

By Mr. SPERRY: Petition of citizens of New Haven, Conn., against conditions in the Kongo Free State—to the Committee on Foreign Affairs.

Also, petition of New Haven Typographical Union, No. 47, for the copyright bill with an amendment—to the Committee on Patents.

Also, petition of the Connecticut Editorial Association, against increase of second-class postal rates—to the Committee on the Post-Office and Post-Roads.

Also, petition of Lumber Dealers' Association of Connecticut, for forest reserves in the White Mountains—to the Committee on Agriculture.

Also, petition of Elm City Division, No. 317, Order of Railway Conductors, for the sixteen-hour bill—to the Committee on Interstate and Foreign Commerce.

By Mr. TAWNEY: Paper to accompany bill for relief of Milton Selby—to the Committee on Invalid Pensions.

SENATE.

TUESDAY, February 12, 1907.

The Chaplain, Rev. EDWARD E. HALE, delivered the following prayer:

Let us now praise famous men, leaders of the people by their counsels, and by their understanding men of learning for the people.

Without such no city shall be inhabited. His memorial shall not depart and his name shall live from generation to generation.

Nations shall declare his wisdom and the congregations shall show forth his praise.

Let us pray. Be pleased to consecrate to-day to us, Father, its memories, its lessons, its sacrifices for man and for Thee. Not in vain that he lived for us, not in vain that he died for us if we can follow in his footsteps, if we can carry out his purpose, if we are willing to live and die for our country—with charity toward all, with malice to none. Show us each and all how we can bear our brothers' burdens. Show us how to forget ourselves and to live for others, how State can help State and nation can help nation, that this may be Thy world, one world of the living God, alive with Thy life and strong with Thy strength.

Father, we turn back to the memory of such a life as this, and not backward only. We look forward for this country, that it may be that happy nation whose God is in the Lord; that the children of this country may know what it is that they have a country to live in, and that for that country they may be willing to live and die. We ask it in Christ Jesus.

Our Father who art in heaven; hallowed by Thy name. Thy kingdom come. Thy will be done on earth as it is done in heaven. Give us this day our daily bread, and forgive us our trespasses as we forgive those who trespass against us. Lead us not into temptation, but deliver us from evil. For Thine is the kingdom, and the power, and the glory forever and ever. Amen.

The Secretary proceeded to read the Journal of yesterday's proceedings, when, on request of Mr. GALLINGER, and by unanimous consent, the further reading was dispensed with.

The VICE-PRESIDENT. The Journal stands approved.

RULES AND REGULATIONS OF DEPARTMENT OF AGRICULTURE.

The VICE-PRESIDENT laid before the Senate a communication from the Secretary of Agriculture, transmitting, in response to a resolution of the 1st instant, a copy of all the rules and regulations governing the Department of Agriculture in its various branches; which, with the accompanying papers, was ordered to lie on the table.

RAILROAD STATISTICS.

The VICE-PRESIDENT laid before the Senate a communication from the Interstate Commerce Commission, transmitting, in response to a resolution of the 8th instant, various original papers, documents, and figures prepared by Messrs. Hanks and Harriman, referred to in the answer of the Interstate Commerce Commission, as shown in Senate Document No. 285, Fifty-ninth Congress, second session.

Mr. CULBERSON. If the communication is not lengthy, I would be glad to have it read.

The communication was read, as follows:

INTERSTATE COMMERCE COMMISSION,
Washington, February 11, 1907.

To the President of the Senate.

SIR: The Interstate Commerce Commission has the honor to submit the following response to the resolution of the Senate adopted February 8, 1907, which directs the Commission:

"To send to the Senate copies of the 'various papers, documents,

and figures' which were prepared by Messrs. Hanks and Harriman, and which are referred to in the answer of the Interstate Commerce Commission to Senate resolution shown in Senate Document No. 285, this session."

The material above referred to is described by the following list of exhibits, which was made out by Mr. Harriman at the time the papers in question were turned over to the Commission:

Exhibit 1. General balance sheet. Standard arranged according to gross earnings per mile.

Exhibit 2. General balance sheet. Treating all railroads as put in one system.

Exhibit 3. Leased roads.

Exhibit 4. Financial classification general balance sheet.

Exhibit 5. Alphabetical list of operating railways. General information.

Exhibit 6. Classification of kind of railroad.

Exhibit 7. Tentative scheme for permanent numbering of railroads.

Exhibit 8. List of operating railroads arranged according to gross earnings per mile.

Exhibit 9. List of narrow-gauge roads.

Exhibit 10. Card index. List of operating roads arranged according to gross earnings from operations per mile for the year 1906.

Exhibit 11. 1905 operating roads arranged alphabetically.

Exhibit 12. Card index. List of time-card information.

Exhibit 13. Card index. List of time-card information.

Exhibit 14. Card index. List of time-card information.

Exhibit 15. Summary of the correspondence relative to switching and terminal companies.

Exhibit 16. Time tables received by result of correspondence.

Exhibit 17. Letter file. Replies of switching and terminal companies.

Exhibit 18. Letter file. Reply to time-card circular.

Exhibits 19 and 20. Alphabetical card index of railroads from various sources.

Exhibit 21. Maps. Location of switching and terminal companies as disclosed by correspondence.

Exhibit 22. Card index. Terminal and switching companies.

In order that the Senate may be promptly furnished with the information called for by the resolution the original papers, documents, and figures turned over to the Commission by Messrs. Hanks and Harriman are herewith transmitted, as it would be impossible with our present clerical force to prepare copies during the present session of Congress.

All of which is respectfully submitted.

MARTIN A. KNAPP, Chairman.

Mr. CULBERSON. I move the communication and exhibits be referred to the Committee on Interstate Commerce.

The motion was agreed to.

REPORT OF NATIONAL ACADEMY OF SCIENCES.

The VICE-PRESIDENT laid before the Senate the annual report of the National Academy of Sciences for the year 1906; which was ordered to be printed.

COMMITTEE SERVICE.

Mr. LONG was, on his own motion, excused from further service upon the Committee on Indian Affairs.

Mr. HALE submitted the following resolution; which was considered by unanimous consent, and agreed to:

Resolved, That Mr. SMITH be appointed to fill the vacancy in the chairmanship of the Committee on the Examination and Disposition of Documents.

Mr. HALE submitted the following resolution; which was considered by unanimous consent, and agreed to:

Resolved, That Mr. HOPKINS be appointed to fill the vacancy in the Committee on Enrolled Bills.

Mr. HALE submitted the following resolution; which was considered by unanimous consent, and agreed to:

Resolved, That Mr. BEVERIDGE be appointed to fill the vacancy in the Committee on the Examination and Disposition of Documents.

Mr. HALE submitted the following resolution; which was considered by unanimous consent, and agreed to:

Resolved, That Mr. CURTIS be appointed to fill the vacancy in the Committee on Indian Affairs.

Mr. HALE submitted the following resolution; which was considered by unanimous consent, and agreed to:

Resolved, That Mr. FULTON be appointed to fill the vacancy in the Committee on Military Affairs.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. W. J. BROWNING, its Chief Clerk, announced that the House had passed the following bills:

S. 3668. An act to authorize the Washington, Spa Spring and Greta Railroad Company, of Prince George County, to extend its street railway into the District of Columbia; and

S. 8065. An act to provide for the transfer to the State of South Carolina of certain school funds for the use of free schools in the parishes of St. Helena and St. Luke, in said State.

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

H. R. 20067. An act to remove dirt, gravel, sand, and other obstructions from the paved sidewalks and alleys in the District of Columbia, and for other purposes;

H. R. 21934. An act to provide for reports and registration of all cases of tuberculosis in the District of Columbia, for free examination of sputum in suspected cases, and for preventing the spread of tuberculosis in said District;

H. R. 23576. An act to provide for the extension of New Hampshire avenue, in the District of Columbia, and for other purposes;

H. R. 24284. An act for the opening of Warren and Forty-sixth streets NW., in the District of Columbia;

H. R. 24875. An act authorizing the extension of Forty-fifth street NW.;

H. R. 24930. An act prohibiting the distribution of circulars and certain other advertising matter on private property within the District of Columbia, and for other purposes;

H. R. 25475. An act to amend an act entitled "An act to regulate the practice of pharmacy and the sale of poisons in the District of Columbia, and for other purposes," approved May 7, 1906; and

H. R. 25482. An act to amend section 878 of the Code of Law for the District of Columbia.

ENROLLED BILLS SIGNED.

The message further announced that the Speaker of the House had signed the following enrolled bills; and they were thereupon signed by the Vice-President:

S. 6833. An act granting an increase of pension to Bettie May Vose;

H. R. 8685. An act for the relief of Charles E. Danner & Co.;

H. R. 24109. An act to authorize the Norfolk and Western Railway Company to construct sundry bridges across the Tug Fork of the Big Sandy River; and

H. R. 25123. An act providing for the construction of a bridge across the Mississippi River.

PETITIONS AND MEMORIALS.

The VICE-PRESIDENT presented a memorial of the Study Class of the Abraham Lincoln Center, of Chicago, Ill., remonstrating against any appropriation being made for the proposed military display at the Jamestown Exposition; which was referred to the Select Committee on Industrial Expositions.

He also presented a memorial of the Commercial Club of Lafayette, Ind., remonstrating against the enactment of legislation curtailing the mail service; which was referred to the Committee on Post-Offices and Post-Roads.

Mr. FRYE presented a memorial of the War Veterans and Sons' Association, remonstrating against the enactment of legislation abolishing the pension agencies throughout the country; which was referred to the Committee on Pensions.

He also presented petitions of sundry citizens of Searsmont, South Durham, Island Falls, and Parkman, all in the State of Maine, praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which were referred to the Committee on the Judiciary.

Mr. HANSBROUGH presented a petition of sundry citizens of Stillwell, N. Dak., and a petition of sundry citizens of North Dakota, praying for the adoption of certain amendments to the present denatured-alcohol bill; which were referred to the Committee on Finance.

He also presented a petition of sundry citizens of Pembina, N. Dak., praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which was referred to the Committee on the Judiciary.

Mr. CULLOM. I present resolutions adopted by a convention of the National Association of Postmasters, held in St. Louis, Mo., October 3, 4, 5, 1906. The resolutions are not very long, and as they set forth the reason for the reclassification and greater compensation of post-office clerks, I ask that they be printed in the RECORD, and referred to the Committee on Post-Offices and Post-Roads.

There being no objection, the resolutions were referred to the Committee on Post-Offices and Post-Roads, and ordered to be printed in the RECORD, as follows:

Resolutions indorsing reclassification and greater compensation for post-office clerks.—Adopted by convention of the National Association of Postmasters, held in St. Louis, Mo., October 3, 4, and 5, 1906.

Whereas the subject of a new classification of post-office clerks and an increase of pay for them having been carefully and fully considered by the convention of first-class postmasters, held in St. Louis, Mo., October 3, 4, 5, 1906, and it being established beyond a question that because of the era of great prosperity and great demand in all walks of life for competent and intelligent men in every branch of service, trade, or traffic, wages for skilled labor having increased materially, the cost of living in all the cities where large post-offices are maintained also greatly increased; and

Whereas the records of the Post-Office Department show no increase in some clerks' salaries for many years past, and now show an astonishing and alarming number of resignations of these Government employees during the past year or two, greatly in excess of any previous years, giving ample proof that in order to obtain good, efficient, and competent clerks in the service that some better inducement must be held out to them in the matter of pay and classification, otherwise the postal service will be still further seriously crippled, to the great damage of the business interests of this country: Now, therefore, be it

Resolved, That it is the sense of this convention that a committee of nine postmasters of the first class be appointed by the president of this

association, who, by and with the consent of the President of the United States and the Postmaster-General, will appear before the Congressional Committee on Post-Offices and Post-Roads, as soon as practicable, and present to said committee our most urgent request that for the good of the service they take immediate necessary action of a reclassification and a material increase in salaries of post-office clerks: Be it

Further resolved, That in order that this committee shall be prepared to properly present the question to the said Congressional Committee on Post-Offices and Post-Roads, it is hereby requested that every first-class postmaster in the United States immediately prepare a statement giving number of separations from the service in their respective post-offices and the reason for same during the past fiscal year, July 1, 1905, to June 30, 1906, and forward same to the chairman of this committee as soon as possible.

I, Addie Vester, secretary of the National Association of Postmasters, do hereby certify that the above and foregoing is a true and correct copy from the records of the above and foregoing resolution, and in witness whereof I have hereunto set my hand as said secretary at the city of St. Louis, Mo., this 5th day of October, 1906.

ADDIE VESTER, Secretary.

Mr. PLATT presented a memorial of the American Musical Copyright League, of New York City, N. Y., remonstrating against the passage of the so-called "Kittredge copyright bill;" which was ordered to lie on the table.

He also presented a petition of the congregation of the First Presbyterian Church of Lyons, N. Y., praying for the enactment of legislation to regulate the employment of child labor; which was ordered to lie on the table.

He also presented a petition of the Clearing House Association of Cleveland, Ohio, praying for the adoption of certain amendments to the present national banking law; which was referred to the Committee on Finance.

He also presented a memorial of the county board of directors of the Ancient Order of Hibernians of Erie County, N. Y., remonstrating against the enactment of legislation to further restrict immigration; which was referred to the Committee on Immigration.

He also presented a petition of the United Master Butchers' Association, of Troy, N. Y., praying for the enactment of legislation requiring meat markets in the District of Columbia to be closed on Sunday; which was referred to the Committee on the District of Columbia.

He also presented a petition of the congregation of the Baptist Church of Fredonia, N. Y., and a petition of sundry citizens of Rush, N. Y., praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which were referred to the Committee on the Judiciary.

He also presented petitions of sundry business firms of Jamestown, Newburgh, and Falconer, all in the State of New York, praying for the adoption of certain amendments to the present denatured-alcohol law; which were referred to the Committee on Finance.

Mr. DEPEW presented petitions of sundry citizens of Ellcottville, Pleasantville, Porter, Hermon, Groton, Burke, Ceres, Rose, Millville, Bridgeport, New York, Port Byron, and Northville, all in the State of New York, praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which were referred to the Committee on the Judiciary.

Mr. McCUMBER presented a petition of sundry citizens of Pembina, N. Dak., praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which was referred to the Committee on the Judiciary.

Mr. HEMENWAY presented a petition of the Spiegel Furniture Company, of Shelbyville, Ind., praying for the adoption of certain amendments to the present denatured-alcohol bill; which was referred to the Committee on Finance.

He also presented the petition of George H. Caldwell, of Indiana, praying for the enactment of legislation for the relief of Joseph V. Cunningham and other officers of the Philippine volunteers; which was referred to the Committee on Claims.

Mr. CRANE presented a petition of the National Board of Trade, of Washington, D. C., praying for the ratification of international reciprocity treaties; which was referred to the Committee on Foreign Relations.

He also presented a petition of the National Board of Trade, of Washington, D. C., praying for the enactment of legislation providing for an elastic national currency; which was referred to the Committee on Finance.

Mr. GAMBLE. I present a joint resolution of the legislature of South Dakota, which I ask may be printed in the RECORD, and referred to the Committee on Interstate Commerce.

The memorial was referred to the Committee on Interstate Commerce, and ordered to be printed in the RECORD, as follows:

STATE OF SOUTH DAKOTA, DEPARTMENT OF STATE,
SECRETARY'S OFFICE.

UNITED STATES OF AMERICA, STATE OF SOUTH DAKOTA.

I, D. D. Wipf, secretary of state of South Dakota, and keeper of the great seal thereof, do hereby certify that the attached instrument of

writing is a true and correct copy of senate joint resolution No. 12, as passed by the tenth legislative assembly of the State of South Dakota, now in session, and of the whole thereof, and has been compared with the original now on file in this office.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State of South Dakota, done at the city of Pierre this 8th day of February, 1907.

[SEAL.]

D. D. WIFF,
Secretary of State.

A JOINT RESOLUTION.

Whereas there was reported in the House of Representatives of the United States (S. 5133) upon January 11, 1907, an act passed by the Senate of the United States entitled "An act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon;" and

Whereas the interests of travelers upon railroads of the United States and of the employees thereon demand the speedy enactment into law of this measure: Therefore, be it

Resolved by the senate and house of representatives of the State of South Dakota, That the Representatives in Congress from the State of South Dakota be requested to use their votes and influence to secure an immediate favorable report upon and the passage of said act (S. 5133) entitled "An act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon." be it

Further resolved, That one copy of this resolution be sent to the Speaker of the House of Representatives of the United States, one copy to the chairman of the Committee on Interstate and Foreign Commerce of said House, and to each Member of Congress from the State of South Dakota.

[Indorsed.]

A joint resolution requesting the Representatives in Congress from the State of South Dakota to use their votes and influence to secure an immediate favorable report upon and passage of an act (S. 5133) entitled "An act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon."

M. J. CHANEY,
Speaker of the House.

Attest:
JAMES W. CONE,
Chief Clerk.

HOWARD G. SHOBER,
President of the Senate.

Attest:
L. M. SIMONS,
Secretary of the Senate.

I hereby certify that the within resolution originated in the senate and was known in the senate files as "S. J. resolution No. 12."

L. M. SIMONS, Secretary.

STATE OF SOUTH DAKOTA, OFFICE OF THE SECRETARY OF STATE, ss:
Filed February 8, 1907, at 3.15 o'clock p. m.

D. D. WIFF,
Secretary of State.

Mr. STONE presented petitions of sundry citizens of Green City and Caruthersville, in the State of Missouri, praying for the enactment of legislation to regulate the employment of child labor; which were ordered to lie on the table.

He also presented a petition of sundry citizens of Caruthersville, Mo., praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which was referred to the Committee on the Judiciary.

He also presented a petition of the Affiliated Business Men's Associations of St. Louis Mo., praying for the enactment of legislation providing increased appropriations for the improvement of the Mississippi River from St. Louis to Cairo; which was referred to the Committee on Commerce.

He also presented petitions of sundry citizens of Joplin and Webb City, in the State of Missouri, remonstrating against the enactment of legislation requiring certain places of business in the District of Columbia to be closed on Sunday; which were referred to the Committee on the District of Columbia.

He also presented a memorial of the Kansas City Section, Council of Jewish Women, of Kansas City, and of Kansas City Lodge, Independent Order of B'nai B'rith, of Kansas City, in the State of Missouri, remonstrating against the adoption of certain amendments to the immigration law; which were referred to the Committee on Immigration.

He also presented a petition of sundry citizens of Caruthersville, Mo., praying for the enactment of legislation to regulate the manufacture and sale of patent and proprietary medicines; which was referred to the Committee on Manufactures.

He also presented a petition of St. Louis Typographical Union, No. 8, of St. Louis, Mo., praying for the enactment of legislation to amend and consolidate the acts respecting copyrights; which was ordered to lie on the table.

Mr. GALLINGER presented a petition of Branch No. 4, National League of Navy-yard Workmen, of Portsmouth, N. H., praying for the passage of the so-called anti-injunction and half-holiday bills; which was referred to the Committee on the Judiciary.

He also presented a petition of the New Century Club, of Philadelphia, Pa., praying that an appropriation be made for a scientific investigation into the industrial condition of woman and child workers in the United States; which was ordered to lie on the table.

He also presented a petition of the National Board of Trade

of Washington, D. C., praying for the enactment of legislation to regulate the issue of receipts for warehoused produce and merchandise; which was referred to the Committee on Finance.

Mr. ALLISON presented memorials of sundry citizens of Sioux Rapids, Taylor County, Montgomery County, Clarke County, Buchanan County, Marshall County, Scott County, Prairie City, Mills County, Lee County, Story City, Sheldon, Osceola County, Pottawattamie County, Comanche, Atalissa, Atlantic, Millersburg, O'Brien County, Clinton County, Adel, Davis County, Storm Lake, and Davis City, all in the State of Iowa, remonstrating against the enactment of legislation requiring certain places of business in the District of Columbia to be closed on Sunday; which were referred to the Committee on the District of Columbia.

He also presented petitions of sundry citizens of Drakeville, Dubuque, Smyrna, Bristow, Danville, Marshalltown, and Louisa County, all in the State of Iowa, praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which were referred to the Committee on the Judiciary.

He also presented a petition of the National Association of Retail Druggists, of Chicago, Ill., praying for a legal construction of the present antitrust laws; which was referred to the Committee on the Judiciary.

He also presented the petition of Rev. J. H. Benedict, of Iowa City, Iowa, praying for the enactment of legislation to prohibit the sale of intoxicating liquors in all Government buildings, grounds, and ships, and also for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which was referred to the Committee on Public Buildings and Grounds.

He also presented a memorial of the Corn Belt Meat Producers' Association, of Des Moines, Iowa, remonstrating against the repeal of the present meat-inspection law; which was ordered to lie on the table.

He also presented a petition of the Negro Republican Club of Polk County, Iowa, praying for an investigation into the dismissal of three companies of the Twenty-fifth Infantry; which was referred to the Committee on Military Affairs.

He also presented a petition of the Iowa State Retail Merchants' Association, of Des Moines, Iowa, praying for the enactment of legislation to repeal the present bankruptcy law; which was referred to the Committee on the Judiciary.

He also presented a petition of the Farmers' Grain Dealers' Association, of Fort Dodge, Iowa, praying for the enactment of legislation providing for a national reciprocal demurrage law penalizing railroads for neglecting to perform their duty as common carriers of freight; which was referred to the Committee on Interstate Commerce.

Mr. NELSON presented a petition of sundry citizens of Watson, Minn., praying for the adoption of certain amendments to the present denatured-alcohol law; which was referred to the Committee on Finance.

He also presented a petition of sundry citizens of Stillwater, Minn., praying for the ratification of international arbitration treaties; which was referred to the Committee on Foreign Relations.

Mr. PILES presented a petition of sundry citizens of Washington, praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which was referred to the Committee on the Judiciary.

Mr. OVERMAN presented sundry papers to accompany the bill (S. 8224) granting an increase of pension to Charles Gunter; which were referred to the Committee on Pensions.

He also presented sundry papers to accompany the bill (S. 8227) granting an increase of pension to John H. Johnson; which were referred to the Committee on Pensions.

Mr. PENROSE presented a memorial of the National Board of Trade of Washington, D. C., remonstrating against the ownership of railways by the United States Government; which was referred to the Committee on Railroads.

He also presented a petition of the National Board of Trade of Washington, D. C., praying for the passage of the so-called "Southern Appalachian and White Mountain Forest Reserve bill;" which was ordered to lie on the table.

He also presented a petition of the National Board of Trade of Washington, D. C., praying for the enactment of legislation to confer upon the administrative branch of the Government additional authority in arranging treaties with foreign nations; which was referred to the Committee on Foreign Relations.

He also presented a petition of the National Board of Trade of Washington, D. C., praying for the enactment of legislation providing for a reduction of letter postage to 1 cent per ounce; which was referred to the Committee on Post-Offices and Post-Roads.

He also presented a petition of the National Board of Trade of Washington, D. C., praying that an appropriation be made for the improvement of the rivers, harbors, and waterways of the country; which was referred to the Committee on Commerce.

Mr. DANIEL presented memorials of sundry business firms of Richmond and Danville and of the Board of Trade of Richmond, all in the State of Virginia, remonstrating against the passage of the so-called "free leaf-tobacco bill;" which were referred to the Committee on Finance.

Mr. HOPKINS presented a petition of the Trades and Labor Assembly of Quincy, Ill., praying for the enactment of legislation to regulate the employment of child labor; which was ordered to lie on the table.

He also presented a memorial of sundry citizens of Galesburg, Ill., remonstrating against the enactment of legislation requiring certain places of business in the District of Columbia to be closed on Sunday; which was referred to the Committee on the District of Columbia.

He also presented a memorial of the Will County Farmers' Institute, of Joliet, Ill., remonstrating against the passage of the so-called "ship-subsidy bill;" which was ordered to lie on the table.

He also presented a petition of the Will County Farmers' Institute, of Joliet, Ill., praying that an appropriation be made for the construction of a deep waterway from the Great Lakes to the Gulf of Mexico; which was referred to the Committee on Commerce.

He also presented a petition of the Woman's Christian Temperance Union of Elgin, Ill., praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which was referred to the Committee on the Judiciary.

Mr. BLACKBURN presented a petition of sundry citizens of Columbus, Ky., praying for the enactment of legislation to regulate the interstate transportation of intoxicating liquors; which was referred to the Committee on the Judiciary.

SAMANA BAY COMPANY.

Mr. McCUMBER. I present a petition of the Samana Bay Company, of Santo Domingo, relative to their claim against the Government of the Dominican Republic. I move that the petition be printed as a document and referred to the Committee on Foreign Relations.

The motion was agreed to.

REPORTS OF COMMITTEES.

Mr. McCUMBER, from the Committee on Pensions, to whom was referred the bill (S. 6277) granting an increase of pension to Marie J. Blaisdell, reported it with amendments, and submitted a report thereon.

Mr. SCOTT, from the Committee on Pensions, to whom was referred the bill (H. R. 17266) granting an increase of pension to Henry W. Alspach, reported it without amendment, and submitted a report thereon.

Mr. ALDRICH. I am directed by the Committee on Finance, to whom was referred the bill (H. R. 13566) to amend sections 6 and 12 of the currency act, approved March 14, 1900, to report it with amendments.

I desire to give notice that I shall try to call up the bill tomorrow morning with a view to its early passage.

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

Mr. PILES, from the Committee on Territories, to whom was referred the bill (H. R. 18891) to aid in the construction of a railroad and telegraph and telephone line in the district of Alaska, reported it with amendments, and submitted a report thereon.

CERTIFICATES OF LICENSES.

Mr. FRYE. I am directed by the Committee on Commerce, to whom was referred the bill (H. R. 21204) to amend section 4446 of the Revised Statutes, relating to licensed masters, mates, engineers, and pilots, to report it favorably without amendment. It is a very short bill, and I ask for its present consideration.

The Secretary read the bill; and there being no objection, the Senate as in Committee of the Whole, proceeded to its consideration. It proposes to amend section 4446 of the Revised Statutes so as to read as follows:

Sec. 4446. Every master, mate, engineer, and pilot who shall receive a license shall, when employed upon any vessel, within forty-eight hours after going on duty, place his certificate of license, which shall be framed under glass, in some conspicuous place in such vessel, where it can be seen by passengers and others at all times: *Provided*, That in case of emergency such officer may be transferred to another vessel of the same owners for a period not exceeding forty-eight hours without the transfer of his license to such other vessel; and for every

neglect to comply with this provision by any such master, mate, engineer, or pilot, he shall be subject to a fine of \$100, or to the revocation of his license.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

LIGHT-SHIP ON LAKE MICHIGAN.

Mr. FRYE. I am directed by the Committee on Commerce, to whom was referred the bill (S. 8252) to construct and place a light-ship at the easterly end of the southeast shoal near North Manitou Island, Lake Michigan, to report it favorably without amendment, and I submit a report thereon.

Mr. BURROWS. I ask unanimous consent for the present consideration of the bill just reported by the chairman of the Committee on Commerce.

The Secretary read the bill; and there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration. It directs the Secretary of Commerce and Labor to have constructed and placed at the easterly end of the southeast shoal near North Manitou Island, Lake Michigan, a light-ship, at a cost not to exceed \$50,000.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

HEARINGS ON RIVER AND HARBOR BILL.

Mr. FRYE. Mr. President, I gave notice on Saturday that the Committee on Commerce would hear Senators on Monday morning, Tuesday morning, and Wednesday morning. There is only one other morning left, and I call the attention of Senators to the fact that hearings will be closed to-morrow. The committee meets every afternoon from 2 o'clock, and will be glad to see any Senators who desire to be heard on amendments they have offered.

CANCELLATION OF INDIAN ALLOTMENTS.

Mr. CLAPP. I am directed by the Committee on Indian Affairs, to whom was recommitted the bill (S. 8365) authorizing the Secretary of the Interior to cancel certain Indian allotments and substitute therefor smaller allotments of irrigable land, and providing for compensatory payments to the irrigation fund on lands so allotted within the Truckee-Carson irrigation project, to report it favorably with amendments, and I submit a report thereon.

Mr. NEULANDS. I ask unanimous consent for the consideration of the bill just reported by the Committee on Indian Affairs.

The Secretary read the bill; and there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration.

The amendments of the Committee on Indian Affairs were, on page 2, line 1, to strike out the words "general allotment act" before the words "the Secretary of the Interior" and to insert "act of Congress approved February 8, 1887, and the acts amendatory thereto;" and in line 2, after the word "authorized," to insert "with the consent of the allottees;" so as to read:

That in carrying out any irrigation project which may be undertaken under the provisions of the act of June 17, 1902 (32 Stat. L., 388), known as the "reclamation act," and which may make possible and provide for, in connection with the reclamation of other lands, the irrigation of all or any part of the irrigable lands heretofore included in allotments made to Indians under the fourth section of the act of Congress approved February 8, 1887, and the acts amendatory thereto, the Secretary of the Interior is hereby authorized, with the consent of the allottees, to cancel all such allotments, including any trust patent which may have issued therefor, and in lieu thereof to reserve for and allot to each Indian having an allotment of such irrigable land and legally entitled to the same 10 acres of irrigable land, which shall be exempt from the payment of any charges by the allottee assessed under the act of June 17, 1902 (32 Stat. L., 389), but such expense shall be borne by the United States: *Provided*, That any of the lands which may have been included in the canceled allotments and which are not needed or reserved for allotment in smaller areas shall be restored to the public domain, to be disposed of subject to the provisions of the above-mentioned reclamation act.

The amendments were agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

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

BILLS INTRODUCED.

Mr. CULLOM introduced a bill (S. 8432) to provide for the classification of the salaries of clerks employed in post-offices of the first and second classes; which was read twice by its title, and referred to the Committee on Post-Offices and Post-Roads.

Mr. FOSTER introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Claims:

A bill (S. 8433) for the relief of the heirs of Daniel Goos, deceased; and

A bill (S. 8434) for the relief of the heirs of Laura Delahoussaye.

Mr. PATTERSON introduced a bill (S. 8435) granting to the city of Durango, in the State of Colorado, certain lands therein described for water reservoirs; which was read twice by its title, and referred to the Committee on Public Lands.

Mr. PATTERSON. I introduce a bill and ask that it lie on the table. I may offer some remarks upon it later in the session.

The bill (S. 8436) to provide for the acquisition, purchase, construction, and condemnation by the United States of America of railroads in the several States and Territories of the United States and the District of Columbia engaged in interstate commerce and in carrying the mails, and to provide for the operation of said roads by the United States, was read twice by its title.

The VICE-PRESIDENT. The bill will lie on the table at the request of the Senator from Colorado.

Mr. PENROSE introduced a bill (S. 8437) granting an increase of pension to J. De Puy Davis; which was read twice by its title, and referred to the Committee on Pensions.

He also introduced a bill (S. 8438) granting an increase of pension to John D. Harris; which was read twice by its title, and referred to the Committee on Pensions.

He also introduced a bill (S. 8439) to correct the military record of John Webster; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Military Affairs.

He also introduced a bill (S. 8440) to authorize the payment of \$2,000 to the widow of the late Tranquilino Luna, in full for his contest expenses in the contested-election case of Manzanares against Luna; which was read twice by its title, and referred to the Committee on Claims.

Mr. DEPEW introduced a bill (S. 8441) granting an increase of pension to Charles C. Gage; which was read twice by its title, and referred to the Committee on Pensions.

Mr. GALLINGER introduced a bill (S. 8442) to amend an act entitled "An act to amend section 1 of an act entitled 'An act relating to the Metropolitan police of the District of Columbia,' approved February 28, 1901," approved June 8, 1906; which was read twice by its title, and referred to the Committee on the District of Columbia.

He also introduced a bill (S. 8443) granting a pension to Fanny M. Grant; which was read twice by its title, and referred to the Committee on Pensions.

Mr. OVERMAN introduced a bill (S. 8444) granting an increase of pension to Zephaniah Sams; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Pensions.

Mr. CRANE introduced a bill (S. 8445) to promote the efficiency of the militia, and for other purposes; which was read twice by its title, and referred to the Committee on Military Affairs.

Mr. GAMBLE introduced a bill (S. 8446) to extend the time for the completion of a bridge across the Missouri River at Yankton, S. Dak., by the Yankton, Norfolk and Southern Railway Company; which was read twice by its title, and referred to the Committee on Commerce.

Mr. PERKINS introduced a bill (S. 8447) for the relief of the estate of Joaquin Gomez, or the estate of Vicente P. Gomez, both late of Monterey County, Cal.; which was read twice by its title, and referred to the Committee on Claims.

Mr. DUBOIS introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Territories:

A bill (S. 8448) ratifying an act of the Arizona legislature providing for the erection of a court-house at St. Johns, in Apache County, Ariz.;

A bill (S. 8449) ratifying chapters 57 and 61 of the session laws of the twenty-third Arizona legislative assembly, providing for the issuance of bonds by Mohave County to erect court-house and jail in said county;

A bill (S. 8450) to enable the city of Phoenix, in Maricopa County, Ariz., to use the proceeds of certain municipal bonds for the purchase of the plant of the Phoenix Water Company and to extend and improve said plant; and

A bill (S. 8451) ratifying and confirming chapter 58 of the twenty-third legislative assembly of the Territory of Arizona, providing for repair of the Territorial bridge at Florence, Pinal County, Ariz.

Mr. DUBOIS introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Indian Affairs:

A bill (S. 8452) to compensate the members of the Eastern Cherokee council and executive committee for expenses incurred and services rendered in administering the affairs of the said Eastern Cherokees;

A bill (S. 8453) to extend the period during which persons heretofore identified as Mississippi Choctaws may remove to the Choctaw-Chickasaw country; and

A bill (S. 8454) to provide for the survey and sale of a certain island in Grand River, Cherokee Nation, heretofore unsurveyed.

Mr. HOPKINS introduced a bill (S. 8455) granting an increase of pension to John A. Garrisine; which was read twice by its title, and referred to the Committee on Pensions.

Mr. PILES (for Mr. WARNER) introduced a bill (S. 8456) granting an increase of pension to Margaret Baber; which was read twice by its title, and referred to the Committee on Pensions.

AMENDMENTS TO APPROPRIATION BILLS.

Mr. SCOTT submitted an amendment intended to be proposed by him to the river and harbor appropriation bill; which was referred to the Committee on Commerce, and ordered to be printed.

Mr. PLATT submitted an amendment relative to certain drafts heretofore issued in payment of refunding internal-revenue taxes illegally collected, etc., intended to be proposed by him to the general deficiency appropriation bill; which was referred to the Committee on Finance, and ordered to be printed.

He also submitted an amendment intended to be proposed by him to the river and harbor appropriation bill; which was referred to the Committee on Commerce, and ordered to be printed.

Mr. DEPEW submitted an amendment intended to be proposed by him to the river and harbor appropriation bill; which was referred to the Committee on Commerce, and ordered to be printed.

Mr. McCUMBER submitted an amendment proposing to appropriate \$177.95 to pay the claim of O. Maury & Co., of Bordeaux, France, for damages and storage of three casks of wine, etc., intended to be proposed by him to the agricultural appropriation bill; which was referred to the Committee on Agriculture and Forestry, and ordered to be printed.

Mr. CULBERSON submitted two amendments intended to be proposed by him to the river and harbor appropriation bill; which were referred to the Committee on Commerce, and ordered to be printed.

Mr. PETTUS submitted an amendment intended to be proposed by him to the river and harbor appropriation bill; which was referred to the Committee on Commerce, and ordered to be printed.

AFFAIRS OF MEXICAN KICKAPOO INDIANS.

Mr. CLAPP submitted the following resolution; which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

Resolved, That Senate resolution No. 220, second session Fifty-ninth Congress, be amended and modified so as to read as follows: "The Committee on Indian Affairs is hereby authorized and directed, by subcommittee or otherwise, to take and have printed testimony for the purpose of ascertaining all the facts with reference to the affairs of the Mexican Kickapoo Indians. Said committee is authorized to send for persons and papers, to administer oaths, to sit during sessions or recess of the Senate, either at Washington or elsewhere, as may be deemed advisable; the expenses of the investigation to be paid from the contingent fund of the Senate."

Mr. KEAN subsequently said: The resolution offered this morning by the Senator from Minnesota [Mr. CLAPP] is a modification of the existing resolution, and as it will save the Government a great deal of money by adopting it, I desire to report it back favorably from the Committee to Audit and Control the Contingent Expenses of the Senate, and I ask for its passage.

The Senate, by unanimous consent, proceeded to consider the resolution.

Mr. CULBERSON. I recall that in the Indian appropriation bill, or during the discussion of that bill, it was proposed that the Department of Justice should make an inquiry into this matter, and, if necessary, institute proper legal proceedings.

Mr. CLAPP. That amendment was stricken out on a point of order.

Mr. CULBERSON. Very well.

Mr. KEAN. It was stricken out on a point of order, one of the reasons being because the Committee on Indian Affairs is at the present time investigating the matter.

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

The resolution was agreed to.

HOUSE BILLS REFERRED.

The following bills were severally read twice by their titles, and referred to the Committee on the District of Columbia:

H. R. 20067. An act to remove dirt, gravel, sand, and other obstructions from the paved sidewalks and alleys in the District of Columbia, and for other purposes;

H. R. 21934. An act to provide for reports and registration of all cases of tuberculosis in the District of Columbia, for the free examination of sputum in suspected cases, and for preventing the spread of tuberculosis in said District;

H. R. 23576. An act to provide for the extension of New Hampshire avenue, in the District of Columbia, and for other purposes;

H. R. 24284. An act for the opening of Warren and Forty-sixth streets NW., in the District of Columbia;

H. R. 24875. An act authorizing the extension of Forty-fifth street NW.;

H. R. 24930. An act prohibiting the distribution of circulars and certain other advertising matter on private property within the District of Columbia, and for other purposes;

H. R. 25475. An act to amend an act entitled "An act to regulate the practice of pharmacy and the sale of poisons in the District of Columbia, and for other purposes," approved May 7, 1906; and

H. R. 25482. An act to amend section 878 of the Code of Law for the District of Columbia.

CERTAIN LAND TITLES IN LOUISIANA.

Mr. FOSTER. I ask unanimous consent for the consideration of the bill (H. R. 15242) to confirm titles to certain lands in the State of Louisiana.

The Secretary read the bill; and there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

ALASKA-YUKON-PACIFIC EXPOSITION.

Mr. PILES. I ask for the consideration of the bill (S. 7382) to encourage the holding of an Alaska-Yukon-Pacific Exposition at the city of Seattle, State of Washington, in the year 1909.

The Secretary read the bill.

The VICE-PRESIDENT. Is there objection to the consideration of the bill which has just been read?

Mr. PATTERSON. Is there a report from a committee?

The VICE-PRESIDENT. A report accompanies the bill.

Mr. PATTERSON. I should like to have the report read.

The VICE-PRESIDENT. Without objection, the Secretary will read the report.

The Secretary proceeded to read the report submitted by Mr. WARNER, from the Select Committee on Industrial Expositions, on the 8th instant.

Mr. PATTERSON. I am told that the report is a very long document. Let the bill go over until to-morrow morning.

The VICE-PRESIDENT. Under objection, the bill will lie over.

APPEALS IN CRIMINAL CASES.

Mr. NELSON. In pursuance of the notice I gave last night, I move that the Senate proceed to the consideration of the bill (H. R. 15434) to regulate appeals in criminal prosecutions.

The motion was agreed to.

MARGARET NEUTZE.

Mr. CULBERSON. Mr. President—

The VICE-PRESIDENT. Does the Senator from Minnesota yield to the Senator from Texas?

Mr. NELSON. I had agreed to yield to the Senator from Texas to call up a bill that will not lead to debate.

Mr. CULBERSON. I ask unanimous consent for the present consideration of the bill (H. R. 20169) for the relief of Margaret Neutze, of Leon Springs, Tex.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill. It directs the Secretary of the Treasury to pay to Margaret Neutze, of Leon Springs, Tex., \$100, in full settlement for damages due her by reason of the killing of two horses by the troops of the United States Army while engaged in target practice near Leon Springs, Tex.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. C. R. McKENNEY, its enrolling clerk, announced that the House had disagreed to the amendments of the Senate to the bill (H. R. 23821) making appropriations for fortifications and other works of defense, for the armament thereof, for the procurement of

heavy ordnance for trial and service, and for other purposes, asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. SMITH of Iowa, Mr. KEIFER, and Mr. FITZGERALD managers at the conference on the part of the House.

The message also announced that the House had disagreed to the amendments of the Senate to the bill (H. R. 25242) to authorize additional aids to navigation in the Light-House Establishment, and for other purposes, asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. MANN, Mr. STEVENS of Minnesota, and Mr. ADAMSON managers at the conference on the part of the House.

The message further returned to the Senate, in compliance with its request, the bill (S. 7495) to define the status of certain patents and pending entries, selections, and filings on lands formerly within the Fort Berthold Indian Reservation, in North Dakota.

AIDS TO NAVIGATION.

Mr. FRYE. I ask the Chair to lay before the Senate the bill just returned from the House to authorize additional aids to navigation.

The VICE-PRESIDENT laid before the Senate the action of the House of Representatives disagreeing to the amendments of the Senate to the bill (H. R. 25242) to authorize additional aids to navigation in the Light-House Establishment, and for other purposes, and asking a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. FRYE. I move that the Senate insist on its amendments and agree to the conference asked by the House, and that the Chair appoint the conferees on the part of the Senate.

The motion was agreed to; and the Vice-President appointed Mr. ELKINS, Mr. PERKINS, and Mr. MALLORY as the conferees on the part of the Senate.

FORTIFICATIONS APPROPRIATION BILL.

The VICE-PRESIDENT laid before the Senate the action of the House of Representatives disagreeing to the amendments of the Senate to the bill (H. R. 23821) making appropriations for fortifications and other works of defense, for the armament thereof, for the procurement of heavy ordnance for trial and service, and for other purposes, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

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

The motion was agreed to; and the Vice-President appointed Mr. PERKINS, Mr. WARREN, and Mr. DANIEL as the conferees on the part of the Senate.

TWIN CITY POWER COMPANY.

Mr. CLAY. Mr. President—

The VICE-PRESIDENT. Does the Senator from Minnesota yield to the Senator from Georgia?

Mr. NELSON. I yield to the Senator from Georgia to call up a local bill if it will not lead to debate.

Mr. CLAY. It can not possibly lead to debate, I will say to the Senator from Minnesota. I ask unanimous consent for the present consideration of the bill (S. 8182) authorizing the Twin City Power Company to build two dams across the Savannah River above the city of Augusta, in the State of Georgia.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill.

Mr. CLAY. I move to amend the bill in section 3, on page 3, line 8, after the word "unless," by inserting "said work is commenced within one year and;" in line 10, before the word "years," to strike out "five" and insert "three;" and in line 11, after the word "within," to strike out the words "the same time" and insert the words "five years."

The VICE-PRESIDENT. The amendment proposed by the Senator from Georgia will be stated.

The SECRETARY. In section 3, page 3, line 8, after the word "unless," it is proposed to insert "said work is commenced within one year and;" in line 10, before the word "years," to strike out "five" and insert "three;" and in line 11, after the word "within," to strike out "the same time" and to insert "five years;" so as to read:

SEC. 3. That this act shall be null and void unless said work is commenced within one year, and one of the said dams herein authorized shall be completed within three years of the passage of this act, and unless the dams shall be completed within five years the rights and privileges hereby granted shall cease and be determined so far as pertains to the incompleting dam.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

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

DISTRICT APPROPRIATION BILL.

Mr. GALLINGER. Mr. President, I ask leave at this time to submit a report.

The VICE-PRESIDENT. Does the Senator from Minnesota yield to the Senator from New Hampshire?

Mr. NELSON. Yes; I yield for a report.

Mr. GALLINGER. I am directed by the Committee on Appropriations, to whom was referred the bill (H. R. 24103) making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1908, and for other purposes, to report it with amendments, and I submit a report thereon. I give notice that at the earliest possible opportunity I shall ask for the consideration of the bill.

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

C. A. BERRY.

Mr. RAYNER obtained the floor.

Mr. ALLISON. Mr. President—

The VICE-PRESIDENT. Does the Senator from Maryland yield to the Senator from Iowa?

Mr. RAYNER. Certainly.

Mr. ALLISON. I ask unanimous consent for the consideration at this time of the bill (H. R. 8365) for the relief of C. A. Berry. It will take but a moment of time.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill. It proposes to pay to C. A. Berry, of Casey, Iowa, \$150, that being the amount paid by C. A. Berry and J. G. Berry for Ruth C. Berry, as shown by cash receipt No. 21616 of the Des Moines (Iowa) land office, the entry under which the payment was made having been canceled, and C. A. Berry being the sole heir and legatee of Ruth C. Berry.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

HARRY M'L. P. HUSE.

Mr. DICK. I ask the Senator from Maryland to yield to me in order that I may secure the consideration of a bill which will not lead to debate.

Mr. RAYNER. I yield to the Senator.

Mr. DICK. I ask unanimous consent for the immediate consideration of the bill (H. R. 22291) to authorize the reappointment of Harry McL. P. Huse as an officer of the line in the Navy.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill. It authorizes the President to appoint, by and with the advice and consent of the Senate, Harry McL. P. Huse, now a professor of mathematics in the United States Navy with the rank of commander, a commander on the active list of the Navy, to take rank next after William L. Rodgers; but he shall establish to the satisfaction of the Secretary of the Navy by examination pursuant to law his physical, mental, moral, and professional fitness to perform the duties of that grade, and shall be carried as an additional to the number of the grade to which he may be appointed under this act, or at any time thereafter promoted; and he shall not by the passage of this act be entitled to back pay of any kind.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

APPEALS IN CRIMINAL PROSECUTIONS.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 15434) to regulate appeals in criminal prosecutions.

Mr. RAYNER. I offer the amendment which I send to the desk.

The VICE-PRESIDENT. The amendment submitted by the Senator from Maryland will be stated.

The SECRETARY. On page 2 of the bill, after the amendment inserted after line 20, it is proposed to insert:

Provided, That if upon appeal or writ of error it shall be found that there was error in the rulings of the court during the trial a verdict in favor of the defendant shall not be set aside.

Mr. RAYNER. Mr. President, this bill is a very important bill; I think one of the most important bills we have had before us at this session. It changes the whole criminal practice in one regard in the Federal courts. I am opposed to the bill, but, fearing that it may pass, I have offered the amendment which has been read. I am very frank to say that I would not vote for the bill with the amendment in it, but without the

amendment I think it is a perilous undertaking. While I shall only take a very short time in discussing it, I think I can convince almost anybody who will kindly give me his attention that this bill ought not to pass in the shape it is in.

Before I state my objections to the substance of the bill let me give you an objection to the form of the bill, which I do with great deference and respect to the Judiciary Committee. If you look at lines 19 and 20, on page 2, you will find the bill provides:

In all these instances the United States shall be entitled to a bill of exceptions as in civil cases.

Mr. President, there is no bill of exceptions in civil cases in any of these instances at all. I submit to the Senator from Minnesota [Mr. NELSON] in charge of this bill that a bill of exceptions was never heard of in any of the instances he has cited. There is no such thing as a bill of exceptions from a motion quashing an indictment; there is no such thing as a bill of exceptions from a demurrer sustaining an indictment; there is no such thing that I know of, either in the Federal or the State practice, as a bill of exceptions to the overruling of a demurrer to a plea, such as this bill has. My own judgment is that if we intend to pass an important bill of this sort we might as well pass it right.

Mr. BACON. Mr. President—

The VICE-PRESIDENT. Does the Senator from Maryland yield to the Senator from Georgia?

Mr. RAYNER. I do.

Mr. BACON. I am not prepared to say that the Senator's criticism in regard to taking an appeal, from a technical standpoint, is not correct; but I desire to correct one statement he makes, and that is that in no jurisdiction is there allowed a bill of exceptions from a decision upon the various matters specified in the bill now under consideration. In the State which I have the honor in part to represent that is the exact writ upon which an alleged error on such questions is taken from the circuit court up to the supreme court for consideration—a bill of exceptions.

Mr. WHYTE. That is by statute.

Mr. RAYNER. I stated that in no State that I knew of was that the case. Of course you may have a statute of a State that gives you a bill of exceptions, but neither at the common law nor in any State where the common law is in vogue is there any such thing as a bill of exceptions in any of the cases mentioned in this bill. It is by appeal or writ of error. Of course you may have a statute giving you a bill of exceptions. If the court overrules the testimony, you must have a bill of exceptions in order to acquaint the appellate tribunal with the facts that occurred in the court below, because the testimony does not go in the record; but when you are quashing an indictment or sustaining a demurrer, it appears in the record, and an appeal carries up the record, so there is no necessity for a bill of exceptions. That, however, is only a minor point, but I think it ought to be changed, and we ought to say that in all these instances the United States should be entitled to a writ of error or an appeal, if you want to perfect the bill.

I am opposed to the substance of the bill, Mr. President, and I will state briefly why I am opposed to it. I am not particular about the form of my amendment. I am perfectly willing to accept any suggestion that may improve it. The amendment reads in this way:

Provided, That if upon appeal or writ of error it shall be found that there was error in the rulings of the court during the trial, a verdict in favor of the defendant shall not be set aside.

I have another proposition here, which I have not offered in the shape of an amendment, but which might perhaps be acceptable to me. It carries out the same idea. It reads in this way:

In all these cases the judgment of the inferior court shall not be reversed nor in any manner affected, but the decision of the Supreme Court shall determine the law to govern in any similar case which may be pending at the time the decision is rendered or which may afterwards arise.

Mr. NELSON. Mr. President—

The VICE-PRESIDENT. Does the Senator from Maryland yield to the Senator from Minnesota?

Mr. RAYNER. I do.

Mr. NELSON. Mr. President, I want to call the attention of the Senator from Maryland to the fact that that suggestion of his would make the case simply a moot case, and the Supreme Court would never consider it.

Mr. RAYNER. Well, if by making a case a moot case you mean where a man is found to be not guilty it enables the court to find him guilty, then I am in favor of making a moot case out of it. I am coming to that in a moment.

There is nothing new about the proposed amendment at all. I have copied it from the legislation of several States. I have

no objection, if there is a motion made to quash an indictment upon the ground of the unconstitutionality of the law or a demurrer is filed, that the Supreme Court shall finally determine whether or not that law is constitutional, so as to have some uniformity of decision in the Federal courts; but I will never consent to the case being tried over again if the defendant has been acquitted upon the ground of the unconstitutionality of the law.

The Senator from Minnesota calls it a moot case, but where a man has made a motion to quash an indictment upon the ground that the law is unconstitutional and goes to trial and the court acquits him and it is sought to provide that the Supreme Court can reverse the lower court and have the case tried over again, it is no moot case, so far as the defendant is concerned.

But let me go on and the Senator will understand my point. I have given some examination to this subject; I have had occasion to do so at other times. I want to state this proposition—and I do it again with great deference to the Judiciary Committee and especially to the Senator from Pennsylvania [Mr. KNOX], who I understand proposes to advocate this bill, because I must say there is no member of the American bar whose legal opinion I respect more than I do his opinion—but I want to say that if there is any one phrase in the law upon which there is an irreconcilable conflict of opinion it is upon the question as to what constitutes jeopardy. There is the trouble. If we knew what "jeopardy" meant there would be no trouble about it, because a man can not be put twice in jeopardy, either at common law, under the Constitution, or, I apprehend, under the statutes or constitutions of any of the States.

But what is "jeopardy?" Listen to this a moment. Here is one of the best authorities we have. He has made a summary of the law on this subject. The Senator from Georgia [Mr. BACON], without sustaining them entirely, in the course of his argument read the citations from Abbott. I say, with great deference to Mr. Abbott, that his definition of "jeopardy" is wrong and that the text writers and the authorities have rejected it long ago. Listen to this definition of "jeopardy" and then, Mr. President, see whether it is not necessary to incorporate into this bill just precisely the provision that I have placed in the amendment in order to prevent a man from being tried twice for the same crime. Here is Mr. Abbott's definition:

A person once placed upon his trial before a competent court and jury, charged with his case upon a valid indictment, is in jeopardy.

I apprehend that no lecturer upon criminal law would venture to tell his class that that is a definition of jeopardy. Let us see how he follows this up:

When a person is placed on trial upon a valid indictment before a competent court and a jury he is put in jeopardy.

All the time he has to be placed on trial before a competent court and a jury.

Mr. SPOONER. And under a valid indictment.

Mr. RAYNER. And under a valid indictment. Mr. Abbott goes on:

Whenever a person has been given in charge, on a legal indictment, to a regular jury, and that jury is unnecessarily discharged, he has once been put in jeopardy.

The last quotation I will give is this, because the definition is wrong if the later authorities, in fact, any binding authorities that I know of, are to be taken as decisive of this question:

Whenever a valid indictment has been returned by a competent grand jury to a court having jurisdiction, the defendant has been arraigned and pleaded, a jury been impaneled and sworn and charged with the case, and all preliminary things of record are ready for the trial, jeopardy has attached.

Mr. President, there is no necessity in the world for having a jury before a man can be put in jeopardy; none whatever. A man can be tried before the court and be put in jeopardy. In my State, for instance, the defendant can select his method of trial. He can be tried before the court, and the State has no choice in the matter. He is in jeopardy. But the authorities have gone way beyond that. A man can be put in jeopardy, as I know the Senator from Wisconsin [Mr. SPOONER] and the Senator from Pennsylvania [Mr. KNOX] will recollect, by being tried before a magistrate. The leading case at common law on this subject was decided by Blackburn and Lush. I have the case here, and I will give it to you in a moment. In that case a prisoner was tried before a magistrate, not on preliminary hearing, but on the merits. He was acquitted, and he was indicted and tried again by the Court of King's Bench. The court unanimously held that he had been put in jeopardy, and that was the end of it. Therefore Abbott's definition is wrong. I only want to show you—and I am anxious to show this to the Senator from Pennsylvania—that there is no accurate definition of "jeopardy."

There is no man can say actually what "jeopardy" means. I understand, Mr. President, that I have not the right to define

the word "jeopardy." I am fully aware of that. It is a constitutional provision, and we would not have any right in an act of Congress to define what "jeopardy" is.

Mr. SPOONER. It is a judicial question.

Mr. RAYNER. It is a judicial question, and I would not have any right to define it or limit it or qualify it in any manner.

I have drawn this amendment in such a manner as not to define what "jeopardy" is. I have merely used this phrase, and I have taken it from other statutes, as I will show. I have said that a defendant shall not be tried again, call it "jeopardy" or not. I put myself on the basis that when a man is once tried and once acquitted, no matter what an appellate tribunal may do—it may settle the question for the future and for all pending cases, but the defendant ought not to be tried again.

Let me show that I am right about the conflict of cases. I have read from Abbott. Let us look at what Mr. Bishop says on this subject—and I only intend to quote a few authorities. He experiences the trouble of trying to define what "jeopardy" is. He says, speaking of "jeopardy":

The subject of this subtitle is in its nature difficult and intricate. It is rendered more so by much conflict in the decisions. So that we are here required to accomplish the not always easy task of following the principles while not departing from the discordant cases.

And then he proceeds to accomplish a task that he fails to accomplish and which is utterly impossible of accomplishment. How is it possible to follow the principles without departing from discordant cases?

When we look at the encyclopedia we encounter the same difficulty. If there was an absolute definition of "jeopardy," if we could all define what "jeopardy" meant, there would be no trouble about this bill; but I want an amendment in it that does not reach the word "jeopardy" at all. I want a plain provision, as they have in some of the States, that when a man is once tried and acquitted, no matter what the judgment of an appellate tribunal may be, that man shall not be tried over again; and even if it is surplusage, it does not hurt to put it in the bill. Let us see what is said in the encyclopedia about this word concerning which the cases are in conflict:

The general rule established by the preponderance of judicial opinion and by the best-considered cases is that when a person has been placed on trial on a valid indictment or information before a court of competent jurisdiction, has been arraigned, and has pleaded, and a jury has been impaneled and sworn he is in jeopardy.

That ought to be the law, but it is not. Then the author goes on to say:

But in some jurisdictions it is held that jeopardy does not attach until a valid verdict either of acquittal or conviction has been rendered.

And then is given an utterly irreconcilable array of conflicting decisions upon the entire subject.

I want to show you how far my own State has gone. I think the court has gone much further than most States on this subject; and while I do not want to pass any criticism on any case in my own State, I can not find a case that sustains this case. I refer my friends to this case—the case of *Hoffman v. The State of Maryland* (20 Md., 475). A man was indicted for murder, and when the case was in progress the State's witnesses—some of the State's witnesses—failed to answer.

This is the case:

The plaintiff in error being indicted for murder jointly with one Robert Miller by the grand jurors of the State of Maryland, for the city of Baltimore, and being arraigned, severed in his defense, and pleaded not guilty. On the 25th of October, 1859, a jury was impaneled and sworn. The State's witnesses being called did not answer; attachments were issued, and the court was adjourned to the 26th of October, 1859. The attachments being returned non est, the following proceedings were entered of record.

I will not read the entire proceeding.

In this case the jury was discharged. When the man came to be tried over again he put in the plea that he had been once in jeopardy. That man was in jeopardy, but the court said not. If that is the law, then the State can abandon the case at any time while it is in progress, because some of the State's witnesses are returned non est. The State might go on with its case, the defendant might be ready, and some of the State's witnesses might either be returned non est or not be present, and the prosecuting attorney, not being able to prove his case, the jury would be discharged and another indictment found. That man is in jeopardy. There are any number of authorities that hold that the defendant is in jeopardy in a case of that kind. That illustrates the conflict.

But the worst trouble we encounter in regard to the meaning of "jeopardy" is in the Federal courts. We have a case in 195 United States, which is about as troublesome a case as you can find, and I want to call particular attention to this case. There was a man tried before a court and acquitted. They wanted to try him over again, and, while it is true that a ma-

majority of the court held that he could not be tried over again in an appellate tribunal, there were three dissenting opinions in that case—the dissenting opinions of Justices Holmes, McKenna, and Brown. In that case is quoted the leading common-law case, the case of *Wemyss v. Hopkins* (Law Reports 10, Queen's Bench, 378), where it was held that a conviction before a tribunal of competent jurisdiction, even without a jury, was a bar to a second prosecution. That case was as follows:

The appellant had been summarily convicted before a magistrate for negligently and by willful misconduct driving a carriage against a horse ridden by the respondent, and was afterwards convicted on the same facts for unlawful assault.

It was held that the first conviction was a bar to the second, and Blackburn and Lush rendered the celebrated opinion with which we are all familiar, because it is one of the leading cases at common law upon the subject of jeopardy, and they held that the defendant could not be tried over again.

In order to show the Senate what a dilemma we are in, just listen for one moment. Let us look at the Federal case in 195 United States. Mr. Justice Holmes announced a dissenting opinion. Here are three judges who dissent and hold that a man can be tried over again. If there had only been one judge absent and one more judge dissented, you would have had a divided court on the question. I am not criticising the opinion of Justice Holmes, but just listen to this opinion for one moment and see if it does not occupy an isolated position upon the proposition before us. Judge Holmes says you can try a man as many times as you want, provided you never leave the case. That is what you are doing in this bill. You are going to hang a man up and suspend him until, through the machinery of the Federal court, you may finally convict him. I am giving you word for word here what Justice Holmes held in this case:

It is more pertinent to observe, and it seems to me that logically and rationally a man can not be said to be more than once in jeopardy in the same cause, however often he may be tried.

You can try him just as often as you want, provided you try him in the same cause, and he is never in jeopardy.

The jeopardy is one continuous jeopardy from its beginning to the end of the cause. * * * There is no rule that a man may not be tried twice in the same case.

I say, respectfully, there is a rule—a rule ever since the beginning of the common law—that a man can not be tried twice in the same case.

Mr. SPOONER. What is the case?

Mr. RAYNER. This is the opinion of Mr. Justice Holmes in the case of *Kepner v. The United States*, the Philippine case (195 U. S.), and Justice Holmes is a man of profound learning.

Mr. KNOX. Is not that a dissenting opinion?

Mr. RAYNER. I say it is a dissenting opinion. Three judges dissented. If another judge had dissented and one judge had been absent, you would have had a divided court on a definition of jeopardy.

Mr. SPOONER. Can the Senator from Maryland conceive of any means by which stability of opinion upon such a question can be absolutely assured for all time in the court?

Mr. RAYNER. I do not know of any way in the world in which you can do it, and for that reason I want a plain provision in this bill that a man once tried shall not be tried again, jeopardy or no jeopardy. Then the court can decide whether he has been in jeopardy. But once tried and once acquitted, no matter on what point tried and acquitted, that ought to be the end of that man's trial. I have not used the word "jeopardy" in the amendment. I want to steer clear of it. I am afraid of it.

Mr. SPOONER. The object of the amendment is to guard a man against an erroneous decision of the Supreme Court of the United States as to the meaning of the word "jeopardy" in the Constitution.

Mr. RAYNER. That is not at all the object of the amendment. He is guarded now against jeopardy. I say when you take him to the Supreme Court, let the Supreme Court rule upon the question, so as to have uniformity of decisions. If it is possible to get from the Supreme Court uniformity of decisions upon any question, let us have it, but let the decision only apply to future cases.

Mr. KNOX. I wish to ask the Senator a question. When you speak of a man being "acquitted," do you mean technically acquitted by the verdict of a jury or dismissed by the court and freed from the burden of trial for any other reason? I want to know the sense in which you use the word "acquitted."

Mr. RAYNER. I mean where there has been a verdict of not guilty, whether by the court or the jury, and judgment on that verdict. That ought to be the end of that case. It has been the end of the case for hundreds of years until this legislation was precipitated here. I am coming to the reasons that brought about this contemplated legislation. I am opposed

to the whole spirit of it, from the beginning to the end. My objection goes a little deeper than any objection I have stated yet.

Mr. President, let me finish the opinion of Justice Holmes:

If a statute should give the right to take exceptions to the Government, I believe it would be impossible to maintain that the prisoner would be protected by the Constitution from being tried again.

Mr. NELSON. Will the Senator allow me a question?

Mr. RAYNER. Certainly.

Mr. NELSON. Is it the contention of the Senator from Maryland that where an indictment has been quashed or a demurrer to an indictment has been sustained, the defendant can not be tried again? Do not all the authorities hold that in all such cases if the indictment is bad the case may be submitted to another grand jury and the defendant may be indicted and tried again on a new indictment? It does not follow that the quashing of an indictment or the sustaining of a demurrer or a motion in arrest of judgment terminates the prosecution. In all those cases if the indictment is bad the court can order the case to be submitted to another grand jury and the defendant can be reindicted and tried.

