Congressional Record

SEVENTY-SECOND CONGRESS, FIRST SESSION

SENATE

THURSDAY, FEBRUARY 25, 1932

(Legislative day of Wednesday, February 24, 1932)

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

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

The VICE PRESIDENT. The clerk will call the roll.

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

Ashurst	Cutting	Jones	Robinson, Ind.
Austin	Dale	Kean	Schall
Bailey	Davis	Kendrick	Sheppard
Bankhead	Dickinson	Keyes	Shipstead
Barbour	Dill	King	Smith
Bingham	Fess	La Follette	Smoot
Black	Fletcher	Lewis	Steiwer
Blaine	Frazier	Logan	Stephens
Borah	George	Long	Thomas, Idaho
Bratton	Glass	McGill	Thomas, Okla.
Brookhart	Glenn	McNary	Townsend
Broussard	Goldsborough	Metcalf	Trammell
Bulkley	Gore	Morrison	Tydings
Bulow	Hale	Moses	Vandenberg
Byrnes	Harrison	Neely	Wagner
Capper	Hastings	Norbeck	Walcott
Caraway	Hatfield	Norris	Walsh, Mass.
Carey	Hawes	Nye	Walsh, Mont.
Connally	Hayden	Oddie	Watson
Coolidge	Hebert	Patterson	Wheeler
Copeland	Howell	Pittman	White
Costigan	Hull	Reed	
Couzens	Johnson	Robinson, Ark.	

Mr. JOHNSON. I announce the absence of my colleague the junior Senator from California [Mr. SHORTRIDGE] by reason of continued illness and ask that the announcement may stand for the day.

Mr. GEORGE. I desire to announce that my colleague the Senator from Georgia [Mr. HARRIS] is detained from the Senate by illness.

Mr. GLASS. I wish to announce that my colleague the senior Senator from Virginia [Mr. SWANSON] is absent in attendance upon the disarmament conference at Geneva, Switzerland.

The VICE PRESIDENT. Ninety Senators have answered to their names. A quorum is present.

MESSAGES FROM THE PRESIDENT

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

OTTER CLIFFS RADIO STATION, ACADIA NATIONAL PARK, ME. (S. DOC. NO. 62)

The VICE PRESIDENT laid before the Senate a communication from the President of the United States transmitting an amendment of the estimate of appropriation for "roads and trails, national parks," National Park Service, Department of the Interior, contained in the Budget for 1933, to provide for the removal and reconstruction of the Otter Cliffs Radio Station within Acadia National Park, Me., which, with the accompanying papers, was referred to the Committee on Appropriations and ordered to be printed.

TRUSTEE TO NATIONAL TRAINING SCHOOL FOR BOYS

The VICE PRESIDENT. The Senator from Delaware [Mr. HASTINGS] has tendered his resignation as a consulting trustee to the National Training School for Boys. The Chair, in accordance with law, appoints the Senator from New Jersey [Mr. BARBOUR] to fill the vacancy.

EMERGENCY CREDIT EXPANSION—CONFERENCE REPORT (S. DOC. NO. 60)

Mr. GLASS submitted the following report, which was ordered to lie on the table and to be printed:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H. R. 9203) to improve the facilities of the Federal reserve system for the service of commerce, industry, and agriculture, to provide means for meeting the needs of member banks in exceptional circumstances, 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 House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert:

"That the Federal reserve act, as amended, is further amended by inserting, between sections 10 and 11 thereof, a new section reading as follows:

"'SEC. 10 (a) Upon receiving the consent of not less than five members of the Federal Reserve Board, any Federal reserve bank may make advances, in such amount as the board of directors of such Federal reserve bank may determine, to groups of five or more member banks within its district, a majority of them independently owned and controlled, upon their time or demand promissory notes, provided the bank or banks which receive the proceeds of such advances as herein provided have no adequate amounts of eligible and acceptable assets available to enable such bank or banks to obtain sufficient credit accommodations from the Federal reserve bank through rediscounts or advances other than as provided in section 10 (b). The liability of the individual banks in each group must be limited to such proportion of the total amount advanced to such group as the deposit liability of the respective banks bears to the aggregate deposit liability of all banks in such group, but such advances may be made to a lesser number of such member banks if the aggregate amount of their deposit liability constitutes at least 10 per cent of the entire deposit liability of the member banks within such district. Such banks shall be authorized to distribute the proceeds of such loans to such of their number and in such amount as they may agree upon, but before so doing they shall require such recipient banks to deposit with a suitable trustee, representing the entire group, their individual notes made in favor of the group protected by such collateral security as may be agreed upon. Any Federal reserve bank making such advance shall charge interest or discount thereon at a rate not less than 1 per cent above its discount rate in effect at the time of making such advance. No such note upon which advances are made by a Federal reserve bank under this section shall be eligible under section 16 of this act as collateral security for Federal reserve notes.

"'No obligations of any foreign government, individual, partnership, association, or corporation organized under the laws thereof shall be eligible as collateral security for advances under this section.

"'Member banks are authorized to obligate themselves in accordance with the provisions of this section.'

"SEC. 2. The Federal reserve act, as amended, is further amended by adding, immediately after such new section 10 (a), an additional new section reading as follows:

"'SEC. 10. (b) Until March 3, 1933, and in exceptional and exigent circumstances, and when any member bank, having a capital of not exceeding $5,000,000, has no further eligible and acceptable assets available to enable it to obtain adequate credit accommodations through rediscounting at the Federal reserve bank or any other method provided by this act other than that provided by section 10 (a), any Federal reserve bank, subject in each case to affirmative action by not less than five members of the Federal Reserve Board, may make advances to such member bank on its time or demand promissory notes secured to the satisfaction of such Federal reserve bank: *Provided*, That (1) each such note shall bear interest at a rate not less than 1 per cent per annum higher than the highest discount rate in effect at such Federal reserve bank on the date of such note, (2) the Federal Reserve Board may by regulation limit and define the classes of assets which may be accepted as security for advances made under authority of this section, and (3) no note accepted for any such advance shall be eligible as collateral security for Federal reserve notes.

"'No obligations of any foreign government, individual partnership, association, or corporation organized under the laws thereof shall be eligible as collateral security for advances under this section.'

"SEC. 3. The second paragraph of section 16 of the Federal reserve act, as amended, is amended to read as follows:

"'Any Federal reserve bank may make application to the local Federal reserve agent for such amount of the Federal reserve notes hereinbefore provided for as it may require. Such application shall be accompanied with a tender to the local Federal reserve agent of collateral in amount equal to the sum of the Federal reserve notes thus applied for and issued pursuant to such application. The collateral security thus offered shall be notes, drafts, bills of exchange, or acceptances acquired under the provisions of section 13 of this act, or bills of exchange indorsed by a member bank of any Federal reserve district and purchased under the provisions of section 14 of this act, or bankers' acceptances purchased under the provisions of said section 14, or gold or gold certificates: *Provided, however*, That until March 3, 1933, should the Federal Reserve Board deem it in the public interest, it may, upon the affirmative vote of not less than a majority of its members, authorize the Federal reserve banks to offer, and the Federal reserve agents to accept, as such collateral security, direct obligations of the United States. On March 3, 1933, or sooner, should the Federal Reserve Board so decide, such authorization shall terminate and such obligations of the United States be retired as security for Federal reserve notes. In no event shall such collateral security be less than the amount of Federal reserve notes applied for. The Federal reserve agent shall each day notify the Federal Reserve Board of all issues and withdrawals of Federal reserve notes to and by the Federal reserve bank to which he is accredited. The said Federal Reserve Board may at any time call upon a Federal reserve bank for additional security to protect the Federal reserve notes issued to it.'"

And the Senate agree to the same.

F. C. WALCOTT,
JOHN G. TOWNSEND,
CARTER GLASS,
Managers on the part of the Senate.

H. B. STEAGALL,
C. H. BRAND,
W. F. STEVENSON,
L. T. MCFADDEN,
JAMES G. STRONG,
Managers on the part of the House.

PETITIONS AND MEMORIALS

The VICE PRESIDENT laid before the Senate resolutions adopted by the Woman's Christian Temperance Unions of Norway, N. Y., and Katy, Tex., protesting against the proposed resubmission of the eighteenth amendment of the Constitution to be ratified by State conventions or legislatures and favoring the making of adequate appropriations for law enforcement and education in law observance, which were referred to the Committee on the Judiciary.

He also laid before the Senate resolutions adopted by the Ohio Vegetable Growers Association, Columbus, Ohio, favoring Federal support for all extension activities of interest to the producers of vegetable crops and commending the Federal-State inspection service with regard to potatoes and vegetables in Ohio, etc., which were referred to the Committee on Agriculture and Forestry.

He also laid before the Senate a letter in the nature of a memorial from Paul Howland, Esq., chairman committee on jurisprudence and law reform of the American Bar Association, of Cleveland, Ohio, in relation to Senate bill 935, the so-called anti-injunction bill, and expressing opposition to legislation radically limiting the jurisdiction of the Federal courts or decreasing the power thereof, which was ordered to lie on the table.

He also laid before the Senate resolutions adopted by the West Side Improvement Association, of South Pasadena, Calif., favoring the passage of legislation reducing expenditures for Government transportation, entertainment, contingent expenses, and salaries falling within the higher brackets; also the elimination of duplicating bureaus, commissions, and departments of the Government; and also the passage of legislation for governmental aid in providing work at a living wage for the able-bodied unemployed, which were referred to the Committee on Appropriations.

Mr. KENDRICK presented numerous memorials and papers in the nature of memorials from sundry citizens and religious and temperance organizations in the State of Wyoming, remonstrating against the proposed resubmission of the eighteenth amendment of the Constitution to be ratified by State conventions or legislatures and favoring the making of adequate appropriations for law enforcement and education in law observance, which were referred to the Committee on the Judiciary.

Mr. BLAINE presented resolutions adopted by groups of the Polish National Alliance of Mosinee, Wausaukee, and Milwaukee (Groups Nos. 253 and 1637), all in the State of Wisconsin, favoring the passage of legislation requesting the President to proclaim October 11 in each year as General Pulaski's memorial day, which were referred to the Committee on the Judiciary.

Mr. KEAN presented numerous telegrams in the nature of memorials from sundry citizens in the State of New Jersey, remonstrating against the proposed imposition of a Federal tax on gasoline, which were referred to the Committee on Finance.

Mr. BULKLEY presented numerous memorials of sundry citizens in the State of Ohio, remonstrating against the passage of legislation providing for the closing of barber shops on Sunday in the District of Columbia, or other restrictive religious measures, which were referred to the Committee on the District of Columbia.

Mr. JONES presented a petition of sundry citizens of Seattle, Wash., praying for the imposition of a tariff duty on imported oil, which was referred to the Committee on Finance.

He also presented a petition of sundry citizens of White Salmon, Wash., praying for the reduction and limitation of armaments, the prohibition of chemical warfare, and the organization of an international delegation on enforcement, which was referred to the Committee on Foreign Relations.

He also presented a petition of sundry citizens of Bridgeport, Wash., praying for the maintenance of the prohibition law and its enforcement, which was referred to the Committee on the Judiciary.

He also presented resolutions adopted by the Woman's Christian Temperance Unions of Amboy, Bellingham, Centralia, Deming, Longview, Monitor, Mount Vernon, Okanogan, Port Orchard, West Seattle; the Church of the Nazarene of Kennewick; the English Congregational Church of Odessa; the Morningside Woman's Christian Temperance Union, the Columbia Woman's Christian Temperance Union, and the Ladies' Aid Society of the First Methodist Episcopal Church, all of Seattle, all in the State of Washington, pro-

testing against the proposed resubmission of the eighteenth amendment of the Constitution to be ratified by State conventions or legislatures, and favoring the making of adequate appropriations for law enforcement and education in law observance, which were referred to the Committee on the Judiciary.

Mr. AUSTIN presented a memorial of sundry citizens of Jamaica, Vt., remonstrating against the passage of legislation providing for the closing of barber shops on Sunday in the District of Columbia, or other restrictive religious measures, which was referred to the Committee on the District of Columbia.

He also presented a petition of sundry citizens of Wallingford, Vt., praying for the passage of the so-called Beck-Linthicum resolution, being House Joint Resolution 209, proposing an amendment to the eighteenth amendment of the Constitution, which was referred to the Committee on the Judiciary.

He also presented petitions of sundry citizens of Fair Haven, Greensboro, and Lamoille Counties, in the State of Vermont, praying for the maintenance of the prohibition law and its enforcement, which were referred to the Committee on the Judiciary.

Mr. BARBOUR presented a resolution adopted by the Board of Commissioners of Trenton, N. J., protesting against the passage of House bill 77, authorizing the construction, maintenance, and operation of a bridge across the Delaware River at or near Wilmington, Del., which was referred to the Committee on Commerce.

He also presented resolutions adopted by Grange No. 111, of Mickleton, N. J., favoring the passage of legislation to investigate and prevent the activities of communists in the country, which were referred to the Committee on Immigration.

He also presented resolutions adopted by Waiters and Cooks' Local Union No. 10, of Union City, N. J., favoring the modification of the Volstead Act so as to legalize the manufacture, sale, and transportation of light wines and beer, which were referred to the Committee on the Judiciary.

He also presented resolutions adopted by North Bergen (N. J.) Post, No. 23, the American Legion, favoring the passage of legislation providing for the maintenance of adequate military and naval defenses, which was referred to the Committee on Appropriations.

He also presented resolutions adopted by North Bergen (N. J.) Post, No. 23, the American Legion, favoring the immediate payment in cash of adjusted-compensation certificates (bonus), which were referred to the Committee on Finance.

He also presented a memorial of sundry citizens of Bergenfield, N. J., remonstrating against the passage of legislation providing for the closing of barber shops on Sunday in the District of Columbia, or other restrictive religious measures, which was referred to the Committee on the District of Columbia.

He also presented a petition of sundry citizens of Penns Grove and vicinity, in the State of New Jersey, praying for the maintenance of the prohibition law and its enforcement, and protesting against any measures looking toward its modification or repeal, which was referred to the Committee on the Judiciary.

Mr. COPELAND presented a resolution adopted by the Niagara County Pomona Grange, of Lockport, N. Y., remonstrating against the making of an appropriation for the irrigation of the Columbia River basin project, which was referred to the Committee on Irrigation and Reclamation.

He also presented a petition of the District of Columbia Congress of Parents and Teachers, of Washington, D. C., praying the passage of Senate bill 2328, providing for the election of the Board of Education of the District of Columbia by the people, which was referred to the Committee on the District of Columbia.

He also presented a memorial of citizens of Blossvale, N. Y., remonstrating against the restriction of religious liberty and the passage of legislation providing for the closing of barber shops on Sunday in the District of Columbia, which was referred to the Committee on the District of Columbia.

He also presented a petition of citizens of New York City and vicinity praying for the enactment of legislation providing for the cash payment of World War veterans' adjusted-compensation certificates, which was referred to the Committee on Finance.

He also presented a resolution adopted by members of St. James Methodist Episcopal Church, of New York City, favoring pacific methods of settling international disputes, which was referred to the Committee on Foreign Relations.

He also presented a resolution adopted by Woodhaven Post, No. 118 (Inc.), American Legion, of Woodhaven, N. Y., remonstrating against reductions in salaries of Government employees, which was referred to the Committee on Civil Service.

He also presented a petition of citizens of New York State praying an investigation into conditions in the coal fields of Harlan County, Ky., and a study of the coal industry, which was referred to the Committee on Education and Labor.

He also presented a resolution adopted by the Chamber of Commerce of The Moriches, of Center Moriches, Long Island, N. Y., favoring the passage of the so-called home loan bank bill, which was referred to the Committee on Banking and Currency.

He also presented a resolution adopted by the Dolgeville (N. Y.) Exchange Club and a petition of citizens of the State of New York praying a reduction in Government expenditures, which was referred to the Committee on Appropriations.

He also presented resolutions adopted by the Westchester County Committee of the American Legion, Department of New York, and the Democratic Veterans' Association of the Bronx (Inc.), remonstrating against reductions in appropriations for the national defense, which were referred to the Committee on Appropriations.

He also presented a resolution adopted by Buffalo Nest, No. 1, Fraternal Order of Orioles, of Buffalo, N. Y., favoring the passage of legislation providing for 2.75 per cent beer and also light wine, which was referred to the Committee on Manufactures.

He also presented resolutions adopted by groups of the Polish National Alliance of Syracuse, Lackawanna, Utica, Buffalo, and New York City, in the State of New York, praying for the passage of legislation requesting the President to proclaim October 11 in each year as General Pulaski's memorial day, which was referred to the Committee on the Judiciary.

He also presented memorials and papers in the nature of memorials from sundry citizens and religious and temperance organizations in the State of New York, remonstrating against the proposed resubmission of the eighteenth amendment of the Constitution to be ratified by State conventions or legislatures, and favoring the making of adequate appropriations for law enforcement and education in law observance, which were referred to the Committee on the Judiciary.

PROPOSED FEDERAL TAX ON GASOLINE

Mr. ROBINSON of Arkansas. Mr. President, I submit a number of telegrams, all from the State of Arkansas, in the nature of memorials or remonstrances variously signed by W. G. Nutt, H. H. Bumpers, Birnie Harper, George Ellefson, all of Fort Smith; G. A. Chambers, of Eldorado; O. C. Day and B. P. Patten, both of Smackover; G. E. Jernigan, of Dermott; Homer H. Cole, of Hoxie; E. P. McBryde, R. D. Judd, E. C. Love, D. C. Cowling, J. H. Kirkpatrick, and F. S. McNeil, all of Rogers; John Rutherford, Rex Oil Co., Benton Miller Oil Co., by B. W. Benton, and the Pine Bluff Chamber of Commerce, all of Pine Bluff; Floyd Sherrod, W. S. Kotch, chairman, and so forth; Clifton W. Gray, W. T. Briggs, president Arkansas Motor Club, and the Little Rock Rubber Merchants' Association, by J. F. Finley, all of Little Rock; T. E. Spruell, E. M. Coleman, E. A. Campbell, and J. M. Vaughan, all of Russellville.

All these messages protest against the imposition of a Federal tax on gasoline. I ask that they may be referred to the Committee on Finance.

The VICE PRESIDENT. The telegrams will be so referred.

THE REMONETIZATION OF SILVER

Mr. WHEELER presented a telegram from the Bimetallic Association, Denver, Colo., on the silver question, which was referred to the Committee on Finance and ordered to be printed in the RECORD, as follows:

DENVER, COLO., *February 16, 1932.*

Hon. BURTON K. WHEELER,
United States Senate, Washington, D. C.:

Silver conference to-day, after two days of session, adopted with only 3 dissenting votes series of resolutions advocating all the essentials of your bill. The conference stood unequivocally for free and unlimited coinage at the present ratio without any compromise. Suggestions for further delays in behalf of international conference rejected by conference. Congratulations on your good work.

BIMETALLIC ASSOCIATION.

Mr. WHEELER also presented a petition of sundry citizens of Morganfield, Union County, Ky., praying for the passage of legislation known as the Wheeler silver bill, providing for the remonetization of silver, which was referred to the Committee on Finance.

PROPOSED MODIFICATION OF ANTITRUST LAW

Mr. WALSH of Massachusetts. Mr. President, may I invite the attention of the chairman of the Judiciary Committee [Mr. NORRIS] and the chairman of the Committee on Interstate Commerce [Mr. COUZENS] to the fact that pending before each committee are bills seeking to modify the antitrust law? Some weeks ago I introduced a bill for this purpose, which was referred to the Interstate Commerce Committee. I think the Senator from North Dakota [Mr. NYE] introduced a bill of like tenor, which was referred to the Committee on the Judiciary. I would like to have the chairmen of the two committees confer and determine to which committee all such bills should be referred. Certainly, there should not be two bills which relate to such an important subject and to the same subject matter, pending at the same time before two committees and two committees holding hearings upon the same subject.

Mr. BLAINE. Mr. President, in connection with the matter to which the Senator from Massachusetts has referred I wish to suggest that there are three bills which have been introduced by the Senator from North Dakota [Mr. NYE], all of which have been referred to the Committee on the Judiciary and all of which I believe belong to that committee; at least that committee has jurisdiction of the subject matter.

Mr. WALSH of Massachusetts. May I inquire of the Senator from Wisconsin to which committee the original draft of the several acts were referred—the Federal Trade Commission act, for instance?

Mr. BLAINE. I was not a Member of the Senate at that time.

Mr. WALSH of Massachusetts. The bills to which I have referred seek to modify materially the original act. It seems to me they should be considered by the committee which prepared and drafted and presented to the Senate the original antitrust act and the amendments thereto.

Mr. BLAINE. I suggest that at least one of the bills introduced by the Senator from North Dakota relates specifically to the antitrust law, and I think the bill which became the original antitrust law was reported out by the Committee on the Judiciary. I would assume that it has jurisdiction of the subject.

Mr. WALSH of Massachusetts. I am only concerned with getting all these bills before one committee.

REPORTS OF COMMITTEES

Mr. WALSH of Massachusetts, from the Committee on Finance, to which were referred the following bills, submitted adverse reports thereon:

S. 1603. An act to amend section 19 of the World War veterans' act, 1924, as amended (Rept. No. 317);

S. 2185. An act to amend section 19 of the World War veterans' act, 1924, as amended (Rept. No. 334);

S. 2324. An act to extend the time for allowing suits on insurance contracts under section 19 of the World War veterans' act, 1924, as amended (Rept. No. 335);

S. 2524. An act for the relief of Ike F. Kearney (Rept. No. 318); and

S. 2566. An act for the relief of Newdigate Moreland Owensby (Rept. No. 319).

Mr. WALSH of Massachusetts also, from the Committee on Finance, to which was referred the bill (S. 2955) to amend the World War veterans' act, 1924, as amended, reported it without amendment and submitted a report (No. 333) thereon.

Mr. KENDRICK, from the Committee on Indian Affairs, to which was referred the bill (S. 3569) to amend the act of May 27, 1930, authorizing an appropriation for the reconstruction and improvement of a road on the Shoshone Indian Reservation, Wyo., reported it without amendment and submitted a report (No. 320) thereon.

Mr. FRAZIER, from the Committee on Indian Affairs, to which was referred the bill (S. 3322) to transfer certain jurisdiction from the War Department in the management of Indian country, reported it with an amendment and submitted a report (No. 326) thereon.

He also, from the same committee, to which was referred the bill (S. 3323) to provide funds for cooperation with the school district at Nespelem, Wash., in the construction of a public-school building to be available to Indian children of the Colville Indian Reservation, reported it without amendment and submitted a report (No. 327) thereon.

Mr. THOMAS of Oklahoma, from the Committee on Indian Affairs, to which was referred the bill (S. 2405) to confer jurisdiction on the Court of Claims to hear and determine certain claims of the Eastern or Emmigrant and the Western or Old Settler Cherokee Indians against the United States, and for other purposes, reported it without amendment and submitted a report (No. 330) thereon.

Mr. LOGAN, from the Committee on Claims, to which was referred the bill (S. 1274) for the relief of the Standard Dredging Co., reported it with an amendment and submitted a report (No. 321) thereon.

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

S. 84. An act for the relief of Abraham Green (Rept. No. 322); and

S. 811. An act for the relief of Sophia A. Beers (Rept. No. 323).

Mr. BLACK, from the Committee on Claims, to which were referred the following bills, reported them each without amendment and submitted reports thereon;

S. 221. An act authorizing adjustment of the claim of the Wilmot Castle Co. (Rept. No. 324); and

S. 252. An act authorizing adjustment of the claim of Johnson and Higgins (Rept. No. 325).

Mr. HOWELL, from the Committee on Claims, to which was referred the bill (S. 83) for the relief of Margaret Crotty, reported it with an amendment and submitted a report (No. 328) thereon.

He also, from the same committee, to which was referred the bill (S. 3771) for the relief of St. Paul's Episcopal Church, Selma, Ala., reported it without amendment and submitted a report (No. 329) thereon.

Mr. ROBINSON of Indiana, from the Committee on Pensions, to which was referred the bill (S. 1230) granting a pension to Helen H. Taft, reported it without amendment and submitted a report (No. 331) thereon.

Mr. BRATTON, from the Committee on the Judiciary, to which was referred the bill (S. 3011) to authorize the Attorney General to permit prisoners to attend the funeral of a deceased and bedside of a dying relative, and for other

purposes, reported it without amendment and submitted a report (No. 332) thereon.

Mr. BINGHAM, from the Committee on Commerce, to which was referred the bill (S. 418) to extend the admiralty laws of the United States of America to the Virgin Islands, reported it with an amendment and submitted a report (No. 336) thereon.

EXECUTIVE REPORTS OF COMMITTEES

As in executive session,

Mr. ODDIE, from the Committee on Post Offices and Post Roads, reported favorably sundry nominations of postmasters.

Mr. SMOOT, from the Committee on Finance, reported favorably the nomination of James H. Douglas, jr., of Chicago, Ill., to be Assistant Secretary of the Treasury, to fill an existing vacancy.

The PRESIDENT pro tempore. The reports will be placed on the Executive Calendar.

BILLS AND JOINT RESOLUTION INTRODUCED

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

By Mr. BARBOUR:

A bill (S. 3810) granting an increase of pension to Delora G. Jenne (with accompanying papers); to the Committee on Pensions.

By Mr. BULKLEY:

A bill (S. 3811) granting an increase of pension to Louis N. White (with accompanying papers); to the Committee on Pensions.

By Mr. DICKINSON:

A bill (S. 3812) for the relief of Lieut. B. G. Marchi; to the Committee on Claims.

A bill (S. 3813) granting a pension to Mary S. Tuffree; to the Committee on Pensions.

A bill (S. 3814) to authorize Frank W. Mahin, retired American Foreign Service officer, to accept from Her Majesty the Queen of the Netherlands the brevet and insignia of the Royal Netherland Order of Orange Nassau; to the Committee on Foreign Relations.

By Mr. HATFIELD:

A bill (S. 3815) to provide for exclusion and expulsion of alien communists; to the Committee on Immigration.

By Mr. WHEELER:

A bill (S. 3816) for the relief of Seth N. Chesley; to the Committee on Claims.

A bill (S. 3817) to provide funds for cooperation with the school board at Wolf Point, Mont., in the extension of the public-school building to be available to Indian children of the Fort Peck Indian Reservation; to the Committee on Indian Affairs.

