does it reduce the efficiency rather than increase the efficiency of any man; and, further, it stultifies the initiative and makes of the human being as far as possible an automatic piece of mechanism."

While the tendency to speed up the postal workers has extended to all branches of the service, the use of the stop watch to determine a worker's speed is most common among those clerks engaged in the distribution of mail. This is a work that lends itself to an application of the timing systems more readily than any other clerical duty.

And yet the use of any timing device upon mail distributers is glaringly unjust. These men must all qualify at frequent intervals by taking what is known as a case examination, when their knowledge of their work, their accuracy, and their speed can be definitely determined. If a distributer is slow and inaccurate, his examination will disclose these shortcomings. It is unnecessary, therefore, to stand behind him with a watch or to surreptitiously spy upon him from an overhead hidden gallery.

These post-office distributers, the hapless victims of the stop-watch practices, must acquire their knowledge of postal work after or before hours upon their own time. After eight hours of steady and nerve-racking toil, too often in a germ-laden, dusty atmosphere, in poorly lighted and illy ventilated basements, they must study intricate distribution schemes at home to better equip themselves for office work. The majority of these men work at night. To compel an employee to devote his time at home toward acquiring knowledge of use only in the post office, and then to prod him into abnormal activity in applying that knowledge by timing his movements, has a tendency to impair rather than improve the efficiency of the service.

The First Assistant Postmaster General in his testimony before the House Committee on the Post Office and Post Roads stated that the installment of the so-called two-division plan in the larger post offices made possible such great economies that he was asking for only a 3 per cent increase instead of the usual 6 or 7 per cent to take care of the normal expansion of the service. This statement, coupled with the fact that the department is asking for but 1,300 additional clerks—the smallest number in many years—plainly indicates that the speeding up of the distributers will continue unless Congress takes some action to prevent it. The two-division plan means to the distributers that they must adapt themselves to different kinds of work. They must acquire a knowledge of both the incoming mail schemes and the outgoing mail schemes. They must study twice as much at home. At work they are shifted from pillar to post, always subject to the fear that a time test is being taken when they are least prepared for it. It is unfair to this class of workers, whose efforts the First Assistant Postmaster General states have made economies possible under the two-division plan, to keep them under the exactions of a time study or speed test. There is a big, pulsating, human factor behind this gigantic task of keeping the Nation's mail in constant motion. These men should not be degraded to the level of machines. Let Congress puts its emphatic stamp of disapproval upon the use of any time-measuring system which tends to grind down the spirits and hopes of those performing the most arduous tasks in the Postal Service.

In my judgment the moral effect of the enactment of this legislation will not be lost on the administrative officials of the service. If Congress says it will not tolerate the use of a time-measuring system, it says, in effect, that it disapproves of the speeding up, the harassing, the demoting, and all of the petty annoyances to which the clerks and the carriers have been subjected.

With sincere appreciation of your consistent support of remedial postal legislation, I am

Very truly, yours,

THOS. F. FLAHERTY,
Secretary-Treasurer.

From the post office the letter goes to the railway mail car, and in the Railway Mail Service they have what is known as the plus-and-minus system, and I just want to say this in regard to that, that the man, at the risk of his life, can receive 500 plus points, and that is the only way he can receive 500 plus points, and there are five different ways in which he can receive 500 minus points. Then, there is what is known as the 100 per cent efficiency night.

One hundred per cent efficiency night is a new scheme to utilize every moment of the time of the railway postal clerk from the time he reports for duty until he reaches the other end of his run. While there is no objection to this from the standpoint of the clerk himself, he realizing that he is supposed to deliver eight hours' work for every day's wage, still the system itself is obnoxious, not only because it tends to drive men, but also because of the poor service to the public which is bound to result from a system of this kind. This system has recently been inaugurated in the tenth division by Supt. Reed, and, in passing, I desire to state that one of the big troubles of all of the systems of efficiency in the service as adopted by different superintendents and different supervisory officials of the Post Office Department are different in character and different in the way that they are enforced by these different supervisory officials. I do not suppose there is another division in the United States where the 100 per cent efficiency nights is in force. It is in force only on certain lines or railway post offices in the

tenth division. Consequently we have this peculiar effect: Clerks running on one railway post office are subjected to rules and regulations which clerks on parallel lines are not subjected to. This causes dissatisfaction amongst the employees, with the resultant lack of efficiency within the service. Now, let us see just how it works out as to delivery of the mail. I am going to give a specific case. The St. Paul and Jamestown railway post office, running on the Northern Pacific Railway west of St. Paul, Minn., prior to the time of putting this so-called time-saving system into effect was manned by five men through. After a time study was made it was determined that Friday night was to be used as a 100 per cent night. Five men were allowed to go through on this night. Saturday was also a 100 per cent night and had five men through, but Sunday and Monday were figured as 60 per cent nights on account of the falling off of the volume of mail handled on Sunday and Monday nights, and only three men were allowed to run through from St. Paul to Jamestown on these nights.

As I have stated previously in my talk, because of the peculiarities existing in the Postal Service it is practically impossible to determine upon a standard hour's work, or a standard day's work, in so far as a timing device is concerned. All Monday nights of the year and all Tuesday nights, Friday and Saturday nights do not correspond exactly as to the volume of mail carried on any one railway post office. If this train goes out on the coming Sunday night with four tons of mail in the car, that is no reason why the Sunday following they will not have more than four tons of mail. This is especially true in the northwestern country, where during the entire winter season trains are missing connections and delayed trains are the regular instead of the exceptional case, and there is no way of determining in advance just how much mail any particular railway post office will carry at any given time in the future. Consequently, it has been the practice of the department to so man the crews on different trunk lines so that they were able to handle the mail on the heaviest night in the week. The same number of men would constitute the crew on the two or three light nights in the week in order to take care of any emergency which might arise and insure the speedy delivery of the mail. This safeguard of the speedy delivery of the public's mail was done away with when this time study had been finished and the 100 per cent efficiency nights put into effect, for if on any of the lighter nights in the week connections which have been missed by previous trains are received by the train having the 60 per cent crew, you will find that it will be impossible for these men to complete their distribution because the result of time study was such as to take care of only the amount of mail which the official putting this system into effect presumed would be received on this night, and no provision has been made to take care of emergencies. What happens? When the clerks reach the other end of the run they find that they have not been able to complete their distribution and this mail is turned over to the next crew unworked, or returned to the initial point for another ride over the entire length of the road. However, the mail of the business men, and others, of that section of the country has been delayed from 12 to 36 hours. Possibly they will not discover the fact, but nevertheless their mail has been delayed. I hardly think the public, when acquainted with the true facts of cases of this kind, would clamor to any great extent for such service.

I do not believe it is the purpose of Congress to enact legislation that will allow economy in any branch of the service when the very best service to the public is not obtained. It is only a few years ago that in this same branch of the service speed tests were put into operation. This was tried out and found wanting. For reasons hereinbefore stated, it was found that it was a very impractical proposition.

By an order effective May 25, 1915, signed by Mr. J. P. Johnston, the general superintendent of the Railway Mail Service, the "speed test" was officially rejected.

This order of the general superintendent was issued following a unanimous recommendation made by all of the division superintendents of the Railway Mail Service. The division superintendents in conference adopted a resolution advising that for service reasons the "speed test" be discontinued.

One of the division superintendents who participated in this conference made the following statement:

After considering the question thoroughly, we decided that it was for the best interests not only of the service but of the clerks as well that the speed tests be abolished as a part of our efficiency-rating system.

There are two reasons for this. The first is that the speed test is extremely difficult to apply, so that the basic principle involved in it could not be applied with fairness and justice either to the clerks or to the service.

The second reason for the action taken by the superintendents is that this test could not be so administered as to get from it a true rating, so far as the efficiency of any of the clerks is concerned.

Notwithstanding this sad experience that the Railway Mail Service had with the "speed-up" system, other branches of the Postal Service continue to employ the same.

The following is the post-office speed test of the city of Cincinnati. This was submitted in the testimony of the national secretary of the carriers' association:

POST-OFFICE SPEED STANDARD.

After making time allowances as noted below, carriers should distribute the number of pieces per minute indicated in the following tables:

Two-trip carriers.		Three-trip carriers.		Four and five trip carriers.	
Percentage.	Pieces.	Percentage.	Pieces.	Percentage.	Pieces.
10	13	10	14	10	16
15	12½	15	13½	15	15½
20	12	20	13	20	15
25	11½	25	12½	25	14½
30	11	30	12	30	14
35	10½	35	11½	35	13½
40	10	40	11	40	13
45	9½	45	10½	45	12½
50	9	50	10	50	12
60	8	60	9½		

"Under 'papers' is included everything except letters, circulars, and cards; time allowances should be made as follows: One minute per piece for registered mail, C. O. D. parcels, insured parcels, postage-due mail, and communications; one-half minute for each change of address order written up; one minute for each seven pieces marked up.

"To arrive at the rate of speed make proper deductions from the total office time on account of 'time allowances' and divide the number of pieces of mail of all classes handled by the number which represents the net number of minutes of office time. For example, a two-trip carrier whose total office time amounts to 1 hour and 31 minutes handles 800 pieces of mail, 35 per cent of which is classed as papers; he handles 2 registered pieces, 1 postage-due piece, answers 1 communication, and marks up for forwarding 77 pieces and enters 4 orders. Making proper deduction for 'time allowances' in accordance with above table, his net office time is 91 minutes less 17 minutes. Dividing 800 by 74, we get 10.8, which shows the average number of pieces handled per minute, and which should be compared with the above table.

"Many carriers should be able to exceed the rates of speed indicated in the above table, and no carrier should fall below the requirements. It can not be supposed that all of the carrier force can sustain their work at the standard fixed by the department, and for this reason there will be routes which are not served according to these standards. Those carriers who can not serve a standard route should be assigned to routes at those outlying stations where they would serve routes in accordance with their abilities, and these assignments should carry a less salary than that paid men serving standard routes. For instance, if it is found after a thorough test that any carrier is unable to conform to the departmental standards of work, he should, if receiving the maximum salary, be reduced in salary, on the grounds of inefficiency, and assigned to a station where undertime, according to the standard of work, is unavoidable."

On October 14, 1915, a test was made of 210 carriers in the Cincinnati post office, divided as follows:

Forty-six six-trip carriers; 10 five-trip carriers; 30 four-trip carrires, 31 three-trip carriers, and 93 two-trip carriers. Out of a total of 210 men 130 fell below the standard in this test. Of the six-trip carriers 23 measured up to the standard and 22 fell below it. Five-trippers, 2 carriers made the standard and 8 fell below; of the four-trippers, 4 men made the standard and 26 fell below; of the three-trippers, 8 measured up to the standard and 23 fell below; of the two-trippers, 43 made the standard and 50 fell below; of the total number, 80 carriers measured up to the speed test of the department and 130 fell below.

Of the test taken on Friday, October 15, 1915, out of a total of 206 men but 72 measured up to the standard and 134 fell below the standard.

The statements referred to are as follows:

CINCINNATI, OHIO.

Result of speed test taken on Thursday, Oct. 14, 1915.

[Number of carriers covered by test 210; forty-six 6-trip carriers; ten 5-trip carriers; thirty 4-trip carriers; thirty-one 3-trip carriers; and ninety-three 2-trip carriers.]

Number of trips.	Number of cards, letters, circulars.	Number other classes.	Number of Reg. Ins. c. o. d.	Number postage due.	Communications answered.	Orders booked.	Forwarded marked up.
6	68,716	5,256	191	363	3	33	4,346
5	10,382	1,058	12	48	0	20	600
4	26,591	4,247	32	84	2	46	1,831
3	21,159	5,528	55	34	4	101	2,209
2	42,642	13,485	70	63	6	123	4,237
Total	169,490	29,574	360	592	15	323	13,223

Table showing time consumed actually.

[First column, time allowance according to weights given in standard table, second column, and time after allowances are deducted and by which the averages are computed are shown in the third column. Time computed in minutes.]

Number of trips.	Actual time.	Allowances.	Time.	Average.	Number of men.
6	5,810	1,195	4,615	16	46
5	1,102	158	944	12.1	10
4	2,900	402	2,498	12.3	30
3	2,848	458	2,390	11.1	31
2	6,125	805	5,320	10.5	93
Total	18,785	3,018	15,767	12.6	210

NOTE.—Fifty-six men, five and six trippers, averaged 15.3, standard 16; 30 four-trippers averaged 12.3, standard 15.5; 31 three-trippers averaged 11.1, standard 13; 93 two-trippers averaged 10.5, standard is 11.5. Out of a total of 210 men, 130 fell below standard.

Table showing the number of men in each class who attained the standard.

	Standard or better.	Lower than standard.	Total.
6-trippers	23	23	46
5-trippers	2	8	10
4-trippers	4	26	30
3-trippers	8	23	31
2-trippers	43	50	93
Total	80	130	210

CINCINNATI, OHIO.

Result of speed test taken on Friday, Oct. 15, 1915.

[Number of carriers covered by test 206; forty-four 6-trip carriers; nine 5-trip carriers; twenty-eight 4-trip carriers; thirty-four 3-trip carriers; and ninety-one 2-trip carriers.]

Number of trips.	Number of cards, letters, circulars.	Number of other classes.	Number of Reg. ins. c. o. d.	Number of communications answered.	Number of orders booked.	Forwarded marked up.	Postage due.
6	70,619	6,216	241	.....	15	4,212	341
5	9,772	1,290	16	1	5	1,599	70
4	27,399	6,003	55	1	20	2,173	65
3	25,369	8,828	46	5	66	3,161	34
2	45,442	17,543	87	7	90	5,015	82
Total	178,601	39,880	445	14	196	15,160	592

Table showing the time consumed.

[First column shows the actual time, second column shows time allowances, and the third shows the time after the allowances have been deducted, and by which the averages are arrived at. Time is shown in minutes.]

Number of trips.	Actual time.	Allowances.	Time.	Average.	Number of men.
6	5,747	1,190	4,557	16.8	44
5	1,052	174	878	12.5	9
4	3,152	441	2,711	12.3	28
3	3,709	569	3,240	10.5	34
2	7,233	937	6,196	10.3	91
Total	20,893	3,311	17,582	12.4	206

NOTE.—Fourty-four 6-trippers averaged 16.8, 10 per cent of papers standard demanded 16; nine 5-trippers averaged 12.5, 10 per cent of papers standard demanded 16; twenty-eight 4-trippers averaged 12.3, 20 per cent papers standard demanded 15; thirty-four 3-trippers averaged 10.5, 25 per cent papers standard demands 12.5; ninety-one 2-trippers averaged 10.1, 35 per cent papers standard demands 10.5. Out of a total of 206 men 134 fell below the standard.

Table showing the number of men in each class who attained the standard.

	Standard or better.	Lower than standard.	Total.
6-trippers	22	22	44
5-trippers	1	8	9
4-trippers	6	22	28
3-trippers	9	25	34
2-trippers	34	57	91
Total	72	134	206

It will be seen from the foregoing that the department is maintaining a speeding-up system which exacts the maximum amount of work from every carrier.

Please note carefully that in the test made on October 14, 1915, out of 210 carriers who were given this test only 80 carriers measured up to the speed test of the department and 130 fell below. No further mention need be made of this, as it is very apparent that, even if a test of this kind is to be considered necessary in the service, that certainly any test in which 130 out of 210 carriers would fall below the required speed could not be a fair and equitable test. So it is in the Postal Service. One of the principal reasons of opposition to any test of this kind is not only of the test itself but because of the abuse of such a test by supervisory officials. Again, let us see how the public is affected by this system. The Government workday is an eight-hour day. In establishing the length of a route which is to be covered by a carrier an inspector, foreman, or roundsman goes out over the route with a carrier and determines by the use of a watch, and sometimes a pedometer, the length of the route and the number of stops which constitute a day's work for that carrier. In determining this the uncertain part of it is the amount of mail which is handled on this special route is never the same. Probably the day in which this route was established was on a Tuesday, or a Wednesday, which are lighter days than the following Monday. This is because on Monday they have the accumulation of Sunday's mail. The work this carrier could perform on a Wednesday was definitely measured. Therefore, when the added amount of mail is given him to distribute he finds that he can not complete his distribution in a given time. Consequently, under the rules of the department it is necessary to take back the undistributed mail to the office with a consequent delay in the delivery of that mail of at least from 16 to 20 hours on a two-trip route and nearly as great a delay on any other route. This complaint is not of a necessity made by the carrier, because it does not affect him personally half as much as it does the persons who should have received the delayed mail on time.

As a member of the Labor Committee, and being interested in this proposition of time study from the standpoint of the Postal Srvice, I asked different witnesses who came before the committee protesting against the stop-watch bill what their opinion of the efficiency system employed by the postal department was and as to whether or not such efficiency systems as used in the Post Office Department were, to their minds, good ones. Each and every man admitted before that committee that he knew nothing about the efficiency systems used in the Post Office Department. I believe that one of these men was a member of the so-called "committee of ten" who had already condemned the bill that I had introduced, but when cross-examined before the committee cheerfully admitted that he did not know the difference between a tie sack and a pouch; how a man received plus or minus points; what kind of speed tests were used, had never heard of a full railway post-office car. In fact, he plead ignorance of the entire proposition, but still had the temerity through the medium of different publications and letters sent out to different civic organizations to oppose the bill introduced by myself. It might be interesting to submit at this time extracts from Henry R. Towne's testimony on the Tavenner stop-watch bill.

EXTRACTS FROM STATEMENT OF HENRY R. TOWNE ON THE TAVENNER STOP-WATCH BILL.

Henry R. Towne, of the Yale & Towne Co., is one of the most widely known exponents of scientific management. He believes abuses of the stop-watch in the Postal Service should be stopped.

Mr. VAN DYKE. As I understand this bill, of course, primarily, it is to apply to Government employees entirely. Certainly it is to apply to abuses which are being practiced in the Government service at the present time, and you have no objection to correcting any abuse which is in existence at the present time in the Government service, have you?