Mr. RAYNER. The Senator from Minnesota has asked three or four questions, and he has given three or four answers, I suppose satisfactory to himself; I am sorry to say not to me. We must discriminate. Law is a science of discrimination. You can not jumble up motions in arrest of judgment and motions for defects in indictment and the unconstitutionality of a law in one question.

Let us discriminate, and before I finish I will answer every question the Senator asked, and I will show him that while he is right in one proposition he asserts, he is wrong in the others.

I say to him now, if there is a motion in arrest of judgment for a defect of form, the man can be tried again on another indictment. We all know that. The defendant at the proper time makes a motion in arrest of judgment for defect of form. The court grants the motion. It arrests the judgment because of some defect in the indictment. The grand jury can find another indictment against him.

Mr. NELSON. Mr. President—

Mr. RAYNER. In one minute.

Mr. NELSON. I want to call the Senator's attention to a decision of the supreme court of his own State. It is the case of the State of Maryland *v. William Sutton*, where a man was convicted upon an indictment containing two counts, one count charging him with committing the crime of rape and another count charging him with an assault to commit rape. He was convicted. A motion in arrest of judgment was made. The motion was granted. The attorney-general of the State took an appeal to the supreme court of Maryland, and the supreme court held that the motion in arrest of judgment had been improperly granted. Here are the final words of the decision:

The verdict was imperfect, and the matter in issue not so ascertained as that the court could render any judgment thereon, and therefore it was a mistrial. The county court erred in discharging the prisoner. The court should have awarded a venire de novo. Judgment reversed and procedendo awarded. (State of Maryland *v. William Sutton*, 4 Gill's Rept., pp. 494-498.)

There is a case in the Senator's own State where a writ of error was taken to the supreme court of the State upon motion in arrest of judgment.

Mr. RAYNER. I want to say to the Senator from Minnesota that while I am very much obliged to him for giving me a decision in my own State, both my colleague and I are rather familiar with those decisions. Each of us has occupied the office of attorney-general of our State, and I have quoted that case half a dozen times. It shows what I said, that the Senator will not discriminate. Where there is a motion in arrest of judgment and the judgment is arrested, the defendant can be tried again. That is an elementary proposition of law. No one—

Mr. NELSON. What about a motion to quash an indictment?

Mr. RAYNER. Let me answer your questions one by one. We have disposed of the first question. The judgment is arrested on a motion made by the defendant, and one of two things takes place. The defendant can either be tried again under the same indictment, provided the motion in arrest does not go to the indictment, but goes to some other part of the record. If the motion goes to the indictment, there must be a new indictment. There is no use discussing that further. It is an elementary proposition.

Mr. NELSON rose.

Mr. RAYNER. I ask the Senator not to interrupt me on this legal proposition. I am coming to the other class of cases in a moment.

Mr. NELSON. Allow me a question in that connection, and that is this: Has not this man, according to your doctrine, been

in jeopardy? According to the doctrine you advocated a moment ago with respect to jeopardy, has not this man been in jeopardy, when a verdict of the jury was rendered upon the indictment and the motion in arrest of judgment made?

Mr. RAYNER. He has never been in jeopardy for one moment, and the Senator will see it, if he will examine the case.

Mr. NELSON. When is a man in jeopardy?

Mr. RAYNER. Let us get down to the cases. He has never been in jeopardy, upon the principle that he has arrested the jeopardy by his own motion, and the authorities state that while the jeopardy may attach, that the jeopardy can be arrested by the motion of the defendant. This is a rule, however, subject to exception.

Mr. KNOX. Mr. President—

The VICE-PRESIDENT. Does the Senator from Maryland yield to the Senator from Pennsylvania?

Mr. RAYNER. Certainly.

Mr. KNOX. May I ask the Senator from Maryland if the provisions of this proposed act do not apply exclusively to motions made by the defendant? A motion to quash is a motion made by the defendant; a demurrer to the indictment is the action of the defendant, and a motion to arrest judgment after verdict is the act of the defendant. Now, does not the defendant in all these cases arrest his jeopardy?

Mr. RAYNER. He does not, and I shall show the Senator he does not.

Mr. KNOX. I should like, then, for the Senator to distinguish between the question I have put to him and his answer to the question of the Senator from Minnesota.

Mr. RAYNER. I will; because the defendant need not make any motion in these cases, and yet the indictment may be quashed. I will give the Senator a case. The court can quash it without motion. I will come to that in a minute. I know exactly what the Senator thinks upon that subject. It is not an unbending rule, one not without exceptions, that every time the defendant makes the motion it arrests the jeopardy. But it is an answer to the proposition of the Senator from Minnesota, and that is that a motion in arrest of judgment suspends the jeopardy. Let us take a case.

Mr. KNOX. Let me put a question right here. When is a demurrer by the defendant to the indictment an act of the defendant which arrests his jeopardy?

Mr. RAYNER. I doubt very much whether a demurrer by the defendant to the indictment upon the ground of the unconstitutionality of the act will arrest jeopardy. I am coming to that, and I will give you the cases.

Mr. NELSON. Mr. President—

Mr. RAYNER. Will not the Senator let me proceed for about five minutes?

Mr. NELSON. Will the Senator allow me a question?

The VICE-PRESIDENT. Does the Senator from Maryland yield to the Senator from Minnesota?

Mr. RAYNER. I suppose I will have to.

Mr. NELSON. I do not want to take up the time unless it is satisfactory.

Mr. RAYNER. It is not very satisfactory.

Mr. NELSON. Let me put the case to the Senator from Maryland on the motion to quash an indictment. Suppose the motion is granted and the indictment is quashed. Has the defendant been put in such jeopardy that he can not be tried again?

Mr. RAYNER. That illustrates the point I made. The Senator from Minnesota will not discriminate. You can quash an indictment upon a dozen different grounds. What ground does the Senator speak of? You can quash an indictment for defect of form. You can quash it upon the ground that the law has been repealed. You can quash it upon the ground of the unconstitutionality of the law. You can quash the indictment upon the ground that the grand jury has not been properly impaneled.

Mr. NELSON. Mr. President—

Mr. RAYNER. One moment. The Senator from Minnesota mixes and confuses all these grounds and seeks an opinion upon all of them when an opinion that would apply to one would not apply to the others.

Mr. NELSON. Mr. President—

Mr. RAYNER. Let me proceed. I beg the Senator's pardon. The Senator will have his own time. I want to say that I am not before the Senate to allege that a man can be put in jeopardy twice. I want a provision put in this bill that he can not be tried twice. I want to get rid entirely of the word "jeopardy," and then the Supreme Court can decide in each case whether the defendant has been put in jeopardy or not. But when a man has been once tried and acquitted that ought

to be the end of it, jeopardy or not. Let me go back and finish this quotation, because I want to give some authorities on that.

Mr. PATTERSON. Mr. President—

The VICE-PRESIDENT. Does the Senator from Maryland yield to the Senator from Colorado?

Mr. RAYNER. Of course I have to yield, but I would rather not.

Mr. PATTERSON. It is for a question. The question I want the Senator from Maryland to answer is this, having the pending bill as the basis of my question: How in any case can a defendant who has been tried and acquitted make any of the motions that are provided for in this bill? These motions are only made where the ruling is against the Government. A motion to quash must be against the Government. The decision on a demurrer must be against the Government. A motion in arrest of judgment is after there has been a trial and a conviction, and not a trial and an acquittal. If a motion in arrest of judgment is sustained—and that is the only one of the three cases in which there can have been a trial—the motion in mind to be presented to the court—if the defendant has been tried and convicted and then he interposes a motion in arrest of judgment and his motion is sustained, and then a writ of error taken to an appellate tribunal, that is not a case in which the defendant has been tried and acquitted, and he can be put to trial again. It is a case in which he has been tried and convicted, but the court for technical reasons, whatever the reasons may be, sees fit to arrest the judgment that would follow on the verdict of the jury or the finding of the court in that case, and the case goes to the appellate tribunal. If there should be a reversal, I can not understand how a man is put in jeopardy the second time, because he has never been acquitted.

It is always in case of a trial and conviction in the matter of an arrest of judgment, and in the other two cases, a motion to quash or a demurrer, the motions must *ex necessitati* be made before jeopardy attaches.

Mr. RAYNER. Is that your question?

Mr. PATTERSON. It is one of those questions which I could not put without making a speech.

Mr. RAYNER. I know; but I have made that same speech. I agree with you entirely in every word you say. That is what I have been trying to show to the Senator from Minnesota. Let the Senator from Colorado convince the Senator from Minnesota, not me. I agree with him. When a judgment has been arrested—I will say for the third time—the man is not in jeopardy.

Let us get on to another matter. I have said twice that no one can contend that where a judgment is arrested on motion of the defendant he has been in jeopardy.

Mr. PATTERSON. But how can any provision of this bill put him in jeopardy?

Mr. RAYNER. If you will let me come to that, I will gladly do so. In the cases I have cited here I have reached the point where everyone on this floor must admit that there is a great conflict of decisions upon the definition of the word "jeopardy." I have already stated the ground upon which I want this amendment put in the bill. I have gone along and said that where upon motion of the defendant judgment is arrested, he is not in jeopardy. If you will only let me get to the cases where it is doubtful whether he is in jeopardy or not, a class of cases I want to reach, then I will get to the end of this argument. I want to finish what Justice Holmes says in this opinion, which is more important than other collateral matters which do not affect the question here at all. I will read it again, and I ask the attention of the Senate to it:

If a statute should give the right to take exceptions to the Government, I believe it would be impossible to maintain that the prisoner would be protected by the Constitution from being tried again. He no more would be put in jeopardy a second time when retried because of a mistake of law in his favor than he would be when retried for a mistake that did him harm. (*Kepler v. United States*, 195 U. S., 135.)

Mr. President, now let me give a class of cases where the trouble occurs. Suppose, for instance, a defendant is put on trial. He is arraigned, pleads not guilty, employs counsel, the testimony for the prosecution is heard, the testimony for the defense is heard, and at the end of that case the court *mere motu*, not upon the motion of the defendant, announces upon an examination of the authorities that it believes that the act under which the prisoner has been indicted is unconstitutional, and it acquits the prisoner. Should that prisoner be tried again? You can not answer that question, because there are half a dozen cases one way and half a dozen the other, and, with the greatest respect to the eminent members of the profession on this floor, that question can not be answered satisfactorily—whether the man has been in jeopardy. With the great respect I have for the opinion of the Senator from Colorado, he can not

answer it, because if he says the man has been put in jeopardy he will be met with authorities which say he has not been, and if he says he has not been he will be met with authorities that say he has been put in jeopardy.

Another case. These are not moot cases. They have occurred in the different States. It is a familiar practice in my own State for a court to decide a case on points never raised by counsel. My distinguished colleague and I once had a very important case in Maryland, and we thought we understood it. We argued it below, and we won the case. It went to the court of appeals, and we thought we had thoroughly argued it, and after we had finished the court decided the case against us upon a point that never occurred to either counsel on either side of the case, and there the decision stands. Over and over again our courts decide cases upon points that are not raised by counsel.

Let me give two other cases. I am not dogmatic upon this point.

Having studied the question, having annotated the authorities upon the subject of jeopardy, I am in great doubt as to what jeopardy means, and I want a plain provision in this bill, not defining what "jeopardy" means—I can not do that; I am aware of that; I can not give a legislative construction to a constitutional provision—but I want a plain provision put in this bill—not an invention of my own, but copied from the statutes of some of the States and copied from a law that you gentlemen passed here in the Senate—providing that in no case where the defendant had been acquitted shall he be tried again, no matter what the ruling of the appellate tribunal may be.

Let me give you another case. You go on to trial. The man is arraigned. He pleads. He employs counsel. The testimony for the prosecution is taken. The testimony for the defendant is taken. At the close of the case the court says upon an examination of the statutes it has come to the conclusion that that statute has been repealed by subsequent legislation; and we know that sometimes among these hundreds and hundreds of Federal statutes, with their unjust and unmerited punishments, it is almost impossible to tell whether a statute has been repealed by implication by the enactment of subsequent laws. Ought that man to be tried again? He has been ready for his trial. He has called his witnesses. He has employed counsel. He is ready to go before the jury. The court holds that the statute has been repealed. The prosecuting attorney takes the case to the Supreme Court of the United States and it says, "The law has not been repealed." Ought that man to be tried again? I am not prepared to say that that man has been in jeopardy. I am not prepared to say that that man has not been in jeopardy. I am prepared to say that that man ought never to be tried again in any tribunal governed by the common law.

Mr. KNOX. Mr. President—

Mr. RAYNER. One moment. Let me give you one other case.

Mr. KNOX. Will the Senator permit me to put one question? It will not be long.

The VICE-PRESIDENT. Does the Senator from Maryland yield to the Senator from Pennsylvania?

Mr. RAYNER. Certainly.

Mr. KNOX. I think it goes to the meat of your amendment and to the point of this bill. The amendment of the Senator from Maryland, I understand, is that there shall be no retrial after a man has been acquitted. Am I correct in that statement? That is the substance of the amendment—there shall be no trial after the defendant has been acquitted.

Mr. NELSON. Acquitted by the verdict of a jury.

Mr. RAYNER. I have in the amendment no such words as "acquitted by the jury." I have nothing to do with the jury. He may be acquitted by a magistrate if it is on the merits, as it was in the common-law case. There it was a trial before a parliamentary magistrate on the merits. That ought to be the end of that man's trial, and no supreme court on earth ought to have the power to try that man again. I do not care by what tribunal he is acquitted, if it is a tribunal of competent jurisdiction.

Mr. KNOX. Now I will finish my question, with the permission of the Senator from Maryland.

Mr. RAYNER. The Senator from Minnesota interrupted me.

Mr. KNOX. I do not want the Senator to understand necessarily that my questions all indicate antagonism to the views he has set forth here this morning, because there are many things the Senator has said with which I agree entirely. But for the purpose of considering the amendment I should like to have the Senator indicate where under this bill there is any writ of error or appeal given to the United States where the defendant has been acquitted.

Mr. RAYNER. What is the verdict in the case I have given?

What verdict does the court find? Where the court holds that the law is unconstitutional, what is the verdict in the Senator's State?

Mr. KNOX. Courts do not render verdicts with us; juries render verdicts, and the courts pronounce judgments.

Mr. RAYNER. It is not that way in our State. A court may render a verdict and a court may pronounce judgment, because the prisoner has a right to be tried before the court, and you can not deny him that right. The practice is different in the different States. Let us take a jury trial, however, and suppose that proceedings have progressed to the point I have indicated, and then the court holds the law unconstitutional. What is the verdict and what is the judgment in that case? What is done in that case in the Senator's State, if he knows? The Senator does not know and no one knows—

Mr. SPOONER rose.

Mr. RAYNER. What is done in the State of Wisconsin in a case of that sort?

Mr. SPOONER. I did not hear the Senator.

Mr. RAYNER. You heard the case—my illustration?

Mr. SPOONER. No; I did not.

Mr. RAYNER. I beg pardon. A man is arraigned on an indictment. He pleads not guilty. He employs counsel. The testimony for the prosecution is heard. The testimony for the defense is heard, and the defendant is ready to go before the jury. And at the end of the case the court says that upon an examination of the statute it believes the statute to be unconstitutional, and it quashes the indictment upon the ground of the unconstitutionality of the statute upon which it is founded. What is the verdict and the judgment in Wisconsin? I know what it would be in my own State, but not in any other State.

Mr. SPOONER. The court would direct an acquittal by the jury.

Mr. RAYNER. Do you think that man ought to be tried again?

Mr. SPOONER. I will get to that.

Mr. RAYNER. I want you to get to it, and get to it slowly and surely. I say under this proposed statute you could try that man again. That is my point, as I have indicated to the Senator from Minnesota. That man will be tried again under the proposed statute. In other words, you open the doors under this proposed statute. If there was no appeal taken the man could not be tried again.

Let me give another case, a case that comes right home to this bill. Suppose there is a plea of limitations. Suppose a man is indicted. I want to say to Senators I have had little criminal nisi trial practice; I do not want it. I tried two criminal cases, murder cases, when I first came to the bar, for the prisoners, and I felt worse than either of the men did.

Mr. PATTERSON. Mr. President—

Mr. RAYNER. One minute. I say I felt worse than did either of the men, who ought to have been hanged, and I made up my mind that I could not practice criminal law at nisi prius. About a week after that time I was offered the position of State's attorney for Baltimore city, which I accepted for the moment, but in about a week I came to the conclusion that I could not prosecute a man. I felt every time I prosecuted a man that I was prosecuting his wife and children. I have, as attorney-general, had four years' practice in the appellate tribunals, and it became my duty, in connection with the State's attorneys for the different counties and cities, to try these cases.

My colleague has had the largest criminal trial practice in the State of Maryland—perhaps as large a criminal trial practice, as well as any other practice, as any lawyer here. I think he agrees with me upon the views I have taken.

I am speaking now of what is the law, and I want to be distinctly understood, so as to have no mistake about it. I am not defining jeopardy. There are questions that can be asked me as to what is jeopardy or what is not jeopardy that can not be answered. I merely say when a man is tried and when he is acquitted he never ought to be tried again. I do not care what he is acquitted on.

Let me give this plea of limitations case now. Suppose a plea of limitations is not filed in time. In our State we file what is called a ne recipiatur—that the plea be not received. Suppose the Government files a plea of ne recipiatur and the court overrules the plea and the Government takes an appeal. An acquittal is directed upon the plea of limitations. Now, can you try that man over again? One author says you can. Another says you can not. The Encyclopedia says that when a man has been tried upon the plea of limitations you can not try him over again. He has risked his case upon the plea of limitations, has been acquitted, and you can not try him over again. In this bill you permit him to be tried over again, be-

cause you take an appeal to the Supreme Court, and the Supreme Court holds that the plea of limitations was not filed in time, that the man has never been put in jeopardy, and he is tried over again.

In order to show my friend that this amendment is not new, that this is no innovation of my own, I want to put in what was stricken out in the original bill. Why did the Judiciary Committee strike this out? The words that were stricken out of the original bill occur on lines 6, 7, and 8. Read it and it will not be considered that my argument has anything peculiar at all about it or that there is anything novel about the point I am making. Lines 6, 7, and 8 read:

That if on such a writ of error it shall be found that there was error in the rulings of the court during the trial, a verdict in favor of the defendant shall not be set aside.

Why was that taken out of the original bill? Why was it not left in there? I want that put back. It is the best thing that you can do—to put this back into this bill. It was put into the District of Columbia bill. There is therefore nothing startling about it. I am just trying to extricate ourselves from this howling wilderness of confusion upon the subject of what constitutes legal jeopardy. Here is the District of Columbia bill that the Senate passed giving the appeal:

Provided, That if on such appeal it shall be found that there was error in the rulings of the court during the trial, a verdict in favor of the defendant shall not be set aside.

Not only that, but you will find this same provision in the laws of Arkansas, of Nebraska, and of Nevada. I like the Nevada law better than I do any other. In Arkansas it is provided that judgment in favor of the defendant which operates as a bar to future prosecution of the offense shall not be reversed by the supreme court. In Nebraska you find a provision that—

The judgment of the court in the case in which the bill was taken shall not be reversed nor in any manner affected.

This is good law. Why not put this in?

But the decision of the supreme court shall determine the law to govern in any similar case which may be pending at the time the decision is rendered or which may afterwards arise in the State.

Why not put the Nevada law in? In Nevada there is a provision that an appeal taken shall in no case stay or affect the operation of a judgment in favor of the defendant.

Texas has a provision in her constitution that an appeal shall not be taken by the State. I think the Senator from Texas, perhaps, will tell me whether I am quoting the points correctly or not in the constitution of Texas, giving no right of appeal at all in criminal cases to the State. Twenty States have refused to give the right of appeal in criminal cases, and out of the other States that have given them half of them have a provision similar to my amendment. They are not defining "jeopardy," they are simply reiterating a principle which has existed from time immemorial, that when a man is once tried and once acquitted, no matter by what tribunal, if it is a tribunal of competent jurisdiction, he shall not be tried again.

Now, in conclusion, I do not propose to go to work and pass a law for 80,000,000 people to remedy the erroneous judgment, perhaps, of a judge in a single case, and that is all that this law seems intended for. We never heard of it until that decision. I want to say that I believe that decision was right. I have carefully examined it. I think if Judge Humphreys—

Mr. NELSON. Will the Senator allow me to interrupt him?

The VICE-PRESIDENT. Does the Senator from Maryland yield to the Senator from Minnesota?

Mr. RAYNER. Certainly.

Mr. NELSON. I want to call the Senator's attention to the fact that in the very case to which he refers no appeal could have been made under this bill. No appeal on a writ of error could have been taken under this bill for the reason that the issue of fact was submitted to a jury and the jury found in favor of the defendant upon that plea in bar. Under this bill that case could not be appealed to the Supreme Court of the United States.

Mr. RAYNER. That is just what I have said. I said you could not have taken an appeal.

Mr. NELSON. Not in that case, because the defendant had been in jeopardy. He had been tried by a jury on that issue.

Mr. RAYNER. I said you could not have taken an appeal in that case, and that is the reason why this law is proposed. It is to give an appeal in a case of that sort.

Mr. NELSON. This proposed law does not give an appeal in a case of that kind. It gives an appeal from the decision or judgment sustaining a special plea in bar when not put in jeopardy.

Mr. RAYNER. You can raise precisely the same question by a special plea in bar. The Senator from Minnesota knows why this law is being urged and precipitated. As far as I am con-

cerned, I do not suppose anyone has stood out here longer and more strongly than I have against all the combinations of railroad companies or trust companies or any other companies when they are violating the law. I have gone to the extreme point on that question, and I stand here ready to enforce the law with the severest punishment when there is any violation of it.

But I am not prepared to pass such a law to-day for 80,000,000 people, perhaps because a judge has made a mistake in a given case. I think the judge was right, but even if he was wrong I am not in favor of changing the common law. This is a perilous matter that we are engaged in. This is a perpetual matter. We have gone along for over a hundred years without it and now in a moment we are to revolutionize the practice of the appellate tribunals of the United States. We have gone along for centuries under the common law without it and now, because a judge in a given case gave an opinion that did not suit somebody, we are asked to pass a law which endangers the liberty of our citizens. Men may not have been put in jeopardy, and there are hundreds of cases where a man ought not to be tried again whether he was put in jeopardy or not.

The Senators from the South have seen men dragged from their homes to northern prisons for violations of law that they were innocent of. We are not so much concerned with the common carriers violating the law and with people violating the Sherman trust act in my jurisdiction. I am not afraid to trust the inferior courts of the United States with the adjudication of those cases. Find better judges and you will have better decisions, and if your judges are not honest, then there is a remedy.

Let me give you, in conclusion, a case that expresses my sentiments better than I can, from a great judge, and one of the greatest judges who ever sat in a State tribunal of this Union. Let me read what he says about this condition and I will finish what I desire to say.

The Senator from Georgia [Mr. BACON] knows these judges. He was a student with one of them. They are great names with us in Maryland—Joseph Henry Lumpkin and Eugenius A. Nisbet. This is Judge Nisbet's opinion. It is very short. I want to give it to you. Speaking of jeopardy, he held that a writ of error did not lie to the court in a criminal case at the instance of the State, except to settle future cases. It ought never to lie. If the constitutionality of a law is involved, let the Supreme Court of the United States decide upon the constitutionality or the unconstitutionality of the law. I am perfectly willing to vote for a law of that sort, and that decision will be binding thereafter in every case that arises upon the law. But I am unwilling to go beyond that. I am not willing that the case should have a retroactive effect, virtually an ex post facto effect, and convict a man who has been already acquitted before a tribunal of competent jurisdiction. Now, let us see what was said in this case:

These principles are founded upon that great fundamental rule of the common law, "Nemo debet bis vexari pro una et eadem causa," which rule, for greater caution and in stricter vigilance over the rights of the citizen against the State, has been in substance embodied in the Constitution of the United States.

That means what I have been contending for to-day, that no man should be twice tried for the same cause.

The trial of a citizen for a violation of the criminal law is a very different thing from the trial of civil rights between two citizens. The forms of procedure and the principles upon which they proceed are different. * * * If there is, by reason of the offense charged, an injury done, especially to any one person, he has a remedy for the wrong. In criminal trials the State—the supreme authority, that authority which makes the law and prescribes its penalty and executes its judgments—moves against the citizen. * * * It is a salutary precaution in favor of the citizen against an abuse of the sovereign authority; for history teaches the melancholy truth that however fenced and guarded, limited, and defined by laws or usages, it sometimes breaks over all these barriers, defies the sentiment of the world, and, in the name of the law, violates justice and outrages humanity. The reign of the Stuarts in England illustrates these views. That the state will not, in this signally favored country, thus abuse its powers, is not only hoped, but believed. Vigilant for right and liberty, we will not trust her, but hold her steadily to the just limitations within which the wisdom of other states and past generations have circumscribed her.

Now, Mr. President, in conclusion, I am opposed to this law upon still another and a broader and a higher ground.

The VICE-PRESIDENT. The Senator from Maryland will kindly suspend while the Chair lays before the Senate the unfinished business, which will be stated by the Secretary.

The SECRETARY. Table Calendar 26, Senate resolution 214, by Mr. CARTER.

Mr. NELSON. I ask that the unfinished business be temporarily laid aside.

The VICE-PRESIDENT. Without objection, it is so ordered. The Senator from Maryland will proceed.

Mr. RAYNER. Mr. President, I could not state my conclusion any better than the Senator from Maine [Mr. HALE] stated

it the other day. Just in a few words, as concisely as it could be put, he made the whole objection that lies to this bill. I am opposed to it upon the grounds stated by him. I am opposed to it, but, as I have said, upon a broader ground.

We are here, Mr. President, day by day legislating in the interest of centralization. The Executive, it seems to me, is day by day encroaching upon constitutional limitations; and now we are to commence with the judiciary and enlarge the powers of the Supreme Court, and give it a jurisdiction which, in my judgment, violates the cardinal principles of the common law, is against American precedent, and, what is worse than all, infringes upon the Constitution of the United States.

Mr. President, you can count me out of this performance. I do not know how long I will remain here, but so long as I am here I will to the last degree with all my humble strength resist every enlargement of Federal power, whether in the hands of the legislative, the executive, or the judiciary departments, that is not demanded by the absolute requirements or necessities of the American people.

Mr. KNOX. Mr. President, if I entertained any such view of this proposed legislation as suggested a few days since by the Senator from Maine [Mr. HALE] and repeated to-day by the Senator from Maryland [Mr. RAYNER], I would be most earnest in my opposition to the bill.

The Senator from Maine stated exactly my position when he said that the old-fashioned doctrine that a man should not be placed twice in jeopardy of life or limb for the same offense was good enough for him. It is good enough for every American citizen, and whether he willingly yields his assent to that doctrine or not, it is the doctrine of the Constitution, and he must bend to it.

Mr. President, if I thought there was a single line, or a sentence, or a clause contained in this bill which by any court would be construed to place a man twice in jeopardy, I would vote to cut it out, not because there would be any necessity for cutting it out, as it would be invalid under the Constitution of the United States, but I would vote to cut it out upon the ground that it would not be an artistic and intelligent bill with such a provision within its borders.

Mr. President, before proceeding to say anything—and I propose to say very little—as to the merits of the bill, I wish to correct an impression that the Senate must have from what the Senator from Maryland has just stated, that this is an entirely new proposition; that it has been sprung on the Senate because of some very recent things that have occurred in the judicial history of the United States. Such, Mr. President, is not the case, and in respect to this I speak of personal knowledge, because I can say to the Senator from Maryland that as long ago as 1902 I had the honor, in a report to the Congress of the United States, when I held the position of Attorney-General of the United States, to recommend this legislation to Congress; and it is my impression that I was not the first Attorney-General to make that recommendation.

Mr. President, this legislation is along the line of the law as it is understood in England under the common law. It is along the line of the action by a great majority of the States of the United States. In England the Crown always had the right to an appeal in a criminal case. In my own State since its foundation the right has been conceded. Our courts have always said that it exists except where limited by statutory provision. If I had the time I could enumerate from the report of the committee at least twenty-eight States where the provisions of their statutes are substantially the same as those contained in the pending bill.

Mr. President, the question of what or what is not jeopardy is a most material one for our consideration. I quite agree with the Senator from Maryland that it is extremely difficult to define what jeopardy is; and we get our best notion of jeopardy from the decisions of the courts which say what is not jeopardy under the particular circumstances.

I quote from the law writers:

Jeopardy, in its constitutional and common-law sense, has a strict application to criminal prosecution only. (In re McClaskey, 37 Pac., 854, 858, 2 Okla., 568.)

A defendant is not in legal jeopardy within the meaning of the constitutional restriction until he has been put upon his trial before a court of competent jurisdiction, upon an indictment or information which is sufficient in form and substance to sustain a conviction. Thus a plea of former jeopardy, which merely alleged that defendant had formerly been informed against for the same offense, but did not allege that he had been put on trial, was demurrable. (Klein v. State, 60 N. E., 1036, 1037, 157 Ind., 146, citing Cooley, Const. Lim., 6th ed., 399; Rowland v. State, 126 Ind., 517, 26 N. E., 485; Dye v. State, 130 Ind., 84, 29 N. E., 771.)

Where an indictment was so defective that, if the defendant had been convicted under it, he could have had any judgment entered up against him reversed, there is no jeopardy, and the solicitor is authorized to ask for a nol. pros and indict anew. (White v. State, 49 Ala., 344, 247.)

Where an indictment is quashed on demurrer, the defendant is not in jeopardy under it, and may be prosecuted under a second indictment for the same offense. (State v. Gill, 33 Ark., 129, 131.)

"Jeopardy" is not synonymous with the words "twice put on trial," and there is a wide difference between a verdict given and jeopardy as a verdict whenever the jury are charged with the person, and the offense—

And this comes nearer being a definition of jeopardy than any I have been able to find—

whenever the jury are charged with the person, and the offense is punishable by death, and the indictment is not defective, he is in jeopardy of life, and accordingly, if discharged without a verdict, he can not be tried again. But where a person is put on trial under a bad indictment he may be tried again, though acquitted, because his life was not in jeopardy, and the court could not have given judgment against him if he had been convicted. (United States v. Gilbert, U. S., 25 Fed. Cas., 1287, 1300.)

Jeopardy does not attach if, after a verdict against accused, it has been set aside on his motion for a new trial. (People v. Travers, 19 Pac., 268; 77 Cal., 176.)

Jeopardy does not attach if, after a verdict against accused, it has been set aside on arrested judgment. (People v. Travers, 19 Pac., 268; 77 Cal., 176.)

Jeopardy is not considered as attaching, although the jury has been sworn, if the defendant is erroneously convicted and obtains a reversal of judgment. (Lovett v. State, 14 South., 837, 838, 33 Fla., 389; People v. Travers, 19 Pac., 268, 77 Cal., 176.)

By "jeopardy," within the meaning of the Constitution, is meant lawful jeopardy from the commencement of the proceedings until their termination by a proper judgment and sentence or acquittal, or what the law regards as such. Where, either for want of jurisdiction or from some defect in the indictment, or from such error in the course of the proceedings, the verdict is set aside or the judgment arrested on a writ of error brought by the defendant or on a motion made by him, and he is tried again, he is not thereby put in jeopardy a second time. (Commonwealth v. Wheeler, 2 Mass., 172, 174; Commonwealth v. Peters, 53 Mass., 12 Metc., 387; Commonwealth v. Roby, 29 Mass., 12 Pick., 496, 502; Commonwealth v. Laby, 74 Mass., 3 Gray, 459; Commonwealth v. Gould, 78 Mass., 12 Gray, 171; McKee v. People, 32 N. Y., 239; People v. McKay, N. Y., 18 Johns., 212; State v. Walters, 16 La. Ann., 400; Jones v. State, 15 Ark., 261; Turner v. State, 40 Ala., 21; Gerard v. People, 4 Ill., 3 Scam., 362; State v. Redman, 17 Iowa, 329; State v. Sutton, Md., 4 Gill, 494; Cooley, Const. Lim., 3d ed., 327; Sedg. St. & Const. Law, 2d ed., 572, 573, note 'a'. In McKee v. People (32 N. Y., 239, 245) it was held that the term has no relation to the reversal of an erroneous judgment and pronouncing a legal one pursuant to a legal conviction. Accordingly, where a final judgment is reversed on account of an erroneous sentence and the case remanded for a proper sentence, the resentence does not put the prisoner twice in jeopardy within the meaning of the Constitution, though he has served a part of his time under the original sentence. (Commonwealth v. Murphy, 54 N. E., 860, 861; 174 Mass., 369; 48 L. R. A., 393; 75 Am. St. Rep., 353.)

I ask the indulgence of the Senate to read about a page and a half from Bishop on Criminal Law, volume 1, sections 1024-1030. I have made the selection of these excerpts with the greatest care, and because I think they will be of use to Senators in making up their minds about this bill.

Rights of State to have proceedings reversed.—In England writs of error, the practical object of which is generally to bring whatever appears of record under the review of a higher tribunal, seem to be allowable to the Crown in criminal cases; but the courts of most of our States refuse them and refuse the right of appeal to the State or Commonwealth, except where expressly authorized by statute, as in some States they are. In Maryland the State may have a writ of error at common law to reverse a judgment given on demurrer in favor of a defendant. And in some other States questions of law may, without specific statutory direction, be reviewed by this proceeding or by appeal on prayer of the State. The question is not free from difficulty; but probably some judges have refused the writ to the State from not distinguishing sufficiently between cases in which the rehearing would violate the constitution and cases in which the prosecuting power has the same inherent right to a rehearing as a plaintiff has in a civil suit.

Common law impediments to rehearing.—It should be borne in mind that the constitutional provision under consideration is not the only impediment to the rehearing of a criminal case. It is the only one not removable by legislation; but, when legislation has not interfered, and the question depends on common-law principles, there may be various other absolute bars to a further trial.

Validity of statute authorizing rehearings.—Whatever the terms of a statute providing for the retrial of criminal cases, or a reexamination of the proceedings, it will not ordinarily be interpreted, and will never have force, to violate the constitutional provision under consideration. If the jeopardy has once attached, there can be no second jeopardy without the consent of the defendant, whatever the statute may direct. It will apply only where it constitutionally may.

Reversal by State after trial.—A statute which undertakes to give to the State the right of appeal, to retry the party after acquittal on a valid indictment, is void. And no writ of error or other proceeding allowed to the State can constitutionally open anew the question of guilt after the jeopardy has attached. Even though an acquittal has been produced by an erroneous direction of the judge at the trial, the result is the same.

But—

Reversal before jeopardy.—Before jeopardy, any reversal of proceedings, whether on prayer of the State or of the defendant, may be had without prejudice to a fresh prosecution.

Thus—

Valid indictment quashed—Judgment on invalid.—If, without a trial, the court quashes a valid indictment, or enters judgment for the defendant on his demurrer, believing it invalid, a trial may be had after the prosecutor has procured the reversal of these proceedings; because, as we have seen, the prisoner is not in jeopardy until the jury is impaneled and sworn. And the same consequence follows where a judgment of conviction has been rendered on an invalid indictment.

But—

Proceedings regular down to trial.—Where the indictment is sufficient and the proceedings are regular before a tribunal having jurisdiction down to the time when the jeopardy attaches, there can be no second jeopardy allowed in favor of the State on account of any lapse or error at a later stage. This doctrine should be considered in connection with what was said under our last subtitle, else it may be misapplied.

For example—

Quashed at defendant's prayer.—If—

And I take it this is the nub of the whole proposition—

If at any stage of the proceedings a defendant procures an indictment to be quashed, he can not be heard to assert, in bar to a new one, that the first was good and he was in jeopardy under it.

Court without authority.—If the court has no jurisdiction over the offense, or derives its existence from an unconstitutional statute, or is holding a term not authorized, or is otherwise without authority in the premises, the defendant is not in jeopardy, however far the tribunal proceeds. In most or all of these circumstances the final judgment is not voidable, as mentioned in a previous section, but void; so that his unreversed conviction is no more a bar to another prosecution than his acquittal.

Concurrent jurisdiction (magistrate's—court-martial).—But if the tribunal has authority, concurrent with another, or exclusive—whether it is an inferior one, as a justice's court, a court-martial, or the court of a municipal corporation, or is a superior one—a conviction or acquittal in it will be a bar to subsequent proceedings in whatever court undertaken.

The plea.—The plea, usually put in at the arraignment, is an essential part of the proceedings. And, until an indicted person has pleaded, he is not in jeopardy, though a jury has been sworn to try him or even though there has been an actual trial. But the similitude appears not to be essential.

Mr. President, from these authorities, it seems to me, the following can be deduced: If a defendant, as is provided by this bill, demurs to an indictment and the court sustains the demurrer, and the prosecutor appeals, and the court sustains the appeal and reverses the judgment on the demurrer, the defendant was not in jeopardy, because he defeated his right to a verdict by his own act.

It is the same in case of motion to quash as well as in case of a motion in arrest of judgment after verdict if the motion is sustained.

Suppose, however, the prisoner is acquitted upon a valid indictment. I agree with the Senator from Maryland [Mr. RAYNER] that no statute could constitutionally open anew the question of his guilt upon any appeal for errors at the trial, and this act does not propose to give any such appeal. This bill allows to Government an appeal only from—

Defendant's motion to quash or set aside indictment;
Defendant's demurrer to indictment;
Defendant's motion, successfully made, in arrest of judgment for insufficiency of the indictment;
A judgment sustaining defendant's special plea in bar.

These proceedings are all defendant's acts before a verdict to prevent a trial, except the motion in arrest of judgment, which is defendant's act after a verdict against him to defeat a judgment on the verdict. These motions of defendant rest upon the want of jurisdiction of the court, the unconstitutionality of the statute, or some other lack of right to proceed to trial or to judgment on the verdict, the effect of all of which is to defeat the jeopardy. Mark this: It is not proposed to give the Government any appeal under any circumstances when the defendant is acquitted for any error whatever committed by the court.

We can not give the Government an appeal or writ of error in any case where a judgment of reversal would put the defendant again in jeopardy, and this bill does not undertake to do so. It gives the Government an appeal only when the defendant has been successful in defeating his jeopardy by defeating the trial.

The Government takes the risks of all the mistakes of its prosecuting officers and of the trial judge in the trial, and it is only proposed to give it an appeal upon questions of law raised by the defendant to defeat the trial and if it defeats the trial.

The defendant gets the benefit of all errors in the trial which are in his favor, and can challenge all errors in the trial which are against him. It is certainly not too much when he attacks the trial itself or the law under which it is conducted to give the people the right to a decision of their highest courts upon the validity of statutes made for their protection against crime.

Mr. PATTERSON. Mr. President, the position of the Senator from Maryland [Mr. RAYNER] with reference to this bill, it seems to me, is somewhat of a reflection against either the intelligence or the sense of justice of the members of the Judiciary Committee who reported it. After listening with great care to the remarks of the Senator from Maryland, I am convinced that his attitude arises wholly from a misconception of what this bill intends.

The Senator asks why a certain provision that was in the bill, which came from the House of Representatives, was not retained in the bill as it now stands. The reason is conclusive

that the House bill was so completely changed by the Judiciary Committee of the Senate that such a provision would have been wholly improper and have rendered the bill, as reported by the Senate committee, thoroughly inartistic, if I may use that term. The changes made in the bill by the Judiciary Committee show how solicitous the Senate committee was as to the rights and the privileges of a defendant who has been once in jeopardy. The House bill, as it came to the Senate, provided for writs of error to the Supreme Court, or the court of appeals, in every instance, and in every case in which a defendant was entitled to a bill of exceptions and a writ of error; in other words, the bill, as it came from the House, permitted writs of error on matters of evidence given before a jury on the trial of a criminal case; writs of error as to the instructions of the court to the jury; bills of exceptions and writs of error in every possible contingency where they might be demanded by a defendant.

Mr. NELSON. Mr. President—

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

Mr. PATTERSON. Certainly.

Mr. NELSON. Allow me to make a suggestion in that connection, which is, that the House bill allowed an appeal even where the defendant had been acquitted by the verdict of a jury; which would be altogether meaningless.

Mr. PATTERSON. Yes; and the Senate committee curtailed the bill as it came from the other House and eliminated from it everything that might seem to be responsive to the objections made by the Senator from Maryland, and, instead of allowing writs of error and bills of exception in every case in which a defendant in a criminal case would be entitled to them, the committee limited the writs of error and bills of exception to four particular specific cases, in neither one of which, Mr. President, was it possible for jeopardy to have attached; and because it was impossible for jeopardy to have attached in either of the cases in which writs of error are allowable to the appellate court, the provision in the House bill covering the matter of jeopardy was not incorporated in the Senate bill. Let me read what the House bill was:

That in all criminal prosecutions the United States shall have the same right of review by writ of error that is given to the defendant, including the right to a bill of exceptions.

With that sweeping, broad provision it is absolutely necessary, Mr. President, if the rule of jeopardy is to be preserved, that the provision which the Senator from Maryland insisted should be incorporated in this bill should be in the House bill, which is:

Provided, That if on such a writ of error it shall be found that there was error in the rulings of the court during the trial, a verdict in favor of the defendant shall not be set aside.

Under the Senate bill there can be nothing which occurred on the trial submitted to the appellate court. Therefore the necessity for the proviso in the House bill does not exist and would be wholly improper in this bill.

Now, Mr. President, is there any jeopardy under any definition, I do not care how broad or indefinite or definite the definition of "jeopardy" may be? I maintain, whatever the definition is, that no jeopardy can attach in cases in which writs of error will lie under the Senate bill, bills of exception and writs of error being, first—

From the decision or judgment quashing or setting aside an indictment.

That is, as a rule, before pleading. The motion to quash an indictment is, as a general rule, filed before the prisoner is required to plead guilty or not guilty. If the prisoner pleads guilty or pleads not guilty in order that the motion to quash may be heard and decided by the court, the plea of not guilty is set aside or held as not having been made.

Mr. SPOONER. And they ask leave of the court to withdraw it.

Mr. PATTERSON. And they ask leave to withdraw the plea of not guilty.

Mr. SPOONER. A request which is always granted.

Mr. PATTERSON. So that nothing that squints at jeopardy has existed up to the time the court has passed upon the motion to quash the indictment.

What is the next?

From the decision or judgment sustaining a demurrer to an indictment or any count thereof.

A demurrer is simply another form of a motion to quash. A demurrer simply reaches the insufficiency of the indictment to put the defendant upon his trial, and therefore it also is interposed before the defendant is required to plead. If he has pleaded before the demurrer can be heard and determined, the request will be made to withdraw the plea of the defendant until the demurrer has been heard and passed upon by the court.

I skip from the second to the fourth because the third ground is one of an entirely different class.

From the decision or judgment sustaining a special plea in bar, when the defendant has not been put in jeopardy.

A special plea in bar, Mr. President, is a plea that does not relate to the guilt or innocence of the defendant in the sense as to whether he did or not commit the act for which he was indicted. A special plea in bar is that which is set up as a special defense notwithstanding the defendant may be guilty of the offenses with which he is charged; it is for some outside matter; yet it may have been connected with the case. The special plea in bar that was filed by the indicted Chicago packers is a very good illustration of that. Their plea in bar set forth the fact of their having been induced or led, whatever it may have been, to make communications to the law officers of the Government with reference to their business that gave the district attorney information which enabled him to bring about the indictments and to help in their prosecution. That had no reference to the guilt or innocence of the accused. It was a pleading of fact that was independent of the crime for which those packers had been indicted.

Therefore, Mr. President, there could be no jeopardy in a case of that kind where there was a decision upon the special plea in bar, because it is not under a plea of guilty or not guilty that the insufficiency of a special plea in bar is determined; it is non obstante whether the defendant is guilty or not guilty.

In neither of these three instances, Mr. President, is it possible that there could have been jeopardy in any sense under any definition that can be found in the decisions of any court of record. So that all that the Senator from Maryland has said upon the subject of preserving to an accused all the rights and privileges that attach to the rule of jeopardy, as we find it contained in our constitutions and the records of the courts, had nothing whatever to do, nor did it relate in any wise to either of the cases in which the writ of error would lie, to which I have called the attention of the Senate.

From the decision arresting the judgment for conviction for insufficiency of the indictment.

Mr. President, it is utterly impossible that a writ of error would lie in a case where a defendant had been found not guilty. The motion in arrest of judgment can only be made—it is wholly inapplicable to any other condition than that of conviction—to a verdict of guilty. It is interposed after a verdict of guilty and before judgment for an alleged legal reason that will arrest the court in pronouncing judgment upon the verdict. Therefore if a motion in arrest of judgment is sustained, and the Government takes its writ of error to the court of appeals or to the Supreme Court, it is not a case of putting a man twice on trial for the same offense who had been acquitted in the first instance. If is a case in which the defendant has been tried, in which he has been found guilty on the merits of the case, and by reason of some technicality, if I may use the term in its broad sense, the hand of the court is arrested from imposing the penalty upon him.

So, Mr. President, in either of these cases the writ of error is taken to the Supreme Court, and in each instance it must be taken to the Supreme Court by the Government, because the defendant would have the right to do those things quite independently of the enactment of this bill.

If the Supreme Court shall reverse the decision of the lower court, it is not putting the defendant in jeopardy the second time, for in the case of sustaining the motion to quash he had not been in jeopardy; in the case of a demurrer being sustained he had not been in jeopardy; in the case of a special plea in bar that went against the Government the defendant had not been in jeopardy on the merits of the case; and in the case of the arrest of judgment the defendant had not been in jeopardy, because, Mr. President, he had been convicted; he had not been acquitted; and if the Supreme Court should hold that the action of the lower court in sustaining the motion in arrest of judgment was erroneous, then, Mr. President, the defendant could not complain, either if the judgment of the court shall be entered upon the verdict or a new trial shall be ordered, because it is giving to the defendant a new opportunity to go acquit when, under the trial that was had, he had been convicted.

The reason, Mr. President, that I, as a member of the Committee on the Judiciary, favored this bill is this: Without this bill in the criminal laws there is liable to be the greatest confusion throughout the country. Congress passes a law, and we find that the district court—it may be of Ohio—will render a decision that the law is unconstitutional. The district court in the State of Kentucky may render a decision that it is con-

stitutional. The decision of one district court is in no manner binding or conclusive upon another district court. Decisions of such courts are only persuasive, and not controlling. They may be controlling within the jurisdiction in which they are rendered, but they are not controlling outside of that jurisdiction. And we would have, Mr. President, this strange and extraordinary condition as we have had it—and to my mind it is a disgrace to the judiciary of the country that such things should be witnessed. We have a district court in one jurisdiction holding that a law is ineffective for one reason or another—it may be that it is unconstitutional, or for some other reason—and we have a district court in another jurisdiction holding the reverse; and as the cases multiply in the several sections of the country we may find one half of the courts of the country arrayed against the other half of the courts of the country upon the same identical law; one half holding that it is entirely constitutional and the other half holding that it is unconstitutional. So, Mr. President, that confusion, that ridiculous condition, exists and must continue to exist, because, as the law now stands, until a case involving the question shall go to the Supreme Court and it is brought there by the defendant, there can be no adjudication by a court whose decision and judgment is controlling.

I am quite willing to have it said, so far as I am concerned, that the decision of Judge Humphreys in the Chicago case led to the legislation that is now proposed. Why should it not, Mr. President? If it calls the attention of the country to a condition of our laws that is absurd, that leads to injustice in one half of the country and to justice in the other half, to a condition of our laws that will permit the same law to be held constitutional in one half of the country and unconstitutional in the other half, and have a citizen committing an act that is not an offense in one half of the country but is an offense in the other half of the country, the same act being done without any fear of consequence in certain States in the Union and leading to the penitentiary, it may be, in other States in the Union—if that condition has been brought to the attention of the country and of Congress, Congress has done right to grapple with the question and to make it possible to eliminate such a status from the laws and their enforcement in the United States.

I would have been, Mr. President, as rigorous as the Senator from Maryland in protesting against any interference in any way with the right of protection under the law of once in jeopardy. We can not afford in this country to in anywise weaken the protection that the statute law and the Constitution afford. This bill, Mr. President, in nowise does it. It does not even wink at it, if I may use that term in connection with a grave and dignified subject such as this. The bill is intended to cure a defect in the administration of justice, a defect that should be cured as speedily as possible if the decisions of our courts are to be received with the dignity and confidence that the decisions of all of the Federal courts should meet with throughout the country.

Mr. HEYBURN. Mr. President, I desire to send to the Secretary's desk some amendments which I propose to offer to the bill.

The PRESIDING OFFICER. Does the Senator desire the amendments read at this time?

Mr. HEYBURN. I desire to discuss the amendments.

The PRESIDING OFFICER. The proposed amendments will be stated.

The SECRETARY. On page 2, line 2, after the word "taken," it is proposed to insert "on objection to the sufficiency of the indictment in matters of law;" on page 2, line 21, after the word "objections," to insert the words "by the United States;" and on line 22, after the word "form," to strike out the word "only" and insert the words "or law."

Mr. HEYBURN. Mr. President, if the right of appeal intended to be provided for by this measure is confined to jurisdictional questions, the question of jeopardy passes out of consideration. A man can only be placed in jeopardy by a trial in a court having jurisdiction to try the matter. The amendment which I have proposed confines the operation of the proposed review by the appellate court to the questions of jurisdiction. The question of jurisdiction involves the question of the legality or binding force of the statute under which the man is held for trial. That is a jurisdictional question. It involves the question of the manner of the execution of the law, that it shall be in accordance with the provisions of the statute. That is jurisdictional.

If the courts do not proceed along the lines laid by the statute, then the party has not been in jeopardy under any rule asserted by the Senator from Maryland [Mr. RAYNER] or the Sen-

ator from Pennsylvania [Mr. KNOX] or the Senator from Colorado [Mr. PATTERSON]. He has been in jeopardy only when the trial might result in a binding verdict against him.

In line 2, page 2, I have proposed, after the word "taken," to limit the effect of the right of review, so that it will read as follows:

That a writ of error may be taken on objection to the sufficiency of an indictment in matters of law.

Those words "in matters of law" are broad enough to cover every possible question of jurisdiction.

Then I propose, in line 21, to limit the right to take this appeal by inserting after the word "objection" the words "by the United States;" so that it will read:

That hereafter all objections by the United States to the sufficiency of the indictment in matters of form—

Then I propose to insert—
or law—

And it continues—

shall be made and determined prior to the empaneling of the jury.

It would not be safe to leave out those words of limitation, "by the United States," because to leave them out would prohibit a defendant, who may discover in the hour of the execution of the judgment that the indictment was defective, from entering objection. The defendant should have the right, up to the very last possible moment, to take objection to the legal sufficiency of the indictment. As the bill comes to us for consideration there is no limitation in favor of the defendant. It has often happened that when the trial court has entered judgment and passed sentence upon a defendant and an intermediate tribunal has affirmed the action of the trial court upon a question of law as to the sufficiency of the indictment being presented to a member of the Supreme Court of the United States, a writ for the review of the proceedings of the lower courts has been granted and an order issued suspending the execution of the judgment, perhaps the party having been sentenced to be hanged. So it is absolutely important, if we are to pass this bill at all, that these words of limitation shall be inserted in it. Otherwise it strikes at an existing right of a defendant.

Mr. RAYNER. Mr. President—

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from Maryland?

Mr. HEYBURN. Certainly.

Mr. RAYNER. I am compelled to leave the Chamber for a moment. Will the Senator permit me to add to my amendment just a word?

Mr. HEYBURN. Certainly.

Mr. RAYNER. So as to read "during the trial and verdict or judgment."

The PRESIDING OFFICER. The Senator has a right to modify his amendment.

Mr. HEYBURN. I am confident that the Judiciary Committee did not intend to take away from a defendant any right now possessed by such defendant under the law to appeal from a decision against the defendant. They intended evidently by this legislation to enlarge a right of the Government without interfering with the right of the defendant. Where the court holds that a law is unconstitutional, and that therefore the indictment is bad, because of no authority to bring it, or where the court holds that an indictment is bad, when as a matter of fact it is in conformity with the statute (one going to the right to indict and the other going to the manner of the indictment), I have no particular objection to the right of appeal being given the Government if taken before the trial, in order that the court may determine it at that time, before the defendant is put to the expense and the annoyance and the other incidents of a trial.

Those are instances that already have been in the minds of those who propose this legislation. The decision of Judge Humphreys and the decision of the court in Tennessee on the question of the employers' liability act involved those two questions. I believe if those questions are raised by the United States before the trouble and the expense of a trial the hands of the trial court may safely and properly be stayed until the sufficiency of the law or the sufficiency of the indictment may be tested by the highest tribunal in the land. Then if the highest tribunal in the land sustains the court below, that will be the end of the trial. If the highest court in the land reverses the action of the court below, then the trial will proceed and the defendant will have the benefit of knowing that those questions involving his right to the defense based upon an attack upon the indictment have been adjudicated, and it resolves itself down to a question of fact.

All lawyers of long experience have known of cases where defendants, under erroneous advice that the indictment was

bad and that it might be safely relied on to set aside a verdict or judgment upon the verdict, have allowed their cases to be tried carelessly, relying upon these legal questions that afterwards proved to be an insufficient reliance. If those questions are settled before trial, upon appeal by the Government of the United States, the defendant goes to trial with an absolute certainty that the law has been determined; and the amendment which I propose simply provides that the Government shall raise its objections to the indictment before the impaneling of a jury. The party is not in jeopardy up to that time. The machinery of the court has not laid its hand upon him up to that time. He is merely charged, and he has not been brought within the limits of jeopardy. Jeopardy can not exist where there is no jurisdiction, because the question of jurisdiction is an undetermined one until a judgment is executed, and may be raised, as has been suggested, in the various ways—for instance, on a motion in arrest of judgment.

Mr. President, I would be compelled to vote against this bill so long as it would deprive the defendant of the right, up to his last hour on earth, to call the attention of the court to a defect in the indictment or a defect in the proceeding under the statute under which the indictment was found. I could not vote for a bill, no matter how good its other provisions might be, that would take from the defendant that right. This bill as it comes to the Senate does take away from the defendant that right. I would vote for the measure cheerfully if the defendant were protected in his existing right to raise these questions at any time up to the final execution of the judgment, and, coupled with that, if the rights proposed to be given to the United States by this bill are limited. The bill reads now:

That a writ of error may be taken by and on behalf of the United States from the district or circuit courts to the Supreme Court or the circuit courts of appeals, * * * in all criminal cases, in the following instances.

Then it cites the instances appropriate to the accomplishment of this class of legislation. It does not limit the grounds upon which the United States may take an appeal. The United States should never be allowed to take an appeal upon questions of fact or upon the rulings of the court as to the admissibility of testimony pending the trial. The burdens upon those charged with the violation of law are sufficiently heavy at present to put us on guard against adding unnecessarily to them for the accomplishment of a purpose that on its face does not pertain to the rights of the defendant, but to the rights of the Government rather. So I have proposed the amendment limiting the right of writ of error, providing that it may be taken only on an objection to the sufficiency of an indictment in matters of law.

Mr. President, I do not think the provisions in lines 19 and 20 are essential to the bill in any way. The matter of a bill of exceptions will not arise under any of the provisions of this bill. An exception to the ruling of a court is settled under the rules of the court and not by virtue of an act of Congress or of any legislative body. The manner of settlement of a bill of exceptions is provided for by the rules of the court. That a party is entitled to except to the rule is sufficiently provided within the general provisions of this bill. The bill of exceptions is simply an evidence, the party having taken an exception, that that exception has been allowed by the court; and the court does not strictly allow a bill of exceptions. It settles a bill of exceptions to conform to the facts, showing that an exception was taken.

Mr. CULBERSON. Mr. President—

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Texas?

Mr. HEYBURN. Certainly.

Mr. CULBERSON. I may have misunderstood the Senator from Idaho, but I understood him to say that he wants to amend lines 11 and 12 so as to read:

From the decision or judgment quashing or setting aside an indictment on matters of law.

Mr. HEYBURN. No; the Senator misunderstood me. I have not referred to lines 11 and 12. My amendment is confined to line 2 and to line 21 and to line 22.

Mr. CULBERSON. I note now the proposition of the Senator. I invite his attention to the suggestion that at the present time the United States is not permitted in criminal cases a writ of error on any ground. This bill specifies the grounds upon which that right shall exist so far as the United States is concerned. I will ask the Senator if that does not necessarily exclude all other cases, so that the amendment suggested by him is unnecessary?

Mr. HEYBURN. I think I see the point of the Senator's suggestion, that it is not necessary in line 2 to limit the scope of the writ of error because from line 11 to line 17 the purposes

for which the writ may be taken are defined. But it was because there are many ways of attacking a decision or judgment quashing or setting aside an indictment that I have specified the questions which may be reviewed. An indictment may be quashed or set aside for other reasons than those included within the exception I have stated; and in order that there may be no question as to the grounds on which those objections may be raised, I have limited them to questions of law.

Mr. CULBERSON. Mr. President—

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Texas?

Mr. HEYBURN. Certainly.

Mr. CULBERSON. With the permission of the Senator, I now have the amendment suggested by him. It has not been printed, but it has been furnished me from the desk. Page 2, line 2, after the word "taken," insert "on objections to the sufficiency of the indictment in matters of law."

Mr. HEYBURN. Yes. The words "in matters of law" are words of limitation.

Mr. CULBERSON. What I wanted to inquire of the Senator is whether there are any objections to an indictment on matters of fact?

Mr. HEYBURN. There are grounds of objection on matters of mixed fact and law, because of the manner in which the law is stated or the facts are stated under the law. Indictments are quashed on those mixed grounds. I desire to confine it simply to the questions of law.

Mr. SPOONER. I do not remember ever to have known a demurrer to an indictment to raise any other question than a question of law.

Mr. HEYBURN. We are not discussing the question of a demurrer. We were discussing the question of a motion to quash an indictment, which, while it partakes of the nature of a demurrer, is something more than a demurrer.

Mr. SPOONER. Oh, yes; that is true. It may go to the validity of the grand jury.

Mr. HEYBURN. It may go to all those questions—the manner of their summons, the manner of their impaneling.

Mr. SPOONER. The matter of their conduct.

Mr. HEYBURN. Yes. Those are mixed questions of law and fact. I would not have such a question reviewed on appeal of the Government of the United States, because it does not test the validity of a statute; it does not test the proper manner of indicting under a statute. I would limit the questions that may be raised by the Government of the United States to a narrow scope, because, as a rule, the question of the manner of impaneling a grand jury, the question of the manner in which a grand jury were summoned, are provided for by different statutes than those which provide for the punishment of the party who is to be tried before the court, and, therefore, are more matters of detail and form than they are matters of legal substance.

Mr. CULBERSON. Mr. President—

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Texas?

Mr. HEYBURN. Certainly.

Mr. CULBERSON. With the permission of the Senator, I will say that I have listened to his explanation of the amendment, but, rather than appear to acquiesce in his position, I desire to say that I do not yet perceive a case in which a motion to quash or set aside an indictment can raise a question of fact or a matter of fact. The motion to quash an indictment ordinarily is that it states no offense—

Mr. HEYBURN. That is one of the grounds.

Mr. CULBERSON. Against the laws of the Government in favor of which the prosecution is aimed. But I can not conceive of a case—there may be, but I can not conceive of it—where the sufficiency of the indictment on a motion to quash can be said to raise a question of fact. It necessarily, as I understand, raises a question of law.

Mr. HEYBURN. I think I can call the Senator's attention to circumstances under which it would be a mixed question of law and fact—that is, the court would have to determine facts. Suppose, for instance, it was charged by affidavit—because that is the basis of a motion to quash, as a rule, where it is not something that appears on the face of the indictment—that the officer who summoned the grand jury was not such an officer as is authorized by law to summon a grand jury. Suppose the matter of fact was shown by affidavit that members of the grand jury were not citizens of the United States. Those are questions of fact to be determined outside of the record as it appears upon the face of the indictment, and I desire to eliminate those questions, so that the United States will not be permitted to take an appeal from the decision of the court upon that class of questions.

Of course the defendant must be allowed to take advantage of them. The defendant must not be disarmed to any extent whatever in defending himself against the charge of violation of the law. I hope that those instances, while there are other instances, may be sufficient to direct the mind of the Senator to the purpose that I have in limiting this in express terms to questions of law. It is a question of law as to whether or not a person other than a citizen may summon a grand jury. But it is a question of fact as to whether or not the person who did summon the grand jury was a citizen. The question of the citizenship of the members of the grand jury is also a question of fact. Questions of law are necessarily involved in the determination of questions of fact. So I desire to eliminate all such considerations and let the United States have the right of appeal only when the motion to quash, for instance, is based upon the fact that the indictment upon its face is not in conformity with the law under which the indictment is framed. That question may be raised sometimes either by motion to quash or by demurrer. There are circumstances under which either of those proceedings may be selected, but it does not follow that in all cases both of them would be applicable.

Mr. President, if this measure is to be enacted into a statute in such manner as to widen or broaden the present rights of the Government in the prosecution of those charged with offenses so as to take away a single existing right of the defendant, then it should be defeated. If we can not so legislate as to give the Government the right on its own motion to test the validity of statutes under which it seeks to punish offenders against the law without infringing the rights of the defendant, then the Government had better rest as it has rested for a hundred years.

This is one of the gravest questions that have come before the Congress of the United States at any time. The presumptions are all against it, because it has been for a hundred years thought quite sufficient for the preservation of the rights of the people and the rights of the individual that the law should remain as it is, and only legislation that will eliminate the conjectural question of jeopardy is safe legislation on this subject. Any legislation that leaves that question to be determined or to rest upon the uncertain and varying decisions of the courts is dangerous. Only by carefully guarded language in this bill against the possibility of the question of jeopardy entering into the interpretation and the application of it can we make this safe legislation, and not otherwise, because that question is involved in too much uncertainty. That is a mixed question of law and fact, too, sometimes. It is determined upon strictly legal grounds, but it involves a consideration of conditions and circumstances that ought not to enter into the construction of a law of this kind, which is a radical change and about-face proposition in the jurisprudence of this country.

No more important question arises than that of the rights of individual against the whole people, and when a person is arraigned to answer a criminal charge in the courts, then it is all the people against one, and no safeguard should be removed from that one. There is an element of danger in this bill to that one person who is on trial. We have no right to overlook any possible safeguard that that person now has. Rather had we better add to than take away from.

The instances under which this question arises in the courts are not numerous. It has arisen only in a few instances where the Government has been dissatisfied by the determination of courts of law of the rights of the individual under the law, and the instances in which these questions have arisen and have been impressed upon the attention of the people are semi-political. The questions have arisen out of the political law rather than out of the criminal law, the violation of political statutes rather than statutes affecting the safety of property and the safety of homes and individuals. The interstate-commerce law, a penal statute, is a political statute. The employers' liability law, a penal statute, is a political one. I mean in its nature. The Government can afford to lose sometimes when it may perhaps think it should win, rather than to take the chances of depriving of his rights a defendant who, under these acts, is generally the agent of some other person, acting under instructions, under fixed rules, rules prescribing his conduct and defining his duties, which he obeys or observes at the risk of his employment.

