SENATE

THURSDAY, *May 1, 1930*

(Legislative day of Wednesday, April 30, 1930)

The Senate met at 12 o'clock meridian in open executive session, on the expiration of the recess.

The VICE PRESIDENT. The Senate, as in legislative session, will receive a message from the House of Representatives.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Farrell, its enrolling clerk, announced that the House had passed a bill (H. R. 11635) to amend the radio act of 1927, approved February 23, 1927, and for other purposes, in which it requested the concurrence of the Senate.

The message also announced that the House had passed the bill (S. 3249) to repeal section 4579 and amend section 4578 of the Revised Statutes of the United States respecting compensation of vessels for transporting seamen, with an amendment, in which it requested the concurrence of the Senate.

EXECUTIVE MESSAGES

Sundry messages in writing were communicated to the Senate from the President of the United States by Mr. Latta, one of his secretaries.

NOMINATION OF JUDGE JOHN J. PARKER

The VICE PRESIDENT laid before the Senate a telegram from T. W. Bell, of Leavenworth, Kans., opposing the confirmation of Judge John J. Parker as an Associate Justice of the Supreme Court of the United States, which was ordered to lie on the table.

He also laid before the Senate a telegram from DeWitt T. Alcorn, C. M. Roulhas, L. G. Patterson, C. B. King, M. S. Stuart, H. J. Johnson, J. L. Campbell, A. D. Bell, G. W. Lee, J. A. Alcorn, S. W. Qualls, J. W. Hall, S. A. Owens, and A. T. Martin, of Memphis, Tenn., protesting "in the name of 60,000 colored people of Memphis," against the confirmation of Judge John J. Parker to be an Associate Justice of the Supreme Court of the United States, which was ordered to lie on the table.

Mr. SULLIVAN. I present a telegram in the nature of a petition from the president of the Wyoming State Bar Association, which I ask may lie on the table and be printed in the RECORD.

There being no objection, the telegram was ordered to lie on the table and to be printed in the RECORD, as follows:

[Telegram]

TORRINGTON, WYO., *May 1, 1930.*

Senator PATRICK J. SULLIVAN:

Regard attack on Judge Parker as a threat to the freedom of the judiciary. Earnestly hope you can vote for his confirmation.

ERLE H. REID,
President Wyoming State Bar Association.

PETITIONS

As in legislative session,

Mr. JONES presented a resolution adopted by the Port Commissioners of Port Angeles, Wash., favoring the passage of the so-called Jones bill, authorizing and providing for the establishment of foreign trade manufacturing zones within the limits of American ports, etc., which was referred to the Committee on Commerce.

He also presented a petition of sundry citizens of Spokane and vicinity, in the State of Washington, praying for the passage of the so-called Capper-Robsion bill, to establish a Federal department of education, which was referred to the Committee on Education and Labor.

REPORTS OF COMMITTEES

As in legislative session,

Mr. WHEELER, from the Committee on Indian Affairs, to which was referred the bill (S. 872) to amend an act for the relief of certain tribes of Indians in Montana, Idaho, and Washington, reported it with an amendment and submitted a report (No. 582) thereon.

He also, from the same committee, to which were referred the following bills, reported them each without amendment and submitted reports thereon:

S. 612. A bill for the relief of Charles Parshall, Fort Peck Indian allottee, of the Fort Peck Reservation, Mont. (Rept. No. 585); and

S. 1533. A bill to authorize the Secretary of the Interior to extend the time for payment of charges due on Indian irrigation projects, and for other purposes (Rept. No. 586).

Mr. JOHNSON, from the Committee on Commerce, to which was referred the bill (H. R. 7405) to provide for a 5-year construction and maintenance program for the United States Bureau of Fisheries, reported it with amendments and submitted a report (No. 583) thereon.

Mr. WATERMAN, from the Committee on Claims, to which was referred the bill (S. 3088) to reimburse R. B. Miller and to repay him for overcharge in freight on manganese shipments paid by him to the United States Railroad Administration, reported it with amendments and submitted a report (No. 584) thereon.

Mr. WALSH of Montana, from the Committee on Public Lands and Surveys, to which was referred the bill (S. 107) establishing additional land offices in the States of Montana, Oregon, South Dakota, Idaho, New Mexico, Colorado, and Nevada, reported it without amendment and submitted a report (No. 587) thereon.

He also, from the Committee on Irrigation and Reclamation, to which was recommitted the bill (H. R. 8296) to amend the act of May 25, 1926, entitled "An act to adjust water-right charges, to grant certain other relief on the Federal irrigation projects, and for other purposes," reported it with amendments and submitted a report (No. 588) thereon.

REPORT OF POSTAL NOMINATIONS

As in open executive session,

Mr. PHIPPS, from the Committee on Post Offices and Post Roads, reported sundry post-office nominations, which were placed on the Executive Calendar.

BILLS AND JOINT RESOLUTION INTRODUCED

As in legislative session,

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

By Mr. McNARY:

A bill (S. 4329) granting an increase of pension to Mary Fitzpatrick (with accompanying papers); to the Committee on Pensions.

By Mr. SHORTRIDGE:

A bill (S. 4330) granting a pension to May E. Carsten; and

A bill (S. 4331) granting an increase of pension to Angelina C. Powell; to the Committee on Pensions.

By Mr. METCALF:

A bill (S. 4332) granting an increase of pension to Clara E. Chace (with accompanying papers); to the Committee on Pensions.

By Mr. COPELAND:

A bill (S. 4333) for the relief of Margaret B. Knapp; and

A bill (S. 4334) for the relief of G. Elias & Bro. (Inc.); to the Committee on Claims.

A bill (S. 4335) to fix the compensation of the assistant heads of the executive departments; to the Committee on Appropriations.

By Mr. ROBSION of Kentucky:

A joint resolution (S. J. Res. 172) authorizing the Director of the Bureau of Standards to investigate traffic conditions on streets and highways; to the Committee on Commerce.

AMENDMENTS TO RIVER AND HARBOR BILL

As in legislative session,

Mr. McNARY, Mr. RANSDELL, and Mr. SHEPPARD each submitted an amendment intended to be proposed by them, respectively, to the bill (H. R. 11781) authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes, which were severally referred to the Committee on Commerce and ordered to be printed.

AMENDMENT TO LEGISLATIVE APPROPRIATION BILL

As in legislative session,

Mr. ROBSION of Kentucky submitted an amendment proposing to increase the number of clerks at $3,180 each in the office of the Secretary of the Senate from three to four, intended to be proposed by him to the bill (H. R. 11965) making appropriations for the legislative branch of the Government for the fiscal year ending June 30, 1931, and for other purposes, which was referred to the Committee on Appropriations and ordered to be printed.

HOUSE BILL REFERRED

As in legislative session,

The bill (H. R. 11635) to amend the radio act of 1927, approved February 23, 1927, and for other purposes, was read twice by its title and referred to the Committee on Interstate Commerce.

COMPENSATION OF VESSELS FOR TRANSPORTING SEAMEN

As in legislative session,

The VICE PRESIDENT laid before the Senate the amendment of the House of Representatives to the bill (S. 3249) to amend section 4578 of the Revised Statutes of the United States respecting compensation of vessels for transporting seamen, which was to amend the title so as to read: "An act to repeal section 4579 and amend section 4578 of the Revised Statutes of

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the United States respecting compensation of vessels for transporting seamen."

Mr. JOHNSON. I move that the Senate concur in the amendment of the House.

The motion was agreed to.

LIMITATION AND REDUCTION OF NAVAL ARMAMENT (S DOC. NO. 141)

The VICE PRESIDENT laid before the Senate the following message from the President of the United States, which was read:

To the Senate:

I transmit herewith a treaty for the limitation and reduction of naval armament, signed at London on April 22, 1930, by the plenipotentiaries of the President of the United States of America; the President of the French Republic; His Majesty the King of Great Britain, Ireland, and the British Dominions Beyond the Seas, Emperor of India; His Majesty the King of Italy; and His Majesty the Emperor of Japan, to the ratification of which I ask the advice and consent of the Senate.

HERBERT HOOVER.

THE WHITE HOUSE,
Washington, May 1, 1930.

Mr. BORAH. I ask that the treaty be printed in the RECORD and referred to the Committee on Foreign Relations. A print was made the other day from a newspaper, but, as this is the official document, I ask that it be printed in the RECORD.

Mr. SWANSON. I suggest also that it be printed as a Senate document.

The VICE PRESIDENT. Without objection, the injunction of secrecy will be removed, and the pact will be printed in the RECORD and also as a document.

Mr. ROBINSON of Arkansas. It is proposed to refer the treaty?

Mr. BORAH. I asked to have it referred to the Committee on Foreign Relations.

The VICE PRESIDENT. The message, with the accompanying paper and treaty, will be referred to the Committee on Foreign Relations, and will appear in the RECORD.

The accompanying letter from the Secretary of State, together with the treaty for limitation and reduction of naval armament, signed at London on April 22, 1930, follow:

THE PRESIDENT:

The undersigned, the Secretary of State, has the honor to lay before the President, to the end that it may be transmitted to the Senate with a view to receiving the advice and consent of that body to ratification, if his judgment approve thereof, a treaty for the limitation and reduction of naval armament, signed at London on April 22, 1930, by the plenipotentiaries of the President of the United States of America, the President of the French Republic, His Majesty the King of Great Britain, Ireland, and the British Dominions Beyond the Seas, Emperor of India, His Majesty the King of Italy, and His Majesty the Emperor of Japan.

Respectfully submitted.

HENRY L. STIMSON.

(Accompaniment: Treaty for the limitation and reduction of naval armament, signed at London, April 22, 1930.)

DEPARTMENT OF STATE,
Washington, April 30, 1930.

The President of the United States of America, the President of the French Republic, His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, His Majesty the King of Italy, and His Majesty the Emperor of Japan,

Desiring to prevent the dangers and reduce the burdens inherent in competitive armaments, and

Desiring to carry forward the work begun by the Washington Naval Conference and to facilitate the progressive realization of general limitation and reduction of armaments,

Have resolved to conclude a Treaty for the limitation and reduction of naval armament, and have accordingly appointed as their Plenipotentiaries:

The President of the United States of America:
Henry L. Stimson, Secretary of State;
Charles G. Dawes, Ambassador to the Court of St. James;
Charles Francis Adams, Secretary of the Navy;
Joseph T. Robinson, Senator from the State of Arkansas;
David A. Reed, Senator from the State of Pennsylvania;
Hugh Gibson, Ambassador to Belgium;
Dwight W. Morrow, Ambassador to Mexico;
The President of the French Republic:
Mr. André Tardieu, Deputy, President of the Council of Ministers, Minister of the Interior;
Mr. Aristide Briand, Deputy, Minister for Foreign Affairs;
Mr. Jacques-Louis Dumesnil, Deputy, Minister of Marine;
Mr. François Piétri, Deputy, Minister of the Colonies;
Mr. Aimé-Joseph de Fleuriau, Ambassador of the French Republic at the Court of St. James;
His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India:
for Great Britain and Northern Ireland and all parts of the British Empire which are not separate Members of the League of Nations:
The Right Honourable James Ramsay MacDonald, M. P., First Lord of His Treasury, Prime Minister;
The Right Honourable Arthur Henderson, M. P., His Principal Secretary of State for Foreign Affairs;
The Right Honourable Albert Victor Alexander, M. P., First Lord of His Admiralty;
The Right Honourable William Wedgwood Benn, D. S. O., D. F. C., M. P., His Principal Secretary of State for India;
for the Dominion of Canada:
Colonel The Honourable James Layton Ralston, C. M. G., D. S. O., K. C., a Member of His Privy Council for Canada, His Minister for National Defence;
The Honourable Philippe Roy, a Member of His Privy Council for Canada, His Envoy Extraordinary and Minister Plenipotentiary in France for the Dominion of Canada;
for the Commonwealth of Australia:
The Honourable James Edward Fenton, His Minister for Trade and Customs;
for the Dominion of New Zealand:
Thomas Mason Wilford, Esquire, K. C., High Commissioner for the Dominion of New Zealand in London;
for the Union of South Africa:
Charles Theodore te Water, Esquire, High Commissioner for the Union of South Africa in London;
for the Irish Free State:
Timothy Aloysius Smiddy, Esquire, High Commissioner for the Irish Free State in London;
for India:
Sir Atul Chandra Chatterjee, K. C. I. E., High Commissioner for India in London;
His Majesty the King of Italy:
The Honourable Dino Grandi, Deputy, His Minister Secretary of State for Foreign Affairs;
Admiral of Division The Honourable Giuseppe Sirianni, Senator of the Kingdom, His Minister Secretary of State for Marine;
Mr. Antonio Chiaramonte-Bordonaro, His Ambassador Extraordinary and Plenipotentiary at the Court of St. James;
Admiral The Honourable Baron Afredo Acton, Senator of the Kingdom;
His Majesty the Emperor of Japan:
Mr. Reijiro Wakatsuki, Member of the House of Peers;
Admiral Takeshi Takarabe, Minister for the Navy;
Mr. Tsuneo Matsudaira, His Ambassador Extraordinary and Plenipotentiary at the Court of St. James;
Mr. Matsuzo Nagai, His Ambassador Extraordinary and Plenipotentiary to His Majesty the King of the Belgians;

Who, having communicated to one another their full powers, found in good and due form, have agreed as follows:

PART I

ARTICLE 1

The High Contracting Parties agree not to exercise their rights to lay down the keels of capital ship replacement tonnage during the years 1931–1936 inclusive as provided in Chapter II, Part 3 of the Treaty for the Limitation of Naval Armament signed between them at Washington on the 6th February, 1922, and referred to in the present Treaty as the Washington Treaty.

This provision is without prejudice to the disposition relating to the replacement of ships accidentally lost or destroyed contained in Chapter II, Part 3, Section I, paragraph (c) of the said Treaty.

France and Italy may, however, build the replacement tonnage which they were entitled to lay down in 1927 and 1929 in accordance with the provisions of the said Treaty.

ARTICLE 2

1. The United States, the United Kingdom of Great Britain and Northern Ireland and Japan shall dispose of the following capital ships as provided in this Article:

United States:
"Florida".
"Utah".
"Arkansas" or "Wyoming".

United Kingdom:
"Benbow".
"Iron Duke".
"Marlborough".
"Emperor of India".
"Tiger".
Japan:
"Hiyei".

(a) Subject to the provisions of sub-paragraph (b), the above ships, unless converted to target use exclusively in accordance with Chapter II, Part 2, paragraph II (c) of the Washington Treaty, shall be scrapped in the following manner:

One of the ships to be scrapped by the United States, and two of those to be scrapped by the United Kingdom shall be rendered unfit for warlike service, in accordance with Chapter II, Part 2, paragraph III (b) of the Washington Treaty, within twelve months from the coming into force of the present Treaty. These ships shall be finally scrapped, in accordance with paragraph II (a) or (b) of the said Part 2, within twenty-four months from the said coming into force. In the case of the second of the ships to be scrapped by the United States, and of the third and fourth of the ships to be scrapped by the United Kingdom, the said periods shall be eighteen and thirty months respectively from the coming into force of the present Treaty.

(b) Of the ships to be disposed of under this Article, the following may be retained for training purposes:

by the United States: "Arkansas" or "Wyoming".
by the United Kingdom: "Iron Duke".
by Japan: "Hiyei".

These ships shall be reduced to the condition prescribed in Section V of Annex II to Part II of the present Treaty. The work of reducing these vessels to the required condition shall begin, in the case of the United States and the United Kingdom, within twelve months, and in the case of Japan within eighteen months from the coming into force of the present Treaty; the work shall be completed within six months of the expiration of the above-mentioned periods.

Any of these ships which are not retained for training purposes shall be rendered unfit for warlike service within eighteen months, and finally scrapped within thirty months, of the coming into force of the present Treaty.

2. Subject to any disposal of capital ships which might be necessitated, in accordance with the Washington Treaty, by the building by France or Italy of the replacement tonnage referred to in Article 1 of the present Treaty, all existing capital ships mentioned in Chapter II, Part 3, Section II of the Washington Treaty and not designated above to be disposed of may be retained during the term of the present Treaty.

3. The right of replacement is not lost by delay in laying down replacement tonnage, and the old vessel may be retained until replaced even though due for scrapping under Chapter II, Part 3, Section II of the Washington Treaty.

ARTICLE 3

1. For the purposes of the Washington Treaty, the definition of an aircraft carrier given in Chapter II, Part 4 of the said Treaty is hereby replaced by the following definition:

The expression "aircraft carrier" includes any surface vessel of war, whatever its displacement, designed for the specific and exclusive purpose of carrying aircraft and so constructed that aircraft can be launched therefrom and landed thereon.

2. The fitting of a landing-on or flying-off platform or deck on a capital ship, cruiser or destroyer, provided such vessel was not designed or adapted exclusively as an aircraft carrier, shall not cause any vessel so fitted to be charged against or classified in the category of aircraft carriers.

3. No capital ship in existence on the 1st April, 1930, shall be fitted with a landing-on platform or deck.

ARTICLE 4

1. No aircraft carrier of 10,000 tons (10,160 metric tons) or less standard displacement mounting a gun above 6.1-inch (155 mm.) calibre shall be acquired by or constructed by or for any of the High Contracting Parties.

2. As from the coming into force of the present Treaty in respect of all the High Contracting Parties, no aircraft carrier of 10,000 tons (10,160 metric tons) or less standard displacement mounting a gun above 6.1-inch (155 mm.) calibre shall be constructed within the jurisdiction of any of the High Contracting Parties.

ARTICLE 5

An aircraft carrier must not be designed and constructed for carrying a more powerful armament than that authorised by Article IX or Article X of the Washington Treaty, or by Article 4 of the present Treaty, as the case may be.

Wherever in the said Articles IX and X the calibre of 6 inches (152 mm.) is mentioned, the calibre of 6.1 inches (155 mm.) is substituted therefor.

PART II

ARTICLE 6

1. The rules for determining standard displacement prescribed in Chapter II, Part 4 of the Washington Treaty shall apply to all surface vessels of war of each of the High Contracting Parties.

2. The standard displacement of a submarine is the surface displacement of the vessel complete (exclusive of the water in non-watertight structure) fully manned, engined, and equipped ready for sea, including all armament and ammunition, equipment, outfit, provisions for crew, miscellaneous stores, and implements of every description that are intended to be carried in war, but without fuel, lubricating oil, fresh water or ballast water of any kind on board.

3. Each naval combatant vessel shall be rated at its displacement tonnage when in the standard condition. The word "ton", except in the expression "metric tons", shall be understood to be the ton of 2,240 pounds (1,016 kilos.).

ARTICLE 7

1. No submarine the standard displacement of which exceeds 2,000 tons (2,032 metric tons) or with a gun above 5.1-inch (130 mm.) calibre shall be acquired by or constructed by or for any of the High Contracting Parties.

2. Each of the High Contracting Parties may, however, retain, build or acquire a maximum number of three submarines of a standard displacement not exceeding 2,800 tons (2,845 metric tons); these submarines may carry guns not above 6.1-inch (155 mm.) calibre. Within this number, France may retain one unit, already launched, of 2,880 tons (2,926 metric tons), with guns the calibre of which is 8 inches (203 mm.).

3. The High Contracting Parties may retain the submarines which they possessed on the 1st April, 1930, having a standard displacement not in excess of 2,000 tons (2,032 metric tons) and armed with guns above 5.1-inch (130 mm.) calibre.

4. As from the coming into force of the present Treaty in respect of all the High Contracting Parties, no submarine the standard displacement of which exceeds 2,000 tons (2,032 metric tons) or with a gun above 5.1-inch (130 mm.) calibre shall be constructed within the jurisdiction of any of the High Contracting Parties, except as provided in paragraph 2 of this Article.

ARTICLE 8

Subject to any special agreements which may submit them to limitation, the following vessels are exempt from limitation:

(a) naval surface combatant vessels of 600 tons (610 metric tons) standard displacement and under;

(b) naval surface combatant vessels exceeding 600 tons (610 metric tons), but not exceeding 2,000 tons (2,032 metric tons) standard displacement, provided they have none of the following characteristics:

(1) mount a gun above 6.1-inch (155 mm.) calibre;
(2) mount more than four guns above 3-inch (76 mm.) calibre;
(3) are designed or fitted to launch torpedoes;
(4) are designed for a speed greater than twenty knots.

(c) naval surface vessels not specifically built as fighting ships which are employed on fleet duties or as troop transports or in some other way than as fighting ships, provided they have none of the following characteristics:

(1) mount a gun above 6.1-inch (155 mm.) calibre;
(2) mount more than four guns above 3-inch (76 mm.) calibre;
(3) are designed or fitted to launch torpedoes;
(4) are designed for a speed greater than twenty knots;
(5) are protected by armour plate;
(6) are designed or fitted to launch mines;
(7) are fitted to receive aircraft on board from the air;
(8) mount more than one aircraft-launching apparatus on the centre line; or two, one on each broadside;
(9) if fitted with any means of launching aircraft into the air, are designed or adapted to operate at sea more than three aircraft.

ARTICLE 9

The rules as to replacement contained in Annex I to this Part II are applicable to vessels of war not exceeding 10,000 tons (10,160 metric tons) standard displacement, with the exception of aircraft carriers, whose replacement is governed by the provisions of the Washington Treaty.

ARTICLE 10

Within one month after the date of laying down and the date of completion, respectively of each vessel of war, other than

capital ships, aircraft carriers and the vessels exempt from limitation under Article 8, laid down or completed by or for them after the coming into force of the present Treaty, the High Contracting Parties shall communicate to each of the other High Contracting Parties the information detailed below:

(a) the date of laying the keel and the following particulars:

classification of the vessel;

standard displacement in tons and metric tons;

principal dimensions, namely: length at water-line, extreme beam at or below water-line;

mean draft at standard displacement;

calibre of the largest gun.

(b) the date of completion together with the foregoing particulars relating to the vessel at that date.

The information to be given in the case of capital ships and aircraft carriers is governed by the Washington Treaty.

ARTICLE 11

Subject to the provisions of Article 2 of the present Treaty, the rules for disposal contained in Annex II to this Part II shall be applied to all vessels of war to be disposed of under the said Treaty, and to aircraft carriers as defined in Article 3.

ARTICLE 12

1. Subject to any supplementary agreements which may modify, as between the High Contracting Parties concerned, the lists in Annex III to this Part II, the special vessels shown therein may be retained and their tonnage shall not be included in the tonnage subject to limitation.

2. Any other vessel constructed, adapted or acquired to serve the purposes for which these special vessels are retained shall be charged against the tonnage of the appropriate combatant category, according to the characteristics of the vessel, unless such vessel conforms to the characteristics of vessels exempt from limitation under Article 8.

3. Japan may, however, replace the minelayers "Aso" and "Tokiwa" by two new minelayers before the 31st December, 1936. The standard displacement of each of the new vessels shall not exceed 5,000 tons (5,080 metric tons); their speed shall not exceed twenty knots, and their other characteristics shall conform to the provisions of paragraph (b) of Article 8. The new vessels shall be regarded as special vessels and their tonnage shall not be chargeable to the tonnage of any combatant category. The "Aso" and "Tokiwa" shall be disposed of in accordance with Section I or II of Annex II to this Part II, on completion of the replacement vessels.

4. The "Asama", "Yakumo", "Izumo", "Iwate" and "Kasuga" shall be disposed of in accordance with Section I or II of Annex II to this Part II when the first three vessels of the "Kuma" class have been replaced by new vessels. These three vessels of the "Kuma" class shall be reduced to the condition prescribed in Section V, sub-paragraph (b) 2 of Annex II to this Part II, and are to be used for training ships, and their tonnage shall not thereafter be included in the tonnage subject to limitation.

ARTICLE 13

Existing ships of various types, which, prior to the 1st April, 1930, have been used as stationary training establishments or hulks, may be retained in a nonseagoing condition.

ANNEX I

RULES FOR REPLACEMENT

Section I.—Except as provided in Section III of this Annex and Part III of the present Treaty, a vessel shall not be replaced before it becomes "over-age". A vessel shall be deemed to be "over-age" when the following number of years have elapsed since the date of its completion:

(a) For a surface vessel exceeding 3,000 tons (3,048 metric tons) but not exceeding 10,000 tons (10,160 metric tons) standard displacement:

(i) if laid down before the 1st January, 1920: 16 years;

(ii) if laid down after the 31st December, 1919: 20 years.

(b) For a surface vessel not exceeding 3,000 tons (3,048 metric tons) standard displacement:

(i) if laid down before the 1st January, 1921: 12 years;

(ii) if laid down after the 31st December, 1920: 16 years.

(c) For a submarine: 13 years.

The keels of replacement tonnage shall not be laid down more than three years before the year in which the vessel to be replaced becomes "over-age"; but this period is reduced to two years in the case of any replacement surface vessel not exceeding 3,000 tons (3,048 metric tons) standard displacement.

The right of replacement is not lost by delay in laying down replacement tonnage.

Section II.—Except as otherwise provided in the present Treaty, the vessel or vessels, whose retention would cause the maximum tonnage permitted in the category to be exceeded, shall, on the completion or acquisition of replacement tonnage, be disposed of in accordance with Annex II to this Part II.

Section III.—In the event of loss or accidental destruction a vessel may be immediately replaced.

ANNEX II

RULES FOR DISPOSAL OF VESSELS OF WAR

The present Treaty provides for the disposal of vessels of war in the following ways:

(i) by scrapping (sinking or breaking up);

(ii) by converting the vessel to a hulk;

(iii) by converting the vessel to target use exclusively;

(iv) by retaining the vessel exclusively for experimental purposes;

(v) by retaining the vessel exclusively for training purposes.

Any vessel of war to be disposed of, other than a capital ship, may either be scrapped or converted to a hulk at the option of the High Contracting Party concerned.

Vessels, other than capital ships, which have been retained for target, experimental or training purposes, shall finally be scrapped or converted to hulks.

SECTION I.—VESSELS TO BE SCRAPPED

(a) A vessel to be disposed of by scrapping, by reason of its replacement, must be rendered incapable of warlike service within six months of the date of the completion of its successor, or of the first of its successors if there are more than one. If, however, the completion of the new vessel or vessels be delayed, the work of rendering the old vessel incapable of warlike service shall, nevertheless, be completed within four and a half years from the date of laying the keel of the new vessel, or of the first of the new vessels; but should the new vessel, or any of the new vessels, be a surface vessel not exceeding 3,000 tons (3,048 metric tons) standard displacement, this period is reduced to three and a half years.

(b) A vessel to be scrapped shall be considered incapable of warlike service when there shall have been removed and landed or else destroyed in the ship:

(1) all guns and essential parts of guns, fire control tops and revolving parts of all barbettes and turrets;

(2) all hydraulic or electric machinery for operating turrets;

(3) all fire control instruments and rangefinders;

(4) all ammunition, explosives, mines and mine rails;

(5) all torpedoes, war heads, torpedo tubes and training racks;

(6) all wireless telegraphy installations;

(7) all main propelling machinery, or alternatively the armoured conning tower and all side armour plate;

(8) all aircraft cranes, derricks, lifts and launching apparatus. All landing-on or flying-off platforms and decks, or alternatively all main propelling machinery;

(9) in addition, in the case of submarines, all main storage batteries, air compressor plants and ballast pumps.

(c) Scrapping shall be finally effected in either of the following ways within twelve months of the date on which the work of rendering the vessel incapable of warlike service is due for completion:

(1) permanent sinking of the vessel;

(2) breaking the vessel up; this shall always include the destruction or removal of all machinery, boilers and armour, and all deck, side and bottom plating.

SECTION II.—VESSELS TO BE CONVERTED TO HULKS

A vessel to be disposed of by conversion to a hulk shall be considered finally disposed of when the conditions prescribed in Section I, paragraph (b), have been complied with, omitting sub-paragraphs (6), (7) and (8), and when the following have been effected:

(1) mutilation beyond repair of all propeller shafts, thrust blocks, turbine gearing or main propelling motors, and turbines or cylinders of main engines;

(2) removal of propeller brackets;

(3) removal and breaking up of all aircraft lifts, and the removal of all aircraft cranes, derricks and launching apparatus.

The vessel must be put in the above condition within the same limits of time as provided in Section I for rendering a vessel incapable of warlike service.

SECTION III.—VESSELS TO BE CONVERTED TO TARGET USE

(a) A vessel to be disposed of by conversion to target use exclusively shall be considered incapable of warlike service when there have been removed and landed, or rendered unserviceable on board, the following:

(1) all guns;

(2) all fire control tops and instruments and main fire control communication wiring;

(3) all machinery for operating gun mountings or turrets;

(4) all ammunition, explosives, mines, torpedoes and torpedo tubes;

(5) all aviation facilities and accessories.

The vessel must be put into the above condition within the same limits of time as provided in Section I for rendering a vessel incapable of warlike service.

(b) In addition to the rights already possessed by each High Contracting Party under the Washington Treaty, each High Contracting Party is permitted to retain, for target use exclusively, at any one time:

(1) not more than three vessels (cruisers or destroyers), but of these three vessels only one may exceed 3,000 tons (3,048 metric tons) standard displacement;

(2) one submarine.

(c) On retaining a vessel for target use, the High Contracting Party concerned undertakes not to recondition it for warlike service.

SECTION IV.—VESSELS RETAINED FOR EXPERIMENTAL PURPOSES

(a) A vessel to be disposed of by conversion to experimental purposes exclusively shall be dealt with in accordance with the provisions of Section III (a) of this Annex.

(b) Without prejudice to the general rules, and provided that due notice be given to the other High Contracting Parties, reasonable variation from the conditions prescribed in Section III (a) of this Annex, in so far as may be necessary for the purposes of a special experiment, may be permitted as a temporary measure.

Any High Contracting Party taking advantage of this provision is required to furnish full details of any such variations and the period for which they will be required.

(c) Each High Contracting Party is permitted to retain for experimental purposes exclusively at any one time:

(1) not more than two vessels (cruisers or destroyers), but of these two vessels only one may exceed 3,000 tons (3,048 metric tons) standard displacement;

(2) one submarine.

(d) The United Kingdom is allowed to retain, in their present conditions, the monitor "Roberts," the main armament guns and mountings of which have been mutilated, and the seaplane carrier "Ark Royal," until no longer required for experimental purposes. The retention of these two vessels is without prejudice to the retention of vessels permitted under (c) above.

(e) On retaining a vessel for experimental purposes the High Contracting Party concerned undertakes not to recondition it for warlike service.

SECTION V.—VESSELS RETAINED FOR TRAINING PURPOSES

(a) In addition to the rights already possessed by any High Contracting Party under the Washington Treaty, each High Contracting Party is permitted to retain for training purposes exclusively the following vessels:

United States: 1 capital ship ("Arkansas" or "Wyoming");

France: 2 surface vessels, one of which may exceed 3,000 tons (3,048 metric tons) standard displacement;

United Kingdom: 1 capital ship ("Iron Duke");

Italy: 2 surface vessels, one of which may exceed 3,000 tons (3,048 metric tons) standard displacement;

Japan: 1 capital ship ("Hiyei"), 3 cruisers ("Kuma" class).

(b) Vessels retained for training purposes under the provisions of paragraph (a) shall, within six months of the date on which they are required to be disposed of, be dealt with as follows:

1. Capital Ships

The following is to be carried out:

(1) removal of main armament guns, revolving parts of all barbettes and turrets; machinery for operating turrets; but three turrets with their armament may be retained in each ship;

(2) removal of all ammunition and explosives in excess of the quantity required for target practice training for the guns remaining on board;

(3) removal of conning tower and the side armour belt between the foremost and aftermost barbettes;

(4) removal or mutilation of all torpedo tubes;

(5) removal or mutilation on board of all boilers in excess of the number required for a maximum speed of eighteen knots.

2. Other surface vessels retained by France, Italy and Japan

The following is to be carried out:

(1) removal of one half of the guns, but four guns of main calibre may be retained on each vessel;

(2) removal of all torpedo tubes;

(3) removal of all aviation facilities and accessories;

(4) removal of one half of the boilers.

(c) The High Contracting Party concerned undertakes that vessels retained in accordance with the provisions of this Section shall not be used for any combatant purpose.

