PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

The SPEAKER (by request): Petition of the Alcade of San Sebastien, Porto Rico, favoring the extension to Porto Rico of Federal rural credits; to the Committee on Banking and Currency.

By Mr. ASHBROOK: Petition of employees of Mount Vernon (Ohio) post office, in favor of Senate joint resolution No. 84, to increase pay of postal employees; to the Committee on the Post Office and Post Roads.

By Mr. COLE: Petition of the Toledo Commerce Club, of Toledo, Ohio, protesting against the Government ownership of railroads; to the Committee on Interstate and Foreign Commerce.

Also, petition of 33 members of the Railway Mail Association of Marion, Ohio, requesting support of the Zihlman bill, H. R. 8376; to the Committee on the Post Office and Post Roads.

By Mr. DALLINGER: Vote of the executive committee of the Associated Industries of Massachusetts, relative to the Mondell-Smoot bill; to the Committee on Ways and Means.

By Mr. FAIRFIELD: Petition of the Missionary Church Association of Berne, Ind., protesting against the passage of legislation providing for universal military training; to the Committee on Military Affairs.

By Mr. FULLER of Illinois: Petition of General Henry M. Slocum Post, No. 55, Grand Army of the Republic, Department of New Jersey, favoring a bill to grant a pension of $50 per month to all veterans of the Civil War, and of $30 per month to all widows of such veterans regardless of date of marriage; to the Committee on Invalid Pensions.

By Mr. GARRETT: Petition of First National Bank of Chattanooga, Tenn., favoring private ownership and management of railroads; to the Committee on Interstate and Foreign Commerce.

By Mr. LINTHICUM: Petition of Allegany Trades Council, of Cumberland, Md., favoring the passage of the Sims bill, H. R. 8157; to the Committee on Interstate and Foreign Commerce.

Also, petition of Baltimore Federation of Labor, Baltimore, Md., favoring the passage of a bill providing for a 35 per cent increase in wages for postal employees; to the Committee on the Post Office and Post Roads.

Also, petition of Mr. Le Roy Bull, of Baltimore, Md., favoring Senate joint resolution No. 84; to the Committee on the Post Office and Post Roads.

Also, petition of Joseph C. Hild and others, of Baltimore, Md., protesting against the Smith-Towner bill; to the Committee on Education.

Also, petition of Joseph A. McDonell and others, of Baltimore, Md., favoring the passage of legislation to increase pay of postal employees and letter carriers; to the Committee on the Post Office and Post Roads.

By Mr. McCLINTIC: Petition of retail merchants and business men of Elk City, Okla., urging the support of the Kenyon bill; to the Committee on Interstate and Foreign Commerce.

By Mr. McGLENNON: Petition of John Hughes and others, of Paterson, N. J., favoring a bill granting to all Union veterans of the Civil War and the widows of the deceased veterans a monthly pension of $50 per month; to the Committee on Pensions.

By Mr. MORIN: Petition of Post 18, of the American Legion, Pittsburgh, Pa., protesting against amnesty for any person imprisoned under the espionage act; to the Committee on the Judiciary.

By Mr. HENRY T. RAINEY: Petition of sundry citizens of Havana, Ill., favoring the repeal of section 907 of the revenue act; to the Committee on Ways and Means.

By Mr. RAKER: Petition of the Cooks' Association of the Pacific Coast, asking that their profession be included in the labor bill now before the Senate Committee on Labor, of which Senator KENYON is the sponsor; to the Committee on Labor.

Also, petition of the Federated Associations for Cripples, protesting against the Smith-Fess measure providing for encouragement of the States to rehabilitate civilian cripples; to the Committee on the Judiciary.

Also, petition of the city council of Oakland, Calif., urging Congress to pass legislation reducing the high cost of living; to the Committee on Agriculture.

Also, resolution passed by the American Legion, headquarters New York City, against any movement against law and order; to the Committee on the Judiciary.

Also, telegram from C. E. Clinch, of Grass Valley, Calif., protesting against the licensing bill and suggesting method of lowering the high cost of living; to the Committee on Agriculture.

Also, petition of the Western Express Messengers' Lodge, No. 2034, San Francisco, Calif., urging the continuation of Government ownership of railroads and express companies for five years; to the Committee on Interstate and Foreign Commerce.

Also, petition of Sonora Theater, Sonora, Calif., urging the repeal of the admission tax on motion-picture theaters; to the Committee on Ways and Means.

By Mr. THOMPSON of Ohio: Petition of Scott Post No. 100, with 88 members, of Van Wert, Ohio, favoring an increase pension to the surviving Civil War veterans to $50 per month; to the Committee on Pensions.

SENATE.

WEDNESDAY, *August 27, 1919.*

(Legislative day of Saturday, August 23, 1919.)

The Senate met at 11 o'clock a. m., on the expiration of the recess.

LEASING OF OIL LANDS.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 2775) to promote the mining of coal, phosphate, oil, gas, and sodium on the public domain.

The VICE PRESIDENT. The question is on the amendment of the Senator from Arkansas [Mr. KIRBY] in the nature of a substitute.

Mr. SMOOT. Mr. President, I think there ought to be one Democrat in the Chamber before we begin the consideration of the bill.

Mr. GAY. Mr. President, I take exception to the statement of the Senator from Utah.

Mr. SMOOT. The Senator was on this side of the Chamber, and I did not observe him. I think I had better 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:

Ball	Gore	McNary	Robinson
Brandegee	Harris	Myers	Sheppard
Calder	Henderson	Nelson	Smoot
Capper	Johnson, S. Dak.	New	Spencer
Chamberlain	Jones, Wash.	Norris	Sterling
Culberson	Kellogg	Nugent	Sutherland
Cummins	King	Overman	Trammell
Curtis	La Follette	Page	Walsh, Mass.
Dial	Lenroot	Phipps	Walsh, Mont.
Fernald	McCumber	Poindexter	Wolcott
Gay	McKellar	Pomerene	

Mr. TRAMMELL. I desire to announce the unavoidable absence of my colleague [Mr. FLETCHER] on account of illness.

Mr. KING. The Senator from Rhode Island [Mr. GERRY], the Senator from Arizona [Mr. ASHURST], the Senator from Alabama [Mr. BANKHEAD], the Senator from New Mexico [Mr. JONES], the Senator from North Carolina [Mr. SIMMONS], and the Senator from Maryland [Mr. SMITH] are detained on official business.

The VICE PRESIDENT. Forty-three Senators have answered to the roll call. There is not a quorum present. The Secretary will call the roll of absentees.

The Secretary called the names of the absent Senators, and Mr. McCORMICK answered to his name when called.

The VICE PRESIDENT. Forty-four Senators have answered to the roll call. There is not a quorum present.

Mr. SMOOT. I move that the Sergeant at Arms be directed to request the attendance of absent Senators.

The motion was agreed to.

The VICE PRESIDENT. The Sergeant at Arms is instructed to request the attendance of absent Senators.

Mr. RANSDELL entered the Chamber and answered to his name.

Mr. RANSDELL. I was requested by the chairman of the Committee on Agriculture and Forestry [Mr. GRONNA] to announce that that committee is holding a very important hearing on some of the bills now pending before the Senate, and Senators GRONNA, WADSWORTH, KENYON, KEYES, KENDRICK, and HARRISON are detained at that hearing.

Mr. FALL, Mr. JOHNSON of California, Mr. PHELAN, Mr. MOSES, Mr. SWANSON, Mr. UNDERWOOD, Mr. WILLIAMS, Mr. TOWNSEND,

Mr. LODGE, Mr. THOMAS, Mr. HITCHCOCK, and Mr. PITTMAN entered the Chamber and answered to their names.

The VICE PRESIDENT. Fifty-seven Senators have answered to the roll call. There is a quorum present.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by D. K. Hempstead, its enrolling clerk, announced that the House had passed a bill (H. R. 5818) for the retirement of public-school teachers in the District of Columbia, in which it requested the concurrence of the Senate.

PETITIONS AND MEMORIALS.

Mr. GAY. I ask unanimous consent to have inserted in the RECORD resolutions adopted by the board of directors of the New Orleans (La.) Board of Trade (Ltd.) in regard to the protest against the demands made by the railroad brotherhoods to the effect that the railroads should be purchased by the Government and operated for the joint benefit of the railroad employees and the public. I ask that the resolutions be appropriately referred.

There being no objection, the resolutions were referred to the Committee on Interstate Commerce and ordered to be printed in the RECORD, as follows:

Resolutions adopted by the board of directors of the New Orleans Board of Trade (Ltd.), August 13, 1919.

THE NEW ORLEANS BOARD OF TRADE (LTD.).

Whereas representatives of several of the railroad brotherhoods have formulated certain demands upon the Government of the United States to the effect that the railroads should be purchased by the Government and should be operated for the joint benefit of the said railroad employees and the public; and

Whereas this demand was accompanied with an implied threat that unless promptly acceded to a universal strike would be called to coerce the Government into acceptance thereof; and

Whereas during the recent war the experience under Government control and operation of several utilities resulted in a demonstration of lowered efficiency, higher cost, and unsatisfactory service; and

Whereas the New Orleans Board of Trade (Ltd.) is on record as being opposed to governmental ownership and governmental operation of our rail and transportation lines; and

Whereas the railroad brotherhoods' suggestions are entirely along class lines, and their demands carry a threat practically of revolution: Therefore be it

Resolved, That the New Orleans Board of Trade (Ltd.) strongly opposes the demands made by the railroad brotherhoods, and we urge upon and we join with the business interests of our country in calling upon the President and Congress to resist such demands at any cost; and be it further

Resolved, That the president of the board of trade be instructed to forward a copy of these resolutions to President Wilson and to our Representatives and Senators in Congress, requesting and urging their vigorous opposition to any legislation along the lines suggested by the railroad brotherhoods.

WARREN KEARNY, *President*.
H. S. HERRING, *Secretary*.

Mr. PHELAN presented a petition of the Board of Trade of Anaheim, Calif., praying for the enactment of legislation to assist in increasing the productive agricultural area of the Imperial and Coachella Valleys, Calif., which was referred to the Committee on Irrigation and Reclamation of Arid Lands.

Mr. PAGE presented a memorial of the Ladies of Nazareth of St. Peter's Parish, of Rutland, Vt., remonstrating against the ratification of the proposed league of nations treaty, which was referred to the Committee on Foreign Relations.

Mr. MOSES presented a petition of Saco Valley Grange, No. 285, Patrons of Husbandry, of Center Conway, N. H., and a petition of Naumkeag Grange, Patrons of Husbandry, of Litchfield, N. H., praying for the ratification of the proposed league of nations treaty, which were referred to the Committee on Foreign Relations.

He also presented the memorial of L. G. Grey, of Chicago, Ill., remonstrating against the ratification of the proposed league of nations treaty, which was referred to the Committee on Foreign Relations.

Mr. TRAMMELL presented petitions of sundry citizens of Tampa, Bowling Green, Lakeland, Winter Haven, Bartow, Wauchula, Plant City, St. Petersburg, Parrish, Manatee, and Cortez, all in the State of Florida, praying for the enactment of legislation providing for Federal control of the meat-packing industry, which were referred to the Committee on Agriculture and Forestry.

Mr. WOLCOTT presented a petition of sundry citizens of Wilmington, Del., praying for the establishment of a department of education, which was referred to the Committee on Education and Labor.

Mr. WALSH of Massachusetts presented memorials of officers of the General Electric Co., of West Lynn; of Thompson Bros. (Inc.), of Brockton; of the Kenneth Hutchins Co., of Boston; of the American Glue Co.; of the R. A. Wood Co., of Lowell; of the George C. Whitney Co., of Worcester; of the Germania Mills, of Holyoke; of Bates & Abbott, of Boston; of the Bird Machine Co., of East Walpole; of the Walworth Manufacturing Co., of Boston; of the Worcester Pressed Steel Co.; of Brown's Beach Jacket Co., of Worcester; of the American Optical Co., of Southbridge; of Clapp & Tilton, of Boston; of the Norfolk Iron Co., of Quincy; of the Reid Mills Co., of North Oxford; of the Fiberloid Corporation, of Springfield; of the Penn Metal Co., of Boston; of the National Blank Book Co., of Holyoke; of the Rockport Granite Co.; of William A. Hardy & Sons Co., of Fitchburg; of Hilliard & Merrill (Inc.), of Lynn; of the Grattan Baking Co., of Wakefield; of the Weetamoe Mills, of Fall River; of the Edes Manufacturing Co., of Plymouth; of the William P. Proctor Co., of North Chelmsford; of the Crofoot Gear Works, of Boston; of the Beacon Manufacturing Co., of New Bedford; of the City Manufacturing Corporation, of New Bedford; of D. B. Maclary & Sons Co., of Boston; of John W. Bolton & Sons (Inc.), of Lawrence; of the J. & B. Sales Co., of Worcester; of the Valley Paper Co., of Holyoke; and of Gilbert A. A. Pevey; Edward B. Sackett; James A. Glass; and 25 other citzens, all in the State of Massachusetts, remonstrating against the adoption of the so-called Plumb plan of railroad management, which were referred to the Committee on Interstate Commerce.

Mr. SMITH of Maryland presented petitions of sundry citizens of Chestertown, Church Hill, Kennedyville, Worton, Georgetown, Betterton, Galena, Millington, Baltimore, Pikesville, Towson, Overlea, Glydon, Bel Air, Perryman, Colora, Easton, Tilghman, Queen Anne, Centerville, Trappe, St. Michaels, Royal Oak, Sherwood, Newcomb, Preston, McDaniel, Weantt, Boxman, Carmichael, Oxford, Carolina, Bellevue, Cordova, Federalsburg, Wittman, Tunis Mills, Fairbank, Long Woods, Newberry, Bar Neck, Mathews, Raspeburg, Upper Marlboro, Clinton, Brandywine, Halethorpe, Ruxton, Lutherville, Brooklandville, Warren, Riderwood, Sparks, Westminster, Roslyn, Mechanicsville, Grantsville, Swanton, Sandy Spring, Spencerville, Ednor, Wilson, Huntingtown, Lawson, Hamilton, Freeland, all in the State of Maryland, praying for the ratification of the proposed league of nations treaty, which were referred to the Committee on Foreign Relations.

CONTROL OF FOOD PRODUCTS.

Mr. GRONNA. I am directed by the Committee on Agriculture and Forestry to report back favorably, with amendments, the bill (H. R. 8624) to amend an act entitled "An act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of food products and fuel," approved August 10, 1917, and I submit a report (No. 162) thereon. I wish to state that while this is a favorable report it is not a unanimous one, and several members of the committee have reserved the right to offer amendments and to oppose some of the amendments proposed by the committee.

The VICE PRESIDENT. The bill will be placed on the Calendar.

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. LENROOT:

A bill (S. 2889) to provide for the creation and organization of the National Railway Corporation, and for the acquisition, control, and operation of railroads and water carriers by it, and for other purposes; to the Committee on Interstate Commerce.

By Mr. WALSH of Montana:

A bill (S. 2890) for allotment of lands and distribution of tribal funds of the Crow Tribe; to the Committee on Indian Affairs.

By Mr. SHIELDS:

A bill (S. 2891) to reenact the act entitled "An act to authorize the Cincinnati, New Orleans and Texas Pacific Railway Co. to rebuild and reconstruct, maintain, and operate a bridge across the Tennessee River near Chattanooga, in Hamilton County, in the State of Tennessee," approved April 5, 1916; to the Committee on Commerce.

By Mr. GERRY:

A bill (S. 2892) granting a pension to Joseph E. Killian; to the Committee on Pensions.

By Mr. CHAMBERLAIN:

A bill (S. 2893) for the relief of William J. Ewing; and

A bill (S. 2894) for the relief of the Ralph Ackley Land Co. (Inc.), and others; to the Committee on Claims.

By Mr. HENDERSON:

A joint resolution (S. J. Res. 94) to amend "A joint resolution to suspend the requirements of annual assessment work on certain mining claims during the year 1919," approved August 15, 1919; to the Committee on Mines and Mining.

FEDERAL POWER COMMISSION.

Mr. SPENCER submitted an amendment intended to be proposed by him to the bill (H. R. 3184) to create a Federal Power Commission and to define its powers and duties, to provide for the improvement of navigation, for the development of water power for the use of lands of the United States in relation thereto, to repeal section 18 of "An act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," approved August 8, 1917, and for other purposes, which was referred to the Committee on Commerce and ordered to be printed.

SPECIAL COMMITTEE ON BUDGET SYSTEM.

Mr. SMOOT submitted the following resolution (S. Res. 174), which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

Resolved, That the special committee of the Senate appointed to devise a plan for a budget system is hereby authorized to send for persons, books, and papers, to administer oaths, and to employ a stenographer, the compensation and the expenses of the committee to be paid from the contingent fund of the Senate. The committee is authorized to sit during the sessions or recess of the Senate.

BUREAU OF WAR RISK INSURANCE.

Mr. GORE. I have conferred with the Senator in charge of the unfinished business, the Senator from Utah [Mr. SMOOT], who has no objection to my offering the resolution which I send to the desk. I request that the resolution may be read, and I ask unanimous consent for its present consideration.

The VICE PRESIDENT. The resolution will be read.

The Secretary read the resolution (S. Res. 173), as follows:

Resolved, That the Finance Committee be, and hereby is, directed to investigate the operation and administration of an act entitled "An act to amend an act entitled 'An act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department,' approved September 2, 1914, and for other purposes," approved October 6, 1917, providing insurance and compensation for persons disabled in the naval and military service of the United States, and to report such legislation as may be necessary to secure greater equality and justice in the payments and compensation under such act to persons who have been disabled in such naval and military service.

The VICE PRESIDENT. Is there any objection to the request of the Senator from Oklahoma?

Mr. McCUMBER. What is the request, Mr. President?

The VICE PRESIDENT. The request is for unanimous consent for the present consideration of the resolution.

Mr. McCUMBER. Mr. President, my impression is that a House committee is now making an investigation of the same matter that is referred to in the resolution, and I do not think we ought to duplicate that investigation. I should like first to look into the question, and I will ask the Senator from Oklahoma if he will not allow the resolution to lie over until to-morrow?

Mr. GORE. I have no objection to the resolution going over.

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

ARTICLE OF J. H. FERGUSON.

Mr. RANSDELL. Mr. President, in these trying days, when some sections of our Republic are almost an armed camp owing to labor troubles, I wish to call to the attention of the Senate and the American people a remarkably wise and patriotic discussion of existing conditions from the pen of J. H. Ferguson, president of the Baltimore Federation of Labor, published in the Manufacturers Record of the 21st instant, page 90. The editor of the Record says:

LABOR LEADER DEMANDS SANITY AND SAFETY—A REMARKABLY CLEAR STATEMENT FROM THE PRESIDENT OF THE BALTIMORE FEDERATION OF LABOR.

(J. H. Ferguson, president of the Baltimore Federation of Labor, has written for the Manufacturers Record one of the sanest and soundest discussions of the whole labor situation which we have seen. If Mr. Ferguson could influence the labor leaders and the so-called labor people to accept and follow his views, all the labor problems of the country would soon be solved, and employers and employees, capital and labor, and all other interests would dwell together in peace and happiness. Mr. Ferguson proclaims the safety of American institutions guarded by those "in the ranks of labor who are Americans by birth or by adoption, and who will not intrust our ship to demagogues, visionaries, or shallow sentimentalists who would steer it on the rocks." The platform which he puts forth is one on which every true American, rich or poor, employer or employee, can stand.—Editor Manufacturers Record.)

[By John H. Ferguson, president Baltimore Federation of Labor.]

"'Reconstruction' has of late been so tiresomely reiterated, not to say violently abused, that it has become to many of us a word of aversion. Politicians, social students, business men, labor men, charity workers, clergymen, and various other social groups have contributed their quota of spoken words and printed pages to the discussion of the subject; yet the majority of us still find ourselves bewildered and helpless. We are unable to say what parts of our social system imperatively need reconstruction, how much of that which is imperatively necessary is likely to be seriously undertaken, or what specific methods and measures are best suited to realize that amount of reconstruction which is at once imperatively necessary and immediately possible.

"I do not believe as many or as great social changes will take place in the United States as in Europe. Neither our habits of thinking nor our ordinary ways of life have undergone a profound disturbance. The hackneyed phrase, 'Things will never be the same since the war,' has a much more concrete and deeply felt meaning among European peoples. Their minds are fully adjusted to the conviction and expectation that these words will come true. In the second place, the devastation, the loss of capital and of men, the changes in individual relations, and the increase in the activities of government have been much greater in Europe than in the United States. Moreover, our superior natural advantages and resources, the better industrial and social condition of our working classes, will constitute an obstacle to anything like revolutionary changes.

"Our present industrial system is destined to last for a long time in its main outlines. That is to say, private ownership of capital is not likely to be supplanted by a collectivist organization of industry at a date sufficiently near to justify any present action based on the hypothesis of its arrival. This is not only extremely probable, but highly desirable; for, other objections apart, Socialism would mean bureaucracy, political tyranny, the helplessness of the individual as a factor in the ordering of his own life, and in general social inefficiency and decadence.

"It is true, there are those in the ranks of organized labor who, in the fervor of their world-improving mission, discover and proclaim certain cure-alls for the ills of humanity, which they fondly and perhaps honestly believe to be new and unfailing remedies, but which, as a matter of fact, are heavy with age, having been tried on this old globe of ours at one time or another, in one of its parts or another, long ago—tried and found wanting and discarded after sad disillusionment. There are the spokesmen of sophomorism, rampant, strutting about in the cloak of superior knowledge, mischievously and noisily, to the disturbance of quiet and orderly mental processes and sane progress. There are the sentimental, unseasoned, intolerant, and cocksure 'advanced thinkers' claiming leave to set the world by the ears, to reconstruct society overnight, and with their strident and ceaseless voices to drown the views of those who are too busy to indulge in much talking. There are the self-seeking demagogues and various related types, and finally there are the devotees of liberty run amuck, who in fanatical obsession would place a visionary and narrow class interest and a sloppy internationalism above patriotism, and with whom class hatred and envy have become a ruling passion. They are perniciously, ceaselessly, and vociferously active and are not representative of labor, either organized or unorganized.

"Among these agitators and disturbers who dare clamorously to assail the majestic and beneficent structure of American traditions, doctrines, and institutions there are some—far too many, indeed—who are of foreign parentage or descent. With many hundreds of thousands, they or their parents came to our free shores from lands of oppression and persecution. The great Republic generously gave them asylum and opened wide to them the portals of her freedom and her opportunities.

"The great bulk of these newcomers have become loyal and enthusiastic Americans. Most of them have proved themselves useful and valuable elements in our many-rooted population. Some of them have accomplished eminent achievements in science, industry, and the arts. Certain of the qualities and talents which they contribute to the common stock are of great worth and promise.

"But some there are who have been blinded by the glare of liberty, as a man is blinded who after long confinement in darkness comes suddenly into the strong sunlight. Blinded, they dare to aspire to force their guidance upon Americans who for generations have walked in the light of liberty. They have become drunk with the strong wine of freedom, these men who until they landed on America's coasts had tasted little but the bitter water of tyranny. Drunk, they presume to impose their

reeling gait upon Americans, to whom freedom has been a pure and refreshing fountain for a century and a half.

"Brooding in the gloom of age-long oppression, they have evolved a fantastic and distorted image of free government. In fatuous effrontery they seek to graft the growth of their stunted vision upon the splendid and ancient tree of American institutions. Admitted in generous trust to the hospitality of America, they grossly violate not only the dictates of common gratitude but of those elementary rules of respect and consideration which immemorial custom imposes upon the newcomer or guest. They seek, indeed, to uproot the foundations of the very house which gave them shelter.

"We will not have it so, we in the ranks of labor who are American by birth or by adoption. We reject these impudent pretensions. We propose to move forward and upward, but we shall proceed by the chart of reason, experience, and tested American principles and doctrines, and not intrust our ship to demagogues, visionaries, or shallow sentimentalists, who would steer it on the rocks.

"Strident voices of the fomenters of unrest do not cause me any serious apprehension. Changes we ought to have; changes we shall have. Where there are grievances to redress, where there are wrongs existing, we must all aid in trying to right them to the best of our conscience and ability. To the extent that social and economic institutions, however deep and ancient their roots, may be found to stand in the way of the highest achievable level of social justice and the widest attainable extension of opportunity, welfare, and contentment, they will have to submit to change. And the less obstructive and stubborn, the more broad-minded, cooperative, sympathetic, and disinterested those who preeminently prospered under the old conditions will prove themselves in meeting the spirit of the new day and the reforms which it may justly call for, the better it will be both for them and the community at large.

"'Society,' said Pope Leo XIII, 'can be healed in no other way than by a return to Christian life and Christian institutions.' The truth of these words is more widely perceived to-day than when they were written, more than 27 years ago. Changes in our economic and political systems will have only partial and feeble efficiency if they be not reinforced by the Christian view of work and wealth. No program of betterment will prove reasonably effective without a reform in the spirit of both capital and labor. The laborer must come to realize that he owes his employer and society an honest day's work in return for a fair wage, and that conditions can not be substantially improved until he roots out the desire to get a maximum of return for a minimum of service. The capitalist must likewise get a new viewpoint. He needs to learn the long-forgotten truth that wealth is stewardship, that profit making is not the basic justification of business enterprise, and that there are such things as fair profits, fair interest, and fair prices. Above and before all, he must cultivate and strengthen within his mind the truth which many of his class have already begun to grasp; namely, that the laborer is a human being, not merely an instrument of production, and that the laborer's right to a decent livelihood is the first moral charge upon industry.

"I shall work with all my strength to bring about changes as the needs of the people become apparent. I shall earnestly strive to realize what formerly were considered unattainable ideals. But I shall do all this in the American way of sane and orderly progress, and in no other."

Mr. President, in the efforts of labor to accomplish the reforms it seeks, if it shall proceed in the old-fashioned American way of "sane and orderly progress, and no other," as suggested by Mr. Ferguson, it will have the sympathetic assistance of all fair-minded people and will attain its ends much quicker than by resort to threats and force, and, indeed, it can never attain them by violence.

EX-PRESIDENT TAFT'S REPLY TO SENATOR LODGE.

Mr. WILLIAMS. Mr. President, I note in the Washington Post of this morning a letter from ex-President William Howard Taft, which is an exhaustive reply to a speech made by the Senator from Massachusetts [Mr. LODGE]. I ask unanimous consent that it be inserted in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD as follows:

TAFT SAYS SENATOR LODGE'S SPEECHES ARE INCONSISTENT; ANSWERS TREATY ARGUMENTS—PURPOSES OF FIVE GREAT POWERS IN LEAGUE TOTALLY UNLIKE THOSE OF HOLY ALLIANCE; SAYS ARTICLE 3 DOES NOT ENLARGE POWERS AS CHARGED BY SENATOR—FORMER PRESIDENT INTERPRETS ARTICLES 10 AND 11—DECLARES NATIONS MUST CONTINUE LEAGUE ENTERED INTO TO CONDUCT WAR AND NOW FRAMED FOR PEACE.

[By William Howard Taft.]

"Senator LODGE'S speech on the league of nations is an important event in the history of the issue over the ratification of the treaty and the covenant of the league. In point of continuous service he is the oldest Member of Congress, as he is one of the ablest, and he is the longest in experience upon the Foreign Relations Committee of the Senate. What he says, therefore, is entitled to great weight. But the Senator can not complain if those who differ with him seek to break the force of what he says by pointing out action and speech by him in the past quite inconsistent with his present attitude. Nor will the claim that his prestige and experience give his arguments and conclusions immunity from analysis and answer. Indeed, the speech of Senator WILLIAMS, impromptu as it was and marred as it was by its personal references to Mr. LODGE, answered with all the vigor of the debater much of what Mr. LODGE in his carefully prepared address had urged. Mr. WILLIAMS'S remarks were directed toward the trend of Mr. LODGE'S speech and his general attitude, rather than to his carefully drawn objections to particular articles of the covenant.

HOLY ALLIANCE ANALOGY FALSE.

"The first great argument of Mr. LODGE against the league was based on the analogy between this league and the Holy Alliance, in which he emphasized the declarations by its constituent absolute monarchs of their high purpose and noble ends in the maintenance of the alliance, and then showed that for 35 years the result of its machinations was a curse to the world.

"It needs no profound knowledge of history to realize how lacking in force and fairness such an argument by analogy is. The Holy Alliance was created for the purpose of keeping on the thrones of Europe occupants who were legitimate heirs in their divine right of ruling and of preventing revolution against them. It was a conspiracy of absolute monarchs to maintain the rule of their class.

"Mr. LODGE objects that the five great powers will control this league as the Holy Alliance was controlled. Five great powers are given large influence in the management of the policy of this league. It must be so, and it ought to be so, because they are the ones upon whom the burden of maintaining the prestige and influence of the league for good is to be heaviest. But whatever is to be done by them must be done by unanimous action. Can we conceive of the United States, Great Britain, and France, ruled by their peoples as they are, uniting to work such purposes as disgraced and broke up the Holy Alliance?

DENIES UNLIMITED POWER.

"The first provision of the league which Senator LODGE attacks is a paragraph from article 3, reading as follows:

"The assembly may deal at its meetings with any matter within the sphere of action of the league or affecting the peace of the world.

"He urges that this confers unlimited power upon the league and greatly enlarges the field of action in which we shall be involved even beyond that in which the Holy Alliance was engaged. This view can not be sustained. The meaning of this paragraph is, of course, to be determined not only by the words used but also by the immediate context and its relation to the rest of the covenant.

"Article 3 is an article prescribing the organization and procedure of the assembly. Article 4 is an article performing the same office in respect to the council. They describe the membership, the times and places of the meetings, the subjects matter to be considered and dealt with at each meeting, and the voting power and number of representatives of each member for the respective bodies. The subjects matter which may be dealt with at any meeting of either are described in exactly the same words for both bodies, to wit, 'any matter within the sphere of action of the league or affecting the peace of the world.'

"By article 5 decisions of the council must be by unanimous vote of representatives present at the meeting. The object of this language is, therefore, to notify members of the league and their representatives in the council or assembly that the whole business of the league is in order to be considered at any meeting without special notice, and that their interests may be affected in their absence. This signification is emphasized by the clause immediately following that in question in article 4, which provides that any member with no representative in the council must be invited to send a representative to any meeting at which matters affecting it are to be considered. This is not necessary in the case of the assembly, because every member has a representative in the assembly.

POWERS ARE UNCHANGED.

"The general language quoted by Senator LODGE in article 3 and the identical language in article 4 are thus merely to put members on notice of what may be considered at every meeting. In neither article is the language to be treated as an independent grant of power. The functions and powers of the assembly and the council are what they are elsewhere in the covenant defined to be, and are no greater by reason of this clause. Otherwise the assembly and the council would have the same functions and the same powers, for the language of the clause as to each is the

same. Every other article of the covenant shows this not to be the case. The clause cited by Senator LODGE neither enlarges the jurisdiction of the league nor the obligations of its members beyond their specific limitation as set out in other articles.

REPLIES TO IRISH ARGUMENT.

"Again, article 11 is relied upon by the Senator to show that it is the purpose of the league to interfere to suppress rebellions and revolutions. Thus Ireland, it is thought, can be brought in. The first sentence of the article reads as follows:

"Any war or threat of war, whether immediately affecting any of the members of the league or not, is hereby declared a matter of concern to the whole league, and the league shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise, the secretary general shall, on the request of any member of the league, forthwith summon a meeting of the council.

"The council is summoned to advise the members of the league what ought to be done, and its advice must be unanimous, and upon that advice the members are to act in their discretion and to perform their obligations under the covenant of the league as they in good faith understand them. Such a provision does not enlarge the obligations of the members; it only provides for prompt cooperation in an emergency which may be the occasion upon which under other articles of the league the members may act.

NO EFFECT ON REBELLIONS.

"Such a case, for instance, as a war between two countries not members of the league might certainly affect the peace of nations. Nor need it be denied that where internal disturbance, as a Bolshevist upturning of society, becomes militant and seeks to upturn society of neighboring nations, this might well be made a matter of concern to the whole league. But there is nothing from these words or any other part of the covenant which brings an internal rebellion or revolution within the jurisdiction of the league. 'War or threat of war' contained in article 11 means something that affects the international relations between countries. This is clearly shown by its last clause, in which it is also declared to be the fundamental right of each member of the league to bring to the attention of the assembly or of the council any circumstance whatever affecting international relations which threaten to disturb either the peace or the good understanding between nations upon which peace depends.

RESTRICTS MEMBERS' DUTIES.

"If article 11 is to have the construction which Senator LODGE maintains and is to refer to internal rebellions and revolutions, then it is very strange that the fundamental right of each member of the league is to bring to the attention of the assembly or the council under article 11 only those circumstances which disturb international relations and the peace and the good understanding between nations.

"To support his view Senator LODGE refers to the provision in the treaty with Germany which requires Poland and the Czech and other States to make treaties with the five great powers guaranteeing the religious and other rights of minorities. This does not at all indicate a purpose on the part of the league to intervene in the internal affairs of nations generally. Poland and the Czech States are new nations born of the war and this treaty, the record of whose peoples in respect to religious intolerance and oppression of the Jews and others has not been good. But the treaty power is to be vested in untried and unrestrained majorities. It is of the highest importance to the effectiveness of the treaty that these nations be made stable bulwarks against German plots, and such a guaranty will serve to steady them.

DOES NOT ADD TO COVENANT.

"The example for such a guaranty was set in the congress of Berlin in the establishment of Roumania, Bulgaria, and Serbia as independent nations. It is a special provision, and leaves to the five great powers the obligation to enforce the guaranty in favor of minorities in countries whose birth and maintenance the signatories to the treaty who won the war are responsible. It does not in any degree enlarge the meaning of the covenant as applied to its members generally.

"Senator LODGE objects to the failure in the covenant to amplify the jurisdiction of the court provided in the league, and to provide a tribunal for hearing justiciable questions. This is a fair criticism of the league, and it is a defect in the plan—a defect which may be cured by amendment, and which, we may hope, will be so cured. In respect to justiciable questions, it would have been much better to have a judicial court, as Mr. Root pointed out, to which all members should be obliged to resort, remitting unjusticiable questions to the council.

"The first steps to be taken after the league is adopted should be to perfect its machinery in this regard. But it seems quite unwarranted to argue, as Senator LODGE does, that the action of the council or assembly in respect to justiciable questions is to be determined on political or diplomatic grounds, and not as an impartial body controlled by the principles of international law. Justiciable questions are those which in their nature are capable of settlement on principles of international law.

"The preamble recites the purpose of the league to be the 'prescription of open, just, and honorable relations between nations,' 'the firm establishment of the understandings of international law as to the actual rule of conduct among governments,' and 'the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one or another.'

"Article 13 declares as among those suitable for arbitration certain justiciable questions in language suggested by Mr. Root, as follows:

"Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach.

PROVIDES FOR ARBITRATION.

"The article imposes on parties to a dispute the duty of agreeing to submit to arbitration questions 'which they recognize as suitable for arbitration.' Even if this article be held not to require a party to a controversy to submit such justiciable questions as are here specified to arbitration, as may well be affirmatively argued, certainly it is most unwarranted to claim that when such justiciable questions are carried to the council or assembly for settlement the recommendation of that body is not to be governed by principles of international law, and the function of the tribunal in disposing of them is not to be judicial. The fact that the representatives of the parties to the dispute are to be left out of the council or assembly in reaching the needed unanimity of conclusion confirms the judicial character of the function.

"Calling for another league than this league because of this and other defects, Senator LODGE urges:

"Let us unite with the world to promote the peaceful settlement of all international disputes. Let us try to develop international law. Let us associate ourselves with other nations for these purposes.

FINDS SENATOR INCONSISTENT.

"This criticism and language sounds a bit strange coming from a Senator who helped to defeat the general arbitration treaties made between the United States and France and the United States and Great Britain, which provided for a settlement of all justiciable issues arising between them and a means of determining whether a question arising was justiciable or not. These treaties were loaded down with such exceptions that it seemed of no use whatever to invite the acquiescence of France and Great Britain in the narrowing amendments that were insisted on in the Senate and supported and voted for by Senator LODGE.

"Senator LODGE says that the amendment to the covenant as originally reported, which excludes from the consideration of the council or the assembly any issue which by international law is purely domestic, is intended to deceive. The exception was obviously put in for the purpose of excluding immigration and tariff from among the issues which the council or assembly might consider in a dispute.

CITES SUPREME COURT RULING.