Mr. President, with those amendments or others that accomplish the same purpose I could give my vote and support to the bill. Without them I shall be compelled to vote against it.

Mr. NELSON. Mr. President, I do not intend to take up much of the time of the Senate in the discussion of the bill. Its merits have been ably presented both by the Senator from Pennsylvania [Mr. Knox] and the Senator from Colorado [Mr. PATTERSON]. I think the Senator from Maryland [Mr. RAYNER]

was subject to some confusion of ideas as to the question of jeopardy. I think if we examine the decisions of our courts on that subject they lay down a rule that is certainly decisive of this case.

The Constitution provides that no man shall be put in jeopardy a second time for the same offense. If a man has been in jeopardy he can not be reindicted. If on first indictment the indictment is quashed, or the indictment is held bad on a demurrer or a motion in arrest of judgment, in all those cases, according to all the authorities, he can be reindicted. His case can be sent to another grand jury and he can be indicted again and tried. He could not thus be reindicted and retried if on the first trial he had been in jeopardy. I read from Wharton's Criminal Pleading and Practice, and it states the law correctly, for I have examined the authorities:

A conviction under a defective indictment is no bar, unless the conviction has been followed by judgment and execution of the sentence. Hence, after judgment has been arrested or reversed on a defective indictment, or after an indictment has been quashed, or a judgment for the defendant has been entered on demurrer, a new indictment may be found correcting the defects in the prior indictment, and to the second indictment the proceedings under the first are no bar.

Numerous authorities are cited in this connection, and if this is good law, and I think no one can question it, in none of these cases has the defendant been put in jeopardy under the constitutional provision, because if he had been in jeopardy under the first indictment he could not be reindicted and tried on the second indictment.

To the same effect is a text-book on the Law of Crimes and Criminal Procedure, by Mr. Hochheimer, of the Baltimore bar. He lays down the same doctrine—

That after indictment is quashed a new one may be preferred, and refusal to quash does not preclude demurrer or motion in arrest

Judgment for the defendant upon demurrer is that he be dismissed and discharged from the premises, leaving him liable to be reindicted.

In section 338 the author cites several cases and says: If judgment is arrested for insufficiency of the indictment, the proceedings are set aside, but the party may be reindicted; if it is arrested because the verdict is wrong, the verdict is set aside and a new trial ordered on the indictment.

The arrest of judgment in this case, on which an appeal lies, is not a general motion covering all the grounds on which a judgment may be arrested. It is simply for arrest of judgment because of the insufficiency of the indictment—that is, the failure of the indictment to charge a criminal offense.

I was a little surprised the other day to see the junior Senator from Maryland [Mr. WYTHE] offer the amendments to the bill striking out the provisions in it relating to an appeal from a decision or judgment quashing an indictment, and from a decision or judgment sustaining a demurrer to an indictment, and from a decision arresting a judgment or conviction for insufficiency of indictment.

I find on looking in the decisions of the State of Maryland those cases in which demurrers have been allowed. I take the case of the State of Maryland *v.* William Sutton, found in Gill's Reports, volume 4, on page 494. I have already referred to it. There the defendant was indicted on an indictment containing two counts—one count charging him with rape, the other count charging him with an assault to commit rape. The jury found him guilty on the second count, and a motion was made in arrest of judgment and the motion sustained. The State of Maryland—not the defendant, but the State of Maryland—took a writ of error to the supreme court, and the supreme court of Maryland held that the motion in arrest of judgment should not have been granted, and directed the case to be sent back to the lower court for further proceedings; in other words, it directed the case to be sent back for a new trial or a new indictment, as the case might be.

I find another Maryland case which was a criminal case. It is the State of Maryland *v.* Patrick McNally, found in 55 Maryland Reports, on page 559. In this case the defendant was indicted in the court below for stealing some wheat. A motion to quash the indictment was granted and the State took a writ of error. After reciting the case, stating the indictment and stating what proceedings were had upon it and that a motion was made to quash it, the decision adds.

And thereupon the attorney for the State, desiring to have the record removed to this court as upon writ of error, filed a petition in the name of the State, designating the questions of law by the decision of which the State was aggrieved, namely, the quashing of the indictment.

The court, after discussing the case, finally concluded as follows:

Being of opinion that this is the correct doctrine—
That is, as to the validity of the indictment—
and it appearing that the ruling of the circuit court in this case was clearly erroneous, its order and judgment quashing the indictment will

be reversed and the cause will be remanded, to the end that the defendants may be required to plead to the indictment and the trial be proceeded with according to law.

I find another case in 48 Maryland, the case of *Kearney v. The State of Maryland*, 48 Maryland, page 16. There a demurrer was sustained to an indictment because it did not charge a criminal offense. The court in deciding that case concluded as follows:

The demurrer must therefore be sustained and the judgment reversed. But this reversal does not relieve the party from further liability. Not having been tried on a valid indictment, he has not been put in jeopardy, and may, on being discharged from his present imprisonment, be rearrested, reindicted, and tried again.

All these decisions and authorities that I have quoted go to show that the proper criterion in all these cases as to whether the defendant has been put in jeopardy or not is whether, if in any form before there has been a trial and a verdict the indictment is held defective and bad because it does not charge a criminal offense, the defendant can be reindicted, rearrested, and tried over again.

That could not be done under the Federal Constitution nor under the constitutions of the various States, which are alike on that subject, if the defendant had been in jeopardy. It is because the courts held that he was not in jeopardy on the first indictment that he could be rearrested and reindicted and tried over again. So we need not have any difficulty about the question whether a man has been put in jeopardy, because this amendment of the Senate committee to the House bill limits it exactly to all those cases, except in one instance, where the defendant can be reindicted, rearrested, and retried for the same offense.

As to the fourth ground contained in the bill, there we have provided, and expressly provided, that where the defendant has been in jeopardy he can not be tried over again.

From the decision or judgment sustaining a special plea in bar, when the defendant has not been put in jeopardy.

So in that matter, out of extreme caution and to put it exactly in harmony and in line with the provisions of the three preceding paragraphs, we have expressly provided that where the defendant has been put in jeopardy he can not be reindicted.

The Supreme Court of the United States has covered this ground pretty well in two or three important cases. Take the case of *The United States v. Ball*, a case where three defendants were indicted for murder committed in the Indian Territory. They were indicted and tried in the district of Texas, to which the Indian Territory was attached for judicial purposes. On the first trial one of the defendants was acquitted, and two of them were found guilty. The defendants who were found guilty moved an arrest of judgment on the ground, among others, that the indictment was too insufficient; that it did not properly charge a criminal offense. The case was taken up to the Supreme Court of the United States, and in 141 United States the court ordered the indictment, in its final decision, to be quashed and directed that the case be proceeded with further in the court below. The three defendants were afterwards reindicted. They were again tried, all three of them, as well the man who had been acquitted on the first and bad indictment as the two who had been found guilty.

When that case came to the Supreme Court of the United States, the Supreme Court held that the first indictment was bad and did not properly charge a criminal offense, and yet the one defendant who had been acquitted on that indictment could not be tried over again, he having been in jeopardy; but as to the other two defendants, they having moved an arrest of judgment and got the trial and proceedings reversed on their own motion, they were liable to be reindicted and retried, and they were properly convicted.

The same thing was held in one of the most recent cases that came to this court from the Philippine Islands, the case of *Trono v. The United States*. In that case the man had been convicted in the lower court. He took an appeal to the higher court. He was indicted for murder. He was convicted of an inferior offense, and he appealed to the supreme court of those islands, and the supreme court affirmed the conviction—that is, they found the defendant guilty, as he had been found in the court below, but they found him guilty of a higher offense. The court held there that, having taken an appeal to the supreme court of the Philippine Islands, it did not lie in his mouth to object to the proceedings, and under the procedure prevailing in the Philippine Islands where a case of that kind is appealed to a higher court upon the motion of the defendant the whole case is retried by the higher court.

In another case from the Philippine Islands where the government undertook to take an appeal—I refer to the *Kepner* case—the government undertook to take an appeal, and the

supreme court held that in that case the government had no right of appeal.

All the cases provided for in this bill—and they are strictly covered, and nothing more is covered—relate to cases where under the decisions of our courts the defendant has not been put in jeopardy. I conceive that in all those cases it is proper that the Government should have the right of appeal to the Supreme Court of the United States to settle the important questions involved.

To me it seems strange that a nisi prius judge in a distant part of the country shall take it upon himself to pronounce an enactment of Congress unconstitutional and void. There is no other country on the face of the earth that I know of where the courts of the country can veto legislation. In this country there is a double veto on our legislation. First, the President can veto a bill that we pass, and then after we have passed a law the courts can veto it. We can overcome the veto of the President, but under our system and our jurisprudence we can not overcome the veto of the courts.

Where it relates to an important subject that is of national concern, in which the welfare of all the people of the United States is involved, before an act of Congress should be pronounced unconstitutional we should have the opinion of the highest court of the land—the Supreme Court. In my opinion no other court ought to have the ultimate power to place a veto upon an act of Congress.

I have heard it said by the Senator from Maryland [Mr. RAYNER] and reiterated by the Senator from Idaho [Mr. HEYBURN] that this is a great innovation, that we have got along for one hundred years without any change in our criminal law. That is true; and we have got along a great many years without any changes or innovation in respect to many other important subjects. It is not until recent years that we found the necessity of passing the Sherman antitrust law. It was not until recent years that we found the necessity of passing a law to regulate interstate commerce and the transportation of interstate commerce. It is not until recent times that we found the necessity of passing a national pure-food law, providing for the inspection of the foods of the people. It is not until recently that we found the necessity of passing a national quarantine law. To all these laws the same objection might have been urged as has been urged by these Senators: "Oh, we have got along; we have sledged along all these years without this legislation; why should we have these innovations? Why not rest on the common law, which is big enough and broad enough for anything?"

Mr. President, the question in its broadest sense appeals to me in this shape: We as the representatives of the people of the United States have found it necessary to enact this most important legislation to which I have called your attention, and the question now before us is whether we will allow a nisi prius judge of an inferior court to render ineffective our efforts in this behalf to protect the American people against trusts and monopolies and other dangerous things; whether we will allow ourselves to be handicapped and crippled by the decision of an inferior nisi prius judge.

To my mind the decision of Judge Humphrey in Chicago regarding the meat inspection law cuts no figure at all. I desire to call the attention of Senators to the fact that under the amendment that the Judiciary Committee have tendered to the Senate an appeal could not have been taken in that case. In that case a jury was impaneled, and the question whether the defendants were entitled to immunity under the immunity law because they had furnished Mr. Garfield and the officials of his Bureau information was submitted to the jury, and the jury under instructions of the court found for the defendants. In that case the defendants under the Constitution had been in jeopardy and in that beef-trust case no appeal could lie.

A case may occur where a special plea in bar is interposed and the Government does not deny the fact pleaded in the special plea in bar, admits the truth of it, but says in its answer or demurrer to the plea in bar that it constitutes no bar. In that case, where a plea in bar is decided without the intervention of a jury, there has been no jeopardy; and if the decision on the plea in bar is against the defendant or in favor of the defendant, where the defendant has not been in jeopardy, he should have the right of appeal. We expressly provide in the fourth paragraph that in the case of a special plea in bar where the defendant has been put in jeopardy no appeal lies.

The Senator from Maryland referred to the matter of a bill of exceptions. A bill of exceptions is simply to preserve the record of the proceedings in the lower court. It is simply an official record of the proceedings taken in the court below, and they go up with the pleadings, with the indictment and the demurrer to it, and the decision of the court. It shows what the court did in the premises. It simply puts it in a legal and

technical form before the court. That is all there is in a bill of exceptions. I take it that in a case of a demurrer, where there is a broad demurrer and simply a decision of the court upon that demurrer, no bill of exceptions is necessary.

But this provides that in any of these cases where a bill of exceptions is necessary in order to bring an authenticated record before the court as to the proceedings that took place in the court below, the Government can have a bill of exceptions. It is necessary to include that in the bill, because under the authorities and decisions of the United States court the United States is not entitled to a bill of exceptions in criminal cases. Therefore that provision was put into this bill. It can do nobody any harm. It is simply to perfect the record, so that when the writ of error is brought for consideration in the appellate court it can have the whole record before it in an authenticated form.

I may be all wrong about it, but it seems to me that all Senators who have at heart the enforcement of the great body of remedial legislation that we have passed in recent years ought to be actuated by the desire to make that legislation effective and not to permit some inferior nisi prius court to put a veto on our efforts to protect the American people.

I have no pride about this matter. When this bill came over from the House it seemed to me that the provision of the bill was too broad, and that there was no meaning in taking an appeal where the verdict of the jury could not be set aside, where you could not disturb it. So when the bill was referred to a subcommittee I took pains to look up all the authorities on this question that I could find, and I aimed to put the bill in such a form that it would cover exactly those cases in which the defendant had not been put in jeopardy under the Constitution of the United States. I believe that the bill is limited strictly to that matter. As to the rest, while I have no doubt about the constitutional authority of every provision of the bill, it is simply a question of policy, a question whether we will allow inferior courts in many instances to render this great body of remedial legislation that we have been compelled to pass in recent years to be noneffective and allow these inferior courts to veto a legislative act.

Mr. WHYTE. Mr. President, it seems to be almost a travesty for anyone to discuss so important and serious a question as this to empty benches. Nevertheless, as I stated the other day, when the bill was about passing without opposition, it is too important a matter to pass without consideration; that it is a startling innovation upon the Federal practice in criminal cases for the last hundred years.

I was not in error when I looked upon it in that light, for those Senators who are familiar by practice in the Federal courts with the views of the highest of those tribunals will know that not long since the question came up in the Supreme Court, and it was argued that under the Evarts Act, the act creating the circuit court of appeals between the lower courts and the Supreme Court of the United States, the court of appeals decided against it, and it was an innovation so serious that the language of the legislature should be so expressed that he who runs may read and understand.

In the case of the United States *v.* Sanges, in 144 United States Reports, 310, the Supreme Court, remarking upon that clause in the law giving a right of a writ of error in the case of conviction of a capital crime, said that the Supreme Court can not review by writ of error a judgment of acquittal, except, possibly, when a constitutional, jurisdictional, or treaty question is involved. Under the statute they have a right under the writ of error to consider such a case; but except in these extreme cases, where a high question of constitutional law or that which goes to the jurisdiction of the court or in regard to a treaty, the Supreme Court of the United States could not review a case where there had been a judgment of acquittal.

Again, in answer to this attempt on the part of the counsel to get the court to interfere under that act of 1891, the Supreme Court said:

It is impossible to presume the intention on the part of Congress to make so serious and far-reaching an innovation in the criminal jurisprudence of the United States.

That can be found on page 323 of 144 United States Reports. Under that law of 1891 it can be seen that by section 5 appeals or writs of error may be taken from the district court, or from the existing circuit court of the United States, direct to the Supreme Court in the following cases:

In any case in which the jurisdiction of the court is in issue. In such cases the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision.

From the final sentences and decrees in prize causes. In cases of conviction of a capital or otherwise infamous crime. In any case that involves the construction or application of the Constitution of the United States, etc.

When the case of *De Lemos v. The United States* came up before the circuit court of appeals—and it is reported in 46 Circuit Court of Appeals Cases, 196—the court there laid down the distinction which seems to me to be lost sight of in the bill now under consideration. The court there said:

The writ of error and the appeal are the two principal methods known to English jurisprudence and to the jurisprudence of the Federal courts by which cases may be removed from an inferior court to an appellate court for review.

In the bill now under consideration, which it is proposed to enact into law, the terms "writ of error" and "appeal" seem to be used as though they were synonymous instead of being entirely different. Bills of exception are spoken of as if they did not have reference to appeals when they are made applicable, under the bill, to writs of error, and consequently in the confusion which is to be found in this proposed law is the great danger I apprehend in ever having it administered by a court of valid jurisdiction.

The appeal, says the court, brings up the whole case on its merits on the ruling of the court in regard to the admission of testimony or the rejection of testimony, and the various other questions that may arise during the pendency of the trial. That is the appeal, that is the bill of exceptions by which the appeal is taken—entirely different from any proceeding by writ by which a jurisdictional question or a constitutional question can be decided. It was for that reason that I suggested the other day that in these cases the writ of error was to be issued and its service was to be applied solely to jurisdictional or constitutional questions; but you will see, Mr. President, upon examining this bill, that you can not tell where the limitation comes in with regard to the right of the United States to prosecute, instead of prosecute, the party charged with crime. In the first part of the bill you will see that it speaks of the writ of error which is to be issued:

That a writ of error may be taken by and on behalf of the United States from the district or circuit courts to the Supreme Court or the circuit courts of appeals, as prescribed in an act entitled "An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," approved March 3, 1891, and the acts amendatory thereof, in all criminal cases.

But farther on it provides:

In all these instances—

For instance, after a motion in arrest of judgment on conviction for insufficiency of indictment—

In all these instances the United States shall be entitled to a bill of exceptions as in civil cases.

What do they want with a bill of exceptions when they have a writ of error carrying the jurisdictional or constitutional question from the lower to the higher court? If I had not too great respect for the Judiciary Committee, I would say it was a legal trap. Then what does the appeal do? Says the United States circuit court of appeals:

The appeal brings up the whole case for reexamination on the merits as to both law and facts, and for decision as if no decree had been ever entered.

But this bill says "As in civil cases." The court further says:

A writ of error was the only appropriate remedy at common law by which a case could be brought up for review by a superior court having jurisdiction.

In the case of *Cohens v. Virginia* (6 Wheat., 409) the writ of error is described and shown to be confined entirely to rulings on points of law, and the distinction is fundamental, and yet under this bill a bill of exceptions and an appeal are made precisely similar to a writ of error, in conflict with the understanding of all the practice in the Federal court from the time that court was established under the Constitution of the United States.

I do not want to take up too much time of the Senate by going into details, but I will say, in passing, that it was for that reason I proposed the other day to limit the writ of error in its operation to matters of law coming up before the jury impaneled to try the party. Then you have got no question of jeopardy. There is no difficulty in raising a jurisdictional or a constitutional question by a demurrer to the indictment, and I suggested the form and substance of a simple amendment to the latter part of this bill, where the objections to be taken are described, and they are limited to four, and compel the man under trial to make his constitutional objection on a demurrer at the time he is called to the bar to plead. He is in jeopardy after he has pleaded, after issue has been joined on the part of the Government, after the jury is sworn, and all the preliminaries are completed for trial. It is not that he is put in jeopardy by conviction or by acquittal under peculiar circumstances in the case of certain penalties. He is put in jeopardy

when he is required to be put to a second trial. That is the time when he is in jeopardy, and the Supreme Court has said so.

The Constitution—which is nothing in reality in the part to which I have referred but the embodiment of the common law—the Constitution in that humanity which, thank God, exists among us all, that humanity to protect the unfortunate when they are accused of crime by the presumption of innocence, which begins from the very moment the charge is made against him at law until the last moment when the trial is brought to an end—that same humanity provided that he should not be put to trial a second time, and thus his life or limb be put in jeopardy. Our fathers, when they inserted this amendment in the Constitution, embodied only that principle which we have inherited from those upon the other side of the great ocean. These are the words:

No fact tried by jury shall be otherwise examined in any court of the United States than according to the rules of the common law.

Then follows the protection which is given to the individual, that he shall not be put in jeopardy of life or limb. Then the act of 1897, following the act creating the circuit court of appeals, came up for judgment in the case of *Bucklin v. The United States* (159 U. S., 680), in which the court said this:

The final judgment of a court of the United States of the conviction of a capital offense or other infamous crime is not reviewable here except on writ of error. Our review of the judgment when brought here in that form is confined to questions of law properly by a bill of exceptions as arising upon the record.

Not a bill of exceptions, as in criminal cases, but a bill of exceptions as arising on the record, and then only the question which is shown to have occurred in the trial upon the face of the record, and not upon the facts.

Again, in the same case, the court said:

Under the act as amended (January 20, 1897) it is not denied that capital cases can only be reviewed by the Supreme Court on writ of error. It is conceded and is clear that other criminal cases, not infamous, can be reviewed only by writ of error in the circuit court of appeals.

Here is a bill opening the door wide to try a man over again through a bill of exceptions arising upon the merits and the facts of the case.

A proper construction of the act does not allow an appeal to this court—

There is the distinction the circuit court of appeals makes between a writ of error taking up a purely legal question and an appeal which opens wide the door to an examination of the case entirely, as it would be tried in the upper court de novo—

A proper construction of the act does not allow an appeal to this court from a judgment of a circuit court convicting a defendant of an infamous crime.

Now, on the question of jeopardy I shall detain the Senate but a few moments. The language of the fifth amendment of the Constitution relating to jeopardy is:

Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb.

In *Commonwealth v. Fitzpatrick*, which I find in 1 Law Reports Annotated, 451, the jury had been dismissed in disregard of the protest of the defendants, and when they were again put on trial the court said they had the right under the Constitution to say: "We have been once put in jeopardy for the crime, and we can not be compelled to undergo the same peril a second time for the same offense." This was the effect of their special plea, and it was unanswerable.

The case I cited—and I am sorry that my friend the Senator from Pennsylvania [Mr. KNOX] is not here—is from 15 Pennsylvania, page 466, *Pieffer v. Commonwealth*.

Again, withdrawing a criminal prosecution from a jury which had been charged with the trial of a prisoner, and dismissing the jury merely because a witness was absent, operates as an acquittal, and the prisoner can not again be placed on trial, under the constitutional provision that no person shall be for the same offense subject to be twice put in jeopardy of his life or liberty. That was decided by the South Carolina supreme court in the case of *South Carolina v. Richardson* (47 S. C. Rept., 166).

It is only the common-law maxim embodied in the Constitution, as I stated, founded in the humanity of the law and in a jealous watchfulness over the rights of the citizens when brought in unequal contest with the State.

That I quote from the opinion in the case of *State v. Jones* (7 Geo., 422), cited by my colleague from Maryland [Mr. RAYNER] this morning. The same principle is found in the case of *United States v. Sanges* (144 U. S.).

Again:

At common law the protection from second jeopardy for the same offense clearly included immunity from second prosecution when the court having jurisdiction had acquitted the defendant of the offense; and it is the settled law of this court—

Says the Supreme Court of the United States, from which I quote—

and it is the settled law of this court that former jeopardy includes one who has been acquitted by a verdict duly rendered, although no judgment be entered on the verdict, and it was found upon a defective indictment.

That is the case of *Kepner v. United States* (195 U. S.).

The Senator from Minnesota [Mr. NELSON] has cited my own State. My own State has had the right of writ of error on jurisdictional questions ever since it was a State. It does not stand upon the statutes. But it had no greater right. It never had any right of appeal until the act of 1872. In the case referred to by the Senator from Minnesota and in the other cases afterwards referred to by him the right to claim by special plea in bar former jeopardy was waived by the defendants where they were convicted and where they themselves appealed. And so it is the same law in Maryland.

I am not, as the Senator from Wisconsin [Mr. SPOONER] will remember, interposing any objection to an appeal and to a writ of error issued in a case where prior to the impaneling of the jury, on a demurrer raising jurisdictional or constitutional questions, the United States shall have the right of appeal, but it is against the bill which is about to be enacted that I enter a protest.

I do so not as a child at the bar. I practiced in my first career as a lawyer as the assistant of the attorney-general of my State in prosecuting in Maryland; afterwards, on the other side of the table, defending persons charged with crime, and subsequently as attorney-general of my State. I was the governor who signed the Maryland law in 1872 in regard to giving the State the right of appeal in certain cases. So that I say to the Senator from Minnesota that every case he cited tends to prove our theory that the moment a man has pleaded to the indictment and not demurred; the moment he has raised an issue with the State and the State accepts the issue and the jury is impaneled he is in jeopardy from that time until the verdict of acquittal by the jury is rendered.

Mr. President, while I am most earnestly opposed to the bill, I am ready to yield that far. It would have made the case that happened out in the West—the case decided by Judge Humphrey—impossible. An appeal would have been taken at that time originally, and the question of immunity could not have been raised afterwards if the clause that is in this bill had been in the law then, that objections of a constitutional or jurisdictional character must be made before the jury is sworn. There would have been no trouble, for the defendants would have been compelled to have raised the question upon demurrer.

Mr. President, I felt it my duty to make my protest to add to what my vote will indicate when this bill comes up for final action.

Mr. SPOONER. Mr. President, only a few words on this bill. It is absolutely unnecessary, after the remarks which have been submitted in favor of it by the Senator from Minnesota [Mr. NELSON], the Senator from Pennsylvania [Mr. KNOX], the Senator from Colorado [Mr. PATTERSON], and other Senators who favor it, to go in any detail into the discussion of it.

I have listened with great interest to the argument of the Senator from Maryland [Mr. WHITE] who has just taken his seat. It was the argument of a lawyer of great ability and very large and long experience. He is not opposed to the presentation by writ of error by the Government to the Supreme Court in criminal cases within defined limits of questions of law. He is much more discriminating, I think, in his opposition to this bill than my distinguished friend, his colleague [Mr. RAYNER], impressed me as being.

Mr. President, I have never been much alarmed or had any sympathy whatever with the criticism which is made of our judicial system so far as it involves the decision by nisi prius judges of constitutional questions. Some of the ablest judges who have ever sat upon the Supreme Bench won their reputation as jurists in the district and circuit courts of the United States. One or two of those now upon the Supreme Bench achieved great fame sitting at the circuit as circuit judges. I have known, and so has every Senator here known, some very able lawyers upon the district bench of the United States. They take the same oath of office that the Supreme Court judges do and that the judges of the circuit courts do, and if a district judge of the United States in a case properly before him involving a constitutional question has a conviction that the law before him is unconstitutional, he would be a coward and unfit to sit upon the bench if he did not so declare.

Mr. President, I did not discover, if I may be permitted to say so, weight in the opposition made by the Senator from Maryland [Mr. RAYNER] who first spoke to this bill, upon the ground of the conflicting decisions of the various courts in the United

States as to jeopardy and what constitutes it. The courts in the various States have differed about it, but the decisions of the Supreme Court of the United States as to what constitutes "jeopardy" within the meaning of the Constitution will be binding upon every district and circuit judge in the United States, without any regard whatever to differences of the State courts upon the subject of the legal meaning of the word "jeopardy."

The Senator from Maryland spoke of the pending bill as a step toward centralization and the enlargement of Federal power. I am too obtuse, Mr. President, to be able to discover anything whatever in the proposition before the Senate involving enlargement of Federal power, using the phrase in its proper sense, or tending to centralization in the Government. It simply deals with the practice in the courts of the United States. It is not intended to affect the substantial right of any defendant who has been indicted in any of the courts of the United States. It does not enlarge Federal power. It really regulates the practice and the procedure. No defendant has any vested right, nor has any citizen, in mere matters of procedure, nor has any defendant a right per se to object to an appeal by the Government in certain cases. To my apprehension there is no constitutional question involved in this measure. It is not possible for the Congress, by any valid act, to subject a person for the same offense to be twice in jeopardy of life or limb. That is impossible.

It is in the Constitution. It is fundamental. No person in the United States I suppose would for a moment, if he could, depart from it, so elemental is its justice, and the Congress can not, if it would; and if the court should feel obliged to construe anything in this bill as violating that provision of the Constitution, which I think it could not possibly do, it would be clearly a void act, and the court would give it a construction which would render it valid, not one which would render it void. Jeopardy is not involved in it at all, as the Committee on the Judiciary thought and as I think has been very clearly shown here to-day by the Senator from Pennsylvania [Mr. KNOX] and others, by argument which I do not intend to repeat.

It is an "innovation." Everything that changes an existing system or practice is an innovation. The circuit court of appeals legislation was an innovation. The prosecution by information for a large class of offenses in the Federal courts was an innovation. It does not follow, as it seems to be thought by some Senators here, that because for a hundred years there has been no change in the matters covered by this bill there is no need for it. There have been changes in nearly all of the States in regard to the criminal practice. The people of a large number of States became satisfied, some of them a long time ago, others at later dates, that the old system which denied the State the right of appeal in criminal cases, within certain limits, was absolutely unjust to the people. The old law, it has been thought, gave too many technical advantages and grounds for indefinite delay to the defendant in criminal cases.

In many of the States the criminal laws have been changed so as to simplify them, not depriving the defendant of any substantial right at all, but facilitating and hastening the disposition of criminal causes. In my State they have provided for trial by information. They have made informations amendable. In many States, and notably in some of the Southern States, as shown by the report made with great industry by the Senator from Minnesota [Mr. NELSON], public opinion demanded a change in the ancient rules so that there may be an appeal in certain cases and upon certain questions, and it is interesting to note that in nearly all those cases appeals have been given as they are proposed to be given in this bill.

It is not the function of the Government to confine its interest solely to the defendant in criminal cases. The rights of the defendant must be religiously safeguarded. Of course that goes without saying. But, subject to that, the legislature has a right—and not only a right, but it is its duty—to look to the interests of the great body of the people. That is what has been done in the States. That is what within narrow limits is proposed to be done by this bill, and would be done, I think, if the word "appeal" and these lines about a bill of exceptions were stricken out.

Take Alabama. In Alabama they provide that—

In all criminal cases where the act of the legislature under which the indictment or information is preferred is held to be unconstitutional the solicitor may take an appeal in behalf of the State to the supreme court, which appeal shall be certified as other appeals in criminal cases.

In Arkansas they have a provision very carefully guarded:

If the attorney-general on inspecting the record is satisfied that error has been committed to the prejudice of the State, and upon which it is important to the correct and uniform administration of the criminal law that the supreme court shall decide, he may, by lodging the transcript in the clerk's office of the supreme court within sixty days after

the decision, take the appeal; but a judgment in favor of the defendant which operates as a bar to a future prosecution of the offense shall not be reversed by the supreme court.

Of course not, but that language which operates as a bar to a future prosecution of the offense is significant language. I do not know how it has been construed by the supreme court of Arkansas, if it has been construed at all, but it is well used.

Mr. BERRY. If the Senator from Wisconsin will permit me, I understand it applies where the party has been in jeopardy on a valid indictment.

Mr. SPOONER. Certainly.

Mr. BERRY. The Supreme Court says that jeopardy attaches when the jury is sworn.

Mr. SPOONER. Yes.

Mr. BERRY. I think that is it.

Mr. SPOONER. That is right. I will not read all of this report. When Senators talk about public opinion and about everything being well enough as it has been for a hundred years, I simply call attention to the fact that the people of many of the States have found it a necessary reform in criminal procedure to incorporate in their statutes provisions almost identical with those that are proposed here as to the United States in certain cases.

CALIFORNIA.

An appeal may be taken by the people: (1) From an order setting aside the indictment or information; (2) from a judgment for the defendant on a demurrer to the indictment, accusation, or information; (3) from an order granting a new trial; (4) from an order arresting judgment, and (5) from an order made after judgment, affecting the substantial rights of the people.

The statute of the State of California goes much further than is proposed by this bill, and further than I, for one, should be satisfied to go.

Connecticut has broad provisions on the same subject. Idaho has a provision very much like the provision in this bill:

An appeal may be taken by the State: (1) From a judgment for the defendant on a demurrer to the indictment or information; (2) from an order granting a new trial; (3) from an order arresting judgment, and (4) from any order made after judgment affecting the substantial rights of the prosecution.

The Indiana provision is very much like this bill.

Appeals to the supreme court may be taken by the State in the following cases, and no other: (1) Upon a judgment for the defendant on quashing or setting aside an indictment or information; (2) upon an order of the court arresting the judgment; (3) upon a question reserved by the State.

That is their reform of the criminal procedure in respect to the matters which we are here considering. In Iowa—

Either the defendant or the State may take an appeal. But in appeals by the State the supreme court can not reverse the judgment or modify it so as to increase the punishment.

A limitation which would be entirely unsatisfactory in its scope to me.

Kansas has the same as Idaho. Kentucky has a provision for appeal by the State in criminal cases. Mississippi has one which is very well drawn and quite as broad as that proposed here. Missouri has one—

An appeal is allowed to the State in any criminal prosecution when an indictment has been held insufficient on motion to quash, demurrer, or motion in arrest.

And so Montana has one like the one proposed here, and Nebraska and Nevada. New York, a very progressive State—

Mr. RAYNER. Will the Senator allow me?

The VICE-PRESIDENT. Does the Senator from Wisconsin yield to the Senator from Maryland?

Mr. SPOONER. Certainly.

Mr. RAYNER. If you will take the Nebraska or the Nevada law, I would be perfectly satisfied with it. Just look at the Nebraska and the Nevada laws. Both have the provision I have asked for in this amendment.

Mr. SPOONER. I will get to the provision the Senator asks for, which I do not think ought to be in the bill.

Mr. RAYNER. Yes, but I want to call the attention of the Senator, when he is citing Nebraska and Nevada as having laws of this sort, to the fact that Nebraska and Nevada have qualified them with provisions substantially similar to the amendment I have offered.

Mr. SPOONER. With respect to future operation. That is true. They provide, in Nevada, that it shall not operate to affect a judgment in favor of the defendant.

Mr. RAYNER. Look at Nebraska.

Mr. SPOONER. It is too long. I will not take time to read it. In New York the provision is:

An appeal to the supreme court may be taken by the people in the following cases and no other: (1) Upon a judgment for the defendant, on a demurrer to the indictment, and (2) upon an order of the court arresting the judgment.

The last is the only item in the bill which has given me any trouble. They have it in several of the States. I might take

the time further. They have it in North Dakota. North Carolina has a provision including arrest of judgment and everything else, as I now recall it, in this bill. Oregon has one which extends also to motions granted arresting the judgment. In Tennessee either party may appeal. South Carolina provides:

The State may appeal from a judgment granting a motion to quash an indictment.

In Utah an appeal may be taken by the State. In Wisconsin we do not allow appeals in criminal cases.

Mr. President, that is a pretty fair indication as to what the people of many of the States have in the tide of time found to be necessary by way of reforming the criminal procedure. Of course it needs no argument to show that what is due to the great body of people, represented by the Government in these cases in the States is due to the great body of the people of the United States represented by the Government in its prosecutions.

The amendment proposed by the Senator from Maryland [Mr. RAYNER], as I understand it, is an absolute change in the law. It changes the rule as to jeopardy. The Senator said after a man had been once tried he did not want him tried again, jeopardy or no jeopardy. That is going very much further than the States have gone and very much further, so far as I remember, than anyone here has proposed to go.

The Supreme Court of the United States, in the case to which the Senator from Minnesota called attention, made a very interesting decision on the question of jeopardy. They overruled the English rule as laid down in the books which we who have practiced the criminal law have been accustomed to take as standard. The court in its unanimous opinion says:

In England an acquittal upon an indictment so defective that if it had been objected to at the trial or by motion in arrest of judgment or by writ of error it would not have supported any conviction or sentence has generally been considered as insufficient to support a plea of former acquittal. (2 Hale, P. C., 248, 394; 2 Hawk., P. C., c. 35, sec. 8; 1 Stark. Crim. Pl. (2d ed.), 320; 1 Chit. Crim. Law, 458; Archb. Crim. Pl. & Ev. (19th ed.), 143; 1 Russell on Crimes (6th ed.), 48.) And the general tendency of opinion in this country has been to the same effect. (3 Greenl. Ev., sec. 35; 1 Bishop's Crim. Law, sec. 1021, and cases there cited.)

The court deals with that rule and is not satisfied that it was well sustained by the English authorities. I will not take the time to go into it. But they cite as the leading American case on the subject, which they adopt, the case of *The People v. Barrett* (1 Johns, N. Y.). They also cite with approval the case of *The Commonwealth v. Purchase* (2 Pick.), in which Chief Justice Parker delivered the opinion of the court. I will not take time to read it. They cite the Massachusetts statute—

Mr. RAYNER. I should like to ask the Senator from Wisconsin a question.

The VICE-PRESIDENT. Does the Senator from Wisconsin yield to the Senator from Maryland?

Mr. SPOONER. Certainly.

Mr. RAYNER. Why does he object to this amendment? If it is surplusage, it certainly is not objectionable. If the substance of the amendment is already in the bill, that is no objection to it. Why object to it when, with respect to the District of Columbia, Congress has passed a law identical, word for word, with the language of this amendment:

Provided, That if on such appeal it shall be found that there was error in the rulings of the court during the trial, a verdict in favor of the defendant shall not be set aside.

If it is good in the District of Columbia, why is it not good all over the United States? What is the objection to it?

Mr. SPOONER. Has it ever been passed upon by the Supreme Court?

Mr. RAYNER. I am satisfied the Senator from Wisconsin would not claim that this amendment is unconstitutional.

Mr. SPOONER. Which amendment?

Mr. RAYNER. The one I have offered and the one I have just read.

Mr. SPOONER. I think the one the Senator has just read, unless the Supreme Court has passed upon it, about which I do not know, would very likely be held by the Supreme Court to be calling upon them to exercise no judicial function. In other words, as presenting to the court and inviting decision by the court upon a purely moot question; and I am inclined to think that under the doctrine laid down by the Supreme Court in the case of *Gordon*, in which the opinion was by Taney, C. J., who died before it was announced, and which the court adopted (I do not remember the volume), and in the decision made by the court affirming *Ex parte Sanborn* afterwards, and numerous other cases, the Supreme Court of the United States would say that it is a purely moot question.

Mr. RAYNER. Will the Senator allow me?

Mr. SPOONER. Certainly.

Mr. RAYNER. Suppose they did say that? No one would

be hurt by it. Then they would determine whether or not the prisoner had been in jeopardy. This measure, I understand, was considered by some of the ablest lawyers in both the Senate and the House, and if the Senator from Wisconsin will permit me, it does not, as I am trying to show, undertake to define what jeopardy is.

Mr. SPOONER. No; and that is one—

Mr. RAYNER. Just a moment.

Mr. SPOONER. Let me have the amendment.

Mr. RAYNER. It does not undertake to define what jeopardy is or is not, because, as I tried to show, there are a number of cases that might not be legal jeopardy. The amendment does not involve the plea of autrefois convict or autrefois acquit.

Mr. SPOONER. No.

Mr. RAYNER. It simply says that if a man has been indicted once and tried, he shall not be tried again. It is entirely outside the question of jeopardy. If the Supreme Court pronounces it unconstitutional, then it certainly does not hurt anybody; and if it is all right, it may be necessary; and if it is mere surplusage, it can not hurt anybody.

I have not heard from the Senator from Pennsylvania [Mr. KNOX] or the Senator from Wisconsin [Mr. SPOONER] or the Senator from Minnesota [Mr. NELSON] in all this argument a single objection to the amendment that I have offered.

Mr. SPOONER. I have this objection to the amendment which the Senator has offered: If it means anything it means too much.

Mr. RAYNER. That is an objection—

Mr. SPOONER. If it does not mean anything, it is not very dignified or wise legislation to incorporate in an important act of Congress.

Mr. RAYNER. I will modify it in any way the Senator can suggest to give it additional dignity.

Mr. SPOONER. I am not speaking of its apparel. I am speaking of the substance. It is the body that ought not to be projected here. It is not the clothing. There is nothing that can interfere with jeopardy—

Mr. NEWLANDS. Mr. President—

The VICE-PRESIDENT. Does the Senator from Wisconsin yield to the Senator from Nevada?

Mr. SPOONER. Certainly.

Mr. NEWLANDS. I will ask the Senator from Wisconsin whether the chief purpose of this proposed act is not so much to secure the conviction of a defendant as to secure uniformity of construction as to the validity of statutes of Congress. Assuming that the amendment proposed by the Senator from Maryland does present simply a moot question, I will ask him whether he can not suggest some method by which the decision of the Supreme Court can be obtained upon these questions without tying up the defendant and subjecting him to all the law's delays resulting from tedious appeals?

Mr. SPOONER. I think there was great merit in the amendment offered by the Senator from Nevada [Mr. NEWLANDS], which was voted down by substituting for it the Peter amendment.

Mr. NEWLANDS. But that simply released the defendant on his own recognizance.

Mr. SPOONER. Yes.

Mr. NEWLANDS. And pending the appeal he would be under constant anxiety with reference to the result of a case which might take months and possibly years to determine. It seems to me the humanity of the law requires that the defendant should not only not be put in jeopardy twice, but that he should have a speedy trial. He should not be kept hanging by the eyelids while these legal questions are being determined.

Mr. SPOONER. He can not be put in jeopardy twice. Such "anxiety" can not well be avoided in all cases. A defendant against public justice has no right to be protected against this anxiety.

Mr. NEWLANDS. He can not be.

Mr. SPOONER. No.

Mr. NEWLANDS. I understand that; but I understand the purpose of the law also is to give, and that the humanity of the law demands that there shall be given, a speedy determination and out of that humanity thus far appeals have not been given in criminal cases as against the defendant. Nor did appeals exist at the common law, as I understand.

Now we propose to change all that, and the change necessarily keeps the defendant hanging by the eyelids for months and possibly years awaiting the determination of the court. It seems to me that if the purpose is simply to obtain uniform construction by the courts as to the constitutionality or validity of the acts we ought to find some means of doing it without tying up the defendant for an interminable time.

Mr. SPOONER. The method here proposed is the one adopted in a good many of the States.

Mr. NEWLANDS. I am not informed as to that. The Senator from Maryland referred to a number of States where the decision on appeal did not affect the defendant, where a judgment or a verdict releasing the defendant was not set aside upon a decision by the appellate tribunal unfavorable to him upon points of law.

Mr. RAYNER. There are twenty-three States which have declined to adopt it, and of those that have adopted it, half a dozen have put in the reservation, among them the State of the Senator from Nevada. So the large majority of the States either have not adopted this legislation, or they have put an amendment in it making it perfectly harmless, the way I have proposed to do here. I have not yet heard the slightest argument whatever on this floor against it—not a word.

Mr. SPOONER. I should like to have the Senator from Maryland point out to me what there is in this bill that can involve double jeopardy.

Mr. RAYNER. I do not know whether or not the Senator heard me when I discussed this question for about an hour.

Mr. SPOONER. I heard the Senator, but—

Mr. RAYNER. I am sorry. I did my best to make myself understood.

Mr. SPOONER. The Senator always does well.

Mr. RAYNER. I know. The Senator himself does well sometimes, too. I do not think he is doing quite as well on this matter as I have heard him do before.

Mr. SPOONER. I do not think the Senator ever thinks I do well when I disagree with him.

Mr. RAYNER. I think the Senator is doing as well as anyone else could. I think he is handling a bad case in the best possible way.

I admitted that there was no jeopardy in the cases I referred to. I have no right to define jeopardy. What right have we here to define jeopardy? We all have to agree upon the proposition that Congress can not define jeopardy. The Supreme Court must define it.

Mr. SPOONER. Yes.

Mr. RAYNER. I gave three instances, and there was no answer on the floor, although I asked for an answer, where a man was not in legal jeopardy but where he had been tried. A man may be tried without being put in legal jeopardy.

Mr. SPOONER. Yes.

Mr. RAYNER. And I wanted the amendment to cover those cases. There is no use of my repeating the cases. One of them was where the court mere motu had decided the law to be unconstitutional. Second, where the court had held that the law under which the prisoner was being tried had been repealed. Third, on a demurrer or a motion ne recipiat to a plea of limitations, unless you put this amendment in the defendant can be tried again.

Mr. SPOONER. He can not if he has been in jeopardy.

Mr. RAYNER. The Supreme Court will say he has not been in legal jeopardy. I do not want that man tried again whether he has been in legal jeopardy or not.

Mr. SPOONER. I am glad the Senator puts it that way.

Mr. RAYNER. I put it that way before.

Mr. SPOONER. I was so unhappy as not to understand the Senator fully, although I think he did put it that way before. There are a vast number of cases in which if a man has been once tried and the court finds that he was not, for some reason, in legal jeopardy and that therefore under the Constitution of the United States he may be lawfully tried again, justice to the people, justice to decency, justice to the Government require that he shall be tried again.

Mr. RAYNER rose.

Mr. SPOONER. The Senator will permit me.

Mr. RAYNER. Oh, yes; I will not interrupt you.

Mr. SPOONER. Permit me. Take a case of piracy. Take a case of treason. Take the infamous case of rape. Take some cases of murder, cowardly, merciless, brutal as the human mind can conceive of, and on appeal to the Supreme Court of the United States the case is reversed, under a decision by the court that the defendant has not been in legal jeopardy. Why should he not be tried again?

Mr. RAYNER. I will answer that question.

Mr. President, that would be a complete answer to every objection that has been made to this proposed law, if the Senator did not forget to state that this amendment requires that there shall be a verdict for the defendant. This amendment says that in every case where there has been a verdict and a judgment for the defendant he shall not be tried again.

Mr. SPOONER. Mr. President—

Mr. RAYNER. One moment. I do not say that wherever a defendant is tried he shall not be tried again, for every one of us knows that where there is a motion in arrest of judgment he is always tried again, either on the same indictment or on another indictment. But I say where the defendant is acquitted, where there is a verdict of not guilty, where there is a judgment on it, that he shall go without day and be discharged, I do not care how great the crime, because the greatness of the crime never changes the principle, I say that man ought not to be tried again.

Mr. SPOONER. *There is nothing in this bill that reaches a verdict of not guilty.* There is nothing that touches that subject in any way on earth except one provision, and that is the motion made by the defendant himself where he has been found guilty, of course, to arrest the judgment.

Mr. RAYNER. Let us see if the Senator is correct. Let us see if he is not mistaken about that. Will the Senator let me have that report? Let me ask the Senator, because we want enlightenment on this subject. I have no feeling about it—

Mr. SPOONER. Nor I.

Mr. RAYNER. Not the slightest. It is a question of law.

Mr. SPOONER. Nobody can have any feeling about it.

Mr. RAYNER. I am perfectly willing to vote for a law that will give the Supreme Court of the United States the right to decide these questions, if you do not apply it to pending cases. I am perfectly willing to vote for a bill to give the Supreme Court the right to determine the constitutionality or the unconstitutionality of a law and to decide any point whatever of law or practice. I am perfectly willing to do that, when you save a man who has been tried from being tried again.

Now suppose the case I gave you this morning. At the end of the case, after the testimony is in, the court quashes the indictment upon the ground of its unconstitutionality. The court does it itself.

Mr. PATTERSON. That does not apply.

Mr. RAYNER. I beg your pardon. It does apply. I will show the Senator from Colorado that it applies to it, unless I misconceive the language of it. "From the decision or judgment quashing or setting aside an indictment." That does not say that the prisoner must file that motion. There is not a word in it about the defendant filing a motion. Can not the court render a decision or judgment or set aside the indictment of its own motion? It has done so over and over again in our State. I should like the Senator's opinion upon that point.

Mr. SPOONER. Is that jeopardy?

Mr. RAYNER. I say that is not jeopardy, and that the man ought never to be tried again. That is just the division between us. The man ought never to be tried after giving his testimony in that case.

Mr. SPOONER. As far as I am concerned I am not willing to lay down any rule of that kind in this country—

Mr. RAYNER. Then that is all right.

Mr. SPOONER. That no matter what the offense may be, no matter how vitally the public interest is involved in the administration of justice, in such a case where the Supreme Court finds that there has been no jeopardy we shall declare by law that the defendant shall not be again tried.

Mr. RAYNER. If the Senator from Wisconsin will permit another interruption, does he think the judgment should be reversed after the man has been arraigned, after he has pleaded to the indictment, after he has employed counsel and the testimony for the prosecution has gone in and his own testimony has gone in, so that the prosecution knows exactly what his case is? He is perfectly willing to go before the jury and take the chances of conviction or acquittal. It is not his fault. The court steps in and holds the law unconstitutional. The Senator thinks that a man ought to be tried over and over again, if the Supreme Court should reverse the judgment of the court below?

Mr. SPOONER. Yes; he may be tried over again.

Mr. RAYNER. Of course. Does the Senator think he ought to be tried over?

Mr. SPOONER. Yes; in many cases.

Mr. RAYNER. I say never, never. Not as long as there is any spirit of liberty in the land will I ever vote for anything of that sort. The prosecution knows every word of that man's testimony.

Mr. SPOONER. I see no good reason and the framers of the Constitution saw no good reason for it; there was not incorporated in the Constitution such a provision as the Senator contends for. What was placed in the Constitution was that no man for the same offense shall be twice put in jeopardy of life or limb. That is the constitutional rule. That is the rule under which we have administered the Government ever

since it was ordained. The Senator from Maryland is not content with that rule, but he insists that independent of it, in all cases where a man has been tried even on his own motion and judgment or verdict of guilty has been arrested—

Mr. RAYNER. No; not arrested.

Mr. SPOONER. Yes; arrested.

Mr. RAYNER. Not arrested.

Mr. SPOONER. All this bill does—

The VICE-PRESIDENT. Does the Senator from Wisconsin yield further to the Senator from Maryland?

Mr. SPOONER. Yes.

Mr. RAYNER. I beg the Senator's pardon. I am not referring to arrest of judgment. When the judgment is arrested a man is always tried over. He can be tried under the old indictment or a new indictment. I am asking the Senator for information. I say that the man ought not to be tried again. The Senator from Wisconsin says that the man ought to be tried again. If he ought to be tried again, then the amendment ought to be defeated, and if he ought not to be tried again, the amendment ought to be adopted.

Let me ask the Senator this question: That man practically outside of this proposed law can not be tried again. You can not try a man over again for the simple reason that he would go before the same judge, in the same jurisdiction, and the judge has already decided the law to be unconstitutional. Practically it is impossible now to try that man over again, but by passing this law you give the court the right to try him over again.

Mr. SPOONER. If the court below had held the law unconstitutional and the Supreme Court had held the law constitutional, I suppose the nisi prius judge would probably by the time the case got back there have changed his mind.

Mr. RAYNER. But the Senator forgets that the Supreme Court has no power under existing law to pronounce the law constitutional, because you have no right of appeal. This law steps in for the first time and gives a right of appeal. If I can only impress that upon the mind of the Senator it may be that he will change his view.

Mr. SPOONER. That is perfectly understood, and that is one of the objects of this proposed law.

Mr. RAYNER. It opens the case against him.

Mr. SPOONER. The question is whether it subjects a man under any aspect of it to the danger of double jeopardy.

Mr. RAYNER. Does it not do it in that case practically?

Mr. SPOONER. The Senator says he does not care whether it is double jeopardy or not. Even if a man under the Constitution may properly and lawfully be put on trial again, if he has been tried once, even though it were a mistrial, if he had been for a moment in jeopardy, he insists that we shall provide by law, no matter what the case may be, that he shall not be tried again; that he shall go acquit.

Mr. RAYNER. That when he has been acquitted he shall stay acquitted. I do not believe in a man being acquitted and afterwards being convicted. If acquitted once he ought to be acquitted forever.

Mr. SPOONER. The Senator is arguing for a much larger rule than the committee has reported, and a larger innovation.

Mr. President, the case of *The United States v. Ball* is a very interesting case, as I was saying, in overruling the English doctrine. I will state it again for the moment, for it goes to this question of jeopardy. It would not cover all such cases. It was a case where there were two brothers Ball, and another man, who were indicted for murder. One was acquitted. The other two were convicted. They appealed to the Supreme Court of the United States, and the Supreme Court reversed the conviction upon the ground that the indictment was bad. A new indictment was found, which included the man who was acquitted. He plead former acquittal, and the court below overruled his plea. The Supreme Court sustained it, and said that he could not be again put upon trial.

Mr. RAYNER. I know the case.

Mr. SPOONER. The court said:

As to the defendant, who had been acquitted by the verdict duly returned and received, the court could take no other action than to order his discharge. The verdict of acquittal was final and could not be reviewed, on error or otherwise, without putting him twice in jeopardy and thereby violating the Constitution. However it may be in England, in this country a verdict of acquittal, although not followed by any judgment, is a bar to a subsequent prosecution for the same offense. (*U. S. v. Ball*, 163 U. S., 671.)

That is where the indictment was bad.

Mr. President, I do not intend to take further time. The matter has been thoroughly argued. I am content to leave it, under the bill, if it shall become a law, to the Supreme Court of the United States. It is their function to determine what

is jeopardy. It is their function to protect the citizens of the United States against any invasion of the constitutional guaranty as to double jeopardy. I think we can rely upon the court to protect as far as the Constitution requires it all defendants, without supplementing the Constitution by the Senator's amendment to this bill.

Mr. CLARKE of Arkansas obtained the floor.

Mr. CULLOM. Mr. President—

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

Mr. CLARKE of Arkansas. Certainly.

Mr. CULLOM. If the Senator from Arkansas would prefer to go on to-morrow, I desire to move an executive session.

Mr. CLARKE of Arkansas. Very well.

Mr. NELSON. Before the motion is put, I should like to make a statement. I desire to state that I shall move to take up this bill for consideration at the earliest practicable moment to-morrow morning after the routine morning business, not to interfere, however, with appropriation bills.

Mr. LODGE. I gave notice yesterday that I would call up the Philippine bank bill. Of course, if the pending bill is not to be disposed of, there will be no chance to have anything else done. I feel bound now to give notice that I shall try to call up the Philippine bank bill and dispose of it at the earliest possible moment.

Mr. CULLOM. I will state in addition to that that there is a very important appropriation bill ready to be taken up to-morrow.

Mr. HEYBURN. I move that all the amendments to the pending bill submitted to-day be printed.

The motion was agreed to.

ELIZABETH H. RICE.

Mr. LODGE. I ask that the Senate proceed to the consideration of the bill (S. 6731) granting a pension to Elizabeth Huntington Rice.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill, which had been reported from the Committee on Pensions with an amendment, to strike out all after the enacting clause and insert:

That the Secretary of the Interior be, and he is hereby, authorized and directed to place on the pension roll, subject to the provisions and limitations of the pension laws, the name of Elizabeth H. Rice, widow of Edmund Rice, late colonel Nineteenth Regiment United States Infantry, and brigadier-general, United States Army, retired, and pay her a pension at the rate of \$50 per month in lieu of that she is now receiving.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

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

The title was amended so as to read: "A bill granting an increase of pension to Elizabeth H. Rice."

EXECUTIVE SESSION.

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

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After ten minutes spent in executive session the doors were reopened, and (at 5 o'clock p. m.) the Senate adjourned until to-morrow, Wednesday, February 13, 1907, at 12 o'clock meridian.

NOMINATIONS.

Executive nominations received by the Senate February 12, 1907.

SURVEYOR-GENERAL.

Matthew Kyle, of Nevada, to be surveyor-general of Nevada, to take effect February 26, 1907, at the expiration of his term. (Reappointment.)

REGISTER OF LAND OFFICE.

John W. Price, of Casper, Wyo., to be register of the land office at Douglas, Wyo., vice Albert D. Chamberlin, resigned.

RECEIVER OF PUBLIC MONEYS.

Samuel Slaymaker, of Douglas, Wyo., to be receiver of public moneys at Douglas, Wyo., vice Merris C. Barrow, removed.

POSTMASTER.

SOUTH DAKOTA.

Willis H. Bonham to be postmaster at Deadwood, in the county of Lawrence and State of South Dakota, in place of Willis H. Bonham. Incumbent's commission expired December 20, 1906.

CONFIRMATIONS.

Executive nominations confirmed by the Senate February 12, 1907.

PROMOTIONS IN THE NAVY.

Passed Asst. Surg. Henry E. Odell to be a surgeon in the Navy from the 6th day of September, 1906.

Asst. Surg. Robert H. Michels to be a passed assistant surgeon in the Navy from the 8th day of October, 1906, upon the completion of three years' service in his present grade.

RECEIVER OF PUBLIC MONEYS.

Samuel Slaymaker to be receiver of public moneys at Douglas, Wyo.

UNITED STATES ATTORNEY.

Charles W. Hoitt, of New Hampshire, to be United States attorney for the district of New Hampshire.

REGISTER OF THE LAND OFFICE.

J. W. Price to be register of the land office at Douglas, Wyo.

POSTMASTERS.

CALIFORNIA.

Thomas E. Byrnes to be postmaster at San Mateo, in the county of San Mateo and State of California.

Felix L. Grauss to be postmaster at Callstoga, in the county of Napa and State of California.

Eri Huggins to be postmaster at Fort Bragg, in the county of Mendocino and State of California.

M. M. Seoon to be postmaster at Rocklin, in the county of Placer and State of California.

Rinaldo E. Taylor to be postmaster at Gridley, in the county of Butte and State of California.

William L. Williams to be postmaster at Madera, in the county of Madera and State of California.

ILLINOIS.

Edward E. Gott to be postmaster at Norris City, in the county of White and State of Illinois.

Clark J. McManis to be postmaster at Princeton, in the county of Bureau and State of Illinois.

Frank G. Robinson to be postmaster at El Paso, in the county of Woodford and State of Illinois.

Otis E. Stumpf to be postmaster at Findlay, in the county of Shelby and State of Illinois.

Thomas H. White to be postmaster at National Stock Yards, in the county of St. Clair and State of Illinois.

INDIANA.

Joseph C. Andrew to be postmaster at Redkey, in the county of Jay and State of Indiana.

Cash M. Graham to be postmaster at South Whitley, in the county of Whitley and State of Indiana.

KENTUCKY.

Marcus L. Kincheloe to be postmaster at Hardinsburg, in the county of Breckinridge and State of Kentucky.

MARYLAND.

George C. Riggin to be postmaster at Crisfield, in the county of Somerset and State of Maryland.

MICHIGAN.

Earl B. Hammond to be postmaster at Vermontville, in the county of Eaton and State of Michigan.

Newton E. Tower to be postmaster at Union City, in the county of Branch and State of Michigan.

MINNESOTA.

Andrew J. Davis to be postmaster at South St. Paul, in the county of Dakota and State of Minnesota.

MISSOURI.

Troy L. Crane to be postmaster at Lees Summit, in the county of Jackson and State of Missouri.

Jerome W. Jones to be postmaster at Brookfield, in the county of Linn and State of Missouri.

NEW YORK.

John R. Costello to be postmaster at Chittenango, in the county of Madison and State of New York.

George H. Keeler to be postmaster at Hammondsport, in the county of Steuben and State of New York.

Fred O'Neil to be postmaster at Malone, in the county of Franklin and State of New York.

William J. H. Parker to be postmaster at Moravia, in the county of Cayuga and State of New York.

John O. Thibault to be postmaster at Clayton, in the county of Jefferson and State of New York.

James A. Wilson to be postmaster at Sacket Harbor, in the county of Jefferson and State of New York.

OHIO.

J. A. Donnelly to be postmaster at New Lexington, in the county of Perry and State of Ohio.

James A. Downs to be postmaster at Scio, in the county of Harrison and State of Ohio.

Homer S. Kent to be postmaster at Chagrin Falls, in the county of Cuyahoga and State of Ohio.

Charles T. La Cost to be postmaster at Bryan, in the county of Williams and State of Ohio.

WISCONSIN.

George H. Dodge to be postmaster at Arcadia, in the county of Trempealeau and State of Wisconsin.

Frank H. Marshall to be postmaster at Kilbourn, in the county of Columbia and State of Wisconsin.

Albert H. Tarnutzer to be postmaster at Prairie du Sac, in the county of Sauk and State of Wisconsin.

Earl S. Welch to be postmaster at Eau Claire, in the county of Eau Claire and State of Wisconsin.

HOUSE OF REPRESENTATIVES.

TUESDAY, February 12, 1907.

The House met at 12 o'clock noon.

The Chaplain, Rev. HENRY N. COUDEN, D. D., offered the following prayer:

We thank Thee, our Father in heaven, that our Republic holds in grateful memory all who have contributed to its life and perpetuity, especially that host of illustrious men "who have breathed their spirits into its institutions" and made it great and glorious; that to-day the hearts of eighty millions will beat with patriotic pride and take the name of Abraham Lincoln upon reverent lips and vie with each other in telling the story of his marvelous life and achievements. Out of obscurity Thou didst lead him to be the savior of his people. "With malice toward none and charity for all" he died a martyr to liberty and freedom. God grant that we may keep his memory sacred to our hearts and honor ourselves by following his example in American citizenship. In the spirit of the Lord Jesus Christ, Amen.

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

JAPANESE SCHOOLS.

Mr. GILBERT. Mr. Speaker, I ask unanimous consent to extend in the RECORD some remarks upon the Japanese schools.

The SPEAKER. The gentleman from Kentucky asks unanimous consent to extend remarks in the RECORD upon the subject indicated. Is there objection?

There was no objection.

UNITED STATES JUDGE NORTHERN JUDICIAL DISTRICT OF ALABAMA.

Mr. CLAYTON. Mr. Speaker, I ask unanimous consent for the present consideration of the bill (H. R. 24887) providing for a United States judge for the northern district of Alabama.

The Clerk read the bill, as follows:

Be it enacted, etc., That the President of the United States, by and with the advice and consent of the Senate, shall appoint a district judge for the northern judicial district of Alabama, who shall possess and exercise all the powers conferred by existing law upon the judges of the district courts of the United States, and who shall possess the same powers and perform the same duties within the said northern judicial district of Alabama as are now possessed by and performed by the district judge of the United States in any of the judicial districts established by law, and he shall receive the same compensation now or hereafter prescribed by law in respect to other district judges of the United States: *And provided*, That the judge appointed under this act shall reside at Birmingham, in said district.

Mr. CLAYTON. Mr. Speaker, I offer the following amendment.

The Clerk read as follows:

On page 2, line 2, after the words "provided, That," insert the words "after appointment."

The amendment was agreed to.

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

Mr. CLAYTON. I move that the title be amended by inserting, after the word "northern," the word "judicial."

The amendment was agreed to.

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

Mr. CLAYTON. Mr. Speaker, I thank the House for the action just taken. This bill presents a most meritorious case. The facts are stated in the report, which I prepared and presented. I here insert it in the RECORD. It is as follows:

The Committee on the Judiciary, to whom was referred the bill (H. R. 24887) providing for a United States judge for the northern judicial district of Alabama, having had the same under consideration, report it back with the recommendation that the bill do pass.

At present there is only one judge for both the northern and middle judicial districts of Alabama, and he resides at Montgomery, in the middle district.

It is impossible for one judge to do the work of both districts. The terms of the circuit and district courts in the northern district of Alabama are held as follows:

Huntsville: April and October; duration of term, two months.
Anniston: May and November; duration of term, two months.
Tuscaloosa: January and June; duration of term, three weeks.
Birmingham: March and September; duration of term, six months.
Total, about eleven months.