ANNEX III

Special vessels

UNITED STATES

Name and type of vessel:	Tons displacement
Aroostook, minelayer	4,950
Oglala, minelayer	4,950
Baltimore, minelayer	4,413
San Francisco, minelayer	4,083
Cheyenne, monitor	2,800
Helena, gunboat	1,392
Isabel, yacht	938
Niagara, yacht	2,600
Name and type of vessel—Continued.	Tons displacement
Bridgeport, destroyer tender	11,750
Dobbin, destroyer tender	12,450
Melville, destroyer tender	7,150
Whitney, destroyer tender	12,450
Holland, submarine tender	11,570
Henderson, naval transport	10,000
	91,496

FRANCE

Name and type of vessel:	Tons displacement
Castor, minelayer	3,150
Pollux, minelayer	2,461
Commandant, Teste, seaplane carrier	10,000
Aisne, despatch vessel	600
Marne, despatch vessel	600
Ancre, despatch vessel	604
Scarpe, despatch vessel	604
Suippe, despatch vessel	604
Dunkerque, despatch vessel	644
Laffaux, despatch vessel	644
Bapaume, despatch vessel	644
Nancy, despatch vessel	644
Calais, despatch vessel	644
Lassigny, despatch vessel	644
Les Eparges, despatch vessel	644
Remiremont, despatch vessel	644
Tahure, despatch vessel	644
Toul, despatch vessel	644
Épinal, despatch vessel	644
Liévin, despatch vessel	644
(—), netlayer	2,293
	28,644

BRITISH COMMONWEALTH OF NATIONS

Name and type of vessel:	Tons displacement
Adventure, minelayer (United Kingdom)	6,740
Albatross, seaplane carrier (Australia)	5,000
Erebus, monitor (United Kingdom)	7,200
Terror, monitor (United Kingdom	7,200
Marshal Soult, monitor (United Kingdom)	6,400
Clive, sloop (India)	2,021
Medway, submarine depot ship (United Kingdom)	15,000
	49,561

ITALY

Name and type of vessel:	Tons displacement
Miraglia, seaplane carrier	4,880
Faà di Bruno, monitor	2,800
Monte Grappa, monitor	605
Montello, monitor	605
Monte Cengio, ex-monitor	500
Monte Novegno, ex-monitor	500
Campania, sloop	2,070
	11,960

JAPAN

Name and type of vessel:	Tons displacement
Aso, minelayer	7,180
Tokiwa, minelayer	9,240
Asama, old cruiser	9,240
Yakumo, old cruiser	9,010
Izumo, old cruiser	9,180
Iwate, old cruiser	9,180
Kasuga, old cruiser	7,080
Yodo, gunboat	1,320
	61,430

PART III

The President of the United States of America, His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, and His Majesty the Emperor of Japan, have agreed as between themselves to the provisions of this Part III:

ARTICLE 14

The naval combatant vessels of the United States, the British Commonwealth of Nations and Japan, other than capital ships, aircraft carriers and all vessels exempt from limitation under Article 8, shall be limited during the term of the present Treaty as provided in this Part III, and, in the case of special vessels, as provided in Article 12.

ARTICLE 15

For the purpose of this Part III the definition of the cruiser and destroyer categories shall be as follows:

Cruisers

Surface vessels of war, other than capital ships or aircraft carriers, the standard displacement of which exceeds 1,850 tons (1,880 metric tons), or with a gun above 5.1-inch (130 mm.) calibre.

The cruiser category is divided into two sub-categories, as follows:

(a) cruisers carrying a gun above 6.1-inch (155 mm.) calibre;

(b) cruisers carrying a gun not above 6.1-inch (155 mm.) calibre.

Destroyers

Surface vessels of war the standard displacement of which does not exceed 1,850 tons (1,880 metric tons), and with a gun not above 5.1-inch (130 mm.) calibre.

ARTICLE 16

1. The completed tonnage in the cruiser, destroyer and submarine categories which is not to be exceeded on the 31st December, 1936, is given in the following table:

Categories	United States	British Commonwealth of Nations	Japan
Cruisers:			
(*a*) with guns of more than 6.1-inch (155 mm.) calibre.	180,000 tons (182,880 metric tons).	146,800 tons (149,149 metric tons).	108,400 tons (110,134 metric tons).
(*b*) with guns of 6.1-inch (155 mm.) calibre or less.	143,500 tons (145,796 metric tons).	192,200 tons (195,275 metric tons).	100,450 tons (102,057 metric tons).
Destroyers	150,000 tons (152,400 metric tons).	150,000 tons (152,400 metric tons).	105,500 tons (107,188 metric tons).
Submarines	52,700 tons (53,543 metric tons).	52,700 tons (53,543 metric tons).	52,700 tons (53,543 metric tons).

2. Vessels which cause the total tonnage in any category to exceed the figures given in the foregoing table shall be disposed of gradually during the period ending on the 31st December, 1936.

3. The maximum number of cruisers of sub-category (*a*) shall be as follows: for the United States, eighteen; for the British Commonwealth of Nations, fifteen; for Japan, twelve.

4. In the destroyer category not more than sixteen per cent. of the allowed total tonnage shall be employed in vessels of over 1,500 tons (1,524 metric tons) standard displacement. Destroyers completed or under construction on the 1st April, 1930, in excess of this percentage may be retained, but no other destroyers exceeding 1,500 tons (1,524 metric tons) standard displacement shall be constructed or acquired until a reduction to such sixteen per cent. has been effected.

5. Not more than twenty-five per cent. of the allowed total tonnage in the cruiser category may be fitted with a landing-on platform or deck for aircraft.

6. It is understood that the submarines referred to in paragraphs 2 and 3 of Article 7 will be counted as part of the total submarine tonnage of the High Contracting Party concerned.

7. The tonnage of any vessels retained under Article 13 or disposed of in accordance with Annex II to Part II of the present Treaty shall not be included in the tonnage subject to limitation.

ARTICLE 17

A transfer not exceeding ten per cent. of the allowed total tonnage of the category or sub-category into which the transfer is to be made shall be permitted between cruisers of sub-category (*b*) and destroyers.

ARTICLE 18

The United States contemplates the completion by 1935 of fifteen cruisers of sub-category (*a*) of an aggregate tonnage of 150,000 tons (152,400 metric tons). For each of the three remaining cruisers of sub-category (*a*) which it is entitled to construct the United States may elect to substitute 15,166 tons (15,409 metric tons) of cruisers of sub-category (*b*). In case the United States shall construct one or more of such three remaining cruisers of sub-category (*a*), the sixteenth unit will not be laid down before 1933 and will not be completed before 1936; the seventeenth will not be laid down before 1934 and will not be completed before 1937; the eighteenth will not be laid down before 1935 and will not be completed before 1938.

ARTICLE 19

Except as provided in Article 20, the tonnage laid down in any category subject to limitation in accordance with Article 16 shall not exceed the amount necessary to reach the maximum allowed tonnage of the category, or to replace vessels that become "over-age" before the 31st December, 1936. Nevertheless, replacement tonnage may be laid down for cruisers and submarines that become "over-age" in 1937, 1938 and 1939, and for destroyers that become "over-age" in 1937 and 1938.

ARTICLE 20

Notwithstanding the rules for replacement contained in Annex I to Part II:

(*a*) The "Frobisher" and "Effingham" (United Kingdom) may be disposed of during the year 1936. Apart from the cruisers under construction on the 1st April, 1930, the total replacement tonnage of cruisers to be completed, in the case of the British Commonwealth of Nations, prior to the 31st December, 1936, shall not exceed 91,000 tons (92,456 metric tons).

(b) Japan may replace the "Tama" by new construction to be completed during the year 1936.

(c) In addition to replacing destroyers becoming "over-age" before the 31st December, 1936, Japan may lay down, in each of the years 1935 and 1936, not more than 5,200 tons (5,283 metric tons) to replace part of the vessels that become "over-age" in 1938 and 1939.

(d) Japan may anticipate replacement during the term of the present Treaty by laying down not more than 19,200 tons (19,507 metric tons) of submarine tonnage, of which not more than 12,000 tons (12,192 metric tons) shall be completed by the 31st December, 1936.

ARTICLE 21

If, during the term of the present Treaty, the requirements of the national security of any High Contracting Party in respect of vessels of war limited by Part III of the present Treaty are in the opinion of that Party materially affected by new construction of any Power other than those who have joined in Part III of this Treaty, that High Contracting Party will notify the other Parties to Part III as to the increase required to be made in its own tonnages within one or more of the categories of such vessels of war, specifying particularly the proposed increases and the reasons therefor, and shall be entitled to make such increase. Thereupon the other Parties to Part III of this Treaty shall be entitled to make a proportionate increase in the category or categories specified; and the said other Parties shall promptly advise with each other through diplomatic channels as to the situation thus presented.

PART IV

ARTICLE 22

The following are accepted as established rules of International Law:

(1) In their action with regard to merchant ships, submarines must conform to the rules of International Law to which surface vessels are subject.

(2) In particular, except in the case of persistent refusal to stop on being duly summoned, or of active resistance to visit or search, a warship, whether surface vessel or submarine, may not sink or render incapable of navigation a merchant vessel without having first placed passengers, crew and ship's papers in a place of safety. For this purpose the ship's boats are not regarded as a place of safety unless the safety of the passengers and crew is assured, in the existing sea and weather conditions, by the proximity of land, or the presence of another vessel which is in a position to take them on board.

The High Contracting Parties invite all other Powers to express their assent to the above rules.

PART V

ARTICLE 23

The present Treaty shall remain in force until the 31st December, 1936, subject to the following exceptions:

(1) Part IV shall remain in force without limit of time;

(2) the provisions of Articles 3, 4, and 5, and of Article 11 and Annex II to Part II so far as they relate to aircraft carriers, shall remain in force for the same period as the Washington Treaty.

Unless the High Contracting Parties should agree otherwise by reason of a more general agreement limiting naval armaments, to which they all become parties, they shall meet in conference in 1935 to frame a new treaty to replace and to carry out the purposes of the present Treaty, it being understood that none of the provisions of the present Treaty shall prejudice the attitude of any of the High Contracting Parties at the conference agreed to.

ARTICLE 24

1. The present Treaty shall be ratified by the High Contracting Parties in accordance with their respective constitutional methods and the ratifications shall be deposited at London as soon as possible. Certified copies of all the *procès-verbaux* of the deposit of ratifications will be transmitted to the Governments of all the High Contracting Parties.

2. As soon as the ratifications of the United States of America, of His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, in respect of each and all of the Members of the British Commonwealth of Nations as enumerated in the preamble of the present Treaty, and of His Majesty the Emperor of Japan have been deposited, the Treaty shall come into force in respect of the said High Contracting Parties.

3. On the date of the coming into force referred to in the preceding paragraph, Parts I, II, IV and V of the present Treaty will come into force in respect of the French Republic and the Kingdom of Italy if their ratifications have been deposited at

that date; otherwise these Parts will come into force in respect of each of those Powers on the deposit of its ratification.

4. The rights and obligations resulting from Part III of the present Treaty are limited to the High Contracting Parties mentioned in paragraph 2 of this Article. The High Contracting Parties will agree as to the date on which, and the conditions under which, the obligations assumed under the said Part III by the High Contracting Parties mentioned in paragraph 2 of this Article will bind them in relation to France and Italy; such agreement will determine at the same time the corresponding obligations of France and Italy in relation to the other High Contracting Parties.

ARTICLE 25

After the deposit of the ratifications of all the High Contracting Parties, His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland will communicate the provisions inserted in Part IV of the present Treaty to all Powers which are not signatories of the said Treaty, inviting them to accede thereto definitely and without limit of time.

Such accession shall be effected by a declaration addressed to His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland.

ARTICLE 26

The present Treaty, of which the French and English texts are both authentic, shall remain deposited in the archives of His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland. Duly certified copies thereof shall be transmitted to the Governments of all the High Contracting Parties.

In faith whereof the above-named Plenipotentiaries have signed the present Treaty and have affixed thereto their seals.

Done at London, the twenty-second day of April, nineteen hundred and thirty.

HENRY L. STIMSON.
CHARLES G. DAWES.
CHARLES F. ADAMS.
JOSEPH T. ROBINSON.
DAVID A. REED.
HUGH GIBSON.
DWIGHT W. MORROW.
ARISTIDE BRIAND.
J. L. DUMESNIL.
A. DE FLEURIAU.
J. RAMSAY MACDONALD.
ARTHUR HENDERSON.
A. V. ALEXANDER.
W. WEDGWOOD BENN.
PHILIPPE ROY.
JAMES E. FENTON.
T. M. WILFORD.
C. T. TE WATER.
T. A. SMIDDY.
ATUL C. CHATTERJEE.
G. SIRIANNI.
A. C. BORDONARO.
ALFREDO ACTON.
R. WAKATSUKI.
TAKESHI TAKARABE.
T. MATSUDAIRA.
M. NAGAI.

Certified a true copy.
[SEAL.]

S. GASELEE,
Librarian and Keeper of the Papers at the Foreign Office.

LONDON, *April 22nd, 1930.*

APPROPRIATIONS FOR TREASURY AND POST OFFICE DEPARTMENTS

As in legislative session,

Mr. PHIPPS submitted the following report:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 8531) making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1931, and for other purposes, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 4, 16, 21, and 22.

That the House recede from its disagreement to the amendments of the Senate numbered 1, 2, 3, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, and 23, and agree to the same.

Amendment numbered 8: That the House recede from its disagreement to the amendment of the Senate numbered 8, and agree to the same with an amendment as follows: In lieu of the sum proposed insert "$1,634,480"; and the Senate agree to the same.

L. C. PHIPPS,
T. L. ODDIE,
W. B. PINE,
LEE S. OVERMAN,
WM. J. HARRIS,
Managers on the part of the Senate.

WILL R. WOOD,
M. H. THATCHER,
JOSEPH W. BYRNS,
Managers on the part of the House.

Mr. PHIPPS. This is a full and final report on the Treasury and Post Office appropriation measure. I move its adoption.

Mr. ROBINSON of Arkansas. Mr. President, may I ask if the report is unanimous?

Mr. PHIPPS. The report is unanimous on both sides. There were very few items in controversy, and the conference was a very agreeable one all the way through, because the conferees were in accord. Some matters that Senators desired to bring up for consideration in this bill will be otherwise cared for in the deficiency appropriation bill. I could give the figures if it were desired to have them known.

Mr. ROBINSON of Arkansas. In view of the statement of the Senator, I have no objection to the consideration of the report.

The report was agreed to.

EXECUTIVE MESSAGES REFERRED

The VICE PRESIDENT laid before the Senate messages from the President of the United States making nominations, which were referred to the appropriate committees.

FORECLOSURE OF MORTGAGES BY FEDERAL LAND BANKS

As in legislative session,

Mr. BLEASE. Mr. President, some time ago I introduced a joint resolution asking that the Federal land bank officials be instructed not to foreclose certain mortgages for a period of two years.

I have here a communication which I sent to Mr. Secretary Mellon, a reply and two tables from Mr. Ogden Mills, Undersecretary, and some letters and other matter, including two articles by Hon. J. S. Wannamaker, of South Carolina, which I ask to have printed in the RECORD, to be taken up at the time of the consideration of this joint resolution, to show what we have given to other countries, and the extension of time given them to pay their debts to the United States, and conditions in our own country. I have many other letters and articles, but shall not ask that they be printed at this time.

The VICE PRESIDENT. Without objection, the matter will be printed in the RECORD.

The matter referred to is as follows:

WASHINGTON, D. C., *April 19, 1930.*

Hon. ANDREW W. MELLON,
The Secretary of the Treasury, Washington, D. C.

DEAR MR. SECRETARY: I would like for you to kindly furnish me with a statement showing the different amounts of the loans made by the United States Government to the various other nations during the World War, together with the respective rates of interest charged, and a statement of the settlements showing the amounts of principal and interest canceled, the amounts now due and when payable with the rates of interest, and the general status of foreign indebtedness to this Government.

Thanking you for your courteous attention to this request, I am

Very respectfully,
COLE. L. BLEASE.

TREASURY DEPARTMENT,
Washington, April 25, 1930.

Hon. COLE. L. BLEASE,
United States Senate, Washington, D. C.

MY DEAR SENATOR: For the Secretary I acknowledge receipt of your letter of April 19, 1930, requesting information concerning the indebtedness of foreign governments to the United States.

There is transmitted herewith copy of the Combined Annual Reports of the World War Foreign Debt Commission, in which on page 318 and 328 you will find statements showing the amounts of obligations taken from foreign governments on account of cash advances made under the Liberty bond acts, war supplies sold on credit under the act of July 9, 1918, and relief supplies furnished under the acts of February 25, 1919, and March 30, 1920. These amounts are also set out in totals in the statement appearing on page 81 of this report. The rates of interest borne by the obligations prior to funding are shown in the tables appearing on pages 318–328, except for the cash advances. All of the obligations acquired for cash advances bore interest at the rate of 5 per cent per annum from an early date in 1918. On page 332 appears a memorandum which explains the rates of interest on the cash advances.

As you know, the funding agreements concluded with our foreign debtors provide for the repayment of the principal in full over a period of 62 years, together with interest at varying rates. Copies of these agreements may be found in the above-mentioned report except the agreement concluded with the Government of Greece and the agreement proposed to be concluded with the Government of Austria. These agreements will be found in the inclosed extract from the annual report of the Secretary of the Treasury for the fiscal year 1929.

You realize, of course, that any cancellation of the indebtedness of foreign governments is represented by a reduction in the interest rates. As the original obligations generally bore interest prior to funding at the rate of 5 per cent per annum, any cancellation is represented by

the difference between this rate and the rates of interest borne by the obligations as funded. If, therefore, the present value of the payments to be received under the various settlements is computed on a basis of 5 per cent per annum and deducted from the total amount due prior to funding, including interest at the original rates, some measure of cancellation can be obtained. In this connection there is also inclosed photostat copy of the statement showing certain information concerning the funded indebtedness of foreign governments to the United States, among which is the present value of the payments to be received under the various settlements on a basis of 3, 4¼, and 5 per cent per annum payable semiannually. The difference between the present value column of 5 per cent and column No. 5 represents in a measure the cancellation of the indebtedness of foreign governments to the United States. You may also be interested in the average rates of interest on the debt settlements as shown in the last two columns.

For your further information there is inclosed copy of statement dated January 10, 1930, which shows the present status of the indebtedness of foreign governments to the United States.

Very truly yours,

OGDEN L. MILLS,
Undersecretary of the Treasury.

Statement showing principal of indebtedness of foreign governments prior to funding; accrued and unpaid interest up to date of settlement which was funded into principal under debt agreements; principal of total indebtedness as funded; total to be received under the funding agreements, without regard to the exercise of any options by the debtor; total indebtedness as of date of funding, including accrued and unpaid interest computed at rates borne by obligations then held (5 and 6 per cent); present values of payments to be received over 62-year period (40 years in case of Austria) on basis of interest rates of 3, 4¼, and 5 per cent, payable semiannually, together with percentages that such present values bear to the total indebtedness, including accrued and unpaid interest computed at rates borne by obligations prior to funding; and approximate average interest rates on indebtedness of each country as funded, and original principal from approximate date to which interest was last paid prior to funding to end of funding period

Country	Original principal	Funded interest	Funded debt	To be received under funding agreements	Debt prior to funding, including accrued interest (5 and 6 per cent)	Present values on basis of interest rates stated and percentage that present value bears to debt prior to funding						Average annual interest rates (approximate)	
						3 per cent	Per cent	4¼ per cent	Per cent	5 per cent	Per cent	On debt as funded (per cent)	On original principal, including back interest (per cent)
Austria	$24,055,708.92	$559,176.08	$24,614,885	$24,614,885.00	$34,631,000	$12,951,000	37.4	$10,238,000	29.5	$8,971,000	25.9	.....	0.100
Belgium	377,029,570.06	40,750,429.94	417,780,000	727,830,500.00	483,426,000	302,239,000	62.5	225,000,000	46.5	191,766,000	39.7	1.790	1.840
Czechoslovakia	91,879,671.03	23,120,328.97	115,000,000	312,811,433.88	123,854,000	124,995,000	100.9	91,964,000	74.3	77,985,000	63.0	3.327	3.433
Estonia	12,066,222.15	1,763,777.85	13,830,000	33,331,140.00	14,143,000	14,798,000	104.6	11,392,000	80.5	9,915,000	70.1	3.306	3.404
Finland	8,281,926.17	718,073.83	9,000,000	21,695,055.00	9,190,000	9,630,000	104.8	7,413,000	80.7	6,452,000	70.2	3.306	3.402
France	3,340,516,043.72	684,483,956.28	4,025,000,000	6,847,674,104.17	4,230,777,000	2,734,250,000	64.6	1,996,509,000	47.2	1,681,369,000	39.7	1.640	1.955
Great Britain	4,074,818,358.44	525,181,641.56	4,600,000,000	11,105,965,000.00	4,715,310,000	4,922,702,000	104.4	3,788,470,000	80.3	3,296,948,000	69.9	3.306	3.415
Greece [1]	15,000,000.00	3,125,000.00	18,125,000	[1] 20,330,000.00	19,660,000	8,577,000	43.6	6,425,000	32.7	5,495,000	27.9	.250	.950
Hungary	1,685,835.61	253,164.39	1,939,000	4,693,240.00	1,984,000	2,076,000	104.6	1,596,000	80.4	1,388,000	70.0	3.306	3.407
Italy	1,647,869,197.96	394,130,802.04	2,042,000,000	2,407,677,500.00	2,150,150,000	782,321,000	36.4	528,192,000	24.6	426,287,000	19.8	.405	.815
Latvia	5,132,287.14	642,712.86	5,775,000	13,958,635.00	5,893,000	6,181,000	104.9	4,755,000	80.7	4,137,000	70.2	3.306	3.426
Lithuania	4,981,628.03	1,043,371.97	6,030,000	14,531,940.00	6,216,000	6,452,000	103.8	4,967,000	79.9	4,322,000	69.5	3.306	3.420
Poland	159,666,972.39	18,893,027.61	178,560,000	435,687,550.00	182,324,000	191,283,000	104.9	146,825,000	80.5	127,643,000	70.0	3.306	3.408
Rumania	36,128,494.94	8,461,505.06	44,590,000	122,506,260.05	46,945,000	48,442,000	103.2	35,172,000	74.9	29,507,000	62.9	3.321	3.358
Yugoslavia	51,037,886.39	11,812,113.61	62,850,000	95,177,635.00	66,164,000	30,286,000	45.8	20,030,000	30.3	15,919,000	24.1	1.030	1.356
Total	9,850,149,802.95	1,714,944,082.05	11,565,093,885	22,188,484,878.10	12,090,667,000	9,197,183,000	76.1	6,878,948,000	56.9	5,888,104,000	48.7	2.135	2.402

[1] Exclusive of new 4 per cent 20-year loan of $12,167,000.

Column 5	$12,090,667,000
Column 5 per cent	5,888,104,000
Approximate total cancellation, $6,202,563,000.	6,202,563,000

Principal of the funded and unfunded indebtedness of foreign governments to the United States, the accrued and unpaid interest thereon, and payments on account of principal and interest, as of January 10, 1930

Country	Total indebtedness	Total payments received	Funded indebtedness				Unfunded indebtedness [1]			
			Indebtedness		Payments on account		Indebtedness		Payments on account	
			Principal (net)	Accrued interest [2]	Principal	Interest	Principal (net)	Accrued interest	Principal	Interest
Armenia	$17,921,433.10						$11,959,917.49	$5,961,515.61		
Austria [3]	24,614,885.00						24,614,885.00			
Belgium	408,180,000.00	$40,066,273.24	$408,180,000.00		$9,600,000.00	$9,865,000.00			$2,057,630.37	$18,543,642.87
Cuba		12,286,751.58							10,000,000.00	2,286,751.58
Czechoslovakia [4]	171,571,023.07	13,804,178.09	171,571,023.07		13,500,000.00					304,178.09
Estonia	16,305,133.90	701,441.88	13,830,000.00	$2,475,133.90		700,000.00				1,441.88
Finland	8,659,000.00	2,510,855.27	8,659,000.00		341,000.00	1,860,540.00				309,315.27
France	3,900,000,000.00	411,075,891.00	3,900,000,000.00		125,000,000.00				64,689,588.18	221,386,302.82
Great Britain	4,426,000,000.00	1,685,048,298.67	4,426,000,000.00		174,000,000.00	950,970,000.00			202,181,641.56	357,896,657.11
Greece	32,206,000.00	1,696,416.01	32,206,000.00		291,000.00	243,340.00			2,922.67	1,159,153.34
Hungary	1,920,315.00	370,473.46	1,920,315.00		62,240.50	307,479.92				753.04
Italy	2,022,000,000.00	77,963,171.90	2,022,000,000.00		20,000,000.00				364,319.28	57,598,852.62
Latvia	6,795,871.06	430,828.95	5,775,000.00	1,020,871.06		300,000.00				130,828.95
Liberia		36,471.56							26,000.00	10,471.56
Lithuania [5]	6,271,674.50	773,456.39	6,271,674.50		160,790.50	611,118.92				1,546.97
Nicaragua	312,827.99	168,783.13					290,627.99	22,200.00	141,221.15	27,561.98
Poland	209,396,218.67	12,048,224.28	178,560,000.00	30,836,218.67		10,000,000.00				2,048,224.28
Rumania [4]	65,160,560.43	3,461,945.76	65,160,560.43		1,400,000.00				1,798,632.02	263,313.74
Russia	298,703,028.85	[6] 8,748,878.87					192,601,297.37	106,101,731.48		8,748,878.87
Yugoslavia	62,050,000.00	2,163,771.69	62,050,000.00		800,000.00				727,712.55	636,059.14
Total	11,678,067,971.57	2,273,356,111.73	11,302,183,573.00	34,332,223.63	345,155,031.00	974,857,478.84	229,466,727.85	112,085,447.09	281,989,667.78	671,353,934.11

[1] Payments of governments which have funded were made prior to the dates of the funding agreements.

[2] Accrued and unpaid interest on funded debts due to exercise of options to pay specified amounts over first 5 years in lieu of total amounts due, for which bonds similar to those originally issued under funding agreement will be given upon expiration of the options for the full amount deferred.

[3] The act of Feb. 4, 1929, authorized the indebtedness of Austria in this amount to be funded as of Jan. 1, 1928. Payments of $575,112, the first and second installments of principal due, were made on Jan. 1, 1929, and Jan. 1, 1930, respectively, which amounts are held in a special account until the agreement is actually concluded.

[4] Difference between principal of funded debt and amount here stated represents deferred payments provided for in the funding agreements, for which gold bonds of the respective debtor governments have been or will be delivered to the Treasury.

[5] Increase over amount funded due to exercise of options to pay one-half of interest due on original issue of bonds, in bonds of debtor governments.

[6] Represents proceeds of liquidation of financial affairs of Russian Government in this country. (Copies of letter dated May 23, 1922, from the Secretary of State and reply of the Secretary of the Treasury dated June 2, 1922, in regard to loans to the Russian Government and liquidation of affairs of the latter in this country, appear in the annual report of the Secretary of the Treasury for the fiscal year 1922, as Exhibit 79, p. 283, and in the combined annual reports of the World War Foreign Debt Commission as Exhibit 2, p. 84.)

House Joint Resolution 352: For the relief of Porto Rico. Preamble agreed to in Senate December 18, 1928 (CONGRESSIONAL RECORD, p. 797). Public Resolution No. 74. (See p. 1011, CONGRESSIONAL RECORD, December 22, 1928.) December 21, 1928, approved, Seventieth Congress, second session. (See CONGRESSIONAL RECORD, this session, pp. 6613, 6939.)

Public Resolution No. 74, Seventieth Congress

(H. J. Res. 352)

Joint resolution for the relief of Porto Rico

Whereas the island of Porto Rico is suffering from the effects of a violent hurricane of extraordinary intensity, unusual duration, and unexampled violence which visited the island on September 13 and 14, 1928; and

Whereas no part of the island escaped suffering some damage; and

Whereas the total number of people affected by the hurricane was 1,454,047, of whom, according to the report of the American Red Cross, more than one-third, or 510,161, were absolutely destitute and without food; and

Whereas the coffee and fruit crops were almost totally destroyed, and the coffee plantations so injured that it will be at least five years before they can be restored to normal conditions; and

Whereas a very large part of the shade trees which are essential for the successful functioning of a coffee plantation were destroyed and more than five years will be required for their replacement or recovery; and

Whereas more than 140,000, or about one-third, of the trees on the coconut plantations were destroyed and it will be at least seven years before the new trees to be planted in their place will be bearing fruit; and

Whereas the damage to all the insular industries has been so great as to make it impossible for the insular government to give adequate relief in the emergency: Therefore be it

Resolved, etc., That there is hereby created a commission, to be known as the Porto Rican Hurricane Relief Commission (hereinafter referred to as the commission), and to consist of the Secretary of the Treasury, the Secretary of War, and the Secretary of Agriculture, of whom the Secretary of War shall be the chairman. It shall be the duty of the commission to assist in the rehabilitation of agriculture in the island of Porto Rico, particularly on the coffee plantations and on the coconut plantations, to encourage a more general planting of food crops needed by laborers on the plantations, especially of root crops, to aid in the repair and restoration of schools and roads, and to assist in providing employment for unemployed and destitute laborers. The commissioners shall receive no compensation for their services under this resolution.

SEC. 2. (a) The commission is authorized (1) without regard to the civil service laws to appoint and without regard to the classification act of 1923, as amended, to fix the compensation of a secretary and such clerical and other assistants; and (2) to make such expenditures (including expenditures for personal services and rent at the seat of government and elsewhere) as may be necessary in carrying out the provisions of this resolution. The commission may, to the extent deemed advisable by it, utilize the facilities and the clerical and other personnel of the Department of the Treasury, the Department of War, and the Department of Agriculture, and may request and accept the cooperation of the insular and municipal governments of Porto Rico in carrying out the provisions of this resolution.

(b) There is hereby authorized to be appropriated the sum of $50,000 for administrative expenses incurred in carrying out the provisions of this resolution.

SEC. 3. For the purpose of carrying out the provisions of this resolution the commission shall have power to make loans to any individual coffee planter, coconut planter, fruit grower, or other agriculturist in the island of Porto Rico in such amounts and upon such terms and conditions as the commission shall by regulation prescribe, including an agreement by the borrowers to use the loan for the purposes specified by the commission; except that no such loan shall be made for a period of more than 10 years or in an amount in excess of $25,000 to any one individual. The rate of interest upon each such loan beginning with the fourth year shall be 5 per cent per annum, but the commission may, in its discretion, defer the payment of interest upon any such loan for such a period of time as the commission shall deem necessary. All such loans shall be made by the commission itself or through such agencies as the commission shall designate. For carrying out the purposes of this section there is hereby authorized to be appropriated the sum of $6,000,000, of which $3,000,000 shall be made immediately available, $2,000,000 shall be made available on January 1, 1930, and $1,000,000 shall be made available on January 1, 1931. All money received during a period of five years from the date of the approval of this joint resolution as repayment of any loan or interest on loan made under the provisions of this joint resolution shall be held by said commission as a revolving fund, which may be loaned on applications for the purposes and upon the terms and conditions herein provided, and all money received thereafter as payments of interest and principal on all loans made under the provisions of this joint resolution shall be covered into the Treasury as miscellaneous receipts.

SEC. 4. There is hereby authorized to be appropriated the sum of $2,000,000 to be used for the rebuilding and repair of schoolhouses damaged or destroyed by the hurricane in the small towns and rural districts of Porto Rico and for the employment of labor and the purchase of materials for repairing insular and rural municipal roads. The sum hereby authorized to be appropriated shall be expended in such manner and in such amounts as the commission shall approve.

SEC. 5. There is hereby authorized to be appropriated the sum of $100,000 to be expended by the commission in the purchase and distribution within the devastated area of Porto Rico of seeds and seedlings, particularly of food and root crops, in such manner as it deems advisable.

SEC. 6. The commission shall make an annual report to Congress at the beginning of each regular session, giving a complete account of its activities in carrying out the provisions of this resolution.

Approved December 21, 1928.

Public Resolution 33, Seventy-first Congress

(S. J. Res. 118)

Joint resolution to authorize additional appropriations for the relief of Porto Rico

Resolved, etc., That there is hereby authorized to be appropriated the sum of $1,000,000 for the purpose of making loans to individual coffee planters, coconut planters, fruit growers, or other agriculturists in the island of Porto Rico; the sum of $2,000,000 for the rebuilding and repairing of schoolhouses damaged or destroyed by the hurricane in the small towns and rural districts of Porto Rico and for the employment of labor and the purchase of supplies, materials, and equipment for repairing and constructing insular and rural municipal roads; in all, $3,000,000, to be made available immediately and to remain available until expended.

