

Also, petition of Mr. R. H. Herring, of 123 Westminster Avenue, Syracuse, N. Y., in favor of national prohibition; to the Committee on the Judiciary.

By Mr. MILLER of Minnesota: Petition of sundry citizens of Deer River, Minn., favoring national prohibition; to the Committee on the Judiciary.

By Mr. MORIN: Petition of the Wolfe Tome Club of Pittsburgh, Pa., pledging the loyal service which the Irish race has ever given in times of national crisis and urging that this Government insist that England withdraw her forces from Ireland and renounce all claim to rule over an unwilling people; to the Committee on Foreign Affairs.

By Mr. O'SHAUNESSY: Petition of members of the women's class of the First Baptist Church of Providence, R. I., favoring prohibition as a war measure; to the Committee on the Judiciary.

By Mr. POLK: Memorial of Pomona Grange No. 1, Stanton, Del., relative to prohibition during the war; to the Committee on the Judiciary.

By Mr. POWERS: Petition of the Baptist Church of Livingston, Ky., for the interning of all saloons, barrooms, and other places where intoxicating liquors are sold as a war measure; to the Committee on Military Affairs.

By Mr. RAKER: Petition of 20 citizens of Whitmore, Cal., against the conscription act; to the Committee on Military Affairs.

Also, petition of E. W. Murphy, of Los Angeles, Cal., favoring the bill for the revision of postal rates; to the Committee on the Post Office and Post Roads.

Also, petition of Dr. Harry P. Beaser, of Fresno, Cal., indorsing the dental section of the national-defense bill; to the Committee on Military Affairs.

Also, petition of Henry B. Halfeld, of Berkeley, Cal., against exempting from tax gifts, bequests, etc.; to the Committee on Ways and Means.

Also, petition of John L. Seaton, of San Jose, Cal., relative to exempting from tax bequests for educational and scientific purposes; to the Committee on Ways and Means.

By Mr. ROWE: Petition of the Champlain Silk Mills, of New York, relative to legislation proposed in House bill 4630; to the Committee on Agriculture.

Also, petitions of Franklin Avenue Presbyterian Church and sundry citizens of Brooklyn, N. Y., favoring prohibition as a war measure; to the Committee on the Judiciary.

Also, petition of the Brewer Bag Co., of New York, favoring House resolution 73, relative to interference with American trade and shipping; to the Committee on Foreign Affairs.

Also, petitions of J. A. Auble and S. J. Rees, of Brooklyn, N. Y., against an increase of second-class postage; to the Committee on Ways and Means.

By Mr. SANDERS of New York: Petition of Mr. Sherman Russell and 11 other residents of Stafford, Genesee County, N. Y., favoring national prohibition as a war measure; to the Committee on Military Affairs.

By Mr. SNELL: Petition of citizens of Westville, N. Y., for full national prohibition of the manufacture, sale, and transportation of intoxicating beverages for the period of the war in conservation of the man power, military and industrial efficiency, and the food supply of the Nation, and that all liquors now in bonded warehouses and elsewhere shall be commandeered by the Government and redistilled for undrinkable alcohol, to be purchased by the Government for war purposes, and that we oppose an increase in the tax on intoxicating liquors as a means of raising a revenue to prosecute the war; to the Committee on the Judiciary.

Also, petition of citizens of Harrietstown, N. Y., for full national prohibition of the manufacture, sale, and transportation of intoxicating beverages for the period of the war in conservation of the man power, military and industrial efficiency, and the food supply of the Nation, and that all liquors now in bonded warehouses and elsewhere shall be commandeered by the Government and redistilled for undrinkable alcohol, to be purchased by the Government for war purposes, and that we oppose an increase in the tax on intoxicating liquors as a means of raising a revenue to prosecute the war; to the Committee on the Judiciary.

By Mr. TAGUE: Petition of the Massachusetts State Federation of Women's Clubs, favoring prohibition as a war measure; to the Committee on the Judiciary.

Also, petitions of Samuel W. McCall and the War Emergency Committee of the Baking Industry, favoring the conservation of food products; to the Committee on Agriculture.