Mr. TOWNE. None at all; on the contrary, I am glad to promote it.

Mr. VAN DYKE. We have, for instance, probably some 130,000 to 140,000 postal employees, and each branch of the Postal Service is being subjected at the present time to a time system, in which they use time-saving devices. For instance, on carriers they have a pedometer on the leg, and they time them in order to find out what is the quickest possible time they can cover a route, and the other men have to come up to that time, or have just recently, and they have been putting them back into the collection service or other service of that kind. In other words, there is no bonus system. It is all the other way. In the Railway Mail Service they have inaugurated a system whereby they take the heaviest night in the week, where primarily, or before inaugurating this system, they used to have five men on a crew, they put the five men out on the heaviest night and reduced that crew proportionately each night according to the amount of mail. If they get an excess of the regular amount of mail on any one of these nights, these men have to speed up, practically at the same rate as a man at an ordinary walk when he has to go on a dog trot, in order to clean up and distribute at this rate on their route.

Mr. TOWNE. Do you call this scientific management that you are describing?

Mr. VAN DYKE. I am talking about the provisions of the bill. The bill, as intended, says "time-saving device or system." This is a timing system.

Mr. TOWNE. Supposing under this system you have just described it is found out that a certain carrier on a route in New York City has 20 or 30 per cent longer route than it is supposed he had, due to his having to go into and out of corridors, as nearly all do in the lower part of the city, and that thereupon the department says, "Why, here, this rate is not just and fair; that man ought to have a higher rate or a shorter route. He is being treated unfairly." Would you object to the application of the system for that service?

Mr. VAN DYKE. The bill as it stands at the present time does not take that into consideration, but it does take into consideration the abuses prevalent in the service at the present time, and all this bill seeks, as I understand, at the present time, is to correct those abuses which are prevalent in the Government service. As a matter of fact the bill does not state that even the Government departments can not time the clerks in order to discover the cost of operating at all, but it does seek to prohibit abuses which are being practiced at the present time.

Mr. TOWNE. Would you not try to eliminate abuses in both directions? Suppose, for example, the postmaster of New York City found on one particular route the carrier taking two hours, where his predecessor took only one hour, and he asked him about it and he said, "I can not do any better," and thereupon the postmaster should put some other carrier, in whom he had confidence, on the route and told him to take it a day or two and he found he could do it comfortably in one hour. Would you say that was a misapplication of scientific methods?

Mr. VAN DYKE. It has been my experience, after my varied experience in the Post Office and other departments of the Government, that we never have to legislate along those lines; that all we have to legislate for is to prohibit abuses the other way.

Mr. TOWNE. Do you not think a case of that kind ought to be subject to correction as well as the other?

Mr. VAN DYKE. it is taken care of at the present time in the service. They have no bonus system, but they have a demerit system or a plus and minus system. There is one way in that service by which employees can obtain 500 plus points—that is by risking life—but there are six distinct, different ways they can get 500 minus points. For instance, he can make a misstatement to his superior. It is abuses of that kind we are endeavoring to correct in this bill.

Mr. TOWNE. I should be with you most heartily in any legitimate effort to prevent abuses, but in preventing abuses do not let us legislate good things out of existence, still less make them penal.

Now, then, Mr. Chairman, as I understand this amendment, and, as a matter of fact, the entire proposition, it does not apply in any shape or manner to private employers. It is simply legislation which may have a tendency to eliminate certain abuses that are prevalent at the present time in different branches of the service, and while I freely admit that it is absolutely necessary, in the Postal Service especially, to keep a record as to the amount of time put in by different employees, and while it is impossible, especially in the Railway Mail Service, to work the men eight hours six days each week, it is therefore absolutely necessary to keep a system of time credit; still I do not believe that it is for the best interest of the men, the department, or the public who should be served by his department, to inaugurate, or keep in effect, any system which has a tendency to speed a man beyond his normal ability to work.

The CHAIRMAN. The time of the gentleman from Minnesota has expired.

Mr. MANN. Mr. Chairman, I yield five minutes to the gentleman from Kentucky [Mr. SHERLEY].

Mr. SHERLEY. Mr. Chairman, it is impossible in five minutes to discuss this question, but I just want to suggest this serious thought to the committee. We have very largely increased the manufacture by the Government of munitions of war. Yesterday I spoke in favor of a Government armor plant. Much of the argument that has been made in favor of Government manufacture has been on account of the record that has been made in cheapness of manufacture; and, despite the statements that were made by the gentleman from Illinois [Mr. TAVENNER], I know from very many personal talks with Gen. Crozier, he considered the efficiency of the arsenals would be greatly interfered with by the abolition of a system that he and those conversant with it believe to be modern and enlightened.

It is possible to abuse anything. You can so arrange a task that is unfair. You can so speed a man as to wear him out; but the Government does not do so. The gentleman used the illustration of a man running instead of walking. It would have been a fairer illustration if he had suggested a man going in a straight line instead of going one way and then turning at a right angle to get to the same point. In other words, this system is one showing you how to go straight to the task. It is a method for creating a fair standard, and then saying to the workman, "If you work beyond that, if you are better than your neighbor, and have more efficiency, you shall be paid for it."

Now, there is objection to it if it is abused by an unfair standard, but where there are abuses the remedy is not by abolishing the system, but doing away with the management responsible for the abuse. We can control the Government arsenals without abolishing a proper system. But the real objection is the objection made by the man who is below the average and who wants to have his inefficiency made the standard of a day's labor and who objects to another man making more money than he.

Now, I have not time to refer to it here, but I will put in the RECORD one letter from a man by the name of John Driscoll. I do not know who he is, except he is employed at the Watertown Arsenal. He writes a letter to the Secretary of War, which the Secretary transmitted to the chairman of the Committee on Appropriations. Hence I came to know of it. This letter states that the men there are satisfied, and that under this system he is making 27 per cent more money than he did theretofore. He does not want anybody to deprive him of the opportunity of making that amount of money.

And I want you to read the letter which was submitted by the Secretary of War, Mr. Baker. He is a man who has been rather noted for his humanitarian views. He was an ideal mayor of Cleveland. No man there had any more friends among the laboring classes. I do not believe that you could get him to recommend a system that he believed was detrimental to the real interests of the working classes. If I did not believe that the system would be of benefit not only to the arsenals but to the men employed there I would oppose it as quickly as anybody else. I am not willing to coin the lives of men into a profit either for the Government or for a private manufacturer. But I recognize that this is an era of progress. If a man can be taught to do a given thing easier and better and quicker than has been done before, you have no right to deny him that benefit. You turn back the dial of time when you undertake to say that a thing can not be done in a right way and in a proper method. I deny that there has been any evidence of abuse in the arsenals, and in the absence of that I am not willing to say to the administrative officers of the Government that "You shall not use an economic system; you shall not have such a method."

Under leave to print, I insert the letters referred to:

[House Document No. 1053.]

PREMIUM PAYMENTS IN GOVERNMENT EMPLOYMENT.

Letter from the Secretary of War, submitting information relative to time studies and premium payments in Government employment.

WAR DEPARTMENT,
Washington, April 20, 1916.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

DEAR MR. SPEAKER: There is pending in the House of Representatives a bill (H. R. 8665), introduced January 11, 1916, to regulate the method of directing the work of Government employees, the object of which is to prohibit at the Government arsenals what are known as time studies and premium payments. Similar legislation to that which is carried in the bill was enacted on the Army appropriation bill which was passed at the last session of Congress, in the form of a prohibition of the payment from funds appropriated in the act of the salary of any person engaged in making or directing time studies or of any premium. There is therefore apparent the possibility of similar legislation at the present session, either in the form of a separate act or in the form of a restrictive prohibition upon an appropriation act. I think that such legislation would be unwise.

The time study referred to may be defined as a method of ascertaining by careful observation and study in connection with a timing process the most advantageous manner in which a given piece of work can be done and also the time in which it can reasonably be expected to be done by following this best manner. The premium is an extra cash compensation which is paid to a workman for accomplishing the work in this reasonable time, or for approaching the time within certain rather liberal limits, the compensation being in addition to the regular wages of the workman, which are not disturbed, and depending in amount upon the degree to which he approaches the reasonable time which has been ascertained. The timepiece is used only in the study of a new job, for the purpose of working it out properly and for assigning the proper time for its performance. It is not held over a man for the purpose of ascertaining whether he is working industriously, and its employment is of less and less frequency as information is accumulated which makes special study unnecessary. The premium is the workman's share of the economy which is effected by the system.

This system has now been in practice in the Ordnance Department for something like five years. At the place at which it has been most fully put into effect, the Watertown Arsenal, Mass., it has resulted in very substantial economy of production and in a material increase of the earnings of the employees. The last monthly report from the arsenal indicates that the total amount paid in premiums during that month was $3,315.61, which was earned by 311 employees, an average of about $10.66 each. The total number of mechanics and workmen at the arsenal was 554, of which approximately 56 per cent worked during the month on premium jobs. The total pay roll of the arsenal for the month was $45,250.85, of which amount it therefore appears that slightly over 7.32 per cent was paid in premiums. The premiums are in addition to the day wages of the employees, which are regulated in accordance with those of the vicinity for work of similar character to that done at the arsenal. During the five years that the system has been in operation at the arsenal neither the day wage nor the number of employees has diminished, but the amount of work done and the average earnings have increased in an important degree.

The legislation which is being urged upon Congress is advocated by organized labor, which is opposed to the system intended to be prohibited for the essential reason which is embodied in the charge that it is a speeding-up system. I can not understand this charge as having any other meaning than that the work required of the employees by the system is unduly severe. Of the truth of this charge in the practice of the system at the Watertown Arsenal there is no evidence whatever, but there is a good deal of evidence the

other way. There is no complaint of overwork at the arsenal, and no workman has been discharged because of failure to meet the requirements of the system. To prohibit the system of which the records show undoubted advantages, both to the Government and to the employees, because of a charge unsupported by evidence, or even by any attempt at evidence—for there has been no effort to prove overwork at the Watertown Arsenal—seems to me to be most unwise.

There has been no investigation at the Watertown Arsenal which has resulted in a report condemnatory of the practice at that establishment. This department has endeavored to secure an investigation and report from the Federal Commission on Industrial Relations, created by the act of August 23, 1912, and that commission employed a committee which did make a very thorough investigation. Neither the commission nor its committee, however, made any mention of the Watertown Arsenal in its report, but both of these bodies confined themselves to a general discussion of the relations of scientific management and labor largely as a social question. The commission was not able to agree, and conflicting reports were made by groups of its membership. The report of the special investigation committee has not been made public, but the substance of it is understood to be contained in a book entitled "Scientific Management and Labor," by the chairman of the committee, which leaves the subject of scientific management in its general practice in shops which have introduced it still open to discussion. The only investigation at the Watertown Arsenal of which the result has been published in a report is that which a special committee of the House of Representatives made some four years ago, and as a result of which the committee recommended that there should be no legislation upon the subject. There have been expressions from the employees at the Watertown Arsenal both for and against the system. There are evidences that at least some of the expressions against it have come from representatives of organized labor, but I am persuaded that this opposition proceeds from a mistaken theory; for while it is obviously true that a piecework system in which the pay of the employees is based solely on a piece price and high-speed machinery is used to drive operatives harder than is consistent with their physical and nervous welfare, is objectionable, it is equally true, in my judgment, that the system above described as operative in the Watertown Arsenal is not open to either of these objections. The Government surely should not be denied the opportunity of securing efficient work from its employees without an investigation of the facts which would justify the action proposed to be taken.

All of my predecessors in the office of the Secretary of War who have held that office since the introduction of the system at the Watertown Arsenal have been in favor of its retention and have opposed efforts to abolish it. I have been in this office too short a time to have had an opportunity to visit the arsenal or to familiarize myself thoroughly with the details of the practice at that establishment, but I have long been interested in both aspects of the problem presented and do not feel that I am an entire stranger to the controversy merely because of the recentness of my contact with this particular application of it.

The relation between fatigue and efficiency is being widely studied, and in some of the European countries astonishing statistical demonstrations of the effect of speeding-up processes have already been obtained. There can be no question that the whole nervous and physical system of the operative is imperiled, and his strength, as a part of the national strength, decreased, if he is either urged or induced to work beyond a sound physiological maximum. On the other hand, inefficient production is bad for the operative. It is always bad for a man not to do his best, not to make the most of his opportunities and of his labor, and to produce less than he can under a system of proper inducements and compensations. It is bad for the national life, for its industrial efficiency, and for its squareness to have its component parts, whether they be operatives in an industrial plant, professional men, or public officers, turning into the aggregate either a product so excessive that it represents a deterioration in their physical and nervous strength, or a product so insufficient as to represent less than their honest and safe best. To strike the happy mean involved in these statements is, of course, difficult, but at the Watertown Arsenal we seem to have made a fair approach to it. The wages paid to our operatives as a flat rate, irrespective of their response to the time system, is the current rate of the community for similar work, and in addition to that, premiums are offered, not large, but large enough to stimulate continuous and faithful activity. So far as I know, there is not a case on record at Watertown since the introduction of this system of a nervous breakdown or physical exhaustion due to excessive work, nor is it claimed that the operatives in that plant, protected as they are against long hours by a wise eight-hour provision, are in any sense driven or hurried beyond a fair and safe limit.

As I am not in any sense personally responsible for the work which has been done at the Watertown Arsenal, I can be permitted to say that, in my judgment, it represents an achievement of which both the legislative and executive branches of the Government can be justly proud. The reproach is often made that the public can not conduct an economical and efficient industrial enterprise, but no such charge can be brought against the Watertown Arsenal, and I think it would be a grave misfortune to the public service and to the employees of the Government there engaged if any action were taken prejudicial to the system which is working so well, without a special investigation at the arsenal itself which would make a comprehensive study of the results of the system, both in output and upon the operatives. Similar studies have been made in other places; there are a great many experts who know exactly how to make such studies, and the information presented by them could be weighed and proper value given it in determining a future policy.

Sincerely, yours,

NEWTON D. BAKER,
Secretary of War.

WAR DEPARTMENT,
Washington, May 5, 1916.

Hon. JOHN J. FITZGERALD,
Chairman Committee on Appropriations,
House of Representatives.

DEAR MR. FITZGERALD: On April 20 last I wrote a letter to the Speaker of the House of Representatives in regard to the bill (H. R. 8665) prohibiting the use of time study and premium payments at Government establishments. In this letter I speak of the possibility of this prohibition either through the passage of the bill referred to or by means of a restrictive prohibition upon an appropriation act, similar to the one placed upon the Army appropriation bill at the last session of Congress. As the fortification bill, which is in charge of your committee, carries the appropriations covering most of the work which is done at the Watertown Arsenal, the place where the time-study and premium-payment system is in practice in the ordnance department, and is thus likely to encounter a proposed amendment prohibiting expenditure of its funds under this system, similar to the amendment which was added to the Army bill at the last session of Congress, I take the liberty of inviting your attention to my letter to the Speaker, which was published as House Document 1053 of the current session, and also of forwarding to you herewith a copy of a letter which I have just received from Mr. John Driscoll, a machinist employed at the Watertown Arsenal, who states with some emphasis and some detail his satisfaction with the system of payment in practice at the arsenal and his belief in the satisfaction of his associates, together with his hope that the system will be allowed to remain. In case an amendment of the tenor suggested shall be offered, I hope that you will give these papers consideration.

Sincerely, yours,

NEWTON D. BAKER,
Secretary of War.

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16 LADD STREET,
Watertown, Mass., April 26, 1916.

The honorable the SECRETARY OF WAR,
Washington, D. C.

DEAR SIR: In February of 1915 I took the liberty of addressing some communications to the Members of Congress upon the question of the abolition of the so-called Taylor or premium system, then and at present in force at the United States Arsenal at Watertown, Mass., where I am now, and for 20 years past have been employed as a machinist. The opponents of the present premium system were not successful in that attempt to abolish it and we have continued to enjoy its benefits from that time to the present.

Another attempt, however, is now being made to deprive us of the benefit of this premium system, and it is for the purpose of enlisting your voice and vote in favor of the system and for the benefit of those of us, by far the majority of the employees of the arsenal, who have prospered under the beneficent provisions of the premium system, that I now address you.

Permit me, therefore, to briefly set forth some of the facts concerning the situation as I know it to exist at the Watertown Arsenal: There is at present employed about 178 machinists; of this number, 134 are working under, and are in favor of retaining, the present premium system.

The balance of the employees are largely in favor of retaining the present system, but for personal reasons do not wish to take an active part in an effort to retain it, or to be openly identified as its supporters. A very small part of the present working force desire the abolition of the present system.

I am not going to state the reasons why this small minority runs counter to the wishes of the great majority of the employees. Their reasons for so doing might be ascertained.

In common with the others who are in favor of the present system, I have been able to earn an average of 27 per cent over ordinary wages, and that, too, without feeling that I have at all overworked myself. I desire, as do the other employees who desire that the present system be retained, to spend my time while in the shop in an earnest effort to render a good day's service for a good day's wage and to reap the benefit that comes to me as a result of the system now in vogue by continued conscientious effort. I do not feel at all as if I were a slave, driven to my utmost endeavor by a hard-hearted task master; rather do I enjoy my work, conscious that by its fair performance and possibly a little added effort I may win the prize which will more than compensate me for any extra care or diligence that I may exercise. I have been reaping these benefits since the installation of this premium system, and I desire, for the benefit of myself and my family, to continue to reap them in the future, and I feel, as does a great majority of my coworkers, that the right to earn these premiums should not be taken from us arbitrarily upon the invitation of a few men who are either ignorant of or entirely misinformed regarding this matter which so vitally concerns the interest of the workers at this arsenal. There is, save for the discontent of these few men, a feeling of harmony existing at the Watertown Arsenal between those in authority and the workers which is unsurpassed, I believe, in any other governmental or private institution in the country. These relations will be shattered if the present system is abolished, and they ought not, I respectfully submit, to be disturbed.

