3269. By Mr. HOOK: Resolution of the Gogebic County Board of Supervisors at Bessemer, Mich., that the Federal Government adopt some system whereby townships and counties shall be reimbursed for the financial loss created by the removal of tax-paying land from tax roll for Federal reserves; to the Committee on the Public Lands.

3270. Also, resolution of the Board of Supervisors of Keweenaw County, Eagle River, Mich., petitioning the Federal Government to adopt some means whereby the townships and counties in which the United States Government has purchased lands for the purpose of creating Federal forest reserves and national-park purposes, be reimbursed for the financial loss sustained by the removal of said lands from the tax roll; to the Committee on the Public Lands.

3271. By Mr. LUTHER A. JOHNSON: Petition of H. J. Kent, president, and J. C. Parks, secretary, Navarro County Agricultural Association, Navarro County; George H. Wyatt, of Kirven; A. J. Harris, S. H. Lee, T. L. Sherrard, of Streetman; Oscar Johnson, Joe Gillespie, James Davis, P. Baty, Tom Beck, Jim Dunkin, Smith Johnson, Nathaniel Brown, Aaron Dunkin, G. Tatum, Alf Tatum, Hubert Tatum, Tennessee Taylor, D. W. Mims, Virginia Mims, Blaine Brown, Homes Brown, O. C. Brown, Clint Henderson, F. R. Smith, W. W. Moore, R. H. Moore, Marvin Moore, W. V. Geppert, A. B. Geppert, Ellen Victery, E. R. Simmoms, and Clair Clark, of Teague; and A. O. Hagen and A. E. Hagen, of Fairfield, all of the State of Texas, favoring general farm bill this session; to the Committee on Agriculture.

3272. Also, petition of H. B. Walker, of Corsicana, Tex., opposing the Black-Connery wage and hour bill; to the Committee on Rules.

3273. By Mr. SANDERS: Resolution of A. D. Winston and 78 farmers, of Smith County, Tex., urging enactment of House bill 7577 at this session of Congress; to the Committee on Agriculture.

3274. By Mr. KEOGH: Petition of the Brooklyn Merchant Bakers Association, Brooklyn, N. Y., concerning Senate bill 2475 and House bill 7200; to the Committee on Labor.

3275. Also, petition of the Citizens Committee for Support of Works Progress Administration, New York City, concerning the Schwellenbach-Allen resolutions; to the Committee on Appropriations.

3276. By Mr. PFEIFER: Petition of the Brooklyn Merchant Bakers Association, Brooklyn, N. Y., concerning House bill 7200 and Senate bill 2475; to the Committee on Labor.

3277. Also, petition of the Citizens Committee for Support of Works Progress Administration, New York City, urging support of the Schwellenbach-Allen joint resolutions; to the Committee on Appropriations.

3278. Also, petition of the American Federation of State, County, and Municipal Employees, Local 61–2, New York City, urging the passage of the wage and hour bill and the Wagner-Steagall housing bill; to the Committee on Labor.

SENATE

TUESDAY, AUGUST 17, 1937

(Legislative day of Monday, Aug. 16, 1937)

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

THE JOURNAL

On request of Mr. BARKLEY, and by unanimous consent, the reading of the Journal of the proceedings of the calendar day Monday, August 16, 1937, was dispensed with, and the Journal was approved.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Chaffee, one of its reading clerks, announced that the House had passed, without amendment, the following bills of the Senate:

S. 1216. An act authorizing the Secretary of the Interior to convey certain land to the State of Montana, to be used for the purposes of a public park and recreational site;

S. 1282. An act to amend Articles of War 50½ and 70;

S. 1551. An act to amend section 24 of the Judicial Code, as amended, with respect to the jurisdiction of the district courts of the United States over suits relating to the collection of State taxes;

S. 1696. An act to authorize the revision of the boundaries of the Snoqualmie National Forest, in the State of Washington;

S. 1816. An act to amend section 77 of the Judicial Code, as amended, to create a Brunswick division in the southern district of Georgia, with terms of court to be held at Brunswick;

S. 1889. An act authorizing the Secretary of the Interior to convey all right, title, and interest of the United States in certain lands to the State of New Mexico, and for other purposes;

S. 2249. An act providing for the manner of payment of taxes on gross production of minerals, including gas and oil, in Oklahoma;

S. 2401. An act for the relief of sergeant-instructors, National Guard, and for other purposes;

S. 2613. An act for the relief of certain applicants for oil and gas permits and leases;

S. 2614. An act authorizing the Secretary of the Interior to patent certain tracts of land to the State of New Mexico and Cordy Bramblet;

S. 2682. An act to authorize the Secretary of the Interior to issue patents to States under the provisions of section 8 of the act of June 28, 1934 (48 Stat. 1269), as amended by the act of June 26, 1936 (49 Stat. 1976), subject to prior leases issued under section 15 of the said act;

S. 2751. An act to authorize the transfer to the jurisdiction of the Secretary of the Treasury of portions of the property within the West Point Military Reservation, N. Y., for the construction thereon of certain public buildings, and for other purposes;

S. 2851. An act to authorize the reservation of minerals in future sales of lands of the Choctaw-Chickasaw Indians in Oklahoma;

S. 2882. An act to authorize the construction of bridges in Caddo Parish, La.; and

S. 2888. An act to authorize the Secretary of the Interior to lease or sell certain lands of the Agua Caliente or Palm Springs Reservation, Calif., for public airport use, and for other purposes.

The message also announced that the House had passed the following bills of the Senate, severally with amendments, in which it requested the concurrence of the Senate:

S. 29. An act to promote the safety of employees and travelers on railroads by requiring common carriers engaged in interstate commerce to install, inspect, test, repair, and maintain block-signal systems, interlocking, automatic train-stop, train-control, cab-signal devices, and other appliances, methods, and systems intended to promote the safety of railroad operation;

S. 1040. An act placing provisional officers of the World War in the same status with emergency officers of the World War and extending to them the same benefits and privileges as are now or may hereafter be provided by law, orders, and regulations for said emergency officers, and for other purposes; and

S. 1516. An act to authorize certain payments to the American War Mothers, Inc.; the Veterans of Foreign Wars of the United States, Inc.; and the Disabled American Veterans of the World War, Inc.

The message further announced that the House had passed the following bills, severally with an amendment, in which it requested the concurrence of the Senate:

S. 1283. An act to increase the extra pay to enlisted men for reporting;

S. 2263. An act providing for per-capita payments to the Seminole Indians in Oklahoma from funds standing to their credit in the Treasury;

S. 2647. An act to provide for the reimbursement of certain enlisted men and former enlisted men of the Navy for the value of personal effects lost while engaged in emergency relief expeditions during the Ohio Valley flood in January and February 1937; and

S. 2862. An act to provide funds for cooperation with the school board at Worley, Idaho, in the construction of a public-school building to be available to Indian children in the town of Worley and county of Kootenai, Idaho.

The message also announced that the House had agreed to the amendments of the Senate to the bill (H. R. 7645) to authorize appropriations for construction and rehabilitation at military posts, and for other purposes.

The message further announced that the House had disagreed to the amendments of the Senate to the bill (H. R. 7646) to amend an act entitled "An act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes", approved June 22, 1936, agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. WHITTINGTON, Mr. GRISWOLD, and Mr. ENGLEBRIGHT were appointed managers on the part of the House at the conference.

The message also announced that the House had disagreed to the amendments of the Senate to the bill (H. R. 7667) to regulate commerce among the several States, with the Territories and possessions of the United States, and with foreign countries; to protect the welfare of consumers of sugars and of those engaged in the domestic sugar-producing industry; to promote the export trade of the United States; to raise revenue; and for other purposes, asked a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. JONES, Mr. DOXEY, Mr. MITCHELL of Tennessee, Mr. HOPE, and Mr. KINZER were appointed managers on the part of the House at the conference.

The message further announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H. R. 1485. An act to amend section 40 of the act of March 2, 1917, entitled "An act to provide a civil government for Porto Rico, and for other purposes";

H. R. 3021. An act to authorize the acquisition of a certain building, furniture, and equipment in the Crater Lake National Park;

H. R. 4399. An act authorizing payment for certain lands appropriated by the United States, and for other purposes;

H. R. 4402. An act to continue in effect a certain lease for the quarters of the post office at Grover, N. C., and for other purposes;

H. R. 4539. An act authorizing a per-capita payment of $25 each to the members of the Red Lake Band of Chippewa Indians from the proceeds of the sale of timber and lumber on the Red Lake Reservation;

H. R. 5753. An act to authorize advance of the amounts due on delinquent homestead entries on certain Indian reservations;

H. R. 6042. An act making further provision with respect to the funds of the Metlakahtla Indians of Alaska;

H. R. 6589. An act to conserve the watersheds and water resources of portions of Santa Barbara and San Luis Obispo Counties, Calif., by the withdrawal of certain public land, included within the Los Padres National Forest, Calif., from location and entry under the mining laws;

H. R. 7210. An act to authorize an exchange of lands at the New Cumberland General Depot, Pennsylvania;

H. R. 7436. An act to validate settlement claims established on sections 16 and 36 within the area withdrawn for the Matanuska settlement project in Alaska, and for other purposes;

H. R. 7649. An act relating to certain lands within the boundaries of the Crow Reservation, Mont.;

H. R. 7709. An act to incorporate the American Chemical Society;

H. R. 7849. An act authorizing State Highway Commission of Arkansas and State Highway Commission of Mississippi to construct, maintain, and operate a toll bridge across the Mississippi River at or near Lake Village, Chicot County, Ark., and to a place at or near Greenville, Washington County, Miss.;

H. R. 7867. An act to amend section 11 of the act of Congress approved July 10, 1890 (26 Stat., ch. 664), relating to the admission into the Union of the State of Wyoming;

H. R. 8167. An act to extend the times for commencing and completing the construction of a bridge across the Delaware River between the village of Barryville, N. Y., and the village of Shohola, Pa.; and

H. R. 8234. An act to provide revenue, equalize taxation, prevent tax evasion and avoidance, and for other purposes.

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

The message also announced that the Speaker had affixed his signature to the following enrolled bills and joint resolutions, and they were signed by the Vice President:

S. 854. An act for the relief of James O. Cook;

S. 2871. An act for the protection of certain enlisted men of the Army;

H. R. 854. An act for the relief of Robert Coates;

H. R. 1375. An act for the relief of Wayne M. Cotner;

H. R. 1767. An act for the relief of the Rowesville Oil Co.;

H. R. 2014. An act to amend an act entitled "An act to provide for the establishment of the Everglades National Park in the State of Florida, and for other purposes", approved May 30, 1934;

H. R. 3406. An act for the relief of the Southeastern University of the Young Men's Christian Association of the District of Columbia;

H. R. 3426. An act for the relief of Rose McGirr;

H. R. 4489. An act for the relief of Stella Van Dewerker;

H. R. 4582. An act to amend the act, approved August 4, 1919, as amended, providing additional aid for the American Printing House for the Blind;

H. R. 5927. An act for the relief of Walter G. Anderson;

H. R. 6167. An act to provide a surcharge on certain air mail carried in Alaska;

H. R. 6762. An act to amend the act known as the "Perishable Agricultural Commodities Act, 1930", approved June 10, 1930, as amended;

H. R. 7127. An act authorizing the President to invite the States of the Union and foreign countries to participate in the International Petroleum Exposition at Tulsa, Okla., to be held May 14 to May 21, 1938;

H. R. 7172. An act for the relief of Jesse A. LaRue;

H. R. 7430. An act for the relief of Mary Lucia Haven;

H. R. 7949. An act to exempt State liquor-dispensing systems from the requirement of keeping certain records and rendering transcripts and summaries of entries with respect to distilled spirits;

H. R. 8174. An act to make available to each State which enacted in 1937 an approved unemployment-compensation law a portion of the proceeds from the Federal employers' tax in such State for the year 1936;

H. J. Res. 171. Joint resolution for the designation of certain streets or avenues in the Mall as Ohio, Missouri, Oklahoma, and Maine Avenues;

H. J. Res. 385. Joint resolution authorizing the President to invite the States of the Union and foreign countries to participate in the Oil World Exposition at Houston, Tex., to be held October 11 to 16, 1937, inclusive;

H. J. Res. 406. Joint resolution to establish the General Anthony Wayne Memorial Commission to formulate plans for the construction of a permanent memorial to the memory of Gen. Anthony Wayne; and

H. J. Res. 445. Joint resolution granting the consent of Congress to a compact between the States of New York and New Jersey providing for the creation of the Palisades Interstate Park Commission as a joint corporate municipal instrumentality of said States with appropriate rights, powers, duties, and immunities, for the transfer to said commission of certain functions, jurisdiction, rights, powers, and duties,

together with the properties of the bodies politic now existing in each State known as "Commissioners of the Palisades Interstate Park", and for the continuance of the Palisades Interstate Park.

CALL OF THE ROLL

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

The VICE PRESIDENT. The clerk will call the roll.

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

Adams	Connally	Lee	Reynolds
Andrews	Copeland	Lewis	Schwartz
Ashurst	Davis	Lodge	Schwellenbach
Austin	Dieterich	Logan	Sheppard
Bankhead	Donahey	Lundeen	Shipstead
Barkley	Ellender	McAdoo	Smathers
Berry	Frazier	McGill	Smith
Bilbo	Gillette	McKellar	Steiwer
Bone	Glass	Minton	Thomas, Okla.
Borah	Green	Moore	Thomas, Utah
Bridges	Hale	Murray	Truman
Brown, N. H.	Hatch	Neely	Tydings
Bulow	Hitchcock	Nye	Van Nuys
Burke	Holt	Overton	Wagner
Byrnes	Hughes	Pepper	Wheeler
Capper	Johnson, Calif.	Pittman	White
Caraway	Johnson, Colo.	Pope	
Chavez	King	Radcliffe	

Mr. BARKLEY. I announce that the following Senators, members of the Committee on Finance, are unavoidably absent from the floor because they are in session considering the tax "loophole" bill: Senators HARRISON, CLARK, BYRD, LONERGAN, GUFFEY, GERRY, BULKLEY, HERRING, BROWN of Michigan, LA FOLLETTE, and TOWNSEND.

Mr. MINTON. I announce that the Senator from Wisconsin [Mr. DUFFY] and the Senator from Georgia [Mr. RUSSELL] are absent on official duty as members of the committee appointed to attend the dedication of the battle monuments in France.

I further announce that the Senator from North Carolina [Mr. BAILEY] and the Senator from Connecticut [Mr. MALONEY] are absent because of illness.

The Senator from Nevada [Mr. MCCARRAN], the Senator from Wyoming [Mr. O'MAHONEY], and the Senator from Massachusetts [Mr. WALSH] are necessarily detained.

Mr. SCHWELLENBACH. I announce that the Senator from Nebraska [Mr. NORRIS] is detained from the Senate because of illness.

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

VIRGINIA DARE CELEBRATION, ROANOKE ISLAND, N. C.

The VICE PRESIDENT. The Chair has received communications from the Senator from Kentucky [Mr. BARKLEY], the Senator from Massachusetts [Mr. LODGE], and the Senator from North Carolina [Mr. BAILEY] tendering their resignations as members on the part of the Senate of the joint congressional committee appointed to represent the Congress at the celebration of the three hundred and fiftieth anniversary of the birth of Virginia Dare, to be held at Roanoke Island, N. C., on the 18th instant, and appoints the Senator from Illinois [Mr. DIETERICH], the Senator from Mississippi [Mr. BILBO], and the Senator from South Dakota [Mr. BULOW] to fill the vacancies.

SUPPLEMENTAL ESTIMATE, NAVY DEPARTMENT (S. DOC. NO. 101)

The VICE PRESIDENT laid before the Senate a communication from the President of the United States, transmitting a supplemental estimate of appropriation for the Navy Department (public works, Bureau of Yards and Docks), fiscal year 1938, amounting to $600,000, which, with the accompanying paper, was referred to the Committee on Appropriations and ordered to be printed.

NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR (S. DOC. NO. 100)

The VICE PRESIDENT laid before the Senate a communication from the President of the United States, transmitting draft of a proposed provision pertaining to an existing appropriation for the Department of the Interior, National Park Service (salaries and general expenses, public buildings and grounds, in the District of Columbia), fiscal year 1938, which, with the accompanying paper, was referred to the Committee on Appropriations and ordered to be printed.

CONSERVATION AND USE OF AGRICULTURAL LAND RESOURCES—INTERNATIONAL PRODUCTION CONTROL COMMITTEES (S. DOC. NO. 99)

The VICE PRESIDENT laid before the Senate a communication from the President of the United States, transmitting two drafts of proposed provisions pertaining to existing appropriations for the Department of Agriculture, namely, "Conservation and use of agricultural land resources, Department of Agriculture", and "International Production Control Committees", which, with the accompanying paper, was referred to the Committee on Appropriations and ordered to be printed.

SUPPLEMENTAL ESTIMATES, DEPARTMENT OF LABOR (S. DOC. NO. 102)

The VICE PRESIDENT laid before the Senate a communication from the President of the United States, transmitting supplemental estimates of appropriations for the Department of Labor, fiscal year 1938, amounting to $53,420, which, with the accompanying paper, was referred to the Committee on Appropriations and ordered to be printed.

PETITIONS AND MEMORIALS

The VICE PRESIDENT laid before the Senate a telegram in the nature of a memorial from the Amalgamated Association of Street Electric Railway and Motor Coach Employees of America, by W. D. Mahon, international president, Detroit, Mich., remonstrating against reduction in the appropriation for the National Labor Relations Board, which was referred to the Committee on Appropriations.

He also laid before the Senate a telegram in the nature of a petition from Brooks Whitton, proprietor, etc., Dr. Edward Brannan, and sundry other citizens, engaged in business and in the professions, all of Birmingham, Ala., praying for the confirmation of the nomination of HUGO L. BLACK, of Alabama, to be an Associate Justice of the Supreme Court of the United States, which was ordered to lie on the table.

Mr. LUNDEEN presented letters in the nature of memorials from Elmer Haugen and G. H. Hubmer, cashier, St. Clair State Bank, both of St. Clair; A. A. Bibus, vice president, etc., Stock Yards National Bank, of South St. Paul; the Little Falls Farmers' Shipping Association, of Little Falls; and members of the Grey Eagle Stock Shipping Association, of Grey Eagle, all in the State of Minnesota, remonstrating against the ratification of the so-called Argentine Sanitary Convention, which were referred to the Committee on Foreign Relations.

Mr. LODGE presented resolutions of the mayors and aldermen of Springfield and Northampton, and the selectmen of Amherst and Blandford, all in the State of Massachusetts, favoring the prompt approval and ratification, without amendment, of the Connecticut River Interstate Flood Control Compact, so that immediate construction of impounding reservoirs may be possible, which were ordered to lie on the table.

REPORTS OF COMMITTEES

Mr. LOGAN, from the Committee on Claims, to which were referred the following bills, reported them severally without amendment and submitted reports thereon:

H. R. 345. A bill for the relief of Genevieve E. Daley (Rept. No. 1220);

H. R. 459. A bill for the relief of the Derby Oil Co. (Rept. No. 1221);

H. R. 518. A bill for the relief of Rosolino Zamito and Maria Zamito (Rept. No. 1222);

H. R. 1233. A bill for the relief of employees of the Indian Service for destruction by fire of personally owned

property in Government quarters at the Pierre Indian School, South Dakota (Rept. No. 1223); and

H. R. 2860. A bill for the relief of Walter W. Johnston (Rept. No. 1240).

Mr. HUGHES, from the Committee on Claims, to which were referred the following bills, reported them severally without amendment and submitted reports thereon:

H. R. 2641. A bill for the relief of John Stevens and the estate of Fred Hausauer, Jr. (Rept. No. 1224);

H. R. 6135. A bill for the relief of R. E. Rainer, R. H. Alderman, and John Harmon (Rept. No. 1225);

H. R. 6155. A bill for the relief of Sadie N. Pike and Edward W. Pike (Rept. No. 1226);

H. R. 6271. A bill conferring jurisdiction upon the United States District Court for the Northern District of Georgia to hear, determine, and render judgment upon the claims of George Perdue, O. B. Ross, Sadie Washington, and the estate of Larry W. Fleming (Rept. No. 1227);

H. R. 6316. A bill for the relief of Helen Niehaus (Rept. No. 1228);

H. R. 6469. A bill conferring jurisdiction upon the United States District Court for the State of Massachusetts to hear, determine, and render judgment upon the claim of Anthony Caramagno (Rept. No. 1229); and

H. R. 7458. A bill for the relief of John E. T. Clark (Rept. No. 1230).

Mr. HATCH, from the Committee on Public Lands and Surveys, to which was referred the bill (H. R. 7618) relating to the revested Oregon & California Railroad and reconveyed Coos Bay Wagon Road grant lands situated in the State of Oregon, reported it without amendment and submitted a report (No. 1231) thereon.

He also, from the same committee, to which was referred the bill (S. 2759) authorizing the sale of certain lands to the Regents of the Agricultural College of New Mexico, reported it with an amendment and submitted a report (No. 1232) thereon.

Mr. MURRAY, from the Committee on Public Lands and Surveys, to which was referred the bill (S. 2953) to provide a measure of damages for trespass involving timber and other forest products upon lands of the United States, reported it with amendments and submitted a report (No. 1233) thereon.

Mr. NYE, from the Committee on Public Lands and Surveys, to which was referred the joint resolution (S. J. Res. 208) relative to the establishment of title of the United States to certain submerged lands containing petroleum deposits, reported it without amendment and submitted a report (No. 1234) thereon.

Mrs. CARAWAY, from the Committee on the Library, to which was referred the joint resolution (S. J. Res. 206) to authorize the painting of the painting The Signing of the Constitution for placement in the Capitol Building, reported it without amendment and submitted a report (No. 1235) thereon.

Mr. BYRNES, from the Select Committee on Government Organization, to which was referred the bill (S. 2970) to provide for reorganizing agencies of the Government, extending the classified civil service, establishing a General Auditing Office and a Department of Welfare, and for other purposes, reported it without amendment and submitted a report (No. 1236) thereon.

Mr. RADCLIFFE, from the Committee on Commerce, to which was referred the bill (H. R. 7806) authorizing the State Roads Commission of the State of Maryland to construct, maintain, and operate a free highway bridge across Sinepuxent Bay in Worcester County, Md., at Ocean City, Md., to replace a bridge already in existence, reported it with amendments and submitted a report (No. 1237) thereon.

Mr. THOMAS of Oklahoma, from the Committee on Indian Affairs, to which was referred the bill (S. 1424) to repeal that provision in the act of March 2, 1917 (39 Stat. L. 976), directing the making of allotments to Indians of the Mission Indian Reservations, Calif., reported it with amendments and submitted a report (No. 1238) thereon.

He also, from the same committee, to which was referred the bill (S. 2223) to provide for the construction, extension, and improvement of public-school buildings in Uintah County, Utah, reported it without amendment and submitted a report (No. 1241) thereon.

Mr. WHEELER, from the Committee on Indian Affairs, to which was referred the bill (S. 2701) relating to certain lands within the boundaries of the Crow Reservation, Mont., reported it with an amendment and submitted a report (No. 1239) thereon.

BILLS INTRODUCED

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

By Mr. GLASS (by request):

A bill (S. 2974) to revise the code of laws of the District of Columbia relating to building and loan associations; to define associations and to provide for their organization, incorporation, examination, operation, regulation, and supervision; and prescribing penalties for violations of the provisions of the act; to the Committee on the District of Columbia.

By Mr. LUNDEEN:

A bill (S. 2975) for the relief of Joseph Lane; to the Committee on Claims.

A bill (S. 2976) granting a pension to Effie G. Mallon; to the Committee on Pensions.

By Mr. WHEELER:

A bill (S. 2977) for the relief of Bert Peters; to the Committee on Claims.

By Mr. McKELLAR:

A bill (S. 2978) requiring that persons holding certain positions under the United States be citizens of the United States; to the Committee on Civil Service.

HOUSE BILLS REFERRED

The following bills were severally read twice by their titles and referred, or ordered to be placed on the calendar, as indicated below:

H. R. 1485. An act to amend section 40 of the act of March 2, 1917, entitled "An act to provide a civil government for Porto Rico, and for other purposes", and;

H. R. 7867. An act to amend section 11 of the act of Congress approved July 10, 1890 (26 Stat. ch. 664), relating to the admission into the Union of the State of Wyoming; to the Committee on Territories and Insular Affairs.

H. R. 3021. An act to authorize the acquisition of a certain building, furniture, and equipment in the Crater Lake National Park;

H. R. 6589. An act to conserve the watersheds and water resources of portions of Santa Barbara and San Luis Obispo Counties, Calif., by the withdrawal of certain public land, included within the Los Padres National Forest, Calif., from location and entry under the mining laws; and

H. R. 7436. An act to validate settlement claims established on sections 16 and 36 within the area withdrawn for the Matanuska settlement project in Alaska, and for other purposes; to the Committee on Public Lands and Surveys.

H. R. 4399. An act authorizing payment for certain lands appropriated by the United States, and for other purposes;

H. R. 4539. An act authorizing a per-capita payment of $25 each to the members of the Red Lake Band of Chippewa Indians from the proceeds of the sale of timber and lumber on the Red Lake Reservation;

H. R. 5753. An act to authorize advance of the amounts due on delinquent homestead entries on certain Indian reservations; and

H. R. 6042. An act making further provision with respect to the funds of the Metlakahtla Indians of Alaska; to the Committee on Indian Affairs.

H. R. 4402. An act to continue in effect a certain lease for the quarters of the post office at Grover, N. C., and for other purposes; to the Committee on Post Offices and Post Roads.

H. R. 7210. An act to authorize an exchange of lands at the New Cumberland General Depot, Pennsylvania; to the Committee on Military Affairs.

H. R. 7649. An act relating to certain lands within the boundaries of the Crow Reservation, Mont.; to the calendar.

H. R. 7709. An act to incorporate the American Chemical Society; to the Committee on the Judiciary.

H. R. 7849. An act authorizing State Highway Commission of Arkansas and State Highway Commission of Mississippi to construct, maintain, and operate a toll bridge across the Mississippi River at or near Lake Village, Chicot County, Ark., and to a place at or near Greenville, Washington County, Miss.; and

H. R. 8167. An act to extend the times for commencing and completing the construction of a bridge across the Delaware River between the village of Barryville, N. Y., and the village of Shohola, Pa.; to the Committee on Commerce.

H. R. 8234. An act to provide revenue, equalize taxation, prevent tax evasion and avoidance, and for other purposes; to the Committee on Finance.

AMENDMENTS TO THIRD DEFICIENCY BILL

Mr. PITTMAN submitted an amendment intended to be proposed by him to House bill 8245, the third deficiency appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed, as follows:

At the proper place, to insert the following new paragraph:

"To pay Edward J. Trenwith, as compensation for compiling a revised supplement to the compilation entitled 'Treaties, Conventions, International Acts, and Protocols Between the United States and Other Powers', to include treaties, conventions, important protocols, and international acts to which the United States may have been a party since March 4, 1923, under resolution of the Senate (S. Res. 132, 75th Cong., 1st sess.), $2,500."

Mr. BYRNES submitted an amendment intended to be proposed by him to House bill 8245, the third deficiency appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed, as follows:

At the proper place to insert the following:

"Notwithstanding any other provisions of section 32 of Public, No. 320, Seventy-fourth Congress, as amended, not to exceed $65,000,000 of the funds available under said section 32 in each of the fiscal years 1938 and 1939 shall be available (at such times and in such amounts as the Secretary of Agriculture may determine) until expended for a price-adjustment payment, upon such terms and conditions as the Secretary of Agriculture may determine, with respect to the 1937 cotton crop to cotton producers who have complied with the provisions of the 1938 agricultural adjustment program formulated under the legislation contemplated by Senate Joint Resolution 207, Seventy-fifth Congress. Such payments shall be the difference between 12 cents per pound and the average price of cotton on the 10 spot cotton markets for the months of August 1937 to January 1938, inclusive, but in no case shall exceed 3 cents per pound. Such payments with respect to each farm shall be based upon the aggregate normal yield of the cotton base acreage that was or could have been established under the provisions of the 1937 agricultural conservation program less the aggregate normal yield of the maximum acreage for which a diversion payment offer was made under said program. Such payments shall be divided among cotton producers in the proportion that they were entitled to share in the 1937 cotton crop, or the proceeds thereof, under their lease or operating agreement and the facts constituting the bases for any such payment, or the amount thereof, when officially determined in conformity with rules prescribed by the Secretary of Agriculture shall be reviewable only by the Secretary of Agriculture."

ASSISTANT CLERK, COMMITTEE ON PATENTS

Mr. McADOO submitted the following resolution (S. Res. 178), which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

Resolved, That Resolution 14, Seventy-fifth Congress, authorizing the Committee on Patents to employ an assistant clerk during the first session of the Seventy-fifth Congress, to be paid from the contingent fund of the Senate at the rate of $2,400 per annum, hereby is continued in full force and effect until the end of the Seventy-fifth Congress.

CONSOLIDATION OF HOME OWNERS' LOAN CORPORATION AND FEDERAL HOUSING ADMINISTRATION

Mr. WAGNER submitted the following resolution (S. Res. 179), which was referred to the Committee on Banking and Currency:

Resolved, That a special committee of five Senators who are members of the Committee on Banking and Currency, to be appointed by the President of the Senate, is authorized and directed to make a full and complete investigation of the desirability of consolidating all the functions of the Home Owners' Loan Corporation and the Federal Housing Administration in one agency of the Government. The committee so appointed shall report to the Senate, at the beginning of its next session, the results of its investigation together with its recommendations.

For the purposes of this resolution the committee, or any duly authorized subcommittee thereof, is authorized to hold such hearings, to sit and act at such times and places during the sessions, recesses, and adjourned periods of the Senate in the Seventy-fifth Congress, to employ such clerical and other assistants, to require by subpena or otherwise the attendance of such witnesses and the production of such books, papers, and documents, to administer such oaths, to take such testimony, and to make such expenditures as it deems advisable. The cost of stenographic services to report such hearings shall not be in excess of 25 cents per hundred words. The expenses of the committee, which shall not exceed $1,500, shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman.

"BACK ROOSEVELT"—EDITORIAL FROM THE NASHVILLE TENNESSEAN

Mr. McKELLAR. Mr. President, on July 25, 1937, the Nashville Tennesseean, one of the best and most widely circulated newspapers in the State of Tennessee, contained an editorial entitled "Back Roosevelt." It is one of the best editorials on that subject that has been written, an editorial which I approve, and I ask unanimous consent that it be printed in the RECORD as a part of my remarks.

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

[From the Nashville Tennesseean of July 25, 1937]

BACK ROOSEVELT

On a murky March day 4 years ago a reassuring and vibrant voice came through the air to a hundred million desperate and despairing people. Banks were closed. The stark specter of hunger stalked, pointing its naked finger at the cradle, the tenement, the farm house. Barred doors under idle smokestacks greeted the factory worker. Empty freight cars were rusting to steel rails in every freight yard in the Nation. Empty shelves of stores were unreplenished because the merchant neither had the faith nor funds to buy, nor the customer to serve. Farmers looked skyward by habit only, because to till the soil under favoring weather would be but to plant for a harvest which would bring no return. Brokers fingered ticker tapes that moved slowly to tell a depressing story of values falling to zero levels.

That voice said, "The only thing we have to fear is fear itself."

The voice was that of Franklin Delano Roosevelt.

It was the voice of hope, vital, aggressive, inspiring.

That same voice has been heard many times since. It has always spoken in behalf of the people—the folks—of the Nation Franklin Roosevelt loves so well. Whether it came from the heart of a dust bowl, under a copper sun which for months sent its torrid heat to kill the hope of the soil, or from the farm belt in behalf of the stabilization of the price of the farmer's crops, or to take men from the breadline and put them to work, and after they went to work that they should receive a fair wage for their labor, that voice spoke the conscientious feeling of President Roosevelt for the improvement of the Nation. We have heard it plead for the peace of the world, and have acutely realized that the man who spoke stood against any encroachment which would send the sons of our lands into warfare.

During 4 years, through which the backwash of the depression sent the fretful waves of Huey Long-ism, Townsendism, and Coughlinism against the Government, the financial fidelity of the American dollar has stood, and, despite the howlers, every Government financing issue has been oversubscribed, the best proof of the confidence of the financial world, just as the soaring national income and the steady rise of Treasury receipts is the best proof of the return to health of the Nation's economy under Roosevelt.

It has been predicted that the defeat of his plan for reform of the Supreme Court would be President Roosevelt's "great test"; that his reaction would measure the durability of his powers of leadership; would try anew his qualities as a man.

The President has met that test and has come through it as through so many others, smiling and face forward.

It was prophesied that he would be embittered, petulant, vengeful. Instead, he has been calm, philosophical, undismayed. He has counted his gains in his battle for the people and, with courage undiminished, counts to gain more.

He has been prompt to declare that he will continue to press for the complete establishment of his great program for the improvement of the lot of all citizens and for the lasting economic stability of the Nation.

It has been argued, on no better basis than the wishful thinking of his personal and political enemies, that his defeat on the Court plan "would be the end of Roosevelt."

That was the opium pipe dream of self-deluding Tories. Franklin D. Roosevelt remains head and shoulders above any other political leader of these times, and his continuing leadership is the chief hope of progressive democracy.

The Tennessean newspapers, in the main, steadfastly have supported the cardinal aims of the President throughout the first New Deal and in the second New Deal as far as it has run.

We shall continue to stand behind the President and his program as long as his proposals shall seem to us reasonable and just,

and until some program better calculated to advance the general welfare shall be presented.

We are frank to say that we can discern on the American political scene no potential leader whose figure can compare with that of Roosevelt; nor have any alternative programs been offered which recommend themselves as more constructive or more sensible than the program which has been launched by this administration, and which it actively pursues.

We have seen instead the constant carping of professional political bourbons and economic nabobs who, in face of repeated expressions of the enthusiastic approval of the people of Roosevelt and his New Deal policies, have carried on an unremitting "war of attrition" against the President's prestige, and have sought ceaselessly to block, discredit, and destroy his reforms.

We do not believe that our readers, or the general public anywhere, have been misled by these constant and often picayunish thrusts at their President, or have placed upon the court bill defeat a significance beyond its due. The bill is dead, beyond chance of resurrection. The Senate in the exercise of its judgment rejected it—and Franklin Roosevelt in the exercise of his oft-proven sense of sportsmanship candidly acknowledged the setback, smiled—and went down the Potomac with ALBEN BARKLEY to discuss the furtherance of his plans for the improvement of the economic and social life of the people of the United States. The people realize that after all the reforms proposed were only a corollary to the New Deal program for "the greater good of the greater number", and that those who have sought to make political capital of that fight, by appealing to every prejudice and trotting out every shibboleth to which humanity might be susceptible, are—apart from a few ingrates within his own party—the same superpatriotic gentlemen who in the last Presidential campaign strained to excite those same prejudices and overworked those same shibboleths in a futile effort to whip Roosevelt out of Washington with a sunflower.

But the sunflower wilted, and the Literary Digest went to the wall, and the false prophets were sent to the doghouse—to join the calamity howlers who had been relegated before them by the happy news that was on the financial pages of every newspaper in the land.

And that happy news still is on those pages, and it is a rare and fate-plagued citizen in these United States who does not know of his own personal experience that the Roosevelt drive for recovery has succeeded. And it is a very dull—or very obstinate—citizen indeed who will not perceive that the man who, no later than last November, was elected President of the United States by 46 of the 48 States of the Union is today, as he was on November 4, the chosen leader of the vast majority of the people.