"The Supreme Court of the United States has said that it is an accepted maxim of international law that immigration is a purely domestic question, as well as the imposition of tariffs. But Senator LODGE is not willing to trust the council or the assembly to follow this accepted maxim in excluding from its jurisdiction such questions. He is afraid that one honest and impartial representative on the council can not be found who, on the plea of the United States, would uphold this accepted maxim of international law in determining the jurisdiction of the council.

"This unwillingness to assume that any other disinterested nation in the world of all the nations will be fair in dealing with the lawful rights of the United States is characteristic of the attitude of Senator LODGE and those who agree with him. Is this uniting 'with the world to promote the peaceful settlement of all international disputes'? Is this trying 'to develop international law'? Is this 'associating ourselves with other nations for these purposes'?

DEFENDS ARTICLE 10.

"Senator LODGE attacks article 10. He says it will enable the King of Arabia, Hussein, Sultan of Hejaz, to appeal to us to come and help him defend his boundary against the attacks of Arabs in his neighborhood. This is not a fair construction of article 10. All the language of article 10 should be read together. It looks to joint operation of the members of the league. It says:

"The members of the league undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all members of the league. In case of any such aggression or in case of any threat or danger of such aggression the council shall advise upon the means by which this obligation shall be fulfilled.

"In other words, the members are to cooperate and the council is to form a plan for their cooperation. Under that no nation will be obliged to act except upon the advice of the council, and the advice of the council would limit the extent of its obligation.

"The action of the council, however, is only advisory, and therefore it would still remain for the members in good faith to determine how far they deemed it their duty to act upon such advice under the obligations of the article. Of course, for us Congress would have to determine how far it would act upon such advice and what in its judgment was its obligation under the article to comply with such advice. It does not seem a fair construction of the article to say that it constitutes a direct obligation between a nation whose integrity or independence is attacked and every other member of the league. It is a league matter, the members responding to carry out a league purpose under the cooperating advice of the council of the league.

QUOTES JUSTICE HUGHES.

"Mr. Justice Hughes, in the reservations which he has suggested to Senator HALE, has given a very excellent construction of what this article 10 means. He says:

"Fourth. That the meaning of article 10 of the covenant of the league of nations is that the members of the league are not under any obligation to act in pursuance of said article except as they may decide to act upon the advice of the council of the league. The United States of America assumes no obligation under said article to undertake any military expedition or to employ its armed forces on land or sea unless such action is authorized by the Congress of the United States of America, which has exclusive authority to declare war or to determine for the United States of America whether there is any obligation on its part under said article, and the means or action by which any such obligation shall be fulfilled.

"Such an interpretation shows that the illustration of Senator LODGE is really fanciful. As the action of the council is to be unanimous, and as the United States has a member on it, the character of its advice must, of course, be reasonable. Those nations in the neighborhood and more directly interested in the Arabian kingdom are the ones whom the council would doubtless advise to take action in pursuance of article 10 in such a case. The council would not attempt to draw the United States in until the trouble growing out of the disturbance bade fair to involve world consideration.

SENATOR CHANGES ATTITUDE.

"Senator LODGE objects to the United States binding itself by war or boycott to cooperate with other nations in suppressing war. This is contrary to his attitude when he delivered an address at a dinner of the League to Enforce Peace in Washington in 1916, at which both he and President Wilson agreed that it was necessary to unite the forces of the world to suppress war. Nor was his judgment at that time doubtful. On the contrary, he enforced the firmness of his conviction by the quotation from Matthew Arnold:

"Charge once more, then, and be dumb;
Let the victors when they come,
When the forts of folly fall,
Find the body by the wall.

"His present attitude is a departure, too, from the position which he took in his commencement address at Union College, in 1915, in which he said that there was no other means by which the peace of the world could be maintained except by a union of nations to enforce peace.

IGNORES OBJECT OF LEAGUE.

"Now the Senator's position is that the United States can better contribute to the peace of the world by staying out of every such union and not involving itself in any obligation to act until the occasion shall arise when it may then determine what it will do. In this he ignores the central feature of any useful league of nations to secure peace. The object of a league is to convince those who would disturb the peace of nations that if they persist in such a course the union of the nations will inflict on them the penalty of forcible restraint. Its purpose is not to make war—its purpose is to threaten the use of lawful force to restrain lawless violence. It is the minatory, cautionary effect of the league that is essentially and highly important.

"It is this feature of the Monroe doctrine that has made it so successful. It was the knowledge that the United States would fight, if need be, to assert the doctrine that has preserved it and peace for now near a century. But if the United States is to stay out of this league and not obligate itself in any way to add to the weight and sanction of the league, then much of the usefulness of the covenant is gone.

MEANS DRIFTING POLICY.

"As Senator WILLIAMS says, the attitude of the United States in such a case is merely drifting and waiting until we are driven into a position in which we must fight, as we were driven into this war.

"More than this, the Senator's contention that the United States can do more good by staying out of the league than by going in ignores the fact that unless the United States enters the league it will cease to be a league of nations and will become only an alliance and will stimulate the formation of other alliances and future war. It is the world-surpassing strength of the United States in its intelligent people and its resources, in its military potentiality, and in its comparative disinterestedness as between all other nations which makes its membership indispensable to a world league. For us to refuse to enter it is to take the responsibility of destroying its possibility. If our real interests require it, of course we should refuse; but in determining our real interests we should face this responsibility.

SHOULD NOT FEAR DEFINITION.

"Senator LODGE objects to the reservation of the Monroe doctrine contained in the covenant. It is very difficult to understand the attitude of Senator LODGE and many others with respect to the Monroe doctrine. He says that the instant the United States, which declared, interpreted, and sustained the doctrine, ceases to be the sole judge of what it means, that instant the Monroe doctrine ceases and disappears from history and from the face of the earth. He then quotes from Theodore Roosevelt 'that we are in honor bound to keep ourselves so prepared that the Monroe doctrine shall be accepted as immutable international law.' Senator LODGE objects to the recognition of the Monroe doctrine by anybody else. He objects to its definition. How can it become 'immutable international law' unless it has definition and terms?

"The essence of law, whether municipal or international or immutable, is its definition as a rule of action. The Monroe doctrine certainly affects the relations between non-American nations and American nations. It is certainly a limitation upon the right of American nations to part with territory and independence to non-American nations and of the right of non-American nations to secure by force or bargain transfer of such territory or independence.

NOT MERE DOMESTIC POLICY.

"If it is to become immutable international law, then it must become a rule of action both for American and non-American nations. How can they act within it unless they know what it is? The doctrine is not a mere domestic policy. It relates directly to international relations between certain classes of nations. Now, the attitude of Senator LODGE and others, if one can understand them, is not that it is for us to say what those relations shall be and for us to refuse to define what those relations shall be in advance, but to decide when the occasion arises what we think they ought to be. This is to make the doctrine not immutable international law. It is to make it an arbitrary decree, ex post facto.

"It is the language of absolutism. It is to make the doctrine as offensive to non-American nations and to American nations other than ourselves as possible.

"For the first time we have in the covenant a full recognition of the Monroe doctrine as something which this covenant is not to affect or interfere with. Yet we even resent its recognition and decline to say what it is. Why in the name of all that is fair and reasonable should we not now interpret what it means, as we may in a reservation, and let the world which wishes to recognize and conform to it know what it is?

NO DISPUTE ON WITHDRAWAL.

"The question of withdrawal from the league, upon which Senator LODGE dwells, is not one that calls for much controversy, because there seems to be a general agreement that it may easily be interpreted by reservations to mean that the United States shall cease to be a member of the league as soon as the notice for two years expires, and that any failure on the part of the United States to comply with international law or the obligations of the league shall not prevent the cessation of membership, but only be made the basis for a claim for damages against the United States if any such exists.

"Nor is it necessary elaborately to discuss Senator LODGE's Americanism, in the maintenance of which he declares that his own country first commands his allegiance. He does not differ from most other Americans in that respect, nor does support of the covenant mark a line of distinction between false and true Americanism. It is perfectly consistent with a love of country and with a preference of the interests of one's country over those of all other nations to favor a union of nations to maintain peace.

NO LESS AMERICAN IN 1915.

"When Senator LODGE advocated this at the dinner of the League to Enforce Peace or at the commencement exercises of Union College in 1915 he was not any less an American than he

is to-day. Nor are those who favor the league any less American than he is. Those who support the league think they are exalting their country in making it properly useful for the maintenance of the peace of the world, in the benefits of which their country will certainly share, and they believe they have a broader vision of the noble purposes which the United States may serve when they would have it take its stand with the other nations of the world to avoid the scourge of war and secure a peace which will work for the benefit of all.

"It should be noted that Senator LODGE does not dwell on any unconstitutional feature of the covenant. This is hardly in accord with the recitals of Senator KNOX's resolutions, which Mr. LODGE voted for in committee and reported to the Senate. He now takes the stand with Mr. Root, who also ignores the constitutional objections, and so, I believe, does Mr. Justice Hughes.

"If there had been any doubt in anyone's mind on the subject of the constitutionality of the covenant reasonably construed, it should be removed by a perusal of the very learned and useful discussion of these issues by Senator KELLOGG in his speech, reported in the CONGRESSIONAL RECORD of August 8, and in the earlier convincing arguments of Senators MCCUMBER, COLT, and MCNARY.

"A noteworthy omission in Senator LODGE's speech is of any suggestion as to how the treaty with Germany is to be enforced, how the limitation of her armament is to be secured, how the stability of the nations created by the treaty can be maintained in accord with the strategic necessities of a permanent peace with Germany, luminously pointed out by Mr. LODGE in his speech on the proper scope of a treaty of peace made soon after the armistice, or how the spread of Bolshevism, which he deprecated and wished restrained, can be met.

TREATY BACKS WAR PURPOSE.

"Neither he nor any opponent of the league seems to regard the treaty of peace as something to be executed. Its chief function now is to furnish objects of critical attack. Surely the United States fought the war to achieve a great purpose. Surely the treaty of peace is to be the embodiment and clinching of that purpose. Surely the treaty imposed upon an unwilling Germany and the other treaties imposed upon reluctant Austria, Bulgaria, and Turkey will not enforce themselves. Who must enforce them, then? The nations who fought the war.

"They must continue the league entered into to conduct the war and now amended and framed to maintain the peace they won. This is the essence of the covenant, and upon it as a firm foundation the rearing of a structure protecting the world against war is a great opportunity and an easy and natural step in the advance of Christian civilization."

LEAGUE OF NATIONS.

Mr. WILLIAMS. I also ask unanimous consent to have inserted in the RECORD in the same connection an article from the Public Ledger, of Philadelphia, Pa., which is headed, "LODGE, fears the covenant but forgets Sarajevo."

There being no objection, the article referred to was ordered to be printed in the RECORD as follows:

"LODGE FEARS THE COVENANT BUT FORGETS SARAJEVO—WE ARE 'ENTANGLED' ALREADY—WILL WE HELP UNRAVEL THE SNARL OR LET IT TRIP US AGAIN?

"No one will be surprised that the Senate galleries cheered LODGE. It was a rattling good speech. The Senator from Massachusetts is an able man, and this set address was the result of months of study and preparation. As steadfast believers in the league of nations, we are quite willing to admit that it was as strong, as appealing, as effective, an attack upon the league covenant as could be made.

"We have referred to ourselves as 'believers' in the league of nations; but we do not claim any offensive superiority in this regard over Senator LODGE, who addressed an audience at Union College in June, 1915, when the Great War had been raging for nearly a year, and who, as the New York World reminds us, held on that occasion the entrancing language of idealism in the following fashion:

"Nations must unite as men unite in order to preserve peace and order. The great nations must be so united as to be able to say to any single country, 'You must not go to war'; and they can say that effectively when the country desiring war knows that the force which the united nations place behind peace is irresistible. * * * It may seem Utopian at this moment to suggest a union of civilized nations in order to put a controlling force behind the maintenance of peace and international order, but it is through the aspirations for perfection, through the search of Utopias, that the real advances have been made. At all events it is along this path that we must travel if we are to attain in any measure to the end we all desire of peace upon earth.

"Nor do we assail Mr. LODGE for changing his mind. If he had confined himself to detailed criticism of the covenant as 'a deformed experiment upon a noble purpose,' we would, indeed, have gladly greeted him as one who stands for the principle but is dissatisfied with the application immediately in hand. That might easily occur—especially when the application bears the name of 'Wilson.' But the Senator went much beyond that. He preached the narrow gospel of nationalism with an unction that points to relish rather than reluctance, and with a remarkable forgetfulness of the chief achievement of the war—the unescapable 'entanglement of America * * * in the intrigues of Europe.' We have no choice in the matter. We never did have. Germany dragged us into the conflict; and the iron necessity of making very sure that our boys did not die in vain fetters us firmly to the task of fighting on with the forces that seek to bring ordered peace out of tumultuous and terror-ridden chaos.

"Says Senator LODGE:

"I will go as far as any one in world service, but the first step to world service is the maintenance of the United States. You may call me selfish, if you will, conservative or reactionary, but an American I was born, an American I have remained all my life.

"I can never be anything else but an American, and I must think of the United States first, and when I think of the United States first in an arrangement like this I am thinking of what is best for the world, for if the United States fails the best hopes of mankind fail with it. I have never had but one allegiance—I can not divide it now.

"No wonder the galleries cheered. Who could say otherwise? We are all Americans first. But does the Senator believe that America would now be worse off if she had been 'entangled' in a league of nations during the summer of 1914 which would have been able to tell the Hapsburg Government of Austria-Hungary that its ultimatum to Serbia was a war-provoking act which must be withdrawn if it did not desire to encounter the condemnation of the league? Does he believe if Germany and Austria had known at that time that any wanton precipitation of war on their part would bring into the field against them automatically not only Britain, France, and Russia, but Italy and the United States as well, that they would have rushed on their fate? The same thing would be true if it had been Russia that then thought of 'lifting the lid off hell.' The 'union of civilized nations' with 'a controlling force behind the maintenance of peace,' which Senator LODGE so eloquently envisaged at Union College, would have kept the peace.

"And America, which we must think of first, would have been the richer to-day by many tens of thousands of 'dead,' hundreds of thousands of 'wounded,' and billions of dollars. We paid a big price to learn the lesson that we live in the world, and no Senator can sing sweetly enough to cause us to forget for a moment that so long as America does not lend her sanity and power to the proper control of what Mr. LODGE calls so contemptuously 'every controversy and conflict on the face of the globe,' she abstains at the cost of risking the life of every American lad who leaves his home this morning with a bright face turned toward the day's duty or pleasure.

"The Senator makes superficially telling points by reading the news from distant Arabia and distracted Poland and asking whether we are willing to put it in the power of King Hussein, for instance, to compel us to send American soldiers to Arabia to fight for the boundaries of his plastic kingdom. The answer is easy. We are not. We are not willing to put it in the power of any foreign prince, potentate, or parliament to send one American marine into action. Congress will continue to control the vital questions of peace and war for us under the league precisely as it has in the past. * * *

"But the case of Arabia, which the Senator has invoked, is an excellent one for him to consider. Has it occurred to him that King Hussein might literally 'compel' American troops to go to war if there were no league in existence? Less important men than the new Arabian King have done that. An assassin lurking in a doorway in by no means metropolitan Sarajevo 'compelled' 2,000,000 Americans to arm and go to France. Some will never come back unless in their coffins. The same King Hussein has immense powers for mischief under his hand. Does the Senator forget that he is the political heir of Mohammed, and that it was the Arabs who once so seriously frightened Christendom? He might, for example, take it into his head to fight the French for Damascus or to try to drive the Armenians back to the Caucasus. A league of nations could easily bring pressure to bear, without asking so much as a company of infantry from America, which would dissuade him. But if there were no league of nations, no big-power unity of action, rather big-power jealousies and intrigues, it is just possible that the conflagration might spread until America must again buckle on her armor and pour out much of her best blood on European battle fields.

"It seems impossible to believe that there is any real and vital divergence of opinion on this subject of a league of civilization for the simple purpose of self-preservation. All of the Lodge 'reservations' do not seriously alter the league covenant. They would do little harm if they were presented so as to avoid delay. The American people are all with him for 'America first'; but men of light and leading ought to unite in telling the American people frankly that the day of American isolation is past forever, and that it is only a question on what particular terms we will join the parliament of man.

"We can not stand aloof. We can not shirk the risks. Immensely greater risks will menace us if we do. We must 'chip in.' We must pool our brains and our hearts and our strong right arms. We must join the forces of prevention, as well as the forces which subsequently fight the flames on dizzy ladders. We can not afford to split hairs and chop logic over definitions of Monroe doctrines or what are or are not domestic questions. * * *"

Mr. THOMAS. Mr. President, I am in receipt of a communication from Judge S. Harrison White, of the Colorado bar, inclosing certain resolutions recently adopted at a meeting of the Colorado branch of the League to Enforce Peace. I ask unanimous consent that the resolutions may be inserted in the RECORD.

There being no objection, the resolutions were referred to the Committee on Foreign Relations and ordered to be printed in the RECORD, as follows:

"Whereas the United States of America entered the World War for the express purpose of making the world a safe place in which to live; and

"Whereas this high purpose involved two objectives—the crushing of militarism and the placing of the political forces of the world under the control of international law; and

"Whereas the first objective has been accomplished, and the only feasible and practicable plan whereby the second may be obtained is presented and embodied in the proposed covenant for a league of nations interwoven into the treaty of peace:

"Now, therefore, this body of citizens of Colorado, here assembled, 600 in number, declares that in our opinion the treaty of peace should be considered without bias or political partisanship and promptly ratified, to the end that peace may speedily come, normal conditions reappear, and a reasonable hope may arise in the minds and hearts of men that in the future nations may not go to war until every reasonable means of settling their disputes shall have been fully and fairly tried.

"STATE OF COLORADO,
"*City and county of Denver, ss:*

"I, S. Harrison White, hereby certify that I was the chairman and presided at a meeting of citizens of Denver, held in the Albany Hotel Auditorium on Tuesday evening, August 19, 1919, under the auspices of the Colorado branch of the League to Enforce Peace, and at said meeting the above and foregoing resolutions were adopted, and the chairman instructed to send a copy of the same to the Hon. CHARLES S. THOMAS, United States Senator, and to the Hon. LAWRENCE C. PHIPPS, United States Senator, Senate Chamber, Washington, D. C.

"Dated at Denver, Colo., this 20th day of August, 1919.

"S. HARRISON WHITE."

Mr. BRANDEGEE. Mr. President, I present a short article from the New York Herald of August 20, which I ask may be read by the Secretary.

The VICE PRESIDENT. Without objection, the Secretary will read as requested.

The Secretary read as follows:

[From the New York Herald, Aug. 20, 1919.]

THE GENESIS OF THE LEAGUE.

"The writer of the third letter asks some questions which should furnish food for thought. He signs himself 'An American Democrat' because he is one. By way of further identification the Herald can say that he is one of the most prominent members of the Democratic Party, not, however, an officeholder or a seeker of office. Because of his prominence and the importance of the questions his letter raises, it is here reproduced in full:

"'*To the Editor of the Herald:*

"'Have our statesmen had occasion to observe the development of the British colonial system into a league of nations?

"'The British Empire is now a league of nations. British statesmen have had long experience in control of the existing league.

"'Should the United States be induced to become incorporated in the proposed new league, its relation to the existing league of English-speaking nations would be difficult to define or maintain.

"'Could we, the only English-speaking Nation now independent of the existing league, avoid being assimilated by it and its other members?

"'Could we maintain a policy of friendly independence toward the British Empire and the Continent of Europe, or would the control of our policy pass from us?

"'AN AMERICAN DEMOCRAT.'

"May not the situation which 'An American Democrat' presents so tersely explain the support which the league covenant, with its six British votes to one American, is receiving in certain circles in Boston and in Washington?"

HOUSE BILL REFERRED.

H. R. 5818. An act for the retirement of public-school teachers in the District of Columbia was read twice by its title and referred to the Committee on the District of Columbia.

TREATY OF PEACE WITH GERMANY.

Mr. FALL. Mr. President, on yesterday afternoon we listened to the remarks of the Senator from North Dakota [Mr. MCCUMBER], and I then gave notice that I would have a few observations to make this morning, more upon the tenor of his remarks, more upon the spirit exhibited by the Senator, than upon the text.

Mr. President, each of us is under a nervous strain; many of us are engaged in the performance of our labors until the late hours of the night, and I realize the fact that we are prone or are likely to say more than we have in mind, possibly, and more than we really mean. But all through this debate, from its inception to the present time, culminating, I may say, in the remarks of the Senator from North Dakota on yesterday, there has run a strain of impatience with those who did not agree with everything contained in the treaty which is now pending before us.

I want to say here, in order that people may know it, that at the first meeting of the Foreign Relations Committee, sir, Senators sat down at the table admitting that they had never read the treaty which was placed before them, and yet they were prepared to vote upon it. Some impatience was displayed with the insistence of other Senators that the treaty should be read openly before the committee, and one or two of the Senators were sincere enough to admit that it might well be read, as they had never read it. Yet some of those Senators had been debating the treaty in this body and on the forum, and those Senators themselves are the most impatient with others who would find objection to any article of the treaty. Amongst those Senators who have spoken in advocacy of the treaty without ever having read it will be found those who are most impatient with those who would read it and have the people of the United States understand it.

Words of scorn have been heard rather than argument in this body and out of it by those who advocate the adoption of this treaty, who are urging most impatiently that the Senate should immediately come to a vote upon it, and who are insisting that delay is being caused in the consideration of the treaty by Senators who persist in endeavoring to have some understanding of it through the securing of evidence upon the different propositions or for other reasons satisfactory to themselves.

Mr. NELSON. Mr. President——

Mr. FALL. I yield to the Senator.

Mr. NELSON. I should be glad to hear from the Senator what the objectionable features of the treaty are. Does he object to the reparation provisions? Does he object to the disarmament provisions? Does he object to the granting of Alsace-Lorraine to France? Does he object to the restoration to Denmark of northern Schleswig? Does he object to the establishment of an independent government in Poland? I should like to know what parts of the treaty, outside of academic matters pertaining to the league of nations, are objectionable.

Mr. FALL. Mr. President, I will only answer the Senator at this moment by calling attention——

Mr. NELSON. I wish to say one thing, and I will say it now. There is no use of attempting to chop up this treaty into mincemeat. If that is the Senator's object, he will find when it gets in here before the Senate that the mincemeat will be wiped out of it.

Mr. FALL. Well, Mr. President, there is no reason for the Senator taking advantage of his age and of his experience to undertake to talk to the Senator from New Mexico in that manner.

Mr. NELSON. The Senator need not pay any attention to my age; he may consider me the youngest man in the Senate.

Mr. FALL. If second childhood meant that, possibly I would. However, I have no desire to get into any controversy with the Senator. I will simply point to the Senator's own action. A few days since the Senate referred to a committee having no

jurisdiction of the matter whatsoever a question concerning the pending French treaty. A report has been drawn by the subcommittee upon the pending French treaty, and in that report, signed by the Senator who has just spoken, no reference whatsoever is made to the matter which concerns the Senate the most seriously, nor was any consideration given by the subcommittee—so I have been told by other members—and no report was made by the subcommittee upon the important question as to whether the Senate of the United States would have a right to ratify a treaty by the consent of a council of the league of nations instead of by itself under its own constitutional authority. The report written and signed by the Senator is silent upon the question which is most interesting to the people of the United States.

Mr. NELSON. I wish to ask the Senator a question. Will he yield?

Mr. FALL. I yield for a question.

Mr. NELSON. I understood the Senator to say that I was in my second childhood. I should like to have him explain that.

Mr. FALL. I did not say that. I said that if I took the Senator at his word I might consider that he was in his second childhood, or words to that effect. I apologize for anything personal that the Senator may have understood me to say.

Mr. NELSON. I want to say to the Senator that I am neither in my second childhood in this matter nor as to the Mexican situation.

Mr. FALL. Very well, Mr. President. Then I will call the attention of the Senator to the fact that he has pending before the Committee on Foreign Relations a request forwarded by him that foreigners be heard upon the disposition of the Aland Islands, which is one of the matters which the Senate has before it for consideration and one of the matters which necessarily delay the consideration of the treaty.

Mr. President, let me say to the Senator from Minnesota and to the Senator from North Dakota, those two Senators on this side, and to Senators on the other side that I recommend to them, if I may, that they read Solomon. I recommend to them for their consideration one of his proverbs:

Scornful men ensnare a city; but wise men prevent calamity.

I was very much interested in reading several years ago—and to refresh my memory I have read again recently—an essay by one of the world's great statesmen and great writers, who took this proverb for a text. It is true that this man wrote over 200 years ago, but it is nevertheless true that his words are yet read with profit by statesmen, while some would-be statesmen have possibly never heard of him. Francis Bacon, taking Solomon's proverb for his text, commented as follows—and I recommend his comment to the serious consideration of some of our statesmen of the present day:

Scornful men ensnare a city; but wise men prevent calamity. (Proverbs xxix, 8.)

Bacon says:

It may seem strange that Solomon, in the description of men formed as it were by nature for the destruction of States, should choose the character not of a proud and haughty, not of a tyrannical and cruel, not of a rash and violent, not of a seditious and turbulent, not of a foolish and incapable man, but the character of a scorner. Yet this choice is becoming the wisdom of that king, who well knew how governments were subverted and how preserved, for there is scarce such another destructive thing to kingdoms and commonwealths as that of the counselors or senators who sit at the helm should be (naturally) scorners; who to show themselves courageous advisers are always extenuating the greatness of dangers, insulting as fearful those who weigh them as they ought, and ridiculing the refining delays of counsel and debate as tedius matters of oratory and unserviceable to the general issue of business. * * * They account the power and authority of laws but nets unfit to hold great matters. They reject as dreams and melancholy notions those counsels of precautions that regard futurity at a distance. They satirize and banter such men as are really prudent and knowing in affairs of state or such as * * * are capable of advising. In short, they sap all the foundations of political government at once—a thing which deserves the greater attention, as it is not effected by open attack but by secret undermining; nor is it, by any means, so much suspected among mankind as it deserves.

Mr. WOLCOTT. Mr. President, will the Senator yield?

Mr. FALL. I yield to the Senator.

Mr. WOLCOTT. May I ask the Senator who is the author of the essay to which he has referred?

Mr. FALL. Lord Francis Bacon.

Mr. WOLCOTT. He was, if I recall, said to be the wisest as well as the meanest of mankind.

Mr. FALL. Yes, sir; Lord Verulam, the younger son of Sir Nicholas Bacon, prime minister of England, and himself prime minister. The Senator has correctly stated what has been said of Lord Verulam.

Mr. President, I was struck particularly with one or two of the observations of the Senator from North Dakota [Mr. McCUMBER], and in attempting to secure an answer to a question from him I undertook to repeat, as a preliminary, the statements which he had made and which he at the time did not remember. I had a transcript of those statements made and presented it here to the Senator yesterday afternoon, and he agreed, I believe, that he had made the statement:

Mr. McCUMBER. What you wanted to do—

Speaking to the Senator from Idaho [Mr. BORAH] and the Senator from Indiana [Mr. WATSON]—

What you wanted to do was to slap Japan in the face. What you wanted to do was to create such a feeling between Japan and the United States that it would be almost impossible for Japan to comply with the treaty.

Following after an interruption:

That is not washing our hands clean of that subject by any means.

This was in answer to the Senator from Indiana [Mr. WATSON].

It is getting into it in such a way that we will have to wash our hands with blood unless Japan backs down, and you are putting her in a position where she can scarcely honorably back down. You are insulting her and her people by a declaration that she can not be trusted.

Following that the Senator again, as he had theretofore done, repeatedly made the statement that Senators by their action in inserting the word "China" in lieu of the word "Japan" intended that their purpose was to kill the treaty.

So far as I am concerned—and I am, with the Senator from North Dakota, a member of the Foreign Relations Committee—I have given him entire credit for sincerity in the position which he has taken and in the votes which he has cast upon any paragraph of the treaty. I have given him credit for the utmost sincerity in the speeches which he has made upon several occasions in the Senate touching the matter. All that I have asked, as one of the Senators who are not of his line of thought with reference to this treaty, is at least the same degree of patience with myself which I have always been ready to extend to him or to others who are in favor of the treaty as it stands. That degree of credit has not been given. When I hear myself and other Senators who think as I do constantly abused, constantly criticized for our course with reference to this matter, by Senators who proclaim their own good faith, their own sincerity, their own patriotism, I must necessarily finally begin to believe that those Senators have not the sincerity of purpose for which I have given them credit. I have found, in my somewhat varied experience in life, that the man who is always ready to distrust the motives of another, or to reflect upon the motives of the other, or to criticize the motives actuating the words or the acts of the other, is one who often feels that his own position is not entirely secure and who may be actuated by other motives than those which he expresses. This is the natural conclusion which we must arrive at if we entertain the feeling that our colleagues in this body are sincere upon the questions which they discuss or upon which they vote.

I for one am wearied with this constant course of criticism; and I say that when the Senator from North Dakota or any other Senator in this body makes the statement, here or elsewhere, that in my action here in asking advice of those who are presumed to know, in seeking information from every source that I think it is obtainable, in casting my vote to right a wrong, as I considered it, in inserting the word "China" for "Japan"—when he says that I do that with any other motive than that which is apparent in the casting of the vote itself for the purpose for which the vote is cast, he is stating what is not true. The same is true of the other amendments upon which I have voted and upon which I have insisted. I have done so, I have voted or made my insistence as strenuously as possible, because of a sincere belief, a sincere conviction, that we are now confronted with the greatest crisis which we have ever been compelled to face, at least since the early days of the Civil War, and in many respects, in my judgment, with due deference to the judgment of others, with a very much more serious crisis.

Mr. President, I have always been convinced of the sincerity of those Senators in this body who at or prior to the outbreak of the Rebellion insisted upon the rights of the States to secede. I have given credit for equal sincerity and very much better judgment and more patriotism to those in the Senate at that time who insisted upon maintaining the Union in all its power and its glory. I know that at that time it was not a political question.

The right of secession was not entirely a sectional question. There were Members of the Senate at that time who believed in the right of the several States to secede from this Union and to destroy this Union by secession. I know that one great Senator from the State of Oregon—the State of North Dakota was not in existence at that time, but it is a near neighbor—entertained and expressed those views. I refer to Senator Lane, of Oregon. I know that various other Senators from the North and from

the Northwest maintained that the South should have the right to secede from this Union and destroy it if they so desired; that they should not be coerced with arms.

I say to you, Senators, that to-day the same spirit which would then have disunited this Union is abroad in this country. In my judgment the joining of the United States with the nations of Europe and of the world with whom she has nothing in common, the entrance of this country into all the broils and the quarrels and the disturbances and partaking in the selfish interests and disputes of Europe, would just so surely destroy this great Government of ours, which was maintained by the loyal people from 1860 to 1865, as would the efforts of those who believed to the contrary had they been successful in 1860. I believe that those Senators who are standing here now urging that this Union be perpetuated as our fathers built it and as Lincoln saved it are performing as sincere and patriotic a duty as those who took their muskets in hand and saved the Union in the bloody days of the Civil War. Men then, in the North or other sections of the country, assisting by their votes or by their voices in the attempted destruction of the Union were known as "copperheads"; but there was no political issue until finally, in 1863, the Democratic Party met in convention and by resolution solemnly declared that the war was a failure, and the Republican Party met in convention and proclaimed their allegiance to the Union of their fathers and their purpose to fight until the last drop of blood was spilled and the last dollar was expended from the Treasury to perpetuate this Union which the opposite party declared already a failure.

If this is to be made a political issue, let it come. I for one have no fear of the result. Why the insistence upon immediate action by this country without knowing what is contained in this treaty, without the Senators themselves knowing? Why the insistence? Because those who take it as it comes from the White House typewriter, those who would force us to accept it as the Germans were forced to accept it, at the point of the bayonet, with no more consideration shown to the American people who oppose it than the German people who signed it under protest—those who are in that frame of mind know that by the discussion going on here the people are being informed, and they, as they have for seven years past, fear informed public opinion in the United States.

I demand for myself the same consideration which I extend to other Senators here. I may be in error. My judgment is entirely fallible. If I err, I err sincerely. If I err, I err through an excess of patriotism. I err because I am an American citizen and because I can see no other body in the political firmament than the United States of America and her welfare. [Manifestations of applause in the galleries.]

The PRESIDING OFFICER (Mr. SUTHERLAND in the chair). The occupants of the galleries must preserve order. No applause is permitted under the rules.

Mr. FALL. Mr. President, in passing I shall now simply refer for a moment to the Shantung controversy.

It is admitted by the Senator from North Dakota and every other Senator who has attempted to speak—and somehow only he has taken upon his shoulders the advocacy of the cause of Japan; the President has not done it; none of the other Senators have, understandingly, I think, attempted to defend the cause of Japan; yet, in defending the Shantung article in the treaty, none have undertaken to deny that Germany obtained her title to Shantung by force and duress.

As yet I have heard none defend the course of Germany in acquiring the Shantung possessions, and yet the Senator from North Dakota and others use two arguments: First, that Japan obtains the stolen goods which Germany stole, and that we should perpetuate the outrage and the fraud; second, that if she does not claim under Germany's title, then she claims by conquest the possessions of her and our ally.

Mr. McCUMBER. Mr. President, does the Senator give that as my statement?

Mr. FALL. I give that as the Senator's statement; possibly not in words, because he attempted to cover it.

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

Mr. FALL. Certainly.

Mr. McCUMBER. I deny that statement in toto as being absolutely and unquestionably false.

Mr. FALL. I am not surprised.

Mr. McCUMBER. No; the Senator need not be surprised. I have never taken any such stand. I not only think the action of Japan was wrong, but I stated wherein I thought and believe that it can be righted.

Mr. FALL. Yes; I understand.

Mr. McCUMBER. The Senator has asked that both sides be treated with fairness. Then I ask him to treat my remarks as meaning just exactly what they do mean, and with the same fairness. I am not afraid but that I can justify myself in the positions I shall take, but I do not want the Senator either to misquote my position or to misstate a thing I have said.

Mr. FALL. I have undertaken to state the conclusions inevitably to be derived from the Senator's statements upon the floor and elsewhere.

Mr. McCUMBER. There is no conclusion the Senator can justly derive from any statement I have made that I say that the action of either Germany or Japan was fair or moral in any respect; and, in fact, the Senator knows, if he remained during the discussion, that I declared them to be unjust and unfair.

Mr. FALL. Mr. President, as I said in opening, we are all under a strain, and there are certain microbes apparently in the atmosphere. The Senator has just drawn the conclusion from my remarks that I said or concluded that he was justifying the acquisition of the Shantung Peninsula by Germany. I stated exactly the contrary—that he did not dare to undertake to defend it.

Mr. McCUMBER. Yes; and then the Senator stated that I defend the claim of Japan. I do not.

Mr. FALL. The Senator defended the Shantung provision in this treaty, and he claimed that Japan had a right to take Shantung because she derived her title either from Germany's wrongful possession or from Japan's conquest of Germany's wrongful possession, thus taking possession of the territory of our and her ally.

Mr. McCUMBER. And she derived it under a solemn obligation that she would return it; and that the Senator fails to mention.

Mr. FALL. Oh, I am not——

Mr. McCUMBER. Now, if the Senator will allow me——

Mr. FALL. I will.

Mr. McCUMBER. While the Senator is, as a doctor, prescribing something for the other Senators to take for their overnervous condition, I think the Senator ought to take a little of his own medicine for that purpose, for certainly, I think, the Senator forgets himself when he accuses one of the oldest and one of the strongest men in the Senate of having reached a condition of childhood. I do not think that he is acting upon his best judgment or that he is entirely free from what he is imputing to other Senators.

Mr. FALL. Mr. President, I decline to take any further emetics in this course of medicine.

Mr. McCUMBER. The Senator will probably get some of his own medicine after a while.

Mr. FALL. I am tired of that. The Senator can administer medicine in any way he desires.

Mr. McCUMBER. If I take it, the Senator can be sure that he will take his part of it.

Mr. FALL. We will see about that.

Mr. McCUMBER. We will see about it; that is dead certain. There is no question about that.

Mr. FALL. From the Senator's speech of yesterday to his action of to-day is from the sublime to the ridiculous.

Mr. President, the people of the United States are being told, and have recently been told by the President of the United States, that we could not reduce the high cost of living until we had agreed to this peace treaty. The people have been told that the high cost of living could only temporarily be dealt with until we have agreed to the treaty now pending.