By Mr. COPELAND:

A bill (S. 3818) to amend an act entitled "An act to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment," approved June 2, 1920, as amended; to the Committee on Education and Labor.

A bill (S. 3819) granting permits for the importation or manufacture for nonbeverage purposes of spirituous liquors of particular kind or quality where the supply in the United States is insufficient to meet the current need therefor; to the Committee on Finance.

By Mr. NEELY:

A bill (S. 3820) for the relief of Elva Gertrude Jones; to the Committee on Finance.

A bill (S. 3821) granting a pension to Fred L. Dreehouse; to the Committee on Pensions.

By Mr. STEIWER:

A bill (S. 3822) for the relief of Fred Herrick; to the Committee on Agriculture and Forestry.

By Mr. BINGHAM:

A bill (S. 3823) for the relief of A. J. Hanlon; to the Committee on Claims.

By Mr. WATSON:

A bill (S. 3824) granting a pension to Catharine Newhall (with accompanying papers); and

A bill (S. 3825) granting a pension to William Reed (with accompanying papers); to the Committee on Pensions.

By Mr. JONES:

A joint resolution (S. J. Res. 112) extending section 2 of the Reconstruction Finance Corporation act approved January 22, 1932, to include summer fallowing; to the Committee on Agriculture and Forestry.

COSTS OF PRODUCTION OF CASEIN

Mr. JOHNSON. Mr. President, my colleague the junior Senator from California [Mr. SHORTRIDGE] is still ill. He has pending a resolution, which is on the table, for the rescinding of a former resolution which he presented and which was agreed to, relating to ascertaining the differences in costs of production of casein. I can not conceive there is any objection to it. I ask unanimous consent that his resolution of rescission may be considered and agreed to.

There being no objection, the resolution (S. Res. 162), submitted by Mr. MCNARY for Mr. SHORTRIDGE on the 5th instant, was read, considered, and agreed to, as follows:

Resolved, That Senate Resolution 390, Seventy-first Congress, third session, agreed to January 21, 1931, directing the United States Tariff Commission, under the authority conferred by section 336 of the tariff act of 1930, and for the purposes of that section, to investigate the costs of production of casein and of any like or similar foreign articles, is hereby rescinded.

LELA C. BROWN

Mr. HATFIELD submitted the following resolution (S. Res. 171), which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay from the appropriation for miscellaneous items, contingent fund of the Senate, fiscal year 1931, to Lela C. Brown, widow of William Brown, late a laborer of the Senate under supervision of the Sergeant at Arms, a sum equal to six months' compensation at the rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.

LITERARY DIGEST PROHIBITION REFERENDUM

Mr. BINGHAM. Mr. President, I ask unanimous consent to have printed in the RECORD an article from the Literary Digest giving the result to date of the very interesting prohibition referendum which is being conducted by that publication.

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

[From the Literary Digest, New York, February 27, 1932]

SEVENTEEN STATES LOCK HORNS IN THE DRY-WET POLL

Almost half a million more returned ballots in the Literary Digest's prohibition referendum are here accounted for.

The reader is face to face with a partial tabulation of 17 States, 9 of which did not appear in last week's initial tabulation, with 323,550 votes.

This second report of the immense poll has been awaited with the utmost eagerness since our presentation of the first one in the Digest of February 20.

The first report, with its startling figures, had created suspense. Quoted by newspapers all over the country, discussed by voters of all parties and all shades of belief, it had given rise to anxious questions.

Would the drys rally and speedily overcome that casual lead scored by their lucky opponents?

Or would the wets consolidate their gains and continue to forge ahead?

These speculations, aroused by the results of that "opening skirmish" of "the 20,000,000-ballot war," helped to rivet the public expectation on this No. 2 report.

But again we must warn our readers that the time is not yet ripe for accurate conclusions to be drawn from the poll figures.

Wait till unterrified Kansas horns into the tally with her camel-corps legions.

Wait for the 30 other States and the District of Columbia.

It's anybody's game yet.

Nevertheless, this second report, with its sample votes from 17 States, will be studied intently by well-informed and public-minded men and women who follow the unfoldment of the poll as a slice of history in the making.

Second report of the Literary Digest prohibition poll

State	Favor continuance of eighteenth (prohibition) amendment	Favor repeal of eighteenth (prohibition) amendment	Total
Connecticut	1,528	8,579	10,107
Georgia	2,969	6,218	9,187
Illinois	3,744	14,683	18,427
Indiana	7,221	13,162	20,383
Maine	689	1,446	2,135
Maryland	4,450	17,891	22,341
Michigan	754	2,920	3,674
New Hampshire	855	1,808	2,663
New Jersey	14,616	86,603	101,219
New York	38,144	255,662	293,806
North Carolina	6,480	8,870	15,350
Ohio	17,584	45,055	62,639
Pennsylvania	43,831	147,139	190,970
Rhode Island	340	1,733	2,073
Vermont	630	1,707	2,337
Virginia	4,493	10,196	14,689
West Virginia	1,198	2,134	3,332
Total	149,526	625,806	775,332

To such observers as these, one gathers from their frank comments, this vast prohibition referendum promises to be of incomparable value as a truthful report of the American Nation's mature state of mind toward prohibition in these early months of the fateful year 1932.

The second report is not quite as wet as the first one. We advised the drys last week not to be downcast, and already our advice is justified by the event.

To be sure, the wets are still away in the lead, with their new total of 625,806 ballots for repeal of the prohibition amendment as against 149,526 for its continuance. But if you figure out the percentages and compare them with those of last week, you'll find that the faithful drys have forged ahead from 15.85 per cent to something like 19.28 per cent.

It is not surprising to find New York just a shade less wet and North Carolina just a shade more dry.

Of the States not recorded in last week's issue, the biggest is Pennsylvania, which bounces into the line-up with 43,831 votes for continuance of the eighteenth amendment and 147,139 for its repeal.

Maine, the original prohibition State, goes wet in our poll, so far, to the tune of some 67.73 per cent.

Still the blizzard of ballots drops its flakes from Atlantic to Pacific, while the voted ballots—each one the expression of some man's or woman's private judgment on an all-important public question—are coming back by wagonloads.

It seems to the Springfield (Mass.) Union, editorially that—

"The effort of the leaders of both parties to keep the prohibition question out of this year's campaign through the advocacy of some kind of a general referendum in the future may be less successful because the Literary Digest is now engaged in another of its referenda which, in times past, have been so indicative of actual results as to be disturbing to those who were dissatisfied with them.

"The Digest's methods of securing a cross section of public sentiment both on the prohibition question and on election prospects have been so illuminating as to the former, and as to the latter so prophetic, that public interest in its present poll on the prohibition question will naturally be keen.

"A further reason for public interest is in the fact that, instead of a triple questionnaire of enforcement, modification, or repeal as heretofore, the Digest will present the single alternative of retention or repeal of the eighteenth amendment. In this respect it departs from the usual questionnaires in such referenda.

"Naturally, it will be a more severe test of public sentiment from a wet standpoint.

"Modificationists who oppose outright repeal will have no place to go except to join the prohibitionists, and those who do not favor retaining the amendment in its present form will need to join the repealers.

"Presumably it is the belief of the Digest editors that public sentiment has so far crystallized that in general modificationists will be prepared to go to one camp or the other."

After giving a brief historical sketch of previous Digest prohibition polls from 1922 on, the Union concludes that the present poll should indicate "what might result from a general referendum, such as both parties seem to be inclined to favor, as a means of keeping the troublesome issue out of the current campaign."

And, it may be added, what an excellent means that "general referendum" would be to confirm the accuracy of the Digest's prohibition poll. Our presidential polls have always been corroborated on election day, sometimes up to more than 99 per cent accuracy, but hitherto there has been no chance for an absolute check up of our prohibition polls—although, of course, enlightened persons follow the sensible course of assuming that Digest prohibition polls are just as exact in their results as Digest presidential polls.

Which, of course, they are.

But it seems that many good people need to have all this proved to them over and over again. Results are not enough for them. They crave blue prints. And so they write us letters by the thousand demanding particulars.

Some of these correspondents are obviously well meaning and without guile. The letters of others show signs of being regimented on one side or the other for a campaign of obstruction and detraction such as we cheerfully encounter in the course of every poll—sometimes from both sides at once.

It is easy to recognize, too, the emotional fringe attached to every controversial issue. This is true not only of many letters but also of some furtive printed attacks of the same general purport, which we may attend to later.

To whom do we send our 20,000,000 or more ballots?

We'll tell the great secret.

To Americans of both sexes and all occupations in every city, town, village, and rural section in the United States.

To Republicans and Democrats, prohibitionists and antiprohibitionists, manufacturers, merchants, mechanics, business women, bankers, farmers, housewives, men and women doctors, preachers, and teachers.

To railroad men, truck drivers, and all others, men and women of all ranks, occupations, and beliefs. To the man who brings the milk, and the woman who comes for the wash. To the man of the crossroads filling station, and the woman of the Main Street beauty parlor. Our elaborate machinery of distribution works automatically and makes no distinctions.

The result is, as so many observers have remarked, a veritable slice of American life. And a very big slice, too. It has been estimated that, roughly speaking, a Digest ballot finds its way to two out of every three American families.

And every State receives a quota proportioned pretty accurately to its voting strength.

For further information we point to the record of prophetic accuracy scored by our various presidential polls. Historic examples of this have been cited more than once recently. We refrain from repeating just now the famous records of the Digest polls in 1924 and 1928, for instance.

Extraordinary achievements, as all the world of intelligence has acknowledged. Behind those achievements is a history of hard work and patient building. By degrees, during 40 years, an elaborate machinery has been built up, a system of distribution and of mailing lists which are kept continually up to date by a staff of trained workers.

In view of all of which the Digest elects to rest on its laurels and to refer the overinquisitive to those enlightened minds which frankly and freely take the authenticity of a Digest poll for granted.

In this connection it is a pleasure to quote from a religious publication, the liberal Zion's Herald (Methodist), of Boston. In its issue of February 10 it remarks:

"Once more the Literary Digest, by means of a nation-wide poll, undertakes to answer the baffling question, 'Is present opinion in the United States for or against prohibition?' Only two questions are to be answered on the present ballot, 'Are you for prohibition?' or 'Are you against prohibition?'

"Twenty million of these ballots are being sent out to every section of the country. The poll is the third that the Digest has conducted on this same subject. Only two years ago a ballot asking these two questions and an additional one, 'Are you for modification?' showed a distinctly wet tendency. The present poll will doubtless be of assistance to those who would feel out public sentiment before platforms are written and candidates chosen for the fall elections.

"The high degree of accuracy of past Digest polls, both prohibition and presidential, has earned for them widespread respect and reliance. It is important, therefore, that no one should miss this opportunity of showing the country where he stands on a great moral question.

"We urge everyone who receives a ballot to mark and remail it immediately."

* * * * * * *

PROPOSED ANTI-INJUNCTION LEGISLATION

The Senate resumed the consideration of the bill (S. 935) to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes.

Mr. HEBERT. Mr. President, I propose to address myself this morning to some of the phases of the so-called anti-injunction bill, Senate bill 935, and to discuss it from the viewpoint of the minority members of the Judiciary Committee. Perhaps I ought to say at this time that the bill, which has been reported by the majority of the Judiciary Committee of the Senate, is itself a substitute bill. In addition to that bill, there is pending here a substitute presented by the minority of the Judiciary Committee. In the course of my argument I shall refer to these substitutes, but I shall try to refer to the measure reported by the majority as the

pending bill and to the substitute presented by the minority as the substitute bill.

This bill has for its primary purpose the relief from certain abuses growing out of the issuance of injunctions in labor disputes. In this proposal I am in accord with the majority of the committee. In many of its aspects I believe the measure to be desirable legislation. If in its operation it will afford the employee that freedom of action to associate with his fellow workers, to deal on a basis of equality with those by whom he is employed, to share equitably in the product of labor and capital, to relieve him and his employer from any unlawful interference, restraint, or coercion, then it is a measure worthy of the consideration of any legislative body.

It is feared, however, that some of its provisions will not only not be effective, but will not stand the test of constitutionality, and therefore will result in a mere gesture. The changes which will be proposed by the minority, if enacted into law, will, we believe, assist in carrying out the purposes of Congress, and while doing justice to one element of our population will not work injustice upon any other.

With these objections in mind, I shall make certain observations upon some of the provisions of the bill. They will not be made for the purpose of delay or to hinder the enactment of the measure, but rather to expedite its consideration and to bring its provisions more in accord with established principles of jurisprudence and the spirits of our institutions.

DECLARATION OF POLICY

The first section of the bill proposes a declaration of policy. To my mind, this declaration is based upon erroneous premises. It declares:

> Whereas under prevailing economic conditions developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association * * *.

The natural inference to be gained from a reading of this language is that corporate forms of ownership have come into being through the enactment of laws by the Congress of the United States, and yet the fact is that practically all corporations are creatures of the several States.

In adopting a public policy which the Government of the United States shall follow in the future I believe that it should be based upon accurate statements of fact and, above all, it should not be misleading. Moreover, it should be borne in mind that most of the relations existing between employers and employees grow out of contracts wholly intrastate in their nature, and, of course, such contracts are governed by the laws of the State where they are made. The Federal Government, except in isolated instances, has no control over such contracts.

Having these objections in mind, the minority of the Committee on the Judiciary have formulated a statement of public policy which they believe expresses the attitude of labor and of those who have given much thought to labor problems. The declaration which they have prepared and which will be submitted for the consideration of the Senate is based in a large part upon language used by the Supreme Court of the United States in the case of American Foundries *v.* Tri City Council (257 U. S. 209).

In his discussion of this subject yesterday the Senator from Wisconsin [Mr. BLAINE] referred approvingly to that language. I shall take occasion to read the declaration of policy which has been included in the substitute bill presented by the minority. It will be found that we have followed closely the language of the Supreme Court in framing that declaration.

I want to read a statement from the opinion of Mr. Chief Justice Taft in American Foundries against Tri-City Council. I read now from page 209 of Two hundred and fifty-seventh United States Reports:

> 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.

Having that language of the Supreme Court in mind, I should like Senators to listen to the reading of the declaration of policy as contained in the substitute bill presented by the minority. I quote from the substitute as follows:

> Whereas under prevailing economic conditions a single employee is helpless in dealing with an employer, is ordinarily dependent on his daily wage for the maintenance of himself and his family, is unable to resist arbitrary and unfair treatment; and whereas it is essential
>
> (a) That he shall be free to associate with his fellow workers and to form unions which will afford him and them the opportunity to deal on a basis of equality with those by whom they are employed;
>
> (b) That they may share equitably in the product of labor and capital;
>
> (c) That both the employer and the employee shall have full freedom of association, self-organization, and designation of representatives of their own choosing to negotiate the terms of employment free from any interference, restraint, or coercion in their efforts toward mutual aid or protection.

It has seemed to us that the declaration of policy contained in the substitute bill presented by the minority more nearly approaches the pronouncement of the Supreme Court on the subject, that it deals more equitably and more fairly with both sides to any controversy, and that it does justice to the employee without doing any injustice to the employer.

I now wish to discuss the so-called "yellow-dog" contract. Section 3 of the bill undertakes to outlaw the so-called "yellow-dog" contract.

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

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

Mr. HEBERT. I yield.

Mr. VANDENBERG. Before the Senator leaves that subject, will he point out specifically the difference in the statement of policy as proposed by the substitute and as originally proposed by the committee?

Mr. HEBERT. Mr. President, the first difference is that under the committee bill the declaration of policy proceeds as follows:

> Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment.

It will be noted that the substitute proposed by the minority has left out of this declaration of policy the statement at the outset of the declaration contained in the committee bill, that these different forms of corporate entities have been organized with the aid of governmental authority, which, as I have already stated, leads to the inference, because we are dealing here with a congressional enactment, with Federal legislation, that those corporate entities organized with the aid of governmental authority have been organized with the aid of congressional authority. Of course, that is far from the truth. I think I am safe in saying that very rarely, indeed, is a corporation organized under the authority of Congress. I know it has been the policy of Congress for many years to refuse organizations corporate existence through congressional enactment. Practically all corporations doing business in the United States are organized under charters granted by the several States. So, when it is stated in this declaration of policy that these aggregations of capital are organized with governmental authority, without any further explanation, I say it is misleading; it has no place in this legislation; it is not a fact, if we have in mind that Congress does not provide for the

incorporation of aggregations of capital doing business in the United States.

Mr. VANDENBERG. Then, Mr. President——

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

Mr. HEBERT. I yield.

Mr. VANDENBERG. If I may further interrupt the Senator, am I correct in the conclusion that the only difference between the two statements is in definition rather than in conclusion as to policy?

Mr. HEBERT. Mr. President, it is not confined to that merely. The declaration of policy in the minority bill tries to afford the same degree of consideration to the employer in his relations to his employee as it does to the employee in his relations with his employer. We have made no distinction in our declaration of policy between one and the other, whereas in the declaration of policy contained in the majority bill there is very little, if any, reference to the consideration that is to be given to the employer in his relations with his employee. Moreover, we felt that in establishing the declaration of policy which is contained in the minority bill we were traveling on pretty safe ground, because we took bodily out of a decision in the Tri-city case the language of the court setting out its attitude on the relations of employers and employees.

Mr. BORAH. Mr. President——

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

Mr. HEBERT. I do.

Mr. BORAH. I do not know whether the Senator desires to proceed without interruption or not.

Mr. HEBERT. I am very glad to be interrupted by the Senator.

Mr. BORAH. I suppose the fundamental difference between the two bills with reference to this particular feature of the matter is that the minority does not concede that what is called the "yellow-dog" contract is contrary to public policy.

Mr. HEBERT. Mr. President, the minority has not reached that conclusion. I have repeatedly said that my own thought is that if any way can be devised whereby to outlaw that contract, I shall follow that way; but I am not unmindful of the existence of opinions of the Supreme Court passing upon the legality of that contract, and that is the obstruction which is in my way in the consideration of this legislation.

Mr. BORAH. Does the Senator concede—is it his personal view—that the so-called "yellow-dog" contract is contrary to public policy?

Mr. HEBERT. I do not know what the public policy would be, Mr. President. I think it is unfair. I think the contract is, in effect, a coercion. It may not be legal coercion as the Senator and I understand legal coercion; but, if we may coin a new phrase, it might well be called economic coercion. I believe it is that; and I say again that I will join the Senator in any move to outlaw it, if a way can be found to do so.

Mr. BORAH. If the Supreme Court should conclude that this so-called "yellow-dog" contract is contrary to public policy, that it is in effect coercion, then it has rendered no decision which would prevent it from so declaring.

Mr. HEBERT. That is true, Mr. President.

Mr. BORAH. Then the whole question, in the first instance, is whether or not the "yellow-dog" contract can be considered as contrary to public policy, because if that is true then the decisions which the Supreme Court has already rendered do not control. It has never been before the Supreme Court in this form.

Mr. HEBERT. Oh, Mr. President, the Supreme Court necessarily had the question of public policy before it when it rendered its decision in the Hitchman case and in the other cases; and surely the court would not have disregarded public policy in passing upon the validity of a contract submitted to it.

Mr. REED. Mr. President——

Mr. BORAH. The Supreme Court has never decided this question.

Mr. HEBERT. It has never referred to public policy in passing judgment upon that contract.

Mr. BORAH. And its decision went off on other questions than the question of public policy.

Mr. HEBERT. The decision was right on the question of whether that contract is a valid contract, and entered into in the exercise of constitutional rights.

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

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

Mr. HEBERT. I yield.

Mr. REED. It did not seem to me that the Senator's answer to the Senator from Idaho, in his first question, was quite responsive. Perhaps the Senator did not catch his question. I understood the Senator from Idaho to ask whether the minority of the committee desired to make the "yellow-dog" contract contrary to publoc policy. Was not that the Senator's question?

Mr. BORAH. Yes.

Mr. REED. It seems to me it is answered directly by section 3 of the substitute bill proposed by the Senator from Rhode Island, in which it is explicitly declared to be contrary to public policy. I think the Senator from Rhode Island has made his position plain beyond any doubt in the language of section 3 of his bill.

Mr. BORAH. Mr. President——

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

Mr. HEBERT. I do.

Mr. BORAH. The minority opinion says:

> In our opinion, this form of agreement deprives employees of the right of free association with their fellows, and takes away from them the opportunity to deal on a basis of equality with those by whom they are employed. But, however distasteful that may be to us, and however much we may sympathize with those who believe that the interest of the employees will never be properly protected except through legislative enactment, the fact remains that the Supreme Court in three cases has held that there is no legislative power, State or Federal, to inhibit or outlaw employment contracts providing against union membership.

I think the minority report has made a very fair and, I think, from their standpoint, a courageous statement when it says that—

> In our opinion, this form of agreement deprives employees of the right of free association with their fellows, and takes away from them the opportunity to deal on a basis of equality with those by whom they are employed.

The Supreme Court has never taken that view of that contract except in the minority opinion. The minority opinion took this view, but the majority opinion has not taken that view.

Mr. HEBERT. Unfortunately, we are not bound by—nor can we follow—the minority opinion of the court.

Mr. BORAH. What I am saying is that the able Senator makes a declaration which comes within the purview of the minority opinion.

Mr. HEBERT. I stand by that declaration.

Mr. BORAH. Then, if the court should come to the conclusion that has been reached here by the able Senator from Rhode Island, that question has never been passed upon by the Supreme Court.

Mr. HEBERT. Of course, the Senator has his own idea about that; but it seems to me that the whole contract was before the court when they considered it.

Mr. ROBINSON of Arkansas. Mr. President, I take it that the question in the mind of the Senator from Rhode Island is whether Congress has the power to define the public policy of the United States with respect to contracts of the nature referred to. May I ask the Senator from Rhode Island what authority defines the public policy of the United States?

Mr. HEBERT. Mr. President, my answer to that would be that the courts define the public policy in the absence of a declaration of policy by Congress or by the legislature of any given State.

Mr. ROBINSON of Arkansas. It is competent, however, for the legislative power to define public policy, and that is

the authority which commonly defines public policy; is it not?

Mr. HEBERT. I think that is so; and, of course, the Senator, in his assumption that I had some question in my mind about the power to define public policy, is erroneous, because in the bill which the minority have presented here the public policy is very clearly declared.

Mr. ROBINSON of Arkansas. Then it is competent for the Congress to outlaw the so-called "yellow-dog" contract in the exercise of its power to define public policy?

Mr. HEBERT. Oh, I would not go that far, Mr. President. That is the question at issue now.

Mr. ROBINSON of Arkansas. That is the question I asked the Senator in the beginning, and which he said did not correctly state his viewpoint. My question was whether the thought in the mind of the Senator is that the United States Congress is without power to define the public policy of the United States with respect to contracts of the nature referred to, meaning the "yellow-dog" contract.

Mr. HEBERT. I did not understand that the Senator's question included a reference to the "yellow-dog" contract.

Mr. ROBINSON of Arkansas. Yes. I did not use the term "yellow-dog" contract——

Mr. HEBERT. My understanding was that the question was general.

Mr. ROBINSON of Arkansas. But I did use the term "contracts of the nature referred to," which, in my mind, implied the "yellow-dog" contract.

Mr. HEBERT. It misled me, I am frank to say.

Mr. ROBINSON of Arkansas. Then Congress has or has not the power—which?—to outlaw the "yellow-dog" contract?

Mr. HEBERT. Mr. President, there is a serious doubt in my mind as to the power of Congress to legislate upon contracts, and to deny to parties the right to enter into contracts. The right of contract is inviolate under the Constitution; and the Supreme Court has repeatedly said that this contract is a valid exercise of that right.

Mr. ROBINSON of Arkansas. In the absence of a statute defining a contrary public policy I do not understand that the Supreme Court has ever intimated that it is not competent for the Congress, in defining the jurisdiction of the courts, also to define the public policy of the Nation as banning the enforcement of such contracts.

Mr. HEBERT. Congress can not define the jurisdiction of the Supreme Court.

Mr. ROBINSON of Arkansas. Why, certainly not.

Mr. HEBERT. And the Supreme Court has already passed judgment upon that matter.

Mr. ROBINSON of Arkansas. But this legislation is not directed at the Supreme Court. This legislation is directed at the inferior courts. Does the Senator contend that the Congress has not unlimited authority to restrict or expand, within the constitutional range, the authority and jurisdiction of the inferior courts?

Mr. HEBERT. The Supreme Court has said that there are limitations.

Mr. ROBINSON of Arkansas. But those are limitations imposed by the Constitution.

Mr. HEBERT. No; there are certain inherent powers in the courts of the United States which can not be taken away by legislative act.

Mr. ROBINSON of Arkansas. Yes. That tends to make clear the Senator's position. It is the Senator's position, then, that the power inheres in an inferior court created by law to issue injunctions enforcing the "yellow-dog" contract, or contracts of that nature, and there is no power in the Congress to limit or deny the authority of the inferior courts to issue such injunctions?

Mr. HEBERT. It is not the idea of the Senator from Rhode Island that there is any such power. Section 3 of the substitute bill which the minority presented with its report in effect limits the power of the courts of the United States in the issuance of injunctions; at least, it endeavors to do so.

Mr. REED. Mr. President——

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

Mr. HEBERT. I yield now to the Senator from Pennsylvania.

Mr. REED. I do not understand where the point of difference is. It seems to me the Senator from Rhode Island has made it very clear that he dislikes the "yellow-dog" contract; that his substitute would declare it to be contrary to public policy; that it would deny the affording of equitable relief by the Federal courts in a case based on such a contract. It seems to me that the Senator from Rhode Island goes as far in that direction as anyone could reasonably ask. I myself do not like the "yellow-dog" contract, and I should like to see it made contrary to public policy; but I think the Senator does it in section 3.

Mr. ROBINSON of Arkansas. Mr. President, I was relying on the answer of the Senator from Rhode Island. I asked him the specific question whether, in his opinion, the Congress had the power, in the exercise of its authority, to limit the jurisdiction of inferior courts and to define the public policy of the United States to ban "yellow-dog" contracts; and he said, as I understood him, that he did not go that far, and that he did not think it had.

Mr. REED. But he clearly does go that far, because his bill proposes to do it.

Mr. ROBINSON of Arkansas. I had the same impression until the Senator from Rhode Island made a contrary statement, and I thought he was the best judge of what he meant.

