3918. Also, petition of Lannin & Kemp and Harvey A. Willis Co., of New York, protesting against soldier bonus legislation; to the Committee on Ways and Means.

3919. By Mr. TAGUE: Petition of New England Section of Society of American Foresters, favoring report of Joint Commission on Reclassification of Salaries; to the Committee on Reform in the Civil Service.

3920. Also, petition of National Association of Cotton Manufacturers opposing immediate passage of pending patent legislation; to the Committee on Patents.

3921. Also, 49 petitions of residents of Boston, Mass., favoring increase in wages for postal employees; to the Committee on the Post Office and Post Roads.

3922. By Mr. TILSON: Petition of Connecticut Congress of Mothers, urging passage of Sheppard-Towner bill; to the Committee on Education.

SENATE.

THURSDAY, *May 27, 1920.*

(Legislative day of Monday, May 24, 1920.)

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

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by D. K. Hempstead, its enrolling clerk, announced that the House agrees to the amendments of the Senate to the bill (H. R. 13416) making appropriations for the payment of invalid and other pensions of the United States for the fiscal year ending June 30, 1921, and for other purposes.

The message also announced that the House agrees to the amendment of the Senate to the bill (H. R. 4438) to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment.

The message further announced that the House disagrees to the amendments of the Senate to the bill (H. R. 13587) making appropriations for the support of the Army for the fiscal year ending June 30, 1921, and for other purposes, agrees to the conference asked for by the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. KAHN, Mr. ANTHONY, and Mr. DENT managers at the conference on the part of the House.

The message also announced that the House had passed the joint resolution (S. J. Res. 170) to authorize and direct the Secretary of the Navy to open certain naval radio stations for the use of the general public with an amendment, in which it requested the concurrence of the Senate.

The message further announced that the Speaker of the House had signed the following enrolled bill and joint resolution, and they were thereupon signed by the Vice President:

S. 3897. An act to amend section 16 of the act of Congress approved July 17, 1916, known as the Federal farm-loan act; and

S. J. Res. 179. Joint resolution authorizing use of Army transports by teams, individuals, and their equipment representing the United States in Olympic games and international competition.

PETITIONS AND MEMORIALS.

Mr. CAPPER presented a memorial of Local Lodge No. 65, Brotherhood of Railway Trainmen, of Osawatomie, Kans., remonstrating against the passage of the Army reorganization bill, which was ordered to lie on the table.

He also presented a petition of the Women's Auxiliary, Benjamin Fuller Post, American Legion, of Pittsburg, Kans., praying for the granting of a bonus to ex-service men, which was referred to the Committee on Finance.

He also presented a memorial of the Lyon County Pomona Grange, Patrons of Husbandry, of Emporia, Kans., remonstrating against the passage of the so-called Nolan tax bill, which was referred to the Committee on Finance.

Mr. McLEAN presented a petition of Local Union No. 22, Journeymen Tailors' Union of America, of New Haven, Conn., praying for the parole of Federal prisoners, which was referred to the Committee on the Judiciary.

He also presented petitions of the Chamber of Commerce of New Britain; of Local Branch No. 175, National Association of Letter Carriers, of Middletown; of the Central Labor Union of Stamford; of Local Council No. 8, Order of United American Mechanics, of New Britain; of the Chamber of Commerce of West Haven; of Court Washington, No. 67, Foresters of America, of Torrington; and of sundry citizens of Bridgeport, all of the State of Connecticut, praying for an increase in the salaries of postal employees, which were referred to the Committee on the Post Office and Post Roads.

He also presented a memorial of the Albanian Society of Goodyear, Conn., remonstrating against the annexation of the southern Provinces of Albania to Greece, which was referred to the Committee on Foreign Relations.

He also presented memorials of the directors of the National Bank of New England, of East Haddam; the Connecticut National Bank, of Bridgeport; the Middletown National Farmers & Mechanics' Savings Bank, of Middletown; the Savings Bank of Middletown; and the Chelsea Savings Bank, of Norwich; the Danbury National Bank, of Danbury; and the Rockville National Bank, of Rockville; and of the East Hampton Bank & Trust Co., of East Hampton, all in the State of Connecticut, remonstrating against the enactment of legislation imposing a Federal tax on the sale of securities, which were referred to the Committee on Finance.

He also presented a petition of the Congress of Mothers for Child Welfare of the State of Connecticut, praying for the enactment of legislation providing for the protection of maternity and infancy, which was referred to the Committee on Public Health and National Quarantine.

Mr. TOWNSEND (for Mr. NEWBERRY) presented a petition of sundry citizens of Ann Arbor, Mich., praying for the enactment of legislation providing for the protection of maternity and infancy, which was referred to the Committee on Public Health and National Quarantine.

He also (for Mr. NEWBERRY) presented memorials of Local Lodge No. 8, Pan-Albanian Mohammedan Religion Society of America, of Detroit; of the Albanian Educational Club of Detroit; of the Albanian Society of Pontiac; and of the Pan-Albanian Federation of America, all in the State of Michigan, remonstrating against the enactment of legislation awarding to Greece by the peace conference of Northern Epirus, including Corytza, the 12 islands of the Ægean and the western coast of Asia Minor, which were referred to the Committee on Foreign Relations.

He also (for Mr. NEWBERRY) presented a memorial of the Civic and Commercial Association of Sault Ste. Marie, Mich., remonstrating against the enactment of legislation recognizing the soviet government of Russia by the United States, which was referred to the Committee on Foreign Relations.

REPORTS OF COMMITTEES.

Mr. SHERMAN, from the Committee on the District of Columbia, to which was referred the bill (H. R. 7158) to provide for the expenses of the government of the District of Columbia, reported it with an amendment and submitted a report (No. 636) thereon.

Mr. LODGE, from the Committee on Foreign Relations, reported an amendment proposing to appropriate $2,500 for the expenses of two officers of the Public Health Service to be designated by the President to represent the United States at the Sixth International Sanitary Conference at Montevideo, Uruguay, from December 12 to 20, 1920, etc., intended to be proposed to the general deficiency appropriation bill, and moved that it be referred to the Committee on Appropriations and printed, which was agreed to.

BILLS AND JOINT RESOLUTION INTRODUCED.

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

By Mr. CALDER:

A bill (S. 4450) for the relief of Lewis W. Flaunlacher; and

A bill (S. 4451) for the relief of the estate of David Clark; to the Committee on Claims.

A bill (S. 4452) providing for the establishment of a probation system in the United States courts, except in the District of Columbia; to the Committee on the Judiciary.

By Mr. BRANDEGEE:

A joint resolution (S. J. Res. 206) authorizing the erection on public grounds in the city of Washington, D. C., of a memorial to Jeanne d'Arc; to the Committee on the Library.

AMENDMENT TO DEFICIENCY APPROPRIATION BILL.

Mr. STERLING submitted an amendment authorizing the Secretary of the Senate and Clerk of the House of Representatives to pay to the officers and employees of the Senate and the House borne on the annual and session rolls on the 1st day of May, 1920, for extra services during the first and second sessions of the Sixty-sixth Congress, a sum equal to one month's pay at the compensation allowed them by law, etc., intended to be proposed by him to the general deficiency appropriation bill, which was ordered to be printed, and, with accompanying paper, referred to the Committee on Appropriations.

AGRICULTURAL APPROPRIATIONS—CONFERENCE REPORT.

Mr. NORRIS. Mr. President, I desire to ask the Senator from Washington [Mr. JONES] if he will not agree to lay aside the unfinished business, the conference report upon House bill 3184, the water-power bill, that I may call up the conference report on the Agricultural appropriation bill.

Mr. JONES of Washington. I ask the Senator how much time he thinks it will take?

Mr. NORRIS. Of course, I am not able to say, as the Senator knows, just how much debate it will require. As far as I know, there will be very little debate. As soon as the report is agreed to there will be a motion made by the Senator from Mississippi [Mr. HARRISON] that the Senate recede from its amendment. There is only one amendment in disagreement. I will wish to make a few remarks to explain the situation and we will have a roll call on the motion of the Senator from Mississippi. If that motion is carried, then, of course, it is ended and the Agricultural appropriation bill will not have to go back to conference but will become a law with the seed provision in it.

If the motion of the Senator from Mississippi is defeated, I intend to offer a motion, that I do not believe will be resisted, for a compromise amendment, and I want to explain that during the pendency of the first motion.

Mr. JONES of Washington. I appreciate the importance of this conference report and recognize the fact that if the motion referred to shall not prevail the bill will have to go back for further conference and a further report here. I understand if the unfinished business is laid aside it can be called up at any time if the debate would seem to be proceeding at an undue length.

I wish to state that I want to have the conference report on the water-power bill disposed of as soon as possible, and I propose to keep it before the Senate until action is taken upon it one way or the other. For matters like this, which will not take much time and but little or no debate, I am willing to lay aside the unfinished business. Upon the statement of the Senator from Nebraska, I ask that the unfinished business be temporarily laid aside.

The VICE PRESIDENT. The Chair hears no objection, and the unfinished business is temporarily laid aside.

The Chair lays before the Senate the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate numbered 93 to the bill (H. R. 12272) making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1921.

Mr. LODGE. Mr. President——

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

ARMENIAN MANDATORY.

Mr. LODGE. I wish merely to submit a report. I report from the Committee on Foreign Relations a concurrent resolution, which is very brief. I ask that it may be read and then go to the calendar. I do not propose to take it up this morning.

The VICE PRESIDENT. The concurrent resolution will be read.

The Reading Clerk read the concurrent resolution (S. Con. Res. 27), as follows:

Resolved by the Senate (the House of Representatives concurring), That the Congress hereby respectfully declines to grant to the Executive the power to accept a mandate over Armenia, as requested in the message of the President, dated May 24, 1920.

Mr. HITCHCOCK. Will the Senator from Massachusetts indicate when he proposes to call up the resolution for action?

Mr. LODGE. That depends on the state of the business here; I can not say. We want to get the appropriation bills and the conference reports out of the way. I am ready to take it up, as far as I am personally concerned, at any time, but I can not tell exactly when it will be taken up.

Mr. HITCHCOCK. Probably this week?

Mr. LODGE. I really can not say. I do not know how long the conference reports will take. I shall be glad to take it up as soon as the conference reports are disposed of.

The VICE PRESIDENT. The concurrent resolution will be placed on the calendar.

Mr. LODGE. I ask to have printed as a Senate document that portion of the Harbord report relating to the military problem of a mandatory. It is the report made to Gen. Harbord by Brig. Gen. Moseley, and covers the whole question of the military obligations of the mandatory of Armenia.

The VICE PRESIDENT. Without objection, it is so ordered.

NATIONAL BUDGET SYSTEM—CONFERENCE REPORT.

Mr. McCORMICK. Will the Senator from Nebraska yield to me for a moment?

Mr. NORRIS. I yield to the Senator.

Mr. McCORMICK. I wish to ask the indulgence of the Senator from Washington [Mr. JONES] for a moment. I ask him if he will permit me, at the conclusion of the consideration of the conference report on the Agricultural appropriation bill, to ask the Senate to consider the conference report on the bill (H. R. 9783) to provide a national budget system and an independent audit of Government accounts, and for other purposes, provided always, of course, that there be no time-consuming debate. The report, I might add, was unanimous, and it is extremely important, in view of the situation in the House and of the requirement for nominations by the President, that the conference report shall be disposed of without delay.

Mr. JONES of Washington. If it creates no discussion, I shall be glad to yield for that purpose.

MILITARY STATUS OF CERTAIN CIVIL EMPLOYEES.

Mr. STERLING. Mr. President, I have here a letter, addressed to me as chairman of the Committee on Civil Service and Retrenchment, from the president of the Civil Service Commission, which letter relates to the tendency to militarize the civil service under the War Department, and refers to the great number of replacements of men in the civil service by soldiers, who afterwards, while performing civil duties, have a military status. The letter is important, and I ask that it may be printed without reading.

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

UNITED STATES CIVIL SERVICE COMMISSION,
Washington, D. C., May 21, 1920.

Hon. THOS. STERLING,
Chairman Committee on Civil Service and Retrenchment,
United States Senate.

DEAR SENATOR STERLING: The civil-service act and rules make this commission in a sense the custodian of the executive civil service of the United States. This office during an experience of nearly 37 years has acquired an unusual knowledge of the trend of affairs in the service.

There appears to be a tendency to militarize the civil service under the War Department. We refer to provisions in appropriation acts replacing civilians with enlisted men, who thereafter perform civil duties with a military status. For example:

The Army appropriation act of August 24, 1912 (37 Stat., 593), provided for the replacement of 4,000 civilians in the Ordnance Corps by enlisted men.

The Army appropriation act of August 29, 1916 (39 Stat., 625), changed the status of headquarters clerks to Army field clerks. The number of positions affected is about 7,000.

The bill introduced in the present Congress to reorganize the Army (S. 3792) seemed to this office to propose replacement of civilians by enlisted men under the War Department to a great extent. Sections 29 to 38 of the bill provided that the permanent personnel of The Adjutant General's service and seven other services named should consist of enlisted men detailed or assigned from the permanent personnel.

Service.	Section.	Number.
Adjutant General's	29	400
Inspector General's	30	100
Judge Advocate General's	31	100
Ordnance	34	6,000
Finance	35	900
Transportation	36	12,500
Construction	37	6,000
Chemical Warfare	38	1,200
		27,200

The proposed distribution of these 27,200 men throughout the several services of the War Department, where no enlisted men were employed before the war, seems to the commission to indicate a tendency to militarize the civil service of the entire department in much the same maner as the militarization of the Quartermaster Corps, which was begun by the Army appropriation act of August 29, 1916, changing 7,000 headquarters clerks to Army field clerks, and would be completed by section 32 of pending act to reorganize the Army, which provides for 9,000 enlisted men in the Quartermaster Service.

Section 12 of the Army reorganization act authorizes the President to maintain a permanent personnel which includes more than 263,200 enlisted men. Section 15 allows 23 per cent of this number, or at least 60,536 enlisted men, to be paid additional for specialized work in the performance of which no military authority is required. This office has been able to find nothing in the bill to prevent superseding employees in the War Department by this class of enlisted men to any extent desired. The proposed basis of pay of enlisted men runs as high as $100

per month, and additional pay for specialized work as high as $30 per month. These plus the usual allowances to enlisted men would seem likely to make this particular kind of service more expensive to the Government than if civilians were employed.

The commission has invited the attention of the Senate and House Committees on Military Affairs to these provisions of the Army reorganization bill, which it regards as objectionable, but in view of their detrimental effect on the civil service, the commission believes the Senate and House Committees on the Civil Service should be similarly advised.

The act making appropriations for the support of the Army for the fiscal year ending June 30, 1920, appropriates for Army field clerks as follows:

Number.	Individual salary.	Amount.
80	$1,800	$144,000
7	2,000	14,000
172	1,600	275,200
11	1,800	19,800
222	1,400	310,800
14	1,600	22,400
526	1,200	631,200
32	1,400	44,800
57	1,200	68,400
49	1,200	58,800
1,170		

The act also provides that Army field clerks shall have the same allowances and benefits as heretofore allowed by law to pay clerks in the Quartermaster Corps, not including retirement, and that the minimum or entrance pay, exclusive of said allowances, shall be $1,200 per annum. The act also authorized the Secretary of War to employ during the present emergency, and not exceeding four months thereafter, not exceeding 4,272 field clerks. The lowest compensated of this large number of clerks receive a minimum salary of $100 per month plus $35 a month allowances. Service in one of these positions of the most temporary character entitles the employees forever after to the same degree of military preference as a soldier who endures the horrors of war on the battle field, and if they attain a rating of 65 per cent in examination they can be appointed ahead of the most highly qualified civilians. The War Department has no discretion in the matter. It can not fill these positions as they become vacant by civilians selected from among those standing highest as the result of open competitive examination. The commission believes this to be a most extravagant method of performing Government work. Passing over the possibility of securing civilians in accordance with civil-service rules to perform this work at a lower salary, it is believed that the present method of taking men on without competitive tests of fitness results in a poorer quality of work and less quantity per capita. It appears to the commission that the tendencies indicated by the facts above set forth are detrimental to the service in general and repugnant to the present form of government.

By direction of the commission:

Very respectfully, MARTIN A. MORRISON,
President.

AMENDMENT OF THE RULES.

Mr. KNOX. Yesterday I gave notice of a proposed amendment to Rule XXV. Pursuant to that notice, I submit a resolution and ask that it be referred to the Committee on Rules.

The resolution (S. Res. 373) proposing to amend Rule XXV of the Standing Rules of the Senate was referred to the Committee on Rules.

Mr. KNOX. I submit a favorable report from the Committee on Rules on the resolution, and I ask unanimous consent of the Senate for its immediate consideration, with the understanding that if it should provoke debate and discussion of any kind I will yield the floor.

Mr. SMOOT. I should want to have the report read first, so that we may know just what changes are proposed to be made in the rule.

Mr. KNOX. That would require either the reading of the report or a short explanation, and a very brief explanation can be made. It merely involves the proposition which I shall state.

The Committee on Rules unanimously, 10 members of the 12 being present, have recommended to the Senate that the number of standing committees shall be reduced about 40, and cut out all the committees that rarely if ever meet. We have likewise reduced the membership of the principal committees of the Senate. Those which are known as the major committees, being 10 of the most important committees, have been reduced to the uniform number of 15, and the less important committees have been reduced proportionately.

Mr. JONES of Washington. Will the Senator permit an interruption? I am heartily in favor of the Senator's proposition. I fought for it through two or three Congresses, and finally got the salaries of the employees of the committees on an equal basis. This, I was sure, would bring about this result. It has done so and I am glad of it. But unless the resolution can be disposed of without discussion, I shall object. If it can be disposed of without discussion, I make no objection.

Mr. KNOX. I anticipated that there might possibly be an objection, and if there is I will withdraw the request for the present consideration of the resolution.

Mr. UNDERWOOD. Without intending to discuss it, I wish to say, as a member of the Committee on Rules, that the report is unanimous, and I think it is very necessary that this reform should be made in the interest of the business of the Senate. I hope the resolution can be passed without discussion at this time.

Mr. KNOX. I might state to the Senate that it is not proposed to go into effect until the beginning of the Sixty-seventh Congress, when the committees will have to be recast under the rules. It makes no change in the committees of the present Congress. I ask for the adoption of the resolution.

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

Mr. SMOOT. I should like to have the report read, so that we can get some idea of what changes are to be made.

Mr. JONES of Washington. If it is to take time, I shall have to object.

Mr. KNOX. It will take only two or three minutes to read the report. It is a very brief report.

Mr. JONES of Washington. Very well, I will let it be read, but I can not consent to a discussion of it.

The VICE PRESIDENT. The proposed amendment to the rules will be read.

The Assistant Secretary read as follows:

Resolved, That Rule XXV of the Standing Rules of the Senate be amended so as to read:

1. Beginning with the Sixty-seventh Congress, the following standing committees shall be appointed at the commencement of each Congress, with leave to report by bill or otherwise:

Committee on Agriculture and Forestry, to consist of 15 Senators.
Committee on Appropriations, to consist of 15 Senators.
Committee to Audit and Control the Contingent Expenses of the Senate, to consist of 5 Senators, to which shall be referred all resolutions directing the payment of money out of the contingent fund of the Senate or creating a charge upon the same.
Committee on Banking and Currency, to consist of 13 Senators.
Committee on Civil Service, to consist of 11 Senators.
Committee on Claims, to consist of 13 Senators.
Committee on Commerce, to consist of 15 Senators.
Committee on the District of Columbia, to consist of 13 Senators.
Committee on Education and Labor, to consist of 11 Senators.
Committee on Engrossed and Enrolled Bills, to consist of 3 Senators, which shall examine all bills, amendments, and joint resolutions before they go out of the possession of the Senate, and which shall have power to act jointly with the same committee of the House of Representatives, and which, or some one of which, shall examine all bills or joint resolutions which shall have passed both Houses, to see that the same are correctly enrolled, and, when signed by the Speaker of the House and President of the Senate, shall forthwith present the same, when they shall have originated in the Senate, to the President of the United States in person, and report the fact and date of such presentation to the Senate.
Committee on Expenditures in the Executive Departments, to consist of 7 Senators.
Committee on Finance, to consist of 15 Senators.
Committee on Foreign Relations, to consist of 15 Senators.
Committee on Immigration, to consist of 11 Senators.
Committee on Indian Affairs, to consist of 11 Senators.
Committee on Interoceanic Canals, to consist of 11 Senators.
Committee on Interstate Commerce, to consist of 15 Senators.
Committee on Irrigation and Reclamation of Arid Lands, to consist of 11 Senators.
Committee on the Judiciary, to consist of 15 Senators.
Committee on the Library, to consist of 7 Senators, which shall have power to act jointly with the same committee of the House of Representatives.
Committee on Manufactures, to consist of 11 Senators.
Committee on Military Affairs, to consist of 15 Senators.
Committee on Mines and Mining, to consist of 9 Senators.
Committee on Naval Affairs, to consist of 15 Senators.
Committee on Patents, to consist of 7 Senators.
Committee on Pensions, to consist of 11 Senators.
Committee on Post Offices and Post Roads, to consist of 15 Senators.
Committee on Printing, to consist of 7 Senators, which shall have power to act jointly with the same committee of the House of Representatives.
Committee on Privileges and Elections, to consist of 13 Senators.
Committee on Public Buildings and Grounds, to consist of 13 Senators, which shall have the power to act jointly with the same committee of the House of Representatives.
Committee on Public Lands and Surveys, to consist of 13 Senators.
Committee on Rules, to consist of 12 Senators.
Committee on Territories and Insular Possessions, to consist of 13 Senators.

2. The Committees to Audit and Control the Contingent Expenses of the Senate, on Printing, and on the Library shall continue and have the power to act until their successors are appointed.

Mr. ROBINSON. I believe unanimous consent has been given to the consideration of the report. I do not desire to discuss the matter at length, but I should like to ask the Senator from Pennsylvania a question regarding the committees which are provided for in this plan for reorganization. Is the jurisdiction of the present standing committees of the Senate materially affected or changed by this reorganization plan?

Mr. KNOX. Not at all. Under the twenty-fifth rule there is no provision for jurisdiction. For instance, as to the Committee on Foreign Relations there is no provision what its jurisdiction shall be and as to the Committee on the Judiciary there is no provision as to what its jurisdiction shall be.

Mr. ROBINSON. Are the so-called nominal committees, that is, the committees which merely perform any functions, eliminated?

Mr. KNOX. All of them are eliminated. For instance, there are 11 committees on expenditures in the various departments of the Government. Those have been consolidated in one committee, the Committee on Expenditures in the Executive Departments.

Mr. ROBINSON. Is the number of members of standing committees to be reduced?

Mr. KNOX. What we call the 10 major committees are to be reduced in membership to 15. They have varied, some committees consisting of 17 members, some 19, and the Appropriations Committee of 20.

Mr. ROBINSON. If this plan is agreed to, all of the 10 principal standing committees of the Senate will consist of 15 members?

Mr. KNOX. They will consist of 15 members.

Mr. ROBINSON. I merely desire to say that I am heartily in favor of this action and I hope the report will be adopted.

The VICE PRESIDENT. The question is on agreeing to the resolution.

The resolution was agreed to.

AGRICULTURAL APPROPRIATIONS—CONFERENCE REPORT.

The Senate resumed the consideration of the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate numbered 93 to the bill (H. R. 12272) making appropriation for the Department of Agriculture for the fiscal year ending June 30, 1921.

Mr. NORRIS. Mr. President, the conferees on the Agricultural appropriation bill have made several reports and they have progressed in their various disagreements and agreements. In all instances where an agreement has been reached the action of the conference has been approved by the House and by the Senate; but we have not agreed on amendment numbered 93. That is the provision in the House bill which provides for the distribution of congressional seeds. The conferees have reported a disagreement. I understand that the Senator from Mississippi [Mr. HARRISON] is going to make a motion that the Senate recede from its amendment, and, of course, that is a preferential motion and is entitled to be heard first. When he makes the motion I expect to make a few remarks in order further to explain the situation.