A few days since, in a conference at the White House, I left with the President of the United States some questions in writing concerning the treaty, directly or indirectly, as affecting those conditions to which he had referred in his address to the joint session of Congress. The President requested or suggested that he might reply to the questions in writing. In due course I received the reply of the President to the questions, and the Senator from Utah [Mr. KING] was kind enough to have the questions and replies printed in the RECORD two or three days since. I stated that I had intended to do so, and despite the fact that he was kind enough to anticipate me, I shall refer to the questions and the President's answers with a few comments upon the subject. It may possibly be a strain upon the patience of some of my impatient colleagues. Nevertheless, I feel that I shall have performed a duty to the people of the United States when I explain to them by the official documents what the condition of the United States is now with reference to peace or war. It is particularly appropriate that this should be done this morning, because the news press is full of the statement of yesterday afternoon, reiterated to-day, that at least two regiments of American soldiers are being ordered now from American soil to the plebiscite district in north Silesia. We have not enough troops upon the Continent now, not enough boys in sufficient number taken from their homes here to garrison certain districts in Siberia and to garrison the Rhine and other districts

in Europe, not enough marines and sailors preserving the peace and safety and security of some unknown quantity in the great old Hanse town, the free city of Danzig; but now we must come back, without authority of the Congress of the United States, and take soldiers from our country and send others again to the disputed district or the riotous district in north Silesia, where we have not been responsible for the riot or dispute or bloodshed. It is therefore, I think, appropriate and should be interesting to the people of the United States to know what the condition of the United States is now, what the status is now as established in the United States as between this country and the country with which we have been at war.

The first question which I asked of the President was this:

In your judgment, have you not the power and authority, by a proclamation, to declare in appropriate words that peace exists and thus restore the status of peace between the governments and peoples of this country and those with whom we declared war?

The second question was as follows:

Could not, in any event, the power which declared war—that is, Congress—joined by the President, as you affixed your approval of the declaration of war, by a resolution or act of Congress declare peace, as Germany did not declare war upon us?

Two other questions I asked, which I shall later read, upon the same subject, and to the first four questions the President replied giving one answer. As will be seen from a reading of the answers and later a reading of the other questions, the answer was not applicable to the last three questions as legal propositions, but only as expressing the determination or the judgment of the President of the United States. His answer to the first four questions, given to the first one, was as follows:

I feel constrained to say in reply to your first question not only that in my judgment I have not the power by proclamation to declare that peace exists but that I could in no circumstances consent to take such a course prior to the ratification of a formal treaty of peace.

I feel it due to perfect frankness to say that it would, in my opinion, put a stain upon our national honor which we never could efface if after sending our men to the battle field to fight the common cause we should abandon our associates in the war in the settlement of the terms of peace and disassociate ourselves from all responsibility with regard to those terms.

Now, Mr. President, judging from the record, from what the President has said and written and from the record of the proceedings of the peace conference and the record which he and others have made since that time, I have been compelled to form the judgment that the President of the United States in entering upon the peace conference was so obsessed with the idea of obtaining something in the nature of a "shell" at least of a league of nations that he could not give his attention to the details of the treaty which he brought back and presented to us, nor was he particularly concerned with the details of the league covenant itself. He and his Secretary of State construe some of the league covenants differently. They certainly construe the provisions of the peace treaty differently. I may call attention to the fact that only in the preamble to the peace treaty and in article 440, the last article of the peace treaty itself, is there any reference to peace or the state of peace or how peace is to be brought about.

The great mass of the treaty is taken up with the details as to how people in northern Silesia are to be governed for an indeterminate number of years, as to how the boundary lines of certain districts being readjusted shall be readjusted, and by whom. Line after line is taken up and page after page given entirely to an attempted settlement based upon some evanescent theory of racial origin or geographical boundaries of the peoples of Europe. We are all in receipt constantly of protests, I presume, from various of these peoples, begging the Senate of the United States to seriously consider the articles with reference to themselves and protesting against what has so far been done. We do not know yet what is being done in detail with reference to Thrace and with reference to Hungary and Roumania and Czecho-Slovakia and the Serbian-Croatian States and the partition of Turkey, and yet, while the operation of partitioning and distributing is going on we are by this treaty pledging the people of the United States by at least a moral obligation to see that what is being done is maintained hereafter by this treaty itself. We do not know what is being done, and we call witness after witness before us, we seek information from the President of the United States, from the Secretary of State, and from every other source, and we get none. Then if the committee seeks to hear the protests from Norway with reference to the disposition of the Aland Islands, in which the Senator from Minnesota [Mr. NELSON] is so materially interested that he has requested a hearing before the committee, he or other Senators rise in their seats and criticize the committee for attempting to get the information, without which I can say to you, sir, we can not intelligently deal with the treaty before us.

Now, to go back. The President having but one idea in mind—that is, the formation of some character of a so-called league of nations—has overlooked, to my mind, the material portions of the peace treaty, or what should have been the material portions of the peace treaty as relating to the United States of America, which was at war, what should become of us?

In the first place, the President seems to have lost sight of the fact that peace is a status, as war is a status, the difference being, as Oppenheim says, that "the normal condition between two States being peace, war can never be more than a temporary condition. Whatever may have been the cause or causes of war, the latter can not really last forever."

Oppenheim and Vattel, and all the other law writers of whom I have any knowledge, down to Wilson and Tucker and others of modern and contemporary times, agree that peace being a status that status can be fixed or brought about in at least three different ways:

First, through debellatio, conquest under the old Roman law, still recognized as one of the methods of bringing about peace.

Second, cessation of hostilities, the adoption of an armistice, or merely the ceasing of armed hostilities, "gliding" into a peace. It may be a peace for years. We have no such thing, the world, of course, has never known such a thing, and no nation has ever known such a thing or condition as perpetual peace.

Peace by treaty is the last peace and the most satisfactorily generally if in the peace treaty the terms of peace themselves are laid down. That is wherein, in my judgment, the treaty which we have before us absolutely fails. There is nothing in it with reference to the conditions of peace as they shall exist between this country and Germany after the Senate may have ratified this particular treaty.

Under the contention of the President of the United States, under the testimony given by the Secretary of State and others, it would be necessary for us to enter into conventions or treaties of peace to establish the rules and conditions under which this Government could operate with reference to Germany, and those aside from this so-called peace treaty.

I simply call attention to two or three occasions upon which nations have been at war for years, have made peace, have conducted the affairs of peace between themselves, without any treaty of peace whatsoever. Sweden and Poland, two of the nations with which we are now dealing, in 1716 had fought for years and then made peace by ceasing hostilities, and never made a treaty of peace.

France and Spain in 1720 had been at war for a number of years; as I recall it, seven years. They made peace by ceasing hostilities, and never made or entered into a treaty of peace for the conclusion of that war, at least.

Spain and her American colonies were at war for many years. The colonies finally achieved their independence from Spain, but it was not acknowledged by Spain, and Spain never entered into a treaty even of recognition of the independence of those colonies until 15 to 20 years or more had elapsed and it became necessary for her to enter into consular agreements with them for the interchange of commercial intercourse. Chile was not recognized by Spain until the year 1840. Spain was again at war with Chile and with Peru in 1866, and the war drifted along and finally ceased. We, the United States of America, undertook to do business with Peru and with Chile, and Spain on one occasion, and Peru, or some one in Peru or Chile, entered protest that they were still at war and that we should regard the rules of belligerency. The United States of America said: "We will settle that for ourselves. You have been at peace, and simply because you have not signed a treaty of peace or entered into peace negotiations you can not bind the world. You are at peace. We will settle that for ourselves." And we did.

Mr. KING. Will it disturb the Senator if I interrupt him?

Mr. FALL. Not at all. I shall be very glad to have the Senator interrupt me.

Mr. KING. I think the Senator is correct in the illustration which he has given. There have been a number of occasions in which the belligerents have accepted a status of peace without an affirmative declaration. But does not the Senator think that it proceeds very much upon the same theory that men may sometimes make a contract by negative action, if I may use that expression, rather than by affirmative action? That is to say, nations who have been at war, as in the instances which the Senator has given, have proceeded upon the assumption that there was a status of peace and the war had terminated, and they have acquiesced in the status of peace. Does not the Senator think that that conduct by the resumption of diplomatic relations, and so on, would take the place of an affirmative declaration of peace which we denominate a treaty?

Mr. FALL. I do not think the resumption of diplomatic relations in such a case is necessary, because we have decided that. France had a war with Mexico in 1867. She never declared

peace and she did not resume diplomatic relations with Mexico until 1884, and yet she was at peace and did business with Mexico. In doing business with a country, your business man deals through consuls and consular agents, who are not diplomatic agents. With that difference I agree with the Senator that the fact has to be established as to whether peace or war exists by the action of the nations themselves with reference to the citizens or nationals of the nations in doing business together.

A resumption of what the Senator possibly had in mind—that is, an exchange of ministers or ambassadors—is not necessary, while it is necessary to have either your own consuls or some other consuls represent your business men in the foreign country for the purpose of viséing passports and bills of lading, making proofs, and so forth.

Mr. President, I will state to the Senator that before I conclude my remarks I shall show that the people of the United States by the act and declaration of the President of the United States are on absolute peace terms with the people of Germany and with the Government of Germany. I shall not at this time go into any argument along the details of this question further than to call attention to the end of our Civil War. It is true that that was a civil war, but it was a war in which the belligerency of the Confederacy was admitted by many foreign countries—for instance, Great Britain. It was a war, and certainly a "regular" war, Mr. President, in view of the fact that in proportion to the numbers engaged there were more killed in the battles of the Wilderness than were killed in any equal number of days or in any battle occurring in France or on the bloody fields of Europe during this recent war, which we proclaim as the bloodiest in the history of the world.

I shall pass as rapidly as possible in the discussion of this question to the thought which I stated to the Senator as that which I should offer; but, first, I refer to the Civil War, which was decided by the Supreme Court of the United States to be closed by the proclamation of the President of the United States—with reference, at least, to a large number of the States in the South engaged in it—which was issued in April, 1866. The terms of surrender and the peace terms in so far as Gen. Lee could bind the Southern Confederacy were arranged between Lee and Grant at the surrender of Appomattox, just as the armistice was arranged between Gen. Foch and the opposing German generals in November of last year.

The peace terms at the conclusion of the Civil War were followed immediately by the proclamation of the President of the United States, and the Supreme Court declared that that proclamation established peace.

Mr. President, I have not in my desk the proclamation of the President of the United States issued on April 6, 1917, declaring a state of war to exist between this country and Germany. I have that proclamation in my office, and, should it be necessary, I will send for it before I conclude my remarks on this occasion. I had, however, intended to read it into the RECORD. Following the action of the Congress of the United States, at the request of the President of the United States, declaring that we recognized the condition of war as thrust upon us by the acts of Germany, the President, as became his duty, immediately issued a proclamation to the people of the United States that war between Germany and the United States existed. In that proclamation, of course, he cited the resolution of the Congress of the United States. Then he proceeded to warn the people of the United States as to their connection with the enemy or the allies of the enemy, and he proceeded to recite the statute of the United States with reference to the action of enemies in this country; he covered the entire field. The state of war existed from the time, of course, of the declaration of war by Congress, but the warning issued to the people both of the enemy country and their allies and to our people that such a declaration had been made, and as to what laws would be in force, was properly made by the President of the United States immediately following, and upon his own initiative. It was not required to be done by law.

Now, there are three methods or more, Mr. President, of carrying on a war against an enemy country aside from that method which was used in this war, of armed hostilities. One of those methods is by closing our ports to shipments of the enemy country by refusing to allow a cargo destined for an enemy port or ships destined for enemy ports clearing from our harbors under our harbor laws and navigation laws. Of course, action in those matters is peculiarly an Executive function and is in the hands of the President of the United States. The port collectors and others have been since the proclamation of the President acting under it until a recent date.

The next and most efficient and effective method of waging war was ascertained in 1798 to be by the passing of an act imposing a very severe penalty upon citizens of this country who undertook to trade with enemy citizens or their allies either in this country or beyond its boundaries. During this present war, in October, 1917, following the declaration of war in April, it became apparent to the Congress of the United States that the old trading-with-the-enemy statute, practically obsolete, having been on the books for a hundred years or more, needed revising, and that other subjects should be dealt with specifically in any such revision. Therefore the Congress of the United States passed what was known as the trading-with-the-enemy act, that being the efficient method of carrying on war against Germany in this country, and it being the method through which any citizen of this country dealing with the citizens of the enemy country or their allies laid themselves liable to very heavy and severe penalties. That act immediately stopped trading with the enemy or the allies of the enemy.

This was followed by the President issuing what were known as blacklists prohibiting trading by the citizens of this country with firms in Germany and firms in neutral countries which were supposed to be directly or indirectly aiding the enemy with whom we were at war. Those blacklists continued up until recent days; they have been revised upon various occasions, added to or subtracted from, during the war. The trading-with-the-enemy act was supposed to be in full force and effect until a comparatively recent date.

The prohibiting of the clearance from our coasts of cargoes destined for the assistance of the enemy, either sailing directly to their ports or through neutral ports; the prevention of the landing of enemy cargoes upon our soil or in our harbors; and the trading-with-the-enemy act, penalizing any act in violation of the proclamation of the President of the United States following the declaration of war by Congress, were the effective means of winning this war, aside from the sacrifice made by our heroic soldiers upon the fields of France.

No one, of course, for a moment would detract from what was done by our soldiers in bringing peace to a distracted world, in at least achieving the objects for which this country went to war. No one, upon the other hand, should forget for a moment the sacrifices made by the people of the United States in submitting to the harsh terms of censorship and to the trading-with-the-enemy act; in submitting to having their houses invaded without due process of law; in submitting to arrest upon the streets without legal warrants for arrest; in submitting to having a portion of their food taken from their tables that it might be furnished to the starving people of Europe, to support our own armies, and to support the civilian populations of those countries who had been outraged and were famished and starving. The world should never forget what the people of the United States of America did voluntarily and because of the acts of Congress under which the President could prohibit such acts as dealing with the enemy either through our ports or here upon our soil or in other portions of the world.

The administration of the trading-with-the-enemy act, Mr. President, was entirely in the President's hands; everything was left to him; he was to put it in force through his departments; he was to see that its terms were complied with or that any infraction of it was punished.

I have before me here the trading-with-the-enemy act, and I desire to read a portion of section 4 of that act, which was approved October 6, 1917—

Every enemy or ally of enemy—

I will pass over section 4 for the time being and will read first from section 5:

That the President, if he shall find it compatible with the safety of the United States and with the successful prosecution of the war, may, by proclamation, suspend the provisions of this act as they apply to an ally of enemy—

I have not heard of any such proclamation being issued by the President of the United States. He is only authorized by such proclamation—

to suspend the provisions of this act so far as they apply to an ally of enemy—

Not to the enemy itself—

and he may revoke or renew such suspensions from time to time; and the President may grant licenses—

I invite the attention of Senators to the words—

may grant licenses, special or general, temporary or otherwise, and for such period of time and containing such provisions and conditions as he shall prescribe, to any person or class of persons to do business as provided in subsection (a) of section 4 hereof.

Mr. President, subsection (a) of section 4 I had commenced to read, but unless some Senator desires to have it read I shall not do so, because it refers to insurance or reinsurance. There-

fore this provision as to granting licenses applies to insurance or reinsurance—

and to perform any act made unlawful without such license in section 3 hereof, and to file and prosecute applications under subsection (b) of section 10 hereof; and he may revoke or renew such licenses from time to time.

There is also a provision that he might issue licenses, waiving the provisions of section 3, the licenses to be issued upon application and to be general or special. The general or special licenses provided for in reading the context can readily be understood. They are special for certain classes of business. A business man engaged in general business may secure a special license for a special product which he desires to import or to export, and, if he is engaged in the exporting and importing business, he may secure, upon proper application, a general license for such business.

Section 3, subsection (a), makes it unlawful—

For any person in the United States, except with the license of the President, granted to such person, or to the enemy, or ally of enemy, as provided in this act, to trade, or attempt to trade, either directly or indirectly, with, to, or from, or for, or on account of, or on behalf of, or for the benefit of, any other person, with knowledge or reasonable cause to believe that such other person is an enemy or ally of enemy, or is conducting or taking part in such trade, directly or indirectly, for, or on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy.

Subsection (b) of section 3 makes it unlawful—

For any person, except with the license of the President, to transport or attempt to transport into or from the United States, or for any owner, master, or other person in charge of a vessel of American registry to transport or attempt to transport from any place to any other place, any subject or citizen of an enemy or ally of enemy nation, with knowledge or reasonable cause to believe that the person transported or attempted to be transported is such subject or citizen.

The right of the President to waive the penalties of this act in favor of the citizen is specifically laid down. That right extends, however, to his power, in his discretion, upon application, to issue a special or a general license.

I shall pass hurriedly to a consideration of what has been the course of the Government upon that subject. I called attention, Mr. President, a few days ago, to certain circulars issued by the department, and particularly to a circular of July 14, 1919. I now read from the copy of the CONGRESSIONAL RECORD in which I had inserted that circular. I read the first paragraph:

The War Trade Board section of the Department of State announces that a general enemy-trade license—

Note the words, "a general enemy-trade license"—

has been issued authorizing all persons in the United States on and after July 14, 1919, to trade and communicate with persons residing in Germany and to trade and communicate with all persons with whom trade and communication is prohibited by the trading-with-the-enemy act.

There are certain specific restrictions with reference to the importation of dyestuffs and similar articles. I shall read no further from this circular, the greater portion of it being already in the RECORD.

Mr. President, I called attention during the remarks which I made upon that occasion to the fact that during the month of June prior to the issuing of this proclamation this country had transacted with Germany $8,783,000 worth of business, while in the same length of time it had transacted with Spain, a country with which we have been at peace since 1898, $8,685,000 worth of business; in other words, our nationals transacted with Germany $100,000 more business in the month of June, prior to the issue of this so-called general license, than they did with the friendly country of Spain, to which we have always been an exporter. I called attention, further, to the fact that during the same time we transacted approximately twice as much business with Germany as we transacted with all the Central American countries.

Mr. President, I find that the following circular was issued some time since——

Mr. WILLIAMS. Mr. President, before the Senator passes from that, the Senator made reference the other day when he was going over this same subject matter to certain shipments of cotton to Germany. I think the value of that cotton was included as a part of the aggregate to which he refers.

Mr. FALL. No; the Senator is in error about that. The cotton was shipped after the data were obtained from the Government reports. I simply called attention to that fact to show that cotton is now being shipped outright directly to Hamburg, Germany, a German port.

Mr. WILLIAMS. Yes. Now, Mr. President, I want to make a correction of a statement made at that time by the Senator. I thought that was rather curious, because I understood that most of the cotton that had gone to Germany had gone through the neutral port of Rotterdam, and not directly. There was a shipment of cotton to Hamburg, as the Senator said, but it was not for the Germans nor for German nationals, and I quote this from the Associated Press, coming from a New Orleans paper. I do not think this discussion is at all relevant to the general issue, but I just want the historical facts right.

Mr. FALL. I have no objection.

Mr. WILLIAMS (reading):

The assertion of Senator FALL, Republican, New Mexico, during debate on the peace in the Senate yesterday that a cargo of cotton was forwarded from New Orleans to Hamburg June 28 for use in Germany, was denied by steamship officials here to-day.

The steamship *Waukegan*, of the Kerr Steamship Line, sailed from New Orleans on June 29 with a cargo of 22,000 bales of cotton for the American Relief Association in Hamburg for distribution to the Czecho-Slovak nation, officials of the line stated. So far as records here show there was no cotton shipped from this port for use in that country—

That means Germany—

during June or July.

So that all shipments that took place were taking place subsequently to this general license.

Mr. FALL. Yes. Mr. President, I thank the Senator very much, because he has now fixed in the RECORD the fact that not only have our nationals been doing business with German nationals, but that the Government of the United States has been directly doing business through German ports in shipping supplies to Czechoslovakia; and, of course, I am grateful to the Senator for the interjection.

Mr. President, I find under serial No. 84, effective July 17, 1918, "United States Shipping Board Emergency Fleet Corporation, rates of freight from United States Atlantic and Gulf ports to Europe on cotton," the following: Germany (Bremen, Hamburg), high density per 100 pounds, from Atlantic ports, rate $1.75; standard, $2; from Gulf ports, $2 and $2.25, respectively. I find, effective under date July 21, from the same authority, "Rates are on all cargo except as mentioned below," and the exception is the special rate upon cotton, and certain other special rates: Hamburg, Bremen, per 100 pounds, $1.50; per cubic foot, 70 cents. I find under the same date, "Rates are on all cargo except as mentioned below," making certain other exceptions upon which specific rates are fixed, the general rate for Bremen and Hamburg being $1.57½ and 75 cents.

I find the same rates—this is all under the authority of the United States Shipping Board, and is, of course, for the Government vessels—Germany (Bremen, Hamburg), regular rates, the same as all neutral countries.

Mr. President, the significance of these matters will possibly appear, even to the minds of some of those who close their mind to the ear, a little later.

What do the records which I have referred to establish? First, this—and I will ask any of the lawyers in the Senate to assist me in construing them: That an attempt has been made, by the use of the licensing power in the trading-with-the-enemy act, to extend to all people alike in the United States, under a proclamation, the right to do business with Germany. Second, the fact that no such authority is granted in the trading-with-the-enemy act itself. This matter, however, has undoubtedly been passed upon by the advisers of the State Department, and they have undoubtedly come to a different conclusion. In reading the act I can not see how it is possible to place upon it the construction that the President of the United States, by proclamation, can suspend the act generally. He can, upon application, grant special or general licenses to individuals; but the issuance of a general proclamation that all the people of the United States can do business with Germany, thus restoring peace by a subterfuge, is something which I do not think can be legally done.

There is, however, a method provided in the act itself by which the President can legally do what he has done. I find no complaint with the act itself. I have been insistent for two months that a status of peace should be declared between this country and Germany because it actually existed, and that trade relations should be restored between this country and Germany because the reason for prohibiting them no longer prevails. I offered a resolution in the Senate to that effect. I frankly say that I could not get enough votes to pass it, or I would have pressed it to a vote long since, because I thought that by some legal method of procedure there should be done in the interests of the people of the United States exactly what has been done by an evasion of the law, in my judgment.

Mr. KING. Mr. President, will the Senator yield?

Mr. FALL. I yield, because I had hoped the Senator would undertake to elucidate for me the legal problem involved.

Mr. KING. Oh, Mr. President, of course I would not pretend to elucidate a subject that the Senator from New Mexico touches, because whatever he speaks about he does illumine, and perhaps the question I was about to propound is not germane to the matter which he was just discussing.

As I follow the Senator, however, his contention is this: Because there is a suspension of the trading-with-the-enemy act, or a modification, or a repeal—and for the purpose of my question I am willing to concede that it goes to the full limit, and that there is a repeal, so far as the President and the officials of the Government without an act of Congress may repeal it—that because there is a repeal of the trading-with-the-enemy act, and commercial relations to a greater or less extent exist between this Government and Germany, therefore it must follow that the status of peace exists.

If that is the position of the Senator, I shall be very glad to have him elucidate the subject a little further, because I can not assent to that proposition, if the Senator goes that far. I can understand that a condition of war, at least theoretically, may exist between belligerents, and that for humanitarian or other reasons one of the belligerents may be willing that food or other supplies may be shipped to the defeated and conquered belligerent pending the final determination of all of the questions at issue, which are being determined in a peace treaty; and I do not see, under conditions of that character, how it would be successfully contented, as a legal proposition, that there was a status of peace, and that there was no further necessity of negotiation in order to bring about a complete status of peace.

Mr. FALL. Mr. President, the Senator has hit the keynote of the whole situation. There is necessity for further negotiation. The treaty that we are considering has gone past the period of negotiation, and does not provide the terms of peace between Germany and the United States. It simply provides for certain rules and regulations governing foreign countries and foreign districts, and does not refer to the people of the United States, nor restore trade conditions, nor restore a condition of peace between this country and Germany, except as there is a provision in the first paragraph, construed with the last article, that upon the ratification by three nations of this peace treaty with Germany, and the filing of the procès-verbal in Paris, by that act the war shall terminate. Only so far does it affect the people of the United States at all, and they do not understand it; and those who are impatient with us who attempt to explain it to them are impatient because they do not want the people of the United States to understand it.

I refer more paricularly now to the answer the Senator has requested me to give as to my understanding of these acts restoring the status of peace.

The Congress of the United States declared the status of war under its constitutional power. The President, in my judgment, had nothing whatsoever to do with it by approval or disapproval of the resolution. However, that is an academic proposition. He did approve it. The Congress of the United States, under our Constitution, is the only power which can create the status of war for the people of the United States, and they lay down the rules and regulations under which that war is to be prosecuted in so far as they themselves are concerned, giving to the President of the United States the management of their armed forces, and giving to him the execution of the laws which they pass for themselves.

They gave him the most ample power, through these laws, for governing themselves and regulating their intercourse with the enemy during the period of the war, and he has repealed them by implication. He has repealed them by an attempt to issue a general license, as he calls it, authorizing any man, woman, or child in the United States to do business with Germany or any ally of Germany, in Germany or elsewhere.

There is one method, and one method alone, and it is provided in the law itself, by which the President of the United States can suspend the trading-with-the-enemy act. I quarrel not with his acts, but I quarrel with his disingenuous answer to my question when he said that he could not by a proclamation create the status of peace in so far as our people were concerned. The Senator has well in mind the point which I have been discussing. The President of the United States has gone abroad through the land, through his address to the Congress of the United States, and has asserted that one of the causes of the high cost of living was the fact that we were not on peace terms, not doing business with the other nations of the world, and that permanent relief could be brought about only by the ratification of his treaty pending before us; and he himself has restored the status of peace and provided rules and regulations for doing business which are not provided in the treaty which he drew after seven months' arduous labors; but he has answered outright to the first question that he has not the power. The whole purport of my questions, as shown by reading them, is as he understood them, and refers to his argument as to the high cost of living; and he has argued himself out of court, and there is no ingenious argument or hair-splitting definition that the Senator or anybody else can read into it that will get him back.

The President says he has no authority to proclaim a status of peace directly. That is the one direct answer which he makes to the four questions; and yet in the trading-with-the-enemy act itself, which he has avoided, which he has, in fact, suspended by a violation of its provisions, I find the following provision:

> The words "end of the war," as used herein, shall be deemed to mean the date of proclamation of exchange of ratifications of the treaty of peace, unless the President shall, by proclamation, declare a prior date, in which case the date so proclaimed shall be deemed to be the "end of the war" within the meaning of this act.

Yet he says that he has no power to do what, as a matter of fact, he has done by the issuance through the State Department of the proclamation of July 14, extending or attempting to extend a general license to do business.

Mr. President, I am taking up much more time than I expected to occupy. I will read one more circular.

The Department of State has charge of all of our relations with reference to the trading-with-the-enemy act under the act of Congress itself, which allows the President to authorize the Department of State to do things for him with relation to it.

On August 15 the Department of State issued the following circular relating to general import licenses intended to cover tin and certain drugs and chemicals. Now, listen:

> The War Trade Board Section of the Department of State announces that general import license PBF 3 (W. T. B. R. 822, issued Aug. 7, 1919) has been revised and extended, effective August 15, 1919, so as to permit the free importation thereunder, without individual import licenses—

Any man can bring his stuff in here now without any individual import license at all, from Germany or from elsewhere, and trade freely with this country, except as certain chemicals and other articles are exempted from such general import license or provision; and in the exemption the only requirement is that they must have the particular individual import licenses for such articles. As to all other articles, they need no individual import licenses.

> As now amended, general import license PBF No. 3 authorizes the importation into the United States from all countries of the world, except Hungary and those parts of Russia under the control of the Bolshevik authorities, of all commodities except those hereinafter specifically enumerated, to wit:
> 1. The following foodstuffs.

And as to those, a particular import license is necessary.

Mr. President, can anyone in authority, can any official in the United States of America, or any body of Congress or any number of Senators, through order or asseveration—that is all we hear—any longer befool the people of the United States and make them believe that they are not on a status of actual peace with Germany and with all the other countries of Europe, except Hungary and the Bolshevik portions of Russia, under this last circular? Can anyone longer proclaim to the people of the United States that before they can have relief in their own country from the high cost of living we must ratify this treaty without crossing a "t" or dotting an "i," when by Executive order itself, whether taken in pursuance of Executive authority duly vested or not, the status of peace has been actually extended over the United States? Can the fact that without constitutional authority or authority of the Congress of the United States the President may, as Commander in Chief of the Army of the United States, seize or take two regiments of soldiers now in camp here and send them to the riotous neighborhood of upper Silesia, on the line of Poland and Prussia—can the fact that he still usurps that authority change the condition existing? And if he still has that authority without usurpation, how can it affect the high cost of living in the United States of America? Let some one answer who understands better or has inside source of information which the Committee on Foreign Relations have been seeking most assiduously for the last two months. Let some one answer.

Mr. President, in connection with this same subject I have sought information from every witness who has come before us, and finally from the President of the United States himself I discovered the status with relation to our business connections with Germany and how our citizens could do business in Germany, in German ports and in German territory, under the provisions of these licenses as they would have done under ordinary peace conditions.

I asked the Secretary of State as to our consular relations with Germany, and he said, first, that they had been broken off; he said, second, that they had only been broken off because of the denunciation of that portion of the consular treaty relating to the seamen's act following the passage of what is known as the La Follette Act, and that the balance of the treaty remained in force. The President of the United States, better informed, answered:

> Question 9. Have you requested consular representatives of other countries to act for us in Germany?
> Answer 9. In February, 1917, Spain was requested to take charge of American interests in Germany through her diplomatic and consular representatives, and no other arrangement has since been made.

The fact of it is, exactly as intimated in the President's answer, that the consuls and consular agents of Spain are acting just as they acted before the war, immediately after the dismissal by the President of von Bernstorff. They are acting as consuls and consular agents of the United States, and apparently just as effectively as if we had restored all our consuls who came out at the time our ambassador to Germany asked for his exequatur.

So we have every evidence of absolute peace and trading and amity and good friendship between the two countries, except that the President of the United States, in his desire to achieve his object to fasten upon the people of the United States some supergovernment, paying no attention whatsoever to the construction of the peace treaty upon which we might do business with Germany and resume official, national, or individual relations with that country, in his anxiety to foist upon us a supergovernment because our Government apparently does not suit him, has provided that the United States should use a portion of its armed forces in the governing of upper Silesia, as he has proposed and agreed, for an indeterminate number of years; that the armed forces of the United States should continue to guard the border between Poland and Germany, just as he attempted to provide for the reparation commission governmental powers to be exercised by it for the use of American soldiers. And the people of the United States do not know it!

We have them there now under the terms of this treaty performing duties for some one else. We have commissioners there whom it is necessary to guard. It is even necessary at Mr. Hoover's request to furnish him an armed guard that he may distribute food or the cotton which the Senator from Mississippi [Mr. WILLIAMS] says we are shipping for his disposition to Czechoslovakia.

How long are an outraged people to be compelled to submit to dictatorship in this country? They provide by their laws when these conditions shall cease. The laws have been enforced by a violation of them and the status of peace exists. The law provides that the President may by proclamation end it all, and he says that he can not, and yet he ends it by a misconstruction, in my judgment, of the specific authority vested by other portions of the act.

Mr. President, hurriedly passing to one or two other subjects, we are proposing to establish a league of nations. The fact has been commented upon by various other Senators that a numerical majority of the population of the earth are not in the proposed league nor have they been invited to come into the league. Russia with 180,000,000 or 200,000,000 people is out of it; China with 400,000,000 people is out of it; Turkey is out of it; Bulgaria is out of it; Hungary is out of it; Austria is out of it. But certain nations of the earth were invited by the Versailles convention and invited in this treaty which we are now passing upon to become members of the league. Among these were the great neutral Scandanavian countries, Norway, Sweden, and Denmark, and then Holland and Switzerland. Switzerland is to be the seat of the council of the league, the capital of the world under the provisions of the treaty. The President of the United States is the president of the league commission formed during that conference. The President of the United States has appointed committees to arrange the details of the first meeting. The President of the United States was asked if he had heard from his appointees on the subject, and he said, "No." As the chairman of the commission upon the league one would judge that any invitation, if accepted or rejected, extended to any nation would be understood by the President of the United States, the chairman of the commission upon the league; and yet he answered that he has not heard officially from the invitations extended to Norway, Sweden, Denmark, Holland, and Switzerland.

You may ask what significance this has. Just recall that a short time since when Germany was being compelled to sign this treaty it was held out and announced to the world and told to her that in the event she did not sign it within a given number of days a blockade would be thrown around her and that food and supplies would be kept from her starving population. Norway, Sweden, Denmark, Holland, and Switzerland were invited by the five allied and associated powers to become parties to this blockade to starve the people of Germany into submission to the terms of the treaty. What did those countries do? They promptly refused. They would not join the allied nations and associated powers in the blockade; they would continue to maintain their neutrality.

Now, we have pending before the Senate of the United States for our consideration a treaty between Great Britain and France and the United States of America which we are asked to ratify, and which, if we so ratify, the league of nations may put in effect or not as it pleases. You are inviting Norway, Sweden, Denmark, Holland, and Switzerland to violate their neutrality to Germany by becoming a part of the governing power which will enforce this treaty against Germany, by which we agree to go to her assistance with reference to what the league may do, provided the league first approves it. Do you suppose that those great nations who maintained their neutrality are going to enter into a league until Germany enters it and all nations stand upon an equality in that league assembled? Or do you suppose that if they may entertain the deepest sentiments of friendship for the people of this great country, Germany remaining out, Russia remaining out, Austria, Bulgaria, Hungary, and Turkey remaining out, those great independent nations of the world who have been able to maintain their independence against Russia, on the one hand, and Germany and Great Britain, on the other, are going to enter now this league of nations against Germany itself and approve a treaty prepared specifically against Germany? If they do not, where is your league? Germany with other great nations of the earth who are not invited, who are not in this league, this great group of neutral nations standing out, may join the strongest group, whether in or out of the league.

I say that by bringing the treaty here you injected into the discussion of the treaty which we now have before us an element of danger which those engaged in the negotiation of the French treaty never for one moment thought of or else to avoid which they had some ulterior design, in my opinion. What it is I can not conceive.

Yet we are asked to ratify both treaties and not to consider the one with the other. You ask to hurry the committee, to take out of the hands of the committee by a vote of the Senate the consideration of this treaty by your Committee on Foreign Relations, and you yourselves have taken what the President himself has said is one of the links in this treaty and put it in the hands of another committee of your own body, which as yet has not made a report.

I want the people of the United States to understand that despite what has been said here by these constitutional scorners the majority of the Committee on Foreign Relations of the United States Senate are patriotically, sincerely, and as honestly as they know how attempting to do the work which you have placed in their hands, and if you are not satisfied with it I challenge you to bring it upon the floor and through open debate here let the people of the United States know what is behind the treaty and what it amounts to, that it means war in every line of it. The Saar Basin provision, in so far as the United States is concerned, means war for the present and war for the future; the reparations commission with powers vested in it means war now, means American soldiers now; not at some distant date in the future, but now and for a time indeterminate. It means war in itself. The commission of government for upper Silesia or a plebiscite for upper Silesia means war, an actual state of war and future war; and your Commander in Chief is recruiting his Army with your soldiers for that border and against people with whom we have had no difficulty. You are fighting now and your children are being killed, with our marines and sailors in the old Hanse town of Danzig, one of that little group which was the mistress of the commerce of the world 500 years ago, always a great city, which joined Prussia and the German Empire by her own desire, never was conquered, and you are taking her away and you have to do it by the blood of your soldiers, and they are spilling the blood of your sailors and your marines in her streets now. The people do not know it; and yet you call upon us not to inform them through the only forum open to us, the Senate of the United States.

Mr. President, I have taken up too much time. At some future occasion I shall go a little more fully into the ingenious answers of the President of the United States to the questions which were propounded to him.

LEASING OF OIL LANDS.

Mr. SMOOT. Mr. President, I ask the Senate now to proceed with the oil-leasing bill.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 2775) to promote the mining of coal, phosphate, oil, gas, and sodium on the public domain.

Mr. SMOOT. From the information I have, if we will continue the consideration of the bill from now on, I am quite sure that we can finish it before the close of to-day's session. A good many hours have been spent upon a question foreign to the bill under consideration, and I ask now that the pending amendment be reported.