SEC. 2. The sums hereby authorized to be appropriated shall be expended in such manner and in such amounts as may be approved by the Porto Rican Hurricane Relief Commission, established by Public Resolution No. 74, Seventieth Congress, approved December 21, 1928.

Approved, January 22, 1930.

EDGEFIELD, S. C., *April 9, 1930.*

Senator COLE. L. BLEASE:

Only $4,000 farm seed-loan fund allotted to Edgefield County. We need $35,000. Farmers in distress; immediate action imperative.

R. H. NORRIS,
Mayor of Edgefield.
W. D. ALLEN,
President Chamber Commerce.
A. E. PADGETT,
President Farmers' Bank of Edgefield.
THOS. H. RAINSFORD,
Vice President Bank of Edgefield.
T. B. GRENEKER,
State Senator.
H. C. FANNING,
Manager Bank of Western Carolina.
W. W. MILLER,
Vice President and Cashier Bank of Trenton.

DEPARTMENT OF AGRICULTURE,
Washington, D. C., April 11, 1930.

HON. COLE. L. BLEASE,
United States Senate, Washington, D. C.

DEAR SENATOR BLEASE: Your letter of April 10 inclosing telegram from certain parties in Edgefield County, S. C., regarding the allotment made to that county from the appropriation for loans to farmers for the purchase of seed, feed, and fertilizer has been received.

Our reports indicate that applications are being filed at the field offices for amounts greatly in excess of the appropriation, and the department is endeavoring to deal fairly with each of the States mentioned in the bill; still it is quite certain that we will not be able to allot each county the amount it would like to receive.

I am referring your letter to Dr. C. W. Warburton, with the request that he see if anything can be done with regard to increasing the allotment to Edgefield County.

Respectfully,

R. W. DUNLAP, *Acting Secretary.*

APRIL 30, 1930.

Senator COLE. L. BLEASE,
Washington, D. C.

DEAR SIR: I find it necessary to write you concerning the Federal seed and fertilizer loan.

I filed application about the 1st of April for money to buy seed and fertilizer for my 1930 crop. I am inclosing a letter from the Federal

loan so you can see the answer they have given me at this late date for farming. I am unable to make plans at this late date.

Now, Mr. BLEASE, not only me but a lot of us farmers are left in a critical condition. We went ahead and prepared all of our land for planting with the expectation of some help from the Government, so here I am left with nothing to buy seed or fertilizer with and the banks absolutely refuse to put out any money on crop mortgage.

Senator BLEASE, for illustration, to show that, it seems to me, it was not equally divided, I have a brother that received a check for $93 from the Federal farm loan who is 50 per cent in a better financial condition than I am.

I obtained money from the Federal farm loan last year, and my crop was indeed short; in fact, it was not sufficient to pay this money back, so I had to work out and deprive my wife and children in order to pay this money back to them, thinking I would be able to get some help from them this spring.

Senator BLEASE, the proposition looks serious to me. It appears to me I will have to give up my farm and get other work in order to live. I have always been an upholder for you, Mr. BLEASE, and have also been advised by a number of other friends of Mr. BLEASE to write you concerning this matter.

I didn't know if it would be of any benefit or not, but I do know if anything can be done Senator BLEASE will do it, because you are a fair man and believe in equal rights.

My motto is, "Equal rights to all and special privileges to none."

Hoping to hear from you at an early date with some advice as what to do,

I am your friend,

[Inclosure]

UNITED STATES DEPARTMENT OF AGRICULTURE,
FARMERS' SEED LOAN OFFICE,
Columbia, S. C., April 27, 1930.

DEAR SIR: We have your application for a seed, feed, and/or fertilizer loan, and we regret to inform you that the allotment of funds set up for applications from your county has been exhausted. We will hold these papers in our office for a short while in the hope that other counties in your State will not use all of their allotments and will thus be able to take care of a few applications received from such counties as have exhausted their allotment.

We can not, however, give definite assurance that any county will not use all of its funds and can not hold out any encouragement that we may be able to approve your loan later.

You should make plans in connection with your 1930 crops with the above in mind.

Yours very truly,

FARMERS' SEED LOAN OFFICE,
L. E. WHITE,
Administrative Officer in Charge.

WASHINGTON, D. C., *May 1, 1930.*

DEAR SIR: Your letter of April 30 received.

Some time ago I took up with the Department of Agriculture the matter of the insufficiency of the farmers' seed loan fund and requested that the allotment to the various counties in South Carolina be increased.

The department advised me that as a number of States were to be supplied out of the fund that it was necessary to make the allotment to the different counties small in order that each State and county entitled to some of the funds should receive its pro rata share.

At the first opportunity I am going to take the matter up on the floor of the Senate along with some other material which I have to offer for the relief of our farmers, and I hope that they will be able to accomplish some good.

In the meantime, there is nothing I can do except to suggest to you that you see your county agricultural agent and have him take the matter up with the farmers' seed loan office in Columbia.

With kind regards and my best wishes, I am, as ever,

COLE. L. BLEASE.

BAMBERG, S. C., *April 16, 1930.*

Senator COLE. L. BLEASE,
Washington, D. C.

DEAR SENATOR: I see where you are putting a bill through requiring the Federal land banks to give us a breathing spell, and I am certainly glad. Please let me know what success you are having, and if you think it will soon become a law.

Unless something happens real soon, I am sure to lose 1,250 acres of land, but I believe I can make the grade if your bill is made a law real soon. Everything is shot to pieces down here, but with just a little indulgence I think we can all come back.

Best regards.

I am, yours truly,

APRIL 28, 1930.

Hon. COLE. L. BLEASE.

DEAR SIR: I guess you will be surprised to get this letter.

As I am flat on the ground, I thought I would write you and see if you could help me in some way. I put in for Government money three weeks ago, and I have called personally on Mr. L. E. White, in charge at Columbia. He told me Orangeburg County money was out. Looks like a man with nine in family could have gotten this money.

I see others that have already gotten it running cars and also have an income. I have no car or income. Plenty of friends, but all of them broke as hell.

Banks are not loaning any money on crop mortgages or real estate. I have no one to look to, that is why I put in for Government help. Two years ago storm destroyed nearly all of my cotton. I borrowed a little last year from Government and was drowned out by rain, but made enough to pay it back. I wanted about $250 this year to run my farm on, and if you can help me to get it right away, in any way, I will appreciate it very much. I will give any kind of note signed by me and wife until next fall.

I know you are not running a bank, but I thought perhaps you could help an old friend—one that has stood by you and one that will stand by you. If the Government don't help farmers a little more than they have been, there won't be anything down here but paved roads and empty bellies. A lot of farmers in this country can't get a cent to farm with, some going crazy, some going to hospital, some to the graveyard over worry. I have a lot more to tell you, but will wait till later.

[From the News and Courier, Charleston, S. C., April 6, 1930]

FARM RELIEF FROM WASHINGTON—ABOLITION OF STATE LEVIES ON REAL PROPERTY ADVOCATED

By J. Skottowe Wannamaker

Hon. Merle Thorpe, editor of the great magazine, Nation's Business, one of the best recognized authorities on the complex question of government and taxes; Col. Richard H. Edmonds, editor of the Manufacturer's Record, long the outstanding champion of the South and to-day recognized nation-wide as one of the most forceful writers and best authorities on agriculture, business, and industry; and Mr. J. T. Tolleman, president of the Southern Mortgage Co. of Atlanta, Ga., a successful banker and business man, with wide connections, a recognized authority and student of agriculture and agricultural financing, have each displayed a remarkable grasp and understanding of the problems that will be discussed at the meeting of the farmers and friendly allied lines from all sections of the State at the convention hall of the Jefferson Hotel at 10 a. m. on April 15. The addresses and writings of the three above-named gentlemen on these subjects have attracted nation-wide attention.

A recent address by Mr. Merle Thorpe over the general radio broadcast on the subjects of taxes and government, it is conceded by reputable authorities, is one of the most masterful addresses ever delivered on this most complex subject. There are few men or publications in the entire Nation that wield a greater influence for good than Col. Richard H. Edmonds. Mr. J. T. Holleman's address before a recent gathering of the American Bankers' Association, on agriculture, agricultural finances, and the Government's place in agriculture, received the unanimous approval of every banker in the large gathering and was conceded to be one of the clearest and most forceful presentations of the farmer's and land owner's problem that has been delivered before any gathering since the ruinous artificial deflation policy of 1920.

FARM REHABILITATION

The above three recognized national authorities will be invited to address the meeting April 15. Their addresses and the action of the meeting will receive wide publicity throughout the entire Nation as it is conceded by every thoughtful person that the most serious problem facing the Nation to-day is the agricultural problem and that it is vitally necessary not only in the interest of the farmer and friendly allied lines but to the business industry, the people of the entire Nation and the Government to adopt proper measures for a solution of this problem so that the farmer can rehabilitate. The science of government is only a science of combinations, of application, and of exceptions according to times, places, and circumstances.

It was long claimed that the South was the cry baby of the Nation and that we, of the South, were convinced that the Government was an eleemosynary institution, and, therefore, we must look to the Government for assistance instead of working out our own problems. The nation-wide depressed condition of agriculture to-day, the foreclosure of mortgages, and execution for nonpaid taxes has resulted in creating conditions of poverty and discontent nation-wide among the agricultural producers and friendly allied lines to such an extent that other lines of human activities are being sucked into the cesspool, so that common sense dictates to our mind the fact that Government is a trust, and the officers of the Government are trustees; and both the trust and trustees are created for the benefit of the people. This is

the interpretation placed upon present conditions by leaders representing agricultural and friendly allied lines throughout the Nation, regardless of section or politics.

AGRICULTURAL FINANCING

Neither the farmers nor the representatives of friendly allied lines are responsible for the agricultural depression. The only hope for better conditions lies in giving the farmer an opportunity to rehabilitate, discontinuing the drastic foreclosure of mortgages. The act creating Federal land banks and joint-stock land banks was the united product of a group of able and sincere men selected from various sections of the Nation by President Woodrow Wilson. This body represents his first appointees after taking the oath of office. Their duties as outlined by the President were to "visit the leading agricultural countries of the world, to study their system of agricultural financing for farm homes and farm lands and for production purposes, and to prepare, based upon this information, an act creating a system of agricultural financing for this Nation that would promote home and land ownership and furnish the farmer with production credit, all of which was to be based upon the most successful of the systems of foreign nations."

Our joint-stock land bank and Federal land bank which was a result of the commission so appointed is a duplication of the German banking system for agriculture, which has been in successful operation for over 300 years. Under this system the farmer pays annually 3 per cent, including his interest and amortization fee and he is allowed three years grace for payment in the case of short crops and low prices, and in extreme cases of depression five years are allowed. The foreclosure of mortgages in Germany, and, for that matter, other leading countries, is unknown. Our intermediate credit bank for production purposes is based upon a combination of the German and French system of production credit for farmers. The highest rate of interest charged the farmers in any of the leading agricultural countries abroad is 3 per cent.

MEMORIAL TO CONGRESS

A memorial was recently forwarded to the President and Congress from this State requesting that necessary steps be immediately taken to secure an armistice for three years against foreclosures of mortgages against farms and farm homes by the joint-stock land bank and Federal land bank and that annual payments on said mortgages be reduced 3 per cent and that the intermediate credit banks be investigated and reorganized, pointing out the fact that the American farmer is without productive credit. In other words, in this memorial we simply ask that the American farmer be shown the same consideration that has been granted to the farmers of Germany and other European countries over 300 years. Leaders of agriculture and allied lines of business and industry and many governors, regardless of politics and section of the Nation, have joined us in this respect to the President and Congress. The indications now plainly point to the fact that this request for cessation of foreclosures of real-estate mortgages through the two Federal banks for a term of three years, the Government to protect the bonds secured by said mortgages during the said period and the reduction of interest or annual payment to 3 per cent, will receive the largest indorsement representing a great scope of the Nation than any petition of a similar nature ever presented to the President and Congress.

FARM TAX SALES

Every reputable economist and every person guided by a sense of justice concede the indisputable fact that it is necessary for the farmer to secure for his product cost plus a reasonable profit, and that, therefore, he must add in his cost interest, taxes, transportation—three items that come directly under control of the Government. It is also conceded that low interest rates, reasonable taxes, and fair transportation charges benefit not alone the farmer but the entire commerce and civilization of the Nation. These assessed charges have acted as a thermometer, marking the prosperity of the Nation in which they were granted.

The sale of farms under foreclosure for taxes have broken all records of the past. Estimated average taxes per acre of farm real estate increased 134 per cent from 1913 to 1924. The increases have been still higher since 1924. In fact, by 1928 it had reached 146 per cent above the 1913 level. Taxes on farm property will not decline and will probably continue to increase unless the State provides for effective control over the tendency of increased expenditures. When I addressed the general assembly in 1916 and 1917 with cotton around 40 cents per pound, the appropriation for the State at that time was approximately $2,500,000. When I addressed the Senate last week the expenditures had increased to the vast sum of $11,000,000.

PROPERTY LEVIES REMOVED

State assessment of real estate and homes and State levies have been removed in many of the progressive States of the Nation, several of which I have recently visited. The county only assesses the real estate and levies for county purposes. Taxation for meeting the expenditures of the State are derived from bonds, stocks, cash in banks (deducting for debts due or owing is allowed against cash), luxury sales tax, etc., provide all the necessary revenue. The farmers of South Carolina, the home owners, can not continue to bear the tax burden, nor can the problem be solved by the sale of the property for taxes. The only solution is to change the antiquated system of taxation now in force and adopt the progressive system which has proved so beneficial in many of the other States and to reduce the expenses of government from the State departments on through the county by elimination and consolidation to the fullest extent permitted without destroying efficiency.

South Carolina is one of the few States that continues to ignore the voice of the people as expressed at the ballot box requesting and directing that the legislature meet only once in every two years. Compliance with these instructions in itself would bring about an enormous saving of the taxpayer's money. Every progressive State keeps the taxpayers posted concerning the financial status of the State and of each county in the State, many of them by semiannual financial statements issued by the officials in plain language so that even a layman or farmer can understand it. A similar financial statement showing the assets and liabilities of the State and each county in the State in condensed form and in plain language published in the press of the State and counties would be in line with the custom followed in a vast majority of the States and that has proved highly beneficial.

FINEST COTTON IN WORLD

The constant statements issued through the press to the effect that the old cotton States can not compete with the West—that is, the States beyond the Mississippi—that American cotton is inferior to foreign cotton, that it has not the fiber and staple, is incorrect and has done serious injury. Since 1840 the cry has been made that the Atlantic States can not compete with the West in the production of cotton. Having visited time and again every section of the Cotton Belt and having operated under the American Cotton Association, of which I am president, approximately 5,000 demonstration farms per year since 1922, these farms being operated in every section of the Cotton Belt, I find that the facts are the world has never known of finer cotton farmers than the cotton farmers of South Carolina and other States this side of the river, especially in the older States. I call your attention to statistics on production confirming this statement. The widely and constantly published statement that the American cotton is inferior in fiber and staple has seriously injured the sale of American cotton abroad. There is no superior cotton produced anywhere in the world to the American cotton running in staple from seven-eighths to 1 inch, and a vast majority of the spindles of the world approximately 80 per cent use cotton of seven-eighths inch to 1 inch staple. This constant erroneous statement concerning our staple and fiber has induced other countries of the world to enter more actively into an effort to produce seven-eighths to 1 inch staple cotton, and, to put it into plain common sense, the statement has given American cotton a black eye. Give a dog a bad name and it will hang him applies in this case.

INJURIOUS COMPETITION

The cotton producers of the South are forced to compete on an unequal basis with the cotton producers of other sections of the world where the standard of living is lower, the scale of wages is only a fraction of the wages paid by the cotton producers of America, which wages, I frankly admit, are inadequate. The foreign producers enjoy a far lower rate of interest, and in many of the foreign countries he is subsidized by the government, and as a result of the tariff he is enabled to buy his agricultural implements at a lower price than that paid by the American cotton producer, although these implements are largely manufactured in America. This unfair competition has resulted in increasing the foreign production in cotton since 1903 in the foreign countries of the world 189 per cent, while the cotton producers of America since 1903 have increased the production only 145 per cent, and unless the American Government places the American farmer and American cotton grower on an equal economic basis with other lines in America and grant to them the relief requested concerning the mortgages over lands and homes and the burden of taxation is more equitably distributed, and he is given an equal rate of transportation with the farmers in other leading agricultural nations, then he is doomed to fall by the wayside, as it is impossible for him to compete against the foreign producers on this unequal basis.

PRICE NECESSARY

One of the best recognized authorities in any division of the cotton industry shows that, based on post-war yield of American cotton per acre and on the average market price for cotton for 10 years prior to the World War and on the present purchasing power of the dollar, the cotton farmer must obtain 22¼ cents per pound for his cotton to-day if he is to maintain even his pre-war standard of living. The present consumption of cotton outside the United States is approximately 20,000,000 bales yearly. The United States furnishes only about 40 per cent of this amount. Fifty years ago we furnished three-fourths of the cotton consumed outside the United States. The consumption of foreign production is due to the fact of the foreign producer being subsidized by their government and having a far lower cost of production. The monopoly that we long enjoyed in this field is steadily being destroyed, and the fact that the American farmer is forced to buy with the

heavier assessed charges imposed by the tariff and sell the production from his farm without this protection and enables the foreign producer to take advantage of his adversity.

GOVERNMENTAL RELIEF

It can no longer be charged that the South is the cry baby of the Nation. A fellow's feeling makes us wondrous kind. The farmers nation-wide were deflated promptly, completely, scientifically, and unmercifully in 1920. Almost 10 years later, with their backs against the wall, facing agricultural serfdom, the cry goes up, mark my words, from outstanding leaders of the far West. The surest way to prevent seditions (if the times do bear it) is to take away the matter of them, for if there be fuel prepared it is hard to tell whence the spark shall come that shall set it on fire. Farm relief is purely and certainly a matter of legislation. Relief must come from Washington; it can come in no other way. The desperate condition of agriculture to-day nation-wide is proof of the necessity of this. The American farmer is still saddled with a debt of $12,000,000,000—a debt one billion more than the amount due the United States by the European allies in the Great War. The foreign countries have been given 50 years in which to pay the eleven billion.

Ten per cent of our population own 57 per cent of our wealth. One hundred and eighty million dollars was recently refunded to this wealthy group by the National Government, $8,000,000 was donated by our National Government to Porto Rico as a free gift following the tropical storm of 1928, which storm was also disastrous to the farmers of our States. Porto Rico, in area, is about the size of South Carolina.

TAX PAYMENTS PUT OFF

Some of these States have postponed tax payments. The State of Texas on account of the pressed finance condition of farmers have recently postponed taxes due until November 15. However, there has been no reduction made in the taxes. The farmers throughout the Nation have been forced to sell staple agricultural products for less than the actual cost of production as a result of this and refusal of extension of time for payment forced sales of farming land through foreclosures of mortgage and execution of taxes has broken all records of the past.

The American farmers have been told that they must pay the $12,000,000,000 they owe and must be quick about it. No armistice is granted in this battle the American farmer is waging for self-preservation. He must, therefore, demand of his Government the relief to which he is entitled. In the fight for farm relief our guns must be trained on the Congress of the United States. The industrial, financial, and transportation interests have hog-tied everything. Every interest gets the legislation it needs—the farmer is left holding the bag, he asks no special favors, he does demand that laws which discriminate against him be repealed. He sees red, he has long ceased to weep, he is fighting mad, and he justly takes the position that if other interests are fostered and protected by law, then laws that will protect him must be enacted. This is all that he asks. It is necessary to enable him to compete with the foreign farmers.

FIGHT JUST BEGINNING

The fight for farm relief is just beginning. We are face to face with an economic revolution of such magnitude that it will eclipse any similar revolution that has occurred, certainly, in the last generation. Many thoughtful people are convinced that it will be more far-reaching in its effect than any economic revolution that has ever occurred in this Nation. This being the case, it is natural that the farmers and friendly allied interest from every section of South Carolina will attend the mass meeting that will be held in the convention hall of the Jefferson Hotel April 15, and that the activities of this meeting will be carried in the press to the people of every section of the Nation.

Our immortal John C. Calhoun delivering an address to a similar gathering to the one that will be held on April 15 under somewhat similar conditions, although the suffering of the people had not reached the serious stage that it has to-day, stated in part, "A power has arisen up in the Government greater than the people themselves, consisting of many and various and powerful interests combined into one mass, and held together by the cohesive power of the vast surplus in the banks."

[From the News and Courier, Charleston, S. C., April 27, 1930]

"A NEW DECLARATION OF INDEPENDENCE"

By J. Skottowe Wannamaker, president Farmers and Taxpayers' League

The records of history show that a safe civilization can not be constructed on the "homeless estate of man," that when the farmers owned the land they cultivated they were happy and contented because they were prosperous and independent. No nation has ever prospered permanently when the basic industry—agriculture—was impoverished and the farmers were tenants instead of landowners. Nothing contributes more to the security of our State than its homes. They constitute the foundation of its freedom, the bulwark of its prosperity, the citadel of its virtues, and the source of its patriotism. Henry Grady never uttered a greater truth than when he said, "The ark of the covenant of our Government rests in the homes of the people."

RURAL LIFE MUST BE RESTORED

We must bring back to rural life the attraction and advantages enjoyed in other days, and unless the tax burden, which is resulting in confiscation of homes and farms, is lifted then this will not be possible. Fortunately, there is a way by which the State can protect the homes and farms and can march into an atmosphere of real progress and development. That way is by adjusting our tax laws so that they will not only distribute the tax burden equitably, but will provide the revenue needed by the State. The ad valorem tax levied on the real estate, homes, and personal property for State purposes should be done away with entirely. Taxes against these sources by counties and subdivisions should be drastically reduced. The State should raise its revenue from a tax on corporations, inheritances, franchises, general occupations, luxuries, cash in banks, stocks, bonds, and other intangibles, and a sales tax.

The sales tax has been in use for many years in Italy, Germany, France, Canada, and a number of the progressive States in our Nation. This system is equitable and fair to all, and instead of a tax burden as heretofore being borne by a small per cent of our citizens every citizen of South Carolina will pay something, and it would result in ridding the State of debt and putting it on a cash basis, and would enable the farmers to rehabilitate and would bring back the attractive rural life of other days.

SUCCESSFULLY SOLVED IN PAST

Forty years ago Denmark was a bankrupt country. Its farmers became discouraged and left the farms for the city. At that time 90 per cent of Denmark's farmers were tenants. A great statesman of that nation realized that it would be not only more statesmanlike for the government to come to the rescue of the home and the farm but it was necessary to do so as a matter of self-preservation. Conditions in Denmark at that time were the same as they are in South Carolina to-day. It is through the efforts of this great statesman and coworkers that conditions in Denmark were changed from what they were into what they ought to be, their tax system was revised so that the tax burden was lifted from the home and the farm. A financial system was installed which enabled the farmers to purchase their lands on long terms at an extremely low rate of interest, and production credit was furnished for raising of livestock and crops also at a low rate. To-day 92 per cent of the farms of Denmark are owned by the people cultivating them, her farmers are prosperous, and Denmark is a solvent nation.

DENMARK PLAN SPREADS

The plan originated by Denmark was not only adopted by other Scandinavian countries but likewise by Germany, France, Italy, and other of the leading foreign agricultural countries, and all of these countries gave special consideration to taxes against farms and homes. The farmers of the three countries named, in addition to Denmark, have been greatly benefited and thus have contributed directly to all lines of industry and commerce in these nations as agriculture is basic. The average bank deposit of the individual farmers in these countries is far in excess of the average deposit of the American farmer; in fact, as a result of this system even prior to the time of the Franco-Prussian War it had so added to the wealth of the farmers of France that the Franco-Prussian War debt was paid overnight by the French farmers checking on their savings accounts.

It is a fundamental principle of political economy that public debt must be avoided if possible and that bond issues are never justified unless first an emergency exists and the money required for improvements is not otherwise available, and, second, unless improvements to be made are of a permanent nature and will last as long, at least, as the terms of the bond. These fundamental principles of economics have been ignored in our State. Bonds for various and sundry purposes, for municipalities, for school districts, counties, and State have been issued in an endless chain. It has frequently been the case that when the bond matured it was retired in a new issue; in fact, with some of our State bonds—tracing them back to the original issue they are hoary with age. Any adherence to the simplest form of sound business would require that the sinking fund be collected on bonds and that these sinking funds be applied annually. Stupendous amounts have been lost during the last few years on account of the nonadherence of this rule in a number of the counties of the State on account of the failures of banks in which were deposited sinking funds.

STRICT ECONOMY NECESSARY

The strictest economy should be practiced by those in charge of the taxpayers' money, because the tax rate of the State automatically responds to the expenditures authorized by the legislature and those in charge of the finances of the State, and it would seem that they fail to bear in mind the fact that the government of South Carolina has no way of coining money. It possesses no wealth apart from that owned by the people collectively. It has no revenue except as it may acquire from taxes. We have reached the parting of the way. The home and the farm can not continue to pay the ever-increasing burden.

BUREAUCRACY GROWS

The administrative machinery of our State government as now constituted consists of the constitutional government—that is, the elective government and the appointed government. The commissions and bureaus were formed to fill some real or apparent need and some were formed without regard or consideration of work being done by some other bureau, commission, or department then existent. Like mushroom the system sprung up during the World War; like mushroom it has poisoned democracy. There must be a drastic revision of the entire administrative branch of the Government. It is far too expensive in proportion of the work done or good accomplished. It is cumbersome, top-heavy. The departments must be reorganized from the top to the bottom and coordinated so as to eliminate duplication and overlapping of effort. All useless departments must be abolished. Departments that are doing work along the same lines must be consolidated. The reorganization of our Government will not only increase the efficiency but will result in a direct saving of a very large sum to the taxpayers. The fact that our annual appropriation, when cotton was selling at 40 cents per pound and other products of the farm on an equal basis, was less than one-third of the appropriation of to-day presents proof that the taxpayers are being burdened far beyond the amount necessary to obtain an efficient Government in all departments.

DEAR PEOPLE PAY BILL

The expense of the State government is far in excess of the amount indicated by the annual appropriation. The iniquitous practice of using a part of the fines, fees, licenses, or whatnot for paying the individual or department collecting the tribute is just as much a part of the appropriation as it would be were these fines, fees, licenses, or whatnot paid over to the proper authorities in full, as they should be, and then a check issued on a proper voucher to pay the amount due the individual, the commission, the bureau, or whatnot. These collections are just as much a direct tax as if they bore the correct name of tax—that come out of the pockets of the "dear" people. It is possible that they do not put as much bad taste in their mouth; however, it has the same effect upon the pocketbook as it drains it.

The best government is that which is the nearest and closest to the people. It is vitally important in a democratic form of government that those who occupy positions of trust and power are directly responsible to the people. The elective franchise is the surest safeguard for the protection of the masses. There are, however, those—and this army is steadily growing—who are afraid to trust the people and insist upon this appointed government instead of electing by popular vote the heads of the departments. I challenge such a statement and repudiate the false theory that the people are not capable of electing their officers.

PEOPLE GENERALLY RIGHT

I admit that the people are human and therefore will make mistakes, but history proves that the choice of the people has been wisely made in a vast majority of elections conducted in this State since it was formed. The people choose many officials who would never have been selected by the manipulation usually practiced in the appointed power. These men so selected, many of them rendered a great service to the State, and those elected by the people will compare with great credit to those elected through the appointed power. I do not claim that good and able men are not appointed. I do, however, claim that we should adhere closely to the landmarks of our fathers, the Constitution, and that we should trust the people and should not take away from them this priceless heritage, the foundation of democracy, the right and privilege to select our officials through the elective franchise, the surest safeguard for the masses and the protection of the Constitution.

If the people are capable of electing a President of the United States, a governor, United States Senator, a Congressman, and other State and county officials, surely they are capable of electing the head of every necessary bureau or commission unless we are to ignore the written lessons of history. These records show that bureaucracy has caused the downfall of democracy; in fact, has destroyed all forms of government in which the people were permitted to have even the slightest form of democracy. It is the most extravagant of all forms of government; in fact, bureaucracy is recognized as a fortress of nepotism, the incubator from which officeholders are bred so that the army of officeholders continue to increase under this system and the Government will finally be absolutely dominated by bureaucracy, and one generation of bureau aristocrats will pass to their children the official positions that they hold. With 1 person out of every 11 an employee of the Government, it is time to stop, look, and listen.

DECLARATION OF INDEPENDENCE

Since the formation of the Farmers and Taxpayers' League on April 15 letters have poured into headquarters from practically every section of every county in South Carolina indorsing the manifesto which was issued by the league. Many term this manifesto a new declaration of independence. These letters of indorsement and pledged cooperation come from farmers and allied lines; in fact, there is no division. The league seems to have the indorsement of all right-thinking people. These letters, however, are not confined to South Carolinians alone. Many have been received from people in distant States, and we are assured by leaders of recognized authorities that success along the lines we are working will prove of untold benefit to the best interest of the people at large. One of the best authorities in the Nation, a great financial leader, makes the following statement:

"South Carolina offers a greater opportunity for safe and profitable investment than any other State in the Nation, provided the antiquated system of taxation is abolished and a modern system installed in its place. The present ad valorem system of taxation is confiscatory against visible property. Investments in real estate for farming, stock and poultry raising, homes, investments in industries and business will be attracted to your State from all sections of the Nation provided you install a sane system of taxation in line with the tax system adopted by the progressive States, and provided your governmental machinery is reorganized and placed on a sane, solid, business basis. Capital is timid; it is knocking at your door and it will never enter your State until these necessary modern reforms have been put into effect.

OFFICERS WITHOUT COMPENSATION

The officers of the Farmers and Taxpayers' League are giving of their time and finances purely as a matter of service to the State. The State is being thoroughly organized from the township through the counties up to the State, so as to enroll in the league all people who are interested in changing conditions in South Carolina from what they are into what they ought to be. The league does not lack for pledges of commendation and cooperation. It does, however, lack for finances for stamps, stationery, stenographic help, and traveling expenses. The officers, executive committee, and board of directors are as follows:

J. Skottowe Wannamaker, president; Neils Christensen, first vice president and secretary; A. R. Johnston, second vice president and treasurer; Carl B. Epps, third vice president; Pierre Mazyck, assistant secretary.

Executive committee: A. R. Johnston (chairman), J. S. Wannamaker, C. B. Epps, Neils Christensen, Frank W. Shealy, A. F. Lever, John W. Drake, S. J. McCoy, and J. B. Johnson.

Board of directors: F. W. Shealy (chairman), members of the executive committee, and the following: W. C. White, Chester; J. B. Johnson, Rock Hill; George B. Laney, Chesterfield; J. B. Lane, Bishopville; J. C. Bethea, Dillon; E. W. Evans, Bennettsville; Nathan Evins, Marion; Edgar L. Ready, Johnston; A. I. Barron, Manning; J. Fletcher Smith, Gaffney; J. S. Stark, Abbeville; S. J. McCoy, Holly Hill; Edgar L. Culler, Orangeburg; W. L. DePass, Camden; James Morse, jr., Cameron; J. P. Guess, Bamberg; Joe Bouknight, Johnston; J. S. Whaley, Charleston; O. P. Goodwin, Laurens; J. Russell Williams, Berkeley; Paul Sanders, Walterboro; J. I. Johns, Allendale; Doctor Wyman, Estill; Quince Cannady, Barnwell; Burney Davenport, Greenwood; Frank Raysor, Greenville; L. J. Browning, Union; W. H. Wicker, Newberry; J. Frank Williams, Sumter; W. C. Wilson, Cades; W. A. Rigby, Reevesville; C. J. Holliday, Gallivants Ferry.

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NOMINATION OF JUDGE JOHN J. PARKER

The Senate in open executive session resumed the consideration of the nomination of John J. Parker, of North Carolina, to be an Associate Justice of the Supreme Court of the United States.

The VICE PRESIDENT. The Senator from Rhode Island [Mr. HEBERT] is entitled to the floor.

Mr. FESS. Mr. President, will the Senator from Rhode Island yield to me to enable me to suggest the absence of a quorum?