In the middle district circuit and district courts are held at Montgomery in accordance with the special statute in May and December, and the session of the district court is also held there the first Monday in each month. Besides, special terms of the courts have been held there at different intervals from time to time. The minimum requirement for holding the district and circuit courts by the present judge in the northern and middle judicial districts aggregates about thirteen months in each year. In the southern district, where there is a judge residing at Mobile, court is in session about five months in each year. In addition to the terms of the court there the judge has much work to do in chambers at all times, as there is a very considerable admiralty business done at that port. Besides, this judge holds court twice a year at Selma, Ala., in his district, and is frequently called to serve on the circuit court of appeals at New Orleans. All his time is now occupied.

Circuit Judge Shelby has held the circuit court at Huntsville since May, 1905. Judge Boarman, of Louisiana, held the district court there last year. Judge Toulmin, of the southern district, has held all the terms of court at Anniston. The judge of the northern and middle district, Judge Jones, held the court at Tuscaloosa in May, 1906. The business at Huntsville, Tuscaloosa, and Anniston is fairly well up to date.

For many years district judges from neighboring States have been called in to assist in the northern district of Alabama, but such assistance as these judges have been able to give has not been sufficient to dispose of the business or to relieve the congested condition of the dockets.

At Birmingham the business of the United States courts is about three years behind. There are about 300 civil cases on the docket there. It takes nearly three years to get a civil case to trial at Birmingham. That city is the center of large coal-mining, iron-mining, and manufacturing industries. The commerce and tonnage there is greater than at any other point in the entire South. There are fourteen railroads and two more are being built. Many civil suits are brought there against foreign corporations, and these suits are, at the instance of the attorneys for these corporations, generally removed to the Federal courts.

At the last session of Congress an act was passed requiring the court at Birmingham to be held six months in each year. It has been impossible for the present judge to strictly comply with this law, and it is obvious that this act has not afforded the desired relief. During the year ending June 30, 1906, circuit and district courts were held at the different places in the northern district as follows:

Huntsville:	Days.
By Circuit Judge Shelby.....	21
By Judge Boarman, of Louisiana.....	55
	76
Anniston: Judge Toulmin, of southern district of Alabama.....	25
Birmingham:	
Judge Jones.....	65
Judge Toulmin.....	27
	92
Tuscaloosa: Judge Jones.....	7
Total.....	200

It is understood, of course, that this shows only a fraction of the work performed by the present judge. It is an ascertained fact that besides holding courts at Montgomery he holds court for the northern district at chambers in Montgomery many days each month. Indeed, when he is at Montgomery he transacts more or less business for the northern district—that is, the Birmingham district—every day, such as orders in bankruptcy cases, hearing and deciding cases in equity, etc. On June 30, 1906, there were pending in the northern district of Alabama 504 criminal and civil cases, all of them said to be live cases. Besides, there were pending there at the same time 349 bankruptcy cases. At the same time there were pending 230 criminal and civil cases at Montgomery, most of them live cases. Besides, there were pending at Montgomery at the same time 302 bankruptcy cases.

The Department of Justice recently made a very thorough examination of the conditions in Alabama and elsewhere in nine cases in which bills were introduced into Congress for additional judges. This investigation showed the necessity for four more district judges, one of them for the northern district of Alabama.

For several years past the condition of the business in the United States courts in the northern district of Alabama has presented an urgent case for relief. Several bills have been proposed. I introduced one for an additional judge of the middle and northern districts. That bill did not meet with the favor of the committee nor with the approval of the Department of Justice. Besides, one of my colleagues has always opposed it, upon the ground that a separate judge for the northern judicial district of Alabama was what was needed—that district now having no separate judge—and not an additional judge for the two districts.

He has informed me that he would object to the consideration of any bill except one in present form—that is to say, the bill which has just been read at the Clerk's desk, and which I also introduced. Of course the objection of any one Member would have defeated the passage of this bill. Whatever may have been my preference as to the details of the matter, I did not succeed in getting the approval of the committee or the Department of Justice, or the cooperation of all of my colleagues from Alabama, for any measure except the bill which has just passed.

During the present Congress the Department of Justice has

recommended the appointment of four additional judges. One for Alabama, one for Nebraska, one for Ohio, and one for California. The House has recently passed bills authorizing an additional judge in each of the States of Ohio and California and in the Territory of Arizona.

The Department of Justice, in reply to my letter to the Attorney-General, has sent me the following letter:

DEPARTMENT OF JUSTICE,
Washington, February 9, 1907.

Hon. HENRY D. CLAYTON,
Committee on the Judiciary, House of Representatives.

SIR: The Department is in receipt of your letter of the 9th instant, inclosing H. R. 24887, providing for a United States judge for the northern district of Alabama, and report thereon from the Committee on the Judiciary.

I have the honor to say that this Department recently made an investigation as to the necessity for a United States judge for the northern district of Alabama, and that the facts contained in the committee's report which you inclose are in accord with the result of such investigation.

Respectfully,

H. M. HOYT,
Acting Attorney-General.

I have received the following telegram:

BIRMINGHAM, ALA., February 9, 1907.

Hon. HENRY D. CLAYTON, M. C.,
Washington, D. C.:

At a Jefferson County bar meeting this day held it was unanimously resolved that the bar of this county heartily favor the Clayton bill, providing a separate judge for the northern district of Alabama, and we were instructed to wire this to the Senators and Representatives of Alabama and the chairman of the Judiciary Committee, and to urge the passage of said bill at this session of Congress in preference to any other. Please communicate this to them.

FRANK S. WHITE, Chairman,
A. O. LANE,
C. P. BEDDOW,
R. N. BELL,
Committee.

BRIDGE ACROSS MISSOURI RIVER.

Mr. ELLIS. Mr. Speaker, I ask unanimous consent for the present consideration of the bill (S. 7211) to amend an act entitled "An act to amend an act to construct a bridge across the Missouri River at a point between Kansas City and Sibley, in Jackson County, Mo.," approved March 19, 1904, which I send to the desk and ask to have read.

The Clerk read as follows:

Be it enacted, etc., That section 1 of the act entitled "An act to amend an act to amend an act to construct a bridge across the Missouri River at a point between Kansas City and Sibley, in Jackson County, Mo.," approved March 19, 1904, be, and the same is hereby, so amended as to read as follows:

"Sec. 3. That the construction of the bridge authorized to be constructed by the act approved March 3, 1887, hereinbefore named, and of which this act is amendatory, shall begin within one year from March 19, 1907, and be completed within two years thereafter, and unless these conditions are complied with this act and the acts of which it is amendatory shall be null and void.

"Sec. 2. That the Congress reserves the right to change, alter, amend, or revise this act and the acts of which it is amendatory at any time."

With the following amendments:

Page 2, lines 1 and 2, after the word "year," insert the words "and be completed within three years."

Page 3, after the word "seven" strike out the words "and be completed within two years thereafter."

At the end of section 1 insert the following:

"Provided, That such beginning of construction within said period of one year shall relate to the superstructure of said bridge above the piers heretofore constructed in the Missouri River in pursuance of the act of which this act is amendatory: And provided further, That in all matters and particulars not expressly provided for in the act of which this act is amendatory the construction, control, and use of such bridge shall be governed by the act of Congress approved March 23, 1906, entitled 'An act to regulate the construction of bridges over navigable waters.'"

The SPEAKER. Is there objection?

Mr. RUCKER. Mr. Speaker, reserving the right to object, I desire to ask the gentleman a question. Is there not a good deal of objection to this bill both in Clay County and Jackson County?

Mr. ELLIS. There has been some objection, but the matter has been thoroughly thrashed out before the committee, and the amendments virtually satisfy everybody.

Mr. RUCKER. The gentleman says the amendments do satisfy those who oppose it?

Mr. ELLIS. Yes.

The SPEAKER. The Chair hears no objection. The question is on the amendment.

The question was taken; and the amendments were agreed to.

The SPEAKER. The question now is on the third reading of the Senate bill as amended.

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

On motion of Mr. ELLIS, a motion to reconsider the last vote was laid on the table.

TRANSFER OF SCHOOL FUNDS TO SOUTH CAROLINA.

Mr. PATTERSON of South Carolina. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (S. 8065) to provide for the transfer to the State of South Carolina of certain school funds for the use of free schools in the parishes of St. Helena and St. Luke, in said State, and to consider the same at this time.

The SPEAKER. The gentleman from South Carolina asks unanimous consent to take from the Speaker's table the bill which the Clerk will report.

The Clerk read as follows:

Be it enacted, etc., That the sum of \$50,450, heretofore invested in United States registered 4 per cent bonds of the funded loan of 1907, and the sum of \$40, invested in United States registered 3 per cent bonds of the loan of 1908 to 1918, an aggregate of \$50,490, invested by the Secretary of the Treasury under the provisions of the act of Congress of March 3, 1873 (17 Stats., p. 600), as a fund for the use and support of free public schools in the parishes of St. Helena and St. Luke, South Carolina, the interest on which is applied to the support of said schools, shall, on the 1st day of July, 1907, be paid over to the State of South Carolina, which State shall set apart said sum as a separate interest-bearing trust fund and administer the same in such manner as it may elect for the benefit of free public schools in the parishes of St. Helena and St. Luke, in said State, as provided in the act of Congress approved March 3, 1873.

The SPEAKER. Is there objection?

Mr. MANN. Mr. Speaker, I desire to have inserted in the Record the following letter relating to the bill.

The SPEAKER. Without objection, the letter may go in the Record.

There was no objection.

The letter is as follows:

DEPARTMENT OF THE INTERIOR,
BUREAU OF EDUCATION,
Washington, February 9, 1907.

Hon. JAMES R. MANN,
House of Representatives, United States,
Washington, D. C.

MY DEAR MR. MANN: Replying to your inquiry by telephone, with reference to Senate bill 8065, to provide for the transfer to the State of South Carolina of certain school funds for the use of free schools in the parishes of St. Helena and St. Luke, in said State, I beg to submit the following statement:

It appears from the acts relating to the funds in question, namely, Chapter CC, Statutes at Large, Volume XIV, passed July 16, 1866; Chapter CCCXXXVII, Statutes at Large, Volume XVII, approved June 8, 1872, and Chapter CCLX of the same, approved March 3, 1873, that these funds arose from the sale of "school farm lands" in the parishes of St. Helena and St. Luke, South Carolina, such school farm lands having been reserved for school purposes from certain lands which came into the hands of the General Government through failure of the owners to pay the direct tax imposed in the year 1862. The act of March 3, 1873, provided that such funds should be turned over to the Secretary of the Treasury and invested by said Secretary in bonds of the United States to be by him retained as a fund for the use and support of free public schools in the parishes of St. Helena and St. Luke in equal parts, the interest of which shall annually be expended by a special board of three commissioners to be appointed by and act under the direction of the Secretary of the Treasury and removable at his discretion, to increase the efficiency of any free public schools established and sustained in said parishes by the authority of said State if such school shall exist, otherwise at the discretion of said commissioners.

I have thus far been unable to find any report or record of the proceedings of these commissioners or of the use which they have made of these funds. I am informed by the Treasury Department that no such report or record is known in that Department. I have caused the reports of the education department of the State of South Carolina to be examined and find in them no reference to these funds, except that in the fifteenth annual report of the State superintendent of education, 1883, there appears in the statement of Thomas H. Wheeler, school commissioner of Beaufort County, the following words: "The districts in St. Luke and St. Helena parishes received aid from the United States Government." No information concerning these funds is to be found in the publications of the Bureau of Education. The names of the special commissioners appear in the latest Official Register of the United States, Volume I, page 294. They are D. W. Bythewood, E. J. Ravenah, and Thomas G. White, all of Beaufort, S. C., each of whom receives compensation to the amount of \$50 a year. I am informed that Mr. Bythewood acts as special disbursing officer of the Treasury Department in this matter.

Referring to the question whether it is desirable that these funds be turned over to the State of South Carolina in trust for the purposes for which they are intended, in the absence of definite information concerning the actual disposition of the funds I can only offer such suggestion as grows out of the past practice of the United States Government in its relations with the school systems of the several States. Such assistance as has been extended by the National Government to the several States for educational purposes has been generally in the form of public lands or of funds derived from the sale of such lands.

The earliest grant was made to Ohio in 1802, where section No. 16 in every township was granted "to the inhabitants of such township for the use of schools."

In Illinois the grant was "made to the State for the use of the inhabitants of such township for the use of schools."

Beginning with the State of Michigan, the lands were granted to the State for the use of schools.

The lands granted for the establishment of universities were likewise conveyed to the several States. This is true also of the lands granted under an act of Congress approved July 2, 1862, for the establishment of colleges of agriculture and the mechanic arts.

Likewise in the act of Congress approved February 22, 1889 (the enabling act for the States of North Dakota, South Dakota, Montana, and Washington), it was provided that 5 per cent of the net pro-

ceeds of the sales of public lands "shall be paid to the said States to be used as a permanent fund, the interest of which only shall be expended for the support of common schools within said States, respectively."

These provisions show that it has been the policy of the General Government to grant lands and funds for educational purposes to the several States, and to vest in such States the management of the funds, including those derived from the sale of school lands.

The case presented by the school farm lands of South Carolina, with which Senate bill 8065 deals, is not altogether parallel with those mentioned above. The origin of the funds was different, and those funds have hitherto been administered by the Treasury Department of the General Government. It does not appear, however, that the intent of the grant was essentially different from that of the several grants referred to above. The act of July 16, 1866, provided that "the proceeds of said sales, after paying expenses of the surveys and sales, shall be invested in United States bonds, the interest of which shall be appropriated * * * to the support of schools, without distinction of color or race, on the islands in the parishes of St. Helena and St. Luke." The act of March 3, 1873, provides that the interest on the bonds purchased with these funds "shall annually be expended to increase the efficiency of any free public schools established and sustained in said parishes by authority of said State, if such schools shall exist, otherwise at the discretion of the commissioners hereinafter named." It is clear from the provisions of the act last named that these funds are intended to supplement the provisions of the public school system of the State so far as these two parishes are concerned, and only in default of public schools may they be devoted to the support of other schools.

In view of these facts, it seems to me that Senate bill 8065, in providing for the transfer to the State of South Carolina of the funds derived from the sale of the lands in question, to be held in trust for the support of the common schools of the State in the two parishes named, is in accord with the established and well-nigh universal practice of the General Government in dealing with educational grants for the benefit of the several States.

I have the honor to be,
Very respectfully,

ELMER ELLSWORTH BROWN,
Commissioner.

The SPEAKER. Is there objection? [After a pause.] The Chair hears none. The question is on the third reading of the Senate bill.

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

Mr. PATTERSON of South Carolina. Mr. Speaker, I ask unanimous consent that a similar House bill, H. R. 25056, on the House Calendar do lie upon the table.

The SPEAKER. Is there objection?

There was no objection; and it was so ordered.

CALIFORNIA DÉBRIS COMMISSION.

Mr. ENGLEBRIGHT. Mr. Speaker, I ask unanimous consent for the present consideration of the bill (H. R. 13367) to amend section 13 of an act of March 1, 1893, entitled "An act to create the California Débris Commission and regulate hydraulic mining in the State of California," which I send to the desk and ask to have read.

The Clerk read as follows:

Be it enacted, etc., That section 13 of an act of March 1, 1893, entitled "An act to create the California Débris Commission and regulate mining in the State of California," is hereby amended so as to read as follows:

"SEC. 13. That in case a majority of the members of said Commission, within thirty days after the time so fixed, concur in the decision in favor of the petitioner or petitioners, the said Commission shall thereupon make an order directing the methods and specifying in detail the manner in which operations shall proceed in such mine or mines; what restraining or impounding works, if any, if facilities therefor can be found, shall be built and maintained; how and of what material; where to be located; and in general set forth such further requirements and safeguards as will protect the public interests and prevent injury to the said navigable rivers and the lands adjacent thereto, with such further conditions and limitations as will observe all the provisions of this act in relation to the working thereof and the payment of taxes on the gross proceeds of the same: *Provided*, That all expense incurred in complying with said order shall be borne by the owner or owners of such mine or mines: *And provided further*, That where it shall appear to said Commission that hydraulic mining may be carried on without injury to the navigation of said navigable rivers and the lands adjacent thereto, an order may be made authorizing such mining to be carried on without requiring the construction of any restraining or impounding works or any settling reservoirs: *And provided also*, That where such an order is made a license to mine no taxes provided for herein on the gross proceeds of such mining operations shall be collected."

The SPEAKER. Is there objection?

Mr. PAYNE. Mr. Speaker, reserving the right to object, I would like to ask the gentleman to explain the change in the law.

Mr. MANN. What committee reported the bill?

Mr. ENGLEBRIGHT. The Committee on Mines and Mining has unanimously reported the bill. It is a bill introduced by my predecessor, Mr. Gillett, and the only change in the law is the clause at the end of the section from the words "And provided further," and is covered in the latter part of the report of the committee:

The purpose of the present bill is to authorize and empower the California Débris Commission to order that hydraulic mining may be carried on without first going to a needless expense of building dams, barriers, etc., where the same can be done without injuring the navigability of the rivers or lands lying adjacent thereto.

It leaves the whole matter in the hands of the Commission, as it always has—only gives them discretion in the matter of some small mines lying back in the mountains where mining could be done without injury to the rivers.

Mr. STEPHENS of Texas. I would like to ask the gentleman if this is a local measure?

Mr. ENGLEBRIGHT. It is entirely local to California, and the entire California delegation is satisfied with it.

Mr. MANN. Is this a matter that has been considered in any way at all by the Committee on Rivers and Harbors?

Mr. ENGLEBRIGHT. I do not know.

Mr. MANN. There has been considerable complaint out there about the Commission and its work in reference to filling up at least one of the rivers. That has been before our committee a number of times.

Mr. ENGLEBRIGHT. Well, this bill would not interfere in any manner with that state of affairs. It merely gives this Commission discretion in certain places. There are mines where it is not necessary to construct any restraining works at all, yet under the act it is absolutely necessary to construct works whether they are needed or not, as the Commission absolutely has no discretion to order or give such permits.

Mr. MANN. Have you not had a lot of litigation out there?

Mr. ENGLEBRIGHT. There has been a large amount of litigation. It is a matter which in years past attracted the attention of Congress, and resulted in the passage of the act providing for the California Débris Commission, under which all hydraulic mining has to be done. A man desiring to do any hydraulic mining must at first make an application to this Commission for a permit to do so. After making the application, it is advertised, allowing anyone to come before the Commission in regard to the subject, and then the Commission, if they deem it proper, will allow works to be constructed, and after the works are constructed they give a permit. This little clause added to one section of the bill gives this Commission authority to allow work to be performed when it is not necessary to construct any works.

Mr. MANN. Does it affect in any way this litigation?

Mr. ENGLEBRIGHT. No, it does not affect the litigation at all.

The SPEAKER. The Chair hears no objection. Will the gentleman indicate his amendment?

Mr. ENGLEBRIGHT. In line 17, page 2, change the spelling of the word "provided."

The SPEAKER. The Clerk will report the amendment.

The Clerk read as follows:

Strike out the typographical error in line 17, page 2, making the word "provided."

The amendment was agreed to.

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

SALE OF CERTAIN TIMBER ON MENOMINEE INDIAN RESERVATION, WIS.

Mr. BROWN. Mr. Speaker, I ask unanimous consent for the present consideration of the bill (H. R. 24043) to authorize the sale of timber on certain of the land reserved for the use of the Menominee tribe of Indians, in the State of Wisconsin.

The SPEAKER. The Clerk will report the bill.

The Clerk read as follows:

Be it enacted, etc., That the Secretary of the Interior be, and he is hereby, authorized to sell, under such rules and regulations as he may prescribe, the blown-down timber and the standing merchantable timber on the sections containing blown-down timber in the north half of township No. 29, range No. 13 east; the north half of township No. 29, range No. 14 east, and in the south half of township No. 30, range No. 13 east, on the Menominee Indian Reservation in Wisconsin, as herein provided, such sale to be in addition to the amount authorized to be sold annually by the act of June 12, 1890 (26 Stat. L., p. 146).

SEC. 2. That the timber shall be sold on stumpage, the sale to be confined to the sections containing blown-down timber, to the highest bidder or bidders, for cash, after due advertisement inviting proposals, in such manner and at such time and place as the Secretary may direct. And the Secretary shall appoint a competent man, who shall be a practical logger, to superintend the marking and cutting of the timber and the scaling of the logs, the timber to be paid for according to the Government scale, no sale, however, to be valid until approved by said Secretary. The compensation of the superintendent and scalers shall be fixed by the Secretary.

SEC. 3. That from the net proceeds of sales of said Menominee timber shall be deducted one-fifth part, which shall be deposited in the Treasury of the United States to the credit of the Menominee Indians in Wisconsin, to be used under the direction of the Secretary of the Interior for the benefit of said Indians, and the residue of said proceeds shall be funded in the United States Treasury, interest on which shall be allowed said tribe annually at the rate of 3 per cent per annum, to be paid to the tribe per capita, or expended for their benefit under the direction of the Secretary of the Interior.

SEC. 4. That all acts or parts of acts inconsistent with this act are hereby repealed.

The SPEAKER. Is there objection? [After a pause.] The Chair hears none.

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

On motion of Mr. BROWN, a motion to reconsider the last vote was laid on the table.

RELIEF OF HOMESTEAD AND OTHER ENTRYMEN PAYING EXCESS LEGAL FEES, ETC.

Mr. MARTIN. Mr. Speaker, I ask unanimous consent for the present consideration of the following bill.

The SPEAKER. The Clerk will report the bill.

The Clerk read as follows:

A bill (H. R. 22588) for the relief of homestead and other entrymen who have been required to pay more than the legal fees, commissions, excesses, and purchase money.

Be it enacted, etc., That section 2 of the act of June 16, 1880 (21 Stat. p. 287), be amended to read as follows:

"Sec. 2. That in all cases where homestead or timber-culture or desert-land entries or other entries of public lands have heretofore or shall hereafter be canceled for conflict, or where, from any cause, the entry has been erroneously allowed and can not be confirmed, the Secretary of the Interior shall cause to be repaid to the person who made such entry, or to his heirs or assigns, the fees and commissions, amount of purchase money, and excesses paid upon the same, upon the surrender of the duplicate receipt and the execution of a proper relinquishment of all claims to said land, whenever such entry shall have been duly canceled by the Commissioner of the General Land Office, and in all cases where parties have been improperly charged the double-minimum price for minimum lands, or where they have been required to pay more than the lawful fees, commissions, excesses, or purchase money, the excess shall in like manner be repaid to the entryman or to his heirs or legal representatives."

The SPEAKER. Is there objection?

Mr. PAYNE. Mr. Speaker, reserving the right to object, I would like to ask the gentleman what is the extent of the changes this makes in existing law?

Mr. MARTIN. Mr. Speaker, in 1825 the first statute was passed, and it provided for the return of the purchase money in cases where entries had been erroneously allowed. That was amended in 1880, so that the purchase money or excess might be returned where the double minimum price had been by mistake charged for minimum price land. That is the law at the present time governing both of these propositions. There is still a class of cases where mistakes have been made not covered by law, such as, for example, where a land officer has by mistake of the law taken more than the legal price under the statute. There are instances where Indian reservations have been opened and prices have been fixed; for instance, \$1.25 an acre for land entered within a certain period, 75 cents or \$1 an acre for land entered in another period, and the officer has received the \$1.25 price for lands where 75 cents or \$1 should have been received under the law. Under the administration of the Land Department, carrying on so large a business as it does, mistakes will necessarily arise, and this bill has been prepared in the Department for the purpose of meeting those cases.

Mr. PAYNE. I would like to ask the gentleman if this does not involve a large amount of money?

Mr. MARTIN. I think not.

Mr. PAYNE. I have been informed it does.

Mr. MARTIN. Of course, mistakes of this kind have been made, but the class of cases not now reached by the law is limited, and would not cover a very large amount of money.

Mr. PAYNE. Mr. Speaker, I think for the present I shall have to object.

Mr. LACEY. I trust the gentleman from New York will not—

Mr. MARTIN. I yield to the gentleman from Iowa [Mr. LACEY] for a moment.

Mr. LACEY. I would suggest to my friend that while it does involve a considerable amount of money, it does not involve any of the Government's money. The Government has got somebody else's money by mistake.

Mr. MANN. That is the case with everything.

Mr. LACEY. Oh, no; not at all. It only occasionally occurs, and they want to get rid of it. Instead of having it come in here each time to the Committee on Claims it is to allow them to adjust these matters and pay back wherever they have taken money that does not belong to them.

Mr. STEPHENS of Texas. Does the gentleman yield to a question?

Mr. LACEY. Certainly.

Mr. STEPHENS of Texas. As I understand the law now, the minimum is \$1.25 an acre, and the double minimum is \$2.50 an acre. Is that correct?

Mr. LACEY. That is railroad land.

Mr. MARTIN. I would say this is already covered by the law. The law now specifically, by the act of 1880, returns the excess always where the double minimum price has been taken for a minimum land. It does not—

Mr. MANN. Does the gentleman yield for a question?

Mr. MARTIN. Certainly.

Mr. MANN. Is it not a fact that there has been a good deal of suspicion created at times, with reference to the existing law, about the return of money paid on desert-land claims and other entries of that sort?

Mr. MARTIN. I am not aware of it if any suspicion of that kind ever existed.

Mr. MANN. I will be glad, then, to give the gentleman some evidence on the subject.

Mr. MARTIN. I think, Mr. Speaker, as the gentleman from New York has suggested, it is a matter that may involve the payment of some money, but whatever may be said along that line it certainly does not involve the payment of any money that the Government rightfully holds. The same rule between private individuals will compel an individual to return what he has received purely by mistake; and so every time a case of this kind gets into the Court of Claims invariably, upon the facts that would be reached by this law, the Government has to return it at the end of litigation in the Court of Claims, and after taking of time and the expenditure of money on behalf of the Government. For all entries now that are erroneously made, where the party does not get the land, the Department adjusts the claim and returns the money. In all cases where double minimum price is charged for minimum land they adjust the claim of excess and return the money. But in other cases, where by mistake they have received more than the lawful price for lands, there is no law now authorizing the return.

Mr. MANN. Is not this the statute now?

Mr. PAYNE. Mr. Speaker, I think we had better insist upon the objection.

The SPEAKER. The gentleman from New York [Mr. PAYNE] objects.

COLUMBIA INDIAN RESERVATION LANDS.

Mr. JONES of Washington. Mr. Speaker, I ask for the present consideration of the bill H. R. 25550.

The SPEAKER. The gentleman from Washington asks consideration of a bill H. R. 25550, which the Clerk will report.

The Clerk read as follows:

A bill (H. R. 25550) confirming entries and applications under section 2306 of the Revised Statutes of the United States for lands embraced in what was formerly the Columbia Indian Reservation, in the State of Washington.

Be it enacted, etc., That all lands in the former Columbia Indian Reservation, in the State of Washington, which are embraced in entries heretofore allowed under section 2306 of the Revised Statutes of the United States, or which are embraced in any application to make entry under said section 2306, which were presented before the lands covered by such application were withdrawn under the reclamation act, are hereby declared to be subject to such entries, and applications and entries shall be allowed and patents shall be issued thereunder in the same manner and upon the same conditions under which entries are allowed and patents are issued under said section 2306 for other public lands of the United States, and all patents heretofore issued under such entries are hereby confirmed.

The SPEAKER. Is there objection?

Mr. MANN. Mr. Speaker, reserving the right to object, I wish the gentleman would tell us what the bill does.

Mr. JONES of Washington. Mr. Speaker, in 1884 we passed an act declaring all lands formerly known as the "Columbia Indian Reservation" to be opened to homestead entry, and under the practice of the Department we accepted soldiers' additional homesteads for several years, and several claims went to a patent, and several applications were pending when they decided that these lands under the terms of that act were not subject to a soldier's additional homestead application and entry, and therefore they held them up. The land involved consists of about a thousand acres. Several parties have gone in and have made very valuable improvements, and the object of this bill is simply to confirm those applications and entries made under the practice of the Department, and this bill was prepared by the Department itself to cover that matter.

The SPEAKER. Is there objection?

There was no objection.

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

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

SALE OF CERTAIN LANDS TO BUFFALO, WYO.

Mr. MONDELL. Mr. Speaker, I ask unanimous consent for the present consideration of the bill (H. R. 23324).

The bill was read, as follows:

A bill (H. R. 23324) authorizing the sale of certain lands to the city of Buffalo, Wyo.

Be it enacted, etc., That the Secretary of the Interior be, and he is hereby, authorized to sell to the city of Buffalo, Johnson County, Wyo.,

for the sum of \$1.25 an acre, for use as a public park and fair grounds, the following described lands: The southwest quarter of the southeast quarter and the southeast quarter of the southwest quarter of section 27 and the northeast quarter of the northwest quarter, and lot 5 of section 34, in township 51 north of range 82 west of the sixth principal meridian.

The amendment recommended by the committee was read, as follows:

In lines 7 and 8 strike out the words "the southwest quarter of the southeast quarter" and insert in lieu thereof the words "lot twelve."

The SPEAKER. Is there objection? [After a pause.] The Chair hears none.

The amendment recommended by the committee was agreed to.

The bill as amended was ordered to be engrossed for a third reading; and being engrossed, it was accordingly read the third time, and passed.

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

ALLOTMENT OF LANDS TO INDIANS OF LA POINTE INDIAN RESERVATION, WIS.

Mr. BROWN. Mr. Speaker, I call up the Senate bill 2787, and ask unanimous consent for its present consideration.

The Clerk read as follows:

A bill (S. 2787) to amend the act of Congress approved February 11, 1901, entitled "An act providing for allotments of lands in severalty to the Indians of the La Pointe or Bad River Reservation, in the State of Wisconsin."

Be it enacted, etc., That the act of Congress approved February 11, 1901 (31 Stat., p. 766), entitled "An act providing for allotments of lands in severalty to the Indians of the La Pointe or Bad River Reservation, in the State of Wisconsin," shall not be construed so as to bar or in any manner abridge or curtail the right of any Indian to allotment on said reservation as provided by the treaty concluded with the Chippewas of Lake Superior and the Mississippi September 30, 1854.

The amendment recommended by the committee was read, as follows:

Amend by inserting after the word "reservation," in line 9, the words "whether born before or after the passage of said act."

The SPEAKER. Is there objection?

Mr. MANN. Mr. Speaker, I think we ought to know what the bill is.

Mr. BROWN. Mr. Speaker, for the information of the House and the gentleman from Illinois, I will say that this bill is a Department bill, and was introduced for the purpose of correcting an injustice under the allotment act of February 11, 1901. In that law there was a clause that confines the allotment to the Indians living, resident, and entitled to reside on the La Pointe or Bad River Indian Reservation.

I will refer to what the Secretary of the Interior and the Commissioner of Indian Affairs say of this bill and the necessity for it. In a communication from the Secretary of the Interior to the chairman of the Committee on Indian Affairs he states as follows:

The object of the amendment, as set forth in the Commissioner's report, is to authorize allotments on the reservation to full-blood non-resident Indians, who by the terms of the act of February 11, 1901, and the decision of the Department of June 8, 1905, have been barred from receiving such allotments.

In addition, I will read to you a letter from Commissioner Leupp, dated December 4, 1905, to the Secretary:

The question presented was whether these nonresidents should be allotted, as they were entitled under the treaty, or did the act of February 11, 1901, bar such rights? Under date of June 8, 1905, the Department decided that the act of February 11, 1901, confined the right of allotment to "each Indian now living and residing on said reservation and entitled to so reside," and therefore the full-blood nonresident members were not entitled to allotment. It was further held that relief for these Indians should be sought at the hands of Congress. This decision and its result were reported to the agent, and great dissatisfaction was thereby created among the Indians, as there were a good many whose names were on the schedule who were not entitled to allotment under the law.

This bill, I will say to the gentleman, was drafted by the Department, and is, as stated, to correct an interpretation that they were compelled to put upon the law of 1901. It authorizes the allotment to Indians belonging to this reservation who were off the reservation and whom the Department have decided are entitled to these allotments.

The SPEAKER. Is there objection? [After a pause.] The Chair hears none.

The question was taken; and the amendment was agreed to.

The bill as amended was ordered to a third reading, was read the third time, and passed.

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

FORTIFICATION APPROPRIATION BILL.

Mr. SMITH of Iowa. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H. R. 23821) making appropriations for fortifications and other works of defense, for

the armament thereof, for the procurement of heavy ordnance for trial and service, and for other purposes, nonconcur in the Senate amendments and ask for a conference.

The SPEAKER. The gentleman from Iowa asks unanimous consent to take from the Speaker's table the fortification bill, nonconcur in the Senate amendments, and ask for a conference.

Mr. WILLIAMS. Mr. Speaker, before that consent is granted, will the gentleman give the House some idea of the points of difference between the two Houses?

Mr. SMITH of Iowa. Well, the points are somewhat numerous. The points include large increase of appropriations for fire control, and they also include large items for repair of the devastations by reason of the Gulf storm. They involve some other items. I will say to the gentleman from Mississippi that hearings have been had on some of the items since the bill passed the Senate, that the conferees of both Houses may have information concerning them. The evidence was not taken as to the extent of the ravages of the Gulf storm in November. These estimates reached the House after the hearings closed. Provision was put upon the Senate bill, and no hearings were had until recently, and it was there considered as to the order and the necessity of speed in doing the work.

Mr. WILLIAMS. Do the minority members of the committee agree with you?

Mr. SMITH of Iowa. There has been no such understanding except as to the ordinary course. The minority understood that I would ask for this order, which is known to the Representative from Mobile, who is on the whole committee, but not on the subcommittee, and he is very much interested in the matter.

Mr. WILLIAMS. I shall not object.

The SPEAKER. Is there objection? [After a pause.] The Chair hears none.

The Chair announced the following conferees: Mr. SMITH of Iowa, Mr. KEIFER, and Mr. FITZGERALD.

OMNIBUS LIGHT-HOUSE BILL.

Mr. MANN. I ask unanimous consent to take from the Speaker's table the bill known as the omnibus light-house bill, and to nonconcur in the Senate amendments and ask for a conference.

The SPEAKER. The gentleman from Illinois asks unanimous consent to take from the Speaker's table the omnibus light-house bill, to nonconcur in the Senate amendments, and to ask for a conference. Is there objection?

Mr. WILLIAMS. Reserving the right to object, will the gentleman make some statement of the differences between the two Houses?

Mr. MANN. The bill, as it passed the House, carried items amounting to \$1,600,000 exclusive of light-house keepers' dwellings. The Senate have added items amounting to about \$800,000, and have stricken out two small items from the House bill.

Mr. WILLIAMS. Is it the general desire of the committee to go to conference?

Mr. MANN. It is by direction of the committee this morning that I make the request.

Mr. WILLIAMS. I shall not object.

The SPEAKER. Is there objection?

There was no objection.

The SPEAKER announced as conferees on the part of the House Mr. MANN, Mr. STEVENS of Minnesota, and Mr. ADAMSON.

PATENTS TO OFFICERS AND EMPLOYEES OF THE GOVERNMENT.

The SPEAKER laid before the House the joint resolution (H. J. Res. 224) directing the Secretary of Commerce and Labor to investigate and report to Congress concerning existing patents granted to officers and employees of the Government in certain cases, with a Senate amendment thereto.

Mr. CHANEY. I move to concur in the Senate amendment.

The motion was agreed to.

INTERMARRIED CHEROKEE INDIANS.

The SPEAKER laid before the House the following message from the President of the United States; which was read, ordered to be printed, and referred to the Committee on Indian Affairs:

To the Senate and House of Representatives:

The Supreme Court of the United States, in its decision of November 5, 1906, in the case of Daniel Red Bird, the Cherokee Nation, et al., v. The United States, held that "the rights and privileges of those white citizens who intermarried with Cherokee citizens subsequent to the 1st day of November, 1875, do not extend to the right of soil or interest in any of the vested funds of the Cherokee Nation, and such intermarried persons are not entitled to share in the allotment of the lands or in the distribution of any of the funds belonging to said

nation, and are not entitled to be enrolled for such purposes; that those white persons who intermarried with Delaware or Shawnee citizens of the Cherokee Nation either prior or subsequent to November 1, 1875, and those who intermarried with Cherokees by blood and subsequently, being left a widow or widower by the death of the Cherokee wife or husband, intermarried with persons not of Cherokee blood, and those white men who, having married Cherokee women and subsequently abandoned their Cherokee wives, have no part or share in the Cherokee property, and are not entitled to participate in the allotment of the lands or in the distribution of the funds of the Cherokee Nation or people, and are not entitled to be enrolled for such purpose."

I invite your attention to the urgent necessity for legislation for the relief of intermarried citizens of the Cherokee Nation adversely affected by such decision, many of whom have made permanent and valuable improvements upon lands of the nation, where they have resided for many years, undisturbed in their possession, under the belief that they were entitled to the same rights in the lands as native-born citizens of such nation.

In the decision of the court it was stated that, as to the improvements made by these intermarried citizens, "they seem to have been treated as those of a tenant who had made them under an agreement that they should remain his."

As the lands of the nation are being allotted under the act of June 28, 1898 (30 Stat., 495), and subsequent legislation to the other members of the tribes, these intermarried citizens will lose their improvements unless remedial legislation is had. In order to avoid serious hardships to very many of these intermarried citizens, they should be given a definite time within which to dispose of their improvements to citizens of the nation entitled to enrollment. I therefore earnestly recommend the passage of an act substantially as follows:

"That for sixty days after the approval of this act white persons who intermarried with Cherokee citizens prior to July 1, 1902, and made permanent and valuable improvements on lands belonging to the Cherokee Nation prior to the decision of the Supreme Court of the United States in the case of Daniel Red Bird, the Cherokee Nation, et al., v. The United States (203 U. S., 76), shall have the right to sell such improvements to citizens of the Cherokee Nation entitled to select allotments at a valuation to be approved by an official to be designated by the Secretary of the Interior for that purpose, and the vendor shall have a lien on the rents and profits of the land on which the improvements are located for the purchase money remaining unpaid, and shall have the right to enforce such lien in any court of competent jurisdiction."

THEODORE ROOSEVELT.

THE WHITE HOUSE, February 11, 1907.

FORT BERTHOLD INDIAN RESERVATION, N. DAK.

The SPEAKER laid before the House the following resolution from the Senate of the United States.

The Clerk read as follows:

Resolved, That the Secretary be directed to request the House of Representatives to return to the Senate the bill (S. 7495) to define the status of certain patents and pending entries, selections, and filings on lands formerly within the Fort Berthold Indian Reservation, N. Dak.

The SPEAKER. Without objection, the request will be complied with.

There was no objection.

VALIDATION OF BONDS OF NEW MEXICO.

Mr. BATES. Mr. Speaker, I ask unanimous consent for the present consideration of the bill (H. R. 12857) to validate certain acts of the legislative assembly of the Territory of New Mexico with reference to the issuance of certain bonds.

The Clerk read the bill, as follows:

Be it enacted, etc., That the act of the thirty-fourth legislative assembly of the Territory of New Mexico entitled "An act providing for additional buildings for the New Mexico Military Institute at Roswell" approved February 20, 1901, and the act of the same assembly and session entitled "An act providing for additional buildings for the New Mexico Insane Asylum at Las Vegas," approved March 21, 1901, and the act of the same assembly and session entitled "An act to provide for the issue of bonds for the New Mexico College of Agriculture and Mechanic Arts," approved March 21, 1901, and chapter 53 of the acts of the thirty-fifth legislative assembly of said Territory of New Mexico, entitled "An act creating two armory beards of control and providing for the construction of armories in the cities of Las Vegas and Albuquerque, and authorizing an issue of bonds therefor," be, and each of said acts hereby is, approved, ratified, validated, and confirmed.

Mr. STEPHENS of Texas. Mr. Speaker, reserving the right to object, I desire to ask the gentleman whether or not the bonds have been issued and sold and the money raised and these buildings erected by means of the money raised under this loan?

Mr. BATES. I understand so.

Mr. STEPHENS of Texas. What is the necessity for Congress acting upon it?

Mr. BATES. They want authority to validate the bonds.

Mr. STEPHENS of Texas. It simply validates the bonds that have been issued? I understand the bonds have not been sold, and that the reason is that there is some question arising as to the validity of the bonds. I desire to ask if there are any suits pending?

Mr. BATES. There are no suits pending, and, as I understand, the bonds have not been sold.

Mr. MANN. I would like to say to the gentleman that a few years ago there was an effort made to pass a bill through the House validating certain bonds of New Mexico where there was a good deal of opposition engendered and the project was defeated. Is this the same thing?

Mr. ANDREWS. No.

Mr. BATES. This is for the purpose set forth in the bill, for building certain buildings.

Mr. MANN. Of course we have not the original bills of the legislature here, and we do not know what they cover.

Mr. BATES. I understand that the bonds have been issued and are ready for sale; they have not been disposed of, but are waiting until the act validating the bonds is passed.

Mr. MANN. There was a question here in reference to a matter very much like this where the people who had the bonds wanted to obtain an act of Congress to make them good. I suppose they hadn't paid very much for them, but the project did not go through.

Mr. BATES. This is not that case and is not a similar case.

Mr. STEPHENS of Texas. These bonds have not been hypothecated or sold, as I understand. The question is being held until the legislation is had. It seems to me this remedial legislation should be passed.

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

COUNTY OF TAOS, N. MEX.

Mr. BATES. Mr. Speaker, I ask unanimous consent for the present consideration of the bill (H. R. 12858) permitting the county of Taos, in the Territory of New Mexico, to refund its indebtedness at a lower rate of interest.

The Clerk read the bill, as follows:

Be it enacted, etc., That notwithstanding anything to the contrary in the laws of the United States limiting the indebtedness of counties in the Territories, the county of Taos, in the Territory of New Mexico, be, and the same is hereby, authorized and empowered to refund its floating indebtedness of \$7,500 and its bonded indebtedness of \$42,400 by an issue of its bonds therefor, under the laws of the said Territory providing for the refunding of county indebtedness: *Provided*, That said bonds shall not run for more than twenty years nor bear interest at a higher rate than 5 per cent per annum, nor shall the same be sold for less than par: *Provided further*, That nothing in this act shall be construed as in any manner creating any liability upon the part of the United States.

The SPEAKER. Is there objection to the present consideration of the bill?

There was no objection.

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

SCHOOL LAND IN OKLAHOMA.

Mr. McGUIRE. Mr. Speaker, I ask unanimous consent for the present consideration of the bill (H. R. 24655) to authorize the legislature of Oklahoma to dispose of a certain section of school land.

The Clerk read the bill, as follows:

Be it enacted, etc., That the legislature of the State of Oklahoma is hereby authorized to grant section 16, in township 14, north of range 4, east of the Indian meridian, Lincoln County, Okla., to the board of education of the city of Chandler, in said county, for school purposes upon such terms as the said legislature may impose.

The following committee amendment was read:

In line 3, after the word "Oklahoma," insert the words "when the State of Oklahoma shall have been admitted."

Mr. WILLIAMS. Reserving the right to object, Mr. Speaker, will the gentleman from Oklahoma explain the necessity of this legislation? Why is it the legislature of the State of Oklahoma can not do this without an act of Congress? The land will go to the State for educational purposes, and it goes with their full control and authority.

Mr. McGUIRE. The enabling act provides that the legislature of Oklahoma can dispose of this school land if it desires, but if it does dispose of it it must be done to the highest bidder. The purpose is to give a section of school land not to the highest bidder, but to the city schools. The reason for the bill is this: There are nine townships adjacent to the city of Chandler that are set aside for school purposes—that is, for common schools. This is known as "lieu land." It has been impossible to support schools where these lieu lands were chosen by the authorities, and these children have had to go necessarily to the Chandler school. This has been done at a very great expense to the city of Chandler. The common schools of every Territory have had the benefit of lieu lands, and the city of Chandler and the county of Lincoln have been paying for it.

They have carried the burden. This is to reimburse them to a limited degree for the expenditures they have incurred for the benefit of all the schools of the Territory.

Mr. WILLIAMS. Does not the gentleman think it would be better to wait until after Oklahoma is admitted to the Union and then let the legislature of the State of Oklahoma ask for this legislation?

Mr. McGUIRE. That is exactly what I am trying to do with this bill. I would be glad to do that if it would not be too late,

but it would be too late. We could not then reimburse these people for the money that they have expended.

Mr. WILLIAMS. This bill does not make a disposition of the land?

Mr. McGUIRE. No.

Mr. WILLIAMS. It merely enables the legislature of Oklahoma to do it?

Mr. McGUIRE. That is the idea.

Mr. WILLIAMS. I have no objection.

The SPEAKER. The Chair hears no objection. The question is on the amendment.

The question was taken; and the amendment was agreed to.

The SPEAKER. The question now is on the engrossment and third reading of the bill.

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

NAVAL APPROPRIATION BILL.

Mr. FOSS. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill H. R. 24925—the naval appropriation bill.

The motion was agreed to; accordingly the House resolved itself into the Committee of the Whole House on the state of the Union for the further consideration of the naval appropriation bill, with Mr. SHERMAN in the chair.

The CHAIRMAN. General debate is closed, and the Clerk will read.

The Clerk read as follows:

PAY OF THE NAVY.

Pay and allowances prescribed by law of officers on sea duty and other duty; officers on waiting orders; officers on the retired list; clerks to commandants of yards and stations; clerks to paymasters at yards and stations, general storekeepers, receiving ships, and other vessels; commutation of quarters for officers on shore not occupying public quarters, including boatswains, gunners, carpenters, sailmakers, warrant machinists, pharmacists, and mates, and also naval constructors and assistant naval constructors; for hire of quarters for officers serving with troops where there are no public quarters belonging to the Government, and where there are not sufficient quarters possessed by the United States to accommodate them, or commutation of quarters not to exceed the amount which an officer would receive were he not serving with troops; pay of enlisted men on the retired list; extra pay to men reenlisting under honorable discharge; interest on deposits by men; pay of petty officers, seamen, landsmen, and apprentice seamen, including men in the engineers' force, and men detailed for duty with Naval Militia, and for the Fish Commission, 36,000 men; and the number of enlisted men shall be exclusive of those undergoing imprisonment with sentence of dishonorable discharge from the service at expiration of such confinement; and as many warrant machinists as the President may from time to time deem necessary to appoint, not to exceed 20 in any one year; and 2,500 apprentice seamen under training stations and on board training ships, at the pay prescribed by law, \$21,000,000.

Provided, That the Secretary of the Navy may, in his discretion, require the whole or a part of the bounty allowed upon enlistment to be refunded in cases where men are discharged during the first year of enlistment by request, for inaptitude, as undesirable, or for disability not incurred in line of duty: *Provided*, that officers of the Navy above the grade of captain, who served with credit in the regular or volunteer forces during the civil war, prior to April 9, 1865, otherwise than as cadets, and were retired prior to June 13, 1899, on account of wounds or disability incident to the service, or on account of age, or after forty years' service, shall receive the same pay and allowances from June 29, 1906, as are or may be provided by or in pursuance of law for the retired officers of corresponding rank in the Army: *And provided further*, That commodores coming under the provision of this section may, in the discretion of the President, by and with the advice and consent of the Senate, be placed on the retired list of the Navy, with the rank and retired pay of rear-admiral (junior grade), from June 29, 1906: *And provided further*, That retired officers of the Navy who have retired for disabilities resulting from an incident of the service shall have for active duty the rank, pay, and allowances of officers of the active list of like length of active service, and if actively employed for an aggregate period of three years after retirement shall, when detached from duty, retain the rank and highest retired pay of the grade they then hold: *Provided*, That the time of service of the retired officer, for the purpose of fixing his rank, pay, and allowances, shall be made up of the period of service before retirement, to which shall be added the time engaged in active service, under the order of the Secretary of the Navy, while on the retired list: *Provided further*, That the present rank and pay of any officer on the retired list shall not hereby be reduced.

Mr. PRINCE. Mr. Chairman, I make the point of order against the provision on page 3, line 6, and running to the end of line 21 on page 3.

Mr. HULL. Mr. Chairman, I reserve the point of order on the balance of the section.

Mr. MANN. Mr. Chairman, I make the point of order on the balance of the section.

Mr. CRUMPACKER. Mr. Chairman, I hope the gentleman from Illinois [Mr. PRINCE] will reserve his point of order.

Mr. FITZGERALD. Mr. Chairman, is it necessary to reserve all points of order at this time?

The CHAIRMAN. It is necessary to state what points of order are reserved against this section at this time.

Mr. FITZGERALD. Mr. Chairman, then I reserve a point of

order against the language on page 2, commencing in line 5, ending with line 11.

Mr. MANN. Mr. Chairman, I also reserve the point of order upon the words "thirty-six thousand men," in line 17, page 2.

The CHAIRMAN. Does the gentleman from Illinois [Mr. Foss] desire to discuss any of the points of order?

Mr. FOSS. So far as the point of order made by the gentleman from New York [Mr. FITZGERALD] is concerned, which I think comes up first upon the paragraph—

Mr. FITZGERALD. Oh, Mr. Chairman, my purpose is to have the gentleman explain the provision. I reserve the point of order. I did not make the point of order.

Mr. FOSS. Mr. Chairman, I would say that this provision has been put in here and is due to a recent decision of the Comptroller of the Treasury, disallowing commutation for quarters for officers where there are no public quarters.

Mr. FITZGERALD. I call the attention of the gentleman to the language of this provision, that it is for hire of quarters for officers serving with troops. When do the naval officers serve with troops?

Mr. FOSS. The decision of the Comptroller was to the effect that where a naval officer was stationed at a navy-yard he was there with men—that is to say, the men in the navy-yard were construed by him as troops. It was a roundabout construction, and in applying the Army law, which applies also to the Navy, the decision of the Comptroller was to the effect that commutation for quarters could not be allowed. This puts it on the same basis as Army officers. I have here the letter from the Chief Quartermaster and also a letter from the Navy Department, which I will be pleased to put into the Record.

NAVY DEPARTMENT,

Washington, February 5, 1907.

SIR: I have the honor to invite the attention of the committee to the inclosed copy of a memorandum from the Bureau of Navigation requesting that the clause providing for "hire of quarters for officers serving with troops where there are no public quarters," which clause appears in the bill making appropriations for the naval service as it passed the House, be amended so as to provide for the allowance, in the settlement of accounts of disbursing officers, of payments for such commutation of quarters made prior to July 1, 1907.

Inasmuch as the provision as it now reads in the naval bill will not be effective until July 1, 1907, and will not cover payments made on the account referred to prior to that date, the Department recommends that the suggested amendment be made.

A duplicate of this communication has this day been addressed to the chairman of the Committee on Naval Affairs of the Senate.

Very respectfully,

V. H. METCALF, Secretary.

HON. GEORGE EDMUND FOSS,

Chairman Committee on Naval Affairs,
House of Representatives.

DEPARTMENT OF THE NAVY,

BUREAU OF NAVIGATION,

Washington, D. C., February 2, 1907.

[Memorandum for the Department.]

On November 30 last this Bureau had the honor to invite the attention of the Department to a decision rendered by the Comptroller of the Treasury that officers of the Navy serving on shore with troops are not entitled to commutation of quarters. The resulting hardship of this decision upon officers ordered on shore duty with enlisted men was pointed out and as a remedy it was suggested that Congress be asked to insert the following language in the naval appropriation bill: "For hire of quarters for officers serving with troops where there are no public quarters belonging to the Government and where there are not sufficient quarters possessed by the United States to accommodate them, or commutation of quarters not to exceed the amount which an officer would receive were he not serving with troops."

This request received favorable action in Congress, and the new language has been incorporated in the naval bill, page 2, lines 5 to 11.

As this bill when enacted into law will not become effective until July 1, 1907, pay officers who have made disbursements prior to that date for commutation of quarters for officers on shore serving with troops will, under the Comptroller's decision, be checked for the sums so paid. To forestall this checkage, the Bureau suggests the insertion of the following language in the naval bill after the word "troops," on page 2, line 11:

"And the proper accounting officers of the Treasury are hereby authorized and directed to allow in the settlement of accounts of disbursing officers all payments made prior to July 1, 1907, for commutation of quarters for officers on shore serving with troops and not provided with public quarters."

It is believed that if the attention of Congress is called to the fact that this slight change in the bill will prevent the enactment of separate legislation for the relief of each pay officer so checked and will lessen the work of the accounting officers of the Treasury Department the advantage of embodying it will be readily seen.

G. A. CONVERSE, Chief of Bureau.

WAR DEPARTMENT,

OFFICE OF THE QUARTERMASTER-GENERAL,

Washington, June 25, 1906.

HON. GEORGE EDMUND FOSS,

House of Representatives, Washington, D. C.

MY DEAR SIR: In reply to your communication of June 23, 1906, addressed to the Secretary of War and by him referred to this office for reply, asking for the statute under which quarters are hired for officers serving with troops where there are not sufficient quarters possessed by the Government to accommodate them, you are respectfully informed that paragraph 1035, Army Regulations, 1904, provides: "If the pub-

lic buildings are inadequate, the commanding officer will apply, through the department commander, to the Secretary of War for authority to hire the necessary quarters." This paragraph of the Army Regulations is based upon section 9 of the act of June 17, 1878 (20 Stat. L., 144).

Very respectfully,

C. F. HUMPHREY,
Quartermaster-General, U. S. Army.

NAVY DEPARTMENT,
Washington, June 22, 1906.

SIR: In answer to your informal inquiry of this morning I have the honor to submit the following statement:

By letter dated May 25, 1906, addressed to the chairman of the Committee on Naval Affairs of the Senate, the Department recommended the insertion in the then pending naval appropriation bill of the following clause:

"For hire of quarters for officers serving with troops where there are no public quarters belonging to the Government and where there are not sufficient quarters possessed by the United States to accommodate them."

This clause now appears as Senate amendment No. 1 in the naval bill as it passed the Senate and was the subject of discussion yesterday in the House (CONGRESSIONAL RECORD, June 21, 1906, p. 9159 et seq.).

The provision is rendered necessary by recent decisions of the Comptroller of the Treasury to the effect that an officer of the Navy on duty with troops is not entitled to commutation for quarters (decision of November 13, 1905, in the case of Asst. Surg. W. N. McDonell, United States Navy, copy inclosed). Under this decision officers, when ordered to shore duty for service with enlisted men at points where there are no quarters available, suffer a special hardship, inasmuch as they receive neither quarters in kind nor commutation therefor. To correct this discrimination is the purpose of Senate "amendment No. 1."

The phraseology of this clause is not new. Prior to the decision of the Comptroller in question, however, such a provision was not needed for the Navy. The language of this "amendment No. 1" appears verbatim in acts making appropriations for the naval service passed as far back as 1890. (See, for example, 33 Stat., p. 349; 26 Stat., p. 204.) This language has, therefore, received interpretation in practice during a period of sixteen years or more, and it has been uniformly interpreted to mean that officers serving with troops, where there are no public quarters or insufficient quarters, shall receive commutation therefor at the rates allowed officers of the Army in like cases—that is to say, at the rate of \$12 per room for the number of rooms to which the rank of the officer concerned entitles him. These rates are fixed by law and regulation as follows:

"That the rate of commutation shall hereafter be \$12 per room per month for officers' quarters." (21 Stat., 31; act of June 23, 1879; 1 Supp. Rev. Stat., p. 267.)

This statute fixes the rate at \$12 per room. By Army Regulations (1904), article 1051, page 152, the number of rooms allowed "as quarters" and "as kitchen" are given as follows:

Lieutenant-General or major-general	6
Brigadier-general or colonel	5
Lieutenant-colonel or major	4
Captain	3
Lieutenant	2

By section 13 of the personnel act it is provided that "officers of the line of the Navy and of the medical and pay corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army." This statute makes the Army allowances applicable to the Navy, and by other provisions of law they are made applicable to the Marine Corps.

Articles 1035 and 1036 of the Army Regulations (1904) read:
"1035. An officer will not occupy more than his proper allowance of quarters, except by permission of the commanding officer, when there is an excess of quarters at the station. The allowance will be reduced pro rata by the commanding officer when the number of officers and troops present makes it necessary. If the public buildings are inadequate, the commanding officer will apply, through the department commander, to the Secretary of War for authority to hire necessary quarters."

"1036. Officers on duty without troops at stations where there are public quarters will be furnished them in kind. If insufficient, application for authority to hire quarters will be made as directed in paragraph 1035."

It is learned by informal inquiry at the War Department that it is the practice in that branch of the service to hire quarters for officers serving with troops where there are no public quarters or where the public quarters are insufficient.

From the foregoing statement it will be seen that the amendment to which objection has been made, Senate amendment No. 1, is not new, but has been running in the statutes relating to the Marine Corps for sixteen years; that its meaning has been settled and determined in practice; that the language does not confer upon the officers concerned any greater privileges than are enjoyed by officers of the Army in like situation.

Very respectfully,

TRUMAN H. NEWBERRY,
Acting Secretary.

Hon. GEORGE EDMUND FOSS,
Chairman Committee on Naval Affairs,
House of Representatives.

Mr. FITZGERALD. If this provision puts the officers of the Navy on the same basis as officers of the Army, so far as I am concerned, I have no desire to press the point of order.

Mr. MANN. Does this provision in any way enlarge what has heretofore been practiced in the Navy Department?

Mr. FOSS. No; it does not—prior to the decision of the Comptroller.

Mr. FITZGERALD. When was this decision made?

Mr. FOSS. I have the decision right here.

Mr. MANN. It is a recent decision?

Mr. FOSS. It is a decision that was made a year ago—a little over a year ago—and this provision first came to the House

in the shape of a Senate amendment last year upon the naval bill.

Mr. FITZGERALD. I withdraw the point of order.

The CHAIRMAN. The gentleman withdraws the point of order. The question is on the point of order raised by the gentleman from Illinois [Mr. MANN] to the word "thirty-six," in line 17, page 2.

Mr. FOSS. Mr. Chairman, right in this connection I would like to offer an amendment. Some of the accounts of the naval officers have already been held up for several months, and this will allow a settlement of those accounts.

The CHAIRMAN. The point of order should be disposed of first, but—

Mr. FOSS. I think I can offer it by unanimous consent.

The CHAIRMAN. Is there objection to an amendment being offered by the gentleman from Illinois, chairman of the committee?

Mr. MANN. Mr. Chairman, it seems to me—

The CHAIRMAN. The Chair will hear the gentleman from Illinois [Mr. MANN].

Mr. MANN. It seems to me it is wiser to pursue the regular course.

The CHAIRMAN. That amounts to an objection. The question is on the point of order raised by the gentleman from Illinois [Mr. MANN] to the word "thirty-six" in line 17, page 2.

Mr. MANN. May I ask the gentleman in charge of the bill, my colleague, whether the law provides for the number of men in the Naval Militia and the Fish Commission; and if so, whether this does not fix the number?

Mr. FOSS. Well, I would say to the gentleman we have no law providing for the number of men in the Navy, only as we fix it each year in the naval appropriation bill.

Mr. MANN. Is the theory of this to cover the additional force of marines?

Mr. FOSS. Oh, no; simply men in the Navy. The Department allowed 1,500, and this 36,000 men is giving them the 1,500 in addition to what they already have now, 34,500.

Mr. MANN. Mr. Chairman, I withdraw the point of order. I do not think it is subject to the point of order.

The CHAIRMAN. The gentleman from Illinois withdraws the point of order against line 17. The question is on the point of order raised by the gentleman from Illinois [Mr. PRINCE] to lines 6 to 21, inclusive, on page 3. Does the gentleman from Illinois desire to discuss the point of order?

Mr. HULL. Mr. Chairman, I understood the gentleman from Illinois to reserve the point of order.

Mr. PRINCE. Mr. Chairman, in order to hear the discussion, if there is any reason for it, I reserve the point of order and it can be considered as pending.

The CHAIRMAN. The point of order is reserved.

Mr. FOSS. Mr. Chairman, I do not care to speak upon the proposition now.

Mr. HULL. Mr. Chairman, I only desire to say a very few words. This is legislation, and of course it is subject to the point of order. The proper way to have dealt with it undoubtedly would have been to have brought in a bill correcting the evil, but there has been an injustice done some very distinguished older officers of the Navy in our legislation in the last few years. When the naval personnel bill was passed all men of civil-war service then on the active list received an additional grade on retirement without any limitation as to rank. In other words, it went from the lowest officer to the highest officer of the Navy. When the Army bill was passed we limited the additional grade to those not above the grade of colonel, so that those who were on the retired list, the brigadier-generals, got no additional grade on account of civil-war service.

We passed a bill for the Army giving an increased pay to all civil-war soldiers on the retired list below the grade of brigadier-general or not above the grade of colonel, the grade of colonel, as you all understand, corresponding in the Army with the grade of captain in the Navy. When the Committee on Naval Affairs reported their bill—I think at the last session of Congress, the chairman can correct me if I am wrong—they gave to the officers of the Navy on the retired list an additional grade where they had had civil-war service. We limited it to those not above the grade of captain. The result was that there are fifteen older officers of the Navy on the retired list who had been retired before the personnel bill was enacted into law. Those men had high rank in the Navy during the civil war, and the anomaly is shown by our legislation that the juniors who had limited service in the civil war, some of them only a few months, some only a few weeks, going to the grade of rear-admiral, senior grade, passed these men who at that time were called commodores, an office that was abolished by the personnel bill, leaving them stationary and at a lower grade

on the retired list than the men they commanded during the civil war. In other words, these fifteen men—is that the number?

Mr. FOSS. Fifteen rear-admirals and three commodores.

Mr. HULL. Fifteen rear-admirals and three commodores have been pocketed by the legislation, have received no benefit whatever from the civil-war service, although they had command rank during the civil war. It seems to me that, while this is not the proper place to legislate on that matter, any place is good enough to correct an injustice of that character, and for one I hope the point of order will not be insisted upon.

Mr. PRINCE. I want to ask my colleague on the committee a question. Did not the Military Committee only a day or two ago decline to grant the privilege to eighteen majors and eleven captains who felt that they had been discriminated against on account of this same law?

Mr. HULL. Yes; they did; but I want to say to my friend that, under the construction of the War Department, as I understand it, each one of those officers had received a grade above the one they were serving in for the purpose of retirement or at the date of retirement. Our law, as my colleague will remember, had this provision in it, that any officer who had received a grade for retirement should not have the benefit of the additional grade to civil-war veterans. Now, if those men did not come under that provision the War Department has been guilty of an injustice in their treatment. If it did come under that provision, or if they did come under the provision, then they have already had the grade and have no complaint to make on account of it.