By Mr. TIMBERLAKE: Petition of sundry citizens of Merino, Colo., favoring prohibition as a war measure; to the Committee on the Judiciary.

## SENATE.

SATURDAY, June 16, 1917.

(Legislative day of Friday, June 15, 1917.)

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

## CONSERVATION OF FOOD AND FUEL.

Mr. GORE. Mr. President, out of order I desire to say that I am directed by the Committee on Agriculture and Forestry to report back the bill which I send to the desk, without amendment and without recommendation. It is the so-called Lever bill in relation to food conservation.

The VICE PRESIDENT. The bill will be read by title.

The SECRETARY. A bill (S. 2463) to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of food products and fuel.

Mr. HARDWICK. Mr. President, I desire to give notice that in connection with the bill just reported at the proper time I shall raise the constitutional question that the Senate has no right to originate bills that undertake to raise revenue as this bill does, and that that matter shall be submitted to the judgment of the Senate before any action is taken by the Senate on the measure.

Mr. GALLINGER. Did I understand the Senator from Oklahoma to say that the bill is reported without recommendation?

Mr. GORE. Yes, sir; that is my statement.

Mr. GALLINGER. Have the committee given it careful consideration?

Mr. GORE. I will say, Mr. President, that there have been several bills in relation to this subject generally, varying slightly in detail but not at all, I will say, varying in principle. From time to time the committee has considered measures of this character. Indeed we had elaborate hearings on the subject generally but not on this particular bill. The bill is reported without recommendation for final action by the Senate for reasons I deem it unnecessary to explain at this time, but which the committee may take occasion to explain later.

Mr. GALLINGER. As I have casually glanced at the bill during its somewhat tempestuous voyage in the House I have thought it was a bill of great consequence. I observed that it was referred to the committee on yesterday, and I wondered how much attention the committee had given to it before making the report.

Mr. GORE. I will say the substance and the principles and the details involved in the bill have received a great deal of attention at the hands of the committee, certainly at the hands of members of the committee. We had hearings extending over three or four weeks on the subject of the bill.

Mr. VARDAMAN. I ask the Senator if the bill has been printed?

Mr. GORE. It has been printed. The members of the committee will express their individual judgment concerning the matter, but it is deemed desirable by some that the discussion should begin, because the friends of the measure think that its efficiency and efficacy will largely depend upon the date of its passage, and unless it should be enacted into law before the present harvest is marketed it would lose much that it is desired to accomplish by the measure.

Mr. GALLINGER. I will ask the Senator further whether a written report will be submitted with the bill?

Mr. GORE. There is no written report concerning the measure because no amendments have been recommended by the committee. I may say to the Senator that there is quite a diversity of views among the members of the committee in regard to this proposed legislation.

Mr. GALLINGER. I thought that was probably so.

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

The VICE PRESIDENT. The Secretary will call the roll.

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

Ashurst	Hollis	Newlands	Smith, Md.
Brady	Husting	Norris	Smith, Mich.
Brandegge	Johnson, S. Dak.	Owen	Smith, S. C.
Chamberlain	Jones, Wash.	Page	Smoot
Culberson	Kendrick	Phelan	Sterling
Cummins	Kenyon	Pittman	Swanson
Curtis	King	Poindexter	Thomas
Dillingham	Kirby	Pomerene	Thompson
Fernald	Lewis	Ransdell	Trammell
Gallinger	Lodge	Reed	Vardaman
Gerry	McCumber	Robinson	Wadsworth
Gore	McKellar	Shafroth	Warren
Gronna	McLean	Sheppard	Watson
Hae	McNary	Simmons	Williams
Hardwick	Nelson	Smith, Ariz.	
Hitchcock	New	Smith, Ga.	

Mr. CURTIS. I announce the absence of the junior Senator from Maryland [Mr. FRANCE] on account of illness. I will allow this announcement to stand for the day.