Mr. HEBERT. I yield for that purpose.

Mr. FESS. I suggest the absence of a quorum.

The VICE PRESIDENT. The Clerk will call the roll.

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

Allen	Fess	McCulloch	Smoot
Ashurst	Frazier	McKellar	Steiwer
Baird	Gillett	McNary	Stephens
Barkley	Glass	Metcalf	Sullivan
Bingham	Glenn	Norris	Swanson
Black	Goldsborough	Nye	Thomas, Idaho
Blaine	Gould	Oddie	Thomas, Okla.
Blease	Greene	Overman	Townsend
Borah	Hale	Patterson	Trammell
Bratton	Harris	Phipps	Tydings
Brock	Harrison	Pine	Vandenberg
Broussard	Hastings	Pittman	Wagner
Capper	Hatfield	Ransdell	Walcott
Caraway	Hawes	Robinson, Ark.	Walsh, Mass.
Connally	Hayden	Robinson, Ind.	Walsh, Mont.
Copeland	Hebert	Robsion, Ky.	Waterman
Couzens	Howell	Schall	Watson
Cutting	Johnson	Sheppard	Wheeler
Dale	Jones	Shipstead	
Deneen	Kendrick	Shortridge	
Dill	Keyes	Simmons	

Mr. BLAINE. I desire to announce that my colleague the senior Senator from Wisconsin [Mr. LA FOLLETTE] is unavoidably absent. I ask that this announcement stand for the day.

Mr. SHEPPARD. I announce that the Senator from Florida [Mr. FLETCHER], the Senator from Utah [Mr. KING], and the Senator from South Carolina [Mr. SMITH] are all detained from the Senate by illness.

Mr. BLACK. I desire to announce that my colleague the senior Senator from Alabama [Mr. HEFLIN] is necessarily detained in his home State on matters of public importance.

The VICE PRESIDENT. Eighty-one Senators have answered to their names. A quorum is present.

Mr. OVERMAN. Mr. President, will the Senator from Rhode Island yield to me to have a telegram read?

The VICE PRESIDENT. Does the Senator from Rhode Island yield to the Senator from North Carolina for that purpose?

Mr. HEBERT. I yield.

Mr. OVERMAN. I ask that there may be read at the desk a telegram which was sent to the Senator from Nebraska [Mr. NORRIS] and handed to me by him.

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

The Chief Clerk read as follows:

CHARLOTTE, N. C., *May 1, 1930.*

Senator NORRIS, of Nebraska,

United States Senate, Washington, D. C.:

The use of my name by Senator OVERMAN in a recent speech in the Senate as supporter of confirmation of Judge Parker as Associate Justice of United States Supreme Court is without warrant. I resent it. I have had no communication with anyone on the subject.

EDWIN FRENCH TYSON.

Mr. OVERMAN. Mr. President, I do not know this man at all. I do know the man whose letters I placed in the RECORD. I know him personally. He lives in a different town than does the man who sends the telegram. The man whose letters I placed in the RECORD lives in Burlington, N. C., while the man who sends the telegram sends it from Charlotte, N. C. I do not know whether he is white or colored. The letters which I placed in the RECORD were from a prominent colored man who was employed for a long time here in Washington, who resides in Burlington, N. C., and stands high in my State, and he is the head of some association of tailors. I have had two communications from him, which I placed in the RECORD, and not a letter from the man who sends the telegram. I do not know who the man is who sends the telegram.

Mr. HEBERT. Mr. President, in the course of my remarks yesterday I referred to Judge Parker's education and legal training, and said that notwithstanding he worked his way through college he made one of the most brilliant records in that institution; that he led his class in scholarship; that he was president of the Phi Beta Kappa; that he won prizes in Greek, economics, and law; that he was accorded the orator's medal, the most-coveted prize of the undergraduate school; that he was president of his class; and that the honorary degree of doctor of law has been conferred upon him by the university of which he is a graduate.

Mr. FESS. Mr. President——

The VICE PRESIDENT. Does the Senator from Rhode Island yield to the Senator from Ohio?

Mr. HEBERT. I yield.

Mr. FESS. In connection with the reputation which Judge Parker made in the university, word has come to me that the university regards him as the most brilliant man who has ever been graduated from the institution since the Civil War.

Mr. HEBERT. I am glad to have the Senator make that comment.

I also referred to Judge Parker's participation in politics in his home State of North Carolina, where he was a candidate for Congress and for the office of governor on the Republican ticket, and I mentioned the fact that during the four and one-half years he has served as a judge of the Circut Court of the Fourth Circuit he has sat in more than 450 cases and has written 184 opinions, many of them looking toward the liberalization of procedure in the Federal courts.

I also took occasion to refer to the sources of opposition to his confirmation, and when the recess was taken I was discussing his attitude toward labor as disclosed in the decision in the Red Jacket case. I mention these facts at this time in order that Senators may better follow the thread of my argument as it shall be developed this morning.

Mr. President, it has been urged that his attitude toward the right of the laboring man in controversies with employers is apparent from this single opinion. As to the scores of other opinions written by him and the numerous others in which he has concurred during his years of service on the bench no word of criticism has been raised. Does this mean that his every other judicial utterance has been satsisfactory to his opponents and that they have, perforce, only this one decision upon which to base the contention that his attitude toward labor is not such as its leaders feel should be possessed by members of the United States Supreme Court? Is it possible that not one other of the cases in which he has participated involved any of the rights of those represented by his opponents? And if not, what of the judicial attitude revealed therein?

That a judge must recognize the doctrine of stare decisis and be governed thereby in his decisions can not successfully be controverted. Would those who now oppose the confirmation of Judge Parker have had him reject the rulings of the lower court in the so-called Red Jacket case, only to meet with an inevitable reversal by the Supreme Court? Would such a course have demonstrated that he was better qualified to sit as a member of that tribunal to which he has been nominated? To ask that question is to answer it.

Mr. McKELLAR. Mr. President——

The PRESIDING OFFICER (Mr. SULLIVAN in the chair). Does the Senator from Rhode Island yield to the Senator from Tennessee?

Mr. HEBERT. I prefer not to yield until I conclude my argument.

Mr. McKELLAR. I merely wanted to ask the Senator whether he thought that if Judge Parker had followed the modification of the Hitchman case, as found in the Tri-City case, he would have been reversed—that is, whether he would have been reversed for following the opinion of Chief Justice Taft in the Tri-City case?

Mr. HEBERT. To begin with, there has been no modification of the Hitchman case by the Tri-City case—absolutely none. The two cases are not similar, because there were elements in the Red Jacket case which are not found in the Tri-City case. In fact, as I shall set forth in the course of my argument, the representatives of miners' unions brought that very question to the attention of the Supreme Court in their application for a writ of certiorari, and the Supreme Court refused to review the case.

The Red Jacket case and companion cases were suits brought by coal-mining companies in West Virginia to enjoin the United Mine Workers who had declared a strike in an attempt to unionize the fields from interfering with the companies' employees by violence, threats, intimidation, picketing, and the like, or by procuring them to breach their contracts with the plaintiffs. The trial court found that the defendants were maliciously endeavoring to cause the employees of the plaintiffs to violate their contracts of employment with the plaintiffs, and were, by force, intimidation, and violence, endeavoring to compel the plaintiffs' employees to cease work, and enjoined these acts.

On appeal to the circuit court of appeals, one question earnestly pressed was that the defendants were not interfering with interstate commerce and, therefore, the Federal courts had no jurisdiction. The circuit court of appeals held that interstate commerce was involved and based its decision on the Coronado case (268 U. S. 295).

Another point urged by the mine workers in the circuit court of appeals was that the injunction was too broad and went beyond injunction against force, violence, and intimidation, and, in effect, enjoined interference with the plaintiffs' employees by means of peaceful persuasion. The opinion discloses that plaintiffs' employees had entered into contracts that they would not join the union while remaining in the plaintiffs' service. In his opinion Judge Parker says:

> What the decree forbids is this, "inciting, inducing, or persuading the employees of plaintiff to break their contracts of employment"; and what was said in the Hitchman case with respect to this matter is conclusive of the point involved here.

It is submitted that Judge Parker's attitude toward the right of neither the employee nor of his employer in labor disputes is apparent from his opinion in the Red Jacket case. His duty in that case was clear. He had no alternative. That he did not indulge in gratuitous expressions of sympathy for defendants' cause has been cited as an indication of a general personal attitude. Would he have shown a superior ability to serve in the position to which he has been nominated, had he expressed himself personally opposed to the existing state of the law as to the matter then before him but had, nevertheless, decided the case as he did?

Attention is directed to the fact that the opinion in the Red Jacket case is noticeably free from expressions of any kind which are not directly related to the question at issue. It seems, however, that the opinion repeatedly recognizes the right of the

laboring man and of the organizations designed for his betterment. Early in the opinion Judge Parker states:

In the first place, we do not think that the international organization, United Mine Workers of America, constitutes of itself an unlawful conspiracy in restraint of interstate trade and commerce because it embraces a large percentage of the mine workers of this country or because its purpose is to extend its membership so as to embrace all of the workers in the mines of the continent. It may be conceded that the purposes of the union, if realized, would affect wages, hours of labor, and living conditions, and that the power of its organization would be used in furtherance of collective bargaining, and that these things would incidentally affect the production and price of coal sold in interstate commerce. And it may be conceded further that by such an extension of membership the union would acquire a great measure of control over the labor involved in coal production. But this does not mean that the organization is unlawful.

Later Judge Parker quotes from the opinion in the case of American Foundries *v.* Tri-City Council (257 U. S. 184), as follows:

Labor unions are recognized by the Clayton Act as legal when instituted for mutual help and lawfully carrying out their legitimate objects. They have long been thus recognized by the courts. They were organized out of the necessities of the situation. A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and family. If the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and to resist arbitrary and unfair treatment. Union was essential to give laborers opportunity to deal on equality with their employer. They united to exert influence upon him and to leave him in a body in order by this inconvenience to induce him to make better terms with them. They were withholding their labor of economic value to make him pay what they thought it was worth. The right to combine for such a lawful purpose has in many years not been denied by any court. The strike became a lawful instrument in a lawful economic struggle or competition between employer and employees as to the share of division between them of the joint product of labor and capital. To render this combination at all effective, employees must make their combination extend beyond one shop. It is helpful to have as many as may be in the same trade in the same community united, because in the competition between employers they are bound to be affected by the standard of wages of their neighborhood.

Judge Parker then said:

What is said in this case as to the effect of the standard of wages on competition between employers applies in the coal industry, not to a restricted neighborhood but to the industry as a whole; for in that industry the rate of wages is one of the largest factors in the cost of production and affects not only competition in the immediate neighborhood but that with producers throughout the same trade territory. The union, therefore, is not to be condemned because it seeks to extend its membership throughout the industry. As a matter of fact, it has been before the Supreme Court in a number of cases, and its organization has been recognized by that court as a lawful one. We have no hesitation, therefore, in holding that the defendants are not guilty of a conspiracy in restraint of trade merely because of the extent and general purpose of their organizations.

Near the close of the opinion Judge Parker states:

It is said, however, that the effect of the decree, which, of course, operates indefinitely in future, is to restrain defendants from attempting to extend their membership among the employees of complainants who are under contract not to join the union while remaining in complainants' service, and to forbid the publishing and circulating of lawful arguments and the making of lawful and proper speeches advocating such union membership. They say that the effect of the decree, therefore, is that, because complainants' employees have agreed to work on the nonunion basis, defendants are forbidden, for an indefinite time in the future, to lay before them any lawful and proper argument in favor of union membership.

Then Judge Parker goes on to say:

If we so understood the decree, we would not hesitate to modify it. As we said in the Bittner case, there can be no doubt of the right of defendants to use all lawful propaganda to increase their membership.

The final quotation in the opinion, the insertion of which reveals the absence of any attitude prejudicial to the interests of the laboring man, is found toward the bottom of page 850. This quotation is taken from the opinion in the case of Gasaway *v.* Borderland Coal Co. (278 Fed. 56), and reads as follows:

So far as the contracts themselves and this record disclose, the check-off is the voluntary assignment by the employee of so much of his wages as may be necessary to meet his union dues and his direction to his employer to pay the amount to the treasurer of his union. In that aspect the contract provision is legal, and quite evidently there are many 'awful purposes for which dues may be used.

In Hitchman Coal & Coke Co. *v.* Mitchell (245 U. S. 229), upon which Judge Parker relied and which he believed to be controlling in the Red Jacket case, the Supreme Court said in its decision:

Another fundamental error in defendants' position consists in the assumption that all measures that may be resorted to are lawful if they are "peaceable"—that is, if they stop short of physical violence or coercion through fear of it. In our opinion, any violation of plaintiff's legal rights contrived by defendants for the purpose of inflicting damage, or having that as its necessary effect, is as plainly inhibited by the law as if it involves a breach of the peace. A combination to procure concerted breaches of contract by plaintiff's employees constitutes such a violation, that is, a violation of the plaintiff's legal rights.

It does not appear from Judge Parker's opinion that any question was raised by counsel in the Red Jacket case as to the validity of the contracts between the plaintiffs and their employees by which the latter agreed not to join the union. An examination of the briefs of counsel filed in this case discloses no suggestion or contention that the contract between the mining companies and their nonunion employees prohibiting the latter from joining the union was illegal or void as against public policy or for any other reason. Counsel, as well as the circuit judges, quite correctly considered the Hitchman case conclusive on that point, for in its opinion (245 U. S. 250) the Supreme Court had declared:

That the plaintiff was acting within its lawful rights in employing its men only upon terms of continuing nonmembership in the United Mine Workers of America is not open to question. * * * The same liberty which enables men to form unions, and through the union to enter into agreements with employers willing to agree, entitled other men to remain independent of the union and other employers to agree with them to employ no man who owes any allegiance or obligation to the union. In the latter case, as in the former, the parties are entitled to be protected by the law in the enjoyment of the benefits of any lawful agreement they may make. This court repeatedly has held that the employer is as free to make nonmembership in a union a condition of employment as the workingman is free to join the union, and that this is a part of the constitutional rights of personal liberty and private property, not to be taken away even by legislation unless through some proper exercise of the paramount police power. (Adair *v.* United States, 208 U. S. 161; Coppage *v.* Kansas, 236 U. S. 1.) * * *

Plaintiff, having in the exercise of its undoubted rights established a working agreement between it and its employees, with the free assent of the latter, is entitled to be protected in the enjoyment of the resulting status, as in any other legal right. That the employment was "at will" and terminable by either party at any time is of no consequence.

Mr. Justice Brandeis wrote a dissenting opinion in the Hitchman case, but his dissent was not based on a suggestion that the contract between the employer and its employees not to join the union was unenforceable or void. On the contrary, he said (p. 271):

In other words, an employer, in order to effectuate the closing of his shop to union labor, may exact an agreement to that effect from his employees. The agreement itself being a lawful one, the employer may withhold from the men an economic need—employment—until they assent to make it.

His dissent was based on the proposition, not that the contracts were unlawful, but that the union men did not induce the plaintiff's employees to violate their terms (p. 272). This contention was expressly rejected in the ruling opinion of the court (p. 255).

Whatever reasons might have been advanced for assailing such contracts on grounds of public policy, Judge Parker and his associate judges were constrained by the decision of the Supreme Court in the Hitchman case to disregard them. No such point was made by counsel in the Red Jacket case, who must have regarded the right to make such contracts as settled in the Supreme Court of the United States.

On the other question, as to whether any actionable wrong justifying an injunction was committed by the union men in attempting by peaceable means to induce nonunion employees to violate their contracts of employment by joining the union, Judge Parker again bases his decision on the Hitchman case where substantially similar contracts were involved, and the Supreme Court held that peaceful efforts by the strikers to induce the company employees to agree to join the union while remaining in plaintiff's employ were properly enjoined.

There does not appear to be a point decided in the Red Jacket case on which Judge Parker assumed to exercise any independent judgment or opinion. He and his associates felt bound by the Supreme Court decisions. In holding the contracts valid and that peaceable efforts to induce the nonunion

men to break them were properly enjoined, he merely quoted rulings to that effect in the Hitchman case. Nowhere are pressed or indicated any personal views about any of these questions. He had no freedom of judgment on any of them; he was bound by the decisions of the Supreme Court, which he could not refuse to follow. The Hitchman case itself had originated in the Circuit Court of Appeals for the Fourth Circuit before Judge Parker became a member of that court, the circuit court of appeals had denied an injunction, and its decision was reversed by the Supreme Court in the Hitchman case. What would have been the fate of a decision by Judge Parker in the Red Jacket case contrary to that which he rendered is indicated by the fact that the United Mine Workers filed a petition for a writ of certiorari with the Supreme Court of the United States, asking that court to review Judge Parker's decision, and the petition for certiorari was denied (275 U. S. 536).

To refuse to confirm the nomination of Judge Parker for his decision in the Red Jacket Coal Co. case will amount to refusing to confirm him because he followed and gave binding effect to the decisions of the Supreme Court of the United States. At least he considered the cited decisions of the Supreme Court to be controlling in the Red Jacket case, and no one has yet pointed out any ground on which the Hitchman case and the Red Jacket case may properly be distinguished.

The question is not whether the Supreme Court was right or wrong in its conclusion. The question is whether Judge Parker was dealing with points which had been settled by the Supreme Court which he was bound, under his oath of office, to follow. He and his two associates based their decision upon the controlling authority of the Hitchman case as they were constrained to do, but even in this they were careful not to go beyond the dictates of that decision.

The argument has been made against Judge Parker's decision in the Red Jacket case that the Supreme Court of the United States in American Steel Foundries *v.* Tri-City Council (257 U. S. 184), decided after the Hitchman case and before Judge Parker decided the Red Jacket case, in some way qualified or modified the ruling in the Hitchman case so as to have afforded Judge Parker a basis for distinguishing the Red Jacket case from the Hitchman case. It has been claimed that the opinion of the court in the American Steel Foundries case indicated that the injunction granted in the Hitchman case against interference with the contracts between employers and employees was directed only at such interference accompanied by deceit and misrepresentation, and that as the interference with the contracts proved in the Red Jacket case was not accompanied by deceit, concealment, and misrepresentation, the cases are distinguishable.

In the first place, it will be noted that in the American Steel Foundries case the question of interference with contractual rights was not even presented, and there was no contention or evidence that any contract had been made between the employer and employee respecting membership in unions. So the result is that in the American Steel Foundries case the court did not consider or decide any question as to interference with contractual rights. In its opinion in the American Steel Foundries case the Chief Justice said that the Hitchman case had no application. In its opinion in the American Steel Foundries case the court, referring to the Hitchman case, said that the plan there involved was carried out (1) by the use of deception and misrepresentation with its nonunion employees, (2) by seeking to induce such employees to become members of the union contrary to the express terms of their contract of employment that they would not remain in complainant's employ if union men, and (3) after enough such employees had been secretly secured, suddenly to declare a strike against the complainant, and said:

> This court held that the purpose was not lawful, and that the means were not lawful, and that the defendants were thus engaged in an unlawful conspiracy which should be enjoined. The unlawful and deceitful means used were quite enough to sustain the decision of the court without more. The statement of the purpose of the plan is sufficient to show the remoteness of the benefit ultimately to be derived by the members of the international union from its success and the formidable country-wide and dangerous character of the control of interstate commerce sought. The circumstances of the case make it no authority for the contention here.

Thus there was no attempt in the Tri-City case to overrule, qualify, or limit the decision rendered in the Hitchman case. The criticism of Judge Parker's decision in the Red Jacket case, made upon the floor of the Senate to the effect that the Hitchman case did not control the Red Jacket case, because in the former there was deceit and misrepresentation not present in the latter, was fully presented to the Supreme Court in the Red Jacket case in a petition for certiorari to review Judge Parker's decision. The contention that the American Steel Foundries case has confined the Hitchman case to cases of concealment or misrepresentation was squarely presented in this petition, as follows:

> Petitioners show that by said contracts the respondents, operators in the five mining districts of West Virginia, have undertaken to insulate their nonunion labor from peaceable persuasion to quit work and join the union, and that the effect of the decision of the circuit court of appeals is to make such insulation effective; that this holding is in direct conflict with the holding of this court in the case of American Steel Foundries Co. *v.* Tri-City Council (257 U. S. 184), and is also in direct conflict with the decision of the Circuit Court of Appeals for the Seventh Circuit in the case of Gasaway *v.* Borderland Coal Corporation (278 Fed. 56), involving the very same alleged contracts referred to by the courts below in this case.

The petition further states as one of the questions involved and sought to be reviewed:

> Did the district court of the United States and the Circuit Court of Appeals of the Fourth Circuit err in enjoining and restraining the officers and members of the United Mine Workers of America from persuading the employees of respondents to become members of the union and cease work?

This question is argued in the brief submitted in support of the petition, which concludes:

> The significance of the situation is revealed in these suits. The nonunion operators of West Virginia and of other unorganized coal fields have universally resorted to individual contracts, in which the helpless and often ignorant employee, working at will, agrees that he will not join the union and continue his employment. And on the assumption that these contracts have insulated their nonunion labor the operators secure injunctions that not merely by terror but by their terms prevent the union, under hazard of fine and imprisonment, from carrying the persuasive argument of their craft organization to those who are without its membership. This is done despite the opinion of this court in the Steel Foundries case. It is done because of a fancied restraint imposed upon the lower courts not by the opinion in the Hitchman case but by the form of decree deemed proper under the facts of that case. And yet in the Foundries case it was carefully pointed out that in the Hitchman case "the unlawful and deceitful means used were quite enough to sustain the decision of the court without more."

The petition for certiorari in the Red Jacket case was thus based upon the ground that Judge Parker's decision was in conflict with the Hitchman case as limited and construed in the case of American Steel Foundries against Tri-City Council. Petition for certiorari was denied, and the criticism of Judge Parker's decision which is now made in the Senate seems thus to have been rejected by the Supreme Court of the United States. The question involved in the Red Jacket case was of public importance. If there had been any substantial basis for the contention that Judge Parker had failed to follow the analysis of the Hitchman case, made in the American Steel Foundries case, no doubt the petition for certiorari would have been granted.

The opinion of the Supreme Court in the Hitchman case was explicit. The court said:

> Another fundamental error in defendants' position consists in the assumption that all measures that may be resorted to are lawful if they are "peaceable"; that is, if they stop short of physical violence or coercion through fear of it. In our opinion, any violation of plaintiff's legal rights contrived by defendants for the purpose of inflicting damage, or having that as its necessary effect, is as plainly inhibited by the law as if it involved a breach of the peace. A combination to procure concerted breaches of contract by plaintiff's employees constitutes such a violation.

The opinion of Judge Parker in the Red Jacket case discloses the careful consideration which he gave not only to the opinion of the Supreme Court in the Hitchman case but to the provisions of its decree, for there he said:

> With respect to the second paragraph complaint is made that it restrains defendants "from inciting, inducing, or persuading the employees of the plaintiffs to break their contract of employment with the plaintiffs." This language is certainly not so broad as that of the decree approved by the Supreme Court in Hitchman Coal & Coke Co. *v.* Mitchell (245 U. S. 229), which also enjoined interference with the contract by means of peaceful persuasion.

The argument against Judge Parker's confirmation is thus based on the theory that he should have rejected the explicit statements of the majority opinion of the Supreme Court in the Hitchman case and followed an alleged suggestion in the opinion of the Supreme Court in the American Steel Foundries case, which did not present any question relating to interference with contracts between employers and employees.

Mr. President, this morning I was handed a telegram addressed to Senator HATFIELD by T. C. Townsend. It is dated Charleston, W. Va., April 30. Mr. Townsend was counsel for the United Mine Workers of America in the Red Jacket case, and I think it would be of interest for Senators to know his attitude upon the decision in that case, as it is revealed in this telegram, which I ask the clerk to read.

The PRESIDING OFFICER. Without objection, the clerk will read.

The legislative clerk read as follows:

CHARLESTON, W. VA., *April 30, 1930.*

Hon. H. D. HATFIELD,

United States Senator, Washington, D. C.:

If the press reports correctly the statements of Senator BORAH made in the United States Senate in opposition to the confirmation of Judge Parker, he not only misrepresents attorneys who appeared for the United Mine Workers in the Red Jacket case but also misconstrues the decisions of the Supreme Court of the United States relating to what is commonly known as the "yellow-dog" contract. The "yellow-dog" contract was first before the Supreme Court of the United States in the case of Hitchman Coal & Coke Co. *v.* Mitchell (245 U. S. 229). First decided in Coppage *v.* Kansas (236 U. S.). In this case the Supreme Court of the United States sustained an injunction issued by the District Court for the Northern District of West Virginia enjoining representatives of the mine workers' organization from persuading employees of said coal company, who were under contract, to violate their contracts of employment. Senator BORAH makes the statement that Judge Parker in rendering the decision in the Red Jacket case should have followed the doctrine of the case of American Foundries *v.* Tri-City (257 U. S. 184). May I direct your attention to the fact that in the Tri-City case no contract of employment whatsoever existed between employer and employee. In other words, the "yellow-dog" contract was not involved directly or indirectly in that case. It was involved in the Hitchman case. The facts of the two cases in so far as the contract of employment was involved were entirely different. Counsel for the mine workers in the Red Jacket case relied upon the Tri-City case and undertook to distinguish that case from the Hitchman case. At page 189 of brief of appellants is found this language:

"Our construction of the court's opinion in the Hitchman case is that it justified the injunction on the ground of the unlawful means, deceptions, and threats shown in that case, for the court said that the defendants had proceeded (p. 261) 'without physical violence, indeed, but by persuasion accompanied with threats of a reduction of wages and deceptive statements as to the attitude of the mine management, to induce plaintiff's employees to join the union and at the same time to break their agreement with plaintiff by remaining in its employ after joining and this for the purpose not of enlarging the membership of the union, but of coercing plaintiff through a strike or the threat of one, into recognition of the union.' 'The jurisdiction of the Federal court was based on divers citizenship, which does not exist here, and if plaintiffs had any right they should have asserted the same in the State courts.'

"These quotations from the opinion of the court amply justify us in concluding that the reasons assigned by the court for sustaining that injunction in that case were the unlawful methods used to induce the employees of the plaintiffs to join the union, and that threats and deceptions were used which it is claimed was evidence of malice; and if the defendants had confined themselves to peaceable persuasion, lawful propaganda, and the address to reason, in inducing the employees of the plaintiff to openly join the union, then no injunction would have been sustained.

"Our views of the proper construction of the court's decision in the case of Hitchman against Mitchell is confirmed by the later case of American Foundries Co. *v.* Tri-City (257 U. S. 184).

"So it will be seen that the court in this last case clearly indicates that the 'unlawful and deceitful means used' were the basis of the court's decision in the Hitchman case.

"The case of American Foundries against Tri-City Central Trades Council, supra, amply sustains our view as to the right of the United Mine Workers to enlarge its union by appealing to nonunion miners by argument, persuasion, and reason to become members of the union; and if necessary, to the extension of the union and procuring the increased wage scale, to encourage a strike conducted along lawful and peaceable lines, and in any case where the court has jurisdiction the injunction should not forbid persuasion, propaganda, and appeal to reason; but any injunction should only forbid the use of unlawful, deceptive, and violent means to extend the union."

Judge Parker in the Red Jacket case held that the doctrine laid down in the Hitchman case was applicable to the facts in the Red Jacket case rather than the doctrine laid down in the Tri-City case. He followed the Hitchman case rather than the Tri-City case. The Supreme Court of the United States refused to review the Red Jacket case, thereby confirming the opinion of Judge Parker. The opinion of Judge Parker in the Red Jacket case to-day stands confirmed by the Supreme Court of the United States by reason of its refusal to review the case.

The major question involved in the Red Jacket case, however, was one of jurisdiction and not the "yellow-dog" contract. This clearly appears from the opinion of the court and the record in the case.

T. C. TOWNSEND.

Mr. HEBERT. Reference has been made here to the so-called "yellow-dog" contract. I hold in my hand a copy of one of these contracts, which I read:

CONTRACT

I hereby apply for work with the ——— company, and agree to accept for my employment in such capacity a wage of ——— cents per hour; if by piece work rate will be ———; the work, wages, and hours being subject to revision on option of the company, and it will be considered as acceptable by me if I remain in the employ of the company hereafter.

I accept the company's right, at its option, to operate its plants and mines such number of hours each shift as the requirements of business demand.

I reserve the right to leave the company's employ at any time upon such reasonable notice to the superintendent of my department that will afford him time to fill my place. The company may, at its option, dispense with my service for any cause which the company may deem sufficient.

I agree during employment under this that I will work efficiently and diligently and will not participate in any strike nor unite with employees in concerted action to change hours, wages, or working conditions. I further declare that I am not a member of the I. W. W. or any other communistic or like organization, nor will I join such while in the company's employ.

I agree to abide faithfully by all the rules of the company as posted on its premises or outlined by the superintendent of my department.

The company agrees to pay the wages earned by me regularly semimonthly and to enable me to maintain as far as possible a regular income by uninterrupted operation.

When this application as indorsed is accepted by the company it shall become a binding contract between myself and the company as long as I remain in the company's employ.

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

Mr. HEBERT. I yield.

Mr. JOHNSON. May I inquire whether or not that is the contract which was at issue in the Red Jacket case?

Mr. HEBERT. Mr. President, I am not advised as to that. I will say, for the information of the Senator, that the form which I have just read is one which was furnished to me by representatives of the American Federation of Labor.

Mr. JOHNSON. Was there an agreement there upon the part of the employees to join no union?

Mr. HEBERT. Yes; there was. Let me reread that particular condition of the contract.

I agree during employment under this that I will work efficiently and diligently and will not participate in any strike nor unite with employees in concerted action to change hours, wages, or working conditions. I further declare that I am not a member of the I. W. W. or any other communistic or like organization, nor will I join such while in the company's employ.

Mr. NORRIS. Mr. President, is there anything in that contract which prohibits the employer from joining an association of employers?

Mr. HEBERT. There is no mention of it.

Mr. NORRIS. I assume, then, that while the employee agrees not to join any union, the employer has the right to join a union or an association of employers if he wants to?

Mr. HEBERT. I should assume that to be so.

Mr. NORRIS. Is there anything in the contract requiring the employer, in case he wants to dismiss the employee, to give him any notice excepting the notice to quit?

Mr. HEBERT. It merely provides:

The company may, at his option, dispense with my services for any cause which the company may deem sufficient.

Mr. NORRIS. In other words, the contract provides that if the workman wants to quit, he must give notice, and let the superintendent have time enough to fill his place, but if the employer wants him to quit he can discharge him without any notice whatever.

Mr. HEBERT. That is true.

Mr. JOHNSON. Mr. President, let me make another inquiry of the Senator. The important part of the agreement, I take it, is that portion which prohibits the employee from in any way engaging with his fellows in any protest, as it were—I do not quote the exact terms—concerning wages or conditions, and the like. That is quite so, is it not?

Mr. HEBERT. Yes.

Mr. JOHNSON. Let me inquire of the Senator, does he approve that contract?

Mr. HEBERT. Mr. President, I doubt very much whether I should be disposed to sign one myself.

Mr. JOHNSON. Of course, the Senator would not sign it unless behind him was a specter of poverty and in front of him the hunger of his family. Would he?

Mr. HEBERT. Even then I should be disposed not to sign it. But we are not called upon here to pass upon that. The Supreme Court has upheld the validity of that contract, and the Senator and I are bound by it, and I do not see how it is possible for us to change the contract.

Mr. JOHNSON. I beg the Senator's pardon; will the Senator yield?

Mr. HEBERT. I yield.

Mr. JOHNSON. The Senator may be bound by it; I am not.

Mr. NORRIS. Mr. President, may I ask the Senator another question?

The PRESIDING OFFICER. Does the Senator from Rhode Island yield further to the Senator from Nebraska?

Mr. HEBERT. I yield.

Mr. NORRIS. If the Senator's theory is right, the Supreme Court has passed on it and it can not be changed, and therefore our civilization is bound by that contract through all eternity, is it not? How will we get away from it?

Mr. HEBERT. I am not prepared to say how it can be changed. I have reason to believe that at some time there will be influences to make some changes which we know not of at the present time. Suffice it to say for the purposes of this argument that it is the law of the land, and when we are discussing the qualifications of a candidate for membership on the Supreme Court we are bound by the decisions of that court, and that candidate in carrying out his duties on the bench is likewise bound by the decisions of that court.