He is that popular leader—as Members of Congress soon, it is likely, to be on their way back to renew acquaintance with the sentiments of their constituencies will discover.

For the time is ripe for 1934 to repeat itself—when the first New Deal Congress in the first lull after the breath-taking introduction to the New Deal wondered "what was to come next?"—and discovered that what was coming was the New Deal extended, more and better, and a President, strong with the confidence and good will of the public, ready to advance and direct the unfolding and interlocking phases of his plan for "recovery and reform."

Congress soon will adjourn, and that is always taken as an auspicious event by the business leaders of the country, and the Members of Congress will find back home where lie the sinews of the President's strength.

For the real measure of President Roosevelt's accomplishment is the simple comparison of the "now" and the "then." It is the sum of the difference between the condition—mental as well as economic—of the citizenry in 1933 and in 1937. Every farmer, businessman, professional man—every stockholder and coupon clipper—has only to look at the trail from red to black in his or her account book for the past 5 years to appreciate what the New Deal has done.

And the test now is not Roosevelt's—he has passed his: the test now is of the gratitude, the loyalty and the intelligence of a people. We believe the people to hold these qualities—but, unfortunately, the people speak only at the intermittent times of election, with years between.

In the meantime the "raucous voices" clamor incessantly their paean of disparagement, and seek to break down the people's trust.

In these times between—at this present time—there is great need that the voiceless masses of the people serry their ranks behind a gallant leader, to uphold his cause and aims to the best of their ability, for his comfort and the protection of the progress that has been made for their own welfare.

In these times the watchword of those who have benefited and whose hopes of a better future are being fulfilled should be:

"Back Roosevelt!"

VIRGINIA DARE CELEBRATION, ROANOKE ISLAND, N. C.

[Mr. REYNOLDS asked and obtained leave to have printed in the RECORD an article on Roanoke Island, published in the Washington Herald of Aug. 17, 1937, which appears in the Appendix.]

PROSPERITY IN INDIANA

[Mr. MINTON asked and obtained leave to have printed in the RECORD articles from the Evansville Press, the Fort Wayne Journal Gazette, and the Indianapolis Star, which appear in the Appendix.]

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.

AUTHORITY FOR FINANCE COMMITTEE TO SUBMIT REPORT

Mr. BARKLEY. As in legislative session, I ask unanimous consent that the Committee on Finance be authorized to report during any recess or adjournment of the Senate following today's session the so-called tax loophole bill.

The VICE PRESIDENT. Is there objection to the unanimous-consent request of the Senator from Kentucky? The Chair hears none, and it is so ordered.

EXECUTIVE SESSION

Mr. BARKLEY. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and (at 11 o'clock and 10 minutes a. m.) the Senate proceeded to the consideration of executive business.

EXECUTIVE REPORTS OF COMMITTEES

Mr. HARRISON, from the Committee on Finance, reported favorably the nominations of sundry officers to be surgeons or passed assistant surgeons in the United States Public Health Service.

Mr. LONERGAN, from the Committee on Finance, reported favorably the nomination of Edward G. Dolan, of Connecticut, to be Register of the Treasury, to fill an existing vacancy.

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

The VICE PRESIDENT. The reports will be placed on the Executive Calendar. If there be no further reports of committees, the Secretary will state in order the nominations on the calendar.

HUGO L. BLACK

The Chief Clerk read the nomination of HUGO L. BLACK, of Alabama, to be an Associate Justice of the Supreme Court of the United States.

The VICE PRESIDENT. The question is, Will the Senate advise and consent to this nomination?

Mr. COPELAND. Mr. President, we are met here today to perform a vital function, to deal with a nomination sent to us by the President of the United States. I can conceive of no more important matter which could be considered by the Senate. I can conceive of a nomination for no other office which ought to be given more careful consideration. Therefore, Mr. President, I venture to say something regarding this nomination and the nominee.

When the delegates to the Constitutional Convention of 1787 drafted our charter of liberty, they sought to drive out of America for all time to come every form of tyranny and intolerance. The absolute independence and impartiality of the judiciary was their aim. They were chartering a new government of human liberties, and to that end placed in the courts of the land the sacred duty of enforcing respect for such liberties. They sought to make certain that the fundamental rights of American citizens might not be trampled under foot by tyrannical officials, intolerant majorities, or narrow-minded judges.

Before the ink was dry upon the original document there was a demand for a more definite guarantee of individual privileges under the new government. To formulate these the first 10 amendments, the Bill of Rights, were added to the Constitution. Then indeed the instrument became and has continued to be the shield of our liberties.

Throughout its history the Supreme Court has independently and fearlessly discharged this duty. The Court's aloofness from partisan politics, bigotry, and popular clamor has heretofore been considered its crowning virtue—a virtue essential to the impartial interpretation and application of constitutional restrictions.

The wisdom of our forefathers has been amply demonstrated. Almost every fundamental liberty guaranteed by the Bill of Rights has been violated at one time or another, by a law of Congress or of some State legislature; the

Supreme Court, in the performance of its duty, has had to extend protection against the enforcement of such laws. The right to labor in the profession of one's calling, the right not to be tried for a capital crime except upon indictment by a grand jury, the right of trial by jury, the right to be secure in one's person and papers, the right not to be twice put in jeopardy for the same offense, freedom from ex post facto laws and bills of attainder, and the right of every person not to be forced to testify against himself—each of these guaranties has on various occasions been violated by an act of Congress.

At the close of the Civil War the State of Missouri attempted to deprive ministers of the right to exercise their divine calling unless they should first take an oath to the effect that they had not aided or even sympathized with the Confederate cause. A Roman Catholic priest who had not taken the oath was convicted and thrown into jail for the high crime of preaching the Gospel in a land boasting of its religious freedom. In those days of passion and prejudice only an independent tribunal of the integrity and character of the Supreme Court could have reached out its protecting arm as the Court did when, in the case of *Cummings* v. *Missouri* (4 Wall. 277), it declared the law unconstitutional.

In that terrible era Congress reflected popular sentiment, and was itself busily engaged in passing laws establishing military commissions and divesting southerners of their civil and political rights—laws which were also declared unconstitutional by the Supreme Court. It was only recently that the Court, through Justice Brandeis, had to extend protection to the dependents of a disabled veteran because Congress had attempted, by the Economy Act, to forfeit the proceeds of term insurance which the Government had solemnly agreed to pay. The Court, too, protected the parochial schools against closure.

Neither the President nor the nominee can complain if we scan today with greatest care the character, the attitude of mind, and the past record of a man who has been named to the group that determines the destinies of a people presently free. This nomination is an index of what may follow. Our liberties may not be seriously endangered by one doubtful addition to the bench. But if this start at the remanning of the Court is intended to move it in the wrong direction, God help America.

At the moment America is free—free in all matters relating to education and civil rights. In our free America, with the Supreme Court above political dictation, bias, and bigotry, we worship God according to the faith of our fathers. We work for our daily bread without fear of racial discrimination.

We are free here in the United States because we are guarded by the Supreme Court. Catholics, Protestants, Negroes, Jews, gentiles, all of us, are guarded by the Supreme Court. But what would happen if a half dozen men of the mental bias of the nominee should be seated on the bench? Is it likely that the remodeled Court would deal tolerantly and generously with religious and racial questions as the Court has done in the past?

Does the leopard change his spots? Will Mr. Justice BLACK be any different than Candidate BLACK, who, according to the Mobile Register of August 15, 1926, "backed by the Klan, had a walk-away in his race for the senatorial nomination"?

According to Charles Michelson, well known to us, speaking of the Alabama results in the New York World:

> The primary resulted in the nomination of Klan-endorsed men for both the senatorship and governorship.

Likewise, the World said:

> With Alabama's most powerful political organization (the Klan) backing him, HUGO L. BLACK seems to have won the Senate nomination beyond a reasonable doubt. * * * In BLACK the Alabama Klan has a loyal and devoted friend.

During his campaign Candidate BLACK made speeches about and against Alfred E. Smith, a devoted and devout Catholic. The New York Times for August 9, 1926, said:

> BLACK has devoted part of his late campaigning to voicing opposition to Gov. Al Smith in an effort to hold his part of the Klan support.

In the New York Sun for August 16, 1937, appeared an article by David Lawrence from which I quote:

> Senator BLACK is under charges widely made that he either was a member of the Ku Klux Klan or accepted its support for election to the United States Senate in 1926. One of the obligations of the Klan at that time was discrimination against the Negro, against the Catholic, and against the Jew.

I have quoted Lawrence because he boldly recited the obligation of the Klan and of the Klansmen. It corresponds exactly to my own and to the general acception of the Klan's purpose.

What chance would Gov. Al Smith have were he, for some reason, to appeal to a Supreme Court made up of a majority of Klansmen or Klan sympathizers of the modern type? What chance would any Catholic have who sought justice there?

We see Catholics attacked, their churches destroyed, their priests and nuns massacred, their property confiscated. All this occurred in a country where once that great church symbolized the state religion. Whatever constitutional guarantees Catholics possessed in Spain have disappeared like a morning mist.

I need not argue with any Jew as to the significance of unlawful and unconstitutional modification of the Palestinian constitution. Surely it is not necessary to remind loyal Americans of Jewish blood that a violation of the American Constitution by indirection is of the same essence.

The rights of all racial groups and religions, all minorities, in America, are not asserted in the Congress, or our States, or our legislatures. They are asserted in the Constitution and enforced by the courts of justice.

It was just a few months ago that several humble Negro boys without money and without homes, and with very few friends, were convicted of a capital crime in the State of Alabama. All the power of that great State was against them. They were sentenced to death. But they learned about the Constitution of the United States. They filed a petition with the Supreme Court; and, with the Constitution wrapped about them, they appeared there by counsel. They had no influence. They were just poor human beings who asserted that they were entitled to the protection of the Constitution of our country. They could not even read that instrument, and it had never been read to them; but the Court read the instrument, and the Court said in effect to the State of Alabama: "You have not given these poor Negro boys a fair trial. You are about to take their lives without due process of law. You shall try this case again, and you must try it fairly. This is our order: There will be no execution of these boys until they shall have been fairly tried." What the Constitution and the Court meant to those poor Negro boys in Alabama it means to every man and women now in our land, and to every child to be born, so long as the Court and the Constitution are what they are, so long as the Justices are free from bigotry and intolerance.

From the time he came into the Senate Mr. BLACK has been a leader against all efforts to pass an antilynching bill. Within 2 weeks he moved to table my own motion to add this rider to a pending bill.

Naturally, one wonders what Mr. Justice BLACK would do were another Scottsboro case appealed to the Supreme Court. Would he face such a case with impartiality and a sincere desire to do justice to Negroes?

Klansmen, Mr. David Lawrence says, take an obligation to discriminate against the Negro. What would be the reaction of the new Justice, Mr. Justice BLACK, to a case of this sort?

Personally, I feel so outraged by this proposal to put a Klan sympathizer upon the bench that it is difficult to discuss the matter in temperate language.

More than 40 years ago, in 1893, in the city of Detroit, I said of the American Protective Association, the vile ancestor of the Ku Klux Klan, that it was the most unkind,

unjust, un-Christian, and ungodly movement of the generation.

Mr. President, I wish to make it clear that what I am saying today about the Ku Klux Klan is not a new thought of mine with reference to racial and religious intolerance. I was a young doctor in Bay City, Mich., at a time when that congressional district of Michigan sent to the United States House of Representatives Mr. Crump, who was supported and sent there by the A. P. A. In the adjoining district, the Ninth District, in which Saginaw is situated, Mr. Linton was sent to the United States House of Representatives by the A. P. A.

The political activities of that organization and its acts of oppression, discrimination, and social indecency caused indignation in my soul, because of the spirit of tolerance given me by my father. I met and joined a young Catholic priest in Bay City, Father Joseph Schrembs, now Bishop Schrembs, of the Diocese of Cleveland. We reviewed the circumstances of that fight when we happened to meet upon shipboard a year ago.

We organized in Bay City and in Bay County a great movement in opposition to the American Protective Association, which had taken possession of Saginaw, our adjoining city. The A. P. A. confined its attacks to the Catholics. The later organization, the Ku Klux Klan, the unworthy son of the A. P. A., makes its attacks not alone upon the Catholic, but upon the Jew, upon the Negro, upon all of foreign birth. Anyhow, Father Schrembs and I, together with our associates, organized what we called the Christian Union. We had a great meeting in the opera house, overflow meetings, and other meetings throughout that section. We preached the doctrine of tolerance and the importance of neighbors living together in fellowship. We killed the A. P. A. in Bay County.

Let no man say that I am a convert to tolerance, as evidenced by my bitter opposition to the Ku Klux Klan and the spirit of the Ku Klux Klan. While some men now in the Senate were yet boys, I was doing the best I could to put down a similar spirit of intolerance.

I said in a speech in Detroit in 1893, at a great Methodist gathering there, speaking of the A. P. A., that it was the most unkind, unjust, un-Christian, and ungodly movement of that generation. So I say now, Mr. President, of the New Deal, that if it must depend for its validation upon decisions participated in by members or supporters of this un-American, un-Christian, and ungodly organization, the Ku Klux Klan, it must be apparent to the country that the New Deal is founded in iniquity. To say the least, it is as far from the democracy of Jefferson, Jackson, Cleveland, and Wilson as the North Pole is from the South Pole.

When I look over this Senate and see the fine men from the South, numbering several who would have honored the bench and honored the President by their appointment, I can hardly restrain my tears. O Mr. President, I beg of you to withdraw this name and send us another, that of a New Dealer, if you must, but one free from the taint of religious and racial prejudice!

In what I have said there has been no thought in my mind of reflecting upon the great State of Alabama, nor upon Mr. BLACK in his capacity as a United States Senator from that State. Mr. Franklyn Waltman, of the Washington Post, expresses exactly the thought I have about this matter. He says:

> If the people of Alabama wish to be represented in the Senate by a Klansman, that is their privilege. If the Klan dominates the voters of Alabama, it is their right to elect the Senators from that State. None in another State may say nay to them. But placing a representative of the Klan on the Supreme Court is another and entirely different matter.

Since I have mentioned Mr. Waltman, let me quote another paragraph from his statement. It is as follows:

> If Senator BLACK has been a member of the Ku Klux Klan, or if he solicited the support of that organization to win his Senate seat, he is not a fit person to sit in judgment over the rights of minorities against which that organization was directed, or over the rights of any group. Such action goes to the very roots of the question of Senator BLACK's fitness. A man throughout his life may make mistakes and mend his ways, but he cannot absolve himself of membership or association with the Ku Klux Klan—an organization based on bigotry and intolerance—because that indicates an enduring state of mind.

The New York Sun of August 14 said editorially:

> Senator BLACK's history is one of intense political prejudice. If he has judicial ability, it has never been shown. He has been the prosecutor, not the judge. His exhibitions in the inquiries he has conducted have been those of bias. Perhaps he knows law; there is no sign that he knows justice. Why should Senators lay the ermine on him merely because he has sat with them? Senatorial courtesy should not become senatorial folly.

Senators, as I see it, our duty is clear. This nominee should be rejected if the Klan relationship charge is accepted as true. If there is a doubt in senatorial minds about his connection with the Klan, the nomination should be recommitted so that the Judiciary Committee may investigate and find the truth.

We have equal responsibility with the President in this matter. It is our duty to preserve the integrity and independence of the Court. For myself I have no doubt of what my action should be. Other Senators will be governed, as they should be, by their convictions. But, Senators, there rests upon us a responsibility in importance second only to the decision we made in the Court packing scheme. Unless the President relieves us from that responsibility by withdrawing the designation, it is our manifest duty, as I see it, to know the whole truth before we act.

Mr. BURKE. Mr. President, I am opposed to the confirmation of this nomination for the Supreme Court and, very briefly, will state the reasons which impel me in opposition.

It has been suggested on the floor of the Senate, and also in the Committee on the Judiciary, that since the nominee whose name is now before us is a Member of this body it is somehow improper and out of place for any examination to be made of his qualifications or, I take it, even of his eligibility. We are referred to an ancient, immemorial rule known as "senatorial courtesy", which, it is said, requires that when a Member of this body receives the honor of having his name suggested for high appointment the entire body should feel that it is honored, and that that of itself should be enough to do away with all examination or inquiry.

It seems to me, Mr. President, that exactly the opposite ought to be the true principle. When one of our colleagues is nominated to any office, particularly to the high office of a Justice of the Supreme Court, when the danger may be present that because of our years of association and the close ties of friendship we may have established with the colleague we may be induced to give our support to one not qualified to hold the office to which he is nominated, it would seem to me we ought to be particularly on our guard.

It has been said that immemorial custom in this body precludes committee study and hearings and requires prompt and favorable action. If there is such a precedent, it seems to me unwise and dangerous, and that it ought not to be followed except within certain definite limits. But, whatever the recent rule may have been, there are precedents to the contrary. I cite only one, although I have little doubt that others could be found.

In January 1853 a vacancy arose on the Supreme Court by the death of Mr. Justice McKinley. President Fillmore sent to the Senate the nomination of one of its members, Senator George E. Badger, of North Carolina. It was freely charged in the press of that day that this was a corrupt effort on the part of the President to capitalize on senatorial courtesy, and to take advantage of the Senate by bringing into play "the kindly sentiments that exist in that body for one of its Members."

Senator Badger was an outstanding lawyer. He had been a judge in North Carolina, and stood at the very top of the legal profession in his State. Yet this body, for reasons, possibly, that were not altogether worthy—there was a good deal of politics being played at that time—put aside senatorial courtesy, debated the matter day after day, postponed action, and never did confirm the nominee. So that

at least there is a precedent for the examination of the qualifications and the eligibility of the present nominee.

Whatever may be said in favor of the doctrine of senatorial courtesy in general, it ought to have no place in determining the action of any Senator when considering a nomination to the great Court which stands as the final bulwark of our liberties, the protector and defender of the rights of minorities, the haven of the oppressed, the final refuge of those fleeing before the lash of the persecutor burning with religious or racial intolerance.

I like this expression found in the constitution of the Commonwealth of Massachusetts:

> It is the right of every citizen to be tried by judges as free, impartial, and independent, as the lot of humanity will admit.

No doctrine of senatorial courtesy, no emphasis upon the kindly sentiment that exists in this body for one of its Members, ought to deter us from examining, with what care we can, the record of the nominee, even though he be our colleague.

We can do no better in considering the qualifications of the nominee before us, the first whose name has been submitted for this exalted office by a Democratic President in almost 20 years, than to quote again the words of President Wilson in his letter to Senator Culberson when the nomination of Mr. Justice Brandeis was pending. Those words, it seems to me, set forth the qualifications which a nominee for Justice of the Supreme Court ought to have, and although Senators undoubtedly have all read these words recently, I take occasion to read again this part of the letter:

> Let me say by way of summing up, my dear Senator, that I nominated Mr. Brandeis for the Supreme Court because it was and is my deliberate judgment that of all the men now at the bar whom it has been my privilege to observe, test, and know, he is exceptionally qualified.
>
> I cannot speak too highly of his impartial—

I call attention to the first qualification:

> I cannot speak too highly of his impartial, impersonal, orderly, and constructive mind, his rare analytical powers, his deep human sympathy, his profound acquaintance with the historical roots of our institutions and insight into their spirit, or of the many evidences he has given of being imbued to the very heart with our American ideals of justice and equality of opportunity; of his knowledge of modern economic conditions and of the way they bear upon the masses of the people, or of his genius in getting persons to unite in common and harmonious action and look with frank and kindly eyes into each other's mind, who had before been heated antagonists.
>
> This friend of justice and of men will ornament the high Court of which we are all so justly proud. I am glad to have had the opportunity to pay him this tribute of admiration and of confidence; and I beg that your committee will accept this nomination as coming from me quick with a sense of public obligation and responsibility.

President Wilson placed the trait of impartiality at the very top of what he considered the essential qualifications of a Justice of the Supreme Court. He emphasized the importance of calling to that position one who has the genius of getting persons to unite in common and harmonious action, and to look with frank and kindly eyes into each other's minds.

The prosecutor has his place, and it is a very important place, but it is not sitting as a Justice of the Supreme Court. The man who can see only one side of a question, and who has trained himself in ways that are shrewd and cunning in developing prejudice against anyone who holds a different view, may accomplish a great deal of good in furthering just causes, but such a man lacks the essential qualifications required to administer even-handed justice as a member of the greatest Court in all the world.

I think each Member of this body should weigh the nominee now before us, and determine whether he possesses the attributes of fairness, tolerance, and impartiality along with judicial poise and temperament which would give promise of a distinguished career on the bench. If those qualities have not been displayed, no amount of zeal, no amount of industry, no amount of sharpness, no record of unwavering and unquestioning support of a political program will make up for their deficiency.

Mr. President, it seemed to me it would be proper at this time to state in this brief way what I would consider, and what I know all Senators would consider, the real qualifications which should be possessed by a nominee for the Supreme Court. We all know this nominee. Some Senators have known him longer than others. I think we may say we all like him and admire many of his splendid qualities. I think we should direct our attention in this matter now before us solely to this one side of his character, his traits, to determine whether he has in him, in his very soul, a desire to administer even-handed justice to all who may come under his influence, regardless of race, of religion, or of anything else, and whether that attribute is accompanied by judicial poise.

I am not going to take up much more of the Senate's time on this point—in fact, very little—before I discuss one other matter that is of interest.

It has seemed to me—and I raise a question which some may consider extraneous—that one incident in the life of the nominee within the past 2 years, which seems not to be subject to dispute, is of such a character as to put the nominee well beyond the line of those who could properly be considered as measuring up to the qualifications required for this office. I refer to an incident with which some of our colleagues are more familiar than am I, in connection with the lobby investigating committee's seizure of telegrams. In order that I may not give my own views on the matter—and I stand subject to be corrected if there is anything wrong in what I am saying here—I should like to read at least a part of the opinion of the court in this matter.

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

Mr. BURKE. Yes, indeed; gladly.

Mr. SCHWELLENBACH. I ask the Senator, before he reads the opinion of the United States Court of Appeals for the District of Columbia, to explain to the Senate the manner in which the case got before the court of appeals, the manner in which it was presented, and the form of pleadings upon which it was presented.

Mr. JOHNSON of California. Mr. President, we cannot hear the Senator on this side of the Chamber.

Mr. SCHWELLENBACH. The Senator from Nebraska has announced that he intends to read from an opinion of the United States Court of Appeals for the District of Columbia in a case in which William Randolph Hearst was the plaintiff, and the Senator from Alabama [Mr. BLACK], the Senator from Indiana [Mr. MINTON], the Senator from North Dakota [Mr. FRAZIER], the Senator from New Hampshire [Mr. GIBSON], and I were the defendants. I asked that he explain to the Senate the way in which the case was presented to the court, and the pleadings under which it was considered, so that the Members of the Senate may know the extent to which the court went out of its way and deviated from its judicial path in an effort last fall to hand down a "political" decision.

The matter was presented to the court upon what we commonly call a demurrer. Under pleadings with which every lawyer in this body is familiar, when one goes into a court and presents a matter on a demurrer he takes part in the legal fiction that he admits that the facts properly pleaded are true. In passing upon this case—in which we went in on a demurrer, and in which, for the purposes of that demurrer, and for the purposes of that demurrer only, we went through the legal fiction of admitting that the facts pleaded were true—the court of appeals assuming those facts to be true, and indulged in a tirade against the Members of this body who were members of that committee, when what they as judges should have done, if there had been the slightest, the most meager evidence of judicial attitude upon their part, was to say, "This matter comes before us on what we may call a demurrer, and these are the facts which for the purposes of the pleadings alone are admitted to be true."

The case was decided upon the question of jurisdiction, and not upon the question of the facts to which the Senator

from Nebraska now refers, and which he is now attempting to use against the Senator from Alabama.

Mr. BURKE. I evidently misunderstood the query of the Senator from Washington, as at first I thought he asked me to explain the circumstances under which the matter arose; but I think the Senator has answered, and I am very glad to have him answer, his own question. In fact, if there is anything more than he would care to say on that point, I shall ask unanimous consent that he may continue on that point without my losing the floor, because I think it is important to have those facts in mind.

Mr. SCHWELLENBACH. I may say to the Senator that the reason I interrupted him——

Mr. BURKE. I was very glad to have the Senator do so.

Mr. SCHWELLENBACH. Was because the Senator said he was going to read a part of the opinion.

Mr. BURKE. I will read it all.

Mr. SCHWELLENBACH. And I do not think it is fair to the Senator from Alabama, I do not think it is fair to those of us who were members of that committee, and I do not think it is fair to the Senate itself to have any statement read from that opinion without first having an explanation of the manner in which the case was considered.

Mr. BURKE. I will read the entire opinion—it is not very long—and I shall be glad to have submitted any further information that ought to be stated in reference to it.

This is a case in the United States Court of Appeals for the District of Columbia.

William Randolph Hearst, appellant, v. *Hugo L. Black, Chairman of the Special Committee of United States Senate to Investigate Lobbying Activities, et al., appellees.*

Appeal from the District Court of the United States for the District of Columbia.

The matter was argued on October 12, 1936, and the decision was rendered November 9, 1936.

Mr. McGILL. November 8.

Mr. BURKE. A day or two after the election.

Mr. SCHWELLENBACH. Does the Senator imply, by his reference to the date, that the courts do not indulge in "political" decisions except at times immediately prior to election?

Mr. BURKE. I was answering only the statement made by the Senator from Washington that this was purely a "political" decision delivered last fall, without having any definite information as to the time; and I was merely interested in knowing now, for the first time, that the decision was rendered the day after election.

The case was argued before Justices Robb, Van Orsdel, Groner, and Stephens, and the decision is by Justice Groner.

Appellant is engaged in the business of publishing daily newspapers and magazines. In March of this year he brought in the court below his bill to enjoin the Special Senate Committee and the Federal Communications Commission from copying and using telegraphic messages in the possession of the telegraph companies sent by him to his employees in the conduct of his business.

The bill alleges that in the month of September 1935 the Senate committee under blanket subpenas duces tecum demanded of the telegraph companies doing business in the city of Washington the delivery to it (the committee) of all communications—i. e., telegraph messages—transmitted through the offices of such companies during the period February 1, 1935, to September 1, 1935; that when the companies expressed reluctance to make delivery of the messages the committee went to the Commission and asked its assistance to compel the production of the communications desired by the committee.

If I may interrupt the quotation right there, I may say that I am advised, on what I consider very reliable authority, that the chairman of the committee, our colleague, Senator BLACK, the present nominee, himself went to the head of the Telegraph Division of the Communications Commission and stated what was under way and that they wanted the cooperation—we might call it by a different term, I think, and still be within legal phraseology—of the Commission——

Mr. MINTON. Mr. President——

Mr. BURKE. Just a moment, and I will be glad to yield—in turning over telegrams, and that as a result the arrangement more fully set forth here will be described.

I say I am told on what I consider reliable authority that our colleague, Senator BLACK, handled that matter in person. He may have been accompanied by the Senator from Indiana or the Senator from Washington; I do not know; but I want to make it certain my information is that at least the other members of the committee, and no one else, put anything over on the nominee. I yield now to the Senator from Indiana.

Mr. MINTON. I just want to say to the Senator from Nebraska, as one of the interested parties in that matter, that his informant is entirely mistaken; that Senator BLACK did nothing of the kind, and neither did any member of the committee. So the Senator's facts are all wrong.

Mr. BURKE. In that connection let me say that yesterday at the meeting of the Judiciary Committee I urged the committe to set this nomination down for hearing before the committee, at least, to the extent of inviting Senator BLACK to come before the committee, my idea being that if he would sit around the table with us and we could ask some of these questions we might be able to straighten the matter out. This was one of the points that I wanted cleared up, because, in spite of what my colleague from Indiana says, I am "of the same opinion still", which I stated a few moments ago, and I think I know whereof I speak.

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

Mr. BURKE. I yield to the Senator.

Mr. SCHWELLENBACH. I simply want to add my statement, as a member of the committee and one fully familiar with the facts, to the statement made by the Senator from Indiana, and say that if the Senator from Nebraska wishes to disbelieve both of us, that is perfectly all right with us.

Mr. BURKE. Will the Senator be kind enough to indicate what part of the statement I made he thinks is not founded on facts, and as to which my informant must have been mistaken?

Mr. SCHWELLENBACH. I refer to all the statements the Senator has made from the point where he said that somebody informed him that Senator BLACK went to the Commission and informed them of what was going on—I believe those were the words the Senator used—and requested the cooperation of the Commission in the seizure of the telegrams.

Mr. BURKE. Does the Senator mean that someone else did that, and that Senator BLACK did not do it, or that it was not done at all?

Mr. SCHWELLENBACH. I think that the Senator from Nebraska knows me well enough to know that I would not quibble about any transaction. What he states did not take place that way to the slightest extent.

Mr. BURKE. I would ask unanimous consent to let the Senator explain, but I presume he can do it in his own time.

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

Mr. BURKE. I yield.

Mr. WHITE. If Senator BLACK did not make this request of the Communications Commission, can the Senator from Washington tell by whose authority the request was made of the Commission? I assume that it is not denied by anyone that a request was made of the Communications Commission to enter into these telegraph offices and to examine their files and to make available to the committee thousands upon thousands of copies of telegrams therein found, because that was what, in fact, was done. I assume—I may be wrong, but I assume—that the Commission did not act on its own volition in the matter.

Mr. SCHWELLENBACH. I will answer that question, if I may.

Mr. BURKE. I yield to the Senator from Washington.

Mr. SCHWELLENBACH. The assumption of the Senator from Maine is entirely incorrect. He asked upon what authority the request was made. The request was never made of the Communications Commission by Senator BLACK or any member of the committee or any representative of the committee. There was no such request made.

Mr. WHITE. Then, do I understand the Commission acted on its own initiative in the matter and that no suggestion from the committee or its authorized agent was made? The fact is that in the legal proceedings that was the allegation made, and it was never denied by any pleadings.

Mr. SCHWELLENBACH. I think that the Senator from Maine, if I may interrupt——

Mr. BURKE. I yield to the Senator.

Mr. SCHWELLENBACH. I think the Senator from Maine, on a moment's hesitation and consideration, will appreciate the unfairness of the statement he has made, that it was never denied in the pleadings. The reason, as I have just explained, was that no answer was ever made. The pleadings of the committee raised the question of jurisdiction, and there never was a request to the Commission made by the committee or any of its members or any of its agents.

Mr. BRIDGES. Mr. President, will the Senator from Nebraska yield to me?

Mr. BURKE. I yield.

Mr. BRIDGES. May I ask the Senator from Washington, then, why did the Communications Commission proceed in the manner in which it did as an organization when a request was never made of them by a member of the committee or any one connected with the committee?

Mr. SCHWELLENBACH. I will say to the Senator that I think the suggestion of the Senator from Nebraska that I answer as to this matter in my own time is entirely satisfactory. Certainly there is no desire upon the part of the committee or any of its members to refuse to answer the question submitted, but I do not like to take the time to discuss a complicated transaction in the time of the Senator from Nebraska. I will be very glad to discuss it later.

Mr. WHITE. Mr. President, will the Senator from Nebraska yield further?

Mr. BURKE. I yield.

Mr. WHITE. I wish to read into the RECORD the action that was taken by the Communications Commission on this matter. I quote:

> It was voted "to detail a member of the Commission's staff to work with the examiners from Senator BLACK's investigating committee in an examination of the messages and records in the Washington offices of the telegraph companies, relating to lobbying activities which are being investigated by the Senate committee, the records and messages to be made available in the name of the Federal Communications Commission."

That, according to my understanding, was adopted by the Commission. It is inconceivable to me that it acted on its own volition in the matter.

Mr. BURKE. Mr. President, let me say that, of course, I accept fully the statements of the Senator from Indiana and the Senator from Washington that to the best of their knowledge—and they are stating only what they know themselves—such a request was not made. I assume they are not speaking of anything that they do not know about of their own personal knowledge, and I accept that fully.

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

Mr. BURKE. I yield.

Mr. MINTON. I wonder if the Senator from Nebraska would be kind enough to give us the name of his informant or at least tell us whether it was not Elisha Hanson?

Mr. BURKE. I will be very glad, if the Senator from Indiana and the Senator from Washington will join with me in urging that this nomination be sent to the Judiciary Committee for examination, to produce not the witness but the witnesses who gave me the information.

Mr. MINTON. The Senator's informant was Elisha Hanson, who was attorney for the Hearst newspapers, and from whose office yesterday the Senator from Maine had documents.

Mr. BURKE. Is the Senator applying the Lobby Investigation Committee procedure to me now on the floor of the Senate?

Mr. MINTON. No; I have not intimated that the Senator needed investigation, but it could be done. [Laughter in the galleries.]

Mr. LEWIS. Mr. President, I rise to a point of order.

The PRESIDENT pro tempore. The Senator will state it.

Mr. LEWIS. In view of the solemnity and great importance of this matter, I beseech the Chair, at his convenience, to inform the occupants of the galleries that expressions of approval or disapproval are not allowed in this body as in the other House. They greatly interfere with the Senator presenting his views and greatly detract from what should attend such a discussion as is at present taking place before this body.

The PRESIDENT pro tempore. The suggestion of the Senator from Illinois is quite appropriate. Evidently the occupants of the galleries do not know that they are the guests of the Senate and that any talking or laughter or other demonstration results in an increasing noise that is disturbing to those on the floor. The doorkeepers are derelict, for they have been told time and again that they must warn the occupants of the galleries. Our only remedy in the case of disobedience of the rule is to close the galleries.

Mr. BURKE. Mr. President, I proceed with the opinion of the learned Justice in this case.

> The bill alleges that in the month of September 1935 the Senate committee under blanket subpenas duces tecum demanded of the telegraph companies doing business in the city of Washington the delivery to it (the committee) of all communications—i. e., telegraph messages—transmitted through the offices of such companies during the period February 1, 1935, to September 1, 1935—

When my friends, in their own time, make their statement on this point, I hope they will tell us whether that statement also is untrue and that the Senate committee did not make the demand on the telegraph companies in the first instance. I proceed—

> that when the companies expressed reluctance to make delivery of the messages, the committee went to the Commission and asked its assistance to compel the production of the communications desired by the committee; that thereafter the committee and the Commission conspired together to deprive appellant of his constitutional rights and liberties under the first, fourth, and fifth amendments to the Constitution of the United States, in that the Commission by a formal resolution detailed a member of its staff to work with an examiner of the Senate committee in an examination of the messages and records in the offices of the telegraph companies; that pursuant to this arrangement agents of the Commission "made copies of or notes concerning thousands of telegrams" from or to sundry individuals, firms, or corporations, and turned the same over to the Senate committee; that among the telegrams examined and copied were messages from appellant to his associates and employees and messages from his associates and employees to him which had no connection with the subject matter of the investigation—all of which were sent in the regular and orderly conduct of the business in which appellant was engaged; that the use of the messages will result in the disclosure of the contents to the committee and to the general public and will disclose to appellant's business competitors privileged and private information relating to his private business affairs and will result in irreparable injury to appellant.
>
> The bill further alleges that the members of the Senate committee are about to make further search in an effort to gather up additional messages which have passed between appellant and his associates and employees and that the Commission is ready and willing to cooperate in the illegal seizure of such messages unless restrained by the court.
>
> Appellees, who are the members of the Senate committee, filed a special appearance through counsel and a motion to dismiss the bill of complaint for lack of jurisdiction. The Commission neither answered the bill nor moved to dismiss, but filed what is called an "opposition" to the motion for preliminary injunction. This paper appears in the record and in it is a statement that the examination by the Commission of the local telegraph offices had been completed prior to the filing of the bill and that no further investigation or examination was then planned or contemplated.
>
> The district court refused to grant the injunction pendente lite, and for lack of jurisdiction dismissed the bill as to the Senate committee, but took jurisdiction as to the Commission; and the judge stated from the bench that the denial of the motion for preliminary injunction as against the Commission was made solely on its disclaimer of any intention thereafter to make any further examination of the telegraphic messages of appellant or otherwise to change the then status of the case, and was without prejudice to renewal of the motion upon any evidence of further activities in the respects mentioned. Apparently it is agreed that thereafter the Commission by formal resolution rescinded its original order for an investigation and examination of the messages in the telegraph offices. And we assume—as did the lower court—that the Commission's activity in the respects complained

of will not be repeated. But because of the importance of the question raised as to the Senate committee, we granted a special appeal.