Under the present system the records of the men are open to the inspection of those who have the right to see them, and each individual is assured that his earning capacity is limited only by the length of the working day and his own faithfulness and diligence.

You will not find among those who desire the abolition of the present system any of the employees who have, by faithful work, earned and merited substantial premiums, but you will find among the agitators for the destruction of the present situation those who have not earned premiums and who are contented, seemingly, to do as little for their day's wages as they possibly can do and retain their positions. In these days "efficiency," which, after all, means common sense and skill applied to the task in hand, and lack of waste in its performance, is a slogan of all industrial concerns. Private enterprises employ efficiency experts to advise employers; not so much on the question of speeding up the workers as of conserving the workers' energies, and directing them intelligently to the end that greater production may be had.

If the wishes of the opponents of the present premium system are heeded and the system itself abolished, the Government will find itself in competition with private enterprises, unable to compete with them in the open market, because of the better conditions which obtain in private shops and the lack of incentive in Government shops to the worker to give the best that there is in him skillfully, energetically, and cheerfully.

We produce at the Watertown Arsenal, under the conditions which now obtain, in a manner and to an extent second to none under normal conditions. I predict that if the present system is abolished the best men, the ambitious men, will leave the governmental employ and will seek other field where their skill and fidelity will be recognized and more worthily compensated. At the Watertown Arsenal we have no real grievances.

If the workers, individually or collectively, feel that they have a grievance, they are encouraged by those in authority to make that grievance known. If it is a just one, it is remedied; if it is unjust, the injustice of it is pointed out and the men are ordinarily satisfied.

This spirit of helpful cooperation will be destroyed, in my judgment, by the abolition of the present system.

I have never known conditions, during my 20 years' service in the Watertown Arsenal, to be as satisfactory as a whole to the workers as they have been during the past four years, during which time we have worked under the premium system.

For these reasons I appeal to you to work to sustain and keep in force the present premium system of wages in the shops of the Government. The basis of the pending bill to abolish this system can not be an intimate knowledge of what it accomplishes, and I respectfully submit that its passage would destroy the great benefits which we now enjoy, would take away from us the worthy ambition which we now possess, and would be a grave wrong, since it would, by reducing our income, seriously affect our future welfare, our happiness and that of those dependent upon us.

Respectfully,

JOHN DRISCOLL.

MESSAGE FROM THE SENATE.

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

S. 708. An act to make immediately available for the use of the State of Georgia in paying expenses incurred by said State in connection with the joint encampment held at Augusta, Ga., July 22 to 31, 1914, certain sums appropriated for arming and equipping the militia of said State;

S. 4594. An act to validate certain declarations of intention to become citizens of the United States;

S. 5805. An act permitting the Riverview Ferry Co. to construct, maintain, and operate a bridge across the Yellowstone River in the State of Montana;

S. 5425. An act to standardize lime barrels;

S. 5851. An act to extend the time for constructing a bridge across the Eastern Branch of the Elizabeth River in Virginia;

S. 6073. An act granting the consent of Congress to George Fabyan to construct a bridge across the Fox River; and

S. J. Res. 133. Joint resolution to authorize the President of the United States to convey the acknowledgments of the Government and people of the United States to various foreign Governments of the world who have participated in the Panama-Pacific International Exposition to celebrate the completion and opening of the Panama Canal, and also the four hundredth anniversary of the discovery of the Pacific Ocean.

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. 755. An act to incorporate the Boy Scouts of America, and for other purposes; and

H. R. 13765. An act to amend section 73 of an act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911, and for other purposes.

NAVAL APPROPRIATION BILL.

The committee resumed its session.

Mr. KEATING rose.

The CHAIRMAN. The gentleman from Colorado is recognized for five minutes.

Mr. KEATING. Mr. Chairman, as the gentleman from Kentucky [Mr. SHERLEY] says, it is quite impossible to discuss this subject in five minutes.

I would call the attention of the committee, however, to the fact that the provision under discussion applies to the Navy Department, and that the same provision, in the identical language, was in the naval appropriation bill which was passed one year ago. So that for one year the navy yards of this country have been operating under this law. Does anybody pretend to say that the navy yards of this country are not efficient?

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

Mr. KEATING. I regret that I have not the time. Where the gentleman errs, and where a lot of other gentlemen err, is in the supposition that you can not have an efficiency system without a stop watch. I hold in my hand an efficiency system covering 16 or 18 closely printed pages—the efficiency system of the navy yards—and there is not a word in that pamphlet concerning a stop watch.

In all the evidence submitted to the Committee on Labor, in all the investigations that have been conducted by committees of this House and by commissions representing Congress and the National Government, it has never been established that you can not have an efficiency system without a stop watch. On the contrary, it has been testified repeatedly that you can have an efficiency system without the stop watch, the premium, or the bonus system.

Only the other day I asked Secretary of the Navy Daniels if, as the result of the operation of this law, he had received the slightest complaint, and he said, "Not at all."

Now, my friends, who is it that is demanding that this law shall be repealed? The leader of the opposition, the chief supporter of the "stop-watch" system before our committee was James A. Emery, of the National Association of Manufacturers. The Members of this House will probably recall Mr. Emery in connection with the Mulhall investigation in the Sixty-third Congress. We did not hear much from Mr. Emery during the remainder of the Sixty-third Congress, but at the beginning of this Congress he reappeared first as the opponent of child-labor legislation, and sent out misleading statements to manufacturers all over this country concerning the proposed legislation.

After he had been defeated by this House on child-labor legislation he bobbed up to oppose the so-called Tavenner bill and the riders placed upon appropriation bills to prevent the use of the "stop watch."

The only Government official I know who has joined with Mr. Emery is Gen. Crozier, of the Ordnance Department. But Gen. Crozier has not demonstrated, and has not attempted to demonstrate, that in his arsenals, where he uses the system, he has gained any higher degree of efficiency than they have in the navy yards, where they refuse to use the system. Now, it is not alone sufficient for Gen. Crozier to come in here and say that as a result of his system he has made a saving. He should be able to prove that under his system he has made a greater saving than they have made in the navy yards.

What are the facts? If anything, the weight of evidence is on the side of the navy yards, and tends to show that they are more efficient than the arsenals. Personally I think there is little to choose between the two. [Applause.]

Mr. Chairman, I desire to insert in the RECORD the following extracts from a report submitted to this House by the Labor Committee on the Tavenner bill to abolish the "stop watch" in governmental arsenals and workshops:

The object of the Tavenner bill is to end the use of the "stop watch" and the bonus and premium systems of payment of employees in Government arsenals and workshops.

Your Committee on Labor made a favorable report on a similar bill in the Sixty-third Congress, but owing to the congested condition of the calendar the House did not have an opportunity to act on it.

NULLIFYING WILL OF CONGRESS.

However, the substance of the proposed legislation was attached as "riders" to the military and naval appropriation bills for 1916. A brief statement containing those "riders" and the amazing attempt of certain officers of the Government to nullify the plain intent of Congress should prove of interest at this point.

On January 22, 1915, Mr. Deitrick, of Massachusetts, offered the following amendment to the military appropriation bill, then pending in the House:

"On page 52, after line 14, insert the following: *Provided*, That no part of the appropriation made in this bill shall be available for the salary or pay of any officer, manager, superintendent, foreman, or other person having charge of the work of any employee of the United States Government while making or causing to be made with a stop watch or other time-measuring device a time study of any job of any such employee between the starting and the completion thereof, or of the movements of any such employee while engaged upon such work; nor shall any part of the appropriations made in this bill be available to pay any premium or bonus or cash reward to any employee in addition to his regular wages, except for suggestions resulting in improvements or economy in the operation of any Government plant; and no claim for services performed by any person while violating this proviso shall be allowed."

A point of order was made against the amendment, but after extended discussion it was withdrawn and the amendment adopted without a division.

Three days later Brig. Gen. Crozier, Chief of Ordnance, wired the commanding officer at the Watertown, Mass., arsenal as follows:

"Cease all time studies ('stop-watch' studies) and all premium payments, except such as shall have accrued at time of notification of employees, and notify them at once.

"CROZIER."

A similar telegram was sent to the commanding officer at Frankford Arsenal, Philadelphia.

CROZIER ENCOURAGED EMPLOYEES TO PROTEST.

Gen. Crozier, when he appeared before your committee, stated he had sent these telegrams "in order that the employees might protest if they saw fit." On the receipt of the general's telegrams the foremen notified the employees of the arsenals that they would be deprived of the premiums which they had been receiving, but would be expected to do just as much work. In other words, they must continue to "speed up," but without the sustaining hope of reward.

Gen. Crozier denies that he authorized the foremen to issue these instructions, but there is ample evidence to show that they were issued.

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"RIDERS" RETAINED IN BILLS.

Gen. Crozier's telegrams and the orders of the arsenal foremen had the effect expected and a number of the employees signed petitions protesting against the adoption of the "riders." Gen. Crozier admits that the employees—most of whom were women receiving $1.16 a day—were "assisted" in preparing these petitions which were forwarded to Members of the House and Senate.

Gen. Crozier appeared before the Senate committee and joined in the protest. By a small majority the Senate struck out the "riders," but when the military and naval bills went to conference the House conferees, acting on instructions from the House, insisted that they must be restored, and that was done.

Secretary of the Navy Josephus Daniels proceeded at once to enforce the mandate of Congress as expressed in the "rider" attached to the naval appropriation bill, and issued the following order:

NAVY DEPARTMENT,
Washington, April 19, 1915.

From: Secretary of the Navy.
To: Commandant and industrial managers of all navy yards and stations.
Subject: Circular letter in regard to premium and bonus systems.

Attention is called to the proviso in the naval appropriation act for the fiscal year ending June 30, 1916, reading as follows:

"*Provided*, That no part of the appropriation made in this act shall be available for the salary or pay of any officer, manager, superintendent, foreman, or any other person having charge of the work of any employee of the United States Government while making or causing to be made with a stop watch or any other time-measuring device a time study of any job of any such employee between the starting and completion thereof, or of the movements of any such employee while engaged upon such work; nor shall any part of the appropriations made in this act be available to pay any premium or bonus or cash award to any employee in addition to his regular wages, except for the suggestions resulting in improvements or economy in the operation of any Government plant."

All premium and bonus systems of doing work and all time studies or timing of employees as defined in this act will be discontinued on or before June 30, 1915.

The wording of this act, however, is construed as not prohibiting straight piecework—that is, work paid for at a certain rate, such as per hundred rivets, per hundred feet of calking, etc.—with or without a guaranteed day's wage in case of failure through no fault of the employee.

Where systems are in use based upon premiums or bonuses, these should be charged, if possible, to straight piecework, as defined above, provided such charge is acceptable to the employee.

JOSEPHUS DANIELS.

Gen. Crozier, on the other hand, set about nullifying the effect of the "rider" on the military appropriation bill, and with the assistance of former Secretary Garrison and other officials of the department was almost completely successful.

The following extract from the hearings before your committee will prove illuminating on this point:

"Mr. KEATING. Didn't you understand that when Congress added that rider it wished the premium and bonus systems to be abolished in Government work?

"Gen. CROZIER. I had no way of knowing the will of Congress except by its legislation. I can perhaps throw a little light on the latter by saying: The Member of Congress who proposed that amendment, and at whose instance it was added to the law, was aware, before it was too late to attach that same kind of a rider to the fortifications bill, that without attaching it the legislation would not apply to funds under the fortifications bill, and he did not seek to do that.

"Mr. KEATING. You did not seem to experience any particular difficulty in interpreting the law when you issued the order suspending the bonus system at Frankford Arsenal?

"Gen. CROZIER. The law applies to Frankford. Do you mean Watertown Arsenal?

"Mr. KEATING. You issued an order at Frankford which you say you intended as a warning to the employees as to what would occur in case it went into effect?

"Gen. CROZIER. Yes, sir.

"Mr. KEATING. Then, after the rider was put into effect, you came forward with a scheme by which you evaded the plain intent of Congress, but you did not tell the workmen you had that in mind when you issued the first order.

"Gen. CROZIER. You say I evaded the plain intent of Congress. I did not evade it in the opinion of the comptroller.

"Mr. KEATING. How about Frankford Arsenal? Was that order issued under a misapprehension of what this legislation meant or intended?

"To be perfectly frank, you attempted to show these employees what you thought the effect of this legislation would be if it passed, and after the rider was adopted, you found means by which you could avoid the purpose of the legislation?

"Gen. CROZIER. I found means by which I saved them from the disadvantages of the legislation.

"Mr. KEATING. You did not suggest there was a way out of it when you issued the warning?

"Gen. CROZIER. I did not.

"Mr. KEATING. You referred to this legislation that was pending and you warned them if the legislation was passed a certain situation would be created, and you did that for the purpose of getting them to protest to Senators and Representatives?

"Gen. CROZIER. I did that for the purpose of allowing them to protest if they wanted to.

"Mr. KEATING. You are warning them that in case certain legislation was enacted a certain condition would be created, and instead of that you created an entirely different situation?

"Gen. CROZIER. I found a way of saving them from it.

"Mr. KEATING. You think it is perfectly proper, do you, for the Chief of Ordnance of the United States Army to conduct himself in that fashion?

"Gen. CROZIER. I do."

Gen. Crozier's attitude is a very strong argument in favor of the passage of the bill now under consideration. He is apparently willing to defy the law, so long as no penalty attaches, but he promises to obey it if he is furnished with a sufficient incentive in the form of a fine and imprisonment.

EXTENDED HEARINGS ON BILL.

Your committee held extended hearings on the Tavenner bill and many able witnesses appeared for and against the measure.

The opponents of the bill, led by Mr. J. A. Emery, chief counsel for the National Association of Manufacturers, declared that to eliminate the "stop watch" and bonus and premium systems would "penalize efficiency and encourage waste."

The supporters of the bill insisted that the combination of "stop watch" and bonus and premium was "in spirit and essence, so far as labor is concerned, a cunningly devised speeding and sweating system."

The majority of your committee feels that the proponents of the bill made so strong a case that we are justified in urging Congress to enact the legislation needed to drive the "stop watch" and bonus and premium systems from Government shops.

EFFICIENCY WITHOUT THE STOP WATCH.

The opponents of this legislation have much to say about "efficiency" and "scientific shop management," and they seek to create the impression that "efficiency" can not be secured unless (a) the workman's every movement is timed by a "stop watch," and (b) that the old system of day's pay is abolished and bonuses and premiums substituted therefor.

Your committee feels there is nothing in the evidence submitted at the hearings, or in the experience of mankind, to sustain either of these contentions.

In this city we have the Washington Navy Yard, employing thousands of skilled mechanics. The stop watch is not used there, and the commandant will assure you he has the "most efficient body of mechanics ever gathered together inside one fence."

The workmen at the Rock Island Arsenal have succeeded in defeating Gen. Crozier's attempt to introduce the "stop watch," and they have demonstrated their "efficiency" by producing munitions of war for very much less than the Government pays contractors for the same articles.

For instance, Gen. Crozier tells us that a 3-inch gun carriage for which contractors asked the Government $3,398.82 was produced in the Rock Island Arsenal for $2,192.27, a saving of practically one-third. And this is not an exceptional case.

Is it necessary to still further "speed up" workmen who have displayed the skill and industry needed to produce these results?

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"STOP WATCH" REJECTED BY PRIVATE ENTERPRISE.

Turning from the Government shops to the plants of private industry, we find that the "stop watch" has not been received with favor.

Mr. Richard A. Feiss, of Cleveland, Ohio, a manufacturer of men's clothing, was presented by the opponents of this legislation as one of their principal witnesses. He defended the use of the "stop watch" and was emphatic in his declaration that "efficiency" could not be secured without it, but he was forced to confess that his concern was the only house in that section of the clothing business which had installed the system. The following extract from Mr. Feiss's testimony will shed light on this point:

"The ACTING CHAIRMAN. Do you know of any other concern in your business that is using the system?

"Mr. FEISS. No, sir; our business, the clothing business, as a whole, is very backward.

"The ACTING CHAIRMAN. As a consequence there is no other concern that you know of that we could make comparisons with as to the results in your shops and others?

"Mr. FEISS. No; no other industry.

"The ACTING CHAIRMAN. These other business men who are competing with you have had an opportunity to adopt this system?

"Mr. FEISS. Yes.

"The ACTING CHAIRMAN. They have been confronted with your splendid and highly successful example for some time?

"Mr. FEISS. Yes; our shops are always open to anyone.

"The ACTING CHAIRMAN. They have not seen fit to adopt your ideas?

"Mr. FEISS. They are adopting some of the ideas. The trouble with most of the men at the top is that they are not practical men.

"The ACTING CHAIRMAN. They think they are practical men.

"Mr. FEISS. I think they will admit that they are not.

"The ACTING CHAIRMAN. But, anyhow, whatever may be your opinion of your competitors, there are many concerns that have not adopted it, although they have had this example before them?

"Mr. FEISS. Yes."

The boot and shoe industry furnishes another example. Not 15 per cent of the boot and shoe factories in this country use the "stop watch," and the 85 per cent which have refused to use it experience no difficulty, so far as the records show, in competing with their so-called "scientific" rivals.

What has been said of the clothing and boot and shoe industries applies with equal truth to other lines of industrial endeavor.

The workers of this country are not a lot of lazy drones who refuse to do a reasonable day's work unless their every movement is timed by a "stop watch."

WORKERS CONDEMN "STOP WATCH."

The workers' attitude toward the "stop watch" is stated in the following excerpt from the testimony of Mr. John P. Frey, editor of the International Molders' Journal, before your committee:

"Mr. SMITH. What objection has the workman to time study?