Mr. NORRIS. Without finding fault or trying to criticize the Senator for his attitude, I would like to ask him another question. If his theory be true, we are here deprived of any right to keep a man off of the Supreme Court who carries out that view, which he himself thinks in some way unknown to him may be changed at some time in the future. If we want to get rid of that kind of a condition, how can we do it? Is not this the only way to do it?

Mr. HEBERT. Mr. President, what argument is there that such a condition will not obtain in the future when Judge Parker is on the Supreme Bench?

Mr. NORRIS. Certainly.

Mr. HEBERT. Let me answer the Senator. Judge Parker has expressed no opinion upon this contract other than that which he was bound to express under the law as it existed at the time the case came before him for consideration.

Mr. NORRIS. Will he not be so bound during his entire official life if he becomes a member of the Supreme Court?

Mr. HEBERT. I should not think so. I understand it is generally recognized among lawyers that the Supreme Court never reverses itself.

Mr. NORRIS. Exactly.

Mr. HEBERT. But it distinguishes.

Mr. NORRIS. That is what we are trying to do now—to distinguish. We want to relieve the Supreme Court of one of its burdens.

Mr. ALLEN and Mr. JOHNSON addressed the Chair.

The VICE PRESIDENT. Does the Senator from Rhode Island yield; and if so, to whom?

Mr. HEBERT. I yield first to the Senator from Kansas.

Mr. ALLEN. I want to get the idea of the Senator from Nebraska. Is it his opinion, is it his reasoning, that the best way to bring about a modification of laws which now exist is to select Supreme Court Justices in harmony with our judgment as to what they ought to do when they go upon the Supreme Bench?

The VICE PRESIDENT. Does the Senator from Rhode Island yield to the Senator from Nebraska to answer the question?

Mr. HEBERT. Certainly.

Mr. NORRIS. I will say to the Senator from Kansas that I expect to get the floor soon and I shall go into the answer to his question rather fully. It is sufficient now to say in a general way that I do think so. I am frank to admit that I want to see men put on the Supreme Bench who have modern ideas and who are not so encrusted with ancient theories which existed in barbarous times that they are going to inflict human slavery upon us now.

Mr. ALLEN. By "modern ideas" the Senator means his own ideas?

Mr. NORRIS. I do, of course, mean my ideas.

Mr. ALLEN. And the Senator believes it is reasonable to set up a policy here that Senators should insist that no one be chosen for the Supreme Bench except those who have their ideas touching the policies which ought to govern our civilization?

Mr. NORRIS. No; I would not say that; but I will say, since the Senator is so careful about following precedents, that I shall give him a precedent. When Judge Brandeis's name was before the Senate he was fought by men who did not agree with his economic views, and I do not find fault with them for doing it. However, I am not in favor of packing the Supreme Court with men who are in favor of enforcing contracts which, if carried to their logical conclusion, mean human slavery for every man who toils.

Mr. HEBERT. Mr. President, it is interesting to note at this point that Mr. Justice Brandeis, to whom the Senator referred, sustained the very contract which I have just read to the Senate.

Mr. NORRIS. That only demonstrates again, if the Senator will permit me, that I am not going so far as the Senator from Kansas intimtaes; that I am not trying to put men on the Supreme Bench in a strait-jacket and have them conform to every idea that I have. For instance, I will not vote to confirm any man to the Supreme Court whom I know believes in the doctrine of the "yellow-dog" contract and is in favor of enforcing that contract by the injunctive process. If that be treason, make the most of it!

Mr. ALLEN. Mr. President, will the Senator from Rhode Island yield further?

Mr. HEBERT. Certainly.

Mr. ALLEN. Can the Senator from Nebraska point out definitely where Judge Parker said he believed in the doctrine of the "yellow dog" contract?

Mr. NORRIS. No. I think it is conceded, however, that Judge Parker believes in it. He not only approved the decision but he disregarded the road that might lead him around it. As I heard a Senator say the other day, he issued his decision and smacked his lips when he did it.

Mr. HEBERT. Mr. President, I think I have pointed out very clearly that the road which was designated here would not lead to any such conclusion for the simple reason that the case is not in point, and had Judge Parker followed the decision in that case he certainly would have been overruled by the Supreme Court.

I repeat, lest there be some misunderstanding about it, that the contract was passed upon and held valid by the Supreme Court in Hitchman Coal & Coke Co. *v.* Mitchell (245 U. S. 229).

It is true, as stated by the representatives of the American Federation of Labor, that Mr. Justice Brandeis wrote a dissenting opinion in this case, not upon the ground that the contract is illegal but that a union contract is equally valid, and upon the further ground that there was no attempt to induce employees to violate their contracts.

There is pending in the Massachusetts House of Representatives a bill, No. 299, which declares contracts of employment by which either party agrees not to become or remain a member of a labor union or an organization of employers against public policy and void. The legislature applied to the justices of the supreme court of that State for an opinion upon the constitutionality of the measure if it were to be enacted into law. The justices held unanimously that the proposed bill, if enacted into law, would be in conflict with the Constitution of the United States and of the Commonwealth of Massachusetts.

Mr. NORRIS. Mr. President, will the Senator from Rhode Island yield further?

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

Mr. HEBERT. I yield.

Mr. NORRIS. The Supreme Court of the State of Massachusetts in that case did not hold that such a contract should be enforced by an injunction, did it? In other words, even assuming that the contract was legal and binding upon the parties, the Supreme Court of Massachusetts did not say that an injunction should issue by a judge restraining some other party, not a party to the contract, from peacefully advising either side which had agreed to the contract, to violate it.

Mr. HEBERT. The Supreme Court of Massachusetts was not called on to pass upon that particular question. It was asked to supply the legislature of the State with an advisory opinion upon the provisions of a measure then pending in the legislature. I have here a copy of the opinion of the Supreme Court of Massachusetts, which is dated April 15, 1930, which I had intended to have inserted in the RECORD as a part of my remarks, but which, for the information of the Senate, I shall ask to have read at this time.

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

The legislative clerk read as follows:

House No. 1275

THE COMMONWEALTH OF MASSACHUSETTS.

OPINIONS OF THE JUSTICES OF THE SUPREME JUDICIAL COURT RELATIVE TO DECLARING VOID CERTAIN CONTRACTS OF EMPLOYMENT WHEREIN EITHER PARTY UNDERTAKES NOT TO JOIN A LABOR UNION OR ORGANIZATION OF EMPLOYERS

(April 15, 1930)

To the Honorable the House of Representatives of the Commonwealth of Massachusetts:

The justices of the supreme judicial court have considered the order adopted on April 4, 1930, and transmitted to them on April 8, 1930, requiring their opinion on the question whether the provisions of the bill printed as House Document No. 299, if enacted into law, would be in conflict with the Constitution of this Commonwealth or of the United States. Copy of the order is hereto annexed. The proposed bill is adequately described in its title in substance as an act declaring provisions in contracts of employment whereby either party undertakes not to join, become, or remain a member of a labor union, or of any organization of employers, or undertakes in such event to withdraw from the contract of employment, to be against public policy and void.

A contract similar to those described in the proposed bill was assailed and its validity was under consideration in Hitchman Coal & Coke Co. *v.* Mitchell (245 U. S. 229). It there was said, at pages 250, 251: "That the plaintiff was acting within its lawful rights in employing its men only upon terms of continuing nonmembership in the United Mine Workers of America is not open to question. Plaintiff's repeated costly experiences of strikes and other interferences while attempting to 'run union' were a sufficient explanation of its resolve to run 'nonunion,' if any were needed. But neither explanation nor justification is needed. Whatever may be the advantages of 'collective bargaining,' it is not bargaining at all, in any just sense, unless it is voluntary on both sides. The same liberty which enables men to form unions, and through the union to enter into agreements with employers willing to agree, entitles other men to remain independent of the union and other employers to agree with them to employ no man who owes any allegiance or obligation to the union. In the latter case, as in the former, the parties are entitled to be protected by the law in the enjoyment of the benefits of any lawful agreement they may make. This court repeatedly has held that the employer is as free to make nonmembership in a union a condition of employment as the workingman is free to join the union, and that this is a part of the constitutional rights of personal liberty and private property, not to be taken away even by legislation, unless through some proper exercise of the paramount police power." It is not necessary to consider whether the extent of the "paramount police power" in this connection can extend beyond provisions to secure that such contracts be free from coercion, because it is plain that the proposed bill does not avoid insuperable difficulties now to be mentioned.

In Adair *v.* United States (208 U. S. 161), an act of Congress was attacked whereby a penalty was imposed upon an employer of labor for making a contract of the same general nature as those described in the proposed bill or for discharging an employee because of membership in a labor union, the acts thus denounced being declared misdemeanors. It was held in an exhaustive opinion that the act was violative of the provisions of the fifth amendment to the Federal Constitution forbidding Congress to enact any law depriving a person of liberty or property without due process of law. In Coppage *v.* Kansas (236 U. S. 1) the main point for consideration was the validity of a statute of Kansas declaring it a misdemeanor for an employer to make a contract indistinguishable in its essential features from those described in the proposed bill. It was held after elaborate discussion and review of decided cases that the statute was repugnant to the guaranties contained in the fourteenth amendment to the Constitution of the United States. It there was said at page 14: "The principle is fundamental and vital. Included in the right of personal liberty and the right of private property—partaking of the nature of each—is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property. If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long-established constitutional sense. The right is as essential to the laborer as to the capitalist, to the poor as to the rich; for the vast majority of persons have no other honest way to begin to acquire property, save by working for money." The decision in the Coppage case but followed and reaffirmed Adair *v.* United States (208 U. S. 161). To the same general effect is the decision in Adkins *v.* Children's Hospital (261 U. S. 525, 545, 546). Those decisions, of course, are binding upon the several States as to the force and effect of the Federal Constitution touching a statute like that in the proposed bill.

The principles thus declared by the Supreme Court of the United States prevail in this Commonwealth. The provisions of articles 1, 10, and 12 of the declaration of rights of the constitution of this Commonwealth are as strong in protection of individual rights and freedom as those of the fifth and fourteenth amendments to the Constitution of the United States. It was said in Commonwealth *v.* Perry (155 Mass. 117, 121): "The right to acquire, possess, and protect property includes the right to make reasonable contracts, which shall be under the protection of the law." To the same general effect are Opinion of the Justices (208 Mass. 619); Rice, Barton & Fales Machine & Iron Foundry Co. *v.* Willard (242 Mass. 566, 572); Moore Drop Forging Co. *v.* McCarthy (243 Mass. 554); and A. T. Stearns Lumber Co. *v.* Howlett (260 Mass. 45, 60, 61). The Adair and Coppage cases have been recognized and followed in Opinion of the Justices (220 Mass. 627, 630); Bogni *v.* Perotti (224 Mass. 152, 155); and Opinion of the Justices (Mass. Adv. Sh. (1929) 907, 911). The views expressed in these several opinions and decisions, which need not be further amplified, are decisive of the question here propounded. There is a wide field for the valid regulation of freedom of contract in the exercise of the police power in the interests of the public health, the public safety, or the public morals, and in a certain restricted sense of the public welfare. A somewhat extended collection of references to such statutes and a review of relevant decisions were made in Holcombe *v.* Creamer (231 Mass. 99, 104–107). None of them go so far as to justify a statute like that in the proposed bill.

Guided by the decisions of binding authority already cited, we respectfully answer that in our opinion the provisions of the proposed bill, if enacted into law, would be in conflict with the Constitution of the United States and of this Commonwealth.

ARTHUR P. RUGG.
JOHN C. CROSBY.
EDWARD P. PIERCE.
JAMES B. CARROLL.
WILLIAM C. WAIT.
GEORGE A. SANDERSON.
FRED T. FIELD.

APRIL 15, 1930.

Mr. WALSH of Massachusetts. Mr. President——

The VICE PRESIDENT. Does the Senator from Rhode Island yield to the Senator from Massachusetts?

Mr. HEBERT. I yield.

Mr. WALSH of Massachusetts. I inquire what is the purpose of having the opinion of the Supreme Court of Massachusetts read at the desk? I was temporarily absent from the Chamber when the Senator asked that it be read.

Mr. HEBERT. Mr. President, I was discussing the "yellow dog" contract, so-called, and the action of the Supreme Court in relation to it. In my discussion I referred to the pendency in the Legislature of the Commonwealth of Massachusetts of a bill to prohibit such a contract and to hold it void and of no effect, and I stated that the legislature had submitted to the Supreme Court of Massachusetts a question as to the validity of that bill and whether it would violate the provisions of the Constitution. What has been read at the desk is the opinion of the Supreme Court of Massachusetts, handed down on the 15th of April, in response to that question.

Mr. WALSH of Massachusetts. The constitution of Massachusetts permits the governor, with the advice of the council and legislature, to ask an opinion of the supreme court of the State in anticipation of legislative action.

Mr. HEBERT. I so understand.

Mr. President, in his statement to the Judiciary Committee, Mr. Green, president of the American Federation of Labor, said this:

Our action in opposing the confirmation of the appointment of Judge Parker is based upon a study of his qualifications, his life's environment, his point of view regarding human relations in modern industry, and his judicial attitude toward economic and industrial problems which seriously affect the material and moral well-being of working men and women as shown in the decision which he rendered in the case of United Mine Workers against The Red Jacket Consolidated Coal & Coke Co., and in the opinion in which he concurred as rendered in the Bittner against West Virginia-Pittsburgh Coal Co. case.

In the Bittner case (Bittner *v.* West Virginia-Pittsburgh Coal Co., 15 F. (2d) 652) the court, speaking through Mr. Justice Waddill, in whose decision Judges Rose and Parker concurred, said at page 659:

Defendants criticize the scope of the injunction, contending that its effect is to forbid the publishing and circulating of lawful arguments and the making of lawful speeches advocating membership in the union in the neighborhood of plaintiff's mines, but we do not think that this is the proper construction of the order, which is an exact copy of that which was approved by the Supreme Court of the United States in the Hitchman Coal Co. case, supra. In view of what was said by that court in American Foundries Co. against Tri-City Council, there can be no doubt as to the right of defendants to use all lawful propaganda to increase their membership. See Gasaway against Borderland Coal

Co., supra. But, that there may be no misunderstanding in the matter, we think that the order should be modified by adding thereto the following provision:

"*Provided*, That nothing herein contained shall be construed to forbid the advocacy of union membership, in public speeches or by the publication or circulation of arguments, when such speeches or arguments are free from threats and other devices to intimidate, and from attempts to persuade the complainant's employees or any of them to violate their contracts with it."

The decree of the district court will be modified, each side to pay one-half of the costs in this court.

If, as I have pointed out, Judge Parker was but following the expression of the law as laid down by the Supreme Court in the Hitchman case, if, as clearly appears in the Red Jacket case, he did not assume to exercise any independent judgment or opinion because of the controlling authority of the Hitchman case, then, indeed, it is difficult for me to understand how anyone could reach a conclusion from a study of the Red Jacket case as to "the qualifications, life environment, his point of view regarding human relations, or his judicial attitude toward economic and industrial problems." If there has been any error in these decisions, then clearly the sins of his superiors are attempted to be visited upon Judge Parker.

Mr. President, with the aims of labor organizations to ameliorate the working and living conditions of their members I am in hearty accord. The American workman occupies a place in our national life superior to that of the workman of any other country on earth. I know something of his aspirations and of his efforts to improve his condition. I would be the last to interpose any discouragement to his desire to better himself. Rather do I want to join in every lawful endeavor which will benefit his condition. I can not, however, subscribe to the theory that because a judge of our courts in the fulfillment of his sworn duty to uphold the law has been obliged to decide a case in a way that does not accord with the views of our chosen representatives that judge shall be denied a merited preferment. If such a theory is to prevail, then the time will come when judges will become subservient to the one or the other conflicting interest. The weak, the poor, the downtrodden may be in favor for a brief space of time, but human experience teaches us that in the main the rich, the powerful, those in high place will succeed in tipping the scales of justice their way. I sincerely hope we may never see such a condition.

I come now to a consideration of the objections of the National Association for the Advancement of Colored People. I am sure that citizens of the Negro race are not unacquainted with Mr. Charles H. Moore, of Greensboro, N. C. Mr. Moore is one of the outstanding men of that race. He was for 13 years the vice president of the agricultural and mechanical college of North Carolina for negro students. He taught for eight years at Tuskegee Institute. He has been State inspector of colored rural schools in North Carolina. He was at one time agent for Mr. Julius Rosenwald in North Carolina in building schools for negroes. He is a graduate of Amherst College.

Here is what Mr. Moore says in a statement over his signature published in the daily News, of Greensboro, N. C., on the 28th instant:

GREENSBORO, N. C., *April 28, 1930.*

EDITOR OF THE DAILY NEWS:

In view of the statement, in part, made by Judge John J. Parker to Senator OVERMAN in a recent letter explaining his attitude toward the political rights of the negro, namely, "I at no time advocated denying them the right to participate in the election in cases where they were qualified to do so, nor did I advocate denying them any other of their rights under the Constitution and laws of the United States," I take this opportunity of saying that notwithstanding I was opposed to his election as governor 10 years ago because of alleged newspaper reports of his political utterances made during the campaign, I now approve of his nomination for the United States Supreme Bench. I, moreover, think that, in view of the above-quoted explanation in the premises from Judge Parker, no intelligent and open-minded member of our race group should now entertain any further grievance or objection to his confirmation.

CHARLES H. MOORE.

But let us examine the record that we may, in the light of it, determine the attitude of John J. Parker when he is called upon to consider the rights of the colored people guaranteed by the Constitution.

Those who affect to believe that Judge Parker, if elevated to the Supreme Court, would disregard the provisions of our fundamental law in regard to the negro, or that he could not approach this vitally important question with that dispassionate, unprejudiced, and judicial frame of mind which would enable him to render a decision in accordance therewith, may well consider his attitude when he is actually called upon to decide that very question. "Actions speak louder than words."

Judge Parker presided in the Circuit Court of Appeals of the Fourth Circuit in the recent case of City of Richmond against Deans, in which, in accordance with a prior decision of the Supreme Court, a residential segregation ordinance based on race was held in violation of the provisions of the Constitution. I have before me a copy of that decision, which I ask may be inserted in the RECORD at this point in my remarks.

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

The decision referred to is as follows:

[From the Federal Reporter, 2d ser., vol. 37 (2d) No. 4, p. 712]

CITY OF RICHMOND ET AL. *v.* DEANS

Circuit court of appeals, fourth circuit, January 14, 1930.

No. 2900.

Constitutional law 278 (1) municipal corporations.

622. Ordinance prohibiting use as residence of building in block occupied mainly by those with whom intermarriage is forbidden denies due process (constitutional amendment 14).

Zoning ordinance prohibiting person from using as residence any building on any street between intersecting streets where majority of residences on such street are occupied by those with whom person is forbidden to intermarry held void as denying due process of law because of race discrimination, in violation of constitutional amendment 14.

Appeal from the District Court of the United States for the Eastern District of Virginia, at Richmond; D. Lawrence Groner, judge.

Suit by J. B. Deams against the city of Richmond and others. From an adverse decree, defendants appeal. Affirmed.

The purpose of this action was to enjoin the enforcement by the city of Richmond of the fines and penalties of an ordinance entitled "An ordinance to prohibit any person from using as a residence any building on any street between intersecting streets where the majority of residences on such street are occupied by those with whom said person is forbidden to intermarry by section 5 of an act of the General Assembly of Virginia entitled 'An act to preserve racial integrity,' approved March 20, 1924, and providing that existing rights shall not be affected." The trial court held that the ordinance was in violation of constitutional amendment 14.

Lucius F. Cary, of Richmond, Va. (James E. Cannon, of Richmond, Va., on the brief), for appellants.

Alfred E. Cohen and Joseph R. Pollard, both of Richmond, Va., for appellee.

Before Parker and Northcott, circuit judges, and McDowell, district judge.

Per curiam: We agree with the learned judge below that this case is controlled by the decisions of the Supreme Court in Buchanan *v.* Warley (245 U. S. 60, 38 S. Ct. 16, 62 L. Ed. 149, L. R. A. 1918 C, 210 Ann. Cas. 1918 A, 1201) and Harmon *v.* Tyler (273 U. S. 668, 47 S. Ct. 471, 71 L. Ed. 831), reversing Tyler *v.* Harmon (158 La. 439, 104 So. 200). To the same effect as these Supreme Court decisions is the Virginia decision of Irvine *v.* City of Clifton Forge (124 Va. 781, 97 S. E. 310), which follows them. Attempt is made to distinguish the case at bar from these cases on the ground that the zoning ordinance here under consideration bases its interdiction on the legal prohibition of intermarriage and not on race or color; but, as the legal prohibition of intermarriage is itself based on race, the question here, in final analysis, is identical with that which the Supreme Court has twice decided in the cases cited.

We have carefully considered the cases of Euclid *v.* Ambler Realty Co. (272 U. S. 365, 47 S. Ct. 114, 71 L. Ed. 303, 54 A. L. R. 1016) and Zahn *v.* Board of Public Works (274 U. S. 325, 47 S. Ct. 594, 71 L. Ed. 1074), upon which defendant relies; but we do not think that they are in point. They deal with the right of a city to forbid the erection of buildings of a particular kind or for a particular use within certain sections of the city, which manifestly is a very different question from that involved here. That the Supreme Court did not consider that the doctrine of Buchanan *v.* Warley was in any way overruled or limited by Euclid *v.* Ambler is shown by the fact that Harmon *v.* Tyler was decided five months after the latter case, and its decision was expressly based on the former. There was no error, and the decree below is affirmed.

Affirmed.

Mr. HEBERT. Mr. President, in the light of this decision, it is inexplicable to me that one of the leading men in the organization which opposes Judge Parker because of what they contend are his views in regard to the negroes, should base his opposition upon it.

In reaching this decision, Judge Parker might well have limited his observations to a brief statement that the case is controlled by that of the Supreme Court in Buchanan *v.* Worley (245 U. S. 60; 38 S. Ct. 16) and Harmon *v.* Tyler (273 U. S. 668), but he went farther. Notice this statement taken from the opinion written by Judge Parker in this case.

Attempt is made to differentiate the case at bar from these cases—

The cases to which I have just referred—

on the ground that the zoning ordinance here under consideration bases its interdiction on the legal prohibition of intermarriage and not on race or color; but, as the legal prohibition of intermarriage is itself based on race, the question here, in final analysis, is identical with that which the Supreme Court has twice decided in cases cited.

Surely there is no indication here that Judge Parker would disregard the provisions of the Constitution. Rather may we infer that his views in this instance were not shared or looked upon with favor by citizens of the city of Richmond not of the Negro race.

That Judge Parker possesses the learning, the mental poise, the courage, and the erudition required of one who aspires to a position upon the Supreme Court is evidenced by his work as a practicing attorney, by his judicial decisions, and by the unanimous expressions coming to us from men high in the counsels of State, from the judiciary, and from his fellow members of the bar. No unworthy aspirant could be the object of such wide encomium. Indeed, those who oppose him most vehemently do not deny that he possesses these attributes. My study of the decisions upon which the opposition to his confirmation is based, leads me to the conclusion that Judge Parker could have followed no other course consonant with law.

I hope for the welfare of my country and for the honor of my profession that the time may never come when one of my fellow citizens occupying the exalted office of judge of our courts shall be made to suffer any penalty because he has dared to uphold the law and has acted according to the dictates of his conscience.

If such a condition shall ever obtain, then we, in the State which I have the honor in part to represent, shall be called upon to obliterate the inscription of a saying by Tacitus, the Roman historian, which adorns the interior of the dome of our statehouse:

Rare felicity of the times
When it is permitted to think as you like and say what you think.

Then, indeed, shall our country have fallen on evil days.

Mr. WALSH of Montana. Mr. President, I had inserted in the RECORD yesterday the instructions given by Judge Groner to the jury in the so-called harness case, directing it to return a verdict of "not guilty." It seems to have been regarded in some quarters that because the judge, in the course of his remarks, paid a meaningless compliment to the attorneys representing the Government, and spoke of their fairness, no significance is to be attached to the incident.

To my mind, Mr. President, the editorial in the Washington News, which challenged attention to this particular episode, is in every respect justified by the instructions of the trial judge. To my mind, without referring to particular portions of this charge, the charge taken as a whole is a rebuke and a reprimand to the attorneys representing the Government, including Judge Parker.

If I were a prosecuting attorney, and found myself subject to comment of this character from the judge on the bench, I should be so humiliated as to prompt me to abandon the practice of the law. What does it mean, Mr. President?

The court reviews the testimony adduced, and tells the jury that there is no evidence whatever before them upon which a verdict of "guilty" would be warranted. Presumably, the attorneys trying the lawsuit have made all necessary investigation to equip themselves to present the facts to the court; and the court, after all the evidence is before the court and jury, says that it is impossible for a man who is honest in his convictions to reach the conclusion that the defendants are guilty of the crime charged.

I desire again, however, to direct attention to two specific portions of this charge.

It will be remembered that it was charged in the indictment that the defendants had corruptly seduced the Government sales manager, Morse, to refuse clearances and permits for the sale of the harness; and an effort was made to sustain that charge. All the evidence that the Government had to maintain that accusation was the evidence of a witness named Bosson, who said that he had difficulties in getting clearances from the officers in charge. Now, it transpired that the defendants, when they put in their case, and Bosson had so testified, presented four separate clearances, which they secured from the Government files, showing prompt action upon applications for clearances for the sale of this harness; and in that connection the court, in his instructions to the jury, said:

Captain Bosson says that he was delayed in getting clearances. He does not specify any particular clearances. He doesn't put his finger on any particular bid, any particular property that he had for sale or wanted to sell and say, "I went to this defendant Morse and asked him to allow me to clear this property for sale"—not one single instance—

And then the court adds:

And yet the defendant in their behalf showed to my decided amazement that there were as a result of papers taken from the Government files and in the possession of the Government, at least four requests for clearances covering this harness made in the usual course from the property division to the sales division which contained Mr. Morse's visa after the receipt of these applications in his office.

How can we account for that situation of affairs unless we assume that the Government counsel were entirely negligent in their study of this case and in their search of the Government files for evidence either to sustain or to dispute the charge?

Again, summarizing the charges in the indictment, the court says it was also charged—

That they caused advertisements to be made of the sale of the harness, which were not in good faith, which were frauds, weren't intended to be what they purported to be, a real invitation to the people to bid—

With respect to that, after reviewing some of the evidence concerning advertisements which were placed in the newspapers and other journals, the court said:

When I consider all of that, plus all of the other evidence in this case of advertising, it is monstrous, monstrous that you should be asked to say that behind it all was a trick, that it was a camouflage, that it wasn't real, that it wasn't meant. What justification could you, on your oaths, in your consciences find for saying any such thing at that?

And then the court added:

I am not surprised that people are mistaken about things of this kind, but could any jury in this free land of ours undertake to stigmatize as traitors four or five of their fellow citizens upon such evidence as that, and could any court, gentlemen of the jury, with courage—and when courts lose courage the foundation stone of our Government is in peril—to allow a verdict based upon evidence of that kind to stand? I think not; and that is why, gentlemen, I am impelled to do what I do.

It takes a good many pleasant compliments to overcome the significance of these comments of the trial court. I should like to ask any lawyer upon this floor how he would feel if, at the close of a case which he presented to a court—a case the trial of which consumed some 11 days—the court had disposed of the case with comment of that character? What kind of a tribute would it be to his industry in searching out the facts of the case, his sagacity and his learning in the law, his ability to analyze evidence, to have comments of that character upon the case which he submitted?

Mr. President, I can not avoid the conclusion that this was one of the Daugherty fraud prosecutions for the purpose of throwing discredit upon the Democratic administration, and that Judge Parker lent himself to that purpose, hoping, of course, that the case would get by the court in some form or other, and then that possibly political bias in the jury, or the reaction occasioned by the war, or following the war, would bring about a verdict of guilty.

Mr. OVERMAN. The Senator knows that Judge Parker was only associate counsel.

Mr. WALSH of Montana. Of course I know that.

Mr. OVERMAN. And that Mr. Early, a great lawyer, I understand, one of the greatest lawyers in the West, prepared the case.

Mr. WALSH of Montana. I regard that as an alibi of no value whatever. If I go into a lawsuit, whether I am the regularly retained counsel in the case or whether I am employed for the purpose of trying the lawsuit, I say that some explanation is necessary from me if the defendant brings from the files of my client evidence which absolutely destroys my own case. As a lawyer, I can not accept that kind of an alibi.

Mr. OVERMAN. Notwithstanding the judge on the bench has said he was a great lawyer, that he used great industry, and complimented him highly in his charge?

Mr. WALSH of Montana. I read what the judge said.

Mr. OVERMAN. The Senator's reading was almost inaudible to me.

Mr. WALSH of Montana. What the judge did say was that the counsel exhibited fairness and ability. He complimented the counsel on the fairness and ability displayed.

Mr. WALSH of Massachusetts. Mr. President, will the Senator yield?

Mr. WALSH of Montana. I yield.

Mr. WALSH of Massachusetts. Is it not a very general practice for a justice of a court to compliment counsel at the end of a trial upon the ability and fair manner in which they presented the case?

Mr. WALSH of Montana. It was obviously done for the purpose of taking the sting out of what had been said by the court concerning the actual state of affairs.

Mr. President, at least some explanation is called for from Judge Parker as to how it came about that having endeavored to establish the contention that clearances had been delayed, that it was impossible to get the clearances, evidence was adduced from the Government files that on at least four different occasions clearances were asked for and were promptly given. There is no explanation. We are faced with just exactly that situation, and we are obliged to suspect simply that Judge Parker had not studied his case and did not know what the evidence in the matter was with respect to the very charges which had been made.

Mr. President, these clearances, of course, are in writing, and when there was a charge that the clearances had not been given, had been delayed, what was the proof? The proof was to get the clearances, to find out when they were asked for and when they were granted, if they were granted at all. There they are.

These are the charges made in the indictment. Judge Parker was put upon inquiry as to what the proof was that these clearances had been delayed, or an effort had been made to postpone and prevent the sale of this property under the advertisements which had been put out, and which brought no results.

Mr. President, I regard this as a very serious imputation upon either the professional integrity or the professional industry of Judge Parker.

I shall endeavor in what I have to say this afternoon to avoid occupying any ground which has heretofore been trodden. I take occasion to say that some sort of an idea has arisen that a judge of a lower court is under obligation under all and any circumstances to follow slavishly a decision by a superior court. Of course, it has been clearly established in the debate thus far that the Hitchman case was not on all fours with the Red Jacket case; that Judge Parker might very easily, by a careful study of his own case and of the Hitchman case, have realized that there was a material distinction between the two, and likewise by a study of the Tri-City case he could easily have arrived at the conclusion that the Supreme Court of the United States had to some extent at least modified the views it had expressed, or at least the conclusion at which it had arrived, in the Hitchman case.

Waiving that, I desire to assert that there is no such hard and fast rule as has been suggested. Of course, under all ordinary circumstances it is to be expected that a lower court will follow a direct precedent of a superior tribunal, expecting, as a matter of course, that if the case goes to the superior tribunal again the same conclusion will be arrived at, and the litigant would be put, therefore, to the unnecessary expense and trouble of an appeal to the higher court.

The rule is by no means invariable, as I learned to my cost in the first case I ever took to the Supreme Court of the State of Montana. I found in the supreme court of that State an adjudication directly in point in the case I had before me. My opponent in the lower court, however, argued that that case was against the clear weight of the authorities, and he succeeded in impressing that view upon the trial court, and, notwithstanding the direct adjudication, the judgment went against me.

I went to the supreme court with a great deal of confidence and called attention to the opinion.

My opponent, when he opened his case, with some trepidation and with some modesty, expressed to the court the view that this precedent stood in the way of a decision in his favor, but he asked of the court, in a modest way, whether he might not address himself to the soundness of that decision. Having no answer from the court, he immediately proceeded to argue the fallacy of the original decision, with the result that the court reversed itself, and the judgment against me was affirmed. The case was Thornberg against Fish, reported in the eleventh volume of the Montana Reports.

A later case will be found in Seventeenth Montana, the case of Fitzgerald against Clark, where a similar condition was presented.