Section 1 of the Communications Act of 1934 (48 Stat. 1064) states the purpose of the act to be to regulate interstate and foreign commerce in communications by wire and radio so as to make available to the people of the United States an efficient Nation-wide and world-wide wire and radio communication for the national defense. The act provides for the appointment by the President of a Commission and provides (sec. 220 (c)) that the Commission shall "at all times have access to and the right of inspection and examination of all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing, and kept or required to be kept by such carriers." And further, that the prohibition in section 605 against disclosure of the contents of messages shall not apply to the provisions just above quoted.

This last provision we think means merely that the Commission shall have complete freedom in the examination and inspection necessary in the discharge of its duty and that the prohibition (sec. 605) against disclosure of the contents of telegraph messages by telegraph companies shall not be so construed as to cripple or destroy the statutory right and duty of examination and inspection of records, etc., necessary in the enforcement of the act.

Section 605 provides:

"No person receiving or assisting in receiving, or transmitting, or assisting in transmitting, any interstate or foreign communication by wire or radio shall divulge or publish the existence, contents, substance, purport, effect, or meaning thereof, except through authorized channels of transmission or reception, to any person other than the addressee, his agent, or attorney, or to a person employed or authorized to forward such communication to its destination", etc., etc., etc.

The Senate committee was appointed pursuant to two resolutions of the Senate, the first July 11, 1935, and the second July 29, 1935. The committee was authorized to investigate "all lobbying activities and all efforts to influence, encourage, promote, or retard legislation, directly or indirectly, in connection with the so-called holding-company bill, or any other matter or proposal affecting legislation"; to investigate also the financial structure of persons, companies, corporations, partnerships, or groups seeking to influence the passage or defeat of legislation; to investigate their political contributions and activities, and their efforts to control the sources and mediums of communication and information. The resolutions permit the committee to require by subpena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers, and documents as it deems advisable.

Appellant's bill does not challenge the power of the committee in any of the respects just mentioned, but rests on the proposition that the Communications Commission was without lawful authority to coerce the telegraph companies, over which it has supervisory control, to make the contents of appellant's telegrams available to the Senate committee or anyone else—and that the committee is now unlawfully in possession of the messages and therefore without legal right to retain, disclose, or in any manner use them. The judge of the lower court, as we assume from his statement from the bench, was of opinion that, though the court would have had jurisdiction to restrain the Commission and its agents from doing an unlawful act, it ought not to grant the prayer for injunction because the things charged—whether lawful or unlawful—had been done before the filing of the bill, and because the Commission had then disclaimed any purpose to give any further assistance to the committee to obtain private telegraph messages. As to the Senate committee, the court held it had no jurisdiction. In dismissing the bill as to it, the judge said:

"If the Senate committee has been proceeding in a way which some people might regard as unlawful, it is better to let them continue to do it and let that be corrected in some other way than it is for me to proceed in the way that seems to me to be unlawful to attempt to correct what they do that I do not agree with."

As the allegations of the bill are not denied, we are obliged to take them as true. And in that view we are of opinion that the resolution adopted by the Commission, under which its agents took possession of the telegraph companies' offices and examined wholesale the thousands of private telegraph messages received and dispatched therefrom over a period of 7 months—for the purpose of securing to the Senate committee knowledge of the contents of the messages—was without authority of law and contrary to the very terms of the act under which the Commission was constituted. And we may, we think, properly go further and say that, even without the express prohibition contained in the act, the disclosure by the Commission of the contents of private telegraph messages—solely—as the bill charges—for the purpose of furnishing to the committee information relevant or irrelevant which might or might not be used for legislative purposes—was unauthorized. And this we think, is true because the property right in private telegrams is in no material respect different from the property right in letters and other writings; nor is there any good reason why the right of privacy in the one should be any greater than in the other. Telegraph messages do not lose their privacy and become public property when the sender communicates them confidentially to the telegraph company. Indeed, in many of the States their publication without authorization—except as a necessary incident in the due administration of justice—is a penal offense; and this is so because of an almost universal recognition of the fact that the exposure of family confidences and business and official secrets would as to telegrams equally with letters, "be subversive of all the comforts of society."

That there is and always has been a property right in letters and other writings which a court of equity will protect is too well settled to discuss. It is one of those rights which antedate the Constitution. It is inherent in a free government (*Pope* v. *Curl*, 2 Atk. 342, 26 English Reports 608). Judge Story, in *Folsom* v. *Marsh* (9 Fed. Cas. 342 (no. 4901)), speaking of the nature and extent of this property interest, said:

"In short, the person to whom letters are addressed has but a limited right, or special property (if I may so call it), in such letters, as a trustee, or bailee, for particular purposes, either of information or of protection, or of support of his own rights and character. The general property, and the general rights incident to property, belong to the writer, whether the letters are literary compositions, or familiar letters, or details of facts, or letters of business. The general property in the manuscripts remains in the writer and his representatives, as well as the general copyright. A fortiori, third persons, standing in no privity with either party, are not entitled to publish them, to subserve their own private purposes of interest, or curiosity, or passion."

And the Supreme Court of Massachusetts, in *Baker* v. *Libbie* (210 Mass. 599, 97 N. E. 109), said:

"The existence of a right in the author over his letters, even though private and without worth as literature, is established on principle and authority. The right is property in its essential features. It is therefore entitled to all the protection which the Constitution and laws give to property."

See also *Ku Klux Klan* v. *International Magazine Co.* (294 Fed. 661); *King* v. *King* (Wyoming), 168 Pac. 730).

In principle, therefore, we think that a dragnet seizure of private telegraph messages as is alleged in the bill, whether made by persons professing to act under color of authority from the Government or by persons acting as individuals, is a trespass which a court of equity has power to enjoin. As the Supreme Court said in *Federal Trade Commission* v. *American Tobacco Co.* (264 U. S. 298), "It is contrary to the first principles of justice to allow a search through all the respondents' records, relevant or irrelevant, in the hope that something will turn up." And we cannot doubt that the purpose and intent of Congress, in including in the Communications Act a positive prohibition against disclosure, was to recognize this principle and give it effect.

And so we think the law is settled that, if appellant were before the Senate committee as a witness and were questioned as to matters unrelated to the legislative business in hand, as his bill alleges is true of the messages in question, he would be entitled to refuse to answer; and if, for his supposed contumacy, he were imprisoned, he could secure his release on habeas corpus. And so, also, if a Senate committee were to attempt to force a telegraph company to produce telegrams not pertinent to the matters the committee was created to investigate, the company could be restrained at the instance of the sender of the telegrams, for as the Supreme Court said in *McGrain* v. *Daugherty* (273 U. S. 135), the decisions in *Kilbourn* v. *Thompson* and *Marshall* v. *Gordon* point—in such circumstances—to admissible measures of relief. We are, therefore, of opinion that the court below was right in assuming jurisdiction as to the Commission, and if the bill had been filed while the trespass was in process it would have been the duty of the lower court by order on the Commission or the telegraph companies or the agents of the committee to enjoin the acts complained of. But the main question we have to decide is in a different aspect. Here, as appears both from the bill and by admission of parties, the committee has obtained copies of the telegrams and they are now physically in its possession; and this means neither more nor less than that they are in the hands of the Senate, for the committee is a part of the Senate (*McGrain* v. *Daugherty*, 273 U. S. 135) created, as we have seen, by the Senate for the purpose of investigating the subject of lobbying, in aid of proposed legislation.

The prayer of the bill is that the committee be restrained from keeping the messages or making any use of them or disclosing their contents. In other words, that if we find that the method adopted to obtain the telegrams was an invasion of appellant's legal rights, we should say to the committee and to the Senate that the contents could not be disclosed or used in the exercise by the Senate of its legitimate functions. We know of no case in which it has been held that a court of equity has authority to do any of these things. On the contrary, the universal rule, so far as we know it, is that the legislative discretion in discharge of its constitutional functions, whether rightfully or wrongfully exercised, is not a subject for judicial interference.

The Constitution has lodged the legislative power exclusively in the Congress. If a court could say to the Congress that it could use or could not use information in its possession, the independence of the Legislature would be destroyed and the constitutional separation of the powers of government invaded. Nothing is better settled than that each of the three great departments of government shall be independent and not subject to be controlled directly or indirectly by either of the others. "This separation and the consequent exclusive character of the powers conferred upon each of the three departments is basic and vital—not merely a matter of governmental mechanism" (*Springer* v. *Philippine Islands*, 277 U. S. 189, 201). In *McChord* v. *Louisville R. R. Co.* (183 U. S. 483) a somewhat similar question arose. There the

railroad sought to enjoin McChord and others, as railroad commissioners of the State of Kentucky, from acting as directed by the legislature of that State in connection with the establishment of railroad rates. The lower court granted the injunction, but the Supreme Court reversed the decree on the ground that the making of rates was a legislative function and as such could not be controlled by a court. The opinion cites and quotes from *New Orleans Waterworks Co.* v. *New Orleans* (164 U. S. 471) and *Alpers* v. *San Francisco* (32 F. 503).

Both of these cases involve the attempted restraint of a city council by a court. In the latter case, which was decided by Mr. Justice Field, the complainant alleged he had a contract with the city and county of San Francisco, and that the council proposed to pass an ordinance which would impair the obligation of the contract. In other words, the enactment of an unconstitutional law. After recognizing that what complainant said was true, the court said (p. 506): "The difficulty presented in the case before us is that the application to enjoin the passage of any resolution, order, or ordinance, which may tend to impair the obligation of the contract, is an application to enjoin a legislative body from the exercise of legislative power, and to enjoin the exercise of such power is not within the jurisdiction of a court of equity. This no one will question as applied to the power of the legislature of the State. * * * The fact that * * * the legislative action threatened may be in disregard of constitutional restraints, and impair the obligation of a contract, as alleged in this case, does not affect the question. It is legislative discretion which is exercised, and that discretion, whether rightfully or wrongfully exercised, is not subject to interference by the judiciary."

If courts cannot enjoin the enactment of unconstitutional laws—as to which proposition there can be no doubt—then by the same token they cannot enjoin legislative debate or discussion of constitutional measures because of the incidental disclosure or publication of knowledge unconstitutionally acquired. If it be insisted that this is the acknowledgment of a power whose plenitude may become a cataclysm, the answer is that the Congress "is as much the guardian of the liberties and welfare of the people as the courts"; and in this view the assumption may properly be indulged that, attention being called to the unlawful nature of the search, the senate will not use its proceeds in disregard of appellant's rights.

Decree affirmed.

Mr. President, I have taken occasion to go at some length into this matter of the seizure of telegrams. I do not care to go into other matters bearing on the question, as I am sure all Members of the Senate, once they determine to apply a certain test to the qualifications of this nominee, will find plenty of examples in his sayings and in his conduct that will weigh the scales one way or the other in their individual minds. I do think the matters so far mentioned this morning—that mentioned by my colleague, the Senator from New York [Mr. COPELAND] in reference to certain alleged affiliations of the nominee, at least in times past, with organizations not especially noted for their emphasis upon tolerance and impartiality and fair dealing—are worthy of consideration. I believe, also, that the circumstances in reference to the seizure of the telegrams as they may be fully developed, whatever other evidence may be offered on the matter, are worthy of the consideration of the Senate. So I proceed in a moment to another phase of the matter.

We have all heard the views of the nominee expressed on the floor of the Senate and elsewhere at a time when probably no flight of fancy carried our colleague to the heights of imagining himself either a possible or a suitable appointee to the Supreme Court. His attitude toward the Court as an institution, and in respect to individual honored judges, has not been such as to lead me to cast a willing vote in favor of his elevation to that body. I think a decent respect for the Court, carefully observed through the years, and not, it might be said, slipped on as a cloak in an emergency, should be a prerequisite to elevation to membership in that body. I have not observed any such attitude on the part of this nominee. He has been caustic in his criticism. There has been something of a sneer in his references to the judges whose social and economic philosophy the Senator does not share. There has been a rather complete lack of what, it seems to me, ought to be the feeling of every just and fair person toward the body which has such an important function to perform.

I would therefore find it impossible to cast a vote in favor of confirmation even if Senator BLACK were eligible. There is, I realize, a decided difference of opinion on the points which I have mentioned, and I have no doubt that I am in a decided minority in holding those views—at least in expressing them. There ought to be no question of the lack of eligibility of any Member of Congress for appointment to the Supreme Court at this time.

If the emoluments of the office of Justice of the Supreme Court have been increased at this session, then of course there is a clear prohibition against this nominee being confirmed. If a new office has been created which he is to occupy, of course he cannot be confirmed.

The facts are not in dispute. The conclusion is inescapable, to my mind, that Congress by its own act, and the President by placing his signature on the measure and making it a law, raised an insurmountable barrier against the appointment to the Supreme Court of any person who was a Member of Congress on March 1, 1937. That ban will last for the remainder of the present term of each such Member.

The framers of the Constitution wanted to remove from Congress and from the Executive the temptation to create or aid in creating new offices, and then filling them with their own Members. Surely that is a sensible and wise provision. I believe the man on the street would say "Amen" to that. The Constitution says that if any Congress creates an office, no sitting Member shall be eligible to fill such office until the full term has expired for which he was elected.

On this point, which I mention only briefly, honest minds may reach different conclusions. Personally, I feel that the effect of the retirement act was to create a new office of Justice each time that a member of the Court having reached the age of 70, after 10 years of service, should elect to forego further active service on the Supreme Court. Such a Justice by such election does not shed the power with which he became invested upon the confirmation of his nomination by this body. He does not leave the Court; he merely says, "I am willing, in strict compliance with the act of Congress, not to sit with the active members of the Court any longer. I remain a Justice, but I will cooperate to the extent of making it possible for a new, active Justice to be appointed."

There is no constitutional authority for setting up a new class of Supreme Court Justices outside the Court, nor for having two members, one active and the other inactive, filling at the same time the same place. Since the one who has now become inactive is already occupying the place, the legal effect of the retirement act must be that the new active member occupies a new place. It was fully within the power of Congress to create that new place. It must be admitted that more appropriate language might have been selected. I believe the legal effect of the act is to create a new justiceship each time an active Justice, complying with the conditions, signifies his intention to put himself within the provisions of the retirement act.

If this be so, then Congress has effectually prevented the appointment of any of its Members to the Supreme Court at this time, or for the remainder of the term for which each of us has happened to be elected. There may be doubt in the minds of some on that point, but there is none in my mind.

There certainly cannot be any doubt, it seems to me, on the proposition to which I now advert. The framers of the Constitution were not content to say that no Member of Congress should be appointed to an office newly created during his term. They went one step further and applied the same prohibition against appointment to any office the emoluments of which had been increased during the term of any sitting Senator or Representative. If, then, the emoluments of the office of Supreme Court Justice were increased by the Retirement Act of March 1, 1937, this nomination cannot be confirmed, unless we who are sworn to defend and uphold the Constitution are willing to flout it.

We all understand what the act provides. Upon confirmation, a Federal judge holds office during good behavior. Only death or impeachment can remove him, or terminate or reduce his salary against his will. If by reason of advancing age or ill health, or if for any other reason, a justice of

the Supreme Court, prior to the enactment of the law of March 1, 1937, desired to be relieved of his active duties, he could do so only by stepping out of the office altogether, in other words, by resigning. He would then no longer be a Federal judge. Whatever Congress might see fit to allow in the way of a pension would be his to have until some subsequent Congress reduced the amount, or abolished the salary altogether.

Congress, therefore, being desirous of treating with fairness men who had every legal right to continue to hold active office upon full salary for the remainder of their lives, passed the retirement act, under which the Justice, giving up his active duties on the Supreme Court altogether, and on the inferior courts serving only to the extent to which he elects, is still assured of his full salary for life. That salary is not subject to reduction by any subsequent Congress. It is not available to the search of the income-tax collector. That is all there is to it.

Did that act increase the emoluments of the office? To my mind, it did so as clearly as if the salary had been raised by $1,000 or $10,000 per annum. Yet every Member of this body would admit without hesitation that if that were so, no sitting Member of Congress could be appointed to the office the salary of which had been thus increased.

Consider this example: Assume that on February 28, 1937, there was a vacancy on the Supreme Court, and that the nomination of Senator BLACK had been sent to this body and confirmed. Having fixed ideas about the propriety of keeping old men off the Court, the new Justice determines to resign on reaching the age of 70. On that point, if I may interrupt the thread of my illustration, there were indications a couple of months ago, in the matter of the promotion of a district judge to the circuit court of appeals, that the Department of Justice was about ready to declare that they would recommend no one for nomination or promotion to a judgeship unless he filed in writing his intention of resigning at the age of 70. At least the letter of Judge Williams was on file at the time he received his notice.

I return to my illustration. Having fixed ideas about the propriety of keeping old men off the Court, the new Justice determines to resign on reaching the age of 70. But, being a prudent man, he desires to provide for his family and his own old age, so he consults an insurance actuary. He is 51 years of age, we will say, and he wants to know how much it will cost him each month or each year to make provision so that when he reaches the age of 70 he can give up his duties as judge and receive an income equal to his salary, $20,000 a year. With very little figuring any insurance man would tell him just how many hundreds of dollars a year—and all of us realize it would be a very substantial sum—the new Justice would have to pay this year, and next year, and every year, in order to be assured that when he reached the age of 70 and gave up work he would receive $20,000 a year for the remainder of his life.

I have stated what would have been the condition if the vacancy had been filled on February 28. But suppose we skip 1 day, and come to March 2; and, of course, the condition then would have been the same as that which exists now. Under the act the appointee could go on the Supreme Court and live up fully to his determination to give up all his duties on reaching the age of 70, yet he could push the insurance men away from his door and say, "I have nothing to do with you. The Congress—the House of Representatives and my colleagues in the Senate—on March 1 passed a measure under which I can save the five hundred or six hundred or a thousand dollars a year, whatever it might be, that I would have to pay you for the assurance of $20,000 a year after I reach the age of 70. They have taken care of that for me, and now I will serve on the Court until I am 70. Then I will avail myself of the provisions of this act, and so long as I live I will receive $20,000 a year. No subsequent Congress can touch it, no income-tax collector can say anything about it, because the Constitution protects that salary of mine, and it still is a salary and not a pension."

Can anyone seriously say that the act of March 1, 1937, the Retirement Act, does not increase the emoluments of this office? Certainly no one can say it unless he has in mind some very peculiar and unusual definition of the term "emoluments." Even the slightest examination of the books should convince any lawyer in this body and convince anyone else that when the framers of the Constitution used the term "emoluments" they wanted to use a broader and more inclusive term than "salary", or "compensation", or "pay", and so they took that word which covers them all. Any advantage accruing as the result of holding an office is an emolument of the office, and the Constitution says that if a Congress does increase the emoluments of an office, does make an office more attractive by any act, then no Member of either House of Congress can for the term for which he was elected be transplanted into such office and receive the benefit of that increased emolument. It is not a matter of degree. If Congress were to raise the salaries of Supreme Court Justices $1 a year, making the salary $20,001 a year, would anyone doubt that that would be as effective a bar to the appointment of any Senator or Representative during the term for which he was elected as if Congress had doubled the salary?

So, I say that all we have to do is to look with some clearness of vision or intellect upon what the framers of the Constitution had in mind, examine their language and apply common sense to this matter. Certainly, if Senators want to uphold the Constitution and see that it is kept sacred, they cannot, as I see it under these circumstances, reach any other conclusion than that the Retirement Act of March 1, 1937, does increase the emoluments of the office of Justices of the Supreme Court.

In closing I refer to only one case, *McLean* v. *United States* (226 U. S. 374), a case decided about 20 years ago. It is an interesting case. An Army officer of the Civil War—a major, we will say—had left the service and was out of it for some time, and Congress wanted eventually to pass a bill to make him whole, to restore to him what he would have had had he continued in the service. Whether that was a wise act or not is immaterial, but Congress passed a law which provided that this major should have all the pay and emoluments to which he would have been entitled if he had remained in the service. Of course, he was given his pay promptly for the 15 years or so that he had been out of the service, but when it came to the matter of emoluments a dispute arose. The officer eventually died, and in the Court of Claims to which the question was brought, his widow contended that in the rank that he had held he was entitled to forage for two horses and the keep of two servants, and that that was included in the word "emoluments." Possibly it would not have been included had the measure referred simply to pay; certainly it would not have been included had the word "salary" been used, but Congress used the term "pay and emoluments." But the Court of Claims could not see the justification for that contention and the matter went to the Supreme Court, and the Supreme Court said: "Why, of course, when you talk about the emoluments of the office you talk about everything that makes the office attractive."

Mr. MINTON. Mr. President——

The PRESIDING OFFICER (Mr. KING in the chair). Does the Senator from Nebraska yield to the Senator from Indiana?

Mr. BURKE. I yield.

Mr. MINTON. Does the Senator say that when we built this nice courthouse across the way for the Supreme Court we increased the emoluments of the members of the Court?

Mr. BURKE. I think that may be going a little bit far.

Mr. MINTON. According to the Senator's last statement, if we do anything to make the office more attractive or advantageous we increase the emoluments.

Mr. BURKE. I will let the Senator's query stand along with my statement, and our colleagues can draw their own conclusions.

So the Supreme Court said, "Why, of course, when Congress used the expression 'pay' and then added to it 'emoluments' they meant everything." Well, in the light of what the Senator from Indiana said, I will say, "They meant practically everything that would make the office more attractive." Anyway, they used this expression, and I will read simply one sentence:

> The word "emoluments" is the most adequate that could have been used.

Whether adequate enough to cover the new Supreme Court Building I do not venture an opinion, but the Supreme Court said:

> The word "emoluments" is the most adequate that could have been used. It especially expresses the perquisites of an office.

I have a long list of cases, but I am not going to refer to them. In all of the cases I have been able to find, in which the courts refer to the word "emoluments" they give the word that all-inclusive definition. So, regardless of whether anyone at all shares my view concerning the propriety, advisability, and necessity of examining the qualifications of this nominee, or whether, having made examination, Senators may reach the same conclusion that I have, I conclude merely by stating that while I have the greatest admiration for this nominee in many particulars, I do not consider that he has judicial temperament, poise, training, experience, or anything that would justify me in voting for him, but, regardless of those points, I still say with respect to the matter of eligibility, that a new office was created, and our colleague cannot be boosted into that new office until the term for which he was elected as Senator has expired. But even beyond all that, as clear as the English language can express it, the Retirement Act of March 1, 1937, increases the emoluments of the office of Justice of the Supreme Court, and the provisions of the Constitution prohibit any Senator during the term for which he was elected from ascending to that office.

Mr. McGILL. Mr. President, I do not care to occupy much of the time of the Senate in discussing the matter of the confirmation of Senator BLACK's nomination. I cannot agree with some of the conclusions which have been reached relative to the law governing this matter. In the addresses made on this subject yesterday it appeared that the points made against the nomination of the Senator from Alabama were based entirely upon questions of law, but today we find that some of those who are opposing his nomination seek to prevent confirmation on the theory that under no circumstances is he qualified to fill the position of a Justice of the Supreme Court of the United States. On that score I have no difficulty whatever. It has been my pleasure during the past nearly 7 years to sit on the floor of this body but a short distance removed from the Senator from Alabama. In my judgment every man on the floor of the Senate knows the character, the high standing, and the qualifications of the nominee as well as does any other citizen of this country.

The holding of hearings to determine whether or not the Senator from Alabama is a good lawyer, whether or not he is a man of high standing, high qualification in statesmanship, in learning, and in knowledge of the law, whether or not he is a man above reproach, would be futile indeed, because, in my judgment, every Member of the Senate would be a witness to his character, his standing as a man, and his qualifications as a lawyer. He has demonstrated throughout his career here, since I have known him, that he is tolerant in his views toward his fellow men, that he is possessed of great learning as a lawyer, highly educated, quick in intellect, and capable in every respect to fill the high office to which he has been nominated.

On this occasion today we have heard a few newspaper clippings read with reference to the past career or supposed career of Senator BLACK. I dare say there is not a man on the floor of the Senate relative to whom it would not be possible to say that we could go to his State and find wherein he had been assailed by the newspapers of the community in which he resides. I do not say that disparagingly of the press, but I do not take it as evidence against Senator BLACK.

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

The PRESIDING OFFICER. Does the Senator from Kansas yield to the Senator from New York?

Mr. McGILL. I yield to the Senator from New York.

Mr. COPELAND. If it were definitely proven that Senator BLACK has been a member of the Ku Klux Klan, would the Senator think that that disqualified him from the Supreme Bench?

Mr. McGILL. It might under some circumstances and not under others.

Mr. COPELAND. What would be the circumstances under which it would?

Mr. McGILL. I am not going to go into any speculative proposition to determine with the Senator from New York whether or not a thing might have been true at some time or other. The question is, if it was true, what, if anything, did the nominee do at any time in his career that would disqualify him from holding the high office?

Need I say to the Senator from New York that since I came to this body the Senator from New York has been a Member of the United States Senate and long prior to that time he was a Member of the United States Senate? Did the Senator from New York ever raise a question against Senator BLACK relative to his qualifications to sit as a Member of this body? No, Mr. President, the Senator from New York sat silently in this body and raised no question whatever against the Americanism, against the integrity, against the character, or against the citizenship or statesmanship of Senator BLACK. It ill behooves him here today to come on the floor of the Senate and complain against the appointment of Senator BLACK simply because he is a liberal, and simply because, if you please, his nomination has been sent to the Senate by Franklin Delano Roosevelt, notwithstanding the wishes or the sentiments of the Senator from New York.

Mr. COPELAND. Mr. President——

The PRESIDING OFFICER. Does the Senator from Kansas yield further to the Senator from New York?

Mr. McGILL. I yield for a question.

Mr. COPELAND. Perhaps I can put my interruption in the form of a question. Did the Senator hear me say a little while ago that Senator BLACK's membership in the Klan, whether real or alleged, would have no relationship to his membership in this body?

Mr. McGILL. It would have just as much relationship——

Mr. COPELAND. No.

Mr. McGILL. If the Senator will allow me, it would have just as much relationship to his membership in this body, if there was anything reflecting upon him as a citizen, as it would insofar as filling any other office in the land is concerned.

Mr. COPELAND. Will the Senator please answer my question?

Mr. McGILL. I have answered the Senator's question. That is what is wrong with the Senator from New York. [Laughter in the galleries.]

Mr. COPELAND. Did the Senator hear me say that that would have no relationship, in my opinion, to his membership in the Senate?

Mr. McGILL. I did not take down notes as to just what the Senator from New York may have said. In fact, his speech did not appeal to me, for it was based on prejudice and intended to prejudice the American people against the man who has been nominated for the position of Associate Justice on the Supreme Court of the United States, the highest court of the land.

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

Mr. McGILL. I yield.

Mr. SCHWELLENBACH. Does not the Senator from Kansas know that the speech of the Senator from New York was not intended to appeal to him, but to the electorate in a campaign which is in the offing? [Laughter in the galleries.]

The PRESIDING OFFICER. There must be no demonstrations of any kind in the galleries.

Mr. McGILL. I will let the Senator from New York——

Mr. COPELAND. May I answer that?

Mr. McGILL. Mr. President, I do not yield to the Senator from New York to make a political speech or campaign address at this time. He had that opportunity and availed himself of it.

Mr. President, I do not care to occupy the time of the Senate in discussing the nominee. I am not any more qualified to speak relative to his high standing than are other Members of this body. I know nothing about political campaigns in the State of Alabama. I do know that at the time with reference to which the Senator from New York has complained Senator BLACK's opponent in that campaign is now a Member of this body and is able and capable to speak for himself with reference to the standing of Senator BLACK in the State of Alabama and with reference to that campaign or anything that may have occurred during that period.

Mr. President, I rose largely to express myself to the effect that, insofar as I am concerned, I have found Senator BLACK to be a liberal-minded man throughout the period of time in which I have known him. I have found him to be a patriotic citizen, a man of high standing and high motives. I have found him to be a man of strict integrity and strict honesty, in mind and in every other respect. So I can find nothing personal, insofar as my knowledge of him is concerned, which would reflect upon him in the slightest degree or interfere with my voting for the confirmation of his nomination.

Mr. TYDINGS. Mr. President, will the Senator yield for a question?

Mr. McGILL. I yield to the Senator from Maryland.

Mr. TYDINGS. Does the Senator intend to discuss in his remarks whether or not a new place has been created upon the Supreme Bench by the retirement of Justice Van Devanter?

Mr. McGILL. I shall advert to that in a few moments.

Mr. TYDINGS. Would the Senator be so kind now as to indicate whether or not he feels that a new place has been created by the retirement of Justice Van Devanter?

Mr. McGILL. I do not feel that there has been a new place created on the Supreme Court of the United States. There has been, in my judgment, a new place created by virtue of the act of March 1, 1937, and the voluntary retirement of Justice Van Devanter. It is my judgment that the office to which Senator BLACK has been nominated is one previously occupied by Mr. Justice Van Devanter and that it was created long prior to the time Senator BLACK became a Member of the Congress.

Mr. TYDINGS. Mr. President, will the Senator yield further?

Mr. McGILL. I yield.

Mr. TYDINGS. I am asking the question purely for information, because the Senator is on the committee and I have not had the chance to study the subject that he has had; I am not arguing with him; but does the Senator consider that Justice Van Devanter is a member of the Supreme Court of the United States?

Mr. McGILL. I do not.

Mr. TYDINGS. To what extent could Justice Van Devanter exercise the functions of an Associate Justice of the Supreme Court of the United States?

Mr. McGILL. In my judgment, he cannot exercise any of the functions of a Justice of the Supreme Court of the United States, but he is possessed of some of the qualifications he previously had as a Justice of the Supreme Court, to wit, the right, if called upon, to sit upon a circuit court bench in the United States.

Mr. TYDINGS. Mr. President, will the Senator yield further?

Mr. McGILL. I yield.

Mr. TYDINGS. Does the Senator think that Justice Van Devanter is now a member of the judiciary insofar as he can sit upon the circuit court or the courts of appeals or any other court inferior to the Supreme Court?

Mr. McGILL. He is qualified, if willing and called upon, to sit upon the circuit court of appeals of the United States.

Mr. TYDINGS. Let me ask the Senator one more question. In considering the legality of what is happening, one of the difficulties that has confronted me, and to which I have not yet received an answer in my own thought, is if Justice Van Devanter can sit as a circuit court judge without being appointed and confirmed by the Senate, how he can occupy that category when the Constitution provides that nominees shall be named by the President and confirmed by the Senate. Will the Senator be so kind as to tell me what the committee has found in reference to that paradox, namely, that Justice Van Devanter becomes an associate judge without being named and confirmed by the Senate? Obviously if he is not a circuit judge, a question might arise as to whether or not there is a vacancy. I am asking this question because I have had difficulty in working it out in my own mind, and I thought the Senator might explain it.

Mr. McGILL. Let me say to the Senator from Maryland that when one is nominated by the President, or by a President, to be a member of the Supreme Court of the United States, and is confirmed as a member of that Court, he is likewise appointed and confirmed as having the authority and capacity to sit and act as a judge of the circuit court of the United States. Therefore appointment to the circuit court is included in the appointment to the Supreme Court.

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

Mr. McGILL. I yield.

Mr. TYDINGS. Then, as I understand, Justice Van Devanter, having been appointed at one and the same time to both the Supreme Court and the circuit court, insofar as jurisdiction is concerned has surrendered his Supreme Court jurisdiction and still retains his circuit court jurisdiction?

Mr. McGILL. Under and by virtue of the act of March 1, 1937.

Mr. TYDINGS. Was a new place created in the circuit court personnel of the United States circuit court?

Mr. McGILL. No; Justice Van Devanter has been a member of that court all the time.

Mr. TYDINGS. Here is the point I am endeavoring to cover. If Senator BLACK is confirmed and sits upon the Supreme Court, have we not added one new Justice to the Federal judiciary?

Mr. McGILL. We have added one new circuit court judge if it is seen fit to assign a Justice of the Supreme Court to serve on the circuit court bench. It has always been the rule, regardless of the issue now before us, that members of the Supreme Court are vested with authority to serve on the circuit court bench.

Mr. TYDINGS. But Justice Van Devanter is no longer a member of the Supreme Court of the United States and unless he is a member of the Supreme Court of the United States how can he be assigned as a circuit court judge of the United States when he has retired as an Associate Justice of the Supreme Court?

Mr. McGILL. Under and by virtue of the act of Congress of March 1, 1937, which specifically provides that where a Justice retires from the Supreme Court of the United States he may be called by the Chief Justice to serve on the circuit court of the United States and may serve if he so desires. If a new judgeship is created it is not one on the Supreme Court, but on the circuit court.

Mr. TYDINGS. I shall ask the Senator another question. I think his answers to my previous questions have been very elucidating. As I recall, the Senator from Texas [Mr. CONNALLY] yesterday made the statement that a new place had been created on the Supreme Court by making

the membership of that court 10 instead of 9, that Justice Van Devanter occupies the new place, and that Senator BLACK would be appointed to the place vacated by Justice Van Devanter. If that be correct, then what the Senator has just now said would not be true, but if what the Senator from Kansas said is true then the contention of the Senator from Texas would not be well founded.

Mr. McGILL. If that has been the contention of the Senator from Texas, of course he and I are not in agreement on the subject.

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

The PRESIDING OFFICER (Mr. BULKLEY in the chair). Does the Senator from Kansas yield to the Senator from Texas?

Mr. McGILL. I yield.

Mr. CONNALLY. I had hoped I would not be dragged into this debate. [Laughter.] What the Senator from Texas said yesterday was that if the position of the Senator from Idaho [Mr. BORAH], to the effect that Justice Van Devanter was not off the Court, is correct, then the effect of the retirement statute which Congress enacted was to create a new position unknown heretofore to the law, and that position is a retired Supreme Court Justice. Up to a recent time a Supreme Court Justice could not retire. That act operated upon the choice of Mr. Van Devanter to accept it as a relinquishment of his duties as a member of the Supreme Court on active service, we will say, and his voluntary assumption of a new status, which is that of a retired Justice of the Supreme Court. The law does not permit him to exercise any of the functions, strictly speaking, of a Justice of the Supreme Court, but provides that he may be assigned to circuit court duty.

Assuming these things to be true, the Senator from Texas asserted yesterday that Senator BLACK is being appointed, not to the new place, but to the old place. Whose place is he taking? He is taking the place of Mr. Justice Van Devanter held by him until Mr. Van Devanter voluntarily relinquished it. So it does not make any difference whether Congress created a new place or not. The place that is being filled is the old place on the Bench in the Supreme Court Building, and not on a farm out in Maryland where Justice Van Devanter is now living. [Laughter.]

Mr. TYDINGS. Mr. President, will the Senator yield further?

Mr. McGILL. I yield.