Mr. SMITH of Michigan. I desire to announce the unavoidable absence of my colleague [Mr. TOWNSEND] on account of sickness in his family. I wish to have this announcement stand for the day.

Mr. THOMPSON. I desire to announce that the junior Senator from Delaware [Mr. WOLCOTT] is necessarily absent on official business.

Mr. NELSON. I wish to state that my colleague [Mr. KELLOGG] is necessarily absent on account of important business. He is paired with the senior Senator from North Carolina [Mr. SIMMONS].

Mr. MCKELLAR. I desire to announce that my colleague [Mr. SHIELDS] is absent because of illness.

Mr. POMERENE. I was requested to announce that the senior Senator from Delaware [Mr. SAULSBURY] is absent on account of important business.

Mr. LEWIS. I desire to announce that the junior Senator from Kentucky [Mr. BECKHAM] is detained on important business.

The VICE PRESIDENT. Sixty-two Senators have answered to the roll call. There is a quorum present.

#### HEARINGS BEFORE THE COMMITTEE ON PUBLIC LANDS.

Mr. THOMPSON, from the Committee to Audit and Control the Contingent Expenses of the Senate, to which was referred Senate resolution 84, submitted by Mr. MYERS on the 14th instant, reported it without amendment, and it was considered by unanimous consent and agreed to, as follows:

*Resolved*, That the Committee on Public Lands, or any subcommittee thereof, be, and hereby is, authorized during the Sixty-fifth Congress, to send for persons, books, and papers, to administer oaths, and to employ a stenographer, at a cost not exceeding \$1 per printed page, to report such hearings as may be had in connection with any subject which may be pending before said committee, the expenses thereof to be paid out of the contingent fund of the Senate, and that the committee, or any subcommittee thereof, may sit during the sessions or recess of the Senate.

#### PETITIONS.

Mr. GALLINGER presented a petition of the Good Neighbors' Circle of the King's Daughters of the First Congregational Church of Concord, N. H., praying for national prohibition, which was ordered to lie on the table.

He also presented a petition of Belknap County Pomona Grange, No. 4, Patrons of Husbandry, of Laconia, N. H., praying for the fixing of maximum and minimum prices on food products, which was referred to the Committee on Agriculture and Forestry.

#### BILLS INTRODUCED.

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

By Mr. GALLINGER:

A bill (S. 2465) providing for the purchase of the "Dean tract," so called, in the District of Columbia, for a public park; to the Committee on the District of Columbia.

By Mr. POMERENE:

A bill (S. 2466) granting a pension to Lafayette Fasnaugh (with accompanying papers); to the Committee on Pensions.

By Mr. WATSON:

A bill (S. 2467) fixing the status as naturalized citizens of enlisted men, commissioned officers of the Army, Navy, or Marine Corps; to the Committee on Military Affairs.

#### WAR REVENUE.

Mr. HOLLIS submitted an amendment intended to be proposed by him to the bill (H. R. 4280) to provide revenue to defray war expenses, and for other purposes, which was referred to the Committee on Finance and ordered to be printed.

#### REGULATION OF FOOD PRICES.

Mr. HOLLIS. Mr. President, I ask unanimous consent to have placed in the RECORD, without reading, an article on "The Federal power to regulate commodity prices under the commerce clause," by Mr. Edward A. Adler, a distinguished lawyer of Boston, Mass.

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

#### NOTES ON THE FEDERAL POWER TO REGULATE COMMODITY PRICES UNDER THE COMMERCE CLAUSE.

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The question of power must not be confused with considerations of expediency and administrative details. It is also to be observed at the outset that the power of a State to regulate prices results from its sovereignty, while that of the United States must be derived from the Constitution.

#### A.—LEGISLATIVE POWER IN GENERAL OVER PRICES AND RATES.

##### 1. HISTORICAL.

As is well known, price regulation, historically considered, is one of the most commonplace phenomena. In England the following price-fixing statutes, among others, may be noted:

23 Edward III (1349): the statute of laborers, fixing prices of all kinds; 37 Edward III (1363), poultry; 25 Henry VIII (1533), chapter 2, produce; 25 Henry VIII, chapter 8, books; 25 Henry VIII (1543), beer barrels; 16 and 17 Charles II, coal; 3 P. and M., rates of land carriage.