"Mr. FREY. Some have the feeling that it is humiliating to have a man standing over your back, or around you, with a stop watch, checking off every movement you make, trying to catch you beating some little time. Others object because it forces them to work harder and harder, and it puts into the employer's hands a power which they use unjustly against them.

"Mr. SMITH. You think the general objection is that it overworks the men?

"Mr. FREY. I should say from what the workers told me, that I interviewed, it was half and half. It was partly the feeling of humiliation in having some one stand over them with a stop watch, and others felt that the system meant making their work that much harder.

"Mr. SMITH. What is the feeling of the workmen about the Taylor system?

"Mr. FREY. I have not encountered one who favored it. All that I have interviewed are bitterly opposed to it.

"Mr. SMITH. Are the workmen generally opposed to a bonus system?

"Mr. FREY. Some of the workers—I want to revise that statement as to the Taylor system. I found some workers working under the Taylor system who said they did not consider it hurt them much.

"Mr. SMITH. But, generally speaking, you think you are safe in saying they are opposed to it?"

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SENATOR LODGE ON THE "STOP WATCH."

Senator HENRY CABOT LODGE presented the case against the "stop watch" in graphic fashion during a discussion of the subject in the Senate during the third session of the Sixty-third Congress. Senator LODGE said:

"The one object of the time measure is to produce speed. Now, speed is not the only thing that the Government or any other employer or manufacturer is seeking for. There is something more important than speed, and that is quality. Speed has nothing to do with quality. Owing to great inventions of our time, owing to steam and electricity, we have carried speed to such an extent in all of our manufactures that certainly in many cases the product has deteriorated in quality as it has advanced in quantity and rapidity of production.

"The stop watch and the time measure can tell you nothing whatever about quality. It may be a basis of fixing wages or anything else, but the only thing we can possibly tell by time is speed. We all associate a stop watch with its use for racing horses. I dare say it is used now

for racing automobiles, but not by a man buying horses for his ordinary use. In the days before automobiles I used to own horses and be very fond of them and drove them a great deal, but I never put a stop watch on a horse I was going to buy. I wanted to know his qualities; I wanted to try him; but I was not going to buy a horse to use on the track, and therefore I had no use for the stop watch. They use a stop watch to test a horse that is going on the track to race in the Derby, for instance, or in any of our great races. It is of the utmost importance to know what the horse can do on the furlong or on the quarter mile or on the half mile, but it does not tell the story of his quality. It will tell the story of speed and the qualities necessary to speed, but there are many qualities it does not tell.

"Now, to put the stop watch on human beings may tell how fast they can work, but it can tell nothing of the quality of their work nor how long they may work. A horse may be very good for a short spurt and absolutely worthless for a 4-mile race. It is a poor test. It is a promoter of the idea that the one thing to do is to turn out just as much as we can just as far as we can. That has gone through everything in this period of ours. It has deteriorated style, it has deteriorated literature, it has deteriorated art, it is deteriorating manufacture.

"I do not believe, Mr. Chairman, in standing over men with stop watches to see how far they can go under pressure in securing speed in performing a given piece of work. The very fact of a stop watch implies strain on every faculty, on every physical power, driving the heart and lungs and every muscle to the utmost possible point.

"In the days of slavery it was said there was one school of slave owners who believed it was more profitable to work the slaves to the last possible point and let them die than to try and care for them when they were ill and work them reasonable hours and treat them without a stop watch. Those who believed in working them to death, I imagine, were a very small and merciless minority, but there is always that disposition.

"I am a thorough believer in the best man getting the best wage and the hard-working man getting what his hard work deserves. I have no desire to see the thriftless and idle paid as well as the industrious, steady, and hard-working men, but I do not believe anything is gained for the Government or for anybody else in standing over a man with a stop watch to see whether under pressure he can do a certain piece of work in a given time. I do not believe it is sound economy."

PREMIUM AND BONUS SYSTEMS.

The premium and bonus systems of payment of employees are designed to supplement the "stop watch" in stimulating the workers to the extreme limit of their physical and mental endurance. When the human machine can no longer stand the strain a new one is to be substituted and the old one sent to the industrial scrap heap.

The opponents of the legislation under discussion deny the truth of this statement, but there is a mountain of evidence to sustain the charge.

* * * * * * *

The United States Public Health Service has just issued Bulletin No. 73, "Tuberculosis Among Industrial Workers," by Surg. D. E. Robinson and Asst. Surg. J. G. Wilson.

Those gentlemen are surely impartial and competent witnesses, and here is what they have to say:

SPEEDING UP.

"This is a natural resultant of the piecework system, and from the standpoint of the employees' health, does more harm than any other one thing associated with factory work. Although it works, or appears to work, to the interest of the employer by increasing the output of the individual workers, these good results are probably only temporary, as the pernicious effect upon the health of the wage earner will, in the end, have the opposite effect."

LABOR'S EARNEST OPPOSITION.

Labor, organized and unorganized, has systematically opposed the introduction of the system into Government plants. Gen. Crozier asserts that outside influences are responsible for the workers' hostile attitude, but the evidence submitted to your committee seems to completely disprove the general's theory.

The leaders of organized labor instead of fomenting trouble in the Government shops have with difficulty restrained the workers from throwing down their tools and quitting work. At the Watertown Arsenal the employees united to employ Miner Chipman, an engineer, to assist them in an attempt to induce the War Department to dispense with the obnoxious system.

Two hundred and thirty-five of the workers furnished Mr. Chipman with detailed information to enable him to complete his case. Of these, 214 were opposed to the system. Of the protestants, 113, or 52.8 per cent, were nonunion, and 101, or 47.2 per cent, were union.

All these men were asked to answer the following question: "Do you think the agitation is brought about through union labor or similar sources?"

They replied as follows: "Noes," 137; "yeas," 28; not answering, 70.

* * * * * * *

CONCLUSION.

In conclusion your committee would suggest:

The system so persistently urged by Gen. Crozier involves a fundamental, not to say revolutionary, change (a) in determining what is a reasonable day's work for an employee in the national arsenals and workshops and (b) in the method of compensating the workers, to wit, the substitution of the "bonus" or "premium" system for the age-old "day's-pay" system.

The workers affected seem to be almost unanimous in their opposition to the change. They insist it will be oppressive to them and will be without benefit to the Government.

So intense is this feeling that an attempt to install the system in all the Government workshops would, in the judgment of your committee, lead to very serious consequences.

In view of these well-established facts, it seems to your committee it would be the height of folly to permit Gen. Crozier to persist in his plan. Apparently, the only way to restrain him is to enact the bill under discussion, and your committee trusts the House will take prompt and favorable action.

The CHAIRMAN. The time of the gentleman from Colorado has expired. All time has expired. The question is on agreeing to the amendment offered by the gentleman from Wisconsin [Mr. BROWNE].

The question was taken, and the Chairman announced that the ayes seemed to have it.

Mr. KEATING. A division, Mr. Chairman.

The CHAIRMAN. A division is demanded.

The committee divided; and there were—ayes 72, noes 83.

Mr. BROWNE. I ask for tellers, Mr. Chairman.

The CHAIRMAN. Tellers are demanded.

Tellers were ordered, and the Chairman appointed Mr. BROWNE and Mr. KEATING to act as tellers.

The committee again divided; and the tellers reported—ayes 74, noes 100.

So the amendment was rejected.

Mr. SHERLEY. Mr. Chairman, I ask unanimous consent to extend my remarks.

The CHAIRMAN. The gentleman from Kentucky asks unanimous consent to extend his remarks. Is there objection?

There was no objection.

Mr. KEATING. Mr. Chairman, I make the same request.

The CHAIRMAN. Is there objection to the request of the gentleman from Colorado?

There was no objection.

Mr. TAGUE. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The gentleman from Massachusetts [Mr. TAGUE] offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment offered by Mr. TAGUE: Page 5, line 13, after the figures "$46,000," add the following:

"The Secretary of the Navy is hereby authorized to use the ships of the United States Navy for the transportation of mail to and from neutral countries in cases of emergency or necessity."

Mr. PADGETT. Mr. Chairman, I reserve a point of order on the amendment.

The CHAIRMAN. The gentleman from Tennessee [Mr. PADGETT] reserves a point of order on the amendment.

Mr. TAGUE. Mr. Chairman, in presenting this amendment I believe that if the House will consider the importance of it and what it means to the business interests of this country they will accept it.

The reason for this must be apparent to every Member of the House who knows the conditions that have prevailed across the sea during the past two years.

The mail of our business men and our people has been interfered with and held up without right or justice, creating hardships and inconvenience to our business interests. I know of no better way of meeting this issue, when it is known that we are without a merchant marine, than by carrying the mail to and from neutral ports on the ships of our Navy.

Not for many years has this country been subjected to such insolence and arrogance on the part of any nation as it is at the present time, when the English Government board neutral ships and take therefrom the mail of our people in direct defiance of the international law and without respect for this or for the other neutral nations.

As one Representative in this Congress I want to know how long we are going to permit the British or any other Government to tamper with the business men's mail of this Nation. They are complaining that bonds and stocks that are sent across the sea have never reached their destination, and only yesterday the captain of a ship that entered the port of Newport News made the following statement:

MAIL FOR UNITED STATES IS SEIZED BY BRITISH.

NEWPORT NEWS, *May 31.*

Capt. Carl Nordman, of the Swedish steamship *New Sweden*, in port from Gothenburg with mail for the United States, Canada, and Mexico, stated that all the parcel-post matter aboard his ship was removed by British authorities at Kirkwall, where his ship was taken by a patrol boat.

About 30 sacks of first-class mail from Scandinavian countries for the United States also were removed and held. Scandinavian mail for Canadian points and a quantity of Russian mail was not disturbed.

In 1775 this country threw off the yoke of English oppression and tyranny, and with the first shot fired at Lexington told England and the world of the birth of a new and independent Nation, and from that day this country has proudly proclaimed that independence.

We have never allowed any nation since that time to interfere with the progress of our business without bringing them to account for it, and not until now has any nation attempted to do this in face of the objection of this country.

How much longer we intend to allow this interference is for us to decide, and I know of no better time than now, when appropriating money to build up our Navy that we shall build it so strong and powerful that it will be a message to English insolence and insults or to any other nation who dares to interfere with our rights upon the sea.

By the adoption of this amendment we send our mail in case of emergency on our warships, with the American flag floating proudly from the masthead, and then let the British attempt to seize it if they dare. That is true Americanism; that is the protection that our American business men deserve at the hands of this Congress to safeguard their business.

The laws of this country forbid any persons interfering with our mails, and anyone who does will be punished by the law. The mail being carried across the sea is just as important as the mail of our own country and deserves that same protection, and if we are unable to punish those who interfere with it, as we do within the confines of our own land, then it is for us to send it across the sea so protected that no nation will dare to interfere with it, and if they do they will do so at their own peril.

We place it in the hands of the officers and men of the American Navy, who have never been found wanting in the performance of their duty in the protection of the rights of the American people. We have always been proud of our American Navy, and we are proud of it to-day. Its personnel can not be excelled by any navy in the world, and is made up of the best of American manhood, who have always been ready to defend the honor and name of their country. We are giving them to-day a navy which they can be proud of, and let us at the same time, by the passage of this amendment, protect our rights upon the high seas.

Like other members of the committee, I have received many letters from the business men of the country whose mail has been interfered and tampered with, depriving them of business that should rightfully come to them, and many complaints have come from our citizens in this country and abroad whose mail, for no reason whatsoever, has been interfered with. Let us, by our accepting this amendment, say to the world that we will not permit in the future any interference with our mail or the rights of America or Americans upon the seas.

May I ask to be allowed to insert in the RECORD a few editorial comments that have come to me recently from some of the newspapers dealing with this question and also with the matter of interference with our rights upon the sea?

[From the Boston American, May 29, 1916.]

A JACKSONIAN AND ROOSEVELTIAN PLAN TO SAFEGUARD OUR NEUTRAL RIGHTS.

Congressman PETER F. TAGUE, of Boston, has introduced a resolution in Congress providing that the United States mails between this country and the neutral ports of the world shall be conveyed in the armed ships of our Navy.

There is a reason for this resolution. The British Government has assumed, without right and without precedent in international law and without decent respect either for this Nation or for other neutral nations, to interfere both with our mail and with the mail of the other neutral nations.

This country has enforced against Germany the claim which the President set up against the use of the submarines which Germany regarded as vital to the successful prosecution of her conflict with Great Britain. The President and the national administration acknowledge that in principle the violation of our rights by the British interference with our mail is no less flagrant. It certainly has less excuse in military necessity than the German use of their submarines. There has, however, been a marked difference in the vigor of the prosecution by our national administration of our demands for fair and respectful treatment by both belligerents. We have entered upon a course of procrastinating negotiations with Great Britain concerning this violation of our rights. Apparently no progress has been made toward a settlement of the controversy.

Now Congressman TAGUE has conceived a way in which an issue can be very promptly forced in this situation. By his resolution he calls upon the Government to send our mail in our warships with our flag at the masthead. Then let the British attempt to seize that mail if they care so to do.

This would be the Jacksonian way of dealing with such a question. It would be the Jacksonian way of settling the question. This method of conducting diplomatic negotiations made Andrew Jackson the most successful diplomat this country knew between the Revolution and the Civil War. This method is also the Roosevelt method of conducting negotiations. It is the way former President Roosevelt would have settled the controversy long, long ago. It is the way of dealing with questions so decisively that they do not have time to get a hot box and become dangerous.

It is only by paltering with embarrassing situations that we make them dangerous. There can not be the least doubt in the world that if our mail were sent in a battleship the British Government would very courteously and discreetly let it entirely alone. Then there would be the end of the controversy.

Mr. TAGUE'S resolution is statesmanship. The administration will do well to heed Mr. TAGUE'S suggestion. Mr. TAGUE has a just conception of real neutrality, for it is not real neutrality to demand our rights vigorously against one belligerent and meekly against another.

[From the Boston American, May 24, 1916.]

FUNDS TAKEN FROM CENSORED LETTER.

WORCESTER, *May 24*.

Patrolman Michael Freil, of the local police department, has written to the Department of State, at Washington, protesting against the abstraction of a money order from a letter which he sent to his mother in Ireland, and which was opened by British censors. He has received a letter from his mother stating that his communication had been opened, and the money order was missing. According to the policeman, the American Express Co. investigated and found that the money order was cashed in Ireland, the indorser giving the name of "A. Lang."

[From the Traveler, May 8, 1916.]

CHARGES BRITISH WARSHIP TRIED TO STOP THE "TEXAS"—WILLIAM P. LARKIN MAKES SENSATIONAL STATEMENT AT MEETING OF CLAN-NA-GAEL.

That the British battleship *Vancouver* tried to hold up the United States battleship *Texas* on the high seas and asked for information as to her destination and complement on October 24, was a declaration made by William P. Larkin, presiding at a public meeting of the Clan-na-Gael, in Hibernian Hall, Dudley Street, last night.

To support his sensational declaration, he read a telegram which he declared was sent by Commander John Wood, of the *Texas*, to the Secretary of the Navy. The telegram reads:

OCTOBER 26, 1915.

To the honorable the SECRETARY OF THE NAVY.

SIR: I have the honor to report herewith an incident which occurred as follows:

At 3.20 o'clock on the morning of October 24, while under full steam for Hampton Roads, we received a wireless from the British warship *Vancouver*, which was accompanied by a British warship torpedo boat. The message inquired as to our destination and full particulars of our complement. Our reply was worded as follows: "Why the hell should we give you the information? Can't you see our flag?" Whereupon we were commanded to halt, to which I replied by ordering all decks stripped for action. Within 15 minutes from the time I was commanded to halt my decks were stripped for action. My men were at their posts, and without further action they proceeded on their way. Hoping that I acted wisely in the fulfillment of my duty, I remain.

JOHN WOOD,
Commandant U. S. S. "Texas."

Following the sensational announcement made by Larkin, John Dovey, editor of the Gaelic American, declared that it was only a matter of transportation that prevented 200,000 trained Irishmen from going to Ireland from the United States to aid in the Irish rebellion.

The meeting was attended by about 1,200 of the "physical force" section of the clan, with a sprinkling of Germans. They contributed $232.60 for the "Irish Republic," and one of the speakers read a notice from City Collector John Curley that another meeting will be held May 15, either in Tremont Temple or in Faneuil Hall.

The other principal speaker was Robert Sturn, vice president of the German-American Alliance.

Mr. TAGUE submitted the following resolution, which was referred to the Committee on Foreign Affairs and ordered to be printed:

House resolution 247.

Whereas the mails leaving this country for neutral countries have been opened and censored by the English Government against the protest of the people of our country and in detriment to the business interests of our country, causing injury to business and much uneasiness to our citizens; and

Whereas the mails from neutral countries destined to the United States of America have been likewise opened, censored, and delayed; and

Whereas the English Government has shown no disposition to discontinue this practice, which is a violation of our rights to the seas and our rights to do business with neutral countries: Therefore be it

Resolved, That the President of the United States is authorized, through the Secretary of the Navy, to transport mail to and from neutral ports upon the ships of the United States Navy, and that any interference with our mails shall be resented by such ships with all power of our Navy and said ships.

Mr. PADGETT. Mr. Chairman, I make the point of order.

The CHAIRMAN. The Chair sustains the point of order.

Mr. GARDNER. I ask unanimous consent to proceed for 15 minutes.

The CHAIRMAN. Does the gentleman offer an amendment?

Mr. GARDNER. Yes; I offer an amendment, which I send to the Clerk's desk.

The CHAIRMAN. The gentleman from Massachusetts offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment by Mr. GARDNER: Page 100, line 10, strike out all down to line 15, on page 101.

The CHAIRMAN. The gentleman from Massachusetts [Mr. GARDNER] asks unanimous consent to proceed for 15 minutes. Is there objection?

There was no objection.

Mr. GARDNER. Mr. Chairman, I ask unanimous consent to extend my remarks in the RECORD.