Mr. TYDINGS. I think the Senator from Texas has stated the matter accurately, and that brings us back to the point that after Justice Van Devanter retires from the Supreme Court of the United States, the question is how can he act as a circuit judge without being nominated and confirmed by the Senate? After he was nominated and confirmed originally, obviously Justice Van Devanter accepted a place created by an act enacted subsequently. The office did not exist at the time he was originally nominated and confirmed, therefore he could not have been appointed to an office which was created only a few months ago. So, if Justice Van Devanter were relying upon the old law, then it seems to me we have to reach the conclusion that he is still on the Supreme Court Bench or else we have to have him nominated and confirmed as a circuit court judge in order that our logic may be consistent clear down the road to the end.

Mr. McGILL. Let me inquire of the Senator from Maryland if he contends the office of judge of the circuit court did not exist at the time of the Van Devanter appointment?

Mr. TYDINGS. The retirement bill to which the Senator refers, and which gave Justice Van Devanter a right to leave the Supreme Court and still be an Associate Justice of the Supreme Court, was not in existence when Justice Van Devanter was appointed to the Supreme Court.

Mr. McGILL. Does the Senator contend that the office of judge of the circuit court of the United States did not exist at the time Justice Van Devanter was appointed to the Supreme Court?

Mr. TYDINGS. My answer to the Senator is that when Justice Van Devanter retired from the Supreme Court of the United States, having been clothed with authority to sit as a circuit judge while he was sitting as a Supreme Court Justice, by the act of retirement he cannot sit as a circuit judge unless he is renominated and reconfirmed.

Mr. McGILL. That is the Senator's position; but the Senator does agree that the office of circuit judge existed at the time Van Devanter was appointed to the Supreme Court?

Mr. TYDINGS. That is true; but he is no longer a Justice of the Supreme Court, and that is the position that gave Justice Van Devanter the jurisdiction to sit on the circuit court. Having given up the position which gave him jurisdiction, and a new office having been created within the last few months after he was originally appointed to the Supreme Court, then Justice Van Devanter will have to be renominated and reconfirmed as he is no longer a member of the Supreme Court of the United States.

Mr. McGILL. The status of Justice Van Devanter is not the issue with which we are concerned here today. The Senator may be correct, but I think he is entirely in error. However, the status of Justice Van Devanter is not the issue. The issue is whether or not there is a vacancy on the Supreme Court.

Mr. TYDINGS. I think the Senator has stated perhaps what may be true, namely, that Justice Van Devanter is not the issue. The only reason why I raised the point is that I want to approach the situation logically. It has been contended here that Justice Van Devanter could try circuit court cases notwithstanding that he was not a member of the Supreme Court of the United States. The Senator from Maryland was at a loss to know how he could do that when the office for which he is now to perform the duties was created after Justice Van Devanter was nominated and confirmed by the Senate. The Senator from Maryland was trying to get some kind of coordination in his mental proccesses as the argument seemed most contradictory, even as made by those who are supporting the nomination of Senator BLACK.

Mr. McGILL. I shall be glad to help the Senator from Maryland in any way I can. He thinks one way and I another. The question is not whether Justice Van Devanter can sit on the circuit court. His status is not what we are considering.

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

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

Mr. McGILL. I yield.

Mr. BARKLEY. In discussing the subject of a vacancy on the Supreme Court and the status of former Justice Van Devanter, it seems to me we should keep in mind the fact that the Supreme Court is a mandatory constitutional institution, and that appointments to the Supreme Court, when provided for by Congress or when the law was passed governing such appointments, are mandatory because the Constitution requires the establishment of a Supreme Court. It does not require the establishment of any inferior courts. Therefore, whatever duties were conferred upon Justices of the Supreme Court in addition to their membership on the Court itself are statutory and not constitutional.

Therefore, when any man was appointed to the Supreme Court after the law was enacted which placed upon his shoulders circuit duties in the circuit courts, he was confirmed not only as a Justice of the Supreme Court, but he was confirmed in the performance of such incidental duties in the circuit court as the law requires. If the Congress has seen fit to make it possible for a Justice to retire from the Supreme Court, it may do it with the limitation that he may still be required, or at least called upon, to perform duties in a lower court, and therefore when he is confirmed for all the duties he does not have to be reconfirmed for any part of them that may remain with him after he has retired from the high court to which he was primarily appointed.

Mr. McGILL. I thank the Senator from Kentucky. That is the view to which I have held.

Mr. LEWIS. Mr. President——

Mr. McGILL. I yield to the Senator from Illinois.

Mr. LEWIS. I ask the attention of the Senator from Maryland [Mr. TYDINGS].

Apart from any position I may take, or be called on to take, as to the confirmation of the distinguished gentleman who has been nominated to the Supreme Court, I realize that there is a possibility of much confusion, in view of the apparently contradictory state of the statutes, as to whether or not the retiring judge becomes a circuit judge by the act of the Legislature; that is, the act of Congress.

I invite the attention of the able Senator from Maryland—who was not honoring this body at the time—to the fact that Congress some time past enacted a law creating a court known as the commerce court. On that court there were three judges appointed, the head of whom, I believe, was named Mr. Justice Archbald. There were other judges, among whom was one from Illinois, now known as Mr. Justice Julian Mack. There arose situations by reason of which Congress was compelled to abolish that court, and it was abolished by a statute which turned these judges into circuit judges. One has passed, let us hope, to heaven. Two still survive as circuit judges under the act; but the name of neither was ever sent up for separate confirmation in this honorable body.

Does not that parallel the situation of my able friend, and remove from his mind what I may designate as uncertainty as to the necessity of personal confirmation of one already in office?

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

Mr. McGILL. I yield to the Senator from Maryland.

Mr. TYDINGS. No; it does not. I do not think the cases are analogous; and I am familiar with the abolition of the commerce court judges. None of them was ever reappointed, as the Senator has rightly stated; but the Senator from Illinois will recall, I am sure, that the Senator from New Mexico [Mr. HATCH], a member of the Judiciary Committee, has contended on this floor with a great deal of force and logic that the Senate, whether it wittingly did so or not, created a new associate justiceship when it passed the retirement bill, and other Senators have so contended.

If that be so, then the argument made by the Senator from Kansas would not lie on a sound foundation. But, of course, if, as he contends—and I am rather inclined to accept his view—that is not so, then we should be proceeding in the right direction; the point being that the members of the Judiciary Committee who are supporting Senator BLACK'S nomination are arguing it from two entirely different standpoints which are in conflict with each other, and we who are not on the committee are having a great deal of difficulty in finding out just what the committee as a whole thinks.

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

Mr. McGILL. I yield to the Senator from New Mexico.

Mr. HATCH. The Senator from New Mexico has not as yet argued this particular question on the floor. On yesterday, or a day or two ago, some questions were asked by the Senator from New Mexico. I have not at any time said on the floor of the Senate that the retirement act of March 1, 1937, created an additional office of Justice of the Supreme Court of the United States. I do not think it did. My views are in exact accord with the views expressed by the Senator from Texas [Mr. CONNALLY] on yesterday and this morning, especially the part about the Maryland farm. [Laughter.]

Mr. McGILL. Mr. President, I think probably some difficulties have arisen by reason of a decision of the Supreme Court of the United States and one of the circuit courts of appeal of the United States in construing the act of 1919, which provided for the retirement of district and circuit court judges. That act specifically provided if a district judge or a circuit court judge availed himself of its provisions and retired under and by virtue of the act, that, notwithstanding that fact, such person remained a judge of the court from which he retired; and the language of the Supreme Court in the Booth case and the language of the circuit court of appeals in the Maxwell case, and other decisions which I have had the opportunity to examine, is merely language construing the act of the Congress passed in 1919.

I do not see how the Court could have arrived at any other conclusion than the one it did arrive at in holding that under and by virtue of the statute those men who had retired remained judges of the courts from which they retired because the act specifically so provided. There was no constitutional question before the Court in that case, except the one question that when a man remained a judge of a court from which he was supposed to have retired under and by virtue of the Constitution his salary could not be reduced after the date of retirement. That really was the only issue. We will find in the decision language that is probably, to some, confusing; and I claim no higher degree of capacity to interpret it than may be claimed by any other Member of this body. Nevertheless, other language in the opinion handed down by Mr. Justice Roberts is wholly foreign to the issue which was before the Court, and the issue which the Court, in fact, did decide, and which only was that a judge who had retired still remained a member of the court, and that was determined to be true by virtue of the language of the statute under which he had retired.

So far as I know, we have no precedent to guide us in this particular case. In my judgment, we had the right under the Constitution to enact the act of March 1, 1937. We could not remove anyone from the Supreme Court; but, after having enacted a method by which a Justice of that Court could retire, the voluntary retirement of the Justice created a vacancy and a new position in which he voluntarily placed himself.

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

Mr. McGILL. I yield to the Senator from Montana.

Mr. WHEELER. Does the Senator contend that Mr. Justice Van Devanter is not now a member of the Supreme Court?

Mr. McGILL. I do. Those are questions, however, which were raised just a moment ago.

Mr. WHEELER. Quite frankly, I am not clear about it. If he is still a member of the Supreme Court, then it seems to me without a question of a doubt we have created another judgeship. I do not think there is any question as to that. The question in my mind is as to whether or not he is still a member of the Supreme Court.

Mr. McGILL. Under the act of March 1, 1937, he could not retire and still be a member of the Supreme Court. When he retired, he abandoned all the duties of his office, voluntarily abandoned the office, and ceased to be a member of the Supreme Court of the United States.

Mr. WHEELER. I am not familiar with the statute with reference to the retirement of other judges; but when a district judge, for instance, reaches the age of 70 and retires, he is still a member of the court and may come back and hold court.

Mr. McGILL. That is the point to which I was referring just a moment ago by reason of certain language used by Mr. Justice Roberts in the Booth case. The act of 1919, under and by virtue of which a judge of a district court or a judge of a circuit court may retire, specially provided that the retired judge should remain a member of the court. The act of March 1, 1937, provides that the only duties any retired Justice of the Supreme Court may be called upon to perform are those the Chief Justice may ask him to perform on the circuit court, in which event, he may, if he so desires, perform them. Under the act of March 1, 1937, he does not remain a Justice of the Supreme Court from which he retired.

Mr. WHEELER. What would happen to Mr. Justice Van Devanter in the event the Congress should repeal the Retirement Act?

Mr. McGILL. He would be in the same status of any other circuit judge.

Mr. WHEELER. How would he be a circuit judge? The act does not make him a circuit judge.

Mr. McGILL. The act makes him a circuit judge, and he has been a circuit judge ever since he was confirmed on the Supreme Court.

Mr. WHEELER. But would he not still be a member of the Supreme Court if we should repeal the Retirement Act?

Mr. McGILL. No. He has abandoned the duties of the office of Justice of the Supreme Court. He has so declared himself. He did it voluntarily, and has ceased to be a member of that Court. He did not have formally to resign.

Mr. WHEELER. The Senator will recall that his retirement was exactly in compliance with the terms of the Retirement Act as passed by Congress. He was extremely careful so to specify. If he retired specifically under the act, and the act should be repealed, the Senator thinks he then would not be a member of the Supreme Court and entitled to sit upon it?

Mr. McGILL. I certainly do. He is in the same situation as every member of the Circuit Court of Appeals of the United States. Congress might repeal the acts creating all the courts below the Supreme Court of the United States. Judge Van Devanter in his declaration has availed himself of the privileges of this act, which specifically provides that he may be called upon to perform duties on the circuit court of appeals if he is willing to perform them. It does not authorize him to perform any other public duty in any other public office.

Mr. WHEELER. In the event the Retirement Act did create another place, will the Senator agree that when Justice Van Devanter retired he did not retire to some new place? He retired to the place that he had, and was simply a retired member of the Supreme Court, was he not?

Mr. McGILL. He retired to a new place. I assume the Senator intends to ask me what would be the result should the act of 1937 be held unconstitutional, and I do not think it will be, although there is no precedent. The Court in the Booth case did not rule upon the constitutionality of the act of 1919; it did not pass upon that question. In any event I would say a vacancy exists on the Supreme Court now because Justice Van Devanter by his voluntary act has abandoned every duty of that office.

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

Mr. McGILL. I yield.

Mr. CONNALLY. If the Court should hold the act unconstitutional—and I do not think it will—would it not be likely to hold that Justice Van Devanter, if he has not been retired, resigned, by abandoning the office and going out and taking up other duties?

Mr. McGILL. By abandoning the duties of an office one resigns from that office. That is the law. If the Senator will look up the authorities, he will see that that is the law. One does not need formally to resign. If he abandons the duties of his office, walks out, and has nothing more to do with it, it will be held that he resigned.

Mr. WHEELER. He specifically stated in his letter to the President that he only retired in accordance with the act passed by the Congress of the United States. If we passed an act permitting a judge to retire, and that act should be held unconstitutional, no court, in my judgment, would hold that that was an abandonment of the office, and the Senator cannot find one single authority holding that it would be an abandonment of the office.

Mr. McGILL. And the Senator from Montana cannot find one single authority that holds that would not be the law. There is no authority on the subject, so I can challenge the Senator from Montana just as readily as he can me.

Mr. WHEELER. Does the Senator contend that if the Justice retired under an act passed by Congress, and specifically stated that he was retiring under the provisions of that act, and the act were not upheld, it would deprive him of the office?

Mr. McGILL. He would have taken his chances with reference to the constitutionality of the act, as the Senator from Montana and I in many of our daily acts in the walks of life take our chances on whether an act of the Congress is or is not constitutional. The fact remains that Justice Van Devanter has abandoned every duty of the office of Justice of the Supreme Court of the United States, which in effect constitutes a resignation, under the law.

Mr. President, I do not wish to occupy more of the time of the Senate in discussing this matter. The other cases which are found, cases decided by circuit courts of appeal, are in harmony and in line with what I have said relative to the Booth case. None of them attempt to pass upon the constitutionality of the acts of the Congress granting retirement privileges.

It is my view that Senator BLACK has not been nominated by the President to an office created since the Senator was elected the last time as a Member of the National Congress, but the office to which he has been nominated is the one previously held by Mr. Justice Van Devanter, and was created by the act of Congress in 1869; that the salary of that office, which constitutes the "emoluments", has in no way been increased at any time since Senator BLACK was elected as a Member of this body; that the office was created in 1869, and that by virtue of the retirement of Mr. Justice Van Devanter under the act of March 1, 1937, from the Supreme Court of the United States, a vacancy was left on the Supreme Court to which this nomination is made.

I will not contend whether there was or was not a new office created, but if any new office was created, it was the office of a retired Justice of the Supreme Court of the United States, now held by Mr. Justice Van Devanter.

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

Mr. McGILL. I was hoping to close, but I yield.

Mr. STEIWER. Does the Senator mind indicating, if his theory is that the new office is that of a retired Justice, by what means Mr. Justice Van Devanter was inducted into that office?

Mr. McGILL. I have discussed that, and I am sorry the Senator was not on the floor at the time. We have been discussing that matter for about 30 minutes, and I have been answering questions in which that problem was involved, questions propounded by the Senator from Maryland, the Senator from Montana, the Senator from Kentucky, the Senator from Illinois, and others. I do not think it would avail us anything to reiterate just exactly what we have been going over for about 30 minutes.

Mr. STEIWER. I withdraw the question. I would not ask the Senator to reiterate anything.

Mr. McGILL. My contention is that the issue before us is not primarily the status of Mr. Justice Van Devanter, except insofar as it is necessary for us to go to determine that he is no longer a member of the Supreme Court of the United States. A vacancy on that bench exists, in my judgment, and it was within the province, the right, and duty of the President to nominate whom he might select to the high office, and unless something can be disclosed to this body showing that the nominee is unfit to fill the position, it is the duty of the Senate to confirm the nomination.

My judgment is that the Members of this body are well advised that the nominee, Mr. BLACK, is one of the best lawyers in the United States, is a man possessed of a high degree of learning, of strict integrity, whose honesty has never been questioned, and that his attitude of mind toward the masses of mankind is that of one of the great liberals of the country.

I thank the Senate.

Mr. CONNALLY. Mr. President, I should like to inquire of the Senator from Vermont and the Senator from Oregon whether they desire to address the Senate at this time.

Mr. AUSTIN. Mr. President, I appreciate the courtesy of the Senator from Texas. I know that he will adorn the situation so much better than I could that I prefer to have him proceed at this time.

Mr. CONNALLY. I regret that the Senator will not speak at this time, because the Senator from Texas feels that he would have so much more information when he should come to discuss this question if he first had the opportunity of listening to the Senator from Vermont, that he approaches the question now with a great deal of trepidation and hesitancy.

Mr. President, the question before the Senate at the moment is whether or not we shall confirm or reject the nomination to be Associate Justice of the Supreme Court of the United States of HUGO L. BLACK, not Senator HUGO L. BLACK, but HUGO L. BLACK, who happens to be a Senator. At the very threshold of the discussion we are told that the Senate cannot properly confirm this nomination because there is no vacancy on the Court. I dare say that when the Supreme Court convenes in October, if this nomination shall not be confirmed, when the spectators and litigants go before the bar of that Court they are going to see a vacant chair, the chair formerly occupied by Mr. Justice Van Devanter, and the question will be, Where is Mr. Justice Van Devanter? Is he on the Bench? Can he ever come back to the Supreme Court Bench? Can he ever hereafter perform any of the duties on the Bench of the Supreme Court? No. The Senator from Texas suggests, then, if those facts be true, no matter how they be true, whether they be true because Mr. Justice Van Devanter shall have died, or whether he shall have fled the realm and gone to foreign countries, or whether he voluntarily surrendered the performance of the duties of a Supreme Court Justice—regardless of how he got off, the question is, Is he off? I submit that he is off that Bench, because I have here his own letter in which he says that he gives up and surrenders the duties of a Justice of the Supreme Court.

Mr. Justice Van Devanter says he accepts the terms of the Retirement Act. The retirement act which the Congress passed provided:

That Justices of the Supreme Court are hereby granted the same rights and privileges with regard to retiring, instead of resigning, granted to judges other than Justices of the Supreme Court by section 260 of the Judicial Code (U. S. C., title 28, sec. 375), and the President shall be authorized—

Who is this speaking? This is the Senate speaking. This is the House also speaking. Senators who voted for this measure now say that the President has no authority or power to appoint a successor. When the bill was before us they said he ought to do it.

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

Mr. CONNALLY. I yield.

Mr. McGILL. Not only was that the Senate speaking and passing the bill, but that measure passed through this body by a vote of 76 yeas and only 4 nays.

Mr. CONNALLY. Exactly. The point the Senator from Texas is making is that the same Senators who in March voted in favor of this bill and directed the President of the United States to appoint a successor to any judge of the Supreme Court who might say that he wanted to retire now say that he must not do it and cannot do it because there is no vacancy.

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

Mr. CONNALLY. I yield.

Mr. BARKLEY. Under that law former Justice Van Devanter cannot voluntarily go back and sit on the Supreme Court in any case.

Mr. CONNALLY. Exactly. I was coming to that.

Mr. BARKLEY. And there is no power in the United States that can compel him to do so.

Mr. CONNALLY. What is that old story about "all of his horses"? What is that old story—the Senator knows it—that "all of his horses" cannot put Humpty Dumpty back again?

Mr. BARKLEY. "All the king's horses and all the king's men", and so forth.

Mr. CONNALLY. Yes.

> Humpty Dumpty sat on a wall.
> Humpty Dumpty had a great fall.
> And all the king's horses and all the king's men
> Cannot put him up again.

[Laughter.]

Mr. President, no matter how Justice Van Devanter got off the Bench, he is now off, and nobody can put him back.

So does not that create a vacancy? Does not that create a vacancy in the old job of being a Supreme Court Justice who sits on the Bench and renders decisions in the Supreme Court of the United States?

I had not completed reading the act. I was just coming to that, I shall say to the Senator from Kentucky.

And the President shall be authorized to appoint a successor—

To whom?

to any such Justice of the Supreme Court—

Mr. Van Devanter; yes. Mr. Hughes; yes. Mr. Brandeis; yes. Mr. Anybody else who retires—in his place the President shall appoint a successor. Yet these same Senators now say "No; we did not mean that. We were just playing like. [Laughter.] We did not mean it at all, because there could not be a vacancy; there could not be a successor."

The language of the act continues:

So retiring from regular active service on the Bench, but—

And listen to this language—

but such Justice of the Supreme Court so retired may nevertheless be called upon by the Chief Justice and be by him authorized to perform such judicial duties in any judicial circuit—

Not on the Supreme Court, not over here in this marble palace, but out in some circuit—

including those of a circuit justice in such circuit as such retired Justice may be willing to undertake.

Under the express terms of this statute, Mr. Justice Van Devanter cannot go back on the Supreme Court Bench. No matter how much he may desire to resume the duties which he voluntarily surrendered, they have left him and left him forever, under the solemn provisions of this act of Congress. So is there a vacancy?

Mr. President, I have some law books here. I shall not quote from all of them. I hold in my hand Words and Phrases, which contains syllabi from a number of cases. Without reading these decisions, what do they hold? They hold that an office is vacant when the officeholder resigns, when it is a new office to which no one has been appointed, when the holder of it voluntarily relinquishes its duties, and in fact, they say "vacant" means "empty." [Laughter.] If there is nobody in the office and nobody performs its duties, it is vacant.

So, Mr. President, by no lucubrations or hallucinations, or any other kind of "nations" can I understand how Senators can come to the conclusion that there is no vacancy on the Supreme Bench. Mr. Van Devanter was on that Bench. He is not on it now, and he never expects to return to it, and never can go back on it. It is the old position to which Senator BLACK has been appointed; not to some new one that the Senators speak of. Senator BLACK—and all Senators know this—is being nominated to perform the duties which Mr. Justice Van Devanter did perform while he was on the Bench, and which he has abandoned.

Mr. President, can there be any challenge to that?

Mr. LEWIS rose.

Mr. CONNALLY. I hope the Senator from Illinois is not going to challenge that statement.

Mr. LEWIS. I simply rose to suggest that there be order in the Chamber.

Mr. CONNALLY. Never mind! The Senator from Texas does not care for order. I thank the Senator from Illinois for offering to secure order, but the Senator from Texas is so often in disorder himself he does not mind a little disorder. [Laughter.]

Mr. President, the Constitution created the Supreme Court. It is the only court which the Constitution directly created. As to other courts, the Constitution vests the power in Congress to create them. For the sake of the record, let us put into the RECORD article III, section 1:

The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office.

While the Constitution created the Supreme Court, it did not fix the number of justices, leaving that to Congress. I agree that if the office which is to be filled or some new office had been created by the Congress during the life of the term of the Senator from Alabama, he could not accept an appointment to it. I agree that if Congress during that period should have increased the emoluments of the office to which he has been appointed, he would not be eligible. But, Mr. President, the contention of the Senator from Texas is that Senator BLACK is being appointed to one of the nine positions, the nine judgeships on the Supreme Court that have existed since 1869.

I ask the chairman of the Judiciary Committee, Is that correct?

Mr. ASHURST. That is my view of the situation.

Mr. CONNALLY. Mr. President, I thank the Senator, because as to the history of the Supreme Court and the governmental institutions of the United States there is no more learned man in this Chamber than the eminent and attractive Senator from Arizona. [Laughter.]

Mr. President, if there is a vacancy, then the Senator from Alabama is eligible thereto unless the emoluments of the office have been increased. I submit that the emoluments of the office have not been increased. Under the Constitution, Mr. Justice Van Devanter will receive for the rest of his life the same compensation that he received as a member of the Court. Had he remained on the Court he would have received that same compensation. How is there any increase in compensation by reason of the mere decision on the part of a judge to retire in the exercise of the option or election either to stay on the Court and perform such duties as he may desire or of not performing all of those duties but going out on his farm and retiring? No increase in compensation is brought about by such a decision.

Oh, but the Senator from Nebraska said that this hazy sort of thing called the privilege of retiring when a man gets to be 70 years of age is an increase in the emoluments. Let us see. Suppose the Senator from Alabama should be appointed and should die when he is 65 years old; he would then not have received any increase of emolument, would he? Suppose he did not retire; he will not have received any increase in emolument. Suppose he does retire. He does not get a copper cent more when he shall have retired than if he had remained on the Bench. How is that an increase in emolument?

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

Mr. CONNALLY. I yield.

Mr. MINTON. It does not increase his emolument. It just decreases his work.

Mr. CONNALLY. That is all. It just lessens his duties a little bit. Everyone knows that a member of the Supreme Court now works when he wants to work, and no one can make him work unless he wants to. [Laughter.] The Federal judges over the country take longer vacations than do Senators and Representatives. They take them frequently at the rate of $5 and $10 a day, Government expense money. They go when and where they please, except when they leave their State I believe they are obliged to get the consent of someone. The State judges take their vacations when they want to. After all, you have got to rely upon the conscience and the patriotism and the sense of responsibility of judges to perform their duties. The only weapon against that is that of impeachment, which is rarely employed, because, as a rule, over the great average, men do not bring themselves within the terms of impeachment.

Mr. President, it is said that a new office has now been created. If that be true, that office is a new status called a retired Justice of the Supreme Court. Why do I say that? Until the act of Congress providing for retirement was passed there was no such place. There was no such status. A judge could not retire. There were no retired Justices of the Supreme Court. So the effect of what the Congress did when it passed the retirement statute was to create a new status called a retired Justice of the Supreme Court. It did that only on the condition and on the contingency that a judge should retire. If no judge had ever retired or should retire, there would be no filling even of that office, that status.

But since Congress said to the Justices of the Supreme Court "when and if you reach 70 years of age and when you shall have served continuously as a Federal Judge for 10 years you may"—do what? "You may relinquish voluntarily your duties on the Supreme Bench and receive the same compensation that you have been receiving."

Mr. President, we must approach this matter from the viewpoint of the public welfare. What is the public welfare concerned with? It is concerned with having a court over yonder of nine Justices; it is concerned with having every place on that court filled. All these fine-spun legal theories, these legalistic quips and quirks cannot erase the fact that there is a vacancy there now; that Justice Van Devanter has surrendered his place on the Bench or that he has given up his duties on the Bench, and he never expects to return to them. Yet it is said that we cannot fill that vacancy; that it must continue. According to such a theory, the Court would automatically extinguish itself by retirements under the new law, and would get down to where there were only three Justices of the Court, when the law requires that six shall be necessary to constitute a quorum. Of course, the Congress might destroy the Supreme Court; it might refuse ever to confirm any nominations and in the course of time, though the Constitution established the Supreme Court, there would be no Court; but the Senate does not want to and does not expect to do that thing.

Now, Mr. President, I want to quote and put in the RECORD the letter of Mr. Justice Van Devanter. We have in the RECORD the statute, and, in construing the statute, the letter of Mr. Justice Van Devanter should be considered.

WASHINGTON, D. C., *May 18, 1937.*

MY DEAR MR. PRESIDENT: Having held my commission as an Associate Justice of the Supreme Court of the United States and served in that Court for 26 years, and having come to be 78 years of age, I desire to avail myself of the rights, privileges, and judicial service specified in the act of March 1, 1937, entitled "An act to provide for retirement of Justices of the Supreme Court", and to that end I hereby retire—

I hereby retire—

from regular active service on the Bench.

What is meant by retiring from regular active service? It means he never will get on that Bench again. It means that he will never serve as a Justice of the Supreme Court, according to his own language, because he cannot do it under this act; he accepts that act, and shows that he understands it if Senators do not understand it. [Laughter in the galleries.]

The PRESIDENT pro tempore rapped with his gavel.

Mr. CONNALLY. Mr. President, I wish the Chair would not be so careful about restraining applause. The Senator from Texas likes to have a little approval now and then. [Laughter.]

And to that end I—

Who? I—Justice Van Devanter. This is his abdication in favor of whomever the President shall appoint and whomever the Senate shall confirm, because the act, the terms of which he accepts, commands the President to appoint his successor. He says he accepts that act.

"I hereby retire. I accept the command which Congress gives to the President to appoint somebody in my place—not in the new status that I am assuming, in this good easy job where it is not necessary to work", in the retired place out on the Maryland farm, where he can fish and cut hay and have a good time during the summer. He is not giving that place up; but he says, "I hereby retire under this act; and that act says that the President shall appoint my successor, and I invite"—that is the effect of his action—"I invite the President to appoint my successor, and I invite the Senate to confirm his nomination." He was not quite through. What does he say furtermore?—

And to that end I hereby retire from regular active service on the Bench.

What is a Supreme Court judge for except to sit on the Bench and work on the Bench?—

This retirement to be effective on and after the 2d day of June 1937, that being the day next following the adjournment of the present term of Court.

I have the honor to remain,
Very respectfully yours,

WILLIS VAN DEVANTER.

And here is the President's letter accepting his retirement.

Mr. President, those things, the act of Congress, the retirement, the acceptance of the retirement by the President make a closed incident. When those things happened a vacancy on the Supreme Court was created not by act of Congress, not by the Senate, but by the incumbent vacating a job that has been in existence ever since 1869. If there was any new position created, it was this new status that no judge of the Supreme Court has ever held before—and if that is not new, I do not know what new means, for it is something that never happened in the history of this Republic until the passage of the act March 1, 1937—a new status, that of a retired Justice of the Supreme Court.

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

Mr. CONNALLY. I yield.

Mr. BURKE. Has the Senator found any provision in the Constitution that authorizes Congress to create that new status of a retired Justice of the Supreme Court?

Mr CONNALLY. Oh, there is no express authority.

Mr. HATCH. Mr. President, will the Senator from Texas yield to me right on that point?

Mr. CONNALLY. Of course, under the Constitution we can create any kind of a court except the Supreme Court itself. I yield to the Senator from New Mexico.

Mr. HATCH. If there is any constitutional question raised, if there is any doubt as to the validity of the new office, does not that doubt go to the position now held by Justice Van Devanter rather than the old position held by him?

Mr. CONNALLY. Exactly. The Senator from New Mexico, in addition to being a very able and efficient Senator, is a very high-class lawyer.

Mr. HATCH. I thank the Senator.

Mr. CONNALLY. The Senator owes me no thanks. It is only a very small portion of what the Senator from Texas could very justly and accurately say.

If there is any question as to the status of Justice Van Devanter, it would have no effect whatever upon the vacancy which is being filled or which is about to be filled by the Senator from Alabama. Why? If the Supreme Court should hold what we undertook to do to be invalid at all, according to the view of the Senator from Texas, the probability would be that they would hold that what has happened, regardless of what it may be called, might have amounted to a resignation of Mr. Justice Van Devanter. Why? He says, "I am giving up the office"; the President accepts his abdication, and it is entirely conceivable to the Senator from Texas that if the Supreme Court should say that Congress had no power to create that kind of a status for a retired Justice they would hold that under the facts Justice Van Devanter had voluntarily resigned.

Mr. BURKE. Mr. President——

Mr. CONNALLY. I yield to the Senator from Nebraska with a great deal of pleasure.

Mr. BURKE. I know the Senator from Texas has read the Sumners retirement act of March 1, 1937?

Mr. CONNALLY. Had the Senator from Nebraska honored the Senator from Texas with his presence he would have heard him read it a while ago in the Senate.

Mr. BURKE. I merely call the Senator's attention to the fact that specifically under that act, in order to permit a Justice of the Supreme Court to leave the Court without resigning a method of retirement is provided.

Mr. CONNALLY. Oh, yes.

Mr. BURKE. How, then, can anyone claim, in justice, that it may be held that Justice Van Devanter in accepting the provisions of the act laid down before him by the Congress resigned when the act itself says specifically that it is to avoid resigning that the privilege is offered to him?

Mr. CONNALLY. That is true, of course. "Resign" is a word. Acts are more forceful or more compelling than words. What the Senator from Nebraska evidently means is that Congress said, "We are going to let Justice Van Devanter occupy this status and he can take it voluntarily without resigning"; but, Mr. President, courts look at substance. The Supreme Court looks at the substance of things. It does not stop at words; it does not simply read the sign over the store as to what is in it, but it goes inside and explores what is in it. I am not saying that the Court would hold that Justice Van Devanter had resigned but I say if it should not uphold the act as Congress passed it, there is little other probability than that it would decide that by his act in voluntarily retiring and giving up the duties of his office he had resigned.

Mr. BORAH. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Texas yield to the Senator from Idaho?

Mr. CONNALLY. I am honored by an interruption by the Senator from Idaho.

Mr. BORAH. I can follow the Senator without any difficulty at all if he takes the position that what Mr. Justice Van Devanter did amounted to resigning. I understand that is the position of the Senator from Texas?

Mr. CONNALLY. The Senator from Texas said that it was entirely conceivable to his mind if the Supreme Court ever could pass upon what has been done here in a determination of the status of Mr. Justice Van Devanter, if the Court did not uphold this act it would probably be on the ground that Mr. Justice Van Devanter had by his act really resigned in fact.

You can resign, Mr. President, by signing your name to a little piece of paper, but that is not the only way to resign. Another way to resign is to give up the office, abandon the office; and what Mr. Justice Van Devanter has done—I charge him with no bad motives—is to accept pay for life and to accept the proposition that he may abandon his duties on the Supreme Bench and take up that which is more congenial in his declining years.

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

Mr. CONNALLY. I yield.

Mr. BURKE. Is not the Senator from Texas willing to admit that, on the evidence before us, it is perfectly clear that Justice Van Devanter had no intention of resigning from the Supreme Court?

Mr. CONNALLY. Naturally; and he evidently thinks his action is legal. Mr. Justice Van Devanter evidently thinks the act of Congress is constitutional, and if back on the Bench he probably would so hold it. Does the Senator from Nebraska contend that Senator BLACK is ineligible because of the fact that the place he is going to fill is a new office that has been created by this Congress?

Mr. BURKE. I have two strings to my bow.

Mr. CONNALLY. One good string is much better than two broken ones.

Mr. BURKE. The first one, which will not break, even under the strain put upon it by the Senator from Texas, is that the legal effect of the act is to create a new office, an additional justiceship on the Supreme Court, every time a member of the Supreme Court 70 years of age and having had 10 years of service elects to come within the provisions of the act which the Senator from Texas and I supported and laid before him. That creates a new office. The office that Mr. Justice Van Devanter has been occupying he still occupies now in an inactive status, and I find nothing in the Constitution nor in common sense that says two men can occupy the same office at the same time. Justice Van Devanter is still there by the express provisions of the act——

Mr. CONNALLY. Still where?

Mr. BURKE. Still in the same office.

Mr. CONNALLY. On the Bench in the Supreme Court Building, or out in Maryland on his farm?

Mr. BURKE. All the Justices are away somewhere, and we all hope we will soon be joining them on the farm or elsewhere.

I say that in legal effect Justice Van Devanter is still vested with judicial power, and the only judicial power that he has is as a Justice of the Supreme Court. By virtue of our act we have given him the privilege of performing some other duties, but he still occupies that office. I find nothing in the Constitution or anywhere else that permits us to put another man in the same bed with him. So the legal effect of this act must be that Congress created a new position, as it had the right to do, and that is the position to which Senator Black is nominated.

But more than that, there is the second string to the bow.

Mr. CONNALLY. Emoluments!

Mr. BURKE. Yes. More than that, we have clearly increased the emoluments of the office.

Mr. CONNALLY. I listened with a great deal of interest to the speech of the Senator from Nebraska and understand his position. I had hoped he would listen to the speech of the Senator from Texas, but he did not, so necessarily I have to advert again to his attitude.

Let me ask the Senator from Nebraska a question. Had Senator Robinson lived would he have been under the same handicap as the Senator from Alabama?

Mr. BURKE. Certainly.