The VICE PRESIDENT. The question is on agreeing to the conference report.

The report was agreed to.

Mr. HARRISON. I move the Senate recede from its amendment numbered 93.

Mr. NORRIS. Mr. President, I desire to have the attention of the Senate now for a few moments in order to explain the situation in reference to the amendment to the Agricultural appropriation bill which remains in disagreement. I shall ask for a roll call on the motion to recede from the Senate amendment. Of course, if the motion shall carry, the Agricultural bill will have been passed and will go to the President. However, I am opposed to the motion, and the other conferees are opposed to the motion.

The Agricultural bill, as everybody knows, contains a provision for an appropriation of $239,416 for what is known as the congressional free-seed distribution. The Senate Committee on Agriculture proposed an amendment eliminating that provision, and the Senate approved their action, so that the appropriation was rejected and the language providing for the method by which Members of the other House and Members of the Senate should distribute free seed was eliminated. The motion is to recede from the Senate amendment. So Senators who are in favor of a continuation of the free-seed distribution will vote "yea," and Senators who are opposed to it will vote "nay."

I wish to say to the Senate that there are various other provisions for seeds and bulbs and trees in this appropriation bill. For instance, on a preceding page there is an appropriation of $20,000 "for the investigation, improvement, encouragement, and determination of the adaptability to different soils and climatic conditions of pecans, almonds, Persian walnuts," and so forth. There is also an appropriation of $83,200 for the investigation and improvement of fruits, and the method of growing and harvesting fruits. On the same page there is an appropriation of $11,690 for experimental work. On page 30 there is an appropriation "for horticultural investigations, including the study of producing and harvesting truck and related crops," and their marketing, "the study of landscape and vegetable gardening," and so forth. The appropriation for that purpose is $86,940.

There is also an appropriation of $20,000 for investigations, in cooperation with the States, in regard to nursery stock, and so forth. There is another appropriation of $20,500 for the improvements on the experimental farm and agricultural station on the Arlington estate. There is also an appropriation of $92,700 "for investigations in foreign seed and plant introduction, including the study, collection, purchase, testing, propagation, and distribution of rare and valuable seeds." There is also an appropriation of $130,000 "for the purchase, propagation, testing, and distribution of new and rare seeds."

So if the free-seed item is stricken out there will still remain full provision for the investigation, propagation, raising, and cultivation of all kinds of fruits and vegetables. All the Senate amendment does is to strike out of the Agricultural bill the appropriation of $239,416 for the purpose of buying ordinary seeds, that may be bought anywhere in any seed store, of course, for free distribution by Members of Congress.

Mr. President, the controversy in reference to the free distribution of seeds has been an annual show ever since I have been a Member of Congress. With very few exceptions, the Senate has stricken out this provision and the House has insisted on it; the matter has gone to conference; in the end the Senate has always receded; and the provision for free seeds has been put in for the benefit of Representatives in Congress. So it has become known to the country as an annual congressional vaudeville show.

I read an editorial not long ago in one of the great newspapers, at the time the Senate had stricken the provision out, stating that the annual show was on; that the Senate had stricken out the appropriation for the free-seed distribution by Congress; that it would go to conference; that there would be a disagreement; that the matter would be brought up several times; but that eventually the Senate would recede. I am wondering if we are going to do that.

I want to say to the Senate that if the pending motion is defeated, I shall submit a motion to instruct the conferees on the part of the Senate to agree to the House proposition with an amendment; and I want Senators to listen to the reading of the amendment. In my judgment, it answers every claim that has ever been made on the floor of either House in favor of the free-seed distribution.

It is claimed by those who favor the proposition that a great many people want these seed; that some poor people want them and use them, and so forth. So they fight for the retention of the appropriation. If that be true, any person in the country who wants free seed badly enough to write a letter will be able to get them under the amendment I intend to propose, although the matter of distribution will be taken out of the hands of Members of Congress to a great extent.

I proposed the amendment in conference. The Senate conferees were willing to accept it, but the House conferees refused to take it to the House; they refused to give it that consideration or to extend that courtesy. If it is adopted by the Senate, it will go to the House, and they will then have an opportunity to act on it. The proposed amendment is as follows:

In lieu of the language proposed to be stricken out insert the following:

"For the purchase, testing, and distribution of valuable seeds, bulbs, trees, shrubs, vines, cuttings, and plants, $75,000. Said seeds, bulbs, trees, shrubs, vines, cuttings, and plants shall be sent only to such persons as shall make request therefor: *Provided*, That all such requests made of Senators, Representatives, and Delegates in Congress, if transmitted to the Department of Agriculture, shall be complied with by said department."

In my humble judgment, Mr. President, such an amendment will meet the only argument which can be made in favor of the free distribution of seed. It will reduce the appropriation from $239,000 to $75,000, and will take the distribution of seed out of the hands of Members of Congress, as I believe all thinking men who have studied the matter agree should be done.

I think Senators understand the proposition, and I am not going to go into a further discussion of it; but I ask for the yeas and nays upon the motion.

Mr. HARRISON. Mr. President——

Mr. NORRIS. Will the Senator allow us to have the yeas and nays ordered on the motion?

Mr. SMITH of Georgia. What is the motion?

Mr. HARRISON. The motion is to recede on amendment numbered 93.

Mr. NORRIS. The Senator from Mississippi has made a motion that the Senate recede from its amendment numbered 93, and on that motion I ask for the yeas and nays.

Mr. THOMAS. To recede, with the amendment proposed by the Senator from Nebraska.

The VICE PRESIDENT. No.

Mr. HARRISON. The question will come first on the motion which I have made, and then if that is defeated the Senator from Nebraska may offer his motion, as I understand.

Mr. SMOOT. Mr. President, I rise to a parliamentary inquiry. If the motion of the Senator from Mississippi is agreed to, then there will remain no disagreement between the two Houses?

Mr. NORRIS. That is understood; I think every Senator understands that. If the motion is agreed to, the provision for free seed goes out of the bill and the bill goes to the President.

Mr. SMOOT. That is as I understand it.

Mr. HARRISON. That is correct.

Mr. SMOOT. But the Senator from Nebraska, in the event the motion is agreed to, will have no chance at all to offer the proposed amendment to which he has referred.

Mr. NORRIS. I understand that, and that is the reason I desire the motion defeated. Then the bill will still remain before the Senate and I will be able to offer my proposed amendment. That is the reason I am opposed to the motion of the Senator from Mississippi.

Mr. HARRISON. Mr. President, I have made a motion to recede from Senate amendment numbered 93. It is the only provision of the bill now in disagreement, every other difference between the Senate and the House having been determined.

This bill ought to get out of the way. There are certain provisions in the bill touching the grades of cotton which it is important should be enacted promptly, for unless they become a part of the law by the 1st of June the old law in that regard will remain in force. I have been in favor of the free distribution of seeds through such a provision as the House incorporated in the bill, and which the Senate struck out, and such a provision has been in the bill year by year—so long, in fact, that the memory of man runneth not to the contrary; but it would seem now that there is a desire to defeat an Agricultural appropriation bill in order to change that policy. If the motion I have made is adopted, then the Agricultural appropriation bill is out of the way.

It is true that the Senate Committee on Agriculture and Forestry reported an amendment striking out the free-seed provision inserted by the House, but in the Senate there was no roll call on the adoption of that amendment. Twice, however, the House by a vote—once on a roll call, both times by a vote practically of two to one—insisted upon the free garden seed provision, thus adhering to the old policy which Congress has pursued for a very long time.

It seems to me that it is too trifling a matter to be allowed to hold up a great Agricultural appropriation bill. If the motion which I have made is adopted, then the bill will be out of the way; and it would seem to me it ought to be adopted.

Mr. BORAH. Mr. President, I wish to ask a question in order that I may get my bearings. Do I understand that the Senator from Mississippi has made a motion to recede?

Mr. HARRISON. I have moved that the Senate recede from its amendment numbered 93.

Mr. BORAH. If that motion is agreed to, then the free-seed provision remains in the bill?

Mr. HARRISON. It remains in the bill.

Mr. THOMAS. In other words, it is a question of "seed" and "recede." [Laughter.]

Mr. BORAH. I know what I desire to accomplish, but I do not know with certainty that my vote will be effective. I want to vote against the free distribution of seed, and in that case I will vote against receding.

Mr. HARRISON. When the Senator votes against my motion, he votes to allow the House provision to remain in the bill.

Mr. NORRIS. I am sorry the Senator from Idaho feels as he does, but if he wants to have a continuation of the free distribution of seed by Members of Congress, then on the pending motion he should vote "yea."

Mr. BORAH. I want to vote against a continuation of the free distribution of seed.

Mr. NORRIS. Then the Senator should vote "nay."

Mr. BORAH. If I can keep my bearings long enough now until the roll is called, I shall know how to vote.

Mr. McCUMBER. Mr. President, in the real working out of the two provisions, the one incorporated in the bill by the House and the one proposed by the Senator from Nebraska, we will simply have a difference between an appropriation of $75,000 and an appropriation of $239,000, or whatever amount is now fixed. In the event the amendment of the Senator from Nebraska is adopted, what will the Agricultural Department do? It will buy $75,000 worth of seeds. It will then pay some money to the several agricultural and other papers in the United States to advertise the fact that it has the seeds on hand; it will solicit applications for those seeds, and they will all go out. It is a difference whether the matter will be handled by Members of Congress or whether it will be handled by the Agricultural Department. I do not think it makes a great deal of difference, except as to the amount, which proposition is adopted.

Mr. SMITH of South Carolina. Mr. President, I simply want to state that the outstanding contracts affecting the northern and southern mills as well as the entire cotton trade are involved in whether or not this bill reaches the President before the 1st of June. Unless it does, it will create utter confusion and will certainly cause incalculable loss. Contracts are outstanding now, and it is said by some lawyers that on account of the rider being placed last March on the wheat bill the amendment of the cotton-futures act will lapse with the termination of that bill, and there is a provision in this bill making it permanent legislation. It will involve one of the greatest industries in this country if it is not made permanent legislation before the 1st of June. Even if the seed question were more serious than it is, I think the matter is of sufficient importance for us to waive that question in order to get this bill to a point where it may be signed, to obviate that difficulty.

Mr. BORAH. Mr. President, I do not think there is anything in the world so fortunate as the free-seed proposition. It is always saved by some situation such as this.

Mr. SMITH of South Carolina. Mr. President, I would not discuss the merits or demerits of the proposition in the face of the situation that I have outlined. The Senator from Idaho is right in this instance, that if it is to be defeated it seems to me it is fortunate that it is under the shadow of such an impelling necessity, because I assure him that there is not a mill in this country nor elsewhere but that will be affected, nor could a more serious condition confront the cotton trade than to have this thing lapse and not be signed by the 1st of June. It involves every contract.

Mr. SMITH of Georgia. Mr. President, I shall support the motion of the Senator from Mississippi [Mr. HARRISON], because I think it is all right to distribute these seeds. I did not think so when I first came to the Senate, and I helped strike the provision from the Senate bill. I did not think so the next year, but I really believe there has been a change in conditions, as a result of which the use of these seeds is doing good.

In my own instance I have calls for all that are furnished me from schools in which practical experimental agricultural gardens are conducted. I wish I had more to send them. I understand that now even the city Congressmen use their seeds, because in the cities where there is a patch of land gardening has begun in the last two or three years, and they need the seed for distribution.

I think it is all right. For eight years we have gone through the farce of striking out the seed appropriation in the Senate and then yielding to the House. The House Members are closer to the people in their districts than we can be. They have less to serve and know their wishes. I believe the people want these seeds; I believe they are entitled to have them; and I shall support this motion, because I have come to the conclusion that the House is right about the matter.

Mr. NORRIS. Mr. President, I want to say just one word in regard to the argument made by the Senator from South Carolina [Mr. SMITH], and also the Senator from Mississippi [Mr. HARRISON], that there is a provision in this bill that makes it necessary that it become a law before the 1st of June.

The provision to which the Senator refers is one of the amendments of the Senate that makes permanent law something that will expire on the 1st of June. If this bill were not enacted until the 4th or 5th of June, I do not think it would make any material difference; it would make it permanent law just the same. But, Mr. President, the bill can go to the President before the 1st of June if we defeat this motion and make this proposition of a compromise, so that the

House will have an opportunity to vote on it, which they never yet have had. It can probably all be done to-day, so that there is not any real delay involved in it.

I ask for the yeas and nays on the motion.

Mr. KING. Mr. President, just a word.

I hope that the motion of the Senator from Mississippi will be voted down. If, as the Senator said, for seven or eight years we have yielded to the House upon this item, it is about time the Senate adhered to its convictions. Apparently—and I do not speak with any disrespect at all of the other body; of course, that would not be proper under the rule—the other body, upon a number of bills, has expressed itself very forcibly, and the Senate has felt constrained to yield.

I do not approve at all of the view expressed by the Senator from South Carolina [Mr. SMITH]. I think this is a cheap and demagogic way of appealing to the people and a method of advertising by Congressmen and Senators that they want the votes of the people. I think it is a most disgraceful performance that we should appropriate money for this purpose when we know the object of it and know the misuse of the appropriation.

Mr. NORRIS. I call for the yeas and nays.

Mr. WALSH of Montana. Mr. President, may the substitute offered by the Senator from Nebraska be stated?

The VICE PRESIDENT. The Senator from Nebraska has not offered any substitute.

Mr. WALSH of Montana. I understand; but the Senator has signified that he will do so, and, of course, we should like to be advised of what the ultimate proposition is to be.

The VICE PRESIDENT. The Senator can read it, but it is not in order at this time. The Senator from Montana requests the reading of the substitute again.

Mr. NORRIS. Mr. President, of course it was not in order for me to offer it now on this motion. As I said before, if the motion to recede is defeated, then I shall offer this as an instruction to the conferees when I ask that the matter be sent back for further conference.

In the language that I use here I keep the language that is in this particular amendment. Of course, I want it to be understood that I shall offer this, if I get an opportunity, only as a compromise. I would rather have it all go out.

It reads as follows:

For the purchase, testing, and distribution of valuable seeds, bulbs, trees, shrubs, vines, cuttings, and plants, $75,000. Said seeds, bulbs, trees, shrubs, vines, cuttings, and plants shall be sent only to such persons as shall make request therefor: *Provided*, That all such requests made of Senators, Representatives, and Delegates in Congress, if transmitted to the Department of Agriculture, shall be complied with by said department.

Mr. SMOOT. Mr. President, of course the Senator means that they shall be complied with within the limit of the appropriation.

Mr. NORRIS. Oh, yes. It will not come anywhere near using up the appropriation, as a matter of fact.

Mr. SMOOT. I will say to the Senator that I think that had better be put in.

The VICE PRESIDENT. The yeas and nays have been called for. Is the request seconded?

The yeas and nays were ordered.

The VICE PRESIDENT. The question is on the motion of the Senator from Mississippi [Mr. HARRISON] that the Senate recede from its amendment No. 93. The Secretary will call the roll.

The Assistant Secretary proceeded to call the roll.

Mr. CURTIS (when his name was called). I have a pair with the junior Senator from Tennessee [Mr. MCKELLAR]. Were I at liberty to vote I should vote "nay."

Mr. FERNALD (when his name called). I have a general pair with the junior Senator from South Dakota [Mr. JOHNSON]. I transfer that pair to the senior Senator from Iowa [Mr. CUMMINS] and vote "nay."

Mr. NORRIS (when Mr. GRONNA's name was called). I desire to announce the absence of the Senator from North Dakota [Mr. GRONNA]. If he were present, he would vote "nay."

Mr. OVERMAN (when his name was called). I have a general pair with the senior Senator from Wyoming [Mr. WARREN]. I transfer that pair to the senior Senator from Oklahoma [Mr. GORE] and vote "yea."

Mr. SMITH of Maryland (when his name was called). I have a pair with the Senator from Vermont [Mr. DILLINGHAM], which I transfer to the Senator from Texas [Mr. CULBERSON] and vote "yea."

Mr. WILLIAMS (when his name was called). I have a pair with the senior Senator from Pennsylvania [Mr. PENROSE], who is absent on account of illness. I transfer that pair to the Senator from Tennessee [Mr. SHIELDS] and vote "yea."

The roll call was concluded.

Mr. CALDER. I have a pair with the junior Senator from Georgia [Mr. HARRIS], which I transfer to the junior Senator from Maryland [Mr. FRANCE] and vote "nay."

Mr. JONES of Washington (after having voted in the negative). The senior Senator from Virginia [Mr. SWANSON] is necessarily absent on business of the Senate. I have agreed to pair with him for the day. I find, however, that I can transfer that pair to the Senator from North Dakota [Mr. GRONNA], and I do so, and allow my vote to stand.

Mr. GERRY. The Senator from Arizona [Mr. ASHURST], the Senator from Ohio [Mr. POMERENE], and the Senator from Arkansas [Mr. ROBINSON] are absent on official business.

Mr. CURTIS. I have been requested to announce the following pairs:

The Senator from Delaware [Mr. BALL] with the Senator from Florida [Mr. FLETCHER];

The Senator from New Jersey [Mr. EDGE] with the Senator from Oklahoma [Mr. OWEN]; and

The Senator from Wisconsin [Mr. LA FOLLETTE] with the Senator from Arkansas [Mr. KIRBY].

Mr. CHAMBERLAIN. I have a pair with the junior Senator from Pennsylvania [Mr. KNOX]. In his absence I transfer my pair to the Senator from Arizona [Mr. ASHURST] and vote "yea."

Mr. MYERS. I have a pair with the Senator from Connecticut [Mr. MCLEAN], which I transfer to the Senator from Arkansas [Mr. ROBINSON] and vote "nay."

Mr. DIAL (after having voted in the affirmative). I have a general pair with the Senator from Colorado [Mr. PHIPPS], which I transfer to the Senator from Ohio [Mr. POMERENE] and let my vote stand.

The result was announced—yeas 31, nays 37, as follows:

YEAS—31.

Chamberlain	Henderson	Phelan	Smith, S. C.
Colt	Hitchcock	Pittman	Stanley
Comer	Kendrick	Ransdell	Sutherland
Dial	McCumber	Reed	Trammell
Elkins	McKellar	Simmons	Underwood
Gay	McNary	Smith, Ariz.	Walsh, Mont.
Gerry	Nelson	Smith, Ga.	Williams
Harrison	Overman	Smith, Md.	

NAYS—37.

Beckham	Harding	Myers	Sterling
Borah	Jones, Wash.	New	Thomas
Brandegee	Kellogg	Norris	Townsend
Calder	Kenyon	Nugent	Wadsworth
Capper	Keyes	Page	Walsh, Mass.
Curtis	King	Poindexter	Watson
Fernald	Lenroot	Sheppard	Wolcott
Frelinghuysen	Lodge	Sherman	
Glass	McCormick	Smoot	
Hale	Moses	Spencer	

NOT VOTING—28.

Ashurst	Fletcher	Jones, N. Mex.	Penrose
Ball	France	Kirby	Phipps
Culberson	Gore	Knox	Pomerene
Cummins	Gronna	La Follette	Robinson
Dillingham	Harris	McLean	Shields
Edge	Johnson, Calif.	Newberry	Swanson
Fall	Johnson, S. Dak.	Owen	Warren

So the Senate refused to recede from its amendment numbered 93.

Mr. NORRIS. Mr. President, I move that the Senate further insist upon its amendment numbered 93, ask for a further conference with the House, and that the conferees on the part of the Senate be instructed in accordance with the language which I sent to the Clerk's desk.

Mr. HARRISON. Will it have to be read again?

The VICE PRESIDENT. It has been read twice to the Senate.

Mr. HARRISON. I am going to make a point of order on that proposition on the ground that it is new matter, that it was not considered by the conferees when the matter was in conference, and that the Senate can not take any action like that.

The VICE PRESIDENT. Like what? Like amending an amendment or instructing the conferees—which?

Mr. HARRISON. A motion was made to instruct the conferees to substitute this provision, I understand. That proposition is not in conference at all and has not been considered by the conferees. If the conferees on their own motion should want to consider it and report it back to the House and the Senate, they could do it; but it is not for the Senate to take the initiative.

The VICE PRESIDENT. The Chair thinks the Senate can amend its amendment if it chooses to do so, but the present occupant of the chair has never believed that you can instruct conferees. That is equivalent to saying to the House conferees, "You have got to take the amendment." It does not leave it open to a full and free conference if you tell the conferees that they have got to take it.

Mr. NORRIS. Mr. President, before the Chair rules that it is not within the power of the Senate to instruct its conferees I wish to state that I admit it is something which I have never seen done in the Senate, but I think in general parliamentary law it is conceded to be a proper motion. The reason why it has never been done in the Senate, as I understand it, is because the conferees never wanted to have it done; but this motion is presented by the conferees. It is a very common procedure in the House of Representatives. It was done just the other day on this particular bill in regard to the so-called Comer amendment. The conferees were instructed.

The VICE PRESIDENT. It is the opinion of the Chair that whenever that is done the Senate conferees ought to withdraw immediately from the conference.

Mr. NORRIS. What is the statement of the Chair?

The VICE PRESIDENT. The Senate conferees should immediately withdraw from a conference whenever the House of Representatives undertakes to tell the Senate that it has to accept an amendment.

Mr. NORRIS. I do not construe this motion as meaning that the Senate has to do it, and it does not mean that the House has to do it. It is a proposition. The Senate instructs its conferees to make this proposition to the House conferees. It has the added force of coming from the Senate rather than from the Senate conferees, and the House conferees do not have to agree to it.

Mr. SMITH of Georgia. May I ask the Senator a question?

Mr. NORRIS. Certainly.

Mr. SMITH of Georgia. Suppose the conferees agree, without any instructions from the Senate, on this proposed amendment, offered by the Senator, would it not be subject to a point of order, when it was brought into the Senate, as new matter?

Mr. NORRIS. No, Mr. President. If the Senator will look at the amendment and the language suggested to be inserted in lieu of it, he will have to concede that it is not subject to a point of order. It is exactly the same subject, and uses the same language, as far as it goes.

Mr. SMITH of Georgia. It would be on the same subject, but modified, and then it is not subject to a point of order.

Mr. NORRIS. There is no doubt about that.

The VICE PRESIDENT. The Chair is going to rule, and then an appeal can be taken and the matter settled.

The Chair holds that it will be in order for the Senate, if it chooses, to adopt the amendment as presented by the Senator from Nebraska [Mr. NORRIS].

The Chair holds, secondly, that it is not in order to instruct the conferees to insist upon this amendment; that that is in violation of the principle of the rule with reference to a full and free conference between the two Houses. An appeal from either or both rulings can be taken.

Mr. UNDERWOOD. I ask that the Secretary may read the proposal of the Senator from Nebraska.

The VICE PRESIDENT. The Secretary will state the motion of the Senator from Nebraska.

The ASSISTANT SECRETARY. In lieu of the Senate amendment insert the following:

> For the purchase, testing, and distribution of valuable seeds, bulbs, trees, shrubs, vines, cuttings, and plants, $75,000. Said seeds, bulbs, trees, shrubs, vines, cuttings, and plants shall be sent only to such persons as shall make request therefor: *Provided*, That all such requests made of Senators, Representatives, and Delegates in Congress, if transmitted to the Department of Agriculture, shall be complied with by said department.

Mr. NORRIS. I will modify the caption. It ought to read, "in lieu of the language stricken out by the Senate amendment."

The VICE PRESIDENT. It will be so modified.

Mr. HARRISON. A parliamentary inquiry, Mr. President. This is a conference report we are considering now; we are not considering it originally as a bill in the Senate. Of course, the Senate could instruct the conferees, as proposed by the Senator from Nebraska, on something which the House had done to which the Senate had not agreed; the House could instruct on the Comer amendment, because the Senate had agreed to the Comer amendment. But this is a conference report. If the Senate should adopt the substitute, what would be in conference? Would the original proposition be in conference or would this substitute be in conference?

The VICE PRESIDENT. The substitute.

Mr. HARRISON. Something which the House conferees have never considered, which has not been before the House in its original form, or before the Senate?

The VICE PRESIDENT. Both the original and this substitute. An appeal can be taken. The Chair does not care anything about it, and the Chair does not know that he is right.