Mr. CRUMPACKER. Mr. Chairman, I desire to reenforce the position of the gentleman from Iowa [Mr. HULL]. In short, this proviso undertakes to put fifteen rear-admirals and three commodores on the retired list upon the same footing—that is, admirals and commodores who were retired before the personnel bill became a law—with rear-admirals and corresponding officers who have been retired under the operation of that law. These fifteen rear-admirals, the youngest of whom is 72 years of age, held commissions in the civil war and performed honorable, distinguished, and faithful service for the Union during that war. They were retired by operation of law prior to the enactment of the personnel bill, and when the personnel bill went into force it increased by about 20 per cent the retired pay of men who held equal rank in the naval service—

Mr. SHACKLEFORD. May I ask the gentleman a question?

Mr. CRUMPACKER. So that these fifteen admirals to-day are getting about \$1,100 a year less of retired pay than rear-admirals who have been retired under operation of the personnel law.

Mr. MANN. How much do they get?

Mr. CRUMPACKER. I do not know. The same as major-generals.

Mr. HULL. They get the same as brigadier-generals.

Mr. MANN. How much do they get?

Mr. HULL. Three-quarters of \$5,500 a year.

Mr. SHACKLEFORD. Why make it a rider to this bill? Why not make it a general measure, to be considered on its merits?

Mr. CRUMPACKER. That is a question of procedure. When the House has an opportunity to do justice to these fifteen rear-admirals who performed distinguished service during the civil war, and who are discriminated against by acts of Congress, I think it ought to avail itself of the opportunity and not quibble over questions of procedure. It is not unusual for acts of Congress to give preferential privileges to men who stood by the Government during the civil war, but this is the first instance that I know of in the legislation of this country where men who performed that service on behalf of the Union are discriminated against. The officers who are retired under the personnel law, very few, if any of them, performed actual service during the civil war. They are receiving, I repeat, 20 per cent more of retired pay than these fifteen veterans to whom the country is under especial obligations. It is simply a question of doing plain, common justice to fifteen or eighteen worthy and deserving men, and I hope the gentleman from Illinois [Mr. PRINCE] will withdraw his point of order.

Mr. WALDO. I want to ask the gentleman a question, if he will yield.

Mr. CRUMPACKER. I will yield to the gentleman from New York.

Mr. WALDO. I want to know whether this clause is intended to include any pay for time of service in a military or naval school?

Mr. CRUMPACKER. No. The proviso to which the point of order is pending begins on line 6 and ends on line 31, and simply

relates to rank and retired pay. These officers have been on the retired list now for over seven years.

They were retired by operation of law prior to the passage of the personnel bill, and they receive the same pay as brigadiers-general. The personnel law provides that all men, officers of the Navy, who should be retired as rear-admirals in the future should receive the rank and retired pay as majors-general. The personnel bill assimilated the rank, and put rear-admirals upon the same rank and pay as majors-general. It only applied to those in the service and who retired after the act went into effect on the 30th of June, 1899; and the fifteen rear-admirals who were retired before that act went into effect received no benefit whatever from it. They are on the retired list with the rank and pay of brigadiers-general, while a number of other officers of the Navy who have been retired since, under the operation of that law, who performed practically no active service for the Government, are on the retired list with the rank and pay of majors-general.

The CHAIRMAN. Does the gentleman from Illinois [Mr. FOSS] desire to be heard upon the point of order?

Mr. FOSS. Mr. Chairman, I do not care to discuss this matter, because it has been fully covered, I think, by the speech of the gentleman from Iowa [Mr. HULL]. If the gentleman from Illinois insists upon the point of order, I should like to know it now, because I think we could save a great deal of time.

Mr. PRINCE. Mr. Chairman, as near as I get a hold of it, this amendment tries to correct and change what was the law at the time of its passage, namely, these officers retired under the then existing law, and they were satisfied with it. Now, a later day came, and Congress passed another law which seemed to give somebody more benefits than were given under the law at the time these officers retired. Now gentlemen come and say therefore they want us to bring them up to the present law. If that were done and in the future you should make another change of law, then here is a precedent to bring up all those other men that have been treated otherwise in the past and give them all the benefit of recent legislation.

Now, they want to make fifteen majors-general. The active pay of a major-general is \$7,500. The retired pay three-fourths of that. Three-fourths of \$7,500, which is \$5,625, is a very pleasant amount to come in as retired pay for services rendered. Now, I can not consent to it; and if it should be done, it should be done in some other way. If there was a wrong done, it should have been corrected at the time. I am getting almost weary of doing something all the time to correct some of these retirements and promotions. There are thousands of men all over the country to-day who braved the storm of battle who are only receiving \$12 a month; and here is a proposition to increase the retired pay of fifteen brigadiers-general on the retired list and make them majors-general, retired, at three-fourths of \$7,500 pay. I will take the responsibility of insisting upon the point of order.

The CHAIRMAN. The point of order is sustained. The question is on the point of order raised by the gentleman from Illinois [Mr. MANN] on the balance of the section.

Mr. MANN. I insist upon the point of order.

The CHAIRMAN. Does the gentleman from Illinois [Mr. FOSS] desire to discuss the point of order?

Mr. FOSS. No, Mr. Chairman; I do not.

The CHAIRMAN. It seems that it is clearly legislation.

Mr. VREELAND. Mr. Chairman, I want to inquire if the part objected to includes that portion of the bill commencing with line 22 on page 3?

The CHAIRMAN. That is right; and down to line 11 on page 4.

Mr. VREELAND. I would ask the gentleman from Illinois to withhold his point of order at least until the reason for placing it in the bill may be given to the House. I think it will commend itself to his judgment upon hearing the reason for it.

Mr. MANN. Well, Mr. Chairman, I am perfectly willing to reserve the point of order until the gentleman makes his speech. However, I am not making the point of order in ignorance of the reason for putting it in the bill.

Mr. VREELAND. Perhaps there may be more reasons than the gentleman thinks.

Mr. MANN. Oh, there are some reasons that probably have not been disclosed to me.

The CHAIRMAN. Does the gentleman reserve the point of order?

Mr. MANN. At the request of the gentleman, I temporarily reserve the point of order.

The CHAIRMAN. Very good.

Mr. VREELAND. Mr. Chairman, I recognize, with other gentlemen on the floor, that it would be better to bring these

matters before the House in separate bills; but we all know it is practically impossible to secure consideration for them. This bill has been pending before Congress for at least five years. It was first introduced by Representative Dayton during his service, and in the present Congress it was introduced by the gentleman from Louisiana [Mr. MEYER], receiving the unanimous indorsement of the committee, but has not been reached upon the Calendar up to the present time by the House, and it is evident that it can not be reached during the present session. At my request the Naval Committee inserted this item in the appropriation bill, believing that a mere statement of the facts in the case would so commend it to the House that it would receive unanimous consent, as it must.

Mr. Chairman, before the year 1900 retired naval officers could only be ordered into the service in time of war. Only in time of war could the Secretary of the Navy order retired officers returned to the service. In the year 1900 this law was changed for a period of twelve years, during which time the Secretary of the Navy may order any retired officer back into active service, on sea or on shore. By what I believe to be an inadvertence in the law, no provision was made whereby these officers who go back into active service can receive any benefit for the new services which they perform.

I want to give the House two or three examples of the effect of the law as it now stands. We will take the case of Lieutenant Graham, who served twenty years and five months in the active service of the Navy. He was then retired for physical disability. Recovering sufficiently from his disability to perform service, he was ordered back into the service, and has now been on the active list again for five years and three months, making him a total of more than thirty-two years of active service for his country. Yet under the provisions of the act of 1900 this officer can receive no advancement whatever, although he performs service side by side with those who are receiving advancement for the services they perform. This man is likely to stay in the service until he can see boys graduated down here at the academy since he returned to active service pass him in rank in spite of the more than thirty-two years of service which he has performed.

Take the case of Ensign W. L. Varnum, who served thirteen years and a half, was retired for physical disabilities, went back into the service, being called there by the Secretary of the Navy, and has now served seven years more, making twenty years of active service in the Navy. Yet to-day he retains the rank of ensign, and if he should complete the balance of the twelve years of service he will still retain the rank of ensign. Meanwhile these young boys that are graduated down at the academy pass him and outrank him in the service, despite the twenty years of service which he has put in.

Mr. PRINCE. May I ask the gentleman a question?

Mr. VREELAND. Yes.

Mr. PRINCE. Does it not often occur that our colleagues come here, serve with us, and pass us, as in the case of the very able justice of the Supreme Court, Mr. Moody? Can we rectify all these differences and equalities of men and officers by legislation?

Mr. VREELAND. We can not rectify all inequalities, but I want to point out to my friend from Illinois that this does not come under the objection that he made to the section of the bill that has just gone out. This does not give an arbitrary raise of pay to men who have retired from the service. This merely gives a chance to men who have come back into active service by order of the Secretary of the Navy and perform new service, and we merely give them the common justice of a chance for promotion for the new service which they render.

I will cite one more example. Take the case of a gunner, S. Cross, who served twenty-five years and ten months, being retired for physical disability. He has now come back into the service and has served more than six years, and yet he can see the gunners by the side of him, with far less years of service than he has had, promoted to be chief gunners, while he must spend the balance of his service in the same position.

Now, I want to explain to the House just what this amendment does. Under this present law, the act of 1900, the Secretary of the Navy can order any retired officer back to active service. It is not a matter of discretion with the officer to serve or not, as it is in the Army. He is ordered back into the service. Now, this bill provides that those who are ordered back into the service and who have been retired for physical disability only—the men who voluntarily retired from the service are not affected by this—after having served three years, may then have credit for the years of active service that they had before their retirement. If that is not common justice and fairness to men who are now performing active duties in the service, then I am totally mistaken in the premises.

We know the reason for this law, Mr. Chairman. We know that it was passed because we have not officers enough in the Navy to man our ships. We know that we have to order these men back into the service because we are not turning out officers at Annapolis fast enough to man the ships which we have built. I have no hesitation in saying that it is not only unjust, but positively mean and niggardly, for Congress to require these men by law to return to active service and then refuse to permit them to advance, but subject them to the humiliation of being passed by their juniors in years and length of service.

Now, Mr. Chairman, I want to say that no officer of high grade will be affected by this bill. It is not a permanent change in the law; this act of 1900 limits its provisions to twelve years. It merely affects those retired for physical disability and called back into the service by order of the Secretary of the Navy, who are now performing active duty in the service wherever they are sent.

Under these circumstances it did seem to me that a statement of the effect of this provision would commend itself to the judgment of the House.

Mr. MANN. Mr. Chairman, I insist on the point of order.

Mr. OLMSTED. I wish the gentleman would withhold his point of order.

Mr. MANN. There are several gentlemen who wish to be heard, but the committee is anxious to proceed. However, I will reserve the point of order if the gentleman from Pennsylvania wishes to address the committee.

Mr. OLMSTED. Mr. Chairman, I wish to say a few words. I happen to be familiar with the case of Mr. Graham, referred to by the gentleman from New York [Mr. VREELAND]. He is the son of a distinguished judge, and has many relatives living in my district. His is a most meritorious case. If I mistake not, there has been once or twice a special bill favorably reported to this House covering his particular case. Now there has been reported by the proper committee a bill covering all similar cases, the same provision that is in this bill with reference to these several cases. I suggest to the gentleman from Illinois that while the rule he invokes is, in the main, a very good rule, with which we are all in sympathy, its object is to prevent vicious legislation which probably could not otherwise be effected than as a rider to an appropriation. This seems to me—and I hope it will seem to him—to be invoking a technical rule, not to prevent an evil, but to prevent a good proposition from becoming law.

There is no doubt that if the general bill which has been reported from the committee could be brought before the House at this time it would pass. I have no doubt that the gentleman from Illinois himself would be very glad to vote for it. That being the case, the measure having been acted upon by the proper committee and favorably reported to the House, and failing to be considered by the House only because it is so far down on the Calendar that it can not be reached at this session, I hope the gentleman from Illinois will not feel it his duty to press the point of order in this case. One great object of the rule is to prevent the springing upon the House of entirely new propositions which have not been considered by the proper committee. It is quite customary to withhold or refrain from making the point of order where the subject-matter of the paragraph has been acted upon by the proper committee, and I ask the gentleman from Illinois not to invoke it against so worthy a provision, which simply does justice to several very worthy officers.

Mr. WEEKS. Mr. Chairman, I want to add one or two words to what the gentleman from New York has said, and that is that these men are retired for physical defects incurred in the service. They are not retired on their own volition. They oppose retirement in almost every case, and are retired by order of the Department because they have some physical defect. If we had a reserve list, as we should have, these men would be continued in the active service, not doing the duty they are not fit to do, but doing the duty which they could do.

Now, there is a vital difference between the method of the operation of the law as it works in the Army and Navy. In the Army retired officers are only placed on duty at their own request and with their own consent, and they are only placed on certain stipulated duty, fixed by law; but in the Navy the Department has the option to order any retired officer on duty and to perform any duty which the Department requires him to do. So that these men, who have been retired through no fault of theirs, no matter if they have taken up some active business, wherever they reside, and while engaged in that business, at the option of the Department may be taken from it and ordered on active duty. It therefore works a direct and immediate financial loss in very many cases.

Mr. FITZGERALD. Will the gentleman allow me to ask him a question?

Mr. WEEKS. Certainly.

Mr. FITZGERALD. The active duty to which these men are ordered is not the class of duty that is of special service in the time of war—only active duty in connection with recruiting stations at yards?

Mr. WEEKS. I will say to the gentleman from New York that they are ordered on any duty which the Department sees fit to order them to.

Mr. FITZGERALD. But, as a matter of fact, the physical defects are such that they are incapacitated even in time of war, if I am correctly informed, of rendering the service which the average man considers to be active service.

Mr. WEEKS. Generally speaking, that is the case.

The CHAIRMAN. Does the gentleman insist on his point of order?

Mr. MANN. I insist on the point of order.

The CHAIRMAN. The point of order is sustained.

Mr. FOSS. Mr. Chairman, I have offered an amendment, which the Clerk has at his desk.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

After the word "troops," in line 11, on page 2, insert the following: "And the proper accounting officers of the Treasury are hereby authorized and directed to allow in the settlement of accounts of disbursing officers all payments made prior to July 1, 1907, for commutation of quarters for officers on shore serving with troops and not provided with public quarters."

Mr. MANN. Mr. Chairman, I reserve the point of order on that.

Mr. FITZGERALD. Does the gentleman mean prior to that time or subsequent to that time?

Mr. FOSS. Prior to that time.

Mr. FITZGERALD. How far back would that go?

Mr. MANN. To the beginning of the Government.

Mr. FOSS. Oh, no.

Mr. FITZGERALD. Yes; I think it would.

Mr. FOSS. Back to the date of the decision of the Comptroller.

Mr. FITZGERALD. I think the amendment should so state. Mr. MANN. Here is a direction on the Comptroller to allow all accounts at any time in reference to officers' quarters.

Mr. FOSS. Mr. Chairman, I wish the Clerk would again report the amendment.

The CHAIRMAN. Without objection, the Clerk will again report the amendment.

There was no objection, and the Clerk again reported the amendment.

Mr. MANN. That would cover all claims for officers' quarters prior to next July, no matter where they occurred or for what reason they had been allowed.

The CHAIRMAN. Does the gentleman from Illinois now make the point of order?

Mr. MANN. I reserve the point of order.

The CHAIRMAN. The Chair will recognize the gentleman from Illinois [Mr. Foss].

Mr. FOSS. Mr. Chairman, I want to state there has been no question as to the commutation of quarters up to the time of the Comptroller's decision, which was on November 15, 1905, and since that time these accounts have been held up. If the gentleman desires to insert "prior to June 30, 1907, and after November 15, 1905," I have no objection.

Mr. FITZGERALD. The gentleman ought to have his amendment prepared so that it would cover all accounts affected by this.

Mr. FOSS. This amendment was prepared by the Department and affects only these accounts which have been held up by the Comptroller's decision.

Mr. MANN. It affects all accounts prior to July 1, 1907, for officers' quarters, no matter whether they have been authorized by law or not. Under this they could allow anything they pleased.

Mr. ROBERTS. Prior to 1905 they were not held up at all; they were paid.

Mr. MANN. That is not the amendment. I have no objection to providing an amendment in accordance with the language of the bill in some way.

The CHAIRMAN. Does the gentleman insist on his point of order?

Mr. MANN. I do in its present shape.

The CHAIRMAN. Wherein does the gentleman claim the amendment is out of order?

Mr. MANN. It is a change of law absolutely. It is directing that accounting officers shall allow certain accounts which are not now allowed by law. It is a specific direction, the law

now providing that accounts shall be allowed by the accounting officers for disbursements for officers' quarters. Here is an amendment directing the accounting officers to allow all disbursements for officers' quarters, though it may be directly in the teeth of the law fixing the allowance.

The CHAIRMAN. Does the gentleman from Illinois [Mr. Foss] desire to be heard on the point of order?

Mr. FOSS. I do not, Mr. Chairman.

The CHAIRMAN. In the opinion of the Chair, the point of order is well taken, and the Chair sustains the point of order.

Mr. FITZGERALD. Mr. Chairman, I offer the following amendment, which I send to the desk and ask to have read.

The Clerk read as follows:

Page 2, line 22, insert:

"The grade of the active list of the Navy hereinafter designated shall be so increased that there shall be sixteen additional chaplains."

Mr. FOSS. Mr. Chairman, I make the point of order.

The CHAIRMAN. Does the gentleman from New York wish to be heard on the point of order?

Mr. FITZGERALD. It is clearly subject to the point of order, but I sincerely hope, since the bill carries so much legislation, the chairman will permit the committee to consider the matter, most particularly as on February 19, 1903, when a similar amendment was offered by me, members of the committee assured me that the bill I had introduced for this purpose would be considered and reported, and no action has yet been taken upon it.

The CHAIRMAN. The point of order is made by the gentleman from Illinois, and sustained.

Mr. SLAYDEN. Mr. Chairman, I move to strike out the last two paragraphs, both having gone out on the point of order. Mr. Chairman, I would like to ask the privilege of the House, and I hope, if my request receives the indorsement of the chairman of the committee, to be permitted to continue for fifteen minutes.

The CHAIRMAN. Is there objection? [After a pause.] The Chair hears none.

Mr. SLAYDEN. Mr. Chairman, it is a curious coincidence that usually as we approach the consideration of the naval bill there is a revival of war talk. Our enemies appear in increasing numbers and with a more threatening aspect just as there seems to be a better opportunity to sell armor plate. I do not mention this as cause and effect, but I do think it suggestive.

Although we are at peace "with all the world and the rest of mankind," as a President of the United States is reported to have said, the air is thick with rumors of war. Senators of the United States see storm clouds in the East and peripatetic preachers of unlimited naval construction are declaring in public addresses that a conflict with Japan is inevitable. Some of our friends who represent the Pacific coast on the floor of this House are frightened almost into a state of nervous collapse over the vision of little brown men marching under the banner of the "rising sun." The fact that 6,000 miles of salt water lie between them and the islands of Japan does not appear to allay their fears. They are not even reassured by the recollection of the fact that the President of the United States has recently been honored with the Nobel prize as the world's chief champion of peace. If this official selection of the President as the world's most conspicuous exemplar of the doctrine of love and peace—and no one has yet openly suggested that it is a misfit—can not calm their fears, it is useless, I suppose, for me to undertake to say anything with the hope that it will reassure them. Still, as one who can not appreciate the imminence of this danger, as one who can not persuade himself that there are certain physical and financial obstacles which even the Japanese, brave, clever, and resourceful as they are, can not overcome, I shall contribute my mite toward restoring their peace of mind.

Mr. Chairman, the war between Japan and Russia was one of the most remarkable in the history of the world. A nation of only about 40,000,000 people, recently emerged from what we are pleased to call "barbarism," met and overcame on the field of battle one of the great military powers of Europe. The remarkable series of battles, always ending in victory for the Japanese, and the result of the war are striking illustrations of what discipline and intelligent preparation will accomplish. The Russians outnumbered the Japanese about three to one; they had better credit; their march into Asia had been for years an uninterrupted series of victories; they held their enemy in contempt, and this may have had something to do with their defeat, but the end was humiliation to the Czar and his armies.

However, it must not be forgotten that the theater of war was several thousand miles away from the Russian base of supplies. Not only the army of Russia but all the provisions of war had to be carried this great distance over two little,

slender threads of steel, and in this fact alone lay an advantage for the Japanese which quite balanced the disparity in numbers.

I call upon my nervous fellow-citizens of the Pacific coast to remember that although the Japanese could march across Korea and through Manchuria, their legs are entirely too short to wade the Pacific. On our side of the Pacific Ocean they have no coaling stations, and ships of war which cross that ocean under their own steam would be comparatively helpless before they could reach the coast of California. Again—and the recollection of this may help our California friends to a night's rest—it should also be remembered that after winning brilliant victories in the greatest battles of all history the Japanese made a treaty of peace, which, if not humiliating, was at least a confession of weakness. No man can believe that the Japanese would have yielded what they did yield at Portsmouth if they had not been physically and financially exhausted. They may have recovered from their physical exhaustion, but it is certain that they have neither paid their debts nor filled their war chests since the summer of 1905. The statesmen of Japan, who seem to measure up in capacity to those of any other nation, know that a bankrupt country can not wage war successfully against a wealthy one, particularly under the circumstances which surround this country and theirs. The poverty of Japan and the wealth of the United States both speak for peace.

It has been suggested by a gentleman who ought to know better that in a crisis of this sort Japan would be used as the tool of England and made the agency of Great Britain for wreaking vengeance on the United States to satisfy an enmity which is not explained and for purposes that no man can fathom. The suggestion is absurd and unwarranted by any facts of current or recent history.

I do not believe that there has been a day in the last ten years when any Government of Great Britain, Conservative or Liberal, would not gladly have entered into a treaty of arbitration with this country. That England would prefer not to share the trade of the East with us goes without saying. But the English people are clever traders and they would never throw away a great business for a small one, nor would they be so stupid as to shut out our grain and cotton from their own country in order to preserve a trade which is of less importance to them, less vital to them, in fact. The tables of our commerce with Great Britain, if carefully studied, should, it seems to me, satisfy any man not besotted with the lust for war that there is absolutely no danger of any trouble between that country and the United States. Then there is a higher plane upon which our relations with Great Britain might be considered. Blood is thicker than water. We speak the same language, hold the same traditions, and have inherited the same love of liberty that has been a conspicuous quality of the British since the barons had their trouble with King John. They are our kinsmen, bone of our bone, and in dealing with other races this is bound to have its influence. Although we may have our periods of irritation, although on two occasions we have actually come to blows with the English, no man can convince me that the great mass of Englishmen or any English government which derives its powers from the people will ever so actively sympathize with those of another race as to lead them to commit political and commercial suicide, both of which would be made almost certain by a war with the United States. This talk of war is ridiculous and wicked. Whether it is more stupid than sinful or more sinful than stupid I can not say. I believe it is the maximum of both.

Arbitration is an honorable, reasonable, and inexpensive way of maintaining peace. It is more in harmony with the platform of the Galilean and more consistent with modern civilization than the "big stick" or "big navy" plan which proposes to keep the peace by developing a power so great that it may crush the life out of opposition. Although it seems a long time coming, I still indulge the hope that the Christian and peace-loving people of this country will some time compel their own Government to write treaties of arbitration with all the other Governments of the world that are willing to enter into them. If I could have my way I would begin by making treaties with the smaller and weaker nations of the American Continent. I would then move steadily forward in the great work until finally the powerful nations of the earth, made ashamed by the noble example that the smaller nations had set them, would gladly seek the advantage of these covenants that are based on the Golden Rule.

I have never been able to appreciate the force of the argument that peace is best preserved by unusual preparation for war. Bringing that argument down to the range of personal observation I would suggest that the man who carries arms is the individual most apt to have personal difficulties. Nations, which

are but aggregated individuals, are governed by the same impulses and follow the same lines of reason, or unreason, as it is more apt to be.

The greed of nations, which is best controlled by treaties of arbitration, is what causes all the trouble. If the strong nations did not lust after the soil and sovereignty of the weaker there would be fewer wars. If we were not debauched by the same lust for other people's goods and government we would have fewer troubles of our own than we have had for the last ten years.

Nothing so marks the growth of the imperial idea in our country as the development of the Navy. All thoughtful and patriotic Americans admit that we need a good defensive Navy, but that is as far as they go. They are beginning to be awakened to the fact that we have gone far beyond their conservative views, and the end is not in sight. We have finally gone into competition with the greatest naval power on earth, and it is no uncommon thing to hear Americans say that we must not stop until we have a Navy equal to if not greater than that of England. To balance England's great war ship, the *Dreadnought*, we are urged to lay down two upon even more powerful lines. Where he got his figure of speech I do not know, but a distinguished clergyman said to me the other day that he detested the poker-playing suggestion that in the matter of building war ships we should always "go one better."

A year ago when this bill was being considered I asked the attention of the House to a comparison of our naval budget then and what it was in the last year of Mr. Cleveland's Administration. That comparison may still be studied with advantage, but it must be distressing to the thoughtful and patriotic American to whom I have referred.

The Navy is not for defense. Strictly speaking it is an offensive weapon. The integrity of our territory is secured by the coast defenses erected at an ultimate cost of nearly \$200,000,000 and in the stout hearts of the 80,000,000 Americans behind them. Perhaps I am to a degree wrong in that statement, for the Navy may be considered necessary for the defense of certain outlying and outlandish islands. But, Mr. Chairman, when the outlanders don't want our defense, or our sovereignty, it would seem that we are really paying too high a price for the privilege of thrusting the benefits of our political system on an unwilling people.

I do not suppose that any moderately well-informed man will deny the proposition that if we did not have the Philippines on our hands our naval expenses could be cut half in two and our military budget greatly reduced. There are very few men of even the most moderate information, no matter what their political faith may be, who are not ready to admit that the monumental blunder of our history was the annexation of those islands. We have dissipated our strength in assuming the burden of their defense. We have repudiated cherished principles by compelling them to accept a government which they do not want. We have complicated our vexatious race problem by making them our wards, and we are increasing the burden of our own taxes because we do not seem to have sense enough to get rid of an expensive nuisance.

My friend CHAMP CLARK of Missouri, who has the habit of forceful and interesting speech, hammered some wholesome truths over, if not into, the heads of Members the other day when he said that while we wanted more land and were trying to get it by draining swamps and watering the plains, we did not want the Philippines, because our children would never live there. The history of our people will show that he is absolutely right in that statement. Our race has usually recoiled from the Tropics, and when it has ventured in that direction the experiment has ended in disaster. The prolonged residence of white men in the Tropics has usually ended in physical and moral degeneracy. Sometimes they have adjusted themselves to the environment and debased themselves by a race merger with the natives, and the result has always been a mongrel who has done nothing worth remembering and who is capable of nothing worth doing.

After nearly four hundred years of efforts at colonization the number of people of European stock in tropical countries is a negligible quantity. The Philippines were occupied by the Portuguese and Spaniards before the English settled at Jamestown and Plymouth Rock. Nothing ever seriously impeded the development of the colonies of Plymouth and Jamestown. They grew in spite of all obstacles. Neither the hostility of the savages, who beset both these plantations, nor the occasionally desperate state of their fortunes could prevent the coming of other colonists or their growth into great and liberty-loving States. But the favor of kings and the nurturing care of the church was not equal to the task of making an important state out of the Philippines, and when the Americans landed at Manila, three

hundred and seventy-seven years after their discovery by Magellan, the natives were still mostly naked savages, who were being ruled and robbed by a handful of Spaniards.

No wonder Mr. CLARK says that American children will not go there. They instinctively know that their destiny lies in the Temperate Zone. Under these circumstances what incredible folly it is for us to go on squandering millions of the money of the American taxpayer to build a great Navy to hold islands which we do not want and can not inhabit if we wanted to.

We have wasted enough money already in the scheme of Asiatic colonization to deepen all the harbors and improve all the rivers in the United States. And what have we gotten for it? The bayonet-enforced right to govern some colored people on the other side of the earth, who never heard of us until they saw the muzzles of our guns and who, if they survive a thousand centuries, will, no doubt, always associate us with schemes of reconcentration and heroic feats of arms like that at Mount Dajo.

We have acquired a footing in the Asiatic storm center. We have provoked the jealousy of Europe and excited the dread of Asia. We have secured conditions out of which we may reasonably expect wars enough to keep our swords from rusting in their scabbards. These are so far the net results of our maneuvering on the China seas.

FORTIFYING THE PHILIPPINES.

It is now proposed to extend our coast defense project to the Philippines. This is a plan that was gotten up to protect American homes against assault from the outside. When completed it will cost nearly \$260,000,000. It is a large tax on the public treasury, but a burden which our people cheerfully bear. I do not believe that they will patiently submit to its extension to the Philippine Islands.

The number of guns proposed for these defenses, with the estimated cost of the guns, carriages, and emplacements, submarine mines, etc., is as follows:

Proposed armament.—Manila: Eight 12-inch mortars, eight 14-inch, four 12-inch, two 10-inch, four 6-inch, and fourteen 3-inch guns. Subig Bay: Eight 12-inch mortars, four 12-inch, three 10-inch, and twelve 3-inch guns.

Estimated cost of armament, etc.

	Manila.	Subig Bay.
Guns, carriages, and emplacements	\$4,435,930	\$1,472,865
Submarine defense	709,106	276,310
Power plants	348,697	160,633
Searchlights	114,000	95,000
Fire control	561,086	243,391
Total	6,168,819	2,248,199
Personnel required:		
Officers	39	58
Men	1,049	1,563

These figures indicate, Mr. Chairman, that it is proposed to spend \$8,417,018 more for defensive works at the two places of Manila and Subig Bay than have already been spent. The estimates do not include the cost of eight 12-inch guns to be mounted at Manila and in Subig Bay, as these guns have already been manufactured from funds heretofore appropriated. The emplacements for six of these 12-inch guns and for four mortars have also been constructed from funds previously appropriated.

There are other points on the islands which our military advisers think should be fortified, if we are to retain them. Iloilo and Cebu will call for as many millions, perhaps, as Manila and Subig Bay, and for a corresponding increase in the personnel of the Coast Artillery.

Very few harbors in the United States will have as costly defenses as Manila. Galveston, for example, which had an outgoing trade in the last six months of 1906 twice as great as the import and export trade of all the Philippine Islands for the entire fiscal year ending June 30, 1906, will be defended by one-third the coast artillerymen required at Manila and Subig Bay and for less than one-third the cost.

Then, after all, there are military experts who do not believe that the islands can be put in a state of defense for any sum of money which will not be prohibitive.

Shall we persevere in this political folly and extravagance? I believe that when the American voter once has his conscience and judgment aroused he will command the abandonment of this strange and un-American policy of meddling with the affairs of Asia.

I have argued this question altogether from the point of view of the Americans and their interests. Now, with the permission of the House, I shall print an article which not only graphically describes political conditions in the islands, but

also undertakes to give the view of the Filipinos. It is not unreasonable to ask that they be considered in the settlement of their affairs.

The article is as follows:

[North American Review, January 18, 1907.]

PHILIPPINE INDEPENDENCE—WHEN?

[By James H. Blount, late judge of the court of first instance of the Philippine Islands.]

After seven years spent at the "storm center" of "expansion," the first of the seven as a volunteer officer in Cuba, the next two in a like capacity in the Philippines, and the remainder in the last-named country as United States judge, the writer was finally inhaled home last spring, sustained in spirit at parting by cordial farewells, oral and written, personal and official. Having now been invited by the editor of the Review to prepare an article embodying his views as to our Philippine problem, he naturally enters upon a discussion of the subject with some degree of diffidence, because it involves calling in question the wisdom and righteousness of a policy inaugurated and carried out by a small group of distinguished men, under whom he shared in this nation's work beyond seas for a very considerable fraction of the average duration of life. However, he can truly say to all former fellow-workers:

"I have eaten your bread and salt,
I have drunk your water and wine,
The deaths ye died I have watched beside
And the lives that ye led were mine.

"Was there aught that I did not share
In vigil or toil or ease,
One joy or woe that I did not know,
Dear friends across the seas?"

In Charles Dickens's novel, *Bleak House*, there is a chapter entitled "Telescopic philanthropy," wherein is introduced the famous Mrs. Jellyby, the mother of a large and interesting family, "a lady of very remarkable strength of character, who devotes herself entirely to the public," who "has devoted herself to an extensive variety of public subjects at various times and is at present devoted to the subject of Africa, with a general view to the cultivation of the coffee berry and the neglect of her own children, the latter continually getting into all kinds of mischief while her attention is diverted from home. Seeing that the present Administration proposes to continue its policy of "benevolent assimilation" in the remote Philippines indefinitely, at whatever cost, the analogy between its attitude and Mrs. Jellyby's misplaced philanthropy toward "the people of Borrioboola-Gha, on the left bank of the Niger," is by no means remote.

Mr. Bryan maintains, substantially (see his newspaper, the *Commoner*, of April 27 and May 4, 1906):

(1) That the Filipinos want independence.

(2) That if protected from the great land-acquiring powers, "so far as their own internal affairs are concerned, they do not need to be subject to any alien government."

(3) That we should at once disclaim any intention of exercising permanent sovereignty over the archipelago and declare it to be our purpose to remain only long enough to see a stable government started, and then leave them to work out their own destiny.

Mr. Taft would probably have taken issue with Mr. Bryan on the first proposition up to the time he visited the islands in the summer of 1905, accompanied by a party of Senators and Congressmen. He will hardly do so now.

Senator DEBOIS, of Idaho, who was a member of the Congressional party referred to, has since said in the *New York Independent*:

"All the Filipinos, with the exception of those who were holding positions under and drawing salaries from our Government, favor a government of their own. There is scarcely an exception among them. There is nobody in the islands, no organization of any kind or description, which favors the policy of our Government toward them."

Senator NEWLANDS, of Nevada, also a member of the Congressional party aforesaid, has declared, in the number of this Review for December, 1905, that practically the whole people desire independence. Congressman PARSONS, also a member of the same party, has since said: "There is no question that all the Filipino parties are now in favor of independence."

Capt. J. A. Moss, of the Twenty-fourth Infantry, a member of General Corbin's staff, is quoted by Mr. Bryan in the *Commoner* of April 27, 1906, as saying, in an article published in a Manila paper while Mr. Bryan was in the islands, with reference to the wishes of "the great majority" of the Filipinos, that "to please them we can not get out of the islands too soon."

Mr. Bryan's second proposition, with which Mr. Taft takes issue, is that "so far as their own internal affairs are concerned, they do not need to be subject to any alien government," provided, of course, they are protected from the danger of annexation by some one of the great nations. If this proposition be sound, subject to the proviso, the proviso can easily be met. The foremost citizen of the world to-day, the man who brought the Japanese-Russian war to a conclusion and thereby won the high regard of all mankind, can, and if so requested by the Congress probably will, within a comparatively short period negotiate a treaty with the great nations, securing the neutralization of the islands and the recognition of their independence whenever the same shall be granted to them by the United States. If the powers should thus agree to consider the Philippines neutral territory forever, Mr. Roosevelt would have done for them exactly what has already been done for Belgium and Switzerland by treaty between the great powers of Europe. When the resolution of Congressman McCALL, of Massachusetts, proposing this was under consideration before the House Committee on Philippine Affairs on April 7, 1906, it met with a very considerable degree of sympathy, as is manifest from the official report of the hearing, the main objection apparently being that because there are a number of different dialects the Filipinos are a heterogeneous lot, and there is no spirit of Philippine nationality. Governor Taft said to the Senate committee in February, 1902:

"While it is true that there are a number of Christian tribes, so called, that speak different languages, there is a homogeneity in the people in appearance, in habits, and in many avenues of thought. To begin with, they are all Catholics."

The Philippine Census, published by the War Department in March, 1905, says (Vol. I, p. 447):

"A town in the Cagayan Valley presents the same style of architecture, the same surrounding barrios (suburban settlements or rural

hamlets), has the same kind of stores and similarly dressed people as a Christian municipality of the island of Mindanao."

And, says the same Government publication (Vol. II, p. 9), in drawing a comparison between itself and the schedules of the Twelfth Census of the United States:

"Those of the Philippine Census are somewhat simpler, the differences being due mainly to the more homogeneous character of the population of the Philippine Islands."

The existence of a general and conscious aspiration for a national life of their own, the real presence of a universal longing to be allowed to pursue happiness in their own way and not in somebody else's way is, to the best of such knowledge and belief as the writer obtained after two years' service in the Army that subjugated them, and four years in the insular judiciary, one of the most obvious and pathetic facts in the whole situation. During the organized fighting no American ever discovered that the enemy was crippled or his effectiveness diminished by the lack of a common language. And as for the national spirit, those people have been welded into absolute unity by the events of the last eight years. Rizal was shot for writing a political novel in which the Spaniards thought there was too much recognition of the "nationalist" idea. And if we should get into a war with a first-class power, and Aguinaldo or Juan Cailles, the man who crumpled the gallant Fifteenth Infantry in 1901, should raise the standard of revolt, let the impartial reader ask any American now in the Philippines, or any American who has spent much time there, how many natives between Aparri and Cagayan de Misamis would fall to understand and rally to the cry "Viva la Republica Filipina." Let us hope that if the McCall resolution ever comes up again the committee will have become satisfied, beyond the peradventure of a doubt that there does in fact exist among all the people of the Philippine Islands a consciousness of racial unity, which draws them together as against all outsiders, and is not marred by any race problem such as exists in Cuba.

The independence of the Philippines should come about within a few years—that is, as soon as practicable—because it is best for both countries. We are governing them against their consent and at an enormous cost to both peoples. If the untold millions we have spent on "benevolent assimilation" since February 4, 1899, had been spent on rivers and harbors and canals and the improvement of our interior water transportation generally, the railroad-rate question would have solved itself without the need of a rate bill. And this is not the only one of Mrs. Jellyby's neglected children, and the only domestic problem which presents a subject for strenuous altruism sufficient to occupy all the patriotism and statesmanship of this great country with its eighty millions of people. If all the splendid ability and grim fortitude that have been concentrated during the last few years upon "telescopic philanthropy" in the Philippines had been steadily focused upon the economic and social problems which are clamoring ever more loudly and ominously for solution at home, Hearst and Hearstism would never have arisen to voice a profound and widespread discontent having in it an element of righteousness.

But, returning to the core of Mr. Bryan's second proposition, namely, that "so far as their own internal affairs are concerned they do not need to be subject to any alien government," he further says (Commoner, April 27, 1906):

"There is a wide difference, it is true, between the general intelligence of the educated Filipino and the laborer on the street and in the field, but this is not a barrier to self-government. Intelligence controls in every government, except where it is suppressed by military force. * * * Nine-tenths of the Japanese have no part in the lawmaking. In Mexico the gap between the educated classes and the peons is fully as great as, if not greater than, the gap between the extremes of Filipino society. Those who question the capacity of the Filipinos for self-government * * * forget that * * * patriotism raises up persons fitted for the work that needs to be done."

And here is the testimony of one of the most distinguished Congressmen who have visited the islands:

"I have little or no doubt that there are a sufficient number of wise and intelligent Filipinos to establish and maintain a government in the Philippines that will compare in liberality and effectiveness with a very great many of the governments that have been in successful operation for a century or more."

Edmund Burke once said, in a speech for which Americans have long delighted to honor his memory: "The general character and situation of a people must determine what sort of government is fitted for them. That, nothing else can or ought to determine."

The Congressman last above quoted talks of twenty years as a safe period of tutelage; Senators NEWLANDS and DUBOIS of thirty years; Mr. Bryan of five, or ten, or fifteen. But the gentleman last named insisted at the convention of 1904, and still insists, that we should make them a definite promise of independence now, the same to be executed as soon as practicable.

To this, the proposition of the Democracy, Mr. Taft's answer is: "The gentlemen that are looking for office under an independent government have very little concern about independence that is to come after they are dead; and if you permit their independence and make it a definite promise, you will have a continued agitation there as to when they ought to have independence." (Speech at Cincinnati, February 22, 1904.)

The imputation of selfishness put by this statement upon all Filipinos who desire independence is uncalled for. "The gentlemen that are looking for office under an independent government" could undoubtedly get office under the present government if they would only stop wanting independence. And "if you permit their independence and make it a definite promise," you will have no agitation to hasten the day, provided the promise itself fix the day. During nearly four years of service on the bench in the Philippines, the writer heard as much genuine, impassioned, and effective eloquence from Filipino lawyers, saw exhibited in the trial of causes as much industrious preparation, and zealous, loyal advocacy of the rights of clients as any ordinary nisi prius judge at home is likely to meet with in the same length of time.

Some of these lawyers are ex-officers of the insurgent army. Each of them has his clients and is the center of a circle of influence. All of them, without exception, want independence. Of course the law of self-preservation precludes them from proclaiming this from the house tops, especially if they are holding office under the Government. But in their heart of hearts the dearest hope that each of them cherishes is that he may live to see the star of the Philippine republic risen in the Far East. Let a date be fixed by the United States Congress for turning over the government of the archipelago to its people, a date which will afford to the great majority of the present generation a reasonable expectation of living to see the independence of their country, and all political unrest, including most of the brigandage in

the islands, will at once cease. The news will spread "like wildfire" to borrow a famous phrase of our sunshiny Secretary of War. We shall have exchanged a balking horse for a willing one. The sullen submission of a conquered people will give place to genuine and universal gratitude toward America. The unborn national life will leap for joy in the womb of time. Te Deums will be celebrated in every church of every town in the archipelago from Aparri to Zamboanga. Aglipay himself may even say: "Now, Lord, let my schism depart in peace, for mine eyes have seen Thy salvation."

The great ocean steamship companies of the world publish the sailing dates of their vessels a year ahead. Everything else hinges upon this point of departure. All preparations, whether by crew, shippers, or prospective passengers, are shaped to that end. Why can not the same be done in the matter of the launching of a ship of state? If three strong and able men, familiar with insular conditions and still young enough to undertake the task—say, for instance, Gen. Leonard Wood, of the Army; Judge Adam C. Carson, of the Philippine supreme court, and W. Morgan Shuster, collector of customs of the archipelago, or three other men of like caliber—were told by a President of the United States, by authority of the Congress, "Go out there and set up a respectable native government in ten years, and then come away," they could and would do it, and that government would be a success, and one of the greatest moral victories in the annals of free government would have been written by the gentlemen concerned upon the pages of their country's history.

To understand the causes of the present discontent and how incurable it is except by a promise of independence at a fixed date, let me review this tragedy of errors which we have written in blood and selfish legislation in that unhappy land, as rapidly as may be consistent with clearness and commensurate with the ability of an inconsiderable person, an individual whose only claim to be heard upon a great question like this must rest upon the circumstance that he was an eyewitness to the tragedy.

When trouble began to brew in the Philippines after the signing of the treaty of Paris, the Schurman Commission, it will be remembered, was sent out, bringing the olive branch. It accomplished nothing. It was too late. War ensued. When the writer reached Manila early in November, 1899, he was detailed to the command of a company of Macabebe scouts, to develop fire for General Lawton's division, their commanding officer, Lieutenant Boutelle, of the artillery, having been killed the day before. On the way to join them he met General Lawton's adjutant-general at a place called San Isidro. The colonel said: "We took this town last spring, after a pretty stiff fight. Then, as a result of the negotiations of the Schurman Commission, General Otis had us evacuate this place and fall back. We have just had to take it again." The Schurman Commission hoped that the Filipinos could be persuaded to give up their idea of independence. The Army knew better.

In the first half of 1899 General Otis inexcusably postponed recommending to President McKinley the call for Federal volunteers. He did not really understand the seriousness of the situation. He conducted the campaign all the time he was there from a desk in Manila, and never once took the field.

The Volunteer Army of 1899 was to last, under the act of Congress, for two years only—that is, until the close of the fiscal year ending June 30, 1901. The insurrection had to be over at that time, whether or no. To use an expression of the theatrical managers, that date was to be "positively its last appearance." The volunteers began their work in the fall of 1899, twenty-five regiments of them, and, shoulder to shoulder with the regulars, pegged away cheerfully at the war, doing their country's work; and they had been vigorously convincing the Filipinos of the benevolence of our intentions for about nine months when the idea of a second Philippine Commission, a second olive branch, was conceived at Washington. The Presidential election was to occur in the following November, and men high in the councils of the Republican party at home believed that the success of the party would be seriously imperiled if the situation did not soon clear up, or at least improve, in the Philippines. The public press of that period contains interviews with such men of the tenor indicated. In this state of the case the Taft Commission was sent out. Things looked dismal. Philippine stock was going down. Optimism was devoutly to be wished. Judge Taft did not disappoint his friends at home. He was not then a judge. He was a partisan of the Republican party, an advocate. And, like many another able advocate, he persuaded himself that the witnesses whose testimony militated against his client's interest were, if not mendacious, at least blinded with prejudice. He accepted the views of natives not in arms as against that of the Army.

In June, 1900, when the Taft Commission arrived, the military authorities had not forgotten the Schurman Commission and the folly of its efforts to mix peace with war; and they did not look forward with enthusiasm to the coming of the new outfit. These latter brought with them, like the Schurman Commission, the theory that kindness would win the people over; and they at once proceeded to act conformably to that amiable delusion. Of course it was not long before they found abundant evidence to support their preconceived theory. Accordingly, on November 30, 1900, they made their first report to the Secretary of War, in which, among other things, they announced this tragically optimistic conclusion:

"A great majority of the people long for peace, and are entirely willing to accept the establishment of a government under the supremacy of the United States."

The Army entertained a diametrically opposite opinion. The military view of the situation about the same time was thus satirically expressed in General MacArthur's annual report to the Secretary of War:

"* * * The people seem to be actuated by the idea that in all doubtful matters of politics or war, men are never nearer right than when going with their own kith and kin."

Allusion is then made to the "almost complete unity of action of the entire native population. That such unity is a fact is too obvious to admit of discussion." This follows this humorous thrust: "* * * The adhesive principle comes from ethnological homogeneity, which induces men to respond for a time to the appeals of consanguineous leadership."

If the volunteers whose term of enlistment was scheduled to expire with the fiscal year, June 30, 1901, should have to be replaced by anything like an equal number of other troops, a call for further appropriations to conduct a long-drawn-out and unpopular war would surely try the patience of the American people and endanger the ultimate fortunes of the Republican party. Everything had to be shaped to avoid such a catastrophe. Whether the country should be ready for civil government on that date or not, it had to be. When Joel Chandler Harris's creation, "Uncle Remus," tells his little friend the story of Bree

Rabbit's climbing the tree to elude the dogs, and the lad interrupts: "But, Uncle Remus, a rabbit can't climb a tree," the resourceful narrator very promptly replies: "Oh, but, honey, dis rabbit des 'bleeged ter climb dis tree." The Administration was "bleeged" to climb the tree of civil government. Civil government was therefore duly inaugurated on July 4, 1901.

Within less than six months thereafter the flames of insurrection broke out anew in Batangas and the adjacent provinces, and it became necessary to give the military a free hand. General J. Franklin Bell accordingly invaded Batangas and the region round about with an ample force, a brigade, and proceeded to wage war—the sort of war General Sherman described, only more so, for General Sherman did not practice reconcentration. General Bell went there to make those people "long for peace." And he did make them "long for peace," or, to use his own language, "want peace and want it badly." General Bell is not to be blamed for this. He is a brave and skillful soldier, one of the best in our own or any other army. He was simply doing his duty, obedient to orders. This Batangas insurrection of 1901-2 would never have occurred had not Governor Taft persisted in believing that the Filipinos could be genuinely satisfied with something less than independence. This error led him to reduce, most imprudently, the army of occupation and the number of Army posts, against military advice, thereby giving the insurrection a chance to get its second wind. If the army of occupation had not been so reduced, reconcentration would never have been necessary in Batangas or elsewhere. Reconcentration tactics are born of numerical weakness. If you have troops enough thoroughly to police a given territory, no need for reconcentration will arise there. Reconcentration is an admission that you are not able constantly to provide protection for all the people. As a corollary of the fundamental mistake indicated, a constabulary force was organized, which, it was believed, could control the situation. That it has never been able to do so is a matter of record in the official publications both of the Manila and of the Washington Government. The fact is solemnly admitted in the recitals of a law now on the statute books of the Philippine Islands. Section 6 of act No. 781 of the Philippine Commission, approved June 1, 1903, providing for reconcentration, begins thus:

"In provinces which are infested to such an extent with ladrones or outlaws that the lives and property of residents in the outlying barrios are rendered wholly insecure by continued predatory raids, and such outlying barrios thus furnish to the ladrones or outlaws their sources of food supply, and it is not possible, with the available police forces constantly to provide protection, etc."

Such are the conditions which to-day warrant reconcentration in the Philippines—whenever "it is not possible with the available police forces" to protect the peaceably inclined people. It will thus be seen that we are now doing in the Philippines the very thing for which we drove Weyler and his Spaniards from the Western Hemisphere. Reconcentration under the military authorities is bad enough, even with the superb equipment of the commissary and quartermaster departments of the Army. But reconcentration conducted by inexperienced civilians and unfriendly constabulary is simply unsportsmanlike.

Caring for the peaceably inclined people, or pacificos, as they were called in Cuba—those who upon being told to do so voluntarily come within the zone or radius prescribed in the order for reconcentration—is not the only problem which can be competently handled by the military alone. There are the prisoners brought in by the policing force, from time to time, because found outside the prescribed radius, and put in the provincial jail. An ordinary jail, with 400 to 800 people crowded into it within a short period of time, can not be properly handled by inexperienced hands. The sanitary conditions are sure to become bad and foul, and more or less disease and death is certain to ensue.

In the latter part of 1903, about the middle of November, the writer was sent to hold court in the province of Albay, where quite a formidable insurrection had been in progress for about a year without suspension of civil government. There had been as many as 1,500 men in the field on each side at times. Reconcentration under the law quoted had been resorted to. There had been as many as 700 or 800 prisoners in the provincial jail at one time, so he was told. Toward the close of the term, just after Christmas, when most of the docket had been disposed of, and there was time for matters more or less perfunctory in their nature, the prosecuting attorney brought in rough drafts of two proposed orders for the court to sign. One was headed with a list of fifty-seven names, the other with a list of sixty-three names. Both orders recited that the foregoing persons had died in the jail—all but one between May 20 and December 3, 1903 (roughly six and one-half months), as will appear from an examination of the dates of death—and concluded by directing that the indictments against them be quashed. The writer was only holding an extraordinary term of court there, and was about to leave the province. The regular judge of the district was scheduled soon to arrive. He did not sign the proposed orders, therefore, but kept them as legal curios. A correct translation of one of them appears below, followed by the list of names which headed the other (identical) order:

The United States of America, Philippine Islands, eighth judicial district, in the court of first instance of Albay.

The United States against Cornelio Rigorosa, died December 3, 1903; Fabian Basques, died September 25, 1903; Julian Nacion, died October 14, 1903; Francisco Rigorosa, died October 18, 1903; Anacleto Solano, died November 25, 1903; Valentin Cesillano, died November 6, 1903; Felix Sasutona, died September 26, 1903; Marcelo de los Santos, died June 3, 1903; Marcelo Patingo, died November 15, 1903; Juan Raynante, died September 7, 1903; Dionisio Cariflaga, died October 4, 1903; Felipe Navor, died September 17, 1903; Luis Nicol, died November 23, 1903; Babino Nicol, died September 23, 1903; Damiano Nicol, died November 23, 1903; Leoncio Sabaluro, died November 20, 1903; Catalino Sideria, died July 25, 1903; Marcelo Ariola, died October 26, 1903; Francisco Cao, died November 26, 1903; Martin Olagner, died November 13, 1903; Juan Neric, died November 16, 1903; Enfemlo Bere, died November 21, 1903; Julian Sotero, died October 30, 1903; Juan Payadan, died September 20, 1903; Benedicto Milla, died July 30, 1903; Placido Porlage, died June 13, 1903; Gaudencio Oguita, died October 11, 1903; Alberto Cabrera, died September 8, 1903; Julian Payadan, died August 4, 1903; Eusebio Payadan, died August 10, 1903; Leonardo Rebusi, died November 2, 1903; Julian Riobaldis, died October 2, 1903; Victor Riobaldis, died October 23, 1903; Mauricio Balbin, died September 27, 1903; Tomas Rigador, died July 23, 1903; Mignel de los Santos, died July 28, 1903; Eustaquio Mapula, died November 18, 1903; Eugenio Lomibao, died November 1, 1903; Francisco Luna, died August 7, 1903; Gregorio Sierte,

died October 31, 1903; Teodoro Patingo, died November 21, 1903; Teodorico Tna, died September 23, 1903; Ceferino Octia, died November 10, 1903; Graclona Pamplona, died September 12, 1903; Felipe Bonifacio, died November 26, 1903; Baltazar Bundi, died October 12, 1903; Julian Locot, died October 13, 1903; Francisco de la Punta, died August 20, 1903; Pedro Madrid, died August 24, 1903; Felipe Pusiguit, died July 17, 1903; Rufo Mansalan, died July 14, 1903; Ignacio Titano, died June 20, 1903; Alfonso Locot, died June 29, 1903; Gil Locot, died May 23, 1903; Regino Bitarra, died September 7, 1903; Bonifacio Bo, died August 2, 1903; Francisco de Belen, died September 29, 1903.

DECREE.

The defendants above named, charged with divers crimes, having died in the provincial jail by reason of various ailments, upon various dates, according to official report of the jailer, it is

Ordered by this court, That the cases pending against the said deceased persons be, and the same are hereby, quashed, the cost to be charged against the government.

Albay, December 28, 1903.

Judge of the Twelfth District Acting in the Eighth.

The foregoing order contains fifty-seven names. As indicated in the text, the second order was like the first. It contained the names of sixty-three other deceased prisoners, as follows, to wit:

Anacleto Avila, died September 2, 1903; Gregorio Saquedo, died July 21, 1903; Francisco Almonte, died October 11, 1903; Faustino Sallao, died October 9, 1903; Leocadio Peña, died October 16, 1903; Juan Ranuco, died October 16, 1903; Esteban de Lima, died February 4, 1903; Estanislao Jacoba, died October 7, 1903; Macario Ordiales, died October 10, 1903; Laureano Ordeales, died October 27, 1903; Reimundo Narito, died October 4, 1903; Antonio Polvorido, died September 12, 1903; Norverto Melgar, died June 14, 1903; Bartolome Rico, died November 8, 1903; Simon Ordiales, died September 13, 1903; Candido Rosari, died September 29, 1903; Saturnino Vuelvo, died October 18, 1903; Vicente Belsada, died May 26, 1903; Felix Canaria, died June 12, 1903; Pedro Cuya, died July 26, 1903; Evaristo Dias, died July 24, 1903; Felix Padre, died July 8, 1903; Alberto Mantes, died August 7, 1903; Joaquin Maamot, died September 5, 1903; Santiago Cacerio, died May 28, 1903; Hilario Zalazar, died July 26, 1903; Tomas Odsinada, died October 1, 1903; Julian Oco, died October 4, 1903; Julian Lontac, died August 27, 1903; Ambrosio Rabosa, died September 19, 1903; Mariano Garcia, died September 12, 1903; Ramon Madrigalejo, died August 19, 1903; Albino Oyardo, died October 1, 1903; Felipe Rotarla, died September 29, 1903; Urbano Saralde, died October 5, 1903; Gil Mediavillo, died June 13, 1903; Egidio Mediavillo, died June 16, 1903; Mauricio Losano, died October 5, 1903; Bernabe Carenan, died September 27, 1903; Pedro Sagaysay, died September 29, 1903; Laureano Ibo, died August 5, 1903; Vicente Sanosing, died July 17, 1903; Francisco Morante, died June 10, 1903; Anatollo Sadullo, died September 16, 1903; Lucio Rebeza, died August 27, 1903; Eugenio Sanbuena, died August 13, 1903; Nicholas Oberos, died August 26, 1903; Eusebio Rambillo, died September 13, 1903; Tomas Rempillo, died August 19, 1903; Daniel Patasin, died August 19, 1903; Ignacio Bundi, died September 7, 1903; Juan Locot, died May 23, 1903; Zacarias David Padilla, died August 7, 1903; Juan Almazar, died September 12, 1903; Rufino Quipi, died June 13, 1903; Antonio Brio, died June 13, 1903; Timoteo Enciso, died September 12, 1903; Hilario Palaad, died August 28, 1903; Ventura Prades, died May 24, 1903; Alejandro Alevanto, died May 22, 1903; Rufino Pellicia, died May 20, 1903; Alejo Bruqueza, died July 19, 1903, and Prudencio Estrada, died September 15, 1903.

If the military authorities had had charge of those prisoners it is safe to say that the mortality among them would have been far less, that possibly half, or even three-fourths, of those who died would have lived. Political necessity, inherent in our form of government, kept the Army from acting then and keeps it from talking now.

When the civil government was set up in July, 1901, the Army took a back seat and looked on with more or less impatience, ready to say, "I told you so"—eager, of course, to get a chance to fight again. Gentlemen of the military profession have a predilection that way. The writer was, of course, entirely in sympathy with the civil authorities, having been promoted from the Army to the judiciary, and rather enjoyed seeing the Army behave with becoming subordination, according to orders, even if it did not like to do so. It is human nature to enjoy the possession of power. Nor did he ever give much thought one way or the other to the question of the original wisdom of setting up the civil government against military advice until he became aware of the death of these 120 prisoners in the Albay jail. This gave him pause. It was impossible to escape the reflection that just about that number had died in the Black Hole of Calcutta. After that, however, he labored all the harder to uphold the civil government by speedy trials of persons incarcerated, with a view to minimizing the necessity for the suspension of the writ of habeas corpus; and, finally, early in November, 1904, in the province of Samar, broke completely down in health from trying to dispose properly of overcrowded jails before the people awaiting trial died. The province of Samar was at that time being overrun by several thousand brigands, representing primarily the members of the late war fanned into flame by the exactions of the taxgatherer and the usurer, and in less than one hundred days more than 50,000 people had been made homeless by their depredations, according to the sworn testimony of a constabulary officer of the province who appeared as a witness before the court presided over by the author of this paper. This witness did not attempt to estimate the number that had been killed, wounded, or kidnapped. Why was not the situation turned over to the military authorities? It was later. But is an ambitious chief of constabulary of a civil government going to admit, on the eve of a Presidential election in the United States, that the public disorder in the Philippines is too great for him and his corps—the right arm of the civil government—to handle?

When the constabulary can not protect the peaceably inclined coast people these latter are compelled, even if they are not already in active sympathy with their harder brethren of the highlands, to get up a modus vivendi whereby they become, ipso facto, accessories to the crime of "brigandage," technically at least. The writer did not meet this ugly proposition in concrete form in the case of any specific defendant. But it would have come sooner or later had he remained in Samar. He left that ill-fated island November 8, 1904, determined, if he could get well, to ask to be stationed in Manila. For, as Edmund Burke said in his speech on "Conciliation with America," "I do not know the method of drawing an indictment against a whole people."

Looked at from the oriental end of the line, the governing of the Philippines by their supposed friends from the antipodes has been not unlike a game of battledoor and shuttlecock between rival political

creeds at home, in which the unfortunate inhabitants have been the shuttlecock.

Space does not remain sufficient to do more than briefly suggest how true this is also of the Washington end of the line.

For the benefit of American cotton manufacturers, cheap English textiles, previously worn by and satisfactory to millions of poor natives, have been shut out of the Philippines by a practically prohibitive import duty, a surtax of 100 per cent imposed by the United States Congress. (Act of Feb. 25, 1906.)

For the benefit of American shipping interests, the Philippines have been treated by our maritime legislation as part of the United States by extension of the coastwise shipping laws to the archipelago.

For the benefit of American sugar and tobacco interests, the Philippines have been treated by our tariff legislation as foreign territory. Those interests defeated the effort to give to the islands the benefit of a reduction of the duty on Philippine products to 25 per cent of the Dingley tariff, their representative insisting before the Committee on Ways and Means, almost in the language of Mrs. Jellyby's critics, "I believe our own children have more claim upon us." The leading Filipinos perceive, as clearly as we Americans do, that in the nature of things this sort of argument will always be an obstacle in the path of their progress so long as human nature retains a modicum of selfishness.

The instinct of self-preservation of our own sugar and tobacco producers would surely be satisfied with and lend their support to a free-trade, or at least a lower tariff, measure between this country and the Philippines, if the same were coupled with a promise of independence within a decade. This seems to be the only solution that is at once righteous and practicable. It is the only lever that will lift the Philippine ship of state upon the ways, and launch her successfully upon the voyage of national life.

JAMES H. BLOUNT.

The Clerk read as follows:

Recruiting: Expenses of recruiting for the naval service; rent of rendezvous and expenses of maintaining the same; advertising for and obtaining men and apprentice seamen; actual and necessary expenses in lieu of mileage to officers on duty with traveling recruiting parties, \$121,340: *Provided*, That no part of this appropriation shall be expended in recruiting seamen, ordinary seamen, or apprentice seamen, unless a certificate of birth or written evidence, other than his own statement, satisfactory to the recruiting officer, showing the applicant to be of age required by naval regulations, shall be presented with the application for enlistment.

Mr. GRANGER. Mr. Chairman, I offer the following amendment.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Page 7, line 3, after the word "statement," strike out the comma and insert the words "or statement of another based thereon."

Mr. FOSS. Mr. Chairman, I desire to reserve the point of order.

Mr. GRANGER. Mr. Chairman, a year ago this provision which has been just read was, after considerable debate, inserted in the bill of that year and has been repeated in the present bill. It has, however, sir, utterly failed to carry out the desires of the House. At that time the purpose of the House in voting the amendment offered by the gentleman from Massachusetts [Mr. KELIHER] was to provide that boys 14, 15, and 16 years of age should not be enlisted solely on their own statement of their age; that they should, in the absence of their parents' consent, provide a certificate of birth or written evidence other than their own statement satisfactory to the recruiting officer. During the past year I have had several cases called to my attention, of one of which I will speak. A boy runs away from home, goes to a recruiting station, and tells the recruiting officer he is 18 years of age when he is only 16. The recruiting officer then says, "Go right around the corner to Mr. So-and-so and make your statement to him." He goes around the corner, comes back within two hours with a sworn statement from the person to whom he is sent by the recruiting officer that he has been appointed guardian of the boy, and having made diligent inquiry is satisfied that the boy was born at such and such a time. The instance which I have in mind is one which occurred in the city of New York. A boy in my State ran away from a good home, from parents who were amply able and willing to care for him. He was then 16 years of age. He ran away, to the great distress of his parents, to New York. He went to the recruiting officer, and I have here a copy from the Navy Department of the captain's letter to the Chief of the Bureau of Navigation, which states the case as follows:

NAVAL RECRUITING STATION,
87 South Street, New York, December 7, 1906.

SIR: I have to acknowledge the receipt of instructions from the Chief of Bureau to make a detailed report of all the facts connected with the enlistment of Abraham Bander at this station on August 28, 1906.