In our own country the Colony of Massachusetts Bay, at a general court held in "Newe Towne" on September 1, 1635, passed the following enactment:

"Whereas two former laws, the one concerning the wages of workmen, the other concerning the prices of commodities, were for divers good considerations repealed, this present court now, for avoiding such mischiefs as may follow thereupon by such ill-disposed persons as may take liberty to oppress and wrong their neighbors by taking excessive wages for work or unreasonable prices for such necessary merchandises or other commodities as shall pass from man to man, it is therefore now ordered that if any man shall offend in any of the said cases against the true intent of this law he shall be punished by fine or imprisonment according to the quality of the offense as the court upon lawful trial and conviction shall adjudge."

In 1777 an elaborate tariff of charges for labor and merchandise was enacted for the city of Boston, but was repealed in the same year. In 1780 the State of New York, on suggestion of the Continental Congress, passed "An act for a general limitation of prices and to prevent engrossing and holding within the State," which provided that the prices of all articles of domestic produce (as well as farming and common labor and the wages of tradesmen and mechanics) should not exceed certain rates, which were specified in great detail as to commodities, ranging from rendered hog lard to manufactured steel and new scythes; and further provided that if any person having more of any such article or articles than might be necessary for his family's use or subsistence or for carrying on his trade or business should refuse to sell the overplus, or a reasonable part thereof, to any person who might be in want of the same for his family's use or subsistence or for carrying on his trade or business, the persons desiring to purchase might apply to any justice of the peace where the person having such overplus resided; and if it should be evident to the justice that the party complained of was possessed of a greater quantity than was thus necessary, the justice might issue a warrant to the constable empowering him to call to his assistance as many persons as might be necessary and take such proportion of the overplus as might be necessary for the supply of the complainant, the same to be sold to the complainant, and the money, after deducting \$10 for the justice's fees, together with other necessary and reasonable costs for the constable and his assistants, to be lodged in the hands of the justice, to be by him delivered to the owner when he applies for the same.

These statutes were typical of many others and suffice for illustration. By slow degrees, however, and step by step with economic change, exertion of the power of price control died out in this country and by the close of the Civil War was practically nonexistent, although a general memory of the regulation of canal, turnpike, mill, ferry, and wharfage tolls still lingered in the judicial mind. So true was this that when the regulation of railroad rates was first proposed it was strenuously resisted.

##### 2. RECRUDESCENCE OF PRICE REGULATION.

One of the first acts of this character was a statute of Iowa, passed in 1874, entitled "An act to establish reasonable maximum rates of charges for the transportation of freight and passengers on the different railroads of this State." The constitutionality of this statute was tested in *Chicago, Burlington & Quincy R. R. Co. v. Iowa* (94 U. S., 155, 1876). It was argued that the act, so far as it prescribed the rates of compensation for the transportation of persons and property, was not a police regulation and could not be maintained under the police power of the State. But the court (Waite, C. J.) pointed out that it was a mistake to assume that because this general legislative power had long lain dormant it had thereby ceased to exist. The Chief Justice said:

"In 1691, during the third year of the reign of William and Mary, Parliament provided for the regulation of the rates of charges by common carriers. This statute remained in force, with some amendment, until 1827, when it was repealed, and it has never been reenacted. No one supposes that the power to restore its provisions has been lost. A change of circumstances seemed to render such a regulation no longer necessary, and it was abandoned for the time. The power was not surrendered. That remains for future exercise, when required. So here the power of regulation existed from the beginning, but it was not exercised until in the judgment of the body politic the condition of things was such as to render it necessary for the common good."