Mr. KING. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. HARDING in the chair). The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Ball	Hale	Lenroot	Robinson
Bankhead	Harding	Lodge	Sheppard
Borah	Harris	McCormick	Shields
Brandegee	Harrison	McCumber	Smith, Md.
Calder	Henderson	McKellar	Smith, S. C.
Capper	Johnson, S. Dak.	McNary	Smoot
Chamberlain	Jones, N. Mex.	Moses	Spencer
Cummins	Jones, Wash.	New	Sterling
Curtis	Kendrick	Norris	Sutherland
Dial	Kenyon	Nugent	Thomas
Elkins	Keyes	Overman	Trammell
Fall	King	Page	Wadsworth
France	Kirby	Phelan	Walsh, Mass.
Gay	Knox	Poindexter	Walsh, Mont.
Gerry	La Follette	Ransdell	Williams

Mr. GERRY. The Senator from Delaware [Mr. WOLCOTT] is necessarily detained on official business.

The PRESIDING OFFICER (Mr. SPENCER in the chair). Sixty Senators have answered to their names. There is a quorum present. The question is on the amendment offered by the Senator from Arkansas [Mr. KIRBY].

Mr. SMOOT. Mr. President, I ask that the amendment proposed by the Senator from Arkansas may be stated.

The PRESIDING OFFICER. The Secretary will state the amendment.

The SECRETARY. The amendment proposed by Mr. KIRBY, in the nature of a substitute, is to strike out all after the enacting clause and to insert:

The President of the United States is hereby authorized to mine and develop coal, oil, and gas in any lands belonging to the United States, and to operate the mines and wells under the direction and supervision of the Secretary of the Interior when, in his discretion, the public exigency may require that it shall be done.

Mr. SMOOT. Mr. President, I had intended to speak upon the proposed substitute and in my remarks to call attention to the present situation and past conditions affecting the production of oil in the United States. I think, however, that the Senate already knows full well what this amendment means, and I am perfectly willing that we shall vote upon it at once.

The PRESIDING OFFICER. The question is on the amendment proposed by the Senator from Arkansas [Mr. KIRBY].

The amendment was rejected.

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

Mr. SMOOT. Mr. President, I do not desire that it may be said that advantage has been taken of any Senator in this matter. I know that the Senator from Wisconsin [Mr. LA FOLLETTE] has a number of amendments to the bill which he desires to offer. I think, however, he has been notified that if he will now come into the Chamber, the time has arrived when he may offer his amendments. The junior Senator from Utah [Mr. KING] also has a substitute to offer for the bill. I do not desire that the bill pass from the consideration as in Committee of the Whole into the Senate until those Senators have an opportunity to offer their amendments.

Mr. KIRBY. Mr. President, I suggest the absence of a quorum.

Mr. SMOOT. I trust the Senator will withdraw that suggestion.

Mr. KIRBY. I withdraw the suggestion, my only object in making it being to give absent Senators an opportunity to return to the Chamber.

Mr. SMOOT. I will state that the Senator from Wisconsin will be here in just a moment, so it will not be necessary to call the roll to bring him into the Chamber.

TREATY OF PEACE WITH GERMANY.

Mr. McCUMBER. Mr. President, while we are awaiting the arrival of the Senator from Wisconsin, I desire to take about three minutes of the time of the Senate in replying to the argument that has just been made by the Senator from New Mexico [Mr. FALL]. I have called for the stenographic report of some of that Senator's introductory remarks, from which I read as follows:

Mr. FALL. Mr. President, in passing I shall now simply refer for a moment to the Shantung controversy.

It is admitted by the Senator from North Dakota and every other Senator who has attempted to speak—and somehow only he has taken upon his shoulders the advocacy of the cause of Japan. The President has not done it. None of the other Senators has understandingly, I think, attempted to defend the cause of Japan; yet, in defending the Shantung article in the treaty, none has undertaken to deny that Germany obtained her title to Shantung by force and duress.

As yet I have heard none defend the course of Germany in acquiring the Shantung possessions, and yet the Senator from North Dakota and others use two arguments: First, that Japan obtains the stolen goods which Germany stole, and that we should perpetuate the outrage and the fraud; second, that if she does not claim under Germany's title, then she claims by conquest the possessions of her and our ally.

Mr. McCUMBER. Mr. President, does the Senator give that as my statement?

Mr. FALL. I give that as the Senator's statement; possibly not in words, because he attempted to cover it.

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

Mr. FALL. Certainly.

Mr. McCUMBER. I deny that statement in toto as being absolutely and unquestionably false.

I have never believed in any character of pettifogging even before the most ignorant court or justice of peace in the United States; much less do I believe in it before a body like the United States Senate. I do not believe that a Senator gains anything by misrepresenting the attitude of another Senator or misquoting what he has said. In this instance the Senator from New Mexico has both misquoted and misrepresented my position.

I have never taken the position that Germany had right to seize the Shantung Peninsula or to acquire any of the other privileges she enjoyed in China. On the other hand, I have always condemned that, and I have condemned the same course of action on the part of other countries.

In order that the RECORD may be clear and show just what my position is, I will recall my statement of yesterday and read it again into the RECORD. I read from page 4356, as follows:

Mr. McCUMBER. Mr. President, I regret that I was called out of the Chamber so that I could not hear all of the address of the Senator from Idaho [Mr. BORAH], but he has presented one or two propositions that can not go unchallenged.

One of the propositions to which I referred was his statement that I was defending the action of Japan. This was my answer:

Mr. President, when as a boy I read in the history of the United States what was declared to be a glorious feat on the part of the American Navy, when Admiral Perry, with loaded guns, awoke Japan from her state of lethargy and commanded her to open her ports and Japan opened those ports at his demand, I never could agree that it was a moral act or that it was an act in which we ought to take a great deal of pride. So I agree with the Senator from Idaho that such acts are immoral.

I have never agreed, no matter what great benefit we got out of it, and no matter what great State was added to our Union, that making a war on Mexico to get added territory, by which we could balance the sentiment of one section against that of another section, was a moral act on the part of the United States. I have never agreed that the exercise of the power of Great Britain in compelling China to give her certain rights at Shanghai was in every respect a moral act. I have never asserted that Japan in compelling China to sign a treaty whereby she gave to Japan just what she had to give to other nations was in all respects moral. All I have asserted, Mr. President, is that we are in no position to claim that Japan has committed a wrong against China so long as we viséed all of the other acts that have been committed in the same way by every other Caucasian nation of the world.

Of course we would all have been glad if Japan had not attempted to make China give her the same rights that China gave to Great Britain, to France, to Russia, and to other countries; we would be pleased if Great Britain would yield her rights in China back to China and if Japan and Russia would do the same thing; but, Mr. President, we were met with a situation in Paris; we had to deal with conditions as they existed and not as we would wish them to be. I believe that we dealt with the conditions in the best possible way they could have been dealt with at the time.

Notwithstanding the declarations of the Senator from Idaho concerning the infidelity of Japan in all of her past history, I say that I do believe that she will keep this treaty obligation with China; and I have given my reason for so believing.

The first reason is that she has made that promise not to China alone but that she has declared it to every civilized nation upon the face of the earth. Nor is that all. If Japan broke her treaty with Korea, she had a treaty with Korea only, and we could not protest. If she enters into this league and does not keep good her word, then she breaks her treaty with every nation worth mentioning upon the face of the earth; and that, Mr. President, is worth something.

I submit my declaration of what I consider moral and immoral in the treatment of China as against the Senator's version of my position as he gave it this morning.

Mr. President, I think that I have made my position quite clear. In all of the running debate of some hours yesterday afternoon there was never a single argument suggested that met the particular points which I proposed. They are clear and simple. Japan at present holds her rights in Shantung by reason of a treaty with China, and I consider the notes which Japan exchanged with China previous to the signing of the treaty, and which became a part of the treaty, paramount to any claim of right by virtue of any conquest. Yet the two exist, the greater, the more important one, being the treaty with China herself. In that treaty with China Japan agrees that she will return to China the German rights in Shantung and Kiaochow Bay. Senators think that she will not keep her treaty obligation. There is an honest difference of opinion. I think she will in this instance, whether she kept it with Korea or not, and I will not discuss that at this time. I think she will, first, because she has made it clear and definite that, in consideration of China signing the treaty, she will do so; and, second, in addition to that, if the President's recollection is at all accurate, she redeclared that intention in the presence of the four great powers.

In addition to that her official statesmen have again and again declared that that is her promise, and that she will solemnly keep that promise. But what is more important than any of them is this—and I base it upon the league of nations—that if

she enters the league of nations she declares by her very signature to that treaty that she will scrupulously keep her treaty obligations, and one of her treaty obligations is that she will return these rights to China. She not only agrees to that, but she agrees further, if she becomes a party to this compact, that upon the complaint of China it may be brought before the council of the league of nations, and that she will obey the award of that council. She not only agrees to that but she agrees that if she does not do so every other country in the world constituting the league may bring to bear upon her and against her the weapons by which their final decision is to be made good.

Taking them all together, I think it is impossible for Japan to escape that treaty obligation. I make that statement irrespective of the morality of her treaty with China or any justification of her treaty with China. I simply assert that, from my standpoint, she was not justified in exacting these promises from China any more than Great Britain or France or Italy were justified in exacting similar promises from China. The only thing that I think Japan is justified in is this: She is justified, from my standpoint of right, in asking China to concede to her a place where her nationals may have a place of residence, exactly the same as she has conceded the same rights to other great nations of the world; and I base my belief in the justice of that cause upon the assumption that Japan, as a great independent power so close to China, with her interests as much at stake as those of any other country, ought to be accorded rights in China not superior but equal to the rights of the other great nations.

Mr. President, the Senator seemed to complain that I had used the words "slap Japan in the face." I did use those words. The Senator says in his discussion that I forgot it. The Senator is mistaken. I did not forget it. I never claimed that I forgot it. I reiterate it. I think it is a slap in the face of Japan. I can not look at it in any other possible way. In all legal controversies a person is presumed to intend the natural consequences of his act, and if one man drives a bowie knife between the ribs of another man up to the hilt there is a reasonable presumption that he intended to kill him. Of course it is not a conclusive presumption. He may prove to the satisfaction of a jury that all he intended to do was to perform an operation for the benefit of the gentleman into whose body he had plunged the dagger. Now, I allow the Senator from New Mexico to make that explanation if it satisfies him, and I will concede that he is making it in good faith, and that he does not think that if the amendment is adopted it will kill the treaty. I simply think it will, and we have a right to disagree upon that point; and we have a right to disagree without the Senator or anybody else declaring that I am justifying Japan in making the treaty that she made with China. I have not justified any of them in all the long history in which those acts have been perpetrated against China.

The Senator again said this morning—and I really think it needs an answer—that in my questioning of him I dropped from yesterday's sublimity to to-day's ridiculousness, or something of that character. I am perfectly willing to admit that. Yesterday I was discussing a great world-wide question, a sublime question, and in getting into the argument with the Senator to-day I will admit that I did get into the pool of his argument; and if I was somewhat stained, I think I should not apologize for it. It was the subject that we were discussing. I simply ask Senators to be as fair with me as I would be with them. Differ if you will; the proposition still faces us that Japan did say to China on the 25th day of May, 1915:

When, after termination of the present war, the leased territory of Kiaochow Bay is completely left to the free disposal of Japan, the Japanese Government will restore the said leased territory to China under the following conditions:

1. The whole of Kiaochow Bay to be opened as a commercial port.

I have heard no objection to that.

2. A concession under the exclusive jurisdiction of Japan to be established at a place designated by the Japanese Government.

I can not see anything serious in the second proposition, in the face of the fact that perhaps a dozen or more like concessions have been given to other great countries.

Mr. President, I agree with the Senator that a great deal of feeling has been developed upon this treaty question, and I do not think the Senator from New Mexico is entirely free from the charge of nervousness, and so forth, which he thinks has affected the other Senators. Certainly his discussion with the Senator from Minnesota [Mr. NELSON] this morning would not indicate that he was making his remarks coolly and deliberately. I believe that we can lay this feeling aside, no matter how bitter any of us might be against the President of the United States; and Heaven knows I am as bitterly opposed to some of his policies as any Senator or any man in the United States. Nevertheless I do not feel that that should enter into this great world question of some method of preventing another such holocaust of blood and misery as has deluged the world during the last four or five years. I believe we can find a way to escape it. I will do my part to make the trial. It may be, possibly, a mistake. I do not think it will be. Many people thought that our great Constitution never would be workable, and we had to make amendments. I have no doubt but that there will be troubles and disputes in the world even after we have agreed upon methods of settlement; but they all tend in the right direction; they all lead toward the goal of peaceful settlement; and I have confidence in the heart and conscience and intelligence of the people of the world and in their ability to work out a scheme, under even this proposed league, that will be successful.

Mr. KING. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from North Dakota yield to the Senator from Utah?

Mr. McCUMBER. I yield.

Mr. KING. Can the Senator imagine any conditions that will arise or may arise in the future in which China's interests would not be far better served if she and Japan were in the league than if both of them were excluded from the league?

Mr. McCUMBER. Of course, I argued that yesterday, and I have not repeated it to-day. I gave the alternative of having Japan and China in the league or of having China and Japan out of the league. If we have them in the league we have them tied up to certain agreements to keep treaties, and to keep them in the very best of faith. If we put them both out, unless we are ready to go to war for our sentiment, then Japan can work her will.

Mr. KING. One other question, if the Senator will pardon me. I would not ask this question except for the fact that the hearings before the Committee on Foreign Relations have been in the open. Has there been any solicitude evinced by those who have spoken so much about the Shantung proposition to relieve China from the incubus of Great Britain's and France's holdings and concessions in China? In other words, has there been any proposition made before the Senator's committee by those who manifest such a great interest——

Mr. McCUMBER. Not a suggestion. It is all on the one subject of Japan.

Mr. KING. I will ask the Senator, then, one further question: Is it not manifest from the attitude taken, or is it not a proper, legitimate deduction from the attitude taken, that the Shantung proposition, urged here so fiercely by opponents of the treaty, is used as a sort of a bogey man to frighten people against the treaty?

Mr. McCUMBER. I think the Senator has answered the question by his question.

LEASING OF OIL LANDS.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 2775) to promote the mining of coal, phosphate, oil, gas, and sodium on the public domain.

The PRESIDING OFFICER. The bill is still before the Senate as in Committee of the Whole and open to amendment. If there are no further amendments to be proposed, the bill will be reported to the Senate.

Mr. KING. Mr. President, I understood that there were some amendments to be offered. The Senator from Wisconsin [Mr. LA FOLLETTE], I understand, has some amendments.

Mr. SMOOT. The Senator from Wisconsin has 15 amendments printed. I have copies of them on my desk. He was here a minute ago.

The PRESIDING OFFICER. If there are no amendments to be proposed, the bill will be reported to the Senate.

Mr. SMOOT. The Senator from Wisconsin is entering the Chamber now.

Mr. KING. I do not think the Presiding Officer should so peremptorily order the bill reported to the Senate.

Mr. LA FOLLETTE addressed the Senate. After having spoken with interruptions for over three hours,

Mr. SMOOT. Mr. President, it is now a quarter past 5 o'clock. The Senator from Wisconsin has been speaking for more than three hours, and no doubt he will not be able to finish this evening.

Mr. LA FOLLETTE. I shall not be able to finish this evening.

RECESS.

Mr. SMOOT. Mr. President, I am going to move that the Senate take a recess until 11 o'clock to-morrow, and I ask Senators not to interfere to-morrow with the consideration of this bill. We have had it before the Senate for some time, and

let us see if we can not dispose of it to-morrow. Let us discuss the bill and allow nothing outside to interfere with its consideration. I sincerely hope that this suggestion will be agreeable to the Senate.

I move that the Senate take a recess until 11 o'clock to-morrow.

The motion was agreed to; and (at 5 o'clock and 15 minutes p. m.) the Senate took a recess until to-morrow, Thursday, August 28, 1919, at 11 o'clock a. m.

HOUSE OF REPRESENTATIVES.

WEDNESDAY, *August 27, 1919.*

The House met at 12 o'clock noon.

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

Eternal Spirit, above, beneath, around, within, so near and yet so far, stir our souls, make us conscious of Thy presence, inspire us with clearer vision, larger life, that we may move forward as a nation in these days of reconstruction with the same patriotic zeal that moved our fathers, who gave us a Nation for the good of mankind; that all our people may be ready to sacrifice for its maintenance, that the prevalent unrest may pass away and the normal come to bless us and all the world. In the Christ spirit. Amen.

A QUORUM—CALL OF THE HOUSE.

Mr. BLANTON. Mr. Speaker, I make the point of no quorum.

The SPEAKER. The gentleman from Texas makes the point that there is no quorum present. It is obvious that there is not a quorum present.

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

A call of the House was ordered.

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

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

Anthony	Evans, Mont.	Jones, Tex.	Rogers
Babka	Evans, Nebr.	Kahn	Rouse
Benson	Fields	Kelley, Mich.	Rowan
Black	Fisher	Kennedy, Iowa	Sabath
Blackmon	Fitzgerald	Kennedy, R. I.	Sanders, N. Y.
Bland, Ind.	Flood	Kettner	Saunders, Va.
Booher	Focht	Langley	Scott
Brinson	Foster	Lea, Calif.	Scully
Britten	Frear	Lee, Ga.	Shreve
Browne	Fuller, Mass.	Linthicum	Sisson
Brumbaugh	Gallagher	Longworth	Smith, Ill.
Burke	Gallivan	Luce	Smith, N. Y.
Burroughs	Gandy	Luhring	Snell
Caldwell	Ganly	McGlennon	Snyder
Candler	Garland	McKenzie	Steagall
Carew	Glynn	McKinley	Stephens, Miss.
Carter	Godwin, N. C.	Magee	Stevenson
Christopherson	Goldfogle	Maher	Stiness
Classon	Goodwin, Ark.	Mann	Sullivan
Costello	Gould	Mead	Sumners, Tex.
Cramton	Graham, Pa.	Moon	Taylor, Ark.
Crowther	Griest	Mooney	Taylor, Colo.
Curry, Calif.	Griffin	Moore, Pa.	Tilson
Davey	Hadley	Moores, Ind.	Vare
Davis, Minn.	Hamill	Morin	Walsh
Dempsey	Hardy, Colo.	Mott	Walters
Denison	Haskell	Mudd	Ward
Dickinson, Mo.	Haugen	Neely	Wason
Donovan	Hill	Olney	Wheeler
Dooling	Holland	Padgett	Williams
Doremus	Huddleston	Parker	Wilson, Pa.
Dunn	Hull, Tenn.	Rainey, John W.	Wise
Dupré	Humphreys	Randall, Calif.	Yates
Eagle	Jefferis	Rayburn	Zihlman
Ellsworth	Johnson, S. Dak.	Reed, N. Y.	
Emerson	Johnson, Wash.	Riordan	

The SPEAKER. Two hundred and eighty-seven Members have answered to their names. A quorum is present.

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

The SPEAKER. The gentleman from Missouri moves to dispense with further proceedings under the call. The question is on agreeing to that motion.

The motion was agreed to.

The SPEAKER. The Clerk will read the Journal of yesterday's proceedings.

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

Mr. BLANTON. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. BLANTON. If it is not out of order, Mr. Speaker, I would like to inquire of the gentleman from Wyoming [Mr. MONDELL] whether Republican differences have been sufficiently ironed out after last night's caucus to now take up the soldiers' relief bill and consider it?

The SPEAKER. The gentleman is out of order.

THE AMERICAN LEGION.

The SPEAKER. The unfinished business before the House is the bill which was pending on last Wednesday for the incorporation of the American Legion. When we adjourned a reconsideration was ordered on the Gard amendment, so that the question before the House is on agreeing to the Gard amendment. Without objection, the Gard amendment will be reported by the Clerk.

The Clerk read as follows:

Page 9, line 7, after the word "and," strike out "November 11, 1918," and insert "the date of the conclusion of the Great War, to be evidenced by the proclamation of the President of the United States."

The SPEAKER. The question is on agreeing to the amendment.

The question was taken, and the amendment was rejected.

Mr. HAYDEN. Mr. Speaker, I ask unanimous consent to correct the amendment which was adopted by the House last Wednesday to include the State chairmen as members of the incorporators of the American Legion. I find that mistakes have been made in the spelling of four names, and that five of the names of State chairmen should be changed by reason of the fact that others have since been regularly elected by the returned soldiers in place of those who were acting temporarily as State chairmen.

The SPEAKER. The gentleman from Arizona asks unanimous consent to modify his amendment. Is there objection?

Mr. DYER. Reserving the right to object, Mr. Speaker, I would like to know where the gentleman gets his information.

Mr. HAYDEN. I have obtained this information from Mr. Thomas W. Miller, a former Congressman from Delaware and a returned soldier, who is here in Washington looking after this bill in behalf of the American Legion. The information furnished him came from the national headquarters of the American Legion in New York City.

The SPEAKER. Is there objection to the modification of the amendment?

Mr. SEARS. Reserving the right to object, is there any chance of further changes being made before we pass the bill?

Mr. HAYDEN. No; the list of names I have is correct to date.

The SPEAKER. The gentleman will send his amendment to the Clerk's desk. The Clerk will report the amendment.

The Clerk read as follows:

Amendment by Mr. HAYDEN:
Connecticut—Alfred M. Phillips, jr., instead of Alfred A. Phillips.
Tennessee—Roane Waring instead of Roan Waring.
Texas—Claude V. Birkhead instead of Claud B. Birkhead.
Virginia—Charles Francis Cocke instead of Francis Cocke.
Alabama—Mathew H. Murphy instead of Bibb Graves.
Kentucky—Henry DeHaven Moorman instead of A. Hilla Cox.
Nevada—J. G. Scrugham instead of E. L. Malsbary.
South Dakota—M. L. Shade instead of T. R. Johnson.
Wisconsin—John C. Davis instead of E. F. Ackley.

Mr. HAYDEN. Mr. Speaker, I have here a list which contains all the corrections that have been read. I would like to substitute this new list for the entire amendment.

Mr. GARD. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. GARD. What is the gentleman asking to do?

The SPEAKER. The gentleman first offered an amendment, which the Clerk has reported. If that amendment is adopted, will it not accomplish what the gentleman wishes to do?

Mr. HAYDEN. Yes; I withdraw my request.

The SPEAKER. The gentleman withdraws his request. The question is on the amendment of the gentleman from Arizona.

The amendment was agreed to.

The SPEAKER. The question is on ordering the bill to be engrossed and read a third time.

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

The SPEAKER. The question is on the amendment to strike out the preamble.

The amendment striking out the preamble was agreed to.

On motion of Mr. VOLSTEAD, a motion to reconsider the vote by which the bill was passed was laid on the table.

The SPEAKER. The call still rests with the Committee on the Judiciary.

AFFIDAVITS IN CERTAIN CASES.

Mr. VOLSTEAD. Mr. Speaker, I call up the bill (S. 2236) relating to affidavits required by the act entitled "An act to extend protection to the civil rights of members of the Military and Naval Establishments of the United States engaged in the present war."

The SPEAKER. The gentleman from Minnesota calls up a bill, which the Clerk will report.

The bill was read as follows:

Be it enacted, etc., That where any judgment has been entered since March 8, 1918, in any action or proceeding commenced in any court where there was a failure to file in such action the affidavits required by section 200 of article 2 of the act approved March 8, 1918, entitled "An act to extend protection to the civil rights of members of the Military and Naval Establishments of the United States engaged in the present war" (40 Stat. L., p. 440), the plaintiff may file an affidavit stating that the defendant, or defendants, in default in such judgments, are not at the time of such filing, and were not at the time of the entry of such judgment, in the naval or military service of the United States, and upon the filing of such affidavit the court may enter an order that such judgment shall stand and be effective as of the date of the entry thereof. Any person who shall make or use such an affidavit as aforesaid, knowing it to be false, shall be guilty of a misdemeanor and shall be punishable by imprisonment not to exceed one year, or by fine not to exceed $1,000, or both, in the discretion of the court.

Mr. VOLSTEAD. Mr. Speaker, this bill has passed the Senate and has been reported unanimously by the Judiciary Committee of the House. Its object is to validate certain judgments that have been entered since the adoption of the soldiers' and sailors' relief act. Section 200 of that act provides that before a person can obtain a judgment by default it is necessary that he shall show by an affidavit that the defendant is not in military or naval service, or that the plaintiff has no knowledge whether the defendant is in such service or not, or that the defendant is in such service. He must file an affidavit setting forth one of those three statements before a judgment can be entered.

The exact terms of this act are not generally known throughout the country, and in many instances where the plaintiff knew that the defendant was not a soldier or sailor plaintiff neglected to file the required affidavit. That was natural enough. I am informed that many courts have held that these judgments are void, that the filing of such an affidavit is jurisdictional. This bill is intended to give relief in those cases by permitting those affidavits to be filed now for then, or nunc pro tunc, as the lawyers say. The affidavits ought to have been filed at the time the judgment was entered; but where they fail to do it, no harm can be done by allowing the filing at this time. The soldiers' and sailors' relief act was not intended to protect people not in the military or naval service. It was intended to protect soldiers and sailors, and the passage of this bill will not affect them, but it will permit plaintiffs who through an error have failed to file the required affidavit as against persons not in the service to obtain valid judgments.

It seems to me that we ought to permit that. I think it is in line with what has been done in a great many instances by legislation. It is purely a curative act, and in view of the injury that has resulted to innocent but mistaken people, it seems to me we ought to allow this matter to be corrected. I am told that there are a number of judgments for divorce against people not in the military or naval service and not entitled to any consideration under the soldiers' and sailors' relief act that are subject to be set aside because of this defect. There are also many cases where land titles are involved. All of us who are lawyers are aware of the fact that in many instances judgments by default are frequently entered against lands, entered in rem, as it is called. No doubt in many such cases plaintiffs have failed to file the proper affidavits.

Mr. HARDY of Texas. Will the gentleman yield?

Mr. VOLSTEAD. Yes.

Mr. HARDY of Texas. Does this act provide for any notice to the party adversely affected?

Mr. VOLSTEAD. Not specifically. Application must be made to the court for the relief provided, and it would be within the discretion of the court.

Mr. HARDY of Texas. Should there not be an absolute requirement that the party adversely interested be notified of the application? In other words, you are taking a second judgment.

Mr. VOLSTEAD. One of the troubles about that would be this: In many instances you could not find the defendant.

Mr. HARDY of Texas. There is a procedure prescribed by which action shall be taken in lieu of personal service?

Mr. VOLSTEAD. Yes; there can be service by publication. I am aware of that.

Mr. HARDY of Texas. It seems to me it is a very grave question to validate an absolutely void judgment, as the gentleman says, without notice to the party against whom the judgment is to be made binding.

Mr. VOLSTEAD. I would not have any serious objection to amending the bill as the gentleman suggests.

Mr. HARDY of Texas. I suggest to the chairman of the committee that he prepare such an amendment.

Mr. CHINDBLOM. I beg to suggest to the chairman of the committee that very likely many defendants knowing that no affidavits had been filed may have purposely omitted to enter an appearance, knowing that the judgment would be void. He knew at the time that jurisdiction was not obtained because no affidavit had been filed. That being so, it seems rather important that he should have notice, and if he can not be found such notice be given as is usual in chancery cases.

Mr. VOLSTEAD. I would not object if the House sees fit to amend the bill in that respect. The defendant could not, however, know that the affidavit would not be filed until after the judgment had been entered.

Mr. KEARNS. Will the gentleman yield?

Mr. VOLSTEAD. Yes.

Mr. KEARNS. Is it the position of the gentleman that in all suits filed in the courts of the various States, Federal and State, it is incumbent on the plaintiff to file an affidavit stating whether or not the defendant was in the military service?

Mr. VOLSTEAD. By the act already referred to it was made incumbent where a person sought judgment by default to file in all the courts—it made no difference whether it was Federal or State court—an affidavit stating that the defendant was not in the military or naval service. It was the only way that we could see that would protect the soldier and sailor.

Mr. KEARNS. As I understand, the law is that the affidavit must be filed when the suit is filed. When the petition is filed there would be no knowledge on the part of the plaintiff whether judgment was going to be by default or not.

Mr. VOLSTEAD. I do not catch the gentleman's idea.

Mr. KEARNS. My understanding of the law is that the affidavit is to be filed at the time of the filing of the petition, that the affidavit should accompany the petition. Is that true?

Mr. VOLSTEAD. No; that would depend upon the practice of the various States. In my State a person would not have to file the petition until he applied for the judgment.

Mr. KEARNS. Is it incumbent on the plaintiff in all suits where the case has gone to final judgment, before final judgment is taken, to file an affidavit stating whether or not the defendant is in the military service or was in the military or naval service of the United States?

Mr. VOLSTEAD. Yes; if he seeks a judgment by default, then the affidavit is necessary. If there is an appearance, the affidavit is not necessary.

Mr. KEARNS. But it is necessary in a judgment by default?

Mr. VOLSTEAD. Yes; where there is no appearance by the defendant.

Mr. KEARNS. The gentleman says that such an affidavit is necessary in all the courts?

Mr. VOLSTEAD. All the courts of the land.

Mr. KEARNS. But that has not been the practice, has it?

Mr. VOLSTEAD. I am informed that in a great many instances plaintiffs have failed to file the affidavit where they knew the defendants were not in the military or naval service.

Mr. KEARNS. I see that the report speaks of cases, especially in matters of divorce. If the defendant does not appear, that is a judgment by default, although testimony is taken in the case.

Mr. VOLSTEAD. Of course.

Mr. KEARNS. In a suit of that sort has it been held necessary by the courts that there must be an affidavit?

Mr. VOLSTEAD. Yes; so I am informed.

Mr. KEARNS. Would that be necessary in a suit where the husband has applied for a divorce from his wife?

Mr. VOLSTEAD. Yes; for the reason that she might be in the military service.

Mr. KEARNS. Suppose it is generally known that the defendant was not in the military service.

Mr. VOLSTEAD. That makes no difference, the record must show it.

Mr. KEARNS. The record must show it?

Mr. VOLSTEAD. Yes; because it is made a statutory requisite for a judgment; the affidavit must be filed in all suits where defendant fails to appear.

Mr. KEARNS. I see that the bill is retroactive. How far back does it go?

Mr. VOLSTEAD. To March 8, 1918.

Mr. KEARNS. Is that the date of the passage of the law?

Mr. VOLSTEAD. Yes.

Mr. WHITE of Maine. Will the gentleman yield?

Mr. VOLSTEAD. I will.

Mr. WHITE of Maine. As I understand the situation, in a certain class of cases in order to obtain an enforceable judgment the plaintiff must file the affidavit.

Mr. VOLSTEAD. Yes.

Mr. WHITE of Maine. In cases of a certain character you propose to validate an unenforceable judgment. Why should you do that? Might it not very well be that the defendant allowed the case to go to judgment by default because the plaintiff had not taken the necessary steps to get an enforceable judgment?

Are you not taking advantage of a defendant by rendering valid a judgment not enforceable and which he may have permitted to be entered against him because he knew that it was not enforceable?

Mr. VOLSTEAD. If there is any objection on that ground, an amendment can be inserted that notice must be given to the defendant before entering the judgment, and then the court can take all these matters into consideration.

Mr. KEARNS. Will the gentleman yield further?

Mr. VOLSTEAD. Yes.

Mr. KEARNS. These cases have been finally adjudicated for nearly a year. Before that judgment can become lawful and binding is it not necessary to reopen the case and give further notice to the defendant?

Mr. VOLSTEAD. I think probably it would be a good idea to require notice to the defendant. I think there are circumstances where it might be proper, as suggested by the gentleman from Maine [Mr. WHITE].

Mr. KEARNS. In a divorce suit where the parties have been married again, is it necessary for the plaintiff to the suit to have the case reopened?

Mr. VOLSTEAD. It does not necessarily have to be reopened.

Mr. KEARNS. It would be necessary to reopen the case if you gave notice to the defendant?

Mr. VOLSTEAD. No; only notice of the filing of this affidavit should be given.

Mr. KEARNS. And if that is true and one of the parties is remarried, and on further hearing upon the part of the court the testimony of the defendant would be heard, and this might show that the former judgment of the court was wrong. Suppose there is a divorce, and in the subsequent proceeding a verdict given showing the divorce had not been granted, and the parties are remarried.

Mr. VOLSTEAD. That is one of the reasons we want this bill passed.

Mr. KEARNS. It is one of the reasons why it will make trouble.

Mr. VOLSTEAD. No; because if that is a void judgment you have trouble already.

Mr. CHINDBLOM. They would be guilty of bigamy.

Mr. KEARNS. It would not be a void judgment, because the court had granted it in good faith; it might be voidable.

Mr. VOLSTEAD. That is a question. If there is a lack of jurisdiction, it is a void judgment. I believe such a judgment would only be held voidable.

Mr. WHITE of Maine. Do I understand the gentleman's suggestion to be that you can take a judgment which is now unenforceable because of the failure to file this affidavit and breathe life into it by filing the affidavit now?

Mr. VOLSTEAD. I do not think there is any doubt about that, if defendant has had the proper notice. It is then one of those cases where, after jurisdiction has been obtained, plaintiff has neglected to comply with some requirement made a condition for entering the judgment. If he had filed the affidavit at the time it was entered, the judgment would be valid; we now ask that he may file it at this time as of the time at which it ought to have been filed. It is a nunc pro tunc proceeding that we seek to authorize.

Mr. WHITE of Maine. And the defendant may have permitted it to go to judgment, fully appreciating the fact that the plaintiff had not taken the steps necessary to obtain a valid judgment.

Mr. VOLSTEAD. I do not see how he could do that, for this reason: Up to the time plaintiff makes application for judgment by default there has been no default in the filing of this affidavit. The affidavit comes at the time of the application for judgment; hence defendant can suffer default because the affidavit has not been filed.

Mr. WHITE of Maine. As a matter of practice in some jurisdictions you get your judgment automatically; you do not have to follow it up.

Mr. VOLSTEAD. In one sense that is true.

Mr. WHITE of Maine. You ought not to permit an invalid judgment to be made valid by the filing of this affidavit, unless you open the case up de novo and allow the defendant an opportunity to defend on the merits, it seems to me.

Mr. VOLSTEAD. I do not think that would be fair, for this reason: When plaintiff makes his application for judgment the defendant's rights have been fixed. You do not have to file this affidavit until that time; that is, plaintiff files the affidavit at that time and in connection with his application for the judgment, so that the situation that the gentleman from Maine suggests can never exist.

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

Mr. VOLSTEAD. Yes.

Mr. KEARNS. I was talking about a case where it had gone to final judgment.

Mr. VOLSTEAD. Yes.

Mr. KEARNS. And the parties have obtained new rights under that judgment.

Mr. VOLSTEAD. Well?

Mr. KEARNS. If you allow that case to be reopened, give notice to the defendant, and he decides that he wants to be heard this time, and he can present a state of facts that would show that the court erred in rendering the first judgment——

Mr. VOLSTEAD. But if it is not a judgment, what good is it to you? If on the face of the record he has not a judgment, it seems to me, in view of that situation, that the position of the gentleman is not tenable.

Mr. KEARNS. But he has a judgment.

Mr. VOLSTEAD. No; he has not, according to the decisions of some courts.

Mr. KEARNS. But some courts have held that he has.

Mr. VOLSTEAD. It is not valid.

Mr. KEARNS. Some courts have held that he has a valid judgment, and some have held that he has not.

Mr. VOLSTEAD. I do not think so.

Mr. KEARNS. That is true in every State in the Union. They have been rendering these verdicts. The entry has gone on by which the plaintiff has been granted certain rights under the judgment, and he has exercised those rights, believing he had them.

Mr. VOLSTEAD. If they hold it valid, the court would continue to hold it valid, regardless of the filing of this affidavit.

Mr. KEARNS. Then what is the object of this law?

Mr. VOLSTEAD. Because the court holds these judgments void.

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

Mr. VOLSTEAD. Yes.

Mr. BRIGGS. As I understand it, the act as it stands at present does not give the court power, according to the construction in some States, to enter judgment without this affidavit first being filed.

Mr. VOLSTEAD. That is correct.

Mr. BRIGGS. And any judgment that is predicated upon any such proceedings is absolutely void, according to the construction given it in some States. This is a corrective act.

Mr. VOLSTEAD. Yes; a curative act.

Mr. BRIGGS. Of course the gentleman does not contend that you can make a judgment by legislative decree.

Mr. VOLSTEAD. Oh, no.

Mr. BRIGGS. This bill here would seem to make it simply a pro forma or formal proceeding to correct judgment when it was called to the attention of the court; but it occurs to me that it is absolutely necessary to give the adverse party some kind of notice, to give due process of law in the first place, and, in fact, to do more than that, so as to keep this from being an ex post facto proceeding, and not really make a judgment or give grounds for one where there was none before.