Mr. HEBERT. Mr. President, I have made no contrary statement. If the Senator will compare the majority bill with the bill presented by the minority, it will be found that the majority bill denies all legal remedies under such contracts, whereas in the substitute presented by the minority the minority seeks to deny all equitable remedies and the right of injunction under such contracts. We have purposely limited it to that, first, because that is the purpose of the bill itself. The title of it indicates that that is the purpose of it. The title of the bill is, "A bill to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity." We have limited ourselves to equitable proceedings.

Mr. REED. Mr. President, if Congress can declare a contract to be contrary to public policy, and if its declaration is effective, that would similarly deny relief in an action at law, would it not?

Mr. HEBERT. There is a question about that, Mr. President, and we felt that we were justified in limiting the provisions of section 3 of our bill to equitable proceedings, and then we are within the purposes of the bill as declared in the title.

Several Senators addressed the Chair.

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

Mr. HEBERT. The Senator from Illinois has been standing for some time. I yield to him.

Mr. LEWIS. May I ask the Senator from Rhode Island whether I was correct in assuming that he answered the Senator from Arkansas that it was not in the power of Congress to declare the public policy of the country?

Mr. HEBERT. If the Senator understood me to say that, Mr. President, he is in error.

Mr. LEWIS. I ask the Senator, then, if his mind recalls for the moment the freight-rate cases in the Supreme Court, where they held it was the privilege of Congress to declare the public policy upon a contract which practically worked a monopoly of freight rates in certain territories of the Union?

Mr. HEBERT. Mr. President, I have not that case in mind; but I have no doubt, since the Senator refers to it, that it was so held.

Mr. LEWIS. Would not that be parallel to the present situation, where the Congress would attempt to legislate that certain contracts in their nature violated public policy?

Mr. HEBERT. Not having studied the case to which the Senator refers, I am not prepared to express an opinion.

Mr. LEWIS. I will not press the question.

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

Mr. HEBERT. I yield to the Senator from Nebraska.

Mr. NORRIS. I am only trying to get clearly before the Senate the position taken by the Senator from Rhode Island, and I think I can do it by asking him this question: Is it the Senator's opinion that Congress has the constitutional authority, either on the ground of announcing the public policy, or on any other ground, to outlaw the "yellow-dog" contract?

Mr. HEBERT. I believe it can go a long way toward outlawing it in the manner which we have provided in our bill. Whether the Congress can say in so many words that no one shall enter into a contract, and put into the inhibition the language contained in many statutes which have tried to outlaw such a contract, I do not say.

Mr. NORRIS. No; but the majority does not attempt to do that. The majority provides for a public policy, something which has never yet been done in this kind of case. The minority public policy leaves out part of what is in the public policy of the majority.

Laying that difference aside, however, we are trying to outlaw the "yellow-dog" contract by taking away the jurisdiction of the courts to enforce it. The Senator has not gone farther than simply to express his doubt. I am trying to get his idea as to whether, on the ground of public policy as announced by the minority, or that announced by the majority, or in any other way, Congress can take away from the inferior Federal courts the jurisdiction to enforce the "yellow-dog" contract? We are not trying to prevent anybody from writing such a contract and signing it, but take our position as I have stated. Let us meet the question squarely. Does the minority believe that we have the authority, in any way, in any manner, on the ground of public policy or otherwise, to take away from the inferior courts the jurisdiction to enforce the "yellow-dog" contract?

Mr. HEBERT. I seriously doubt whether Congress has that authority, Mr. President, having in mind the decisions of the Supreme Court already rendered. I realize, too, that the Supreme Court has said that certain limitations may be placed upon the jurisdiction of inferior courts, and it has placed them. The decision affecting the construction of the Clayton Act, for instance, in the Michaelson case, where a jury trial was provided in contempt cases, was sustained by the Supreme Court.

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

Mr. HEBERT. I yield.

Mr. BORAH. I think the Senator and I would agree that primarily the right belongs to the Congress to declare the public policy of the country.

Mr. HEBERT. As representatives of the people, Mr. President, I should say that is so.

Mr. BORAH. Primarily the right rests in a State legislature to declare the public policy of the State, and primarily it is in Congress to declare the public policy of the Nation. Then I think we would agree to the further proposition that the liberty of contract of which we speak is not an unlimited liberty of contract, that it may be limited by Congress or by the courts, or that it may be restrained by a State legislature in the States. Is not that true?

Mr. HEBERT. That is precisely what the Legislature of Massachusetts attempted to do very recently, and the supreme court of that State, in an advisory opinion, handed down on May 11, 1931, said they could not do it.

Mr. BORAH. Let me read a line from the Supreme Court of the United States. It says:

> While it may be conceded that, generally speaking, among the inalienable liberties of the citizen is that of liberty of contract, yet such liberty is not absolute and universal.

Then the Supreme Court says that there are certain contracts which may not be made, which may be inhibited, and which are not protected by the Constitution of the United States providing for the liberty of contract.

Mr. HEBERT. O Mr. President, we know that all rights are relative.

Mr. BORAH. Exactly.

Mr. HEBERT. That one's rights end whether another's rights begin; and when we say that certain things can not be done, that is all relative, too. Whether or not under certain conditions a thing can be done or can not be done will depend upon the particular circumstances and the nature of the case.

Mr. BORAH. What I was undertaking to support in the way of a contention is that this liberty of contract of which the Senator has spoken is not unlimited; it is not absolute; it is something which is subject to the control of the country, under the doctrine of the country to decide whether or not a particular contract is contrary to public policy.

Mr. HEBERT. Mr. President, it has been passed upon on three different occasions by the Supreme Court, not dealing with generalities, but dealing with a specific case, and in a specific case it has been passed upon on three different occasions by the highest court of the land.

Mr. BORAH. Of course, I do not desire, in the time of the Senator, to discuss that, but I would say before I sit down that my contention is that that court has never passed upon the question which is now before the Senate.

Mr. BLAINE. Mr. President——

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

Mr. HEBERT. I yield.

Mr. BLAINE. The Senator a few moments ago took exception to the majority report and stated that the majority bill prevented either legal or equitable relief by any inferior Federal court. I want to ask the Senator with reference to the subject which is under investigation and on which we propose to legislate what legal relief might be obtained in a Federal court?

Mr. HEBERT. Mr. President, there would be a right of action for recovery of damages for breach of contract.

Mr. BLAINE. I do not think the Senator cares to go that far. Is it the Senator's understanding that a corporation or an individual, an employer, can go into a Federal court in the State in which the corporation or individual has a legal abode and sue a defendant for damages in that same State in a Federal court?

Mr. HEBERT. He certainly would have a right to sue in the State courts. There is no provision here which would vitiate the right to sue in a State court.

Mr. BLAINE. Exactly; so that the only possible legal relief that is denied under the majority bill is relief which may be sought by a corporation or an individual by reason of diversity of citizenship.

Mr. HEBERT. O Mr. President, but that is very easy of attainment, and if this is carried out to its logical conclusion we are going to have the spectacle of a contract wholly legal in a given State and enforceable in the courts of that State vitiated by transference of the case from a State court to a Federal court because of diversity of citizenship.

Mr. BLAINE. If you exclude from the language of the bill this granting of legal relief, then do you not discriminate in favor of the corporation or individual who may sue in a Federal court by reason of diversity of citizenship?

Mr. HEBERT. It might well be, Mr. President, that we would be discriminating against both parties to such a contract. I am not prepared to say that we are not. I simply say that we have gone to this extent in our effort to make invalid or inoperative in equity the so-called "yellow-dog" contracts.

Mr. BLAINE. If the Senator will yield for another question, the Senator will recall that on yesterday when I undertook to state my position, I think, he raised this very question. I did not want to engage in debate on the question at that time, when speaking on the general outline of the bill; but is it not a fact that the only legal relief which would be denied under the majority bill would be relief sought by an individual or corporation because of diversity of citizenship?

Mr. HEBERT. Mr. President, the only relief that can be provided anywhere in the bill is that. It deals with the jurisdiction of the United States courts, and in no way affects the State courts or their jurisdiction.

Mr. BLAINE. Then, does not the Senator recognize that by denying legal relief to corporations and individuals on account of diversity of citizenship the committee is undertaking to put all corporations and all individuals on identically the same plane of equality in seeking legal relief for damages?

Mr. HEBERT. I myself see no reason why there should be any discrimination between parties to a contract before a court. That is what we have attempted to avoid.

Mr. BLAINE. Mr. President, I just want to suggest to the Senator, if he will permit, that that is my conception of the bill, that the primary purpose of the bill is to make the so-called "yellow-dog" contract unenforceable in the Federal courts, and that the declaration of public policy perhaps has no other effect than to aid the court in the interpretation and construction of the act. After all, is not the declaration of public policy designed for that purpose only? A declaration of public policy, as a matter of fact, does not declare what the law is but declares what the public policy ought to be, and is in aid of the interpretation and construction of the act respecting a decision before a court.

Mr. HEBERT. Of course, Mr. President, a declaration of policy is not merely a path blazed out in the wilderness which courts are requested to follow. It goes much beyond that. It may set down certain policies. The Constitution of the United States contains declarations of policy from which nobody can get away. They are fixed until the Constitution is amended. That is a declaration of policy and it is absolute and binding upon every citizen of the United States.

Mr. BLAINE. When a declaration of public policy goes to the extent of declaring substantive law, then it ceases to be a mere declaration of public policy but is the enactment of positive substantive law.

Mr. HEBERT. If it be done in accordance with the provisions of the supreme law of the land, of course it is within the power of legislative bodies to enact such declaration.

Mr. BLAINE. I thank the Senator for his patience.

Mr. WATSON. Mr. President——

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

Mr. HEBERT. Certainly.

Mr. WATSON. Am I right in stating that the Supreme Court has squarely decided that the "yellow-dog" contract is a valid, binding contract.

Mr. HEBERT. It has so declared in three cases, from which I shall quote in the course of my argument.

Mr. WATSON. That is my understanding. Based upon that understanding, I want to ask the Senator two further questions. First, in the face of those decisions can Congress—and by "can" I mean is it within the power of Congress—declare a public policy contrary to the direct decisions of the Supreme Court of the United States?

Mr. HEBERT. Of course Congress may declare a public policy. The question is how effective it will be when a case of this nature comes before the Supreme Court of the land on the law and existing decisions.

Mr. WATSON. The next question is, If Congress can declare a public policy of that kind, ought it to declare such a policy contrary to the direct decisions of the Supreme Court of the United States? Those are questions with which I think we have to deal.

Mr. HEBERT. The idea of the minority of the committee was that we should not go that far.

Mr. REED. Mr. President, may I ask one more question, with an apology?

Mr. HEBERT. I am glad to yield to the Senator from Pennsylvania, and he need not apologize for interrupting me.

Mr. REED. Does not the minority substitute, in section 3, explicitly declare a "yellow-dog" contract to be contrary to public policy?

Mr. HEBERT. If by the provision of that section which denies relief in equity, then I would say "yes."

Mr. REED. No; I do not think we have to infer that. The language, as I read it on page 4, is—

> Any undertaking or promise such as is described in this section—

And that quite plainly is the "yellow-dog" contract—

> * * * is hereby declared to be contrary to the public policy of the United States, and shall not afford any basis for the granting of equitable relief by any court of the United States.

How could language more plainly establish public policy than that?

Mr. HEBERT. Of course it declares public policy in the light of the declaration that we have in the bill, but the two provisions must be read together. The Senator will find that there is a difference between the public policy declared by the minority of the committee and that declared by the majority of the committee in the majority report.

Mr. REED. But the minority does declare the "yellow-dog" contract to be contrary to public policy.

Mr. HEBERT. Yes; we do.

Mr. NORRIS. Mr. President——

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

Mr. HEBERT. Certainly.

Mr. NORRIS. Pursuing the question asked by the Senator from Pennsylvania does it not follow that the Senator then under his own statement to the Senator from Pennsylvania has proposed to do something that he has grave doubt about our authority to do under the Constitution?

Mr. HEBERT. I answer that question in the affirmative. I have repeatedly said that we have gone beyond what we think the law permits.

Mr. NORRIS. Then the Senator will expect his bill, if it is enacted into law, to be held unconstitutional?

Mr. HEBERT. No; I am not giving my time and attention to this legislation with any idea that we are merely indulging in an idle gesture. I am hoping that it will be sustained. I sincerely hope that it will be sustained. I hope that we shall afford that measure of relief which our bill provides. I very much doubt, however, if the bill presented by the majority of the committee will be sustained.

Mr. NORRIS. The Senator under his own statement has the same doubt about the minority bill.

Mr. HEBERT. Except as to the degree of doubt.

Mr. NORRIS. Just a difference in degree? All right.

Mr. FLETCHER. Mr. President——

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

Mr. HEBERT. I yield.

Mr. FLETCHER. In referring to contracts, has the Senator in mind contracts that are voluntarily made?

Mr. HEBERT. When the Senator says "contracts voluntarily made," and whenever reference is made to the so-called "yellow-dog" contract, it is contended—and I think with some degree of force—that none of these contracts is voluntarily made; that is, that they are usually made under coercion. But the Supreme Court has held that they are voluntarily made and has sustained them in three different instances.

The majority of the committee frankly states in its report that one of the objects of this legislation is to outlaw such contracts, because many of the injunctions which have been issued by the Federal courts in labor disputes have been based wholly or in part upon them, on the assumption that they are valid and not contrary to public policy.

In my opinion, this form of agreement deprives, by a form of economic coercion, employees of the right of free association with their fellows, and takes away from them the opportunity to deal on a basis of equality with those by whom they are employed. But however distasteful they may be to us, and however much we may sympathize with those who believe that the interests of employees will never be protected except through legislative enactment to make them void, the fact remains that the Supreme Court of the United States in three cases has held that there is no legis-

lative power, State or Federal, to inhibit or outlaw employment contracts providing against union membership.

The first of these cases is Coppage against Kansas, decided in 1915 and reported in Two hundred and thirty-sixth United States Reports at page 1. I wish to quote from that case. This is an opinion written by Mr. Justice Pitney. I quote from page 16:

Laying aside, therefore, as immaterial for present purposes, so much of the statute as indicates a purpose to repress coercive practices, what possible relation has the residue of the act to the public health, safety, morals, or general welfare? None is suggested, and we are unable to conceive any.

This was an act of the State of Kansas fining anyone for making this so-called "yellow-dog" contract.

The act, as the construction given to it by the State courts shows, is intended to deprive employers of a part of their liberty of contract, to the corresponding advantage of the employed and the upbuilding of labor organizations. But no attempt is made or could reasonably be made to sustain the purpose to strengthen these voluntary organizations, any more than other voluntary associations of persons, as a legitimate object for the exercise of the police power. They are not public institutions, charged by law with public or governmental duties, such as would render the maintenance of their membership a matter of direct concern to the general welfare. If they were, a different question would be presented.

And again, at page 20, I quote:

When a man is called upon to agree not to become or remain a member of the union while working for a particular employer, he is in effect only asked to deal openly and frankly with his employer, so as not to retain the employment upon terms to which the latter is not willing to agree. And the liberty of making contracts does not include a liberty to procure employment from an unwilling employer or without a fair understanding. Nor may the employer be foreclosed by legislation from exercising the same freedom of choice that is the right of the employee. To ask a man to agree in advance to refrain from affiliation with a union while retaining a certain position of employment is not to ask him to give up any part of his constitutional freedom. He is free to decline the employment on those terms, just as the employer may decline to offer employment on any other; for "It takes two to make a bargain." Having accepted employment on those terms, the man is still free to join the union when the period of employment expires; or, if employed at will, then at any time upon simply quitting the employment. And, if bound by his own agreement to refrain from joining during a stated period of employment, he is in no different situation from that which is necessarily incident to term contract in general.

At page 23 appears the following:

One of the ways of obtaining property is by contract. The right, therefore, to contract can not be infringed by the legislature without violating the letter and spirit of the Constitution. Every citizen is protected in his right to work where and for whom he will. He may select not only his employer but also his associates. He is at liberty to refuse to continue to serve one who has in his employ a person, or an association of persons, objectionable to him. In this respect the rights of the employer and employee are equal.

Mr. LONG. Mr. President——

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

Mr. HEBERT. I yield.

Mr. LONG. I have noticed that the Senator, in arguing the matter, has read a decision of the court relative to the subject of rights under a contract. As a matter of fact, Congress confers all the jurisdiction that a court of equity has, does it not? It is not a constitutional authority, but a grant of authority conferred by the Congress, a statutory authority. I am referring to courts of equity. They have only such authority as is given to them by the Congress. Is not that true?

Mr. HEBERT. I am not prepared to subscribe to that statement since there are concededly some inherent powers in the courts immediately they are created.

Mr. LONG. Is it not a fact that they could be limited to the granting of injunctions in cases involving not more than $300 or not more than $1,000?

Mr. HEBERT. That is true, and we have tried to limit them in our proposed substitute.

Mr. LONG. The bill, as it is reported by the committee, simply proposes to withhold from the courts certain jurisdiction. That would not prevent litigants from going into the State courts. The United States courts of every district—in New Jersey or Louisiana or elsewhere—could be denied any equitable jurisdiction at all, and litigants would be required to go into the State courts to enforce any rights in equity which they might have.

Mr. HEBERT. The statement of the Senator is at variance with the expression of opinion of the Supreme Court of the United States on that point.

Mr. NORRIS. Mr. President——

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

Mr. HEBERT. Certainly.

Mr. NORRIS. I do not like to interrupt the Senator so often and he has been very kind in yielding.

Mr. HEBERT. I do not at all mind the interruptions and am glad indeed to yield to the Senator from Nebraska.

Mr. NORRIS. I want to understand the Senator's idea. What he said to the Senator from Louisiana [Mr. LONG], I think, ought to be clarified just a little, so I would like to ask the Senator a further question. I realize, of course, there is a difference of opinion among eminent lawyers on the subject, but I want to ask the Senator whether the minority contend that Congress does not have the right to take away from any Federal court, except the Supreme Court of the United States, any jurisdiction that the court may have? Would we not have the right to take it all away and abolish the court by statute, if we wanted to do so?

Mr. HEBERT. I think we have the right to abolish the court, but the Supreme Court has made a pronouncement upon the power of Congress to limit the inherent powers of the court once it is established.

Mr. NORRIS. Yes; but it is not an inherent power of a court, for instance, to be endowed with jurisdiction to issue injunctions, is it? An inherent power, as I understand, is one necessary to enable the court to protect itself, and so forth.

Mr. HEBERT. To enforce its mandates.

Mr. NORRIS. Yes; but would not Congress have the right, without interfering with any of its inherent powers, to take any jurisdiction away from any inferior Federal court?

Mr. HEBERT. Does the Senator mean that Congress might take all its jurisdiction away?

Mr. NORRIS. Congress may take all its jurisdiction away or it may take any part of it away.

Mr. HEBERT. Unquestionably, Congress has the right to abolish any court which is inferior to the Supreme Court; there is no question about that; but whether, in the exercise of that right, Congress can go to any limit below the abolition of the court is a grave question, upon which there is difference of opinion.

Mr. NORRIS. I realize that, and the Senator perhaps should remember that in the hearings that argument was made by some very eminent attorneys. It was contended by one of those attorneys, representing some of the large corporations that are opposed to this legislation, that while he conceded Congress has the right even to abolish the court, having once given jurisdiction to an inferior court, Congress has no authority to take it away. However, I do not think that argument made any very substantial impression upon any of the members of the subcommittee that heard it.

Mr. HEBERT. Mr. President, I shall have occasion, in the course of my argument, to refer to a decision of the Supreme Court which discussed that question to some extent.

Mr. NORRIS. Very well.

Mr. HEBERT. I come now to the second of the cases to which I had reference when I said that in three different instances the Supreme Court had declared these contracts valid. I shall quote now from the case of Adair against the United States, Two hundred and eighth United States Reports, page 161. I read now from the opinion at page 172:

Without stopping to consider what would have been the rights of the railroad company under the fifth amendment, had it been indicted under the act of Congress, it is sufficient in this case to say that as agent of the railroad company and as such responsible for the conduct of the business of one of its departments, it was the defendant, Adair's, right—and that right inhered in his personal liberty, and was also a right of property, to serve his em-

ployer as best he could, so long as he did nothing that was reasonably forbidden by law as injurious to the public interests. It was the right of the defendant to prescribe the terms upon which the services of Coppage would be accepted, and it was the right of Coppage to become or not, as he chose, an employee of the railroad company upon the terms offered to him. Mr. Cooley in his treatise on Torts, page 278, well says: "It is a part of every man's civil rights that he be left at liberty to refuse business relations with any person whomsoever, whether the refusal rests upon reason, or is the result of whim, caprice, prejudice, or malice. With his reasons neither the public nor third persons have any legal concern. It is also his right to have business relations with anyone with whom he can make contracts; and if he is wrongfully deprived of this right by others, he is entitled to redress.

Again, at page 174:

While, as already suggested, the right of liberty and property guaranteed by the Constitution against deprivation without due process of law is subject to such reasonable restraints as the common good or the general welfare may require, it is not within the functions of government—at least in the absence of contract between the parties—to compel any person in the course of his business and against his will to accept or retain the personal services of another, or to compel any person against his will to perform personal services for another. The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it. So the right of the employee to quit the service of the employer, for whatever reason, is the same as the right of the employer, for whatever reason, to dispense with the services of such employee. It was the legal right of the defendant Adair—however unwise such a course might have been—to discharge Coppage because of his being a member of a labor organization, as it was the legal right of Coppage, if he saw fit to do so—however unwise such a course on his part might have been—to quit the service in which he was engaged because the defendant employed some persons who were not members of a labor organization. In all such particulars the employer and the employee have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land.

Mr. NORRIS. Mr. President——

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

Mr. HEBERT. I yield.

Mr. NORRIS. I take it the Senator is about to discuss the case of the Hitchman Coal & Coke Co. against Mitchell?

Mr. HEBERT. Yes.

Mr. NORRIS. Before he leaves the two cases—the Coppage case and the Adair case—I should like, if he will permit me, to ask him a question or two about those cases.

Mr. HEBERT. I shall be very glad to have the Senator do so.

Mr. NORRIS. They were both cases where a criminal statute was undertaken to be enforced, were they not?

Mr. HEBERT. It is my understanding that they were.

Mr. NORRIS. One involved a criminal statute of Kansas.

Mr. HEBERT. Yes; a statute imposing a fine for making such a contract.

Mr. NORRIS. A statute imposing a fine for discharging a man because he belonged to a union. Does the Senator think that either one of those cases has a direct application to the legislation that is being discussed here, each of them involving a criminal statute and each one going to the court on the appeal of the defendant who was convicted under the statute? In one case a Federal statute was involved and in the other case a State statute. In the case involving the Federal statute the act complained of was claimed to be a violation of section 10 of the Erdman Act. That was the Adair case.

While I am interrupting the Senator I should like to call his attention also to the fact—and it seems to me, in all fairness, the attention of the Senate should be called to it—that both of these cases and also the case of Hitchman Coal & Coke Co. against Mitchell in the Supreme Court of the United States—the case, as I understand, the Senator is about to discuss—were all decided by a divided court.

Mr. HEBERT. That is true, Mr. President.

As to the first observation of the Senator from Nebraska, I have purposely confined my quotations to those portions of these opinions which relate to the contractual relations of the parties and not with reference to the offense committed in making those contracts. That is beside the point.

Mr. NORRIS. I realize that; but, at the same time, these criminal statutes were enacted to enforce the law by that means rather than by civil action.

Mr. HEBERT. Yes, Mr. President; but, first of all, it was incumbent upon the court to find out whether the making of such a contract was a valid exercise of constitutional right.

Mr. NORRIS. Yes; I think that is correct.

Mr. HEBERT. And if it were such an exercise, then no fine, provision for imprisonment, or anything else would interfere.

Mr. NORRIS. I am not contending that any of those cases do not have application to the point to which the Senator is applying them. I believe, however, that all the facts, including the one that all the cases were decided by a divided court, should be taken into consideration in attaching weight to these decisions.

Mr. HEBERT. Mr. President, I can well understand what the Senator has in mind. He proceeds upon the theory that if a case involving damages growing out of one of these contracts, dissociated altogether from any violation of a criminal statute, came before the court, the court might decide otherwise than it did and might declare such a contract to be void. However, I want to call the Senator's attention to the very explicit language in the Adair case. I repeat:

It was the legal right of the defendant Adair—however unwise such a course might have been—to discharge Coppage because of his being a member of a labor organization, as it was the legal right of Coppage, if he saw fit to do so—however unwise such a course on his part might have been—to quit the service in which he was engaged because the defendant employed some persons who were not members of a labor organization. In such particulars the employer and the employee have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land.

Mr. NORRIS. I am not finding fault with that, if the Senator will permit me to interrupt him further, but the bill which the majority of the committee have reported, in my judgment, does not in any respect conflict with the opinion laid down there. Although the Adair case has a bearing on the contention the Senator is ably making—I concede that—at that time there was on the statute books no law such as is here proposed; and, while it may not have much effect on the Senator's mind, to my mind it is significant that those cases were decided at a time when the "yellow-dog" contract had not reached the culmination of its wickedness. Even in the Hitchman case, which the Senator is going to consider next, as I understand, the contract, even in the dissenting opinion, was not criticized, and the contract itself which is set out in the dissenting opinion of Mr. Justice Brandeis, as I recall, is not harsh in its terms. It was the first, or almost the first, "yellow-dog" contract that ever came before a court. It was mild in contradistinction to the development of the "yellow-dog" contract as it afterwards appeared. To anyone who will read all the cases, as they follow one another, it will appear in the development of the "yellow-dog" contract that the first one which was held legal was quite mild as compared to those which afterwards came to be considered in injunction cases. It will be easy to see, it seems to me, that the development of the "yellow-dog" contract was gradually and rather slow, until the dissenting opinions became more and more numerous as time went on.

Mr. LOGAN. Mr. President——

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

Mr. HEBERT. Yes; I do.

Mr. LOGAN. I have been listening to the very able argument of the Senator with a good deal of interest. I want to ask him if this is the conclusion that he has reached about those "yellow-dog" contracts—that as long as the contracts remain, no court can disturb his doctrine of liberty of contract, and that the contract must be got rid of in some way before it can grant relief? Is that the Senator's position?

Mr. HEBERT. No, Mr. President. With the declaration of policy contained in the bill proposed by the minority, we have proceeded to deny to inferior courts of the United States the right to afford injunctive relief based upon such contracts.

Mr. LOGAN. Does the Senator think he may do that within the constitutional limits?