In an earlier case, the case of Amy & Silversmith Co., the Supreme Court of Montana had interpreted the mining law, which was a law of Congress, in a certain way applicable to a certain state of facts. That case went to the Supreme Court of the United States, and the Supreme Court of Montana was reversed, the Supreme Court of the United States holding that it was in error in the construction which it gave to the act.

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

Mr. WALSH of Montana. Certainly.

Mr. NORRIS. As I understand, the Supreme Court of the United States followed the Supreme Court of Montana the first time in deciding the question. Is that right?

Mr. WALSH of Montana. No; it reversed the Supreme Court of Montana.

Mr. NORRIS. I understand, but the case it reversed was itself a reversal of a prior case, was it not?

Mr. WALSH of Montana. No. The case arose in Montana, went to the Supreme Court of Montana, which laid down principles of construction applicable to the case, then an appeal was taken from that to the Supreme Court of the United States, and the Supreme Court of the United States in that case reversed the Supreme Court of Montana, and laid down a contrary rule.

Later another case, the case of Clark against Fitzgerald, arose, presenting, however, exactly the same question presented in the Army & Silversmith case, and in that particular instance the Supreme Court of Montana was, in the just sense, inferior to the Supreme Court of the United States, the question at issue being a Federal question arising under a Federal statute. Of course, the case of Amy & Silversmith was appealed to, and the question was, Shall the Supreme Court of Montana follow the decision of the Supreme Court of the United States in the Amy & Silversmith case, or should they take up the question anew and determine it as an independent proposition? The opinion in the case was written by one of the most able men who ever sat upon our supreme bench, Judge DeWitt. He said in the opinion:

> We shall not renew the discussion of the cases upon this question decided by the United States Supreme Court prior to May 21, 1890, the date of our decision of the Amy & Silversmith case. Our best construction of those decisions is found in our opinion in that case. We there met the problem which had for years engaged the earnest attention of lawyers who had to do with mining litigation, i. e., the preservation of the intent of the mining statutes when they are applied to a location in which exploration has demonstrated that the apex and strike of the vein do not pass through both end lines of the location. We gave our best endeavor and research to that decision, and arrived at a result which we were willing to concede was not wholly in accord with the decisions of the United States Supreme Court upon that subject, but which we believed could, with a very little effort, be reconciled with those decisions, and which we were wholly satisfied was the only practicable working solution of the problem in all its phases, and which we were also wholly satisfied was fully within the intent of the United States mining laws. Even with the profound respect which we, in common with all courts, entertain for the decisions of the United States Supreme Court, we think that there is no impropriety in saying, and that it is due to ourselves to say, that the longer we observe the daily operation of the mining laws in practical affairs the more satisfied are we that our decision of the Amy & Silversmith case was correct. We are strengthened in this opinion by the views of other courts to which we shall hereinafter refer. But the United States Supreme Court is the court of last resort upon this subject, and our opinions, as a rule of decision, must be abandoned if they are in conflict with the declarations of the superior tribunal. If that court had given no further utterance upon this subject since its decision of the Amy & Silversmith case, we should feel that we must, however reluctantly, desert the principle which we sought to maintain in that case. But, as will be seen in the review of the cases below, that distinguished tribunal has given a hint that it is willing to reconsider the principle involved. Upon that hint we feel that we are justified in approaching the subject much as if it were res integra, and, without subjecting ourselves to the criticism of judicial insubordination.

Accordingly, Mr. President, they proceeded to review all of the cases upon the subject, and reasserted the doctrine which they announced in the Amy & Silversmith case. An appeal was formally taken to the Supreme Court of the United States, which reversed the Amy & Silversmith case and affirmed the judgment in the case of Clark against Fitzgerald.

I dare say there is scarcely a lawyer upon this floor who has had any considerable practice in the appellate courts who will not be able to refer to some instances where the lower court was convinced that a decision of the Supreme Court was wrong, and that upon a reconsideration of the subject the Supreme Court would announce a contrary doctrine.

So, Mr. President, there would have been no impropriety whatever in Judge Parker saying that, in view of the conclusion that was arrived at in the Tri-City case, he felt that there would be no impropriety upon his part if he undertook to review the decisions, and call attention to the repeated denunciation of the so-called "yellow-dog" contract, to which the

Senator from New York adverted yesterday. He did not, I believe, however, include a declaration by the former Chief Justice Taft, made while he was the president of the War Labor Board during the war. There was at that time a strike among the street-car operatives of Council Bluffs and Omaha, and it became the duty of Judge Taft's War Labor Board to endeavor to adjust controversies of that character, so that the activities of the war should not be interrupted or interfered with. In reporting upon that particular labor controversy Judge Taft said:

The practice of the company in times past to make restrictive contracts—

That is, contracts which provided that the operator would not join a union—

The practice of the company in times past to make restrictive contracts such as shown to the arbitrators, if continued, would be contrary to the principles of the National War Labor Board. However, counsel for the company states to the arbitrators that this practice has been abandoned and calls for no further action on the part of the arbitrators.

It was abandoned, I take it, because doubtless the officials of those roads felt as did officers of some other corporations referred to by the Senator from New York, who declared that in their judgment the contract was not a moral one. So it would have been equally no violation of propriety whatever upon the part of Judge Parker had he said that, while he had no sympathy whatever with the rule prescribed in the Hitchman case, and felt that it was contrary to the more modern conception of the duties of labor and capital toward each other, he felt constrained to follow the decision in that case.

Or he might have adverted to some of these other considerations and said that, having those in mind, he was disposed to adopt that view, but that he felt under obligation to follow the decision in the Hitchman case. There is absolutely nothing whatever in the decision of Judge Parker or in what he said in the opinion that leads us to believe that he is not entirely in sympathy with the doctrine of the Hitchman case and with the idea that the so-called "yellow-dog" contract is protected by the Constitution of the United States and is, so far as that is concerned, a perfectly justifiable arrangement from an economic standpoint.

Mr. President, it would not have been at all out of his way had he said something like that said by another eminent North Carolinian. I regret very much that the Senator from North Carolina [Mr. OVERMAN] is not in the Chamber at the moment. I refer to the opinion of the circuit court of appeals in the Hitchman case written by Judge Pritchard, at one time a Senator from the State of North Carolina in this body, a man of great learning, of great eloquence, and of great sympathy with the laboring classes. It will be remembered that in the Hitchman case the trial judge, the district judge, granted an injunction, the injunction which was eventually sustained by the Supreme Court of the United States. He granted that injunction upon the ground that the United Mine Workers of America was an unlawful organization and conspiracy in restraint of trade, and for other reasons. The case went to the circuit court of appeals, where the judgment was reversed and then eventually went to the Supreme Court of the United States, which reversed the judgment of the circuit court of appeals and affirmed the judgment of the district court.

The opinion in the circuit court of appeals was, as I said, written by Judge Senator Pritchard. I adverted to the fact that the trial judge had held that the United Mine Workers of America was an unlawful conspiracy, and in order to support that holding he referred to the decisions of a bygone age which he asserted established that condition of things as the common law. It could easily be established that that never was the common-law rule, but that by reason of later statutes in Great Britain combinations of that character had been held to be in violation of the law. But Judge Pritchard, commenting upon the judgment of the district court in that particular, said, and I am reading from Two hundred and fifteenth Federal Reporter:

The growth and development of the common law occurred when property rights were recognized as paramount to personal rights. At that time there was little, if any, concert of action on the part of the laboring people, owing to their helpless condition, due in the main to their ignorance. Their domination by the landowner and capitalist was absolute in most respects, and as a result they were as helpless as those held in slavery before our great war. Under such circumstances, it is no wonder that we have many decisions in the past at common law, as well as the enactment of statutory laws, by virtue of which it was almost a physical impossibility for those who earned their living by honest toil to accomplish by organized effort those things necessary to elevate them to a plane where they could assert those rights so essential to their welfare.

The industrial development of the world within the last half century has been such as to render it necessary for the courts to take a broader and more comprehensive view than formerly of questions pertaining to the relation that capital sustains to labor.

Then, I read from page 702, as follows:

The court below was also of the opinion that the rules of the organization undertake to "control, or rather abrogate and destroy, the right of the employer to contract with the men independent of the organization." If it is meant by this statement that under the rules it is possible by peaceable, persuasive, and other lawful methods to induce a majority, if not all, of the miners of any particular locality to join the union and thereby place the mine owner in a position where it may be necessary for him to negotiate with union labor in order to operate his mines, then the conclusion reached by the court below is entirely correct. However, the fact that such a result would be possible under this rule could not in any way affect the legality of the organization, because it has been repeatedly held by the courts that a labor union may use all lawful methods for the purpose of inducing others to join its order, and until the contrary is shown it must be assumed that only lawful methods are to be employed for the accomplishment of such purpose.

Then, at page 703, he continued:

However, in this instance the plaintiff has adopted a policy by which only nonunion men may be employed. If the plaintiff may for the purpose of protecting its interests adopt a policy by which only nonunion men can secure employment at its mines, and such conduct be sanctioned by the law, by what process of reasoning can it be held that the defendants may not adopt the same method in order to protect their interests? If the plaintiff is to be protected in the use of such methods, and the defendants are to be restrained from using lawful methods for the purpose of successfully meeting the issue thus raised by the plaintiff, then indeed it may be truthfully said that capital receives greater protection at the hands of the courts than those through whose efforts capital in the first instance was created. But such is not the law; and when we consider the testimony as respects the conduct of the defendants at and before the institution of this suit, we are of the opinion that the plaintiff has not by a preponderance of the evidence shown that these defendants employed unlawful methods as alleged in the bill.

He continued:

At one time this identical mine employed union labor, and in all probability would have continued to do so, had it not been for a controversy which arose as to certain adjustments and the parties failing to reach an agreement the plaintiff decided to employ only nonunion labor.

It further appears that the plaintiff is paying the nonunion men the same wages that are being paid union men. Therefore, under these circumstances, is it not as reasonable to infer that the plaintiff is endeavoring to place the laborers of that section in a position where it would be master of the situation as it is to infer that the defendants are seeking to destroy the business of the plaintiff? While it is true that the plaintiff has a perfect right to refuse to employ union labor, is it not equally true that union labor, as we have stated, may by the employment of legitimate means do that which is necessary to keep its forces together?

Surely we have not reached the point when capital with its strong arm may adopt a plan like this for protecting its interests, while on the other hand the laboring classes are to be denied the protection of the law when they are attempting to assert rights that are just as important to their well-being as are the rights of those who have been more fortunate in accumulating wealth. He who "seeks equity must do equity." In other words, he "must come into court with clean hands." If the courts of this country should by injunctive relief protect the mine owner in the enjoyment of his property rights and restrain the laboring people from organizing their forces by declaring such organization unlawful, would not the mine owner then be in a position to control the situation so that he who has to toil for his daily bread would be placed in a position where if he exists at all he must do so at such wages, and upon such terms as organized capital may see fit to dictate?

Then I read a concluding paragraph, as follows:

The court below also reached the conclusion that the defendants have caused and are attempting to cause the nonunion members employed by the plaintiff to break a contract which it has with the nonunion operators. The contract in question is in the following language.

This comes to the gist of the matter as it is presented to us here. This is the contract:

I am employed by and work for the Hitchman Coal & Coke Co. with the express understanding that I am not a member of the United Mine Workers of America and will not become so while an employee of the Hitchman Coal & Coke Co.; that the Hitchman Coal & Coke Co. is run nonunion and agrees with me that it will run nonunion while I am in its employ. If at any time while I am employed by the Hitchman Coal

& Coke Co. I want to become connected with the United Mine Workers of America or any affiliated organization, I agree to withdraw from the employment of said company, and agree that while I am in the employ of that company that I will not make any efforts amongst its employees to bring about the unionizing of that mine against the company's wish. I have either read the above or heard the same read.

Then the learned judge said:

It will be observed that by the terms of the contract that either of the parties thereto may at will terminate the same, and while it is provided that so long as the employee continues to work for the plaintiff he shall not join this organization, nevertheless there is nothing in the contract which requires such employees to work for any fixed or definite period. If at any time after employment any of them should decide to join the defendant organization, the plaintiff could not under the contract recover damages for a breach of the same. In other words, the employees, under this contract, if they deem proper, may at any moment join a labor union, and the only penalty provided therefor is that they can not secure further employment from the plaintiff. Therefore, under this contract, if the nonunion men, or any of them, should see fit to join the United Mine Workers of America on account of lawful and persuasive methods on the part of the defendants, and as a result of such action on their part were to be discharged by the plaintiff, it could not maintain an action against them on account of such conduct on their part. Such being the case, it would be unreasonable to hold that the action of the defendants would render the United Mine Workers of America liable in damages to the plaintiff because they had employed lawful methods to induce the nonunion miners to become members of their organization.

Under these circumstances, we fail to see how this contract can be taken as a basis for restraining the defendants from using lawful methods for the purpose of inducing the parties to the contract to join the organization.

I read this particularly because Mr. Justice Brandeis, in the same case, called attention to the fact that there was no breach of the contract whatever on the part of any man who quit the employ of the coal company and joined the union. The simple point was that under the contract he could not join the union and remain in the employ of the coal company. So anybody who induced him to quit the employ of the company and join the union was not endeavoring to have him break his contract at all.

Mr. Justice Brandeis, in his dissenting opinion in the Hitchman case, said:

Fifth. There was no attempt to induce employees to violate their contracts.

The contract created an employment at will, and the employee was free to leave at any time. The contract did not bind the employee not to join the union, and he was free to join it at any time. The contract merely bound him to withdraw from plaintiff's employ if he joined the union. There is evidence of an attempt to induce plaintiff's employees to agree to join the union; but none whatever of any attempt to induce them to violate their contract. Until an employee actually joined the union he was not, under the contract, called upon to leave plaintiff's employ. There consequently would be no breach of contract until the employee both joined the union and failed to withdraw from plaintiff's employ. There was no evidence that any employee was persuaded to do that or that such a course was contemplated. What perhaps was intended was to secure agreements or assurances from individual employees that they would join the union when a large number of them should have consented to do so; with the purpose, when such time arrived, to have them join the union together and strike—unless plaintiff consented to unionize the mine. Such a course would have been clearly permissible under the contract.

Mr. President, although the learned Judge Pritchard called attention to the fact that there was no violation of the contract in inducing the employees to quit the plaintiff's employ and join the union, and, although Mr. Justice Brandeis in his dissenting opinion called attention to that, the decision of Judge Parker, without even adverting to the contract or even quoting it in the opinion anywhere, charged the defendants in that case with having induced the plaintiff's employees to violate their contract, and they were enjoined from continuing to do so. I am left with the impression that the learned Judge Parker was either entirely indifferent to these considerations thus advanced by his predecessor, Judge Pritchard, or he was entirely in sympathy with the "yellow-dog" contract.

Mr. President, there is another suggestion to which I wish to advert. Almost from the very beginning of our Government there have existed two schools of thought with respect to our National Government and our political system: One that this Government of ours enjoys, for one reason or another, a large measure of implied powers, flowing from general considerations, from the Constitution as a whole, and, perhaps, from the idea that ours is a nation having all the powers of those nations in which all the powers of government are centered in one authority.

On the other hand, Mr. President, there are those who believe in what is known as the restricted construction of the Constitution, and the restriction of the powers of the National Government, leaving the powers generally to the States except where expressly delegated or where it is clearly implied from the Constitution that they are delegated.

Mr. President, as I think, it is a fortunate thing that those two schools of thought have, for the greater part of our history, been represented upon the Supreme Court of the United States. The learned Senator from Ohio [Mr. FESS] the other day in his interesting review of the illustrious men who have had a place in the work of that great tribunal adverted to two of its most shining lights—Marshall and Story. Marshall, of course, stands, as is generally believed and recognized, at the head of those who have adorned that bench, and next to him is Joseph Story. Marshall was a Federalist, one of the leaders of that party, and one of the ablest exponents of that theory of our government. Story, on the other hand, was a Democrat. He was appointed by Madison in 1811. Those two schools of thought, in a general way, have been represented by the two great political parties into which our electorate has been divided.

So, during the entire period of the occupancy of this bench by these two men, these two great schools of thought were there represented, and so it has continued down to our time, until the problems incident to the limitations on the Federal Government have come to be fairly well defined. But in our time, Mr. President, there have arisen conflicting schools of thought with respect to economic problems rather than political and governmental problems, and, as was made plain in a discussion in this Chamber not long ago, the Supreme Court of the United States on many questions that come before it divides upon these economic questions involved in the lawsuits which the court is called upon to adjudicate. Included in these, Mr. President, are cases involving labor controversies, and it is a rather startling fact that one can almost anticipate when such a controversy comes before the Supreme Court how one set of judges will decide upon the question and what attitude another group will take.

Including the Hitchman case, there have been four epochal cases before the Supreme Court of the United States involving labor disputes. In every one of those cases there was a dissenting opinion by Justices Holmes and Brandeis, sometimes participated in by other justices. In the Hitchman case Justices Holmes and Brandeis dissented, and with them was Mr. Justice Clarke.

In 1921 there came before the court the case of Duplex Printing Co. against Deering, a case which involved an injunction against members of labor unions in the city of New York for refusing to work upon printing presses manufactured in the city of Detroit by nonunion labor. The injunction was sustained by the Supreme Court of the United States, Justice Holmes, Justice Brandeis, and Justice Clarke, the same three, dissenting.

The case of Truax against Corrigan came a little later, reported in Two hundred and fifty-seventh United States Reports, decided December 19, 1921. That case arose under a statute of the State of Arizona forbidding the issuance of injunctions in labor disputes. It was held that that statute was unconstitutional, being contrary to the fourteenth amendment to the Constitution, and therefore void. Justices Holmes, Brandeis, Clarke, and Pitney dissented.

Later on the case of Bedford Cut Stone Co. against Journeymen Stonecutters came before the court, presenting questions not unlike those in the Duplex Printing Co. case, workers in the city of New York declining to work upon stone coming from the Bedford quarries in the State of Indiana because produced by nonunion labor. Justices Holmes and Brandeis dissented and Justices Stone and Sanford concurred in the majority opinion because of the earlier decision in the Duplex Printing Co. case.

I might say likewise, Mr. President, that going back to the case which is relied upon as holding that the so-called "yellow-dog" contract is a valid contract, the case of Adair against the United States, decided in Two hundred and eighth United States Reports, December 27, 1908, Justices Holmes and McKenna dissented.

It will be observed that of these dissenting Justices Clarke and McKenna have already left the bench, McKenna having passed to his reward and Clarke having retired of his own volition. Pitney likewise has passed to the great beyond, and there remain of these dissenting judges, these judges who took a different view of these questions from the majority of the court, but Holmes and Brandeis. Holmes, the grand old man of the American bar, regrettable as it may be, must, of course, soon cease his labors. Brandeis has already passed the retiring age,

and when they go who will there be left to represent the views which they have upheld? Mr. Hughes was elevated to the Chief Justiceship a short while ago, obviously having views in a general way in harmony with those of the majority of the court. And now it is proposed to put another man on the bench whose views, if we are to judge from the Red Jacket case, are in harmony with those of the majority.

I think, Mr. President, that it would be singularly unfortunate if this other view, whether it is sound or whether it is unsound, were not represented in that tribunal, so that at least in the deliberations of the court the other idea might have at least one exponent.

I believe, Mr. President, that we would not be discharging the duty with which we are charged to protect in its integrity this great court, the final arbiter of the lives and liberties of the American people under the Constitution of the United States, unless we made sure, in so far as we can, that someone more in consonance with modern views concerning the relations of labor and capital than is Judge Parker shall be selected for the Supreme Court.

The PRESIDING OFFICER (Mr. COUZENS in the chair). The question is, Will the Senate advise and consent to the nomination of John J. Parker to be justice of the Supreme Court of the United States?

Mr. BORAH. I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum being suggested, the clerk will call the roll.

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

Allen	Fess	McCulloch	Smoot
Ashurst	Frazier	McKellar	Steiwer
Baird	Gillett	McNary	Stephens
Barkley	Glass	Metcalf	Sullivan
Bingham	Glenn	Norris	Swanson
Black	Goldsborough	Nye	Thomas, Idaho
Blaine	Gould	Oddie	Thomas, Okla.
Blease	Greene	Overman	Townsend
Borah	Hale	Patterson	Trammell
Bratton	Harris	Phipps	Tydings
Brock	Harrison	Pine	Vandenberg
Broussard	Hastings	Pittman	Wagner
Capper	Hatfield	Ransdell	Walcott
Caraway	Hawes	Robinson, Ark.	Walsh, Mass.
Connally	Hayden	Robinson, Ind.	Walsh, Mont.
Copeland	Hebert	Robsion, Ky.	Waterman
Couzens	Howell	Schall	Watson
Cutting	Johnson	Sheppard	Wheeler
Dale	Jones	Shipstead	
Deneen	Kendrick	Shortridge	
Dill	Keyes	Simmons	

The PRESIDING OFFICER. Eighty-one Senators have answered to their names. A quorum is present.

Mr. HATFIELD. Mr. President, I have received numerous protests from organized labor in West Virginia against the confirmation of Judge John J. Parker to be an associate justice of the Supreme Court of the United States.

I have also had the same expression from colored organizations and colored people individually asking that I oppose his confirmation.

I have likewise had a great number of telegrams, letters, and resolutions adopted by the district and the State bar associations; also numerous telegrams and letters from individuals supporting his confirmation.

I do not think it necessary for me to file all of these protests and commendations with the clerk to be printed in the RECORD; but, because of a personal request in one telegram I feel it my duty to ask unanimous consent to have it printed in the RECORD, and also to ask leave to have printed in the RECORD a telegram from the Hon. Harold A. Ritz, a former member of the Supreme Court of West Virginia, and now president of the bar association of that State.

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

The telegrams are as follows:

HUNTINGTON, W. VA., *April 7, 1930.*

Senator HENRY D. HATFIELD,
Washington, D. C.:

The membership of this union unanimously protests against the confirmation of Judge Parker to the United States Supreme Court. Kindly register this protest in our behalf. Thanks.

HUNTINGTON TYPOGRAPHICAL UNION, No. 533,
C. N. BREWER, *President.*

CHARLESTON, W. VA., *April 16, 1930.*

Hon. H. D. HATFIELD,
United States Senate:

The West Virginia Bar Association heartily indorsed Judge Parker to the President for appointment to the Supreme Court. The recently developed opposition to him because of matters of which we were fully cognizant has not changed our attitude, and we are just as heartily in favor of his confirmation. We trust that you will do everything possible to that end.

HAROLD A. RITZ,
President West Virginia Bar Association.

Mr. HATFIELD. It is my desire at all times, Mr. President, to respect the wishes of the people that I represent; but in the final analysis the responsibility must necessarily be left with me as to the proper course to be taken, having in mind that when I assume this position I do so in keeping with what I deem to be to the best interests of a majority of the citizenship of the State that I in part represent. Of course, I must take into consideration justice, equity, and fair play in arriving at conclusions which control my vote upon any and all questions that are presented to me for consideration as a Senator.

Again, Mr. President, in view of what has been said of a derogatory nature regarding the conduct of one of the basic industries of my State toward labor, and inasmuch as the Red Jacket case in controversy originated in the State of West Virginia, in which issue is taken by able lawyers who are Members of this body with the decision of the circuit court of appeals of the fourth Federal judicial circuit, in which Judge John J. Parker rendered the opinion, resulting in a protest against his confirmation, I feel that I should, in a brief way, describe the conditions in West Virginia as they relate to the coal industry in a fair and impartial way, so that they may be understood in their true light.

It can not be truthfully stated that I have not been a friend of labor in West Virginia. If I have not been, then industry, especially the one responsible for the controversy here, has had the wrong impression of me; for its representatives have usually opposed any ambition I have had for public office, because of my friendly attitude toward labor.

When I became governor of my native State on March 4, 1913, I found then in existence a mine war that had been waged for more than a year, costing many lives and a tremendous destruction of property in the mining region of Paint and Cabin Creeks, in the Kanawha Valley. This section of my State has not as yet recovered either economically, socially, or industrially from the results of this disaster.

It was during this period that the able senior Senator from Idaho [Mr. BORAH] visited that section, in company with Senators Kenyon, of Iowa; Martine, of New Jersey, and SWANSON, of Virginia, under Senate Resolution No. 37 of the Sixty-third Congress, passed May 27, 1913, directing them to investigate certain phases of the strike situation, as it had been loudly acclaimed through the press of the country that certain injustices were being invoked against freedom and liberty as guaranteed in our Constitution. Because of these claims, credence was given to them to the point of the adoption of the heretofore mentioned resolution by the Senate of the United States.

These claims set out that men and women were being deprived of their rights as citizens without due process of law. It was in those days that the criminal court, in the person of its judge and prosecuting attorney, appeared before the governor in his chambers and stated that the courts were closed, and that convictions of law violators were impossible. It was during the period of the strike on Paint and Cabin Creeks, in the latter part of 1911 and during the entire year of 1912, that my predecessor declared martial law.

When I became governor in 1913, a number of people were awaiting sentence under conviction by this court-martial; and my approval was necessary in order to commit them to the penitentiary. I did not approve a single finding of the court-martial; but, on the contrary, within less than six weeks I directed the discharge of all those who were convicted. I personally adjusted, to the satisfaction of all concerned, this long-drawn-out warfare, which had lasted over a period of two years, costing West Virginia millions of dollars, and giving my State both an undeserved and an unenviable reputation. In the meantime, I was selected as the sole arbitrator, for a period of two years, by both the miners and the operators, and the strike in that industrial section of West Virginia came to an end. My decisions met with the approval of the laboring group, and, as far as I know, of the operators as well.

During my term as governor the legislature passed laws providing for an 8-hour workday, the payment of wages at least once in every two weeks, and enacted a compensation law that has paid labor in a little less than 17 years of its operation approximately $58,000,000. Prior to the passage of this legislation the laboring people were subject to the old fellow-servant law, which ended in the State supreme court when litigation was undertaken, usually at a loss to the plaintiff, and the records disclose that in the cases that were successful less

than $50,000 had been recovered by the plaintiffs in case of accident, which was more than absorbed in court costs.

It was the settlement of this strike, through my efforts as governor, and subsequently my service as arbitrator, when the mine management and the mine worker could not agree, that resulted in the first collective bargaining in West Virginia, from a coal-industry point of view, so far as I know. So it can not be successfully claimed that I have been unmindful of the rights of labor in public life.

When the words "peaceful persuasion" are referred to in connection with strikes in West Virginia, as has been discussed at some length in this body in connection with the Red Jacket case, I wish to say that the approach to West Virginia's laboring people to induce them to join hands with the union with the hope of bettering their condition has been usually accompanied where these industrial conflicts have taken place by something entirely foreign to the word "peaceful."

The law-enforcing officers of those sections affected, beginning with the constable and ending with the chief executive of the State, would testify that the approach toward organization was accompanied by anything but law and order.

Inasmuch as the action of the Senate in the matter of the confirmation of Judge Parker will depend in a large measure upon whether his opinion in the Red Jacket case was correct, it has occurred to me that my colleagues would be interested in a brief discussion of conditions leading up to and immediately following that litigation.

"Peaceful persuasion" in the Red Jacket controversy resulted in the loss of more than 40 lives. The controversy began on May 19, 1920, with a massacre of seven men. The strike order, however, did not become effective until July 1, and lasted until late in the year of 1921, during which time there was lost in property values a sum amounting to $10,000,000, and the passing of time has not cured the ills which developed from that industrial epochal period in the Mingo coal fields, which have been crippled economically ever since.

Mr. President, I now wish to read for the information of the Senate a telegram that I have recently received from the Hon. M. Z. White, Lieutenant Governor of the State of West Virginia, who lives in Mingo County, in which is located the Red Jacket Coal Co.:

WILLIAMSON, W. VA., *April 29, 1930.*

Senator H. D. HATFIELD,
Washington, D. C.:

Strike order became effective July 1, 1920. Trouble started May 19, 1920, with Matewan massacre; seven killed; continued until late 1921. In August, 1920, Gov. John J. Cornwell applied to War Department. Sent 500 troops; arrived here August 29, 1920. These, in addition to local, county, State officers, together with citizens of Mingo, McDowell, and Logan Counties, in command. In November, 1920, 500 more United States troops arrived. Mingo County placed under martial law. Strike very revolutionary. Loss of life and property damage very large.

M. Z. WHITE,
Lieutenant Governor of West Virginia.

There is no record or evidence of a semblance of "peaceful picketing" at any time or place in the coal section in which the Red Jacket controversy took place between the union organizer, the miner, and the industrial owner. The salutation from the strikers would be a salute of so many high-powered guns, which would belch forth from the mountain fastness, and a return of like character in the way of a response from the other side.

West Virginia produces yearly more than 25 per cent of the coal consumed in America. Her geographic location places her at a disadvantage because of a longer railway haul, plus a differential in the market resulting from findings of the Interstate Commerce Commission, where the mine owner and consumer and the worker must make up the difference in the competitive market where this coal is largely to be sold, in the West and Northwest, in competition with the central fields.

There have been several attempts by court procedure to increase the freight-rate differential. The mine workers and the representatives of competitive fields have been chiefly interested in advocating such a course, and if they had been successful, West Virginia would have been removed from the markets of the West and Northwest.

When this coal strike was called, the industry owners of West Virginia charged that there was a coalition between the central competitive operators and the mine workers industrially, and they claimed they had conclusive proof that the conspiracy had for its purpose the removing of West Virginia's coal from these markets.

In the face of all of these unfriendly acts, could anything else be expected from West Virginia's industrial representatives than resentment of the intrusion of these formidable forces into her industrial domains and entering into a compact with her employees?

I am impressed with the thought that West Virginia's industrial owners would not be opposed to collective bargaining or to men belonging to a union if they felt the organization would be primarily cooperative with the best interests of the coal industry in seeking a market for its products. Whether or not this be true, I wish to say that I have always felt that the workmen of our country should be encouraged in the development of collective bargaining in the sections where they are interested industrially.

I submit that West Virginia has much at stake in the protection of her coal industry when her citizenship stops to summarize, and are confronted with the fact that 33⅓ per cent of her population are directly dependent upon the prosperity of this one industry and more than 80 per cent indirectly.

West Virginia furnishes approximately 70 per cent annually of the entire tonnage to three trunk railway lines having 4,000 miles of main-line trackage in the State.

These same railways touch 26 States of this Union. They realize in revenue out of this coal tonnage transported $325,000,000 yearly.

The Chesapeake & Ohio Railroad operates 2,730.29 miles of railroad in the following States: Virginia, West Virginia, Kentucky, Ohio, Indiana, Illinois, and the District of Columbia. The Baltimore & Ohio operates 5,639.42 miles in the following States: New York, New Jersey, Delaware, Pennsylvania, Maryland, Virginia, West Virginia, Ohio, Indiana, Illinois, Kentucky, Missouri, and the District of Columbia. The Norfolk & Western Railroad operates 2,240.23 miles in the following States: Virginia, West Virginia, Maryland, North Carolina, Kentucky, and Ohio. Aside from this, her coal is carried by three other railroads—the New York Central, the Virginian, and the Pennsylvania. It is our chief industry. If not protected, therefore, railway labor would perish, our independent stores and independent industries would speedily disorganize and become bankrupt, and 130,000 men who work in the coal industry in West Virginia would be out of employment.

It might be argued that the reason why West Virginia sells in the markets of this country more than 25 per cent of the coal consumed—510,000,000 tons a year—is that the laborer is forced to work for less consideration than is paid for like work in other States.

On this point I wish to insert here a table.

The VICE PRESIDENT. Is there objection?

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

Average earnings per hour, based on time at face, including lunch, of coal miners in West Virginia in 1929

Loaders, contract	$1.085
Loaders, hand	.653
Loaders, machine	.743
Miners, hand or pick	.669
Miners, machine (cutters)	1.062
Miners, machine (cutters' helpers)	.683
Average, all miners and loaders	.689

Mr. HATFIELD. These earnings were compiled by the Bureau of Labor Statistics, United States Department of Labor, and published in the monthly Labor Review September, 1929.