Mr. CONNALLY. Did not the Senator from Nebraska publicly state in the press that he was going to vote to confirm Senator Robinson?

Mr. BURKE. No; I made no such statement as that. I stated, not to the press but to my friends, that I thought that would be a fine appointment to the Supreme Court. That was a mark of esteem for our late departed leader. We all joined in it without regard to the serious constitutional questions involved. I would say to the Senator from Texas that if Senator Robinson had lived and if the President had sent his name here, which he never would have done, he undoubtedly would have secured an opinion from the Attorney General——

Mr. CONNALLY. Would Senator Robinson have secured the Senator's vote?

Mr. BURKE. I shall come to that. I have no doubt in my mind that an opinion from the Attorney General would have been forthcoming that the Retirement Act of March 1, 1937, increased the emoluments of the office and, therefore, Senator Robinson was ineligible. But if that had not happened to be true, if Senator Robinson's name had come before the Senate, I would have wanted to make the same examination as to his eligibility that we are making today, solely on the question of eligibility under the constitutional provision.

Mr. CONNALLY. The Senator from Texas does not want to do the Senator from Nebraska any injustice because he entertains a very warm and close personal regard for him, but I had understood from someone that the Senator from Nebraska had given out a statement to the press, when Senator Robinson's name was being discussed, to the effect that he would be confirmed practically unanimously and that the Senator from Nebraska would support him. However, I withdraw that statement.

Mr. BARKLEY. Mr. President, will the Senator from Texas yield?

Mr. CONNALLY. Certainly.

Mr. BARKLEY. Did the Senator from Texas understand the Senator from Nebraska or did I understand the Senator from Nebraska to say that if Senator Robinson had lived and had been appointed, the Attorney General would have given the President an opinion that he was ineligible, notwithstanding the fact that he has given the President an opinion that the present appointee is eligible?

Mr. BURKE. I think the Senator from Kentucky understood what I was throwing out as a suggestion. If he wants to know my own opinion, I never felt that the President would send the name of Senator Robinson to the Senate of the United States.

Mr. BARKLEY. That does not answer my question.

Mr. BURKE. Give me an opportunity and I shall answer it. I cannot answer it in one breath.

I felt very strongly, as everyone realizes, that there were reasons why the President would feel he was under obligation to our late departed leader and that he would feel under the necessity of sending his name to the Senate unless there was some objection to it. In my own mind I have the very strong feeling that at the right time the Attorney General, looking at the authorities, and very properly, would advise the President that there would be at least a cloud on the title of any Member of the Senate who might be appointed to the Supreme Court under those circumstances and that the President would feel justified in saying, "We will appoint someone outside the Senate upon whose title there will be no cloud."

Mr. BARKLEY. Mr. President, will the Senator from Texas yield further?

Mr. CONNALLY. I yield, but I dislike very much to indulge in all this speculation. We have a great deal more important matter to consider.

Mr. BARKLEY. I hope the Senator from Nebraska does not desire to leave the impression that, although the Attorney General of the United States, the highest law officer in the Government, has given the President an opinion that Senator BLACK is eligible to the vacancy, he would have been guilty of such duplicity toward the President that if Senator Robinson had been nominated he would have found some way to render an opinion that he was ineligible.

Mr. BURKE. I have not seen any opinion or any statement of any kind from the Attorney General, although I know it has been referred to in the press that he has told the President that Senator BLACK is eligible. I have no doubt at all that the Attorney General would have been able to give—and would have been able to back it up with very excellent authority—the kind of opinion which I say, speculating entirely, he might have given, which was that no Member of the Senate was eligible to this office.

Mr. BARKLEY. No one has been able to cite such authority, even those who oppose the nomination of Senator BLACK.

Mr. CONNALLY. The Senator from Texas was interested in the suggestion of the Senator from Nebraska that in the case of Senator Robinson, because of our affection for him and the esteem in which the President held him, the Senate would vote to confirm him, whether it was a question of eligibility or ineligibility. If we are going to determine the matter purely on constitutional grounds, I cannot understand how Senator Robinson's popularity or our fondness for him could in any wise alter our view or our attitude.

Mr. BURKE. I think the Senator misunderstood my point entirely. I was referring only to the first announcement that was made upon the retirement of Justice Van Devanter, that we as Members of the Senate felt that Senator Robinson had all the qualifications to fill the position honorably. None of us at that time had given any consideration to the constitutional questions involved. I did not say and I do not say that when the point arose and we had occasion to look into the matter, I would have reached any different conclusion in reference to Senator Robinson than we ought now to reach in the case of Senator BLACK. We should treat them both alike on this point, certainly.

Mr. CONNALLY. I thought the Senator certainly meant that, although his language was subject to the other construction.

Mr. BURKE. Hardly so to anyone who listened to it.

Mr. CONNALLY. The intellect of the Senator from Texas may be dull, but his hearing is not. [Laughter.] Let me say to the Senator from Nebraska, when he says that none of us had thought about this legal question, that at the time the Senator from Idaho [Mr. BORAH] raised the question, the Judiciary Committee was considering the retirement bill. The Senator from Nebraska is a member of that committee just as is the Senator from Texas. The Senator from Idaho raised the question regarding his theory as to there being no vacancy created when the retirement bill was originally before the Senate and before it passed the Senate.

Mr. President, I was about to say, when I was interrupted——

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

Mr. CONNALLY. I am delighted to yield to my distinguished colleague from California.

Mr. McADOO. May it not be a fact that by the act of March 1, 1937, we created an inferior court composed of retired Justices of the Supreme Court? The Constitution clearly gives to the Congress the power to create inferior courts of the United States.

Mr. CONNALLY. And it has created some, too. [Laughter.]

Mr. McADOO. Yes; some very inferior ones, I admit. [Laughter.] But, as I read the act—and it seems to me a perfectly logical construction—the retired Justice absolutely gives up his position on the bench. He cannot be recalled to service on the bench under the very terms of the act; and he goes into retirement, into what we might call a retirement status or court. He may be called upon, by the very terms of the act, to perform certain duties. The Chief Justice may call upon him "to perform such judicial duties, in any judicial circuit"—which is an inferior court of the United States—"including those of a circuit justice in such circuit, as such retired Justice may be willing to undertake."

Mr. CONNALLY. That is correct.

Mr. McADOO. Therefore, he can be called upon to serve as an inferior judge of the United States only if he has ceased to serve on the Supreme Bench.

Mr. CONNALLY. That is right.

Mr. McADOO. If that does not create a vacancy on the Supreme Bench, because he can never retake his seat on it, then I cannot understand the language of the statute.

Mr. CONNALLY. Let me say to the Senator from California that the Senator from Texas discussed that matter a little earlier in his address, and undertook to point out that if we created any new place at all, it was a new status as a retired Justice of the Supreme Court; one which, both by the statute and by his own letter of retirement, precluded any possibility of his ever returning to perform the duties which he formerly performed.

What is the Congress concerned with? What is the country concerned with? With the performance of the duties of the office. What is an office? An office is not a salary. An office consists of certain duties which devolve upon a man who was appointed to that station. That is all there is to an office. So when Mr. Justice Van Devanter gave up all the duties of a Supreme Court judge, he gave up, in essence, the office itself. He retained merely the shell. He retained merely the little decorative coating and the $20,000 salary, which, of course, was the real objective. That is why Congress put in the act the words "instead of resigning." It was to undertake to create a way to insure that his salary could never be reduced, and that it could never be taxed under the income-tax law.

If the Senator from Alabama [Mr. BLACK] is eligible because there is a vacancy, and if he is not ineligible because the emoluments of the office have not been increased—and they have not—he should be confirmed. The Senator from Alabama will not get a cent more than Mr. Justice Van Devanter got while he was on the Bench, not a cent more than Mr. Justice Van Devanter gets off the Bench; so the option there is not one of emolument or moneyed consideration. Anyway, the increased emolument in this particular instance has gone to Mr. Justice Van Devanter, if there is any increase in the emoluments, of course. It will never be received by Senator BLACK until he shall have lived to be 70 years of age, which many of us will never do, and shall have served 10 years, and shall have made up his mind to quit work; and not many of us who like to work want to quit work.

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

Mr. CONNALLY. I yield.

Mr. BURKE. Does not the increased emolument, if any, attach to the office of Justice of the Supreme Court? It is not personal to Justice Van Devanter.

Mr. CONNALLY. No; that is true.

Mr. BURKE. It attaches to the office.

Mr. CONNALLY. Certainly; I agree to that. I am glad to find something on which I agree with the Senator from Nebraska.

Mr. BURKE. So there really is no force in what the Senator has just said about the emolument going to Justice Van Devanter. It attaches to the office to which the nominee is being appointed with the concurrence of the Senate.

Mr. CONNALLY. That is true. Of course I knew the Senator from Nebraska did not think there was anything in what the Senator from Texas was saying. That statement was really surplusage. I knew he thought that anyway. If there is any increase of emolument, it does go with the office, of course, but the Senator from Texas says there is no increase of emolument. That sort of a theory is so speculative, it is so imaginative, it is so shadowy and nebulous, that it cannot form any substance upon which to refuse to confirm a nominee for the Supreme Court of the United States.

Mr. BURKE. Mr. President, will the Senator yield for just one point before he goes on?

Mr. CONNALLY. I shall be glad to yield.

Mr. BURKE. Does the Senator from Texas take the position that the only way in which there could be an increase in the emoluments of the office of a Justice of the Supreme Court would be to raise the present salary of $20,000 to some sum above $20,000?

Mr. CONNALLY. I think that would be an increase of the emoluments.

Mr. BURKE. But is that the only way in which there could be an increase?

Mr. CONNALLY. I do not know that it is the only way. I do not know. I am sure the ingenuity of the Senator from Nebraska could devise a way, if anybody could.

Mr. BURKE. Is the Senator willing to admit that any increased benefits coming from the office of Justice of the Supreme Court would amount to an increase of emoluments?

Mr. CONNALLY. No. I do not mean giving him another secretary. That would not increase the emoluments of the office. I do not mean that giving him a soft chair to sit in, instead of a hard one, would be an increase of the emoluments of his office. I do not mean that by air-cooling the Senate Office Building we thereby have increased the emoluments of Senators of the United States, or by giving us comfortable offices instead of having our offices in our apartments and our hotels.

Mr. BURKE. Is not the Senator now descending to the level of the Senator from Indiana in arguing that the logical contention is that because the Justices have a new Supreme Court Building, therefore there has been an increase in the emoluments of the office?

Mr. CONNALLY. When a Senator is interrupted, he has to get down on the level of the interruption. [Laughter.]

Mr. BURKE. Is there anything that the Senator will say he would consider an increased emolument, other than an actual increase in salary?

Mr. CONNALLY. The Senator from Texas has never had either an increase in salary or an emolument, so he is not really familiar with it.

Mr. BURKE. Probably he never deserved it. [Laughter.]

Mr. CONNALLY. Well, likely I have not. The Senator from Nebraska made his speech on the subject of emoluments. The Senator from Texas listened attentively, and he thinks he understands the position of the Senator from Nebraska. The Senator from Texas will content himself with saying that he does not regard the act which we passed, conferring the retirement privilege at some indefinite time in the future, subject to all the vicissitudes of life and death and things of that kind, as being of a sufficiently substantial character as an emolument to disqualify a Senator from accepting the office.

The Senator said I got down on the level with somebody. The Senator from Texas is always on the level with the people. He tries to be on a level with the people of the United

States. What he is trying to do now is to perform his duty to the people of the United States who wrote this old Constitution, and who need a Supreme Judge over yonder, and who invested the President of the United States under the Constitution with the power to nominate him, and directed the Senate of the United States either to consent or not to consent to his appointment. The Senator from Texas is going to vote to consent to this appointment.

Now, let us see what else there is.

Oh, yes, Senators say that even if the Senator from Alabama is eligible, even if the emoluments have not been increased, they want to vote against him for some other reason, because he took some telegrams from somebody.

Mr. President, I have here a letter from one of my constituents who thought he was grievously wronged by the seizure by a committee of the Senate of a lot of telegrams, and it turned out that he had been wronged because none of the telegrams that were received had anything to do with the matter under investigation. This letter is from an outstanding citizens of my State:

You are well aware that Senator BLACK authorized the seizure of my private telegrams—

Of course, the writer did not know whether Senator BLACK did it or whether somebody else did it. He assumed that Senator BLACK did it, but in reading this letter I do not assume that Senator BLACK did it.

as well as those of my associates and of the Times Publishing Co. I believe he was overinfluenced in that act by others, who I will not name, but who you know well. After having gone that far, every single telegram that myself and family and my company had sent during a period of 10 months were returned and marked "Unrelated."

Of course, I think he should have at least written a letter clearing me and my newspapers of a false accusation, but no such letter was received from Senator BLACK.

How does this man act? What is his attitude?—

Notwithstanding—

Notwithstanding that he felt outraged by what had occurred to him—

Notwithstanding, it is my judgment that he should be confirmed for the appointment the President has seen proper to make.

Mr. MINTON. Mr. President——

Mr. CONNALLY. Just a moment.

Mr. President, here is a man who at the moment felt that Senator BLACK's committee had done him an injustice; but he realized that Senator BLACK was acting in an official capacity. Suppose he was a prosecutor. All investigations are more or less prosecutions, and this man does not hold that as impairing the character of the Senator, or his fitness for this high office. When a man is a prosecutor, he is one thing; he is a prosecutor; but when he gets on the bench and under a sense of responsibility and duty with respect to both sides of a question, that is quite a different function than that of a prosecutor in court.

I now yield to the Senator from Indiana.

Mr. MINTON. As to the facts with reference to the letter which the Senator has just read, I may say to the Senator and to the Senate that Senator BLACK did not in any way authorize the seizure of those telegrams, or the telegrams of any newspaper, but expressly directed his workers on the committee not to subpena any telegrams of any newspaper.

Mr. CONNALLY. Mr. President, I cited that instance not to discredit Senator BLACK, but to show the attitude of broad-minded citizens of this country, that they recognize that what a man does in his representative capacity, holding a responsibility of investigating, is not to be held against him, even if they do not agree with what he did.

Mr. President, what are the tests that the Senate should apply to nominees for office? I have known of only two outstanding tests that it has been the custom of the Senate to require. First, has the man character and integrity and honesty? Second, has he ability?

Does the Senator from Alabama measure up to these tests? There has been no charge filed in the Judiciary Committee attacking the character or the integrity of the Senator from Alabama. Has he ability? Well, Senators say he has ability, but he has not judicial ability.

Mr. President, how can a man give evidence of judicial ability until he is a judge? Over on the Supreme Bench now there are several members of the Court who never held a judicial office until they went on the Supreme Court. My information is—and I hope I shall be corrected by Senators if I am in error—that Mr. Justice Butler was never a judge of any kind of a court until he was appointed on the Supreme Court of the United States. It is said that Senator BLACK was only a police court judge. Mr. Justice Butler was not even a police court judge; he was not any kind of a judge, and yet he was appointed to the Supreme Court.

Mr. Justice Owen J. Roberts, so the Senator from Tennessee [Mr. MCKELLAR] suggests, appointed a member of the Supreme Court of the United States, had never before held a judicial office. He was an active practitioner at the bar, fighting lawsuits, trying cases, arguing to the jury. It might have been said quite as justly, "Why, Mr. Roberts has no judicial pose. I saw him trying a lawsuit, and he did his darndest to win it for his side. He was bitter. He went after the witnesses who, he thought, were lying, and made them tell the truth, or tried to. He is not of a judicial temperament."

Mr. Justice Stone was never a judge of any court. He was a professor of law in a great university in New York. Somebody might have said, "Why, he has no judicial temperament. He is a professor", and that term does not appeal very much to some Senators. "He is only a professor."

Mr. Justice Brandeis was not a judge prior to his appointment to the Supreme Bench; but he was a great lawyer, a lawyer of the poor man, a lawyer for the underprivileged, serving in many cases without compensation, fighting bitterly, fighting so bitterly that he aroused the antagonism and the bitterness of the reactionary and hard-boiled element all over the country, so that when President Wilson submitted his name here they fought it, and they blocked it for months before it was finally confirmed.

Mr. BURKE. Mr. President, am I correct——

Mr. CONNALLY. I doubt very much if the Senator is. [Laughter.]

Mr. BURKE. With the permission of the Senator from Texas, I will change my question and ask, Is it correct that the Senator from Texas, as a Member of this body, voted against the confirmation of Charles Evans Hughes for membership on the Supreme Court and now proposes to vote for confirmation of the nomination of HUGO L. BLACK? Is that correct?

Mr. CONNALLY. The Senator from Nebraska knows that that is correct; he knows that the Senator from Texas voted against the confirmation of Mr. Hughes; and the Senator from Texas learned something as a result of that vote. When he voted against Mr. Hughes' confirmation he honestly believed, as his speech in the RECORD will show, that Mr. Hughes was so indurated, so saturated, and so soaked with the corporate outlook, the outlook of the great monopolies which he had been representing after he had gone off the Supreme Bench in his vain campaign for the Presidency—the Senator from Texas thought that Mr. Hughes, though an honest man, and though an able man, had become so saturated with the economic outlook and the legal outlook and the legal construction of laws and the constitution of the great corporations and the great monopolies that he voted against confirming Mr. Hughes. But, carrying out what the Senator from Texas was trying to suggest to the Senator from Nebraska a little while ago, Mr. Hughes, when he quit the bar, when he gave up his fees, when he gave up the emoluments he was getting from his clients and laid them on the table, held up his hand and took the oath as a Justice of the Supreme Court and put on the robes of a Justice of the Supreme Court, he had the character and the ability and the manhood to say, "I am no longer the attorney for these corporations. I am no longer a partisan at the bar. I am here as a judge. It is my duty to weigh questions fairly between the people and the corporations." Carrying out that

theory, Mr. Justice Hughes has made a great Justice of the Supreme Court of the United States. Does the Senator from Nebraska deny that?

Mr. BURKE. I join heartily with the Senator in aproving it.

Mr. CONNALLY. On the other hand, let me suggest to the Senator, why can he not be somewhat similarly charitable, even though he does not agree with the economic views of the Senator from Alabama—and the Senator from Texas does not agree with all of them; although the Senator from Nebraska may not agree with his views, why can he not be charitable enough to say that the Senator from Alabama, being an honest man and being an able man and being an industrious man, when he ceases to prosecute, when he gives up his investigating committees, when he gives up his ambition to hold office and to run for office, and goes over yonder on the Bench of the Supreme Court, and with his hand on the Bible and with his lips touching it, signs an oath to perform the duties for the rich and the poor alike, will carry out that oath?

I want to read to the Senate the oath a Justice of the Supreme Court must take. It is a little different from the oath we take. He promises to hold the scales evenly between the rich and the poor, and I am willing to believe that the Senator from Alabama, when he goes over there, being an honest man, and nobody has said he is not, and being an able man, and nobody has said he is not, will abide by the oath he must take.

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

Mr. CONNALLY. Just one word, and I shall yield. Being an honest man, being an able man, having a sense of responsibility to the people, not the little people alone, but the big people also; not to the rich people alone, but to the poor people as well; not to people who wear silks alone, but to ragged people as well—that he will rise to his responsibilities and perform his duty, and make America an honest and a faithful judge. I yield to the Senator.

Mr. BURKE. Mr. President, when the Senator from Texas voted against the confirmation of Mr. Hughes as Justice on the Supreme Court, is it not true that Mr. Hughes had previously served a number of years as a member of that Court?

Mr. CONNALLY. Yes. He had been off in the meantime running as a candidate for President.

Mr. BURKE. He had been off the Court, yes, but the Senator knew of his judicial qualifications by reason of the fact that he had served on the Court already.

Mr. CONNALLY. I have not read all his decisions, but after he made those decisions I saw him in the Supreme Court every time I would go there, and he was there representing some great corporation from New York, with a flock of young lawyers writing the briefs, sitting around him, and he frequently did not know much about the case himself. I did not like that farming out of his influence and his prestige, for one thing.

Mr. BURKE. The Senator from Texas does not mean to intimate to this body, when he says he voted against the confirmation of Mr. Hughes, and now is voting for the confirmation of the present nominee, that there was any comparison between the two individuals as to their legal training, their experience in the law, and their general qualifications for the position, does he?

Mr. CONNALLY. Oh, no; I do not claim there is equality, and I will tell the Senator why. Mr. Hughes lived in New York, a great city. His clients had been corporations, monopolies, banks, trusts. Senator BLACK is from down in Alabama, from a more or less small town. I imagine that most of his clients have been people who did not have much money with which to pay his fees, and I imagine that they were of the common people. I do not see that it makes any difference as to whether one has been representing rich clients or poor ones, if he is fair, and if he has a conscience and a character, and knows enough about law to get on the Bench, to assume such a position, if he is going to be honest, he will be a good Judge, whether his clients were corporations or whether they were not corporations, unless his mind becomes so slanted and so warped and so bent as that he honestly and conscientiously thinks along those lines.

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

Mr. CONNALLY. I yield.

Mr. McKELLAR. The Senator from Texas was giving the names of those members of the Supreme Court who had never served as judges before they went on the Bench.

Mr. CONNALLY. Yes.

Mr. McKELLAR. The Senator omitted the names of Mr. Justice McReynolds and of Mr. Justice Sutherland. I call his attention to the fact that of the eight Justices now on the Supreme Court six out of the eight had never served in judicial positions before, and had no experience as judges before they went on that Bench.

Mr. CONNALLY. I thank the Senator. I was interrupted. I intended to go along and call the roll, but some of these inquiring Senators, who are seeking information and nothing else, interrupted me, and I was diverted.

Mr. Justice McReynolds is a very able Judge; I do not agree with many of his opinions, but he is an able Judge. Mr. Justice Sutherland is an able Judge; I do not agree with his opinions very often, but still he is an outstanding and an able Judge, a fomer Senator. They were never judges on any court, never sat on any bench in their lives until they got on the Supreme Court of the United States.

Mr. President, I now wish to read the oath Judges of the Supreme Court must take. It is not like the oath we take. I want Senators to listen to this, and ask themselves the question whether, if they were appointed on the Supreme Court and should take this oath, they would have a sense of responsibility and a sense of fairness, or refuse to take it. I read from the Judicial Code:

> Justices of the Supreme Court, the circuit judges and the district judges appointed, shall take the following oath before they proceed to perform the duties of their respective offices:
> I, EDWARD R. BURKE, of Nebraska——

[Laughter.]

Mr. NEELY rose.

Mr. CONNALLY. "I, MATTHEW MANSFIELD NEELY, of West Virginia" [laughter]——

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

Mr. CONNALLY. I yield.

Mr. NEELY. I still insist that the Senator must not resort to such fiction as that of intimating that either of the Senators whom he has named will ever take the oath of office as a Justice of the Supreme Court.

Mr. CONNALLY. This is not reality, I shall say to the Senator from West Virginia; this is a supposition. [Laughter.] I never would have used the Senator's name except as a supposition. [Laughter.]

Listen to this. It is not funny—

> Do solemnly swear, or affirm, that I will administer justice without respect to persons—

What could there be more solemn, with your hand on the Constitution and your lips on the Bible, and those words being uttered by your tongue?

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

Mr. CONNALLY. No; not until I get through with the oath. [Laughter.] Wait until I get through with the oath, and then I shall yield to the Senator.

Mr. BURKE. The question would not have any point then.

Mr. CONNALLY. Very well; I yield.

Mr. BURKE. Will the Senator read that again?

Mr. CONNALLY. I thought the Senator heard it.

> I do solemnly swear, or affirm, that I will administer justice without respect to persons—

Mr. BURKE. "Persons", the Senator, of course would understand to mean, regardless of race——

Mr. CONNALLY. Exactly.

Mr. BURKE. Religion.

Mr. CONNALLY. Exactly.

Mr. BURKE. Or anything else.

Mr. CONNALLY. Exactly; that is what the Senator from Texas means when he says that.

Mr. BURKE. Very well.

Mr. CONNALLY. There is no prejudice against anybody unless he is a nominee for the Supreme Court—

that I will administer justice without respect to persons and do equal justice to the poor and to the rich—

They put the poor first. If there is any difference, they give the seniority to the poor—

and that I will faithfully—

What does that mean? What does that mean? Senators know what it means. Faithfully without dishonor, honestly, with righteousness and with rectitude. Not with prejudice, not with meanness, not with something low and groveling, but faithfully—

and impartially—

Impartially. What does it mean? It means that one shall divest himself of any predilections, or any preferences, or any prejudices, to go on that Bench as a Judge and act impartially, without favor, without fear, without intimidation from Congress, or from the White House, or from any place on earth. A Judge goes on the Bench and swears to be impartial and unafraid—

impartially discharge and perform all the duties—

Not some of them. Not a part of them. Not just two or three, but all of the duties of Judge. The highest duty of a Judge is to be honest, and to be fearless, and to be courageous against every influence, whether it is the wild passions of the mob outside of the doors of the Court or whether it is against some other master, either the Congress or the Executive, that seeks to control him. That is the kind of Judge I want—

incumbent upon me as—

What? Not as a prosecutor. Not as a Senator. Not as a lawyer down in Alabama, but as a Judge—

according to the best of my abilities and understanding, agreeable to the Constitution and laws of the United States.

Who does he call upon to help him? Does he call on Congress to help him—"So help me Congress"? Oh, no. Does he call on the President—"So help me, Mr. President of the United States"? No. Does he call on the voters as he does when he is running out in the elections somewhere for votes? Oh, no. He calls on the highest, the supremest of supreme Judges—

So help me God.

I challenge any Senator in this body to take that obligation and then to go out and vary from what he believes to be his duties under that oath. No one but a craven, no one but a scoundrel, would do it. He might be mistaken, he might misunderstand his duties, but a man who would take an oath like that and then either corruptly, or willfully, or maliciously use the tremendous powers of his office to do that which was not according to his standard of justice and right and impartiality would be a character so debased as not to be worthy to occupy any place of high station anywhere.

Mr. President, has anyone said that the Senator from Alabama is a man of that kind? No one has attacked his character. But some say, "We do not agree with his views."

Mr. President, we do not have to agree with the views of nominees on all things when we vote on the question of confirming them. If we in the Senate voted to confirm only those with whom we agreed, I doubt if any nominee would ever be confirmed. If I voted to confirm only those who belonged to my church, I do not believe I would get along very well. Suppose Senators voted to confirm only such nominees as belong to their church, to their lodge, to their political party, or who wear their hair like some of us do, or who do this, that, or the other. I know many Senators with whom I do not agree 30 percent of the time, and yet they would make Supreme Court Judges of much better ability than the Senator from Texas. Should I say that they ought not to sit on the Supreme Court simply because I do not agree with them? Senators, that would be an unsound standard. The standard to take is, Is he honest, has he good character, and has he integrity and ability?

We do not run a training school for Judges of the Supreme Court. The nominee for that position should know the law. I do not mean to say that he must have had experience on the bench so long that he is about ready to drop off the bench with old age before he attains sufficient knowledge of the law. I think young men going on the Bench can become better trained and be better Judges than some old man who has spent his life at the bar either on one side of an issue representing corporations, or on the other side representing those who bring damage suits. I think one is as bad as the other. But if we take a young man who is intelligent, able, and industrious—and everyone agrees that the Senator from Alabama is industrious, and that he is able, and that he is intelligent, and that he has character—and put him on the Supreme Court Bench, if he does not make a good Judge, then it is no one's fault on earth but that of God Almighty, who did not give him sufficient intellect.

Mr. President, in conclusion, I submit that there is a vacancy on the Court, the old place that Mr. Justice Van Devanter formerly occupied and which he surrendered; that if there is any new place it is the new status of a retired Judge of the Supreme Court which has been assumed by Mr. Justice Van Devanter; and if that is not a legal retirement, I submit again to the Senator from Idaho [Mr. BORAH] that if the Court ever holds differently it will hold that he resigned because of his letter saying that he gave up his duties.

So, Mr. President, with those legal impediments, those constitutional obstacles removed, I do not care what church Senator BLACK belongs to. So far as I am concerned, I believe in absolute religious liberty and religious freedom for every class of our citizenship. Whether a man be a Protestant, or a Jew, or a Catholic, or a Mohammedan makes no difference to the Senator from Texas. The Senator's record in his own State is clear on that issue, because when he was elected to the Senate for the first time in his campaign he proclaimed his opposition to secret organizations which would challenge the right of men to exercise religious freedom. So my record in that respect is clear.

I am against intolerance. I stand for complete tolerance and freedom. I do not care whether a Supreme Court Justice is a Jew, or a Gentile, or a Protestant, or a Catholic, I would vote to confirm him if I thought he was honest, if he had integrity and he had ability, and was capable of filling the office, and that such an office existed.

So, Mr. President, I submit to the Senate of the United States that we should vote to confirm HUGO L. BLACK as Associate Justice of the Supreme Court of the United States.

SUGAR PRODUCTION AND CONTROL

As in legislative session,

The PRESIDENT pro tempore laid before the Senate the action of the House of Representatives disagreeing to the amendments of the Senate to the bill (H. R. 7667) to regulate commerce among the several States, with the Territories and possessions of the United States, and with foreign countries; to protect the welfare of consumers of sugars and of those engaged in the domestic sugar-producing industry; to promote the export trade of the United States; to raise revenue; and for other purposes; and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. HARRISON. I move that the Senate insist upon its amendments, agree to the request of the House for a conference, and that the Chair appoint the conferees on the part of the Senate.

The motion was agreed to; and the President pro tempore appointed Mr. HARRISON, Mr. KING, Mr. GEORGE, Mr. BROWN of Michigan, Mr. LA FOLLETTE, and Mr. CAPPER conferees on the part of the Senate.

HUGO L. BLACK

The Senate resumed the consideration of the nomination of HUGO L. BLACK to be an Associate Justice of the Supreme Court of the United States.

Mr. AUSTIN. Mr. President, the earnest debate that we listened to during part of yesterday and today should be enough to convince any reasonable persons that the Senate is dealing with a question of supreme importance. Of course, matter of confirmation of one who has been named by the President of the United States to the highest judicial office in the world is sufficient to attract the interest and study of all who may be affected by the judgments of that person. That, however, is not the only issue here. On this occasion we are confronted by an issue that comes very closely to the people, because it deals with the formation of that branch of the Government of the United States which is most intimately associated with the lives, the property, the civil rights, and the immunities of all citizens of this country.

There is no department of our Government that the citizen so quickly reacts to as the judicial department. We have had evidence of that during the last 3 months. When the people of this country had the impression that the Supreme Court of the United States and all of the other judicial tribunals under the Federal system in the United States were about to be so tampered with as to affect their independence, there was such a reaction that we were completely inundated with telegrams and letters and importunities from people all over the United States asking us to do our duty and to protect them from a change in their fundamental law, made without their consent.

Now we are confronting exactly the same question here as we were throughout the investigation of the bill to reorganize the judiciary, for here we are about to decide the question of whether a Senator of the United States may be appointed to an office created by Congress during the term of his office, or, on the other hand, if not that, whether we shall confirm the nomination to an office of a Senator of the United States who participated in increasing the emoluments either of an old office that existed or a new office created during his term of office. In either event, as we see it, it means a transgression of a direct prohibition imposed by the people of the United States upon the Senate and upon the other House of Congress. In other words, brought down to our own condition here, it is a question, as I see it, whether we shall exercise self-restraint and self-discipline under the temptation to favor one of our colleagues with this appointment.

Now, I wish to answer, or try to answer, some of the claims made to avoid or evade the contention that a new office has been created by the act of March 1, 1937, to which Senator BLACK has been nominated. In the first place, it is said that it is not a new office; that it is the old office, and that the vacancy exists in it because of an abandonment of the office. Secondly, that there is nothing left for a Justice of the Supreme Court to do which belongs to his office as a Justice of the Supreme Court when he accepts the terms of the act of March 1, 1937.

Let us examine the question of abandonment. Let me say, in the first place, that I would regard it a most remarkable mental performance for the Congress of the United States to convert what it expressly declared was not a resignation into a resignation through a device called abandonment. Secondly, I would regard it as a despicable trick unworthy of the Congress of the United States to place upon its own act, which undertook to invest a great old man and others in a similar situation with a retirement allowance corresponding to his salary, such a construction as would deprive him of the surety and the certainty and the unfailing support of that retirement pay by interpreting our own act in such a manner as to expose him to having that retirement pay reduced by any subsequent Congress at any time. I cannot conceive of any honest mental reaction to the proposal we have listened to here today, which proceeds along this line—and I took the pains to write it down in order that I might not overstate it: If under the act of March 1, 1937, a Justice innocently should abandon and thereby vacate his office, he would not be entitled to retirement pay; he would not be secure from diminution under the Constitution. This right lasts only during his continuance in office. He would have to discontinue his term of office if he abandoned or vacated the office.

In other words, his tenure would be ended by a trick, because that construction would reverse, in occult manner, the clear recognition of retirement instead of resignation expressed in the law.

Now let us see if that is not so. I read from the act of March 1, 1937:

> That Justices of the Supreme Court are hereby granted the same rights and privileges with regard to retiring, instead of resigning, granted—

And so forth.

Did the Congress hold out to Mr. Justice Van Devanter a beguiling hand that would induce him to leave the Bench of the Supreme Court, induce him into such a position that Congress could today say, "We have got him now, he has vacated, he has abandoned by accepting the benefits and the emoluments of that act of ours; we have tricked him out of his office"? Is this venerable man, who has served until beyond the age when he wished to retire, who has contributed to the learning and the welfare and the security and safety of this country during that long life, will to be served that scurvy trick by the Congress of the United States? I cannot believe that that device will be accepted, mentally or morally, by the Senate or by the people of the United States as a way out when we say that a new office on the Supreme Court was created by the act of March 1, 1937.

What is the other device? It is equally remarkable, it is equally unbelievable, it is equally absurd, it is equally ridiculous. It is—and I have heard it not from one alone but from several who have debated this matter—that by the act of March 1, 1937, the Senate did not leave any duty as a Justice of the Supreme Court of the United States to be performed by the Justice who accepted its terms. One must deny the statute itself, one must run right counter to the express words of the law when he takes that position, for this is what the statute says in that respect—and I read from the last part of the act of March 1, 1937:

> And the President shall be authorized to appoint a successor to any such Justice of the Supreme Court so retiring from regular active service on the Bench, but such Justice of the Supreme Court—

What does that law say? It says, "Justice of the Supreme Court." We named him, we labeled him, we kept the same old name; we did not change it and call him a "retired Justice of the Supreme Court"; we named him; and then we said of him, treating him in that manner—

> so retired, may nevertheless be called upon by the Chief Justice and be by him authorized to perform such judicial duties, in any judicial circuit, including those of a circut justice in such circuit as such retired Justice may be willing to undertake.

Not only did we lay our finger upon his office and say, "This man's office is the same as it was before; this man who has retired is a Justice of the Supreme Court", but we also assigned to him duties which no one but a Justice of the Supreme Court can have assigned to him, namely, duties "including those of a circuit justice in such circuit."

If there were nothing else to lean upon, if there were no other place to go to find out what the intention of the law expressed in the act is, that would be conclusive, for a circuit justice cannot be separated from the office of a Supreme Court Justice. There is not any such office; there is not any such person holding an office in the United States. A circuit justice is a Justice of the Supreme Court of the United States assigned to a definite territory. No judge of a circuit court occupies the same office.

What is the proof of that? Let me call the attention of the Senator to section 215 of title 28 of the United States Code Annotated.