Mr. VOLSTEAD. I have no objection against authorizing notice in proper cases. Personally I do not think it would be necessary. Defendant has already been served with notice and jurisdiction has been obtained. This bill provides a proceeding for the purpose of validating a judgment, voidable not because of lack of jurisdiction but because of failure to exercise that jurisdiction properly. The defendant has had his day in court.

Mr. BRIGGS. I think that the chairman is more nearly correct when he says that courts would hold it voidable rather than void. It is something that may be taken advantage of, and yet would not involve invalidity of the decision.

Mr. VOLSTEAD. I spoke of it in a general way as being void, because anything that is voidable is often called that though incorrectly.

Mr. BRIGGS. I understand that the chairman has no objection to a provision providing that a certain notice should be given preliminary to the entry of any order?

Mr. SMITH of Michigan. Will the gentleman yield?

Mr. VOLSTEAD. I will.

Mr. SMITH of Michigan. In a proceeding of this kind something was said that an affidavit should be served personally, and every defendant should have personal notice of the correction of the record by the filing of this affidavit. Now, if a personal notice is necessary, and then proceedings in rem, in a good many instances they might give the same notice as required by the rules of court where they want to amend their proceedings by publication.

Mr. VOLSTEAD. You could not always give by personal notice, because you might not be able to find the party, and the notice

required, if any is required, should be served the same as the service of a summons.

Mr. SMITH of Michigan. In that case the rules provide that the parties—one, two, three, or more—if it is deemed necessary, should have notice.

Mr. KEARNS. Will the gentleman yield for one more question?

Mr. VOLSTEAD. I will.

Mr. KEARNS. Does the gentleman mean to say in all cases now, even though it is known the defendant was not in the military or the naval service at the time stated, or was not at any time, although it is well known, it is necessary, before he can have a valid judgment, to have that affidavit filed? Is that the gentleman's position?

Mr. VOLSTEAD. That is the position, and that is the reason why this bill has been prepared and passed in the Senate.

Mr. KEARNS. I want to ask this question: That law was passed for one purpose. It is only for two classes of persons who could get the benefit of it. Those persons were members of the Military and Naval Establishments of the United States. Now, if the records in court on this suit are absolutely silent, would it not be presumed that this man or woman, however that may be, was not in the Military or Naval Establishment?

Mr. VOLSTEAD. Oh, no; we have made it an affirmative duty upon the part of the plaintiff to file it. The presumption is one that can be rebutted.

Mr. KEARNS. It all refers to two classes of persons—those in the military and naval services; and if it is well known to everyone that the defendant was not in either one of the services——

Mr. VOLSTEAD. But you have to make the proof; the law requires it.

Mr. KEARNS. It does not require it, because that refers to two classes of men.

Mr. VOLSTEAD. It refers to all classes.

Mr. KEARNS. It says "an act to extend protection to the civil rights of members of the Military and Naval Establishments," and so forth.

Mr. VOLSTEAD. It expressly provides that plaintiff must file an affidavit showing that defendant is not in the military service just as much as he is required to file an affidavit showing defendant is in such service.

Mr. HUSTED. Will the gentleman yield?

Mr. VOLSTEAD. I will.

Mr. HUSTED. Assuming the defendant, on the advice of counsel, utterly disregarded the suit on the ground that it was void through failure to answer this necessary allegation in the complaint. Now, does the gentleman think it is the proper course to validate that judgment simply by the filing of an affidavit, even if it is upon notice? It seems to me that if you do that, you are going to give the plaintiff a very great advantage.

Mr. VOLSTEAD. The gentleman is entirely mistaken as to the proceedings. No mention of this affidavit is made in the complaint at all. When you present your proof for the purpose of showing the defendant has not made an appearance, with a view of obtaining a judgment by default, then you must file your affidavit, so that the situation the gentleman suggests is not in the case at all.

Mr. HUSTED. The gentleman means that it is necessary to allege the fact in the complaint that the defendant was not in the military or naval service of the United States?

Mr. VOLSTEAD. Oh, no; you plead just the same as you always did. If defendant appears, no affidavit is required; but in case he fails to appear, then, in order to apply for judgment, you must file it; consequently the rights of the defendant have been fixed by his default, and plaintiff is entitled to a judgment if he makes the showing that defendant is not in the military or naval service.

Mr. KEARNS. Will the gentleman yield again?

Mr. VOLSTEAD. Yes.

Mr. KEARNS. Suppose this affidavit is filed in a suit that has been long since finally adjudicated, stating that the defendant, he or she, was not a member of the Military or Naval Establishments at the time that the suit was pending. That would reopen the case, as I understand it?

Mr. VOLSTEAD. I do not think so.

Mr. KEARNS. Then what is the use of filing it, if the defendant is not to have any benefits or rights under it?

Mr. VOLSTEAD. The defendant's rights were barred when the plaintiff obtained the judgment. He was in default and the plaintiff was entitled to the judgment. The affidavit, when filed, simply complies with a technicality required in entering that judgment. It does not seem to me that the defendant need be notified at all, in view of the situation, because he had forfeited his rights to appear and answer. The only occasion for a notice that I can see is as to third parties whose rights may be affected.

Mr. KEARNS. I misunderstood the answer to the inquiry I made a while ago, then. I understood they reopened the case.

Mr. VOLSTEAD. I have said that I do not object if you would require notice in these cases.

Mr. BRIGGS. If the gentleman will yield, it has been suggested that the status of those proceedings, anyway, simply leaves them without any valid judgment, but this leaves the case simply in the attitude of no default having actually been declared. They admit the default could not be taken, because the affidavit has not been filed. It simply defers the judgment to which the party is entitled. On the filing of the affidavit the party becomes entitled to his judgment. The provisions of this bill make it retroactive. I do not think under the Constitution the judgment should be made effective as of the date of the prior entry, but should be made of the date of the entry of this proceeding.

Mr. VOLSTEAD. I think it could and should.

Mr. BRIGGS. I do not think you could go back to that, because if the court had no power to enter it at that time it is simply an open proceeding. I do not think now, under the further consideration, that probable notice would be required. It would simply be a case where the party had not answered.

Mr. SANFORD. If the gentleman will yield, on page 2, line 6, where you attempt to make the judgment valid from the date of the entry, does that mean from the date of the entry of judgment originally or from the date of the entry of the order?

Mr. VOLSTEAD. The date of the entry of the judgment.

Mr. SANFORD. I want to say to the gentleman that I am very sure there is no rule of law that will guide the courts to the conclusion the committee has in mind. There is no rule of law that I have ever been able to find that will determine to what antecedent noun "thereof" refers to. I think under this law, if you leave it as it is, the court will have the obligation of interpretation and will have to guess whether the judgment is to be effective from the date of the entry of the order or from the date of the entry of the judgment. I do not think you will find in law or syntax any very reliable rule for guiding you to know to what noun "thereof" refers to. I think if your purpose is clear in that connection you should say "from the date of the original entry of the judgment."

Mr. VOLSTEAD. I would not object to that, if the bill is to be amended at all, though I do not think there is any doubt about it.

Mr. SANFORD. The gentleman ought to have in mind that there seems to be no doubt about this original law; but when you attempt to operate laws that you write in unclear language, with your eyes open, you must expect to write law that will cause trouble hereafter from time to time.

Mr. VOLSTEAD. Well, I did not happen to write this.

Mr. SANFORD. I know the gentleman did not; but he has the writing of this act now, and I think it is well to make it clear now.

Mr. WHITE of Maine. I understand in a proceeding it is not necessary to allege that the defendant is in the military or naval service. Now, when you bring suit against a man, take out judgment, and then you attempt to levy on real estate and come to sell it under your execution, how does the man know who may be thinking of purchasing at that sale whether there may not be an affidavit coming in later on that may affect the whole proceeding and his title under that sale? In other words, does not this process throw a cloud on every judgment that is issued?

Mr. VOLSTEAD. No. This is to remove clouds, validate sales, and prevent litigation.

Mr. WHITE of Maine. Suppose a man secures judgment and levies on real estate and has a sale; then has not the defendant before him all the time the possibility that the plaintiff may come in and file an affidavit and validate the whole proceeding which he has assumed is invalid? And in that respect would you not be throwing a doubt on every judgment that is issued?

Mr. VOLSTEAD. We are making judgments valid instead of making them doubtful.

Mr. DAVIS of Tennessee. I was going to say the purpose of this is not to invalidate a judgment, and it could not do it under this law, but it is to validate it.

Mr. KEARNS. Suppose this affidavit is filed stating that during all the time of the pendency of the suit up to final judgment the defendant was not in the military or naval service, will it be necessary after that affidavit is filed to have another court entry made reaffirming the former entry after the affidavit has been filed, setting forth that the defendant

was not at any time during the pendency of the suit and up to the time of final judgment——

Mr. VOLSTEAD. Filed under the proposed act?

Mr. KEARNS. Yes; filed under the proposed act—an affidavit that the defendant was not in the military or naval service? Then there would have to be another court entry.

Mr. VOLSTEAD. The order is to be made on that affidavit.

Mr. KEARNS. Yes. Now, if the court entry has been made, suppose the defendant appears and files an affidavit that he was at some time during the pendency of that suit, or all the time during the pendency of that suit, in neither the military or naval service, that would be a reopening of the case, would it not?

Mr. VOLSTEAD. If at the time the judgment was entered defendant was in the military or naval service he could have the judgment reopened.

Mr. KEARNS. We ought to know something about the law before we vote on it. The gentleman is as good a lawyer as you can find over here in the Supreme Court, perhaps. [Applause.] Would he admit that? In our State, when a suit is brought against a nonresident who happens to own some real estate in the county in which the suit is brought, that real estate can be attached and service can be obtained by publication, although you do not know where the man lives, even, or where the defendant lives.

Mr. VOLSTEAD. Yes. That is good law everywhere.

Mr. KEARNS. Now, then, no one knows in that county—the plaintiff does not know—whether that man or woman was at that time in the naval or military service and could not file such an affidavit and can not now file the affidavit, because in many instances they do not know where the defendant resides, although that case has gone to final judgment and the rights have gone to final judgment.

Mr. VOLSTEAD. The gentleman is in error. Section 200 does not say that you shall file just one kind of an affidavit. If you file an affidavit that you do not know whether defendant is in the naval or military service you can get a judgment by applying to the court. The case that the gentleman suggests is taken care of in the statute itself and does not come within the purview of this bill at all.

Mr. KEARNS. Suppose, now, in such a case that the defendant has been apprised of the judgment obtained against him some months ago and comes back to that State and county when this affidavit is filed and sets up his defense through a counteraffidavit that he was at that time in the military or naval service?

Mr. VOLSTEAD. There is no provision in this law for counteraffidavits.

Mr. KEARNS. There is certainly some way for him to get into court.

Mr. VOLSTEAD. Yes; the soldiers' and sailors' relief act makes provision for that.

Mr. KEARNS. I would like to have the gentleman's view on this question: We will take the case of a nonresident who owns real estate in the county in which a suit is sought to be brought, and that real estate is attached and service is had by publication. At the time of the pendency, or any time during the pendency of the suit before final judgment, the required affidavit was not filed, but by virtue of this law which we are now trying to pass, if we do pass it, the plaintiff in that case comes into court and files an affidavit setting forth that he does not know whether the defendant was in the military or naval service or not. But suppose that the defendant has learned of this suit in some way——

Mr. VOLSTEAD. It does not come under the proposed act at all.

Mr. KEARNS. Suppose, then, that he does file the affidavit stating that he was not either in the military or naval service during the pendency of the suit?

Mr. VOLSTEAD. Then he has a valid judgment.

Mr. KEARNS. But supposing this defendant comes in and in some way makes it known to the court that he was in the military or naval service?

Mr. VOLSTEAD. He has got to apply to the court for relief under some equitable right or some particular statutory provision. He may apply under the soldiers' and sailors' relief act.

Mr. KEARNS. But what would that be?

Mr. VOLSTEAD. That would depend upon the circumstances.

Mr. HASTINGS. Mr. Speaker, will the gentleman yield there?

Mr. VOLSTEAD. Yes.

Mr. HASTINGS. As I understand it, this bill is not to give the defendant a new trial. If he has ground for a new trial, to open the case under the law, he has that right now; but this bill would not give the defendant the privilege of proceeding under a new trial by the passage of this bill.

Mr. VOLSTEAD. No.

Mr. HASTINGS. But if this bill is passed you allow him to file the affidavit that he should have filed nunc pro tunc?

Mr. VOLSTEAD. Yes.

Mr. BEE. If the plaintiff is guilty of laches, ought he not to file an affidavit to revise the judgment rather than by the method suggested by the gentleman?

Mr. VOLSTEAD. The defendant is not entitled to any special consideration. He was not a soldier or sailor and the act requiring this affidavit was not passed for his benefit. He has failed to answer a complaint, petition, or whatever you call the pleading, and should not be heard to claim the advantages designed for the benefit of the men in the service. All we do is simply this: If plaintiff has neglected to file an affidavit that we did not design for his protection, he has no right to complain because we deprive him of such protection.

Mr. BEE. Under those circumstances, having failed to file an affidavit, does it not become absolutely a dead judgment, without any life, and therefore ought he not either to file an affidavit to revive the judgment or enter a new suit in order to keep within the legal bounds?

Mr. VOLSTEAD. I do not think so.

Mr. DAVIS of Tennessee. Mr. Speaker, will the gentleman yield to me for a moment?

Mr. VOLSTEAD. Yes.

Mr. DAVIS of Tennessee. I wish to say in response to what has been suggested by the gentleman from Texas [Mr. BEE] that this applies only to cases of default, and if it had not been for the act which this bill proposes to amend, whenever the defendant was in default the plaintiff was thereupon and by reason of that fact entitled to a judgment.

Mr. BEE. Yes; judgment by default.

Mr. DAVIS of Tennessee. This act which the bill amends was not intended to protect anybody except soldiers and sailors, and they are not affected in the least by this amendatory act, and consequently the defendant, when he is in default and is not a soldier or sailor, is out of court. He is entitled to be heard no further. And it occurs to me that it may frequently happen that the plaintiff was not guilty of any laches, but that he was unable to make the affidavit as required by the original act because of lack of information or the ability to make a searching investigation.

Mr. BEE. If the gentleman will permit, I would like to ask, as a lawyer and as a man who has been upon the bench, where the statute requires that an affidavit shall be made in order to secure judgment by default against the defendant, what becomes of the judgment secured without this affidavit? Does it not become absolutely a dead judgment, only revivable by a direct proceeding to revive judgment or by a new suit?

Mr. DAVIS of Tennessee. That would depend upon circumstances, and I understand that the courts in some jurisdictions have held one way and in other jurisdictions have held otherwise.

Mr. BLANTON. Will the gentleman permit me to answer my colleague?

Mr. VOLSTEAD. Certainly.

Mr. BLANTON. Is not this the law, that the presumption of law is that all matters and things have been properly complied with until the contrary appears?

Mr. DAVIS of Tennessee. That all proper proceedings have been taken.

Mr. BLANTON. That all proper procedure has been complied with; and, if the judgment is voidable by reason of something not having been complied with, then upon proper showing and affirmative action to have the judgment set aside, it is so ordered. Is not that the law?

Mr. VOLSTEAD. Yes.

Mr. BEE. If that be the case, that all proceedings are presumed to have been regular and correct, what is the necessity for this legislation?

Mr. VOLSTEAD. Because the defendant can apply to the court and show that the affidavit has not been filed.

Mr. BLANTON. It gives a remedy to the plaintiff.

Mr. BEE. You are providing for opening up the litigation without notice to the defendant.

Mr. VOLSTEAD. I do not think so. It would not give a retrial of the action at all.

Mr. HASTINGS. Is not this to protect the plaintiff against the action of a defendant attacking the judgment?

Mr. VOLSTEAD. Yes. I presume a judgment entered in a court not of record would be void on its face. A judgment entered in a court of record would be presumed to be valid until

it was made to appear by a proceeding in the action itself that it was voidable.

Mr. McKEOWN. The language of the original act provided that no judgment should be entered until certain things were done.

Mr. VOLSTEAD. Yes.

Mr. McKEOWN. Until the filing of the affidavit.

Mr. VOLSTEAD. Yes.

Mr. McKEOWN. Is not the gentleman of the opinion that a judgment entered in the face of that act is a void judgment?

Mr. VOLSTEAD. We very often use the expression "void" when we mean "voidable," and when I used the language "void" the idea which I had in mind was voidable rather than absolutely void. I think it is true that a judgment entered in an inferior court, not of record, may be void, because in an inferior court not of record the rule is, if I remember it, that the jurisdictional facts must appear affirmatively upon the face of the proceedings; but this is not a jurisdictional fact in the sense that a failure to serve the defendant or to acquire control of property by proper proceedings would be jurisdictional. The judgment is erroneous, the facts exist upon which the court has a right to act, but the proof of it by the statutory affidavit has not been filed and I believe we can authorize that it be filed.

Mr. McKEOWN. The act says that judgment shall not be entered unless the affidavit is filed, or an order of the court obtained.

Mr. VOLSTEAD. There is no specific requirement in the original act that an order shall be made——

Mr. DAVIS of Tennessee. And in that same connection, in reply to the gentleman from Illinois, the act provides that the court may enter an order that such judgment shall stand and be effective as of the date of the entry thereof; and if the defendant should come up and controvert the filing of that affidavit, it would be for the court to determine as to whether he was a soldier or sailor, and of course the court would proceed in the disposition of the matter in such a manner as to satisfy himself that justice was done.

Mr. VOLSTEAD. I think that language would make it the duty of the court to determine whether under the circumstances it was proper or necessary to give notice to the parties interested before the judgment was entered. For that reason I think there is very little reason for amending the bill.

Mr. BEE. This bill was originally passed for the protection of men of the military service.

Mr. VOLSTEAD. For the protection of soldiers and sailors.

Mr. BEE. Against judgment by default.

Mr. VOLSTEAD. Yes.

Mr. BEE. This resolves itself into a controversy between a plaintiff who is not a soldier or sailor and a defendant who is not a soldier or sailor.

Mr. VOLSTEAD. Yes. Plaintiff need not be a soldier or sailor.

Mr. BEE. What more sanctity should there be to the action of the plaintiff who has been guilty of neglect to comply with the law than there should be in favor of a defendant who may have been guilty of neglect to file an answer? Why should the plaintiff be given any more protection?

Mr. VOLSTEAD. Let us stop and look at the situation. Here is a man who has gone to work in good faith and put in his money and commenced a suit. Through an oversight, unaware of the existence of this statute, he has failed to file an affidavit that is of no earthly consequence to the defendant. The defendant is not interested in it at all, the defendant is not injured at all, because he is not a soldier or a sailor. We never intended to protect him at all. But the situation was this, that we had to compel everybody to make this showing. Otherwise they would go and enter judgment against soldiers and sailors. I do not think a plaintiff ought to be penalized. In this country with its thousands of judges, justices, and courts of various kinds it would be strange indeed if they all knew of this statute.

Mr. BEE. They ought to know about it. The presumption is that everybody knows the law.

Mr. RUCKER. That presumption applies only to laymen and not to judges. [Laughter.]

Mr. BEE. The presumption ought to run against the lawyer who brings the suit.

Mr. PELL. It seems to me either the title to the subject of the suit is in the plaintiff absolutely, in which case there is no need of any further law to protect him, or else that it is in doubt; and if it is in doubt, I should think that the defendant would have the right to appear. There will be many cases coming up where a man might own a few acres of land away from his home. Judgment is entered against him.

He does not think it worth while to defend the suit but lets it go by default. It develops that the plaintiff did not attend to this particular requirement. You validate the plaintiff's title. Now, if there was any other formality in court omitted——

Mr. VOLSTEAD. The defendant in these cases has no equity at all.

Mr. PELL. If the plaintiff has forgotten any other technicality of law, the defendant can take advantage of it. Why should this particular technicality be excepted any more than any other—for instance, in certain States where they require a given number of witnesses on a bond, or where affidavits have not been properly sworn to and the judgment is overruled because of the technicality of the law which has not been complied with. Why should this particular technicality be excepted rather than any other?

Mr. VOLSTEAD. Well, it seems to me that we ought to relieve these cases where the defendants have no real merit in the contention. We required the making of these affidavits, and why should we encourage these technicalities?

Mr. PELL. If a man came into a New York court with a statement sworn to before a New Jersey justice or New Jersey notary, he would be told that his case had collapsed because it was not properly sworn to. We do not defend him, but we say that his lawyer should have known better. Now we are picking out this particular technicality and excepting it from all others. I sympathize with the purposes of the bill.

Mr. VOLSTEAD. The fact that you may find other technicalities in the record ought not to be any reason why we should not cure this.

Mr. KEARNS. Will the gentleman yield?

Mr. VOLSTEAD. Yes.

Mr. KEARNS. I would like to have the gentleman's opinion on a case that I will state that came under my observation. A husband was an actor, and of course his wife thought he was a bad actor and filed a suit for divorce against him. He was then living in Chicago and she was living in Ohio. She filed a suit. He knew of the pendency of the suit and received a copy of the petition.

Within a week after he received a copy of the petition for divorce he enlisted in the military service or the naval service, and I think he is still there. She did not know of this until after the divorce was granted, although she knew at the time the petition was filed that he was not in the service.

Mr. VOLSTEAD. This legislation would have nothing to do with that case because the affidavit must be filed at the time the judgment is obtained by default, and at that time he was in the military service.

Mr. KEARNS. If this bill becomes a law, would it not be necessary for her to file an affidavit of some sort?

Mr. VOLSTEAD. No; that is an entirely different kind of a case. This bill only applies to parties who were not in the military service at the time the judgment was entered.

Mr. KEARNS. He was in the military service at the time the judgment was entered.

Mr. VOLSTEAD. Yes; and for that reason this legislation would not apply; this only applies to those not in the service. It does not affect the soldiers or the sailors at all.

Mr. KEARNS. What would be the effect of the divorce under the circumstances I have mentioned?

Mr. BEE. Are there any judgments by default? These would only be in the Federal courts.

Mr. VOLSTEAD. It covers every court in the land.

Mr. BEE. In the State of Texas we have our own legislation on these lines.

Mr. VOLSTEAD. Well, you have this law too.

Mr. BEE. What becomes of our legislation?

Mr. VOLSTEAD. You, no doubt, have hundreds of judgments in your State that ought to be validated.

Mr. RUCKER. Will the gentleman yield?

Mr. VOLSTEAD. Yes.

Mr. RUCKER. As I understand, the purpose is to enable plaintiffs who have gone into the Federal courts, generally speaking——

Mr. VOLSTEAD. Any court in the land.

Mr. RUCKER. Well, any court, to perfect the judgment they have obtained.

Mr. VOLSTEAD. If the defendants are not in the military service.

Mr. RUCKER. I am satisfied, from what little observation I have had, that any judge of a State court would see that the law had been complied with as to the filing of the affidavit, and perhaps the Federal court would do the same thing; but I have seen so many funny things done in the Federal courts that, for

one, I am not disposed to give any consolation whatever to a man who brings a suit in the Federal courts. Therefore I am a little disposed to vote against the gentleman's bill. [Laughter.]

Mr. VOLSTEAD. I think it is true that you will find the omission almost entirely in the State courts. In my State the judge does not see the entry of judgment by default. The parties go to the clerk of the court and file the necessary affidavit and get judgment. In a great many instances, I presume, the clerks do not know anything about this requirement.

Mr. RUCKER. That is a terrible reflection on the courts of the State of Minnesota. I think they do know about it, and, if they do not, the man that goes into court to bring a lawsuit ought to know about it.

Mr. DOWELL. Will the gentleman yield?

Mr. VOLSTEAD. Yes.

Mr. DOWELL. This is designed to correct the errors of a plaintiff's lawyer in securing judgment. I want to ask the gentleman what will happen if a false affidavit is made and filed in a case and the defendant was in the service at the time the judgment was rendered; what would be the situation with reference to the judgment?

Mr. VOLSTEAD. The gentleman says a false affidavit?

Mr. DOWELL. Yes; under this bill he might file a false affidavit. Do I understand that, although the affidavit is false and the defendant knows nothing of the affidavit—does that render the judgment a valid judgment if the defendant was actually in the service?

Mr. VOLSTEAD. Yes; I think it would. But that is one of the consequences of every proceeding, and the judgment could be set aside under the law. We have false affidavits and false testimony; perjury is punished by fine and imprisonment.

Mr. DOWELL. Oh, I understand about the fine; but what I am getting at is this: Here is a plaintiff who files a false affidavit on a judgment that has been rendered before, and under this bill——

The SPEAKER. The time of the gentleman from Minnesota has expired.

Mr. DOWELL. Mr. Speaker, I ask unanimous consent that the time of the gentleman may be extended for two minutes.

Mr. GARD. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. Under the rule, on Calendar Wednesday there are two hours of debate—one hour controlled, in this instance, by the gentleman from Minnesota [Mr. VOLSTEAD] and the other hour by the gentleman from Ohio [Mr. GARD]. The gentleman from Ohio [Mr. GARD] can yield if he wishes to do so.

Mr. DOWELL. I think by unanimous consent this might be granted.

The SPEAKER. In the judgment of the Chair it can be done by unanimous consent.

Mr. DOWELL. Mr. Speaker, I ask unanimous consent that his time be extended for two minutes.

The SPEAKER. The gentleman from Iowa asks unanimous consent that the time of the gentleman from Minnesota be extended for two minutes. Is there objection?

There was no objection.

Mr. DOWELL. The affidavit that is filed under this bill is conclusive, and makes the judgment valid, even though it be untrue, and known to the plaintiff to be untrue.

Mr. VOLSTEAD. Not any more than it would if it had been filed at the time the judgment was taken. If it is a false affidavit that matter can be shown, and application can be made to have it set aside.

Mr. DOWELL. Except this: I take it that if the affidavit had been filed at the time of judgment application would be made to set it aside, but under this bill it makes the judgment final and conclusive. I am submitting that suggestion.

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

Mr. DOWELL. The gentleman from Minnesota has the floor.

Mr. VOLSTEAD. I yield to the gentleman.

Mr. PARRISH. Does not the provision of the bill where it says the court may render judgment leave it within the discretion of the court?

Mr. VOLSTEAD. Certainly. There are cases where he ought not to validate the judgment.

Mr. PARRISH. I think that would answer the question of the gentleman from Iowa.

Mr. DOWELL. But if he does render judgment, that is final.

Mr. PARRISH. It would be a question of appeal.

Mr. DAVIS of Tennessee. There are provisions in every State that in case of fraud and in certain other instances, within a certain length of time, the court may grant an order for rehearing and set aside judgment. I think the same rule of law in the various jurisdictions would apply.

Mr. DOWELL. Except for this bill.

The SPEAKER. The time of the gentleman from Minnesota has again expired.

Mr. KINKAID. Mr. Speaker, I ask unanimous consent that the time of the gentleman from Minnesota be extended for one minute more.

The SPEAKER. The gentleman from Nebraska asks unanimous consent that the time of the gentleman from Minnesota be extended for one minute. Is there objection?

There was no objection.

Mr. KINKAID. It being admitted that this judgment was absolutely void——

Mr. VOLSTEAD. Or voidable.

Mr. KINKAID. Because of the absence of the essential affidavits, would not this bill in its form conflict with the Constitution of the United States, which provides that a defendant's property may not be taken without due process of law?

Mr. VOLSTEAD. I do not think so.

Mr. GARD. Mr. Speaker, the bill S. 2236, under consideration, came to the House, after it had passed the Senate, without any consideration in the Senate at all except the fact that it was introduced by the Senator from Wisconsin [Mr. LENROOT]. There was no discussion in the Senate, and there was little or no discussion in the Committee on the Judiciary. The first discussion that has been accorded this measure has been had on the floor of the House this morning. Therefore I feel privileged, although a member of the Committee on the Judiciary, to speak to the merits of the bill. I know the members of the committee are likewise interested in knowing just what the bill provides. I think the bill should be amended in certain very important particulars, to which I would call attention, if I may have the attention of the chairman of the Committee on the Judiciary. I would be glad to inform him of what they are. The gentleman not paying heed, I shall proceed. In line 3, page 1, the bill provides—

That where any judgment has been entered since March 4, 1918, in any action or proceeding commenced in any court where there was a failure to file in such action the affidavits required by section 200 of article 2 of the act approved March 8, 1918—

although there never had been service of summons upon the defendant, still by the filing of an affidavit which this bill authorizes judgment may be obtained and judgment validated. I do not believe that by the filing of any affidavit you can validate an invalid judgment. That is precisely what this bill undertakes to do. It would be an anomaly in the law——

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

Mr. GARD. I yield, although I tried to attract the attention of the gentleman and could not.

Mr. VOLSTEAD. Does the gentleman say that one can get a judgment here without having a summons served?

Mr. GARD. I say that under this bill that is what you do. If judgment has been taken erroneously, and you file an affidavit under this bill, it makes the whole judgment valid. I say you can not make an illegal judgment legal by the filing of an affidavit, which affidavit itself may be untrue. There is no theory of law under which a judgment which is absolutely void because of lack of correct procedure can be validated by the filing of a subsequent affidavit, which subsequent affidavit may itself be untrue, and I desire to speak to that principle.

Therefore, the amendment I propose, first, is that, in line 3 of page 1, after the word—I see the gentleman from Minnesota [Mr. VOLSTEAD], chairman of the Committee on the Judiciary, is apparently about to leave the Chamber and I would like to have his attention. It is impossible to discuss anything intelligently unless those who are in charge of the bill pay attention, and I am seeking to discuss it now——

Mr. VOLSTEAD. I am not in charge of it any more than anyone else.

Mr. BLANTON. Mr. Chairman, will the gentleman from Ohio yield?

Mr. GARD. Yes.

Mr. BLANTON. Mr. Speaker, we are confronted with a very strange situation. We are now considering an important measure, one which vitally deals with the valuable personal and property rights of soldiers, sailors, and marines who have lately done service for their country in the trenches of France.

Mr. DOWELL. Mr. Speaker——

The SPEAKER pro tempore. For what purpose does the gentleman rise?

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

Mr. BLANTON. Why, Mr. Speaker, my colleague yielded to me.

The SPEAKER pro tempore. A point of order is always in order.

Mr. GARD. I yielded to the gentleman from Texas for a question.

Mr. DOWELL. But the gentleman is not propounding a question.

Mr. BLANTON. I have a right to frame my own question.

Mr. GARD. I yielded to the gentleman for a question; I do not desire——

Mr. BLANTON. My question is not going to be very long——

Mr. GARD. Very well.

Mr. BLANTON. As I was about to say, Mr. Speaker, on this very important bill which the distinguished jurist who now has the floor and who kindly yielded to me says is an injustice to men in the service, it is impossible to keep a quorum here, even after the majority leader [Mr. MONDELL] spent 20 minutes in the Republican caucus last night with tears in his eyes pleading with and urging Republican Members to stay on this floor, we have not but 15 Republican Members now on the floor and we can not keep the chairman of the Judiciary Committee here to answer questions. Is that——

Mr. DOWELL. Mr. Speaker, I desire to call the gentleman to order.

Mr. BLANTON. Is that the kind of business management in this Congress the Republicans are giving to the people of the United States?

Mr. GARD. Mr. Speaker, I do not desire to say what I do say in any partisan sense or appeal to any partisan passion at all. I am seeking to make a legal discussion of the bill, and although we do not happen to have very many Members present, yet they make up in quality what they lack in quantity.

Mr. HUSTED. Will the gentleman yield?

Mr. GARD. I will.

Mr. HUSTED. Did I correctly understand the gentleman to say that by this bill under consideration, through the filing of an affidavit, we could validate a judgment or that we propose to validate a judgment in which no summons has been issued——

Mr. GARD. I think it might be so.

Mr. HUSTED. I do not see how that can be done, because you provide in terms that it only applies to an action or proceeding commenced in any court. No action can be commenced in any court except by the service of process.

Mr. GARD. An action may be commenced, in so far as it has authority, against the defendant, but——

Mr. TINCHER. Will the gentleman yield?

Mr. GARD. But I desire to suggest—I will yield to the gentleman from Kansas.

Mr. TINCHER. As I understand this act, it is in the nature of a curative act. Is the gentleman of opinion that it cures too many irregularities?

Mr. GARD. I think so; yes.

Mr. TINCHER. It is after irregularities other than that of filing soldiers' affidavits?

Mr. GARD. I should like to discuss the matter and draw attention of Members here to language which I think could be added by way of amendment making the bill a proper bill. There may be cases where some relief of this kind should be had; for that reason I was asking the presence of the chairman of the Committee on the Judiciary, because I think Members of the House are guided largely by chairmen of committees. Since the chairman of the committee is not here, and does not care to stay, I shall offer my observations. [Applause.]

The points that I make are, first, that there should be an amendment, in line 3, page 1, providing that there should appear to have been a proper service——

Mr. BLANTON. Mr. Speaker, I make the point that there is no quorum present. I think that Members ought to hear this argument.

Mr. GARD. Mr. Speaker, I trust that the gentleman will not make that point.

Mr. BLANTON. Well, this is an important matter; Members ought to hear it, and I make the point of order that there is no quorum. I do not think that this House ought to do business without a quorum.

The SPEAKER pro tempore. Evidently there is no quorum present. The Doorkeeper will close the doors, the Sergeant at Arms will notify absentees, and the Clerk will call the roll.

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

Andrews, Md.	Candler	Dunn	Gallivan
Anthony	Cantrill	Dupré	Gandy
Babka	Carew	Eagle	Ganly
Benson	Carter	Edmonds	Garland
Blackmon	Christopherson	Ellsworth	Glynn
Bland, Ind.	Clark, Fla.	Emerson	Godwin, N. C.
Booher	Clark, Mo.	Esch	Goldfogle
Brinson	Classon	Evans, Mont.	Gould
Britten	Costello	Evans, Nebr.	Graham, Pa.
Brooks, Pa.	Crago	Fields	Graham, Ill.
Browne	Cramton	Fitzgerald	Greene, Mass.
Brumbaugh	Crowther	Flood	Griest
Burke	Dale	Focht	Griffin
Burroughs	Davey	Foster	Hadley
Byrnes, S. C.	Dempsey	Frear	Hamill
Caldwell	Donovan	Fuller, Mass.	Hardy, Colo.
Campbell, Kans.	Dooling	Gallagher	Harrison
Haskell	McCulloch	Osborne	Stephens, Miss.
Haugen	McFadden	Parker	Stevenson
Hill	McKenzie	Rainey, J. W.	Stiness
Howard	McKinley	Randall, Calif.	Sullivan
Huddleston	McKinley	Reber	Sumners, Tex.
Hulings	Magee	Reed, N. Y.	Taylor, Ark.
Humphreys	Maher	Reed, W. Va.	Taylor, Colo.
Jefferis	Mann	Riordan	Taylor, Tenn.
Johnson, S. Dak.	Mason	Rogers	Tilson
Johnson, Wash.	Mead	Rouse	Vare
Jones, Pa.	Montague	Rowan	Walsh
Kahn	Moon	Sanders, N. Y.	Walters
Kelley, Mich.	Mooney	Saunders, Va.	Ward
Kelly, Pa.	Moore, Pa.	Scott	Wason
Kennedy, Iowa	Moores, Ind.	Scully	Watson, Pa.
Kennedy, R. I.	Morin	Shreve	Webster
Kettner	Mott	Siegel	Wheeler
Langley	Mudd	Sims	Williams
Lea, Calif.	Neely	Sisson	Wilson, Pa.
Lee, Ga.	Newton, Mo.	Slemp	Wise
Linthicum	Nicholls, S. C.	Smith, Ill.	Yates
Longworth	Nichols, Mich.	Smith, N. Y.	
Luce	Oldfield	Snell	
McArthur	Olney	Snyder	

The SPEAKER. A quorum is present. The Sergeant at Arms will open the doors. The gentleman from Ohio [Mr. GARD] has the floor.

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

The motion was agreed to.

Mr. GARD. Mr. Speaker, how much time have I used?

The SPEAKER pro tempore. Twelve minutes.

Mr. GARD. Mr. Speaker, the bill S. 2236, to which I have hitherto vainly tried to claim the attention of the chairman of the committee, provides a practical amendment of section 2 of the so-called act to extend protection to the civil rights of members of the Military and Naval Establishments of the United States engaged in the present war. The purpose of the bill is just that expression:

To afford protection to the civil rights of members of the Military and Naval Establishments of the United States engaged in the present war.