The CHAIRMAN. The gentleman asks unanimous consent to extend his remarks in the RECORD. Is there objection?

There was no objection.

Mr. GARDNER. Mr. Chairman, the part of the bill which I seek to strike out is that part which authorizes President Wilson to send nine gentlemen, noted for their interest in peace, to a European peace conclave.

TALK LESS AND DO MORE.

If there are gentlemen here who are fearful lest we get mixed up in war, let me remind them that if they long to keep out of European troubles they had better stop meddling with European affairs and keep their itching fingers out of European pies.

We Americans have been sitting like a lot of overfed dowagers in the best seats in the opera. We have been criticizing and scolding and patronizing the men who are doing the fighting, and simultaneously we have been filling our own pockets at their expense. We have been moralizing away as if we were not actuated by anything except the grandest motives on earth, and as if greed and timidity were quite unknown to us.

The United States has talked so much and done so little that we shall stand better in the eyes of the world if for the present we hold our tongues and let the men who have been doing the fighting do some of the talking as well.

ENTANGLING ALLIANCES.

Now comes this proposition to ally ourselves with European and Asiatic nations in establishing an international court, with an international army and navy to back up its decrees.

From this time forward everything is going to be left to arbitration, we are told. Oh, of course, I know that at present they talk of limiting the scope of these arbitrations; but if you are going to have an international court at all and tie this country up to an international army and an international navy you had better arbitrate the things which men have strong feelings about, and not merely arbitrate questions which no one would fight over anyway.

Gentlemen have been painting a very attractive picture of the power of this international court to prevent belligerency on the part of angry nations. I can easily see the attractiveness of the program if we only consider one side of the picture. If our international army and navy prevent a war, well and good; but suppose they can not prevent a war. Suppose that the international army and navy must actually be used to suppress some nation or group of nations which may be dissatisfied with the decree of the international court. What then? Is the United States going to let that international court declare war for us in some European or Asiatic quarrel with which we have no concern whatever?

WHAT WOULD HAVE HAPPENED IN 1914?

Suppose that we had had this kind of an international court in 1914, and suppose that this international court had decided that Germany and Austria were in the wrong and had then called upon the United States to furnish its quota of men and money and ships to put down the Austrian and German belligerents. Looking the proposition honestly and squarely in the face, what chance is there that this Congress would have voted in 1914 to raise half a million men and send them to war in Europe to support the allies against Germany and Austria? Why, even to-day, with all the unavenged ghosts of the *Lusitania* victims haunting our pacifist dreams, even now, to-day, we could not get a vote through this Congress to raise half a million men to participate in civilization's struggle for self-preservation.

MONROE DOCTRINE AND CHINESE EXCLUSION.

But let us ask ourselves whether we are genuine in clamoring for the settlement of international questions by arbitration. Would we, were the issue to arise, consent to arbitrate the Monroe doctrine? Would we consent to arbitrate our right to exclude the Chinese and other yellow races from this country? Those are two of the doctrines nearest to the American heart. Yet they are the very doctrines under which the rest of the world chafes. Supposing that you had your international court, with a judge from Japan, and a judge from Great Britain, and a judge from Sweden, and a judge from Germany, and a judge from Austria, and a judge from Russia, and a judge from Italy, and suppose that Japan were to go before that court and claim the right of free immigration of Japanese and Chinese into the United States, would our workingmen submit to a decree of that international court under which we should certainly be overrun by cheap yellow labor? I think not. I think that this Congress would repudiate such a decision of an international court.

Now, take the Monroe doctrine. Supposing Germany goes before that international court and claims the right to restore order in Mexico in order to recover property which has been taken from the Kaiser's subjects. Supposing that we refuse to intervene and refuse to let Germany intervene. Will the international court support us or will it support the side of Germany? If it decrees that Germany has the right to send an army into Mexico, what are we going to do? Submit to the decree of the court or repudiate our international agreement?

Mr. SMITH of Michigan. Mr. Chairman, will the gentleman yield?

Mr. GARDNER. Yes.

Mr. SMITH of Michigan. I would like to inquire whether it is proposed to submit questions of national honor and vital interest to this court?

Mr. GARDNER. The gentleman evidently did not hear the first part of my remarks.

Mr. SMITH of Michigan. Yes.

Mr. GARDNER. I stated that the proposition was to limit the functions of the international court at present, but if the court is to have any value at all it must settle questions which men fight about, not questions which men only argue about. The proposition at present is to leave to the international court all academic wrangles, like boundary disputes and waterways questions, and that sort of pother which nobody would fight about anyway.

SCRAPS OF PAPER.

I confess that I have lost confidence in international agreements. Countries do not keep their treaties when the pace gets too hot. In 1914 Germany promptly announced her disbelief in "scraps of paper." Greece found a reason for evading her treaty with Servia. Uncle Sam's hands are by no means clean. We violated our treaty with the Chinese when we passed the Chinese-exclusion act, and we violated our treaty with the Indians when we drove them from their coveted lands to the country west of the Mississippi River.

JUDGING BY THE PAST.

What sort of success should we have had with arbitration if it had prevailed in the past? Supposing that the question had been left to a court of international judges whether the American colonies had the right to revolt against Great Britain in a matter of taxation levied to pay for New England's own defense. Do you think that we should have won our case before an international court?

Mr. GARRETT. The taxes were not confined to New England.

Mr. GARDNER. No; but if the gentleman will remember the first army was formed in New England. From Virginia we got our commander in chief, but I think the gentleman will admit that if the Revolutionary War had not broken out in New England it would have been many years before it broke out elsewhere. It was New England's fight in the first instance.

Now, let us take up the Mexican War.

We needed some territory in the Southwest, so we helped Texas revolt from Mexico. Then we annexed Texas and went to war to prevent Mexico from recovering her former territory. How do you think that an international court would have looked upon that casus belli?

Supposing that the North and the South had tried to arbitrate their difficulties at the time of the Civil War. What question would they have arbitrated? Half of the Nation thought then, and still thinks, that it went to war to end slavery, and the other half thought then, and still thinks, that it went to war to defend its firesides from invasion. Does anyone to-day believe that the abolition of slavery was an evil thing? And yet, notoriously, the leaders of European thought were for the most part opposed to the course of the North.

Last of all, how should we have come out if our difficulties with Spain in 1898 had been submitted to an international tribunal? Would an international court have decided that we had adequate proof that the battleship *Maine* was blown up from the outside? Would an international court have conceded our right to aid the Cuban insurgents against their Spanish masters? If you have the slightest doubt on this matter, look back to your newspapers just before the Spanish War. As a matter of fact, a sort of international court actually convened itself to sit on the very question of our dispute with Spain. You may have forgotten about that court. It was known to the world as the Concert of European Powers, and a grand old harmonious concert it was, when Great Britain broke in with a dissenting note. The rest of the orchestra had attuned its fiddles to the popular air of "Down With Your Uncle Samuel." Just at that moment Great Britain started to play "Hail, Columbia," and broke up that concert of European powers. I dare say that that was about as near to an international court as we shall get for some time to come.

Mr. BENNET. Mr. Chairman, I desire to offer a preferential amendment to perfect the text.

Mr. BYRNES of South Carolina. Mr. Chairman, I desire to be recognized.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Page 100, after line 9, insert—

The CHAIRMAN. The Chair does not think this is a preferential amendment. It is to insert——

Mr. BENNET. In the latter part of the text which the gentleman from Massachusetts asked to be stricken out my amendment comes in, and under the rules of the House an amendment perfecting language is in order.

The CHAIRMAN. But the gentleman's amendment proposes to insert some other matter.

Mr. BENNET. If the Chair will look at the latter part of my amendment he will see——

The CHAIRMAN. The Chair does not think it is a preferential amendment. The gentleman can offer his amendment in

the event the amendment of the gentleman from Massachusetts be adopted.

Mr. BENNET. If the Chair will listen. In the amendment offered by the gentleman from Massachusetts——

The CHAIRMAN. Striking out the entire paragraph.

Mr. BENNET. Striking out the entire paragraph. Now, my amendment inserts new matter between lines 10 and 11. Then, on page 100, within the matter proposed to be stricken out by the gentleman from Massachusetts, it inserts after the word "*be*," in line 22, the words "the commissioners herein provided for and," and in line 24, page 100, strike out the word "representatives" and insert the word "commissioners." Now, if the amendment proposed by the gentleman from Massachusetts should succeed there would be nothing to which that portion of my amendment could attach.

The CHAIRMAN. The gentleman can prepare a new amendment which would be in order.

Mr. BENNET. In order to reach that what I would have to do would be to get up a new amendment consisting of the first part of mine and then all of lines 10 to 21, and change that which is stricken out, and change lines 22 to 24, and in line 23——

The CHAIRMAN. It would be an entirely different provision, and it would be in order to insert that.

Mr. GARDNER. Mr. Chairman, I ask unanimous consent to withdraw my amendment.

The CHAIRMAN. The gentleman from Massachusetts asks unanimous consent to withdraw his amendment. Is there objection? [After a pause.] The Chair hears none, and it is so ordered.

Mr. BENNET. Now, Mr. Chairman, I offer this as an amendment.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Page 100, after line 9, insert:

"That a commission of nine members be appointed by the President of the United States to consider the expediency of utilizing existing international agencies for the purpose of limiting the armaments of the nations of the world by international agreement, and of constituting the combined navies of the world an international force for the preservation of universal peace, and to consider and report upon any other means to diminish the expenditures of government for military purposes and to lessen the probabilities of war.

"On page 100, line 22, after the word 'be' insert 'the commission herein provided and'.

"On page 100, line 24, strike out 'representatives' and insert 'commissioners'."

Mr. BENNET. Mr. Chairman, the first part of this amendment ought not to be new to men who have served any length of time in this House, because in the Sixty-first Congress it was reported from the Committee on Foreign Affairs and passed this House and the Senate with the addition of a limitation by which it expired within two years and with an appropriation of $10,000. It was signed by President Taft, but he never, very much to my regret and to the regret of other friends of peace, appointed the commission authorized—a commission under that resolution consisting of five. The Sixty-first Congress, of course, was Republican. The Sixty-second House was Democratic, and the Committee on Foreign Affairs of the Sixty-second Congress reported out the same resolution, and again, by unanimous consent, as my recollection is, the resolution passed the House in the Sixty-second Congress.

So that this House has twice committed itself—once when Republican and once when Democratic—to what I now suggest. Mr. Chairman, there is a good deal of force to what the gentleman from Massachusetts [Mr. GARDNER] says in relation to the defects of an arbitral court. There are things that no self-respecting nation, any more than any self-respecting man, will submit to arbitration—those things for which both men and nations will fight—and it is at that point that an arbitral court almost certainly will break down.

Now, what does this resolution do? This resolution faces the fact that the expenditures for war, particularly the naval expenditures, are going to be tremendously high. We are voting for preparedness. I am voting for two battleships, and all that, and no matter how big this bill is when it goes through the House, I am going to vote for it. But, nevertheless, I realize that the very size of these bills will some day bring about a movement all over the civilized world to stop war, because the nations can not afford it.

Mr. GARDNER. Will the gentleman yield?

Mr. BENNET. Yes.

Mr. GARDNER. Suppose that all the navies were disarmed, would not the British potential navy, to wit, her merchant marine, which could be armed in time of war, more overbalance the rest of the world than her navy does at present?

Mr. BENNET. Mr. Chairman, I would not want to answer dogmatically, but I see the gentleman's point.

Mr. GARDNER. That she would be much better off after this than now, because she would have a better potential navy than before.

Mr. BENNET. Very likely the Foreign Affairs Committee, when they drafted this resolution, had precisely this matter in mind, because they provided for the combination of the nations of the world into an international force for the preservation of universal peace. In other words, they did not go to the idealistic extreme of disbanding all the navies, but they took the step of preventing the expansion of the navies and continuing what we had, with the diminution incident upon the wear and tear as the international police——

Mr. MEEKER. The gentleman mentioned a moment ago the expense we are going to now for providing a navy. Does the gentleman believe, after all, our additional outlay for the Navy is ahead of our increase in wealth?

Mr. BENNET. I am quite sure it is. In fact, I know our expenditures for naval affairs are increasing with geometrical rapidity as compared with our increase in wealth.

Now, this proposition of mine does another thing. We can map out a program now and appoint a commission now, without reference to any foreign country, and when the international conference comes——

The CHAIRMAN. The time of the gentleman has expired.

Mr. BENNET. I ask unanimous consent for two minutes more.

The CHAIRMAN. The gentleman from New York asks unanimous consent for two minutes more. Is there objection?

There was no objection.

Mr. BENNET. The advantage of this proposition of permitting the President to appoint this commission now is that when the international conference comes the United States of America will have a commission which has studied the question and which will not go blindfolded into any international conference. I shall vote, in any event, for the proposition of the committee, because I think it is a step in the right direction; and with the multiplying expense of armament, it may be the best thing in the bill.

Mr. FESS. I am greatly interested in the possibility of stopping all war; but is there anything in this that might lead to an entangling alliance with another country of Europe; being a quarrel between us and a European country, that would be the outcome if it had to be referred to arbitration?

Mr. BENNET. If the gentleman will read my proposition he will not find any chance of an entangling alliance in that. But I still think the other is a step in the right direction.

Mr. DECKER. I ask in all kindness this question: Do you think it would be easier to get 10 men to agree if you laid down a specific proposition of defense, or if you say to them, "Come together, gentlemen, and let us talk it over, and we will make you suggestions and we will come to some agreement"?

Mr. BENNET. I think nine men that have spent a couple of years in educating themselves on that subject could do not only themselves good and the country good but good to the countries to which they went.

Mr. DECKER. That is what Mr. HENSLEY's resolution provides for.

Mr. BENNET. No; Mr. HENSLEY's resolution provides that upon the conclusion of the European war this commission shall be appointed. Mine provides that the commission shall be appointed now, and that if an international conference is called, then the commission shall be in existence and cooperate.

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

Mr. DECKER. Mr. Chairman and members of the committee, it is not my desire to quibble about the different plans. The gentleman from Massachusetts [Mr. GARDNER] has withdrawn his amendment.

Mr. GARDNER. Mr. Chairman, will the gentleman yield just for a minute?

Mr. DECKER. Yes.

Mr. GARDNER. Just to straighten out the parliamentary tangle the amendment was withdrawn. The gentleman will offer it again just as soon as the amendment is voted down.

Mr. DECKER. Before I begin I would like to read a cablegram. It reads:

STOCKHOLM, *May 8, 1916.*

Congressman HENSLEY, *Washington, D. C.:*

Neutral conference congratulates you upon reported success in Committee on Naval Affairs in securing recommendation to Congress of appropriation for world congress at end of war. Hopes Congress will vote favorably.

LOCHNER, *General Secretary.*

[Applause.]

Now, I want to say to the distinguished gentleman from Massachusetts—and he is a distinguished gentleman—that from the beginning of time this question has been before the world. We may build our battleships as we have planned in this bill; we may train our armies to march; we may resort to the reeking sword and the belching cannon, but I hope the time will never come in this country when men will not still hope for the day when justice and love and kindness will be stronger than the sword. [Applause.]

I want to congratulate the distinguished gentleman [Mr. HENSLEY] from the State from which I come. I want to commend him for his persistence, his courage, and his lofty purpose. I know that in this hour, when the clouds of war hang over the world—in this hour, when men kneel at the shrine of Jesus Christ and then rise from their knees and rush at each other's throats—some people think it is a poor time to talk about love and peace and the brotherhood of man. I know that it is almost popular to-day to sneer at the man who plants his feet upon the doctrine of the brotherhood of man and the fatherhood of God. I know that when a man sometimes, even for a moment, dreams and hopes for the time when the war drums shall throb no longer, men will tap their heads and say, "Pacifist." If a man to-day begins to say a word in behalf of the men who pay the taxes for enormous armaments, some people will say, "Henry Ford." If a man, forsooth, dares to speak in favor of persuasion and reason as a greater power than a battleship, some one will say, "Bryanite." If a man, forsooth, dares in this hour of tragedy and in this world conflict to speak about the fellowship of human beings and the kindness that should exist between nations as well as men, some people say to themselves, "He must believe in the teaching of Jesus Christ; he must really believe in the power of love."

I am not one of those who wish to leave my country defenseless. I believe in a reasonable and adequate Navy and a reasonable and adequate Army; but I hope that this Congress and no other Congress will ever lose sight of the fact that the world power and the safety which America enjoys is not based so much upon tramping legions, battle cruisers, dreadnaughts, aeroplanes, or deadly submarines as upon the belief that this Nation does not covet any other nation's territory, that this Nation does not covet any other nation's gold, that this Nation, though it wants a world commerce, does not want a commerce built on force. We believe in the doctrine of Bismarck—that a commerce built on force is not worth what it costs, and that the price mark and diplomacy are the greatest guaranties of profitable commerce. Of course, we do not want our country to be unprepared for defense. I believe in reasonable armament, keeping in consideration all the time the Atlantic and the Pacific Oceans; keeping in consideration the less need of force if our Nation will be honest, if it will be just. [Applause.]

This paragraph which the gentleman from Massachusetts [Mr. GARDNER] moves to strike out seeks to bring about a world conference at the end of this war, looking toward arbitration and the limiting of armaments and the lessening of war. It may not strike a responsive chord in the minds of all statesmen and diplomats. It may be scoffed at by those who command the mighty navies and direct tremendous armies. But it may reach beyond these and penetrate the ranks of those who bear the burdens and fight the battles. It may reach to the trenches of Verdun and the far-flung battle line where millions of Russians, Germans, and Austrians contend. This message, direct from the people of this country, may sound above the cannon's roar and cause these fighting, dying millions to ask themselves the question, "Is there not a better way?" Even when this war is ended this paragraph may not appeal to "the masters, lords, and rulers in all lands," but it may appeal to those who, maimed and halt and blind, stagger back to ruined homes and desolate hearths. It may appeal to orphans and widowed women and childless mothers. It may appeal to those whose hearts are torn with sorrow, suffering, and woe, and those whose backs must bend under the burden of taxation necessary to pay for this mad carnival of butchery and destruction. And these are the ones to whom we want the message to go. Until these plain, common men, whose toiling, fighting, dying makes up the sum of every nation's life, until these begin to think, to question, to understand the causes that lead to international strife, there can be no hope of permanent peace. When these plain men shall come to demand that their hopes, their aims, their happiness, their lives be considered, then rulers will not think it unusual and dishonorable to resort to arbitration, negotiation, and even to concession instead of war.