> Allotment of Justices to the circuits. The Chief Justice and the Associate Justices of the Supreme Court shall be allotted among the circuits by an order of the Court, and a new allotment shall be made whenever it becomes necessary or convenient by reason of the alteration of any circuit, or of the new appoint-

ment of a Chief Justice or Associate Justice, or otherwise. If a new allotment becomes necessary at any other time than during a term, it shall be made by the Chief Justice, and shall be binding until the next term and until a new allotment by the Court. Whenever, by reason of death or resignation, no Justice is allotted to a circuit, the Chief Justice may, until a Justice is regularly allotted thereto, temporarily assign a Justice of another circuit to such circuit.

That deals with no one but a Justice of the Supreme Court. The officials or officers who occupy the circuit court of appeals or who occupy the circuit court or who occupy the district courts of the United States are not justices. They are judges. The distinction is kept for very valid reasons. It is obviously necessary to have no confusion between the offices of the Federal judicial system, and so we find that this designation was of such great importance that the Congress defined the difference and fixed in the code a rule to govern us about it, so that we ought not and we cannot with any validity claim that the Justice who has taken the benefits of the act of March 1, 1937, is something else than one of the circuit justices and, therefore, one of the Justices of the Supreme Court.

Here is section 217 of title 28 of the Code, Annotated:

DESIGNATION OF JUSTICES ALLOTTED TO CIRCUITS

The words "circuit justice" and "justice of a circuit" shall be understood to designate the Justice of the Supreme Court who is allotted to any circuit; but the word "judge", when applied generally to any circuit, shall be understood to include such Justice.

Continuing about the judges who occupy circuit courts and district courts, let us look at the statute. Section 213 of the Code provides:

Circuit judges. There shall be in the second and seventh circuits, respectively, four circuit judges; and in the eighth circuit, six judges; and in each of the other circuits, three circuit judges, to be appointed by the President, by and with the advice and consent of the Senate.

Then the section deals with salaries. I omit that and continue:

The circuit judges in each circuit shall be judges of the circuit court of appeals in that circuit, and it shall be the duty of each circuit judge in each circuit to sit as one of the judges of the circuit court of appeals in that circuit from time to time according to law. Nothing in this section shall be construed to prevent any circuit judge holding district court or otherwise, as provided by other sections of the judicial code.

Thus great care has been exercised by the Congress to separate the designation so there could not be any mental aberration regarding the use of the word "justice" and the use of the word "judge" in the Federal judicial system. There is no "justice" save a Justice of the Supreme Court. When Congress enacted the obligation upon a retired Justice that "he may nevertheless be called upon by the Chief Justice and be by him authorized to perform such judicial duties in any judicial circuit, including those of a circuit justice in such circuit as such retired Justice may be willing to undertake", Congress in effect said, "We are dealing with the office of a Justice of the Supreme Court, and we are adding to that office an emolument, and that is all we are doing." Any independent research of this act will lead to that one definite clear objective, that we were providing retirement emoluments for a Justice of the Supreme Court.

Therefore, Mr. President, we say that neither by the device of abandonment nor by the device of saying there is nothing left, there is no duty of a Justice of the Supreme Court left by this act, do we avoid the plain fact that Mr. Justice Van Devanter is a Justice of the Supreme Court; that the law itself expresses the fact.

On the question of what constitutes an abandonment, we find that the party alone cannot complete the vacation of an office by abandonment. We find there must be an ouster declared. More than that, we find there cannot be an abandonment of a part of the duties and a reservation of a part of the duties, and thereby vacate the office. That is an utter impossibility.

To constitute an abandonment of an office it must be total and under such circumstances as clearly to indicate an absolute relinquishment.

That is the syllabus in *State ex rel.* v. *Huff* (87 New England 141, 143; 172 Ind. 1; 139 Am. State Reporter 355).

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

Mr. AUSTIN. Certainly.

Mr. HATCH. The Senator stopped his quotation at the word "relinquishment." What follows? Relinquishment of what?

Mr. AUSTIN. There is a period after the word "relinquishment." It is obvious it means relinquishment of all duties of the office.

Mr. HATCH. The duties of the office?

Mr. AUSTIN. Yes. Meacham on Public Offices and Officers states the same principle in the following manner:

SEC. 435. Where, however, while desiring and intending to hold the office if he has a legal right to do so, and with no desire or intention willfully or purposely to abandon it, he vacates it in deference to the requirements of a public statute which is afterward declared unconstitutional, such a surrender will not be deemed an abandonment, and upon the overthrow of the law during his term, he may recover his office.

Mr. HATCH. Mr. President, will the Senator yield further?

Mr. AUSTIN. Certainly.

Mr. HATCH. Does the Senator agree to the general proposition that an officeholder cannot relinquish the duties of the office and yet retain the office?

Mr. AUSTIN. Yes. There is one other necessary step, and that is the judgment of ouster. Meacham, at page 279, section 436, says:

But while such an abandonment is clearly a cause for forfeiture, it is ordinarily held that it does not of itself create a completed vacancy, but that a judicial determination of the fact is necessary in order to render it conclusive.

Mr. HATCH. Mr. President, will the Senator yield again?

Mr. AUSTIN. Certainly.

Mr. HATCH. Will not the Senator also agree that the cases hold generally that where the intent to relinquish the duties of an office is manifest, it requires no judicial determination to create a vacancy? Does the Senator agree with that proposition?

Mr. AUSTIN. There has to be a meeting of minds on it. The State, on the one hand, must accept the relinquishment in some form—not exclusively by a judgment of a court, because it may be accepted by the filling of the vacancy by another election; but in some manner there must be a meeting of the minds.

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

Mr. AUSTIN. Yes.

Mr. HATCH. On that point I think we are not in disagreement at all—that where the officeholder manifests his clear intention to relinquish the duties of the office, the office then does become vacant, provided, of course, he relinquishes the office; and then the power to fill the office, whether it be by an appointment or by election, may be called into play, and the vacancy may be filled.

I think we agree on that point, do we not?

Mr. AUSTIN. I think so, substantially.

Mr. President, in this situation we find Mr. Justice Van Devanter writing his views about this matter in such unequivocal terms that there can be no doubt of the understanding that he was not vacating his office by abandonment; that he was not carelessly or innocently being enticed out of his office, to be afterward caught from behind with the claim that "Now you are out, we will reduce your retirement pay."

Mr. HATCH. Mr. President, will the Senator yield and pardon me for interrupting him?

Mr. AUSTIN. Yes.

Mr. HATCH. But no one has expressed any desire to catch the Justice from behind and reduce his compensation.

Mr. AUSTIN. Oh, certainly; I know that. That would not be done. I am talking about what could be the result, what could be the effect of an interpretation by us of this law after the manner of accomplishing a resignation through the device of abandonment. That, in my opinion, would be

a trick. I think it would be a disgraceful thing for Congress to do, and in the face of the statement that we are making a law for a man to retire instead of resigning, I cannot see how we can possibly make such a claim for the law. What I say is that Mr. Justice Van Devanter recognized the import of the duties and service that were required by the act of March 1, 1937, in his letter of retirement, which read as follows:

Having held my commission—

Do not forget that he wrote that. I am going to call attention to that, because he still holds his commission, and I am going to ask the Senate what commission it is.

Having held my commission as an Associate Justice of the Supreme Court of the United States and served in that Court for 26 years, and having come to be 78 years of age—

Every word is important—

I desire to avail myself of the rights, privileges, and judicial service specified in the act of March 1, 1937, entitled "An act to provide for retirement of Justices of the Supreme Court", and to that end I hereby retire from regular active service on the bench—this retirement to be effective on and after the 2d day of June 1937, that being the day next following the adjournment of the present term of the Court.

He was careful to limit the things from which he retired. He did not end his statement simply by saying "I retire from the bench." He did not allow anybody to make such an interpretation of his act. He said:

I hereby retire from regular active service on the bench.

He did not retire from the bench, and most certainly he did not abandon the office. Most certainly he did not resign, because he said he desired to take advantage of the privileges and benefits contained in the act, one of which was that he could retire instead of resigning.

Mr. President, it seems to me that that device for evading or avoiding the claim that we are about to confirm the appointment of a Senator to an office created by this act cannot live through careful, candid, and rational study and consideration.

What about this other plan? We cannot do this.

Some of my learned friends have made the claim that the act of March 1 created an inferior tribunal. That is an attractive way out, is it not? If we did, if that is what we did, what words here did it? I cannot find that we created any court here in express language; and why put in this statute the word "successor"? To what does the word "successor" refer? To something anterior. Is there any other office about to be made vacant by retirement, if we examine this act; any other office anterior to in it than the office of a Justice of the Supreme Court? Let us see:

And the President—

I am quoting from the act—

shall be authorized to appoint a successor to any such Justice of the Supreme Court so retiring from regular active service on the bench.

How absurd to say that the new office was another office than that of an additional Justice of the Supreme Court, if a new office was created.

Examining this matter in another way—for it seems to me we must apply something realistic to this discussion—under what appointment is Mr. Justice Van Devanter acting? That question would not be important at all if the people of this country had not said to us, and to everyone entrusted with making laws relating to the Federal judiciary, that "the only way in which you can appoint to a judicial office under the Constitution is through the President of the United States." I refer to section 2 of article II, and it is also in clause 2, as follows:

And he—

Meaning the President—

shall nominate and, by and with the advice and consent of the Senate, shall appoint * * * judges of the Supreme Court and all other officers of the United States whose appointments are not herein otherwise provided for and which shall be established by law.

If we are going to the device of stretching the act of March 1, 1937, into the creation of an inferior tribunal, we then have come within this part of the Constitution, "and which shall be established by law", have we not? And we get to the next step, that in order to have a Justice there he must be appointed by the President, and he must be confirmed by the Senate; and, of course, we know that the appointment by virtue of which Mr. Justice Van Devanter exercises judicial duties and functions is an appointment as an Associate Justice of the Supreme Court of the United States which was confirmed by the United States Senate.

He said in his letter:

Having held my commission as an Associate Justice of the Supreme Court of the United States—

And so forth; and he laid his finger upon another thing that we ought to stop and consider: Under what commission is Mr. Justice Van Devanter exercising functions and duties of a judicial nature? It is the commission of an Associate Justice of the Supreme Court of the United States, and no other commission. Again, Mr. President, we did not believe any of this nonsense before. We ought not to believe it now. We know perfectly well that Mr. Justice Van Devanter could not hold any such office at all without coming here or elsewhere where he could find a magistrate and taking the very solemn oath that has been referred to here, adapted in some form to this supposed new office of his. In other words, we find him acting under the oath of an Associate Justice of the Supreme Court today with a commission of that character under an appointment and confirmation of that kind, and nobody has power to oust him from that office save for cause, and then only by way of impeachment.

He cannot occupy two of these Federal offices. But would it not be a strange thing, in the interpretation of statutes of any kind, to treat this act of March 1 as endowing Mr. Justice Van Devanter with an office? And that has to be the construction if we follow those who make the claim that the office he is occupying is the office of a retired Justice, instead of the office of an Associate Justice of the Supreme Court.

I make the claim that there is no power to endow any citizen with any office of any kind, anywhere, any time. That is strictly contrary to the spirit of our institutions. When we get to the point where we may from this high and exalted place of ours endue, or endow, or honor, or benefit a citizen by the creation of an office on his head or on his shoulders, then we will be indeed in danger.

Mr. President, we are not creating the high office of a Justice in that manner. We are not picking out men and endowing them with an office right out of our benevolence. There is no question but that we undertook on the 1st day of March, in a most unskillful manner, to provide the same retirement emoluments, theretofore enjoyed by other Federal judges, for Justices. There is no doubt that we overlooked many things in the passage of that measure. For my part I am ready to make the confession that I did not give the legislation the examination, preceding my vote upon it, to which it was entitled. I confess that I believed that the thing we were doing was conferring upon Justices of the Supreme Court the same right of retirement which we had theretofore conferred upon judges of the inferior Federal courts. I had no idea that we were getting into such a remarkable position as that in which we are today by virtue of the act of March 1, 1937. I feel bound to respect the act until it is amended or repealed, but I certainly question the wisdom of leaving out of the act the provisions contained in the act of 1919, one of which is extremely important, and which would have prevented the great questions which have been raised about the number of members of the Supreme Court. That is the very last part of the act, providing in substance, that on the death of one of the retiring judges the office left vacant by the death shall not be filled up. That prevented the accumulation of judges in the Federal courts, which the act of March 1 does not do with respect to the Supreme Court, because we omitted it.

I wish now to call attention to the fact that these principles are not new; they have been decided; they have been passed upon. We cannot help being guided by the opinion of the Supreme Court expressed by Mr. Justice Roberts in the Booth case. There this claim which I am discussing now was argued, and he said, with respect to the act of 1919:

> The act does not, and indeed, could not, endue him with a new office, different from, but embracing the duties of the office of judge. He does not surrender his commission, but continues to act under it. He loses his seniority in office, but that fact, in itself, attests that he remains in office.

We have that reference in the 1937 act to his undertaking to perform the duties of a circuit justice. To my mind it has more probative force than the reference to seniority in the act of 1919, and the other statement, in effect, in that act, that he is indeed a Justice of the Supreme Court, completely answers the claim.

There was, in this connection, just a shadow of a suggestion, not boldly asserted, not definitely argued, but I caught the suggestion, that the office of the Associate Justice of the Supreme Court was created by the Constitution, and, therefore, that the office of an Associate Justice of the Supreme Court was not created by the Congress. It was not asserted, but it was implied in some of the claims that were argued.

Mr. President, that is not a new question. That principle has been passed on. The new office of an additional Justice of the Supreme Court, if one exists, did not come into being when the Constitution was adopted. Indeed, no single one of the offices of the Associate Justices of the Supreme Court came into being until the Congress, by the act creating the Supreme Court, established the office. I refer now to the reasoning of the Court in an Alabama case. It is very interesting that this case should come from Alabama at this time. It was the case of *State* v. *Porter* (1 Ala. 688), a case decided in 1840. I will not take the time to go into a description of the case, but will turn directly to the language in point:

> The fifth section of the fifth article of the constitution, page 707, directs that "the State shall be divided into convenient circuits, and each circuit shall contain not less than three nor more than six counties; and for each circuit there shall be appointed a judge, who shall after his appointment reside in the circuit for which he may be appointed." Thus it will be seen that the constitution instead of dividing the State into circuits, and creating the office of the circuit judges, devolved that duty upon the legislature, to be exercised, as the increase of counties of population might render it expedient.

I skip now, and read the following:

> The fact that the counties included in the tenth circuit, previously composed in part of the first circuit, does not make the statute of January 31, 1840, less an act of creation. Though each had its circuit court, yet it was under a different organization, so that the tenth circuit, or the office of judge (if the expression be allowable) had no vitality until the legislature spoke them into being.

Mr. President, I do not believe Mr. Justice Van Devanter is left, after his years of public service, in any such situation that he can be regarded as no longer a Justice of the Supreme Court, and, therefore, that his retirement allowance or pay may be diminished at any time that Congress sees fit to diminish it. I think that in his case his pay may not be reduced by taxation, but, of course, in respect of any person who has been or may be appointed a Justice of the Supreme Court after 1932 that rule does not apply, as I understand the situation.

Mr. HATCH. Mr. President——

The PRESIDING OFFICER (Mr. LOGAN in the chair). Does the Senator from Vermont yield to the Senator from New Mexico?

Mr. AUSTIN. I yield.

Mr. HATCH. I thought the Senator was about to conclude and I wanted to get his theory definitely in my mind.

I understand from the Senator's argument that he says in effect that no new office, such as he has termed an inferior judgeship——

Mr. AUSTIN. I adopted the language of one of the speakers; it is not mine.

Mr. HATCH. That that office, whatever it may be, has not been created, because there are no words in the act creating such an office. Am I correct in that?

Mr. AUSTIN. Yes; because of the fact that the act itself is wholly inconsistent with that, and contains words which show that the office is that of a Supreme Court Associate Justice.

Mr. HATCH. Does the Senator argue that an additional Justice of the Supreme Court has been authorized?

Mr. AUSTIN. Yes.

Mr. HATCH. So that the Court would consist, say, of ten members?

Mr. AUSTIN. Yes. I have not come to that, but I intend to follow up that thought.

Mr. HATCH. I did not want to interrupt. I just wanted to get the Senator's view on that. When he gets to that, will he point out in the act of March 1, 1937, the words referring to a Court of 10 members?

Mr. AUSTIN. I do not think I will be able to do that.

Mr. HATCH. I did not think so, either.

Mr. AUSTIN. What I have said thus far has been intended to meet if possible the claim made by those who say that the new office which was created by this statute is an inferior one, or that it is the office of a retired Justice of the Supreme Court, and to meet the claim that there is a vacancy in the old office formerly occupied by Mr. Justice Van Devanter by virtue of abandonment of the office by Mr. Justice Van Devanter, and the loss by him of all he was supposed to have saved when he accepted the terms of the act.

That is the intended effect of what I have said up to this point. The proposition, it seems to me, is this: We come within the reasoning of the Booth case with respect to judges of the Federal courts when Mr. Justice Roberts discusses the successor of a judge retired from the Federal bench. Senators will notice that we have in the act of 1919 identically the same blundering sentence with respect to the appointment of a successor as we have here, but we do not have the clarity of expression that is found in the naming of the office into which a successor is to be inducted as we have it in the act of 1937. The act of 1937 leaves no doubt at all that the office into which the new person who follows Mr. Justice Van Devanter is to be inducted is that of Justice of the Supreme Court. That is the office. Mr. Justice Roberts says about that matter—and I am reading from page 351 of the official report:

> Some reference is made to the fact that under the act a successor to the retiring judge is to be appointed, and it is claimed the direction is inconsistent with his retention of office. The phraseology may not be well chosen, but it cannot be construed to vacate the office of the retiring judge, in the light of the evident purpose that he shall continue to hold office and perform official duties.

We have exactly the same thing here. In fact, this wording was taken from the act of 1919:

> And the President shall be authorized to appoint a successor to any such Justice of the Supreme Court so retiring from regular active service on the bench.

Mr. President, if we are going to give this act any validity, if we are going to obey what I regard as our duty here until this act shall be declared unconstitutional, repealed, revised, or amended, or in some other way we are excused, we must regard that word "successor" as the naming of a new Associate Justice. The President, in other words, is authorized to appoint an Associate Justice to the Supreme Court of the United States upon this retirement taking place. Such an act as that is a violent way to create a new office. I do not approve of it, but I see no other course for us to take than to regard that as the creation of a new office—an additional Associate Justice of the Supreme Court.

Mr. BORAH. Mr. President, may I make a suggestion, that the way to avoid that situation is for the Congress to legislate upon the subject. The thing that is troubling us here is that Congress has not legislated. If Congress had said that the President shall appoint an additional Justice so as to have nine active Justices on the Court, this question would be solved.

Mr. AUSTIN. Mr. President, that is right. I agree with that.

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

Mr. AUSTIN. I yield.

Mr. PEPPER. Will the Senator from Idaho [Mr. BORAH] permit me to make an inquiry of him?

Mr. BORAH. Yes.

Mr. PEPPER. By legislation would it be made possible for us to provide a salary for the resigned Justice, which I understand is the suggestion of the Senator from Idaho, which would not be subject to control by subsequent Congresses, and not be subject to impairment or reduction?

Mr. BORAH. The proposition I have in mind would not affect that problem—if the Senator from Vermont will permit me?

Mr. AUSTIN. Yes.

Mr. BORAH. I would consider Justice Van Devanter as a retired Justice. Therefore his salary could never be reduced. I would provide that the President should appoint an additional Justice so as to have nine active Justices on the Supreme Court.

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

Mr. AUSTIN. I yield.

Mr. HATCH. Did I understand the Senator to say that the construction he gave to the statute is that it is a violent way to create an office?

Mr. AUSTIN. I think that is what I said. Anyhow I believe that.

Mr. HATCH. Can an office be created in that fashion?

Mr. AUSTIN. It seems to me that there is no law of construction that actually and realistically overcomes the law of necessity. That law of necessity is a powerful law affecting activities in life, and art, and science, and law, and I do not know how we can escape the construction if we undertake to give force to that power of the President to appoint a successor for the Supreme Court of the United States, save to say that thereby we created this additional office.

Mr. HATCH. Mr. President, will the Senator yield at that point?

Mr. AUSTIN. I yield.

Mr. HATCH. Would it not be simpler and would it not be easier to say that the statute might mean what it says, and that the Justice who retires shall be a retired Justice of the Supreme Court, and his place shall be filled by the President? Is not that the simple and easy construction to make of the statute, without doing violence to it, or calling into play the law of necessity?

Mr. AUSTIN. Mr. President, then where would we be? It strikes me we are up against just as powerful and imperative a prohibition as we would be in case we had created a new office, because then we encounter the proposition that we have added an emolument to the compensation of an Associate Justice of the Supreme Court.

Mr. HATCH. Mr. President, will the Senator again yield to me at that point?

Mr. AUSTIN. I yield.

Mr. HATCH. I may say that that is simply a question for us to decide. We have done no violence to the statutes by adopting this construction. Then all we would have to determine is whether relieving a Justice of the Supreme Court of the burden of the duties of office is an increase of the emoluments of the office. That is a very simple situation, I believe, if the Senator will just boil it down.

Mr. AUSTIN. I shall come to that point directly. I intended to discuss that. I think this case of McLean against the United States is ample authority. This is the United States Supreme Court speaking. It is ample authority for the claim that retirement pay is an emolument of office. Retirement pay contemplates a giving up of some of the service—it may be the giving up of all the service, and, notwithstanding that, receiving compensation. Of course, it is based on the theory of earned pay. This added emolument is on the theory that a man who retires has by virtue of his service become entitled to this as an adjunct to his office.

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

Mr. AUSTIN. I yield.

Mr. HUGHES. May it not also be said that he was entitled to that for the services which he might render as a circuit-court judge?

Mr. AUSTIN. Mr. President, I accept that. I hope it is so. Here is the problem: Before March 1, 1937, if the Senator from Alabama had been appointed an Associate Justice of the Supreme Court of the United States what would have been the pay and emoluments of his office? He would have had a salary, and if he resigned his salary would have continued the same as before, provided that the Congress did not cut it down. He had no assurance of $20,000 a year during the remainder of his life. No man can say that the assurance of $20,000 a year in old age is not a valuable thing. Who is there with any sense of appropriateness or any economic sense whatever who does not recognize that the assured income of $20,000 a year, which cannot be touched, is a thing of very great value?

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

Mr. AUSTIN. I yield.

Mr. HATCH. He is assured of that whether we have a retirement act or not, is he not?

Mr. AUSTIN. Mr. President, not so. Before March 1, 1937, he could have his pay cut in half, as the pay of the resigned Mr. Justice Holmes was cut in half, or——

Mr. HATCH. Mr. President, if the Senator will pardon me, he did not understand my question. An Associate Justice of the Supreme Court of the United States is assured of his salary of $20,000 a year.

Mr. AUSTIN. Certainly, but he was not so assured before the act of March 1, 1937.

Mr. HATCH. All he had to do to protect himself was to remain on the Bench, was it not?

Mr. AUSTIN. That is quite true. He would have to stay there until he died in his tracks. That just illustrates the point.

Mr. HATCH. Will the Senator yield for a moment further?

Mr. AUSTIN. Yes.

Mr. HATCH. What I mean is that whether he leaves the Bench is a matter of his own volition. The salary is his.

Mr. AUSTIN. Oh, yes, of course; but what would be the choice of any man contemplating the office or any man looking forward to it who is not now in it? On the one side is an office in which he may terminate his activity at his own will at the age of 70 and retire with an assured pay of $20,000 a year, and on the other side is an office in which he must stay and work until he dies in order to have an assured pay of $20,000 a year. Which one would he choose? There is no doubt whatever as to the answer. Therefore, a thing of value was created by the act of March 1, 1937; an emolument was added to the pay of an Associate Justice of the Supreme Court.

So, when a Senator of the present Congress who participated in creating that emolument is offered an appointment to this office he is confronted by that prohibition, and we are confronted by it, too. The prohibition is contained in the people's law. We are at that juncture in the affairs of our National Government when we must regard the people's law. The people have become vocal; they have demanded that we obey; they have demanded that we discipline ourselves; they have demanded that we keep within our powers; and when they prohibit us from making one of our own Members the beneficiary of increased emoluments we cannot do it with impunity; somebody, sometime, somewhere, will be injured by it. No one knows the outermost rim of the evil that may result from what we do here today if we violate that prohibition.

There is no question but that retired pay is an emolument. I wish to call attention to an opinion which one of our distinguished colleagues rendered while he was judge. I refer

to the case of *Schieffelin* v. *Barry* (vol. 217 of the Appellate Division Reports, p. 451; 216 N. Y. S. 367). The present Senator from New York [Mr. WAGNER] was the judge who delivered the opinion of the court.

I quote:

It is established that pensions and retirement allowances are part of the compensation of public officials. If they were not, of course, their payment would be unconstitutional.

And he cites *Matter of Wright* v. *Craig* (202 Appellate Division 684; affirmed 234 N. Y. 548).

With all of the other judges of the court concurring, it was held that an act which undertook to reduce those emoluments was unconstitutional. I read from the concluding paragraph of the opinion delivered by then Justice, now Senator, WAGNER:

In violation of this constitutional and statutory provision, the municipal assembly of the city of New York has, by the enactment of local laws nos. 10 and 18 of the New York local laws of 1925, attempted to change the compensation of county and State employees who are members of the Retirement System, for the interests and obligations of all the members are so inextricably linked together that separation is impossible.

We are, therefore, constrained to hold the laws under consideration unauthorized and invalid.

What those laws attempted to do was to reduce the retirement pay.

Retirement pay has been held—until it has become a sound principle of law—to be a part of the compensation of a public officer. He has earned it. When he is given pay without work it is on the theory of attributed work; it is on the theory of suppositive work; it is on the supposition that he has done enough work so that it carries forward to the end of his life. That was the theory that underlay the opinion of the Supreme Court of the United States in *McLean* v. *United States* (226 U. S. 381), from which I read as follows:

Whatever is directed to be settled—pay or an emolument—is for compensation, not for actual service but for attributed service. This, we repeat, is the scheme of the statute and the test of its application. It is difficult to deal with a distinction between pay and emoluments. Both are rewards or compensation.

Notice, Mr. President, that here we have again that declaration which I say is settled in our law that retirement pay is compensation.

The one no more than the other, for "service supposed." To say that one is certain and the other contingent has no meaning in the situation of Major McLean. He could not have performed the condition upon which either dependent, under the then existing law, and to distinguish between them notwithstanding is to enter a maze of irrelevant considerations. The enactment is, and we return to it as its own best interpreter, "that the proper accounting officers be, and they are hereby, directed to settle and adjust to Sarah K. McLean, widow of the late Lt. Col. Nathaniel H. McLean, all back pay and emoluments that would have been due and payable" to him "as major from July 23, 1864, to the date of his reinstatement March 3, 1875 * * *."

This is the principle involved.

It is manifest that the supposition of service by the officer is attributed to both pay and emoluments. Under that supposition, what essential difference is there between them? Pay and emoluments are but expressions of value used to give complete recompense to a deserving officer. Their association was deliberate; emoluments were additive to pay.

I should like to have notice of that taken in the RECORD, although I do not expect any Senator to note it, but I hope, Mr. President, that this RECORD before the people will be a justification for their belief, expressed soon after the report on the Court bill was made, that there had been a revival in the United States Senate of interest in the affairs of the people and of courage to defend their fundamental law. That is what we are doing here now, today, this instant, and if no other benefit arises out of it save to write down in the RECORD that we are claiming these rights for the people, that we are trying to defend them for the people, I know that it will meet with a response from the hearts of the people who will some day have flesh and blood in the Senate if they have not now.

Under that supposition what essential difference is there between them? Pay and emoluments are but expressions of value used to give complete recompense to a deserving officer. Their association was deliberate. Emoluments were additive to pay, and the direction as to them is as substantive as the direction as to it, and qualified by no other condition.

Mr. President, I suppose that unless that law has been changed there is no use further to discuss the matter of whether we are by this act of March 31, 1937, increasing the emoluments of the office. If that is the law of the land today we have increased the emoluments of the office of Associate Justice of the Supreme Court by a very valuable compensation, namely, the assurance that an old gentleman who has served 10 years continuously or otherwise on the highest Court of the land, and made his contribution to the welfare of the country, may retire from active service on the bench without suffering the claim that he has abandoned or resigned or voluntarily withdrawn from the bench, and that this is an emolument that he is assured for the remainder of his lifetime, the continuance of his pay—retirement pay, a thing which specifically can be bought, or can be granted as it has been granted by our Government, and which has been declared by the Supreme Court of the United States to be an emolument. It cannot be taken from him because of this act. It could have been taken from him before this act was passed.

Thus this Congress added something to the pay of an Associate Justice of the Supreme Court and any man who was a Member of Congress at the time that addition was made is disqualified because the people have said, "We do not want you gentlemen creating offices or increasing the emoluments thereof and then taking them unto yourselves."

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

Mr. AUSTIN. Certainly.

Mr. WHITE. The Senator seems to have narrowed to the case of the present retiring Justice his contention that this was an increased emolument. It would be equally an increase in the emolument of any Justice who might hereafter retire, would it not? It is general rather than specific.

Mr. AUSTIN. I thank the Senator. The Senator from Maine has helped me because I did not realize I was making that limitation. Of course, that is what I mean by what I have said. It is because it does apply to the Senator whose nomination is now under consideration that he is ineligible to be appointed and confirmed to the office. It would apply to every other Justice coming along hereafter. It is, therefore, an increase in the emoluments of the office and it does not make any difference whether this office has been created by us or whether it is an old office from which Mr. Justice Van Devanter has resigned or which he has abandoned, as some would have us think this means. In either event, the fact that this Congress has increased the emolument is the fact that makes ineligible any Senator who was a Member of the Senate at that time.

I invite attention to another authority because it presents a picture. We participated in the scheme of an attempt under the Economy Act. That was one of the "must" bills of our President for which I voted. I thought we were headed for economy. In that act, however, we did some great injustices, and one of those injustices was to abrogate the contract between the Government of the United States and a retired soldier, a contract for which he had paid money. The Supreme Court of the United States said to the Congress, "You cannot do that. That relationship entered into between the Government and its citizens is just as binding on the Government as it would be if it were between two citizens. It is a contract and the contract is binding." But in the case of *Retirement Board of Allegheny County* v. *McGovern* (174 Atlantic Reporter 400, p. 404), we find this holding:

Until an employee has earned his retirement pay, or until the time arrives when he may retire, his retirement pay is but an inchoate right; but when the conditions are satisfied, at that time retirement pay becomes a vested right of which the person entitled thereto cannot be deprived; it has ripened into a full contractual obligation. (See *Lynch* v. *United States* (54 S. Ct. 840, 78 L. Ed. 1434), decided June 4, 1934.) True, section 312 of the act of 1929 (16 PS sec. 312) calls this system a pension system and the fund a pension fund, but in every part of the statute the system and fund created are of the character above

described, and the nomenclature has been changed to retirement system and retirement fund by the act of May 22, 1933 (P. L. 840; 16 P. S. sec. 312).

It is, therefore, an emolument. It is an emolument for that one reason. A contract has been established upon the retirement of a Justice, a contract between the Government of the United States and that Justice which never before existed. It is a new thing. It is a thing of great value. It is a contract on the part of the Government with him that when he retires and if he retires, and if he performs the service mentioned in the act, he may receive during the remainder of his life an assured and certain compensation, and that is an emolument.

Mr. President, I do not wish to delay the Senate further. I have tried to present my views as briefly as possible on the subject. I would have preferred to have opportunity for more thorough study of the question because I regard it as an exceedingly important one. The study which it has been possible to make since the nomination was sent to the Senate has necessarily been limited.

CLAIMS OF ESTATES OF H. LEE SHELTON, MRS. H. LEE SHELTON, AND OTHERS—VETO MESSAGE (S. DOC. NO. 103)

As in legislative session,

The PRESIDING OFFICER (Mr. GEORGE in the chair) laid before the Senate a message from the President of the United States, which was read and, with the accompanying bill, referred to the Committee on Claims and ordered to be printed as follows:

To the Senate:

I return herewith, without my approval, Senate bill 826, to authorize and direct the Secretary of the Treasury to pay to the estate of H. Lee Shelton the sum of $5,000, to the estate of Mrs. H. Lee Shelton the sum of $2,500, to Mrs. J. R. Scruggs the sum of $3,000, and to Mrs. Irwin Johnson the sum of $300, in full settlement of their claims against the United States for fatal and personal injuries sustained in an automobile collision.

It appears that on the night of November 9, 1935, a United States Government truck, operated by an employee of the Soil Conservation Service of the Department of Agriculture, in Pittsylvania County, Va., was proceeding on a State highway, followed by a car driven by Mr. Shelton, and in which Mrs. Shelton, Mrs. Scruggs, and Mrs. Johnson were passengers. An automobile driven by one C. O. Stuart coming from the opposite direction sideswiped the Government truck, skidded and traveled for a distance of about 160 feet, and crashed into Mr. Shelton's car, causing the death of Mr. and Mrs. Shelton and personal injuries to Mrs. Scruggs and Mrs. Johnson.

Thereafter suits were brought in the Virginia State courts against the driver of the Government truck by the claimants named in this bill, and judgments were recovered aggregating the sum of $15,300.

It appears that the principal basis for a finding of negligence on the part of the driver of the Government truck was that he failed to comply with the local regulations requiring side lights on trucks exceeding a certain specified width. In the light of the decisions of the Federal courts, there is grave doubt, to say the least, as to whether the Federal Government is required to equip its vehicles with the accessories required by State or local regulations.

In view of this circumstance, it does not seem desirable that a direct appropriation be made for the payment of this claim without prior adjudication by a court of the United States to which the Government has been a party and in which it has had an opportunity to be heard.

An entirely different situation would be presented if this bill were confined to a grant of jurisdiction over these claims, to the Court of Claims or a United States district court.

While the unfortunate accident is to be greatly deplored, I feel constrained, nevertheless, as a matter of proper protection to the Government, to withhold my approval from this measure.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE, *August 7, 1937.*

MESSAGE FROM THE PRESIDENT

A mesage in writing from the President of the United States was communicated to the Senate by Mr. Latta, one of his secretaries.

HUGO L. BLACK

The Senate resumed the consideration of the nomination of HUGO L. BLACK, to be an Associate Justice of the Supreme Court of the United States.

Mr. BRIDGES. Mr. President, we have before this body today for consideration the nomination of a man for Associate Justice of the Supreme Court of the United States. The name under consideration is that of HUGO L. BLACK, of Alabama. Mr. BLACK's name is before this body for consideration, not as a United States Senator, but as a nominee for a position on the highest court in the land. Therefore, I think it very inappropriate that any attempt should be made to railroad his nomination through this body without full public hearings and an extensive investigation.

What are the facts? The facts are that the distinguished chairman of the Judiciary Committee, the Senator from Arizona [Mr. ASHURST], probably because of efficiency, personal regard, and an honest conviction that Mr. BLACK would make a good Justice of the Supreme Court, urged immediate action without reference to a committee. Objections were raised. The nomination was referred to the committee, and a subcommittee was appointed and was in session for a short time. From all over the country, from the American people, came a demand to be heard, to have an opportunity to have something to say about the nomination to the Supreme Court. They recognize that the Supreme Court of the United States is the trustee of American liberties. For that reason they deserve an opportunity to have something to say, and this body should show them the consideration of giving them a reasonable opportunity to appear and be heard.

There is an honest difference of opinion relative to this nomination, and Mr. BLACK himself would be the last man who could consistently object to an extensive investigation.