In the same year the celebrated case of *Munn v. Illinois* (94 U. S., 113, 1876) came before the same court. This case involved the constitutionality of a statute of Illinois, fixing the maximum charges for the storage of grain in warehouses at Chicago and other places in the State having not less than 100,000 inhabitants. It appeared that at that time there were in Chicago 14 warehouses adapted to this particular business, owned by about 30 persons comprised in 9 business firms, and that the prices charged and received for storage were such as were agreed upon and established from year to year and published in one or more newspapers in the month of January of each year as the established rate for the year then next ensuing. The court, in sustaining the statute, used the following language paraphrased from the remarks of Lord Chief Justice Hale in his treatise *De Portibus Maris*:

"Looking, then, to the common law, from whence came the right which the Constitution protects, we find that when private property is 'affected with a public interest, it ceases to be *juris privati* only' \* \* \* property does become clothed with a public interest when used in a manner to make it of public consequence and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created."

Reference was also made to the remarks of Lord Ellenborough in the case of *Allnutt v. Inglis* (12 East, 527, 1810) to the effect that—

"There is no doubt that the general principle is favored, both in law and justice, that every man may fix what price he pleases upon his



own property or the use of it; but if for a particular purpose the public have a right to resort to his premises and make use of them, and he have a monopoly in them for that purpose, if he will take the benefit of that monopoly he must, as an equivalent, perform the duty attached to it on reasonable terms."

A similar situation came before the Supreme Court in the case of *Budd v. New York* (143 U. S. 517, 1892), involving an act of the Legislature of New York, providing for a maximum charge for elevating, receiving, weighing, and discharging grain. *Munn v. Illinois* was reviewed and reaffirmed. Mr. Justice Brewer, with whom Justices Field and Brown concurred, dissented.

"Everything the manner and extent of whose use affects the well being of others," he said, "is property in whose use the public has an interest. Take, for instance, the only store in a little village. All the public of that village are interested in it; interested in the quantity and quality of the goods on its shelves, and their prices, in the time at which it opens and closes, and, generally, in the way in which it is managed; in short, interested in the use. Does it follow that that village public has a right to control these matters? That which is true of the single small store in the village is also true of the largest mercantile establishment in the great city. The magnitude of the business does not change the principle. There may be more individuals interested, a larger public, but still the public. The country merchant who has a small warehouse in which the neighboring farmers are wont to store their potatoes and grain preparatory to shipment occupies the same position as the proprietor of the largest elevator in New York. The public has in each case an interest in the use, and the same interest, no more and no less. I can not bring myself to believe that when the owner of property has by his industry, skill, and money made a certain piece of his property of large value to many, he has thereby deprived himself of the full dominion over it which he had when it was of comparatively little value; nor can I believe that the control of the public over one's property or business is at all dependent upon the extent to which the public is benefited by it.

"Surely the matters in which the public has the most interest are the supplies of food and clothing, yet can it be that by reason of this interest the State may fix the price at which the butcher must sell his meat, or the vendor of boots and shoes his goods? Men are endowed by their Creator with certain inalienable rights, 'life, liberty, and the pursuit of happiness'; and to 'secure' not grant or create, these rights governments are instituted. That property which a man has acquired he retains full control of subject to these limitations: First, that he shall not use it to his neighbor's injury, and that does not mean that he must use it for his neighbor's benefit; second, that if he devotes it to a public use he gives to the public a right to control that use; and, third, that whenever the public needs require, the public may take it upon payment of due compensation.

"It is suggested that there is a monopoly, and that that justifies legislative interference. There are two kinds of monopoly: one of law, the other of fact. The one exists when exclusive privileges are granted. Such a monopoly, the law which creates alone can break, and being the creation of law justifies legislative control. A monopoly of fact any one can break, and there is no necessity for legislative interference. It exists where any one by his money and labor furnishes facilities for business which no one else has. A man puts up in a city the only building suitable for offices. He has therefore a monopoly of that business; but it is a monopoly of fact, which any one can break who, with like business courage, put his means into a similar building. Because of the monopoly feature, subject thus easily to be broken, may the legislature regulate the price at which he will lease his offices? So here there are no exclusive privileges given to these elevators. They are not upon public ground. If the business is profitable anyone can build another; the field is open for all the elevators and all the competition that may be desired. If there be a monopoly it is one of fact and not of law, and one which any individual can break."