Bander presented himself at the station for enlistment on August 28; he was questioned by me personally as to his age, parentage, etc.; then he was required to write out a formal application for enlistment. As he claimed to have no parents or guardian, I sent him to Mr. Herbert Van Dyke to secure a sworn certificate of his age; on his return to the office with this certificate, he was sworn in and sent to the training station at Newport.

I inclose the written application of this boy, in which he states that

"An eloquent and indignant protest against this by Rev. Charles H. Brent, Episcopal bishop of the Philippines, appeared in the Outlook for July 19, 1906.

he was born on April 3, 1888; I also inclose the sworn certificate which he brought from Mr. Van Dyke.

I very much regret the frequent occurrence of such cases at this station. Every precaution is taken to prevent illegal enlistments, and candidates are strictly examined by the recruiting officer before their applications are considered. If they will falsify as to their age and parentage and if they pass the required physical examination, I can not refuse to accept them. If at any time the appearance of the boy leads the doctor or recruiting officer to doubt the authenticity of his age statement, the candidate is promptly rejected.

Very respectfully,
D. D. V. STUART,
Captain, United States Navy, and Recruiting Officer.

The CHIEF OF BUREAU OF NAVIGATION,
Navy Department.

Mr. FOSS. May I interrupt the gentleman?

Mr. GRANGER. Certainly.

Mr. FOSS. Whose statement did the gentleman take—the statement of the boy in regard to this matter?

Mr. GRANGER. I take the statement of this letter from the captain, which was furnished me from the Navy Department.

Mr. FOSS. Do I understand he makes the statement that the recruiting officer sent this boy to somebody to make a false statement?

Mr. GRANGER. He says that, "as he claimed to have no parents or guardian, I sent him to Mr. Herbert Van Dyke to secure a sworn certificate of his age."

That is the statement. On his return to the office with this certificate he was sworn in. Mr. Herbert Van Dyke, to whom he was sent, makes this sworn statement:

STATE OF NEW YORK, CITY AND COUNTY OF NEW YORK, ss:

Herbert Van Dyke, being duly sworn, says: That he is the guardian of Abraham Bander, who has applied for enlistment as apprentice seaman in the United States Navy; that he, enlistment, has made diligent investigation as to the nativity of said Bander, and is satisfied that he was born on the 3d day of April, 1888, at Providence, R. I., U. S. A.
HERBERT VAN DYKE.

Sworn to before me this 28th day of August, 1906.

[SEAL.]
GEORGE A. MINASIAN,
Notary Public, Kings County.

Certificate filed in New York County.

It was the same day that Captain Stuart says he sent him to Herbert Van Dyke. I wrote to Herbert Van Dyke and asked him to kindly tell me of what his "diligent investigation" consisted, and what evidence he had other than the word of the boy himself as to his age and his birthplace. He never replied to my letter, and, my letter having never been returned to me, I have every reason to suppose he received it. I am informed by the Navy Department that Mr. Van Dyke is in the business of acting as guardian for runaway boys; that he takes them as he did this boy—

The CHAIRMAN. The time of the gentleman has expired.

Mr. GRANGER. Mr. Chairman, I ask unanimous consent that I may be allowed five minutes more.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. GRANGER. According to the statement of the Department, Mr. Van Dyke takes these boys and goes to the surrogate court and becomes their guardian. I have no doubt that he is a philanthropic man, one of those professional philanthropists who do a great deal of good in the world, but he does not stop to think that he helps to break up homes or that he brings trouble and sorrow, as he did in this case, into a good home, where he allowed a boy of 16 years of age to hoodwink the Government and go into the Government service at a time when he should not have been allowed there.

Now, Mr. Chairman, the amendment which I offered is a very simple one. If this clause is to be kept in the bill at all, it should be made effective. The words which I offer are simply as to the evidence other than his own statement—that is, the statement of the person who is about to be enlisted or statement of another based thereon—that is, that the "other evidence" shall not be based upon the statement of the person who desires to enlist. Under the present condition of things the boy makes the same statement, which is not sufficient to allow him to be enlisted by making it to the recruiting officer, but he makes it to somebody else, say, to Mr. A., and then Mr. A. makes an affidavit that he has made that statement, and then the boy comes back and gets around the law. It is merely enlisting the boy under his own statement. All along the Atlantic seacoast, and within the range of the Atlantic seacoast, where boys are attracted at the age of 14, 15, and 16 by the circulars and advertisements that are put up by the Navy Department, boys are being continually taken away from home. And I say, Mr. Chairman, that I do not believe that it is necessary that the United States should undertake to fill its Navy by offering inducements to, or by encouraging the running away of, 15 and 16 year old boys from their homes to enter the Navy. I believe we should offer sufficient inducements in order that men who have reached the age of 21 should enlist, or else

we should keep out boys unless they bring satisfactory evidence. Does the gentleman from Illinois [Mr. Foss] wish to discuss the point of order? I ask this, because I wish to speak on that if he intends to press it.

Mr. FOSS. Mr. Chairman, I do not press the point of order, but I object to the amendment. Last year we inserted a provision that the applicant desiring enlistment shall furnish a certificate of birth or written evidence, other than his own statement, satisfactory to the recruiting officer.

I may say that that provision, which we recommend in the appropriation bill this year, was inserted last year by the House, and the Chief of the Bureau of Navigation says it has worked to great disadvantage in enlisting men for the Navy. In the Army, I am informed, there is no requirement for any certificate of birth or any other evidence. In the enlistment in the Marine Corps there is no requirement for certificate of birth or any other evidence. But a boy goes to the recruiting officer of the Navy and he must furnish a certificate of birth or written evidence, other than his own statement, satisfactory to the recruiting officer. Not so with the Army or Marine Corps. Now, the gentleman's provision has, further, a greater requirement. It often occurs, for instance, that a boy goes to a naval recruiting office and can not furnish the certificate of birth, but he goes right over to an Army recruiting office or Marine Corps recruiting office and is enlisted.

Now, I will say, Mr. Chairman, that we are behind on enlistments. It is very difficult to obtain this certificate of birth. It has only been in recent years that some municipalities have provided an office where the certificates of birth are registered. It is, I may say, during the last ten years in some municipalities and communities this has been provided; and it is very difficult to secure these certificates. It seems to me that we ought not to make it any harder than it is at the present time for boys to get into the Navy who desire to get in. I hope this amendment will be voted down.

Mr. FITZGERALD. Mr. Chairman, the gentleman from Illinois forgets that there has not been the same difficulty about enlisting boys in the Army that there has been about enlistments in the Navy. The naval service, before boys get into it, is very attractive; after they are in the service it is not so attractive. The result has been in the past that a great many boys have run away from their homes, misstated their age, and after getting into the service there has been considerable difficulty to get them out. This provision was put in the bill last year to compel boys to procure either a written certificate of birth or some other written evidence that they had attained the age necessary to permit them to enlist. The gentleman from Illinois expresses the hope that no further difficulty will be placed in the way of these boys entering the service. I hope that every possible difficulty will be placed in the way of permitting a minor to enlist in the service without the permission of his parents or his guardian. What is the effect when a boy does so enlist? If the parent applies to the Department to have the boy discharged, notice is given that if he exercises the right to take the boy out of the service, the boy will be court-martialed for perjury and imprisoned for two years in a naval prison. Those who have the control of minor children are entitled to some consideration. The Department should do its utmost to prevent these boys going into the service ill advisedly. They are of no benefit to the service. If they be not discharged, they desert, and we have continual difficulties arising from boys enlisting without the consent of their parents and guardians, being refused their discharge, leaving the service of their own volition, obtaining employment, then being apprehended by private detectives who receive a reward from the Department for the return of these deserters. If this proposed amendment of the gentleman from Rhode Island will prevent these wild boys, these boys who are ill advised, from going into the service without the consent of their parents or guardians, it ought to be adopted, and any other amendment that would prevent them going into the service, except with proper consent, should be enacted into law.

The mere fact that the Department is suffering from the want of boys and men is no excuse for taking in improperly boys who imagine they will be satisfied in the service, but who quickly become discontented and make trouble for themselves, their parents, and everybody connected with the Government. I hope if this amendment will effect the desired result it will be adopted.

The gentleman from Rhode Island called my attention to this case some time ago. There is a gentleman in New York who is a philanthropist who makes it a business to look after boys who are homeless, and he seems to make it a special business to have himself appointed guardian by a court in the State so that he can give the consent required by the State for a boy

to enlist. This boy, having run away from his home, with his father and mother living in Providence, applied to the enlistment officer in New York without being able to furnish certificate of birth or other written evidence that he had attained the age that would enable him to enlist. The recruiting officer—the boy having stated that he had no parents—suggested that he visit the office of the philanthropist. That gentleman had him sign an application to the court for the appointment of him as the boy's guardian. The boy swore his mother and father were dead, and prayed that the court appoint this man, whom he had never seen more than two or three minutes, as his guardian. The action had was purely of a formal nature, the order was signed, and thereupon this man signs this certificate, gives it to the boy, and the boy takes it and goes back to the same recruiting officer and is immediately enlisted in the naval service. Here is the case of a boy with a certificate from a man who has been appointed his guardian, appointed upon a false statement of the boy, and his parents unable to take him from the service except upon condition that the boy shall be court-martialed and punished for perjury. It seems to me that the House should do whatever it can to prevent a recurrence of such a transaction, and I hope the amendment will be adopted.

The CHAIRMAN. The time of the gentleman has expired.

Mr. GREENE. Mr. Chairman, I wish to indorse all the remarks that have been made by the gentleman from Rhode Island, who introduced the amendment, and also of the gentleman from New York, who has so clearly stated the case. I know of a great many cases similar to that related by the gentleman from Rhode Island, where young men under the age of 18 have run away from their homes and enlisted, and afterwards many of them becoming dissatisfied with the Navy, because they are too young to enter it, have deserted, being then hounded by officials and in some cases arrested and imprisoned, destroying their hope for future preferment in any kind of service. The fact that the Navy needs the boys is of course made clear to us by the statement of the chairman of the committee, but that fact alone should not weigh against the amendment offered by the gentleman from Rhode Island, for in my judgment it is better to protect the youth from the liability of the trouble that arises from enlistments of boys too young and unfit for the service. I trust the amendment will be adopted. I feel sure that it will work well in the section of the State where I reside, and believe that it will work well everywhere for the better protection of the youth, and for the protection of the fathers and mothers who do not want their children taken from them in an unjust way.

Mr. FOSS. Mr. Chairman, I think we are too apt to listen to the stories of the boys and not to investigate all sides of the question. I know I have had a good many applications for discharges from the Navy, for one cause or another, but when I came to look up all of the facts never in a single instance have I found that the naval recruiting officer was at all to blame. These boys come to the recruiting offices and are very anxious to get into the Navy. They are full of the naval spirit; but after they get into the Navy and see that it means good hard work, then they want to get out, and very frequently they tell all kinds of stories and appeal to the sympathies of Members of Congress. I want to say that so far as the recruiting officers are concerned, I think they have been honest and conscientious in the discharge of their duties. Admiral Converse, Chief of the Bureau of Navigation, and who is, in my judgment, one of the ablest officers in the American Navy to-day, speaking before the committee, said that most of the recruiting officers are very apt to err on the safe side, and are unwilling to accept any man unless they can get very good testimony in regard to his age. Now, what I do insist on is that we ought to make the same provision here for the Navy that we do for the Army and the Marine Corps. Last year we hedged about the applications for enlistment with additional provisions, which are in the law to-day, and which the committee recommend to remain in the law for the coming year, although those provisions have had a very disadvantageous effect upon enlistments. For instance, in the months of July and August, at Boston and various substations, there were 1,752 candidates presented themselves for enlistment, and of that number 200 passed. There were 966 who failed to present evidence of age and were rejected at Boston and substations during the months of July and August. That shows that the naval recruiting officer is carrying out the provisions of the law.

Mr. GRANGER. Mr. Herbert Van Dyke does not live in Boston.

Mr. FOSS. I hope that the Members of the House will not be moved by these appeals in cases which come up, where I think Members pay too much attention to the stories of the boys and do not look thoroughly into all the facts in regard to the partic-

ular cases of enlistment. As I said before, the restrictions around the matter of enlistment in the Navy are a great deal more stringent to-day than they are in the Army or Marine Corps. For that reason I do not think that we ought to make them any more so, thereby checking the enlistment of men whom we are short of in the naval service.

Mr. McNARY. Mr. Chairman—

The CHAIRMAN. Debate upon this amendment is exhausted.

Mr. McNARY. I move to strike out the last word.

Mr. FOSS. I move to close debate.

Mr. PERKINS. I ask that the amendment be again reported.

The CHAIRMAN. The gentleman from Illinois moves to close debate.

Mr. McNARY. I had my motion in first.

The CHAIRMAN. The gentleman from Massachusetts was not recognized.

Mr. FOSS. I move to close debate in ten minutes.

The CHAIRMAN. On this amendment or on the paragraph?

Mr. FOSS. On the paragraph and amendments thereto.

The CHAIRMAN. The gentleman from Illinois moves that all debate on this paragraph and amendments thereto be closed in ten minutes.

The question being taken, the motion was agreed to.

Mr. McNARY. Mr. Chairman, it seems to me that the gentleman from Illinois [Mr. Foss] is not meeting this question squarely. I do not understand that anybody here has impugned the honor of the recruiting officers. As I understand the purpose of this amendment, it is to make clearer the fact that the boy himself must present absolutely reliable evidence, and not present evidence that appears to be fair and conclusive by means of fraud and duplicity. Now, if the naval officer accepts the evidence of the boy presented and believes it to be true, it is not necessarily duplicity on the part of the officer, but we desire to have the matter put in such a form that there will be no opportunity of fraudulent enlistment.

I believe in the American Navy and in upbuilding it, but every man from the northern stations, from Boston, New England, down the Atlantic seaboard, knows full well that there has been great and grievous complaint as regards the method of enlistment of boys in the Navy, and that we have been unable to get these boys out of the Navy, even though they were enlisted fraudulently and under age, and even though their guardians and parents demanded their release, because the Navy Department officials threatened the boy with prosecution for perjury.

Now, we desire to have this matter made clear and definite, and if there be boys—and there ought to be plenty of them—who seek to enter the American Navy, let them do it honorably and start their career in the right way, in truth and honesty, and not have them go in by fraudulent representations and perjury. It is certainly a queer school in which to start a boy if you expect to make him a truthful and honest man.

Let me say to the gentleman from Illinois that one reason why the attraction of the Navy is not so great as the Army and Marine Corps is the fact that in both the Army and Marine Corps the man who goes in has a reasonable and definite opportunity, if he is studious, if he is honest and honorable, if he is intelligent and ambitious, of being able by passing an examination to be promoted into the list of officers. To be sure there is such a provision in the naval service, but as a matter of fact very few, if any, boys are ever allowed to reach beyond the position of warrant officer.

As a matter of fact, the provisions of the law allowing promotion into the ranks of officers are practically ignored, or deliberately ignored, so that it is almost impossible to-day for a boy who enters the American Navy, no matter how intelligent, no matter how earnest, no matter how ambitious he may be to become an officer in that Navy, it is almost impossible for him to do so, although the records of the Department prove and the history of the country shows that many of the most successful naval captains in our history from the days of the Revolutionary war were men who have been taken from the ordinary seafaring class and the merchant marine. Nobody will attempt to decry the great advantages of the present system of naval education, but if the gentleman wants to increase enlistments he should seek to change the law in such a respect that it will give boys who are ambitious and studious an opportunity to get into the ranks of the officers of the Navy, and he will find a far larger number of boys seeking enlistment than under the present system, because it will give them an opportunity that every American craves—to advance himself in life to the highest point his ambition and ability will let him.

I believe in the amendment offered by the gentleman from Rhode Island, and let us have recruiting put on a square, honest, and honorable ground, by which fraudulent enlistments will be prevented upon the part of the boy himself or upon the

part of fictitious guardians and parents—by means of false affidavits. Then boys can go into the Navy honorably and honestly, and Members of Congress will not be appealed to in the future, asking them to get boys out who have been enlisted by fraud and deception. Let us be square and honest with the boys and square and honest with the whole community, and in my judgment the Navy will not suffer once the policy is adopted and squarely maintained. [Applause.]

Mr. WILLIAM W. KITCHIN. Mr. Chairman, as this debate, I believe, has five minutes more to run, I will just take two and a half minutes of that time and give the remaining portion to the gentlemen on the other side who desire to speak against the amendment. As the law is now we recruit boys under 18 years of age, with the consent of their parents or guardians. A boy that is over 18 years of age is not required to get the consent of his parent or guardian. In my judgment nobody ought to be enlisted in the Navy under 21 years of age without the consent of his parents. The parent ought to have a right higher than the right of the recruiting officer. The parent ought to have a right to control his boy until he is 21 years of age, but as the law is now the recruiting officer can enlist a boy at 18 years of age and the parent has no recourse. We are troubled year in and year out trying to get boys out of the Navy who enlisted contrary to the wishes of their parents, between the ages of 18 and 21; but as far as this amendment goes, as I understand it, it is to require some certainty in a boy's being 18 years of age when he pretends to be of that age. It is to prevent officials from relying altogether on the boy's statement as to his age, or upon the testimony of some man who bases his opinion upon the boy's statement only. It seems to me this is a wise amendment, that it is not contrary to the interests of the Government. I admit that there are many desertions from the Navy. I admit it is hard to get enlistments for the Navy, but those faults ought not to be put upon individual citizens, the individual mothers and fathers of this country. If there is a fundamental fault, the Naval Committee ought to devise some plan to obviate it. If the conditions are hard, and thereby prevent enlistments in the Navy, then the Government ought to do something to alleviate those hard conditions. There ought to be some inducements held out, and conditions ought to be made such that it will not be difficult to enlist men in the Navy who are 21 years of age. There ought to be such conditions as will tend to discourage desertions and to decrease the number of desertions from the Navy. But with all this failure to enlist sufficient men, and with all these desertions, yet I do not believe it can be logically argued that it should remain easy for recruiting officers to enlist boys under 18 years of age without the consent of their parents, for we know a boy under that age who seeks to enlist is not a disinterested witness as to his age. As far as I am concerned I do not believe they ought to be permitted to enlist when under 21 years of age without the consent of the parents. I think this is a wholesome amendment and that it ought to be adopted.

Mr. MEYER. Mr. Chairman, I agree fully with the proposition that every safeguard should be applied to prevent boys who are under the legal age from enlistment in the Navy, but the amendment proposed by the gentleman from Rhode Island [Mr. GRANGER], in my judgment goes too far. Our desire is and should be not to make it easy for boys under legal age to enlist through misrepresentation of their years, but also to obviate a condition which keeps those beyond that age from entering the service. According to the report of Admiral Converse, which I have before me, but which I have not now the time to read, he states that the great difficulty is that experienced at times by men who wish to enlist, but who can not within the necessary time produce positive proof of eligibility of age—men who would make valuable additions to the Navy, men thoroughly and legally qualified. It is to that class of men to whom we wish to give opportunity to enter the Navy, without being hampered and embarrassed in the way probably that this amendment, if adopted, would do, and which would have a deterrent rather than encouraging effect.

I append extract from the report of the Chief of Bureau of Navigation for 1906:

CERTIFICATES OF BIRTH.

The current naval appropriation act contains the following provision: "That no part of this appropriation shall be expended in recruiting seamen, ordinary seamen, or apprentice seamen unless a certificate of birth or written evidence, other than his own statement, satisfactory to the recruiting officer, showing the applicant to be of age required by naval regulations, shall be presented with the application for enlistment."

The observance of this requirement has reduced enlistments of seamen, ordinary seamen, and apprentice seamen about 30 per cent. Few men who desire to enlist can produce, at short notice, "a certificate of birth or written evidence," not based upon their own statements, showing their precise age. Naturally every man intelligent enough to be wanted in the Navy knows his own age, but the majority of

them when away from home can not confirm such knowledge by written evidence that is worth anything.

No State or Territory of the United States at the present time possesses a complete registration of births. It is estimated by the Director of the Census that in none of them registration reaches 90 per cent of the births, and this standard has been attained only in recent years. Registration is most complete in California, Colorado, Connecticut, the District of Columbia, Indiana, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, South Dakota, and Vermont, but even in these States it is probable that such information could not be obtained in more than 75 per cent of the actual cases; in all other States the records are still more imperfect.

Such are present conditions. Carrying the inquiry back eighteen or more years, to the date of birth of men now seeking to enlist in the Navy, a worse state of affairs is found. In a communication upon this subject the Director of the Census says:

"The statements made above will indicate the probability, in most cases, that there was very little satisfactory registration of births as far back as the year 1886."

This explains the serious falling off in enlistments under the statute above quoted. Given time enough, perhaps a majority of the men seeking to enlist could obtain the paper evidence called for by this statute, but to a considerable portion of them the requirement stands as a bar. Men who have left their homes seeking employment can rarely afford to await the slow and uncertain results of a search of any registration records that may have existed in their native States when they were born. Although admitted to other vocations, they find the Navy closed to them. The matter is one of grave public concern on account of the embarrassment to the service, on the one hand, and, on the other, the denial of the privilege of enlistment to a worthy and desirable class of citizens.

This statute has, by crippling enlistments in the Navy, caused a more serious evil than that which it was intended to cure. It was directed against enlistment of boys under age. Such enlistments are not desired by the Navy, and the Bureau has been zealous in the endeavor to reduce them to a minimum. That it has been reasonably successful in this direction appears from the records, which show the enlistment during the past year of about 8,000 men as apprentices and seamen, of whom but a small percentage have turned out to be under age.

In view of the foregoing considerations, the modification or repeal of this statute, which has proven prejudicial to the best interests of the service and disadvantageous to the men it affects, is recommended. It is suggested that inasmuch as a boy of 17 is, if otherwise qualified, a competent witness in any court, his oath, in connection with the report of the recruiting officer and the careful physical examination made by the examining medical officer, should be accepted as sufficient.

The CHAIRMAN. Without objection, the Clerk will again report the amendment.

There was no objection, and the Clerk again reported the amendment.

The CHAIRMAN. The question is on the adoption of the amendment.

The question was taken; and on a division, demanded by Mr. Foss, there were—ayes 42, noes 26.

So the amendment was agreed to.

The Clerk read as follows:

Outfits on first enlistment; Outfits for all enlisted men and apprentice seamen of the Navy on first enlistment, at not to exceed \$60 each, \$600,000.

Mr. PERKINS. Mr. Chairman, I move to strike out the last word. I would like to inquire of the chairman of the committee the reasons for the change between the present bill and the bill of last year? I see the provision for outfit is raised from \$45 to \$60, and the provision in the bill last year allowing the Secretary in certain cases to charge against the men who had not served six months a portion of the outfit is stricken out. What is the object of the change?

Mr. FOSS. In regard to the first part of the gentleman's question I will say that we have increased the cost of the outfit to \$60. That is due to the increased cost of materials. Admiral Converse said the cost of everything in the Navy has jumped up. He goes on to specify, for instance, that overshirts which formerly cost \$2.40 the price is now \$2.75, and blue trousers which cost \$2.65 have jumped to \$4.25, so that the same outfit which cost, for instance, \$45 before, can not be purchased under \$60 at the present time.

Mr. PERKINS. Has it jumped up in a single year as much as that?

Mr. FOSS. Well, not in a single year, no; but in the last two or three years.

Mr. PERKINS. But the outfit last year was purchased at \$45.

Mr. FOSS. Well, it went over \$45.

Mr. PERKINS. That is what they were allowed by law.

Mr. FOSS. Then they cut off some things of the outfit, but now the full outfit which they will give to every one will cost \$60.

Mr. PERKINS. Why was the clause in reference to the refunding of the outfit stricken from the bill?

Mr. FOSS. If I recall rightly, that was made permanent law. The word "hereafter" was used, and of course when that is used it makes it permanent law, and it is not now necessary to put it in the bill this year.

Mr. PERKINS. I withdraw the pro forma amendment.

The Clerk read as follows:

Maintenance of naval auxiliaries: Pay, transportation, shipping, and subsistence of civilian officers and crews of naval auxiliaries and all

expenses connected with naval auxiliaries employed in emergencies which can not be paid from other appropriations, \$500,000.

Mr. PERKINS. Mr. Chairman, I reserve the point on that. That, I think, is a new provision.

Mr. FOSS. No; it is an old provision.

Mr. PERKINS. Then I am mistaken.

Mr. FOSS. The only new thing is the heading. It used to read "Maintenance of naval colliers." Now we change the word "colliers" to "auxiliaries" in order to include two provision ships and two ammunition ships, etc.

Mr. PERKINS. No; I think the gentleman is mistaken, or else I am. The clause just read is at the top of page 8.

Mr. FOSS. Well, that is the clause. It read "Maintenance of naval colliers" before.

Mr. PERKINS. Well, it now provides for the subsistence of civilian officers.

Mr. FOSS. Well, it did before. That was the law of last year and for a number of years.

Mr. PERKINS. Then this provision is not a new provision?

Mr. FOSS. No; only under this language they include a couple of provision ships and ammunition ships which were not included in the former law.

Mr. PERKINS. What does this cover, the expenses of men not in the Navy at all, in the State naval reserves?

Mr. FOSS. No; this provides for civilian crews to colliers and ammunition ships and provision ships. It is cheaper to run them with civilian crews than it is with officers and men of the Navy.

Mr. PERKINS. I withdraw the point of order, Mr. Chairman.

The Clerk read as follows:

Naval training station, Great Lakes: Maintenance of naval training station: Labor and material: general care, repairs, and improvements of grounds, buildings, and piers; street-car fare; purchase and maintenance of live stock, and attendance on same; wagons, carts, implements, and tools, and repairs to same; fire extinguishers; heating, lighting, and furniture; stationery, books, and periodicals; ice and washing; expressage; packing boxes and materials; postage, telegraphing, and telephoning; and all other contingent expenses, \$20,000.

Mr. CRUMPACKER. Mr. Chairman, I move to strike out the last word with a view of getting some information with relation to the naval training station on the Great Lakes. I am a friend of that improvement, but I have been impressed with the notion that a great deal of money is being expended there, possibly more than the training station really requires. I would like to know how much has been appropriated heretofore for the establishment of the station, if the gentleman, the chairman of the committee, has it in mind.

Mr. FOSS. Last year we appropriated \$750,000, and at the time when the board was appointed we appropriated \$250,000.

Mr. CRUMPACKER. That makes a million heretofore, and this bill carries altogether how much?

Mr. FOSS. This bill carries \$700,000.

Mr. CRUMPACKER. So it will aggregate \$1,700,000, and then plans have been adopted for the construction of buildings amounting to how much?

Mr. FOSS. A provision was put in the appropriation bill last year, which was passed, to the effect that the buildings shall cost not to exceed \$2,000,000.

Mr. CRUMPACKER. Not to exceed \$2,000,000?

Mr. FOSS. Yes.

Mr. CRUMPACKER. I notice an appropriation in this bill of \$150,000 for a hospital.

Mr. FOSS. No; not in this bill.

Mr. CRUMPACKER. Not in this bill?

Mr. FOSS. No.

Mr. CRUMPACKER. I was mistaken. I thought there was an appropriation in this bill of \$150,000 for a hospital. Well, does the gentleman expect that the \$1,700,000 which has been appropriated, which this bill carries, with the additional \$300,000, making \$2,000,000, will complete the work there?

Mr. FOSS. The provision was that the buildings should cost not to exceed \$2,000,000. Of course, in addition to that there are matters outside, such as walks, filling of ravines, and the dredging of the basin.

Mr. CRUMPACKER. Has any money been expended for the construction of a harbor there?

Mr. FOSS. The contract has been entered into, and the work is now going on for the dredging of the basin, which will cost, I believe, \$24,000.

Mr. CRUMPACKER. Has the gentleman any idea about the aggregate cost of that station—what it will cost when it is completed?

Mr. FOSS. I will say to the gentleman that under the provision of Congress last year, fixing the buildings at \$2,000,000, that, of course, the bids have not been let, and the plans and

specifications as to both of these have not yet been fully approved, and we do not know how much it is going to cost. But I should think the buildings could be built within the authorization of Congress of last year, namely, \$2,000,000.

Mr. CRUMPACKER. Will a million dollars in addition do the balance of the work?

Mr. FOSS. I should think so and I should hope so.

Mr. CRUMPACKER. I ask these questions not for the purpose of criticising, but for information.

Mr. FOSS. I am very glad the gentleman does.

Mr. CRUMPACKER. It has been intimated to me that the plan upon which the naval station there has been started if carried out would cost six or eight or ten millions of dollars.

Mr. FOSS. Oh, no.

Mr. CRUMPACKER. And I wanted to be informed in relation to it.

Mr. FOSS. I will say to the gentleman that that is entirely erroneous. I think our naval training station down at Newport, which is the best one we have, has probably cost in the neighborhood of two millions to two millions and a half, and I do not anticipate that this naval station will cost very much more than that. Of course, there is this thing to be taken into consideration. The cost of labor is high, and the cost of material at the present time is also high, and it may be that the naval training station will cost more than two millions and a half of dollars, but I would say that the man who has charge of it, Captain Ross, of the Navy, and who has had a great deal of experience in connection with public works of this kind in the Navy Department, is doing everything in his power to hold this down to a reasonable and economical basis.

Mr. CRUMPACKER. I want to repeat that I very much favor the improvement, but I wanted to know, so that I might be able to give information if any request should be made respecting the amount of money that is being expended there and what will probably be required to complete the station. Mr. Chairman, I withdraw the pro forma amendment.

Mr. COOPER of Wisconsin. Will the chairman of the Naval Committee answer one question?

Mr. FOSS. I will be pleased to.

Mr. COOPER of Wisconsin. How much of harbor facilities can be secured there for \$24,000?

Mr. FOSS. I understand all that is necessary for small boats, which are the only boats used in the training of men.

Mr. COOPER of Wisconsin. What does the gentleman mean by small boats? How large are they?

Mr. FOSS. I do not know the exact size, but they are row-boats, lifeboats—

Mr. COOPER of Wisconsin. Rowboats?

Mr. FOSS. Yes; and lifeboats.

Mr. COOPER of Wisconsin. Those are rowboats.

Mr. FOSS. Yes; but they are larger than the ordinary row-boats.

Mr. COOPER of Wisconsin. That \$24,000 will not build anything of a harbor there and will not build any docks or any piers. The reason I asked this question, I will say to the gentleman, is this: The original law providing for the establishment of this station required that there should be estimates submitted by the board which reported in favor of the site, and that the President should confirm the report, and that report, of course, was to include these estimates. No estimates were made at that time and there were not for a long time after Lake Bluff was selected.

Now, I will ask the gentleman if there ever has been any estimates submitted as to the probable cost of a harbor at Lake Bluff site; and if so, what that harbor is to cost or what the estimate is?

Mr. FOSS. The only estimates which have been finished, so far as I am aware, were those submitted by the board at the time it made its report to the President.

Mr. COOPER of Wisconsin. I will say there is nothing in those estimates at all that I have ever seen, and I sent for the copy. There was no estimate made that I ever saw at that time. At least I asked for one, and could not find it, as to the cost of the harbor.

Mr. FOSS. They were made at that time with regard to other harbors along the Great Lakes, and particularly, as I recall it, in regard to Muskegon.

I stated a moment ago, as I recall it, that the contract for dredging the basin was \$24,000, but I find by looking it up in a memorandum that the contract was a double contract, for filling the ravines and dredging the basin, \$38,400, comprising two purposes instead of one.

The Clerk read as follows:

Naval Home, Philadelphia, Pa.: One superintendent of grounds, at \$710; one steward, at \$720; one matron, at \$420; one beneficiaries'

attendant, at \$240; one chief cook, at \$480; one assistant cook, at \$360; one assistant cook, at \$240; one chief laundress, at \$192; five laundresses, at \$168 each; four scrubbers, at \$168 each; one head waitress, at \$192; eight waitresses, at \$168 each; one kitchen servant, at \$240; eight laborers, at \$240 each; one stable keeper and driver, at \$360; one master at arms, at \$480; two house corporals, at \$300 each; one barber, at \$360; one carpenter, at \$845; one painter, at \$845; one engineer for elevator and machinery, \$600; three laborers, at \$360 each; three laborers, at \$300 each; total for employees, \$14,110. Miscellaneous: Water rent and lighting, \$2,100; cemetery, burial expenses, and headstones, \$800; improvement of grounds, \$780; repairs to buildings, boilers, furnaces, and furniture, \$6,748; music in chapel, \$600; transportation of indigent and destitute beneficiaries to the Naval Home, \$100; support of beneficiaries, \$47,905; total miscellaneous, \$59,033.

Mr. FITZGERALD. Mr. Chairman, I reserve the point of order on the item on page 10, line 21, "one steward, at \$720."

The CHAIRMAN. What is the point of order?

Mr. FITZGERALD. It is not authorized by law.

The CHAIRMAN. The Chair will hear the gentleman from Illinois on the point of order.

Mr. FOSS. I will say that it has been provided for heretofore.

Mr. FITZGERALD. It has been provided for at less compensation.

Mr. FOSS. At less compensation.

Mr. FITZGERALD. This is an increase of compensation, obnoxious to the rules, and is new legislation. I will reserve the point of order, if the gentleman thinks he can give a satisfactory explanation of it.

Mr. BUTLER of Pennsylvania. Mr. Chairman, if my friend will give me his attention I will state to him that these estimates are sent in by the old sailors, and this money does not come from the United States Government, but comes from a fund that has been accumulated from the earnings of the sailors. It is their own fund; and I suggest to him that he will agree with us that what these old sailors feel that they ought to have provided for them we should give to them if it is to come out of their own fund.

Mr. FITZGERALD. The gentleman is mistaken. This appropriation is paid out of the Treasury of the United States.

Mr. WILLIAM W. KITCHIN. If the gentleman will look on page 12, at lines 21 and 22, where the whole business is summarized, he will find that it states "which sum shall be paid out of the income from the naval pension fund." As I understand this, it is a fund that belongs to the Navy. The Government has it in trust, and it is a fund over which I understand they have had the control.

Mr. FITZGERALD. Why is this put in?

Mr. BUTLER of Pennsylvania. Mr. Chairman, the gentleman asks why it is put in. I have already endeavored to explain the reason. It is at the request of the sailors themselves. This fund is provided by themselves out of their earnings. The Government is the trustee, and they send in an estimate designating what they would like to have and the purposes for which they propose to use it, and we have always followed the suggestion and made the appropriation accordingly.

Mr. FITZGERALD. The gentleman does not pretend to state to the committee that this has been done on the recommendation of the inmates of the Home?

Mr. BUTLER of Pennsylvania. Made to the Bureau of Navigation.

Mr. FITZGERALD. Not by the inmates here.

Mr. BUTLER of Pennsylvania. Made by the old sailors.

Mr. FITZGERALD. Not at all. It is made by the man designated as the head of the Home.

Mr. BUTLER of Pennsylvania. But the suggestion came from the sailorman, and the Naval Affairs Committee inserted it.

Mr. FITZGERALD. Knowing the utter incapacity of the inmates of this Home to determine this question, if it is based upon their recommendation I insist upon the point of order.

Mr. MANN. What is the reason for making the increase?

Mr. BUTLER of Pennsylvania. I will be very glad to answer my friend.

Mr. MANN. The gentleman from New York will understand that it is necessary to have a good steward. Whether they could obtain one for \$480 I do not know. But a good steward will save a great deal more than the difference between the salary of a good steward and a bad steward, as the gentleman will readily know. The steward is the man who makes the purchases of supplies.

Mr. BUTLER of Pennsylvania. Yes, he is; and it is recommended by the Department that they should have this officer.

Mr. MANN. What is the necessity for the increase? I can readily see that where stewards are in demand it may not be possible to obtain or retain the services of a good steward at \$480 a year, which is only \$40 a month.

Mr. BUTLER of Pennsylvania. Well, it is in this report.

Mr. Chairman, here is the statement that is furnished by the

Navy Department, upon which the item was inserted as the committee was advised on the hearings referred to.

The regulations of the Naval Home provide that in consideration of the faithful performance of such duties in and about the Home as may be directed by the governor or commanding officer each beneficiary shall receive \$2 per month. This was afterwards increased to \$3, and was paid up to March 1, 1906. Upon the question of the establishment of the rate of writer at the Home, at a compensation of \$10 per month, the Comptroller of the Treasury rendered a decision, under date of March 22, 1906, to the effect that as the appropriation for the support of the Home provides specifically for forty-nine employees, other personal services than those authorized by the act are prohibited by section 3679 of the Revised Statutes. This was considered to also cover the cases of beneficiaries who had been receiving a compensation of \$3 per month for extra services performed, and consequently payment of this sum was stopped. To reimburse these beneficiaries for extra services rendered at the Home from March 1, 1906, to June 30, 1906, and also to pay certain workmen for services rendered to the Home during the second half of March, 1906, the present estimate is submitted.

Mr. MANN. Well, I do not understand who is the beneficiary. I suggest to the gentleman from New York that it is quite probable that they can not obtain and retain the services of a good steward at present for \$40 a month.

Mr. FITZGERALD. Mr. Chairman, the suggestions of the gentleman from Illinois usually carry great weight, but I have gone through the hearings of the Committee on Naval Affairs, and the only thing that is said in there is that on page 21 of the hearings the chairman says:

I see here a provision for laborers and cooks, and so forth. You have separated it. There are a number of increases here.

Admiral CONVERSE. There is an increase in the pay of the stewards, the cooks, and two assistant cooks.

There is not a single word of explanation for any one of the increases. This naval pension fund is created, first, from certain prize moneys which were turned in for the support of naval hospitals many years ago. Now every officer and enlisted man in the Navy and in the Marine Corps has 20 cents a month deducted from his pay, which goes into this fund.

If Congress is charged with the duty of supervising the expenditures from this fund, it should do so upon proper information and in an intelligent manner. I repeat that there is not a word in the hearings upon which the gentleman from Pennsylvania can base his statement that these increases are at the request of the inmates of the Home, who, as a matter of fact, are less entitled to make recommendations than anybody else, because they are enjoying the results of deductions made from all the men in the service; and merely because a recommendation is made is not, in my judgment, sufficient reason for the appropriation.

Mr. MANN. If the gentleman will permit me, I have not gone through the hearings upon this question, but I do not think the gentleman needs to go through the hearings to determine what I think is perfectly evident to the gentleman from New York, as it is perfectly evident to me, that it is to the interest of the Government at this point to have a good steward. It is perfectly apparent to the gentleman from New York, I believe, that to-day you can not obtain and retain the services of a good steward at \$480 a year.

Mr. FITZGERALD. If that were in the city in which the gentleman lives or the city in which I live that probably would be true, but I am not so sure about it in the city of Philadelphia.

Mr. MANN. My experience in the city of Philadelphia is that they know a good steward when they get one, and I think the good steward there knows how to perform properly, and I should question whether it would not require more pay to retain a good steward in Philadelphia than in any other city.

Mr. FITZGERALD. The gentleman from Pennsylvania probably is familiar with this, and while it does not appear in the hearings I desire to inquire whether he has made any investigation of this matter and knows whether it is necessary to have this increase in order to retain a competent man?

Mr. BUTLER of Pennsylvania. I understand it will be impossible to continue the services of this steward unless his salary is raised. I further understand—and I do not think my friend will ask me the source of my information, but it is good—the services of this steward have been perfectly satisfactory, and that the authorities are especially desirous that they may be continued. I hope, in view of that statement—

Mr. FITZGERALD. How many men are in this Home?

Mr. BUTLER of Pennsylvania. I very much wish I could answer my friend, for I should like to know myself. If the gentleman will restrain his desire for information until tomorrow morning, I will learn the number and tell him. I do not know how many.

Mr. FITZGERALD. If the gentleman feels that the conduct of the Home will be interfered with, I will not press the point of order.

Mr. BUTLER of Pennsylvania. It is for the good of the

service and for the good of the Home, and I ask my friend to withdraw his point of order.

Mr. FITZGERALD. At the suggestion of the gentleman, I withdraw the point of order.

The CHAIRMAN. The gentleman from New York withdraws the point of order, and the Clerk will read.

The Clerk read as follows:

One secretary, \$1,600; one master mechanic, at \$3.28 per diem, \$1,026.64; one store laborer, \$480.

Mr. MANN. Mr. Chairman, I reserve the point of order on that paragraph. I want to know what the reasons are.

The CHAIRMAN. The gentleman from Illinois reserves the point of order against lines 3 to 6, inclusive, on page 12. Does the gentleman from Illinois [Mr. Foss] desire to discuss the paragraph on its merits?

Mr. MANN. It is a new provision in the bill.

Mr. FOSS. So far as the first part is concerned—

Mr. MANN. What is the necessity of a secretary at \$1,600?

Mr. FOSS. These are new provisions in the bill, recommended by the head of the Naval Home, at Philadelphia, and also by the Secretary of the Navy.

In regard to the master mechanic and the storekeeper, Admiral Converse asked for the increase on account of the increased labors at the Home. I want to say that this Home is taken care of by the interest on the naval pension fund, which amounts to about \$14,000,000, and that we have usually taken the recommendations of the officers in charge there with regard to these increases. Heretofore there have been comparatively few increases in the wages of the people employed in this Home, but we felt that this year there was more necessity for it. In regard to the allowance of pay for the beneficiaries from March 1 to June 30, 1906, that was due to the decision of the Comptroller of the Treasury, who in a ruling decided that these amounts which heretofore had been paid for extra duties to these beneficiaries should not be allowed.

Upon this matter Admiral Converse stated in the hearings as follows:

The regulations of the Naval Home provide that in consideration of the faithful performance of such duties in and about the Home as may be directed by the governor or commanding officer each beneficiary shall receive \$2 per month. This was afterwards increased to \$3, and was paid up to March 1, 1906. Upon the question of the establishment of the rate of writer at the Home at a compensation of \$10 per month the Comptroller of the Treasury rendered a decision, under date of March 22, 1906, to the effect that as the appropriation for the support of the Home provides specifically for 49 employees other personal services than those authorized by the act are prohibited by section 3679 of the Revised Statutes. This was considered to also cover the cases of beneficiaries who had been receiving a compensation of \$3 per month for extra services performed, and consequently payment of this sum was stopped. To reimburse these beneficiaries for extra services rendered at the Home from March 1, 1906, to June 30, 1906, and also to pay certain workmen for services rendered to the Home during the second half of March, 1906, the present estimate is submitted.

That is what Admiral Converse said upon this subject. It was in view of this decision of the Comptroller, and his decision was to the effect that because we only provided for 49 employees, therefore we could not go outside and pay for the extra services performed by these beneficiaries. That held up the amount which they were entitled to under the regulations of the Home.

Mr. MANN. May I ask the gentleman if the decision of the Comptroller was rendered since the last appropriation act providing that they should be authorized to obtain additional service through the use of the beneficiaries? That was in the last act. Was not the decision of the Comptroller rendered after this provision was put into the law?

Mr. FOSS. The decision of the Comptroller was rendered March 22, 1906, a little less than a year ago.

Mr. MANN. That was before the present law was in effect. Then the gentleman last year, in view of that decision, put in the provision for the performance of additional services in and about the Home, and that the Secretary of the Navy was authorized to employ the beneficiaries and pay them out of the fund?

Mr. FOSS. Yes.

Mr. MANN. That being the case, the Secretary of the Navy being authorized to employ the beneficiaries in the Home and give them some employment, what is the reason for employing additional employees outside of the Home entirely; why not give these men a chance to earn a little extra money?

Mr. FOSS. These people are old, and there is only a certain amount of work they can do around the Home. That will take up their minds and attention and give them these little amounts, say two or three dollars a month, so that they will feel that they are doing something.

Mr. MANN. I am in favor of that; but the point I am making is, Why do you want to cut them off and employ somebody else when they can do it just as well?

Mr. FOSS. We are not cutting them off, but we are providing for men to do the heavy work, and in that respect we are making provision for master mechanics.

The CHAIRMAN. The point of order is sustained. The Clerk read as follows:

To pay beneficiaries for extra duties performed by them at the Home from March 1 to June 30, 1906, in established ratings, \$1,205.66.

Mr. FITZGERALD. Mr. Chairman, I make a point of order as to that, that it is a deficiency and should be carried in the proper bill.

The CHAIRMAN. The point of order is sustained. The Clerk read as follows:

To pay the following-named men for services rendered to the Home during the second half of March, 1906: John T. Foley, mechanic, fourteen days, at \$4 per diem, \$56; Joseph S. Trainer, carpenter, fourteen days, at \$2.80 per day, \$39.20; Alonzo Hersh, plasterer, five days, at \$2.80 per diem, \$14; Frank W. Mohler, store laborer, one-half month, at \$40 per month, \$20.

Mr. FITZGERALD. Mr. Chairman, I make the same point of order against that paragraph.

The CHAIRMAN. The point of order is sustained. The Clerk read as follows:

In all, for Naval Home, \$78,124.50, which sum shall be paid out of the income from the naval pension fund: *Provided*, That for the performance of such additional services in and about the Naval Home as may be necessary, the Secretary of the Navy is authorized to employ, on the recommendation of the governor, beneficiaries in said Home, whose compensation shall be fixed by the Secretary and paid from the appropriation for the support of the Home.

The CHAIRMAN. If there be no objection, the Clerk will be authorized to make the change in the total made necessary by striking out certain provisions on points of order.

There was no objection.

The Clerk read as follows:

Ammunition and other supplies for new ships, \$750,000.

Mr. FOSS. Mr. Chairman, I offer the following amendment, which I send to the desk and ask to have read:

The Clerk read as follows:

On page 13, line 22, after the word "dollars," insert the following: *Provided*, That immediately after the passage of this act all ammunition and other supplies already on hand under appropriation "Increase of the Navy, armor and armament," shall thereby be transferred to the appropriation "Ordnance and ordnance stores," the same as if purchased under that appropriation, and that this change of title shall be effected without a charge against the appropriation "Ordnance and ordnance stores."

Provided further, That after the passage of this act all ammunition and other supplies now contracted for under the appropriation "Increase of the Navy, armor and armament," shall be transferred to the appropriation "Ordnance and ordnance stores" immediately after such ammunition and other supplies have been delivered and paid for; that this change of title shall be effected without a charge against the appropriation "Ordnance and ordnance stores."

Mr. FITZGERALD. Mr. Chairman, I reserve the point of order on the amendment.

Mr. FOSS. Mr. Chairman, the explanation is very simple. This appropriation has been carried heretofore—"Increase of the Navy"—over at the rear end of the bill, but now the Secretary of the Navy desires to put it here under the Bureau of Ordnance, and it is simply changing it from one part of the bill to another.

Mr. BUTLER of Pennsylvania. It does not change any provision of law?

Mr. FOSS. It is a mere matter of bookkeeping, and I may say works to a more business-like management of the Bureau of Ordnance.

Mr. FITZGERALD. Mr. Chairman, let me call the attention of the gentleman from Illinois [Mr. Foss] to this fact. Appropriations made under the part of the bill entitled "Increase of the Navy," if I am correctly informed, are available until expended. Appropriations made under this part of the bill are only available for two years. If the unexpended balances of the appropriations that have been heretofore made under the provision "Increase of the Navy" in former years are turned over in this way, it may be that they will thus be turned back into the Treasury. It would be a very wise thing for the gentleman from Illinois to know how much money now available for the purpose would thereby be taken from the Department. I desire to know whether that question has been looked into and whether the gentleman is able to state the amounts unexpended under the former appropriations and what amounts, if any, would be converted back into the Treasury as the result of the adoption of this provision.

Mr. FOSS. I will state to the gentleman that I can not tell him what amounts are unexpended of this appropriation which has been made heretofore under the "Increase of the Navy." I have not the figures here.

Mr. FITZGERALD. I ask the gentleman whether that question was taken into consideration when the recommendation of the Secretary was agreed to or whether the Secretary of the

Navy took that particular fact into consideration in making this request.

Mr. FOSS. Well, I do not know what the Secretary of the Navy took into consideration, but the main purpose or the reason which actuated the committee fully as much in recommending this provision was a reason which was given by the Chief of the Bureau of Ordnance, Admiral Mason, in which he says:

Under existing conditions, with ammunition and ordnance supplies carried under the two titles "Armor and armament" and "Ordnance and ordnance stores," this Bureau, being by regulation forbidden to keep accounts, is absolutely unable to keep a businesslike control and cognizance of this material under the separate titles. When the ammunition and supplies under both titles are issued to the naval magazines, the Bureau practically loses knowledge of the title under which the material is carried.

And for the reason that it was more businesslike and economic we were of the opinion that the recommendation of the Secretary and also the recommendation of the Chief of the Bureau ought to stand in the bill.

Mr. FITZGERALD. It may be much more businesslike, but I call the attention of the gentleman to the fact that heretofore ammunition and other supplies for new ships were purchased out of the provision "Increase of the Navy, equipment, armor, and armament."

Mr. FOSS. Yes.

Mr. FITZGERALD. Last year there was appropriated over \$15,000,000 for that purpose. For a number of years—five or six—past the appropriations have been very large and they have been based to some extent upon the contracts that have been made or were in contemplation, and under the law the appropriations are available until expended. This particular appropriation will be available for two years only, and by that time, if it be not expended, it will revert to the Treasury. It is just possible that under this proposed amendment large balances that are now to the credit of this fund will, as a matter of fact, be taken from the available amounts that the Department has now to meet contract obligations, and as this is the short session of Congress it might very seriously embarrass the Department in the performance of its work. It seems to me, Mr. Chairman, that a provision of so much importance should not be offered to the House in this way at this time. I will insist upon the point of order.

Mr. FOSS. Mr. Chairman, I do not think the Secretary of the Navy would have recommended this if he thought it was in any way going to embarrass him.

Mr. FITZGERALD. It is just possible he did not know anything about it.

Mr. FOSS. Then I think if the gentleman from New York will only call the attention of the Secretary to this important matter that it will probably relieve him of any embarrassment which might be occasioned.

Mr. FITZGERALD. I prefer to avoid the embarrassment by exercising a right I have rather than to rely upon some right I have not.

Mr. FOSS. I appreciate the gentleman's zeal in pointing this out. Now, so far as the point of order is concerned, Mr. Chairman, I do not think it is subject to the point of order. It has been held it is in order to authorize a new ship upon the naval appropriation bill, and it is certainly in order to authorize any part or portion of a new ship. This is for the ammunition and other supplies of new ships, \$750,000. I understand the gentleman makes his point of order to that provision.

Mr. FITZGERALD. No; I do not.

Mr. FOSS. Or to the amendment.

The CHAIRMAN. The Chair is ready to rule.

Mr. FOSS. I have nothing further to say.

The CHAIRMAN. It seems to the Chair, if the Secretary has not authority to make the transfer as recommended by him, if it is necessary that Congressional action be taken in order to authorize such transfer, why the provision is legislation and subject to the rules.

Mr. FOSS. Mr. Chairman, upon that point I think I can show to the Chair that the Secretary of the Navy has the authority to put the business—

The CHAIRMAN. The Chair suggests, then, what is the necessity of the legislation?

Mr. FOSS. There is no necessity, only simply that it should be in proper form in the bill.

Mr. FITZGERALD. But, Mr. Chairman, this attempts to transfer appropriations heretofore made from one account to another, and the Secretary of the Navy has no power to make any such transfer.

Mr. FOSS. So far as this appropriation is concerned, whether the appropriation is made here on page 17 or whether it is made under "Increase of the Navy," the same bureau has jurisdiction of it.

Mr. FITZGERALD. I have not made the point of order against the language in the bill.

Mr. FOSS. But if the Chair will reserve his decision until to-morrow, I think I can show the Secretary has jurisdiction of this matter.

The CHAIRMAN. Upon the statement of the chairman of the committee that he believes he can produce authority to the Chair for this provision, the Chair will ask the unanimous consent of the committee to pass this matter over without prejudice until to-morrow. Is there objection? [After a pause.] None is heard, and that course will be followed.

The Clerk read as follows:

For completing the work of modifying 4-inch .40-caliber mounts, and providing new sights; and for modifying 5-inch .40-caliber mounts, and providing new sights for same, \$100,000.

Mr. FITZGERALD. Mr. Chairman, I move to strike out the last word. I desire to inquire why this particular item is placed in the bill?

Mr. FOSS. To what item does the gentleman refer?

The CHAIRMAN. Lines 15 to 18, inclusive, page 14.

Mr. FOSS. Well, I can refer him to the hearings, on page 49, before the committee—

Mr. FITZGERALD. That is what I desired to ascertain about.

Mr. FOSS. And also to the report of the chief, on page 5.

Mr. FITZGERALD. Heretofore this work has been done out of other appropriations.

Mr. FOSS. Whatever has been done has been done under the general work of the appropriation for the Bureau of Ordnance and Ordnance Stores.

Mr. FITZGERALD. Why is this item segregated, and has it resulted in any decrease of the appropriation available for any other purpose?

Mr. FOSS. Well, the estimates were made upon the basis of two items, and what would otherwise have been placed under the general appropriation for ordnance and ordnance stores has been taken out of that and put in a separate paragraph.

Mr. FITZGERALD. Does the gentleman know how much has been already expended for that purpose?

Mr. FOSS. No; but very little if anything has been expended, but from time to time there have been modifications of these new sights and mounts upon our ships, but now they have worn out and need repair. I also state there have been new inventions in these matters during the last two or three years, and the Chief of the Bureau of Ordnance thinks the time has now arrived when these modifications should be made and that the ships should be brought up to date.

Mr. FITZGERALD. There is no question as to the propriety, the advisability, of bringing ships up to date, but the hearings show that this work has heretofore been done out of general appropriations. The experience of the House has been that where appropriations are divided and the items segregated in this way it takes but a very short time very largely to increase the total appropriation for the same purpose. I took occasion to point out three or four years ago, where certain paragraphs in the naval appropriation bill had been divided into independent paragraphs, that the appropriations increased over 300 per cent as a result of so dividing them. The recommendation for this work last year was \$320,000. The hearings show the estimates made this year would complete the work. I do not recall whether the \$100,000 is the complete estimate—

Mr. WILLIAM W. KITCHIN. No; it is not.

Mr. BUTLER of Pennsylvania. Two hundred and thirty-five thousand dollars is asked for.

Mr. FITZGERALD. Which shows that last year the difference between \$235,000 and \$320,000—namely, \$95,000—was expended for this very purpose out of the general appropriation for the Bureau. The Bureau will obtain practically \$100,000, an amount equal to that expended last year, in addition to the current appropriation for the Bureau. My opinion is that this will result, without the Members of the House appreciating it, in largely increasing the appropriation for this Bureau. It will come about because these two items will be carried in the bill, and hereafter it will be very difficult to trace the history of the appropriation. For that reason I move to strike out that paragraph of the bill.

Mr. FOSS. Mr. Chairman, I call for a vote.

The CHAIRMAN. The gentleman from New York [Mr. FITZGERALD] moves to strike out lines 15 to 18, inclusive, on page 14. The question is on agreeing to the amendment.

The question was taken, and the amendment was rejected.

The Clerk read as follows:

For fire-control instruments for nineteen battle ships and twelve armed cruisers; for fire-control instruments for four monitors and twenty-five cruisers, \$300,000.

Mr. FITZGERALD. Mr. Chairman, I move to strike out the paragraph. I wish to call the attention of the committee to

some remarkable statements made to the Committee on Naval Affairs. It has been our pride that the American seamen have been the most expert marksmen in the world. The records that have been made in target practice both for accuracy of fire and rapidity of firing have never been equaled in any other Navy in the world. And yet we find in the hearings before the Naval Committee that an officer of the Navy states that experience at target practice indicates that rapid hitting is possible and "information from abroad indicates that it is necessary." I suppose that this is the first time, in the history of the modern navy, at least, and possibly in the history of the navy before the modern ships, that any naval officer thought it was necessary to report what had happened abroad in the line of marksmanship, either as to accuracy or rapidity, in order to set up a standard for the men of the American Navy. Indeed, the accuracy of the marksmen of the American Navy has been the admiration of the navies of the civilized world. I am astonished that, when other naval authorities are sending here to seek information, when they are expressing admiration and astonishment at the proficiency of our seamen, some officials should find it necessary to refer to what has happened abroad as an indication of what should be done in this country. I have no doubt whatever that the seamen and the marksmen on board of the ships of the American Navy excel in a very great degree those on board of the ships of any other naval power. And I trust that whatever may be appropriated for instruments of fire control, to perfect the accuracy of the shooting of the men on board our ships, will not be based upon information that has not been found from our own experiences, without regard to what has happened in other countries.

Mr. FOSS. Mr. Chairman, I call for a vote.

The CHAIRMAN. The gentleman from New York [Mr. FITZGERALD] moves to strike out lines 19, 20, 21, and 22, inclusive, on page 14. The question is on agreeing to the amendment.

The question was taken; and the amendment was rejected.

The Clerk read as follows:

Reserve ammunition: Toward the accumulation of a reserve supply of powder and shell, \$2,000,000: *Provided*, That no part of this appropriation shall be expended for the purchase of shells or projectiles except for shells or projectiles purchased in accordance with the terms and conditions of proposals submitted by the Secretary of the Navy to all of the manufacturers of shells and projectiles and upon bids received in accordance with the terms and requirements of such proposals. All shells and projectiles shall conform to the standards prescribed by the Secretary of the Navy.

Mr. PERKINS. Mr. Chairman, I move to strike out the last word for the purpose of getting information from some member of the committee. Last year there was an appropriation of \$2,000,000 for reserve of powder and shell and also \$750,000 for a reserve of guns. A similar provision is contained in the bill this year and has, I think, been carried in this bill for many years. I would like to be informed as to what this reserve is. We have now appropriated millions and millions to accumulate a reserve. Does the time ever come when the reserve is completed?

Mr. FOSS. I want to say to the gentleman from New York [Mr. PERKINS] that last year was the first time we made any appropriation for reserve ammunition.

Mr. PERKINS. That was the first time?

Mr. FOSS. That was the first time; and the recommendation in the estimate last year was \$4,000,000. We cut that down to \$2,000,000, and this year the estimate was four millions and we cut it down to two millions.

Mr. PERKINS. How large is this reserve to be that is to be created?

Mr. FOSS. Well, it is suggested that four millions will buy—

Mr. PERKINS. Is it to stop at four millions or will there be a provision next year for two millions?

Mr. FOSS. No doubt there will be a provision right along, as we are very much behind in stores of ammunition. Since this bill has been reported the Department have recommended that we make the appropriation larger.

Mr. PERKINS. What is done with the powder and shell of these reserves? It must be taken out, otherwise the reserve would keep on growing until finally it would amount to twenty millions.

Mr. FOSS. It is stored and ready for cases of emergency.

Mr. PERKINS. Where is the \$2,000,000 worth of powder and shell that was purchased last year for the reserve?

Mr. FOSS. That is being manufactured at the present time. That appropriation did not go into effect until the 1st of July last.

Mr. BATES. Let me read to the gentleman the testimony of Admiral Mason on this subject when he was before the committee. He states that the probable expenditure of this appropriation will net four millions:

Smokeless powder	\$911,200
Armor-piercing shells, mostly above 6-inch caliber	2,600,000
Powder tanks and cartridge cases (to accumulate 20 per cent of one reserve)	368,000
Fuses	70,000

Mr. PERKINS. What is done with this reserve?

Mr. MADDEN. As a matter of fact, they take the reserve for target practice.

Mr. BATES. The reserve is procured for actual use:

As stated in last year's estimates, it seems imperative that there should be acquired at the earliest date practicable a reserve supply of ammunition sufficient to refill the main battery magazines of the fleet twice and the secondary battery magazines once. This is because a modern battle ship at her maximum rate of gun fire will exhaust the magazines supplying her main battery in about half an hour, and her secondary battery ammunition will not last much longer.

Mr. PERKINS. The bill makes an appropriation for the purchase of a still further amount this year.

Mr. BATES. He states that this is required.

Mr. PERKINS. I do not care what he states.

Mr. BATES. It answer the question.

Mr. PERKINS. I think not.

Mr. BATES (reading):

That the accumulation of this reserve should be undertaken at once is evidenced by the fact that the manufacture of shell of sufficient merit to meet the Bureau's requirements has, in many instances, taken from two to three years.

Mr. PERKINS. What is done with the powder and shell? Is it used in target practice?

Mr. FOSS. It is stored.

Mr. PERKINS. Besides the \$2,000,000 worth of powder that was purchased last year?

Mr. FOSS. We are going to store it up. We have a place for reserve supply of powder on every ship, and in addition to that we have stores and magazines in other parts of the country.

Mr. PERKINS. Then if we are to have \$2,000,000 for the increase reserve of powder and shot piled up each year, it will get to ten or twelve millions.

Mr. FOSS. We have got to have a reserve.

Mr. PERKINS. How big has it got to be?

Mr. FOSS. The estimate last year was that \$9,126,000 would be required in order to have a reserve of ammunition for all the ships in the Navy, and so this \$2,000,000 was appropriated last year, and we are endeavoring to make the reserve as large as it should be. There is no question as to the necessity of making the reserve.

Mr. PERKINS. How is it that we never had a reserve before in a hundred years of naval history?

Mr. FOSS. I think that the gentleman will find that we have always had some reserve, and the gentleman will find there has always been some reserve of powder and shot.

Mr. PERKINS. I thought the gentleman stated that last year was the first appropriation for such purpose. I am asking for information.

Mr. FOSS. That was the first specific appropriation carried in our bill for reserve.

Mr. PERKINS. Then it was the beginning of the reserve.

Mr. FOSS. It was the beginning of the piling up, I may say, of reserve ammunition for the Navy.

Mr. PERKINS. Then there was no reserve ammunition for the Navy during the century before?

Mr. FOSS. We appropriated \$50,000,000 one day before the time we entered upon the Spanish war, and a large portion of that went into reserve, which we had not provided for before. Now, we propose to go to piling up our reserve, so that in case of necessity or emergency we will be ready.

Mr. PERKINS. Is it ever used except in case of war?

Mr. FOSS. It might be, and it might not.

Mr. PADGETT. If the gentleman will permit me, I will answer that inquiry.

Mr. PERKINS. I should be glad to get an answer from anyone.

Mr. PADGETT. I want to say to the gentleman that I asked the same question of the Admiral a year ago in the committee, and he stated that after we had reached the time when the first stored would be used the old is replenished from the current appropriation. The older reserves would be used in target practice and for current uses; so that there would not be a continual piling up. The old ammunition would be used and that would be replenished from the new.

Mr. PERKINS. Let me ask these naval experts another question. This powder is stored, then, it may be, for a period of four or five years. Is there any deterioration of powder that is stored for so long a time as this?

Mr. PADGETT. They stated that there was practically no deterioration.

Mr. PERKINS. Practically none, though stored for four or five years?