On April 28, 1930, Mr. BLACK said, as reported in the official RECORD, with reference to the confirmation of Judge Parker:

> May I state that so far as I am concerned with reference to this matter—I feel sure that I voice the sentiments of many others—it is immaterial with what ability Judge Parker handled the case; if it be true that as a prosecutor he had in his possession evidence which tended to show the innocence of a defendant, and at the same time prosecuted him, I feel sure that he would get no votes for confirmation. Therefore, I think it is exceedingly important that from some source, someone who knows, this statement be disproved if it can be disproved.

The then Senator from North Carolina, Mr. Overman, replied:

> Does the Senator think that a man such as I have proved Judge Parker to be—of irreproachable character, an honest man, a courageous man, a Christian gentleman—would suppress any testimony of that sort?

Senator BLACK retorted:

> It is difficult to believe that it would be done, but the charge has been publicly made; and, so far as I am concerned, while I do not know how I shall vote with this matter eliminated, if this charge is not satisfactorily disproven, I shall be compelled to vote against him.

The record will reveal an honest difference of opinion relative to Mr. BLACK's fitness to serve on the Supreme Bench. A person is entitled to his opinion. The American people are entitled to be heard.

The distinguished Senator from Texas [Mr. CONNALLY] in speaking said:

> If Senator BLACK does not make a good judge, nobody is to blame but God Almighty.

That is quite a broad statement for the distinguished Senator from Texas to make. I want to say that if Senator BLACK does not make a good judge, the responsibility does not rest on God Almighty but upon the President of the United States and the Members of this body who vote to confirm

him, and it will rest doubly so if we do not give the American public an opportunity to be heard.

There is an honest difference among the public. There is an honest difference among the press. Right in the State of Alabama we have a real difference of opinion. Let me quote from editorials from two Alabama newspapers—a State where they naturally have pride in Senator BLACK's appointment. I quote from the Birmingham Age-Herald, a Democratic newspaper:

No news that has come to Alabama in many a day has produced a greater conflict and confusion of emotion and judgment than President Roosevelt's nomination of Senator HUGO L. BLACK to become a Justice of the United States Supreme Court. Unbounded exultation contrasted with grim resentment. There was joy at the idea of HUGO BLACK on the Supreme Bench, but in the same hearts it clashed with regret at losing his services in the Senate.

Contrariwise, there was nothing less than alarm at the thought of Senator BLACK on the high Court, but in such feeling there was intermingled relief at his prospective passing from the Senate.

We fear he may not prove the great judge. We think Mr. Roosevelt, at this time of extreme feeling, did no service to the judicial ideals of this country in appointing a man around whom much of that feeling centers. But, even so, we hold to a faith in HUGO BLACK's fundamental sincerity and his broad mental caliber.

From the Birmingham News, a Democratic paper:

Pride is the dominant feeling, but there are other emotions, including relief and misgivings. For Senator BLACK has been sharply identified with one side in a number of controversial issues and the reactions of Alabamans to this appointment will reflect their position on the issues. That pride cannot conceal wholly a little doubt as to Senator BLACK's fitness by experience and temperament for a judicial post.

He has been the prosecutor, the partisan litigant, rather than the calm weigher of opposing arguments. His high mental qualities, his perspicacity, his acumen, his quickness of thought and readiness of speech, have found their best uses in controversy.

No one is questioning the fitness of Senator BLACK as a Member of this body, but a Member of this body may be an able Senator and a poor judge, or he may be an able Senator and an able judge. The public could properly have something to say, and should have an opportunity to be heard. We cannot afford to put on the Supreme Bench of this country a man under any cloud, and charges have been made on this very floor as well as elsewhere.

Mr. President, I believe this nomination should be recommitted to the Committee on the Judiciary with instructions to hold public hearings, and to conduct a full investigation. In other words, let us have the facts; let us deal the cards and lay them face up on the table. Let us not pass them under the table in the dark. If a person is above reproach, he has nothing to fear from public hearings and a thorough investigation.

During my remarks I have made no charges against Senator BLACK. I realize that from his past experience he would be a good prosecutor, and I should have no hesitation in picking him out for the position of a prosecuting attorney, a district attorney, or any sort of a prosecuting official. But a man may be a good prosecutor and not a good judge. In a judge we must have fairness, we must have integrity, we must have tolerance, and human understanding of the other fellow's opinion, and not a partisan approach.

Mr. President, I move that the nomination of HUGO L. BLACK be recommitted to the Committee on the Judiciary for public hearings and further investigation. 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:

Adams	Byrnes	Guffey	Lundeen
Andrews	Capper	Hale	McAdoo
Ashurst	Caraway	Harrison	McGill
Austin	Chavez	Hatch	McKellar
Bankhead	Clark	Herring	Minton
Barkley	Connally	Hitchcock	Moore
Berry	Copeland	Holt	Murray
Bilbo	Davis	Hughes	Neely
Bone	Dieterich	Johnson, Calif.	Nye
Borah	Donahey	Johnson, Colo.	Overton
Bridges	Ellender	King	Pepper
Brown, Mich.	Frazier	La Follette	Pittman
Brown, N. H.	George	Lee	Pope
Bulkley	Gerry	Lewis	Radcliffe
Bulow	Gillette	Lodge	Reynolds
Burke	Glass	Logan	Schwartz
Byrd	Green	Lonergan	Schwellenbach
Sheppard	Steiwer	Truman	Wheeler
Shipstead	Thomas, Okla.	Tydings	White
Smathers	Thomas, Utah	Van Nuys	
Smith	Townsend	Wagner	

The VICE PRESIDENT. Eighty-two Senators having answered to their names, a quorum is present.

The question is on the motion of the Senator from New Hampshire [Mr. BRIDGES] that the nomination be recommitted to the Committee on the Judiciary.

Mr. TYDINGS. Mr. President, I wish to make a brief statement on this motion, which I shall support.

I look upon the Supreme Court of the United States as the last tribunal between earth and the hereafter, where every citizen of the United States may have to go on trial for his property or his life. I feel, therefore, that in the selection of an Associate Justice of the Supreme Court the committee charged with the responsibility of reporting to the Senate on the nomination should investigate every rumor that has any reasonable ground of fact before it reports the nomination to this body.

I do not believe that course was followed in the case of Senator BLACK, and it is unfair to him to allow his nomination to come before this body under any cloud of suspicion of prejudice or fact which might affect his fitness as a judge.

If the rumors of which we have heard are not well founded, then the committee ought to ascertain the facts and publish them. If they are well founded, the Senate ought to know that fact. I shall support the motion to recommit because I believe the committee has not gone fully into many matters, a knowledge of which the Senate ought to have before it when it passes on anything so important as the nomination of one to be an Associate Justice of the Supreme Court of the United States.

Mr. COPELAND. Mr. President, I agree with the Senator from Maryland that this nomination should be recommitted to the committee. I spoke at some length this morning about the possible connection of Mr. BLACK with the Ku Klux Klan. I do not know of my own knowledge that he is or was a member of that organization. Within 2 or 3 days I have been told by persons, one of whom at least is known to me as a reputable man, that Mr. BLACK was or is a Klansman; and this one man said he sat with him in the lodge.

It may well be, of course, that the majority of the Senate feel that it makes no difference whether the nominee is or is not a Klansman. For my part, I feel it makes a vast difference. I do not believe that a man whose mind may be fossilized as regards the rights of certain classes of people should sit upon the Bench.

It would be a very simple matter for the committee, if it chose, to ask Mr. BLACK himself whether he was a member of that order. I feel very strongly that the committee has not taken the same care to investigate the merits or demerits of this nominee it has been accustomed to take. I think the nomination should go back to the committee. I shall be glad to turn over any material I have. But I believe that, too, is quite unnecessary, because the simple questioning of the nominee would satisfy the committee as to whether or not this particular impediment to his membership on the Supreme Court actually exists.

Mr. GLASS. Mr. President, while it is my irrevocable purpose to vote against the confirmation of this nomination, I am utterly opposed to wasting any more time on the subject. Therefore, I am going to vote against the motion to recommit.

Mr. BORAH. Mr. President, the Committee on the Judiciary had this matter before it, and I do not see any reason why it should be sent back to the committee. There has never been at any time one iota of evidence that Senator BLACK was a member of the Klan. No one has suggested any source from which such evidence could be gathered. The members of the committee have had hundreds of telegrams even running into the thousands, from people over the country, sent upon the theory that the Senator is a member of the Klan; but in no telegram that I have seen has there been a suggestion as to any evidence or any facts

sustaining that proposition, and, for myself, I am not willing to go about hunting for the possibility of something which may reflect upon a Member of the Senate.

We know that Senator BLACK has said in private conversation, not since this matter came up but at other times, that he was not a member of the Klan, and there is no evidence to the effect that he is. What is there to examine? Of course, the country seems to proceed upon the theory that there is something to examine, but there is not. There is no fact or facts even indicating it. It is rumor or hearsay. For myself, I am not desirous of entering upon any investigation regarding it, unless some responsible person is prepared to make the charge, not based upon hearsay, but upon knowledge of some facts tending to sustain the charge. If it goes back to the committee, upon whose charge or upon what facts shall we begin investigation?

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

Mr. BORAH. I yield.

Mr. COPELAND. Does the distinguished Senator from Idaho feel that if Mr. BLACK is or was a member of the Klan, that would be any embarrassment to him, and be a reason, possibly, for not placing him upon the Bench?

Mr. BORAH. Mr. President, for myself, if I knew that a man was a member of a secret association organized to spread racial antipathies and religious intolerance through this country, I should certainly vote against him for any position. There is one thing we ought be be very careful about in this country, and that is not to start the flames of intolerance; and I have no sympathy and no respect for any effort along that line. But that is a wholly different proposition from taking an associate here who has been with us for 11 years and, because of mere rumor, putting him under the humiliation of a trial as to whether or not he is a loyal American citizen. If anyone has any facts, let him present them here, and then we will talk about the nomination going back to the committee.

Mr. COPELAND. Mr. President, if the Senator from Idaho will bear with me, if there is the possibility—apparently the Senator dismisses that—but if there is the possibility—is it not wise at least to inquire from the candidate whether or not he is a member of the Klan? I do not recognize that there would be any objection to his membership in this body by reason of the fact that he is a Klansman. I think the State of Alabama had a right to send him here if he were a Klansman. But if there is any doubt on the part of the Senate as to whether or not he is a Klansman in connection with this particular appointment, it seems to me it is the duty of the committee to ascertain the fact.

Mr. BORAH. Mr. President, I cannot make up my mind adversely against a person whom I know and have known for years without some facts, and I have not heard any facts. Those who purport to have the facts have not revealed them to any one. The committee has had no facts before it. No one proposed to give it any facts. The committee has received no communications, no letters, no telegrams purporting to give it any facts. There is only one question here, as I see it, and that is a question of eligibility. That we can determine here, and here is really the only place we can properly and finally determine it.

The VICE PRESIDENT. The question is on the motion of the Senator from New Hampshire [Mr. BRIDGES] to recommit the nomination to the Committee on the Judiciary.

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

The yeas and nays were ordered.

Mr. BURKE. Mr. President, with reference to the matter just raised by the Senator from Idaho, of course no facts were presented either to the subcommittee or to the full committee, because neither the subcommittee nor the full committee saw fit to ask for the presentation of any facts. I did not know of my own knowledge anything about the circumstances of our colleague's membership in the Klan; but I do know that there are two gentlemen in the city of Washington, with one of whom I talked, and that one told me that he and the other gentleman in this city were both members of the Klan in Birmingham, Ala., and both were present in person on the occasion of the initiation of Mr. HUGO BLACK into the order; and both gentlemen could be subpenaed to come before the committee if the committee desires to go into that question.

Mr. BORAH. Mr. President, may I ask the Senator when he ascertained the fact?

Mr. BURKE. Last Saturday. Even on Monday, at the committee hearing, I urged that the committee invite Senator BLACK to come before the committee in order that we might sit around the table and get his own statement on the matter. If he himself were to state that he was not and had never been a member of the Klan, that would be sufficient for me, regardless of what anyone else said.

Mr. BORAH. The Senator will concede that he did not state to the committee that he had any evidence whatever of this fact.

Mr. BURKE. There was no discussion of the Klan matter in the committee. I stated that there were facts that I thought made it imperative that we ask Senator BLACK to come before the committee, and the committee did not see fit to do so. I did not state anything with reference to that.

Mr. TYDINGS. Mr. President, the matters that have just been referred to here on the floor may or may not be so. It may be that these reports are not authentic, and I frankly doubt very much that Senator BLACK has been or is a member of the Klan.

The point I am making is that so long as there are people who make statements which have been repeated by the Senator from Nebraska to the effect that Mr. BLACK has been a member of the Klan or is a member of the Klan, I am not in a position to exercise my conscience on this matter.

Obviously, if Mr. BLACK had been a member of the Klan I should very seriously question his eligibility, even at this late date, to sit on the Court and render the kind of justice that one ought to expect at the hands of the Supreme Court of the United States. It is unfair to Senator BLACK to have him go on the Bench with the veil of suspicion thrown over him in this regard; and if for no other reason he ought to clear himself of such an imputation before he is put on the Supreme Court.

I do not want to vote on the final question of confirmation, as the matter now stands, either for or against Senator BLACK, because I do not consider that I can cast an intelligent vote on that question without this matter being pursued and investigated and the facts laid before the Senate.

As stated before, I shall vote for the motion to recommit, believing that before the vote is cast the Senate ought to have all possible information on matters bearing upon a man's fitness to sit on the highest tribunal in this land. If we do not have that kind of information, who knows but that after Senator BLACK is confirmed, and takes his place on the Bench, these affidavits or statements may be printed in the press, and we may never have a chance to find out about their falsity or their truth after the nomination is confirmed?

For that reason I think it is our duty to send this nomination back to the committee, so that the Senate may have all the information. I think Senator BLACK above everybody else would want the Senate to know the truth. What harm can there be if Senator BLACK is not properly subject to these imputations for the world and the Senate to know it? What injury could come if these imputations were correct and we should find it out after we had voted to confirm him?

Mr. ASHURST. Mr. President, whoever believes that this is not a comic world does not know the world in which he lives. Many, but not all, of these persons who now suspect that the nominee, Senator BLACK, was a member of the Klan were once complaining that Mr. Justice Butler was a communicant of the Roman Catholic Church, and some of these, but not all, who are now complaining that Senator

BLACK forsooth might have had some dealings with the Klan, complained overmuch against Mr. Justice Cardozo because he was a Jew.

Mr. TYDINGS. Mr. President, the Senator, of course, does not apply that to me?

Mr. ASHURST. Certainly not. I do not refer to any Member of the Senate. I refer to some of those outside of the Senate who complained against Mr. Justice Butler and Mr. Justice Cardozo, respectively.

Membership in the Senate of the United States probably affords a larger opportunity for public service than does any other forum in America. The Senate is an interesting body and not the least attractive of its features is its unfailing human nature. Here in the Senate we find, as is to be expected, virtues, faults, and failures mingling in the lives of all of us.

Many if not most of the Chief Executives have had sharp disagreements with the Senate. President Washington had his troubles with the Senate, and, whilst he was famous for controlling his emotions, he left the Senate after attending only one session, heatedly declaring that he would never participate in another session of the Senate; and he never did.

Presidents Jefferson, Jackson, and Tyler clashed with the Senate; and, if Booth's bullet had missed its fire, Lincoln would have shared the fate of President Johnson, who was narrowly spared from a foul impeachment conviction, as a change of one vote in the Senate would have convicted him. The quarrel between President Garfield and the Senate led to far-reaching consequences. Presidents Cleveland and Theodore Roosevelt had violent disagreements with the Senate. The disagreements between President Wilson and the Senate and President Hoover and the Senate are well remembered. Not in every instance that I have mentioned was the Senate wrong and not in every instance was the Chief Executive right. Never did human nature exhibit itself in the Senate more radiantly or more true to form than it is doing now in its present disagreement with the Chief Executive regarding the nomination of the Senator of Alabama [Mr. BLACK] to be Associate Justice of the Supreme Court of the United States.

No scenario writer this year will produce a more delightful film or one more opulent with gentle irony than the scene we have here. For example:

All during last June and July the Senate testily and sourly demanded that the Chief Executive make haste and send to us the name of his nominee for Associate Justice of the Supreme Court before the Senate adjourned, and now that the Chief Executive has taken us at our word and sent in a nominee, running true to that glamourous human nature which makes kinsmen of us all we now testily and sourly complain as to the choice he has made. Truly we are hard to please; if the President pipes we will not dance; if he weeps we mock his grief. The President, in sending this nomination to the Senate, has done nothing more than discharge a duty laid upon him by the Constitution, a duty which we have been urging him to make haste to perform. Some persons outside the Senate—I am not referring to any Member of the body—complain about the nominee, but they would complain at any nomination President Roosevelt might submit. They are grumbletonians and their lamentations are as professional as are the mournings of a mortician.

Although from President Washington down to this date, Presidents have clashed with the Senate, it is to the glory of our race that no President ever remembered for long his quarrel with the Senate. When President Garfield lay dying he said, referring to his quarrel with the Senate, "I am sorry for Conkling. I will give him anything he wants or any appointment he may desire." This very refusal by the Senate and by Presidents to practice revenge and reprisals has softened the asperities of politics and promoted the country's good.

The wise person, not to say the good, will always employ that superabundant energy, so necessary for success, in some nobler enterprise than the seeking of reprisals. There is not an authentic instance where any noble character who achieved a stupendous destiny that blessed the human race ever allowed his deep enthusiasms to be dissipated in seeking to "get even." Those persons who refuse to practice revenge enjoy one of the most sublime ecstasies of life. Those great characters, whether of the days of classical antiquity or of the modern world, of whatsoever race or nation, who journeyed outside of the small domain of the five senses always refused to allow their vitality to flow into a channel so useless as that of revenge.

Senators have spoken of toleration. The only sort of toleration in this world that is worth anything is that toleration which will tolerate another man's intolerance.

Mr. President, history has a strange way of repeating herself. She is a great plagiarist. History is constantly plagiarizing from herself. Let me read now what was said when a certain nomination was sent to the Senate about 20 years ago of a distinguished man to be Associate Justice of the Supreme Court of the United States.

Wall Street was stunned. The New York Press, an able newspaper of that day, regarded the appointment as an insult to the members of the Court. They said the nominee was "a man of furious partisanship, of violent antagonisms, and of irredeemable prejudices", which utterly disqualified him from acting in a judicial capacity "where nothing but calm, cold reason should dominate the mind."

If the President did not withdraw the nomination the Senate should throw it out. The New York Tribune, a great journal—I daily peruse it, and have done so for 30 years—said:

> It would be a misfortune if he—
>
> The nominee—
>
> carried to the Supreme Bench the narrow, mistaken attitude toward the vital industry of transportation which he took when he was serving as adviser to a certain committee.

The New York Sun satirically suggested that the President was trying to test the vigilance of the Senate; that the appointment was entirely unfit.

The Boston Herald asserted that few of the nominee's friends would claim him to be judicially minded.

> It is as a controversialist rather than as a dispassionate weigher of facts and arguments that he has achieved distinction. This is not the type of mind which has proved most serviceable in the deliberations of the Supreme Court.

The Boston Transcript said it regretted that the exigencies of the approaching Presidential campaign should have caused the President "to attempt to force upon the Supreme Court one whom the Senate is reported to have been unwilling to confirm as a member of the Cabinet." The Detroit Free Press called the nominee least fit for the cold, dispassionate work of the Court. It was a political debt to be paid. And so on ad nauseam ad infinitum.

And then respecting this particular nominee, a petition was sent to the Senate signed by six men whom I regarded as being among the most distinguished in the land. The petition read as follows:

> The undersigned feel it their painful duty to say to you that, in their opinion, taking into view the reputation, character, and professional career of—
>
> The nominee, naming him—
>
> he is not a fit person to be a member of the Supreme Court of the United States.

That petition was not signed by demagogues on the hustings, seeking by popular appeal to secure votes. It was signed by William Howard Taft, Simeon E. Baldwin, Francis Rawle, Joseph H. Choate, Elihu Root, and Moorfield Storey, and a separate letter was signed by Peter W. Meldrum. The significance of the letter or petition lies not alone in the

fact that it was signed by able men and trusted public servants, but that they were each and all presidents emeritus of the American Bar Association.

I do not use that as an epithet. I respect the American Bar Association. Next to my membership in the Senate, I would value membership in the American Bar Association, because they have courage. They have the courage of their retainers. [Laughter.]

Mr. President, I have read to the Senate these charges made against that nominee. You would think it was Senator BLACK of whom they were talking. They were talking of Louis D. Brandeis.

Mr. President, to attempt now to declare what will be the fame and the position in history of Louis D. Brandeis would be to trench upon the prerogative of posterity. Suffice it to say that Mr. Justice Brandeis is today regarded throughout the civilized world as one of the most distinguished jurists alive, if, indeed, he is not the most distinguished.

Mr. President, apparently those persons using the epithets that have been employed against the Senator from Alabama have cribbed and plagarized from the epithets used against Louis D. Brandeis.

When the muse of history shall fold this century away into the millenium into which this century belongs—I now trespass far enough upon the privilege of posterity to say that Brandeis will be regarded as a luminous mind, a great human being; and, venturing still further to trespass, I will say that within a few years Senators who now oppose the pending nomination will, out of the frankness that characterizes them, declare that Mr. Justice BLACK is a great Associate Justice.

Therefore, Mr. President, I support the view taken by the able Senator from Idaho [Mr. BORAH] with respect to this particular motion. I do not know exactly what view the Senator from Idaho will take as to the question of eligibility. As a lawyer, I sit here at his feet, even as Saul sat at the feet of Gamaliel [laughter]; but I declare that after an investigation lasting some days I am content with the view that Senator BLACK is eligible.

I thank the Senate for its attention.

Mr. SCHWELLENBACH. Mr. President, I had not intended to present any discussion concerning this nomination; and were it not for the fact that earlier in the day three of the Members of the body—the Senator from Nebraska [Mr. BURKE], the Senator from New Hampshire [Mr. BRIDGES], and the Senator from Maine [Mr. WHITE]—indicated on the floor of the Senate that they desired a statement with reference to one particular transaction, I should not now take up the time of the Senate.

However, earlier in the day the junior Senator from Nebraska [Mr. BURKE], in discussing this nomination, indicated his belief that the transactions which went on in reference to the subpenaing of telegrams by the committee of this body known as the Committee of the Investigation of Lobbying Activities, constituted activities upon the part of Senator BLACK which indicated that he did not possess the judicial temperament necessary for the performance of the duties of a member of the Supreme Court. I desire very briefly to discuss the matter to which he referred.

The Senator from Nebraska presented his argument upon the basis of two things: One, a statement which he said had been made to him by an unnamed informant; the other, the reading of an opinion by the United States Court of Appeals for the District of Columbia.

For one who through the past few months has been so determined in his efforts to insist upon punctiliousness in the matter of following legal precedents and legal procedure, and acting as a Paul Revere for the defense of the Constitution, I am suprised that my very good friend from Nebraska should stray so far away as to present, upon this serious occasion, hearsay evidence to the Senate as a basis for a charge against a nominee of the President of the United States for a position on the Supreme Court of the United States. I say it was particularly surprising and disappointing to me because of the fact that the best evidence was so easily available to the Senator from Nebraska.

On the 17th of March of last year the Federal Communications Commission made a report to the Senate of the United States. The report was filed. It was printed as a public document. It has been available to the Members of this body since that time. I do not know whether or not the Senator from Nebraska has read it; but it completely and definitely answers all the charges that were made against the committee, all the rumors that were circulated throughout the country, all the statements that were made in the press of the country, in which it was charged that the committee, under the leadership of Senator BLACK, had unlawfully, and in defiance of precedent, and in defiance of the principles of justice, made use of the Federal Communications Commission in order to extend the power of the Senate.

Mind you, the question which the Senator from Nebraska presents is this: Did Senator BLACK, as chairman of the committee, do something which indicates that he does not have judicial temperament? Did he do something which may disqualify him as a member of the Court? The question which is now before us is not whether or not there should have been a lobby investigation. It is not whether or not we should have investigating committees in the Senate. The question is, did Senator BLACK so conduct himself as to disqualify himself by those activities?

That question is answered by this report, which is a Senate document.

The Communications Commission made this report, in which they set forth, first, what their duties were. They set forth the fact that the preliminary examination by the Senate committee revealed two things: First, the almost wholesale forging of telegrams which were sent to Members of Congress; second, the illegal destruction of telegrams by the telegraph companies. They say that the information they secured originally came as a result of preliminary examinations, not of telegrams, but of witnesses by the Senate committee here in the Senate Office Building.

Feeling that they had a duty to perform under the law, the Communications Commission then go on to say that they independently started to make their investigation. The statement was made—in view of the failure of the Senator from Nebraska [Mr. BURKE] to answer the question of the Senator from Indiana [Mr. MINTON], I think his informant was Mr. Elisha Hanson, the attorney for Mr. Hearst, who started this suit—that Senator BLACK, as chairman of the committee, went to the Federal Communications Commission and attempted to secure the assistance of the Federal Communications Commission. When we denied that, the Senator doubted that we knew what we were talking about. The report definitely shows that it was not Senator BLACK who went to the Communications Commission and asked for assistance, but that the Communications Commission came to the committee and asked whether or not information which had been sifted, after we had properly done so, might be made available to them so that they could perform their duty under the statute, and properly enforce the laws in reference to communications.

So far as these subpenas are concerned, I want to say that there was a very careful and a very thorough search made by the members of the committee prior to the issuance of the subpenas.

The Senator from Nebraska is always talking about precedents. If precedents justify anything, certainly we were justified in what we did, because the precedents which this committee had for the form of their subpenas and the use of their subpenas go back to 1876. Precisely the same form of subpena which Senator BLACK used was used by such men as Senator Smoot, Senator Thomas Walsh, and Senator James Reed. Since 1876 the investigating committees of this body have used precisely the same sort of subpena, precisely the same method we used.

It happened that at the time we were making the investigation, absolutely independent of the Senate committee investigation, absolutely upon its own responsibility, upon its own motion, without any attempt upon our part to influence them, without any request or suggestion upon our

part, the Federal Communications Commission decided to conduct an investigation of its own, and the two investigations proceeded parallel as to time; but the Senate committee did not at any time make use of any power which the Federal Communications Commission had to secure information for the committee or for the Senate.

I wish to read just briefly from the report of the Commission:

Testimony before the Senate Committee to Investigate Lobbying Activities under Senate Resolution 165 and Senate Resolution 184 revealed the wholesale forgery of telegrams addressed to Congress. The revelation engaged the immediate attention of the Commission. The entire telegraph structure rests upon the faith which the recipient of a telegram can have that it was sent by the person whose name appears as the sender. There appeared to be no provision in the Communications Act prohibiting the forgery of telegrams. Forgery of telegrams on a large scale would seem to indicate the need for remedial legislation. Under section 4 (k) of the Communications Act the Commission has the duty of recommending to Congress such additional legislation relating to communications as it may deem necessary.

Testimony before the Senate committee had also shown the destruction of records. The Commission has no jurisdiction over the general destruction of copies of telegrams by the senders and receivers thereof, such as was revealed in the testimony. The evidence did reveal, however, that the copies in the possession of the telegraph companies had been burned in at least one instance. Such destruction is a penal offense.

They said that the telegraph companies were aware of the need for measures to protect the telegram industry, the telegraph users, as indicated by the following rules issued by the Western Union and communicated to the Commission. They then go ahead and set forth the rules. The Commission then said:

The insufficiency of the rule is apparent. It is only fair to point out, however, that in many instances the proper method of dealing with the sending of unauthorized telegrams may be through the liability of the sender, which is beyond the power of the telegraph company.

A report was made to the Commission of an attempt to determine the authenticity of 652 messages originating in Warren, Pa.

* * * * * * *

The Commission had no information with respect to forged telegrams or the destruction of records, except that brought to light as a result of the revelations before the Senate committee. Its duty to pursue the matter seemed clear. On July 23, 1935, the telegraph division sought additional information.

They then outlined the proceedings before the Commission when they made up their minds to make the investigation; and set forth the resolution which the Senator from Maine (Mr. WHITE) read this morning, and which he said made it absolutely clear that it must have been done at the request of Senator BLACK and his committee. This report, which has been available here to Members of this body since the 17th of March last year, clearly states that the Commission itself reported to this body that all the transactions it carried out were carried out on its own volition, for its own purpose, and in order that it might perform its functions under the Communications Act.

Let me conclude by saying two things. There have been two charges made against Senator BLACK with reference to the lobby investigating committee. One was that he made use of the powers of the Communications Commission for the benefit of the committee. That is completely refuted and denied by the report of the Commission. As a member of the committee, I wish to say that I personally know that the report of the Commission is correct when it states that we did not ask them for assistance. They were pursuing their own independent investigation at the same time.

The second contention is that the use of subpenas by which we asked for all the telegrams going to and from certain points, going to and from certain individuals, was improper. Passing upon the question of the fitness of Senator BLACK, I ask Senators to take into consideration the fact that the precedents for those subpenas and the method of using those subpenas existed in this body steadily from 1876 down to the present date.

I know that some Members of the Senate do not believe in such investigations; there are those who think they are improper, there are those who think they are a waste of money. Those questions are not to be decided upon this inquiry. The question is, did Senator BLACK in those transactions do things which the Senator from Nebraska indicated this morning he thought made it impossible for him to serve properly as a member of the Supreme Court?

Mr. JOHNSON of California. Mr. President, because I shall occupy but a few minutes, I do not want to be interrupted.

I think that what has just been said by the Senator from Washington is the best reason that can be advanced for agreeing to the motion made by the Senator from New Hampshire. Why make an explanation of one thing, and respecting the greater thing, with which we are all concerned, have no explanation at all?

I wish to say a word about senatorial courtesy. I am for senatorial courtesy. I believe in courtesy to all my fellows. But beyond these walls I owe a courtesy to the people of the United States, and on an occasion such as this, where there is at issue an important nomination of a man to a position on the Supreme Court, I shall not pay any attention to senatorial courtesy at all; I will think of the courtesy I owe to others beyond these walls. So much, therefore, for senatorial courtesy.

I recall that when I first became a Member of this body, senatorial courtesy enabled a man at once to dispose of a nominee by saying he did not like him, or that he was offensive to him. We have changed the rule with time, and now a nominee cannot be disposed of by a mere suggestion of that sort, but one must show to the Members of this body the offense the nominee has given, and the reasons which will not permit him to be for the nominee, and the Senate itself will judge whether the reasons are good or not.

Senatorial courtesy in relation to the most important appointive office in the gift of the people of the United States? Senatorial courtesy in the consideration of what Senators on the other side, those to whom we owe much, have fought for the last 6 months? Senatorial courtesy when we deal with a subject like that of a nomination to the United States Supreme Court, and what may mean much more than dealing with the United States Supreme Court?

I want to pay my meed of praise to the Senator from Nebraska [Mr. BURKE], the Senator from Texas [Mr. CONNALLY], the Senator from Montana [Mr. WHEELER], the Senator from New York [Mr. COPELAND], the Senator from Indiana [Mr. VAN NUYS], the Senator from Missouri [Mr. CLARK], the Senator from Utah [Mr. KING], the Senator from Rhode Island [Mr. GERRY], and all the other Senators who made the glorious fight of the last 6 months, and to the new Senators who contributed so much to the great victory. They made it, not out of courtesy to anybody on earth, but they made it out of courtesy to the people to whom they owe allegiance and because their consciences dictated that they should deal with that subject as they saw fit. I thank every one of them. I cannot during the remainder of my life express the gratitude that I feel for what they have done for all of us. The American people owe to them a debt of gratitude that never can be repaid; and to those men I say, what a small thing is senatorial courtesy compared with that duty which they recently performed.

In regard to Senator BLACK, it is not pleasant for me to oppose the nomination of any man who is a Member of this body or whom I have met day in and day out for the past 10 years. But I oppose Senator BLACK's nomination, first, upon the ground of his ineligibility, because the Constitution forbids him to take this place, inasmuch as he voted for the particular retirement act; the Constitution therefore forbids him to take the position because of having voted to increase the emoluments of that office.

Secondly, the Constitution forbids him from taking the place because the Congress has created another sort of office by virtue of the retirement act, which leaves a place which is not filled and cannot be filled by appointment.

Easy enough it is to overcome it if Congress so desires. That may be done by the insertion of a sentence as an amendment to the law. On the question of the eligibility,

therefore, I say that Mr. BLACK is not qualified for the position on the Supreme Court.

Next I say that judging him by temperament and judging him by disposition he ought not to be made a Justice of the Supreme Court, and if he ought not to be made a Justice of the Supreme Court by virtue of that fact, then Senators ought not to confirm him, no matter whether he is a senatorial brother of theirs, no matter whether he has been a Member of this body with them for years.

So, Mr. President, at the conclusion of this day I say that Mr. BLACK is ineligible under the Constitution for two reasons. I say that he should not be made a Justice of the Supreme Court because by disposition and temperament he is unfitted to fill a judicial position.

Mr. President, let us hear no more about senatorial courtesy. Vote us down if you will. Vote us down; that is all right. I do not care whether there is one vote or two votes or three votes in this body such as I desire. Vote us down if you desire, but let us not proceed on any false premise whatsoever. Let us proceed and vote not because a man has been a Member of this body but upon his qualifications and merits.

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from New Hampshire [Mr. BRIDGES] to recommit the nomination to the Committee on the Judiciary.

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

The VICE PRESIDENT. The clerk will call the roll.

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

Adams	Clark	Johnson, Calif.	Pope
Andrews	Connally	Johnson, Colo.	Radcliffe
Ashurst	Copeland	King	Reynolds
Austin	Davis	La Follette	Schwartz
Bankhead	Dieterich	Lee	Schwellenbach
Barkley	Donahey	Lewis	Sheppard
Berry	Ellender	Lodge	Shipstead
Bilbo	Frazier	Logan	Smathers
Bone	George	Lonergan	Smith
Borah	Gerry	Lundeen	Steiwer
Bridges	Gillette	McAdoo	Thomas, Okla.
Brown, Mich.	Glass	McGill	Thomas, Utah
Brown, N. H.	Green	McKellar	Townsend
Bulkley	Guffey	Minton	Truman
Bulow	Hale	Moore	Tydings
Burke	Harrison	Murray	Van Nuys
Byrd	Hatch	Neely	Wagner
Byrnes	Herring	Nye	White
Capper	Hitchcock	Overton	
Caraway	Holt	Pepper	
Chavez	Hughes	Pittman	

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

The question is on agreeing to the motion of the Senator from New Hampshire [Mr. BRIDGES] to recommit the nomination to the Committee on the Judiciary. On that question the yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HARRISON (when his name was called). I have a general pair with the senior Senator from Oregon [Mr. McNARY]. I transfer that pair to the Senator from Wyoming [Mr. O'MAHONEY], and will vote. I vote "nay."

Mr. ASHURST (when Mr. HAYDEN'S name was called). My colleague [Mr. HAYDEN] is unavoidably absent. If present, he would vote "nay."

Mr. LA FOLLETTE (when Mr. NORRIS' name was called). The senior Senator from Nebraska [Mr. NORRIS] is unavoidably absent from the Senate. If present, he would note "nay."

Mr. SCHWARTZ (when Mr. O'MAHONEY'S name was called). I am authorized to state that if the senior Senator from Wyoming [Mr. O'MAHONEY] was present he would vote "nay."

The roll call was concluded.