### 3. MODERN AMERICAN THEORY OF REGULATION AS APPLIED TO BUSINESSES.

Until quite recently there has been great confusion in the minds of American lawyers as to the true basis of the power of regulation in general and of business in particular, and this confusion has persisted to some extent to the present time. It would carry us too far afield to go into the subject generally in this memorandum and to deal with the power to regulate (which is really the power to legislate) in its widest aspects. We will confine ourselves to businesses which are by many supposed to be beyond the power of regulation unless they are public. Declare them public, first describe them as "public utilities," and then, curiously enough, those who entertain these views have little difficulty in conceding the power to regulate.

Consider the opinion of the court (Chief Justice Waite) in *Munn v. Illinois* and the dissenting opinion of Mr. Justice Brewer in *Budd v. New York*. At first glance these two opinions seem to be irreconcilable, but in reality they are not so. Chief Justice Waite did not state the whole truth and nothing but the truth when he said that when "one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use and must submit to be controlled by the public for the common good." The one thing that the owners of the elevators contended that they did not do was "to grant" a public right. Justice Brewer was quite right when he declared that "the country merchant who has a small warehouse in which the neighboring farmers are wont to store their potatoes and grain preparatory to shipment occupies the same position as the proprietor of the largest elevator in New York. The public has in each case an interest in the use, and the same interest, no more and no less."

The great source of difficulty lay in the failure of both justices to perceive or, at least, fully to state what I have pointed out at length in my essay on "Business Jurisprudence" and on "Labor, capital, and business at common law" (*Harvard Law Review*, December, 1914, and January, 1916), namely, that at common law there is no such thing as private business, that all business from its nature is and must be public, and that the only way in which one business differs from another is in the degree of public interest.

In some respects a more accurate statement of the basis of the right to regulate was made by the Court of Appeals of New York in *People v. Budd* (*Budd v. N. Y.*, below) (117 N. Y. 127, 1889), as follows:

"The attempts made to place the right of public regulation in these cases upon the ground of special privilege conferred by the public on those affected can not, we think, be supported. The underlying principle is that business of certain kinds hold such a peculiar relation to public interests that there is superinduced upon it the right of public regulation. We rest the power of the legislature to control and regulate elevator charges on the nature and extent of the business, the

existence of a virtual monopoly, the benefit derived from the canal, creating the business and making it possible, the interest to trade and commerce, the relation of the business to the prosperity and welfare of the State, and the practice of legislation in analogous cases. These circumstances, collectively, create an exceptional case and justify legislative regulation."

Some two years after the decision in *Budd v. New York*, the nature and extent of the legislative power to control prices and rates was further illuminated in the case of *Brass v. Stoesser* (153 U. S. 391, 1894). This case involved a statute of North Dakota, regulating grain warehouses and the weighing and handling of grain, fixing rates of storage, and requiring owners to keep insurance for the benefit of those storing grain with them. In the case before the court there was no monopoly such as might have been considered to exist in the terminal warehouses in Chicago and Buffalo. It appeared that there were literally hundreds of elevators scattered throughout the State; that at every station there was land purchasable at \$1.25 to \$40 per acre; and that a granary sufficient to store the average product of a Dakota farm could be erected at a cost not exceeding \$150. But the Supreme Court said:

"When it is once admitted, as it is admitted here, that it is competent for the legislative power to control the business of elevating and storing grain, whether carried on by individuals or associations, in cities of one size and in some circumstances, it follows that such power may be legally exerted over the same business when carried on in smaller cities and in other circumstances. It may be conceded that that would not be wise legislation which provided the same regulations in every case and overlooked differences in the facts that called for regulations. But, as we have no right to revise the wisdom or expediency of the law in question, so we would not be justified in imputing an improper exercise of discretion to the Legislature of North Dakota. It may be true that, in the cases cited, the judges who expressed the conclusions of the court entered, at some length, into a defense of the propriety of the laws which they were considering, and that some of the reasons given for sustaining them went rather to their expediency than to their validity. Such efforts, on the part of judges, to justify to citizens the ways of legislatures are not without value, though they are liable to be met by the assertion of opposite views as to the practical wisdom of the law, and thus the real question at issue, namely, the power of the legislature to act at all, is obscured. Still, in the present instance, the obvious aim of the reasoning that prevailed was to show that the subject matter of these enactments fell within the legitimate sphere of legislative power, and that, so far as the laws and Constitution of the United States were concerned, the legislation in question deprived no person of his property without due process of law, and did not interfere with Federal jurisdiction over interstate commerce."