Mr. HEBERT. We are hoping we can do it. I have repeatedly expressed some doubts about it, but we are hoping we can do it; and I shall refer to the authority upon which we are basing our action a little later on in my argument.

Mr. LOGAN. I have been somewhat confused by the reference to public policy. The confusion may be only in my own mind. I thought the public policy of a state or nation was always to be found in the laws of that state or nation, and that a mere statement that this is the public policy would have no effect unless it was backed up by some legislative enactment. Is that the Senator's opinion about it?

Mr. HEBERT. That is absolutely my opinion, Mr. President; but, of course, the Senator is coupling up now, in both of these bills, a statement of public policy followed up by an enactment.

Mr. LOGAN. That is true. I agree with the Senator about that; but it has been suggested that the liberty of contract is not absolute. It is absolute, is it not, except that a contract can not be made contrary to public policy? And if we desire to find out whether the contract is contrary to public policy, we must go to the existing laws of the Nation?

Mr. HEBERT. That is my understanding.

Mr. LOGAN. So if the Supreme Court has held, as it seems to have done, that the liberty of contract can not be interfered with, then did not that language, that it was not absolute, refer to contracts which could not be made in violation of some law?

Mr. HEBERT. Of course, I said all rights are relative.

Mr. LOGAN. The Senator from Rhode Island did not say that. Some one else suggested that.

Mr. HEBERT. Well, I have said in the course of this debate, and I repeat, that all rights are relative. There is no absolute right to do anything one likes. It is all bound by certain limitations—for instance, the limitations of the Constitution, the limitations of the law.

Mr. LOGAN. Finally, let me ask the Senator this question, and then I think I have finished.

The public policy of a nation must be declared by its legislative body having the authority to define it, as I understand. That is where we go to find our public policy—in the laws that govern the Nation.

Mr. HEBERT. The Supreme Court has said that in the absence of an expression of public policy in the legislative enactments the court declares a public policy.

Mr. LOGAN. That is true. There is no doubt about that. Congress could not pass any law declaring public policy if that public policy, when so declared, would be in violation of the Constitution; could it?

Mr. HEBERT. I can not see that there can be any argument upon that point.

Mr. LOGAN. Then, is it the Senator's contention that the declaration of public policy interfering with the liberty of contract is unconstitutional, rather than to term it as against public policy?

Mr. HEBERT. The declaration of public policy is not an enactment at all.

Mr. LOGAN. Can there be a declaration of public policy without an enactment?

Mr. HEBERT. There is nothing to a declaration of public policy. In other words, it does not command the doing of anything. It is simply the preamble which we find in many enactments. It enables those who are called upon to do so to construe what follows by referring to the preamble. It sets out what the enacting body had in mind, what it sought to accomplish, the objectionable things it sought to remove, what it endeavored to forbid; and, then, when the court comes to pass upon any act committed in violation or in alleged violation of the enactment it goes back to the preamble to see what was in the mind of the legislature when it passed that act.

Mr. LOGAN. It is not binding upon the court, however; is it?

Mr. HEBERT. No; I do not think so.

Mr. LOGAN. And is it not the general rule throughout the United States, so far as we know, that anything that may have been said in the consideration of a bill or in the proposal of a constitution and recorded in the journals is of very little weight with the court when it comes to construe the actual provision?

Mr. HEBERT. Mr. President, in my reading of some of these decisions I have observed that when the reports of committees of Congress and certain statements made by Members of Congress in both Houses of Congress on the enactment which the court is called upon to construe are referred to; the courts refer to them with approval. I have never seen any reference to those that did not sustain their position in their decisions.

Mr. LOGAN. They refer to them in the interpretation of the act. That is very correct; but would a simple declaration of policy, without its being followed by a legislative enactment, have any binding effect on the courts?

Mr. HEBERT. In my opinion, Mr. President, it would not.

Mr. LOGAN. I thank the Senator very much.

Mr. HEBERT. Mr. President, I now take up the so-called Hitchman case—Hitchman Coal & Coke Co. *v.* Mitchell (245 U. S., 229.) Before quoting from that opinion, however, I think it might be well to include as a part of my argument the exact wording of the contract which was required to be entered into by those seeking employment at the Hitchman Coal & Coke Co. plant and which was the subject of this litigation. It occurs to me that it may be informative to Members of the Senate who do me the honor to read my argument.

The contract is quoted in full at page 263 of volume 245, United States Reports, and I read:

> 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 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 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.

That contract was the basis in part of this suit; and in passing upon it the court said, at page 248:

> In short, at the time the bill was filed, defendants, although having full notice of the terms of employment existing between plaintiff and its miners, were engaged in an earnest effort to subvert those relations without plaintiff's consent, and to alienate a sufficient number of the men to shut down the mine, to the end that the fear of losses through stoppage of operations might coerce plaintiff into "recognizing the union," at the cost of its own independence. The methods resorted to by their "organizer" were such as have been described.

At page 250:

> What are the legal consequences of the facts that have been detailed?
>
> 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.

And on page 251, quoting from the case of Truax *v.* Raich (239 U. S.), at page 33 the court says:

* * * It is said that the bill does not show an employment for a term, and that under an employment at will the complainant could be discharged at any time for any reason or for no reason, the motive of the employer being immaterial. The conclusion, however, that is sought to be drawn is too broad. The fact that the employment is at the will of the parties, respectively, does not make it one at the will of others. The employee has manifest interest in the freedom of the employer to exercise his judgment without illegal interference or compulsion, and, by the weight of authority, the unjustified interference of third persons is actionable, although the employment is at will. (Citing many cases.)

On page 252:

The right of action for persuading an employee to leave his employer is universally recognized—nowhere more clearly than in West Virginia—and it rests upon fundamental principles of general application, not upon the English statute of laborers.

In this case Mr. Justice Brandeis dissented, but he did not dissent upon the question of the legality of the contract.

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

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

Mr. HEBERT. Yes; I yield.

Mr. KING. My recollection is, although it has been several years since I read the case, that he directly or indirectly declared the contract was not subject to challenge upon the ground that it was unconstitutional.

Mr. HEBERT. Mr. President, recently the House of Representatives of the State of Massachusetts asked the justices of the supreme judicial court of that State for an advisory opinion. There is a provision in the constitution of Massachusetts which permits that to be done. I have before me the advance sheets of the opinion of the Supreme Judicial Court of Massachusetts, from which I now wish to read:

OPINION OF THE JUSTICES TO THE HOUSE OF REPRESENTATIVES

CONSTITUTIONAL LAW, OPINION OF THE JUSTICES, DUE PROCESS OF LAW, EQUAL PROTECTION OF LAW, CLASS LEGISLATION, CONTEMPT PROCEEDINGS. LABOR

On May 11, 1931, the house of representatives adopted the following order:

"Whereas there is pending before the general court a bill entitled 'An act to define and limit the jurisdiction of courts sitting in equity, and for other purposes,' printed as House Document No. 976 of the current year, a copy of which is herewith submitted; and

"Whereas doubt exists as to the constitutionality of said bill, if enacted into law: Therefore be it

"*Ordered*, That the opinions of the honorable the justices of the supreme judicial court be required by the house of representatives on the following important question of law:

"Would the provisions of said bill, if enacted into law, be in conflict with the Constitution of this Commonwealth or of the United States?"

On May 29, 1931, the justices returned the following answer:

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 May 11, 1931, and transmitted to them on May 13, 1931, requiring their opinion on the question whether the provisions of the bill printed as House Document No. 976, if enacted into law, would be in conflict with the Constitution of the United States or of this Commonwealth. Copy of the order is hereto annexed.

It has been the practice of the justices of the supreme judicial court in the performance of their duty under chapter 3, article 2, of the constitution to render opinions when required by the designated legislative or executive branch upon "important questions of law and upon solemn occasions" to confine their answers to particular questions of law submitted to them. It has not been regarded as within the fair intent of this article of the constitution that they should be required to examine the validity of every clause, section, or part of a complicated statute, except in response to specific questions. (Opinion of the justices, 138 Mass. 601, 604; 145 Mass. 587, 592; 217 Mass. 607; 239 Mass. 606, 612; 247 Mass. 589, 598; 261 Mass. 523, 554; 261 Mass. 556, 613.) We well might decline to answer the question here propounded on this ground. This rule of conduct is not to be impaired in any degree. We presume that the honorable house of representatives desires no more than that the question be answered upon a general view of the proposed statute without scrutiny of its details.

On such general view the proposed act appears to us to fall into three main divisions. The first is comprised in sections 1 to 3, inclusive. The vital part of this division appears to be section 2. That section declares, in substance, that every contract between any present or prospective employee and present or prospective employer or others whereby either party undertakes to join or not to join or to remain or not to remain a member of any labor organization or employer organization or to withdraw from an employment relation in the event that he joins or remains a member of such organization is contrary to public policy and shall not be the basis of relief in the courts. Main provisions of section 3 of the bill attempt to deprive the courts of jurisdiction to issue any injunction touching such contracts. This appears especially from subsections (a), (b), (g). The provisions of section 1 declare the public policy of the Commonwealth to be in favor of full freedom of organization of workmen for collective bargaining and other purposes. The terms of that section are plainly broad enough to comprehend organization to break contracts made contrary to the terms of section 2, and although containing no definite reference to section 2 must be construed as designed to include the facts recited in section 2. These provisions would be unconstitutional. That is too clear for discussion. They fall within the condemnation of principles declared and stated at length in Adair *v.* United States (208 U. S. 161), and Coppage *v.* Kansas (236 U. S. 1). In the first of those decisions an act of Congress and in the second a statute of Kansas, indistinguishable in essential features from these sections of the present bill, were held to be violative of provisions of the Federal Constitution forbidding the enactment of any law depriving a person of liberty or property without due process of law. A decisive sentence from 236 U. S. 1, 14, is in these words: "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." These principles have been reiterated and these cases cited with approval in more recent decisions. (Truax *v.* Raich, 239 U. S. 33, 41; New York Central Railroad *v.* White, 243 U. S. 188, 206; Hitchman Coal & Coke Co. *v.* Mitchell, 245 U. S. 229, 250–251; Prudential Ins. Co. *v.* Cheek, 259 U. S. 530, 536; Adkins *v.* Children's Hospital, 261 U. S. 525, 545–546; Highland *v.* Russell Car & Snow Plow Co., 279 U. S. 253, 261; Texas & New Orleans Railroad *v.* Brotherhood of Railway & Steamship Clerks, 281 U. S. 548, 570.) It would be vain for us to indulge in discussion in view of these authoritative adjudications. This matter also is fully covered by the "Opinion of the Justices" rendered to the honorable the house of representatives on April 15, 1930 (Mass. Adv. Sh. (1930) 903).

The second division of the bill comprehends sections 4–9, both inclusive. It is possible that these sections are designed chiefly to be in aid of section 2 of the bill and would not otherwise be proposed. However that may be, one dominating aim of this part of the bill seems to be to establish with respect to every "labor dispute" as defined in section 12 (c) a substantially different method of procedure, subject to materially different prerequisites, conditions, rules of trial, and extent of redress, from that established in any other kind of controversy where relief in equity is sought. This dominating purpose appears to be class legislation and to impair equality before the law and equal protection of equal laws to all persons, contrary to principles affirmed in Bogni *v.* Perotti (224 Mass. 152) and Truax *v.* Corrigan (257 U. S. 312).

The third division of the bill includes sections 10–14, both inclusive. The dominating purpose of these sections is to narrow to an unconstitutional extent the power of courts to deal with contempt of court in connection with litigation in labor disputes. The effect of these sections would contravene principles laid down in Walton Lunch Co. *v.* Kearney (236 Mass. 310); Root *v.* MacDonald (260 Mass. 344); and Blankenburg *v.* Commonwealth (260 Mass. 369). See Blankenburg *v.* Commonwealth (Mass. Adv. Sh. (1930) 1485).

In answering the question we have considered only a general view of the proposed bill. It has not been examined in detail with reference to the questions that might be raised as to its several parts. We do not undertake to intimate how much of the bill, if dissociated from the dominating factors already mentioned, would be within the competency of the general court to enact. Those matters we can not deal with for the reasons stated at the outset of this opinion.

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

Mr. KING. Mr. President, will the Senator submit to an interruption?

Mr. HEBERT. I am glad to yield.

Mr. KING. I invited the attention of the Senator a moment ago to the dissenting opinion of Mr. Justice Brandeis in the Hitchman case, and my recollection is that the senior

Senator from Nebraska [Mr. NORRIS] a few moments ago implied that that dissenting opinion by Justice Brandeis was a declaration that contracts of this character were illegal. I would like to read just a sentence or two from Mr. Justice Brandeis's dissenting opinion:

> 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. Likewise an agreement closing a shop to nonunion labor being lawful, the union may withhold from an employer an economic need—labor—until he assents to make it. In a legal sense an agreement entered into, under such circumstances, is voluntarily entered into; and as the agreement is in itself legal, no reason appears why the general rule that a legal end may be pursued by legal means should not be applied. Or, putting it in other words, there is nothing in the character of the agreement which should make unlawful means used to attain it, which in other connections are recognized as lawful.

Mr. HEBERT. Mr. President, it is to be observed that the majority of the committee in its report seeks not so much to deny legal remedies to the parties to such contracts as to take away the right of injunction to prevent a breach of them.

In the majority report on page 9 the following statement appears:

> Relief by injunction is an extraordinary and harsh remedy. It should not be resorted to except in cases where such action is imperatively demanded; and yet, injunctive relief is often the only adequate and effective relief against many wrongs and to prevent many irreparable injuries in controversies of infinite variety.

If any means can be devised by legislative enactment to carry out the purposes of the measure so far as injunctive relief is concerned, without conflicting with the provisions of the Constitution and the decisions of the courts of last resort, I believe I am justified in saying for the minority and for myself—I unhesitatingly say—I will join in such an effort and will assist in every way possible to secure its passage.

Inasmuch as the general purpose of the bill is to afford relief from unfair injunctive processes, it seems reasonable to assume that the provisions of this section would effectuate that purpose quite fully if they were limited so as to provide that such contracts should afford no ground for injunctive relief. The bill would then be in harmony with the public policy to be established by other provisions of the measure.

These so-called "yellow-dog" contracts are contracts of employment. They are entered into between employers and employees all domiciled in the same State, with but few exceptions. It follows, then, that they are to be construed in accordance with the laws of the State where they are made. If Congress is to declare such contracts void, then we shall have the anomalous situation where in a State they are legal and enforceable by the laws of that State, they may be held illegal and void by a mere transference of a case involving them to a court of the United States.

In my opinion, a provision which would deny injunctive relief based upon the existence of such contracts would afford full remedy to employees against any injustice done them in labor disputes, and at the same time would probably not be open to serious constitutional objections.

Some serious doubt has been expressed as to the right of Congress to limit the equity powers of courts of the United States. This question arose in the case of Michaelson *v.* United States (1924, 266 U. S. 62). My reading of the decision in that case leads me to the conclusion that it is not beyond the authority of Congress to place some limitations upon the equity powers of such courts. In that case the court was interpreting the provision in the Clayton Act which requires courts to afford jury trials in criminal contempt proceedings.

Mr. Justice Sutherland said in the opinion:

> But it is contended that the statute merely interferes with the inherent power of the courts and is therefore invalid. That the power to punish for contempts is inherent in all courts has been many times decided and may be regarded as settled law. It is essential to the administration of justice. The courts of the United States, when called into existence and vested with jurisdiction over any subject, at once become possessed of the power. So far as the inferior Federal courts are concerned, however, it is not beyond the authority of Congress * * *. That it may be regulated within limits not precisely defined may not be doubted.

The limitation which is proposed to be placed upon the power of the courts to issue injunctions based upon these "yellow-dog" contracts is, I hope, one within the purview of the opinion to which I have referred, and the opinion justifies the belief that such a provision as is embodied in the substitute bill submitted by the minority will be sustained, especially when read in the light of the declaration of policy which is also a part of the measure.

LIMIT OF INJUNCTIVE RELIEF

Sections 4 and 5 prohibit the issuance of injunctions under certain conditions therein enumerated. The language of clause (a), section 4, is as follows:

> Ceasing or refusing to perform any work or to remain in any relation of employment.

This language, fairly interpreted, leads to the conclusion that an employee may continue in the relation of employment, hold his job, and yet refuse to perform any work. That an employee may cease to be employed, whereas, in most instances, he is working under a contract at will, there is no question. On the other hand, the employer may, under such a contract, dismiss the employee and either party is at liberty to put an end to the employment relation. But expressly to provide that an employee may refuse to perform any work and yet continue in an employment relation is, to my mind, to place the stamp of approval, by legislative enactment, upon a breach of contract. It can not be that the framers of this bill had any such purpose in mind. It may well be, however, that what was intended was to place the employee outside of those injunctive processes which have been so broad as to compel an employee against his will to perform a given task. Such a situation arose in the case of Bedford Co. against Stone Cutters' Association, reported in Two hundred and seventy-fourth United States Reports, page 37 (1926).

In that case reference is made to an injunction granted to the complainant in the case of Duplex Co. *v.* Deering (254 U. S. 443) restraining the respondents—

> From interfering with the sale, transportation, or delivery in interstate commerce of the presses of complainant; also from interfering with the carting, installation, use, operation, exhibition, displacing, or preparing of any such press or presses, * * * and especially from using any force, threats, command, direction, or even persuasion with the object of having the effect of causing any person or persons to decline employment, cease employment, or not seek employment or to refrain from work or cease working under any person, firm, or corporation being a purchaser or prospective purchaser of any printing press or presses from complainant * * *.

The injunction issued in the Bedford Stone Co. case, supra, was sustained. Justice Brandeis, who wrote a dissenting opinion, made this observation:

> If on the undisputed facts of this case refusal to work can be enjoined, Congress created by the Sherman law and the Clayton Act an instrument for imposing restraints upon labor which reminds of involuntary servitude.

In my opinion, the provisions of paragraph (a), section 4, of the bill should be modified so as to provide that no injunction shall issue upon the ground that an employee has ceased or refused to remain in any relation of employment. This, I believe, would fully guarantee to the employee his freedom of contract and his right to put an end to his contractural relations.

The substitute bill prepared by the minority of the committee modifies in some respects other clauses of section 4, which, as written in the bill reported by the majority, are, in my opinion, open to serious objections.

In other words, if by the provisions of section 4 of the majority bill, clause (a), it is meant that no limitation shall be placed upon an employee to cease work when he chooses to do so and that by ceasing to do so he may not render himself liable to restraint through injunctive processes, then,

of course, that is fully justified in my judgment. But let me repeat the language:

Ceasing or refusing to perform any work or to remain in any relation of employment.

It would seem to me that would permit an employee to continue in the employment relation; in other words, to stay right on the job and refuse to do anything that he is told to do even though it be in the course of his employment and even though they be acts which he is hired to perform. It can not be that the Senate wants to enact any such provision as that. The minority has modified it by providing in the substitute bill a change so as to make it read:

Ceasing or refusing to remain in any relation of employment.

LAW OF AGENCY

I come now to a discussion of the provisions of section 6 of the majority bill which relates to agency in labor disputes.

In section 6 the bill attempts fundamentally to change the law of agency in respect to "an association or combination participating or interested in a labor dispute."

It is urged that this is not the establishment of a new law of agency, but rather the creation of a new rule of evidence. It is contended that this provision will not relieve an individual from responsibility for his acts. It is claimed that there is a distinction between cases which would arise under this section, and those commonly arising under the law of agency as it is recognized, and under which one is held legally responsible for the acts of his agents done in the course of his employment.

Criminal acts are personal to the wrongdoer, and an employer may not be held responsible as a criminal wrongdoer if his agent be guilty of a crime, notwithstanding it be committed in the course of the employment unless the employer or principal authorizes or participates in or ratifies its commission. This section does not deal with criminal acts; its provisions affect the commission of "unlawful acts." It attempts to make a distinction between the relations of those in charge of a strike who are directing the members of a labor organization in the accomplishment of their purposes and employers who direct the activities of their employees in the ordinary course of their business.

It does not seem to me that such a distinction is tenable. In the one case strikers are acting under the authority of and are subject to the orders of the leaders of the movement; in the other, the employee is subject to the authority and under the control and direction of his employer. To this extent at least there is no difference in the relation. Both seek to accomplish their respective ends—in the one case to prevail in a strike and make it effective so as to compel the employer to submit to the demands of the strikers; in the other, to render service or to sell merchandise or whatever may be the particular trade or occupation in which the employer is engaged.

If I may cite an illustration to clarify that statement somewhat, the law of agency is based upon the legal maxim that an employer is liable for the acts of his employee done in the course of his employment; in other words, respondeat superior. If a delivery clerk employed by some merchant in this city, for instance, driving a motor truck or other conveyance, runs into a pedestrain who is in the exercise of due care, and injuries him, however severely, and if in the doing of that act the delivery clerk be negligent and it be done in the course of his employment, then his employer is liable for the consequences resulting from that injury.

The provisions of section 6 would alter that completely. It would be subversive of that principle of the law of agency. It says, in effect, if an employee or a man engaged in a labor dispute, acting on the orders from him who directs that labor dispute, commits an unlawful act, then the director of that labor dispute, under whom a given employee is operating, will not be liable for the consequences of such unlawful acts "except upon clear proof of actual participation in or actual authorization of such act or of ratification of such act after actual knowledge thereof."

Having in mind that the chief object to be attained by the enactment of this bill is to limit the power of courts to issue injunctions and to punish for contempts thereof, it has seemed to me that this section might well be made a part of section 11 of the bill reported by the majority and so phrased as to protect officers and members of labor organizations from punishment for contempt and from injunctions if, when unlawful acts are committed by anyone engaged in a strike or labor dispute, it appears that such officers or members as are charged with responsibility for the acts of others did not actually participate in or actually authorize or actually ratify such acts. In addition, the amendment which I have proposed would provide that in any contempt proceedings based upon the commission of such acts, if the person charged makes the claim that he did not actually participate in or actually authorize or actually ratify such act, he shall be entitled to a public trial by an impartial jury.

In this way members of organizations engaged in labor disputes, and their officers as well, will be fully protected and at the same time the provisions of existing law will in no way be subverted.

HEARINGS ON PETITIONS FOR INJUNCTION

I come now to the provisions of section 7 of the majority bill affecting the question of hearings on petitions for injunctions.

Section 7 of the bill provides that no restraining order or injunction shall be issued in a case growing out of a labor dispute except after hearing the testimony of witnesses in open court.

The section then proceeds to outline certain findings of fact which must be had prior to the issuance of a restraining order or injunction. The first requirement is that unlawful acts have been committed and will be continued unless restrained.

Many of the restraining orders and injunctions heretofore issued in labor disputes were much more far-reaching in their effect than the occasion required. Proof to sustain this view may be found in the decisions of the Supreme Court. I am in sympathy with the purposes sought to be attained by this part of the bill, but I believe it should be modified in some respects. Under paragraph (a) of this section the owner of property may not have relief where acts of destruction are contemplated or threatened and must have actually suffered injury before he can secure a restraining order or an injunction. Courts should be left free to restrain anyone from engaging in unlawful acts, and before they are committed.

There is no element of justice in a provision of law which would permit one citizen to destroy the property of another before any court shall have the power to restrain him.

The effect of this provision would be to work hardship upon employees as well as upon employers, because in the event that an employer should threaten to commit an unlawful act against the interests of the employee the employee would have no redress, but would be required to wait until after the act had been committed before seeking his remedy. In other words, there can be no injury to a wrongdoer if he be restrained from continuing his wrongdoing.

Paragraph (c) of section 7 brings in the law of comparative negligence. In cases of comparative negligence both parties are at fault, and the question of which one is liable is determined by a comparison of the fault of each. In the case of injunctive processes to restrain illegal acts, such as violence and threats, no injury can in contemplation of law be suffered by the party who is restrained from continuing the illegal acts. Paragraph (c) makes no distinction between acts which are lawful and those which are not. It simply provides that as to the measure of relief granted the court must find that greater injury will be inflicted upon the complainant by the denial of the relief than will be inflicted upon the defendant by the granting of it.

Paragraph (e) of section 7 would require a complainant to show affirmatively that the public officers charged with the duty to protect his property are unable or unwilling to furnish adequate protection. All such officers are required to be given personal notice and as this provision is now worded, it might be construed to mean that every police officer in a city

or town of whatever size must have notice and must testify in any proceeding which may be had for injunctive relief. It would impose an unusual burden upon a complainant; first, to ascertain the names and the duties of all officers charged with the protection of property; and second, to prove that they have failed to afford protection or that they are unable to do so.

I can well imagine the burden placed upon a complainant where he sought to have relief in injunction proceedings in a city the size of New York, for instance, where he would be called upon to establish affirmatively either that the police, or those charged with the enforcement of the law or the protection of his property, were unable to afford protection or were unwilling to do so.

Not all the acts of which employers of labor complain in the course of labor disputes are such as to come within the purview of the duties of public officers generally. Even a most cursory examination of the forms of reasonable injunction which have been issued in labor disputes will disclose this. If, however, the provisions of paragraph (e) are to be limited in their operation to acts of destruction of property, there again the difficulty of establishing proof of neglect or inability of public officers to afford protection may be impossible to sustain. The destruction of property may well occur without the knowledge of public officers.

CONDITION PRECEDENT TO ISSUANCE OF RESTRAINING ORDER OR INJUNCTION

Section 8 provides that no restraining order or injunction shall be granted unless the complainant has first made every reasonable effort to settle the dispute by negotiation. The principle of mediation and arbitration is the ideal one in the settlement of labor disputes; and, wherever possible, resort should be had to such a course of action; but under this section a respondent may, without notice, engage in violence and fraud and the complainant will be denied relief unless he has first taken all steps for the negotiation of a settlement. Thus the aggressor may act without notice, and may not be restrained until the injured party has endured the violence for a sufficient length of time within which to endeavor to secure an adjustment. Negotiations looking to the settlement of labor disputes are most commendable. In very recent time we have had ample proof of this. Notwithstanding the depressed condition of industry there have been practically no labor disputes of any kind, all parties having submitted their differences to mediation and to a calm discussion through their chosen representatives. Negotiations prior to overt acts is desirable, but this rule should apply to all parties, and particularly to the aggressor.