Mr. HARRISON. I understand; but I never appeal from a decision of the Chair, because I have profound respect for his judgment.

The VICE PRESIDENT. The Chair does not know that he is right, but it seems to the Chair that the Senate has a perfect right now to send back the only remaining item in conference and to send back to the conferees the question whether the original Senate amendment shall stand or whether this amendment shall stand. The House conferees have an option to take or reject either one.

Mr. NORRIS. Mr. President, I am not so particular about it. The only thing I wanted to do was to get the judgment of the Senate on whether this would be a fair compromise in the opinion of the Senate, in order that the House conferees, as it came from the Senate instead of the conferees, might feel willing to take the matter back to the House for the House's judgment, if they will not agree to it in a report. I am not so particular whether we are instructed or not. As a member of the conference, if I am on the conference, I will submit it, or something of the same tenor, as a compromise only, because we shall have to compromise on something.

Mr. REED. Mr. President, I am interested in the form in which this is presented. I have not the slightest doubt but that the Senator from Nebraska has a right to take the sense of the Senate in regard to the course he desires to have the conference pursue. But I understand that this is in effect an amendment to the bill. The paper before me does not seem to me to be very clear. I have the matter offered, which reads:

> In lieu of the matter proposed to be stricken out insert the following.

In that form, it seems to me, we are practically undertaking to amend a bill which is no longer before the Senate, upon which the Senate took its final vote. If that can be done, then, of course, the whole course of our procedure here, as we have understood it in the past, would be changed.

Mr. NORRIS. Mr. President, will the Senator yield there?

Mr. REED. I will.

Mr. NORRIS. I may be wrong, of course, but I did not offer it as a matter of instructing the conferees with the idea that I was thereby amending the bill. I think that it only has the effect of expressing to the House through the conferees that the Senate would be willing to accept it. It does not mean that they have to agree on this or nothing, as I understand it.

Mr. REED. If it is put in the form that the Senate directs the conferees to endeavor to have this language inserted, I think it is parliamentary and can be done, but if it is a proposal to amend the text of the bill I do not think it can be done, and I think it would be a very hazardous precedent to establish.

Mr. NORRIS. If the Senator will permit me, I should like to propound a parliamentary inquiry to the Chair.

In the judgment of the Chair, would the language suggested by the Senator from Missouri be a proper parliamentary procedure? If so, I am perfectly willing to make my motion in that form. That is as far as I want to go.

The VICE PRESIDENT. The Chair has already ruled.

Mr. REED. There was some confusion, and I did not hear the ruling.

The VICE PRESIDENT. The Chair thinks it would be proper, if the Senator wishes to adopt it, to say that the conferees be not instructed, but requested to agree upon a compromise with the House conferees upon the proposed basis. That can be done, but the Chair does not think the Senate can instruct the conferees.

Mr. NORRIS. I withdraw the motion as originally stated and make it in the form the Chair has suggested, that the conferees on the part of the Senate be requested to submit the following language in lieu of the language stricken out by amendment numbered 93.

Mr. REED. I think that is parliamentary.

The VICE PRESIDENT. As a compromise of the disagreement between the two Houses?

Mr. NORRIS. Yes.

The VICE PRESIDENT. The Chair thinks that can be done.

Mr. REED. With the question stated in that form, I beg the indulgence of the Senate for just about five minutes.

This is an old fight, and has its origin in the theory that the distribution of seeds is a sort of congressional graft, and that the seeds are distributed for the furtherance of the campaigns of Congressmen. It is like a great many other claims that are put forward, and no one sees fit to deny them or explain the facts until the charge becomes accepted as a fact.

I have not the slightest doubt in the world that there is not an item in all the appropriations made by Congress that so directly and immediately benefits all the people of the United States as the item in the appropriation bill which provides for

the distribution of seeds. Of course, no one can follow the benefits and point out exactly where the benefits have occurred, or count up in the aggregate the value to the country; but the fact is that if the Department of Agriculture does its business right, and no one has charged to the contrary, it provides a superior quality of seed that, of course, will produce a superior product.

These seeds are called for by the people of the United States. Speaking for myself, I can not supply, out of the quota of seeds assigned to me as a Senator, one-tenth of the demands or requests that are made for seeds from my State. These requests come from the country, to use a common expression, from "the forks of the creek," from the little neighborhoods, and frequently their receipt is followed by letters of thanks.

I do not care whether the seeds are sent out through Congressmen or not. I would be quite willing to be relieved of the responsibility and that labor, but the man who thinks that seeds sent out to the country and planted and reproduced do not pay for themselves many times over is a very peculiar sort of individual. Here is a community that has just an ordinary kind of tomato. Some one sends in and gets from the Government a superior variety, and one of the good old ladies in the community raises them in her garden. All the other women folks get that seed the next year. The result is that the little package of seed that is sent out from Washington to Mrs. Jones or Mrs. Smith may be the cause of the introduction into an entire county of a superior variety of that product.

This has gone on for years. I have no doubt in the world that the seeds sent out from Washington have produced in products one hundred thousand times the value of the entire cost.

This is some more Republican cheeseparing, picayunish parsimony for political purposes. You vote $600,000,000 a year for an Army without batting an eye. You vote old-age pensions that, before you are through with them, will run to a billion dollars a year in this country, and do not shed a tear. You expend a million dollars a day to keep soldiers in Europe who ought to have been back here 12 months ago, and it does not disturb the peaceful serenity of your dreams. You carry on these plans of enormous expenditure and insist upon an Army of 300,000 men in a time of profound peace, with no enemy at our gates, and no possible enemy to attack us. But when it comes to sending some garden seeds out to the people of the United States you suddenly become very economical. You can tear down a river and harbor appropriation so that the improvements already in will be swept away in two or three years, and then you can vote ten times the sum for something that brings no return, and congratulate yourselves upon your wonderful financial ability.

I hope that this compromise and back-down proposition will be defeated. I hope the House of Representatives will stand just where it stands now, insisting on the provision as it passed the House. There is no use talking much more about it. There are some Senators here who think that this Government is going to be saved by cutting off a few pennies here and a few pennies there, who sit here, and will sit here, having voted and intending to vote in the future for expenditures that are inexcusable. The idea of an Army of 300,000 men in the United States in time of profound peace!

While we are talking about depriving the farmers and owners of little gardens in little villages of seeds, we are talking about going over to Armenia and taking charge of the battle grounds of Europe and Asia.

Mr. McCORMICK. May I interrupt the Senator to say that not many of us here are talking about going over to Armenia.

Mr. REED. I understand that the Senator is not.

Mr. McCORMICK. No; nor many anywhere in the Chamber.

Mr. REED. It may be not, and so much the better; but while that subject is being forced on the attention of the American people and a sentiment sought to be created in favor of it, a proposition that will cost the country, if it is carried, the maintenance of an army of not less than 1,000,000 men in Armenia, we are haggling here about some seeds which sown in good ground will produce one hundredfold.

I said an army of a million men, and I mean it, for whoever undertakes to take charge of the new Armenia and hold it must be prepared to hold it against the entire Turkish hordes, against the hordes of Arabia, and ultimately to defend it against the vast forces of Russia. Some Senators on both sides of the Chamber who may not be for the Armenian proposition, who balk at taking charge of a small section of the world, have been standing here for 18 months insisting that we shall go into a general scheme for the control of the entire world, with all its vast expense in blood and in treasure. Some of those same gentlemen will vote to take the garden seed away from the people in their communities.

I have talked longer than I intended and have gone into other subjects.

The VICE PRESIDENT. The question is on the motion of the Senator from Nebraska [Mr. NORRIS].

Mr. REED. On that I ask for the yeas and nays.

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

Mr. FERNALD (when his name was called). Making the same announcement as to my pair and its transfer as before, I vote "yea."

Mr. OVERMAN (when his name was called). Making the same announcement of the transfer of my pair as on the last roll call, I vote "nay."

The roll call was concluded.

Mr. JONES of Washington (after having voted in the affirmative). Making the same announcement regarding my pair and its transfer to the Senator from North Dakota [Mr. GRONNA] as on the last roll call, I will let my vote stand.

Mr. EDGE. I inquire if the Senator from Oklahoma [Mr. OWEN] has voted?

The VICE PRESIDENT. He has not.

Mr. EDGE. I transfer my pair with that Senator to the Senator from Maryland [Mr. FRANCE] and vote "yea."

Mr. MYERS. I inquire if the Senator from Connecticut [Mr. McLEAN] has voted?

The VICE PRESIDENT. He has not.

Mr. MYERS. I have a pair with the Senator from Connecticut, which I transfer to the Senator from Oklahoma [Mr. GORE] and vote "yea."

Mr. CHAMBERLAIN. I have a general pair with the junior Senator from Pennsylvania [Mr. KNOX]. As he is absent, I withhold my vote.

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

Mr. CURTIS. I have been requested to announce the following pairs:

The Senator from Delaware [Mr. BALL] with the Senator from Florida [Mr. FLETCHER];

The Senator from New York [Mr. CALDER] with the Senator from Georgia [Mr. HARRIS];

The Senator from Vermont [Mr. DILLINGHAM] with the Senator from Maryland [Mr. SMITH]; and

The Senator from Wisconsin [Mr. LA FOLLETTE] with the Senator from Arkansas [Mr. KIRBY].

The result was announced—yeas 39, nays 24, as follows:

YEAS—39.

Beckham	Hale	McCormick	Sheppard
Borah	Harding	Moses	Smoot
Brandegee	Henderson	Myers	Spencer
Capper	Jones, Wash.	New	Sterling
Comer	Kendrick	Norris	Townsend
Curtis	Kenyon	Nugent	Wadsworth
Edge	Keyes	Page	Walsh, Mont.
Elkins	King	Phelan	Warren
Fernald	Lenroot	Phipps	Watson
Frelinghuysen	Lodge	Pomerene	

NAYS—24.

Ashurst	Harrison	Poindexter	Smith, S. C.
Colt	McCumber	Ransdell	Sutherland
Dial	McKellar	Reed	Trammell
Gay	McNary	Simmons	Underwood
Gerry	Overman	Smith, Ariz.	Walsh, Mass.
Glass	Pittman	Smith, Ga.	Williams

NOT VOTING—33.

Ball	Gore	Knox	Shields
Calder	Gronna	La Follette	Smith, Md.
Chamberlain	Harris	McLean	Stanley
Culberson	Hitchcock	Nelson	Swanson
Cummins	Johnson, Calif.	Newberry	Thomas
Dillingham	Johnson, S. Dak.	Owen	Wolcott
Fall	Jones, N. Mex.	Penrose	
Fletcher	Kellogg	Robinson	
France	Kirby	Sherman	

So Mr. NORRIS's motion was agreed to, and it was entered in the Journal, as follows:

Mr. NORRIS moves that the Senate request a further conference with the House of Representatives on the disagreeing votes of the two Houses on Senate amendment numbered 93, and that the conferees on the part of the Senate be appointed by the Chair, and that they be requested, if possible, to compromise the disagreement upon the said amendment upon substantially the following bases:

In lieu of the matter proposed to be stricken out insert:

"For the purchase, testing, and distribution of valuable seeds, bulbs, trees, shrubs, vines, cuttings, and plants, $75,000. Said seeds, bulbs, trees, shrubs, vines, cuttings, and plants shall be sent only to such persons as shall make request therefor: *Provided*, That all such requests made of Senators, Representatives, and Delegates in Congress, if transmitted to the Department of Agriculture, shall be complied with by said department."

The VICE PRESIDENT appointed Mr. GRONNA, Mr. NORRIS, and Mr. GORE conferees on the part of the Senate at the further conference.

NATIONAL BUDGET SYSTEM—CONFERENCE REPORT.

Mr. JONES of Washington. I ask that the unfinished business be laid before the Senate.

Mr. McCORMICK. May I presume on the good nature of the Senator from Washington to permit me now to atempt to secure consideration for the unanimous report of the committee of conference on the bill (H. R. 9783) to provide a national budget system and an independent audit of Government accounts, and for other purposes?

Mr. JONES of Washington. If the Senator from Illinois can have the report disposed of without discussion, I will ask that the unfinished business be temporarily laid aside.

The VICE PRESIDENT. Without objection, it is so ordered. The Chair lays before the Senate the conference report on House bill 9783, called up by the Senator from Illinois, which will be read.

The Assistant Secretary proceeded to read the report.

[For report see Senate proceedings of May 26, pp. 7660–7663.]

During the reading of the conference report,

Mr. KING. Mr. President, if the Senator from Illinois will make a brief explanation of the points in disagreement and of the changes which have been made in the Senate bill, it seems to me that would answer the purpose. I therefore ask unanimous consent that the further reading of the conference report be dispensed with, and that the Senator from Illinois make a brief explanation of the points of difference and of the action of the conferees.

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

Mr. McCORMICK. Mr. President, it would be inexact as it would be ungenerous to our colleagues on the conference committee to say that, although the report embodies some changes in the form of the bill as it passed the Senate, it represents substantially no modification of the substance of that bill. The text of the report, as the Senator will learn, if he will turn to page 3, section 207, provides for the creation of a bureau of the budget; that the Secretary of the Treasury shall be the director thereof, and that there shall be an assistant director appointed by the President. The Senate bill provided that there should be in the Treasury a bureau of the budget and the commissioner thereof appointed by the President.

The bill reported by the conferees includes, in section 205, the provision that for the service of the fiscal year ending June 30, 1923, and for the service of that year only, there shall be presented an alternative budget, incorporating therefor an important provision of the House bill which was not included in the Senate bill.

Those are the sole radical departures from the substance of the Senate bill.

Under Title III, creating the general accounting office, the report of the conferees includes all of the substantive provisions of the Senate bill, but does not create by statute——

Mr. SIMMONS. Mr. President, before the Senator leaves the second change to which he has just referred, I think it would be very well for him to explain what he means by the alternative.

Mr. McCORMICK. Mr. President, it was felt by the conferees for the House that possibly some good might accrue from the presentation of a budget classified in detail according to the kind of service purposed to be supported by appropriations rather than classified according to departments and establishments of government.

I may illustrate by pointing out that to-day there are a number of map-making services scattered through the several departments and that there are a number of health services distributed through the several departments. If I understand the purpose of the conferees of the House, they intend to vest in the President the power to present for the fiscal year 1923, and for this year only, the budget in two forms, the first following in general terms the present Book of Estimates and classified by departments and divisions, the second or alternative budget presenting the estimates aggregated and correlated as to the kind of service. Thus, for example, the estimates for these several map-making services or health services would be presented under the general head of maps or of health rather than classified by departments and establishments of the Government, as under the Book of Estimates with which Senators are familiar.

If I have answered the query of the Senator from North Carolina as it touched the alternative budget, I shall proceed to a very brief consideration of the general accounting office.

The Senate bill provided that there should be three assistants to the comptroller general, each charged with specific responsibilities, to be carried out under the direction of the comptroller general and with his approval—an assistant comptroller, discharging the duties of the present auditors; a second, who would be an expert accountant; and a third, who would be the general bookkeeper of the Government. The conferees of the House held that it would be a mistake rigidly to confer upon three statutory subordinates of the comptroller general the responsibilities fixed by the Senate bill, for reasons of general administration, but especially because the responsibilities of the comptroller general were to be new, and that to departmentize too rigidly now would hamper in the organization of his department. They held that especially it would inhibit an effort to rid the department of about 20 per cent of the employees now engaged in the work for which the comptroller general would be responsible. The conferees of the Senate were brought to agree with the conferees of the House by their argument. The conferees of the House, on the other hand, accepted the general additional powers of the comptroller's office, upon which the committee of the Senate had insisted from the beginning. Finally, that provision of the Senate bill of the value of which the members of the Senate committee were the least certain, the provision creating the board of appeals, we struck out. There was none of the members of the Senate Committee on the Budget who was clearly convinced of the wisdom of this provision; and in the face of the insistence of the House conferees, and conscious of our own want of confidence in our provision, we yielded.

Mr. KING. Mr. President——

The PRESIDING OFFICER (Mr. CURTIS in the chair). Does the Senator from Illinois yield to the Senator from Utah?

Mr. McCORMICK. Certainly.

Mr. KING. May I inquire of the Senator if there is any reviewing board or any appellate power that takes the place of the provision that was stricken out?

Mr. McCORMICK. The comptroller, for certain purposes, may vest specified responsibilities in his subordinates in order that they may make settlements. Provision is made that settlements so determined by his subordinates may be appealed to the comptroller himself.

Mr. President, like all agreements upon measures of this general character, like the agreement between the House and Senate on the railroad bill, there has been concession on the part of the conferees for the Senate and on the part of the conferees for the House. As I suggested at the beginning of my remarks, in my judgment, in substance, the conferees for the House yielded the greater part.

Mr. KING. Mr. President——

The PRESIDING OFFICER. Does the Senator from Illinois further yield to the Senator from Utah?

Mr. McCORMICK. I do.

Mr. KING. Does the Senator think, now, that with the arrangement made the bill is entirely congruous?

Mr. McCORMICK. It is that. It is devoid of any incongruity.

Mr. KING. It articulates in such a way as that there will be proper functioning of the various departments and agencies created?

Mr. McCORMICK. It does. It was the long labor necessary to contrive articulation which delayed our report.

I have only trespassed upon the generosity of the Senator from Washington [Mr. JONES] because the members of the House Budget Committee have urged, and insistently urged, first, that we act to-day in order that they might act, and, secondly, in order that under the new law the President of the United States may make the necessary appointments before the Senate goes into recess. The very important appointments of the comptroller general and the assistant comptroller general must be submitted to the Senate for confirmation before the new law takes effect on July 1. I hope that the Senate may adopt this report to-day.

Mr. SIMMONS. Mr. President, I merely want to say one or two words.

It is very well known that the Senate committee charged with the duty of framing legislation for the purpose of establishing a budget gave most mature consideration to the House bill, and as a result that committee, of which I was a member, materially changed the House plan. Of course, it was expected when the matter went to conference that there would be stubborn contention on the part of the conferees representing both bodies for their views. The conference report does not, in my judgment, materially change the measure as it passed the Senate, and practically all of the changes that are made are with reference to matters about which there was controversy in the Senate committee framing the bill.

There were two courses of procedure with reference to the establishment of the budget system. Both of those methods met approval on the part of certain members of the Senate committee. We finally selected the one which was different from that proposed by the House. Now, the conferees have compromised these matters of difference, retaining a part of the Senate plan, and the Senate has yielded to a part of the House plan.

In my judgment the result of the conference has not materially weakened the bill as framed by the Senate committee. It has merely changed the form of the procedure and shifted slightly the responsibility of final action; but, in my judgment, the general result has been not to weaken the system which it is sought to establish.

This matter of a budget system is one that has been very much discussed in the country. As I took occasion to say once before, both parties have thoroughly committed themselves to a budget system. I do not believe it is possible for the two branches of Congress to have worked out and finally come to an agreement upon a system that will more effectually accomplish the purpose which the Congress has in mind and which the country has in mind in the establishment of a budget than this conference report, and I trust that we may have practically a unanimous vote in support of the conference report.

Mr. KING. Mr. President——

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

Mr. SIMMONS. I do.

Mr. KING. During the consideration of the bill in the Senate an amendment was offered which created an organization or agency that might go into the departments and make an examination with a view to securing efficiency. The amendment was offered by my colleague, the senior Senator from Utah [Mr. SMOOT]. I understand that that provision has been materially modified. Does the Senator state that the bill as now presented contains any of the terms of that provision?

Mr. SIMMONS. I understand that the conference report gives authority which will be amply sufficient to accomplish that purpose.

Mr. McCORMICK. Mr. President——

The PRESIDING OFFICER. Does the Senator from North Carolina yield to the Senator from Illinois?

Mr. SIMMONS. I yield.

Mr. McCORMICK. If the Senator from Utah will turn to the provisions touching the relation between the budget bureau on the one hand and the comptroller's office on the other with Congress, he will find that both are in large measure either responsible to Congress or required to afford Congress such information as it seeks.

Mr. SIMMONS. He will find also that the accounting department has the right to make investigations to enlighten itself with reference to expenditures, and that for that purpose they may call for the books of every bureau, department, or establishment of the Government.

Mr. SMOOT. Mr. President——

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

Mr. SIMMONS. I yield.

Mr. SMOOT. I was simply going to add to what the Senator said that it also provides that Congress shall have the right and power to request this bureau to make an examination and report the facts to Congress on any item found in the budget. I recognize the fact that it is not exactly in conformity with the amendment which was offered by me and agreed to by the Senate, but perhaps it will work out as nearly through the agency created in the budget bill, as now reported, as it could possibly be without the adoption of the plan originally offered by me. I would prefer, of course, to have had the other provision, but I am quite confident that the compromise will work out along the lines which some of us had in mind, namely, that Congress would have some agency at their command to make a thorough investigation on any estimate calling for money from the Treasury of the United States and report their findings direct to Congress and not through some other source.

Mr. SIMMONS. Mr. President, I entirely concur in the statement made by the Senator from Utah [Mr. SMOOT]. I think the bill provides ample authority to enable Congress to secure such information as it may need. I think it also confers upon the accounting bureau ample authority to make investigations in the departments, that all the facts will be available to them, and that they will have full authority to examine the books and obtain the information in order to advise Congress.

The PRESIDING OFFICER. The question is upon the adoption of the conference report.

The report was agreed to.

TUNGSTEN ORES.

Mr. JONES of Washington. Mr. President——

Mr. PHIPPS. Will the Senator yield to me for a moment or two only to make a statement?

Mr. JONES of Washington. I yield.

Mr. PHIPPS. Mr. President, I am very much interested in securing consideration for the bill (H. R. 4437) to provide revenue for the Government and to promote the production of tungsten ores and manufactures thereof in the United States. During the past week I have been absent on account of illness, and I realize that as the time of the Senate has been taken up with other measures, that bill has not been reached. I wondered if it would be possible to agree upon a time when consideration of that measure might be had, and whether it might be agreeable to take it up during the morning hour of Saturday next. In order to test the question, I ask unanimous consent that it be taken up in the morning hour on Saturday next.

Mr. THOMAS. Mr. President, I object.

The PRESIDING OFFICER. There is objection.

HAWAIIAN HOMES COMMISSION.

Mr. NEW. I move that the Committee on Pacific Islands, Porto Rico, and the Virgin Islands be discharged from the further consideration of the bill (H. R. 13500) to amend an act entitled "An act to provide a government for the Territory of Hawaii," approved April 30, 1900, as amended, to establish a Hawaiian homes commission, and for other purposes, and that it be referred to the Senate Committee on Territories. The reason for the motion is simply that House bill 13500 is the same as the Senate bill on the same subject. The bills are identical. They were introduced concurrently in the two Houses. The one in the Senate was referred to the Committee on Territories, which has had hearings on the bill and is about ready to submit a report. The House bill when it came over to the Senate was referred to the Committee on the Pacific Islands, Porto Rico, and the Virgin Islands. I talked with the Senator from New Mexico [Mr. FALL], chairman of that committee, about this change of reference, and he thoroughly understands it. The purpose is simply to avoid complications.

The PRESIDING OFFICER. Without objection, the change of reference will be made.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by D. K. Hempstead, its enrolling clerk, announced that the House disagrees to the amendments of the Senate to the bill (H. R. 13870) making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1921, and for other purposes; requests a conference with the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. GOOD, Mr. VARE, and Mr. BYRNS of Tennessee managers at the conference on the part of the House.

The message also announced that the Speaker of the House had signed the following enrolled bills:

S. 4163. An act to incorporate the Roosevelt Memorial Association; and

H. R. 4438. An act to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment.

SUNDRY CIVIL APPROPRIATIONS.

The PRESIDING OFFICER laid before the Senate the action of the House of Representatives disagreeing to the amendments of the Senate to the bill (H. R. 13870) making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1921, and for other purposes, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. WARREN. I move that the Senate insist upon its amendments, agree to the conference asked for by the House, and that the conferees on the part of the Senate be appointed by the Chair.

The motion was agreed to; and the Presiding Officer appointed Mr. WARREN, Mr. SMOOT, and Mr. OVERMAN conferees on the part of the Senate.