The average hourly earnings in manufacturing industries, as compiled and published by the National Industrial Conference Board in Service Letter No. 48, December 26, 1929, were as follows:

Industry	Average hourly earnings, 1929	
	September	October
Agricultural implements	$0.631	$0.628
Automobiles	.700	.697
Boot and shoe	.481	.472
Chemicals	.577	.572
Cotton:		
North	.418	.416
South	.325	.323
Electrical manufacturing	.631	.632
Furniture	.542	.550
Hosiery and knit goods	.499	.493
Iron and steel	.659	.659
Leather tanning	.525	.522
Lumber and millwork	.586	.595
Meat packing	.514	.512
Paint and varnish	.580	.579
Paper and pulp	.538	.541
Paper products	.537	.527
Printing:		
Book and job	.732	.729
News and magazine	.896	.899

Industry	Average hourly earnings, 1929	
	September	October
Rubber	$0.659	$0.650
Silk	.477	.485
Wool	.481	.481
Foundry and machine shop	.612	.616
1. Foundries	.618	.622
2. Machines and machine tools	.630	.631
3. Heavy equipment	.666	.679
4. Hardware and small parts	.550	.550
All industries	.582	.582

It will be noted that in practically every case the average earnings for miners exceed those in manufacturing industries as listed in the table, and they are far above the average of $0.582 for the entire industrial group.

Average earnings of employees on all pay rolls for October, 1929

Classifications	Number of full-time workers	Per cent of full-time workers	Average daily earnings	Average monthly earnings
Piece workers:				
Loaders	1,102	45	$6.16	$166.32
Machinemen	101	4	9.55	257.85
Drill men	47	2	9.08	245.16
Contract motormen	108	5	5.98	161.46
All pieceworkers	1,358	56	6.50	175.50
Hour workers:				
Inside daymen	485	20	5.32	143.64
Tipplemen	229	9	4.52	122.04
Carpenters, shopmen, electricians, truckmen, etc	108	4	5.38	145.26
All hour workers	822	33	5.10	137.70
Salaried men (mines' rolls):				
Mine foremen and assistants	25	01	7.23	224.13
Tipple foremen, watchmen, dairymen, carpenters, electricians, and truck foremen	58	03	5.52	171.12
All salaried men (mines' rolls)	83	04	6.04	187.24
Salaried men (confidential roll):				
Superintendents, assistants, mine inspector, warehousemen, telegraph operators, interpreter, clerks, stenographers, etc	43	02	8.77	263.10
Bookkeepers, shipping and pay roll clerks	25	01	6.71	201.30
Mine engineers and draftsmen	8		7.40	222.00
Stores' employees	59	03	5.28	158.40
All confidential roll	135	06	6.67	200.00
Medical department (hospital corporation)	12	01	8.50	255.00
All departments	2,410	100	6.04	163.08
		Number of men	Number of days	Per cent of total
Full-time workers		2,410	65,070	87½
Time lost		343	9,261	12½
Total men on roll		2,753	74,331	100

[I. C. C. Docket No. 15007. Witness Exhibit No. 424]

Average daily earnings in certain districts, West Virginia and Kentucky

AUGUST, 1925

District	Number of companies reporting	Average number men working	Total man-days	Wages paid	Average daily earnings per man
Pocahontas	4	1,364	30,179	$162,700.20	$5.39
Tug River	3	766	19,521	99,426.41	5.09
Kenova-Thacker	8	1,393	34,585	201,903.30	5.83
Logan	4	4,743½	121,625.8	700,948.15	6.33
Winding Gulf	3	971	24,590	151,838.54	6.17
Kanawha	1	337	8,762	52,044.69	5.94
Total	23	9,574½	239,262.8	1,438,861.29	6.01
Northeastern Kentucky	5	1,005	24,765¼	134,111.30	5.41
Hazard	3	778	17,950	102,318.00	5.70
Harlan	5	832	19,697	108,600.06	5.51
Total	13	2,615	62,412¼	345,029.36	5.52
Southern Appalachian	2	1,118	25,286	115,006.54	4.54
Total, all fields	38	13,307	326,961.05	1,898,897.19	5.80

Average daily earnings in certain districts, West Virginia and Kentucky—Continued

AVERAGE EARNINGS 10 HIGHEST MEN, SAME COMPANIES AND MONTH

District	Per day	Per month
Pocahontas	$8.30	$188.74
Tug River	7.34	186.31
Kenova-Thacker	9.69	243.45
Logan	11.71	301.60
Winding Gulf	11.67	294.31
Kanawha	(1)	(1)
Average	9.74	242.88
Northeast Kentucky	9.12	193.71
Hazard	10.70	243.61
Harlan	10.07	239.23
Average	9.96	225.52
Southern Appalachian	8.80	203.91
Average, all districts	9.71	233.76

[1] Not available.

Statement showing average daily earnings for certain districts in West Virginia and Kentucky

NOVEMBER, 1925

District	Number of companies reporting	Average number men working	Total man-days	Wages paid	Average daily earnings per man
Pocahontas	4	1,402	31,736	$182,856.06	$5.76
Tug River	3	861	21,075	119,616.00	5.67
Kenova-Thacker	8	1,401	33,605	193,020.40	5.74
Logan	4	4,810.7	118,550.4	751,209.92	6.33
Winding Gulf	3	1,020	24,911.1	160,484.36	6.44
Kanawha	1	366	8,784	55,134.04	6.28
Total	23	9,860.7	238,661.5	1,462,320.78	6.12
Northeastern Kentucky	5	988	23,804	132,257.24	5.55
Hazard	3	810	18,018	103,247.76	5.73
Harlan	5	879	16,911	98,355.11	5.81
Total	13	2,677	58,733	333,860.11	5.68
Southern Appalachian	2	1,177	23,088	111,202.80	4.81
Total, all fields	38	13,714.7	320,482.5	1,907,383.69	5.95

AVERAGE EARNINGS 10 HIGHEST MEN, SAME COMPANIES AND DISTRICTS

District	Per day	Per month
Pocahontas	$9.04	$200.78
Tug River	8.44	205.66
Kenova-Thacker	9.71	238.78
Logan	10.87	269.22
Winding Gulf	12.38	305.46
Kanawha	(1)	(1)
Average	10.09	243.98
Northeastern Kentucky	7.50	180.74
Hazard	10.28	229.76
Harlan	11.43	218.21
Average	9.74	209.57
Southern Appalachian	11.09	212.20
Average, all districts	10.08	228.98

[1] Not available.

Statement showing average daily earnings for certain districts in West Virginia and Kentucky

MAY, 1926

District	Number of companies reporting	Average number men working	Total man-days	Wages paid	Average daily earnings per man
Pocahontas	4	1,419	33,536	$187,412.22	$5.58
Tug River	3	904	21,824	123,159.76	5.64
Kenova-Thacker	8	1,458	30,826	174,748.15	5.66
Logan	4	4,802.25	119,840.5	772,007.26	6.44
Winding Gulf	3	1,035	26,910	168,507.30	6.26
Kanawha	1	321	8,346	53,965.24	6.47
Total	23	9,939.25	241,282.5	1,479,799.93	6.13
Northeastern Kentucky	5	1,071	26,030.4	139,405.04	5.35
Hazard	3	826	17,074	97,686.30	5.72
Harlan	5	866	18,846.5	107,816.48	5.72
Total	13	2,763	61,950.9	344,907.82	5.56
Southern Appalachian	2	1,586	55,955	88,658.55	5.56
Total, all fields	38	14,288.25	359,188.4	1,913,366.30	5.32

Statement showing average daily earnings for certain districts in West Virginia and Kentucky—Continued

AVERAGE EARNINGS 10 HIGHEST MEN, SAME COMPANIES AND DISTRICTS

District	Per day	Per month
Pocahontas	$8.75	$202.59
Tug River	9.22	216.77
Kenova-Thacker	9.19	200.04
Logan	10.77	275.50
Winding Gulf	11.05	279.32
Kanawha	(1)	(1)
Average	9.80	234.84
Northeastern Kentucky	8.12	194.88
Hazard	10.25	208.30
Harlan	10.27	221.41
Average	9.55	208.20
Southern Appalachian	13.68	173.01
Average, all districts	10.14	219.09

[1] Not available.

Statement showing average hourly and weekly earnings of labor employed in various industries

Class I railroads	Average hourly earnings, actual cents	Average weekly earnings, actual dollars
FOURTH QUARTER, 1925		
All wage earners	61.3	$30.53
Train and engine service labor	89.0	46.44
Skilled shop labor	72.9	34.27
Unskilled labor	37.2	17.75
FIRST QUARTER, 1926		
Iron and steel manufacturing:		
Skilled	68.9	37.28
Unskilled	49.8	28.01
Agricultural implement manufacturing:		
Skilled	64.6	32.57
Unskilled	47.7	24.46
Automobile manufacturing:		
Skilled	69.2	34.81
Unskilled	51.8	27.63
Electrical apparatus manufacturing:		
Skilled	65.7	31.71
Unskilled	47.0	23.06
Foundry and machine shop products:		
Skilled	63.8	31.73
Unskilled	49.0	24.73
Foundries:		
Skilled	67.4	33.98
Unskilled	51.0	26.09
Machines and machine tools:		
Skilled	61.7	31.19
Unskilled	47.2	24.23
Heavy equipment:		
Skilled	69.2	33.68
Unskilled	49.6	24.68
Hardware and small parts:		
Skilled	58.8	29.20
Unskilled	45.2	22.33
Cotton manufacturing, North:		
Skilled	48.9	23.34
Unskilled	37.7	19.33
Cotton manufacturing, South:		
Skilled	35.2	17.89
Unskilled	25.3	13.00
Hosiery and knit goods manufacturing:		
Skilled	61.7	29.60
Unskilled	37.7	17.47
Silk manufacturing:		
Skilled	59.5	27.89
Unskilled	47.5	25.92
Wool manufacturing:		
Skilled	54.2	24.89
Unskilled	43.9	20.29
Leather tanning and finishing:		
Skilled	56.6	26.81
Unskilled	49.1	22.90
Boot and shoe manufacturing:		
Skilled	54.1	24.71
Unskilled	40.0	18.98
Chemical manufacturing:		
Skilled	59.8	30.82
Unskilled	50.9	27.62
Paint and varnish manufacturing:		
Skilled	59.0	32.13
Unskilled	46.8	21.69
Paper and wood-pulp manufacturing:		
Skilled	60.5	31.93
Unskilled	44.9	23.18
Paper products manufacturing:		
Skilled	60.9	28.95
Unskilled	47.7	23.97
Printing and publishing, book and job:		
Skilled	87.5	41.70
Unskilled	46.9	22.91
Printing and publishing, newspaper and periodical:		
Skilled	95.6	43.61
Unskilled	48.2	22.03

Statement showing average hourly and weekly earnings of labor employed in various industries—Continued

Class I railroads	Average hourly earnings, actual cents	Average weekly earnings, actual dollars
FIRST QUARTER, 1926—continued		
Furniture manufacturing:		
Skilled	61.8	$30.55
Unskilled	43.5	21.52
Lumber manufacturing and millwork:		
Skilled	60.8	29.13
Unskilled	38.0	18.65
Meat packing:		
Skilled	55.8	28.04
Unskilled	45.1	22.46
Rubber manufacturing:		
Skilled	74.6	33.82
Unskilled	53.6	26.78

Authority: National Industrial Conference Board Treatise on Wages in the United States, published May, 1926. Their reference No. 115.

NOTE.—In every instance the statistics covering the latest period shown have been used in the above statement.

Mr. HATFIELD. Mr. President, the coal miner in West Virginia is the highest paid mine worker in America, notwithstanding the handicap of the industry, according to statistics I have which I will discuss briefly. The same, however, can not be said of the owner in the way of a return on his investment.

I shall discuss the wages paid coal miners in West Virginia, and I am not referring to the highest paid men but to the average wage paid the rank and file of the coal-mine workers, including all men employed. For example, I have here a record of the earnings of 2,753 men employed by one company, who in the month of October, 1929, earned on the average $163.08 per month. The lowest wage for any class of these workers was $4.52 a day, or $122.04 a month. The highest wage for any class was $257.85 for the month of October, or $9.55 a day. This total average, amounting to $6.04 a day, or $163.08 a month, was for unskilled, semiskilled, and skilled workers. Only about 10 per cent of the number of men employed can be classified as skilled workers. This is the record of a company selling its coal in the open market. It is typical of the better class of mines in the State of West Virginia. This shows an average wage of 75½ cents an hour for skilled, semiskilled, and unskilled labor.

According to the reports of the National Industrial Conference Board, the statistics for 27 of the principal industries of this country, including Class 1 railroads, iron and steel manufacturing, foundries, automobile manufacturing, lumbering, chemicals, meat packing, and the other major industries of the country, show that the average wage paid skilled labor in these industries amounted to 63.6 cents per hour, and the average wage paid to unskilled labor amounted to 45.3 cents per hour. Under these conditions can it be said that the workers in the West Virginia mines are reduced to a condition of serfdom as compared with the workers of the principal industries of the United States?

There has never been any major labor controversy between the miners of West Virginia and the producers of West Virginia coal except such controversies as have been incited by competitors and producers of coal from other States.

The mine workers and operators of West Virginia entered into a contract providing that the employees in the West Virginia mines would not join the union during their term of employment. This situation was brought about, I am told, by the reported coalition between the United Mine Workers and the central competitive operators in an effort to curtail the mining industry of the State of West Virginia, and because of this combination the nonunion coalition developed, which furnished the basis for the Red Jacket case.

Living conditions in the mining towns of West Virginia are excellent, far superior to those found in most mining communities. In these towns may be found first-class schools and churches for both white and colored, splendidly equipped hospitals, recreation grounds, and in many cases miners' clubs or community centers. The houses are well built and comfortable and are furnished to the miners at an extremely low rental. Good hard roads are found in all of the mining communities.

The prevailing idea that earnings in West Virginia are low because mines operate nonunion is not borne out by the facts. In 1928 the mines in West Virginia worked on an average 223 days.

The records of mine operators show that in 1927 bituminous mine wage earners of one West Virginia company drew an average of $1,828.88 and those of another West Virginia company an average of $1,692.17. The statistical information submitted

shows that similar conditions obtain in the following fields south of the Ohio River: Logan, Kanawha, Thacker, Big Sandy, Hazard, Harlan, Kentucky, Pocahontas, Virginia New River, and Winding Gulf. In one operation in the Pocahontas field the earnings per man per day in 1927 averaged $6.81, this applying to day workers and piece workers. In one West Virginia operation less than 1 per cent of the men earned less than 45 cents per hour in 1927; less than 3 per cent earned under 50 cents per hour; and less than 10 per cent earned under 60 cents per hour, on an 8-hour-day basis. These earnings are typical of the wages paid in the West Virginia mining industry.

According to statistics compiled by the National Industrial Conference Board, the wage earners of the United States spend 27 to 32 per cent of their wages for rent, heat, light, and water. According to sworn testimony before the Committee on Interstate Commerce of the United States Senate, these items of living in West Virginia cost the miners less than 10 per cent of their wages for these four necessary or primary items in the living cost. In other words, after paying these expenses the average worker in the United States has 70 per cent of his wages left for food, clothing, education, recreation, health, and savings, while the coal-mine employees in West Virginia have 90 per cent of their wages for similar purposes. This does not mean that the wages themselves are low, comparatively speaking.

Again referring to the reports of the National Industrial Conference Board for the year 1928, "Wages in the United States in 1928," page 37 of their report, they make the following statement in regard to the earnings of employees of Class I railroads:

> For all wage earners the average hourly earnings, varying between 61.4 cents and 63.2 cents, are at a much higher level than for all wage earners in manufacturing industries. Indeed, the level of average wages for all wage earners in railway service approaches the average for skilled and semiskilled workers in manufacturing industries.

From this statement it will be seen that on the basis of an 8-hour day for the year 1928, which are the latest statistics available, all employees of Class I railroads in the United States averaged approximately $5 per day earnings for the days actually worked.

The report further shows that the average hourly earnings of the highest paid group in this service, that is, train and engine service, earned an average hourly wage of approximately 90 cents per hour or $7.20 per day, but it also shows that the unskilled labor on railroads for the last quarter of 1928 earned an average hourly wage of only 37.4 cents per hour.

Let us contrast the foregoing wages with the wages in the coal-mining industry in the State of West Virginia. The wages paid in the coal industry in West Virginia are not so uniform as the wages paid by the railroads, but the average daily wage is greater than the average daily wage paid by the railroads. In the large majority of the mines, according to sworn testimony of witnesses covering a large number of companies and thousands of men, the average hourly wage is more than 25 per cent in excess of the Class I railroad wages.

In the summer of 1928, pursuant to Senate Resolution 105, a large number of coal operators of our State were asked to appear at Washington before the Senate Committee on Interstate Commerce and to bring their books and papers showing wage rates and actual wage payments. These statements, given under oath, show that the bulk of the wages average materially in excess of the $5 per day paid by the railroads. For example, the sworn testimony of the president of the New River Co., in Fayette County, which company employed 2,085 men, showed an average wage of $5.57 per day. Similar testimony was given by Mr. Jones of the Pocahontas Fuel Co., Mr. Ott of the West Virginia Coal & Coke Co., Mr. Bradley of the Elk River Coal & Lumber Co., Mr. Coolidge of the Island Creek Coal Co., and others. Mr. Coolidge testified, for example, that his company, the Island Creek Coal Co., a typical employer of labor in Logan County, W. Va., employed 2,500 to 3,500 men, at an average wage of $6.47 per day; that only 1 per cent of these employees earned less than 50 cents per hour, that a large number of them earned more than 85 cents per hour, and that the average of all employees was 80.8 cents per hour.

I give these facts knowing when I do so that they have only an indirect bearing upon the controversial subject which is before this body at the present time. The only justification, therefore, is primarily to show that West Virginia miners are not subjected to serfdom and that they have privileges and comforts which a large percentage of the average workmen in America do not have; second, to indicate that there is an air of satisfaction and contentment among those who labor in the mining industry of West Virginia, generally speaking; third, that any intrusion that has resulted in a disturbance in the mining industry of West Virginia came from without the State; and fourth, when this influence came it was not in keeping with law and order.

I now desire to discuss briefly Judge Parker's attitude toward the colored people. As a jurist, his action in performing the duties of his office speaks louder than any proclamation uttered in his youthful days when aspiring for a political office, and while he is accused of certain statements incompatible with the best interests of the colored race, he strenuously denies them. His opinion in the segregation case which came up from Richmond, Va., dealing with the fourteenth amendment to the Constitution, is to my mind conclusive on this point. If there had been any room for doubt by the colored race as to Judge Parker's attitude toward them and their welfare, it should have been dissipated when he wrote this opinion. And again, when over his signature he says:

> I am grateful for the opportunity your inquiry affords of allaying, I hope successfully, any fear that may exist in the mind of any Senator, or indeed of any other citizen, with relation to my disposition to see enforced all of the provisions of the Constitution of our country. I need hardly say to you, who know me so well, that the slightest anxiety on the part of any person, of any race or creed, that I do not acknowledge the Constitution as the fundamental and supreme law of the land is wholly groundless, or that I regard it otherwise than as the first duty of the judge to enforce and give scope and effect to all of its provisions. In the discharge of my duties as circuit judge, I have never hesitated, I hope and believe, to meet this obligation in the fullest degree.
>
> The unfair effort to interpret some statements made some 10 years ago in a speech in a political campaign in North Carolina as indicating a contrary disposition is wholly unjust. What I then said on the subject of the negro was said in an honest effort to place myself side by side with the best men of both races who, for 20 years, had been seeking to create friendly sentiments and peaceful relations between the races in that State, and to enter my protest, in my capacity as a citizen and as the candidate of the minority party for the office of governor, against the motives of those who, for selfish purposes, sought to stir up racial antagonisms inimical to both.
>
> As a judge of the circuit court of appeals I have tried to discharge my duties in such a way as to demonstrate to all persons having business with the court that I knew neither parties nor individuals in the decision of cases, but endeavored to pronounce the law as I found it, to all alike. Such would be my effort if I were a member of the Supreme Court.

Mr. President, Judge Parker stands for the entire Constitution and all its amendments, from the first to the last. I am convinced that our 12,000,000 colored people will at least stand on an equal footing with the other races under the American flag so far as Judge Parker's influence will go in deciding any case affecting their rights and privileges as citizens.

In connection with the Red Jacket injunction case, which arose in my State, it can not be successfully questioned that his decision in that case was based upon and followed the decisions of the Supreme Court of the United States in like controversies. An application was actually made to the Supreme Court for a writ of certiorari to review his decision, but was denied, no doubt because that decision met with the approval of the Supreme Court, and it became thereby not only the decision of Judge Parker and his associates on the circuit court of appeals, but as well the decision of the Supreme Court itself.

Mr. President, it is said that if Judge Parker's nomination should be confirmed, he would hesitate to enforce the provisions of the fourteenth and fifteenth amendments to the Constitution of the United States in cases where the rights of colored people were involved, but his past conduct as a judge shows he has scrupulously given effect to the provisions of those amendments, and that, too, where the rights of colored people were involved. I refer again to the case of the City of Richmond *v.* Deans, Thirty-seventh Federal Reporter, second series, at page 712. In addition to this, those who know Judge Parker and have watched his judicial career must know that no man in the land would more scrupulously carry into execution and enforce in every detail the provisions of those two amendments.

The West Virginia counsel in the Red Jacket case, the Hon. Thomas C. Townsend, who has long been an acknowledged champion of union labor in West Virginia, who has had the complete confidence of labor for a long term of years, and who is recognized as one of the most able lawyers in the State and Nation, has told the subcommittee of the Judiciary Committee that Judge Parker's decision in the Red Jacket case was not to be criticized from the standpoint of his clients, the United Mine Workers. Mr. Townsend not only has the confidence of labor in West Virginia, but has the confidence of the people of the whole State. He is at present the tax commissioner of West Virginia, one of the most important offices under the State government. He has always championed the interests of the common people and endeavored to protect the small farm owner and the laborer from exactions and unnecessary burdens.

The adverse criticism made of labor lawyers generally by the senior Senator from Idaho surely does not apply to Mr. Townsend. He ranks high as a lawyer, and he has assured me personally that there is nothing in Judge Parker's judicial record that would justify the conclusion that as a Justice of the Supreme Court of the United States he would not in every respect be a just judge and a competent member of that great tribunal.

I am impressed with the feeling that Judge Parker's attitude of regard and reverence for the law as evidenced by his respect for the conclusions of the Supreme Court is in keeping with and supportive of stable government. Such integrity and devotion, Mr. President, on the part of the members of the Federal judiciary, constitute the foundation stone upon which this Government rests and which must be protected in all the years to come.

The VICE PRESIDENT. The question is, Shall the Senate advise and consent to the nomination of John J. Parker to be Associate Justice of the Supreme Court of the United States?

Mr. FRAZIER. I suggest the absence of a quorum.

The VICE PRESIDENT. The Secretary will call the roll.

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

Allen	Fess	McCulloch	Smoot
Ashurst	Frazier	McKellar	Steiwer
Baird	Gillett	McNary	Stephens
Barkley	Glass	Metcalf	Sullivan
Bingham	Glenn	Norris	Swanson
Black	Goldsborough	Nye	Thomas, Idaho
Blaine	Gould	Oddie	Thomas, Okla.
Blease	Greene	Overman	Townsend
Borah	Hale	Patterson	Trammell
Bratton	Harris	Phipps	Tydings
Brock	Harrison	Pine	Vandenberg
Broussard	Hastings	Pittman	Wagner
Capper	Hatfield	Ransdell	Walcott
Caraway	Hawes	Robinson, Ark.	Walsh, Mass.
Connally	Hayden	Robinson, Ind.	Walsh, Mont.
Copeland	Hebert	Robsion, Ky.	Waterman
Couzens	Howell	Schall	Watson
Cutting	Johnson	Sheppard	Wheeler
Dale	Jones	Shipstead	
Deneen	Kendrick	Shortridge	
Dill	Keyes	Simmons	

The VICE PRESIDENT. Eighty-one Senators have answered to their names. A quorum is present.

Mr. FESS. Mr. President, day before yesterday, when I was occupying some time on the floor, I referred to an incident that was alleged to have taken place between Henry Clay and Roger B. Taney. The Senator from Idaho [Mr. BORAH], who is always responsive to any matters historical, stated that while he appreciated the beautiful picture, he had never been able to verify the accuracy of it.

If there is any one thing that I should like to have to my credit it is a reputation for accuracy, and to avoid the charge that loose or incorrect statements are made; because I presume that one of the characteristics of the mind of anyone who has been identified with the youth of the country, especially in a historical manner, is that he gets into the habit of making statements that can not be inaccurate if he has any regard whatever for what he is saying or teaching.

That is one reason why I have the habit of not making statements unless I have some ground for them; so, quite naturally, I looked for the source of the story about Clay and Taney, and I ascertained the origin of it. It was due to a debate that took place in this Chamber on a matter relating to the Supreme Court at a time when Taney was very bitterly criticized. An address had been delivered by Henry Wilson, Senator from Massachusetts, and the debate had been participated in also by Charles Sumner, of the same State. The latter was very bitter in his criticisms; the former not so bitter.

One of the many great minds from the State of Maryland, domiciled at the city of Baltimore, was Reverdy Johnson. He was in his day one of the greatest lawyers of the country. By the way, Mr. President, I am impressed with the very high rank in other days of the bar of the State of Maryland, including such men as William Wirt, who was credited, and I think properly so, with being one of the greatest lawyers, as well as one of the greatest orators, of the country. William Wirt was also a biographer of Patrick Henry; and one of the most readable books of my memory is Wirt's life of this natural orator of the Republic.

In addition to Wirt, who had occupied the position of Attorney General and other high positions, there was at that bar William Pinkney, sometimes confused with the famous South Carolinian, Pinckney. As Senators will remember, there were two Pinckneys of great distinction from the State of South Carolina. They reached a very high plane not only as lawyers but as statesmen. But the great lawyer of the three was William Pinkney, of Baltimore. He is rated as one of the greatest lawyers who ever appeared before the Supreme Court; and in almost every great case that was tried for 15 years Webster was likely to be on one side and Pinkney on the other.

In addition to these two was the famous Roger B. Taney, not below either one in rank and ability; and while Sergeant was regarded equal to them, and much of the time in Baltimore, as you will recall, he came from Philadelphia. But this bar had the leading rank of the country; and I might also state that this being the fourth judicial circuit, it happens to be the Chief Justice's circuit, and was always so regarded during the time that a member of the Supreme Court presided over the circuit. It was assigned to the Chief Justice of the court.

I have looked over the list of great names that have been on the court from the fourth judicial circuit; and any Senator who will recall to his mind the men who have been on the court from this circuit will find that it ranks as high as, if not higher, than any other circuit. There was John Marshall, the Chief Justice for 34 years, from this circuit. There was Roger B. Taney, the second Chief Justice, who was at the head of the court for 28 or 29 years. There was P. P. Barbour, a very distinguished jurist from Virginia, on the bench. There was James Iredell, from North Carolina, who was regarded in his day—although he was on the bench but a short time, because of a premature death—as one of the most brilliant lawyers of the country; and Iredell is being quoted as much, for the short time he was on the bench, as any member who ever sat on that bench. Then there was Bushrod Washington, who had considerable rank.

I mention just a few of these. All of them gave great reputation to the fourth circuit; and I am of the opinion, from what I can glean, gathering information from those who know, that Judge Parker will make a fit successor of the judges who have been on the bench from this circuit. I happen to know that a great number of splendid lawyers, whose judgment I would take on any matter of this kind, give him the very highest praise as a judge to-day.

Mr. OVERMAN. Mr. President——

Mr. FESS. I yield to my friend.

Mr. OVERMAN. John J. Parker is a descendant of the great Judge Iredell.

Mr. FESS. That is a bit of very interesting information of which I was not aware—that Judge Parker is a descendant of the great James Iredell, who sat on the bench away back in Washington's time, and who, at the time of his appointment, was only 33 years of age.

Now, coming to the subject of the discussion that was conducted here in the Senate Chamber, I wish to read just a portion of the famous Reverdy Johnson's remarks. Reverdy Johnson, of Baltimore, was one of the country's greatest lawyers, and also was a great Senator. He said:

> Now, Mr. President, I think whatever may be the opinion of the honorable Member from Massachusetts—

That refers to Wilson—

> or of any other Member of the Senate, that if there is any department of the Government which, from the beginning of its organization to the present hour, the public in general, may be proud of, it is the judicial department of the Government as far as the Supreme Court constitutes a portion of that department. And I am not singular in that opinion. It is not necessary to advert to what was the impression of the people of the United States, the bar, and the public, during the days when that tribunal was presided over by Marshall, for the purpose of calling to the recollection of the Senate what I am sure is fresh in their remembrance, and to which, therefore, their recollection need not be specially called, that there was throughout the length and breadth of the land the most implicit confidence not only in the absolute integrity of every member of the bench but in the unequaled ability of all the members of the court, and especially of him who in public estimation towered above the rest, John Marshall. And although it would seem to be perhaps inappropriate, let me say to the honorable Member from Massachusetts that much as he may now disparagingly think of the venerable man who presides over the deliberations of that tribunal—

Referring there, of course, to Roger B. Taney—

> and has for the last 20 or 30 years, he is not alone in that particular. When his name was before the Senate of the United States for confirmation, first as Justice of the court, and secondly as Chief Justice, his confirmation was resisted steadily, zealously, by, among others, Clay, of Kentucky. There was hardly an opprobrious epithet which, as he told me himself afterwards, he failed to use against the nomination; and from a conviction that the nominee was unfit, and would prove to be unfit, for the discharge of the duties of the judicial station. But I say it, and it is due to the memory of the dead, and due to him who now survives, survives tremblingly, his life having been protracted much beyond, as we know, the ordinary period of human life, and who has devoted himself with untiring energy, and with exclusive devotion, and with unsurpassed ability, to the duties of his station, that after he had

been upon that bench some four or five years, and Mr. Clay had been the witness, from having practiced before him and read his decisions, of the manner in which his duties had been discharged, he, as he told me himself, after hearing an opinion delivered by the presiding judge, went to his quarters to see him, and found him alone; he said he felt the embarrassment necessarily incident to the object of his visit; and after exchanging the salutations suited to the occasion, and being about to leave him, he took him by the hand and said—

I quote now an address delivered by Johnson in this Chamber in 1864, and it was the same year that Taney died. I quote Reverdy Johnson's statement of the words of Henry Clay, as they appear on page 1363 of the Congressional Globe for March 31, 1864.

"Mr. Chief Justice, there was no man in the land who regretted your appointment to the place you now hold more than I did; there was no Member of the Senate who opposed it more than I did; but I have come to say to you, and I say it now in parting, perhaps for the last time, I have witnessed your judicial career, and it is due to myself and due to you that I should say to you what has been the result; that I am satisfied now that no man in the United States could have been selected more abundantly able to wear the ermine which Chief Justice Marshall honored."

Mr. Johnson goes on:

And with the tears trickling down the checks of both—I speak the words of Henry Clay—they parted; and that opinion he continued to hold up to the last moment that his life was a blessing to the country.

Mr. President, it is no light thing to assail the Chief Justice of the United States or that high tribunal. We have an interest, jurisprudence has an interest, justice has an interest, the Nation has an interest in maintaining the character of that tribunal against all unjust reproach. It is no light thing to pronounce a decision given by such a tribunal as that as a disgrace. I never deal in epithets, Mr. President, if I know myself. I am willing to give, and I always do allow, to him who differs from me upon any question about which it is possible for a difference of opinion to exist, the credit of sincerity and honest conviction, and I can not therefore stand still and hear a tribunal like that assailed, as I think, unnecessarily by anybody and particularly by the Honorable Member from Massachusetts, who stands, in the estimation of his friends, so high aloft that his voice is heard the land over, and is, in their impression, potential.

While it is true that that is only testimony, we have no documentary evidence other than this, yet Mr. Johnson gives it as a recital of the statement made to him by Henry Clay. However, I was not simply interested in making that statement for the accuracy of history. After reading it I thought it was a splendid estimate of the Supreme Court in that day.

Mr. President, when we recall the time that sentiment was uttered, right at the last of the Civil War, in 1864, with bitterness in the country which probably had never reached such a degree, it was quite natural that there would be extravagant statements; and in the midst of it there arose what we would call a Whig in politics, not agreeing with the radicals, who were then known as Republicans, who were assailing the Supreme Court because of its position on the fugitive slave law, and who were so extravagant that one of the leaders said that the Constitution was a covenant of hell and in league with the devil.

One of the great thinkers of the United States, one of the most brilliant orators we ever had, made that statement with reference to the Constitution. At that time the excitement had run so high that there was danger of the Supreme Court being sufficiently attacked to break it down. It was for Mr. Johnson to make this defense of it in the midst of the war.