In conclusion, Mr. President, I repeat that I have no disposition or intention to delay or to interfere with the passage of this bill. I shall offer amendments as we proceed with its consideration which I believe will more fully protect the interests of all parties in labor disputes. I have been informed that labor organizations themselves have many amendments to propose to the bill. It may be that some of those which they intend to offer or which are to be offered at their instance may carry out the purposes which I myself have in mind. I firmly believe that the substitute which I have proposed will prove satisfactory to everyone. It will relieve the laboring man from the injustices which grew out of that form of contract which is so obnoxious to American citizens; it will remove, so far as they can be removed, the well-founded objections to some of the injunctive processes which have been issued in the past in labor disputes; it will curb the power of the courts to legislate by injunction, as it is claimed they have done, and will afford to every citizen the right of trial by jury guaranteed him by the Constitution.

Mr. VANDENBERG. Mr. President, before the Senator from Rhode Island takes his seat, I should like to ask him a question.

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

Mr. HEBERT. I yield.

Mr. VANDENBERG. I am very anxious to be sure I understand the Senator's definition of the right of temporary injunction. Am I correct in understanding him to say that it is his construction that a contemplated injury can not be enjoined; that injury must actually have been suffered before there can be an injunction?

Mr. HEBERT. Mr. President, that is my reading of the provisions of the bill reported by the majority of the committee, and I shall call the Senator's attention to them.

Mr. ROBINSON of Arkansas. The language to which the Senator from Rhode Island refers is found, beginning in paragraph (a), line 7, on page 6.

Mr. HEBERT. Yes. Paragraph (a), line 7, page 6, reads:

That unlawful acts have been committed and will be continued unless restrained.

Mr. VANDENBERG. Yes; but I call the Senator's attention to paragraph (b), which reads:

That substantial and irreparable injury to complainant's property will follow.

Mr. HEBERT. Will follow what?

Mr. VANDENBERG. The unlawful acts that have been committed. There need not necessarily be damage, need there?

Mr. HEBERT. But, notwithstanding one has knowledge that unlawful acts have been threatened which, if committed, will destroy his property and will cause irreparable injury, he may not obtain an injunction, under this bill, according to paragraph (a), on page 6, because injunctions are to be limited to unlawful acts which "have been committed and will be continued unless restrained."

Mr. VANDENBERG. In other words, would it be the Senator's view that no contemplated injury, however formidably anticipated, could be reached?

Mr. HEBERT. That is correct.

Mr. ROBINSON of Arkansas. Mr. President——

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

Mr. HEBERT. I yield.

Mr. ROBINSON of Arkansas. I am impressed with the correctness of the interpretation of this language by the Senator from Rhode Island. Paragraphs (a), (b), (c), (d), and (e) appear to be cumulative; that is to say, it must appear that all five of the conditions mentioned in them exist before relief may be granted; there must have been unlawful acts already committed; it must appear that substantial and irreparable injury will result; that, upon a balancing of injuries, it shall be found that the injury to be inflicted upon the complainant will be greater than the injury that will be imposed on the defendant; that the complainant has no adequate remedy at law; and that public officers are not able or are unwilling to enforce it.

Mr. VANDENBERG. Mr. President, may I ask the Senator from Arkansas, then, would it be his view, if I have definite and specific information that my property is about to be attacked in the course of a well-sustained and well-formulated conspiracy, that I must await the attack before I can procure relief?

Mr. ROBINSON of Arkansas. No; that is not my view at all; and I think if it is made to appear clearly that property is about to be destroyed it is much better to grant relief before the destruction of the property than afterwards.

Mr. VANDENBERG. I would think so; but I am asking the Senator if it is his construction of this bill that relief can not be obtained under the circumstances I have mentioned?

Mr. ROBINSON of Arkansas. That is what I was saying. I did not write the language, but from its reading it seems that before an injunction can be obtained it must be shown that there have been unlawful acts. Of course, the reason for that is that frequently attempts are made to prove intention to commit unlawful acts when there is little actual evidence to support it. Under the procedure that has prevailed heretofore most of the injunctions have been issued upon ex parte applications, and therein lies the great sin of them. Any sort of an allegation that would apparently give the court jurisdiction is accepted as true upon slight

proof. The object of the provision is apparent; it is to protect against such circumstances; but I think the language needs consideration.

Mr. HEBERT. In fact, many of those injunctions are issued ex parte upon mere affidavit.

Mr. ROBINSON of Arkansas. Yes.

Mr. HEBERT. That situation is amply protected by the provisions of the substitute which has been prepared by the minority members of the committee, and it is likewise protected by the bill presented by the majority; but we of the minority felt that the majority bill goes too far, and requires too much cumulative evidence before affording any redress to one whose property is destroyed or is about to be destroyed.

Mr. ROBINSON of Arkansas. I should say that in connection with the paragraph just referred to on page 6 of the bill, I think the suggestion of the Senator from Rhode Island is well worthy of consideration.

Mr. WALSH of Montana obtained the floor.

Mr. ROBINSON of Arkansas. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

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

Ashurst	Cutting	Jones	Robinson, Ind.
Austin	Dale	Kean	Schall
Bailey	Davis	Kendrick	Sheppard
Bankhead	Dickinson	Keyes	Shipstead
Barbour	Dill	King	Smith
Bingham	Fess	La Follette	Smoot
Black	Fletcher	Lewis	Steiwer
Blaine	Frazier	Logan	Stephens
Borah	George	Long	Thomas, Idaho
Bratton	Glass	McGill	Thomas, Okla.
Brookhart	Glenn	McNary	Townsend
Broussard	Goldsborough	Metcalf	Trammell
Bulkley	Gore	Morrison	Tydings
Bulow	Hale	Moses	Vandenberg
Byrnes	Harrison	Neely	Wagner
Capper	Hastings	Norbeck	Walcott
Caraway	Hatfield	Norris	Walsh, Mass.
Carey	Hawes	Nye	Walsh, Mont.
Connally	Hayden	Oddie	Watson
Coolidge	Hebert	Patterson	Wheeler
Copeland	Howell	Pittman	White
Costigan	Hull	Reed	
Couzens	Johnson	Robinson, Ark.	

The PRESIDENT pro tempore. Ninety Senators having answered to their names, a quorum is present.

Mr. WALSH of Montana. Mr. President, the differences which have developed in the course of the discussion so far as it has proceeded indicate that they occupy so narrow a field that it would seem as though protracted debate would scarcely any longer be called for, and that hereafter it might very appropriately be confined to what may be regarded as details of the bill, such as were referred to in the colloquy with the Senator from Rhode Island [Mr. HEBERT] as he was about to quit the floor.

Of the necessity and advisability of legislation dealing with this particular subject there seems to be no difference of opinion. Reference has been made to the declarations of the platforms of the two great political parties in 1928 to the effect that abuses have crept into the procedure of the issuance of injunctions, particularly in labor cases, and that remedial legislation should be enacted. Both the majority and the minority reports agree concerning the existence of these abuses and concerning the need for legislation.

The governors of various States, particularly the States of Massachusetts, New York, and Wisconsin, have recently invited the attention of their legislatures to these abuses and suggested the enactment of remedial legislation. The National Civic Federation has called attention to the need in a pamphlet recently issued, from which I read, as follows:

> A most careful and thorough examination has been made of injunctions issued in labor disputes in our State courts as well as in our Federal courts (as indicated in the record annexed), which study has clearly indicated the validity of the complaint made by labor that the injunction writ has been subject to many abuses, thus confirming as well the declarations of the two major political parties, which have expressed themselves upon this question.
>
> Your committee has, therefore, no hesitancy in recommending the advisability of remedial legislation on this subject. Indeed, it deems it imperative if the workers are to be assured that the judiciary of our land and the great powers vested in it are not being unduly and unwarrantedly used in determining the industrial relations and policies that should govern our industrial life.

Former Senator Pepper, once a distinguished Member of this body, has contributed an article on this subject to the Journal of the American Bar Association, which I ask may be incorporated in the RECORD at the conclusion of my remarks.

The PRESIDENT pro tempore. Without objection, it is so ordered.

(See Exhibit A.)

Mr. WALSH of Montana. The particular abuses pointed out are, first, the issuance of restraining orders without any notice whatever; second, the issuance of temporary injunctions at least upon ex parte affidavits; third, the use of general language in the restraining order, so that the ordinary person to whom it may be directed, or who may be interested in it, is unable to say whether or not a particular act falls within the condemnation of the order; fourth, the issuance of injunctions upon what is known as the "yellow-dog" contract; and, finally, the issuance of injunctions restraining the doing of acts clearly legal in themselves.

I desire to address myself particularly, however, to what is known as the "yellow-dog" contract. That is a contract by which, when one seeks employment from an industrial organization, he is confronted with a form contract by which he agrees that while he remains in the employ of the employer he will not join a union. There are other stipulations related to that to which it will not be necessary to advert; but it is for the purpose of insuring to the employer that he will not be called upon to deal with a union.

These contracts are coming into remarkably general use. A case involving one recently came before the Supreme Court of the State of Pennsylvania. The injunction in that case was sustained, but in it a dissenting opinion was rendered by Mr. Justice Maxey in which reference was made to the frequency with which these so-called restrictive contracts are employed. I read from an opinion filed by him, as follows:

> In May, 1929, the plaintiff company entered into an agreement with the Allied Manufacturers' League (Inc.), of New York City, whereby the "league" agreed to assist plaintiff company in installing the "individual contract system" at the plant and to secure new employees in the event of a strike. This "league" is apparently owned and managed by one Horace A. MacDonald. On June 8, 1929, MacDonald appeared with mimeographed forms of the individual contract and that night he and the company's superintendent, Winkler, went to the knitters' floor in the mill and instructed the night foreman, Bowersocks, to assemble the employees. This was done, and Winkler and MacDonald told the men that they were to sign the individual contracts. Lester Rice, a knitter in the plaintiff's mill, testified that Bowersocks, the foreman, "just called them down there, one by one, to the office to sign that "yellow-dog" contract, and we wouldn't sign." For about two hours the importunities to sign continued. MacDonald testified that the men "said it was a "yellow-dog" contract." The men were told to sign or quit work. Nearly the entire night force refused to sign and left the plant at 2 a. m. William Montplaisir, an employee, testified that "there was a lot of discussion about signing it; no one wanted to." The following day Schmidt summoned the day-shift men to his office where, according to the testimony of employees, they were "told to sign or get out. So what was the use of reading it?"

I call attention to the fact that this company exists for the purpose of supplying what are known as strike breakers wherever a strike occurs—that is to say, furnishing men who will operate during the course of the strike—and at the same time furnishes blank "yellow-dog" contracts to any company that desires to use them for the purpose of restricting the liberty of the men in its employ.

The generality of the use of these contracts is likewise disclosed in an article, which will be found in the Nation of December 31, 1930, by Mr. Joel L. Seidman. I read from that article, as follows:

> Employers were not slow to realize that they possessed in the injunction a weapon of the greatest effectiveness. The Red Jacket case, upon which rests Judge Parker's claim to fame, strengthened the tendency to resort to these contracts, though it added nothing that was conclusive, since it went no higher than the United States Circuit Court of Appeals. As a result, the "yellow-dog" contract is resorted to at present, not so much for its psychological effect as for its future usefulness in securing a court injunction against union organizers. Whenever an attempt is made to persuade the signers of these contracts to join a union, it can be

accepted as a certainty that application will be made to a court of equity for a restraining order, and as just as great a certainty that the order will be issued.

This was true of the Kraemer Hosiery Mills, of Nazareth, Pa.—

That is the case to which I have just referred—

and of the United States Gypsum Corporation in Iowa, to cite but two of the most recent instances. In several instances, as in certain dressmaking establishments in New York City, the workers have been forced to deposit cash with the employer as security for observance of the "yellow-dog" contracts. In one case the helpless employees were even forced to agree that if they violated the terms by joining a union, an injunction could be issued against them—which is much like forcing condemned men to say that they are willing to be executed. The use of "yellow-dog" contracts has spread so rapidly within the past 13 years that now the Metal Trades Department of the American Federation of Labor estimates that 1,250,000 persons in this country are working under such agreements.

Clearly, labor is being combated here with a peculiarly deadly weapon. A man who has a family to support and no resources upon which he can fall back will of necessity sign anything to get a job. If, then, an injunction is issued and any attempt to acquaint him with the advantages of unionization becomes contempt subject to the summary punishment of the court, it follows that the growth of unionism can effectively be checked.

The subject had very elaborate consideration in this body in connection with the confirmation of Judge Parker; and, at the close of a very eloquent address, the Senator from Idaho [Mr. BORAH] expressed gratification that no Member of the Senate had risen in his place and said one word in justification of that method of oppression of labor. Thus far in the discussion of the matter upon the floor, no one has risen to justify the use of these contracts. Indeed, to his credit the Senator from Rhode Island [Mr. HEBERT] expressly declared that they met his condemnation.

The minority report, as well as the majority report, condemns them. I read from the minority report as follows, referred to what is known as the "yellow dog" contract:

In our opinion, this form of agreement deprives employees of the right of free association with their fellows and takes away from them the opportunity to deal on a basis of equality with those by whom they are employed. But however distasteful they may be to us, and however much we may sympathize with those who believe that the interests of employees will never be properly protected except through legislative enactment, the fact remains that the Supreme Court in three cases has held that there is no legislative power, State or Federal, to inhibit or outlaw employment contracts providing against union membership.

I read that for the purpose of calling attention to the fact that although the minority contend that these contracts are immune from legislative condemnation by reason of constitutional principles, they still meet their condemnation; they believe they are oppressive and wrong.

So, too, both bills condemn these contracts, the bill presented by the majority of the committee declaring that they shall be unenforceable either at law or in equity, and the minority report equally declaring that they shall not be enforceable in equity.

Mr. CONNALLY. Mr. President, even though it may be agreed that the minority report is correct in the view that the contract itself, on account of constitutional reasons, can not be condemned, Congress, however, would still have the power to say that no Federal instrumentality should be permitted to enforce it or to issue an injunction in cases of that kind. Is not that true?

Mr. WALSH of Montana. That appears to be the concurrence of the entire committee.

Mr. CONNALLY. Is not that sound constitutional principle?

Mr. WALSH of Montana. I think so. I propose to say something about that a little later on.

Mr. CONNALLY. I beg the Senator's pardon.

Mr. WALSH of Montana. That is all right. Both bills, then, condemn these contracts. The bill presented by the majority of the committee declares that they are against public policy and ought not to be enforced, either at law or in equity. The minority reports that they are against public policy and ought not to be enforced in equity, and they content themselves with that. The point I am making now is that they meet the condemnation of the entire membership of the Senate, so far as I have been able to discern.

In a pamphlet I hold is collected a large number of expressions from public men, from publicists and from jurists, who express themselves in unmeasured terms in denunciation of this particular form of contract and oppression of labor. I ask unanimous consent that this may be printed in the RECORD at the conclusion of my remarks.

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

(See Exhibit B.)

Mr. WALSH of Montana. The late Chief Justice of the Supreme Court, Mr. Chief Justice Taft, during the war, it will be remembered, was at the head of what was known as the War Labor Board, a board constituted for the purpose of adjusting differences between labor and employers so that production might go on uninterrupted during that stressful time. He found that a strike was in progress among the street-car operatives in Council Bluffs and Omaha, and it became a part of his duty to adjust that controversy. He found that the "yellow-dog" contract was in force among the street-railway employees in those two cities and their employers, and in reporting on that particular controversy Judge Taft said:

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

That is, contracts which provided that the operative 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.

We may, then, proceed upon the assumption that everybody in this body would get rid of these contracts if that could be done, believing them to be unwise and unjust.

It is said, however, that we are powerless in the premises, at least, that we have no power to condemn these contracts so far as legal actions are concerned, and that conclusion is based upon three decisions of the Supreme Court of the United States, the case of Adair against the United States, the case of Coppage against Kansas, and the case of Hitchman Coal & Coke Co. against Mitchell.

The case of Adair against the United States arose under a statute which condemned these contracts so far as they were executed in favor of companies engaged in interstate commerce. Some of the railroad companies, as has been disclosed, were resorting to these contracts, and an effort was made by Congress to hold them ineffective. The statute was declared by the Supreme Court of the United States in that case to be void. That statute made it criminal for anyone to enter into a contract of that character or for any interstate carrier to exact such a contract of its employees. It was a criminal statute, and the criminal statute was held void.

The case of Coppage against Kansas arose upon a similar statute enacted by the State of Kansas. It forbade any employer exacting of his employees a contract of that character, and made again the exacting of such a contract a criminal offense. Upon the authority of Adair against the United States, the Supreme Court held that that statute of the State of Kansas was void.

The case of Hitchman Coal & Coke Co. against Mitchell has frequently been adverted to on the floor here, and particularly in connection with the confirmation of the nomination of Judge Parker, and need not be adverted to. The question was not directly presented in that case as to the power of Congress to legislate upon the subject or as to the power of a State to legislate upon it. However, on the basis of such contract, an injunction in that case was sustained.

Those conclusions were, as I have pointed out, arrived at in determining the validity of criminal statutes, and the decisions went no further than to find that neither the Congress nor the States could make contracts of that character criminal and punishable penally.

It is true, however, that in reaching that conclusion the court expressed itself further than that, and indicated that

it was beyond the power, in the one case of Congress and in the other case of the legislature of a State, to enact legislation which would invalidate contracts of that character.

The grounds upon which those decisions proceeded are indicated by a brief extract from the opinion in the case of Adair against the United States, which I shall read. The majority opinion says:

> It was the legal right of the defendant, Adair—however unwise such a course might have been—to discharge Coppage because of his being a member of a labor organization, as it was the legal right of Coppage, if he saw fit to do so—however unwise such a course on his part might have been—to quit the service in which he was engaged, because the defendant employed some persons who were not members of a labor organization. In all such particulars the employer and the employee have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land.

In the later Coppage case the court said:

> To ask a man to agree in advance to refrain from affiliation with the union while retaining a certain position of employment is not to ask him to give up any part of his constitutional freedom. He is free to decline the employment on those terms, just as the employer may decline to offer employment on any other, for "it takes two to make a bargain."

Both of these decisions proceed upon the assumption that both of the parties to the contract stand upon an entire equality of footing, whereas, as a matter of course, everybody in these days recognizes that they stand on no such footing.

In the dissenting opinion in that case it was said that for the reason that the employee is under all manner of constraint, the constraint of fear of starvation for himself and his family, to induce him to enter into the contract, they do not stand on any footing of equality, and therefore contracts of that character are and should be by the courts declared to be contrary to a wise public policy.

I read from the opinion of Judge Day, with whom the present Chief Justice, then Associate Justice Hughes, concurred:

> Liberty of making contracts is subject to conditions in the interest of the public welfare, and which shall prevail—principle or condition—can not be defined by any precise and universal formula. Each instance of asserted conflict must be determined by itself, and it has ben said many times that each act of legislation has the support of the presumption that it is an exercise in the interest of the public. The burden is on him who attacks the legislation, and it is not sustained by declaring a liberty of contract. It can only be sustained by demonstrating that it conflicts with some constitutional restraint or that the public welfare is not subserved by the legislation. The legislature is, in the first instance, the judge of what is necessary for the public welfare, and a judicial review of its judgment is limited. The earnest conflict of serious opinion does not suffice to bring it within the range of judicial cognizance.

Judge Taft again said, in the Tri-City case, something quite pertinent to this matter we have under consideration. I read as follows:

> They—

That is, trade-unions.

> 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.

Of course, it need not be said that if these contracts shall be upheld against legislative condemnation of them, and come into general use—and they have already come into general use and bid fair to come into practically universal use—as a matter of course there can be no such thing as labor unions, which Judge Taft said are essential in order to protect the liberty of the laboring men.

Mr. President, the right to enter into contract is not unrestricted. It is governed and controlled by many considerations, among them being the question as to whether the particular contract is or is not condemned by public policy. Take usurious contracts, for instance. Here are two parties perfectly willing to enter into a usurious contract, but the law says, "No; you may not do that. We will not give judicial countenance to any contract of that character. We forbid you to enter into a contract of that character."

Why, Mr. President? "Usurious contract" has been defined as the extorting or taking of a higher rate of interest than that allowed by law. Statutes making usuries penal proceed upon the assumption that the borrower is constrained by his necessities to enter into an unwarranted and improvident or unconscionable contract. It appears to me there is a perfect analogy between the case of statutes condemning usurious contracts and statutes condemning contracts such as are under consideration.

Chancellor Kent declared in one of his great opinions that Jeremy Bentham had declared that statutes of usury are founded upon wise and sound principles of public policy. Statutes of usury date back even to Biblical times. Their origin is involved in so much doubt that it still remains a matter of question as to whether usury was an offense under the common law or whether it had its origin in parliamentary statutes. However that may be, Mr. President, the power to contract was thus restrained by the act of the legislature or by the common law.

Likewise, it will be observed that public policy is different at different times and in different places. Statutes of usury existed in Great Britain for many years. It was deemed a wise public policy to prohibit contracts of that character. After a time that policy changed so that in 1856 all English statutes in relation to usury were abrogated. So in this country there are some States in which it is considered wise public policy to enact usury statutes. In others perfect freedom is believed to be the wiser public policy. Many of the States of the West have no usury statutes at all.

Mr. President, the power to contract is limited by many considerations. I have here the standard work, Greenwood on Public Policy, in the law of contracts. In the index we find a long list of contracts which the law will not permit to be made, and will not permit to be made upon grounds of public policy. One chapter deals with "contracts promotive of private dishonesty." All such are void. Another chapter deals with "contracts destructive of competition." The Senator from Illinois [Mr. LEWIS] referred this morning to the statutes of Congress declaring certain contracts void because their tendency was to abrogate or limit competition.

Other chapters deal with contracts tending toward oppression; contracts promotive of prostitution, crime, and infidelity; contracts promotive of gambling; contracts for insurance where the party insuring has no real substantial interest in the life of the party assured; contracts promotive of dereliction of duty, public and private; contracts the effect of which will be the corruption of private citizens with reference to public matters; contracts affecting the integrity of public elections; contracts restricting assignability, the latter prohibiting one from making a contract by which the person to whom he sells a piece of property is restrained from disposing of that property at will; contracts promotive of monopoly; contracts in restraint of trade; contracts limiting the liability of common carriers, telegraph companies, employers, and tort feasors; contracts excusing a man from negligence either of himself or of his servants. So, Mr. President, there is a vast class, a great variety of contracts which the law will not permit to be made.

Is a contract of the character we are now considering such as is to be condemned as contrary to the public policy of the country? From the pamphlet to which I referred a little while ago I read a few excerpts indicating the views of publicists with reference to the same.

The United States Coal Commission reported in 1925, and in its report said:

> Notwithstanding the decisions of the Supreme Court of the United States that the so-called "yellow-dog" contract is legal, the commission is of the opinion that it is a source of economic irritation, and is no more justifiable than any other form of contract which debars the individual from employment solely because of membership or nonmembership in any organization.

The United States Coal Commission, reporting again in 1923, said as follows:

We recommend that such destructive labor policies as the use of spies, the use of deputy sheriffs as paid company guards, house leases which prevent free access and exit, and individual contracts which are not free-will contracts be abolished.

Again the Coal Commission said:

The individual contract is closely tied up with the suppression of civil liberties. It has been used as a basis for securing injunctions against the attempts to organize the field by any means whatsoever. It has also been used as the basis for claiming damages from the United Mine Workers.

The Federal Council of Churches of Christ in America, in a press release under date of December, 1920, had the following to say:

When an applicant for work is compelled to sign a contract pledging himself against affiliation with a union, or when a union man is refused employment or discharged merely on the ground of union membership, the employer is using coercive methods and is violating the fundamental principle of an open shop.

From a pastoral letter of Catholic archbishops and bishops in the United States I read as follows:

Religion teaches the laboring man and the artisan to carry out honestly and fairly all equitable agreements freely arranged. * * * By treating the laborer first of all as a man the employer will make him a better working man; by respecting his own moral dignity as a man the laborer will compel the respect of his employer and of the community.

Reference is made, Mr. President, to the fact that these contracts almost encroach, if they do not actually encroach, upon the prohibition of the thirteenth amendment against involuntary servitude. I am reminded that long ago Homer said, "That day sees man a slave that takes half his work away."

No one will accuse Elihu Root of being a wild radical by any means, but in an address delivered by him in 1916 he had the following to say. After referring to the perfect freedom of contracts that existed between employer and the employee in past days before industrial conditions arrived at the point at which we find them in our day, he said:

Now, however, the power of organization has massed both capital and labor in such vast operations that in many directions, affecting great bodies of people, the right of contract can no longer be at once individual and free. In the great massed industries the free give and take of industrial demand and supply does not apply to the individual. Nor does the right of free contract protect the individual under those conditions of complicated interdependence which make so large a part of the community dependent for their food, their clothing, their health, and means of continuing life itself upon the service of a multitude of people with whom they have no direct relations whatever, contract or otherwise. Accordingly democracy turns again to government to furnish by law the protection which the individual can no longer secure through his freedom of contract and to compel the vast multitude on whose cooperation all of us are dependent to do their necessary part in the life of the community.

In the Daily Law Journal of May, 1909, appeared an article by Dean Roscoe Pound, from which I read as follows:

The attitude of many of our courts on the subject of liberty of contract is so certain to be misapprehended, is so out of the range of ordinary understanding, the decisions themselves are so academic and so artificial in their reasoning, that they can not fail to engender such feelings. Thus, those decisions do an injury beyond the failure of a few acts. These acts can be replaced as legislatures learn how to comply with the letter of the decisions and to evade the spirit of them. But the lost respect for courts and law can not be replaced. The evil of those cases will live after them in impaired authority of the courts long after the decisions themselves are forgotten.

Dr. Felix Frankfurter, of the Harvard Law School, had the following to say about it:

The rapidly increasing use of the so-called "yellow-dog" contracts has grown into a serious threat to the very existence of labor unions. In view of the inequitable conditions that surround the formation of such agreements and the unfair division of their obligation, to appeal to equity for their enforcement is to disregard the fundamentally ethical foundations of courts of chancery.

Francis B. Sayre, of the Harvard Law School, in the Yale Law Journal of March, 1930, had the following to say:

Seizing upon the Hitchman decision, employers have found an effective way to prevent peaceful and otherwise lawful union activities by requiring present or prospective employees as the price of employment to sign individual contracts against joining any union. Thus entrenched, they are in a position to defy every effort on the part of the union to unionize their plants, and by a system of strategic individual contracts with their employees they are able in many cases to prevent unions entering into a competitive struggle with them over the price of labor. That courts would refuse in fields other than labor law to allow competition to be effectually stifled by means of strategic contracts with third parties seems clear.