Toward that end certain safeguards were placed in section 2, the principal one of which was that an affidavit should be filed before judgment should be entered, the affidavit setting forth facts showing that the defendant is not in the military service. It provides an alternative that if he is unable to file that affidavit the plaintiff shall in lieu thereof file an affidavit setting forth either that the defendant is in the military service or that the plaintiff is not able to determine whether or not he is in such service, and it provides that if the affidavit is not filed no judgment shall be entered securing an order, the court directing such entry, and no such order shall be made if the defendant is in such service until after the court shall have appointed an attorney to defend his interests, and he shall on application make such a point. In other words, a complete safeguard is sought to be thrown about the interests of those in the military and naval service of the United States in the processes in the courts of civil administration of the United States during the period of the war. The present bill, S. 2236, has this objection, in my mind, and I will offer certain amendments which I trust may be entertained, if the gentleman who is chairman of the Committee on the Judiciary will be so fair to the membership of the House as to ask that the bill may be considered under the five-minute rule after the hour's debate shall have been exhausted.

There may be cases where this bill or a bill similar to this may be proper to afford necessary relief. There may be cases under this bill whereby an absolutely illegal judgment would, by the filing of an affidavit, be validated, and that is the principal point that I seek to protect. I do not desire to disturb in any way the existence of any judgment granted after full service of summons and after proper procedure, but I do object to a case where a judgment otherwise illegal may be rendered entirely legal by the filing of that which may be called a nunc pro tunc affidavit.

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

Mr. GARD. Yes.

Mr. RAMSEY. What instance can the gentleman cite where an illegal judgment may be made legal or valid?

Mr. GARD. The bill provides in its terms that where no judgment has been entered since March 8, 1918, where there was a failure to file in such action the affidavits required by section 2, that upon the filing of these affidavits the plaintiff may file an affidavit stating the defendant or defendants in default of judgment were not at the time of the filing, or at the time of the entry of the judgment, in the military or naval forces, and therefore the judgment shall stand and be effective as of the date of the entry thereof. What I have in mind is a judgment which a man may not have contested, which a defendant may not have contested, although fully cognizant of his rights, because of illegality, because no proper or necessary affidavit was filed against him, he being in the military service. He relied upon the failure of procedure, in other words.

And otherwise there may have been defects in the procedure. Otherwise the judgment may be erroneous. Still, if he does not act and relies on the failure of the affidavit procedure, then upon the passage of this bill and the filing of this affidavit what may be a valid judgment may be considered invalid.

Mr. RAMSEY. If the gentleman will permit me, is not an invalid judgment subject to review by the court at any time by application of the defendant? This applies only to men who were not in the military service.

Mr. GARD. This applies for the protection of those who were in the military service.

Mr. REAVIS. Will the gentleman yield to me?

Mr. GARD. Very gladly.

Mr. REAVIS. For the purpose of information, I want to know the gentleman's viewpoint. Invalid judgments are either void or voidable?

Mr. GARD. Yes.

Mr. REAVIS. If they are voidable, the remedy is to take it into a court of appeals. If it was a void judgment, it could not be validated by this bill or any other bill?

Mr. GARD. That is what this bill provides.

Mr. REAVIS. You can not cause this bill or any other legislation to put vitality into a judgment that is void?

Mr. GARD. I do not think so.

Mr. REAVIS. Then where would be the danger of the occurrence of what the gentleman fears?

Mr. GARD. I fear that is the underlying purpose of the bill, which may not be correctly expressed in terms, and therefore I desire to offer some amendments which, to my mind, will clarify the situation.

Mr. REAVIS. Assuming the purpose of the bill is to make valid a judgment absolutely void, no legislation can do that.

Mr. GARD. If that be true, if a position is taken that it is to make valid a judgment absolutely void—I do not take that position—but if that is the position taken, there should be no further consideration.

Mr. REAVIS. If no legislation can make valid a void judgment, where would be the danger the gentleman suggests with reference to a voidable judgment where the remedy is the right of repeal?

Mr. GARD. I will state for the benefit of the Members that the remedy I seek is the proper remedy in the procedure which this bill undertakes to remedy. To this bill, Senate No. 2236, concerning which a number of gentlemen have spoken, principally upon the other side, I desire to offer certain amendments covering what seem to me to be questions relative to the proper amendment of the bill. I have no desire to take up very much time on the bill.

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

The SPEAKER pro tempore. Does the gentleman yield?

Mr. GARD. I would prefer, if I may be permitted, to advise the membership of the House about what amendments I have in mind, so that they may be discussed, although I am willing to yield to the gentleman.

The SPEAKER pro tempore. Does the gentleman decline to yield?

Mr. GARD. I would prefer for the moment just to explain.

The SPEAKER pro tempore. The gentleman declines to yield.

Mr. GARD. The amendments I have in mind are, first, on page 1, line 3, of the bill, after the word "judgment," to insert the words "after proper service on the defendant." The second amendment that I have is on page 1, line 10, after the word "plaintiff," to insert the words "after such notice to the defendant as may be prescribed by the court." The third amendment that I have in mind is to insert, after the word "judgment," on line 5 of page 2, the words "if otherwise legal."

I have offered these amendments because if this is to be considered merely as a matter of procedure and not a matter of validating a void judgment, then it would seem to me that especially the amendment I have offered on line 5 of page 2, the words "if otherwise legal," should be placed in the bill. I have offered the amendment on page 1, line 10, that "the plaintiff may file after such notice to the defendant as may be prescribed by the court an affidavit stating that the defendant or defendants," and so forth; in other words, in order to make it comply with the original bill. The purpose of that amendment is to compel a notice of the filing of the affidavit to be given to the defendant in order that the defendant may have the right to rebut it, because if the procedure is to be started entirely de novo, a man who has failed to do something that the statute required him to do and then this law comes in and allows him to do it, we at least should provide, if the affidavit is filed, that notice should be given in order that the defendant may controvert the affidavit.

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

Mr. GARD. In a moment. I have now made known my position on these three amendments, and I yield first to the gentleman from Nebraska [Mr. KINKAID].

Mr. KINKAID. Then, it is the purpose of the gentleman that he would require due process of law before permitting a judgment to be entered against the defendant?

Mr. GARD. Yes.

Mr. KINKAID. And the gentleman would require that by actual service or constructive service upon the defendant, or upon the thing, whether real estate or otherwise?

Mr. GARD. I think that when this law provides for the filing of the affidavit at a late date, and long after the judgment has been rendered, if the law permits an affidavit to be subsequently filed the defendant should have notice of that filing.

Mr. KINKAID. Another question. Is it the opinion of the gentleman from Ohio that taking judgment without due process of law would be any more valid in this instance provided for by the bill than in the first instance, where there was not the proper foundation for jurisdiction laid?

Mr. GARD. I do not think it would be. I yield now to the gentleman from New York [Mr. SANFORD], and then I will yield to the gentleman from Iowa [Mr. DOWELL].

Mr. SANFORD. I desire to ask the gentleman what may appear to be a very simple question. I think he and the members of his committee can probably answer it. I want to ask him if a member of the draft board is a member of the Military Establishment within the meaning of this law?

Mr. GARD. I confess that the question was never raised in my mind and never brought up in the committee. I would be inclined to think that he would not be.

Mr. SANFORD. I am interested to ask the question because the chairman seems to think this is a very simple matter, and he leaves it with the plaintiff in order to secure such a judgment to file an affidavit wherein the affiant shall decide for himself whether the plaintiff is in the Military or Naval Establishment or not. It seems to me it is a very difficult question to establish sometimes, whether a man is in the Military Establishment or not, and my doubt is strengthened by the failure of the gentleman from Ohio to answer.

Mr. GARD. The gentleman from Missouri [Mr. IGOE] advises me that section 101, which I have in my hand, defines who are in the military service, and it includes the following:

That the "persons in military service," as used in this act, shall include the following persons and no others: All officers and enlisted men of the Regular Army, the Regular Army Reserve, the Officers' Reserve Corps, and the Enlisted Reserve Corps; all officers and enlisted men of the National Guard and National Guard Reserve recognized by the Militia Bureau of the War Department; all forces raised under the act entitled "An act to authorize the President to increase temporarily the Military Establishment of the United States," approved May 18, 1917; all officers and enlisted men of the Navy, the Marine Corps, and the Coast Guard; all officers and enlisted men of the Naval Militia, Naval Reserve force, Marine Corps Reserve, and National Naval Volunteers recognized by the Navy Department; all officers of the Public Health Service detailed by the Secretary of the Treasury for duty either with the Army or the Navy; any of the personnel of the Lighthouse Service and of the Coast and Geodetic Survey transferred by the President to the service and jurisdiction of the War Department or of the Navy Department; members of the Nurse Corps; Army field clerks, field clerks, Quartermaster Corps; civilian clerks and employees on duty with the military forces detailed for service abroad in accordance with provisions of existing law; and members of any other body who have heretofore or may hereafter become a part of the military or naval forces of the United States.

Mr. SANFORD. Will it help the gentleman at this time to answer the question by my saying that as I understand it the Secretary of War made an order to the effect that the members of the draft board should be deemed to be in the military service? I was wondering whether under the law they would be brought under the provisions of this bill.

Mr. GARD. I do not think they would, not unless there is power given under section 101 for the Secretary to include them in the Military Establishment.

Mr. SANFORD. The purpose of my question was to show that this affidavit, which this plaintiff is privileged to make, gives him an opportunity to decide quite a complicated question for himself, to swear to a fact and get his judgment by a very simple process.

Mr. GARD. It does. It is a very comprehensive affidavit; and that affidavit should be safeguarded by certain regulations to preserve the primary intent of the bill, which was to afford relief to soldiers and sailors against civil processes in their absence.

Mr. SANFORD. Just one word more. For that reason I think there should be notice given, so that the defendant may be heard on that question, at least as to whether he was or was not in the military service.

Mr. GARD. I think he should have notice, so that, if he cares to, he can file a contradictory affidavit and put the ques-

tion whether he was or was not in the service up to the court to decide. Otherwise the first affidavit is not entirely one of jurisdiction, but this is so nearly one of making a judgment valid that it seems to me the defendant should have the right to file a contradictory affidavit, if he desires, showing that he was in the military service when the plaintiff says he was not.

Mr. JONES of Texas. Will the gentleman yield?

Mr. GARD. I yield to the gentleman from Texas.

Mr. WHITE of Maine. Will the gentleman yield?

Mr. GARD. I will yield first to the gentleman from Texas.

Mr. JONES of Texas. Does not the gentleman think adequate protection would be given by his last amendment without including the other?

Mr. GARD. I am frank to say that I think that is the most vital amendment.

Mr. JONES of Texas. I should like to suggest in this connection that service may have been had regularly when the suit was first filed, and the defendant may be somewhere in a far-distant State now, and it would be very difficult to secure service if you adopt the first amendment.

Mr. GARD. I think the first amendment may be unnecessary, and I will not insist upon it. I offered it for the purpose of clarifying the situation in its entirety.

Mr. JONES of Texas. I think the last amendment is the more important.

Mr. GARD. The first amendment may not be necessary, but I think the second amendment is a proper amendment, and I think the third amendment is one that by all means ought to be adopted.

Mr. BANKHEAD. Mr. Speaker, a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. BANKHEAD. How much time will have to be exhausted before we get to the consideration of this bill under the five-minute rule?

The SPEAKER pro tempore. The gentleman from Ohio [Mr. GARD] is entitled to the floor until 8 minutes after 3.

Mr. GARD. I want to yield the floor as soon as gentlemen have concluded their questions.

Mr. BOIES. Will the gentleman yield?

Mr. GARD. I yield to the gentleman from Iowa.

Mr. BOIES. Does the gentleman from Ohio hold the opinion that House bill 6361 has reference to anyone not in the service of the United States?

Mr. GARD. What is House bill 6361?

Mr. BOIES. The bill referred to in this bill, Senate bill 2236.

Mr. GARD. Is that the one that is set out in Fortieth Statutes at Large?

Mr. BOIES. Yes.

Mr. GARD. Now, what is the gentleman's question?

Mr. BOIES. Does the gentleman think that law was enacted for the protection of anyone outside of the service of the United States Government?

Mr. GARD. No, sir; I do not.

Mr. BOIES. Then, does the gentleman hold that any affidavit filed at this time could validate a judgment against a soldier in the service of the United States?

Mr. GARD. Not against a soldier; no.

Mr. BOIES. Then, if he is a soldier, the affidavit does not validate the judgment. If he is not a soldier, it has no application, because this law has no reference to anyone outside of the service of the United States.

Mr. GARD. The point I have been trying to make is this, that the filing of the affidavit by the plaintiff himself makes it an absolute conclusion that the defendant is not a soldier. Now, he may be a soldier, and my contention is that at this time especially he should have the privilege of filing a contradictory affidavit, in the event that he was not in the military service, to show what his real status was.

Mr. BOIES. If it is a false affidavit, it is fraudulent, and nothing can be based upon it.

Mr. GARD. That is very true, but unless its falsity is made known it can operate as a continuation of the validity of the judgment. If the gentleman will investigate the bill, he will find that it merely provides that any person who uses an affidavit knowing it to be false is guilty of a misdemeanor, but it nowhere says that the affidavit must be true or that the judgment must be based upon a true affidavit. In other words, under this bill a man could come in and file an affidavit that is not true and sustain the validity of his judgment heretofore obtained, and would be liable only under a criminal process, and by an untrue affidavit he could establish the validity of his judgment.

Mr. BOIES. Then why would it not be cured by a short amendment saying that whenever it appears that the affidavit is false it shall have no validity?

Mr. GARD. I hardly think that is necessary.

Mr. KEARNS. Will the gentleman yield?

Mr. GARD. I yield to my colleague from Ohio, and then I shall be glad to yield the floor.

Mr. KEARNS. It has been necessary to file this affidavit in all suits that have been brought since March 18, 1918. Is that correct?

Mr. GARD. Since the passage of the bill; yes, in all cases.

Mr. KEARNS. Suppose a suit had been brought and there was no affidavit filed, but the defendant appeared in court and was present and defended the suit.

Mr. GARD. Then this has no application.

Mr. KEARNS. Then it is not necessary to file an affidavit at this time?

Mr. GARD. No.

Mr. KEARNS. Then it will be necessary to file affidavits in order to validate judgments that have already been rendered only in cases where there was nonappearance of the defendant?

Mr. GARD. Nonappearance and default; that is all.

Mr. JUUL. Will the gentleman yield?

Mr. GARD. I yield to the gentleman from Illinois.

Mr. JUUL. If this bill has any flaw in it at all, it is in lines 5 and 6, where it is sought to make the judgment final. That is the big mistake in the bill, and I think we should insert, in line 6, after the word "thereof," the words "subject, however, to the usual writ of error or appeal." With that amendment we would have a fairly good bill.

Mr. GARD. On what page is that?

Mr. JUUL. Page 2. You will notice in line 3 it says:

> And upon the filing of such affidavit the court may enter an order that such judgment shall stand and be effective as of the date of the entry thereof.

Now, no matter what judgment may be entered up against a man, he ought to have the right of appeal.

Mr. GARD. It does not say the judgment is final. I think it includes the subsequent recognized procedure.

Mr. JUUL. It does not say that. It says:

> Such judgment shall stand and be effective.

If it should stand, it should stand subject to the usual right of appeal or writ of error to which any other judgment would be subject.

Mr. GARD. My opinion is that such is the case anyhow.

Mr. Speaker, I reserve the balance of my time.

Mr. BLANTON. Mr. Speaker, a point of order.

The SPEAKER pro tempore (Mr. MADDEN). The gentleman will state it.

Mr. BLANTON. I submit that under the rules of the House the bill should be read under the five-minute rule, debate having been exhausted and the gentleman having used his part of the hour and yielded the floor.

The SPEAKER pro tempore. This bill is on the House Calendar and does not come under the five-minute rule. The point of order is overruled.

Mr. VOLSTEAD. Mr. Speaker, I ask unanimous consent that the bill be now read for amendment under the five-minute rule.

The SPEAKER pro tempore. The gentleman from Minnesota asks unanimous consent that the bill be read for amendment under the five-minute rule. Is there objection? [After a pause.] The Chair hears none, and the Clerk will read.

The Clerk read as follows:

> *Be it enacted, etc.*, That where any judgment has been entered since March 8, 1918, in any action or proceeding commenced in any court where there was a failure to file in such action the affidavits required by section 200 of article 2 of the act approved March 8, 1918, entitled "An act to extend protection to the civil rights of members of the Military and Naval Establishments of the United States engaged in the present war" (40 Stat. L., p. 440), the plaintiff may file an affidavit stating that the defendant, or defendants, in default in such judgments, are not at the time of such filing, and were not at the time of the entry of such judgment, in the naval or military service of the United States, and upon the filing of such affidavit the court may enter an order that such judgment shall stand and be effective as of the date of the entry thereof. Any person who shall make or use such an affidavit as aforesaid, knowing it to be false, shall be guilty of a misdemeanor and shall be punishable by imprisonment not to exceed one year or by fine not to exceed $1,000, or both, in the discretion of the court.

Mr. VOLSTEAD. Mr. Speaker, I move to amend, in line 10, after the word "plaintiff."

Mr. GARD. I have an amendment that I desire to offer.

Mr. VOLSTEAD. I am offering my amendments at this time, and then the gentleman can offer his afterwards. I move to amend, on page 1, line 10, after the word "plaintiff," by inserting the words "after such notice as the court may prescribe."

The SPEAKER pro tempore. The Clerk will report the amendment.

The Clerk read as follows:

Page 1, line 10, after the word "plaintiff," insert the words "after such notice as the court may prescribe."

The SPEAKER pro tempore. The question is on the amendment.

The amendment was considered and agreed to.

Mr. VOLSTEAD. Now, on page 2, line 6, strike out the word "thereof" and insert the words "of such judgment as if such affidavit had been duly filed."

The Clerk read as follows:

Page 2, line 6, strike out the word "thereof" and insert "of such judgment as if such affidavit had been duly filed."

The SPEAKER pro tempore. The question is on the amendment.

The amendment was agreed to.

Mr. VOLSTEAD. On page 2, line 9, strike out the words "one year" and insert the words "two years."

The SPEAKER pro tempore. The Clerk will report the amendment.

The Clerk read as follows:

Page 2, line 9, strike out the words "one year" and insert in lieu thereof the words "two years."

The amendment was agreed to.

Mr. VOLSTEAD. In line 10 strike out "$1,000" and insert "$5,000." I am trying to harmonize this with the law in regard to perjury.

The SPEAKER pro tempore. The Clerk will report the amendment.

The Clerk read as follows:

Page 2, line 10, strike out "$1,000" and insert in lieu thereof "$5,000."

The amendment was agreed to.

Mr. VOLSTEAD. I have one other amendment. In line 8, page 2, strike out the words "guilty of a misdemeanor and shall be."

The SPEAKER pro tempore. The Clerk will report the amendment.

The Clerk read as follows:

Page 2, line 8, strike out the words "guilty of a misdemeanor and shall be."

The amendment was agreed to.

Mr. DOWELL. I want to call the attention of the chairman of the committee to the fact that the words "shall be" ought not to be stricken out.

Mr. VOLSTEAD. Yes; it is in there twice. It now reads "it shall be punishable." It is not necessary to specify that it is a misdemeanor.

Mr. GARD. Mr. Speaker, I have sent to the Clerk's desk three amendments. The second amendment has been offered by the gentleman from Minnesota, the chairman of the committee, and I do not desire to insist on the first amendment that I have offered, and I ask to withdraw it. But I do offer the third amendment, which I will ask the Clerk to report.

The Clerk read as follows:

Page 2, line 5, after the word "judgment," insert "if otherwise legal."

Mr. VOLSTEAD. Mr. Speaker, I think that is clearly covered by the amendment I offered, because it is only valid now as if the affidavit had been filed. The amendment I offer takes care of that very proposition.

Mr. GARD. I do not think it does; I think my amendment carries out the original intention of the act, which was the protection of the soldiers and sailors.

Mr. VOLSTEAD. It is plain that this does not intend to validate anything else.

Mr. GARD. Mr. Speaker, I ask for a consideration of my amendment.

Mr. RAMSEY. I want to say that a judgment entered is presumed to be legal. It is a presumption of law. Why should we put in language which might bring it into investigation?

Mr. GARD. It is for the protection of the soldiers and the sailors, which is the object of the original bill; otherwise there would be no need of the legislation.

Mr. RAMSEY. The object of this bill is to protect the man who is not a sailor or a soldier.

Mr. JONES of Texas. The gentleman from New Jersey does not mean to say that a judgment is conclusive?

Mr. RAMSEY. No; but it is presumptively legal.

Mr. JONES of Texas. Suppose a judgment was entered without any citation. Under this bill, without that amendment offered by the gentleman from Ohio, it would be legalized by filing an affidavit.

Mr. RAMSEY. Oh, no.

Mr. JONES of Texas. According to its terms, it would.

Mr. RAMSEY. Oh, no. A judgment is presumed to be legal when entered, and any man has a right to make application to a court to open it and show that it is not legal.

Mr. JONES of Texas. But this law would go ahead and say that it shall be corrected at that time.

Mr. RAMSEY. The judgment stands the same as it was before.

Mr. McPHERSON. I would like to ask the gentleman if this entire act which we are considering and the report that accompanies it does not show that we are not dealing with a legal proceeding against soldiers or sailors?

Mr. RAMSEY. That is true.

Mr. McPHERSON. What authority has Congress to pass an act affecting the judgment of a State court under this act or any other act that is not a proceeding between some person as plaintiff against some person as defendant who was in the military service?

Mr. RAMSEY. We are not affecting that. Congress has passed a law that before any judgment could be entered against any person, where it was by default, in order to protect possibly the soldier or the sailor, the plaintiff must file an affidavit that the defendant is not either a soldier or a sailor. For instance, the gentleman is my next-door neighbor and I sue him for $5,000. He admits the claim. He is not in the military service. He says that he has no defense and that I may take judgment by default, and because I have not filed this affidavit, therefore some one may come in and say that that is an illegal judgment. Of course, my conclusion is that upon a fair, honorable, judicial decision every court would construe it and say that it is a good judgment, but there may be a question about it. Therefore in order to make effective and without question a judgment entered by me against the gentleman who is not in the service we want to pass this law to eliminate any possible question in the future.

Mr. McPHERSON. One further question. At the time Congress passed the act that is being amended, it was exercising a war power for carrying on the war.

Mr. RAMSEY. Yes.

Mr. McPHERSON. And the gentleman will admit that they had authority to regulate the legality of a legal proceeding in the State court only as against a soldier.

Mr. RAMSEY. Yes.

Mr. McPHERSON. In case he assumes judgment was entered, but it was not a matter between a soldier and some one else.

Mr. RAMSEY. That is what this bill is for.

Mr. McPHERSON. And there was no one connected with the proceeding over which Congress had any jurisdiction.

Mr. RAMSEY. No.

Mr. McPHERSON. So that we are regulating a judgment outside of our jurisdiction.

Mr. RAMSEY. We are only seeking to perfect a judgment as against a man who is not a soldier.

Mr. McPHERSON. And we have no authority over him.

Mr. RAMSEY. Yes, we have. We have placed on the statute books a law which requires an affidavit to be filed stating that the defendant is not a soldier.

Mr. McPHERSON. Does the gentleman mean to say that Congress can require a certain thing to be true or a certain evidence to be introduced in a State court in the absence of a soldier being the defendant?

Mr. RAMSEY. Oh, that is a constitutional question, and I am not passing upon that.

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

Mr. RAMSEY. Yes.

Mr. BLANTON. Suit is filed on the supposition that a man is not a soldier and no affidavit is required. Suppose, as a matter of fact, a man is a soldier fighting for his country in the trenches of France.

Mr. RAMSEY. Yes.

Mr. BLANTON. Under this bill as originally brought in here, without amendment, the plaintiff, if he saw fit—and people in court do frequently cross each other in testimony, sometimes on very material matters—by merely filing an affidavit that the defendant was not in the service of the country when the suit was filed could get his judgment validated under this proposed law. The question I desire to ask is, Does the gentleman believe that the courts of this country would hold that this kind of law would validate such a judgment?

Mr. RAMSEY. No; and in reply I want to say this: Of course the judgment would not be validated, and the man who made the affidavit would go to State prison for two years and be fined $5,000. The presumption, as I understand it, is that men are honest, honorable, truthful, and that they make affidavits according to facts. We do not pass our legislation nor do we draw our conclusions upon the idea that men are false.

Mr. BLANTON. But the existing law was intended only to apply to soldiers, sailors, and marines in the service of their country.

Mr. RAMSEY. I am frank to answer the question by saying this, that a proper judicial construction of the law as originally passed would show that any judgment entered as against a man who was not a soldier would not require the affidavit for the reason that the original law was passed for the purpose of protecting the soldier and the sailor, and when you come to construe a law you must construe it according to the purpose for which it was passed.

The SPEAKER. The time of the gentleman from New Jersey has expired.

Mr. VOLSTEAD. Mr. Speaker, I move the previous question on the bill and all amendments to final passage.

Mr. RUCKER. Oh, I hope the gentleman will not do that. I have an amendment which I desire to offer.

Mr. JUUL. I would like to ask the gentleman a question.

Mr. VOLSTEAD. I withhold the motion for the present.

Mr. GARD. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. GARD. Would it not be first proper to vote upon the amendment that I have offered, which is pending?

The SPEAKER. If there is an amendment pending, yes. The previous question can be ordered upon that, however. The Chair understands the gentleman to withdraw his motion for the previous question?

Mr. VOLSTEAD. Mr. Speaker, I withhold the motion for the present.

The SPEAKER. If there is an amendment pending, the Chair will put the question on the amendment. The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. GARD: Page 2, line 5, after the word "judgment," insert "if otherwise legal."

The SPEAKER. The question is on the amendment.

The question was taken, and the Chair announced that the noes seemed to have it.

On a division (demanded by Mr. BLANTON) there were—ayes 37, noes 28.

So the amendment was agreed to.

Mr. BUCHANAN. Mr. Speaker, I offer the following amendment.

The SPEAKER. The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. BUCHANAN: Amend the bill, on line 10, page 1, after the figures "440," by striking out all thereafter down to and including the word "thereof," in line 6, on page 2, and inserting the following: "Such judgments shall be valid notwithstanding the failure to file the affidavit required aforesaid: *Provided*, That any defendant in any such suits filed or judgments rendered at any time before the collection of any such judgment shall have the right to appear in any such court and establish the fact, if such is the fact, that such defendant was a member of the Military or Naval Establishments of the United States engaged in the present war and included within the said act approved March 8, 1918, whereupon such cases or case shall be tried de novo."

Mr. BUCHANAN. Mr. Speaker and gentlemen of the House, from all I can understand from the facts surrounding this legislation perhaps thousands, maybe tens of thousands, of suits have been brought between civilian citizens of the United States as plaintiff and defendant, or in which judgments have been rendered and in which affidavits have not been filed, and therefore these judgments may be voided or may be voidable, or they may not, but in order to settle that question I think the simplest way to validate all such judgments is to give any defendant who may have been in the military or naval service the right to appear in such court and establish the fact that he was in the military or naval service, coming within the exception, and when the judgment is set aside start out de novo.

Mr. DOWELL. Will the gentleman yield?

Mr. BUCHANAN. I will.

Mr. DOWELL. The purpose of the law originally was that he should not be compelled to appear in court during his service.

Mr. BUCHANAN. Surely.

Mr. DOWELL. Now, the gentleman's amendment compels him to appear in court and set aside a judgment rendered while in actual service.

Mr. BUCHANAN. It gives him a trial de novo after he leaves the service

Mr. DOWELL. I understand; but should not we continue to treat him as in the original act, by requiring plaintiff to show that he was not in the service?

Mr. BUCHANAN. The only objection to the gentleman's position is, on the one hand we may have hundreds of thousands of judgments rendered between civilians in the United States and subject every one of them to the filing of additional affidavits and to the sending out of additional citations for men who were absolutely not in the military service, who may be their neighbors, who appeared in court and fought their cases and final judgment was rendered, who were not connected in any way with the military service, and yet they had not filed affidavits to show that in such cases.

Mr. DOWELL. But he must appear; we are now only correcting the error of attorneys in filing the original proceedings.

Mr. BUCHANAN. Sure; we are correcting them.

Mr. DOWELL. It would seem to me we would be doing better if we required the plaintiffs to file affidavits than to place the burden of proof upon the soldier who is actually in the service who has judgment rendered against him.

Mr. BUCHANAN. But you may not have a hundred soldiers out of the entire military service of the United States who have judgments rendered against them.

Mr. DOWELL. So far as I am concerned, I am in favor of protecting that hundred under the original law.

Mr. KEARNS. Will the gentleman yield for the purpose of asking a question?

Mr. BUCHANAN. I will.

Mr. KEARNS. The gentleman's amendment provides that this affidavit is filed before collection of judgment.

Mr. BUCHANAN. There is no affidavit. I strike out the affidavit. It provides that any time before the collection of judgment the soldier, if he is a soldier and can make a showing to the court that he is a soldier, should have the judgment set aside.

Mr. KEARNS. The point I want to make is this: Suppose it is a case where there is no money or property collection to be made.

Mr. BUCHANAN. Well, an enforcement of the judgment.

Mr. KEARNS. Then the gentleman's amendment will have to be amended. It might be a foreclosure or it might be a divorce suit.

Mr. BUCHANAN. A foreclosure would be a collection.

Mr. KEARNS. It might be a divorce suit.

Mr. BUCHANAN. I ask that that word "enforcement" be put in instead of "collection."

Mr. McPHERSON. Will the gentleman yield?

Mr. BUCHANAN. I will.

Mr. McPHERSON. I take it the gentleman has examined the law that we are amending. I have it here, and this is the provision of section 4:

If any judgment shall be rendered in any action or proceeding governed by this section against any person in the military service during the period of such service or within 30 days thereafter, and it appears that such person was prejudiced by reason of his military service in making his defense thereto, such judgment may, upon application, made by such person or his legal representative not later than 90 days after the termination of such service, be opened by the court rendering the same, and such defendant or his legal representative let in to defend.

So that the gentleman's amendment is already in the law. Your amendment is already in the law, is it not?

Mr. BUCHANAN. My amendment gives a man unlimited time. He may not know of it until the 90 days has elapsed under the law as it now stands, but under my amendment he will have until judgment is collected or some attempt to be enforced, and no possible injustice can be done the soldier. On the other hand, it will save perhaps hundreds of thousands of dollars to the civilian litigants of this country in court costs, attorneys' fees, and so forth.

Mr. DOWELL. Mr. Speaker, I would like to say a word in opposition to the amendment. If I understand it rightly, instead of correcting the error made by the plaintiff originally in the filing of the suit in his failure to comply with the law enacted to protect soldiers and sailors in the service, this amendment, if adopted, without notice would compel the soldier or sailor to appear in court and file an affidavit or make a showing that he was in the service at the time of the entering of the judgment.

Now, it seems to me that all the protection we threw around the soldier while he was in the service we are now taking off if we adopt this amendment. In other words, wherever a judgment was rendered against a soldier, even in violation of the statutes, by this amendment the judgment is valid and binding, unless perchance he discovers that a judgment was rendered against him and makes a showing before the court. I can see no reason whatever why we should place such a burden upon one who has a judgment rendered against him unlawfully where the attorneys for the plaintiff fail to comply with the statute. I think the amendment should be voted down.

Mr. THOMPSON of Oklahoma. Will the gentleman yield?

Mr. DOWELL. I will.

Mr. THOMPSON of Oklahoma. And if this judgment has been collected or enforced the effect of the amendment of the gentleman from Texas would be to validate it?

Mr. DOWELL. And it stands a valid judgment until he has appeared in court and set it aside. In other words, by the adoption of this amendment we invalidate the law that was enacted for his protection while he was in the service.

Mr. RUCKER. Mr. Speaker, I want to express myself to the amendment offered by the gentleman from Texas. The amendment I desired to offer was the same in principle as the one now pending, and therefore I will not offer mine.

I think in dealing with this pure question of law we ought to deal with it devoid of sentimentality so far as it is possible to do it. In the last three years the sensibilities, and enthusiasms, and affections, and loyalty of the American people have been so wrought up that to mention a soldier's name is calculated to cause something akin to delirium tremens—and that is about the only way we will ever have this fatal disease here.

This bill would have no place on the calendar, and ought not to consume a half day's time of the House of Representatives, if it were not for the fact that a great many suits have been brought throughout the land in which litigants failed to file a formal affidavit, say, like a suit of Smith against Jones, two old sinners that everybody knew were too old to fight, and probably would not fight if they could; and therefore this formal statutory affidavit was not made. It may be that those suits run into hundreds of thousands. Now, this statute is attempted to cure the defect in that judgment. It is to clarify the statute, and to cure it. How? By requiring the plaintiff in each one of these hundreds of thousands of lawsuits possibly, in the circuit courts and in the lower courts, to go and file a purely formal affidavit. A merchant who had to resort to the law to collect his bills and brought suit against 25 or 50 of his patrons must file 25 or 50 affidavits that those men were not in the military service.

A gentleman says, "Suppose a soldier boy's land had been sold." Let me say to you that no soldier boy who had land in the United States has lost 1 foot of it while he was following the flag. I do not believe there is a community in this whole land of ours where public sentiment would permit a claim to go into court and obtain judgment against a soldier fighting for his country, and sell his land. I do not believe such a thing has been done or would be done. It is true that it is said that lawyers and courts did not know about this statute. I will tell you what they did know. Every man, woman, and child in this country knew that Congress had provided that the soldier boy, while fighting for his native land, should not be sued in court. They knew that. Hence they have not been sued. You give notice, and I believe the amendment carries it, to the defendant. What does that mean? There are 100,000 cases, and to give notice under the statutes of the United States and statutes of every State in the United States means it must be served by some authorized officer or somebody who will make an affidavit to the service, and sheriff's fees, and the constable's fees, and docketing fees, and notary's fees, and a whole lot of costs multiplied and added, and for what purpose? Because some one fancies that somewhere some soldier boy might be injured. I do not believe that. Adopt this amendment, and I think you will save a great deal of trouble and make this law a reasonable provision, such as it ought to be.

Mr. VOLSTEAD. Mr. Speaker, I ask unanimous consent that debate on this amendment be now closed.

The SPEAKER. The gentleman from Minnesota asks unanimous consent that debate on this amendment be now closed. Is there objection? [After a pause.] The Chair hears none. The question is on agreeing to the amendment offered by the gentleman from Texas [Mr. BUCHANAN].

The question was taken, and the amendment was rejected.

Mr. VOLSTEAD. Mr. Speaker, I move the previous question on the bill and all amendments thereto to final passage.

The previous question was ordered.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time.

The SPEAKER. The question is on the passage of the bill.

The question was taken, and the Speaker announced that the ayes seemed to have it.

Mr. BLANTON. Division, Mr. Speaker.

The House divided; and there were—ayes 53, noes 18.

Mr. BLANTON. Mr. Speaker, I make the point that there is no quorum present.

The SPEAKER. Obviously there is no quorum present.

Mr. CHINDBLOM. Mr. Speaker, may the bill be read with amendments?

The SPEAKER. That is not in order after the point of no quorum is made. The Doorkeeper will close the doors, the Sergeant at Arms will notify absentees, and the Clerk will call the roll.

The question was taken; and there were—yeas 183, nays 63, answered "present" 1, not voting 183, as follows:

YEAS—183.