WATER-POWER DEVELOPMENT—CONFERENCE REPORT.

Mr. JONES of Washington. Mr. President, I call up the unfinished business and ask for the adoption of the conference report on the water-power bill.

The Senate proceeded to consider the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 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 mak-

ing 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.

Mr. LENROOT. Mr. President, I very greatly regret that I can not support this conference report, because I realize that it does contain very many excellent features in the public interest. On the other hand, it does contain some features which, in my judgment, are so inimical to the public interest that I can not support it.

I appreciate, Mr. President, that this conference report will in all probability be adopted, but because of the position which I have always taken with reference to this legislation, and the dangers which, it seems to me, lurk in the provisions to which I shall refer in a moment, I wish to make a statement with reference to it before the vote is taken.

I realize, Mr. President, the very great necessity of the development of our water power, the great saving of coal and the effect on transportation which will result from the development of our water power, and I believe that inducements necessary to secure development should be offered to private capital. The difference between the committee and some of us is simply as to what inducements are necessary to secure that development. The committee evidently believes that it is necessary to go very much further in inducements than I believe is necessary to secure that development.

But aside from that, Mr. President, there is one section in the conference report—section 12, found on page 28—which, in my judgment, goes beyond the power of Congress to enact, and I believe that if this report is adopted and this becomes a law the court will hold that at least that section is unconstitutional, and it may hold that because of the unconstitutionality of that section the entire act is rendered invalid.

Mr. President, our jurisdiction with reference to this water-power legislation upon navigable streams depends wholly upon our jurisdiction over navigable waters, and we have no right to legislate with reference to any navigable stream except for the purpose of improving the navigation thereof. All water-power legislation is based upon the theory that the erection of a dam and the conservation of the waters will improve navigation, and if in improving navigation water power is also created in the carrying out of that purpose the Federal Government has the right to deal with that power thus created. But if it be granted in any particular case that the construction of a dam across a navigable river, instead of improving navigation, destroys navigation, it is utterly beyond the power of the Congress to enact any such legislation.

Section 12 as passed by the House provided:

SEC. 12. That whenever application is filed for a project hereunder involving navigable waters of the United States, and the commission shall find upon investigation that the needs of navigation require the construction of a lock or locks or other navigation structures, and that such structures can not, consistent with a reasonable investment cost to the applicant, be provided in the manner specified in section 11, subsection (a) hereof, the commission may, before taking action upon such application, cause a report upon such project to be prepared, with estimates of cost of the power of development and of the navigation structures, and shall submit such report to Congress with such recommendations as it deems appropriate concerning the participation of the United States in the cost of construction of such navigation structures.

So that Congress may, if it deems best, itself provide the navigation structures.

This was permissive as passed by the House, and the Senate adopted an amendment providing that in such case, where the needs of navigation, according to the finding of the commission, required a lock or locks or other navigation structures before granting any applications for a license the matter should be reported to Congress, so that navigation could not be obstructed upon any navigable stream, and that before or in connection with the construction of the dam provision should be made for the necessary lock or locks, in order not to interfere with navigation. Those were the differences between the Houses, the House making it permissive, the Senate making it mandatory.

But now what do we find the conferees have done? The conferees have stricken out both of those provisions and have inserted a new one, reading that the commission "may grant the application, with the provision to be expressed in the license that the licensee will install the necessary navigation structures if the Government fails to make provision therefor within a time to be fixed in the license."

Under the agreements reached by the conferees this commission has the right to obstruct and destroy navigation upon any and every navigable stream in the United States. There is not any question about it; there can not be any question about it. They have the right to grant an application to put a dam across the Mississippi River, so that no boats can float upon that river until such time as Congress, in its wisdom, within the time fixed by the commission, may provide locks, or a private party or a licensee after the expiration of that time may provide them.

But for a period of time fixed in the license the Congress of the United States proposes to give to this subordinate body the power to destroy its navigation in any stream of the United States. That, I say, is beyond the power of the Congress to do. When a body created by Congress, carrying out the directions of Congress, make a finding that the needs of navigation require the construction of a lock or locks in case a dam is built, I say that Congress has no power, either itself or by delegation of power, to authorize the absolute obstruction of that stream without a lock or locks.

I do not believe there is a lawyer in the Senate who upon reflection will disagree with that proposition. It is no answer, as the answer may be made, that the commission would not undertake to exercise any such power, but why put it in? We have a dam across the Mississippi River now at Keokuk. The licensee was required to construct locks in connection with that dam so as not to interfere with navigation, and the theory was that the construction of the dam would in fact improve navigation. But here is authority to absolutely obstruct navigation. Not only is there no possibility in a given case, so far as power is concerned, of improving navigation, but power is delegated to destroy navigation, something utterly and completely beyond the power of Congress.

Mr. KING. Mr. President——

The PRESIDING OFFICER (Mr. WATSON in the chair). Does the Senator from Wisconsin yield to the Senator from Utah?

Mr. LENROOT. I yield.

Mr. KING. As I understand the Senator, and I inquire for information, his position is that this provision of the bill in the reported agreement of the conferees permits the Federal Government to engage in the power business by obstructing navigation; in other words, it subordinates its power to control navigation in the interest of commerce, to the establishment of power instrumentalities upon the streams of the country?

Mr. LENROOT. That is true. I think it will be conceded by everyone that the Congress has no power to obstruct and destroy navigation upon the navigable streams for the purpose of creating power.

Mr. KING. It seems to me that is so obvious that the mere statement of it carries with it the conviction of its soundness. The Federal Government may not interfere with navigable streams except for the purpose of protecting the streams for navigable purpose or uses. It has no power and it has no right, as I understand the law, to go upon a stream and regard it primarily for power purposes, and it may exercise no authority whatever over the streams except to say that they shall not be interfered with for navigable uses.

Mr. LENROOT. The Senator is correct. The law very clearly is that the only power of Congress over a navigable stream is for the control and improvement of its navigation. It may be in a given case, where the Congress authorizes the erection of a dam across a navigable stream, that opinions will differ as to whether that dam did improve or injure navigation. The courts would not inquire into that, holding that that was a matter for Congress to determine. But here is a case where it is expressly provided in the law that a body created by Congress, if they shall find that navigation will be injured by the construction of the dam, nevertheless may destroy navigation and absolutely obstruct the stream.

Mr. KING. Will the Senator yield to me again?

Mr. LENROOT. Certainly.

Mr. KING. Does not the Senator think that he stated the proposition a little too broadly with respect to the action which the courts might take? It seems to me, of course, that it is a legislative question to determine whether or not a structure constructed in a stream injures navigation, and yet at the same time cases will suggest themselves to the minds of Senators and can easily be conceived of where there could be no possible question but that the structure created did destroy navigation, so that it would cease to be a legislative determination and become a question for the courts to pass on.

Mr. LENROOT. I agree; and a very plain illustration would be this: Supposing the Congress enacted a law authorizing the erection of a dam across the Mississippi River without any provision for locks. That very clearly would be beyond the power of Congress. But Congress might pass a law authorizing the erection of a dam across the Mississippi River with locks, and even with those locks it might be a question of fact whether navigation was improved or injured by the erection of the dam.

In such case the courts would not inquire into that question of fact, but would take the conclusion of Congress as being final. But in the case I just mentioned I do not believe the chairman of the committee would undertake to say that we have the right to authorize the absolute obstruction of the Mississippi River without providing navigation facilities; and yet that is exactly what this does, after a finding by the commission that those facilities are necessary in the interest of navigation.

I think it is very unfortunate. It would be very much better to have left the House provision as it was, which was permissive. The Senate provision was even very much better. I really can not understand what may have been in the minds of the conferees, not only upon the merits of the case, but to so greatly endanger the constitutionality of this measure. So much for that proposition.

The next proposition to which I refer is a provision with reference to the charges that may be imposed as a consideration for the granting of a license. The House bill provided that the commission should have the right to exact a charge for the privilege granted. The Senate provision modified that, in effect, limiting the charges, except upon public lands, to reasonable charges to pay the cost of the administration of the act. The conference agreement provides for a charge for the purpose of reimbursing the United States for the cost of the administration of the act, for recompensing it for the use and occupancy of the enjoyment of any public land, and then goes on and provides:

And for the expropriation to the Government of excessive profits until the respective States shall make provision for preventing excessive profits or for the expropriation thereof to themselves, or until the period of amortization as herein provided is reached, and in fixing such charges the commission shall seek to avoid increasing the price to the consumers of power by such charges, and charges for the expropriation of excessive profits may be adjusted from time to time by the commission as conditions may require:

Mr. President, I have never contended that the United States ought to exact any charge for the privilege granted other than to reimburse itself for the cost of administration in any case where the public will get the benefit of the privilege. I have only contended, and have contended for years, that the commission should have the authority to exact a charge only where the public does not and will not get the benefit of the privilege and the privilege granted enables the licensee to make exorbitant profits for itself.

I am not going to take the time to-day, for I have argued it many times before, to discuss the classifications where the public would not get the benefit of the privilege and where the only recompense the public can secure is through the exaction of a charge.

One of the most familiar illustrations is that where the power created is not distributed to the public, but is a power created for a manufacturing establishment either owned directly or indirectly by the same financial interests that erect a dam. The regulation of charges in that kind of a case by State commissions does not amount to a snap of one's finger. It is taking money out of one pocket and putting it into another pocket, and that is all that it amounts to.

With the language that is agreed upon, while there is a great deal of language there looking to the protection of the public against excessive profits, in actual practice it will be of no value because the provision is directed against the licensee and against the licensee alone, and wherever the licensee distributes the power created to the general public there is no occasion for any charge. The State commission can regulate it in that kind of a case.

But take a great water power for the production of nitrate, where it requires 100,000 horsepower, where the creation of the horsepower is for the purpose of that manufacture, as to which there is a monopoly in the United States to-day, the only nitrates coming in competition being the nitrates that may be imported from Chile. In that kind of a case what would any licensee do? The licensee in its corporate capacity would not own the manufacturing plant. The licensee would erect the dam, the licensee would make a rate and charge to its subsidiary corporation for the power created, and the subsidiary corporation might make 100 per cent a year upon the money actually invested in it, and it is absolutely without the terms of the bill.

On the other hand, if the commission were given discretion to take all of these things into consideration, it could inquire and would inquire whether such a subsidiary corporation was in fact owned by the same interests that owned the stock of the licensee, and if they found that there was such condition they would impose and could impose and should impose a charge upon the licensee. It will not be done and it can not be done under the provisions as agreed upon in conference.

The next and last provision to which I desire to call attention is the one which was discussed so much when the bill was before the Senate previously, relating to what I then claimed amounted to a perpetual license to licensees under the bill. I am very clear that I was correct in my contention, but, whether I was or not, there is no question now, in the form that the conferees have reported it, that it is a perpetual license. It goes on forever. Not only that, but it delegates to the courts the power to determine whether or not a law enacted by Congress is reasonable, which is something entirely unprecedented in the history of the Congress of the United States. The House provision read:

Provided, That in the event the United States does not exercise the right to take over and does not issue a new license to the original or a new licensee, then the commission shall issue from year to year an annual license—

And so forth. The Senate provision read:

Provided, That in the event the United States does not exercise the right to take over or does not issue a license to a new licensee, or tender a new license to the original licensee, upon the terms and conditions aforesaid which is accepted, then the commission shall issue from year to year an annual license to the then licensee—

And so forth. The conferees have stricken out the word "tender" and have inserted the word "issue," so that it now reads:

Provided, That in the event the United States does not exercise the right to take over or does not issue a license to a new licensee, or issue a new license to the original licensee, upon reasonable terms, then the commission shall issue from year to year an annual license to the then licensee.

Mr. President, when the conferees struck out the word "tender" and inserted the word "issue" they removed any possible doubt as to the definition the word "issue" should have in this connection. It might have been argued, and it was argued by the very gentlemen who are interested in this legislation in connection with the conference report of last year, that the word "issue" as used herein did not mean a license accepted by the licensee, but one that was tendered. I admitted in the argument here when the bill was before the Senate that that question was open to argument; but when the conferees strike out the word "tender" and insert the word "issue" they must have had some purpose in so doing. So in the construction of this act the courts will not read "issue" as being synonymous with "tender," but they will necessarily read that a new license in order to be effective must be accepted by the original licensee. Consequently, if the original licensee chooses to sit back and say, "I do not care to accept this new license; I prefer to go on from year to year so long as time shall run under the original terms of my license," he will have the legal right to do so under this conference report.

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

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

Mr. LENROOT. I yield.

Mr. NORRIS. The effect would be, would it not, to make the lease perpetual?

Mr. LENROOT. Yes; exactly.

Mr. NORRIS. At least, it gives the lessee the right to make it perpetual?

Mr. LENROOT. Exactly.

Mr. NORRIS. The Government would have in reality nothing to say about it.

Mr. LENROOT. Absolutely nothing. That is the very contention that I am making. The lessee may go on forever under the terms of the original lease until such time as the licensee is willing to accept a new license or lease from the Government.

But it is said, Mr. President, that the provisions for the recapture of the property and its leasing to a new licensee or the recapture by the Government itself are a sufficient protection to the Government, because at the expiration of the term the Government could take over the property upon paying the compensation provided for in the bill. I am sure that not one of the gentlemen interested in this bill believe the Government should ever take such property over and operate it; they are all against that; but they say if the original licensee is not willing to accept a new license we can lease it to a new licensee who is willing to take it over and pay for it. Let us see what the new licensee would have to pay and how impossible it would be for a new licensee under any ordinary conditions ever to accept a transfer. Under the provisions of this bill, Mr. President, if the property is transferred to a new licensee he must pay not only every dollar that has been invested in the plant, less any amortization which may have occurred during the term, but he must under the provisions of the bill pay what is termed "severance damages" to the original licensee, which may easily amount to a great deal more than the entire value of the property that is taken over. He gets no value from those damages. The only value to the new licensee is the property that is taken over, but under the bill he is compelled not only to pay for that but to pay damages upon the theory that the

licensee has been injured at the end of the term by the severance of his property. Of course, treating the license as a perpetual franchise, as is now provided in the conference report, the original licensee is injured by the severance of his property; but if the lease had been for a flat term of 50 years, as it ought to have been, giving the Government the power to accept the terms instead of granting such power to the licensee; if Congress had been given any control over these water powers, as it ought to have been, after giving such liberal inducements to private parties as would result in their development, then there could be no damages at the end of the 50 years. How could there possibly be any damages when the licensee has secured all that his contract called for?

But under the terms of this conference report, as I said a moment ago, after paying the full value of the plant, it is provided that severance damages must be paid, upon the theory that the licensee has been injured at the end of the 50 years through the severance of the property. Gentlemen can not take the position that this is not a perpetual license, on the one hand, and then say severance damages are just upon the other. The only possible justification for severance damages would be that at the end of the 50 years the licensees had legal rights still existing of which we were depriving them, and, therefore, that severance damages would be proper. If they have no legal rights at the end of the 50 years, there can be no proper severance damages.

But that is not all. The Senate adopted an amendment, which was proposed by me, providing some limitation upon the severance damages that might be allowed; a very liberal limitation it was, too. It provided that the total severance damages allowed should in no case exceed the value of the works taken; in other words, if the Government took over the property, or if a new licensee took it over, the severance damages should in no case exceed the value of the property taken; or if the Government took it over, or if a new licensee wanted it, they should in no case be compelled to pay more than twice what the plant was worth. But we find the conferees have stricken out that limitation; it is not now found in the bill. There is no protection either to the Government or to a new licensee. There is no limit to the severance damages that may be allowed; and under the language of the bill as it now comes to us from the conferees, recognizing the right under a perpetual franchise of a licensee to damages for the severance of his property, the courts may very well hold that if a water power is created under a license of the Government at a cost of $10 per horsepower per year, and the plant is taken over and horsepower from other source or by steam is required to take its place, costing $30 per year, the Government must pay a profit to the licensee of $20 per horsepower per year.

Mr. President, the provisions for recapture found in this bill are not worth the paper upon which they are written, so far as any protection to the Government is concerned, for the bill provides practically for a perpetual franchise. I am very sorry that we come to the end of this important legislation with such a surrender as it seems to me is found in the conference report.

Mr. HALE. Mr. President, under the act passed by Congress in 1906 to construct dams across navigable waters, and the further act passed in 1910, no obstruction may be placed upon navigable rivers without the consent of the Federal authorities. Since the act of 1910 was passed, no further legislation has been enacted covering this question.

The present water-power act provides a method for getting permission of the Federal authorities to erect dams and other obstructions on the navigable waters of the country. Some such act is undoubtedly necessary if the water-power development of the country is to be allowed to proceed.

I am not finding any fault with the general purpose of the act, although there are Senators who have taken that position. What I do object to is the definition of "navigable waters" contained in this bill.

The House provision reads as follows:

That the term "navigable waters," as used in this act and as applied to streams, shall be construed to include only such streams or parts of streams as are in their ordinary natural condition used for the transportation of persons or property in interstate or foreign commerce or which through improvement heretofore or hereafter made have been or shall become usable in such commerce.

The Senate amendment to the House bill, which has been adopted by the conferees, reads as follows:

"Navigable waters" means those parts of streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States, and which either in their natural or improved condition, notwithstanding interruptions between the navigable parts of such streams or waters by falls, shallows, or rapids compelling land carriage, are used or suitable for use for the transportation of persons or property in interstate or foreign commerce, including therein all such interrupting falls, shallows, or rapids, together with such other parts of streams as shall have been authorized by Congress for improvement by the United States or shall have been recommended to Congress for such improvement after investigation under its authority.

The Constitution of the United States does not specifically mention "navigable waters." The only right of Congress to take jurisdiction over such waters is under the clause of the Constitution allowing Congress to regulate commerce with foreign nations and among the States.

The purpose of this bill is not really to regulate commerce but to control water powers. As such it should not go beyond what really affects the commerce of the country.

At a hearing before the conferees of the House and Senate on this bill a number of Senators and Representatives who object to the Senate amendment made the following suggestions to the conferees, either that the House provisions be adopted as it stood or that the Senate amendment be adopted with the following changes:

First. To strike out the words "or other bodies of water" on line 2 of the amendment. This would prevent the making of all parts of streams which are the outlets of navigable lakes subject to the provisions of this bill, which the present amendment would clearly do.

Second. The striking out of the word "and" in line 5 of the amendment. This would limit the rest of the amendment to the parts of streams which are navigable and would not be in addition thereto.

Third. To strike out the words "are used or suitable for use," in line 9, and insert the following: "are habitually used or with or without the proposed improvements have a reasonable prospect of being so used." The purpose of this change is to limit the section to parts of streams which are really to be used for the purpose of interstate or foreign commerce.

Fourth. To strike out lines 14 and 15, which read "or shall have been recommended to Congress for such improvement after investigation under its authority."

It is absurd to claim that the action of Congress in recommending a survey to determine whether a part of a stream may be so improved as to make it navigable should make that part of the stream navigable before the improvement has been authorized by Congress.

None of these proposed suggestions were adopted by the conferees. The only change that was made in the Senate amendment by the conferees was the addition of the words "between the navigable parts of such streams or waters" after the word "interruptions" in line 8.

Congress can not under the Constitution determine what shall and what shall not become "navigable waters." The decision must lie in all cases with the courts, and the decisions of the courts as to just what constitutes "navigable waters" are not uniform.

On May 4 Congressman WHITE, of Maine, made a very excellent speech in the House of Representatives, and I will refer to what he says about navigable waters:

What are "navigable waters" of the United States? What is the rule which must be applied in determining whether a particular stream comes within our jurisdiction? Cases in which the question has been discussed are many, but in them all the principle which must guide is clearly recognized.

In the Daniel Ball (10 Wall., 557) the court said:

"Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition as highways of commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water.

In the Montello (20 Wall., 436) the court accepted navigability of the river in its natural state as the proper test, and said:

"If it (the river) be capable in its natural state of being used for purposes of commerce, * * * it is navigable in fact, and becomes in law a public river or highway."

And, again, it lays down the proposition that—

"The vital and essential point is whether the natural navigation of the river is such that it affords a channel for useful commerce."

The case quotes with approval the language by Chief Justice Shaw, of Massachusetts (21 Pickering, 344), in which he asserts that it is not—

"Every small creek in which a fishing skiff or gunning canoe can be made to float at high water which is deemed navigable, but in order to give it the character of a navigable stream it must be generally and commonly useful to some purpose of trade or agriculture."

And through the years the principle laid down in these early cases has been followed. The measure is the use or the susceptibility of use of the stream in its natural condition for useful commerce.

In United States *v.* Rio Grade Dam & Irrigation Co. (174 U. S., 690) the court limited the definition in this language:

"The mere fact that logs, poles, and rafts are floated down a stream occasionally and in times of high water does not make it a navigable river."

This case emphasizes the requirement that we must look to the ordinary and natural condition of the stream and to its natural availability for substantial commerce.

The case of United States *v.* Brewer-Elliott Oil & Gas Co. (249 Fed. Rep., 615) states the essentials of the rule with unusual clarity. I quote from the opinion:

"The issue of navigability is one of fact. * * * A river is not navigable unless so in fact. It will be deemed navigable when used or susceptible of use in its ordinary condition as a highway of trade and

travel in the customary modes on water. * * * The exceptional use of a stream for purposes of transportation in times of temporary high water or 'the mere fact that logs, poles, and rafts are floated down the stream occasionally * * * in * * * high water does not make it a navigable river.' To meet the test * * * a watercourse should be susceptible of use for purposes of commerce or possess a capacity for valuable floatage in the transportation to market of the products of this country through which it runs. It should be a practical usefulness to the public as a public highway in its natural state and without the aid of artificial means. A theoretical or potential navigability, or one that is temporary, precarious, and unprofitable, is not sufficient."

In Donnelly *v.* United States (228 U. S., 262) we find the rule expressed thus:

"The question of the navigability in fact of nontidal streams is sometimes a doubtful one. It has been held in fact that what are navigable waters of the United States within the meaning of the act of Congress in contradistinction to the navigable waters of the States depends upon whether the stream in its ordinary condition affords a channel for useful commerce."

One of the recent cases on this subject, and the last to which I shall refer in this connection, is United States *v.* Cross (243 U. S., 316). I quote:

"In Kentucky * * * numerous cases have arisen where it has been necessary to draw the line between public and private right in waters alleged to be navigable, and by an unbroken current of authorities it has become well established that the test of navigability in fact is to be applied to the stream in its natural condition, not as artificially raised by dams or similar structures; that the public right is to be measured by the capacity of the stream for valuable public use in its natural condition; that riparian owners have a right to the enjoyment of the natural flow without burden or hindrance imposed by artificial means, and no public easement beyond the natural one can arise without grant or dedication save by condemnation with appropriate compensation for the private right. * * * We have found no case to the contrary. * * * Many State courts * * * have held, also, that the legislature can not by simple declaration that a stream shall be a public highway if in fact it be not navigable in its natural state appropriate to public use the private rights therein without compensation. * * * This court has followed the same line of distinction."

The opinion then cites with approval some of the cases hereinbefore mentioned by me and later in the opinion reaches the conclusion:

"That the servitude of privately owned lands forming the banks and bed of a stream to navigation is a natural servitude, confined to such streams as in their ordinary and natural condition are navigable in fact and confined to the natural condition of the stream."

There have also been other decisions by the courts which hold practically the opposite.

It may be claimed that under some of these decisions practically all of the rivers of the country are "navigable." That is a matter for the courts to decide.

It may be claimed that no obstructions of any kind can be put on these rivers without the permission of the Federal Government. That is also a matter for the courts to decide.

In any event, under the provisions of this bill the Water Power Commission will, unless prevented by the Congress, assume jurisdiction over practically all of the rivers of the country. Licenses will be obtained from the commission to erect dams and water powers. Those who apply first and who get the permission of the Government to do so will secure a priority of right over those who do not. The result will be that it will not be safe for anyone depending on their constitutional rights to proceed without the permission of the Water Power Commission. Endless litigation will be started, and the courts will have to decide specifically in each case as to whether the parts of the stream on which the improvements are to be made are or are not within the jurisdiction of the commission.