Mr. HENSLEY. Mr. Chairman, I truly hope that the amendment suggested by the gentleman from New York will not be agreed to, for the reason that the provision contained in the bill on page 100, which was suggested by myself, has been gone over very carefully by the Naval Affairs Committee, and it was reported unanimously without a dissenting vote.

I am very anxious that this provision may remain in the bill without change for many reasons. Some of those reasons I discussed with the gentleman from New York, and I think he will agree with me that there are ample reasons for asking that the provision remain in the bill as it is.

Mr. Chairman, I listened with a great deal of interest to the talk made by the gentleman from Massachusetts [Mr. GARDNER]. I must say that I was astonished at the position that he took. I recall that there was a time in the history of our country when some men insisted that there should be no laws for the prevention of dueling, when some men thought it was perfectly right, when certain disputed questions of honor were involved, to go out and shoot it out with each other upon the field of honor. I recall distinctly that on many occasions—if I had time I would be glad to recite some of those occasions—when some of the best men of our country went out, and one or the other was shot down ruthlessly at the hands of a one-time friend. The gentleman from Massachusetts insists that there are questions which can not be arbitrated. Mr. Chairman, there comes a time in connection with nations the same as with individuals, when all disputed questions can be arbitrated. Is it better and wiser to first engage in war over a question of honor and after you have had killed and slaughtered thousands or millions of your people to then arbitrate the differences? Many disputes have been settled by arbitration which otherwise might have led to war.

Now, with reference to the Japanese question. Does not the gentleman from Massachusetts remember that out in California they prohibited the Japanese children from attending the public schools with the white children, which was contrary to the wishes of the Japanese? And what did Japan do? Why, when the San Francisco calamity occurred Japan answered what she regarded as an offensive act to her nation by appropriating so many millions of dollars to the sufferers of San Francisco. [Applause.]

When later California passed an alien land law for the purpose of preventing Japanese holding and owning land and when the jingo press of this country very nearly involved us in war, Japan again answered by appropriating money sufficient to make a creditable exhibition of her products at that fair.

Now, gentlemen of this committee, I say that if ever there was a time in the history of the world when this Nation should take the initiative upon a great vital question it is at this juncture. Picture, if you can, the deplorable situation that will be presented by the sufferers of Europe at the conclusion of this war. Can you imagine that in the history of the world militarism more prostrate than it will be at that time. Think of the sufferers of those countries. We can not afford to look with complacency upon these suffering people. We should think internationally and not nationally upon these great questions. Many of the things that the gentleman from Massachusetts [Mr. GARDNER] has referred to are not in this resolution. Let me read it to you so that you can intelligently pass upon it.

The CHAIRMAN. The time of the gentleman has expired.

Mr. HENSLEY. I ask for two minutes more.

The CHAIRMAN. Is there objection to the request of the gentleman from Missouri?

There was no objection.

Mr. HENSLEY. I will read it:

Upon the conclusion of the war in Europe, or as soon thereafter as it may be done, the President of the United States is authorized to invite all the great Governments of the world to send representatives to a conference which shall be charged with the duty of suggesting an organization, court of arbitration, or other body, to which disputed questions between nations shall be referred for adjudication and peaceful settlement, and to consider the question of disarmament and submit their recommendation to their respective Governments for approval. The President is hereby authorized to appoint nine citizens of the United States, who shall be qualified for the mission by eminence in the law and by devotion to the cause of peace, to be representatives of the United States in such a conference. The President shall fix the compensation of said representatives, and such secretaries and other employees as may be needed. Two hundred thousand dollars, or so much thereof as may be necessary, is hereby appropriated and set aside and placed at the disposal of the President to carry into effect the provisions of this paragraph.

I can not understand how any individual can stand upon the floor of the House and oppose this proposition. I can not quite understand his purpose. I know I have witnessed in the last few months, certainly within the last year's time ships bearing gifts going from the very hearts of the people in this country to those unfortunate sufferers of Europe that have also borne shrapnel and ammunition for the destruction of other folks over there. I have not quite understood it, but some light from day to day is thrown upon that great question. It does to me seem most abhorrent that men will stand on the floor of this House and talk in a way that indicates that they stand for war as against peace between nations. We settle differences between

men; we have a mechanism set up whereby disputes between individuals are settled. Why can not there be some sort of machinery set up between nations whereby disputed international questions may be submitted for settlement.

The CHAIRMAN. The time of the gentleman from Missouri has expired.

[Mr. HENSLEY had leave to extend his remarks.]

Mr. CLARK of Missouri. Mr. Chairman and gentlemen, I would not take the time of the committee if I did not believe that this is the most important section of this bill. [Applause.] In the interest of clear understanding I will call it the Hensley section. I have always believed, believe now, and have always acted on that belief individually, that there are things in this life that individuals are justified in fighting for, and that there are things in the world that nations are justified in fighting for—things both personal and national, which from their very nature can not be compromised.

I have a very high opinion of the gentleman from Massachusetts [Mr. GARDNER]. He is intelligent; he is both insistent and consistent; he is courageous; he possesses mental integrity. But I never saw anything in my life that reminded me of the speech he delivered a few moments ago except the sleight-of-hand performer in a country show pulling rabbits, gold watches, and everything you can think of out of a silk hat. [Laughter and applause.] He conjured up a lot of ghosts and made them walk. He injected into the Hensley section of this bill things that Mr. HENSLEY and other members of the Naval Committee never dreamed of. There is not a thing in this resolution that justifies nine-tenths of his speech. Most of his objections are chimerical—figments of the imagination—merely that and nothing more. He wants to know whether we would be willing to arbitrate the Monroe doctrine. No. [Applause.] We will never arbitrate the Monroe doctrine while the earth spins on its axis and slides down the ecliptic. [Applause.] It is the political life preserver of the western world. [Applause.]

There are a lot of dilettante people in this country who have been talking about the Monroe doctrine being obsolete and played out and a matter of ancient times. The temper of the American people is such that they will not only retain the Monroe doctrine, but strengthen it and improve it. [Applause.] If any gentleman thinks that they do not agree on that proposition, he is very much mistaken. It is the only political proposition that the American people ever did agree on. [Applause.]

A great many people misstate what it was made for anyhow. They think that it was primarily made to help somebody else. It was primarily made for our own defense, and in a secondary way to help other people. The gentleman from Massachusetts asks if we would arbitrate the Chinese immigration question. No; and we never will. If I had my way I would shut out the entire Asiatic gang [applause], and I have always voted for every measure toward shutting them out. He asked if we would agree to arbitrate certain other great questions, questions of peace and war. No! But there are a whole multitude of questions of minor character that could be submitted to courts of arbitration with great advantage. People were accustomed to making fun of The Hague Conference. The Hague Conference did a great deal of good. It did not prevent this stupendous war, and there may be wars in days to come, although I hope not. I hope we will never be engaged in another one, and my own opinion is that if we attend strictly to our own business we never will. [Applause.] I do not believe there is a nation on earth that has little enough sense to attack us, I do not care a straw which one it is; and I have abiding faith that if one of them does attack us it will get licked in the end. [Applause.] I am not in favor of a great standing Army or a Navy that is going to overawe the world, but I am in favor of reasonable preparedness by land and sea—particularly by sea. There was a little of piety and much of wisdom in Oliver Cromwell's order to his Ironsides: "Put your trust in God but keep your powder dry." He certainly knew what he was talking about. I told Chairman HAY originally that if he would bring in an Army bill which was reasonable I would stick to him through thick and thin to the last ditch, and I did, although in order to do so and keep faith with him, I voted against one amendment I was very much in favor of. I told Chairman PADGETT the same thing, and I am going to do it. I am going to vote for his bill no matter what happens.

The CHAIRMAN. The time of the gentleman from Missouri has expired.

Mr. CLARK of Missouri. Mr. Chairman, I ask unanimous consent to proceed for five minutes more.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. GARDNER. Mr. Chairman, will the gentleman yield to me at some time during his time?

Mr. CLARK of Missouri. Yes; I think the gentleman better ask his question now.

Mr. GARDNER. The gentleman from Missouri calls attention to the fact that a great many matters can be arbitrated. We know that now. Does the gentleman from Missouri think there ought to be an international army and navy back of the international court?

Mr. CLARK of Missouri. To tell you the truth, I have not studied much about that. This does not provide for any international army or navy. I will tell you what I am in favor of about this thing. I do not believe that the great nations of the earth can stand very much longer this piling up of armaments by land and sea [applause]; that the nation-bankrupting process must come to an end; and the only way that you can bring it to an end is to have an international conference on the subject. It may prove futile at first; you may have to have a half dozen; but the only way that you are ever going to disarm all the nations is to do it by percentages. What would be the sense in asking Germany to disarm without asking France, England, Russia, and the rest to do the same thing? What would be the wisdom in asking England to disarm without asking the rest to do likewise? If they will cut these armaments down in proportion, they will be just as strong when they get through and reach the minimum, or what Capt. Hobson loved to call the "irreducible residuum"—I think that was his phrase. They would be relatively as strong as they are now. We have demonstrated in the last few weeks by the Army bill and the Navy bill and other bills which we have passed, that we propose to be reasonably prepared, and if any rash nation forces a war on us, we will see to it that it gets what it comes for and plenty of it.

I favor the Hensley proposition over the Bennet proposition because the Hensley proposition proposes that this conference shall be after the trans-Atlantic war closes. The Bennet proposition would have it right away. There is no more sense in calling a conference as long as this war rages to undertake to make peace or establish peace or prepare for peace or disarmament than there would be in undertaking to fly to the moon. They would make fun of us; they would laugh in our face; and they would do nothing at all except go on killing each other. We can afford to make this suggestion looking to disarmament. If they reject it, all well and good; we can not help it; but we can afford better than any other people under the sun to make the suggestion. We are not around seeking quarrels and fusses and fights and wars with other people. We are the richest Nation on the globe. We have the largest homogeneous population of all the nations. We are unafraid. In the interest of peace we can afford to lead the way.

The gentleman from Massachusetts [Mr. GARDNER] made another queer suggestion, and that was that if we went into this business, this court, or whatever you please to call it, and destroyed all of the battleships and the battle cruisers and other war vessels, because England has a larger merchant marine than anyone else on the face of the earth she could put some guns on her merchant vessels, and she would be stronger than she is now, relatively. Mr. Chairman, as sure as the night doth follow out the day, other people are going to increase their merchant fleets. We are; and we have started in to do it.

We can put guns on a merchant ship just as easily as Great Britain can, and so can the South American and Central American States and the neutral States of Europe and all the States and countries of the world. Arming merchantmen is a game that two—indeed, several—can play. My judgment is, giving it for what it is worth—and it is not much, because I do not know much about military affairs—when this over-seas war closes the belligerent nations of Europe now engaged in war will be so completely worn to a frazzle that they will not want to war with us or anybody else for the next quarter of a century. [Applause.] This is a good naval bill, and this is the best section in it. [Applause.]

Mr. Chairman, I ask unanimous consent to extend my remarks in the RECORD.

The CHAIRMAN. The gentleman from Missouri asks unanimous consent to extend his remarks in the RECORD. Is there objection? [After a pause.] The Chair hears none.

Mr. CLARK of Missouri. Under the leave to extend my remarks I here insert two short articles which I recently wrote for the National Sunday Magazine—one on "The Monroe Doctrine"; the other on "The Aftermath":

THE MONROE DOCTRINE.

Certain dilettante statesmen, writers, and orators—more philanthropic than patriotic—from time to time vociferate with great positiveness that the Monroe doctrine is obsolete, dead, and should be abandoned. According to these prophets of a New Evangel, the Monroe doctrine was good enough for such old fogies as Jefferson, Monroe, Adams, Lincoln, and Cleveland, and was all right for the stagecoach period of the Re-

public but is entirely too slow and narrow for strictly up-to-date folks in the age of electricity and flying machines.

On the contrary, the Monroe doctrine is the only proposition the American people ever agreed on. About the tariff, finance, internal improvements, and everything else they differ—about several they differ violently and in an unseemly manner—but about the Monroe doctrine all real lovers of our country of whatever persuasion, religious or political, agree. They rightly consider it far and away America's most important contribution to the code of international law, and they regard it as the political life preserver of the Western World—which it is. Consequently, they are justly proud of it and will defend and uphold it under all circumstances and at any cost.

It enabled the Central and South American Republics to maintain their independence. Under it Secretary Seward ran Louis Napoleon, Emperor of the French, out of Mexico at a time when he was the most powerful monarch on earth, when his arms glittered from China to Peru. Under it Cleveland shook his fist in the face of the British lion and forbade him to lay his paw on little Venezuela. We had no Navy then worth mentioning, but Johnnie Bull let us have our way. These are two of the proudest chapters in our history—chapters dear to the American heart.

Abandon the Monroe doctrine! By no manner of means. Obsolete! it is possessed of its pristine strength. It will be maintained in full force and effect. It will grow with our growth and remain forever a blessing to mankind from Vancouver to the Straits of Magellan. This is a plain, unvarnished statement of the sentiments of 100,000,000 American citizens.

What is this Monroe doctrine which we forced into the code of international law? Jefferson stated it—at least the germ of it—when in one of his letters he said that in order to preserve our own independence of the Central and South American countries it might be necessary to actually establish a line betwixt the Eastern and Western Hemispheres, with a distinct understanding and agreement that no gun of a power of the Eastern Hemisphere should ever be heard in the Western Hemisphere and vice versa. That is a much stronger statement of the American position than the one formulated by his friend, neighbor, and political pupil, James Monroe, the last of the Virginia dynasty. John Quincy Adams was Monroe's Secretary of State, and there is a disposition to filch from the great Viriginian the honor of being the father of his own doctrine and to confer it upon his renowned New England Secretary of State, who needs no borrowed honors to confirm his fame. But I do not believe that that scheme will work, and it will forever remain the Monroe doctrine in the minds and hearts of the people. The chances are the Mr. Secretary Adams formulated it—clothed it with proper language, a performance in which he was a master artist—but the idea was Monroe's.

In his annual message of 1823, he stated it in these words:

"We owe it, therefore, to candor and to the amicable relations existing between the United States and those powers (European powers) to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European power we have not interfered and shall not interfere. But with the Governments who have declared their independence and maintained it, and whose independence we have, on great consideration and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European power in any other light than as the manifestation of an unfriendly disposition toward the United States. In the war between those new Governments and Spain we declared our neutrality at the time of their recognition, and to this we have adhered, and shall continue to adhere, provided no change shall occur which, in the judgment of the competent authorities of this Government, shall make a corresponding change on the part of the United States indispensable to their security."

That is the Monroe doctrine. Most assuredly it was a modest statement. We were a modest people then; but we have outgrown that modesty, and the doctrine has kept pace with our growth and strength until it means what Cleveland said it meant in our squabble with Great Britain touching the Venezuelan question; that is, that in political matters we are supreme in the Western Hemisphere.

The nations of the Old World have never liked the Monroe doctrine. At the time it was proclaimed to a startled world Great Britain pretended to like it, but she has made more than one attempt to violate it.

Aaron Burr said: "Whatever is boldly asserted and plausibly maintained is law!" And while Old World Governments did not take kindly to the doctrine, they knew that we boldly asserted it, and they believed we would maintain it even at the cannon's mouth. So with much shaking of heads and fists, with many savage objurgations as to American upstarts across the sea they concluded to let us have our way. It was a wise conclusion. It was, as Westerners would say, "A ground-hog case."

Monroe's statement of his doctrine is terse, succinct, clear as crystal. It seems to me that nobody with two ideas above a Hottentot can mistake its meaning, and yet perhaps no state document in all the hoary registers of time has been so misconstrued. Many well-informed persons appear to think that it constitutes us a sort of universal constable—a meddler-in-general in the affairs of all the Governments of the Western Hemisphere. A more astounding or pernicious misconception never entered the mind of man.

That interpretation of the Monroe doctrine would keep us in hot water continually and get us into all sorts of trouble. It would cost us the lives of thousands of the flower of American youth, to say nothing of hundreds of millions of dollars.

The clear intent of the Monroe doctrine—and all there is to it—is to warn the nations of Europe against any attempt on their part to set up their system of Government—which evidently meant the monarchical system—in this hemisphere.

How, then, does it happen that we interfered in Cuba, San Domingo, Nicaragua, and Haiti, and may be forced to interfere in Mexico?

Of course, all sane people hope we will not be forced so to do. By what right have we interfered with the affairs of these countries? Simply to protect the lives and property of American citizens and, in an altruistic spirit, to protect the people of those countries against themselves.

We interfered in Cuban affairs and did a great and noble work. We took over the financial affairs of San Domingo and they have had no trouble since; but we have never meddled with their quarrels or their wars.

For our own protection, for the protection of the Haitians themselves, and to maintain the Monroe doctrine without resort to war with European nations, we should, if we can, make some such arrangement with the Haitians that we have with Cuba. It would be better for us, better for Haiti, better for the world, than the utter chaos which has prevailed for a century in that beautiful and fertile island country.

We have sometimes interfered to preserve American lives and American property, and perhaps may be compelled to do so again, for the vast majority of Americans are determined that our foreign policy everywhere shall be such as to make the sentence "I am an American" a safe passport in every country under the sun.