Mr. PADGETT. I do not know the limit. They stated that there was practically no deterioration in the powder.

Mr. CRUMPACKER. I should like to get the matter clear in my head. I understand that before the Congress adopted the policy of providing for a reserve the only reserve would be a surplus.

Mr. PADGETT. That had been retained from current appropriations?

Mr. CRUMPACKER. From the ammunition that was provided for current use.

Mr. PADGETT. Yes.

Mr. CRUMPACKER. And now the policy is to provide a reserve that is segregated for emergencies and that is to reach a certain aggregate, and when it does it is to be used?

Mr. PADGETT. Added to, and some used from the later reservations.

Mr. CRUMPACKER. It is a little like the redemption fund in the Treasury. We used to have none—

Mr. PERKINS. They say that does not work very well in the Treasury.

Mr. CRUMPACKER. We used to have no specific segregated redemption fund, but a few years ago we provided one, and the Navy Department is now arranging to provide for a reserve store of ammunition.

Mr. DAWSON. Simply large enough to fill the ships' magazines once.

Mr. PERKINS. How many million dollars would it take?

Mr. DAWSON. About \$9,000,000, for which we already appropriated last year \$2,000,000. If we keep appropriating \$2,000,000 a year, in 1910 we will have this reserve large enough to fill the magazines of the ships once.

Mr. PERKINS. I withdraw the pro forma amendment.

Mr. FOSS. Mr. Chairman, I wish to strike out in line 5 the words "powder and shell" and to insert in lieu thereof the word "ammunition."

The CHAIRMAN. The gentleman from Illinois offers an amendment which the Clerk will report.

The Clerk read as follows:

In line 5, page 15, strike out the words "powder and shell" and insert the word "ammunition."

The amendment was agreed to.

The Clerk read as follows:

Reserve torpedoes and appliances: For the purchase or manufacture of reserve torpedoes and appliances, \$250,000.

Mr. WILLIAM W. KITCHIN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Line 19, page 15, after the word "dollars," insert the following: "Provided, That of this amount not more than \$155,000 shall be used for the construction and equipment of a torpedo factory at the torpedo station at Newport, R. I."

Mr. MANN. I reserve the point of order on the amendment. I could not hear it read.

The CHAIRMAN. What is the request of the gentleman from Illinois?

Mr. MANN. I should like to hear the amendment reported again.

The CHAIRMAN. The Clerk will again report the amendment.

The amendment was again read.

Mr. MANN. Does that read "not more than?"

Mr. WILLIAM W. KITCHIN. Yes. Does the gentleman reserve a point of order?

Mr. MANN. I do not think it is subject to a point of order. It is a limitation on the appropriation.

Mr. WILLIAM W. KITCHIN. Mr. Chairman, I desire to state that I think this amendment will render the purpose of the appropriation more certain, and will effect not only what I think a very proper provision, but also the intention of the Department and of this committee. I call the attention of the committee to the following language in the report on this bill on page 5:

An appropriation of \$250,000 is recommended for the purchase and manufacture of reserve torpedoes and appliances. The Chief of the Bureau is of the opinion that he can manufacture 21-inch torpedoes for \$3,500 each, which would be a saving of \$1,500 on each torpedo, and as we require a large number of them, the committee have thought it would be economy to allow him to make the trial.

These 21-inch torpedoes now cost us \$7,100 each. The estimate of the Bureau is that we can make them for \$3,500 each, but to that estimate is to be added the wear and tear of the plant and also a royalty of perhaps \$500 on each torpedo.

But it would appear that by making the torpedoes we can save from \$2,000 to \$2,500 on each torpedo. There is only one concern in the United States that now makes these torpedoes. Its capacity is 100 torpedoes a year. The Department says that we need 200 torpedoes a year. In other words, the private con-

cern can only make half of what the Government needs annually. Then, in view of the fact that we will have this great saving upon the torpedoes if we make them, and in view of the very strong recommendations of the Department in favor of the torpedo factory, it seems to me it is good business and wisdom to authorize in direct terms the erection of this factory.

Mr. CRUMPACKER. Will the gentleman allow me a question?

Mr. WILLIAM W. KITCHIN. Certainly.

Mr. CRUMPACKER. How much would it take to establish and equip a torpedo factory?

Mr. WILLIAM W. KITCHIN. That question was asked, and Admiral Mason answered that \$155,000 would make it and equip it. For that reason the language of the amendment says "for the erection and equipment of a torpedo factory."

Mr. DAWSON. If the gentleman will allow me, if I understood his amendment, it is to fix the place or location of the factory?

Mr. WILLIAM W. KITCHIN. At Newport.

Mr. DAWSON. Does the gentleman think it is wise for us to fix the place at which the factory is to be erected? Would it not be better to leave that to the discretion of the officers in the Navy Department?

Mr. WILLIAM W. KITCHIN. I followed the recommendation of the Navy Department because in their estimate they had the item, but they put it in another part of the bill. Their recommendation is to have it at Newport, where they now carry on the torpedo experiments.

Mr. FITZGERALD. Does the gentleman believe that \$250,000 is enough for the item, even without taking some of it for the purpose of erecting a Government factory?

Mr. WILLIAM W. KITCHIN. I will say to the gentleman from New York, my idea is that it will take twelve months to erect the factory, and \$250,000 will be enough to erect a factory and to supply the money that will be required in that factory for the next fiscal year. But, if we are going to buy 100 additional torpedoes in the next fiscal year, then it will take more than double the appropriation.

Mr. FITZGERALD. It will not be possible to obtain the 100 torpedoes in any one year by purchase?

Mr. WILLIAM W. KITCHIN. That is correct, and before we can manufacture any at Newport ourselves we must first have a factory. I think it is safe to authorize the erection of this plant out of this appropriation. Then, after we have our plant perfected, hereafter it may be necessary to appropriate \$500,000 a year to the plant in order to make the necessary torpedoes.

Mr. BUTLER of Pennsylvania. How about the royalty?

Mr. WILLIAM W. KITCHIN. As to the royalty, I have alluded to that. Admiral Mason thought \$500 on each torpedo a sufficient royalty.

Mr. MADDEN. Is it proposed that the Government shall make all of the torpedoes?

Mr. WILLIAM W. KITCHIN. No; personally, I should favor that, but the recommendation of the Department is that we be prepared to make them, and to make one-half of our supply in that respect, as I understand the testimony.

The CHAIRMAN. The question is on agreeing to the amendment offered by the gentleman from North Carolina.

The question was taken; and the amendment was agreed to.

Mr. FITZGERALD. Mr. Chairman, I move to strike out the words "two hundred and fifty" in line 19 and insert in place thereof the words "five hundred."

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

In line 19 strike out the words "two hundred and fifty" and insert the words "five hundred."

Mr. FITZGERALD. Mr. Chairman, under the amendment that has just been adopted \$155,000 will be utilized for the building of a torpedo factory. The Department asked for \$500,000 for the purpose of acquiring reserve torpedoes. Last year they asked Congress to give \$100,000 for that purpose, and no money was given. In the hearings it was shown that 606 torpedoes are needed to supply the ships now in commission. The Department has on hand 570, and the Chief of the Bureau states that so long as this condition continues the Department is not prepared for war so far as its ability to supply these ships with torpedoes is concerned.

I recollect in the last session I called the attention of the House to the fact that the Department had notified the committee that it did not have sufficient torpedoes to supply one round for all the vessels in commission.

If we are to maintain our Navy, there is no more important thing, in my judgment, than to have the ammunition on hand that would be required in case the vessels were called into serv-

ice. The committee gave \$250,000 for the purpose of obtaining these torpedoes. One hundred and fifty-five thousand dollars of that is to be utilized in building a factory. It seems to me that at least more than \$100,000 should be available for the purpose of obtaining torpedoes. The hearings show that they cost, if obtained by contract, \$7,000; that about twenty are lost in each year in experimenting and practicing with the ships, so that the \$100,000 that will be available to acquire new torpedoes will not be sufficient even to replace those that are likely to be lost during the coming year. Whatever desire there may be to economize, to keep down appropriations, it seems to me that the Department should have sufficient funds to acquire either by contract or purchase sufficient torpedoes to at least supply one round for the ships now in commission. In addition to that, it is pointed out in the hearings that in the course of a few years 996 will be the number of torpedoes that will be required for one round for all the ships in commission, and the Department asks in addition that it have a reserve sufficient to supply an additional round. It would take a great many years, even utilizing the one plant that exists and the plant that it is proposed to erect, to furnish these torpedoes. We should either stop placing torpedo tubes in the battle ships and building torpedo boats to utilize torpedoes or else we should at least have on hand a sufficient number to permit these vessels to be used if, unfortunately, they should be called into action.

The CHAIRMAN. The question is on agreeing to the amendment offered by the gentleman from New York.

The question was taken; and the amendment was rejected.

MESSAGE FROM THE SENATE.

The committee informally rose; and Mr. PERKINS having taken the chair as Speaker pro tempore, a message from the Senate, by Mr. PARKINSON, its reading clerk, announced that the Senate had passed with amendments bills of the following titles; in which the concurrence of the House of Representatives was requested:

H. R. 23551. An act making appropriation for the support of the Army for the fiscal year ending June 30, 1908; and

H. R. 21383. An act providing that terms of the circuit court of the United States for the western district and of the district court of the United States for the northern division of the western district of the State of Washington be held at Bellingham.

The message also announced that the Senate had insisted upon its amendments to the bill (H. R. 25242) to authorize additional aids to navigation in the Light-House Establishment, and for other purposes, disagreed to by the House of Representatives; had agreed to the conference asked by the House on the disagreeing votes of the two Houses thereon, and had appointed Mr. ELKINS, Mr. PERKINS, and Mr. MALLORY as the conferees on the part of the Senate.

The message also announced that the Senate had insisted upon its amendments to the bill (H. R. 23821) making appropriations for fortifications and other works of defense, for the armament thereof, for the procurement of heavy ordnance for trial and service, and for other purposes, disagreed to by the House of Representatives; had agreed to the conference asked by the House of Representatives on the disagreeing votes of the two Houses thereon, and had appointed Mr. PERKINS, Mr. WARREN, and Mr. DANIEL as the conferees on the part of the Senate.

The message also announced that the Senate had passed without amendment bills of the following titles:

H. R. 21204. An act to amend section 4446 of the Revised Statutes, relating to licensed masters, mates, engineers, and pilots;

H. R. 22291. An act to authorize the reappointment of Harry McL. P. Huse as an officer of the line in the Navy;

H. R. 8365. An act for the relief of C. A. Berry;

H. R. 15242. An act to confirm titles to certain lands in the State of Louisiana; and

H. R. 20169. An act for the relief of Margaret Neutze, of Leon Springs, Tex.

The message also announced that the Senate had passed bills of the following titles; in which the concurrence of the House of Representatives was requested:

S. 8362. An act to authorize the city council of Salt Lake City, Utah, to construct and maintain a boulevard through the military reservation of Fort Douglas, Utah; and

S. 8274. An act to amend an act to authorize the construction of two bridges across the Cumberland River at or near Nashville, Tenn.

NAVAL APPROPRIATION BILL.

The committee resumed its session.

The Clerk read as follows:

Torpedo station, Newport, R. I.: For labor, material, freight and express charges; general care of and repairs to grounds, buildings, and

wharves; boats, instruction, instruments, tools, furniture, experiments, and general torpedo outfits, and new smokestack and flues for boilers, \$70,000.

Mr. PARKER. Mr. Chairman, I move to strike out the last word, and I ask unanimous consent to extend my remarks not to exceed fifteen minutes.

The CHAIRMAN. The gentleman from New Jersey asks unanimous consent to speak for fifteen minutes. Is there objection?

There was no objection.

Mr. PARKER. Mr. Chairman, my remarks to-day will be a comparison of the Army and the Navy with reference to pay, promotion, retirement, and command. It is a subject large enough for days of speech. I want to put before the House in a few words, without referring more than need be to figures, the conditions which attend two of the most honorable professions that exist—professions in which officer and man devote their lives—yes, themselves in life or death—to the service and command of their country.

PAY OF ENLISTED MEN AND NONCOMMISSIONED OFFICERS.

Mr. Chairman, we learn much from the estimates. The estimates of the Navy (p. 493) are for 37,500 petty officers, seamen, and other enlisted men. The appropriation asked for them is \$13,500,000. It will be understood that I speak in round numbers. The appropriations asked for the Army on pages 169 and 170 of the estimates were for about 59,500 men, and the appropriations asked for them were \$12,556,000. Thus, for over 59,000 men less is asked than for 37,500. The average for the Army which was asked for all noncommissioned officers and men is \$212.50 a year, and the average for the Navy which is asked is \$300 a year. Again, in the number of the Army already given are included all noncommissioned officers, sergeants, corporals, electricians, and pharmacists. The Navy appropriation referred to does not include what are called "warrant officers," allowed by statute, though it does include petty officers. These petty officers are paid as fixed by the President's order, and instead of the pitiful sum of \$30 or \$34 a month that we pay our sergeants with the exception of a few electricians who get \$60 or \$70 a month, naval petty officers are paid as high as \$85 a month on the President's order.

But besides those petty officers there are what are known as "warrant officers," in number 819, with a pay running from \$900 to \$1,950, comprising boatswains, carpenters, sailmakers, machinists, pharmacists, and mates, with an average pay of \$1,239.36, making altogether for warrant noncommissioned officers, petty officers, and enlisted men, 38,319 in number, \$14,500,000 and odd, or an average pay of \$378.58, which is 80 per cent more than the average pay of the Army. Do not think that I complain of the inequality, Mr. Chairman. But in these days of varied pursuits skill is needed in artillerymen, electricians, photographers, and machinists. Skilled farriers, saddlers, etc., are needed in the cavalry. In the Engineering Corps, and all through the Army, we need skilled men with training, and the United States must pay them if we expect to have them and keep them. I wish that we could have the same rule in the Army that exists in the Navy, and that the settlement of the pay could belong to the Executive, so that instead of appropriating as we do for every sergeant and corporal we could appropriate for the pay of the Army and leave the President to order what rates should be paid as a practical matter of necessity that changes from day to day.

The following and all other extensions of my remarks are in small print, so as not to break the current of what I said.

NOTE ON NONCOMMISSIONED OFFICERS AND ENLISTED MEN.

The conditions of the service of enlisted men and warrant and petty officers are very different in the Army and Navy. The number of such in the Army are as follows:

Nonecommissioned officers and men.	Number.	Pay.
Line.....	52,578	\$10,624,442.25
Engineers.....	1,282	302,604.00
Ordnance Department.....	700	223,372.00
Quartermaster's and Subsistence Department.....	400	96,600.00
Electricians, Artillery Corps.....	125	69,300.00
Signal Corps.....	1,212	372,448.00
Hospital Corps.....	3,155	870,360.00
Total.....	59,452	12,556,126.25

This is an average pay for each enlisted man of \$212.83.

The warrant officers of the Navy (see pp. 614-615) are as follows: 4 chief boatswains (ensigns after twenty years), at \$1,960; 3 chief boatswains (fourth five years), at \$1,820; 20 chief boatswains (third five years), at \$1,680; 2 chief boatswains (third five years) (beyond seas), at \$1,748; 37 chief boatswains (second five years), at \$1,540; 2 chief boatswains (second five years) (beyond seas), at \$1,694; 59 boatswains (second three years), at \$1,300; 46 boatswains (first three years), at \$1,200; 5 chief gunners (ensigns after twenty years), at \$1,960; 6 chief gunners (fourth five years), at \$1,820; 17 chief gun-

ners (third five years), at \$1,680; 48 chief gunners (second five years), \$1,540; 1 chief gunner (second five years) (beyond seas), \$1,694; 35 gunners (second three years), at \$1,300; 56 gunners (first three years), at \$1,200; 10 chief carpenters (ensigns after twenty years), at \$1,960; 2 chief carpenters (fourth five years), at \$1,820; 21 chief carpenters (third five years), at \$1,680; 28 chief carpenters (second five years), at \$1,540; 1 chief carpenter (second five years) (beyond seas), \$1,694; 39 carpenters (second three years), at \$1,300; 30 carpenters (first three years), at \$1,200; 6 chief sailmakers (ensigns after twenty years), at \$1,960; 116 warrant machinists (third three years), at \$1,400; 52 warrant machinists (second three years), at \$1,300; 82 warrant machinists (first three years), at \$1,200; 17 pharmacists (fourth three years), at \$1,600; 4 pharmacists (third three years), at \$1,400; 4 pharmacists (second three years), at \$1,300, and 66 mates (appointed since August 1, 1894), at \$900.

The pay of petty officers and seamen is shown on page 575 of Pulsifer's Navy Year Book (S. Doc. 140, 59th Cong., 2d sess.), which is a perfect mine of information, as follows:

Chief petty officers, \$50 to \$85.
Petty officers, first class, \$36 to \$70; second class, \$35 to \$45; third class, \$30 to \$35.

Seamen, first class, \$24 to \$28; second class, \$19 to \$33; third class, \$16 to \$24.

Commissary branch, \$16 to \$80; mess men branch, \$16 to \$65; enlisted men of the Marine Corps, \$13 to \$44.

The above rates of pay are affected by the following provisions: Allowance of 75 cents per month for each good-conduct medal, pin, or bar; allowance of \$5 per month for duty on submarine vessels of the Navy; allowance of \$5 per month for crew mess men; allowance of 33 cents per day for seamen and ordinary seamen doing duty as firemen or coal passers; allowance of from \$1 to \$3 per month for men doing duty as signalmen; allowance of from \$2 to \$10 per month for men doing duty as gun pointers.

The above are the most important variations of pay allowed by law. A few are not given, because of the small number of men affected.

By a more recent Executive order the pay of each rating is increased \$5 a month during the second period of service, and \$3 per month during every subsequent period of service. The pay of noncommissioned officers of the Army is shown on pages 169, etc., of the estimates. Sergeant-majors get \$408; first sergeants, \$300; farriers, corporals, and sutlers, \$180; wagoners, \$168; musicians, trumpeters, and privates, \$156. Some of the chief musicians get up as high as \$720; first sergeants in the Signal Corps, \$540; master electricians (end of page 170) get \$900.

It is interesting to compare the first-class sergeants in the Hospital Corps, \$540 a year, besides longevity pay, amounting in all to nearly \$60 a month, or \$720 a year, while a first-class pharmacist in the Navy, which is the same position, gets \$1,600 a year.

Beyond all question, the varied pay which must in these days be given to men of varied skill should not wait the years which are necessary for Congressional legislation, but be fixed by Executive order, so as to get, keep, and properly reward the right men. And some equality should be established between the like employment in the Army and Navy.

PAY OF COMMISSIONED OFFICERS.

Now, Mr. Chairman, I pass briefly—I have little time—I pass briefly to the officers. Their pay in the Army and Navy is nominally the same—that is to say, men of equivalent rank get the same pay. The naval ensign has rank and pay of a second lieutenant; a junior lieutenant in the Navy has the pay of a first lieutenant in the Army; a lieutenant in the Navy has the rank and pay of a captain in the Army; a lieutenant-commander has the rank and pay of a major; a commander has the rank and pay of a lieutenant-colonel, and a captain in the Navy has the rank and pay of a colonel. A rear-admiral of less than five years' service gets the pay of a brigadier-general, and after only five years' service he receives the pay of a major-general. But that pay of the rank does not state the whole case. When a young man goes into business or into a profession he does not want to know merely what is the pay of the various grades, but how many there are in the higher grades and what chance he has for promotion. The difference is already indicated by the statement that a rear-admiral of the Navy, ranking with and paid the pay of a brigadier-general, is promoted for five years' service to the pay of a major-general. The estimates are for 1,079 commissioned officers in the Navy of all grades, and for somewhere between 3,400 to 3,500 in the Army. There ought to be, therefore, over three times as many officers of the rank of major-general in the Army as in the Navy; but instead of that there are only half as many—seven major-generals of the Army and fourteen rear-admirals, with major-generals' pay, in the Navy.

There are twenty-five brigadier-generals in the Army, and the Navy, with not one-third as many officers, should have eight, and has eleven. For the ninety-four colonels in the Army there should be thirty-one captains in the Navy, and there are eighty-four. For the one hundred and twelve lieutenant-colonels there should be thirty-seven commanders, and there are one hundred and twenty-two. For the two hundred and eighty-five majors there should be ninety-five lieutenant-commanders, and there are two hundred and six.

Less than 3 per cent of Army officers are colonels and 11 per cent of the Navy officers are of the equivalent rank and pay of captain.

Eight per cent of the Army officers are majors and 19 per cent of the Navy officers are lieutenant-commanders, with majors' pay.

Twenty-seven per cent of the Army officers are first lieutenants. The equivalent grade in rank and pay is that of junior lieutenant, and there are none in the Navy and will be none in 1908.

Captains and second lieutenants will not show the same difference.

The result of it all is that 438 of the 1,079 officers of the Navy, or over 40 per cent, get the pay of major or more, whereas in the Army only 524 out of 3,436, or less than 16 per cent, get that pay. In both lists we take only such staff bureaus as are officered from the line, leaving out doctors, chaplains, paymasters, and naval constructors.

Do we wonder that the Army generals, majors, and captains, and colonels sometimes wish for promotion? Perhaps it is not wrong that a man of ability and character, who has given his life to his country, should have a fair chance to get the pay that comes to men in business life of \$5,000 to \$7,000 a year.

To state the matter otherwise, the pay of 3,435 Army officers of all grades is estimated at \$7,815,300, or at an average of \$2,274.56 each, while the pay of 1,079 Navy officers is estimated at \$3,087,784, or an average of \$2,862 each. Officers in the Navy, on the average, get more than a quarter more pay than in the Army. The reason is that there is not the same proportion of higher officers in the Army. It is not a question of the pay of each rank, but that there are more promotions.

I insert here certain tables giving details as to these statements:

ARMY OFFICERS' PAY.
[Estimates, pp. 169 to 171.]

Line.	Military Secretary.	Inspector-General.	Engineers.	Ordnance.	Quartermaster's Department.	Subsistence.	Judge-Advocate.	Insular.	Signal Corps.	Total.	Per cent.	Estimated pay.
General												
Lieutenant-general	1									1	0.00029	\$11,000
Major-generals	6	1								7	.002	7,000
Brigadier-generals	16	1	1	1	1	1	1	1	1	25	.007	5,500
Colonels	58	5	3	10	6	6	3	2	1	94	.027	\$3,500 to 4,500
Lieutenant-colonels	58	7	4	16	9	9	4	3	2	112	.032	3,000 to 4,000
Majors	174	10	9	32	19	20	9	6	6	285	.082	2,500 to 3,500
Captains	870			43	25	60	27			181	.043	1,800 to 2,800
First lieutenants	870			43	25					18	.956	1,590 to 2,240
Second lieutenants	870			43						913	.265	1,400 to 2,100
Total	2,923	24	17	188	85	96	44	12	1	463,436		

NAVY OFFICERS' PAY.
[Estimates, p. 614.]

	Number.	Per cent.	Estimated pay.
Admiral, equivalent of general	1	0.001	\$13,500
Rear-admirals, equivalent of lieutenant-general.	14	.013	105,000
Junior rear-admirals and bureau chiefs, equivalent of brigadier-general	11	.010	60,500
Captains, equivalent of colonel	84	.078	378,000
Commanders, equivalent of lieutenant-colonel	122	.114	489,700
Lieutenant-commanders, equivalent of major	205	.190	722,050
Lieutenants, equivalent of captain	359	.332	884,600
Junior lieutenants, equivalent of first lieutenant.	None.		
Ensigns, equivalent of second lieutenant.	282	.262	434,434
Total	1,079		3,087,784

Average Navy pay, \$2,862.

ARMY OFFICERS' PAY.
[From Estimates, pp. 168 to 171.]

Line	Total pay.	Number of officers.
Military Secretary	\$6,333,200	2,923
Inspector-General	100,500	24
Engineers	66,500	17
Ordnance	477,800	188
Quartermaster	228,500	85
Subsistence	282,500	96
Judge-Advocate-General	160,000	44
Insular	47,000	12
Signal Corps	5,900	1
	113,800	46
Total	7,815,300	3,436

Average Army pay, \$2,274.56.

Percentage of officers of or above the ranks following.

	Army.	Navy.
Major-general (Army) or rear-admiral (Navy)	0.0003	0.014
Brigadier-general (Army) or junior rear-admiral and chief of bureau (Navy)	.009	.024
Colonel (Army) or captain (Navy)	.086	.102
Lieutenant-colonel (Army) or commander (Navy)	.068	.216
Major (Army) or lieutenant-commander (Navy)	.150	.406
Captain (Army) or lieutenant (Navy)	.452	.738
First lieutenant (Army) or junior lieutenant (Navy)	.722	.738
Second lieutenant (Army) or ensign (Navy)	1.000	1.000

This average pay of \$2,274.56 in the Army and \$2,862 in the Navy, and certainly the pay of \$1,400 and \$1,500 in the lower grade for the first five years, are, in the judgment of many, inadequate. The rates of pay were settled many years ago. Expenses have largely increased for uniforms, food, wages, and rents. Commutation of quarters is ludicrously small and should certainly vary with the size of the town where the duty is performed, and possibly with the size of the officer's family. It would be invidious to express an opinion whether the Army or the Navy need most pay. The naval officer, besides supporting his family, must contribute to his officers' mess, must regard himself as representing the United States, and must be hospitable when he meets officers of other countries. The Army officer, when ordered to the Philippines, must take his family with him or send them home, and receives nothing for their traveling expenses. Without comparison of one service with the other, the pay of our officers is not enough. The style of living has changed since it was adopted. It is idle to suggest that teachers, clergymen, and lawyers in the country often receive less. They are not required, like the officer, to keep themselves and their family well dressed, well educated, ready to accept any courtesies shown them by any neighborhood where they may be, as well as to change their home whenever the Government may order.

The Navy officer has a variety of responsibilities and duties, involving artillery, engineering, equipment, repair, and supply, as well as seamanship and international law and its practical application, which do not fall upon the Army officer, and which give to the officer of the Navy a variety of training which is much to be envied.

Navy cadetship lasts for six years instead of four years. The age limit, however, is two years younger in the Army, so that the age of commission as ensign or second lieutenant is expected to be about the same.

In comparing the position of officers in the two branches of the service, it is fair that the separate bureaus, which are called the staff, should be reckoned with the line when they are, in fact, filled wholly or mostly by promotions from the line. This is the case in the Army with the departments or bureaus of The Military Secretary, Inspector-General, Engineers, Ordnance, Quartermaster-General, Subsistence, Judge-Advocate-General, and Insular possessions. The Medical Department and the places of chaplains are filled from civil life and not from the line, and the pay department in the Army and Navy, and the civil engineers in the Navy are chiefly so filled and therefore left out of account.

The Bureau of Construction, etc., is, like Army engineers, filled from academy cadets. It was not so understood when the table was prepared. But to include it would have raised the Navy average for the 75 officers for \$231,100, or \$3,081.33 each.

PROMOTION AS DELAYED BY EQUALITY OF AGE.

The chance of promotion does not depend solely on the number in each grade, but on the comparative age of the officers. If they are older in the higher ranks, and the young are appointed as the old men go out, there will be a fairly steady flow of promotion throughout the service.

But if any such service be suddenly enlarged or otherwise filled with new appointments or promotions of young men, then they are all young together, and promotion of those at the bottom must wait until the young men at the top die or retire. That is what is called a "hump." It happened at the close of the war in both Army and Navy. The Army was increased to 50,000 men. It was filled up with gallant officers of the war, all young, mostly about 25 years old, and promotion almost stopped. When I came to Congress I was able to find and report in 1896 and thirty years after the war it was true that not only all major-generals and all brigadier-generals and all colonels and lieutenant-colonels, but nearly all the majors, half the captains, and some lieutenants (they were in the artillery) had served in the civil war and had been thirty years waiting for promotion, because only young men had been above their heads. That was what was technically called the "hump" in the Army and Navy, and the difficulty was, and is, how to prevent such a "hump."

Congress in 1899 and 1903 increased the personnel of the Navy. They increased it so much that there is not left a single junior lieutenant who answers to first lieutenant in the Army, but every ensign after three years' service as such becomes a senior lieutenant with the pay of captain in the Army. If the Navy be filled up soon with young graduates from the Naval Academy, there will be a like "hump." What is to be done? What is the ordinary and proper way to prevent a disheartening stagnation in promotion?

The misfortune of a hump—that is, of filling the whole list with men of the same age—is that it repeats itself, for they go out, by age or death, much at the same time, and their places are suddenly filled by younger men. Since 1900 almost all the civil war veterans have disappeared from the Army list, and the Army, being largely increased

since the Spanish war, has been filled with younger men, which will cause another stoppage of promotion as soon as the ranks are full.

The suddenness of the change might have been diminished if the promotion of civil-war veterans one grade on the retired list had been passed in 1896, when first proposed in a report on the case of David S. Gordon. This measure was not adopted until 1904, and meanwhile, after the year 1898, the suddenness of the change in officers was increased by the plan adopted by the President of promoting officers through the grade of brigadier-general, with immediate retirement, so as to give some reward in their old age to men who had served so many years with little promotion and on low pay.

The same conditions prevail in the Navy. The number of officers has been increased by the personnel bill of 1899, section 7 (see Navy Year Book, p. 528), and the appropriation bill of 1903, under "Naval Academy" (Year Book, p. 421), so as to consist of 18 rear-admirals, 70 captains, 112 commanders, 200 lieutenant-commanders, 350 lieutenants, and such total numbers of lieutenants (junior grade) and ensigns as might qualify for such grades under existing law, the increases in the grades of lieutenant-commander and lieutenant to be filled by promotion each year of one-fourth. These numbers are so far in excess of present graduations from the academy that the number of lieutenants answering to captain in the Army is not full, and there are no junior lieutenants whatever answering to lieutenant in the Army. On the other hand, there are some extras in the higher grades under a law allowing promotions in the Spanish war to be additional to those grades.

RETIREMENT AND LONGEVITY PAY.

Several reliefs have been attempted. One is a system of retirement for age. Another is the system of longevity pay, by which we pay a man more, though in the same rank, as years roll on and a family grows about him. Another is the system of compulsory retirement lately adopted in the Navy, which not only lets officers resign with an additional grade, but actually retires a certain number against their will with an additional grade if the promotions do not go fast enough to satisfy the personnel act. I have no time now to discuss which way is the best.

Another plan is the one existing in the Navy of having a large number of men in the upper ranks who, if at any time there are too many officers, used to be put on leave or on waiting orders at reduced pay, or could be put on furlough at about one-quarter pay. This is still the law for the Navy, and when our fleet was small it could keep on the list a large number of officers and give active work only to those who were selected. I can only indicate the difficulties of the subject and its complications to the House at this time. (See Appendix.)

COMMAND.

The real question in the Army and the Navy is not one of money, but of command. The real question in time of peace is how to give young men the training of responsibility. In the short time remaining to me I can indicate the difficulty, but can only touch on how it is to be met. The difficulty, both in the Army and in the Navy, is in the size of the unit of command. We are building nothing but battle ships. We have over a hundred captains or admirals and only thirty-eight battle ships and armored vessels for them to command. The lieutenants get no independent command, nor the lieutenant-commanders. One cure for this would be to have more small ships and to train the Navy officer upon revenue cutters, light-house tenders, and Army transports. If gentlemen will look at the report of the Naval Committee they will find that in every other navy in the world there is a vastly larger proportion of smaller boats. We want them now, not because they are not possible to provide in short order if threatened by war, but because they are needed in time of peace in order to give young officers responsibility with small boats before putting them without previous training in charge of a ship that costs \$8,000,000.

The United States has 18 battle ships, first class; 12 coast-defense vessels; 8 armored cruisers—38 in all. It also has 5 cruisers averaging from 8,000 to 9,000 tons, 17 averaging a little over 4,000 tons, 22 averaging under 2,000 tons, besides 16 torpedo-boat destroyers, and 32 torpedo boats, and 8 submarines, making 100 unarmored vessels in all.

Great Britain has 82 armored vessels and 311 unarmored; France has 51 armored vessels and 350 unarmored; Germany has 34 armored and 122 unarmored; Japan has 23 armored and 161 unarmored. The particulars are in the last table annexed to the report on this bill. All these nations have large numbers of smaller vessels, which give practice to young officers, who learn habits of responsibility and command.

The value of torpedo boats as a coast defense, to keep foreign fleets well away, has never been tested by a nation that breeds such men as Cushing, ready to take their lives in their hands for the sake of success. There might be hundreds of such small boats in our harbors or laid up on shore. If we have no naval officers to spare, there are hundreds of tug boat captains and pilots who would show what Americans can do and dare, if a hostile fleet was found within 100 miles. But as our Navy fills up from the enlarged Naval Academy we shall have young officers idle unless we have the smaller craft in which to try and prove the stuff of which each man is made.

In the Army I believe the same principle is to be followed. We are getting large garrisons in brigade posts. I doubt whether I believe in large garrisons, because the captains or the under officers in those garrisons are nothing but mere subordinates, pawns doing the orders of the post commander. I believe in small posts, though I believe in uniting the men of those small posts for study of the science of actual warfare for

six months during the summer in large commands of a division or a corps, but in camps and away from the houses and homes which expose our Army, like the armies of the rest of the world, to the danger of garrison dry rot.

CONCLUSION.

Now, Mr. Chairman, only one word. Let no man of the Army or Navy think that Congress either grudges or counts the cost of promotion or pay. Let us be liberal. The pay account in the Navy is less than a quarter of the total appropriation contained in the bill. The pay account in the Army is hardly a quarter of the total appropriations, including those of other bills for fortifications and barracks and quarters. We do not grudge fair pay. The cheapest thing the country can buy is men—cheaper than guns, or forts, or ships, and greater. [Applause.]

APPENDIX.

LONGEVITY PAY.

Officers in the Army and Navy up to the rank of colonel receive 10 per cent additional for every five years' service, not to exceed 40 per cent in all, and with a provision that colonels shall not receive over \$4,500 and lieutenant-colonels not over \$4,000. A second lieutenant of long standing may thus receive more than a junior captain. It is questionable whether the principle of longevity pay might not be extended so as to make pay dependent wholly on seniority and independent of rank or other conditions, except as some allowances might be made for entertainment, foreign service, or detail to expensive cities. For example, if the pay of a lieutenant were \$2,000, increased each year by \$100 it would amount after forty years to \$6,000, and be very nearly the pay now received with ordinary average promotion, while it would avoid the inequalities between the Army and Navy and the different branches of the line and staff, would enable the officers of regiments to be kept together and prevent the feeling of injustice when the younger men are selected for difficult command. Under such a system there would be no need of so strict an age limit for entrance into the service.

This is so radical a suggestion that it has been surprising to find that quite a number of officers have welcomed it as a real solution of some, at least, of the inequality and injustice which would result from any system of promotion by selection and result now from inequality in various branches of the service.

RETIREMENTS, ETC.

The system of retirement has largely come in since the civil war. Before the war Army officers held their commissions during life, but active work was probably intrusted to younger officers. The Navy had a nominal retired list, and they had an equivalent in the system still remaining, by which supernumerary officers can be put on leave or waiting orders, with reduced pay, or half that pay when on furlough, and the Secretary of the Navy could place any officer on furlough. (R. S., 1442, 1556, etc.)

As early as February 28, 1855, there had been a reserved list on leave of absence pay or furlough pay, according to the approval of the President. This system was a naval necessity, because there were often more officers than there were ships.

The outbreak of the civil war found the Army with no retired list, and all officers with high command were old and often incapable of the active service required in the war. In August, 1861, not over 7 per cent were authorized to be retired on full pay if incapable of service. On July 17, 1866, any officer over 62 years old, or forty-five years in service, might be retired at the discretion of the President; and since that time the officers at 64 years of age must be retired, or, after forty years of service may be retired by the President, or after thirty years, service may be so retired by the President on their own application, with three-quarters pay of the last grade. Those unfit for duty, for causes incident to the service, are likewise so retired, and if this be found after mental examination for promotion, the officer receives the retired pay of the advanced grade, while for causes not incident to the service the officer may be retired wholly without pay.

The system is complicated and works sometimes well and sometimes ill. While it makes promotion for younger officers, it sometimes takes away our very best commanders in the flower of their age. Some men are old at 45 years of age and some are boys at 70. The German army has not found it necessary to turn out their best men because of age. Our own Navy takes them back into active service, with full pay. The really important thing is to get rid of the laggards. If we could test our officers in summer by the fatigues of protracted field maneuvers like those of other nations, we might, like those nations, find it unnecessary to question an officer's age, while we would get rid of a great many men whom no board would find incapable of service but who are really not useful in their profession.

It is not certain that retirement for disability always works well. Causes are held to be incident to the service if they are not proved to be otherwise, and where an officer has served gallantly for many years it is hard for a retiring board not to be somewhat blind if his habits are not of the best. What is more, men who are really disabled are allowed to hang on until they can take examination for promotion, so as to have an advance.

There is much to be said in favor of making retired pay a deferred pay for services performed, proportionate to the length of service. In the English civil service employees of certain standing—I think thirteen years—may withdraw or retire at any time, by resignation or otherwise, with as much per cent of the last pay for life as they have served years. In the Army the per cent should be larger, and the provision might well be that any officer who has served honorably for fifteen years may retire at any time with twice as many per cent of his last pay for life as he has served years, but not exceeding 75 per cent. Of course, disability by wounds should always get the full per cent. We should thus get rid of perplexing questions as to disability and its extent and cause and should have an opportunity to get men honorably out of the service who have done gallant and faithful work, but have given way when older to the temptations of sloth or appetite and are unfit for further service.

Of late years a somewhat questionable system has been adopted, abroad and in our own Navy, of aiding promotions by encouraging or forcing retirements in the upper grades. The Navy personnel bill of 1899, section 8, allows captains, commanders, and lieutenant-commanders to apply for volunteer retirement, as follows:

"Sec. 8. That officers of the line in the grades of captain, commander, and lieutenant-commander may, by official application to the Secretary of the Navy, have their names placed on a list which shall be known as the list of 'applicants for volunteer retirement,' and when, at the end of any fiscal year, the average vacancies for the fiscal years subsequent to the passage of this act above the grade of commander have been less than thirteen, above the grade of lieutenant-commander less than twenty, above the grade of lieutenant less than twenty-nine, and above the grade of lieutenant (junior grade) less than forty, the President may, in the order of the rank of the applicants, place a sufficient number on the retired list with the rank and three-fourths the sea pay of the next higher grade, as now existing, including the grade of commodore, to cause the aforesaid vacancies for the fiscal year then being considered."

By section 9, if volunteer retirements do not create these average vacancies, a retiring board selects and retires not more than five captains, four commanders, four lieutenant-commanders, and two lieutenants in order if possible to make up the number.

Thirteen a year would sweep out the 84 rear-admirals and captains in less than seven years; 20 a year would dispose of the 196 admirals, captains, and commanders in less than ten years; 29 a year would renew the whole list of 396 admirals, captains, commanders, and lieutenant-commanders in less than fourteen years.

The youngest lieutenant of the 307 now on the Navy list became an ensign only three years ago. Eleven years at the minimum of 29 vacancies would make him a lieutenant-commander, and not quite fourteen years more would take him out of the service. This allows a severe selection to be maintained, while it gives those who are retired nothing to do and an advanced grade, with a retired pay about equal to the active pay they were getting. If they are detailed into active service they will get the full pay of the advanced grade. Perhaps under these circumstances it is sometimes an advantage to have been retired.

Retirement is more likely to occur in the Navy than in the Army. The safety of the ship depends constantly on the seamanship of its officers, and no favor can be safely shown in an examination. The physical requirements as to sight and hearing must be more severe, because the safety of the ship may at any time depend upon them and because glasses can not be used in the ocean spray. Probably for similar reasons the compulsory age of retirement is fixed at 62 years in the Navy, while in the Army it is 64 years.

Just now the Navy needs officers and will probably employ all that are retired. Meanwhile, although the ranks provided by the present personnel bill are not full, a new personnel bill is warmly advocated increasing the number in each grade.

It is a question whether we can ever have a system fair to Army and Navy and all branches of the service that does not base active and retired pay solely on length of active service and not on rank, which must so often be the sport of legislation as well as chance.

Mr. HULL. Mr. Chairman, I ask unanimous consent that the gentleman from New Jersey [Mr. PARKER] may have leave to extend his remarks in the RECORD.

The CHAIRMAN. Is there objection?

There was no objection.

The Clerk read as follows:

Coal and transportation: Purchase of coal and other fuel for steamers' and ships' use, and other equipment purposes, including expenses of transportation, storage, and handling the same, and for the general maintenance of naval coaling depots and coaling plants, \$3,750,000.

By Mr. WILLIAM W. KITCHIN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Insert, in line 9, page 2, after the word "dollars," the following:

"Provided, That no part of this appropriation shall be expended for coal in the Philippine Islands, except for coal purchased from the lowest bidder: And provided further, That no part of this appropriation shall be expended for the transportation of coal to the Philippine Islands, except to the lowest bidders for such transportation in steam vessels and to the lowest bidders for such transportation in sailing vessels, whether such steam and sailing vessels shall be American or foreign."

Mr. WILLIAM W. KITCHIN. Mr. Chairman, upon that amendment I wish to say that it will save, in my judgment, to the Government in the course of each twelve months many thousands of dollars. Now we are required to transport our coal in American bottoms unless the President finds the rate unreasonable and excessive. The rates that were paid under the new law of 1904 during the year of 1905 were 47 per cent to American vessels in excess of the rate paid to foreign vessels, and in 1906 51 per cent in excess of American vessels over foreign vessels. Now, this practical excess of 50 per cent in favor of American vessels amounted to a subsidy in their favor of near \$3 per ton. Yet notwithstanding that preferential in favor of American vessels, the coal-carrying fleet of American vessels has not been increased. To-day the Government finds it impossible to secure enough American vessels to transport our coal to the Philippines, even when it is willing to give \$3 or \$3.50 more per ton than to foreign vessels.

No gentleman ought to oppose this on the ground that it is contrary to any American industry, because under it in all probability we will still use American coal. We can buy American coal in the Philippine Islands for about \$1 a ton cheaper than we can buy European coal, provided we let the Navy buy it after being transported in foreign bottoms. You can buy American coal there to-day for the price at which the American steamers offer to transport the coal. We can save the original cost of the coal by giving the Secretary power to buy American coal there.

The 1904 law has cost this Government, through the Navy Department, thousands of dollars from year to year without

bringing any benefit to the American people. No one can oppose this amendment on the ground that coal is an article of which we have a great surplus for which this country ought to pay a bounty for its transportation abroad, because this very winter we are having a coal famine and there has been a lack of the necessary American coal throughout various sections of this land. There is a shortage of cars handling coal, we understand. You can not oppose this amendment under the plea that it will throw labor out of employment, because there is a shortage of labor in almost every section of this land.

You can only defeat this amendment by adhering to the spirit of "stand-patism" that will contravene the best interests of the people; that will help no coal miner, nor shipowner, nor laborer, nor any other class of our citizens, in my judgment. The Department desires relief from the law of 1904. The Department, we are told, will next year need 150,000 tons of coal in Cavite, in the Philippines. According to the last offers made to the Department we can, if permitted to do so, buy American coal there for \$7.25 or \$7.50 a ton, while we can not secure transportation of the coal in American steamers for less than \$7.50 after we buy it here at a cost of \$2.75 per ton. Under the present law every ton of coal bought here and transported in American steamers costs us at Cavite from 30 to 40 per cent more than our coal there will cost us under this amendment.

The CHAIRMAN. The time of the gentleman has expired.

Mr. FOSS. Mr. Chairman, I wish to say just a word upon this question. On April 28, 1904, an act was passed providing that naval supplies, including coal, should be shipped in American bottoms, unless the President shall find the rates of freight charged by such vessels are excessive and unreasonable.

Since that act was passed we have shipped some of our coal in American bottoms, but the major part of it has been shipped in foreign bottoms. The excess which has been paid to American ships in 1905 amounted to \$133,000, and in 1906 to \$63,000, making in all up to the present time, since the passage of the act, an excess of \$197,184. Now, this year the situation is that it is almost impossible to get American bottoms to carry this coal, and it is very difficult also to get coal anywhere, and the Department has made a very full statement of the condition in a pamphlet, which I have before me, and which I propose to put in the RECORD. They recommend that they be permitted to buy coal where it can be bought cheapest without being restricted to its transportation in American bottoms.

NO. 68.—TRANSPORTATION OF COAL—DEPARTMENT LETTER.

DEPARTMENT OF THE NAVY,
BUREAU OF EQUIPMENT,
Washington, D. C., February 5, 1907.

MY DEAR MR. FOSS: In compliance with your request over the telephone yesterday I inclose herewith additional data with reference to shipment of coal to Manila since the operation of the law requiring shipments to be made in American bottoms. This data is based on shipments to Manila for the reason that few shipments have been made in other directions in either American or foreign bottoms, since shipments to the other principal outlying stations are governed by the coastwise shipping law, so called, and foreign bottoms are therefore out of the question. It has therefore been necessary to purchase Cardiff coal, which can be had delivered, including duty, at rates about equal to the rates demanded for transportation only in American ships, to which must be added the cost of the coal. The coal, of course, is shipped in foreign bottoms, but is not shipped by the Government, but purchased at the station desired.

I shall be glad to furnish any additional information desired.

Very truly, yours,

WM. S. COWLES.

Hon. GEORGE E. FOSS, M. C.,
House of Representatives, Washington, D. C.

Vessels chartered to carry coal to Cavite since the law requiring shipment in American bottoms went into effect.
1905.

	Number of tons.	Average cost of transportation.	Average cost of coal.	Total cost of coal and transportation.
Foreign.....	85,837.5	\$4.80	\$2.48	\$7.28
American.....	58,510.0	7.09	2.48	9.57

If coal shipped in American bottoms had been shipped in foreign bottoms at the average rate \$133,890 would have been saved to the Government.

1906.

	Number of tons.	Average cost of transportation.	Average cost of coal.	Total cost of coal and transportation.
Foreign.....	18,578	\$4.00	\$2.55	\$6.55
American.....	30,989	6.04	2.55	8.59

If coal shipped in American bottoms had been shipped in foreign bottoms at the average rate, \$63,294 would have been saved.

1907.

No coal has been shipped to Cavite during the fiscal year 1907. A contract has just been entered into for the transportation in foreign bottoms of 10,000 tons at \$4.70 and 40,00 tons at a rate equivalent to \$4.50. It is anticipated that 50,000 tons additional will be engaged during the year, and it is hoped and expected that a rate of \$4.25 to \$4.40 will be obtained.

Excess paid for American ships:	
1905	\$133,890.00
1906	63,294.00
Total for two years	
	197,184.00
Total amount paid for transportation to Manila, 1905 and 1906	
	1,088,745.89
Excess paid for American bottoms	
	197,184.00
Per cent of excess	
	18.1

DEPARTMENT OF THE NAVY,
BUREAU OF EQUIPMENT,
Washington, D. C., February 4, 1907.

MY DEAR MR. FOSS: In compliance with your request I forward herewith a memorandum prepared in my office bearing on the operation of the law requiring that vessels of the United States, or belonging to the United States, and no others, shall be employed in the transportation by sea of coal, etc., for use of the Army and Navy. (Public—No. 198.)

A comparison of the rates the Government has been required to pay for transporting its coal in American bottoms with those paid for the same service in foreign bottoms will demonstrate how expensive this law has proven to the Government and how expensive it will continue to prove as long as it remains in force. This memorandum will also show that however desirable it may be to ship coal in American bottoms, the number of such ships available for the business do not begin to compare with the requirements.

It will be shown by this memorandum that though practically all American vessels available for the transportation of coal for the Government have been chartered to transport coal to Manila, the supply has been short of the demand in excess of 150,000 tons. In addition to this, it has been necessary to purchase many thousand tons of Welsh coal to supply other distant stations, such as Mare Island, Puget Sound, Honolulu, Sitka, Tutuila, etc.

You will also note that in addition to the rate of transportation demanded, additional concessions must be made American ships in the way of supplying ballast. Whether this adds to the cost of the coal to the Government does not matter; certainly it provides an additional income for the ship.

The law has been in effect two and one-half years. To the Bureau, it appears without question, it has been demonstrated that there are not sufficient American ships to carry out the intent of the law, and its operation is detrimental to the interests of the Government, and particularly so to the Navy Department.

I hope this memorandum may serve your purpose. It has been hurriedly drawn, but the facts are shown therein.

Very truly, yours,

WM. S. COWLES.

HON. GEORGE E. FOSS, M. C.,
House of Representatives, Washington, D. C.

TRANSPORTATION OF COAL FOR THE BUREAU OF EQUIPMENT, NAVY DEPARTMENT.

1. The law entitled "An act to require the employment of vessels of the United States for public purposes" (Public—No. 198), requiring vessels of the United States, or belonging to the United States, and no others, shall be employed in the transportation by sea of coal, etc., for use of the Army or Navy, unless the President shall find that the rates of freight charged by such vessels are excessive and unreasonable, was approved April 28, 1904, and became effective June 28, 1904.

2. The last call for proposals for vessels to transport coal to Cavite, P. I., prior to the operation of the act referred to above, was sent out May 24, 1904, in the form of a circular letter to twenty-three different concerns in the United States, and resulted in chartering three British steamers, carrying a total of 12,210½ tons, at an average cost of \$4.6325 per ton freight.

3. The first call for proposals under the operation of the law referred to was made by public advertisement October 25, 1904. Proposals were requested for transporting 25,000 tons of coal to the naval station, Cavite, in American vessels only. In addition to the public advertisement a special notice was sent to twenty-one shipowners, agents, or brokers, whose names were a matter of record in the Bureau of Equipment. Proposals were received as follows. It will be noted that though foreign tonnage was not requested considerable was offered.

Proposals for transporting 25,000 tons of coal from the east coast of the United States to the naval station, Cavite.

Offered by—	Number of ships.	Number of tons.	Rate per ton.	Rate of transportation for 25,000 tons.
AMERICAN STEAMERS.				
Atlantic Transport Co	1	9,000	\$7.00	\$175,000
Lewis Luckenbach	2	9,000	7.50	187,500
AMERICAN SAILING VESSELS.				
Philip Ruprecht	1	5,000	6.50	162,500
Arthur Sewall & Co.....	2	8,000	6.50	162,500
De Groot & Peck.....	1	2,000	7.00	175,000
FOREIGN STEAMERS.				
Lind & Co.....		25,000	4.16	104,000
Funch, Edye & Co.....		25,000	4.20	105,000
McCall & Co.....		25,000	4.23	105,750

Proposals for transporting 25,000 tons of coal, etc.—Continued.

Offered by—	Number of ships.	Number of tons.	Rate per ton.	Rate of transportation for 25,000 tons.
FOREIGN STEAMERS—continued.				
Hopkins & Co.....		25,000	\$4.70	\$117,500
Ocean Transport Co.....		25,000	4.87	121,750
John R. Livermore.....		5,000	6.00	150,000
AMERICAN COAL LAID DOWN.				
Davis Coal and Coke Co.....		25,000	6.98	173,250
BRITISH COAL LAID DOWN.				
Barber & Co.....		25,000	7.35	183,750
		25,000	6.35	158,750
		25,000	7.50	187,500
		25,000	6.50	162,500

Lowest offer for foreign steamers..... \$4.16
Lowest offer for American steamers..... 7.00

Excess of offer for American steamers over offer for foreign steamers, \$2.84 per ton, or 68.2 per cent, which on the entire quantity for which shipment was contemplated—i. e., 25,000 tons—is a difference of \$71,000 in favor of foreign steamers.

Lowest offer for foreign sailing vessels..... \$4.16
Lowest offer for American sailing vessels..... 6.50

Excess of offer for American sailing vessels over offer for foreign steamers, \$2.34 per ton, or 56½ per cent, which on the entire quantity for which shipment was contemplated—i. e., 25,000 tons—is a difference of \$58,500 in favor of foreign steamers.

4. The rates given above for American vessels being considered excessive, no award was made; a second call for proposals was made by advertisement, dated December 1, supplemented by special notice to sixty-five shipowners, agents, or brokers. The specifications requested proposals for transportation in vessels of either American or foreign register, either sail or steam.

5. Proposals were received as follows:

Proposals for transporting 20,000 tons of coal from the east coast of the United States to the naval station, Cavite.

Offered by—	Number of ships.	Number of tons.	Rate per ton.	Rate of transportation for 20,000 tons.
AMERICAN STEAMERS.				
Atlantic Transport Co.....	1	9,000	\$7.00	\$140,000
Lewis Luckenbach.....	2	9,000	7.50	150,000
AMERICAN SAILING VESSELS.				
Arthur Sewall & Co.....	2	8,000	6.50	130,000
De Groot & Peck.....	1	2,000	6.50	130,000
FOREIGN STEAMERS.				
Lind & Co.....		20,000	4.12	82,400
McCall & Co.....		to 50,000		
		20,000	4.23	84,600
Howard, Houlder, Rowat & Co.....		10,000	4.75	95,000
		10,000	4.75	95,000
Atlantic Steamship Co. (Limited).....		20,000	4.92	98,400
J. J. Hobbs.....		20,000	5.36	107,200
American-Asiatic Steamship Co.....		20,000	5.50	110,000

* Sail or steam, their option.

Lowest offer for foreign steamers..... \$4.12
Lowest offer for American steamers..... 7.00

Excess of offer for American steamers over offer for foreign steamers, \$2.88 per ton, or 69.9 per cent, which on the entire quantity for which shipment was contemplated, i. e., 20,000 tons, is a difference of \$57,600 in favor of foreign steamers.

Lowest offer for foreign sailing vessels..... \$4.12
Lowest offer for American sailing vessels..... 6.50

Excess of offer for American sailing vessels over offer for foreign steamers, \$2.38 per ton, or 57.7 per cent, which on the entire quantity for which shipment was contemplated, i. e., 20,000 tons, is a difference of \$47,600 in favor of foreign steamers.

6. It will be noted that the same American steamers were offered and the same American sailing vessels, except that one American sailing vessel for 5,000 tons was not offered on the second call. It will also be noted that the lowest offer for foreign steamers on the first call, i. e., \$4.16 per ton, was reduced to \$4.12 on the second call.

7. On this second call all American vessels, sail or steam, that were offered at \$7 or less, or whose owners would make the \$7 rate, were chartered, resulting in choosing three sailing vessels of 9,754 tons total cargo and one steamer of 9,382 tons cargo, a total all told of 19,136 tons, at an average cost of \$6.745 per ton.

8. Pending the negotiations to secure transportation in American vessels, the stock of coal at Cavite became reduced to an alarming extent; at one time less than a month's supply was on hand, and the situation became so critical that it became imperative to consider the acceptance of vessels of any nationality.

9. On December 27, 1904, a third call was issued, by advertisement, for transportation of 30,000 tons, and again proposals were requested for vessels of either American or foreign register, sail or steam. In addition to the advertisement, supplemental notices were sent to sev-

enty-five owners, agents, or brokers. Proposals were received as follows:

Proposals for transporting 30,000 tons of coal from the east coast of the United States to the naval station, Cavite.

Offered by—	Number of ships.	Number of tons.	Rate per ton.	Rate of transportation for 30,000 tons.
AMERICAN STEAMERS.				
Atlantic Transport Co	1	9,000	\$7.00	\$210,000
Do	1	9,000	7.50	225,000
Lewis Luckenbach	1 or 2	{ to 9,000 }	7.50	225,000
AMERICAN SAILING VESSELS.				
Wm. F. Palmer		{ 9,000 to 10,000 }	8.00	240,000
Phillip Ruprecht	1	5,000	6.50	195,000
F. P. Nichols, for I. F. Chapman & Co.	1	2,500	6.50	195,000
Arthur Sewall & Co.	1	4,600	6.50	195,000
FOREIGN STEAMERS.				
Howard, Houlder, Rowat & Co.		80,000	5.50	165,000
Lind & Co.		10,000	4.88	146,400
Do		20,000	4.92	147,600
McCall & Co.		30,000	4.87½	146,250

Lowest offer for foreign steamers..... \$4.875
 Lowest offer for American steamers..... 7.00

Excess of offer for American steamers over offer for foreign steamers, \$2.12½ per ton, or 43.6 per cent, which on the entire quantity for which shipment was contemplated—i. e., 30,000 tons—is a difference of \$63,750 in favor of foreign steamers.

Excess of offer for American sailing vessels over offer for foreign steamers, \$1.025, or 33.3 per cent, which on the entire quantity for which shipment was contemplated—i. e., 30,000 tons—is a difference of \$48,750 in favor of foreign steamers.

10. All of the American vessels offered at this time, sail and steam, were accepted, except the sailing vessel offered by William F. Palmer at \$8, which rate was considered prohibitive. The steamers offered in this instance by Lewis Luckenbach were the same two that had twice previously been offered and each time declined at the same rate offered in this instance. However, the need of coal at Cavite was getting so pressing that these ships had to be accepted at \$7.50. It was at once apparent, however, that in order to get coal to Cavite faster than it was required for use, foreign bottoms would necessarily have to be resorted to, and by direction of the Secretary of the Navy negotiations were entered into with Messrs. McCall & Co., of Baltimore, and Lind & Co., of New York, the concerns which had submitted the lowest offers for foreign bottoms, which resulted in awarding each a contract to transport 30,000 tons in ships of foreign register, at \$4.87½ per ton. This rate, however, was 7½ cents higher than the previous low offer for foreign bottoms, and the efforts to get American ships, preventing the acceptance of the original low offer, resulted in an outlay of over \$50,000.

11. The accumulation of a stock of coal at Cavite having been assured, it was decided the part of wisdom to take advantage of any or all American vessels that might possibly be available in the near future, and on February 15, 1905, another advertisement was inserted, requesting proposals to transport 40,000 tons to Cavite in American vessels only. This advertisement was supplemented by special notices sent to 130 shipowners, agents, brokers, etc. Sixteen offers were received as follows:

Offered by—	Number of ships.	Number of tons.	Rate per ton.	Rate of transportation for 40,000 tons.
AMERICAN SAILING VESSELS.				
Arthur Sewall & Co.	2	9,000	\$6.50	\$260,000
Phillip Ruprecht	1	5,000	6.50	260,000
F. P. Nichols	2	4,400	6.50	260,000
FOREIGN STEAMERS.				
Sanderson & Son	1	5,800	4.40	176,000
McCall & Co.		40,000	4.35	174,000
Lewis Luckenbach		30,000	4.65	186,000
Busk & Jevons		40,000	4.65	186,000
Winchester & Co.		40,000	4.25	170,000
Funch, Edye & Co.		40,000	4.50	180,000
Hopkins & Co.		6,500	4.25	170,000
J. W. Elwell & Co.		6,000	4.75	190,000
Bowring & Co.		20,000	4.50	180,000
Hogan & Son		11,000	4.42½	177,000

Lowest offer for foreign steamers..... \$4.25
 Lowest offer for American steamers, none offered.
 Lowest offer for foreign steamers..... 4.25
 Lowest offer for American sailing vessels..... 6.50

Excess of offer for American sailing vessels over offer for foreign steamers, \$2.25, or 53 per cent, which on the entire quantity for which shipment was contemplated, i. e., 40,000 tons, is a difference of \$90,000 in favor of foreign steamers.

12. It will be noted that although proposals for transportation in American bottoms only were distinctly requested, but 18,000 tons of American ships were offered, while foreign ships, approximating 240,000 tons, were offered. All offers of American ships were accepted.

13. The fifth general call for proposals was made July 8, 1905, not by advertisement, but by circular letter sent to 129 shipowners, agents, or brokers throughout the United States. The result of this call was as follows:

Proposals for transporting coal from the east coast of the United States to the naval station, Cavite.

Offered by—	Number of ships.	Number of tons.	Rate per ton.
AMERICAN STEAMERS.			
Lewis Luckenbach	2	11,000	\$7.50
AMERICAN SAILING VESSELS.			
D. B. Dearborn	2	7,800	6.50
Arthur Sewall & Co.	2	10,000	6.50
F. P. Nichols	1	3,000	6.00
Do	1	2,800	6.25
FOREIGN STEAMERS.			
J. H. Winchester & Co.	1	7,500	4.00
C. P. Sumner & Co.	2	11,400	4.75
Tweedie Trading Co	1	{ to 7,000 }	6.00
McCall & Co.			4.00
J. W. Elwell & Co.	2	7,000	4.35

Lowest offer for foreign steamers..... \$4.00
 Lowest offer for American steamers..... 7.50

Excess of offer for American steamers over offer for foreign steamers, \$3.50 per ton, or 87.5 per cent, which, on the entire quantity for which shipment was contemplated, i. e., 25,000 tons, is a difference of \$87,500 in favor of foreign steamers.

Lowest offer for foreign steamers..... \$4.00
 Lowest offer for American sailing vessels..... 6.00

Excess of offer for American sailing vessels over offer for foreign steamers, \$2 per ton, or 50 per cent, which, on the entire quantity for which shipment was contemplated, i. e., 25,000 tons, is a difference of \$50,000 in favor of foreign steamers.

All bona fide offers for American sailing vessels were accepted. The offers for American steamers were not accepted, but \$7 per ton was offered, which was declined.

14. No other advertisement for proposals was issued until December 6, 1906, but, based on individual offers from owners or agents, a British steamer was chartered at \$4.40 per ton, one at \$4.25 per ton, and three at \$4 per ton, while ten American sailing vessels were chartered at prices ranging from \$5.50 to \$6.50 per ton. During the present fiscal year, July 1 to date, no shipments have been made to Cavite.

15. Some of the American vessels shown as being offered under the various requests for proposals heretofore detailed were offered while their acceptance on a previous offer was already under consideration. The number of American ships that have been offered to the Bureau were therefore actually less in number than the foregoing statement shows.

16. Since the act under consideration went into effect it is not believed that any American sailing vessel that has been offered for Cavite at \$6.50 or less has been rejected, unless they have been required by the Bureau for other destinations or unless the Bureau's funds were in such a state as to make rejection necessary, nor has any American steamer that has been offered at \$7.50 or less been rejected, except in the one instance of two steamers, total 9,000 tons, offered at \$7.50. The Bureau offered \$7 per ton, which offer was declined by the owner.

17. Despite the fact that practically all American tonnage offered has been accepted and that 104,400 tons of coal have been shipped in foreign bottoms since the operation of the act referred to, the stock of coal at Cavite, which on January 1, 1906, was approximately 104,000 tons, has been reduced to 57,800 tons on January 1, 1907.

18. On December 6, 1906, an advertisement was issued calling for proposals to transport 50,000 tons of coal to Cavite under the following items:

- Item A. Transportation in American steamers.
- Item A-1. Transportation in American sailing vessels.
- Item B. Transportation in foreign steamers.
- Item B-1. Transportation in foreign sailing vessels.
- Item C. American coal laid down.
- Item D. Cardiff coal laid down.