The question was mooted, Mr. President, as to how the public policy should be declared and promulgated, whether by the legislature or by the courts themselves. That subject is referred to in a note on page 4 of the book to which I referred a while ago, Greenwood on Public Policy, as follows:

Howe, J., of the Wisconsin Supreme Court, admitted, in a comparatively recent case, that the immediate representatives of the people, in legislature assembled, "would seem to be the fairest exponents of what public policy requires, as being most familiar with the habits and fashions of the day, and with the actual condition of commerce and trade, their consequent wants and weaknesses." Legislation is the least objectionable, because it operates prospectively as a guide to future negotiations, and does not, like a judgment of a court, annul a contract already concluded in good faith and upon a valuable consideration, and establishes a rule giving a wider circulation among the people, and which enters more generally into the information of the public. But this consideration by no means establishes the impropriety of a judicial determination that transactions are "at war with any established interest of society, however individuals may suffer thereby. The interest of individuals must be subservient to the public welfare."

That is to say, Mr. President, that the courts themselves may declare that a certain contract is against public policy, and many of the contracts denounced as against public policy were declared to be so in the entire absence of statutes, but, in the development of law, contracts of that kind coming before the courts were held to be contrary to public policy and declared to be void. Others were condemned by specific statutes, and there would appear to be no reason whatever, as it seems to me, why this particular variety of contracts should not be equally so condemned.

The present state of the law, Mr. President, upon the subject was set forth in an article in the Columbia Law Journal. It collates all of the cases, both for and against, and discloses that in the State of New York a very marked change has been shown in the later decisions from those upholding contracts of this character at an earlier date. I refrain from a discussion of these particular decisions, because I know that they have had the attention of the Senator from New York [Mr. WAGNER], who will probably address the Senate upon that subject. However, even though this view should be unsound, even though the court should eventually hold that, notwithstanding the character of these contracts, notwithstanding they have been so generally condemned and denounced, notwithstanding that the Senate has declared that it is against public policy that they should be enforced, the court should find that they still are protected by the Constitution, we are not without remedy, because, so far as the Federal courts are concerned, their jurisdiction is controlled entirely by the acts of Congress. We may limit as we see fit the jurisdiction of the inferior courts of the United States. The Constitution itself prescribes that "the judicial power [of the United States] shall extend to all cases in law and equity" involving a Federal question and to controversies involving citizens of different States, and so on; but no jurisdiction can be exercised unless it is conferred by Congress. That view is very clearly expressed in the case of Kline *v.* Burke Construction Co., in Two hundred and sixtieth United States Reports. I read from page 234, as follows:

Only the jurisdiction of the Supreme Court is derived directly from the Constitution. Every other court created by the general Government derives its jurisdiction wholly from the authority of Congress. That body may give, withhold, or restrict such jurisdiction at its discretion, provided it be not extended beyond the boundaries fixed by the Constitution.

The opinion in that case was rendered by Mr. Justice Sutherland, formerly a member of this body, and he declares that jurisdiction may be given, it may be withheld, or it may be restricted. Congress has consistently acted upon that theory. So far back as 1793 it enacted a law providing that no restraining order should be issued by any equity court

without notice to the parties against whom it ran. Prior to that time the courts of equity were authorized, in accordance with the practice of the chancery courts of Great Britain, to issue restraining orders without notice. Nevertheless, Congress declared, "You shall not issue a restraining order without notice." That state of the law continued, as my recollection is, until 1870 or 1872, during which time courts of the United States could not issue restraining orders without notice. The bill before us does not go that far. It authorizes the issuance of an injunction without notice, but the case must be clearly made in order to have it issued without notice that an irreparable injury will ensue.

Let me remark, Mr. President, that the more or less famous injunction issued by Judge Wilkerson, sued out at the instance of the then Attorney General of the United States, Mr. Harry Daugherty, is an instance of a restraining order which issued without any notice whatever. The shopmen's strike had been in progress for a long time, some months at least. It was alleged that acts of violence had been committed over a very considerable period of time. It was alleged, among other things, that a conspiracy existed for the purpose of restraining commerce between the several States and interrupting the progress of the mails. So far as that is concerned, if a strike is conducted upon a perfectly peaceful plan, if there is no violence of any character whatever, and no law is violated, yet, as a matter of course, if it is a successful strike, it will more or less interfere with commerce between the several States.

The shopmen's strike, for instance, was conducted upon the most peaceful lines, but obviously there would be some delay in the transport of products from one State to another, because, as a matter of course, equipment would deteriorate and transportation could not be carried on with the usual facility and with rapidity. So an application was made for a restraining order upon a bill of complaint, to which was attached a schedule, prepared by a clerk in the Department of Justice, reciting that United States marshals had reported from all over the country certain acts of violence. That was made a part of the bill of complaint. The bill of complaint was verified on information and belief by the United States district attorney for the northern district of Illinois; and upon that kind of a showing, without any notice whatever, an order was issued restraining the defendants from committing any of the acts mentioned in the bill of complaint, the restraining order itself being couched in such general language that no one could tell what particular acts were and what were not condemned by it.

At any rate, as I have indicated, along about 1870 the statute was changed, and thereafter restraining orders might be issued without notice.

Then again, in 1930, Congress restricted the power of Federal courts to punish for contempt. Prior to that time, in accordance with the practice of the courts of chancery, no limitation whatever was placed upon the chancellor. He could impose such penalty for contempt as seemed to him to be required by the justice and necessity of the case. But in that year Congress passed an act prohibiting judges of Federal courts from imposing a fine greater than $500 for contempt. Again in 1914, in the Clayton Act, we gave the right of trial by jury in cases of contempt, or at least supposed we had.

In other words, three separate times the power of the Federal courts in equity matters has been restricted by Federal legislation. Accordingly, even the minority members of the committee concede the right of the Congress of the United States to restrain the courts of the United States sitting as courts of equity from issuing writs of injunction; in other words, they concede the right of Congress to limit the jurisdiction of courts of the United States in the matter of the issuance of injunctions.

Mr. President, there is another feature of the pending legislation to which I desire to advert only briefly, and to my mind it is one of the crucial questions in connection with the bill. I refer to a feature to which the Senator from Rhode Island [Mr. HEBERT] adverted before the close of his remarks. The bill presented by the majority provides that one shall not be liable for acts of violence or destruction of property committed during the course of a strike unless he actually authorized the acts or thereafter ratified the commission of them. This is condemned, Mr. President, by the minority. The actual situation is this: Many of the courts hold that most strikes are conspiracies—conspiracies to restrain trade. As I have indicated, no matter how peacefully or orderly a strike may be conducted, it will interfere, to some extent, with the movement of trains. Consequently the conclusion is arrived at that the strike itself is an unlawful conspiracy in restraint of trade, and evidence concerning specific acts of violence or the destruction of property or the threatened destruction of property is introduced simply for the purpose of aggravating the alleged conspiracy.

There is a principle of law to the effect that every member of a conspiracy is responsible for every act committed by any other member of the conspiracy, whether he participates in the act or not. So, Mr. President, the officers of a union declaring and endeavoring to manage a strike, although they may exercise every power at their command to restrain all acts of violence, however such acts may be provoked, are held answerable. I might say in this connection that the courts have repeatedly said that in the case of strikes there are probably acts of violence upon both sides. There is the strike breaker on the one side and the striker on the other side, each actuated by powerful passions and each filled with bitterness toward the other, so that clashes are very likely to ensue; so that, however the officers of the organization may exert themselves in order to prevent violence, it will occur. They issue bulletins urging all their members to observe the law, to do nothing beyond the limits of what the law will permit, and they even punish and restrain their members who have been shown to have violated such instructions. No matter what they do, violence will ensue, in all reasonable probability; and if the court finds that a conspiracy exists they become answerable for every act committee by any of those who are alleged to be within the conspiracy. That is entirely unjust. So that suits are brought against the officers of the unions to recover damages from them for all injuries done, either to person or property, by anybody who is connected with the strike, upon the ground that it is done by one of the conspirators, and all conspirators are liable.

The bill presented by the majority seeks to relieve the officers of the unions engineering a strike from liability to respond in damages for any loss sustained by the acts of anyone unless done by their authority, either express or implied, or unless they have afterwards ratified the unlawful acts.

There are some other minor features of the legislation to which I may address myself as the debate proceeds.

EXHIBIT A

THE LABOR INJUNCTION—TOUCHSTONE OF OPINION

It is sometimes said that the nations of continental Europe have domesticated war. In the sphere of industrial warfare we and our English brethren have long ago domesticated the strike. Legislators and lawyers, whether English or American, are familiar with the efforts always made by each party, when a strike is in progress, to win the final decision. The employer tries to keep his plant running with the help of all the nonunion labor he can assemble. The strikers, by every device which ingenuity suggests, strive to induce workers to quit and to dissuade would-be workers from enlisting. There is apt to be lawlessness on both sides, more particularly on the side of the strikers. They are more numerous. The responsibility of the individual is more difficult to fix. They are persuaded that for them it is a life-and-death struggle. Defeat, they think, means for them industrial death. From their point of view the strike breaker is not merely a formidable industrial competitor. He is committing a social offense against his class. Any group of people with class consciousness can be counted upon to show bitter resentment against the man who ought, they think, to be with them and is in fact working against them. It requires tremendous self-control in such a situation to keep bitterness from expressing itself in violence.

The thing called picketing may accordingly be regarded as much more than an effort to persuade or intimidate nonunion workers. It may be conceived of as the protective action of a great social group who feel outraged at what seems to them the betrayal of their class.

In a community which so conceives of it, picketing is not a thing to be stopped by injunction. It is rather a thing to be domesticated along with the strike. Attending at or near the plant or

near the nonunion man's house, for the purpose of persuading him to abstain from working, becomes a normal and inevitable course of conduct. If you object that such conduct may easily lead to violence, the answer will be made to you that the administration of criminal law must in that event be relied upon for protection.

When you observe attentively what is going on in a given community you will find it possible to decide whether in that community picketing has come to be recognized as the self-protection of a social class in strike time or is still generally regarded as something which can successfully be outlawed in the warfare between employer and employee. I suggest that it is in this connection that you will find an instructive contract between the English industrial situation and ours. If you read the trades disputes act, you will find in section 2 (see p. 535) a definite statutory declaration of the legality of some of the very things from which the striking shopmen were enjoined 18 months ago by the United States District Court for the Northern District of Illinois. This means that in England picketing has been recognized as inevitable class self-protection, while with us it is still treated as a preventable offense against the rules of industrial war.

A further study of the act will show you that our British brethren have also declared that acts done by agreement or combination in contemplation or furtherance of a trade dispute are not actionable unless they are such as to be actionable in the absence of agreement or combination. In other words, actionable conspiracy in such cases no longer includes conspiracy to do things in themselves lawful. You will not fail to note, however, that, while Parliament was making these declarations, it put additional teeth into the conspiracy and protection of property act by prescribing fine and imprisonment after summary conviction for those who use violence toward a worker or his family or indulge in threats or in disorder or beset the house of a worker or follow him through the streets. In other words, our British friends have come to recognize peaceable picketing as a legitimate concomitant of a strike, but have trained the guns of their criminal procedure upon conduct which threatens breach of the peace or invasion of private right. What they have thus domesticated we still seek to enjoin.

When you mark this contrast you will be led to review our own industrial history during the last 35 years. You will begin with 1888, when a State court first issued an injunction is a labor case. You will pass to 1891, when the Federal courts first entered this field. Then you will note the frequent recurrence of Federal injunctions until to-day such injunctions have become a recognized exercise of the Federal equity power.

I was led recently to make such a review of our industrial history by my desire to account for the growing bitterness of organized labor toward the Federal courts. In the Senate one quickly becomes aware of the existence throughout the country of a sentiment on this subject which, if unchecked, may easily develop into a revolutionary sentiment. I accordingly addressed a letter to every United States district attorney asking him to secure from the clerk's office in his district a copy of all such injunction orders made by the United States court in his district during the last few years. Courteous attention to my request has supplied me with a most interesting mass of material. The study of these orders discloses an evolution mildly comparable with the growth of the corporate mortgage. The injunction orders have become more and more comprehensive and far-reaching in their provisions, until they culminate in the shopmen's injunction order already referred to. Every thoughtful citizen who has not already done so should read that order and meditate upon its significance. In so doing he should have in mind that during the shopmen's strike in 1922 nearly every one of the 261 "Class I" railroads and a number of short-line railroads applied for injunctions in the various Federal courts. No applications were denied. In all nearly 300 were issued.

Naturally enough, during the past two decades there have been bitter protests from the ranks of labor. To the striker it seems like tyranny to find such vast power exercised—not by a jury of one's neighbors, but by a single official who is not elected but appointed, and that for life, and whose commission comes from a distant and little understood source. The protests have taken every conceivable form. They include a suggested act of Congress to take away the jurisdiction to issue injunctions except to protect tangible property, and a proposed amendment of the Constitution framed to make Federal judges elective. Whether the so-called Caraway Act should be regarded as a protest emanating from organized labor I do not know. It is, at any rate, a manifestation of the same tendency.

Much of the protest is intemperate and unintelligent. Many of the proposals are short-sighted and unwise. The friends of organized labor who criticize the Federal judges for lack of the social instinct often themselves lack the insight necessary to a complete understanding of the problem. As long as the enlightened sense of the community fails to recognize the difference between the self-protection of an industrial class and mere wanton conspiracy to injure property and business, just so long judges who have power in their hands are likely to use it when urged thereto by the owners of the property and the business or by the official representative of the Government of which the judges are themselves a part. The problem is not primarily the problem of changing the point of view of Federal judges but of determining what the community attitude toward organized labor is going to be.

In the last analysis the attitude of the community will be determined by the workers themselves. If their uncoerced judgment is favorable to organization and collective action as the surest guaranty of industrial welfare, then the sentiment of the community—your sentiment and mine—will settle down to an acceptance of that view. If the persistent judgment of a decisive majority of the individual workers were to be that social development can best be pursued through unorganized effort, then the unions would lose their reason for existing. In England the sentiment of the workers has definitely crystallized in favor of organization and this fact has determined the thought and action of the whole community. The trades disputes act is the result. We, on the other hand, are experiencing the pangs incident to indecision; and unhappily we are placing upon our Federal courts the nonjudicial duty of maintaining the negative side of the dispute while organized labor maintains the affirmative.

One incident of the struggle of a community to determine its attitude toward organized labor is the constantly recurring dispute over the legality or illegality of a sympathetic strike or secondary boycott. In a community where in any field of activity there is a fairly divided public sentiment between closed and open shop, the union will often strive to build itself up by encouraging union men to refuse to work upon the same job with nonunion men. By this means it is hoped that the employer will be forced to employ union men, thus ultimately forcing the individual worker to join the union as a condition of getting employment. In a community where union sentiment is universal, pressure of this sort on the part of the union becomes merely a measure of self-protection. Accordingly the trades disputes act declares in effect that it is not actionable (in such a case as just suggested) to induce union men to quit the service of the employer or to press the employer to discharge his nonunion men, or to force an owner to break his contract with an open-shop contractor. With us, since public opinion is not yet settled, such conduct is still regarded as actionable. It is an unjustifiable effort of the union to maneuver itself into a stronger position than is warranted by the sentiment of the community. In such cases organized labor has only itself to blame if its attempt to gain a tactical advantage is met by an application for an injunction. Wherever organized labor has failed to create an overwhelming sentiment for the closed shop it can not in the absence of such a sentiment successfully do the things which otherwise public opinion would approve.

Difficult as is the duty which we have forced upon our Federal judges, their problem has, of course, been complicated by the necessity of considering what conduct is and what is not, a direct interference with interstate commerce or a violation of some Federal statute. Less than a month ago the Supreme Court (in United Leather Workers Union *v.* Herkert & Meisel Trunk Co.) decided, 6 justices to 3, that picketing to prevent the manufacture of goods which, if manufactured, would have been shipped in interstate commerce was not a conspiracy in restraint of interstate commerce within the antitrust act. Any other decision would have subjected to Federal jurisdiction every strike in every factory the product of which was destined to swell the volume of interstate commerce. But back of the decision upon this jurisdictional ground looms the vital question—shall we persist in compelling the United States courts to take up the shock of our industrial warfare?

Respect for the courts is not the least valuable part of our English inheritance. Under such a system of government as ours the maintenance of well-nigh universal confidence in the judiciary is pretty nearly essential to national safety. Is it not worth our while to place elsewhere than upon our Federal judges the burden of solving for us our legislative and executive problems?

To maintain such confidence must we not confine the courts to the sphere in which the creators of our constitutional system intended them to live and move and have their being?

GEORGE WHARTON PEPPER.

EXHIBIT B

"YELLOW-DOG" CONTRACTS CONDEMNED BY EXPERTS

FOREWORD

When workers seeking a job are told to sign an agreement not to join a union before they are put on the pay roll, this condition is called a "yellow-dog" contract. Workers who accept such conditions give up their legal and economic rights because those dependent on them have to be fed and clothed.

To get money for these immediate necessities they must forego their right to plan and order their own lives, that is, the right to join with fellow workers to deal with common problems collectively. Wage earners, like all other groups of citizens, are expected to assume responsibility for their own progress. Persons who neglect opportunities to keep step with progress retard social advancement and may even become public wards.

A single wage earner is unable to make an advantageous contract with his employer. Acting jointly with other wage earners they can meet their employers on an equal footing and negotiate mutually satisfactory contracts. Employers who are unwilling to give their employees a fair chance to make progress require them to sign "yellow-dog" contracts.

When there is evidence of efforts to promote the organization of a union among workers who have signed "yellow-dog" contracts, employers usually apply to the courts for injunctions enjoining union activities. Thus the full force of government is put behind contracts which take advantage of the necessities of workers and these workers are denied the right to do things which the law regards as legal and which society regards as necessary and constructive.

Clearly, "yellow-dog" contracts and their enforcement by injunctions are in conflict with American principles of liberty and with orderly social progress.

Labor believes that such contracts should not be actionable. Our position is supported by many lawyers and experts who believe that law should be an effective social instrument. To be such an instrument, law must be something more than a mechanical application of precedents—it must be the application of principles of human justice to specific conditions and problems.

Quotations from authorities in different fields have been compiled for the ready use of wage earners studying this problem.

WM. GREEN,
President American Federation of Labor.

CONDEMNED BY EXPERTS

Theodore Roosevelt: "It is all wrong to use the injunction to prevent the entirely proper and legitimate actions of labor organizations in their struggle for industrial betterment, or under the guise of protecting property rights unwarrantably to invade the fundamental rights of the individual. It is futile to concede, as we all do, the right and necessity of organized effort on the part of wage earners and yet by injunctive process to forbid peaceable action to accomplish the lawful objects for which they are organized and upon which their success depends." (42 CONG. RECORD 1347–1348 (1908).)

William Howard Taft: "They [trade unions] 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." (American Foundries *v.* Tri-City Council (257 U. S. 184–209).)

Woodrow Wilson: "Governments must recognize the right of men collectively to bargain for humane objects that have at their base the mutual protection and welfare of those engaged in all industries. Labor must not be longer treated as a commodity. It must be regarded as the activity of human beings, possessed of deep yearnings and desires. The business man gives his best thought to the repair and replenishment of his machinery so that its usefulness will not be impaired and its power to produce may always be at its height and kept in full vigor and motion. No less regard ought to be paid to the human machine which, after all, propels the machinery of the world and is the great dynamic force that lies back of all industry and progress." (From message communicated to both Houses of Congress at the beginning of the 66th Cong.)

Charles Evans Hughes: "I trust there will be no more struggles in futile opposition to the right of collective bargaining on the part of employees. The recognition of the right of representation and the prompt hearing of grievances provide the open doors to reasonable and just settlements." (From address before the Institute of Arts and Sciences, Columbia University, November 30, 1918.)

"Notwithstanding the decisions of the Supreme Court of the United States that the so-called 'yellow-dog' contract is legal, the commission is of the opinion that it is a source of economic irritation and is no more justifiable than any other form of contract which debars the individual from employment solely because of membership or nonmembership in any organization. The right of an employer to discharge for disloyalty, dishonesty, and incompetency or other unlawful conduct should not be abridged, but he should not be permitted to blacklist a discharged laborer for any other reason than disloyalty, dishonesty, or unlawful conduct." (Report of United States Coal Commission, 1925, pt. 1, p. 179.)

"We recommend that such destructive labor policies as the use of spies, the use of deputy sheriffs as paid company guards, house leases which prevent free access and exit, and individual contracts which are not free-will contracts be abolished." (Summary of recommendations, September 14, 1923, United States Coal Commission in Bituminous Coal Mining. Government Printing Office, 1925.)

"The individual contract is closely tied up with the suppression of civil liberties. It has been used as a basis for securing injunctions against the attempts to organize the field by any means whatsoever. It has also been used as a basis for claiming damages from the United States Workers." (Report of the United States Coal Commission on Labor Relations in Bituminous Mining. Government Printing Office, 1925.)

"* * * When an applicant for work is compelled to sign a contract pledging himself against affiliation with a union, or when a union man is refused employment or discharged merely on the ground of union membership, the employer is using coercive methods and is violating the fundamental principle of an open shop. * * *" (Federal Council of the Churches of Christ of America, press release, December, 1920.)

"* * * Religion teaches the laboring man and the artisan to carry out honestly and fairly all equitable agreements freely arranged. * * * By treating the laborer first of all as a man the employer will make him a better workingman; by respecting his own moral dignity as a man the laborer will compel the respect of his employer and of the community." (From pastoral letter of Catholic archbishops and bishops in the United States, 1920.)

Elihu Root: "* * * The individualism which was the formula of reform in the early nineteenth century was democracy's reaction against the law and custom that made the status to which men were born the controlling factor in their lives.

"It was an assertion of each freeman's right to order his own life according to his own pleasure and power, unrestrained by those class limitations which had long determined individual status. The instrument through which democracy was to exercise its newly asserted power was freedom of individual contract, and the method by which the world's work was to be carried on in lieu of class subjection and class domination was to be the give and take of industrial demand and supply.

"Now, however, the power of organization has massed both capital and labor in such vast operations that in many directions, affecting great bodies of people, the right of contract can no longer be at once individual and free. In the great massed industries the free give and take of industrial demands and supply does not apply to the individual. Nor does the right of free contract protect the individual under those conditions of complicated interdependence which make so large a part of the community dependent for their food, their clothing, their health, and means of continuing life itself upon the service of a multitude of people with whom they have no direct relations whatever, contract or otherwise. Accordingly, democracy turns again to government to furnish by law the protection which the individual can no longer secure through his freedom of contract and to compel the vast multitude on whose cooperation all of us are dependent to do their necessary part in the life of the community. * * *." (Public Service by the Bar, from address to American Bar Association, 1916.)

Roscoe Pound, dean Harvard Law School: "The attitude of many of our courts on the subject of liberty of contract is so certain to be misapprehended, is so out of the range of ordinary understanding, the decisions themselves are so academic and so artificial in their reasoning, that they can not fail to engender such feelings. (Above statement made in commenting on workmen's growing distrust of the courts.) Thus, those decisions do an injury beyond the failure of a few acts. These acts can be replaced as legislatures learn how to comply with the letter of the decisions and to evade the spirit of them. But the lost respect for courts and law can not be replaced. The evil of those cases will live after them in impaired authority of the courts long after the decisions themselves are forgotten." (Liberty of Contract, Yale Law Journal, May, 1909.)

Felix Frankfurter, Harvard Law School: "* * * The rapidly increasing use of the so-called 'yellow-dog' contracts has grown into a serious threat to the very existence of labor unions. In view of the inequitable conditions that surround the formation of such agreements and the unfair division of their obligation, to appeal to equity for their enforcement is to disregard the fundamentally ethical foundations of courts of chancery. * * *." (The Labor Injunctions, Felix Frankfurter and Nathan Greene.)

Francis B. Sayre, Harvard Law School: "The signs are all about us that labor groups throughout the country are smarting with a sense of injustice at the hands of the courts. * * * The situation calls for constructive efforts to meet the growing danger, not only on the part of labor leaders but on the part of all who believe in American law and American traditions."

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"Seizing upon the Hitchman decision, employers have found an effective way to prevent peaceful and otherwise lawful union activities by requiring present or prospective employees as the price of employment to sign individual contracts against joining any union. Thus intrenched they are in a position to defy every effort on the part of the unions to unionize their plants, and by a system of strategic individual contracts with their employees they are able in many cases to prevent unions entering into a competitive struggle with them over the price of labor. That courts would refuse in fields other than labor law to allow competition to be effectually stifled by means of strategic contracts with third parties seems clear." (Labor and the Courts, Yale Law Journal, March, 1930.)

Donald R. Richberg, attorney, Railway Shop Trades Unions: "It is a waste of time to criticize judges who chatter about equality of right and liberty of contract between a billion-dollar corporation and a man looking for a job. When judges solemnly announce that society is more interested in preserving the freedom of one man to injure himself and his coworkers than in preserving the freedom of a hundred thousand men to promote their common interests it is unnecessary to argue that the lawmakers do not know what they are talking about. That fact is obvious. It is, however, worth while to point out the misdirection of persistent efforts to combat natural laws of human conduct with artificial laws.

"* * * And it is apparent that employees sign 'yellow dog' contracts only because they feel compelled to do so. No man voluntarily puts his head in a noose and then hands the rope to his adversary with the idea that he has improved his chance of winning the contest. If courts will not recognize the facts, and hold that the employer acts illegally when he interferes with the employee's natural rights to associate with his fellow men and thus to designate representatives to advance their common interests, then it is time to have the legislatures write this law and to make it binding on the courts." (From address delivered at the joint conference on injunctions in labor disputes in Pennsylvania, Labor Institute, March 16, 1930.)

WILLIAM E. BORAH, United States Senator from Idaho: "* * * I appreciate, too, the interest which the employee has in this kind of contract. It is a vital interest and it is an interest which can not be measured at all times in dollars and cents. It sometimes

means home and family and economic freedom. I appreciate also the interest which organized labor has in this contract, because if it were universally applied and carried to its logical conclusion union labor would be at an end in the United States.