THE AFTERMATH.

It goes without saying that free speech is one of our most priceless heritages—and one that always has been and must be jealously safeguarded. But the tendency of the American people to confuse free speech and loose talk has never been more pronounced than at the present time. Its rampant indulgence is at once disquieting and amazing, concerning itself chiefly, of course, with the European-Asiatic-African war and the aftermath thereof.

It is with the aftermath of the war that the following observations are concerned. The prophets of disaster are in their element when making themselves and other timid folks miserable by conjuring up the dire calamities that will befall the United States at the close of the trouble across the seas. They can not deny our present unprecedented prosperity, in which everybody ought to take pleasure, but which many inconsiderate thinkers and talkers seem to take as a personal grievance. They are the skeletons at our feast and prophesy adversity with an unction which shows that they hope for the evils which they foretell.

Item: While admitting most reluctantly that every factory of every sort in all this spacious land is running overtime and making profits unheard of till now, they solemnly asseverate that so soon as the overseas war ends Europe will ruin all American manufacturers by the simple process of dumping her surplus wares upon us. Who can sanely accept or be disturbed by such a preposterous conclusion? Who can believe that at the close of this war Europe will happen to have a surplus of anything except ruin and sorrow with which to jeopardize American prosperity and the welfare of the Republic? Anybody who thinks carefully and has a modicum of vision must foresee that Europe, instead of being burdened with a surplus of wares and merchandise, being in fact afflicted with a painful shortage in respect to such, will, when the war is over, be busy trying to supply wares and merchandise to its own people.

Item: Many of our people view with grave apprehension the prospect of a vastly increased immigration into this country when peace is established beyond the seas, which is another figment of imagination. The chances are that the immigration into this country for a decade, perhaps for a generation, will be negligible, for good and sufficient reasons. Because so many have been killed, crippled, or incapacitated by disease, by exposure in camp, on the march, or in the field, the prospect is that every man or woman desiring employment at home will be able to find it at a higher wage than heretofore. Therefore and thereby the temptation to emigrate from their old homes and seek a new country, particularly this one, will be diminished. Many persons seem to think that the only reason why immigrants come to America is because they desire to live in a Republic. No doubt that is the reason why many do come hither, but many others—a majority perhaps—come because of the greater rewards for labor, whether skilled or unskilled, whether of brain or of brawn. It is confidently submitted that both these motives are rational and honorable. These two classes embrace the bulk of the immigrants to American shores, not to mention the comparatively few who flee from religious or political persecutions and others who, like the Knight of La Mancha, come in quest of ventures. It is safe to say that 95 per cent of all who emigrate from Europe leave the land of their birth with regret, a regret inherent in human nature itself and honorable to the human heart.

It is also safe to say that if the rewards of toil are even approximately equal in their own country and in another, most folks the wide world over prefer to stay in their native land, amid the scenes of childhood, and in company with kindred and friends. It is not to Americans alone that the song, "Home, Sweet Home," appeals, but to all the peoples of the earth.

When this stupendous conflict closes laborers of every kind will be so scarce in the belligerent countries that wages are as certain to rise in them as the sun is to shine; and just as wages increase, so emigration will decrease. It is bound to be so. It can not be otherwise.

Not more than two cases need be advanced to sustain the conclusion as to reduced immigration into this country.

The first mighty army of our immigrants came from Ireland, because of the hard conditions prevailing at home, particularly as to religious and political freedom, education, rents, and ownership of land. Almost exactly in proportion as conditions have improved in Ireland the Irish have ceased to emigrate—for no people are more ardent lovers of their native land.

Following the vast Irish immigration came that of the Germans—a vaster still. Until some 30 or 40 years ago our principal supply of immigrants came from Germany. When the present war began, the great stream of German immigrants had dwindled almost to the vanishing point. What was the reason for this shrinkage? It is clear that it was because the great industrial awakening of Germany—one of the most astounding phenomena of modern times—gave employment at home to hundreds of thousands at higher wages in new kinds of work. That was among the chief of the herculean labors Bismarck performed for his country. Germans found employment at home at more remunerative wages than were obtainable prior to the great industrial awakening, and the number of immigrants into this country from the Fatherland grew constantly smaller year by year, until it practically ceased altogether.

I repeat, that that was one of the main benefactions which Bismarck wrought for Germany, for it made her one of the foremost manufacturing and exporting nations of the globe. And the truth is that no statesman or leader of men ever worked more persistently and industriously at any self-imposed task than Kaiser Wilhelm II has labored to increase the manufactures and exports of Germany.

Query: If improved conditions as to the rewards of labor in Ireland and Germany, whence so many of our most desirable immigrants came in the earlier day, diminished the emigration from those countries, why is not the same result likely to happen in the present warring nations?

So it seems that instead of our country being swamped by a tremendous host of immigrants, the Anti-Immigration Society is likely to find itself in the condition of Othello, for its "occupation will be gone."

Mr. PADGETT. Mr. Chairman, I ask for a vote on the amendment.

Mr. BENNET. Mr. Chairman, I ask for one moment to close debate on my amendment.

Mr. MANN. Will that close debate?

Mr. BENNET. I have no objection to debate being closed. I understand the gentleman from Massachusetts [Mr. GARDNER] is going to offer an amendment to strike out the clause.

Mr. MANN. Mr. Chairman, I ask that debate on this pending amendment close in two minutes.

The CHAIRMAN. The gentleman from Illinois asks unanimous consent that debate on the pending amendment close in two minutes. Is there objection? [After a pause.] The Chair hears none.

Mr. BENNET. Mr. Chairman, when the gentleman from Missouri [Mr. CLARK] and myself were both Members of the Sixty-first Congress he sat down and read this amendment of mine. He favored my amendment and helped get it through the House. If my amendment did what he thinks it does I would be against it myself. Now I want the gentlemen of the committee to listen to it. It says:

That a commission of nine members be appointed by the President of the United States to consider the expediency of utilizing existing international agencies for the purpose of limiting the armaments of the nations of the world by international agreement and of constituting the combined navies of the world an international force for the preservation of universal peace and to consider and report upon any other means to diminish the expenditures of government for military purposes and to lessen the probabilities of war.

Why, we would be crazy if we proposed to call an international conference in the midst of this war conflagration. This is for the purpose of getting ready for the conference which the gentleman from Missouri and I both agree is going to come, which will be forced by the awful cost of war and the burden of taxation.

The CHAIRMAN. The time of the gentleman has expired; all time has expired. The question is on agreeing to the amendment offered by the gentleman from New York.

The question was taken, and the amendment was rejected.

Mr. GARDNER. Mr. Chairman, I offer the following amendment.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Page 100, line 10, strike out all down to line 15 on page 101.

Mr. SISSON rose.

Mr. MANN. Mr. Chairman——

Mr. SISSON. I desire to state to the gentleman that I have not opened my mouth during this debate, and this is one item in which I am interested.

Mr. MANN. How much time does the gentleman desire to take?

Mr. SISSON. I do not think I will desire more than five minutes, but if I should want a minute or two more I should dislike very much to be cut off.

Mr. MANN. We will give it to the gentleman. Mr. Chairman, I ask unanimous consent that debate on the amendment close in five minutes.

The CHAIRMAN. The gentleman from Illinois asks unanimous consent that debate on the pending amendment close in five minutes. Is there objection? [After a pause.] The Chair hears none.

Mr. SISSON. Mr. Chairman, the gentleman from Alabama [Mr. OLIVER] wants to make a unanimous-consent request.

Mr. OLIVER. Mr. Chairman, I ask unanimous consent to have inserted in the RECORD an address delivered by Admiral Benson, Chief of Naval Operations, before the graduating class at Annapolis, which is full of information touching very important provisions in this bill.

The CHAIRMAN. The gentleman will have to do that in the House.

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

The CHAIRMAN. The question is on agreeing to the amendment.

The question was taken, and the amendment was rejected.

Mr. SISSON. Mr. Chairman, I ask unanimous consent to extend my remarks in the RECORD.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. PADGETT. Mr. Chairman, I move that the committee do now rise.

The motion was agreed to.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. FITZGERALD, Chairman of the Committee of the Whole House on the state of the Union, reported that that committee had had under consideration the bill (H. R. 15947) making appropriations for the naval service for the fiscal year ending June 30, 1917, and for other purposes, and had come to no resolution thereon.

LEAVE OF ABSENCE.

Mr. BURKE, by unanimous consent, was granted leave of absence for two weeks on account of illness in his family.

EXTENSION OF REMARKS.

Mr. PADGETT. Mr. Speaker, I wish to submit a request for unanimous consent that everyone have leave to print for five legislative days upon the naval bill.

The SPEAKER. The gentleman from Tennessee [Mr. PADGETT] asks unanimous consent that all gentlemen have the right to extend their remarks in the RECORD for five legislative days on the naval appropriation bill.

Mr. MOORE of Pennsylvania. Reserving the right to object, I ask the gentleman to let that request go over until to-morrow. Let us dispose of it to-morrow.

Mr. PADGETT. Let us dispose of it to-night.

Mr. MOORE of Pennsylvania. If the gentleman insists, I shall object to it now. Let us see how to-morrow works out.

Mr. McKELLAR. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD on the rural-credits question.

The SPEAKER. Is there objection?

There was no objection.

Mr. FESS. Mr. Speaker, I ask unanimous consent to print in the RECORD an address delivered at Canton, Ohio, on Memorial Day, to the McKinley Post, by my colleague, Representative DAVID A. HOLLINGSWORTH.

The SPEAKER. The gentleman from Ohio asks unanimous consent to extend his remarks in the RECORD by printing a speech made to the McKinley Grand Army Post at Canton, Ohio, on Memorial Day by his colleague, Mr. HOLLINGSWORTH. Is there objection?

There was no objection.

Mr. OLIVER. Mr. Speaker, I ask unanimous consent to insert in the RECORD a speech delivered by Admiral Benson, Chief of Naval Operations, before the graduating class at Annapolis to-day.

The SPEAKER. The gentleman from Alabama asks unanimous consent to extend his remarks in the RECORD by printing a speech delivered by Admiral Benson at Annapolis. Is there objection?

There was no objection.

Mr. MUDD. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD on the naval appropriation bill.

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

Mr. CALDWELL. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD on the naval appropriation bill.

The SPEAKER. The gentleman from New York asks unanimous consent to extend his remarks in the RECORD on the naval appropriation bill. Is there objection? [After a pause.] The Chair hears none.

Mr. DECKER. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD on the naval appropriation bill.

The SPEAKER. Is there objection?

There was no objection.

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. 1059. An act to provide for the payment for certain lands within the former Flathead Indian Reservation, in the State of Montana; to the Committee on the Public Lands.

S. 1550. An act to authorize the establishment of fish-cultural stations on the Columbia River or its tributaries in the State of Oregon or the State of Washington; to the Committee on the Merchant Marine and Fisheries.

S. 1746. An act for the relief of Delilah Siebenaler; to the Committee on Claims.

S. 4526. An act authorizing the Arikara, Gros Ventre, and Mandan Tribes of Indians, of the Fort Berthold Reservation, N. Dak., to submit claims to the Court of Claims; to the Committee on Claims.

S. 3539. An act for the relief of John L. Moon; to the Committee on Claims.

S. 798. An act for the relief of Kate Canniff; to the Committee on Claims.

S. 147. An act for the relief of John W. Cupp; to the Committee on Claims.

S. 28. An act for the relief of George T. Hamilton; to the Committee on War Claims.

S. 4810. An act for issuance of a patent for certain Government land to Benjamin F. Robinson and John Dows; to the Committee on the Public Lands.

S. 4807. An act for the relief of James W. Cross; to the Committee on Claims.

S. 4368. An act for the relief of D. A. Barbour and Andrew P. Gladden; to the Committee on Claims.

S. 3533. An act for the relief of Mike G. Womack; to the Committee on Claims.

S. 5851. An act to extend the time for constructing a bridge across the Eastern Branch of the Elizabeth River in Virginia; to the Committee on Interstate and Foreign Commerce.

S. 5425. An act to standardize lime barrels; to the Committee on Coinage, Weights, and Measures.

S. 5805. An act permitting the Riverview Ferry Co. to construct, maintain, and operate a bridge across the Yellowstone River in the State of Montana; to the Committee on Interstate and Foreign Commerce.

S. 4594. An act to validate certain declarations of intention to become citizens of the United States; to the Committee on Immigration and Naturalization.

S. 6239. An act authorizing the Commissioner of Navigation to document as vessels of the United States two dredges built of American material and owned by James Stewart & Co. (Inc.), a citizen of the United States; to the Committee on Interstate and Foreign Commerce.

ADJOURNMENT.

Mr. PADGETT. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 5 o'clock and 53 minutes p. m.) the House adjourned until Friday, June 2, 1916, at 11 o'clock a. m.

EXECUTIVE COMMUNICATIONS, ETC.

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 Treasury, transmitting copy of a communication from the president of the Board of Commissioners of the District of Columbia submitting estimates of urgent deficiencies in appropriations required for the service of the fiscal year ending June 30, 1916 (H. Doc. No. 1186); to the Committee on Appropriations and ordered to be printed.

2. A letter from the Acting Secretary of the Treasury, transmitting copy of a communication from the Secretary of the Navy submitting an estimate of deficiency in the appropriation for "Pay, miscellaneous, fiscal year 1913," to pay the New York Telephone Co., for rental of telephones at the New York Navy Yard, $94.50 (H. Doc. No. 1187); to the Committee on Appropriations and ordered to be printed.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII,

Mr. IGOE, from the Committee on the Judiciary, to which was referred the bill (H. R. 15158) to amend the Judicial Code, to fix the time when the annual term of the Supreme Court shall commence, and further to define the jurisdiction of that court, reported the same without amendment, accompanied by a report (No. 794), which said bill and report were referred to the House Calendar.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII, private bills and a resolution were severally reported from committees, delivered to the Clerk, and referred to the Committee of the Whole House, as follows:

Mr. MILLER of Delaware, from the Committee on Claims, to which was referred the bill (H. R. 14528) for the relief of W. W. Finn, reported the same with amendment, accompanied by a report (No. 792), which said bill and report were referred to the Private Calendar.

He also, from the same committee, to which was referred the bill (H. R. 8698) for the relief of William W. Danenhower, reported in lieu of said bill H. Res. 252, accompanied by a report (No. 793), which said resolution and report were referred to the Private Calendar.

CHANGE OF REFERENCE.

Under clause 2 of Rule XXII, committees were discharged from the consideration of the following bills, which were referred as follows:

A bill (H. R. 7485) granting a pension to Lee Allen; Committee on Invalid Pensions discharged, and referred to the Committee on Pensions.

A bill (H. R. 15177) for the relief of Leander Parker; Committee on Invalid Pensions discharged, and referred to the Committee on Military Affairs.

A bill (H. R. 14396) granting a pension to Eliza J. Reed; Committee on Pensions discharged, and referred to the Committee on Invalid Pensions.

PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS.

Under clause 3 of Rule XXII, bills and resolutions were introduced and severally referred as follows:

By Mr. STEDMAN: A bill (H. R. 16171) increasing the limit of cost for the purchase of a site for the erection of a public building at Mount Airy, N. C.; to the Committee on Public Buildings and Grounds.

By Mr. STOUT: A bill (H. R. 16172) to define the qualifications of Representatives in Congress; to the Committee on Election of President, Vice President, and Representatives in Congress.

By Mr. JOHNSON of Kentucky: A bill (H. R. 16173) to protect the hungry, the naked, the sick, and the dead in the District of Columbia from extortion, and for other purposes; to the Committee on the District of Columbia.

By Mr. REAVIS: A bill (H. R. 16174) to fix standard sizes for baskets or other containers for small fruits, berries, vegetables, and other agricultural products, and for other purposes; to the Committee on Coinage, Weights, and Measures.

By Mr. FESS: A bill (H. R. 16175) providing for the acquisition of a site and the erection thereon of a public building for the city of London, Madison County, Ohio; to the Committee on Public Buildings and Grounds.

Also, a bill (H. R. 16176) providing for the acquisition of a site and erection thereon of a public building for the city of Marysville, Union County, Ohio; to the Committee on Public Buildings and Grounds.

Also, a bill (H. R. 16177) providing for the acquisition of a site and erection thereon of a public building for the city of Lebanon, Warren County, Ohio; to the Committee on Public Buildings and Grounds.

Also, a bill (H. R. 16178) providing for the erection of a public building for the city of Urbana, Champaign County, Ohio; to the Committee on Public Buildings and Grounds.

By Mr. SHOUSE: A bill (H. R. 16179) authorizing the Secretary of War to donate to the city of Lyons, in the county of Rice and State of Kansas, two bronze or brass cannon or field-pieces, with their carriages; to the Committee on Military Affairs.

By Mr. WM. ELZA WILLIAMS: A bill (H. R. 16180) to prohibit the giving or receiving of tips or other gratuities; to the Committee on Interstate and Foreign Commerce.

By Mr. SMALL: A bill (H. R. 16181) to provide for the erection of a public building at Edenton, N. C.; to the Committee on Public Buildings and Grounds.

By Mr. KETTNER: A bill (H. R. 16182) for the purchase of a site for a public building at Santa Ana, Orange County, Cal.; to the Committee on Public Buildings and Grounds.

By Mr. McCULLOCH: A bill (H. R. 16183) to create a United States Tariff Commission, to define its powers and duties, and for other purposes; to the Committee on Ways and Means.

By Mr. McKELLAR: A bill (H. R. 16184) to reduce the tax on oleomargarine; to the Committee on Agriculture.

By Mr. DUPRÉ: A bill (H. R. 16185) to give the consent of the Congress to the construction of a bridge across the Mississippi River near and above the city of New Orleans, La., and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. BELL: Resolution (H. Res. 251) authorizing the Doorkeeper to employ additional labor for folding speeches; to the Committee on Accounts.