It is, of course, too late to offer any amendment to the bill, now that the bill is in conference and the conferees have reported. I will say frankly that we prefer the House amendment, because in our opinion it is not as broad as the Senate amendment.

The Senate amendment provides specifically that all connecting parts of streams between navigable waters shall themselves be considered as navigable. The House bill has no such provision.

Under the Senate amendment, if a stream were navigable near its mouth and at some portion of the stream 100 miles away from its mouth and in no way navigable in between, all of the intervening waters would become navigable under the bill, though under no possibility could they become navigable in fact.

The Water Power Commission would have jurisdiction over all of these unnavigable parts of streams. This would not be the case under the House provision. Under the latter we believe that the Government would not assume jurisdiction over waters where there was any question of their navigability, and the people who desire to make improvements could proceed as they do now in many cases without applying in any way to the Federal Government.

In my State we have many valuable water powers, developed and undeveloped. These water powers we regard as among the principal assets of the State. As far as possible we desire to handle them for the use of the people of the State of Maine under State instead of Federal regulations.

Many of the streams in my State are used for lumbering purposes, and temporary dams and temporary obstructions are constantly being put in these streams for logging purposes. Often the need for action is very immediate. To have to go to the Water Power Commission in each case for permission to do so would be intolerable.

I sincerely trust that the conference report will be defeated, and that a further conference will be ordered which will report back the bill with the House provision restored.

Mr. THOMAS and Mr. FERNALD addressed the Chair.

The PRESIDING OFFICER (Mr. MCNARY in the chair). The Senator from Colorado.

Mr. THOMAS. I will say to the Senator from Maine that I expect to speak for perhaps an hour. Does the Senator from Maine desire to say something on this matter?

Mr. FERNALD. I do; but I am very anxious to listen to the Senator from Colorado.

Mr. THOMAS. I will yield to the Senator for a few minutes.

Mr. FERNALD. I think if the Senator will yield for just a few moments I shall be able to conclude what I have to say.

Mr. THOMAS. I shall be glad to do so.

Mr. FERNALD. I thank the Senator for his courtesy.

Mr. President, I regret exceedingly that it should seem necessary for me to pursue a course so unusual and extraordinary as to oppose a conference report. This matter, however, is of so much interest to the people of New England, and particularly to the constituents whom I represent, that I deem it only fair to make a statement to the Senate which, I am sure, will have due and proper consideration.

I have listened with great satisfaction to the eloquent appeal made by the Senator from Wisconsin [Mr. LENROOT] in explaining the legal status of this bill, and I have also listened with much interest to my colleague [Mr. HALE]. My State, as you know, is the most easterly of the Union. I assume that every Senator feels it his duty, when any matter concerning his particular State is brought to the attention of Congress and any legislation is about to be enacted with reference to or which will in any way affect the business interests of his State, to present whatever evidence there may be for or against such legislation; and the State of Maine is so seriously affected by this particular bill that I deem it only fair to present a few facts.

As stated, my State is the most easterly of the Union. While it is known as an agricultural State, we have no fields and lands that, tickled with the hoe, laugh with the harvest; but the land responds bountifully and splendidly to efficient service and hard work. A large part of our State, however, is still in the virgin forest. We have 5,000 rivers and streams in the State of Maine and more than 1,500 lakes. I assume that we may have been blessed with this enormous amount of water because we have not permitted ourselves to have any other liquids for drinking purposes, and it seemed only fair that we should have all the water we wanted; and in the early days these streams were used somewhat for purposes of navigation, if streams that float logs may be considered navigable streams.

As I say, we have in our State thousands and hundreds of thousands of acres of virgin forest. We have, as was suggested in a report from the Forestry Service, about one-third of the growing spruce of this country. It is estimated that we have more than 22,750,000,000 feet of spruce about 6 inches at the stem. From that we can cut 750,000,000 feet of spruce annually from now to the end of time and have just as much growing as we have now. Our lumbermen are conserving the forests, and these forests are being manufactured into pulp and paper on the rivers and streams of my State. We have many large pulp mills, we have a great many cotton mills and woolen mills and boot and shoe factories, all operated, or nearly all, by power generated from the water powers in the State of Maine. When you affect the interests of the owners or operators of these powers, you affect the entire business of the State; you affect every mill and every manufacturer that is receiving power from these streams.

I assume that every Senator knows a little more about his own State than any other Senator. When Senators from the Middle West talk to me about the great prairies and the wonderful crops that are being harvested from the plains and splendid lands of the Middle West, I assume that they know something about the wheat and corn business of that section. When Senators from the South talk to me about rice and cotton, I assume that they know more about the raising of rice and cotton and their manufacture than I do up in Maine, where we have nothing of that kind; and when I tell you about the water powers of my State, I assume that you will believe that I know something about the power that is generated down in the State of Maine.

We stand second in water power of all the North Atlantic States. More than 900,000 horsepower may be generated and developed in the State of Maine. On the river that runs nearest my home, with a power of 180,000 horsepower, 120,000 horsepower is already developed; and many other manufacturers and many other men engaged in the development of that sort of power are now contemplating the development of the entire stream.

On this particular river we have a reservoir which will hold more than 30,000,000,000 feet of water, covering a territory of more than 1,200 square miles. I am telling you this, Senators, so that you may understand the interest my constituents have in this power bill.

I am in sympathy, in the main, with this bill. I realize the effort which the chairman of the Committee on Commerce has made and the sincerity of his associates in producing a bill which might be fair to all of the business interests of this country. I have been a member of that committee. I have watched carefully to guard well the interests of my State, and yet it is believed by some of our legal fraternity in Maine that we are not sufficiently protected, that some changes should be made in this bill, and it is for that reason that I bring the matter before the Senate this afternoon.

I assume that nothing I may say will change the bill. I assume it is likely to be adopted, because I realize that in the main it is going to be of great interest to the people of the country. I realize that of all the waste in the country which may be mentioned, there is none so inexcusable as water power running undeveloped, because, unlike coal and oil, there is just as much running, and just as restlessly, as in the beginning of time. The sooner this is developed, of course, the more advantageous it will be to the people of Maine, and it ought to be done immediately.

Mr. JONES of Washington. Mr. President——

The PRESIDING OFFICER. Does the Senator yield to the Senator from Washington?

Mr. FERNALD. I yield.

Mr. JONES of Washington. I have always had a very high opinion of the legal fraternity of Maine, but I want to say that if the legal fraternity of Maine hold to the opinion that this bill affects injuriously conditions which confront them now upon navigable waters, my opinion will change very materially. I want to say to the Senator that this bill, in the definition of navigable waters, and so forth, does not interfere with any rights they have now in any way, shape, or form. As a matter of fact, there is a law on the statute books now which prohibits any interference with the navigable capacity of streams, and if, under the advice of the legal fraternity of Maine, men have invested their money in the construction of dams, and so forth, under that law, they will lose their investments.

Under this bill their rights in that respect will not be in any way affected, either adversely or favorably, for that matter, but under the bill provisions are made by which they can come to the Government and get a permit which will insure their investment and make safe that which now might be unsafe. However, under this bill they do not have to come to this commission to get a permit. If they want to take the risk, if they want to put their money in, they can go on and do it just the same in the future as they have done in the past. There is absolutely nothing in this bill which prohibits anyone from putting an obstruction in a stream. I thought I would just put that in the RECORD, in view of the statement of the Senator that the legal fraternity of Maine are fearful of the effect of the bill.

Let me say that the Senator from Maine has guarded this in the most effective way. He has given it his most careful attention, and the provision is not subject to any criticism whatever.

I know it has been stated by some that it was put in the bill secretly. It was not. It was put in the bill in the Senate committee openly, was reported to the Senate, was on the calendar here for weeks, was then brought up in the Senate, and passed without any objection whatever. It was all done openly, and in my judgment it is clearly in the interests of the people and for the benefit of the interests in the State of Maine described by the Senator.

Mr. FERNALD. I thank the Senator from Washington, and I want to say that I know what he says is true, so far as these amendments and the consideration of this bill are concerned. These matters were discussed. I did not always agree with the majority. Many things which I had suggested which I felt would be of interest to my State were allowed to go in the bill. I want to say further that, fortunately or unfortunately, I do not know which, I am not a lawyer, but I followed carefully the legal effect of the different provisions in the bill. I believe all the Senator from Washington told me, fine lawyer as he is, and with his honesty, as to the legal status of these provisions. He represents a State similar to mine. There is a very large water development in the State of Washington. I believe it has a larger water power than any other State of the Union, some 10,000,000 horsepower of developed and undeveloped water power, in his State. Then, coming down along the Atlantic coast to the North Atlantic States, New York is one of the large water-power States. Then comes Maine, which people sometimes forget is as large in territory as all the other New England States. It is often referred to as the playground of the world, because for a period of six months we have perhaps the finest climate on earth, and the water powers are a great asset to us. We have all of these timbers in the forests which we desire to have worked up by our own mills and with our own power, and the State some time since placed upon its statute books a law that no power should be carried from the State, but that it should all be used in the State. We have what was referred to by my colleague as a dam act. He did not intend, I am sure, to begin his speech by swearing at the chairman of the committee, but we refer to it often in the State of Maine as the dam act, because it has been before our courts and has been always construed as sound and good law.

Our riparian-right law there is that any man who owns both sides of a stream, the banks, may cast a dam across the stream and use the power for any purpose he chooses, provided he pays any damages to other men's land where the water may flow, and by paying for the flowage rights he can go on and do business.

In the early days the pioneers had their sawmills on these streams. Later they were developed and great manufacturing plants and cotton mills were erected there, until to-day, on one little river, which is less than 100 miles long, whose source is in the adjoining State of New Hampshire, running across about 30 miles and down through my State, there is more than $50,000,000 worth of property, paying an annual pay roll to the operatives of more than $10,000,000. So Senators can see what interest the people have in this one particular river; and we have three large rivers of like size and like development.

The one provision in the bill to which I object, and to which my constituents object very seriously, is the vague and indefinite definition of "navigable waters."

Mr. WALSH of Montana. Mr. President——

The PRESIDING OFFICER (Mr. GERRY in the chair). Does the Senator yield to the Senator from Montana?

Mr. FERNALD. I yield.

Mr. WALSH of Montana. For the sake of clarity, as the Senator is now taking up that subject, I desire to invite his attention to the fact that the only change made by the conferees in that provision of the bill is formal. The conferees have not changed the substance of that provision at all, as I read it. They caused to be inserted the words "between the navigable parts of such streams." I ask the chairman of the committee if I am correct.

Mr. JONES of Washington. All the conferees put in was the clause "between the navigable parts of such streams or waters."

Mr. WALSH of Montana. So the significance of it is not changed at all. The complaint the Senator is making, as I interpret it, is against the provision which was inserted not by the conferees but by the Senate when the bill was before it. I would like to inquire of the Senator from Washington, the chairman of the committee, if any request for a hearing was had before the committee upon the definition of "navigable waters," as given in the bill.

Mr. JONES of Washington. No request for a hearing was made until after we had been conferring quite a good while, and after the House conferees had really accepted the amendment. Then the Senator from Maine [Mr. HALE] asked for a hearing, and the hearing was given. The Senator from Maine and the Senator from Massachusetts and Members of the House came over and discussed the matter, and after that hearing the words to which the Senator has just called attention were inserted in the amendment. That was all.

Mr. WALSH of Montana. I suggest to the Senator from Maine that the criticism is rather late now.

Mr. FERNALD. I assume it may be too late, Mr. President. I realize the legislation which has already taken place regarding the water-power development in the country, and I am going to read a statute on the subject. I do not often refer to law books, but I am going to read a statute taken from the United States Statutes at Large, Fifty-fifth Congress, 1897–1899, volume 30, page 1151, paragraph 10. I want to say, Mr. President, that at that time Senator Frye was chairman of the Commerce Committee, and I am sure that this country has

never seen a more efficient, honest, sincere legislator in this or any other body than the Senator from Maine at that time. I will submit to the lawyers of the Senate if the language of this act is not very vague and indefinite, so far as the definition of "navigable waters" is concerned.

What I desire, in legislating in this body, is to have it so clear that the common layman can understand it. We have passed legislation here within a year which affected billions of dollars' worth of property; and it took the best lawyers in this country to determine the meaning of it; and members of the committee who reported upon that legislation were unable to give me or anybody else any light on the subject. If we are about to pass such legislation, we ought to send about 150,000 lawyers to go with it, so that the business men in the country might have somebody to interpret it. I know the lawyers of my State have written me asking what certain phrases meant in laws which have been passed. I do not propose, if I can help it, to have any laws passed which I do not understand myself, so that if a man asks me, I can give him some faint idea of their meaning.

Mr. THOMAS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Maine yield to the Senator from Colorado?

Mr. FERNALD. I yield to the Senator from Colorado.

Mr. THOMAS. I think that if the Senator will take the experiences of Congress for the past 10 or 15 years, he will discover that anything is a navigable stream for whose improvement you can get an appropriation.

Mr. FERNALD. Exactly; the Senator is right. Now, I am going to refer to this act, and I am going to leave it to the lawyers in the Senate if this is not a vague and uncertain definition of what navigable waters are.

Mr. NELSON. Is the Senator about to read the old law?

Mr. FERNALD. The old law; yes.

Mr. NELSON. In what year was it passed?

Mr. FERNALD. It is found in United States Statutes at Large, 1897–1899, volume 30, page 1151, section 10.

Mr. NELSON. I want to say, incidentally, if the Senator will allow me, that I was a member of the Committee on Commerce at that time and served under Senator Frye, and I indorse everything the Senator said about Senator Frye.

Mr. FERNALD. I thank the Senator. I want to say, too, that I have followed the Senator from Minnesota in this legislation carefully, because I knew he was as well versed as anybody in this country, and I have all confidence in him.

This is the law, and I want the lawyers in the Senate to give attention:

> That the creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States, is hereby prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of War; and it shall not be lawful to excavate, or fill, or in any manner to alter or modify the course, location, condition, or capacity of any port, roadstead, haven, harbor, canal, lake, harbor of refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of War prior to beginning the same.

I am frank to say that the navigable waters are not defined at all in that law.

Now, Mr. President, I realize and appreciate that I am speaking in the time of the Senator from Colorado [Mr. THOMAS], but I am going to cite the Senate to one concrete case which in my judgment represents every river and stream in the United States. I will take one of the rivers in my own State.

The Androscoggin River has its source at the outlet of Umbagog Lake and flows thence to tidewater below Brunswick, Me.

From its source to tidewater, a distance of considerably more than 100 miles, there is a total fall of about 1,200 feet, with numerous falls or rapids capable of development for power purposes.

Tidewater stops at the foot of the falls at Brunswick. The river is not navigable for boats or vessels above Brunswick, but formerly was used for floating logs from the Great Lakes down river even as far as Brunswick. In other words, it is a "floatable" stream, in the language of the Maine decisions.

The numerous falls in the river made it more useful and valuable for the development of power, and in the process of time the sawmills at Brunswick, Lisbon, Lewiston, and so forth, have all disappeared, and at the present time logs are only driven down river to the pulp and paper mills and a few sawmills on the upper reaches of the river.

Except, then, for log driving, it can not be said that the river in its natural condition ever afforded a "channel for useful commerce"; that is, boats and vessels never plied back and forth on the river carrying merchandise or engaged in trade and commerce. The most that can possibly be claimed is that logs in the sections in northern Maine were floated to the sawmills at various points in New Hampshire and Maine and there sawed into lumber, from which points the manufactured products were sent to market by rail, but never by water boats or conveyance.

The waters of this river always have been, and now are, used almost exclusively for manufacturing purposes, formerly by direct power, and now, to a considerable extent, by hydroelectric power. Indeed, during these trying days of coal shortage, it is safe to say that not a single manufacturing plant on the Androscoggin River has been obliged to shut down or lose an hour's time.

The investment in manufacturing plants directly and indirectly on the river operated by water power or hydroelectric power will amount to more than $50,000,000. My own judgment is very considerably in excess of that, but I do not wish to overstate, and the annual pay rolls for operating labor will amount to not less than $10,000,000.

These manufacturing industries include a great variety of products—cotton and woolen goods, shoes, lumber, wood products, paper, and many other things. None of these various products go to market by water—that is, by this river—but all are shipped by rail from the various points of manufacture along the river.

More than one-half of the available head on the river is now developed and used for these manufacturing purposes, and the power developments operating these varied industries have been made almost wholly at power sites on the river where the power could be developed at a low cost per foot of head. The undeveloped heads are more expensive for development, but they will be developed and used as called for by business conditions.

The present owners, representing probably 75 per cent of the developed and undeveloped power on the river, have spent not less than $3,000,000 in storage reservoirs at the headwaters of the river, and maintain a system of control and regulation of flow on the river which it is conceded make this river one of the best controlled and regulated streams of its size in the United States.

These storage reservoirs have a capacity of more than 30,000,000,000 cubic feet of water, with a watershed of about 1,200 square miles.

What I have said above applies in a degree to all of the numerous tributary streams flowing into the Androscoggin.

Leaving now the description of the river and its industries, I take up another branch, that is, the legal side of the question.

It seems certain that the Federal Government can have no control over the Androscoggin River above tidewater, except such as it may have under the commerce clause of the Federal Constitution. The Government owns no soil in the bed or on the banks of the river, and it can not acquire such lands except, of course, by purchase or by condemnatory proceedings for some public use.

On the other hand, the riparian, under the laws of Maine, may build a dam on his own land and raise a head of water to run his mill or factory.

Does this bill undertake to impose any restriction upon the exercise of the settled rights of the riparian; and, if so, what?

It would seem to me that the bill applies primarily to such water powers as there may be on public lands now owned by the Federal Government and, next, upon the navigable waters of the United States, like, for example, the Androscoggin River below Brunswick, where the tide ebbs and flows, and upon which boats and vessels may pass engaged in commerce.

If there is any claim that the owners of undeveloped power privileges on this river may not build dams and develop and use the power so created without the consent of the Federal Government under the provisions of this bill, we ought to know it, and we also ought to know what the extent of that consent would be.

I am hoping that this statement of facts, in connection with the law as we have all understood it, will enable me to inform my constituents what the claims of the proponents of the bill are as applied to the Androscoggin River.

Mr. JONES of Washington. Mr. President——

The PRESIDING OFFICER (Mr. MCLEAN in the chair). Does the Senator from Maine yield to the Senator from Washington?

Mr. FERNALD. Certainly.

Mr. JONES of Washington. In this connection I wish to repeat what I said a while ago, that there is nothing in the bill that prohibits the people of the Senator's State from doing anything that they want to try to do, and that they can do now.

Mr. FERNALD. I thank the Senator.

Mr. KING. Mr. President——

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

Mr. KING. Is there not something in the bill—and I am addressing myself to the Senator from Washington, with the permission of the Senator from Maine—that requires the citizens of the State, those who live upon the river to which the Senator is referring, to obtain a license from the Federal Government for the construction of power plants upon the stream?

Mr. JONES of Washington. There is not. There are provisions in the bill which permit people to get a permit, but it does not require them to do so. There is not a prohibitory provision in the bill with reference to the construction of dams in streams, but there are provisions in the bill under which, if a person wants to be sure he will not be interfered with under the law to which the Senator referred and which he read, he can come to the commission and ask for a permit and get it upon certain conditions. But if they want to take the chances, they can go on and put a dam in the stream, just as they can do now.

Mr. KING. If the Senator will pardon me further, as I interpret the bill it makes a man who constructs a power plant upon a so-called navigable stream a trespasser unless he obtains a license from the Federal Government.

Mr. JONES of Washington. No; the bill does not.

Mr. WALSH of Montana. Mr. President, I wish to remind the Senator from Utah that the prohibition is not in the pending bill. The prohibition is in the law now. A person can not do it at all now without an act of Congress, while under the pending bill he can get a permit from the commission.

Mr. FERNALD. I should like to inquire of the Senator from Montana if under the provision of the law which I have read he finds that clause?

Mr. WALSH of Montana. Yes. It prohibits any obstruction of a navigable stream.

Mr. KING. Will the Senator permit me to make one observation?

Mr. FERNALD. Certainly.

Mr. KING. The courts have held repeatedly, I understand, that it is not such an obstruction as the Federal Government could take cognizance of unless it does interfere with navigation. There may be obstructions, there may be locks, there may be dams, but if they do not interfere with navigation, under the law which the Senator read and to which the Senator from Montana now refers, such obstructions may be placed in the river.

Mr. WALSH of Montana. As stated by the chairman of the committee, there is no such prohibition in this bill at all.

Mr. KING. May I inquire of the Senator what is the purpose of the bill with reference to the States in which there are no public lands, if it is not for the purpose of fastening a Federal system of leasing and licensing upon all the power streams of the United States?

Mr. WALSH of Montana. This is the purpose of the bill. Under the existing law anyone who wants to put any obstruction whatever in a navigable stream must come to Congress and get a special act. The pending bill is a general act granting power to give permits through this commission. That is the purpose of it.

Mr. JONES of Washington. May I suggest further in connection with this matter that the Senate placed amendment No. 58 on the bill, under which it provides a way by which a person or company or corporation may get the judgment of the commission with reference to whether a stream is navigable, if they desire to do it. That is for the protection of any person who contemplates putting a dam in a navigable stream. If they exercise the right given to them in this section of the bill, the commission will first make an investigation to see whether or not the stream is navigable, and they can not put their dam in if the commission says that it is navigable; but if the commission says that it is not navigable, then permission is granted to put the dam in. However, there is nothing which requires them to come to the commission in the first instance and ask their judgment as to whether the stream is navigable or not.

They can go on and take their chances under the prohibitory law which the Senator from Montana read, and that is the law now. That law we do not seek in any way to change in this bill except to provide a way by which a person can get a permit so that he will not bring himself under the prohibition of the law as it exists now.

Mr. FERNALD. I thank the Senator.

Personally, if the bill is not dangerous to the great manufacturing interests of the Androscoggin River, which represents other rivers of my State and of the country, I think we should support the bill. It is unnecessary for me to say that the owners of the undeveloped powers are broad, progressive men, and that they are not holding these undeveloped privileges for any monopilistic purposes. These privileges will be developed as and when the business conditions require, but we do not want the cold hand of Federal authority laid upon our property rights, which we have bought and paid for and improved by the vast storage reservoirs at the headwaters of the river, and be told that we can not use our own except by the consent of some one who has no property rights on the river.

I can not imagine that the power developments that have made possible such cities as Lewiston, Auburn, Rumford Falls, Berlin, and many similar cities and towns are or can be considered an obstruction to the navigation or commerce on the Androscoggin River.

Mr. President, in closing let me say that the one particular feature of this bill to which I object, and which I believe the proponents of the bill ought to accept an amendment to remedy, is the absence of a clear definition of the term "navigable waters." I do not know what definition may be laid down in any of the law books of the country, but I do know that a definition might be placed upon "navigable waters" which would be so plain and clear that anybody might understand it.

Mr. JONES of Washington. Mr. President, let me suggest to the Senator from Maine that we do not attempt in this bill to define "navigable waters" at all. We simply say that for the purpose of this act—that is, for the purpose of applying for permits to build dams, and so forth—certain waters shall be considered navigable. That leaves the whole matter as to whether in fact a stream is navigable to be determined under the rules which have been laid down by the courts, and they have laid them down in a great many cases.

Mr. FERNALD. Does not the Senator from Washington think it would be wise right here and now, in three or four lines, to define what a navigable stream is? I think it could be done by an amendment that, if it were in order, I might suggest.

Mr. JONES of Washington. I remember, a Congress or two ago, that we spent days discussing the proposition of defining a navigable stream in connection with the water-power bill; and while it may appear very plain and simple to the Senator from Maine, I am satisfied that if we were to open up on the proposition and try to define in legislation the term "navigable streams" we should be discussing it for weeks. The courts have laid down pretty good rules in reference to the matter; and in framing this bill we do not seek to interfere with those rules at all.