Ackerman	Fairfield	Kraus	Ramseyer
Anderson	Fess	Kreider	Randall, Wis.
Andrews, Nebr.	Fisher	LaGuardia	Reavis
Ashbrook	Fordney	Lampert	Rhodes
Bacharach	Freeman	Layton	Ricketts
Baer	French	Lehlbach	Riddick
Barbour	Fuller, Ill.	Little	Rodenberg
Begg	Garner	Lonergan	Rose
Benham	Garrett	Lufkin	Rubey
Black	Glynn	Luhring	Rucker
Bland, Mo.	Good	McAndrews	Sanders, Ind.
Boies	Goodall	McGlennon	Sanford
Bowers	Goodwin, Ark.	McLane	Schall
Briggs	Graham, Pa.	McLaughlin, Mich.	Sinclair
Brooks, Ill.	Green, Iowa	McLaughlin, Nebr.	Sinnott
Browning	Greene, Vt.	MacCrate	Slemp
Burdick	Hastings	MacGregor	Smith, Idaho
Butler	Hawley	Madden	Smith, Mich.
Byrns, Tenn.	Hays	Mapes	Stedman
Campbell, Pa.	Hernandez	Mays	Steele
Cannon	Hersey	Michener	Steenerson
Caraway	Hersman	Miller	Stephens, Ohio
Carss	Hickey	Minahan, N. J.	Strong, Kans.
Casey	Hicks	Mondell	Strong, Pa.
Chindblom	Hoch	Moore, Ohio	Summers, Wash.
Clark, Mo.	Hudspeth	Morgan	Swope
Cleary	Hulings	Murphy	Temple
Coady	Hull, Iowa	Nelson, Wis.	Thomas
Copley	Hull, Tenn.	Newton, Minn.	Thompson, Ohio
Crago	Husted	Nichols, Mich.	Thompson, Okla.
Cullen	Hutchinson	O'Connell	Timberlake
Currie, Mich.	Igoe	Ogden	Tinkham
Curry, Calif.	Ireland	Oldfield	Upshaw
Dale	Johnson, Ky.	Osborne	Valle
Dallinger	Juul	Padgett	Vestal
Darrow	Kahn	Paige	Voigt
Davis, Tenn.	Kearns	Parrish	Volstead
Dickinson, Iowa	Keller	Peters	Webb
Dowell	Kendall	Phelan	Welling
Dunbar	Kiess	Platt	White, Kans.
Dupré	Kincheloe	Pou	White, Me.
Dyer	King	Purnell	Wood, Ind.
Eagan	Kinkaid	Radcliffe	Woodyard
Echols	Kitchin	Rainey, H. T.	Young, N. Dak.
Elliott	Kleczka	Raker	Zihlman
Elston	Knutson	Ramsey	

NAYS—63.

Almon	Doughton	McPherson	Sanders, La.
Aswell	Evans, Nev.	Major	Sherwood
Ayres	Ferris	Mansfield	Smithwick
Bankhead	Gard	Moore, Va.	Steagall
Barkley	Hardy, Tex.	Nelson, Mo.	Venable
Bee	Heflin	Nicholls, S. C.	Vinson
Bell	Holland	O'Connor	Watkins
Bland, Va.	Jacoway	Oliver	Watson, Va.
Blanton	Johnson, Miss.	Overstreet	Weaver
Box	Jones, Tex.	Park	Welty
Brand	Lantham	Quin	Wilson, La.
Buchanan	Lankford	Rayburn	Wingo
Collier	Lazaro	Robinson, N. C.	Woods, Va.
Connally	Lesher	Robsion, Ky.	Wright
Crisp	McClintic	Romjue	Young, Tex.
Dickinson, Mo.	McKeown	Sabath	

ANSWERED "PRESENT"—1.

Pell

NOT VOTING—183.

Alexander	Dooling	Hayden	Monahan, Wis.
Andrews, Md.	Doremus	Hill	Montague
Anthony	Drane	Houghton	Moon
Babka	Dunn	Howard	Mooney
Benson	Eagle	Huddleston	Moore, Pa.
Blackmon	Edmonds	Humphreys	Moores, Ind.
Bland, Ind.	Ellsworth	James	Morin
Booher	Emerson	Jefferis	Mott
Brinson	Esch	Johnson, S. Dak.	Mudd
Britten	Evans, Mont.	Johnson, Wash.	Neely
Brooks, Pa.	Evans, Nebr.	Johnston, N. Y.	Newton, Mo.
Browne	Fields	Jones, Pa.	Nolan
Brumbaugh	Fitzgerald	Kelley, Mich.	Olney
Burke	Flood	Kelly, Pa.	Parker
Burroughs	Focht	Kennedy, Iowa	Porter
Byrnes, S. C.	Foster	Kennedy, R. I.	Rainey, J. W.
Caldwell	Frear	Kettner	Randall, Calif.
Campbell, Kans.	Fuller, Mass.	Langley	Reber
Candler	Gallagher	Larsen	Reed, N. Y.
Cantrill	Gallivan	Lea, Calif.	Reed, W. Va.
Carew	Gandy	Lee, Ga.	Riordan
Carter	Ganly	Linthicum	Rogers
Christopherson	Garland	Longworth	Rouse
Clark, Fla.	Godwin, N. C.	Luce	Rowan
Classon	Goldfogle	McArthur	Rowe
Cole	Goodykoontz	McCulloch	Sanders, N. Y.
Cooper	Gould	McDuffie	Saunders, Va.
Costello	Graham, Ill.	McFadden	Scott
Cramton	Greene, Mass.	McKenzie	Scully
Crowther	Griest	McKiniry	Sears
Davey	Griffin	McKinley	Sells
Davis, Minn.	Hadley	Magee	Shreve
Dempsey	Hamill	Maher	Siegel
Denison	Hamilton	Mann	Sims
Dent	Hardy, Colo.	Martin	Sisson
Dewalt	Harrison	Mason	Small
Dominick	Haskell	Mead	Smith, Ill.
Donovan	Haugen	Merritt	Smith, N. Y.

Snell	Taylor, Ark.	Vare	Wheeler
Snyder	Taylor, Colo.	Walsh	Williams
Stephens, Miss.	Taylor, Tenn.	Walters	Wilson, Ill.
Stevenson	Tillman	Ward	Wilson, Pa.
Stiness	Tilson	Wason	Winslow
Sullivan	Tincher	Watson, Pa.	Wise
Sumners, Tex.	Towner	Webster	Yates
Sweet	Treadway	Whaley	

So the bill was passed.

The Clerk announced the following pairs:

Until further notice:

Mr. SIEGEL with Mr. JOHN W. RAINEY.
Mr. WILLIAMS with Mr. DONOVAN.
Mr. DUNN with Mr. ALEXANDER.
Mr. YATES with Mr. BENSON.
Mr. WINSLOW with Mr. BRINSON.
Mr. WHEELER with Mr. BRUMBAUGH.
Mr. WATSON of Pennsylvania with Mr. BYRNES of South Carolina.
Mr. TREADWAY with Mr. SAUNDERS of Virginia.
Mr. TOWNER with Mr. CANDLER.
Mr. TILSON with Mr. CANTRILL.
Mr. SWEET with Mr. CAREW.
Mr. STINESS with Mr. HOWARD.
Mr. SNYDER with Mr. HUDDLESTON.
Mr. SNELL with Mr. HUMPHREYS.
Mr. SHREVE with Mr. KETTNER.
Mr. SCOTT with Mr. LARSEN.
Mr. SANDERS of New York with Mr. LEA of California.
Mr. ROWE with Mr. LEE of Georgia.
Mr. COLE with Mr. STEPHENS of Mississippi.
Mr. ROGERS with Mr. CLARK of Florida.
Mr. REED of West Virginia with Mr. DAVEY.
Mr. PORTER with Mr. DENT.
Mr. NEWTON of Missouri with Mr. DOMINICK.
Mr. MUDD with Mr. DOOLING.
Mr. MORIN with Mr. DOREMUS.
Mr. MASON with Mr. DRANE.
Mr. MCKINLEY with Mr. EAGLE.
Mr. MCKENZIE with Mr. FIELDS.
Mr. MCFADDEN with Mr. FITZGERALD.
Mr. MCCULLOCH with Mr. GANDY.
Mr. LONGWORTH with Mr. GODWIN of North Carolina.
Mr. KENNEDY of Rhode Island with Mr. GOLDFOGLE.
Mr. KELLEY of Michigan with Mr. GRIFFIN.
Mr. JONES of Pennsylvania with Mr. HAMILL.
Mr. JOHNSON of Washington with Mr. HARRISON.
Mr. HAUGEN with Mr. HAYDEN.
Mr. HAMILTON with Mr. MCDUFFIE.
Mr. HADLEY with Mr. MARTIN.
Mr. GRIEST with Mr. MEAD.
Mr. GREENE of Massachusetts with Mr. MONTAGUE.
Mr. GRAHAM of Illinois with Mr. MOON.
Mr. GOULD with Mr. NEELY.
Mr. GARLAND with Mr. RANDALL of California.
Mr. FREAR with Mr. ROWAN.
Mr. FOCHT with Mr. SEARS.
Mr. ESCH with Mr. SIMS.
Mr. EDMONDS with Mr. SMALL.
Mr. DENISON with Mr. SMITH of New York.
Mr. DAVIS of Minnesota with Mr. STEVENSON.
Mr. COSTELLO with Mr. TAYLOR of Arkansas.
Mr. CAMPBELL of Kansas with Mr. TAYLOR of Colorado.
Mr. BURKE with Mr. TILLMAN.
Mr. BROWNE with Mr. WHALEY.
Mr. BROOKS of Pennsylvania with Mr. WILSON of Pennsylvania.
Mr. ANTHONY with Mr. WISE.
Mr. JONES of Pennsylvania with Mr. JOHNSON of New York.
Mr. MOORES of Indiana with Mr. CALDWELL.
Mr. BLAND of Indiana with Mr. EVANS of Montana.
Mr. BURROUGHS with Mr. SUMNERS of Texas.
Mr. CRAMTON with Mr. DEWALT.
Mr. CHRISTOPHERSON with Mr. SULLIVAN.
Mr. CROWTHER with Mr. OLNEY.
Mr. DEMPSEY with Mr. RIORDAN.
Mr. EVANS of Nebraska with Mr. SISSON.
Mr. EMERSON with Mr. MOONEY.
Mr. FOSTER with Mr. BABKA.
Mr. HOUGHTON with Mr. PELL.
Mr. JEFFERIS with Mr. GANLY.
Mr. JOHNSON of South Dakota with Mr. FLOOD.
Mr. KENNEDY of Iowa with Mr. GALLAGHER.
Mr. LUCE with Mr. MAHER.
Mr. WASON with Mr. BOOHER.
Mr. WALSH with Mr. CARTER.
Mr. REBER with Mr. MCKINLEY.
Mr. REED of New York with Mr. SCULLY.
Mr. MANN with Mr. BLACKMON.
Mr. MAGEE with Mr. LINTHICUM.
Mr. MOORE of Pennsylvania with Mr. GALLIVAN.

The result of the vote was announced as above recorded.

The SPEAKER. A quorum is present.

On motion of Mr. VOLSTEAD, a motion to reconsider the vote whereby the bill was passed was laid on the table.

WOMAN-SUFFRAGE AMENDMENT.

The SPEAKER laid before the House a communication from the secretary of state of the State of Montana announcing the ratification by the legislature of that State of the proposed amendment to the Constitution of the United States extending the right of suffrage to women.

PRACTICE AND PROCEDURE IN FEDERAL COURTS.

Mr. VOLSTEAD. Mr. Speaker, I call up the bill H. R. 3171.

The SPEAKER. The gentleman from Minnesota, chairman of the Committee on the Judiciary, calls up the bill H. R. 3171, which the Clerk will report.

The Clerk read as follows:

A bill (H. R. 3171) to amend the practice and procedure in Federal courts, and for other purposes.

Be it enacted, etc., That hereafter in any cause pending in any United States court, triable by jury, in which the jury has been impaneled to try the issue of facts, it shall be reversible error for the judge presiding in said court to express his personal opinion as to the credibility of witnesses or the weight of testimony involved in said issue: *Provided*, That nothing herein contained shall prevent the court directing a verdict when the same may be required or permitted as a matter of law.

SEC. 2. That the judge of the court on the issue of law involved in said cause shall be required to deliver his charge to the jury after the introduction of testimony and before the argument of counsel on either side, and where requested by either party said charge shall be reduced to writing: *Provided, however*, That in United States courts sitting in States in which the law permits the trial judge to deliver his charge after argument of counsel, such procedure and practice may be followed by the trial judges in United States courts sitting in such States.

Mr. VOLSTEAD. Mr. Speaker, I would like, if possible, to arrange for general debate on this bill if anyone desires to oppose it.

The SPEAKER. The rule allows one hour to each side.

Mr. VOLSTEAD. If the gentleman from Arkansas [Mr. CARAWAY] cares to speak, I will yield to him 15 minutes now.

The SPEAKER. The gentleman from Arkansas is recognized.

Mr. CARAWAY. Mr. Speaker and gentlemen of the House, I do not mean to occupy the floor for the 15 minutes yielded me by the gentleman from Minnesota, the chairman of the committee. There is nothing I can say about the proposed measure that is not expressed in the bill itself. Every gentleman here who has practiced in the Federal courts realizes the importance of the passage of this proposed act.

It seeks to make the practice and procedure in the Federal courts the same as in the State courts in the site where the court may sit, with this one exception: Heretofore in all the States, so far as my acquaintance with the practice in the Federal courts goes, the Federal judges have assumed to "sum up," as they call it, intermingling their statement of fact and the law, and after argument of counsel. This bill requires that in those States where that practice does not prevail the Federal judge shall render his charge to the jury after the introduction of all of the evidence and before argument of counsel. It goes this much further: It provides that at the request of either party the charge of the judge shall be in writing.

The proviso in section 2 says: "That in United States courts sitting in States in which the law permits the trial judge to deliver his charge after argument of counsel, such procedure and practice may be followed by the trial judges in United States courts sitting in such States." The only change would be in requiring him, at the suggestion of either party, to deliver his charge in writing.

I do not, of course, know what the procedure in United States courts is in all the States. But I know this is the procedure in my State and other States where I have had occasion to go: The judge reserves his charge until after the arguments of counsel. He then frequently in his charge expresses his personal opinion as to the credibility of witnesses and the weight of testimony. I recall one of the most sensational trials that ever took place in our section of the country, which is reported in Smith against United States (157 Fed., 721). This was a peonage charge. There was but one witness who testified whose testimony, if believed, would have made the conviction of the defendant impossible. The court took occasion to say to the jury, as to this man who testified to that state of facts, that this witness lied and that the jury knew he lied. The court of appeals, in passing upon that, said, admitting it was a bad practice for the trial judge to single out a witness and denounce him as a perjurer—I am not using the exact language of the court but the substance—but inasmuch as he—the trial judge—said somewhere in his charge

that the jury was the sole judge of the credibility of the witnesses and the weight of the evidence, therefore this conduct of the trial judge was not prejudicial.

I have frequently heard, and I presume most gentlemen in this House who have practiced in a United States court have heard the trial judge say to the jury, "Certain witnesses have testified to an alleged state of facts, but no one should be expected to believe them." Of course, somewhere in his charge the trial judge would say, "Notwithstanding the fact that I know and you know the statement of such witness is unreasonable, yet if you are so inclined as to believe him you can render your verdict on his testimony," and this has been held not to be reversible error. This bill says that the trial judge shall express no opinion as to the credibility of a witness or the weight of testimony. In order to protect judges who have gone outside of what seems to be the proper course, the appellate courts have said that such statements of the trial judge are cured by a statement that the jury may believe the witness if it wants to do so, notwithstanding the trial judge has said his testimony is unworthy of belief. It is so held because somewhere he tells the jury they are the sole judges of the weight of testimony and the credibility of witnesses. In other words, the appellate courts have held that the statement of the trial judge that he does not believe a witness and that no sane man could believe him does not and should not influence the jury. If it does not and is not intended to influence unduly the jury—substituting the opinion of the judge for that of the jury—why should and why does the trial judge indulge in such expression of opinion?

Mr. ROSE. Will the gentleman yield?

Mr. CARAWAY. Yes.

Mr. ROSE. I have read the provisions of the bill, and I can see nothing seriously wrong with them, except that I would like to call the attention of the gentleman to the words in lines 2 and 3, on page 2, where it says:

And where requested by either party said charge shall be reduced to writing——

Mr. CARAWAY. Yes.

Mr. ROSE. It does not say when the charge is to be reduced to writing. I can easily see where a trial judge may be ready to deliver his charge, but he would like to look up certain authorities before he delivers the charge. Now, when must he reduce his charge to writing?

Mr. CARAWAY. Before he delivers it.

Mr. ROSE. That may cause great delay in the trial of cases, may it not?

Mr. CARAWAY. I do not think so. I do not think the judge ought to charge the jury until he knows what the law is, and this undertakes to say that he shall know and shall reduce it to writing. All of us have suffered by the trial judge so intermingling his statement of facts and his comments upon the testimony with his declarations of law that frequently the ablest lawyer who sits in the court room can not say when the court is making a declaration of law and when he is commenting upon the testimony. This bill undertakes to say that he shall reduce his charge to writing. That is the practice, I think, in about nine-tenths of the States of this Union. It is the practice in my own State, and it works admirably. When counsel argue the case before the jury, he knows exactly what the judge's charge is. It has been reduced to writing. No great delay is caused. After all, however, it is better a little delay than a miscarriage of justice.

Mr. KEARNS. There is nothing in the gentleman's bill that would compel the court to read his charge to the jury before the argument.

Mr. CARAWAY. Yes; there is.

Mr. KEARNS. I do not so understand it.

Mr. CARAWAY. In section 2 it is provided that the judge of the court shall be required to deliver his charge to the jury after the introduction of all of the evidence and before argument of counsel.

Mr. KEARNS. Yes; but it says:

Provided, however, That in United States courts sitting in States in which the law permits the trial judge to deliver his charge after argument of counsel, such procedure and practice may be followed by the trial judges in United States courts sitting in such States.

Mr. CARAWAY. Yes; in those States.

Mr. KEARNS. So there is nothing to compel the judge to read his charge to the jury before the arguments of counsel?

Mr. CARAWAY. In States where the State practice and procedure require the court to read his charge before the argument, then the trial judge in the United States court would have to follow the State procedure.

Mr. KEARNS. Yes.

Mr. CARAWAY. But in those States where the old common law rule prevails, and permits the judge to sum up, as it is called, after the argument, the same practice would prevail in the Federal courts.

Mr. SANFORD. Will the gentleman yield?

Mr. CARAWAY. Yes.

Mr. SANFORD. Is it the purpose of this bill to prevent the trial judge from stating to the jury the legal rules for determining the credibility of witnesses?

Mr. CARAWAY. No.

Mr. SANFORD. Or the rules by which they shall determine the weight of the evidence?

Mr. CARAWAY. No.

Mr. SANFORD. Does not the gentleman think his bill is a little vague on that subject?

Mr. CARAWAY. No. The only thing this bill undertakes to do is to prevent the judge expressing his personal opinion as to the credibility of a witness or as to the weight of the testimony. There is nothing in the bill to prevent the judge from saying to the jury that the plaintiff must establish his case by a preponderance of testimony, and that in determining the weight of testimony the jury shall give consideration to the interest of the witnesses and to their opportunity to know the facts, and all those things commonly laid down in the rules by which the jury shall be governed in determining the weight of testimony and the credibility of witnesses. There is nothing that prevents the judge doing that. It simply undertakes to prevent the judge saying, "I do not believe the testimony of that witness," or "I believe on the whole case the testimony of the plaintiff ought to prevail." In other words, prevents the trial judge thrusting on the jury his personal opinion as to what its finding should be.

Mr. SANFORD. I appreciate that that is the purpose and intention of the bill, but I am not so sure that the bill has made it entirely clear.

The gentleman will appreciate the fact that a clever judge in stating the rules for determining the weight of testimony and the credibility of witnesses can create in the minds of the jury any impression he may desire to create without violating the provisions of the bill or the ordinary rules of law.

Mr. CARAWAY. I do not think an honest judge would so conduct himself. For dishonest judges we have provided other means of procedure.

Mr. KEARNS. I think this bill lays down the rule of practice that is adopted in most of the States of the Union, does it not?

Mr. CARAWAY. In about nine-tenths of them; yes.

Mr. ALMON. I am very much in favor of section 1 of the bill, and it seems to me that in section 2 it should expressly provide when the request for a written charge should be made. In Alabama the rule is that if you want a written charge you must make your request after the evidence closes and before the argument begins, but is not given to the jury until after the argument of counsel.

Mr. CARAWAY. The idea I had, and I think the requirement of the bill is, that he shall reduce it to writing before he delivers it, and upon the request of either party he must reduce his charge to writing before he delivers it.

Mr. ALMON. Will the gentleman yield?

Mr. CARAWAY. Yes.

Mr. ALMON. Does not the gentleman think that the law should expressly provide when the request for the written charge should be made?

Mr. CARAWAY. I think that when the judge is ready to charge the jury either party can make the request.

Mr. DAVIS of Tennessee. Will the gentleman yield?

Mr. CARAWAY. Yes.

Mr. DAVIS of Tennessee. It occurs to me that the criticism of the gentleman from Alabama could be cured beyond question by striking out the words "reduced to" and insert the words "delivered in," so that it would leave it that the written charge should be delivered before the argument of counsel, in accordance with whether it was the practice in that State or not, as provided here.

Mr. CARAWAY. Let me say the language of the bill is almost the identical language found in the statutes or in the constitution of a number of States. The courts have always held that the judge then is required, where either party requests, to reduce his instructions to writing and read them to the jury.

Mr. SABATH. Will the gentleman yield?

Mr. CARAWAY. I will yield.

Mr. SABATH. This bill tends to take away from the judge the power to control the action of the jury, as has been frequently done by some judges?

Mr. CARAWAY. That is what it seeks to do.

Mr. SABATH. The bill states that he shall not express his personal opinion as to the credibility of witnesses, or the weight

of the evidence involved in the issue, but he can do by indirection that which you prohibit by direction. He can do it by examining the witnesses himself, and he can do it by insinuation conveyed to the jury that he does not believe the witness and that he is a contemptible witness. Does not the gentleman think that it should be so amended that he should not indirectly do what you prohibit his doing directly? Some judges have assumed the power of a czar and believe that they have a right to control the action of jurors and everyone else.

Mr. CARAWAY. We could not possibly get into the record the tone of voice by which the judge might convey his opinion, and I think it would lead to endless confusion if we attempted it.

Mr. LAGUARDIA. Will the gentleman yield?

Mr. CARAWAY. Yes.

Mr. LAGUARDIA. The purpose of having the charge reduced to writing is so as to have a permanent record?

Mr. CARAWAY. Yes.

Mr. LAGUARDIA. Or is it so that counsel may have the law before them?

Mr. CARAWAY. The idea I had was this: It follows, as I said, the language of the Constitution or the statutes of many States, and its purpose is to prevent any question about what the judge charged the law to be. It also gives counsel no excuse to mistake the court's charge. It is a record of the court's instructions and can not be misunderstood.

Mr. LAGUARDIA. Would it satisfy the provisions of this bill if a stenographic record was made of the charge delivered by the judge? What I have in mind is the saving of time.

Mr. KEARNS. The suggestion of the gentleman from Illinois is that it would stop the crooked judge, if you can conceive of such a man sitting on the bench, afterwards denying that he charged the jury in any such way.

The SPEAKER. The time of the gentleman from Arkansas has expired.

Mr. VOLSTEAD. I yield to the gentleman from Arkansas five minutes more.

Mr. FISHER. Will the gentleman yield?

Mr. CARAWAY. I yield.

Mr. FISHER. I am heartily in favor of the first section of the bill, but I have my doubts whether under the second section it would not be a hardship for the judge to reduce his charge to writing. Is it to be construed that he is to reduce it to writing before he delivers the charge?

Mr. CARAWAY. Yes.

Mr. FISHER. A stenographer's report would not answer?

Mr. CARAWAY. It would not answer. Counsel could consent that the judge deliver his charge thus, and that it may be transcribed by the reporter, but this bill does not contemplate that; it requires that he shall reduce the charge to writing and read that written charge, so that there can never be any question about what he said to the jury.

Mr. FISHER. Most Federal judges, at least in my district, carry around a stenographer to take down the charge, and the notes are at the request of any lawyer written out after the judge has rendered the charge. Do I understand that you are to construe this law to mean that he must write it in advance?

Mr. CARAWAY. Absolutely.

Mr. FISHER. Where he has 8 or 10 small bootlegging cases during a day, that would be a great hardship on the Federal judge.

Mr. CARAWAY. I take it that in most cases neither side would request the judge to reduce his charge to writing, but if either does it he must reduce it to writing. If either side feels that he can not permit the judge to wander in a charge and wants it reduced to writing, I think he ought to have that right.

Mr. OLIVER. This bill makes it a reversible error for the judge to express an opinion on the character of the witness or the weight of the testimony, but it fails to make it a reversible error if he refuses to give his charge in writing or deliver it in advance of the argument. Would it not, since you expressly provide in section 1 that it shall be reversible error to do a certain thing, be better to provide that it shall be a reversible error to refuse to do it?

Mr. CARAWAY. The gentleman thinks that is not implied. I think it is. Inasmuch as it is made his absolute duty to reduce his charge to writing and deliver it to the jury in advance of argument, of course it would be a reversible error if he should refuse.

Mr. OLIVER. Does the gentleman construe section 2 as preventing any charge from being given by the judge after the argument in those States where the charge is required to be given before the argument?

Mr. CARAWAY. I do not think so. In a State where the constitution provides that a judge shall charge the jury after the introduction of all of the evidence and before argument, and where requested by either party in writing, the courts have held that if some new issue should arise or if the jury should come back and ask for specific instructions the court has the right to grant the request.

Mr. OLIVER. The part I want to bring out is this: The language of section 2 is that the court, "on the issue of law," shall be required, and so forth. All charges are not necessarily referable to issues of law, as the gentleman is aware, and that is rather a restrictive definition of the charge, it seems to me. Many charges undertake to summarize the testimony. Yet that would not necessarily be a charge upon the issues of law, and that is what I had in mind when I asked whether the language of section 2 would preclude a summarizing of the testimony by the judge after the argument was in.

Mr. CARAWAY. It would prevent him from expressing his personal opinion as to the credibility of the witness or the weight of the evidence; nothing more. He would be permitted to lay down rules for weighing testimony.

The SPEAKER pro tempore. The time of the gentleman from Arkansas has expired.

Mr. HERSEY. Mr. Speaker, I would like to ask the gentleman a question, and I ask that the gentleman from Minnesota yield him two minutes more.

Mr. VOLSTEAD. I yield two minutes more to the gentleman from Arkansas.

Mr. HERSEY. I want to know the object of the judge submitting his charge in writing when you have a reporter that takes very word he says.

Mr. CARAWAY. There are two reasons. In the first place, it is very difficult sometimes in a long charge for counsel to determine just what the court has declared the law to be. It is difficult for counsel to preserve his exceptions to the charge if it is not in writing, so that he may have it before him. He is in a better position to know what his rights are and whether or not the court has erred in his declarations of law, and in presenting the case to the jury there is less excuse for him to misstate the court's charge to the jury. There are sufficient reasons, in my judgment.

Mr. LITTLE. You might not have any reporter in a Federal court.

Mr. HERSEY. I can not conceive of such a thing.

Mr. LITTLE. If the gentleman would come along with me, I could show him.

Mr. CARAWAY. There is no law in the Federal statutes for reporters in Federal courts. We have a bill now on the calendar, by Mr. STEELE, making provision for a reporter in United States courts.

Mr. GREEN of Iowa. Mr. Speaker, will the gentleman yield?

Mr. CARAWAY. Yes.

Mr. GREEN of Iowa. It is evidently the intention in this bill that this charge of the judge should be reduced to writing before being delivered to the jury.

Mr. CARAWAY. That is it.

Mr. GREEN of Iowa. And yet it has occurred to me that the bill might be so construed as to reduce it to writing at any time, so as to comply with the provisions of the bill.

Mr. CARAWAY. The judge has to deliver his charge to the jury before argument of counsel, and he can not make it except he make it in writing if either side requests it. Therefore there can be no question but that the judge would have to reduce his charge to writing before he gave it. I sincerely hope the bill will become a law.

The SPEAKER pro tempore. The time of the gentleman from Arkansas has again expired.

Mr. GARD. Mr. Speaker, I yield 10 minutes to the gentleman from Pennsylvania [Mr. GRAHAM].

Mr. GRAHAM of Pennsylvania. Mr. Speaker, I can not say that I heartily approve of this bill. I perhaps belong to that school which still has faith in the administration of justice in our courts. I feel that in the vast majority of cases the law is properly stated to the jury and the evidence is reviewed within the limits which are permissible to a judge bringing the facts to their attention. Because under certain circumstances there have been violations of this rule, I do not think we are justified in attempting to correct those individual cases by general legislation. However, so far as the bill is concerned I shall vote for its adoption. As originally presented there were objections to be made to the language used. For instance, as I recall the prohibition, it was to the judge expressing an opinion as to the credibility of witnesses. Of course, every lawyer in this House knows that it is the duty of a judge under certain circumstances to express an opinion and to charge the jury upon the question of credibility. Let us suppose a criminal case where a man's chief accuser is an accomplice. The court is bound to

charge the jury as to the credit and weight of such testimony. Where there is an overwhelming interest upon the part of some witness the court has the right to call the attention of the jury to that interest as something to be taken into consideration in weighing the testimony of the witness. But this language was adopted, with the approval of my colleagues on the committee:

It shall be reversible error for the judge in said court to express his personal opinion as to the credibility of witnesses—

And so forth.

To that language it seems there ought to be no objection. In other words, this would reach the cases that are complained of where the judge goes outside of his judicial function and expresses his personal opinion against a witness as to his credibility. The opinion expressed is merely the judge's own opinion. That is what is excluded by this section and what is made reversible error.

The proviso appended to this section that nothing therein contained shall prevent the court directing a verdict when the same may be required or permitted as a matter of law saves the section from the objection that perhaps there might be involved in this language the prohibition upon a court to direct a verdict when it is his duty to do so.

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

Mr. GRAHAM of Pennsylvania. Surely.

Mr. LEHLBACH. Is not all error which is prejudicial to a party to a cause ground for reversal in common law?

Mr. GRAHAM of Pennsylvania. Certainly.

Mr. LEHLBACH. Is it not a fact that some States in order to avoid grounds for appeal or reversals on technicalities, and so forth, have enacted that only such error shall be ground for reversal that goes to the merits of the case and is prejudicial to the party alleging the error?

Mr. GRAHAM of Pennsylvania. Yes.

Mr. LEHLBACH. Would not the use of the words "reversible error" make it mandatory to reverse the case in which error occurred, whether it was a reversible error or not?

Mr. GRAHAM of Pennsylvania. I think the gentleman offers a very correct definition.

Mr. LEHLBACH. Would it not be better to leave out the word "reversible"?

Mr. GRAHAM of Pennsylvania. I should think not if you are going to stop this practice or abate the evil to be cured; you ought to make it reversible error, and if the judge after the passage of this law indulges in a thing of that kind it ought to be a reversible error if it is put in the law that he ought not to do it; there ought to be no alternative given, but to cure it by saying, "It is all wrong." He should not escape the consequences of his deliberate violation of the law by having a higher court say, "I know he ought not to have done it, but on the whole case it would not justify us in setting aside the verdict, and there will be no reversal."

Mr. BEE. Otherwise it would be a harmless error.

Mr. GRAHAM of Pennsylvania. Certainly.

Mr. CARAWAY. That is exactly the excuse the court has given by saying it is cured somewhere else; is not that true?

Mr. GRAHAM of Pennsylvania. All agree on that. But so far as the second section is concerned, I was going to say, and I may be a little bit boastful, perhaps, in so saying, that I have tried as many cases as any man in the House, and perhaps more, but you will excuse the boast when I say that that is only because I am so much older than you are. My knowledge of the practice of the courts in the East is that this section covers a subject that is unknown to us. The judge charges a jury after the addresses of counsel, and it seems to me to be the most logical place for the charge. We must have some faith in the men who administer justice in our courts, and we must believe that they are there as an umpire to express the law and to call the attention of the jury to the facts in the case so that they may reach a righteous verdict; and having that faith in the court the judges ought not to be hampered by having to prepare their charges in writing before counsel addresses the jury and deliver their charges to the jury. It seems to me as a practitioner—probably it comes from the fact of my habit of being accustomed to the opposite course that that is putting the cart before the horse. The charge ought to follow everything, and ought to state clearly the law and give a résumé of the evidence.

Mr. GARRETT. Will the gentleman yield?

Mr. GRAHAM of Pennsylvania. I will.

Mr. GARRETT. May I ask the gentleman, if I caught correctly the reading of the bill, does not the proviso take care of that situation? The practice is the same in my State, I will say to the gentleman, that it is in his.

Mr. GRAHAM of Pennsylvania. I presented that amendment in committee for the purpose of taking care of it in the States where this is now the practice, and I am going to suggest an amendment to the language of the section so as to make it clearer.

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

Mr. GRAHAM of Pennsylvania. Yes.

Mr. BLANTON. The gentleman stated that the charge should logically follow everything else.

Mr. GRAHAM of Pennsylvania. Yes.

Mr. BLANTON. The argument of counsel in the case?

Mr. GRAHAM of Pennsylvania. Yes.

Mr. BLANTON. Has the gentleman in his experience not many times heard lawyers attempt to argue the law to the jury when the court on the bench knew they were not arguing the law and he was going to charge something else to the jury as the law? Then why should not the attorneys have the benefit of the court's charge in arguing to the jury what the law is and knowing exactly what the court would charge as the law in the case?

Mr. GRAHAM of Pennsylvania. Replying to the gentleman's interrogatory, I would say that we generally meet that in this way: If I am arguing a question of law to the jury, I will say, "Subject to what the court may direct on this question, gentlemen, I believe the law to be thus and so"; but there is a remedy, and that remedy is to present your points for charge, by which you pin the court down to answer your legal points, so that he must construe the law in such a way as may enable you to know what it may be.

Mr. CRAGO. Will the gentleman yield?

Mr. GRAHAM of Pennsylvania. Yes.

Mr. CRAGO. Is not the purpose of the charge by the court to the jury to clear up misunderstandings which have arisen during the trial of the cause?

Mr. GRAHAM of Pennsylvania. Certainly.

Mr. CRAGO. If the judge would charge the jury, and the attorneys argue the case afterwards, would not the case go to the jury in a more chaotic state than if it goes to the jury just after the judge's charge?

Mr. GRAHAM of Pennsylvania. I think so.

Mr. CRAGO. The gentleman has suggested——

The SPEAKER. The time of the gentleman has expired.

Mr. GRAHAM of Pennsylvania. May I have a few minutes more?

Mr. GARD. How much time does the gentleman desire?

Mr. GRAHAM of Pennsylvania. Five minutes.

Mr. GARD. I yield to the gentleman 10 minutes.

Mr. CRAGO. As the gentleman has well suggested, the submission of points by opposing counsel allows the court to pass on those points before the case is argued anyhow.

Mr. GRAHAM of Pennsylvania. Yes; this point about the charge being reduced to writing—I would like to call attention——

Mr. GREEN of Iowa. Will the gentleman yield?

Mr. GRAHAM of Pennsylvania. I will yield to the gentleman.

Mr. GREEN of Iowa. Did the gentleman consider it was necessary, at the top of page 2, to put in that clause "before the argument of counsel on either side"? I had supposed that the court followed the practice in the particular State in that respect. So far as I know, the courts follow the practice of the several States in that respect, and I would think it really would be better to leave that out, so that the court, unless he was following the practice of the State, would put off the charge until the argument of the counsel had been finished.

Mr. GRAHAM of Pennsylvania. That is true. The Federal court is supposed to follow the practice of the States largely. It is not obliged to do so. Now, the object of this section of the bill is to make it compulsory on the court to follow it in this particular. And that is the reason why this language to which the gentleman has referred has been inserted.

There are two things in this section; first, the period at which the charge is to be delivered, which is before the argument of the counsel, and the other is that it must be reduced to writing.

Now, I have no experience with which to speak with reference to the latter phase of this section, but I am told that in the States where this is the practice and is required by law it leads to a very questionable state of affairs very frequently. In the midst of a trial you require the trial judge to reduce to writing his charge. He is going then to reduce it to the simplest form and will not permit of that expansion of statement that ought to be made for the purpose of clearing the matter to the minds of the jury. I am told that some of the charges simply contain the principles of law, and only covering two or three pages of foolscap, and no summing up and reviewing of the case as it ought to be reviewed. Now, if it leads to such a result as that—and I do not know whether that is correct or not——

Mr. GREEN of Iowa. Will the gentleman yield for a moment there?

Mr. GRAHAM of Pennsylvania. Yes; surely.

Mr. GREEN of Iowa. I will say that depends entirely on the temperament of the judge.

Mr. GRAHAM of Pennsylvania. That is what I said.

Mr. GREEN of Iowa. Some of them are inclined to short charges, but even in Iowa we have the complaint there that some of them make too long constructions of the law, up and down and around, until we do not know where they will land.

Mr. GRAHAM of Pennsylvania. My point is that if you adopt this rule you appeal to the judge that is lazy or to the judge that is timid to make exceedingly brief charges, and only express principles of law, and not do justice to the case.