"But over and above these interests, transcending them in importance, is the interest of the public, of the State, and of the National Government. Can there be anything of more concern to the State, to the Government, to the public generally than that which is calculated to undermine, destroy or build up, to render fit or unfit for citizenship men and women who toil? Is not the public, the State, the National Government interested in striking down, as contrary to public policy, as at war with the public welfare, all those overreaching contracts which rob those who work of the discretion, of the liberty of choice as to how they shall conduct themselves so long as they conduct themselves lawfully in their interests?" (CONGRESSIONAL RECORD, April 29, 1930, p. 8223.)

ROBERT F. WAGNER, United States Senator from New York: "To the worker organization means bargaining power, security, self-respect. So long as he continues unorganized he must accept terms of employment just as they are tendered. It is only through organization that he achieves the power to withhold that which he sells. The arrangement known as the antiunion or 'yellow-dog' contract is ordinarily an undertaking on the part of the employee that he will continue to remain in the same helpless condition which compelled him to make the 'yellow-dog' promise in the first instance." (CONGRESSIONAL RECORD, April 30, 1930, p. 8338.)

KENNETH MCKELLAR, United States Senator from Tennessee: "The 'yellow-dog' contract is unconscionable, and it is doubtful if any court should have ever upheld it." (CONGRESSIONAL RECORD, April 30, 1930, p. 8341.)

FELIX HEBERT, United States Senator from Rhode Island:

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

"Mr. HEBERT. 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 * * *." (From the Senate debate, CONGRESSIONAL RECORD, May 1, 1930, p. 8405.)

GEORGE W. NORRIS, United States Senator from Nebraska: "The 'yellow-dog' contract, in my judgment, is void for three reasons: First, it is without any consideration; second, it is signed under coercion; third, it violates public policy." (CONGRESSIONAL RECORD, May 2, 1930, p. 8475.)

HENRY F. ASHURST, United States Senator from Arizona: "In this morning of the twentieth century, when mankind is asking for a larger degree of liberty, the 'yellow-dog' decision is a rank injustice; it is an angry scar upon American jurisprudence." (CONGRESSIONAL RECORD, May 5, 1930, p. 8624.)

HIRAM JOHNSON, United States Senator from California: "Words utterly fail me in characterization of contracts such as that. I care not whether they have been enforced by one court or another. Legally, they are void as against public policy; socially, they are wicked and destructive of ordinary human relations; economically, they are unsound as resting upon necessity on the one side and coercion on the other; and morally, sir, they are infamous, denying fundamental rights and disrupting the dearest human associations." (CONGRESSIONAL RECORD, May 7, 1930, p. 8787.)

Morris L. Cooke, consulting engineer: "I believe that individual contracts for employment of this kind are unsound because—

"(a) They do not make for efficiency—either individual or collective;

"(b) They imply the absence of that groundwork of good will and mutual trust such as are inherent in properly conducted industry;

"(c) They do not permit that freedom of action for the individual requisite alike for his conduct and his growth in the employee-employer relationship;

"(d) They overemphasize the industrial aspects of the life of the individual citizen to the detriment of the State." (Interborough Brief.)

John R. Commons, University of Wisconsin: "No adequate argument can be made why such an injunction should lie against a labor union but not against a church or a lodge. * * * They (labor unions) are private organizations, but both in court decisions and in statutes they have been recognized as being not only lawful but useful to society. That they should now be virtually outlawed is unthinkable. Such a step inevitably leads to giving the employer complete control over the entire life of his employees—an intolerable condition, contrary to all our concepts of individual freedom." (Interborough Brief.)

Paul F. Brissenden, Columbia University: "It is also evident, I believe, that the 'yellow-dog' contract itself is an artificial protection that precludes the possibility of such an institutional rivalry in a free field. It should no more be tolerated than we would tolerate the insistence by a union that the employer of its members, on pain of their refusal to continue working for him, withdraw from or refrain from joining some particular employers' association. Such a contract, being against public policy, should be forbidden." (Interborough brief.)

Sumner H. Slichter, Cornell University: "* * * In its economic effects this contract appears to require that the workman, in order to sell his services, must also sell his right to improve his future bargaining status by joining a trade-union. The law has long been familiar with certain things which may not be bought and sold, with certain restrictive covenants on one's future freedom of action, which are denied jural recognition. * * * In my judgment, there are three outstanding economic reasons why wage earners should not be permitted to barter away the right of belonging to a trade-union:

"In the first place, the right of the worker to improve his future bargaining position involves more than merely his opportunity to raise his wages. It involves his ability to feed and clothe his family and to educate his children.

* * * * * * *

"In the second place, it is unwise to permit workmen to sell their freedom to join trade-unions because there is great disparity in bargaining power between individual wage-earners and employers.

* * * * * * *

"The third economic reason why it should be unfortunate to permit wage earners to barter away their right to join trade-unions arises from the fact that unions perform functions which are of substantial value to the community." (Interborough brief.)

Ordway Tead, editorial staff, Harpers Publishing Co.: "* * * Equality of bargaining power is in the company's interest because only as the labor contract is entered into freely and is felt by the parties in interest to be satisfactory and fair will the resulting work attitude and work performance be of a character that is productive and safe. Hence any feature of the labor contract, as in the Interborough Rapid Transit contract with its provision against labor-union affiliation, represents a very definite and successful attempt to prevent equality of bargaining power from prevailing. Such a contract thus operates both against the public interest and against the interest of good management as the phrase is understood in well-managed corporations to-day." (Interborough brief.)

Horace M. Kallen, Harvard University: "The contract itself is vicious. It is always signed under coercion. It requires of the worker not only to give an honest day's work for an honest day's pay, it compels him also to give up his right to seek such help as he may lawfully find effective to make sure that it is an honest day's pay. It requires him to surrender his constitutional freedom of association. It cuts him off from his livelihood if he exercises this freedom * * *. In fact, the sign-on-the-dotted-line contract is not only unconstitutional but a fraud. It imposes a practical peonage on people who would otherwise suffer great hardships if they did not sign * * *." (Interborough Brief.)

John A. Fitch, New York School of Social Work: "* * * The employee is free at the outset to sign or not to sign the contract, which means that he is free to accept or reject employment with the Interborough if it is offered. As a practical matter, however, considerations of physical need may at any time, in an overstocked labor market, make the exercise of such freedom impossible. When nonmembership in a trade union is made a condition of employment the employee is frequently subject to a compulsion as real and effective as if physical force were used.

* * * * * * *

"It is my belief that such contracts should be outlawed as against sound public policy." (Interborough Brief.)

Edwin R. A. Seligman, Cornell University: "* * * The essence of our modern economic life is freedom, freedom to contract, freedom to act; and this freedom attaches to both parties of the contract, the employer and the employee. The present contract leaves the freedom of the employer unimpaired; it even, as we have pointed out, increases, if possible, that freedom: On the other hand it restricts in notable respects, actually, if not technically, the freedom of the employee. This disparity of conditions is of the utmost consequence. The world has not yet succeeded in finding a solution for the so-called labor problem. Whatever that solution may be, both history and philosophy conspire to advise against the adoption of any policy which will render the solution more difficult and perhaps impossible. The conditions of this contract seem to the affiant clearly to fall within the latter category." (Interborough Brief.)

PROPOSED FEDERAL GASOLINE TAX

Mr. STEIWER. Mr. President, with the indulgence of the Senate, I invite the attention of the Members present to a subject other than the unfinished business.

It happens that to-day is the thirteenth anniversary of the first provision for a tax upon gasoline for the purpose of building and maintaining the highway system in this country. This tax was first proposed and adopted in the State of Oregon. Subsequently all the States of the Union have, I believe, adopted some form of tax upon gasoline for the purpose of providing road funds.

The matter is one of great public importance. My attention has been drawn to the subject at this time because the

Secretary of the Treasury, in a recent appearance before the Ways and Means Committee of the House of Representatives, proposed that the Federal Government also enact a tax of 1 cent per gallon upon gasoline. It is estimated that this tax will produce $165,000,000 annually for the Federal Treasury.

This matter is of such importance that I ask the Senate's consideration of it for just a moment in advance of the consideration of the revenue bill.

It is asserted that the maximum revenue is produced by a tax of 3 or 4 cents per gallon. Many of the State taxes are now in excess of that amount. The United States heretofore has never attempted to lay a tax upon gasoline for the production of Federal revenue. In the proposal of the Secretary there is, therefore, a novel element, as it involves the invasion of a tax field heretofore occupied exclusively by the States.

I shall not now detain the Senate to comment in detail upon the wisdom or unwisdom of the Federal invasion of that field of taxation. It will appear, however, to all that the wisdom of the step is most doubtful. It means that the Federal Government will engage in a competitive race with the States in seeking to obtain revenue from a source which heretofore the States have alone enjoyed. It means the imposition of an additional tax upon the automobile owners of America, and it means probably such an increase of tax that the maximum yield will not be had either for the United States or for the several States.

The matter is of especial interest now because there is before the Senate a proposal by the junior Senator from Arizona [Mr. HAYDEN], which, I understand, he will offer as an amendment to the agricultural supply bill; by that proposal there would be appropriated approximately $135,000,000 to be employed in the construction of highways without the necessity of contribution or matching by the various States.

It is almost ironical that the agencies of the Federal Government should consider the invasion of a tax field now enjoyed by the States upon a basis that would produce $165,000,000, and at the same time contemplate the appropriation of about $135,000,000 to the States under the guise of relief for unemployment. It means merely that we take money from a State source and then give it back to the States, and perhaps then claim that we have made a generous contribution by so doing.

I shall at the proper time have something further to say with respect to this matter. I have claimed the Senate's attention to this question at this time in order that I may ask to have printed in the RECORD certain data which I think will be most revealing.

I send to the desk an estimate of tax burden by States in case the proposal made before the House Ways and Means Committee shall be adopted by Congress. This estimate is prepared by the American Automobile Association, and it discloses the extent to which this tax would be a burden upon the automobile owners of the different States of the Union.

Mr. TRAMMELL. Mr President——

The PRESIDENT pro tempore. Does the Senator from Oregon yield to the Senator from Florida?

Mr. STEIWER. I do.

Mr. TRAMMELL. I wish to state that I have no doubt in regard to the wisdom of enacting this legislation. I am absolutely opposed to it. The Senator says that is a matter to be determined later. I think the States have been taxed to the full limit by the State authorities in the way of gasoline taxes and taxes on automobiles. I believe it would be very unfortunate to enact at this time legislation imposing a greater and an increased burden upon the users of automobiles, and I am unequivocally opposed to it. It is not a matter about the wisdom of which there is any doubt in my mind.

Mr. STEIWER. I thank the Senator for his suggestion. I had not intended at this time to enter into an expression of my own views of this tax; but, inasmuch as the suggestion of opposition comes from the Senator from Florida, I will say that in due time I also expect to voice my most resolute opposition to this proposition. The people of the State of Florida may well be opposed to it. Their present tax is 7 cents per gallon. The imposition of this Federal tax would make the tax 8 cents per gallon, and I understand that in one city in the State of Florida there is an additional tax of 1 cent per gallon, and that the total tax in that State therefore would be substantially a 75 per cent sales tax upon an essential commodity.

I can assure the Senator from Florida that he will not be alone in his opposition.

I now ask that the following compilation of costs to the car owners of the several States appear at this place in my remarks.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The matter referred to is as follows:

Estimated tax burden by States

Alabama	$1,725,370
Arizona	760,440
Arkansas	1,386,320
California	13,355,560
Colorado	1,708,550
Connecticut	2,232,970
Delaware	359,970
District of Columbia	805,380
Florida	2,270,370
Georgia	2,241,880
Idaho	612,620
Illinois	9,732,080
Indiana	4,450,160
Iowa	3,908,260
Kansas	3,867,550
Kentucky	1,682,780
Louisiana	1,847,740
Maine	1,086,790
Maryland	1,823,400
Massachusetts	5,360,830
Michigan	7,927,760
Minnesota	4,014,440
Mississippi	1,352,390
Missouri	4,452,270
Montana	774,760
Nebraska	2,238,980
Nevada	186,150
New Hampshire	647,430
New Jersey	5,479,770
New Mexico	546,610
New York	15,119,970
North Carolina	2,506,690
North Dakota	1,200,340
Ohio	9,755,820
Oklahoma	3,231,120
Oregon	1,701,690
Pennsylvania	9,288,420
Rhode Island	888,320
South Carolina	1,192,130
South Dakota	1,405,800
Tennessee	2,152,440
Texas	8,065,050
Utah	601,370
Vermont	469,980
Virginia	2,284,530
Washington	2,711,670
West Virginia	1,404,110
Wisconsin	4,378,780
Wyoming	366,150

Mr. STEIWER. I send to the desk also a table showing the gasoline tax rates by States in the United States. I shall be glad if that can follow after the table last offered.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The matter referred to is as follows:

Gasoline tax rates, by States, as of January 1, 1932

(Latest tax rate per gallon shown, and date the rate became effective. Compiled from State laws and official data)

7-CENT TAX RATE (2 STATES)

*Florida,[1] August 1, 1931.
*Tennessee, December 19, 1931.

*Means tax increase in 1931.

[1] Two-year emergency tax; reverts to 6-cent tax on Aug. 1, 1933.

6-CENT TAX RATE (4 STATES)

*Arkansas, February 26, 1931.
Georgia, September 1, 1929.
*North Carolina, April 1, 1931.
South Carolina, March 16, 1929.

5½-CENT TAX RATE (1 STATE)

*Mississippi, November 1, 1931.

5-CENT TAX RATE (9 STATES)

*Alabama, July 28, 1931.
*Arizona,[2] January 30, 1931.
Idaho, March 1, 1930.
Kentucky, February 21, 1926.
Louisiana, November 27, 1930.
Montana,[3] April 1, 1929.
New Mexico, March 7, 1927.
Virginia, March 19, 1928.
*Washington, April 1, 1931.

4-CENT TAX RATE (17 STATES)

Colorado, May 1, 1929.
Indiana, April 1, 1929.
Maine,[4] October 29, 1927.
Maryland, April 1, 1927.
Nebraska, March 29, 1929.
Nevada, April 1, 1925.
New Hampshire, January 1, 1928.
Ohio, April 17, 1929.
*Oklahoma,[5] March 25, 1931.
Oregon, January 1, 1930.
South Dakota, July 1, 1927.
Texas, July 16, 1929.
*Utah, May 12, 1931.
Vermont, April 1, 1929.
West Virginia, July 1, 1927.
*Wisconsin, April 1, 1931.
Wyoming, April 1, 1929.

3-CENT TAX RATE (11 STATES)

California, July 29, 1927.
Delaware, March 24, 1927.
Illinois, August 1, 1929.
Iowa, July 4, 1927.
Kansas, April 1, 1929.
*Massachusetts,[6] May 1, 1931.
Michigan, September 4, 1927.
Minnesota, May 1, 1929.
New Jersey, December 1, 1930.
North Dakota, July 1, 1929.
Pennsylvania, July 1, 1930.

2-CENT TAX RATE (4 STATES AND DISTRICT OF COLUMBIA)

Connecticut, July 1, 1925.
Missouri,[7] January 1, 1925.
New York, May 1, 1929.
Rhode Island, June 1, 1927.
District of Columbia, May 23, 1924.
Hawaii: No gasoline tax.

REMARK.—All Canadian Provinces have 5-cent tax per imperial gallon.

Mr. STEIWER. In addition to those two tables, I send to the desk and ask to have appear as a part of my remarks two sheets of compilations of the revenues received by the States from the gasoline tax—the first one for the year 1930, the second for the first half of the year 1931.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The matter referred to is as follows:

Gasoline taxes, 1930—Total tax earned on motor-vehicle fuel, etc., refunds, disposition of fund, and gallons taxed

[From reports of State authorities]

State	Gross tax assessed prior to deduction of refund	Exemption refund (deducted from gross tax)	Total tax earning on fuel for motor vehicles [1]	Other receipts, under tax law (licenses)	Grand total earning (tax and other receipts)	Disposition of grand total earning according to law					Tax rate, 1930			Net gallons of gasoline taxed and used by motor vehicles
						Collection cost [2]	Construction and maintenance on rural roads		State and county road bond payment [3]	For miscellaneous purposes	Cents per gallon		Date of rate change	
							State highway	Local roads			Jan. 1	Dec. 31		
Alabama	$6,901,491		$6,901,491	$1	$6,901,492	$34,064	$1,958,478	$3,439,493	$1,469,457		4	4		172,537,281
Arizona	3,011,844	$341,825	2,670,019		2,670,019	[4]	1,682,596	987,423			4	4		66,750,478
Arkansas	6,702,273	275,000	6,427,273		6,427,273	47,908	4,505,108		[5] 1,802,755	[6] $71,502	5	5		128,545,469
California	38,603,808	3,733,682	34,870,126		34,870,126	[7] 51,532	23,212,396	11,606,198			3	3		1,162,337,545
Colorado	6,834,198	689,372	6,144,826		6,144,826	[8] 54,750	4,263,053	1,644,321		[9] 182,702	4	4		153,620,645
Connecticut		[10]	4,465,933	49,130	4,515,063	[11]	4,515,063				2	2		223,296,627
Delaware	1,071,363	58,006	1,013,357		1,013,357		864,170		149,187		3	3		33,778,561
Florida	13,622,215		13,622,215	32,960	13,655,175	13,280	4,540,738	756,790	[12] 5,540,738	[13] 3,803,629	6	6		227,036,915
Georgia	13,391,079		13,391,079	43,983	13,435,062	4,200	8,953,908	2,238,477		[14] 2,238,477	6	6		223,184,648
Idaho	2,941,124	272,542	2,668,582	62,280	2,730,862	12,752	2,674,080		35,609	[15] 8,421	4	5	Mar. 1	[16] 54,422,752
Illinois [17]	28,612,269	1,139,849	27,472,420		27,472,420	61,724	18,273,797	9,136,899			3	3		915,747,319
Indiana	18,247,078	1,088,332	17,158,746	88	17,158,834	40,958	12,838,407	3,209,602		[18] 1,069,867	4	4		428,968,653
Iowa	11,793,452	1,209,384	10,584,068		10,584,068	32,524	[19] 5,242,393	5,309,151			3	3		352,802,277
Kansas	10,553,021	1,732,530	9,120,491		9,120,491	[20]	7,370,491	1,750,000			3	3		304,016,374
Kentucky	8,414,733		8,414,733		8,414,733	28,364	8,386,369				5	5		168,294,655
Louisiana	7,547,292	844	7,546,448		7,546,448	[21]	5,543,453		1,847,817	[22] 155,178	4	5	Nov. 27	184,781,753
Maine	4,347,071	237,575	4,109,496	[23] 59,394	4,168,890	28,847	2,070,022	2,070,021			4	4		[24] 102,737,416
Maryland	7,285,117	293,929	6,991,188		6,991,188	9,000	5,525,759			[25] 1,456,433	4	4		174,779,703
Massachusetts	10,721,664	158,717	10,562,947		10,562,947	20,000	7,407,323	2,500,000	635,624		2	2		528,147,350
Michigan	23,783,308	2,109,429	21,673,879	39,610	21,713,489	41,373	11,508,628	6,623,880	3,000,000	[26] 539,610	3	3		722,452,626
Minnesota	11,432,686	1,073,575	10,359,111		10,359,111		6,906,074	3,453,037			3	3		345,303,709
Mississippi	6,791,177		6,791,177	[27] 126,393	6,917,575	6,645	2,848,126	3,855,364		[28] 207,440	5	5		135,823,574
Missouri	8,901,169	262,008	8,639,161		8,639,161	56,760	8,582,401				2	2		431,958,060
Montana	3,873,713	931,834	2,941,879		2,941,879	13,500	2,928,379				5	5		58,837,575
Nebraska	9,149,484	89,062	9,060,422		9,060,422	7,500	6,789,691	2,263,231			4	4		226,510,543
Nevada	744,615	69,603	675,012		675,012	[29]	675,012				4	4		16,875,292
New Hampshire	2,589,833	90,355	2,499,478		2,499,478		1,874,608		624,870		4	4		62,486,940
New Jersey		[30]	11,342,896	37,335	11,380,231	18,660	11,268,571			[31] 93,000	2	3	Dec. 1	546,685,108
New Mexico	2,719,281		2,719,231	42,606	2,761,887	55,238	1,842,649		864,000		5	5		54,385,614
New York	29,539,436	[32] 1,060,146	28,476,290		28,476,290	[33]	21,319,718	5,685,258		[34] 1,471,314	2	2		[35] 1,438,582,716
North Carolina	13,174,064	640,610	12,533,454		12,533,454	[36]	8,845,113		3,688,341		5	5		250,669,089
North Dakota	3,405,212	1,435,908	1,969,304	2,052	1,971,986	25,000	1,290,000	645,000		[37] 11,986	3	3		65,643,460
Ohio	39,023,304	1,941,853	37,081,451		37,081,451		23,175,907	7,416,290		[38] 6,489,254	4	4		927,036,272
Oklahoma	12,924,521	832,101	12,092,420		12,092,420	62,684	9,022,302	3,007,434			4	4		302,310,488
Oregon	6,787,295	588,518	6,198,777		6,198,777	14,967	6,183,810				4	4	Jan. 1	[39] 154,986,497
Pennsylvania	33,482,609	166,880	33,315,729	[39] 307,781	33,623,510	[40] 278,875	25,250,576	4,644,213	3,449,846		4	3	July 1	928,842,534
Rhode Island	1,776,773	44,514	1,732,259	3,488	1,735,747		1,301,810		433,937		2	2		86,612,980
South Carolina	7,162,945	18,635	7,144,310	1,401	7,145,711		3,475,756	1,190,952	[41] 2,479,003		6	6		119,071,835
South Dakota	5,149,295	1,645,413	3,503,882		3,503,882	12,750	2,715,155		775,977		4	4		87,597,064
Tennessee	10,719,195		10,719,195		10,719,195	53,596	6,399,359	2,133,120	[42] 2,133,120		5	5		214,383,900
Texas	32,341,499	2,814,401	29,527,098		29,527,098		22,145,324			[43] 7,381,774	4	4		738,177,457
Utah		[43]	2,104,823	706	2,105,529	3,836	1,663,193		438,500		3½	3½		60,137,811
Vermont	1,879,921		1,879,921		1,879,921	[44]	1,879,921				4	4		46,998,012
Virginia	11,426,066	651,008	10,775,058		10,775,058	[45]	7,542,541	3,232,517			5	5		215,501,157

[Footnotes for table at end of table]

* Means tax increase in 1931.

[2] In effect until Jan. 31, 1933, then tax reverts to 4 cents.

[3] Law extends 5-cent tax to Mar. 31, 1941, then tax reverts to 3 cents.

[4] Referendum in September, 1932, for 5-cent tax.

[5] Reverted to 4-cent tax from 5 cents on Jan. 1, 1932.

[6] Two-year emergency tax; reverts to 2-cent tax on Apr. 30, 1933.

[7] By constitutional amendment of Nov. 6, 1928, tax to remain at 2 cents until Nov. 6, 1938.

Gasoline taxes, 1930—Total tax earned on motor-vehicle fuel, etc., refunds, disposition of fund, and gallons taxed—Continued

State	Gross tax assessed prior to deduction of refund	Exemption refund (deducted from gross tax)	Total tax earning on fuel for motor vehicles	Other receipts, under tax law (licenses)	Grand total earning (tax and other receipts)	Disposition of grand total earning according to law: Collection cost	Construction and maintenance on rural roads: State highway	Construction and maintenance on rural roads: Local roads	State and county road bond payment	For miscellaneous purposes	Tax rate, 1930: Cents per gallon: Jan. 1	Tax rate, 1930: Cents per gallon: Dec. 31	Tax rate, 1930: Date of rate change	Net gallons of gasoline taxed and used by motor vehicles
Washington	$7,951,587	$698,338	$7,253,249		$7,253,249	[45]	$4,835,499	$2,417,750			3	3		241,774,964
West Virginia	5,615,926	257,298	5,358,628	$8,450	5,367,078		2,686,823		$2,680,255		4	4		133,965,701
Wisconsin	8,757,555	442,714	8,314,841		8,314,841	$10,900	3,057,771	4,647,465		[15] $598,705	2	2		415,742,027
Wyoming	1,447,005		1,447,005		1,447,005		1,085,254	361,751			4	4		36,175,118
District of Columbia	1,610,770	11,081	1,599,689		1,599,689					[47] 1,599,689	2	2		79,984,431
Total			493,865,117	818,293	494,683,410	1,102,187	338,927,564	96,225,637	[48] 31,049,036	[49] 27,378,986	[50]	[50]	[50]	14,751,308,978

[1] Net gasoline tax earned after deduction of refunds allowed by law.
[2] Many States pay collection costs from other State funds, and amounts reported are noted.
[3] Payments for State highway bonds, except as noted.
[4] Paid from State budget, $14,685.
[5] Includes $1,326,274 for county bonds.
[6] Includes $50,227 for State Highway Commission office expenses, and $21,275 for city streets.
[7] Includes administrative costs of State board of equalization which controls fuel tax and transportation tax.
[8] Includes all expenses of State inspector of oils.
[9] For town and city streets.
[10] Exemptions made at time of purchase on 9,349,546 gallons.
[11] Paid from motor-vehicle receipts, $30,000.
[12] Payments on county road bonds.
[13] For schools and school buildings, $3,783,949, and for reserve fund, $19,680.
[14] For public schools.
[15] Aviation gas-tax fund, for aviation purposes.
[16] Omits 173,975 gallons sold for aviation purposes.
[17] The 2 per cent allowance for evaporation and loss on gross purchases by retailers not shown here.
[18] For city streets.
[19] Includes $3,000,000, formerly a reserve for refunds on right of way, bridges, and culverts.
[20] Paid from State general fund, $15,000.
[21] Paid from State appropriation, $57,500.
[22] For dock board.
[23] Consists of 1-cent tax on all gasoline not used by motor vehicles (3-cent refund).
[24] Excludes gallonage taxed 1 cent, not used by motor vehicles.
[25] Includes $1,381,438 to Baltimore streets and grade-crossing eliminations; also $75,000 to conservation department for oyster propagation.
[26] Includes $500,000 for city streets, $35,350 for aviation fund, and $4,260 (dealers' license fees) to State general fund.
[27] Receipts from extra 2-cent tax in Harrison County and 3-cent tax in Hancock County for sea wall.
[28] Alloted to sea-wall financing (largely from extra tax receipts).
[29] Paid from tax-commission fund, $1,500.
[30] Exemption made at time of purchase on 96,681,081 gallons.
[31] Includes $90,000 for free bridge commission and department of navigation and commerce, also $3,000 for public-utility commission.
[32] Includes $764,782 refunded because of exemptions, and an allowance to distributors of 1 per cent of gross receipts amounting to $295,364.
[33] Paid from State appropriation of $65,497.
[34] Includes $50,000 to reserve for refunds and $1,421,314 to New York City funds.
[35] Includes 14,768,218 gallons taxed but taxes returned to distributors for collection costs.
[36] Paid from State highway commission maintenance fund, $8,683.
[37] Includes $11,334 to reserve for refunds and $652 (license fees) to State general fund.
[38] Includes approximately 136,579 gallons of distillate taxed 3½ cents per gallon.
[39] Includes $299,591 for previous year's taxes.
[40] Collection bonus to dealers deducted before payment of tax to State.
[41] Payments of $300,000 on State highway bonds and $2,179,003 on county road bonds.
[42] For free-school fund.
[43] An allowance of 2 per cent for evaporation and handling exempts 1,227,178 gallons from tax.
[44] Paid from motor-vehicle funds, $1,000.
[45] Paid from State appropriations of $15,144.
[46] Paid from motor-vehicle fund, $5,000.
[47] For repair and improvement of Washington streets.
[48] Includes payments of $10,179,135 on county bonds and $20,869,901 on State bonds.
[49] Includes $11,842,930 for city streets, $13,404,200 for schools, and $2,131,856 for various items.
[50] Average, 3.35 cents.