Mr. FERNALD. But, Mr. President, if the chairman of the committee wishes—and I know he does wish—to be fair in this matter, does he not think it would be better to define what a navigable stream is here than to permit the question to go to the courts, at an expense of millions of dollars, as it has already done? It seems to me right in this bill we have reached a point where in three or four lines we could readily define, so that it might be clearly understood, exactly what a navigable stream is. I think I can suggest such an amendment to the Senator.

Mr. JONES of Washington. I think the courts have laid down rules which determine that question mightly well. However, the Senator from Minnesota [Mr. NELSON] has given the matter especial consideration, and I will let him answer the suggestion which has been made by the Senator from Maine.

Mr. NELSON. Will the Senator from Maine yield to me?

Mr. FERNALD. I very gladly yield to the Senator from Minnesota.

Mr. NELSON. Mr. President, I think the Supreme Court has long ago settled, as nearly as it can be settled, the question as to the navigability of streams. I refer to their decision in the case of the *Montello*.

Mr. FERNALD. Let me ask the Senator from Minnesota before he proceeds, if the interpretation of the court which he is about to read is generally accepted by the lawyers of the country, or are they still in disagreement in reference to the matter?

Mr. NELSON. I have never heard the decision questioned; on the contrary, it has been followed in other cases. The decision is found in Twentieth Wallace, on page 430. It is what is known as the case of the *Montello*, that being the name of the vessel. Merely to save time, I will read only the syllabus.

Mr. SMITH of Arizona. I did not catch the title of the case from which the Senator from Minnesota is going to quote.

Mr. NELSON. The title of the case is the *Montello*, which is the name of the vessel.

Mr. SMITH of Arizona. I recall it.

Mr. NELSON. To save time I will read the syllabus of the case instead of going into the decision in detail. It is as follows:

THE MONTELLO.

1. The navigability of a stream for the purpose of bringing it within the terms "navigable waters of the United States" does not depend upon the mode by which commerce is conducted upon it, as whether by steamers, or sailing vessels, or Durham boats, nor upon the difficulties attending navigation, such as those made by falls, rapids, and sand bars, even though these be so great as that while they last they prevent the use of the best means, such as steamboats, for carrying on commerce. It depends upon the fact whether the river in its natural state is such as that it affords a channel for useful commerce.

This was a case arising in Wisconsin and related to the navigation of the Fox River, a stream that flows into Green Bay, which itself connects with Lake Michigan; so that the navigation of the stream was connected with the waters of the Great Lakes. The headwaters of that stream are very near the Wisconsin River, which flows southward into the Mississippi River. There was only a slight portage between the Fox River and the Wisconsin River, over a distance perhaps of 2 or 3 miles. In early days commerce went up the Fox River from Green Bay and Lake Michigan, and crossed the portage into the Wisconsin River and then down the Mississippi River. The Supreme Court held that, although there were rapids and falls in the stream, around which it was necessary to portage the freight, it was a navigable stream and so came within the commerce clause of the Constitution. I may add that the opinion of the Supreme Court of the United States in the case of "The *Daniel Ball*," Tenth Wallace, page 557, is to the same effect.

Mr. KING. Mr. President——

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

Mr. KING. This bill, as I interpret it, would make every stream navigable, even to the headwaters of the smallest stream, or up to the snow line, where the snow melts and finds its way by little trickles and rivulets into some other stream. For instance, this language, if the Senator will pardon me——

Mr. NELSON. Let me call the attention of the Senator to the first part of the amendment, which reads:

"Navigable waters" means those parts of streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States—

Mr. KING. The Senator will see that that does not impose any limitation upon the Federal Government as to what it may regulate. When it confers the power to regulate commerce among the States, et cetera, that is not a definition of what commerce is or the extent to which Congress may control streams. The Supreme Court has held, as I understand, that tributaries of tributaries of other tributaries, if any part of such tributary of the final stream was navigable, would be under the cognizance of the Federal Government. That would carry up to the snow line.

Mr. NELSON. The court's decision only goes to this extent—and the facts in the case must be considered—that as to the tributaries that supply water to the main stream, which is in fact and in law navigable, Congress of necessity must have sufficient jurisdiction over those feeders to prevent their being dammed up and thereby preventing the supply of water running into the main stream. That is the extent of the decision and the Senator ought to see that that is inevitable, for if all the feeders of our great rivers, such as the Mississippi, the Missouri, and other navigable rivers, could be dammed up so that water would be kept away from them they would cease to be navigable.

Mr. KING. I am not arguing that question.

Mr. NELSON. So the Government has jurisdiction to the extent that the supply of water can not be cut off from a navigable stream.

Mr. KING. Obviously, then, under the Senator's contention, the Federal Government would have jurisdiction over the snow line, and, as the Senator from Colorado [Mr. THOMAS] sotto voce says, it would have jurisdiction of the clouds which produce the snow which melts and produces the spring which produces the tributary flowing into the river which is navigable. So that the Federal Government may stretch out its powerful and omnipotent hand until it can grasp the snow in the mountains and say, "We have jurisdiction over that."

Mr. NELSON. That is a forced construction.

Mr. KING. I think that the Senator's position leads to that.

Mr. NELSON. It does not lead to that, and that is not my position. The Senator a few moments ago referred to the Rio Grande case. The court intimated incidentally in that opinion that the control of Congress extended to the feeders of the stream, but when it comes to applying the principles of law to the facts in each case they must be measured by the facts. The court did not mean to decide that the feeders were navigable. What the court meant to say was that the Federal Government has sufficient jurisdiction over the feeders to see to it that the supply of water shall not be destroyed or so diminished in the feeders as to prevent the main stream from being navigable. The Senator on reflection ought to see that if the Government had no control whatever of the feeders—if such a thing were possible, although I can not conceive it—if it were possible for the States or individuals to dam up the feeders and prevent a drop of water flowing into the main navigable stream, they could dry up the main stream and destroy navigation on it. Except in those sections where the water is exhausted for irrigation, the erection of dams in feeders, as a matter of fact, for instance, in the East and in the Middle West, does not diminish the supply of water, for the water flows over the dam in one way or another and enters the feeders and then the main stream. It is only in the arid West where it is possible to divert water entirely for irrigation purposes from the main stream.

To what extent can that be done? I take it that if a case of that kind should come before the court, the court would consider both the rights of the farmers, who needed the water for irrigation, and the interests of commerce requiring water for navigation, and the question would be one of fact in each case. Does the diversion of the water of a certain feeder of a certain stream for irrigation purposes diminish the quantity of the water to such an extent as to destroy the navigability of the main stream? If the diversion of the water did not diminish the navigability of the main stream, the Government would have no control whatever. Furthermore, it would only have control to the extent of the supply of water needed to subserve the purposes of real navigation.

We are not seeking to interfere with the present situation, and no matter what we put into this bill, if the Senator from Maine will excuse me a moment longer, we can not change the decisions of the Supreme Court as to their determination of the words "navigable stream." We could not undo by this legislation, if we should make the effort, what they have decided. We have made no such attempt. We have simply said that those parts of streams or bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States, and which in either their natural or improved conditions, and so forth, are naviable, shall be considered to be navigable streams. That is all we have said. We have simply left the matter where the courts have left it; and if we undertook to change the law as it is and to say that a certain class of streams which are navigable in fact are not navigable the Supreme Court would overrule us.

Mr. FERNALD. Without going more fully into the decisions of the Supreme Court of the United States, I wish to cite the case of Samuel Veazie and Levi Young, plaintiffs in error, against Wyman B. S. Moor, reported in Fourteenth Howard:

"SAMUEL VEAZIE AND LEVI YOUNG, PLAINTIFFS IN ERROR, V. WYMAN B. S. MOOR.

"The River Penobscot is entirely within the State of Maine, from its source to its mouth. For the last 8 miles of its course it is not navigable, but crossed by four dams erected for manufacturing purposes. Higher up the stream there was an imperfect navigation.

"A law of the State, granting the exclusive navigation of the upper river to a company who were to improve it, is not in conflict with the eighth section of the first article of the Constitution of the United States, and a license to carry on the coasting trade did not entitle a vessel to navigate the upper waters of the river.

"This case was brought up from the Supreme Judicial Court of the State of Maine by a writ of error issued under the twenty-fifth section of the judiciary act.

"The facts in the case are stated in the opinion of the court.

"It was argued by Mr. Paine, for the plaintiffs in error, and by Mr. Kelley and Mr. Moor, for the defendant in error.

"The following propositions were contended for in an elaborate brief filed by the counsel for the plaintiffs in error:

"1. That the constitutional power of Congress in question embraces the right to adopt any means reasonably necessary in their opinion to the successful prosecution of commerce among the States and with foreign nations.

"2. That Congress has adopted as such means the whole commercial marine of the country, every part of which as a unit is under their entire control and regulation, without regard to the waters on which the navigation is carried on.

"3. That to constitute a part of this commercial marine, no other qualifications are necessary than those prescribed by

(569) Congress in the several acts regulating the registry and enrollment of vessels, and such registry or enrollment is evidence of a compliance with the prescribed conditions.

"4. That any vessel so enrolled, being licensed, has an unrestricted right to navigate all the navigable waters of the United States, wherever they may be found serviceable to its use.

"5. That the power of Congress to regulate commerce is as extensive on land as water, and is irrespective of both—that these compose no part of commerce or navigation, but are subject to be adopted as ways or thoroughfares of it, whenever they may be required by the wants of either—and that in legislating upon the subject Congress has not discriminated between one class or body of navigable waters and another, but has made all such waters free for the uses of navigation, wherever any portion of the commercial marine of the country may exist.

"6. That under the statute of 1831, March 2, section 3, the plaintiffs' boat is expressly included as provided for by said act, and is thus embraced within the power of Congress, even if not included in the general provisions of the acts regulating the 'coasting trade.'

"7. That the right of Congress to regulate 'commerce with the Indian tribes,' extends to and embraces the Penobscot Tribe of Indians, and the Legislature of Maine has no right to restrict the people to, or deprive them of, any particular mode of intercourse or trade with them.

"8. That any act of a State legislature contravening such right of navigation, as does the act set forth in defendants' bill of complaint, is absolutely null and void.

"The points made by the counsel for the defendant in error were thus stated:

"The only question here is, whether the grant to Moor is in conflict with that provision of the Constitution which gives Congress the right to regulate commerce.

"A party alleging that a State law is unconstitutional takes on himself the burden of establishing there three propositions:

"First. That the matter or subject in controversy is within the legislative jurisdiction of Congress.

"Second. That Congress has de facto legislated on the subject, and embraced it within regulations established by its legislation; and

"Third. That the party impeaching the law has himself acquired rights in the subject matter which is in controversy, and that these rights have been invaded by the legislation of the State.

"570. Applying these rules to this case, plaintiffs are bound to show: First. That the navigation of the Penobscot River, above Oldtown Falls, is within the jurisdiction of Congress.

"Second. That Congress has embraced this navigation in its legislation, and provided regulations for it; and

"Third. That they have acquired rights in that navigation under the legislation of Congress, which rights have been impaired by the law of the State.

"Plaintiffs must establish all three of these propositions. It is not enough for them to establish any two of them. If they fail in any one of them they have no ground to stand upon.

"First. As to the first of these propositions. The grant being confined to waters wholly internal, plaintiffs can carry on no navigation by means of those waters, with any foreign nation, nor with any other State. We think this is almost too plain for argument. (Moor *v.* Veazie, 32 Me., 343; Wilson *v.* Blackbird Co., 2 Pet., 250, 3 Kent, Com., 458; Livingston *v.* Van Ingen, 9 Johns. (N. Y.), 506; Gibbons *v.* Ogden, 17 Id., 488; Id., 9 Wheat., 1; New Bedford Bridge case, 1 Woodb. & M., 404; Kellogg *v.* Union Co., 12 Conn., 7; Passenger cases, 7 How., 283; Brown *v.* Maryland, 12 Wheat., 419; New York *v.* Miln, 11 Pet., 102; 3 Cow. (N. Y.), 713.)

"Again, this grant is not in conflict with the power of Congress to regulate commerce with the Indian tribes.

"1. Because commerce in this connection does not include navigation. (32 Me., 343.)

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"2. Because the Constitution manifestly refers only to independent tribes with which the General Government may come in conflict; not to those small remnants of tribes scattered over the country, which are under State jurisdiction and guardianship. (32 Me., 343.)

"Second. We hold that plaintiffs entirely fail to establish the second proposition, to wit: That the navigation of these waters is embraced within the actual legislation of Congress. None of the acts cited were ever intended to apply to waters wholly within the limits of a State, and which could not be reached by vessels from foreign ports or from other States.

"Again, we contend that if Congress has, or should pass any acts interfering with commerce purely internal, they would be unauthorized and void. (Passenger case, 7 How., 283; Genesee Chief, 12 Id., 443.)

"Third. As to the third proposition, the case fails to show that plaintiffs have acquired any rights in the navigation of the waters of the upper Penobscot, under any regulation of Congress or in any other way or manner.

"Assuredly there can be no pretense that plaintiffs were engaged (571) in any commerce on those waters with any foreign nation, or with any other State. Nor is there any fact or evidence in the case tending to show that they were engaged in commerce with the Penobscot Tribe. It does not appear that they traded or had any intercourse with that tribe, nor that they wished or intended to have any such intercourse. The Penobscots are not represented here. They do not complain of the grant. There is no fact going to show that this grant has any bearing or effect on any commerce to which they are parties. If they have any ports of entry or clearance, for aught the case finds, such ports may be as hermetically sealed as those of Japan.

"If plaintiffs fail to show that they have acquired rights which have been taken away, they can not complain, even if the act was most palpably against the Constitution. (Wheeling Bridge case, 13 How., 518; East Hartford *v.* Hartford Bridge Co., 17 Conn.)

"Mr. Justice Daniel delivered the opinion of the court.

"The questions raised upon this record, however subdivided or varied they may have been in form or number, are essentially and properly restricted to the power and the duty of this court to inquire into the constitutional obligation of the law of the State of Maine, upon which the decision of the supreme court of that State was founded, for if that law and the privileges conferred thereby be coincident with the eighth section of Article I of the Constitution they can be assailable here upon no just exception.

"It is insisted, however, that the statute of the State of Maine is in derogation of the power vested in Congress by the article and section above mentioned, 'to regulate commerce with foreign nations and among the several States and with the Indian tribes.' We will examine the character of this objection with reference to the facts disclosed by the record and with reference also to the provisions of the statute in question, as they have been designed to operate on those facts; and, as these last are all agreed by the parties, there can be no need of a comparison of the testimony to ascertain their verity.

"The River Penobscot is situated entirely within the State of Maine. Having its rise far in the interior of the State, it is not subject to the tides above the city of Bangor, near its mouth. Between the city of Bangor and Old Town, a distance of 8 miles, the Penobscot passes over a fall, is crossed by four dams erected for manufacturing purposes, and for the above space is not at this time and never has been navigable; but there is a railroad from Bangor to the steamboat landing at Old Town. On the 30th day of July, 1846, the Legislature of Maine, by (572) law enacted that—

"'William Moor and Daniel Moor, jr.,' their associates and assigns, were authorized to improve the navigation of the Penobscot River above Old Town, and for that purpose were authorized to deepen the channel of the river; to cut down and remove any gravel or ledge, bars, rocks, or other obstructions in the bed thereof; to erect in the bed, on the shore or bank of said river suitable dams and locks, with booms, piers, abutments, breakwaters, and other erections to protect the same; to build upon the shore or bank of said river any canal or canals to connect the navigable parts of said river; or (in case it shall be deemed the preferable mode of improvement) any railroads for the like purpose.

"After providing the modes of acquiring lands or gravel on the shores or in the bed of the river, and for compensating the owners of property used in the prosecution of the contemplated improvement, the act proceeds to limit the time for the contemplation of the undertaking, with particular termini therein named, to the period of seven years from its date, and, further, requires that within the period thus limited the grantees shall build and run a steamboat between those termini, and shall, within the same time, make a canal and lock around the falls of the river or a railroad to connect the route above with that below the falls.

"Then follows section 4 of the statute, containing the provision objected to. It is in these words: 'If said William Moor and Daniel Moor, jr., their associates and assigns, shall perform the conditions of this grant as contained in the preceding section, the sole right of navigation of said river by boats

propelled by steam from said Oldtown so far up as they shall render the same navigable is hereby granted to them for the term of 20 years from and after the completion of the improvement, as provided in the third section of this act.' The defendant in error, who is assignee of the original grantees from the legislature, having made certain improvements in the river by the removal of rocks and by deepening the channel in other places, so as to enable boats to run therein, with 2½ feet less of water than was requisite for navigation previously to these improvements, and all within the limit prescribed to him by law, built, and on the 27th of May, 1847, placed upon the said river the steamboat *Governor Neptune* and ran her from Oldtown over the Piscataquis Falls to a place called Nickaton. In the spring of the year 1847 the defendant in error placed on the river the steamboat *Mattanawcook* and ran her to Lincoln till obstructions were removed by him at a place called the Mohawk Rips, above the Piscataquis Falls; and has also built, and is now running upon the river, another steamboat (573) called the *Sam Houston*, in addition to the *Governor Neptune* and the *Mattanawcook*.

"The plaintiff in error, Samuel Veazie, built the steamboat *Governor Dana*, and in conjunction with other plaintiffs, Levi and Warren R. Young, ran her upon the Penobscot River between Oldtown and the Piscataquis Falls from the 10th of May, 1849, until they were arrested by an injunction granted at the suit of the defendant in error. The steamboat *Governor Dana* was enrolled and licensed for the coasting trade at the customhouse at Bangor. The Penobscot tribe of Indians own all the islands in the Penobscot River above Oldtown Falls, some of which they occupy; and this tribe always have been, and now are, under the jurisdiction and guardianship of the State of Maine.

"Upon this state of facts agreed, the Supreme Judicial Court of Maine, after argument and advisement, at its June term, 1850, decreed that the plaintiffs in error be perpetually enjoined to desist and refrain from running and employing the steamboat *Governor Dana*, propelled by steam, for transporting passengers or merchandise on said river or any part thereof above Oldtown, and also from building, using, and employing any other boat propelled by steam on that part of the said river for that purpose without the consent of the said Wyman B. S. Moor, obtained according to law, until the said Moor's exclusive right shall expire. The court further decreed to the defendant in error the sum of $1,052.45 for damages and expenses incurred by him by reason of the interference with his rights on the part of the plaintiffs in error.

"Upon a comparison of this decree and of the statute upon which it is founded with the provision of the Constitution already referred to we are unable to perceive by what rule of interpretation either the statute or the decree can be brought within either of the categories comprised in that provision.

"These categories are, first, commerce with foreign nations; second, commerce amongst the several States; third, commerce with the Indian tribes. Taking the term commerce in its broadest acceptation, supposing it to embrace not merely traffic, but the means and vehicles by which it is prosecuted, can it properly be made to include objects and purposes such as those contemplated by the law under review? Commerce with foreign nations must signify commerce which in some sense is necessarily connected with these nations, transactions which either immediately or at some state of their progress, must be extraterritorial. The phrase can never be applied to transactions wholly internal between citizens of the same community or to a polity and laws whose ends and purposes and operations are (574) restricted to the territory and soil and jurisdiction of such community. Nor can it be properly concluded that, because the products of domestic enterprise in agriculture or manufactures, or in the arts, may ultimately become the subjects of foreign commerce, that the control of the means or the encouragements by which enterprise is fostered and protected, is legitimately within the import of the phrase 'foreign commerce,' or fairly implied in any investiture of the power to regulate such commerce. A pretension as far-reaching as this would extend to contracts between citizen and citizen of the same State, would control the pursuits of the planter, the grazier, the manufacturer, the mechanic, the immense operations of the collieries and mines and furnaces of the country; for there is not one of these avocations, the results of which may not become the subjects of foreign commerce, and be borne either by turnpikes, canals, or railroads, from point to point within the several States, toward an ultimate destination, like the one above mentioned. Such a pretension would effectually prevent or paralyze every effort at internal improvement by the several States; for it can not be supposed that the States would exhaust their capital and their credit in the construction of turnpikes, canals, and railroads, the remuneration derivable from which, and all control over which, might be immediately wrested from them, because such public works would be facilities for a commerce which, whilst availing itself of those facilities, was unquestionably internal, although intermediately or ultimately it might become foreign.

"The rule here given with respect to the regulation of foreign commerce, equally excludes from the regulation of commerce, between the States and the Indian tribes the control over turnpikes, canals, or railroads, or the clearing and deepening of watercourses exclusively within the States, or the management of the transportation upon and by means of such improvements. In truth, the power vested in Congress by Article I, section 8, of the Constitution was not designed to operate upon matters like those embraced in the statute of the State of Maine, and which are essentially local in their nature and extent. The design and object of that power, as evinced in the history of the Constitution, was to establish a perfect equality amongst the several States as to commercial rights, and to prevent unjust and invidious distinctions, which local jealousies or local and partial interests might be disposed to introduce and maintain. These were the views pressed upon the public attention by the advocates for the adoption of the Constitution, and in accordance therewith have been the expositions of this instrument propounded by this court, in decisions quoted by counsel on either side of this cause, though differently applied by them. (575) (Vide The Federalist, Nos. 7 and 11, and the cases of Gibbons *v.* Ogden, 9 Wheat., 1; New York *v.* Milne, 11 Pet., 102; Brown *v.* The State of Maryland, 12 Wheat., 419; and the License cases in 5 How., 504.)

"The fact of procuring from the collector of the port of Bangor a license to prosecute the coasting trade for the boat placed upon the Penobscot by the plaintiff in error (the *Governor Dana*), does not affect, in the slightest degree, the rights or condition of the parties. These remain precisely as they would have stood had no such license been obtained. A license to prosecute the coasting trade is a warrant to traverse the waters washing or bounding the coasts of the United States. Such a license conveys no privilege to use, free of tolls, or of any condition whatsoever, the canals constructed by a State, or the watercourses partaking of the character of canals exclusively within the interior of a State, and made practicable for navigation by the funds of the State, or by privileges she may have conferred for the accomplishment of the same end. The attempt to use a coasting license for a purpose like this is, in the first place, a departure from the obvious meaning of the document itself, and an abuse wholly beyond the object and the power of the Government in granting it.

"Upon the whole we are of the opinion that the decision of the Supreme Judicial Court of the State of Maine is in accordance with the Constitution of the United States, and ought to be, and is hereby, affirmed.

"ORDER.

"This cause came on to be heard on the transcript of the record from the Supreme Judicial Court of the State of Maine and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of said supreme judicial court in this cause be, and the same is hereby affirmed with costs."

Mr. President, I feel that I ought not to occupy the floor longer. The Senator from Colorado gave notice yesterday that he would speak to-day, and I feel that I am imposing on him by taking so much time.

Mr. THOMAS. I have no desire to abbreviate the remarks of the Senator from Maine.

Mr. FERNALD. I have already used more than an hour, although I intended to speak but a few moments.

Mr. President, in conclusion I wish to ask in order to bring this question back to a concrete matter, what will really happen when a man who owns the banks of a stream wishes, under this bill, if it shall be enacted into law, as it probably will be, to erect a dam? What will be the first thing he will do? Will he not go to the best lawyer he can find to ascertain what his rights are?

Mr. President, it is readily apparent that there is a great difference of opinion among the leading lawyers of the Senate, as there is a great difference of opinion among the courts of the United States in the various States, as to this question. Some decisions are on one side and some on the other. All I want to do is to provide a definition which everyone can understand, so that it will not be necessary for a farmer, if he desires to build a dam across a stream, to ascertain whether or not it is a navigable stream.

I am going to suggest to the chairman of the committee a definition which, I think, would make the matter plain. It

would apply to every stream and every State in the United States, and would obviate any further dispute about this matter. It would take, I am sure, a considerable business away from the lawyers—and that is what I am here for, for I am not a lawyer. [Laughter.]

I would suggest, if the committee of conference mean what they say—and I know they do—that they ought to be willing to accept my definition, and it is simply this. It is only four lines, and everybody can understand it; and if the term has not been defined up to this time in any law, it is time that it was defined in this bill.

"Navigable waters" as used in this act includes only those streams or sections of streams that are shown to be navigable in more than one State, for boats drawing more than 2 feet of water, and are more useful for navigation than for other purposes.