Mr. President, I did not intend to occupy any time this afternoon, but while I am on my feet I will take a little time to indicate the rule of construction that was laid down by Marshall. I believe it is good yet. But before I do that I want to indicate the view of Washington as to the characteristics of the members of the court. Washington wrote this letter giving his view as to what should be the qualifications of members of the court. I quote:

Considering the judicial system as the chief pillar upon which our National Government must rest, I have thought it my duty to nominate for the high offices in that department, such men as I conceived would give dignity and luster to our national character, and I flatter myself that the love which you bear to our country and a desire to promote the general happiness will lead you to a ready acceptance of the inclosed commission which is accompanied with such laws as have passed relative to your office.

The only occasion for me reading that is to give a contemporary opinion of the value of the judiciary. Washington, the presiding officer of the convention, who knew the 55 members of that convention and their positions from the standpoint of political science as probably no other man knew them, believed that the judiciary was the chief pillar upon which our National Government must rest. I think that was not only true then, but that it is true at the present time.

Washington made another statement that is quite significant.

Mr. BORAH. Mr. President, to whom was that first letter addressed?

Mr. FESS. It was addressed to each one of the appointees on the court.

Mr. BORAH. At that time Washington was appointing John Jay Chief Justice, was he not?

Mr. FESS. John Jay was appointed Chief Justice, and this letter was sent to each member who went on the Supreme Court.

Mr. BORAH. It would be well to read the names of the entire membership as he appointed them under that rule.

Mr. FESS. I will do so. The entire membership was: John Jay, from New York, 44 years old; John Rutledge, of South Carolina, 50 years of age; William Cushing, of Massachusetts, 57 years of age, who, by the way, later on was rejected by a Senate which did not like him; James Wilson, who was regarded by contemporary opinion as the keenest jurist in the Constitutional Convention, from Pennsylvania, only 47 years of age; John Blair, of Virginia, 57 years of age; James Iredell, of North Carolina; Thomas Johnson, who was appointed, and who resigned in two years; William Patterson, another member of the Constitutional Convention; and then later John Rutledge was appointed Chief Justice, and was rejected by the Senate because of his speech on the Jay treaty, as the Senator will recall; then Samuel Chase was appointed just before Washington went out, in 1796; and Oliver Ellsworth was appointed Chief Justice when John Rutledge was rejected by the Senate.

Mr. BORAH. Mr. President, has the Senator a list of the Members of the Senate who rejected him?

Mr. FESS. No; I could find it, but I do not have it here.

Mr. WALSH of Montana. Mr. President, there seems to be running through the thought of the Senator from Ohio, if I grasp it aright, the idea that those who are supporting the nomination of Judge Parker are upholding the dignity, the honor, and the prestige of the Supreme Court, while those who are opposing him are assailing it and endeavoring to bring it into disrepute and disrespect. Have I correctly appraised the thought of the Senator?

Mr. FESS. No. The Senator who is now speaking is convinced that there has been an effort to break down the Supreme Court as it exists in history by attacking the nominees who do not fit in with the particular views of those who criticize in regard to the matter of the functions of the Supreme Court. The Senator is convinced that that is true at this time. Of course, I do not mean that every Senator who will vote for Parker is taking the view I take, and I do not mean at all that every Member who will vote against Parker is actuated or motivated by a desire to attack the Supreme Court. But I think the Senator will agree with me that I have reason for being concerned about the manufactured clamor looking to the defeat of this nominee. It is on a par, but not quite so distinguished, as opposition to Mr. Hughes.

Mr. BORAH. Mr. President, I could but wish the manufactured clamor would be as effective as some other manufactured things that are going on on the other side.

Mr. FESS. Mr. President, when I say "manufactured clamor," I refer to things like the telegram I hold in my hand. Let me say to the Senator from Idaho that he has no more respect for this thing than I have. Here is a wire which comes to me:

DEAR SIR: Through the colored press and the National Association of Colored Women's Clubs I am asking the colored women of Ohio to note your stand in the Parker case.

Yours very truly,

———— ————,

Chairman of the National Political Study Club, 1752 T Street NW.

I do not read the name, because I have too much respect for the person who wrote this. I happen to know who it is. Now, let me read another one.

Mr. BORAH. Mr. President, let me read one following that, which will fit right in there.

Mr. FESS. Very well.

Mr. BORAH. This telegram reads:

The Republicans of North Carolina deplore your attitude relative to the confirmation of Judge Parker as Associate Justice of the United States Supreme Court. We are building a great Republican Party in this State. The lack of Judge Parker's confirmation will destroy our hope. Why let a fanatic like Green or the negro element which we shall never tolerate prevail?

Mr. FESS. Mr. President, I am somewhat surprised that that telegram should have been sent to the Senator from Idaho.

Mr. JOHNSON. Oh——

Mr. FESS. I could understand how it might be sent to some Members of the Senate.

Mr. JOHNSON. The Senator from Idaho is not alone in receiving telegrams of that sort.

Mr. FESS. No.

Mr. JOHNSON. They have been received by many Members of the Senate, and the appeal has been made solely in the interest of a political party that we vote for the confirmation of Mr. Parker. So it would seem to me that in the matter of propaganda it is "horse and horse."

Mr. FESS. O Mr. President, the Senator from California is keen enough to appreciate the difference between expressing an opinion as to what would be the effect politically or otherwise, and a threat such as this telegram.

Mr. JOHNSON rose.

Mr. FESS. In just a moment. Will the Senator wait until I read another telegram?—

Press reports of your speech made yesterday seeking confirmation of Judge Parker show how little you regard the interests, wishes, and welfare of the colored people of the country and of Ohio. Your speeches and attitude shall not be forgotten by the colored people. Should you ever come before the people again seeking office we shall certainly do all in our power to defeat you.

Where does that telegram come from? It comes from Chicago.

Mr. JOHNSON. Does the Senator pay any attention to that sort of thing?

Mr. FESS. No!

Mr. JOHNSON. Does he think there is any difference in principle between that sort of a telegram and the telegram which is sent to Senators here that this confirmation must be had in order to bolster up a political party in North Carolina?

Mr. FESS. Mr. President, if somebody who might be a Republican down in the State of North Carolina would think that his fortunes would be benefited by having this man confirmed or that man defeated, we would permit him to express his opinion, although it is a very indiscreet thing for him to do. But that is not on a par with the statement that, "We will take care of you and defeat you," signed by an organization, and the Senator knows it is not.

Mr. JOHNSON. As a matter of principle and logic there is not the slightest difference.

Mr. FESS. Oh, yes; there is.

Mr. JOHNSON. Indeed, when the appeal is made to this side of the Chamber solely upon political grounds that a man shall be confirmed as a member of the Supreme Court, it is more reprehensible than when some poor benighted individuals may threaten the Senator with political extinction.

Mr. FESS. I am glad the Senator uses the term "poor benighted individuals." That is good, and I think I agree with him in what he said.

Mr. JOHNSON. On both sides there are poor benighted individuals.

Mr. FESS. Mr. President, I know the Senator's motive. The Senator is no more opposed to making an appointment to the Supreme Court one of a political nature than I am.

Mr. JOHNSON. Then we agree that much, anyway.

Mr. FESS. While heretofore that rule was universally applied, McKinley was the first President to break it. He appointed a Democrat. Taft appointed two Democrats, or three, I have forgotten which. Taft went out of his party in the matter of appointments to the Supreme Bench. The Senator and I thought it was a wise thing to do. The same thing was done by Harding.

Whatever else some enthusiastic Republican might do or say, I know that the one concern in the appointment of a man to the Supreme Court is to find a man of ability, of unquestioned integrity, a man of honor, of fair dealing, who will not be partial to any particular interest or race, whether it be a question of servitude, color, or what not. That is the desire on the part of those of us over here who are refusing to be bludgeoned, for whatever reason, to vote against a man because of some particular opposition that might be organized against him.

Mr. BORAH. Mr. President——

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

Mr. FESS. I yield.

Mr. BORAH. I am getting a little interested in the constant reiteration of the Senator about people who are "refusing to be bludgeoned," as if somebody else was consenting to be bludgeoned.

Mr. FESS. I do not mean that anybody is consenting to be bludgeoned. I mean that I will not be bludgeoned.

Mr. BORAH. Does the Senator mean to say that simply because Senators differ with him they are yielding to influences which the Senator characterizes as "bludgeoning" influences?

Mr. FESS. I am referring to the effort on the part of interested or disinterested people in demanding that I do this at the price of my remaining in this body. The Senator thinks of that thing just as I do.

Mr. BORAH. Let me say to the Senator that when Judge McClintic rendered his opinion in the Red Jacket case in the lower court and sustained this contract, some of us went on record at that time against the contract, believing that it was such a contract as ought not to find embodiment in American jurisprudence, and we have been fighting along that line ever since.

Mr. FESS. I give the Senator absolute freedom so far as I am concerned to continue his fight.

Mr. BORAH. I thank the Senator! [Laughter.]

Mr. FESS. The Senator is entirely welcome!

I want to read a statement in reference to this particular point of controversy:

In that respect Judge Parker's position was unassailable if the duty of inferior and intermediate courts is to apply the law to the facts as it is interpreted by the highest authority. That assumption limits the reviewing court to determining whether the trial judge had correctly applied the principle as enunciated by the court of last resort. But the question raised by the protest is one of personal attitude, which under the state of facts stated by the Department of Justice would presuppose some discretion on the part of the reviewing judge to disagree with the rule laid down for his guidance.

Judge Parker may or may not have expressed approval of the precedent; but he approved the action of the district judge in following it. Had he found it repugnant to his sense of justice and contrary to his construction of the fundamental law, what should have been his course? It was cited in the briefs and specifically referred to in the judgment of injunction as the reason for granting it. Should he have criticized the decision of the Supreme Court, indicated its fallacy, and sent the case up to the Supreme Court on appeal with a recommendation that the precedent be overruled, or should he have criticized the decision, while affirming the judgment, and allowed the defendants to take an appeal, supported by his sympathetic opinion?

It could be done; yet a judge would have to feel very strongly on the subject and be perfectly sure of his ground to do it, for a Supreme Court decision is as much the law of the land as a statutory enactment is. The decision can be overruled, the statute amended or repealed; but so long as either stands unchanged by the authority which made it no one else may challenge its validity. A reversal of the Red Jacket injunction case by Judge Parker would have been ineffectual unless he could have persuaded the Supreme Court by the cogency of his opinion that it had erred in a similar case.

That course isn't customary. Settled policy is a corner stone of jurisprudence.

That is a statement which ought to have some effect: "Settled policy is a corner stone of jurisprudence." If a decision of this court is not to stand until it is reversed by the same court when it is the court of last resort, the result would be chaos; it would be anarchy! What we insist upon is such respect for the judgment of the court of last resort that a lower court shall not ignore it. The lower court, of course, can express its opinion different from the upper court, and if the parties in litigation then desire that the upper court should hear it, there is a way under the law to have the upper court hear it. That way was open and was resorted to, and the upper court, studying the situation, declined to approve it. Yet now we are finding fault with Judge Parker for respecting the decision of the Supreme Court of the United States, which it is the duty of every citizen to respect until those decisions are reversed, for it is as much the law as if it were written in the law. We are finding fault here with a man because he did not do what, so far as I know, no one of any reputation for jurisprudence has done. It is wholly outside of the practice.

Mr. President, there has been some dispute as to what is to be the rule of construction. I had thought of reading the opinion of Washington, but I shall not take the time to do it.

Adams made the following statement:

Prophecies of division have been familiar in my ears for six and thirty years; they have been incessant, but have had no other effect than to increase the attachment of the people to the Union. However highly we may think of the voice of the people sometimes, they not infrequently see further than you or I in many great fundamental questions. Nevertheless, it was of high importance to the survival of the American Union that its judiciary at least should be so constituted as to prove a bulwark against the spread of such false constitutional doctrines.

If we have no respect for the decisions of this court of last resort, what shall be the effect of law in a country that is a country of law? There are men who want the matter of law to be a matter of men, but I insist that the Government is a government of law, and not a government of men. Law is sub-

stantial and looks to stability. Men's minds are as varied as there are numbers of men. No two people looking at the same thing inevitably come to the same conclusion. It is natural that they differ.

The father of the Constitution—James Madison—gave this suggestion of the rules of construction:

A supremacy of the Constitution and laws of the Union without a supremacy in the exposition and execution of them would be as much a mockery as a scabbard put in the hands of a soldier without a sword in it.

I wonder if we have that "without a supremacy in the exposition"? It is not alone a question of the Constitution and of the laws, but a supremacy of the Constitution and laws without a supremacy in the exposition of them—that is, in the Supreme Court—is like giving a scabbard without a sword to a soldier. So said James Madison.

Alexander Dallas, Secretary of the Treasury in Jefferson's Cabinet, later on a distinguished reporter for the Supreme Court of the United States and once Vice President of the United States, said:

The Constitution is the supreme law of the land, and not only this court but every court in the Union is bound to decide the question of constitutionality. They are bound to decide an act to be unconstitutional if the case is clear of doubt, but not on the ground of inconvenience, inexpediency, or impolicy. It must be a case in which the act and the Constitution are in plain conflict with each other.

So I might go on indicating the opinion of our fathers and those who followed them as to the qualifications of members of the Supreme Court Bench.

Fillmore, whose nominations were rejected, in pointing out the requisites of a member of the Supreme Court, says this:

A vigorous constitution, high moral and intellectual qualifications, a good judicial mind, and such age as give prospect of long service.

Those were the qualifications in the mind of a President. Then he wrote to Daniel Webster and asked his opinion of Benjamin R. Curtis, whom he was thinking of appointing. Before Webster had received the letter he had written the President a letter recommending Rufus Choate as the one most eminently fitted, but doubted whether or not he would accept.

In the same letter, although it was not in reply to President Fillmore's letter, because Webster had not then received it, Webster said in case of the refusal of Rufus Choate to accept, he recommended Benjamin R. Curtis as a man of suitable age, good health, excellent habits, sufficient industry, and love of labor, and in point of legal attainments and general character in every way fitting.

I mention this to indicate the qualities that should be possessed by members of the Supreme Court Bench. I am told by lawyers in whom I have confidence—and if I should name them there is not a Senator here who would not say he has confidence in them—that if Judge Parker shall be placed on the Supreme Court at the age of 45 there will be nothing to regret; that he will make a really great judge. I have that testimonial unsolicited from a number of sources, but especially do I have it from one or two men to whom I personally directed the question in order to get their reaction.

Speaking of the rule of interpretation, I want to take a brief time to indicate the rule laid down by Marshall. I am going to do it at the expense of taking the time of the Senate, although I should much prefer not to do so. As Senators will recall, the conduct of Aaron Burr in 1807 led Jefferson to believe that he was going to establish an empire in connection with what later became the Louisiana Purchase and Mexico. The President was very bitter over the act and was most desirous to bring Aaron Burr to justice. As will be remembered, Aaron Burr was arrested and brought to Richmond for trial. Marshall was on the bench and presided at the trial. There was a technicality in that case because the indictment had alleged the treason to have taken place on a certain island in the Ohio River which was known as Blennerhassett Island. It was demonstrated that Aaron Burr was not at that island at that time, whereas the allegation in the indictment was that the act was committed there, and upon that technicality the Chief Justice would not admit testimony to show what Burr was doing away from the island. On that technicality Marshall ruled in favor of Burr, which greatly angered the President.

Mr. BORAH. Chief Justice Marshall's ruling was that there was no such thing as constructive treason under the Constitution.

Mr. FESS. That was precisely his ruling; he ruled that there was treason, but that Burr had to be construed to be present, because he was not where he was alleged to be. The case did not really turn on what Burr had done, but on the allegation that he was at Blennerhassett Island.

I do not know that it is worth while for me to read the statement of the Chief Justice on that point. I can give the substance of it. As I recall, the Chief Justice said that no one willingly would do a thing which would bring criticism to him; that no one would be willing to drink the cup if it could be passed from his lips; but where there was no choice left to him except to act in accordance with the law of the land or to win the favor of the public a man fit to be on the bench would not hesitate as to the course he should pursue.

Jefferson wrote to James Bowdoin, jr., in 1807:

The fact is that the Federalists make Burr's cause their own and exert their whole influence to shield him from punishment. It is unfortunate that Federalism is still predominant in our judiciary department, which is consequently in opposition to the legislative and executive branches and is able to baffle their measures often.

That statement called forth this utterance on the part of Chief Justice Marshall:

If Burr's crimes were ten times greater than the bitterest of his enemies allege, we hope he will only suffer as the law directs. If once a law is subservient to motives of policy, or, what is worse, to suit the views of party, we may bid a long farewell to all our boasted freedom. The judge does not make the laws; he expounds them and is bound to see that the trial be conducted according to law. Such, we believe, has been the conduct of the court on the present occasion and such we hope it will ever be. The judge who permits reasons of state or popular opinions to influence his judgment would be a fit member for a star-chamber court or a revolutionary tribunal, but is wholly unqualified for a judge in a court which has been established by the Constitution and laws of a free and independent nation.

I think that statement is just as sound to-day as it was when it was uttered.

The predicament in which this court stands in relation to the Nation at large is full of perplexities and embarrassments. It stands in the midst of jealousies and rivalries of conflicting parties, with the most momentous interests consigned to its care. Under such circumstances it never can have a motive to do more than its duty; and I trust it will always be found to possess firmness enough to do that. It is not for judges to listen to the voice of persuasive eloquence or popular appeal. We have nothing to do but to pronounce the law as we find it; and, having done this, our justification must be left to the impartial judgment of our country.

So spoke John Marshall after the most bitter criticism because of a certain ruling made by him.

Who that knows and respects eminent abilities, the unsullied integrity, the great legal knowledge, and the most amiable character of Chief Justice Marshall will not resent the unwarrantable insinuations that in the trial of Burr, he abused the benignity of general maxims; witheld from the jury testimony sufficient for his conviction, and that in consequence of this suppression of evidence, Burr was acquitted? Again both the law and the judge are assailed.

That was the estimate of Timothy Pickering in 1808 of the decision rendered by John Marshall, who refused to yield to clamor, but held to the limitations of the law.

Craig against Missouri was a case in which constitutional supremacy as against State sovereignty was involved. In that case Marshall said this:

These are considerations which address themselves to those departments which may with perfect propriety be influenced by them. This department can listen only to the mandates of law, and can tread only that path which is marked out by duty.

That is just as true to-day as it was when it was uttered in this case. In the decision of judicial questions the moment courts shall employ the latitudinal privilege of personal opinions, determined by emotions, motivated by passions and without respect to the limitations of law, anarchy is going to be the result. That is why I do not appreciate a certain kind of criticism, whether directed against the Supreme Court or against a particular judge of the court or against a man who happens to be an appointee of the President to the court. What we should require of any man who goes on the Supreme Court Bench is to know the law, to ascertain the facts, and within the law and upon the facts to render a decision that is impartial. Any other standard is unsafe.

In argument we have been admonished of the jealousy with which various States of the Union view the revising power intrusted by the Constitution and laws of the United States to this tribunal.

To observations of this character the answer uniformly given has been that the course of the judicial department is marked out by law.

We must tread the direct and narrow path prescribed for us. As this court has never grasped at ungranted jurisdiction, so it will never, we trust, shrink from the exercise of that which is conferred upon it.

So spake Marshall in the case of Fisher against Cockerill. And yet that rule laid down by the builder of American nationality, which secured to us the stability that comes from uniformity of decisions in accordance with law, is criticized because it is within the limits of the law and does not go beyond the law. The moment the Supreme Court goes beyond the limitations of law that moment the court will be a usurping body, because the only way it can avoid the usurpation of which there is fear is by holding to the law.

Mr. President, this is the country of the written Constitution. While we are young, we are the oldest country that has a written constitution. The Constitution is the letter of the American people in the form of instructions to the Congress of the United States and to the President of the United States and to the Supreme Court of the United States. The legislature can not go beyond that letter of instructions, and the President can not go beyond the letter of instructions. Should he do it, impeachment awaits him; and the Supreme Court, which is to determine what the law is, must stay within the law and the Constitution, and not use its own opinions as the limit of its latitude. Otherwise there is not any protection at all.

One of the most difficult and heatedly discussed cases that called for a very pronounced decision was Cohens against Virginia. After stating the case, Marshall said this:

If such be the Constitution, it is the duty of the court to bow with respectful submission to its provisions. If such be not the Constitution, it is equally the duty of this court to say so, and to perform that task which the American people have assigned to the judicial department.

The complaint against this man or that man is that he did not use latitude. It is complained that he held too closely to the instructions of the law upon which he was making his decision. That that will not be done is the very thing I am afraid of. That is why I am reading these rules of constitutional interpretation.

Where is the man who would to-day declaim against the keen mind, the clear construction, the discerning interpretation of John Marshall? Yet, Mr. President, when John Marshall died some very reputable newspapers expressed relief over his death, because, they said, "Now we shall be relieved from the domination of the court by the type of man that John Marshall was." That is true, and I can quote it to you. The man who established nationality in a series of decisions unequaled in the history of jurisprudence in all the world was criticized all along the line; and even when he died relief was expressed that no longer would the Supreme Court be presided over by that sort of a man.

Marshall, in the Antelope case, had this to say:

In examining claims of this momentous importance, claims in which the sacred rights of liberty and of property come in conflict with each other, which have drawn from the bar a degree of talent and eloquence worthy of the questions which have been discussed, this court must not yield to feelings which might seduce it from the path of duty but must obey the mandates of the law.

That is the procedure, the conduct, that comes in for criticism here. What is it that we hear about the Supreme Court that certain individuals do not like? This was spoken back in 1825. It is heard in almost identical language to-day as a subject of criticism.

In examining claims of this momentous importance, claims in which the sacred rights of liberty and of property come in conflict with each other—

That referred to the conflict between property rights and human rights, which we hear so much about in these days—

which have drawn from the bar a degree of talent and eloquence worthy of the questions which have been discussed—

The talent that was drawn was such as Webster and Clay and William Pinkney and John Sergeant and Reverdy Johnson, and that type of man—

this court—

Hear me, Senators!—

this court must not yield to feelings which might seduce it from the path of duty, but must obey the mandates of the law. It is not wonderful that public feeling should march somewhat in advance of strict law. Whatever might be the answer of a moralist—

And we hear a good many of them in these days—

Whatever might be the answer of a moralist to this question, a jurist—

Not a moralist—

a jurist must search for its legal solution in those principles of action which are sanctioned by the usages, the national acts, and the general assent of that portion of the world of which he considers himself a part, and to whose law the appeal is made.

There is not any statement that is more pertinent than that statement to this criticism against Judge Parker. That was in 1825.

Marshall further said, in another case:

The court can be insensible neither to the magnitude nor delicacy of this question.

But he added:

On the judges of this court is imposed the high and solemn duty of protecting from even legislative violation those contracts which the Constitution of our country has placed beyond legislative control; and, however irksome the task may be, this is a duty from which we dare not shrink.

I am not going to pursue this further. I have examined the numerous decisions of John Marshall, and have taken certain excerpts that touch this particular duty of constitutional construction. Marshall, as I stated before, lived to 1835. One of the men who did not agree with Marshall, but who was the lieutenant of Andrew Jackson—and who, by the way, succeeded Andrew Jackson in the Presidency—was Martin Van Buren. Whatever else may be said about Martin Van Buren, he was a man who, while rather bitter politically, yet was fair and broad-minded. He had this to say, speaking of the Supreme Court:

They possess talents of the highest order and spotless integrity, and * * * the Chief Justice is in all probability the ablest judge now sitting upon any judicial bench in the world.

That is from a source opposite in politics to the Chief Justice.

Wirt, who did not agree with Marshall in politics, said:

This power of analysis, the power of simplifying a complex subject and showing all its parts clearly and distinctly, is the forte of Chief Justice Marshall.

* * * * * * *

You will see the opinion by which Marshall stopped the trial for treason. The trial for misdemeanor will begin to-day. It will soon be stopped. The second prosecution of Burr is at an end.

So said a critic of Marshall.

A friend writing to Webster said:

What President has done as much for his country as John Marshall has in the station he has occupied? And who has secured for himself a more imperishable fame? So long as the judiciary shall remain unpolluted, and shall possess intelligence, the citadel will be defended against the machinations of the Executive or the sudden convulsions of the people.

The closest friend of John Marshall was Joseph Story. He was appointed to the bench away back in 1811. He remained on the bench until 1845—the year Jackson died, three years before the death of John Quincy Adams—during all that time constantly sitting on the bench delivering opinions, many of which I have here, that I may ask, some time later, to place in the RECORD. This is the man whose opinion of Marshall would be most appreciated:

Great, good, and excellent man! I perceive we must soon, very soon, part with him forever. * * * I shall never see his like again. His gentleness, his affectionateness, his glorious virtues, his unblemished life, leave him without a rival or a peer.

I am trying to get before the Senate the standards that we will require on the Supreme Court; but especially I am trying to refresh the minds of Senators that these men like Marshall and Story constantly had their critics, who were bitter—so bitter, indeed, that when Marshall died there were speeches that were not complimentary; and, Mr. President, when Roger B. Taney died in 1864 certain papers were unlimited in their sarcastic castigation; and when the time came to place his bust in the Supreme Chamber with the busts of the other Chief Justices it was denied and voted down, and the most bitter criticism was made that would startle the Senate, should I read the words of men like Charles Sumner, Ben Wade, and others; and yet later they recanted, when Congress changed, and the bust of Roger B. Taney went into the Supreme Court Chamber, where it now is.

I am mentioning these things to show that this attack on the Supreme Court is not new. It has always existed; and I want the people not to overlook that fact.

Mr. President, if John J. Parker were not a man who measures up to the qualifications required on the bench, I should not be here resisting these criticisms. If it were not for what I know to be true of the effort to undermine the judiciary of the country that is motivated by exactly the same motives that heretofore have assailed that body, I should not be here resisting the efforts to defeat this nominee through manufactured clamor, by working up the labor people and the colored people into thinking that they can defeat a man through fear of what they will do if we do not vote in accordance with their views.

I have only taken the time necessary to mention the rules of construction laid down by Marshall. I will pursue that later on with the rules laid down by Story and others whose judgment we to-day accept.

Mr. NORRIS obtained the floor.

Mr. McNARY rose.

Mr. NORRIS. Does the Senator from Oregon want to move a recess?

Mr. McNARY. I shall be very happy to yield to the convenience and pleasure of the Senator from Nebraska.

Mr. NORRIS. Of course, I can not finish what I have to say this evening, unless we run on quite late with the session. I would prefer, if it is agreeable to the Senator, that we take a recess now, and that I proceed in the morning.

The VICE PRESIDENT. The Senator from Nebraska will be recognized when the Senate meets to-morrow.

RECESS

Mr. McNARY. I move that the Senate take a recess in executive session until 12 o'clock to-morrow.

The motion was agreed to; and the Senate (at 4 o'clock and 45 minutes p. m.) took a recess until to-morrow, Friday, May 2, 1930, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate May 1 (legislative day of April 30), 1930

COLLECTOR OF CUSTOMS

Jeannette A. Hyde, of Salt Lake City, Utah, to be collector of customs for customs collection district No. 32, with headquarters at Honolulu, Hawaii. (Reappointment.)

UNITED STATES MARSHAL

John P. Hallanan, of West Virginia, to be United States marshal, southern district of West Virginia, to succeed Siegel Workman, whose term expired April 20, 1930.

HOUSE OF REPRESENTATIVES

THURSDAY, *May 1, 1930*

The House met at 11 o'clock a. m.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

O Thou who hast made the day, the sunlight, and all that is blossoming and fair upon the earth, hearken unto us, for Thou art our Father. Dwell in our thoughts and give proof that Thou art against temptation, trial, and every besetment of this mortal life. Bless and direct us through the hours before us, and let none of us fail. O God of the nations, bring into the light all that dwell in darkness. Spread abroad everywhere the spirit of humanity, gentleness, and patience, and may our own country always lead the way. As servants of the public weal, give us restraint in the unguarded moment. Keep us true, quiet, and undaunted in our mission. Be with all—lift the burden, still the sigh, and awake the song. Amen.

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

PHOTOGRAPHIC MOSAIC MAPS

Mr. TEMPLE. Mr. Speaker, I ask unanimous consent to proceed for two minutes to make an announcement.

The SPEAKER. The gentleman from Pennsylvania asks unanimous consent to address the House for two minutes. Is there objection?

There was no objection.

Mr. TEMPLE. Mr. Speaker and gentlemen of the House, in the cloakroom on both sides of the House the Members will find, one in each room, an air map of the District of Columbia and surrounding country, photographed from a height of 10,000 feet, making a map to the scale of about 6 inches to the mile. Members can identify their own houses on the map. It will not only be interesting but useful in any District legislation that may come before the House.

I ask unanimous consent that the Clerk may read a letter of Col. Glenn S. Smith, through whose interest in the matter, and by permission of the Speaker of the House the maps have been placed where they are.

The SPEAKER. Without objection, the Clerk will read the letter.

There was no objection.

The Clerk read the letter, as follows:

UNITED STATES DEPARTMENT OF THE INTERIOR,
GEOLOGICAL SURVEY,
Washington, April 30, 1930.

Memorandum for Doctor TEMPLE, House of Representatives.

The two photographic mosaic maps which I am delivering to you for hanging in the House cloakrooms cover an area of 120 square miles, including the city of Washington, the District of Columbia, and adjacent country. This area is 12 miles east and west and 10 miles north and south. It is composed of 830 separate photographs 7 by 9 inches, taken at an altitude of approximately 10,000 feet. This whole area was photographed by the Army Air Corps in approximately four hours of flying time. The scale of the map is approximately 6 inches to 1 mile.

The photographs were taken at the request of the National Capital Park and Planning Commission for the use of the United States Geological Survey in revising the topographic map made by the United States Geological Survey of Washington and vicinity. The photographs were used for adding to the existing map the new streets and houses which had come into existence since the topographic map was originally surveyed. The use of these photographs saved the expenses of ground surveys and secured data in 4 hours which would have taken one engineer 12 months or approximately 2,400 hours field work to secure.

GLENN S. SMITH,
Chief Engineer (Topographic).

THE FARM SITUATION

Mr. RAMSEYER. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD by printing an address which was delivered by Alexander Legge, chairman of the Federal Farm Board, at the annual meeting of the Chamber of Commerce of the United States in Washington, D. C., on April 20, 1930.

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

There was no objection.

The address is as follows:

In talking to you about the work of the Federal Farm Board it is perhaps unnecessary to go into details and statistics to show that there is an agricultural problem, since that has been well established by the many studies and years of public discussion with which members of the Chamber of Commerce of the United States are familiar.

Nevertheless, if you will indulge me for a few moments I am going to delve into the record of the past, particularly as it reflects what information was before you on the agricultural problem and your efforts to help find a solution.

Back in 1925 the National Industrial Conference Board made rather an extensive study of the situation, and I believe that those of you who have read this report, which was published in 1926, will agree that it confirms the statement that the Nation was confronted with a serious problem in agriculture. That report, as you may recall, reached the conclusion that "American agriculture appears to have fallen out of step with the general economic development in the country."

A number of reasons were cited. A few of these in which we are particularly interested on this occasion were that farmers lacked national organization to deal with the surplus problem; lacked "organization and system in the marketing processes" that would give them a better return through adjusting supply to demand in the domestic markets; and also that there was "lack of organization, standardization, and grading in marketing," resulting in excessive costs of distribution which could be minimized by "a more systematic contact between producer and consumer."

Fiscal, tariff, and immigration policies, industrial efficiency, industrial, financial, trade, and labor organizations, transportation and credit were cited as other influences affecting agriculture adversely. Most of these ills, it was emphasized, were not new and go back of the World War period, even into the previous century.

"While it [agriculture] has become inseparably involved in a network of interrelationships with a more and more highly organized system of industry, trade, finance, transportation, and governmental activities," the report says, "it [agriculture] has so far not developed effective means for adjusting itself to this new situation."

The Industrial Conference Board reached the conclusion that the situation confronting agriculture could not be met by a political palliative. "If agriculture is confronted with fundamentally adverse conditions, making for a general and persistent inequity and maladjustment," it said, "they not only constitute a serious menace to the progress and prosperity of American industry, commerce, and trade but are equally of great significance for our national welfare, for they deeply affect the