Mr. MINTON. The Senator from Georgia [Mr. RUSSELL] and the Senator from Wisconsin [Mr. DUFFY] are attending the battle monuments dedication ceremonies in France.

Mr. BARKLEY. I wish to announce the unavoidable absence of the senior Senator from North Carolina [Mr. BAILEY]. Not knowing how he would vote on this motion, I make no announcement.

Mr. AUSTIN. I wish to announce that the Senator from Vermont [Mr. GIBSON] has a general pair with the Senator from Wisconsin [Mr. DUFFY], and that the Senator from Michigan [Mr. VANDENBERG] has a general pair with the Senator from Georgia [Mr. RUSSELL].

Mr. LEWIS. I announce the absence of the Senator from Connecticut [Mr. MALONEY] because of illness.

The Senator from Wyoming [Mr. O'MAHONEY], the Senator from Nevada [Mr. McCARRAN] and the Senator from Massachusetts [Mr. WALSH] and the Senator from Montana [Mr. WHEELER] are unavoidably detained.

The result was announced—yeas 15, nays 66, as follows:

YEAS—15

Austin	Copeland	Johnson, Calif.	Townsend
Bridges	Davis	Lodge	Tydings
Burke	Gerry	Lonergan	White
Byrd	Hale	Steiwer	

NAYS—66

Adams	Clark	Johnson, Colo.	Pittman
Andrews	Connally	King	Pope
Ashurst	Dieterich	La Follette	Radcliffe
Bankhead	Donahey	Lee	Reynolds
Barkley	Ellender	Lewis	Schwartz
Berry	Frazier	Logan	Schwellenbach
Bilbo	George	Lundeen	Sheppard
Bone	Gillette	McAdoo	Shipstead
Borah	Glass	McGill	Smathers
Brown, Mich.	Green	McKellar	Smith
Brown, N. H.	Guffey	Minton	Thomas, Okla.
Bulkley	Harrison	Moore	Thomas, Utah
Bulow	Hatch	Murray	Truman
Byrnes	Herring	Neely	Van Nuys
Capper	Hitchcock	Nye	Wagner
Caraway	Holt	Overton	
Chavez	Hughes	Pepper	

NOT VOTING—14

Bailey	Hayden	Norris	Walsh
Black	McCarran	O'Mahoney	Wheeler
Duffy	McNary	Russell	
Gibson	Maloney	Vandenberg	

So Mr. BRIDGES' motion to recommit was rejected.

The VICE PRESIDENT. The question is, Will the Senate advise and consent to this nomination?

Mr. AUSTIN. Let us have the yeas and nays.

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

Mr. REYNOLDS (when Mr. BAILEY'S name was called). I announce that my colleague the senior Senator from North Carolina [Mr. BAILEY] is absent because of illness.

Mr. SCHWARTZ (when Mr. O'MAHONEY'S name was called). I am authorized to state that the senior Senator from Wyoming [Mr. O'MAHONEY], if present, would vote "yea."

Mr. TYDINGS (when his name was called). On this vote I have a pair with the Senator from Nebraska [Mr. NORRIS]. If the Senator from Nebraska [Mr. NORRIS] were present, he would vote "yea." If permitted to vote, I should vote "nay."

The roll call was concluded.

Mr. AUSTIN. I desire to announce that the Senator from Vermont [Mr. GIBSON] has a general pair with the Senator from Wisconsin [Mr. DUFFY].

I also announce that the Senator from Michigan [Mr. VANDENBERG] has a general pair with the Senator from Georgia [Mr. RUSSELL]. If the Senator from Michigan [Mr. VANDENBERG] were present, he would vote "nay." If the Senator from Georgia [Mr. RUSSELL] were present, he would vote "yea."

Mr. HARRISON (after having voted in the affirmative). I have a general pair with the senior Senator from Oregon [Mr. McNARY], which I transfer to the senior Senator from Wyoming [Mr. O'MAHONEY], and let my vote stand.

Mr. ASHURST. My colleague the junior Senator from Arizona [Mr. HAYDEN] is unavoidably absent. If present, he would vote "yea."

Mr. LEWIS. I announce that the Senator from Wisconsin [Mr. DUFFY] and the Senator from Georgia [Mr. RUSSELL] are absent on official duty as members of the committee appointed to attend the dedication of the battle monuments in France.

I further announce that the Senator from Connecticut [Mr. MALONEY] is absent because of illness.

The Senator from Montana [Mr. WHEELER], the Senator from Nevada [Mr. MCCARRAN], the Senator from South Carolina [Mr. SMITH], and the Senator from Massachusetts [Mr. WALSH] are unavoidably detained.

The result was announced—yeas 63, nays 16, as follows:

YEAS—63

Adams	Clark	Johnson, Colo.	Pepper
Andrews	Connally	La Follette	Pittman
Ashurst	Dieterich	Lee	Pope
Bankhead	Donahey	Lewis	Radcliffe
Barkley	Ellender	Logan	Reynolds
Berry	Frazier	Lonergan	Schwartz
Bilbo	George	Lundeen	Schwellenbach
Bone	Gillette	McAdoo	Sheppard
Brown, Mich.	Green	McGill	Shipstead
Brown, N. H.	Guffey	McKellar	Smathers
Bulkley	Harrison	Minton	Thomas, Okla.
Bulow	Hatch	Moore	Thomas, Utah
Byrnes	Herring	Murray	Truman
Capper	Hitchcock	Neely	Van Nuys
Caraway	Holt	Nye	Wagner
Chavez	Hughes	Overton	

NAYS—16

Austin	Byrd	Glass	Lodge
Borah	Copeland	Hale	Steiwer
Bridges	Davis	Johnson, Calif.	Townsend
Burke	Gerry	King	White

NOT VOTING—16

Bailey	Hayden	Norris	Tydings
Black	McCarran	O'Mahoney	Vandenberg
Duffy	McNary	Russell	Walsh
Gibson	Maloney	Smith	Wheeler

So the nomination of Senator HUGO L. BLACK, of Alabama, to be Associate Justice of the Supreme Court of the United States, was confirmed.

Mr. NEELY. Mr. President, for friendly reasons which all will understand, I move that the Senate reconsider the vote by which it has just advised and consented to the confirmation of the nomination of Senator BLACK.

Mr. BARKLEY. Mr. President, I move to lay that motion on the table.

The VICE PRESIDENT. The question is on the motion of the Senator from Kentucky.

The motion to lay on the table was agreed to.

Mr. BARKLEY. Mr. President, I now move that the President be notified of the action of the Senate in advising and consenting to this nomination.

The VICE PRESIDENT. The question is on the motion of the Senator from Kentucky.

The motion was agreed to.

THE JUDICIARY

Mr. BARKLEY. I suggest that the remaining nominations on the Executive Calendar be considered.

The VICE PRESIDENT. The clerk will state in order the remaining nominations on the Executive Calendar.

The legislative clerk read the nomination of George F. Sullivan to be United States district judge for Minnesota.

The VICE PRESIDENT. Without objection, the nomination is confirmed.

The legislative clerk read the nomination of Claude McColloch to be United States district judge for the district of Oregon.

The VICE PRESIDENT. Without objection, the nomination is confirmed.

INTERSTATE COMMERCE COMMISSION

The legislative clerk read the nomination of John L. Rogers, of Tennessee, to be an Interstate Commerce Commissioner for a term expiring December 31, 1943.

The VICE PRESIDENT. Without objection, the nomination is confirmed.

POSTMASTERS

The legislative clerk read the nomination of Charles H. Mease to be postmaster at West Leesport, Pa., which had been reported adversely by the Committee on Post Offices and Post Roads.

The VICE PRESIDENT. The question is, Will the Senate advise and consent to the nomination?

The nomination was rejected.

Mr. BARKLEY. I ask unanimous consent that the remaining nominations of postmasters on the calendar be confirmed en bloc.

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

That concludes the Executive Calendar.

EXECUTIVE MESSAGES REFERRED

The PRESIDING OFFICER (Mr. CLARK in the chair) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

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

LEGISLATIVE SESSION

Mr. BARKLEY. I move that the Senate resume the consideration of legislative business.

The motion was agreed to; and the Senate resumed legislative session.

VIRGINIA DARE CELEBRATION, ROANOKE ISLAND, N. C.

Mr. REYNOLDS. Mr. President, tomorrow—August 18—the eyes of the country will be on my beloved State of North Carolina. Therefore, I am confident that I will be permitted to intrude briefly on the time of the Senate to remind my colleagues again of the reason.

North Carolina is truly a State of firsts. Our people drafted the first Declaration of American Independence. They saw the first victory of the Revolutionary War. They witnessed, at Kitty Hawk, the first flight of an airplane carrying a man. They named the first town for George Washington. They established the first school of forestry, found the first gold nugget in the New World, worked the first silver mine, and built the first revolving gun.

But none of these events can overshadow in importance the fact that in North Carolina was born the first child of English parentage in the New World, on the spot where was first attempted an English settlement in America. It marked the very beginning of Anglo-American civilization. The child was Virginia Dare, perhaps the most famous child of history. She was lost to written history 10 days after her birth, but she provided a romantic theme that has lived for three centuries.

Tomorrow, in a setting of simplicity befitting the occasion, the three hundred and fiftieth anniversary of the birth of Virginia Dare will be celebrated at Roanoke Island. It will probably be the first time in history that any President of the United States has acted for our people in making a pilgrimage to the birthplace of a child who lives in history only as a child. Accompanying the President will be a commission representing Congress. The ceremony promises to be one of the most significant in the whole history of the New World.

For nearly 6 years North Carolina has planned for this great celebration in an area of peculiar charm. Originally scheduled for 1934, it was postponed because of the depression. It now comes in one of the most eventful periods of recent years, at a time when we all need an encouraging glimpse of the glorious yesterdays of history as we plan for the promising future of tomorrows. It will be offered in full measure to all who come to the hallowed area of Roankoe Island for the day commemorating the birth of America's first English child.

In mentioning the Roanoke Island celebration, I should be remiss in my duty to North Carolina if I did not speak for her people in extending to the Congress and to other agencies of our Federal Government deep appreciation for the splendid cooperation in making this event possible. One of the things that the Federal Government can always do to preserve the unity of the several States is to continue to evidence interest in preserving historic shrines. So long as our people cling to the proud heritage that is theirs, we need have no fear for the shattering of our ideals nor for the future of our institutions; and those of you who are fortunate enough to come to North Carolina

and Roanoke Island tomorrow will gain new vision and new hope as you stand at the cradle of Anglo-American history.

The business of the Senate at a time when adjournment is near prevents me from telling more of the history of the lost colony at Roanoke Island. I urge that you read it if you have not already done so. You will find in it the romance of America, and you will understand better the pride we North Carolinians have in our native State.

To leave one more thought: It seems peculiarly appropriate to me that at the very doors of Roanoke Island is located a shrine to the Wright brothers commemorating the flight of the first plane to carry a man. No more fitting place could be found for a memorial to the pioneers in conquering the air.

However, on this occasion I should like to remind the Senate again that for 10 years or more this first plane to fly at Kitty Hawk has rested in the South Kensington Museum in London, England. It should be here, in the country where it created transportation history. I realize, of course, that the Wright plane was sent to London as a climax to a controversy over credit given to the Langley plane at the National Museum. I do not attempt to place any blame for the failure to keep the Wright plane in this country. Nevertheless, the fact remains that the first plane to fly carrying a man, which added lustre to the transportation achievements of the United States, now rests in a London museum.

I hope the time will come when the Congress, through appropriate action, will cause the Wright plane to be returned to the United States. It belongs here; and no better place could be found for it to be permanently housed than in a museum at Kitty Hawk, where it first ascended from historic sands to conquer the air.

It is my hope eventually to see the time when Kitty Hawk will be a real memorial to the Wright brothers as the home of the first plane to fly, and along with it a real appreciation of the American people for the historic soil on which Virginia Dare was born.

INTER-AMERICAN RADIO CONFERENCE

Mr. PITTMAN. Mr. President, at the time of the last call of the calendar there were called two joint resolutions to which the Senator from Tennessee [Mr. McKELLAR] objected. Since that time he has examined the reports and, I am informed, makes no objection at the present time. Therefore I ask unanimous consent that the Senate proceed to the consideration of Senate Joint Resolution 197, relating to the Inter-American Radio Conference.

The PRESIDING OFFICER. Is there objection?

There being no objection, the joint resolution (S. J. Res. 197) authorizing an appropriation for the expenses of participation by the United States in the Inter-American Radio Conference to be held in 1937 at Habana, Cuba, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Resolved, etc., That there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $15,000, or so much thereof as may be necessary, for the expenses of participation by the United States in the Inter-American Radio Conference to be held in 1937 at Habana, Cuba, including personal services in the District of Columbia and elsewhere without reference to the Classification Act of 1923, as amended; stenographic reporting, translating, and other services by contract if deemed necessary, without regard to section 3709 of the Revised Statutes (U. S. C., title 41, sec. 5); rent; traveling expenses; purchase of necessary books, documents, newspapers, and periodicals; stationery; official cards; printing and binding; entertainment; and such other expenses as may be authorized by the Secretary of State, including the reimbursement of other appropriations from which payments may have been made for any of the purposes herein specified.

EIGHTH INTERNATIONAL ROAD CONGRESS

Mr. PITTMAN. Mr. President, the other joint resolution to which I have referred is Calendar No. 1232, Senate Joint Resolution 199, relating to the Eighth International Road Congress. I ask unanimous consent for the present consideration of the joint resolution.

There being no objection, the joint resolution (S. J. Res. 199) to authorize an appropriation for the expenses of participation by the United States in the Eighth International Road Congress in 1938 was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Resolved, etc., That there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $5,000, or so much thereof as may be necessary, for the expenses of participation by the United States in the Eighth International Road Congress, to be held in the Netherlands in 1938, including personal services in the District of Columbia and elsewhere, without reference to the Classification Act of 1923, as amended; stenographic reporting, translating, and other services, by contract if deemed necessary, without regard to section 3709 of the Revised Statutes (U. S. C., title 41, sec. 5); rent; traveling expenses; purchase of necessary books, documents, newspapers, and periodicals; official cards; printing and binding; preparation, installation, transportation, and operation of an appropriate exhibit; entertainment; local transportation; the payment of expenses incident to travel by steamer, rail, or motorbus on the official congress inspection trip; and such other expenses as may be authorized by the Secretary of State, including the reimbursement of other appropriations from which payment may have been made for any of the purposes herein specified.

REGULATION OF AIR TRANSPORTATION

The PRESIDING OFFICER. The question now before the Senate is the motion of the Senator from Nevada [Mr. McCARRAN] that the Senate proceed to the consideration of Senate bill 2, having to do with the regulation of air transportation.

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

Mr. BARKLEY. Mr. President, is this the motion that has been pending for 2 or 3 days?

The PRESIDING OFFICER. It is the motion made by the Senator from Nevada.

Mr. BARKLEY. It is too late to attempt to get a quorum at this time. The motion will be the pending business when the Senate reconvenes tomorrow.

The PRESIDING OFFICER. The Senator is correct.

Mr. McKELLAR. Mr. President, I think we had better have a quorum. I am getting tired of that bill, as the Senate knows.

Mr. PEPPER. Mr. President——

The PRESIDING OFFICER. Does the Senator from Tennessee withhold his suggestion as to the absence of a quorum?

Mr. McKELLAR. Certainly.

TERMS OF DISTRICT COURT AT TALLAHASSEE, FLA.

Mr. PEPPER. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of House bill 3493, providing for the terms of the Federal district court at Tallahassee, Fla., which is my home town.

The PRESIDING OFFICER. Is there objection?

Mr. AUSTIN. Mr. President, I wish to inquire of the Senator from Florida whether he is about to suggest a change in the bill which he and I discussed?

Mr. PEPPER. I am.

The PRESIDING OFFICER. Is there objection?

There being no objection, the Senate proceeded to consider the bill (H. R. 3493), to amend section 76 of the Judicial Code as amended with respect to the terms of the Federal district court, held at Tallahassee, Fla., which had been reported from the Committee on the Judiciary with an amendment, to strike out all after the enacting clause and to insert the following:

That section 76 of the Judicial Code, as amended (U. S. C., 1934 edition, title 28, sec. 149), is amended to read as follows:

"SEC. 76. (a) The State of Florida is divided into two districts, to be known as the northern and southern districts of Florida.

"(b) The southern district shall include the territory embraced on the 1st day of July 1937 in the counties of Baker, Bradford, Brevard, Broward, Charlotte, Citrus, Clay, Collier, Columbia, Dade, De Soto, Duval, Flagler, Glades, Hamilton, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lake, Lee, Madison, Manatee, Marion, Martin, Monroe, Nassau, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, St. Johns, St. Lucie, Sarasota, Seminole, Sumter, Suwannee, Union, and Volusia.

"(c) Terms of the district court for the southern district shall be held at Ocala on the third Monday in January; at Tampa on the second Monday in February; at Key West on the first Mondays in May and November; at Jacksonville on the first Monday in December; at Fernandina on the first Monday in April;

at Miami on the fourth Monday in April; at Orlando on the first Monday in October; and at Fort Pierce on the first Monday in February: *Provided,* That suitable rooms and accommodations for holding court at Fort Pierce are furnished without expense to the United States: *Provided further,* That suitable rooms and accommodations for holding court at Orlando are furnished without expense to the United States until a Federal building containing quarters for the court is erected at such place. No deputy clerk or deputy marshal of the court shall be appointed for Fort Pierce. The district court for the southern district shall be open at all times for the purpose of hearing and deciding causes of admiralty and maritime jurisdiction.

"(d) The northern district shall include the territory embraced on the 1st day of July 1937 in the counties of Alachua, Bay, Calhoun, Dixie, Escambia, Franklin, Gadsden, Gilchrist, Gulf, Holmes, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Okaloosa, Santa Rosa, Taylor, Wakulla, Walton, and Washington.

"(e) Terms of the district court for the northern district shall be held at Tallahassee on the second Monday in February and on the Tuesday next after the first Monday in September; at Pensacola on the first Mondays in May and November; at Marianna on the first Monday in April; at Gainesville on the second Mondays in June and December; and at Panama City on the first Monday in October: *Provided,* That suitable rooms and accommodations for holding court at Panama City are furnished without expense to the United States."

SEC. 2. The act entitled "An act providing for the establishment of a term of the District Court of the United States for the Southern District of Florida at Orlando, Fla.", approved June 15, 1933, as amended; the act entitled "An act providing for the establishment of a term of the District Court of the United States for the Southern District of Florida at Fort Pierce, Fla.", approved August 22, 1935; and the act entitled "An act providing for the establishment of a term of the District Court of the United States for the Northern District of Florida at Panama City, Fla.", approved May 6, 1936, are hereby repealed.

Mr. PEPPER. Mr. President, I move to amend the amendment of the committee by striking out, on page 3, line 3, the words "as amended", and on page 4, line 6, by striking out the words "until a Federal building containing quarters for the court is erected at such place" and to insert in lieu thereof the words "*Provided,* That nothing in this act shall be construed to prevent the provision of quarters for the officers of said court and appropriate court rooms for the holding of the sessions of said court in any new Federal building which may be constructed in Orlando, Fla."

The amendments to the amendment were agreed to.

The amendment as amended was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

The title was amended so as to read: "An act to amend section 76 of the Judicial Code with respect to the terms of the United States district court at Tallahassee, Fla."

PREVENTION OF TAX EVASION—REPORT OF COMMITTEE ON FINANCE

Mr. HARRISON, from the Committee on Finance, to which was referred the bill (H. R. 8234) to provide revenue, equalize taxation, prevent tax evasion and avoidance, and for other purposes, reported it with amendments and submitted a report (No. 1242) thereon.

RECESS

Mr. BARKLEY. I move that the Senate take a recess until 12 o'clock noon tomorrow.

The motion was agreed to; and (at 6 o'clock p. m.) the Senate took a recess until tomorrow, Wednesday, August 18, 1937, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate August 17 (legislative day of Aug. 16), 1937

CIVIL SERVICE COMMISSION

Samuel H. Ordway, Jr., of New York, to be a Civil Service Commissioner, vice Leonard D. White, resigned.

FEDERAL COMMUNICATIONS COMMISSION

T. A. M. Craven, of the District of Columbia, to be a member of the Federal Communications Commission for a term of seven years from July 1, 1937.

Frank R. McNinch, of North Carolina, to be a member of the Federal Communications Commission for the unexpired portion of the term of seven years from July 1, 1935, vice Anning S. Prall, deceased.

SOCIAL SECURITY BOARD

Mary W. Dewson, of New York, to be a member of the Social Security Board for the term expiring August 13, 1943.

Meyer L. Casman, of Pennsylvania, to be regional attorney, region III, Philadelphia, Pa., in the Social Security Board.

APPOINTMENTS, BY TRANSFER, IN THE REGULAR ARMY

TO ADJUTANT GENERAL'S DEPARTMENT

Maj. Thomas Bennett Woodburn, Infantry, with rank from August 1, 1935.

TO QUARTERMASTER CORPS

First Lt. Henry Ray McKenzie, Coast Artillery Corps, with rank from October 5, 1934.

First Lt. Morton Elmer Townes, Infantry, with rank from August 1, 1935.

REAPPOINTMENT IN THE OFFICERS' RESERVE CORPS OF THE ARMY

GENERAL OFFICER

Brig. Gen. Albert Lyman Cox, Reserve, to be brigadier general, Reserve, from November 10, 1937.

PROMOTIONS IN THE NAVY

Commander Lee P. Johnson to be a captain in the Navy from the 30th day of June 1937.

The following-named lieutenant commanders to be commanders in the Navy, to rank from the date stated opposite their names:

James K. Davis, June 3, 1937.
Randall E. Dees, June 3, 1937.
Edward A. Mitchell, June 3, 1937.
George T. Howard, June 3, 1937.
Francis C. Denebrink, June 30, 1937.
Davenport Browne, June 30, 1937.
George E. Maynard, July 1, 1937.

The following-named lieutenants to be lieutenant commanders in the Navy, to rank from the date stated opposite their names:

George D. Lyon, January 1, 1937.
Jesse B. Goode, June 3, 1937.
Vincent W. Grady, June 3, 1937.
John S. Crenshaw, June 30, 1937.
Ralph C. Kephart, June 30, 1937.
Adolph E. Becker, Jr., June 30, 1937.
Robert E. Blick, Jr., June 30, 1937.
George P. Hunter, July 1, 1937.
Harold F. Pullen, July 1, 1937.
Archibald E. Uehlinger, July 1, 1937.
Donald S. Evans, July 1, 1937.
Charles J. Cater, July 1, 1937.

The following-named lieutenants (junior grade) to be lieutenants in the Navy, to rank from the date stated opposite their names:

Abraham L. Baird, June 3, 1937.
Charles E. Trescott, June 3, 1937.
Walter S. Denham, June 3, 1937.
Joseph B. Berkley, June 3, 1937.
Robert C. Brownlee, 2d, June 3, 1937.
Williston L. Dye, June 3, 1937.
Laurence C. Baldauf, June 3, 1937.
Joseph B. Duval, Jr., June 3, 1937.
Howard C. Bernet, June 3, 1937.
George F. Beardsley, June 21, 1937.
John Andrews, Jr., June 30, 1937.
George K. Carmichael, June 30, 1937.
Erle V. Dennett, June 30, 1937.
Charles E. Brunton, June 30, 1937.
Griswold T. Atkins, June 30, 1937.
Richard R. Briner, June 30, 1937.
Leonidas D. Coates, Jr., June 30, 1937.
Volckert P. Douw, June 30, 1937.
Charles B. Brook, June 30, 1937.

Martin C. Burns, June 30, 1937.
John W. Ailes, 3d, June 30, 1937.
Jack S. Dorsey, August 1, 1937.

The following-named ensigns to be lieutenants (junior grade) in the Navy, to rank from the 29th day of May, 1937:

Lewis L. Snider	Matthew DeMaria
Raymond D. Fusselman	Lawrence R. Neville
John D. Bulkeley	Dillon R. McMullen
Nathaniel B. Davis, Jr.	Blish C. Hills

The following-named ensigns to be lieutenants (junior grade) in the Navy, to rank from the 31st day of May 1937:

Jacob T. Bullen, Jr.	Duncan P. Dixon, Jr.
Paul T. Metcalf	Robert M. Brinker
Royal R. Ingersoll, 2d	George S. Bullen
Arthur C. Smith	Robert C. Houston
William F. Cassidy	William C. Hembury
Charles M. Henderson	Thomas C. Edrington, 3d
John R. Bromley	Frederic G. Pegelow
Edgar S. Powell, Jr.	Francis D. Boyle
Robert J. Ovrom	Albert Raborn
Charles R. Stephan	Forrest M. Price
Joseph J. Staley, Jr.	Joe M. Alexander
Richard C. Latham	Robert F. Sellars
Earl K. Solenberger	Thomas R. Hine
Donald G. Irvine	Charles C. Coley
John M. Hyde	Dewey G. Johnston
Wayne R. Merrill	Edwin K. Jones

Surgeon James D. Rives to be a medical inspector in the Navy with the rank of commander, to rank from the 30th day of June 1936.

The following-named lieutenants (junior grade) to be assistant paymasters in the Navy, with the rank of lieutenant (junior grade), to rank from the date stated opposite their names:

Oakleigh W. Robinson, June 5, 1933.
Paul W. Clarke, June 4, 1934.

The following-named citizens of the United States to be assistant paymasters in the Navy with the rank of ensign, to rank from the 16th day of August 1937:

Daniel E. Waite.	James T. Mathews, Jr.
Milton H. Jensen.	Boyd Shafsky
Max Schliewe.	Duncan J. McNab
Lawrence V. Hallberg.	Robert A. Williams
Albert E. Pallon.	Oswald B. Porter, Jr.
Bert S. Beasley.	Phillip D. Chubb
Jerry H. Taylor, Jr.	Ernest S. Tharpe
David D. Long, Jr.	Lathrop B. Clapham, Jr.
Marion D. Sims, Jr.	George L. Bennett
Portus D. Boyce	James J. Bunner
John B. Kackley	Albert B. Howden

Electrician Charlie Deaton to be a chief electrician in the Navy, to rank with but after ensign, from the the 16th day of October 1936.

Radio Electrician August B. Cook to be a chief radio electrician in the Navy, to rank with but after ensign, from the 5th day of March 1937.

The following-named lieutenant commanders to be commanders in the Navy, to rank from the 30th day of June 1937:

Gale A. Poindexter
Leonard P. Wessell

The following-named lieutenants to be lieutenant commanders in the Navy, to rank from the date stated opposite their names:

Charles W. Gray, March 1, 1937.
Wilber G. Jones, July 1, 1937.
Marion E. Murphy, July 1, 1937.

The following-named lieutenants (junior grade) to be lieutenants in the Navy, to rank from the date stated opposite their names:

Paul Foley, Jr., June 3, 1937.
Edward C. Folger, Jr., June 3, 1937.
David T. Ferrier, June 3, 1937.
Harvey D. Akin, June 3, 1937.
Donald T. Eller, June 30, 1937.
Edward J. Burke, June 30, 1937.
Lot Ensey, June 30, 1937.
Peter R. Lackner, June 30, 1937.
William S. Estabrook, Jr., July 1, 1937.
Bernhart A. Fuetsch, July 26, 1937.
Christian L. Engleman, August 1, 1937.

The following-named ensigns to be lieutenants (junior grade) in the Navy, to rank from the date stated opposite their names:

Philip W. Winston, May 29, 1937.
Paul Van Leunen, Jr., May 31, 1937.
Keith E. Taylor, May 31, 1937.
Sidney L. Erwin, May 31, 1937.
Clyde G. Caldwell, May 31, 1937.
Lawrence H. Birthisel, Jr., May 31, 1937.

POSTMASTERS

ALABAMA

Mae F. Seymour to be postmaster at Goshen, Ala. Office became Presidential July 1, 1937.

Martha Dale True to be postmaster at Newbern, Ala. Office became Presidential July 1, 1937.

George B. Butler to be postmaster at New Hope, Ala. Office became Presidential July 1, 1937.

Moses B. Rushton to be postmaster at Ramer, Ala. Office became Presidential July 1, 1937.

ARIZONA

Barbara H. Goodman to be postmaster at Ganado, Ariz. Office became Presidential July 1, 1937.

Lucye L. Horan to be postmaster at Inspiration, Ariz. Office became Presidential July 1, 1937.

James E. Harris to be postmaster at Mayer, Ariz. Office became Presidential July 1, 1937.

Anna M. Hall to be postmaster at San Simon, Ariz. Office became Presidential July 1, 1937.

ARKANSAS

Hal P. Johnson to be postmaster at Hatfield, Ark. Office became Presidential July 1, 1937.

Mary N. Old to be postmaster at Huntington, Ark. Office became Presidential July 1, 1937.

Ella K. Calhoun to be postmaster at Mineral Springs, Ark. Office became Presidential July 1, 1937.

James L. Wilson to be postmaster at Moro, Ark. Office became Presidential July 1, 1937.

Rucker C. Carmical to be postmaster at Rison, Ark., in place of E. R. Maddox, deceased.

Stephan M. Heim to be postmaster at Scranton, Ark. Office became Presidential July 1, 1937.

Robert H. Willis to be postmaster at Watson, Ark. Office became Presidential July 1, 1937.

CALIFORNIA

Emilio C. Ortega to be postmaster at Ventura, Calif., in place of J. E. Rains, deceased.

FLORIDA

Luther L. Callaway to be postmaster at Chiefland, Fla. Office became Presidential July 1, 1937.

Harry F. Aicher to be postmaster at Jupiter, Fla. Office became Presidential July 1, 1937.

Minnie Blanch Payne to be postmaster at Longwood, Fla. Office became Presidential July 1, 1937.

Thomas J. West to be postmaster at Riviera, Fla. Office became Presidential July 1, 1937.

Orrell W. Prevatt to be postmaster at Seville, Fla. Office became Presidential July 1, 1937.

HAWAII

Kaku Sakai to be postmaster at Hawi, Hawaii, in place of Antone Silva. Incumbent's commission expired June 1, 1936.

IDAHO

John H. Clay to be postmaster at Riggins, Idaho. Office became Presidential July 1, 1937.

ILLINOIS

Lesbia G. Moore to be postmaster at Belle Rive, Ill. Office became Presidential July 1, 1936.

KANSAS

Elbert V. Benton to be postmaster at Robinson, Kans., in place of O. E. Edwards, resigned.

KENTUCKY

Charles W. Burnley to be postmaster at Kuttawa, Ky., in place of H. P. Yates, deceased.

LOUISIANA

Charles T. Matlock to be postmaster at Bastrop, La., in place of I. C. Fife, removed.

Howard K. Wells to be postmaster at Colfax, La., in place of V. N. McNeely. Incumbent's commission expired February 6, 1935.

Wesley K. Ferguson to be postmaster at Leesville, La., in place of B. F. Cowley, removed.

Charles Jefferson Calhoun to be postmaster at Montgomery, La., in place of L. L. Thompson. Incumbent's commission expired May 20, 1934.

MARYLAND

Agnes C. Rafferty to be postmaster at Cockeysville, Md., in place of J. F. Rafferty, deceased.

MINNESOTA

Vernon H. Ploen to be postmaster at Carver, Minn., in place of G. K. Dols, removed.

John M. Lambert to be postmaster at Two Harbors, Minn., in place of Dennis Dwan, deceased.

Alf Cornelius Knudson to be postmaster at Detroit Lakes, Minn., in place of C. E. McCarthy, resigned.

MISSISSIPPI

Mary S. Farish to be postmaster at Whitfield, Miss. Office became Presidential July 1, 1937.

William C. Bourland to be postmaster at Fulton, Miss., in place of Q. E. Mattox, removed.

MISSOURI

William T. Scott to be postmaster at Centerville, Mo. Office became Presidential July 1, 1937.

NEW JERSEY

Joseph R. Johnson to be postmaster at Mount Arlington, N. J., in place of A. H. Gordon, deceased.

NORTH CAROLINA

Galusha Pullium to be postmaster at Andrews, N. C., in place of M. T. Whatley, resigned.

Mary P. Williams to be postmaster at Whittier, N. C. Office became Presidential July 1, 1937.

Nelson Ritter Hunsucker to be postmaster at Winterville, N. C., in place of M. T. Speir, resigned.

NORTH DAKOTA

Margaret F. Scouton to be postmaster at Inkster, N. Dak. Office became Presidential July 1, 1937.

Albert James Gilman to be postmaster at Beach, N. Dak., in place of George Christensen, resigned.

OHIO

Ruth M. McLaughlin to be postmaster at North Ridgeville, Ohio, in place of Nellie Maddock, resigned.

OKLAHOMA

Benjamin F. Cooksey to be postmaster at Fairland, Okla., in place of C. G. Walker, removed.

OREGON

Odden L. Dickens to be postmaster at John Day, Oreg., in place of O. L. Dickens. Incumbent's commission expired May 10, 1936.

PENNSYLVANIA

John P. Connolly to be postmaster at Linwood, Pa., in place of E. H. Higgins, removed.

SOUTH CAROLINA

Bertie Lee B. Wilson to be postmaster at Neeses, S. C. Office became Presidential July 1, 1937.

Lee B. Hudson to be postmaster at Ruffin, S. C. Office became Presidential July 1, 1937.

Lottie M. Vernon to be postmaster at Wellford, S. C. Office became Presidential July 1, 1937.

TENNESSEE

Frances P. Hudson to be postmaster at Germantown, Tenn. Office became Presidential July 1, 1937.

Amy G. Sylar to be postmaster at Ooltewah, Tenn. Office became Presidential July 1, 1937.

TEXAS

Thomas L. Satterwhite to be postmaster at Coolidge, Tex., in place of W. T. Grogan, deceased.

George V. Norman to be postmaster at Hempstead, Tex., in place of H. H. Cooke, deceased.

VIRGINIA

Edgar L. Boone to be postmaster at Troutville, Va., in place of H. C. Snyder, removed.

WASHINGTON

Frank Williams to be postmaster at Richmond Beach, Wash., in place of L. R. H. Bratt. Incumbent's commission expired April 14, 1936.

WEST VIRGINIA

Lance Hatfield to be postmaster at Red Jacket, W. Va. Office became Presidential July 1, 1936.

Herbert A. Frazier to be postmaster at Winfield, W. Va. Office became Presidential July 1, 1935.

CONFIRMATIONS

Executive nominations confirmed by the Senate August 17 (legislative day of Aug. 16), 1937

THE SUPREME COURT OF THE UNITED STATES

HUGO L. BLACK to be an Associate Justice of the Supreme Court of the United States.

UNITED STATES DISTRICT COURT JUDGES

George F. Sullivan to be United States district judge for the district of Minnesota.

Claude McColloch to be United States district judge for the district of Oregon.

INTERSTATE COMMERCE COMMISSION

John L. Rogers to be an Interstate Commerce Commissioner.

POSTMASTERS

NEBRASKA

Blanche E. Kammerer, Ashland.

NEW JERSEY

William Joseph Morris, Wyckoff.

WASHINGTON

Lonnie M. Crim, Woodinville.

WEST VIRGINIA

John G. Hammond, Bartley.
Elmer G. Rose, Caretta.
Nona G. Marcum, Ceredo.
Peter J. Groseclose, Hemphill.
Earl Wesley Alley, Jenkinjones.
Earl E. Bennett, New Cumberland.
Edward R. Christian, Quinwood.

REJECTION

Executive nomination rejected by the Senate August 17 (legislative day of Aug. 16), 1937

POSTMASTER

PENNSYLVANIA

Charles H. Mease to be postmaster at West Leesport in the State of Pennsylvania.