That defines the term so that anybody can understand it, and I suggest that definition to the conferees.

Mr. THOMAS. Mr. President, I am satisfied that if the Senator's definition were incorporated in this law, it would create a harvest for the legal profession that would support them for at least one generation to come.

I sympathize with my friend the Senator from Maine and all other representatives of the nonpublic-domain States with regard to this question of Federal control of their streams; and yet simple justice requires me to say to those gentlemen that the position which they have heretofore occupied with regard to similar questions on the public domain is the cause of their present difficulty, and their dilemma is a situation which, with all due respect to them, serves them perfectly right. As the Senator from Arizona [Mr. SMITH] suggests, they are getting now what they have given to us for a great many years; and it is a source of some consolation, therefore, to know that these chickens are coming home to roost.

We have stood upon this floor for years protesting against the restrictions and the constantly growing extension of Federal authority over the public lands, over the public waters, and the use of them, against the continuous enlargement of the legal and statutory definitions of navigable streams, against the interference of those definitions as applied in practice with the development of the public-domain States, against the discouragements which they have furnished to immigration and development; and during all these years Senators from the older States have constituted an almost solid phalanx in sustaining this policy, in promoting it, and in defeating every effort at relief which western Senators and Congressmen have attempted to secure. The result is that the term "navigable stream," as applied to Federal jurisdiction, means all the waters in the country, including the surface waters falling from the heavens and filling the streams, and thus contributing to the navigability of the greater rivers to which the Senator from Minnesota [Mr. NELSON] referred.

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

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

Mr. THOMAS. I yield.

Mr. SMOOT. The Senator knows my position on this question, and the position that I have taken on it for about 12 years.

Mr. THOMAS. Yes.

Mr. SMOOT. Until a year ago, there were two separate bills always introduced at each Congress, one for navigable streams and one for the streams of the intermountain country.

Mr. THOMAS. Yes; one for streams in the public domain.

Mr. SMOOT. In the public domain. A year ago they conceived the idea that by combining the two propositions into one bill it would be very much easier to secure the passage of the proposition in that way than to try to pass the bills separately. I want to say that while the bill is not what I should like to have it, and if I had the writing of it the Senator knows that it would be an entirely different bill, the situation got so intolerable that I thought it was best to get legislation by which we could at least develop some of the water powers that have been tied up in the West for so many years.

I was informed this morning that if the bill becomes a law there are already prospects of the expenditure of great sums of money for the development of water power under its provisions. I hope I shall not be disappointed. I may, however, but I hope not; and it is for that reason that I signed the conference report on this bill. In my opinion it is the best possible measure that we could pass through Congress that at least allows, with restrictions that are almost unbearable, the development of the water powers of the West.

Mr. THOMAS. Mr. President, I expect to hold my nose and vote for it, also, if necessary. The definition given to the subject of navigable waters in this bill, however, to my mind will eventuate in its applicability to every stream favorably passed upon by the engineers, who will probably pass upon any stream which in some particular district is sufficiently formidable to justify an application for an appropriation to improve it.

Mr. JONES of Washington. Mr. President——

The PRESIDING OFFICER (Mr. FERNALD in the chair). Does the Senator from Colorado yield to the Senator from Washington?

Mr. THOMAS. I yield.

Mr. JONES of Washington. Does not the Senator think that if that is true it will make Senators and Representatives a little bit more careful about asking for surveys of rivers, and thereby result in the saving of money?

Mr. THOMAS. I do not. If I thought so I would support the bill enthusiastically. I do not think anything will put a stop to that except the introduction of a new policy of appropriation in the Congress.

This bill does provide for permits, which may or may not be applied for—to use the language of the Senator having charge of the bill—according as the interested party may be willing to take chances; but before the bill has been in operation three years the department down here will construe that provision of the act as mandatory, and there is not a man in your State who can build a cow track or a sheep's bridge across one of your streams without coming down here to Washington and getting a permit; and again I say, it serves you right.

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

The PRESIDING OFFICER. Does the Senator from Colorado yield to the Senator from North Carolina?

Mr. THOMAS. I do.

Mr. OVERMAN. Suppose we define in this bill what a navigable stream is. Does that make it a navigable stream?

Mr. THOMAS. I do not know whether it does or not, because the chances are that in nine cases out of ten the courts will have to define the definition.

Mr. BORAH. Mr. President, of course, as a matter of fact, it does not, but in the practical workings that will be the effect of it.

Mr. THOMAS. Certainly. I am speaking about its practical operation.

Mr. BORAH. They will find this authority here spread upon the statute, and they will exercise it, and there will be nobody who can stand against their exercise.

Mr. THOMAS. Precisely. We from the West have fought against this policy by day and by night, in season and out of season, and have been compelled to go down to defeat every time, because we have been confronted by an almost solid phalanx of opposition in the East and in the Middle States. Now, gentlemen, the medicine is of your own preparation. Please take it, and look as pleasant as you can. We have had to do it for some time.

ACTIVITIES AND ACCOMPLISHMENTS OF THE WAR DEPARTMENT.

But, Mr. President, I rose, pursuant to a notice which I gave a day or two ago, to submit to the Senate some observations upon the part played by the War Department in the recent war against Germany.

The part assigned by fate to the Great Republic in the tragedy of the German war, and her performance of it, surpasses the combined military exploits of history. The generation which wrought the stupendous task have reached the high tide in human accomplishment. Posterity will record their deeds in epic, song, and story. These may be emulated in the crises of the future, but no achievement, however heroic in purpose or stupendous in proportions, can overshadow it.

We are too near the great episode, we have been too much a part of it, to appreciate the magnitude of its proportions or the sublimity of its perspective. We have been involved in its details, annoyed by contact with the conception or the execution of some of the plans, critical of its operation here and there, doubtful of the earnestness, the capacity, or the integrity of personnel, and impatient over costly delays seemingly avoidable. Apprehension and anxiety, mingled with crimination and recrimination and synchronizing with the development of a mighty military machine, have been too acute and too chronic to subside with the triumph of our arms and the close of hostilities. These, coupled with the magnitude of the public expenditure, extravagant beyond the experiences of the past but unavoidable in the waste of war, have displaced in public vision the vastness of the national task and the implacable need for its speedy accomplishment.

This state of mind, coupled with an approaching presidential election and the prospect of a supply of unlimited campaign material, have impelled the Congress to devote the greater part of the session, now more than a year old, to numerous and microscopical investigations of the details and methods of

mobilization and supply, and of the departments, bureaus, boards, and individuals through whose agencies the work was done.

The investigators have revealed a few small dents in the national armor, a stray blemish on the escutcheon of national achievement, an occasional inability in personal effort. Like spots on the sun, these are for the astronomer's vision, and, like the astronomer, they are paraded with sinister enthusiasm by their discoverers, while the sun shines on.

The majestic sweep of an Amercian Army across the French landscape 3,000 miles away, their transport across the submarine-infested seas, their sustained equipment of munitions and supplies, the assembling and discipline of still vaster hordes of American youth in huge cantonments springing into existence overnight, the concentration of a nation's limitless industrial resources for a nation's cause, the titanic effort of a hundred million people for the overthrow of an overshadowing menace fraught with unspeakable disaster to a harried world, and the speedy retransportation of a victorious army—these are to-day obscured by the probings, the calumnies, the denunciations, and the personal animosities of the hour. Failures here, profligacy there, inability, incompetency, and dishonesty everywhere, form a clamoring chorus of complaint and detraction, undignified in character and unworthy of the Nation.

If it need be that such offenses must come, then rebuke and denial are alike impotent to overcome them. But they justify an attempt to draw the public mind for a brief moment away from the arena of acrid and passionate contention to a brief contemplation of the Nation's record as a whole during that period of 19 months which forms its "crowded hour of glorious life."

Let me, therefore, present to your dispassionate consideration a brief and imperfect sketch of the outlines of America's military campaign against the Central Empires during the years 1917 and 1918.

Since the date of the armistice on the western front a period has elapsed that is about equal to the period of American participation in the World War. Much has been written about the great accomplishments of our armies in France, but little has been said about the other and equally great achievement of our War Department in the creation and delivery of those armies in Europe. It is but just that something of the colossal measure of that achievement should be known.

Before passing to its review it seems fitting that we should touch upon still another—one that underlay and made possible both of these achievements—the effort of the American people. In the World War for nearly three years we had stood apart. We had no hand in bringing it about; no share in its conception. We had no thoughts of conquest or dominion. A great Nation, not insensible of our strength, we accorded to the smallest of peoples the full measure of national freedom which we demanded, as of right, for ourselves. We questioned the purposes of none. We believed that each nation was moving in its own way toward ends that the world would judge as good.

Suddenly, to us at least, the war burst upon Europe. Amazed at its onset, we watched, almost incredulously, its flames sweeping over Europe, then leaping to the remotest corners of the earth. What madness was theirs who kindled them? Everywhere men's hearts were gripped with apprehension. The structure of European civilization was assailed—a structure that had been a thousand years in the building. And then we, too, came in.

It is not needful to refer here to the causes which thrust us into the arena and for which we fought. They are known to all men. Nor is it wished to prolong the terrible passions of the war. These must be quenched. Mankind can not go forward until they die out. Without passion, without malice, our people are setting themselves to new tasks. And it is in no mean or ignoble spirit that they are facing them. The memory of recent years is fresh upon them; a memory of a common effort in an unselfish cause, when, revealing themselves to the world and to each other in new and unsuspected lights, they went forward, with a unity of purpose, of resolution, and of effort, to the greatest achievement in history.

The moral basis of that achievement is beyond measure or praise. The outlines of the achievement itself can be appraised. And the more we contemplate it, as it recedes in perspective so that we can see its full outlines, the more stupendous it appears. The conditions under which we began our task were not promising either as to an early or even as to a final success. For nearly three years the most powerful military machine ever created, the product of a century's growth, had marched triumphantly on. The Central Empires had been almost everywhere successful. Their opponents now to become our associates in the war had passed the zenith of their power. The eastern front was crumbling, and the Russian armies, shaken by excessive losses and repeated defeats, palsied by internal convulsions, showed but a shadow of their former strength. The fears then felt as to their dissolution and the total collapse of that once mighty nation were soon to be realized.

The task before our people was of transcendent magnitude. Could we offset the loss of Russia? Russia, a military nation, having a population nearly twice our own, and the largest armies in the world, organized and trained to meet this very event, whose borders ran with those of the enemy, so that her full strength could be exerted in the struggle, whose 8,000,000 troops had fought until so recently with an unflinching courage! Would it be possible for us, in practice and by inclination an unmilitary nation, to overcome the handicaps of our lack of preparation, to surmount the difficulties surrounding the dispatch of armies across 3,000 miles of a sea infested with submarines? In the face of these conditions, would it be practicable for us to exert a military effort equal to that lost by the defection of Russia?

But our task was much greater. We must exert that increased measure of effort that would be necessary to turn the tide of battle in our favor, and we must develop that effort with the utmost speed lest our associates, now facing enemy forces swollen by the release of his armies from the eastern front, should be crushed before we could come to their aid. Prior to the collapse of Russia the Allies had been able to maintain a numerical superiority on the western front of about 30 per cent; but the defection of that nation would permit the Central Powers not only to wipe out the allied superiority but to attain for themselves a superiority on that front of about 50 per cent. Our associates had put forth their maximum efforts. From now on their strength must wane. Their premiers and their military experts united in urging upon us that promptness was imperative. We must act quickly. Delay, whether avoidable or not, would be irretrievably disastrous.

The countries at war were literally nations in arms. The great military establishment each had maintained in peace lent itself to that expansion which was forced by the impelling need of three gruelling years, until their whole people had been molded into vast war machines. Great Britain alone afforded us an example even partially analogous to our own situation. Possessed, like ourselves, at the outbreak of war with an Army so small as to be, from a European standpoint, almost negligible, and, like ours, one not adapted to rapid expansion, her achievements had well earned our admiration. They might afford a comparative measure of our possible accomplishments. Yet Great Britain, close to the western front, without the great transportation difficulty that was facing us, in the 18 months following the outbreak of war had been able to assemble in France a force of only about 1,000,000 men. Our task might well have been looked on as impossible. In the light of the facts of the war until then it was impossible. Then we must do the impossible. We must surpass achievements that hitherto had found no parallel in history. We must demonstrate the old assertion that autocracies seem more efficient than they are, while democracies are more efficient than they seem.

It was in this spirit that our people met the great problems of the war. With unalterable resolution, with singleness of purpose, with constantly growing effectiveness of effort, they met every demand, overcame every difficulty, and turned an otherwise certain defeat into a decisive victory. And it was this spirit wafted overseas which brought renewed hope to the exhausted people of the Allies. And from this spirit flowed the resolution, the indomitable courage, that inspired our troops to their great deeds in France.

These deeds are well known. They are inscribed indelibly in history. But the basis on which these deeds became possible—the direction of the willing efforts of individuals into collective efforts toward essential ends, the organization of the resources of the entire Nation for the most effective prosecution of the war, the wise guidance of that organization; in brief, the achievement of the War Department in translating this unity of national purpose into unity of national effective effort—this is less known. Yet this achievement finds no counterpart among similar performances elsewhere in the war or in preceding history. Without leadership of high quality the sacrifices of a generous people would have been in vain. But again in a crisis, American leadership rose to the full measure of need and met every test.

The outstanding task which faced us upon our entry into the war was that of exerting our military strength upon the western front with a minimum of delay. To this task, which fell to the War Department, all others were subordinate or secondary. Time was everything. To its inexorable demand all other elements were subordinated. The main steps that had to be taken

by that department for the accomplishment of this task included raising the men; organizing, training, and equipping them; transporting them overseas; and subsequently providing them with the supplies and munitions needed in the conduct of operations.

The declaration of war, on April 6, 1917, found the United States, from a military standpoint, wholly unprepared. We could not make the deliberate preparation that had marked the development of the European military systems. The latter were the products of systematic and prearranged plans in time of profound peace, developed in the gradual manner of great commercial enterprises, such as the United States Steel Corporation or the Pennsylvania Railroad. The War Department, without time for experimentation, had to proceed along untried lines and with the utmost speed to the accomplishment of the greatest enterprise ever undertaken. Let us examine what its task was and how that task was accomplished.

When we entered the war in the spring of 1917 the submarine situation justified grave doubts as to our ability to transport, much less to maintain, large forces in Europe. The sinkings during that spring were unusually heavy and were increasing from month to month to such an extent as to cause our associates to become apprehensive lest the decreasing ocean tonnage should preclude their obtaining the necessary foodstuffs and the material for munitions requisite for the further prosecution of the war. If this increased rate of sinkings should continue it would be possible to dispatch overseas only a comparatively small force, as the greater part of the available tonnage would be required for foodstuffs and supplies for our associates. These considerations led to the adoption at that time of a tentative program, which involved—

(a) The immediate dispatch overseas of a small but, in a military sense, complete body of troops—one division—to serve as the nucleus for the organization and training of the American forces that were to follow and to afford a physical evidence of our participation in the war.

(b) To follow this advance detachment by an expeditionary force as large as the shipping situation would permit. For housing this latter force during the period of organization and training, work was at once started on the construction of 16 National Army cantonments and 16 National Guard camps, having a total capacity of one and a half million troops.

(c) To construct shipyards and turn out ships faster than the enemy could destroy them.

The adoption of a detailed plan of organization had to await the report of Gen. Pershing, then in France. That report was submitted under date of July 10, 1917, and recommended the dispatch to France of an American army of 30 divisions, a force which would aggregate 1,372,399 troops. Subsequently, the serious situation produced by the German offensive on the western front in the spring of 1918 led to the conviction that the war could be brought to a successful end only through a greater participation by the United States than was possible under the 30-division program. Accordingly, on July 8, 1918, the War Department enlarged that program so as to provide for the assembly in France by June 30, 1919, of 80 divisions, or 3,360,000 men, with 18 divisions at home, or a total force of 4,850,000 men. This was the program followed from then until the date of the armistice in the dispatch of troops to France. The premiers of our associates and Marshal Foch insistently urged, however, that a program even of that magnitude would not be sufficient to insure that the war would be brought to a successful termination, and on September 3, 1918, the War Department extended that program so as to provide for the assembly in France by June 30, 1920, of 100 divisions, or 4,260,000 men, with 12 divisions at home, or a grand total of 5,500,000 on that date.

The forces available upon our entry into the war as a nucleus for such enormous armies were, indeed, small. Our Regular Army comprised only 128,000 men, scattered throughout the United States, Panama, Hawaii, Alaska, and the Philippines. A large portion of it was guarding the Mexican border, which could not be wholly denuded. The strength of the National Guard in Federal service, as a result of the troubles on the border, amounted to about 64,000, and the National Guard troops in State service amounted to about 111,000. Our total forces, both Regular and National Guard, amounted to only about 300,000, including the Regular troops in our insular possessions. Our National Guard troops had to be assembled, organized into divisions, their training completed, and their expansion effected to their war strength of approximately 400,000 men. The small force of trained Regular troops had to be drawn on to obtain detachments to act as training leavens for the divisions to be organized from the draft and to afford nuclei for the additional organizations created under the national defense act, and then further diluted by an expansion to war strength, until finally these organizations contained only a small percentage of men with prewar training.

In the following year and a half these small forces had been expanded to a total of approximately 4,000,000 men, of whom 2,000,000 had been assembled in France. An indication of the true measure of this accomplishment will be found in the rate of expansion achieved by the British. The latter, although their trained forces were double ours, and notwithstanding their heroic efforts and their proximity to the battle field, were able to assemble in France only 1,000,000 men in the first 18 months after their entry into the war, and it required three years for them to assemble there the number that we assembled in half that period.

This rapid and large expansion in our military forces was made possible by the selective-service act of May 18, 1917. Enlistments were from two sources—voluntary and the draft. During the spring and summer of 1917, before men could be obtained through the draft, voluntary enlistment was resorted to in order to expand the Regular Army and National Guard to war strength. From September of 1917 onward nearly all enlistments were obtained through the operation of the selective-service act. Of our total male population of 54,000,000, 26,000,000, or nearly one-half, were registered, and over 2,800,000 were inducted into the military service, or 60 per cent of our armed forces. The act was applied in a manner recognized by our people as just and equitable and with a minimum of interference with our economic life, yet it continued to meet the progressive needs of our constantly expanding military forces and would have met the 100-division program asked by Marshal Foch. The country supported the law in letter and in spirit and held the drafted soldier and the volunteer in equal honor and esteem. The earnest, unselfish cooperation of the people in the application of that law will endure forever as a monument to American patriotism.

The men called in the initial draft in the fall of 1917 were used in the creation of the 17 new National Army divisions. Subsequently calls under the draft varied from month to month, depending upon the rate of shipment of troops to France. As this rate increased, releasing greater housing facilities at cantonments, the monthly increments in the draft were correspondingly increased. As it required about a month to call, receive, and distribute a single large increment of the draft, the total number that could be called during a month was limited to the maximum number that could be received and assigned during that period. The distribution of the draft among the cantonments was made with a view to completing the different units in the relative order in which they would have to be dispatched to France, in order to maintain there at all times a well-balanced army. In this distribution consideration had to be given also to the necessities which had arisen in the World War of supplying to each organization men with special qualifications for particular functions. These specialists could be obtained from the draft, as it had brought into the service men of all trades. The number obtained from agricultural districts, however, was too small to meet the needs of the organizations formed from the drafts from those districts, and it was found necessary therefore to examine and classify all men received and reassign those with mechanical or other special training to organizations as needed. This classification served also to disclose those who were inferior in physique, or whose knowledge of the English language was inadequate, and permitted special measures to be taken for the correction of those deficiencies. The effect of this system was to obtain the maximum value from each increment of the draft, as each man was placed in the position that he was best qualified to fill; and it was an important factor in the conservation of the man power of the country and in tending to disturb to a minimum degree the economic life of the Nation.

As the war progressed men were needed not only to make up the new divisions required in the expansion of the Army, but also to replace the wastage in divisions already formed. This wastage arose not only from battle casualties but from disease and from rejections of men because of physical or other deficiencies. It became an increasingly serious problem as the war went on until in the summer of 1918 the replacements required had risen to 50,000 men per month.

In the initial organization of the divisions of the National Army, as well as of those of the National Guard, each division was made up of men drawn from the same locality. At first it appeared to be desirable to restrict the replacements sent to a division to men drawn from its home locality, so as to maintain its local character, but subsequent events challenged its practicability. It was unavoidable that the character and extent of exposure to battle casualties of different divisions should vary widely, and if replacements had been so distributed as to

maintain the localized character of divisions the losses suffered by certain communities would have far exceeded those of others. For example, the Twenty-sixth Division was drawn from New England; the Twenty-seventh Division from New York; the Thirty-third Division from Illinois; the Thirtieth Division from North Carolina, South Carolina, and Tennessee. During the course of the war each of these divisions received about 30 per cent of replacements, drawn from about 40 States other than those from which the division was originally raised. Had the First and Second Regular Divisions been drawn from particular localities the changes in their original character would have been still more marked because of the heavier losses they sustained. These facts indicate that the policy followed in the distribution of replacements tended to the distribution of losses equitably over the entire country.

With the limited means on hand, the training of our armies appeared to offer a problem that might prove insurmountable in the time available. The officers of the Regular Army numbered less than 6,000, those in the National Guard about 12,000. The latter were needed and were retained with the divisions drawn from the National Guard. The small corps of Regular officers afforded the only source from which instructors could be obtained to train the nearly 200,000 new officers that were needed for our expanded armies. But that source had to be drawn on at the same time to meet a multitude of other pressing needs arising in the organization of our armies here and abroad. The training of our forces could not be carried on without shelter for the men during the training period. It was required on an enormous scale, and none was available; and its construction had to be begun at once, as the initial draft could not be assembled until it was completed.

Immediately after the declaration of war steps were taken by the War Department to meet both these pressing needs. Orders were issued in April, 1917, for the first series of officers' training camps, which opened on May 8, 1917, and which was attended by approximately 38,000 candidates for commissions, selected after tests as to their physical and mental qualifications. These candidates were given an intensive course of instruction for three months in the duties of an enlisted man and of platoon and company commanders. The results were excellent and of fundamental and far-reaching importance. Over 27,000 of the graduates of this first series of camps were found qualified for commissions, and it was these graduates who supplied the initial quotas of company officers for the National Army divisions organized in September, 1917. Subsequently three other series of training camps were held with equally good results. The rapid expansion of the commissioned personnel from its total of 18,000 at the declaration of war to nearly 200,000 at the date of the armistice was made possible largely by the results obtained at these camps. Of these 200,000 officers, approximately one-half were drawn from these camps, 3 per cent came from the commissioned and 8 per cent from the enlisted personnel of the Regular Army, 6 per cent from the National Guard, and the remainder, a majority of whom were for the Medical Department, entered the Army directly from civil life.

Simultaneously with the initiation of the first series of officers' training camps steps were taken by the War Department toward the provision of shelter and suitable training areas for the new forces. The construction of 16 cantonments for National Army divisions was authorized in May, 1917, the last site secured on July 6, and on September 5 of that year, when the first installment of the initial draft was called to the colors, cantonment accommodations were available for 430,000 men. This capacity was shortly increased to 770,000, or an average capacity per cantonment of 48,000.

In May, 1917, the construction work was started also on camps for the 16 National Guard divisions which were called into the Federal service in July of that year. Although the soldiers were quartered under canvas, the provision of these camps involved extensive construction work, including the erection of many wooden structures, the provision of water, sewer, and lighting systems, and the construction of roads. These camps had a capacity of 684,000, so that the total capacity of the camps and cantonments constructed in 1917 amounted to one and a half millions. In addition to these 32 camps and cantonments, a large amount of additional construction was required for the provision of suitable embarkation centers at New York and Newport News, and of schools for special services. This additional construction had a capacity for more than 300,000 men, so that during a few months in 1917 there was constructed as an essential part of our war program shelter for approximately 1,800,000 men.