Mr. LITTLE. Will the gentleman yield?

Mr. GRAHAM of Pennsylvania. Yes.

Mr. LITTLE. The gentleman suggested that judges sometimes, or generally, he was told, omitted the proper review of the case. As far as my experience goes, of about 32 years, the universal rule in all States where the law is as he suggests is that before he does anything else the judge gives a complete and rounded review of the facts of the case. I do not think it has occurred to the contrary in my experience.

Mr. ROBSION of Kentucky. Will the gentleman yield?

Mr. GRAHAM of Pennsylvania. In just a moment, when I have finished this point.

I cited an instance that is fairly corroborated by the gentleman from Iowa [Mr. GREEN]. Now, the second thing in the requirements of this section is that the judge shall reduce his charge to writing. The other relates to the period of its delivery. In addition to what I have already said I would like to add that there is in the Committee on the Judiciary now a bill providing for the appointment of stenographers in all the Federal courts, and that is what ought to be done. There ought to be stenographers to take down the charge of the court, so that there will be no question as to what it is, and so that it could be readily reproduced, and that without the delay incident to requiring the judge to write it in person, and without the temptation to shorten it in order to escape the labor or escape the fear of reversal. Now, if that bill concerning court stenographers is going to be passed, then we need not pass a provision like this requiring the charge to be reduced to writing—to longhand writing—prior to the argument of counsel, in the midst of the trial, and before the case can be concluded.

Now I yield to the gentleman from Kentucky [Mr. ROBSION].

Mr. ROBSION of Kentucky. I come from Kentucky. In our State the charge is given as provided in this bill, in the State courts; but in the Federal courts they follow the procedure as in the gentleman's State. Now, I doubt if there is a lawyer in general practice in the State of Kentucky who does not favor the giving of the written instructions or charge before the argument. And I can not see how it affects the gentleman from Pennsylvania, as the bill requires the court in his State to still follow the State law. Now, in States where they have the State-court practice with this Federal practice we will have two kinds of procedure, but we would make the procedure in our State and in other States similarly situated uniform. And it would be a good thing for Kentucky, and I think the Kentucky lawyers want it.

Mr. VOLSTEAD. May I call attention to the fact that it will not be uniform, because in many States, I assume, they do not require that the charge shall be written by the judge at all. It is not provided in my State, for instance, that the charge shall be written up, and still this would compel it to be written.

Mr. GRAHAM of Pennsylvania. I am going to suggest that in line 5 of section 2—and I would ask the attention of the gentleman from Arkansas [Mr. CARAWAY] to that—an amendment be made by inserting the words "or rules of procedure and practice."

Mr. CARAWAY. That is in the proviso?

Mr. GRAHAM of Pennsylvania. Yes.

Mr. CARAWAY. How would it read?

Mr. GRAHAM of Pennsylvania. As it reads now it is---

Mr. CARAWAY. I know how it reads now.

Mr. GRAHAM of Pennsylvania. "Courts sitting in States where the law permits." There may be a question raised if simply a rule of court provides it.

Mr. CARAWAY. I have no objection to that. What I wanted to preserve was that the Federal courts would be compelled to follow the State procedure.

Mr. GRAHAM of Pennsylvania. That is what I am aiding you to do.

The SPEAKER pro tempore. The time of the gentleman from Pennsylvania has expired.

Mr. GRAHAM of Pennsylvania. I have made these remarks because I thought it was only fair to present the whole case to the consideration of my colleagues. [Applause.]

Mr. VOLSTEAD. I yield 10 minutes to the gentleman from Kansas [Mr. LITTLE].

Mr. LITTLE. Mr. Speaker, it has been a third of a century since I began the practice of the law. It has been 32 years, I think, since I made my first appearance as a lawyer in the Federal courts. The State in which I have practiced has followed the policy which is required in this bill. The Federal court in that State has followed the practice against which this bill is aimed. So I have had an opportunity to see both methods very much in use. The gentleman from Pennsylvania [Mr. GRAHAM] has stated that he comes from a State where they use the other method, both in the State courts and in the Federal courts, and he hints that he may be prejudiced in favor of his own system, which is very natural. Anybody who has had the extended and successful experience that my colleague from Pennsylvania [Mr. GRAHAM] has had, would very naturally be somewhat fixed in his ideas about the merits of the practice pursued.

But I think those of us who come from States where the practice is dissimilar in the State courts and in the Federal courts have the advantage of the gentleman in opportunity for estimating the merits of the two methods of practice. Under the practice that he advocates the attorney begins his address to the jury after he knows what the evidence is, but before he knows what the law is. A man might just as well address the jury without knowing what the evidence was as to talk to them without knowing what the law was. It would be just as logical.

In the second case I ever tried in the Federal court the question at issue was whether a letter written by the president of the national bank that I represented was a fraudulent letter or not. Of course, I said it was not, and my opponent said it was a fraud, and that they should win their case on that letter.

Before the case had proceeded far the Federal judge remarked casually, in his frank and open way, that if that letter was not a fraud he did not know what a fraud was. Of course, that had a tendency—a slight tendency—to prejudice the jury against my client, though they could believe the judge did not know, as he did not. I called the president of the biggest bank in the State as a witness, and he swore that that was exactly such a letter as he would have written, whereupon the judge said, "Well, I guess I do not know what a fraud is, then." But he had managed to prejudice the jury by his previous statement, so that 11 of them voted against us, and we had a disagreement of the jury and had to try the case over again. Personally I do not think a judge should testify—even in rebuttal—unless he is sworn. Then another judge came down and sat in the case, and as soon as the evidence was presented he told the jury that the letter was not fraudulent at all; that it was just such a letter as anybody should have written; and that if he had written any other kind it would have been fraudulent. He directed the jury presently to decide in our favor. That was an instance in which no man on earth could tell what to say to the jury until he found out what the court was going to hold as to what the law was.

In those States where the court is required to address the jury before counsel argue the case and is required to write out his instructions to the jury the plaintiff appears and puts in writing his requests for certain instructions to the jury. He states the law of his case. The defendant does the same thing. The court then makes his choice between the two. He can take one of them or the other, or he can take a part of one and a part of the other, or he can disregard both; but if he fails to give any just request as to the law made by either plaintiff or defendant or to cover the point in some way in his charge, then the case is reversed on him, if the point is of any importance.

The minute that I, representing the plaintiff, state to the court what the law is and ask him so to charge, and the court refuses to do it, he gives me ground for a new trial, on a reversal in the court of appeals, if I am beaten, and the same is true of the defendant. This conduces to equity and to a just determination of the case. In a State where the judge does not tell the jury what the law is until after counsel have addressed the jury, no man on earth can tell what the decision of the court may be.

In Federal courts, without stenographers, you can not be sure of what error is instructed. Of course, the instructions should be in permanent form for the record and that the attorneys may read and be guided by them. Every man is entitled to a jury trial, and it is not for a judge to sit on a jury. The sheriff, the marshal, or the bailiff has just as much right to tell the jury which witness should be favored as the judge. A man who butts in on a trial that way is a dangerous man. The duty of the court is to state the law and see it is obeyed. One side may address the jury for an hour, following one line of evidence, and the court may say that that has nothing to do with the case. It is not giving a man an opportunity to have a full day in court. No man has had his full day in court until the

opportunity comes to his attorney to present the facts to the jury with a knowledge of what the law is. There is always a dispute between the lawyers on each side as to what the law is, and if the attorney for the plaintiff has an incorrect idea of the law of the case his argument goes into the waste basket and his evidence is of no value, and it is the same for the defendant.

The proper thing is for the lawyer to begin the presentation of his case to the jury with all the law in his hand, written out, stating what it is. The gentleman suggests that it should not be in writing. When a judge begins the preparation of his charge to the jury he takes the requested instructions made by each side, goes to his office with his stenographer, and in a few minutes he has prepared the charge, because he has it all accessible at hand.

On the other hand, if he is a just and industrious judge it will take him as long to get ready the other way and no time will be saved. If he jumps in and delivers a charge without looking up the law he has not done the fair thing. So that it would take just as long one way as the other.

Before any judge can charge a jury he must take a little time with the facts before him to decide what the law is. It takes as long for him to prepare his charge after the argument as it does before. And in this system the attorneys have an opportunity to present to the jury their arguments knowing what the law is.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. VOLSTEAD. I yield to the gentleman one minute more.

Mr. LITTLE. The gentleman suggests that he has great confidence in the courts and does not think it is necessary to make this change. So have I, but the courts that follow this procedure are more numerous and they do as well as his courts. If the courts which instruct after the arguments are worthy of confidence so are those which deliver written instructions before counsel address the jury.

Mr. RAKER. Will the gentleman yield?

Mr. LITTLE. Yes.

Mr. RAKER. Is it not a fact that the method the gentleman suggests and which is provided in this bill has the effect of expediting the trial of cases?

Mr. LITTLE. Absolutely. The gentleman's experience on the bench makes him a good witness.

Mr. BLANTON. Is it not a fact that every judge who has been on the bench any time has copies of his old charges from which he can select a charge that will apply to almost any case he may have before him?

Mr. LITTLE. Piles of them that high, and barrels of them sometimes. The gentleman from Texas was a long time on the bench and knows.

Mr. GRAHAM of Pennsylvania. Will the gentleman yield?

Mr. LITTLE. Yes.

Mr. GRAHAM of Pennsylvania. Where has the gentleman seen any such court where the judge has piles of charges?

Mr. LITTLE. Almost every judge in my State has them in his office room, and I have a good many judges' old instructions in my own office. They are always easily accessible from the files.

Mr. BLAND of Missouri. Will the gentleman yield?

Mr. LITTLE. Yes.

Mr. BLAND of Missouri. Is it not a fact that every trial judge where this procedure exists during the progress of the trial is constantly preparing his instructions so far as they will affect the case?

Mr. LITTLE. Precisely.

Mr. BLAND of Missouri. And so, at the conclusion of the evidence, he has the complete instructions ready?

Mr. LITTLE. The gentleman from Missouri ought to know that is so, for he was on the bench in our State for a number of years, and he has practiced law in Missouri, where the practice is somewhat different, and I hope he will tell the House something about that. As a general proposition, I believe that no man on earth has a right to come to a decision in any case or indicate his judgment until he hears all the evidence. Any judge who, before the evidence is all produced, drops a remark before the jury as to how he stands is not an honest man. No court has a right to form its opinion or impress the jury until the witnesses are all heard.

John Brown was tried for his life in Virginia and condemned. Somebody asked him about the judge. He said, "I never did know which side that little man was on." There must have been an honest judge. [Applause.]

Mr. GARD. Mr. Speaker, I yield five minutes to the gentleman from Kentucky [Mr. THOMAS].

Mr. THOMAS. Mr. Speaker, like most of the gentlemen in this House, I have a license to practice law and have practiced at the law for some years. In the State of Kentucky the court must charge the jury in writing in all criminal cases and must give all the law in criminal cases before the argument of counsel. In civil cases he must give the charge to the jury in writing if requested by counsel before argument to the jury, and that is the only logical way, in my opinion, to try a lawsuit. If a lawyer argues a case, he ought to know what the law of that particular case is before he argues it, so that he can apply the facts to the law. If the charge is not given before he makes his argument, he frequently guesses at what the court will charge the jury and generally takes a crack at the sky and very often misses it. I remember one time being in San Antonio, Tex., when my friend Mr. BEE was district attorney at that place. They have this method—or did then in Texas—of a judge charging the jury after the argument had been closed. A civil case was on trial. One of the lawyers argued that such and such was the law, and another lawyer for the other side argued that something else was the law. The court instructed the jury entirely different from what either one of them had contended. If the court had instructed the jury before the argument of counsel, his instruction, whether the law was correct or not, would have been the law of that particular case until reversed by a higher court, and the attorneys arguing the case would have been confined to those instructions as the law of that case and could have properly applied the facts. That is the method of practice in the State of Kentucky, and I will venture that there is not a lawyer in the State from the Big Sandy to Mills Point who would be willing to adopt a different kind of practice. It is the logical practice and it is the proper practice. I never had any patience with the court making a speech to a jury for his side of the case, and that is what courts frequently do. I do not think the law ought to permit any court to instruct upon the facts.

The SPEAKER. The time of the gentleman from Kentucky has expired.

Mr. THOMAS. Mr. Speaker, I will ask the gentleman to give me a little more time.

Mr. GARD. How much time have I remaining?

The SPEAKER. Twenty-two minutes.

Mr. GARD. I yield five minutes more to the gentleman.

Mr. THOMAS. Mr. Speaker, I think the court ought to give the law as he conceives it to be, and the jury should be the sole judges of the facts, and they should determine what the facts are, not from what the court says but from the testimony of the witnesses and the law as applied to the testimony. If the court has the right to say what the facts are, why should we have a jury, or of what use and what purpose is a jury, if it is to sit there and decide the facts of a case as the court in summarizing it states the facts to be. You might just as well repeal the jury system. The instructions to a jury should give all of the law applicable to the case on trial and in the shortest and simplest form. That, in my opinion, is the most conducive to justice. I have heard of Federal judges in summarizing the testimony absolutely denounce witnesses before juries as being liars. I understand there is one in the State of Arkansas who makes a practice of doing that thing; and any Federal judge who is guilty of such a thing is not fit to try an animal, much less a human being, and he ought to be impeached, I do not care who he is. The object of courts is, or ought to be, to give justice in all cases, and whenever a judge goes to summarizing testimony I think that he is liable to be subject to the same kind of weakness of human nature that affects us all, and that is, in the summary he may favor the side that he honestly thinks ought to prevail. If this bill is passed, the testimony will be heard and the court will have to give its instructions in writing without giving instructions as to how the case should be decided, and then the jury should take his instructions as the law of the case and apply that as best they can to the testimony of the witnesses and decide the case accordingly.

The SPEAKER. The time of the gentleman from Kentucky has again expired.

Mr. KING. Mr. Speaker, a point of order. I have been watching the clock very carefully while the gentleman from Kentucky has been speaking, and he has been cut off one minute of his time.

Mr. THOMAS. I will grant that minute to the gentleman from Illinois.

Mr. KING. I do not want it, but I was speaking for the gentleman.

Mr. GARD. Mr. Speaker, if there is any confusion about the time, I shall be glad to accept the minute remaining. I yield five minutes to the gentleman from Alabama [Mr. OLIVER].

Mr. OLIVER. Mr. Speaker, I am very heartily in favor of the bill as drawn and interpreted by the gentleman from Arkansas [Mr. CARAWAY], who introduced it. I am doubtful, however, as to whether section 2 as drawn carries out the purposes he

announces, and I have therefore prepared two amendments, both of which are intended to make effective the interpretation given by the gentleman from Arkansas. I think the House evidently favors the interpretation which he gave the bill. In section 2 it is provided that the charge of the court on the issue of law shall be delivered in advance of the argument in those States where such practice prevails.

The language of section 2 might be construed as simply requiring the charge of the court on mere abstract questions of law to be given in advance of the argument and might permit the court to summarize the evidence by way of charge after the conclusion of the argument. I have prepared an amendment requiring the charge on issues of law and fact to be given in advance of the argument. On page 2 the language is perhaps doubtful, in that it does not require that the charge, when requested in writing, shall be reduced to writing before its delivery. Evidently that is the purpose of the bill. Some of the committee, however, have thought that a compliance with this requirement of section 2 would be met where a stenographer took down the charge and afterwards transcribed and submitted it to the attorneys.

Mr. GARRETT. I want to ask the gentleman if it is not the customary language as is contained in various State constitutions and State statutes? Is not this language in the exact form it is in many States, and has it not been construed always to mean that it should be in advance?

Mr. OLIVER. I will state this to the gentleman: That some members of the committee are not in favor of that construction and feel that the requirement is met by taking contemporaneous stenographic notes to be later transcribed.

Mr. GARRETT. I do not think that is the construction in any State.

Mr. OLIVER. I am not familiar, of course, with the construction in all of the States——

Mr. GARRETT. Of course, I am not, either.

Mr. OLIVER. For your information I will say that attorneys from some Western States inform me that it is a sufficient compliance for the stenographer to take down the charge. I have therefore prepared an amendment for insertion after the word "charge," in line 1, on page 2, the words "before delivery." I yield back what time there may be remaining.

Mr. DOWELL. Will the gentleman yield?

Mr. OLIVER. Yes.

Mr. DOWELL. On page 2 the bill provides that at the request of either party the judge shall give instructions in writing. There is no provision, however, in the bill as to the time when this request may be made. Does not the gentleman believe that there should be a time when these requests should be offered?

Mr. OLIVER. I think it would expedite the trial if you required that at some period of the trial in advance of the argument that such demand be made.

The SPEAKER. The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. OLIVER: Page 1, line 11, after the word "law," insert the words "and fact."

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

Mr. OLIVER. Will the Speaker permit me to ask a question? I think the word "issue" there should be "issues" of law and fact, and I move that that be amended so as to make the word "issues."

Mr. GARD. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. GARD. Has there been any suggestion that we are proceeding under the five-minute rule?

The SPEAKER. No; but amendments may be offered without the House proceeding under the five-minute rule.

Mr. GARD. I thought the gentleman was going to make that suggestion.

Mr. OLIVER. I thought the amendment was carried.

The SPEAKER. The Clerk will report the next amendment.

The Clerk read as follows:

Page 1, line 11, after the third word, "the," strike out the word "issue" and insert the word "issues."

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

Mr. GARRETT. Mr. Speaker, was the other amendment declared carried?

The SPEAKER. It was.

Mr. GARRETT. I expected to ask a division on that.

Mr. DOWELL. Mr. Speaker, I desire to offer an amendment.

Mr. GARD. I have an amendment to offer.

The SPEAKER. The gentleman from Ohio offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment offered by Mr. GARD: Page 1, line 11, after the word "court," insert "upon request of either party."

Mr. GARD. Mr. Speaker, so that the committee may have an intelligent idea of what they are acting upon, I merely beg leave to say that I think, in section 2, where it provides that the issue of law shall be charged by the court before argument of counsel, it should be at least limited to the request by either party, and I have coupled with this amendment which so provides an amendment striking out the language in line 2, page 2, after the word "side," all of the language in line 3 which requires a judge to reduce his charge to writing.

In other words, it makes this state of affairs under section 2: It provides that where there are to be requests the judge on the issues of law shall be required to charge the jury before the argument of counsel, and strikes out that proviso requiring the court to stop as long as is absolutely necessary to reduce his entire charge to writing. I do not desire to pursue the argument any further. I request a vote after the committee understands it.

The SPEAKER. The question is on the amendment offered by the gentleman from Ohio [Mr. GARD].

The question was taken, and the amendment was rejected.

Mr. THOMAS. Mr. Speaker, I desire to make a motion to reconsider the vote by which the first amendment offered by the gentleman from Alabama [Mr. OLIVER] was passed.

The SPEAKER. The gentleman from Kentucky moves to reconsider the vote by which the first amendment of the gentleman from Alabama was agreed to.

Mr. OLIVER. Mr. Speaker, I will state this, that I have no objection to its being reconsidered. If they think it gives to section 2 a different interpretation than that announced by the gentleman from Arkansas [Mr. CARAWAY], I have no desire to offer it.

The SPEAKER. The question is on the motion to reconsider.

The question was agreed to.

Mr. RAKER. May we have the amendment reported?

The SPEAKER. The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. OLIVER: Page 1, line 11, after the word "law," at the end of the line, insert the words "and fact."

Mr. BRAND. Mr. Speaker, I desire to offer a substitute to that amendment. Am I in order?

The SPEAKER. The gentleman is in order.

Mr. BRAND. As a substitute to the amendment offered by the gentleman from Alabama [Mr. OLIVER], I move to amend as follows:

After the word "issues," add the following words in section 2, line 11: "raised by the pleadings and evidence involved in said cause."

The SPEAKER. The gentleman from Georgia offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment offered by Mr. BRAND: Page 1, line 11, after the word "issues," insert: "raised by the pleadings and evidence."

Mr. RAKER. Will the gentleman yield for just a moment? The court instructs upon any other matter without the pleading and evidence.

Mr. BRAND. This section confines it to the law.

Mr. SANFORD. Mr. Speaker, I make the point of order that there is no quorum present. It does not seem possible to do business in this way.

The SPEAKER. The gentleman from New York makes the point that there is no quorum present.

Mr. SANFORD. I will reserve it for the present, Mr. Speaker.

The SPEAKER. The question is on the amendment offered by the gentleman from Georgia as a substitute to the amendment offered by the gentleman from Alabama [Mr. OLIVER].

Mr. BRAND. Mr. Speaker, have I the right to a minute or two?

The SPEAKER. The gentleman from Ohio [Mr. GARD] has the floor. The question is on the amendment offered by the gentleman from Georgia [Mr. BRAND].

The question was taken, and the amendment was rejected.

The SPEAKER. The question is on the amendment offered by the gentleman from Alabama [Mr. OLIVER].

The question was taken, and the amendment was rejected.

Mr. DOWELL. Mr. Speaker, I desire to offer an amendment.

Mr. VOLSTEAD. Mr. Speaker——

The SPEAKER. The gentleman from Minnesota, the chairman of the committee, asks for recognition. Does the gentleman from Minnesota yield to the gentleman from Iowa?

Mr. VOLSTEAD. I do.

The SPEAKER. The gentleman from Iowa is recognized.

Mr. DOWELL. Mr. Speaker, I move to amend by adding, in line 1, page 2, after the word "of," the words "all the."

The SPEAKER. The gentleman from Iowa offers an amendment, which the Clerk will report.

The Clerk read as follows:

Page 2, line 1, after the word "of," insert the words "all the."

The SPEAKER. The question is on agreeing to the amendment.

Mr. BLAND of Missouri. Will the gentleman yield a moment? Would it not be better, after the words "all the," to write the word "evidence" instead of "testimony"?

Mr. DOWELL. I did not want to change the language of the bill.

Mr. JOHNSON of Mississippi. May we not have the bill reported as it is proposed to be amended?

Mr. DOWELL. This is the way it will read:

That the judge of the court on the issues of law involved in said cause shall be required to deliver the charge to the jury after the introduction of all the testimony.

Mr. BLAND of Missouri. Will the gentleman yield for a moment?

Mr. DOWELL. I yield.

Mr. BLAND of Missouri. As I understand it, the testimony is that evidence which is introduced under oath. Evidence may be documentary or testimony under oath.

Mr. DOWELL. I am willing to accept an amendment to strike out "testimony" and insert "evidence," and by unanimous consent I will so amend the amendment.

The SPEAKER. The gentleman offers a modified amendment, which he will please state to the Clerk.

Mr. DOWELL. To read, "of all the evidence."

The SPEAKER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. VOLSTEAD. I move to amend on line 5, after the word "law," on page 2, by insisting "or procedure and practice."

The SPEAKER. The Clerk will report the amendment offered by the gentleman from Minnesota.

The Clerk read as follows:

Amendment offered by Mr. VOLSTEAD: Page 2, line 5, after the word "law," insert "or procedure and practice."

The SPEAKER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. VOLSTEAD. On line 6, after the word "counsel," on page 2, insert "or without such charge being written," so as to make it conform in all the States.

The SPEAKER. The Clerk will report the amendment offered by the gentleman from Minnesota.

The Clerk read as follows:

Amendment offered by Mr. VOLSTEAD: Page 2, line 6, after the word "counsel," insert "or without such charge being written."

The SPEAKER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. VOLSTEAD. Page 2, line 7, strike out the word "may" and insert the word "shall."

The SPEAKER. The Clerk will report the amendment offered by the gentleman from Minnesota.

The Clerk read as follows:

Page 2, line 7, strike out the word "may" and in lieu thereof insert the word "shall."

The SPEAKER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. VOLSTEAD. Mr. Speaker, I now move the previous question on the bill and all amendments to final passage.

The SPEAKER. The gentleman from Minnesota moves the previous question on the bill and all amendments to final passage.

The previous question was ordered.

The SPEAKER. The question is on the engrossment and third reading of the bill.

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

On motion of Mr. VOLSTEAD, a motion to reconsider the vote whereby the bill was passed was laid on the table.

EXTENSION OF REMARKS.

Mr. LITTLE. Mr. Speaker, I ask unanimous consent to revise and extend my remarks.

The SPEAKER. The gentleman from Kansas asks unanimous consent to revise and extend his remarks. Is there objection?

There was no objection.

ADJOURNMENT OVER FROM FRIDAY UNTIL TUESDAY NEXT.

Mr. MONDELL. Mr. Speaker, I ask unanimous consent that when the House adjourns Friday it adjourn until Tuesday next. Monday is Labor Day, and quite a number of Members have invitations to speak on that day, and some of them require considerable time to go and come.

The SPEAKER. The gentleman from Wyoming asks unanimous consent that when the House adjourns on Friday it adjourn until Tuesday next. Is there objection?

There was no objection.

ADJOURNMENT.

Mr. VOLSTEAD. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 5 o'clock and 16 minutes p. m.) the House adjourned, pursuant to the order previously made, until to-morrow, Thursday, August 28, 1919, at 11 o'clock a. m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of Rule XXIV, a letter from the Secretary of the Treasury, transmitting copy of a communication from the Secretary of the Interior submitting a supplemental estimate of appropriations required by the National Park Service to reimburse appropriations for the Glacier and Yellowstone National Parks for money expended in fighting forest fires, including construction of a bridge over the Flathead River at Belton, Mont., was taken from the Speaker's table, referred to the Committee on Appropriations, and ordered to be printed.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII, bills and resolutions were severally reported from committees, delivered to the Clerk, and referred to the several calendars therein named, as follows:

Mr. SWEET, from the Committee on Interstate and Foreign Commerce, to which was referred the bill (H. R. 8778) to amend and modify the war-risk insurance act, reported the same without amendment, accompanied by a report (No. 266), which said bill and report were referred to the Committee of the Whole House on the state of the Union.

Mr. COLE, from the Committee on Indian Affairs, to which was referred the bill (H. R. 7751) authorizing the sale of inherited and unpartitioned allotments for town-site purposes in the Quapaw Agency, Okla., reported the same with amendment, accompanied by a report (No. 267), which said bill and report were referred to the Committee of the Whole House on the state of the Union.

Mr. PORTER, from the Committee on Foreign Affairs, to which was referred the joint resolution of the Senate (S. J. Res. 75) authorizing the appointment of an ambassador to Belgium, reported the same without amendment, accompanied by a report (No. 268), which said joint resolution and report were referred to the Committee of the Whole House on the state of the Union.

PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS.

Under clause 3 of Rule XXII, bills, resolutions, and memorials were introduced and severally referred as follows:

By Mr. TINKHAM: A bill (H. R. 8818) to amend the war-risk insurance act; to the Committee on Interstate and Foreign Commerce.

By Mr. KAHN: A bill (H. R. 8819) to amend an act entitled "An act making appropriations for the support of the Army for the fiscal year ending June 30, 1920, and for other purposes," approved July 11, 1919; to the Committee on Military Affairs.

By Mr. McFADDEN: A bill (H. R. 8820) to provide members of the military and naval forces with capital for farm settlements; to the Committee on Banking and Currency.

By Mr. RANDALL of Wisconsin: A bill (H. R. 8821) authorizing the Secretary of War to donate to the city of Oconomowoc, Wis., one German cannon or fieldpiece; to the Committee on Military Affairs.

By Mr. FOCHT: A bill (H. R. 8822) authorizing the Secretary of War to donate to the county of Perry, State of Pennsylvania, to be placed in the public square, city of Marysville, one German cannon or fieldpiece, with carriage and suitable number of shells; to the Committee on Military Affairs.

By Mr. CRISP: A bill (H. R. 8823) to promote the efficiency of the permanent Military Establishment of the United States, and for other purposes; to the Committee on Military Affairs.

By Mr. FERRIS: Joint resolution (H. J. Res. 184) directing the Secretary of War to carry into effect section 7 of the Post Office appropriation act, approved February 28, 1919, and to transfer to the Department of Agriculture for the benefit of the several States the motor-propelled vehicles therein mentioned; to the Committee on Military Affairs.

By Mr. MONDELL. Concurrent resolution (H. Con. Res. 29) for the appointment of a committee to make arrangements for appropriate exercises in the welcome of Gen. John J. Pershing; to the Committee on Rules.

By Mr. WOOD of Indiana: Resolution (H. Res. 266) protesting against the proposed action of this Government in sending of troops to Silesia or any other part of Europe for police duty; to the Committee on Foreign Affairs.

By Mr. PETERS: Resolution (H. Res. 267) for the immediate consideration of House bill 7767; to the Committee on Rules.

By Mr. MONDELL: Resolution (H. Res. 268) providing for the immediate consideration of House concurrent resolution No. 29; to the Committee on Rules.

By Mr. LEHLBACH: Resolution (H. Res. 269) to provide for the consideration of House bill 3149; to the Committee on Rules.

Also, resolution (H. Res. 270) directing the Postmaster General to transmit certain facts; to the Committee on Reform in the Civil Service.

PRIVATE BILLS AND RESOLUTIONS.

Under clause 1 of Rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. ASHBROOK: A bill (H. R. 8824) granting an increase of pension to Lewis Barrick; to the Committee on Invalid Pensions.

By Mr. AYRES: A bill (H. R. 8825) granting an increase of pension to Elias W. Bowman; to the Committee on Invalid Pensions.

By Mr. BEGG: A bill (H. R. 8826) granting a pension to Louise May; to the Committee on Invalid Pensions.

Also, a bill (H. R. 8827) granting an increase of pension to Samuel Z. Beam; to the Committee on Invalid Pensions.

By Mr. CURRIE of Michigan: A bill (H. R. 8828) for the relief of Frank Alger; to the Committee on Claims.

By Mr. DEWALT: A bill (H. R. 8829) granting a pension to Dorothy M. Mohr; to the Committee on Pensions.

By Mr. FISHER: A bill (H. R. 8830) granting an increase of pension to Walter L. Jewell; to the Committee on Pensions.

Also, a bill (H. R. 8831) granting a pension to Margaret J. Mahan, to the Committee on Pensions.

By Mr. FRENCH: A bill (H. R. 8832) granting a pension to John W. Redington; to the Committee on Pensions.

By Mr. HAYS: A bill (H. R. 8833) granting a pension to John Speer; to the Committee on Invalid Pensions.

Also, a bill (H. R. 8834) granting a pension to Caroline Scherrer; to the Committee on Invalid Pensions.

Also, a bill (H. R. 8835) granting a pension to Andrew Jackson Sutton; to the Committee on Invalid Pensions.

Also, a bill (H. R. 8836) granting an increase of pension to Philip C. Cooter; to the Committee on Invalid Pensions.

Also, a bill (H. R. 8837) granting a pension to Arthur Barchman; to the Committee on Pensions.

Also, a bill (H. R. 8838) granting an increase of pension to Gilmon A. H. Simmons; to the Committee on Invalid Pensions.

Also, a bill (H. R. 8839) granting a pension to Green B. Cloud; to the Committee on Invalid Pensions.

Also, a bill (H. R. 8840) granting a pension to George T. Hubbs; to the Committee on Invalid Pensions.

Also, a bill (H. R. 8841) granting a pension to Christopher Martin; to the Committee on Invalid Pensions.

Also, a bill (H. R. 8842) granting a pension to William Bleckwendt; to the Committee on Invalid Pensions.

Also, a bill (H. R. 8843) granting a pension to James M. Murray; to the Committee on Invalid Pensions.

Also, a bill (H. R. 8844) granting an increase of pension to Frederick Lampe; to the Committee on Invalid Pensions.

Also, a bill (H. R. 8845) granting an increase of pension to John W. Bond; to the Committee on Invalid Pensions.

Also, a bill (H. R. 8846) granting a pension to Charles D. Wood; to the Committee on Pensions.

Also, a bill (H. R. 8847) granting a pension to Lucinda J. Henry; to the Committee on Pensions.

Also, a bill (H. R. 8848) granting an increase of pension to Charles C. Mauch; to the Committee on Pensions.

Also, a bill (H. R. 8849) granting a pension to Pearl C. Holt; to the Committee on Pensions.

Also, a bill (H. R. 8850) granting a pension to John P. Compton; to the Committee on Invalid Pensions.

Also, a bill (H. R. 8851) granting a pension to Henry Thomas; to the Committee on Invalid Pensions.

Also, a bill (H. R. 8852) granting a pension to Pernecia Boozer; to the Committee on Invalid Pensions.

Also, a bill (H. R. 8853) granting a pension to Louisa F. Mansfield; to the Committee on Invalid Pensions.

By Mr. IRELAND: A bill (H. R. 8854) granting an increase of pension to William F. Brought; to the Committee on Invalid Pensions.

Also, a bill (H. R. 8855) granting an increase of pension to Cornelia F. Huckins; to the Committee on Invalid Pensions.

By Mr. KAHN: A bill (H. R. 8856) granting a pension to Mary Morgan; to the Committee on Pensions.

By Mr. LANGLEY: A bill (H. R. 8857) granting an increase of pension to Richard L. Davis; to the Committee on Pensions.

By Mr. McANDREWS: A bill (H. R. 8858) granting a pension to Isabella Holt; to the Committee on Invalid Pensions.

Also, a bill (H. R. 8859) to correct the muster of Cassius C. Roberts; to the Committee on Military Affairs.

By Mr. OLDFIELD: A bill (H. R. 8860) granting an increase of pension to Charles E. Frizzell; to the Committee on Invalid Pensions.

By Mr. HENRY T. RAINEY: A bill (H. R. 8861) granting an increase of pension to Matilda M. Whitaker; to the Committee on Invalid Pensions.

By Mr. STEELE: A bill (H. R. 8862) for the relief of Bertrand W. Heim; to the Committee on Military Affairs.

By Mr. WILSON of Illinois: A bill (H. R. 8863) granting a pension to Edward E. Wagner; 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 the SPEAKER (by request): Petition of City Municipal Council of Massachusetts, favoring the independence of Ireland; to the Committee on Foreign Affairs.

By Mr. ASHBROOK: Petition of the Chamber of Commerce of Mansfield, Ohio, in favor of the budget system; to the Committee on Appropriations.

By Mr. BACHARACH: Resolutions adopted by General Henry W. Slocum Post, Grand Army of the Republic, of Paterson, N. J., urging increased pensions for Civil War veterans; to the Committee on Invalid Pensions.

By Mr. BEGG: Petition of the League for the Protection of Korea, of Tiffin, Ohio, protesting against the persecutions of the Koreans by the Japanese; to the Committee on Foreign Affairs.

By Mr. CRAGO: Petition of Local Union No. 131, Journeymen Tailors' Union of America, of Pittsburgh, Pa., disapproving wartime prohibition; to the Committee on the Judiciary.

By Mr. CRAMTON: Petition of Local Union No. 97 of Mount Clemens, Mich., in favor of light wine and beer; to the Committee on the Judiciary.

By Mr. KEARNS: Petition of R. G. Shumaker and others, of Waverly, Ohio, favoring the passage of House bill 8376; to the Committee on the Post Office and Post Roads.

Also, petition of Charles C. Bennett, secretary National Association of Letter Carriers, No. 184, of Portsmouth, Ohio, favoring Senate joint resolution 84; to the Committee on the Post Office and Post Roads.

By Mr. MILLER: Petition of the Clara Barton Tent, No. 1, in regard to House joint resolution No. 157; to the Committee on the Judiciary.

By Mr. REBER: Petition of Mr. William Navick, chairman, and Mr. William Cupstas, secretary American Lithuanian Fraternity, Shenandoah, Pa., relative to the Lithuanian situation; to the Committee on Foreign Affairs.

By Mr. STEENERSON: Petition of Robinson Straus & Co., of St. Paul, Minn., against special tax of $50 per year on sales agents; to the Committee on Ways and Means.

By Mr. TAYLOR of Tennessee: Petition of Roy E. Paul, of Rockwood, Tenn., favoring the passage of Senate joint resolution No. 84; to the Committee on the Post Office and Post Roads.

Also, petition of John L. Hollingsworth, Charles L. Silcox, Lewis M. Broyles, John R. Broyles, William Mazingo, and J. P. Miller, of Lafollette, Tenn., asking for an increase in salaries as mail carriers; to the Committee on the Post Office and Post Roads.

By Mr. THOMPSON of Ohio: Petition of Scott Post, No. 100, with 88 members, of Van Wert, Ohio, favoring an increase of pension to the surviving Civil War veterans to $50 per month; to the Committee on Invalid Pensions.

Also, petition of International Association of Machinists, Van Wert Lodge, No. 667, indorsing Government ownership of railroads under the Plumb plan; to the Committee on Interstate and Foreign Commerce.