Gasoline taxes, first half year of 1931—Tax earned on motor-vehicle fuel, etc., disposition of fund, and gallons taxed

[From reports and records of State authorities]

State	Gross tax assessed prior to deduction of refund	Exemption refund (deducted from gross tax)	Total tax earning on motor-vehicle fuel	Other receipts under tax law (licenses)	Grand total earning (tax and other receipts)	Disposition of grand total earning: Collection cost	Construction and maintenance of rural roads: State highways	Construction and maintenance of rural roads: Local roads
Alabama	$3,200,225		$3,200,225		$3,200,225	$9,118	$555,605	$1,596,732
Arizona	1,788,502	$163,776	1,624,726	$501,446	2,126,172	[1]	1,627,867	498,305
Arkansas	3,267,935	212,416	3,055,519		3,055,519	67,500		378,255
California	20,723,606	2,212,544	18,511,062	[2] 735,000	19,246,062	38,898	12,804,776	6,402,388
Colorado	3,365,278	310,862	3,054,416		3,054,416	[7] 30,358	2,116,840	816,496
Connecticut	2,097,423	2,483	2,094,940	49,130	2,144,070	[3]	2,144,070	
Delaware	518,976	29,611	489,365		489,365	[9]	489,365	
Florida	7,623,982		7,623,982	[10] 14,232	7,638,214	14,232	2,541,327	423,555
Georgia	6,365,601		6,365,601		6,365,601	[14] 4,200	4,240,934	1,060,234
Idaho	1,331,087	118,503	1,212,584	388	1,212,972	8,019	1,051,396	
Illinois	13,990,088	593,733	13,396,355		13,396,355	42,601	8,902,503	4,451,251
Indiana	8,997,330	532,454	8,464,876	37	8,464,913	29,047	6,326,399	1,581,725
Iowa	5,946,968	649,830	5,297,138		5,297,138	17,000	3,128,138	2,152,000
Kansas	4,854,587	1,206,815	3,647,772		3,647,772	[17]	2,747,772	900,000
Kentucky	4,054,046		4,054,046		4,054,046	15,501	4,038,545	
Louisiana	4,462,153	222	4,461,931		4,461,931	31,000	1,653,564	
Maine	1,771,037	170,450	1,600,587		1,600,587	34,448	783,070	783,069
Maryland	3,389,018	144,345	3,244,672		3,244,672	13,573	2,584,879	
Massachusetts	6,060,946	80,452	5,980,494		5,980,494	[21]	3,209,744	902,267
Michigan	11,065,515	1,064,407	10,001,108	18,231	10,019,339	24,558	5,492,615	2,950,000
Minnesota	5,703,938	546,863	5,157,075		5,157,075	[25]	3,438,050	1,719,025
Mississippi	2,774,770		2,774,770	67,755	2,842,525	[26] 8,920	1,342,365	1,386,950
Missouri	4,463,803	112,422	4,351,381		4,351,381	22,712	4,328,669	
Montana	1,689,546	267,817	1,421,729		1,421,729	13,711	1,408,018	
Nebraska	4,452,430	32,357	4,420,073		4,420,073	3,750	3,312,242	1,104,081
Nevada	406,645	43,191	363,454		363,454		363,454	
New Hampshire	1,055,412	27,464	1,037,948		1,037,948		778,461	
New Jersey	9,802,250	1,887,223	7,915,027	6,559	7,921,626	9,500	5,367,126	
New Mexico	1,253,516		1,253,516	4,742	1,258,258	25,146	784,163	
New York	14,219,976	307,131	13,912,845	27,351	13,940,196	[32] 142,199	10,310,998	2,749,599
North Carolina	6,104,821	232,255	5,872,566		5,872,566	5,165	[33] 2,567,401	[33] 1,500,000
North Dakota	1,301,035	516,764	784,271		784,271	[33]	522,847	261,424
Ohio	18,506,660	856,906	17,649,754	400	17,650,154	[9]	9,928,212	4,412,538
Oklahoma	5,757,592	7,786	5,749,806		5,749,806	22,779	3,698,331	1,232,777
Oregon	3,408,036	314,435	3,093,601		3,093,601	9,409	2,395,080	
Pennsylvania	14,281,909	83,197	14,198,712	193,367	14,392,079	117,971	10,395,090	2,379,018
Rhode Island	883,334	29,177	854,157	2,486	856,643	[36]	642,482	
South Carolina	3,484,195	16,693	3,467,502		3,467,502	[37]	2,889,585	577,917
South Dakota	2,301,562	1,005,592	1,295,970		1,295,970	7,500	875,825	
Tennessee	4,969,312		4,969,312		4,969,312	49,693	1,967,847	983,924
Texas	16,004,109	862,840	15,141,269		15,141,269		11,355,952	
Utah	1,070,643	21,413	1,049,230	93	1,049,323	2,309	660,064	

[Footnotes at end of table]

Gasoline taxes, first half year of 1931—Tax earned on motor-vehicle fuel, etc., disposition of fund, and gallons taxed—Continued

State	Gross tax assessed prior to deduction of refund	Exemption refund (deducted from gross tax)	Total tax earning on motor-vehicle fuel	Other receipts under tax law (licenses)	Grand total earning (tax and other receipts)	Disposition of grand total earning		
						Collection cost	Construction and maintenance of rural roads	
							State highways	Local roads
Vermont	$751,806		$751,806		$751,806		$751,806	
Virginia	5,458,080	$327,315	5,130,765		5,130,765		3,591,535	$1,539,230
Washington	5,487,693	615,033	4,872,660		4,872,660	[42]	3,120,863	1,560,431
West Virginia	2,463,954	99,002	2,364,952	$4,525	2,369,477		831,375	
Wisconsin	6,420,208	413,330	6,006,878		6,006,878	$4,598	3,793,492	1,956,723
Wyoming	627,866		627,866		627,866		470,900	156,966
District of Columbia	881,646	5,087	876,559		876,559			
Total			244,746,853	1,625,782	246,372,635	823,415	158,332,132	48,416,879

State	Disposition of grand total earning			Tax rate, 1931			Gasoline, etc., taxed	
	State and county road [1] bond payments	On city streets	Miscellaneous purposes	Cents per gallon		Date of rate change	Net gallons	Per cent increase [2]
				Jan. 1	June 30			
Alabama	$1,038,770			4	[3] 4		80,005,626	−6.5
Arizona				4	5	Jan. 30	33,194,313	−1.1
Arkansas	[4] 2,558,919	$50,845		5	6	Feb. 26	54,037,015	−6.3
California				3	3		617,035,384	14.0
Colorado		90,722		4	4		76,360,389	3.4
Connecticut				2	2		104,746,999	3.2
Delaware				3	3		16,312,162	4.1
Florida	[11] 2,541,327		[12] $2,117,773	6	[13] 6		127,066,367	5.4
Georgia			[14] 1,060,233	6	6		106,093,343	−1.0
Idaho	[15] 153,567			5	5		24,251,680	−1.0
Illinois				3	3		446,545,165	3.6
Indiana		527,242		4	4		224,413,636	12.3
Iowa				3	3		176,571,279	6.0
Kansas				3	3		121,592,400	−18.8
Kentucky				5	5		81,025,634	4.7
Louisiana	1,891,181		[16] 886,186	5	5		89,238,632	−0.7
Maine				4	[17] 4		[18] 38,594,253	11.1
Maryland		[21] 646,220		4	4		81,116,787	1.8
Massachusetts		1,868,483		2	3	May 1	247,720,983	4.2
Michigan	1,500,000	35,000	[23] 17,166	3	3		[24] 333,370,258	.3
Minnesota				3	3		171,002,484	10.3
Mississippi			[27] 106,250	5	5		55,495,393	−17.7
Missouri				2	2		217,569,048	8.3
Montana				5	5		28,434,580	4.5
Nebraska				4	4		110,501,811	4.0
Nevada				4	4		9,086,441	21.6
New Hampshire	259,487			4	4		25,948,689	5.7
New Jersey		2,500,000	[28] 45,000	3	3		263,834,202	6.2
New Mexico	444,000		[29] 4,949	5	5		25,070,315	−1.8
New York			[31] 737,400	2	2		695,642,265	6.0
North Carolina	[32] 1,800,000			5	6	Apr. 1	97,876,102	−17.9
North Dakota				3	[34] 3		26,803,554	2.7
Ohio		3,309,404		4	4		1,243,859	−.6
Oklahoma			[35] 795,919	4	5	Mar. 25	134,170,623	−13.1
Oregon	689,112			4	4		77,581,843	10.8
Pennsylvania	1,500,000			3	3		473,131,367	18.6
Rhode Island	214,161			2	2		42,707,822	7.3
South Carolina				6	6		57,791,696	2.7
South Dakota	376,748		[38] 35,897	4	4		32,399,255	2.5
Tennessee	[39] 1,967,848			4	[40] 5		99,386,235	.6
Texas			[41] 3,785,317	4	4		378,531,742	7.7
Utah	386,950			3½	4	May 12	23,774,682	.7
Vermont				4	4		18,789,365	4.9
Virginia				5	5		102,581,754	4.6
Washington			[43] 191,366	3	5	Apr. 1	117,506,219	7.5
West Virginia	1,538,102			4	4		59,123,817	.9
Wisconsin		252,066		2	4	Apr. 1	187,172,123	6.6
Wyoming				4	4		15,696,651	12.5
District of Columbia		876,559		2	2		43,827,986	17.4
Total	18,860,172	10,136,541	[44] 9,783,496	[45]	[45]	[45]	7,117,874,233	4.5

[1] For State highway bonds, except as noted.
[2] Column shows percentage increase, or decrease (−), over same period last year.
[3] Increased to 5 cents on July 28, 1931.
[4] From State appropriation, $8,936.
[5] Includes $1,601,626 payments on county bonds.
[6] Refund reserve released and returned to gasoline tax fund.
[7] Includes all expenses of inspector of oils.
[8] Paid from motor vehicle license receipts, $15,000.
[9] Paid from State treasury.
[10] Includes $12,015 from dealer's licenses and $2,217 from reserve fund to cover collection cost.
[11] For county and town bonds.
[12] Includes $200,000 to permanent building fund under State board of control for buildings of higher learning, remainder to schools under county boards of public instruction.
[13] Emergency tax of 7 cents passed, and becomes effective Aug. 1, 1931 to July 1, 1933.
[14] Clerk's salary for full year taken from first collections of year.
[15] To an equalization school fund for public schools.
[16] State treasury note payment.
[17] From State general fund, $7,500.
[18] Includes $443,093 for State board of education, and $443,093 for boards of commissioners of port of New Orleans and Lake Charles Harbor.
[19] Referendum petition postponed 5 cent tax until election in September, 1932.
[20] Excludes 5,681,678 gallons taxed 1 cent for uses other than in motor vehicles.
[21] Baltimore City only.
[22] State appropriation $10,000.
[23] For aviation fund; from taxes collected from gasoline sold for airplanes, included in "other receipts."
[24] Includes 572,205 gallons sold for airplanes, tax for which is shown in "other receipts."
[25] State appropriation, $7,146.
[26] Includes expenses of State audit of accounts, $4,220.
[27] For financing sea-wall to protect road, partly paid by extra gasoline taxes in tidewater counties.
[28] For inland waterways under State department of commerce and navigation, partly paid for by 2-cent gas tax for motor boats.
[29] Undistributed suspense fund.
[30] Allowance of 1 per cent on gross receipts for loss in handling, and in addition $37,505 paid for collection cost from State treasury.
[31] Includes $687,400 to New York City general funds, and $50,000 to reserve for refunds.
[32] Disposition of funds approximate.
[33] From State appropriation, $12,500.
[34] Referendum petition prevented collection of 4-cent tax which will be voted upon in March, 1932.
[35] Includes $756,241 to special emergency relief fund, and $39,678 to suspense accounts.
[36] From motor-vehicle fees.
[37] From State tax commission appropriation.
[38] Reserve for refunds.
[39] On State highway bonds, $983,924 and same amount for county bonds.
[40] Increased to 6 cents on July 1, 1931.
[41] For free-school fund, according to State constitution.
[42] From motor-vehicle fund, $5,000.
[43] Reserve for refunds.
[44] Includes $7,405,416 for schools, $2,055,190 for special purposes (as noted) and $321,890 for suspense and reserve accounts.
[45] Average rate, 3.44 cents.

Mr. STEIWER. The revenue possibilities from taxing the sale of gasoline are, of course, based upon two things: First, the development and use of the automobile; and, second, upon the construction and maintenance of the highways. The first has been accomplished by private initiative. The Federal Government has made a substantial contribution toward the building of highways, but a much greater contribution has been made by the States; the States having furnished the roads have thus made the revenues possible. There is but little justification from the moral standpoint of the invasion by the Federal Government of this State-created source of revenue.

Without detaining the Senate further in connection with this matter, I desire to call attention to a statement just issued by the American Automobile Association. This statement is marked for release to-day, and it discloses in a most effectual way the enormous burden that would come to the automobile users of the United States if the proposal of the Secretary of the Treasury should be enacted into law. I ask unanimous consent that this statement may also appear in connection with what I am saying at this time.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The matter referred to is as follows:

WASHINGTON, D. C., February 25.—The threat of a 33 per cent boost in the Nation's $500,000,000 a year gasoline-tax bill, in the form of a Federal levy of 1 cent per gallon, looms as a birthday gift to motorists on the thirteenth anniversary of this form of taxation.

This statement was made to-day by the American Automobile Association, which pointed out that the gasoline tax, first levied at the rate of 1 cent per gallon in Oregon on February 25, 1919, has spread to every State, with the average rate nearly 4 cents per gallon.

Pointing out that motorists have paid approximately $2,500,000,000 in gasoline taxes since it was first levied, Thomas P. Henry, of Detroit, Mich., president of the national motoring body, declared that the evils that have crept into this taxing system are without parallel in the whole history of taxation.

"The tax was conceived as one of the most equitable forms in existence," said Mr. Henry, "in that the users of the highways were to pay for the building of roads in proportion to their use of the roads. But what do we find on the thirteenth anniversay of the tax?

"We find the tax in effect in the 48 States and the District of Columbia, and in hundreds of counties and municipalities that have superimposed local taxes on the top-heavy State levy.

"We find rates ranging from 2 cents per gallon in some States to 7 cents in Tennessee and Florida, with a 1-cent levy at Pensacola, in the latter State, making the rate 8 cents per gallon.

"We find the bootlegger and the racketeer waxing rich at the expense of motorists and profiting to the extent of approximately $60,000,000 a year through wholesale evasions of the tax.

"We find the States diverting around $20,000,000 a year from the tax receipts to schools, port development, charitable and penal institutions, for the development of water supplies, and for unemployment relief.

"And at the moment we find the Federal Government threatening to enter a field that is already overexploited by the State, the county, and the city, through the levy of a Federal tax of 1 cent per gallon, which it is estimated would cost motorists $165,000,000 a year. This would bring the tax in Pensacola, Fla., for example, to 9 cents per gallon, or equivalent to a 75 per cent sales tax on a commodity selling for 12 cents per gallon without the tax. Surely it can be said that the gasoline tax is no longer equitable." Mr. Henry's statement continues:

"If a Federal gasoline levy comes as an equitable part of a general tax on manufactures, the motorists will not quarrel, highly burdened thought they are. To impose a special sales tax on gasoline, however, would be highly inequitable and hark back to the discrimination that the Ways and Means Committee has made a praiseworthy effort to avoid.

"Such a policy would hasten the breakdown of the gas-tax structure. A special Government impost for general purposes would go far to establish 'diversion' as a principle and divorce this tax from road use, its original justification.

"It would jeopardize hundreds of millions of dollars in road bonds issued by the States and which are contingent on future gasoline-tax collections by the States.

"It would greatly accelerate the evasion evil, which is already depriving the States of much revenue and adding greatly to the cost of administration.

"It would inaugurate a serious battle between the States and the Federal Government in their respective spheres of taxation and inevitably lead to retaliation in other tax fields."

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Haltigan, one of its clerks, announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the joint resolution (H. J. Res. 292) to authorize the Secretary of Agriculture to aid in the establishment of agricultural-credit corporations, and for other purposes.

The message also announced that the House had passed the following bills and joint resolution, in which it requested the concurrence of the Senate:

H. R. 6310. An act to amend section 1709 of the Revised Statutes, as amended by the act of March 3, 1911 (36 Stat. 1083), and section 304 of the Budget and Accounting Act, 1921 (42 Stat. 24);

H. R. 7119. An act to authorize the modification of the boundary line between the Panama Canal Zone and the Republic of Panama, and for other purposes;

H. R. 9349. An act making appropriations for the Departments of State and Justice and for the judiciary, and for the Departments of Commerce and Labor, for the fiscal year ending June 30, 1933, and for other purposes;

H. R. 9393. An act to increase passport fees, and for other purposes; and

H. J. Res. 182. Joint resolution authorizing an appropriation to defray the expenses of participation by the United States Government in the Second Polar Year Program, August 1, 1932, to August 31, 1933.

HOUSE BILLS AND JOINT RESOLUTION REFERRED

The following bills and joint resolution were severally read twice by their titles and referred as indicated below:

H. R. 9349. An act making appropriations for the Departments of State and Justice and for the judiciary, and for the Departments of Commerce and Labor, for the fiscal year ending June 30, 1933, and for other purposes; to the Committee on Appropriations.

H. R. 6310. An act to amend section 1709 of the Revised Statutes, as amended by the act of March 3, 1911 (36 Stat. 1083), and section 304 of the Budget and Accounting Act, 1921 (42 Stat. 24);

H. R. 7119. An act to authorize the modification of the boundary line between the Panama Canal Zone and the Republic of Panama, and for other purposes; and

H. R. 9393. An act to increase passport fees, and for other purposes; to the Committee on Foreign Relations.

H. J. Res. 182. Joint resolution authorizing an appropriation to defray the expenses of participation by the United States Government in the Second Polar Year Program, August 1, 1932, to August 31, 1933; to the calendar.

THE WALES ISLAND PACKING CO. *v.* THE UNITED STATES (S. DOC. NO. 61)

The PRESIDENT pro tempore laid before the Senate a letter from the assistant clerk of the Court of Claims transmitting, pursuant to a resolution of the Senate and in accordance with law, copies of the special findings of fact and opinion of the court in the cause of the Wales Island Packing Co. *v.* The United States, which (with the accompanying papers) was referred to the Committee on Foreign Relations and ordered to be printed.

LEMUEL SIMPSON

The PRESIDENT pro tempore laid before the Senate the amendment of the House of Representatives to the bill (S. 315) for the relief of Lemuel Simpson, which was, on page 1, line 11, after the word "Cavalry," to insert "on the 20th day of February, 1862."

Mr. HAWES. I move that the amendment of the House of Representatives be concurred in.

The PRESIDENT pro tempore. The question is on the motion of the Senator from Missouri.

The motion was agreed to.

EXECUTIVE MESSAGES REFERRED

The PRESIDENT pro tempore, as in executive session, laid before the Senate several messages from the President of the United States submitting a treaty and nominations, which were referred to the appropriate committees.

(For nominations this day received, see the end of Senate proceedings.)

PROPOSED ANTI-INJUNCTION LEGISLATION

The Senate resumed the consideration of the bill (S. 935) to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes.

The PRESIDENT pro tempore. The clerk will proceed to read the bill and state the first amendment of the Committee on the Judiciary.

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

The PRESIDENT pro tempore. The clerk will call the roll.

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

Ashurst	Cutting	Jones	Robinson, Ind.
Austin	Dale	Kean	Schall
Bailey	Davis	Kendrick	Sheppard
Bankhead	Dickinson	Keyes	Shipstead
Barbour	Dill	King	Smith
Bingham	Fess	La Follette	Smoot
Black	Fletcher	Lewis	Steiwer
Blaine	Frazier	Logan	Stephens
Borah	George	Long	Thomas, Idaho
Bratton	Glass	McGill	Thomas, Okla.
Brookhart	Glenn	McNary	Townsend
Broussard	Goldsborough	Metcalf	Trammell
Bulkley	Gore	Morrison	Tydings
Bulow	Hale	Moses	Vandenberg
Byrnes	Harrison	Neely	Wagner
Capper	Hastings	Norbeck	Walcott
Caraway	Hatfield	Norris	Walsh, Mass.
Carey	Hawes	Nye	Walsh, Mont.
Connally	Hayden	Oddie	Watson
Coolidge	Hebert	Patterson	Wheeler
Copeland	Howell	Pittman	White
Costigan	Hull	Reed	
Couzens	Johnson	Robinson, Ark.	

The PRESIDENT pro tempore. Ninety Senators having answered to their names, there is a quorum present.

Mr. REED. Mr. President, if I may have the attention of the Senator from Rhode Island, I want to ask him to look at the language on the bottom of page 9 of the substitute, particularly that part beginning in line 19. It seems to me that in perfecting the substitute there ought to be some change made in the language of that sentence. It now reads:

> Such a temporary restraining order shall be effective for no longer than five days, and shall not be extended if, in the judgment of the court, unjustifiable delay is sought by complainant.

That is all right. Then it proceeds:

> And shall become void at the expiration of said five days, unless extended, but not for more than five days at any one time, by order of the court for good cause shown.

I think what the Senator means probably is that the order shall not be extended if unjustifiable delay is sought, and shall not be extended for more than five days at any one time. I believe that the section would be improved if it were stated in that way.

Mr. HEBERT. I observe the Senator is reading from the minority substitute.

Mr. REED. Yes; the sentence beginning in line 19, page 9. I am in full agreement with the purpose of the sentence, and, of course, it is substantially the same as that in the majority bill.

Mr. HEBERT. In the majority bill, may I say, there is no provision for an extension. The substitute provides that in no event shall the extension continue for a longer period than five days in the first instance, and then it may be extended, but not for longer than five days at any one time. That is the purpose of the clause.

Mr. REED. With that I am in full agreement; but I think the language is obscure.

Mr. HEBERT. I have no pride of authorship about it.

Mr. REED. I would like to submit to the Senator for reading at his leisure the redraft I have made of it, and then later on, if he agrees with me, he may propose the change.

Mr. HEBERT. I will be very glad to take the matter up and consider it.

Mr. NORRIS. Mr. President, I hope the Senator from Pennsylvania will have his amendment printed, so that we may consider it.

Mr. REED. I will be glad to. I will state it now.

Mr. NORRIS. Very well.

Mr. REED. My suggestion would be to strike out, on page 9, line 23, beginning after the word "complainant," everything from there down to the end of the sentence and replace it with these words: "and shall not be extended for more than five days at any one time." That expresses the same intention, I think, but I think it expresses it better.

Mr. WALSH of Montana. Mr. President, will the Senator from Pennsylvania yield?

Mr. REED. I yield.

Mr. WALSH of Montana. I think the Senator should go back a little further. It provides that it "shall not be extended if, in the judgment of the court, unjustifiable delay is sought by complainant." That is to say, in order to refuse it, the judge must find that the complainant is seeking unjustifiable delay. It throws the burden on the wrong side. If a party seeks a continuance, he should show why he wants the continuance, and make clear to the court that the continuance is necessary. As it reads, the burden is thrown upon the other party to show that really what the party wants to do is to trifle with the court.

Mr. REED. I think the Senator is exactly right, and therefore I believe I would strike out the entire sentence beginning on line 19 and replace it with this sentence:

> Such a temporary restraining order shall not be effective for longer than five days, and shall not thereafter be extended unless in the judgment of the court the delay is justifiable, and shall not be extended for more than five days at any one time.

That is the end of the proposed insertion. I think we can well leave out the words "by order of the court for good cause shown," because it is obvious that if it is extended it will have to be by order of the court, and it is equally obvious that cause must be shown by the person applying for the extension.

Mr. NORRIS. Mr. President, there are one or two Senators, one at least, I think, on each side, who desire to be heard in the general debate on the bill, and neither of them is ready to proceed this evening. I would be glad, if the Senator from Oregon desires, either to take up something else or to take a recess at this time until 12 o'clock to-morrow.

RECESS

Mr. McNARY. I move that the Senate take a recess until 12 o'clock to-morrow.

The motion was agreed to; and the Senate (at 4 o'clock p. m.) took a recess until to-morrow, Friday, February 26, 1932, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate February 25 (legislative day of February 24), 1932

UNITED STATES MARSHAL

Watt H. Gragg, of North Carolina, to be United States marshal, middle district of North Carolina, to succeed Joseph John Jenkins, whose term expired January 11, 1932.

PROMOTION IN THE REGULAR ARMY

To be first lieutenant

Second Lieut. Russell Potter Reeder, jr., Infantry, from February 19, 1932.

CHAPLAIN

To be chaplain with the rank of major

Chaplain Albert Leslie Evans (captain), United States Army, from February 18, 1932.

HOUSE OF REPRESENTATIVES

THURSDAY, FEBRUARY 25, 1932

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

They that trust in the Lord are as Mount Zion, which can not be removed but abideth forever. Help us, O Lord, to set our conscience by the moral sense of God. As Thy law is so just, Thy love so bountiful, and Thy wisdom so infinite,