The costs of construction were necessarily higher than they would have been if time had not been a controlling consideration; but time was the essential factor, and the outstanding feature of the accomplishment was its rapidity. Each of the cantonments was completed in substantially 90 days. It was this speed which made it possible to begin the training of the drafted army in the fall of 1917, and that made it available just in time for the critical battles of the summer of 1918.

The problem of the initial equipment of our forces, and subsequently their maintenance in munitions and supplies overseas, at best an exceedingly difficult one, was complicated for us by the fact that our associates were drawing and must continue to draw from us large quantities of munitions and supplies which were essential to the maintenance of their armies. As a consequence, the War Department, notwithstanding the delay thus entailed in our own preparations, was forced to develop new fields to meet our needs.

Some phases of this problem presented difficulties as to quantities rather than as to character, as, for example, blankets, clothing, and so forth. While the provision of adequate quantities of these latter articles was less difficult than the provision of noncommercial articles, such as ordnance, yet the quantities needed were so enormous as frequently to overtax the industries of the country. This was due not only to the large requirements for initial and reserve stocks but also to the vast but unavoidable wastage in the operations of troops in campaign. For example, the number of blankets purchased by the Army during 1918 was two and one-fourth times as great as the entire American production in 1914. In 1918 the margin between demand and supply had so decreased that it became necessary for the War Department to take over certain industries and control the output throughout all stages of manufacture. In the same year that department found itself obliged to follow the precedent established by the British Government and commandeer the entire wool supply of the country.

The great difficulty, however, in equipping our new Army was that of supplying it with munitions—that is, rifles, machine guns, artillery, ammunition, airplanes, guns, toxic gases, and so forth. These are noncommercial articles, which find no place in our economic life, and involve such technical difficulties in manufacture that their production can not be improvised and can be materially shortened in point of time only with the greatest difficulty. This problem had been found a critical one by each of the countries at war, and to meet it our associates had been forced to supplement their own facilities by drawing heavily upon us. Then, too, unlike the other belligerents, we entered the war without large initial stocks of equipment to tide us over the period until new facilities could come into quantity production. The problem frequently appeared an insuperable one. That it was met and mastered is a tribute both to the capacity and foresight of the War Department and to the patriotism of American industry.

But it should be remembered that the actual achievements in our production of munitions, great as they were, were but a foretaste of the far greater accomplishments that would have been achieved by the War Department had the war continued through 1919. And it should be remembered also that the fact that much of the equipment and munitions used by our troops in France was obtained from our associates was due in large measure to the imperative need that confronted us in the spring of 1918 of responding to the urgent appeals of our associates by employing all available tonnage for the shipment of troops, to the exclusion of the dispatch of equipment, and accepting the offers of our associates to supply equipment for those troops. The situation then existing is well described by Lieut. Col. Repington, the British military critic, writing in the Morning Post, of London, on December 9, 1918, as follows:

> * * * They (the British war cabinet) also prayed America in aid, implored her to send in haste all available infantry and machine guns, and placed at her disposal, to her great surprise, a large amount of transports to hasten arrivals. * * *
>
> The American Government acceded to this request in the most loyal and generous manner. Assured by their allies in France that the latter could fit out the American Infantry divisions on their arrival with guns, horses, and transport, the Americans packed their infantry tightly in the ships and left to a later occasion the dispatch to France of guns, horses, transport, labor units, flying service, rolling stock, and a score of other things originally destined for transport with the divisions. If subsequently—and indeed up to the day that the armistice was signed—Gen. Pershing found himself short of many indispensable things, and if his operations were thereby conducted under real difficulties of which he must have been only too sensible, the defects were not due to him and his staff, nor to the Washington administration, nor to the resolute Gen. March and his able fellow workers, but solely to the self-sacrificing manner in which America had responded to the call of her friends. * * *

When we entered the war we had 600,000 rifles; at the date of the armistice this number had been increased to over 3,000,000, of types that were superior in accuracy and rapidity of fire to those used by either our associates or our enemies. The expansion made necessary in our stocks of machine guns was on a still greater scale. The extensive use of machine guns, as

exemplified in the World War, had revolutionized the tactics of the battle field. The allowance of such guns authorized by Congress in 1912 was 4 per regiment. The experience of the World War has shown that this allowance should be eighty-fourfold greater, or 336 per regiment. Our production of machine guns was one of the striking features of our war effort. Our stocks were increased from a few thousand to 227,000 on the date of the armistice, a number well in excess of that required for our forces on that date. Moreover, a majority of these guns were of the Browning type, invented during the war by an American of that name, which were found superior to any machine guns in use by any of the other belligerents.

Of the enormous amount of equipment required in the expansion of our Army from its prewar to its final strength, artillery and artillery ammunition were among the elements that could be improvised with the least facility, for the necessary processes of its manufacture involved irreducible periods of time. As in the case of rifles, the quantity of light artillery the United States had on hand at its entry into war was sufficient to equip an army of only 500,000 men. We had on hand only 544 3-inch fieldpieces, whereas the 42 divisions organized in 1917 required 2,100 guns of that type. Few of our industries were adapted or could be adapted in the time available to the manufacture of complete pieces; so that the production of these pieces in quantity could be obtained only by distributing the work among many factories in such a way that each was allotted only the particular components that it could best produce. The success of this method involved a harmonizing and a coordination of effort in the work of many industries, so that the processes of all could be so timed that the subsequent assembly of the completed units would not be delayed. This coordination was attained, and during the period before the armistice the United States produced a total of 1,642 pieces of light artillery, and the work of production was under such headway that before it could be advantageously checked, in April, 1919, this total had risen to more than 3,000.

Our artillery program required the production of enormous quantities of artillery projectiles. As in the case of the artillery itself, no factories were prepared to manufacture complete rounds, and it became necessary for the War Department to assume the burden of distributing these components among manufacturers in such a manner as to secure harmony of effort in the production of the finished projectiles. By October, 1918, our monthly production had risen to the enormous total of 3,000,000 rounds. Our production of smokeless powder and high explosives was on an even greater and an unprecedented scale. Our output in 1918 not only met our own needs, but in addition met nearly one-half the needs of our associates.

A measure of the results obtained by the War Department in the manufacture of these munitions is afforded by comparing our output in the first 20 months after our declaration of war with the output of Great Britain in the first 20 months after her entry into the war. On making these comparisons we find that in respect of only one element, light artillery, was our output exceeded by that of Great Britain. Our output in heavy artillery was nearly double that of the British, exceeded it in light-artillery projectiles, was sixfold greater in heavy artillery projectiles, and 40 per cent greater in powders and explosives.

The manufacture of toxic gases was a problem that for us was wholly new. When, in 1915, the British and French lines in the Ypres salient were suddenly enveloped in clouds of gas, a new weapon had been introduced into warfare. That it was a terrible one is shown by the fact that during 1918 between 20 and 30 per cent of all our battle casualties were caused by gas.

When we entered the war we had had practically no experience in the manufacture of toxic gases, and possessed no facilities that could be readily converted to their manufacture. By the date of the armistice we had produced more than 10,000 tons, and on that date we were equipped to produce gas at a greater rate than France, England, or Germany.

One of the striking developments of the war was the wide application of caterpillar traction to military uses. It was variously applied and, as the war progressed, in increasing measure. Caterpillar tractors were used to haul heavy artillery, and to draw caterpillar trailers loaded with artillery ammunition or other heavy weights. During the latter stages of the war guns of constantly increasing size were mounted on caterpillar tractors, so that they became self-propelled batteries, which could travel over the roughest of country and fire directly from the conveyances on which they were mounted. In this new field our production made rapid progress, and before the armistice over 1,400 large artillery tractors had been shipped overseas. Another and a revolutionary military application of the caterpillar principle was the tank, which is merely a caterpillar having armored protection for the men and guns it carries. The progress of the war had led to the development of two distinct types, the light, 6-ton, and the heavy, 30-ton, tank. In the production of both these types we had made gratifying progress by the date of the armistice.

For the expansion of our aviation we set, in the general enthusiasm aroused by the creation of that new military arm, a program whose magnitude we did not in our ignorance then appreciate. At our entry into the war we possessed only a few airplanes, and these were not of battle types. The designs of the battle types developed during the war and prior to our entry therein had not been accessible to us, as they had been carefully guarded and withheld from neutrals. There was a general lack of appreciation, shared by even the best informed American authorities on aviation, as to the requirements, other than that of simple flying ability, of the enormous program that we had laid out for ourselves; and our people were thus led to cherish expectations that were beyond the possibilities of realization. The magnitude of that program is shown by the fact that after four years of intensive effort, and when at the height of her strength, Germany was able to maintain on the western front only about 2,500 airplanes.

Following the advice of our associates, our production of airplanes was largely concentrated on observation and bombing machines, which were subject to less frequent changes in design than pursuit planes, leaving the construction of the latter types to the European factories, which were in close contact with the front. As foreign engine production was insufficient to meet even the needs of our associates, it was found necessary to redesign many planes so as to take American-made motors. By November, 1918, our total production of service planes had reached 4,000, and was then proceeding at the rate of over 1,100 per month. America's chief contribution to aviation, however, was the development and production of Liberty engines. Engine production had been and continued to be the limiting factor in the aviation expansion of our associates. It was essential that we should develop a high-powered motor which could be adapted to our commercial methods of standardized quantity production. This need was met by the development of the Liberty 12-cylinder engine, which was adapted to our methods of quantity production and which could be produced by us in quantities to meet our own needs and those of our associates. By October, 1918, the production of these engines had reached a monthly output of 3,850, and the production to the date of the armistice totaled 13,574. After exhaustive trials our associates pronounced this engine a complete success, and vied with each other in attempting to obtain our total monthly output.

It may be said, indeed, that our accomplishments in aviation, while not equal to the initial program that we had laid out for ourselves, were what might have been anticipated in the light of a fuller knowledge of the subject and of the experiences of the war, and equaled the accomplishments of any of our associates during a like period.

The rate of delivery of our armies and their equipment overseas stands as an achievement that is unique and unprecedented in history. It was beyond the previous expectations of ourselves of our associates, and at a rate which the Central Empires had confidently assumed as wholly impracticable of attainment. Back of it there lay the most stupendous transportation system, rail and sea, ever assembled under a single control, directed by the War Department with an efficiency which met every demand made upon it.

The necessity for the creation of a great transport fleet arose just at the time when the world was experiencing its most acute shortage of tonnage. At the opening of hostilities the War Department possessed only 7 small transports, but within a period of 18 months it built up from this small beginning a transport fleet of over 600 vessels, totaling over three and a half million tons. In the assembling of this great fleet every possible source of tonnage had to be drawn upon. The first great increment was the seized German vessels, which amounted to about a half million tons. A million and a half tons were obtained by the withdrawal of ships from those commercial routes whose maintenance was not a vital economic need; a million tons of new ships were obtained from the Emergency Fleet Corporation, and the balance of the tonnage was obtained by charter from Dutch, Scandinavian, and Japanese sources.

In the summer of 1917 our troop movement was not rapid. In the fall of that year, as the former German liners were repaired and put into service, our embarkations increased to a rate of about 50,000 per month. In the spring and summer of 1918 this rate increased progressively and rapidly, until in the single month of July 306,000 men were landed in France, or 10,000 men per day. Within a period of 18 months over

2,000,000 men were transported overseas. Of these a half million were transported in the first 12 months and one and one-half millions in the last 6 months. The transportation of troops on such a scale or over such a distance has never before been attempted or contemplated. While credit for this movement must be shared with our associates, particularly the British, it should be said that the accomplishment of our transports exceeded theirs, both in the extent to which they were loaded and in the speed of their turn around.

Cargo shipments rose from 16,000 tons in June, 1917, to over 800,000 tons in November, 1918, and the total oversea cargo shipments amounted to 7,500,000 tons. This cargo included not only food, equipment, and munitions for our armies, but large quantities of building and railway material for the extensive overseas construction required for the maintenance of those armies in France. It included, for example, 47,000 motor trucks, 27,000 freight cars, and about 1,800 locomotives, of which 650 were shipped set up on their own wheels, so that they could be unloaded on the tracks in France and run off in a few hours under their own steam. The need for additional locomotives for military operations in France was a constant and pressing need. The shipment of set-up locomotives of large size had never been made before, but at the date of the armistice the War Department was prepared to ship these set-up locomotives at the rate of 200 a month.

The movement of troops and supplies within the United States reached tremendous proportions, nearly 14,000,000 soldiers being moved by rail during the war to camps or ports of embarkation, but because of the centralized and efficient control of our railways, which permitted an effective coordination of the measures taken to meet both military and commercial needs, these movements were carried out with but little interference with the normal traffic of the country.

During the entire period of active hostilities the Army lost at sea only 200,000 tons of shipping, of which 142,000 tons were sunk by torpedoes. No American troop transport was lost on its eastward voyage. For this splendid record the Navy, which armed, manned, and convoyed the troop transports, deserves the highest commendation.

The record made in the dispatch of our troops to France has been excelled only in the rate at which they were returned to our shores after the armistice. This return movement reached its maximum in June of 1919, when 364,000 troops were embarked from French ports, nearly all of whom were carried in American ships.

No effort was spared by the War Department to safeguard the health of our soldiers. The Medical Corps of the Army, numbering about 2,000 commissioned officers, was expanded by the addition of over 31,000 physicians from civil life, including practically all the leaders in the medical profession. Adequate hospital facilities were provided, and all of the most recent advances in medical science were applied toward the prevention of disease. As a result, for the first time in our history the deaths in war from disease were not far in excess of those resulting from battle. In this war approximately half the deaths occurring among our soldiers were due to disease, and it is estimated that of this number nearly one-half was due to the influenza epidemic occurring in the fall of 1918. In the Spanish War the number of deaths from disease were five times, in the Civil War two times, and in the Mexican War seven times as large as the number of deaths from battle. America's debt of gratitude to the medical profession is immeasurable. No branch of our citizenship rendered more splendid service.

Execution of the details of the Nation's colossal undertaking demanded many new organizations, attainable only through business and scientific management, and talent of the highest order. To this need the business and professional men of America made prompt and loyal response. They came from every industrial center of the country. Unmindful of the pressure of their own affairs, they tendered their services to the departments, which gladly welcomed them, and, without pay or hope of pecuniary reward, they cheerfully accepted and sustained every responsibility which the Nation in its exigency placed upon their competent and willing shoulders. It is not too much to say that these splendid patriots contributed an indispensable element to the success of American arms in the great war just ended. The duties falling on them were as vital as those committed to the men in arms and at the front. They helped to organize victory. I wish that time would permit me to recite the long list of these men, all, or nearly all, of whom have long since returned to their homes and quietly taken up the tasks they abandoned for the sterner and most insistent duties of American citizenship. With scarcely an exception that I can recall, they paid their own expenses, lived upon their own resources, made and canceled many monetary obligation incurred solely for the Government, assumed responsibilities on critical occasions which imperiled their private fortunes, and effaced themselves in the work their heads and hands were called upon to perform. Baruch, Hoover, Ryan, and Garfield are types of this great galaxy of war-time servants of the country's urgent needs.

With many of these the tongue of slander and the spirit of detraction have been busy. But they may take serene pleasure in the fact that the illustrious men of our past were even more bitterly assailed than they, and that posterity, always dispassionate and always just, will lay its laurels upon their memories and cherish with undying gratitude their unselfish devotion to their country in its hour of travail.

As the war progressed more and more of our industrial activities were diverted from their normal uses and drawn in to become integral parts of the constantly expanding national war-making machine. Until the date of the armistice this machine was moving at ever-increasing speed. On that date the machinery had to be reversed and the work of demobilization begun. The problem was not a simple one. Nearly 4,000,000 men, 2,000,000 of whom were overseas, had to be returned promptly, yet with a minimum of interference with our industries and without causing hardship to the men, to the places in our social and economic life that they had quitted to enter the Army. War contracts had to be terminated with the minimum of delay consistent with a due regard for the interests of both the Government and of industry.

Fortunately, the War Department had foreseen the character of the problem which would arise and was prepared to adopt at once an effective and wise policy of demobilization. Three classes of industrial workers whose immediate discharge was for the public good—anthracite-coal miners, railway employees, and railway mail clerks—were demobilized at once. Individuals whose families were in need or distress or whose services were specially needed in our economic reconstruction were discharged in advance of the demobilization of their military organizations. With these exceptions, the plan followed was that of demobilization by military organizations in the order in which they could be best spared—transporting each soldier before final discharge to the camp nearest his home; retaining in service those of impaired physical condition who could be improved by treatment; preventing the congestion of unemployed discharged soldiers in the larger cities; and aiding the soldiers in securing employment.

The demobilization of our armies was accomplished with remarkable celerity, with fairness to the soldier, and without disturbing our economic life. In the first month after the armistice over 600,000 men were demobilized, and in one year the number discharged had risen to 3,200,000. This rate of demobilization would have been far exceeded had it not been retarded by the delays incident to the return of 2,000,000 troops from France and to the accompanying necessity of retaining in service in this country organization for the reception and demobilization of men and equipment from abroad. Notwithstanding this unavoidable retardation, the rate of demobilization was twice that attained in the discharge of the Northern armies at the close of the Civil War.

The great military industrial machine created during the war had also to be demobilized and incompleted war contracts liquidated. This was done promptly and with a great saving of public funds. The total value of uncompleted war contracts liquidated was approximately $3,000,000,000, and those were liquidated at a cost of about 13 per cent, effecting a saving to the Government of about $2,600,000,000.

These are the larger aspects of the achievement of the War Department during the World War. They speak for themselves. It was the will of the American people that we should have made no preparation for that struggle. It was their will that, once entered, we should expend, if need be, every ounce of national strength in bringing it to a successful end. In effort and in achievement the War Department responded to that will. From small beginnings it created a mighty structure, built on foundations of a still greater scope. If upon minute examination of each detailed part imperfections be found here and there, due to the impelling haste in its creation, they do not mar its splendor, and they are lost in the overshadowing perspective of the massive whole. It rises beyond the reach of those who might wish to deface it. It stands out as the achievement of all the ages; an achievement well worthy of the genius of our people; an American achievement under American leadership; an achievement immeasurably beyond the capacity of any other nation of any time; an achievement made possible by the genius

and the development of a Government dedicated from its birth to the great principle of liberty, linked with justice and protected by law.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

RECESS.

Mr. JONES of Washington. Mr. President, the Senator from Utah [Mr. KING] left the Chamber, as he was not feeling well. I can not ask for a vote upon the report in the absence of the Senator from Utah, but if any other Senator desires to speak on it I should like to have him take the time until about 5 o'clock. As no one seems to be inclined to do so, I move that the Senate take a recess until 11 o'clock to-morrow morning.

The motion was agreed to; and (at 4 o'clock and 40 minutes p. m.) the Senate took a recess until to-morrow, Friday, May 28, 1920, at 11 o'clock a. m.

HOUSE OF REPRESENTATIVES.

THURSDAY, *May 27, 1920.*

The House met at 12 o'clock noon.

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

O Life, all love abounding, we thank Thee for this beautiful world full of life and activity, wherein we can develop our physical, intellectual, and moral being to the largest scope of our energy.

"Hitherto my Father works and I work." In this saying of the Master will be found the keynote to real success. God grant that we may study Thy laws and work in harmony with them, that together we may accomplish Thy will and fulfill our destiny. In Jesus Christ our Lord. Amen.

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

RIVER AND HARBOR APPROPRIATIONS—CONFERENCE REPORT.

Mr. KENNEDY of Iowa presented the conference report and statement of the House conferees on the bill (H. R. 11892) making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes, for printing under the rule.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Dudley, its enrolling clerk, announced that the Senate had passed with amendments the bill (H. R. 13870) making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1921, and for other purposes, in which the concurrence of the House of Representatives was requested.

The message also announced that the Senate had passed joint resolution (S. J. Res. 191) to create a joint committee on the reorganization of the administrative branch of the Government, in which the concurrence of the House of Representatives was requested.

SENATE BILL REFERRED.

Under clause 2, Rule XXIV, Senate bill of the following title was taken from the Speaker's table and referred to its appropriate committee, as indicated below:

S. 4411. An act granting the consent of Congress to the counties of Pembina, N. Dak., and Kittson, Minn., to construct a bridge across the Red River of the North at or near the city of Pembina, N. Dak.; to the Committee on Interstate and Foreign Commerce.

ENROLLED BILLS SIGNED.

Mr. RAMSEY, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled bill of the following title, when the Speaker signed the same:

H. R. 4438. An act to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment.

The SPEAKER announced his signature to enrolled bill of the following title:

S. 4163. An act to incorporate the Roosevelt Memorial Association.

ARMY APPROPRIATIONS.

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

The SPEAKER. The gentleman from California asks unanimous consent to take from the Speaker's table the Army appropriation bill, disagree to all the Senate amendments, and agree to the conference asked for by the Senate. Is there objection?

Mr. GARNER. Mr. Speaker, I shall object unless the gentleman will make the statement that the minority have been consulted and that they have agreed to it. I am going to make objection each time unless that statement accompanies the request for unanimous consent. You might just as well understand that now.

Mr. KAHN. Mr. Speaker, the ranking Democratic member of the committee, Mr. DENT, left the conference room with me and knew I was coming here for the purpose of making this request. He is present.

Mr. GARNER. The gentleman may be present; he may be in the Hall; but unless that statement accompanies the request for unanimous consent to send a bill to conference you are not going to conference by unanimous consent. You might just as well understand that.

Mr. DENT. Mr. Speaker, if the gentleman will yield, it is a fact that the chairman of the committee consulted me, and he and I came over to make this request.

Mr. GARNER. It is easy enough for the gentleman to make that statement when he asks unanimous consent.

Mr. KAHN. Mr. Speaker, I did not know that the gentleman from Texas had grown so particular. This is the first time I have heard him make this statement.

Mr. GARNER. It is unfortunate that the gentleman has not been in the Hall. This is the fifth time I have made that statement on the floor of the House.

Mr. KAHN. Mr. Speaker, I think the gentleman ought to be fair. I have been in conference on the Army reorganization bill every morning, every afternoon, and frequently at night, and I have not been able to be in the House all the time.

Mr. GARNER. I understand that. I made no criticism of the gentleman's absence, but I make the statement that this is the fifth time I have made this identical statement. I think it is a reasonable request, and the gentleman hears it.

Mr. KAHN. There is no use getting excited about it.

Mr. GARNER. I am not. I am merely stating that this is the fifth time I have given this notice.

Mr. KAHN. And I make the request.

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

There was no objection; and the Speaker appointed as conferees on the part of the House Mr. KAHN, Mr. ANTHONY, and Mr. DENT.

CROW INDIANS.

The SPEAKER. The Chair recognizes the gentleman from Kansas [Mr. CAMPBELL].

Mr. CAMPBELL of Kansas. Mr. Speaker, I was going to call up the conference report on the Crow Indian bill, providing for the leasing of certain lands, but I understand that the statement of the House conferees does not accompany the report.

The SPEAKER. Apparently there is no statement accompanying the report.

Mr. CAMPBELL of Kansas. Then, of course, I shall not call it up at this time.

SIMPLIFICATION OF THE REVENUE ACT OF 1918.

Mr. GREEN of Iowa. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the state of the Union for the further consideration of H. R. 14198——

Mr. CANNON. Will the gentleman yield for a moment?

Mr. GREEN of Iowa. I yield to the gentleman from Illinois.

PENSION APPROPRIATIONS.

Mr. CANNON. I desire to call up the pension appropriation bill (H. R. 13416) and to move to concur in two Senate amendments which are made necessary by the enactment of the Fuller bill.

The SPEAKER. The gentleman from Illinois calls up from the Speaker's table pension appropriation bill with Senate amendments. The Clerk will report the bill by title.

The Clerk read the title of the bill (H. R. 13416) making appropriations for the payment of invalid and other pensions of the United States for the fiscal year ending June 30, 1921, and for other purposes.

The SPEAKER. The Clerk will report the Senate amendments.

The Senate amendments were read.

Mr. CANNON. Mr. Speaker, these two amendments of the Senate are made necessary by the enactment of the Fuller bill. When the pension appropriation bill passed the House the Senate had not acted upon the Fuller bill. The estimate of the Pension Office, upon inquiry, is that $150,000 will be necessary,