By Mr. HULL of Iowa (by request): Resolution (H. Res. 253) for adopting the Decalogue and Jesus' rule as standard measure for laws and regulations of the Government of the United States; to the Committee on Alcoholic Liquor Traffic.

By Mr. COX: Resolution (H. Res. 254) asking the belligerent nations to agree to an armistice; to the Committee on Foreign Affairs.

By Mr. STEPHENS of Texas: Joint resolution (H. J. Res. 233) to officially recognize a floral emblem for the United States of America; to the Committee on the Library.

PRIVATE BILLS AND RESOLUTIONS.

Under clause 1 of Rule XXII, private bills were introduced and severally referred as follows:

By Mr. BEALES: A bill (H. R. 16186) granting a pension to Mary A. Hemler; to the Committee on Invalid Pensions.

Also, a bill (H. R. 16187) granting an increase of pension to Isaac Myers; to the Committee on Invalid Pensions.

Also, a bill (H. R. 16188) granting an increase of pension to Mary A. Wilhelm; to the Committee on Invalid Pensions.

Also, a bill (H. R. 16189) granting an increase of pension to Morris W. Hackman; to the Committee on Invalid Pensions.

By Mr. FIELDS: A bill (H. R. 16190) granting a pension to Carrie S. Wright; to the Committee on Invalid Pensions.

By Mr. HARRISON: A bill (H. R. 16191) granting a pension to Georgia Gentry; to the Committee on Invalid Pensions.

By Mr. HOUSTON: A bill (H. R. 16192) granting an increase of pension to Nancy J. Frame; to the Committee on Pensions.

By Mr. JOHNSON of South Dakota: A bill (H. R. 16193) granting an increase of pension to William Mitchell; to the Committee on Invalid Pensions.

Also, a bill (H. R. 16194) granting an increase of pension to Richard A. Woodall; to the Committee on Invalid Pensions.

By Mr. KETTNER: A bill (H. R. 16195) granting a pension to Mrs. Augusta Schreiner; to the Committee on Invalid Pensions.

Also, a bill (H. R. 16196) granting a pension to Agnes Perry Wilson; to the Committee on Pensions.

By Mr. KIESS of Pennsylvania: A bill (H. R. 16197) granting a pension to Catharine Keen; to the Committee on Invalid Pensions.

By Mr. LIEBEL: A bill (H. R. 16198) granting a pension to Annie H. Hastings; to the Committee on Invalid Pensions.

Also, a bill (H. R. 16199) for the relief of James Tweed; to the Committee on Military Affairs.

By Mr. MAGEE: A bill (H. R. 16200) granting an increase of pension to John A. Jaynes; to the Committee on Pensions.

By Mr. OAKEY: A bill (H. R. 16201) granting a pension to Fred G. Kasimir; to the Committee on Pensions.

By Mr. POWERS: A bill (H. R. 16202) granting a pension to Bertha Shackelford; to the Committee on Pensions.

By Mr. SMITH of Idaho: A bill (H. R. 16203) granting an increase of pension to Charles Richter; to the Committee on Invalid Pensions.

By Mr. TINKHAM: A bill (H. R. 16204) granting a pension to Mary A. Bowen; to the Committee on Pensions.

By Mr. WM. ELZA WILLIAMS: A bill (H. R. 16205) granting a pension to Joseph K. Bellemey; to the Committee on Pensions.

By Mr. WILSON of Illinois: A bill (H. R. 16206) granting a pension to Carl B. Traver; to the Committee on Pensions.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

By Mr. ASHBROOK: Evidence to accompany House bill 6125, for relief of Charles W. Bryant; to the Committee on Invalid Pensions.

By Mr. BORLAND: Petition of sundry citizens of Kansas City, Mo., regarding execution by English Government of Padrias H. Pearse and others in Ireland; to the Committee on Foreign Affairs.

By Mr. CAREW: Petition of the Indianapolis (Ind.) Board of Trade favoring passage of the Pomerene bill-of-lading bill; to the Committee on Interstate and Foreign Commerce.

By Mr. DOOLING: Petition of National Automobile Chamber of Commerce, relative to data regarding production of petroleum; to the Committee on Ways and Means.

By Mr. FOCHT: Evidence in support of House bill 12140, for relief of Caroline Smith; to the Committee on Pensions.

By Mr. GARDNER: Petitions of various citizens of Beverly, Mass., favoring the passage of the Webb-Smith national prohibition resolution; to the Committee on the Judiciary.

By Mr. GREENE of Vermont: Petition of George W. Peck, jr., and others, of first congressional district, against the passage of House bill 13048, to create a juvenile court; to the Committee on the Judiciary.

Also, petition of Dr. E. F. Johnson, of Orwell, Vt., against passage of House bill 13778, to exclude from the mails certain publications; to the Committee on the Post Office and Post Roads.

By Mr. HAMLIN: Papers to accompany House bill 15408, a bill to pension John E. Opedyke; to the Committee on Invalid Pensions.

By Mr. HOLLINGSWORTH: Memorial of Ohio Yearly Meeting of Friends, against increase in Army; to the Committee on Military Affairs.

Also, memorial of J. G. Battelle, against legislation to prevent use of scientific efficiency methods in industrial operations; to the Committee on Labor.

By Mr. KETTNER: Petition of E. L. M. Tate, director California State Board of Health, of Sacramento, Cal., protesting against Senate resolution disqualifying the Surgeon General from holding office in or becoming a member of any medical or private health association; to the Committee on Appropriations.

Also, petition of J. H. Smith and Hon. George Puterbaugh, 742 Second Street, San Diego, Cal., favoring House bill 386, creating Civil War volunteer officers' list; to the Committee on Military Affairs.

Also, petition of C. E. Lamb, of Big Pine, Cal., favoring House bill 9216, providing eight-hour workday for railroad agents and telegraphers; to the Committee on Labor.

Also, petition of F. D. Teall, 2931 Thorn Street, San Diego, Cal., protesting against the Shields water-power bill; to the Committee on Military Affairs.

Also, petition of R. C. Brinkerhoff, of Riverside, Cal., protesting against the juvenile-court bill; to the Committee on the District of Columbia.

Also, petition of Levi S. Taylor and Edith D. Hopkins, of Pasadena, Cal., protesting against increase in Army and Navy; to the Committee on Military Affairs.

By Mr. LIEBEL: Papers to accompany House bill 16198, for relief of Annie H. Hastings; to the Committee on Invalid Pensions.

By Mr. LINTHICUM: Petition of Baltimore (Md.) Federation of Labor, favoring passage of employers' liability act, House bill 10318; to the Committee on the District of Columbia.

Also, petition of Pattern Makers' Association, of Baltimore, Md., favoring House bill 11168, relative to leave of absence for employees of navy yards and arsenals; to the Committee on Naval Affairs.

By Mr. LOBECK: Memorial passed by the temperance committee of the People's Society of Christian Endeavor of Castellar Presbyterian Church, of Omaha, Nebr., petitioning Congress to pass the Barkley and Sheppard bills, prohibiting liquor traffic in the District of Columbia; to the Committee on the District of Columbia.

Also, memorial of Temperance Society of Christian Endeavor, of Omaha, Nebr., petitioning Congress to prohibit the sale of intoxicants in Porto Rico; to the Committee on Insular Affairs.

By Mr. LONDON: Petition of the Workmen's Circle Sixteenth Annual Convention, at New York City, protesting against the agitation for military preparedness and against the introduction of military training into schools, "transforming them into military barracks instead of institutions for the mental development of the young"; to the Committee on Military Affairs.

By Mr. MATTHEWS: Evidence in support of House bill 16139, a bill for the relief of John S. Conkright; to the Committee on Military Affairs.

By Mr. NOLAN: Petitions of California Federation of Women's Clubs, favoring woman suffrage; to the Committee on the Judiciary.

Also, petitions of California Federation of Women's Clubs, favoring S. 5408, to create a women's division in the Department of Labor; to the Committee on Labor.

By Mr. O'SHAUNESSY: Memorial of mass meeting of citizens of Providence, R. I., favoring Dyer resolution relative to execution of Irish prisoners by English Government; to the Committee on Foreign Affairs.

Also, petition of Committee of Ten, Rhode Island Branch National Metal Trades Association, Beakman & Smith, Providence, R. I., against antiefficiency rider to naval appropriation bill; to the Committee on Naval Affairs.

Also, memorial of Rhode Island State Federation of Labor, favoring employers' liability act, House bill 10318; to the Committee on the District of Columbia.

By Mr. SCULLY: Petition of United Hatters of North America, Local No. 4, of Orange, N. J., relative to appropriation for purchase of campaign hats for United States Army; to the Committee on Military Affairs.

Also, petition of Colonial Dames of America, favoring preparedness; to the Committee on Military Affairs.

Also, memorial of convention of Mental Hygiene Societies of the United States, relative to division of mental hygiene in the United States Public Health Service; to the Committee on Interstate and Foreign Commerce.

By Mr. SINNOTT: Petition of citizens of Carson and Halfway, Oreg., against law enforcing the observance of a religious institution, etc.; to the Committee on the Judiciary.

Also, petition of citizens of Rye Valley, Oreg., against House bill 13048, to create a juvenile court in the District of Columbia; to the Committee on the District of Columbia.

By Mr. SMITH of Idaho: Memorial of Wendell (Idaho) Grange, No. 82, against limiting the weight of parcel-post pack-

ages to 50 pounds; to the Committee on the Post Office and Post Roads.

By Mr. SNELL: Petition of T. S. Hanmer, B. L. Hanmer, E. M. Hanmer, Herman A. James, Jacob Daniels, Allen Farr, Mrs. Elizabeth Farr, L. A. Harding, William La Bounty, J. E. Corey, Charlotte Beck, A. B. Moore, Mrs. Phebe Gray, Vernon Lamoy, Berton H. Farrell, D. A. Farrell, M. E. Henry, M. R. Wood, Mrs. Liggett, P. M. Light, Charles Collins, Aaron Weinstock, S. Weinstock, A. J. Foster, and Ernest Foster, all of Saranac Lake, N. Y., protesting against the passage of House bill 6468 and House bill 491, known as the Fitzgerald and Siegel bills; to the Committee on the Post Office and Post Roads.

Also, petition of Theo. S. Hanmer, B. L. Hanmer, Truman Hanmer, William La Bounty, J. E. Cory, A. B. Moore, Mrs. Phebe Gray, Berton H. Farrell, D. A. Farrell, M. E. Harney, Mary R. Wood, Mrs. Liggett, P. M. Light, L. Weinstock, Aaron Weinstock, A. J. Foster, and Ernest Foster, all of Saranac Lake, N. Y., protesting against House bill 652; to the Committee on the District of Columbia.

By Mr. STINESS: Petition of Livermore & Knight Co., of Providence, R. I., against bill to discontinue the Taylor system in Government shops; to the Committee on Labor.

Also, petition of sundry citizens of Providence and Kent Counties, R. I., favoring national prohibition; to the Committee on the Judiciary.

Also, memorial of a mass meeting of citizens of Providence, R. I., favoring Dyer resolution relative to treatment of Irish prisoners by English Government; to the Committee on Foreign Affairs.

By Mr. WALSH: Petition of 200 citizens of New Bedford, presided over by Charles Mitchell, in meeting assembled on May 22, petitioning for the speedy passage of Webb-Smith resolutions (H. J. Res. 84 and 85), proposing amendment to the Constitution prohibiting beverage traffic in intoxicating liquors; to the Committee on the Judiciary.

By Mr. YOUNG of North Dakota: Petition of Dakota conference of the Evangelical Association, favoring national prohibition; to the Committee on the Judiciary.

SENATE.

FRIDAY, *June 2, 1916.*

The Senate met at 11 o'clock a. m.

The Chaplain, Rev. Forrest J. Prettyman, D. D., offered the following prayer:

Almighty God, we seek Thy guidance and blessing for the duties of this day that we may be prepared for every issue with that spiritual equipment that will give us the authority of those who dwell in communion with God and who are the exponents of God's will. Thou hast not separated Thyself from us even in our smallest interests, and Thou art with us to guide us in our larger national life. Do Thou take charge of us this day that we may perform Thy will and that all that we do may be in accordance with Thy law. Grant us the grace that comes from God. Bring every emotion of our hearts into subjection to Thy will. For Christ's sake. Amen.

The Journal of the proceedings of the legislative day of Wednesday, May 31, 1916, was read and approved.

PETITIONS AND MEMORIALS.

Mr. CHAMBERLAIN presented a memorial of sundry citizens of Alsea, Oreg., remonstrating against the enactment of legislation for compulsory Sunday observance in the District of Columbia, which was ordered to lie on the table.

He also presented a petition of sundry citizens of Salem, Oreg., praying for national prohibition, which was referred to the Committee on the Judiciary.

Mr. REED. I present resolutions adopted at a meeting of certain prominent Irish-American citizens of Kansas City, Mo., regarding the execution by the English Government of Padriac H. Pearse, provisional president of Ireland, and his compatriots. Accompanying the resolutions is a letter from Hon. Frank P. Walsh, chairman of the executive committee, transmitting the resolutions to me. I ask that the letter and accompanying resolutions be printed in the RECORD.

There being no objection, the letter and accompanying resolutions were ordered to be printed in the RECORD, as follows:

KANSAS CITY, MO., *May 29, 1916.*

Hon. JAMES A. REED,
United States Senate, Washington, D. C.

DEAR MR. REED: We have the honor to hand you herewith resolutions adopted at a meeting of our citizens regarding the execution by the English Government of Padriac H. Pearse, provisional president of Ireland, and his compatriots upon charges of fomenting rebellion.

The resolutions were unanimously adopted by the 4,000 men and women attending the meeting, which was held in this city upon May 21, 1916.

The committee would be pleased if you will present the resolutions to Congress.

Very truly, yours,

FRANK P. WALSH,
Chairman Executive Committee.
MAURICE J. MCNELLIS,
Secretary.
D. V. KENT,
FRANCIS C. DOWNEY,
WILLIAM P. HARVEY,
M. A. FLYNN,
JOHN J. O'CONNOR,
RICHARD J. HIGGINS,
WILLIAM E. LYONS,
JOHN NANGLE,
Members Executive Committee.

At the sacred altar of human liberty, before whose portals the flame of Irish freedom has burned for centuries, the blood of our race has been reconsecrated to its loftiest and finest ideal.

THE ESTABLISHMENT OF THE IRISH REPUBLIC.

England has again shocked the world with a series of barbaric crimes against civilization in the cruel murders of Patrick H. Pearse, James Connolly, Thomas McDonagh, and their brave compatriots.

These latest iniquities should receive the condemnation of lovers of liberty everywhere.

These men, the very flower of Irish manhood, were slain for the assertion of the identical principles written into the American Declaration of Independence by Thomas Jefferson and vindicated by the sword of the immortal Washington.

In the sublime effort which cost them their lives they represented an unconquered race in a state of war against an invading and oppressive enemy, and, as prisoners of war, were entitled to the treatment which truly civilized governments extend to captured foes.

It is repellant to every human ideal that any people should be oppressed by force or their nationality suppressed. Efforts to do so are of the primal causes of war.

Ireland's struggle for freedom has persisted through the generations, kept alive by the indomitable courage and deeply implanted traditions of her sons and daughters.

She has never surrendered her unity of purpose, national ideals, or customs, and has ever preserved a racial tongue. These things constitute the deathless soul of a nation.

Unvanquished, unafraid, her children have ever clung to their righteous ambition to take that place in the world of nations which is the divine heritage of an autonomous and invincible race.

We, therefore, as American citizens, enter our solemn protest against this latest atrocity of the English Government and its wanton violation of the humanities in the cowardly assassination of these Irish statesmen and soldiers, and call upon the President and Congress to use the powerful influence of America to prevent massacres of like character.

We also earnestly demand, in case it becomes the duty of our Government to select mediators to bring about peace in Europe, that the Republic of Ireland be represented with the other nations, to the end that free government may be established there and the holy cause of democracy advanced throughout the world.

As loyal citizens of a neutral country, we desire to offer a historic precedent for our action here to-day by reminding our fellow citizens of the fact that after the Declaration of American Independence was proclaimed Benjamin Franklin went to Europe to plead the cause of the American "rebels" of that day and ask assistance.

In his wisdom he first went to Dublin. The Irish Parliament was then in session. He was granted the privilege of addressing that body, and then and there the Irish Legislature passed a resolution indorsing the Declaration of Independence, and thus went on record as the first legislative body on earth that did indorse it.

PORT OF NOYES, MINN.

Mr. NELSON. From the Committee on Commerce I report back favorably without amendment the bill (S. 5645) for the establishment of Noyes, in the State of Minnesota, as a port of entry and delivery for immediate transportation without appraisement of dutiable merchandise. It is a very short bill, and I ask unanimous consent for its present consideration.

There being no objection, the bill was considered as in Committee of the Whole. It extends the privileges of the first and seventh sections of the act approved June 10, 1880, governing the immediate transportation of dutiable merchandise without appraisement to the port of Noyes, in the State of Minnesota.

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

CALLING OF THE ROLL.

Mr. KERN. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Hollis	Overman	Stone
Brady	Jones	Page	Sutherland
Brandegee	Kern	Reed	Thomas
Chamberlain	La Follette	Saulsbury	Thompson
Clark, Wyo.	Lane	Sheppard	Townsend
Culberson	Lea, Tenn.	Simmons	Vardaman
Curtis	Lodge	Smith, Ariz.	Warren
Dillingham	Myers	Smith, Ga.	Works
Fall	Nelson	Smith, Md.	
Fletcher	Newlands	Smith, S. C.	
Gallinger	Norris	Sterling	

Mr. TOWNSEND. The senior Senator from Michigan [Mr. SMITH] is absent on important business. He is paired with the junior Senator from Missouri [Mr. REED]. I desire this announcement to stand for the day.