In addition to the advertisement, special notices were sent to 133 shipowners, agents, and brokers, and agents of coal suppliers, etc. Proposals were received as follows:

Offered by—	Number of ships.	Number of tons.	Rate per ton.	Remarks.
ITEM A.				
<i>Transportation in American steamers.</i>				
No offers received.				
ITEM A-1.				
<i>Transportation in American sailing vessels.</i>				
Arthur Sewall & Co.	1	5,000	\$6.50	Report Apr. 1, 1907
ITEM B.				
<i>Transportation in foreign steamers.</i>				
Frank Waterhouse & Co.		50,000	5.35	Different conditions as to delivery.
Howard, Houlder, Rowat & Co.		50,000	4.98	
Samuel Holmes		50,000	5.60	
Funch, Edye & Co.		50,000	4.93	
McCall-Dinning Co.		50,000	5.08½	
Do		50,000	4.78-5.08	
Do		50,000	4.88-5.18	
Do		50,000	5.00	
Lind & Co.		50,000	4.70	

Offered by—	Number of ships.	Number of tons.	Rate per ton.	Remarks.
ITEM B-1.				
<i>Transportation in foreign sailing vessels.</i>				
None offered.				
ITEM C.				
<i>American coal delivered Cavite.</i>				
Charles Dunlop.....		50,000	\$8.88	} Different conditions of delivery.
Lind & Co.....		50,000	7.50	
Do.....		50,000	7.25	
ITEM D.				
<i>Cardiff coal delivered Cavite.</i>				
J. J. Moore & Co.....		50,000	8.85	} Different conditions of delivery.
Castner, Curran & Bullitt.....		50,000	8.75	
McCall-Dinning & Co.....		20,000	8.71	
Do.....		20,000	8.81	

It will be noted that in these proposals but one American vessel was offered, and that a sailing vessel of 5,000 tons capacity, at \$6.50, due for cargo about April 1, 1907. This ship will be considered later.

19. By authority of the Department a contract has been entered into for transporting 10,000 tons in foreign bottoms at \$4.70 per ton, coal to be supplied by the Bureau, and for 40,000 tons of American coal delivered at Cavite in foreign bottoms at \$7.25 per ton, including the cost of coal, transportation, insurance, etc.

20. The following statement shows the number of tons of coal shipped to the naval station, Cavite, from 1902 and including the fiscal year 1906, the nationality of bottoms used for its transportation, and average rate of transportation paid:

Year.	Nationality.	Number.	Class.	Number of tons.	Average rate.
1902..	Foreign	21	Steamers	86,145.5	\$5.86
1903..	do	10	do	41,985.5	4.77
1904..	do	12	do	57,338.5	5.05
1905..	do	17	do	85,837.5	4.88
	American	5	do	39,114.0	7.30
	do	5	Sailing vessels	19,396.0	6.50
1906..	Foreign	3	Steamers	18,578.0	4.00
	American	8	Sailing vessels	30,989.0	6.04

21. In addition to considering the question of American bottoms for shipping coal to Manila, the Bureau is required to consider American vessels only in the transportation of American coal to Honolulu, to San Francisco, and to other outlying United States Government possessions.

22. Failing to secure American bottoms for such shipments, it became necessary to adopt the only other alternative, of importing coals of foreign origin, principally coal from Wales, in foreign ships. The Government is therefore practically at the combined mercy of the British coal trade and owners of foreign ships, and must pay whatever price may be demanded of it, however high it may be considered. Efforts have been made for more than a week to secure one cargo of Welsh coal for delivery at the navy-yard, Mare Island. The lowest offer made, and which must be accepted, provided the Bureau is successful in its efforts to do so, is \$11 per ton for a second or third grade coal. The last price paid was \$6.80 per ton delivered for coal of the first quality.

23. During the fiscal year 1903 approximately 30,000 tons of Welsh coal was purchased for delivery to the navy-yard, Mare Island. For a part of this \$7.08 was paid and for the remainder \$7.13. In 1904 and 1905 no shipments of Cardiff coal were made, but small quantities of coal mined on the Pacific coast were purchased as required, principally for yard use. This is not good coal for use on naval vessels, and is expensive to use at the prices paid. In 1906 approximately 40,000 tons of Welsh coal were purchased, delivered at the navy-yard, Mare Island, for a part of which \$6.80 was paid, for the remainder \$7.14 was paid.

24. During the current fiscal year, owing to a preference of American vessels for San Francisco as a point of destination, four American sailing vessels have been chartered to carry coal to Mare Island, one at \$5.75 per ton, two at \$6 per ton, and one at \$6.50, and one American steamer at \$7.50 per ton. Efforts to secure other American steamers at this rate have failed, owing to their inability to obtain return cargoes. These rates are for transportation only, to which must be added the cost of the coal, at \$2.75 per ton.

25. There have been no shipments of American coal to Honolulu during the present fiscal year. During the fiscal year 1906 10,000 tons of Welsh coal were purchased, delivered at this place, at \$7.40 for coal, freight, and other expenses. There was also shipped during this fiscal year two cargoes in American vessels, and small quantities of from 900 to 1,400 tons were left there by American ships, having carried cargoes to Cavite and to which a concession was made of permitting a part of the cargo to be carried to Honolulu as ballast, depositing it at that place. During the fiscal year 1905 no shipments were made, and during the fiscal year 1904 8,000 tons of Welsh coal was purchased at \$7.95 delivered, including cost of coal, freight, and other charges.

Foreign coal and foreign ships, however, are indispensable to this station if American coal and American ships are diverted in other directions. In addition coal must be sent to our coaling depots at Pichilinoa Bay, Mexico; Yokohama, Japan; Sitka, Alaska; Tutuila, Samoa; Guam; Puget Sound, and to our depots at California City Point and San Diego, now in course of construction or in contemplation. These places are practically dependent on Welsh coal, or coal mined on the Pacific coast, which can not always be had, and, as

stated before, is not suitable for use on war vessels, principally on account of its comparatively low steaming value and its smoke-producing qualities.

26. The American sailing vessels that have been chartered to carry coal to Manila number twelve, and the American steamers five. The sailing vessels, as a rule, are outbound for Honolulu and are what may be termed the sugar fleet. In most cases, in addition to the rate paid, the ship must be allowed to retain about one-fourth of the cargo carried to Manila to ballast the ship to Honolulu. This results in a practical saving of about 50 cents per ton on the cargo capacity of the ship, and must be added to the rate actually paid for transportation in calculating the value of the business to the ship. Furthermore, shipowners now require that not only ballast be supplied them to final destination, but require that ballast be supplied them from point of last discharge to the point the coal is to be loaded, should the latter point be distant from the former.

27. Of the American steamers but five have been chartered since the law in question went into effect, and these five represent but two owners, two ships being owned by one concern, Lewis Luckenbach, and three by another, the Atlantic Transport Line. No charter of an American steamer may be expected at less than \$7.50 per ton, the rate paid for the Luckenbach ships. Two of the other three were secured at \$7, but the experience gained by their owners was such as to cause them to demand \$7.50 for the third, which was paid; and though recently they have been seeking the business, it must be on their own terms, practically. They want no more charters at \$7.50. In 1905 they offered one of their ships at \$8 per ton, agreeing to refund to the Government 50 cents per ton provided they were "able to secure for the homeward voyage a cargo the freight upon which would pay all expenses from the time the ship finishes discharging at Manila until free of her homeward cargo at the United States port, plus 5 per cent on the value of the ship during this period." This company admits its willingness and desire to keep its four large freighters in the coal-carrying business, but by the foregoing indicate their inability to insure return freights, thus necessitating the Government to pay on the outward trip the operating expenses of the in and out voyage and a fair margin of profit.

28. Again in 1905, after demonstrating their inability to use the ships in the Manila coal-carrying trade at a rate fair to the Government which would net them a fair margin of profit on the business, they made a proposition to charter two of their fleet to the Government by the year at a stipulated rate per ton per month on the dead-weight capacity of the ships.

29. Of the sailing vessels chartered, i. e., twelve, six were owned by one concern, two by another concern, the remaining four being owned by separate concerns, making six owners all told.

30. However desirable it may be to charter American vessels to carry Government coal, it has been demonstrated that the number of such vessels available for the business, principally sailing vessels, are totally inadequate for the service required, and all other considerations aside, the long voyage through the Tropics, endangering the vessel and the crew, and the possible loss of the cargo, all due to the liability of fire from spontaneous combustion in the coal, makes sailing vessels decidedly objectionable. A sailing vessel requires from one hundred and seven to one hundred and seventy-two days for the voyage from the east coast of the United States to Manila, or from three and one-half to five and one-half months, the average being about five months.

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

Mr. FOSS. Yes.

Mr. MANN. This is a limitation upon the appropriation.

Mr. FOSS. For this year.

Mr. MANN. The law provides that they must follow the provisions of the statute. This bill limits the appropriation so they can not follow the provisions of the statute. If this remains in the form in which it is proposed, it simply makes your entire appropriation ineffective.

Mr. WILLIAM W. KITCHIN. If the gentleman from Illinois will permit me, I will say that this would have been subject to a point of order, according to the rulings, as I recollect, of the Chair last year, with which, however, I did not agree.

Mr. MANN. This is a mere limitation now.

Mr. WILLIAM W. KITCHIN. This will be a limitation upon it, and they can expend this appropriation in accordance with the limitation.

Mr. MANN. As I understood from the reading of the amendment, it said that no part of the appropriation should be used unless so and so is done, and that means that unless so and so is done contrary to the statutes of the United States.

Mr. WILLIAM W. KITCHIN. But I think this provision in this appropriation will supersede the general law on the subject as to this appropriation. As I said, it would have been subject to a point of order under the former ruling, but I take it that no Secretary of the Navy could be charged with violating the law when in expending a fund he followed the provisions attaching to the specific appropriation.

Mr. MANN. I did not think the gentleman's amendment was subject to the point of order, whatever the ruling on it may have been. It is a limitation in form expressly, and if it had been put in a positive form undoubtedly the point of order would have been made upon it by some one, or at least reserved upon it. It is expressly in the form of a limitation, and if it be a mere limitation the result is simply to make the total appropriation unavailable.

Mr. WILLIAM W. KITCHIN. I do not agree with the gentleman that the appropriation will be unavailable. But, in furtherance of the statement of the gentleman from Illinois [Mr. Foss], chairman of the committee, I desire to say in this connection that on December 6, 1906, the Department advertised for

proposals to transport 50,000 tons of coal to Cavite under the following items:

Item A. Transportation in American steamers.

Then it gives several others, and the statement is made that, in addition to the advertisement, special notices were sent to 133 shipowners, agents, brokers, agents of coal supplies, and so forth, and not a single proposition was received from an American steamer to transport any part of that coal, and only one offer from a sailing vessel, and that for only 5,000 tons.

Mr. BUTLER of Pennsylvania. Before the gentleman sits down I want to ask him a question.

Mr. WILLIAM W. KITCHIN. Certainly.

Mr. BUTLER of Pennsylvania. If that amendment prevails, this Government may buy coal from any country it sees fit?

Mr. WILLIAM W. KITCHIN. In the Philippines. It is limited to the Philippines.

Mr. BUTLER of Pennsylvania. But this Department may buy coal of any country it pleases and is not required to buy coal in this country. Is that the effect of the amendment?

Mr. WILLIAM W. KITCHIN. That is the effect of the amendment.

Mr. BUTLER of Pennsylvania. You could not convince me to vote for that if you talked four days.

Mr. WILLIAM W. KITCHIN. But in response to the advertisement that I called attention to there are bidders who offered to deliver American coal and to sell American coal there for \$1 a ton less than they can get any foreign coal there.

Mr. HULL. Then, what is the object of this?

Mr. WILLIAM W. KITCHIN. It permits them to buy where they please.

The CHAIRMAN. The time of the gentleman has expired.

Mr. WILLIAM W. KITCHIN. I should like to have about three minutes more on that point.

By unanimous consent the time of Mr. WILLIAM W. KITCHIN was extended three minutes.

Mr. WILLIAM W. KITCHIN. The object of that provision is to give power to the Navy Department to buy its coal there as cheap as it can; but, as a matter of fact, according to this report we can buy American coal there for a dollar a ton less than we can buy any foreign coal. According to these offers for American coal delivered at Cavite, the offer of one bidder for 50,000 tons was \$8.80, and of one bidder 50,000 tons at \$7.50 under certain conditions and \$7.25 under other conditions. Cardiff coal delivered at Cavite—that is foreign coal, as I understand—the cheapest price of that was for 20,000 tons at \$8.71 and 20,000 tons at \$8.81, which is more than a dollar a ton higher than the lowest offer for 50,000 tons of American coal. I take it that this Department has given us full information, after full advertisement, not only through the press, but by the various circulars and letters sent out to the coal dealers and agents.

Mr. LOUDENSLAGER. Mr. Chairman, in view of the statements of the chairman of the committee, I do not have any desire to strenuously oppose this amendment, and especially in view of the recommendation of the Chief of the Bureau. I mean if it conforms to the wishes of the committee, but I do desire to correct what I deem is some error in the statement of the gentleman from North Carolina [Mr. WILLIAM W. KITCHIN] regarding the effect of this law which authorizes the Secretary of the Navy to transport this coal in American bottoms where the prices are not exorbitant or extravagant.

If the gentleman from North Carolina had looked over the reports of the Chief of the Bureau for a period of years before the passage of this law, when all of it was carried in foreign bottoms, he would have observed what it costs this Government to carry its coal from the Atlantic coast to the Pacific possessions. From the year 1899 down to the year 1906 the lowest price for the transportation of coal was in the year 1906, save the two years of 1903 and 1904, before the passage of the law which the gentleman from North Carolina now declaims against. So that the effect of this law, according to the statement of the Chief of that Bureau, must have been beneficial in stating to these owners of foreign bottoms that no combination as to price would be accepted, but that those who owned American vessels might bid lower, and hence their prices were reduced from that which formerly obtained. The gentleman also made a statement that the price charged by the owners of American vessels was practically \$7.50 a ton. The Chief of the Bureau says it was \$6.04 a ton.

Mr. WILLIAM W. KITCHIN. I have these tables here, and on page 460, which is a part of Document No. 68 of our committee, it says that no charter of an American steamer may be expected at less than \$7.50 a ton, the rate paid for the Luckenbach ships, and he says that they want no more at \$7.50. Upon that same pamphlet, page 459, it says that in 1903 we carried

41,000 tons of coal at \$4.77 a ton. That was in foreign bottoms, and in 1904—

Mr. LOUDENSLAGER. Oh, I am familiar with all those figures. I am not answering the argument of the Chief of the Bureau or the argument of the gentleman from North Carolina save by the facts as reported by the Department, which certainly can not be contradicted.

Mr. WILLIAM W. KITCHIN. The statement that I read from is dated February 5, 1907, just a week ago to-day.

Mr. FITZGERALD. The gentleman will remember that the Secretary of the Navy, in his annual report last year, stated that the only effect of that law was to create embarrassment, annoyance, and expense to the Department.

Mr. LOUDENSLAGER. I do not know that those were the exact words, but I remember something in that line.

Mr. FITZGERALD. I think his words were even more emphatic.

Mr. LOUDENSLAGER. I want to state for the information of the committee that when the Department carried its coal in foreign bottoms it paid \$6.46 a ton on an average, but last year it was only \$6.04, or 42 cents difference.

Mr. WILLIAM W. KITCHIN. That was in sailing vessels.

Mr. HULL. Mr. Chairman, ordinarily I would hesitate to break into a discussion on an appropriation bill in the preparation of which I have had no responsibility, but it seems to me that this amendment is a very radical departure from the entire history of this country, and it is a proposition to break down one of the restrictions and safeguards for the American people trading with themselves or those people dependent upon them for their government. It seems to me it is a mistake in an amendment of this character to adopt it in the Committee of the Whole in this way without consideration. The Committee on Naval Affairs evidently did not favor this matter or it would have reported it. It was before the committee evidently or the hearings the gentleman from North Carolina [Mr. WILLIAM W. KITCHIN] has quoted could not be so full as he claims them to be.

Mr. WILLIAM W. KITCHIN. Will the gentleman permit an interruption?

Mr. HULL. Certainly.

Mr. WILLIAM W. KITCHIN. This main document that we have on this subject was made after the chairman of the committee had reported this bill to the House, in which a review of the entire situation was had, showing the prices we have paid, showing the situation we are now in—that we are unable to get sufficient American steamers—

Mr. HULL. Well, it was not considered by the committee. My understanding of the present law is that the coal has to be carried in American bottoms if it can be carried for the same price as in foreign bottoms.

Mr. LOUDENSLAGER. If it is not exorbitant.

Mr. HULL. Yes. We have in our coastwise trade a provision of law that it has to be carried in American bottoms. No foreign trade can compete with us in our coastwise trade. The Philippines, in one sense, is our coastwise trade, and, in my judgment, should be made absolutely under the same provisions as the rest of this country. We pay all the expenses of their administration; we are responsible for good government there just as much as we are on the mainland of this continent, and, in my judgment, we should preserve to our own people all of the advantages of trading there that we possibly can preserve to them. There is now before this Congress the proposition to aid our marine by subsidies in the nature of additional compensation in carrying the mails, and yet with that proposition before us we come in here and propose to strike down one safeguard and open to the commerce of the world trade with the Philippine Islands. I am opposed to the proposition. I do not believe it is right, and I hope it will not be adopted, even if the Committee on Naval Affairs should be for it.

Mr. COOPER of Wisconsin. Will the gentleman permit an inquiry?

Mr. HULL. Yes.

Mr. COOPER of Wisconsin. I understand the gentleman to say that the putting of these navigation laws against the Philippines practically made them a part of our coast line.

Mr. HULL. I say they ought to be.

Mr. COOPER of Wisconsin. It makes them that in effect, does it not, if it limits the carrying to our own ships?

Mr. HULL. Certainly.

Mr. COOPER of Wisconsin. Does the gentleman think we ought to put the coastwise navigation laws against any island and make it a part of our coast line and at the same time keep a high tariff against its products?

Mr. HULL. No; I do not. There ought not to be any tariff

between any part of this country, whether you call it the United States proper or one of its dependencies. I am in favor of wherever the flag goes having free trade in all parts of the United States. I hope this amendment will not be adopted.

Mr. BUTLER of Pennsylvania. Does the gentleman understand that if this amendment is adopted this Government has permission to buy its coal from any nation?

Mr. HULL. I understand that, and I am opposed to the whole proposition.

Mr. FOSS. Mr. Chairman, this provision applies only to the appropriation of this year, and we are in a peculiar situation. So far as the law is concerned with reference to American bottoms, that law was passed only two years ago. Up to that time we could buy our coal wherever we saw fit, whether it was shipped in foreign bottoms or any other kind of bottoms, but the law was passed two years ago, and it has had this effect, and we are in this situation to-day; and so far as I am concerned I shall support the gentleman from North Carolina. I want to say to the gentleman, my colleague on the committee, that I think I am as intensely an American as he is. I would like to see everything which is consumed by the sailors on board our ships American. I would like to see the coal American; I would like to see everything American; but I want to say to him that notwithstanding that this law has been in effect it does not preclude our country from buying foreign coal wherever it sees fit to-day, even for our home stations, because here during the last year, 1906, approximately 40,000 tons of Welsh coal were purchased and delivered at the navy-yard at Mare Island. We are buying foreign coal everywhere, wherever we go.

Mr. BUTLER of Pennsylvania. I suggest to my colleague on the committee it is under stress they buy that coal, because they can not get our own.

Mr. FOSS. Of course they buy American coal when they can.

Mr. CRUMPACKER. Allow me to make the suggestion that we enacted a law several years ago extending the coastwise laws to the Philippine Archipelago, and we could not get American boats enough to accommodate the trade and we were compelled to postpone the operation of that law until two years from next April, because there were not American boats enough to take care of the trade. Now, if we enforce the present law and require all coal to be carried in American bottoms what will be the outcome? We could not get American boats enough to provide for the commerce of the islands.

Mr. HULL. Do you understand coal is now carried in American bottoms?

Mr. CRUMPACKER. Not under this provision.

Mr. HULL. Independent of this provision?

Mr. CRUMPACKER. The law provides that coal must be carried in American boats unless the rates are "extortionate." That word "extortionate"—

Mr. HULL. Unreasonable.

Mr. CRUMPACKER. That is an elastic word, and it is difficult to apply and fix a standard.

Mr. HUMPHREY of Washington. May I ask the gentleman a question?

Mr. CRUMPACKER. You may.

Mr. HUMPHREY of Washington. You were speaking about the law extending the coastwise laws to the Philippines for two years on account of the shortage of American ships. When you had that bill did you give any hearings to anybody? Was not that bill brought in here and put through the House in about forty-eight hours, without opportunity for any of the shipping interests of this country to be heard?

Mr. CRUMPACKER. I do not know about that. I know the Committee on the Merchant Marine of the House had before it a bill containing identically the same provisions, and the War Department and the Philippine Commission insisted—repeatedly insisted—upon it, and stated that if the law went into force the result would be disastrous if not destructive to commerce between the mainland of this country and the Philippine Archipelago.

Mr. HUMPHREY of Washington. The gentleman dodges the question. I asked if it is not the fact that the law was introduced here, brought in from the committee, and passed through without a hearing inside of forty-eight hours.

Mr. CRUMPACKER. There was no formal hearing before the committee, because the matter had been thoroughly investigated and recommendations came to us from the War Department and the Philippine Commission and—

Mr. HUMPHREY of Washington. I take issue with the gentleman when he says that there are no American ships—

The CHAIRMAN. The time of the gentleman has expired.

Mr. WALDO. Mr. Chairman, it seems to me this is a very remarkable proposition for the chairman of this committee to

agree to. It is the first time that I have known, certainly since I have been here, of the proposal of a measure allowing the world to compete with American ships in carrying coal for our own Navy. In the first place, as already indicated by the gentleman from Washington, it is an injustice to the American shipping which we are trying to aid at this very moment. A bill for that purpose is just now brought here before the House—a bill which I understand meets the approval of a majority of this side of the House, and certainly ought, although it does not go far enough; yet at this moment we propose to allow the shipping of the world to come in here and compete against American bottoms—

Mr. HULL. On Government work.

Mr. WALDO. Yes; on Government work. Such a proposition seems to me to be remarkable. Aside from that question, it is a very foolish thing to put our Navy in the hands of foreign shipowners, to leave thus to foreign nations the power to say whether we shall have coal enough to run our own battle ships. Foreign nations will have the power then to say whether we shall have coal enough, what kind of coal we shall have, or whether we shall coal our Navy at all. It seems to me a most remarkable thing for us to think for one moment of allowing the shipping of the world to compete for the furnishing of supplies of coal necessary before our Navy can operate at all. It would be very much better for this Government to build colliers to carry coal to our Navy in the Philippines rather than to depend upon foreign ships, no matter how cheaply they can be hired. If the gentleman is opposed to allowing such merchant ships as we have do the Government business, then certainly he ought to favor an appropriation to build colliers so that the Government can itself carry the coal necessary for the Navy.

I suppose if we were to have a war with England those favoring this amendment would permit English ships to bid for the carrying of coal to our war ships and to follow our ships from place to place with necessary coal, because it would be so much cheaper. That will be the next step, and it will certainly be a natural step if we allow the world to bid for the carrying of coal to our Navy in the Philippines. If the policy of the proposed amendment is to be followed, in a little while we will not have any merchant ships at all to carry coal there or anywhere, and the result will be that we shall have to depend on France, or England, or Germany to furnish colliers to follow our war ships and coal them, in time of war as well as in time of peace, else we can not get any coal at all. For the protection of the last remnant of American shipping and the saving of our Navy itself from future disaster, I hope if there is any patriotic American here he will vote against any such amendment. [Applause.]

Mr. FITZGERALD. Mr. Chairman, in the last session of Congress I attempted to have an amendment adopted that would limit the price paid to the owners of American ships for carrying coal. Some of the owners of the ships that go from ports on the Atlantic coast live in the district represented by my colleague [Mr. WALDO] and some in the district represented by myself. My action was based, however, upon the recommendation made by the Secretary of the Navy in his report for 1905, in which he said that the result of the law requiring supplies to be carried in American vessels "was only to cause trouble and expense to the Government, with no offsetting advantage." He also stated that the law did not promote the building of any American ship or the training of any American sailor. The only good it did was to benefit the owners of the ships, and it had largely increased the cost of transporting coal.

I am opposed to the continuance of any law that will permit an American citizen to hold the Government by the throat and extort money from it in the transporting of supplies required by the Government in distant places. The excuse that has been given for these exorbitant prices has been that the American shipowners could not obtain cargoes back at remunerative prices.

At the request of the gentleman from Michigan [Mr. LOUD], a member of the Committee on Naval Affairs, several weeks ago I wired one of the largest freight brokers in the city of New York, and he sent me a message saying the rates for the last steamer that arrived in New York from Manila were, for hemp, 45s. a ton, and for sugar, 27s. 6d. a ton of 2,240 pounds. The prices on returned cargoes are largely in excess of the prices paid on outgoing cargoes. Under the existing law the President has the right, if the bids of the owners of American ships are excessive or unreasonable, to permit the carrying of coal in foreign bottoms; but, as I pointed out at the last session, the President is charged with a multitude of duties, and it is impossible for him to give his attention to these matters. We should permit the Department, when it finds itself confronted

by a few men controlling the few American ships putting up unreasonably and unfairly the price of transporting coal, to ship the coal in other ships at a reasonable price.

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

Mr. FITZGERALD. Yes.

Mr. MADDEN. I understand the gentleman to say that the President under existing law has the power to regulate the method of shipment of coal either in American or foreign bottoms, but that his duties were so numerous he might not have his attention called to the character of his work. If that be true, is it not possible for the Secretary of the Navy, or somebody acting for the Secretary of the Navy, to call the attention of the President to the discrimination which was being practiced against the Government for American shipping?

Mr. FITZGERALD. The Secretary of the Navy did call the President's attention to it. His request that the law be repealed was contained in his annual report to the President for the year 1905, and he urged that the law be repealed because it resulted only in expense and trouble to the Government. Since the President is too busy to take up a trifling matter like that, particularly as it arises upon each shipment, but which involves in a year an additional expense of three hundred to four hundred thousand dollars to the Government, it is very easy for this House in its deliberations to give a little attention to the matter and to save that money to the Government. The Secretary of the Navy pointed out—and I will say this for the benefit of the gentleman from Ohio [Mr. GROSVENOR]—that, regardless of his opinion as to the advisability of making appropriations for subsidies for ships, this law should be repealed, because it did not help to build ships or to train American sailors.

Mr. OLMSTED. Mr. Chairman, I move to amend the amendment by striking out the last word.

Mr. Chairman, I am opposed to this proposition upon the general principles so well stated by the gentleman from Iowa [Mr. HULL] and the gentleman from New York [Mr. WALDO]. I am opposed to it also because it seems from the figures submitted by the gentleman from New Jersey [Mr. LOUDENSLAGER] that the present law instead of increasing the price of coal or the price of transportation has actually reduced the price of transportation, so that coal is now secured in the Philippines for Government use at lower prices than before.

I am opposed to it for the further reason that this important proposition has not been submitted to or considered by the Naval Committee, and therefore we have not the benefit of a report, either unanimous or of the majority of that committee. The committee itself seem to be divided upon it here. I am opposed to it, too, for the further reason that there does not seem to have arisen any emergency requiring this deviation from our present principle of American bottoms for American transportation of American coal for the use of the American Navy. It is very singular that if there is such an emergency it did not arise until after this naval bill was reported to this House.

I am opposed to it for the further reason that the amendment in the present form would nullify the appropriation so far as the supply of coal to the Philippines is concerned. We have now a law providing how coal shall be purchased, by whom it shall be purchased, and how it shall be shipped to the Philippines. This proposed amendment, instead of repealing that law and enacting a new one, says that the Secretary of the Navy shall not proceed to use any portion of this appropriation provided in the bill unless he violates that law. It makes it impossible for the Secretary of the Navy to expend money for the purchase of coal so far as the Philippine Islands are concerned. An important measure like this ought not to be sprung upon us, without a committee report, at a time when, under the five-minute rule, we have no opportunity for general debate.

In the event of war the United States Navy would be in a bad way if it had to depend for coal upon foreign contracts for foreign coal to be transported in foreign bottoms.

Mr. HUMPHREY of Washington. Mr. Chairman, I just want one moment to reply further to the statement that was made by the gentleman from Indiana [Mr. CRUMPACKER] in regard to the bill extending the time of the taking effect of the coastwise laws and to say a few words as to why American ships are unable to carry freight to the Philippines. The law of which the gentleman spoke, extending the time of the coastwise law, according to my recollection, was introduced into this House, was referred to his committee, and called up here within forty-eight hours. I know that when I went to inquire of the gentleman about the bill it was ready to be heard, upon that very morning.

Now, the difficulty about shipping over to Manila has been brought about by that very measure of extension of the time of the coastwise laws, because American ships can not get freight coming in this direction, and the reason of it is that there is a combination over in Manila between the British merchants and foreign ships, and the moment an American vessel goes into the harbor of Manila they reduce the rate sufficient to make it unprofitable for an American vessel to go there.

What has been the result? The result of it has been that American vessels have stopped going to Manila. The two large Hill vessels, carrying 20,000 tons each, no longer go to Manila for that very reason; and within the last thirty days three of the Boston Steamship Company's vessels have stopped going to Manila, and now we have only two American vessels running regularly to the Philippines. And now you propose to take away even the two that are left and depend upon foreign vessels to carry not only coal but our soldiers and ammunition. If the time for the going into effect of the coastwise law had not been extended for two years, American vessels would be carrying this freight, and there would be to-day eight instead of two American vessels going to the Philippines. It seems to me that it is a very unusual proposition that this Government should not only carry our coal to our Navy in foreign vessels, but buy that coal for our Navy from the foreigner when we can get it cheaper than we can get it at home. For one I am not willing to subscribe to that proposition. And I am opposed to this legislation, because you are only going one step further toward destroying the only American ships we have left.

Mr. WILLIAM W. KITCHIN. Is the gentleman from Washington of the impression that these ships which are in the regular lines carry coal?

Mr. HUMPHREY of Washington. No, sir; no coal goes from the Pacific coast to the Philippines.

Mr. WILLIAM W. KITCHIN. They start on the Chesapeake and go there. And that is what you adopt if you adopt this amendment.

Mr. HUMPHREY of Washington. I am not talking about the Pacific coast, because no coal goes from there. I am speaking from the interest I take in the subject generally. I am interested in shipping and in the merchant marine, and I am interested in the American people having their own supplies carried in American ships. I have no interest in the subject in so far as my own district is concerned.

Mr. GROSVENOR. Mr. Chairman, I would like to have about five minutes to speak on this subject. I did not intend to discuss the main questions that are involved in the proposition of this amendment at this time. The gentleman complained that the Government of the United States in the matter of its transportation has violated and practically nullified the movement which would undoubtedly have resulted in the complete competition between our own coastwise ships and those of our competitors in foreign bottoms. It is a poor time now to do this. Let us suppose a case now. Suppose that this threatened trouble with the oriental countries should come. What are we to do with our Navy and without naval supplies? We have not men enough to man two-thirds of our Navy to-day; and we propose to turn over the furnishing of the coal to our Navy to contractors carrying foreign flags. England carries a flag which is in treaty alliance with Japan. English ships would undoubtedly be the successful competitors for the carrying of this coal.

We are expending a vast sum of money to develop our own coal production in the Philippine Islands; but pending that we are seeking to destroy the possibility of the growth of American competition. How can you expect American competition if you keep giggering backward and forward your statutes in regard to the coastwise trade? There was being developed rapidly successful competition, and undoubtedly it would have been in the field to-day if it had not been for the change in the statute of our own country which was enacted by the last Congress. Now, the difference, as shown by the gentleman from New Jersey [Mr. LOUDENSLAGER], between the cost last year and the cost under the former condition of things is a matter of so small importance that it seems to me that while the President has full power to prevent extortion against the Treasury of the United States by high prices, while he has a complete remedy in his own hands, while these developments are going on, it is unwise for us to drive out of this business by an enactment of Congress any American ships that might see fit to carry this trade in competition with foreign bottoms. I shall have a good deal more to say about some features of this matter. We have now no ships running to Manila. We have not a single over-sea ship under a system of regular sailing that carries her to the Philippine Islands at stated times. So we must depend upon our coastwise ships being diverted from their own trade and going

into that trade, and with the power in the hands of the President to prevent extortion I can see no reason why this blow should here be struck.

Mr. LACEY. Mr. Chairman, I desire to ask in this connection a question of the chairman of the committee. A year or two ago we passed a bill appropriating \$50,000 (I think that was the amount) to buy out a coal company that had some rights in the Philippine Islands; and we were assured that that would furnish us very soon a supply of coal and solve this coal question. It seems to me this would be a very proper time for the chairman of the committee to tell us what has come of that venture, how much it has cost, what progress has been made, and what success, if any, has been attained.

Mr. WILLIAM W. KITCHIN. And in reply to the gentleman from Iowa I can read what Admiral Cowles said about that:

Mr. KITCHIN. There has been a good deal said about the development of some coal fields on a near-by island?

Admiral COWLES. Yes, sir; they have not any coal out there yet. They talk about it a good deal, and they wanted us to use it. We tried some of it and found it had too much sulphur in it, and that the carbon was low, and it was not coal that we could use without injuring the boilers. There is coal in Borneo, in the Philippines, and in China. There is also coal in Japan, but it is not good, except the Yakaido coal. The Japanese use the latter themselves, and will not let you have it. It is said that there is good coal in Alaska, and I wish they would mine it, but they have not yet got communication down to Resurrection Bay to get it to market. Coal is much needed on the Pacific coast just now, and dealers would gladly buy all the Government has stored out there at rates much in excess of what we paid for it. They recently offered us \$10 a ton, and it cost us about \$7 to get there.

Mr. LACEY. I understand that, but what I should like to know is what has become of this coal speculation that we went into?

Mr. WILLIAM W. KITCHIN. That is not under the jurisdiction of the Naval Committee.

Mr. CRUMPACKER. I think I can give the gentleman some information on that subject. We appropriated \$50,000 to buy out a couple of coal leases on the island of Batan. We made no appropriation authorizing the Government to develop the coal deposits at all. The Committee on Insular Affairs reported a bill to the House, giving the Secretary of War authority to lease the mines under certain conditions, but the House refused to pass the bill. We own the coal mines, but there is no appropriation authorizing their development, and no authority conferred upon the Secretary of War to do anything in connection with the business at all.

Mr. LACEY. Then, if I understand it, the result of it has been to relieve those men over there from a bad speculation in the coal business, paying them for the investment they had made, and that was the end of it.

Mr. CRUMPACKER. The gentleman's understanding is a little bit fanciful. It does not necessarily follow because we bought the coal mines that the investment is a poor one. It was developed in the course of that investigation that the coal in the Batan deposits was not suitable to use in war vessels, but it was proper to be used in transports and for mechanical purposes in the islands, and having the coal mines, if we had the money to develop them, it is believed that we would save several hundred thousand dollars a year out of the investment.

But that is speculation. There has not been a dollar appropriated to develop the mines, and authority was refused the Secretary of War to make any lease of them.

Mr. WILLIAM W. KITCHIN. Mr. Chairman, in further reply, I will say that my understanding is that of the valuable coal, English and American coal constitute the best coal we can get, and American coal, as I understand, has no superior. The great trouble with the Navy Department is that when they advertised for 50,000 tons they could get no single American steamer and only one American vessel, and that proposed to carry 5,000 tons, or about one-tenth of what was required.

Mr. FOSS. Mr. Chairman, I want to say one word. Gentlemen have taken this as a rather serious matter, I think more serious than the matter deserves, because this law was passed two years ago. Prior to that time we bought our coal and had a perfectly free hand in buying it in the Philippines. Last year the Secretary of the Navy came before the committee and stated that the law worked detrimentally to the Government and he wanted it repealed. We did not bring in any provision last year, but now comes the Chief of the Bureau, who sends up a statement of the condition after the bill was reported to the House, and the gentleman from North Carolina has recommended the amendment which limits simply the appropriation of this year and gives the Secretary of the Navy a free hand in buying coal in the Philippines.

Now, the Chief of the Bureau in the Department states that the law has been in effect two years and a half, and it appears

without question that it has been demonstrated that there are not sufficient American ships to carry out the intent of the law, and the operation of the law is detrimental to the interests of the Government and particularly to the Navy Department.

Foreign ships have been carrying the most of the coal since the law has been enacted because we could not get American ships, and therefore it seems to me that we ought this year, in view of the fact that it is a condition and not a theory that confronts us, to adopt this provision.

The CHAIRMAN. Without objection, the pro forma amendment will be withdrawn. The question is on the amendment offered by the gentleman from North Carolina.

The question was taken; and on a division (demanded by Mr. WILLIAM W. KITCHIN) there were—ayes 34, noes 51.

So the amendment was rejected.

Mr. FOSS. Mr. Chairman, I move that the committee do now rise.

The motion was agreed to; accordingly the committee rose and the Speaker having resumed the chair, Mr. SHERMAN, Chairman of the Committee of the Whole House on the state of the Union, reported that that committee had had under consideration the bill H. R. 24925, the naval appropriation bill, and had come to no resolution thereon.

ENROLLED BILLS SIGNED.

Mr. WACHTER, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled bills and joint resolution of the following titles; when the Speaker signed the same:

H. J. Res. 224. Joint resolution directing the Secretary of Commerce and Labor to investigate and report to Congress concerning existing patents granted to officers and employees of the Government in certain cases;

H. R. 15242. An act to confirm titles to certain lands in the State of Louisiana;

H. R. 22291. An act to authorize the reappointment of Harry McL. P. Huse as an officer of the line in the Navy;

H. R. 20169. An act for the relief of Margaret Neutze, of Leon Springs, Tex.;

H. R. 8365. An act for the relief of C. A. Berry;

H. R. 25043. An act to authorize the Atlanta, Birmingham and Atlantic Railroad Company to construct a bridge across the Chattahoochee River in the State of Georgia;

H. R. 19930. An act referring the claim of S. W. Peel for legal services rendered the Choctaw Nation of Indians to the Court of Claims for adjudication.

H. R. 18007. An act to authorize the appointment of Acting Asst. Surg. Julian Taylor Miller, United States Navy, as an assistant surgeon in the United States Navy;

H. R. 20168. An act for the relief of F. Kraut, of Leon Springs, Tex.;

H. R. 24473. An act to define the status of certain patents and pending entries, selections, and filings on lands formerly within the Fort Berthold Indian Reservation, in North Dakota;

H. R. 23578. An act to authorize the county of Clay, in the State of Arkansas, to construct a bridge across Black River, at or near Bennetts Ferry, in said county and State; and

H. R. 20060. An act granting an increase of pension to Anna E. Hughes.

SENATE BILLS REFERRED.

Under clause 2, Rule XXIV, Senate bills of the following titles were taken from the Speaker's table and referred to their appropriate committees as indicated below:

S. 8362. An act to authorize the city council of Salt Lake City, Utah, to construct and maintain a boulevard through the military reservation of Fort Douglas, Utah—to the Committee on Military Affairs.

S. 8274. An act to amend an act to authorize the construction of two bridges across the Cumberland River at or near Nashville, Tenn.—to the Committee on Interstate and Foreign Commerce.

ARMY APPROPRIATION BILL.

Mr. HULL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H. R. 23551) making appropriations for the support of the Army for the fiscal year ending June 30, 1908, disagree to the Senate amendments, and ask for a conference.

The SPEAKER. The gentleman from Iowa asks unanimous consent to take from the Speaker's table the Army appropriation bill, disagree to the Senate amendments, and ask for a conference. Is there objection? [After a pause.] The Chair hears none.

The SPEAKER appointed as conferees on the part of the House Mr. HULL, Mr. PARKER, and Mr. HAY.

CIRCUIT AND DISTRICT COURTS IN WASHINGTON.

The SPEAKER laid before the House the bill (H. R. 21383) providing that terms of the circuit court of the United States for the western district and of the district court of the United States for the northern division of the western district of the State of Washington be held at Bellingham, with Senate amendments.

The Senate amendments were read.

Mr. HUMPHREY of Washington. Mr. Speaker, I move that the House concur in the Senate amendments.

The motion was agreed to.

Mr. FOSS. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; and accordingly (at 5 o'clock and 22 minutes p. m.) the House adjourned.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII, bills of the following titles were severally reported from committees, delivered to the Clerk, and referred to the several Calendars therein named, as follows:

Mr. RUSSELL, from the Committee on Interstate and Foreign Commerce, to which was referred the bill of the Senate (S. 7684) to provide and maintain for the port of Galveston, Tex., a customs boarding boat, reported the same with amendment, accompanied by a report (No. 7593); which said bill and report were referred to the Committee of the Whole House on the state of the Union.

Mr. BARTHOLDT, from the Committee on Public Buildings and Grounds, to which was referred the bill of the House (H. R. 25578) amending an act entitled "An act to increase the limit of cost of certain public buildings, to authorize the purchase of sites for public buildings, to authorize the erection and completion of public buildings, and for other purposes," and for other purposes, reported the same without amendment, accompanied by a report (No. 7596); which said bill and report were referred to the Committee of the Whole House on the state of the Union.

Mr. COLE, from the Committee on the Territories, to which was referred the bill of the Senate (S. 6261) to establish a fund for public works in the Territory of Hawaii, and for other purposes, reported the same without amendment, accompanied by a report (No. 7594); which said bill and report were referred to the Committee of the Whole House on the state of the Union.

Mr. MONDELL, from the Committee on the Public Lands, to which was referred the bill of the House (H. R. 21944) to amend section No. 2 of an act entitled "An act to amend the homestead laws as to certain unappropriated and unreserved lands in Nebraska," approved April 28, 1904; to restore to and confer upon certain persons the right to make entry under said act, and to amend existing law as to the sale of isolated tracts subject to entry under said act, reported the same with amendment, accompanied by a report (No. 7595); which said bill and report were referred to the Committee of the Whole House on the state of the Union.

He also, from the same committee, to which was referred the bill of the House (H. R. 24134) providing for the granting and patenting to the State of Colorado, free of price, desert lands formerly in the Ute Indian Reservation in Colorado, reported the same with amendment, accompanied by a report (No. 7597); which said bill and report were referred to the Committee of the Whole House on the state of the Union.

Mr. YOUNG, from the Committee on Military Affairs, to which was referred the bill of the Senate (S. 6691) granting to the Columbia Valley Railroad Company a right of way through Fort Columbia Military Reservation, at Scarborough Head, in the State of Washington, and through the United States quarantine station in section 17, township 9 north, range 9 west of Willamette meridian, in said State of Washington, and for other purposes, reported the same without amendment, accompanied by a report (No. 7601); which said bill and report were referred to the Committee of the Whole House on the state of the Union.

Mr. HAY, from the Committee on Military Affairs, to which was referred the bill of the House (H. R. 24605) granting to the Norfolk and Portsmouth Traction Company the right to operate trains through the military reservation on Willoughby Spit, Norfolk County, Va., reported the same without amendment, accompanied by a report (No. 7602); which said bill and report were referred to the Committee of the Whole House on the state of the Union.

Mr. MANN, from the Committee on Interstate and Foreign Commerce, to which was referred the bill of the House (H. R.

25234) permitting the building of a dam across Rock River at Lyndon, Ill., reported the same without amendment, accompanied by a report (No. 7598); which said bill and report were referred to the House Calendar.

Mr. BARTLETT, from the Committee on Interstate and Foreign Commerce, to which was referred the bill of the House (H. R. 25366) to authorize the New Orleans and Great Northern Railroad Company to construct a bridge across Pearl River, in the State of Mississippi, reported the same without amendment, accompanied by a report (No. 7599); which said bill and report were referred to the House Calendar.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII, private bills of the following titles were severally reported from committees, delivered to the Clerk, and referred to the Committee of the Whole House, as follows:

Mr. DAWES, from the Committee on Military Affairs, to which was referred the bill of the Senate (S. 3863) to correct the military record of Stephen Thompson, reported the same without amendment, accompanied by a report (No. 7592); which said bill and report were referred to the Private Calendar.

Mr. PRINCE, from the Committee on Military Affairs, to which was referred the bill of the Senate (S. 7550) for the relief of Harry A. Young, reported the same without amendment, accompanied by a report (No. 7600); which said bill and report were referred to the Private Calendar.

ADVERSE REPORT.

Under clause 2 of Rule XIII, adverse report was delivered to the Clerk, and laid on the table, as follows:

Mr. DAWES, from the Committee on Military Affairs, to which was referred the bill of the House (H. R. 2127) for the relief of James Nipper, reported the same adversely, accompanied by a report (No. 7591); which said bill and report were laid on the table.

PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS INTRODUCED.

Under clause 3 of Rule XXII, bills, resolutions, and memorials of the following titles were introduced and severally referred as follows:

By Mr. BARTHOLDT: A bill (H. R. 25605) to establish the foundation for the promotion of industrial peace—to the Committee on Labor.

By Mr. WILLIAMS: A bill (H. R. 25606) to distribute the surplus in the Treasury of the United States to the several States, Territories, and the District of Columbia for the sole purpose of improving the roads therein—to the Committee on Ways and Means.

By Mr. BURKE of South Dakota: A bill (H. R. 25607) to provide for additional allotments of land to certain Indians of the Cheyenne River Indian Agency, the Rosebud Indian Agency, the Pine Ridge Indian Agency, the Standing Rock Indian Agency, and the Crow Creek Indian Agency—to the Committee on Indian Affairs.

By Mr. STEPHENS of Texas (by request): A bill (H. R. 25608) to authorize the sale and disposition of surplus or unallotted lands in Tripp County, in the Rosebud Indian Reservation, in the State of South Dakota, and making appropriation and provision to carry the same into effect—to the Committee on Indian Affairs.

By Mr. KALANIANA'OLE: A bill (H. R. 25609) to amend the act approved June 30, 1906, entitled "An act creating a United States court for China and prescribing the jurisdiction thereof"—to the Committee on Foreign Affairs.

By Mr. STEPHENS of Texas: A bill (H. R. 25610) providing that white persons intermarried with Cherokee Indian citizens prior to July 1, 1902, shall receive pay for their improvements placed on Indian land in the Cherokee Nation, and for other purposes—to the Committee on Indian Affairs.

By Mr. HUGHES: A bill (H. R. 25611) to authorize the Burnwell Coal and Coke Company to construct a bridge across the Tug Fork of Big Sandy River—to the Committee on Interstate and Foreign Commerce.

By Mr. ACHESON: A bill (H. R. 25612) to provide for the erection of a public building at Monongahela, Pa.—to the Committee on Public Buildings and Grounds.

By Mr. LORIMER: A bill (H. R. 25613) to construe section 1 of the act to regulate commerce—to the Committee on Interstate and Foreign Commerce

By Mr. McCARTHY: A bill (H. R. 25614) authorizing the Omaha tribe of Indians to submit claims to the Court of Claims—to the Committee on Indian Affairs.

By Mr. MORRELL: A bill (H. R. 25615) changing Sixteenth street to Washington avenue—to the Committee on the District of Columbia.

By Mr. POU: A bill (H. R. 25616) fixing passenger charges of street railways operating in the District of Columbia—to the Committee on the District of Columbia.

By Mr. LAMAR: A bill (H. R. 25617) to prohibit lobbying at the national capital—to the Committee on the Judiciary.

By Mr. BURLISON: A joint resolution (H. J. Res. 237) amending an act entitled "An act granting pensions to certain enlisted men, soldiers, and officers who served in the civil war and the war with Mexico," approved February 6, 1907—to the Committee on Invalid Pensions.

By Mr. RANDELL of Texas: A resolution (H. Res. 829) requesting certain information from the President concerning tariff relations with Germany—to the Committee on Ways and Means.

By Mr. RYAN: A resolution (H. Res. 830) to provide for the voucher check system in payment of pensions—to the Committee on Invalid Pensions.

By Mr. WILLIAMS: A resolution (H. Res. 831) directing the Secretary of Commerce and Labor to send to the House certain information concerning railroad companies—to the Committee on Interstate and Foreign Commerce.

Also, a resolution (H. Res. 832) inquiring concerning the settlement of estates by consuls in Turkey and China—to the Committee on Foreign Affairs.

By Mr. FITZGERALD: A resolution (H. Res. 833) directing the Secretary of the Navy to furnish certain information regarding the U. S. S. *Louisiana* to the House of Representatives—to the Committee on Naval Affairs.

Also, a resolution (H. Res. 834) directing the Secretary of Commerce and Labor to furnish certain information to the House of Representatives—to the Committee on the Judiciary.

By Mr. MONDELL: A resolution (H. Res. 835) requesting the Secretary of the Interior to inform the House concerning certain public lands in several States of the Union—to the Committee on the Public Lands.

By Mr. COUSINS: A resolution (H. Res. 836) providing for an assistant clerk to the Committee on Foreign Affairs—to the Committee on Accounts.

By Mr. BURKE of South Dakota: Memorial of the legislature of South Dakota, requesting their delegation in Congress to support Senate bill 5133, concerning the hours of labor of railroad employees—to the Committee on Interstate and Foreign Commerce.

By Mr. McCARTHY: Memorial of the legislature of Nebraska, concerning the law regulating the inspection of cattle and sheep, etc.—to the Committee on Agriculture.

Also, memorial of the legislature of Nebraska, in relation to the ship-subsidy bill—to the Committee on the Merchant Marine and Fisheries.

PRIVATE BILLS AND RESOLUTIONS INTRODUCED.

Under clause 1 of Rule XXII, private bills of the following titles were introduced and severally referred as follows:

By Mr. CANNON: A bill (H. R. 25618) to correct the military record of William G. Cowan—to the Committee on Military Affairs.

By Mr. FASSETT: A bill (H. R. 25619) granting an increase of pension to Timothy Dempsey—to the Committee on Invalid Pensions.

By Mr. FRENCH: A bill (H. R. 25620) granting an increase of pension to Jacob B. Long—to the Committee on Invalid Pensions.

By Mr. FULLER: A bill (H. R. 25621) granting an increase of pension to Nelson R. Harrington—to the Committee on Invalid Pensions.

By Mr. HAUGEN: A bill (H. R. 25622) granting an increase of pension to Christian A. Baldwin—to the Committee on Invalid Pensions.

By Mr. KLINE: A bill (H. R. 25623) granting an increase of pension to Albert Hoffman—to the Committee on Invalid Pensions.

By Mr. LAFEAN: A bill (H. R. 25624) granting an increase of pension to Samuel Guistwite—to the Committee on Invalid Pensions.

By Mr. McGAVIN: A bill (H. R. 25625) granting an increase of pension to Hobart Hamilton—to the Committee on Invalid Pensions.

By Mr. MOUSER: A bill (H. R. 25626) granting an increase

of pension to James Dulpher—to the Committee on Invalid Pensions.

PETITIONS, ETC.

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

By the SPEAKER: Petition of the Chamber of Commerce and Board of Trade of San Juan, P. R., for dredging the harbor of San Juan—to the Committee on Rivers and Harbors.

Also, petition of various associations of citizens in Massachusetts, Connecticut, Pennsylvania, and West Virginia, against the Littlefield bill (H. R. 13655)—to the Committee on the Judiciary.

By Mr. ACHESON: Petition of Division No. 565, Brotherhood of Locomotive Engineers (400 engineers), for the sixteen-hour bill (S. 5133)—to the Committee on Interstate and Foreign Commerce.

Also, petition of citizens of Pennsylvania, for increase of salaries of post-office clerks—to the Committee on the Post-Office and Post-Roads.

Also, petition of the Cairo Commercial Club, Board of Trade, and officials of the city of Cairo, for an appropriation of \$50,000,000 annually for waterways—to the Committee on Rivers and Harbors.

Also, petition of the National Wool Growers' Association, against forest reservations on land not already timbered—to the Committee on Agriculture.

Also, petition of the Pennsylvania State Grange, for an amendment to the free-alcohol law—to the Committee on Ways and Means.

Mr. ADAMSON: Petition of the International Association of Machinists, for a new foundry in the Naval Gun Factory—to the Committee on Naval Affairs.

By Mr. BARCHFELD: Petitions of citizens of Lancaster, Pa.; Belmont, Ohio; Pierce, N. Dak.; Lexington, S. C.; Waynesboro, Pa.; Corydon, Ind.; Dearborn, Ind.; Marquette, Mich.; Warsaw, N. Y.; Boston, Mass.; Wayne, Ill.; Chenung, N. Y.; Covington, La.; Morganfield, Ky.; Defiance, Ohio; Denver, Colo., and Jerseyville, Ill., against bill S. 5221, to regulate the practice of osteopathy in the District of Columbia—to the Committee on the District of Columbia.

By Mr. BARTLETT: Petition of A. D. Jones et al., of Macon, Ga., favoring enlarged powers for the Interstate Commerce Commission—to the Committee on Interstate and Foreign Commerce.

By Mr. BATES: Petition of J. L. Evans, commander of Grand Army of the Republic Post No. 3, of Pittsburg, Pa., against abolition of pension agencies—to the Committee on Appropriations.

Also, petition of E. G. Barie, of McKean, Pa., for bill H. R. 22134—to the Committee on Claims.

Also, petition of the Conneautville (Pa.) Methodist Episcopal Church, for the Littlefield bill—to the Committee on the Judiciary.

Also, petition of Typographical Union No. 77, of Erie, Pa., for the copyright bill (H. R. 19853)—to the Committee on Patents.

Also, petition of W. F. Hill, Pennsylvania State Grange, for an amendment to the free-alcohol bill—to the Committee on Agriculture.

By Mr. BIRDSALL: Petition of citizens of Iowa, for an amendment to the Constitution to suppress polygamy—to the Committee on the Judiciary.

Also, petition of Dubuque (Iowa) Typographical Union, No. 22, for the copyright bills (S. 6330 and H. R. 19853)—to the Committee on Patents.

By Mr. BRUNDIDGE: Petition of F. W. Mullins et al., for reciprocal demurrage by railway companies—to the Committee on Interstate and Foreign Commerce.

By Mr. BURKE of Pennsylvania: Petition of the International Association of Machinists, for a new foundry in the Naval Gun Factory in Washington, D. C.—to the Committee on Naval Affairs.

Also, petition of the Ohio Valley Improvement Association, for improvement of the Ohio River from Pittsburg to Cairo—to the Committee on Rivers and Harbors.

Also, petition of the Chicago Real Estate Board, for improvement of the Chicago River—to the Committee on Rivers and Harbors.

By Mr. DALE: Petition of the National Convention for the Extension of Foreign Commerce, for a dual tariff—to the Committee on Ways and Means.

Also, petition of the Public Educational Association of Philadelphia, for the child-labor bill—to the Committee on Labor.

Also, petition of Chicago Real Estate Board, for improvement

of all branches of the Chicago River—to the Committee on Rivers and Harbors.

Also, petition of the International Association of Machinists, for new foundry in the Naval Gun Factory—to the Committee on Naval Affairs.

Also, petition of the Illinois Manufacturers' Association, for a deep waterway from Chicago to St. Louis—to the Committee on Rivers and Harbors.

Also, petition of W. F. Hill, for Pennsylvania farmers, favoring an amendment to the free-alcohol law—to the Committee on Ways and Means.

Also, petition of the American Musical Copyright League, for bill H. R. 25133—to the Committee on Patents.

Also, petition of Division No. 276, Brotherhood of Locomotive Engineers (200 members), for the sixteen-hour bill—to the Committee on Interstate and Foreign Commerce.

By Mr. DAWSON: Petition of James Peterson et al., citizens of Iowa, for increase of salaries of letter carriers—to the Committee on Post-Office and Post-Roads.

By Mr. DUNWELL: Petition of the War Veterans' and Sons' Association, against abolition of pension agencies—to the Committee on Appropriations.

Also, petition of the National Wool Growers' Association, against forest reserves on land not already timbered—to the Committee on Agriculture.

Also, petition of New York Typographical Union, No. 6, for bills S. 6330 and H. R. 19853 (the copyright bills)—to the Committee on Patents.

Also, petition of the Chamber of Commerce of New York, for a post-office building in New York City—to the Committee on Public Buildings and Grounds.

Also, petition of the International Association of Machinists, for a new foundry in the Naval Gun Factory at Washington, D. C.—to the Committee on Naval Affairs.

Also, petition of the Chicago Real Estate Board, for general improvement of Chicago River—to the Committee on Rivers and Harbors.

By Mr. ELLIS: Petition of residents of Kansas City, in support of bill H. R. 23558 (reciprocal railway demurrage)—to the Committee on Interstate and Foreign Commerce.

By Mr. ESCH: Petition of E. B. Wolcott Post, No. 1, Department of Wisconsin, against abolition of pension agencies—to the Committee on Appropriations.

By Mr. FLOYD: Paper to accompany bill for relief of Oliver Shaw—to the Committee on Invalid Pensions.

Also, paper to accompany bill for relief of McDonald Mead—to the Committee on Military Affairs.

By Mr. FULLER: Petition of George L. Cain, for the liability bill and Saturday half-holiday bill for Government employees—to the Committee on the Judiciary.

Also, petition of the Chicago Real Estate Board, for improvement of the Chicago River—to the Committee on Rivers and Harbors.

By Mr. GILHAMS: Petition of the Alliance of German Societies of Fort Wayne, Ind., against the Lodge-Gardner bill—to the Committee on Immigration and Naturalization.

By Mr. HASKINS: Petition of the Baptist Church of Grafton, Vt., for the Littlefield bill—to the Committee on the Judiciary.

By Mr. HAYES: Petition of the Japanese and Korean Exclusion League, for Japanese exclusion legislation—to the Committee on Foreign Affairs.

By Mr. HEPBURN: Petition of the National Board of Trade, in favor of bills S. 26 and H. R. 113—to the Committee on Interstate and Foreign Commerce.

By Mr. HIGGINS: Petition of the Lumber Dealers' Association, for the Appalachian and White Mountain reservation bill—to the Committee on Agriculture.

By Mr. HINSHAW: Petition of citizens of Nebraska, for repeal of the duty on lumber—to the Committee on Ways and Means.

By Mr. HILL of Connecticut: Petition of the National Association of Letter Carriers, favoring the Crane bill relative to letter carriers—to the Committee on the Post-Office and Post-Roads.

Also, resolution of the Lumber Dealers' Association of Connecticut, for forest reservations—to the Committee on Agriculture.

By Mr. HOWELL of New Jersey: Paper to accompany bill for relief of William F. Johnson—to the Committee on Invalid Pensions.

Also, petition of the New Jersey State Federation of Women's Clubs, for forest reservations—to the Committee on Agriculture.

By Mr. HULL: Petition of the Corn Belt Meat Producers' Association, of Iowa, for an amendment to the free-alcohol law—to the Committee on Ways and Means.

By Mr. KENNEDY of Nebraska: Paper to accompany bill for relief of John Trimmer—to the Committee on Invalid Pensions.

By Mr. LAFEAN: Paper to accompany bill for relief of Samuel Guistwite—to the Committee on Invalid Pensions.

Also, petition of York (Pa.) Typographical Union, No. 242, for the copyright bill (H. R. 19853)—to the Committee on Patents.

Also, petition of the Smith Lyrphone Company, of Hanover, Pa., for an amendment of paragraph G, section L, copyright law—to the Committee on Patents.

By Mr. LEE: Paper to accompany bill for relief of Mrs. Lena Wing—to the Committee on Invalid Pensions.

By Mr. LINDSAY: Petition of the War Veterans and Sons' Association of Brooklyn, N. Y., against abolition of pension agencies—to the Committee on Appropriations.

By Mr. MADDEN: Petition of the National Convention for the Extension of Foreign Commerce of the United States, for adoption of maximum and minimum rates of tariff—to the Committee on Ways and Means.

By Mr. MANN: Petition of the Chicago Real Estate Board, for improvement of the Chicago River—to the Committee on Rivers and Harbors.

Also, petition of the Moline Business Men's Association, for improvement of the upper Mississippi River—to the Committee on Rivers and Harbors.

Also, petition of the Chicago Grocers and Butchers' Association, favoring a postal savings bank system—to the Committee on the Post-Office and Post-Roads.

By Mr. MOON of Tennessee: Paper to accompany bill for relief of John C. Wiley—to the Committee on War Claims.

By Mr. MOORE of Pennsylvania: Petition of the Philadelphia Board of Trade, for the Merchant Marine Commission bill (S. 6291)—to the Committee on the Merchant Marine and Fisheries.

Also, petition of Joseph P. Candy et al., favoring restriction of immigration (S. 4403)—to the Committee on Immigration and Naturalization.

By Mr. PADGETT: Paper to accompany bill for relief of heirs of Robert M. Nicholson—to the Committee on War Claims.

By Mr. REEDER: Petition of the National Irrigation Congress, favoring the work of the Reclamation Service—to the Committee on Irrigation of Arid Lands.

By Mr. REYBURN: Petition of the Philadelphia Board of Trade, for the ship-subsidy bill—to the Committee on the Merchant Marine and Fisheries.

By Mr. RYAN: Petition of the Chamber of Commerce of New York, for a post-office building in New York City—to the Committee on the Post-Office and Post-Roads.

Also, petition of the county board of the Ancient Order of Hibernians of Erie County, N. Y., against the immigration bill—to the Committee on Immigration and Naturalization.

By Mr. SMITH of California: Petition of citizens of California, for enactment of a child-labor law—to the Committee on Labor.

By Mr. ZENOR: Paper to accompany bill for relief of Adam Meyer—to the Committee on Invalid Pensions.

SENATE.

WEDNESDAY, February 13, 1907.

Prayer by the Chaplain, Rev. EDWARD E. HALE.

The Secretary proceeded to read the Journal of yesterday's proceedings, when, on request of Mr. HALE, and by unanimous consent, the further reading was dispensed with.

The VICE-PRESIDENT. The Journal stands approved.

AFFAIRS IN THE PHILIPPINES.

The VICE-PRESIDENT laid before the Senate a communication from the Secretary of War, transmitting a copy of a cablegram from the governor-general of the Philippine Islands submitting a telegram from the governor of the province of Occidental Negros requesting suspension of the Dingley tariff and also for the establishment of an agricultural bank in the Philippines; which was ordered to lie on the table and be printed.

AGRICULTURAL BANK IN THE PHILIPPINES.

The VICE-PRESIDENT laid before the Senate a communication from the Secretary of War, transmitting a cablegram from the president of the Economic Association of the Philippines expressing appreciation over the approval of the passage of the bill for the establishment of an agricultural bank in the Philippines; which was ordered to lie on the table and be printed.