So the law stood for the next 20 years, when, in the case of *German Alliance Insurance Company v. Kansas* (233 U. S. 389, 1914). Mr. Justice McKenna made a notable contribution to American legal theory. This case involved a Kansas statute entitled "An act relating to fire insurance, and to provide for the regulation and control of rates of premium thereon, and to prevent discrimination therein." There was nothing in the nature of monopoly as commonly understood. There were many fire insurance companies in Kansas doing business in each other's territory. It was purely a "private" business in the sense in which those words are usually employed. Speaking of the opposition encountered in the *Bull* and *Munn* cases, the court says (409):

"Every consideration was adduced, based on the private character of the business regulated, and, for that reason, the constitutional immunity from regulation, with all the power of argument and illustration of which that great judge (Justice Brewer) was a master. The considerations urged did not prevail. Against them the court opposed the ever-existing police power in government and its necessary exercise for the public good and declared its entire accommodation to the limitations of the Constitution. The court was not deterred by the charge (repeated in the case at bar) that its decision had the sweeping and dangerous comprehension of subjecting to legislative regulation all the businesses and affairs of life and the prices of all commodities."

Again, referring to *Brass v. Stoesser*:

"It extended the principle of the two other cases and denuded it of the limiting element which was supposed to beset it—that to justify regulation of a business the business must have a monopolistic character."

Continuing (411):

"The cases need no explanatory or fortifying comment. They demonstrate that a business, by circumstances and its nature, may rise from private to be of public concern and be subject, in consequence, to governmental regulation."

The opinion in this case is epoch making, and no abstract can do it justice. The following extracts, however, are of special importance in the present connection (p. 413):

"Complainant feels the necessity of accounting for the regulatory State legislation and refers it to the exertion of the police power but, while expressing the power in the broad language of the cases, seeks to restrict its application. Counsel states that this power may be exerted to 'pass laws whose purpose is the health, safety, morals, and the general welfare of the people.' The admission is very comprehensive. What makes for the general welfare is necessarily in the first instance a matter of legislative judgment and a judicial review of such judgment is limited. The scope of judicial inquiry in deciding the question of power is not to be confused with the scope of legislative considerations in dealing with the matter of policy. Whether the enactment is wise or unwise, whether it is based on sound economic theory, whether it is the best means to achieve the desired result, whether, in short, the legislative discretion within its prescribed limits should be exercised in a particular manner, are matters for the judgment of the legislature, and the earnest conflict of serious opinion does not suffice to bring them within the range of judicial cognizance." *Chicago, Burlington & Quincy Railroad Co. v. McGuire* (219 U. S. 549, 569).

"The principle we apply is definite and old and has, as we have pointed out, illustrating examples. And both by the expression of the principle and the citation of the examples we have tried to confine our decision to the regulation of the business of insurance, it having become 'clothed with a public interest' and therefore subject 'to be controlled by the public for the common good.'"

"If there may be controversy as to the business having such character, there can be no controversy as to what follows from such character if it be established. It is idle, therefore, to debate whether the liberty of contract guaranteed by the Constitution of the United States is more intimately involved in price regulation than in the other forms of regulation as to the validity of which there is no dispute. The order of their enactment certainly can not be considered an element in



their legality. It would be very rudimentary to say that measures of government are determined by circumstances, by the presence or imminence of conditions, and of the legislative judgment of the means or the policy of removing or preventing them. The power to regulate interstate commerce existed for a century before the interstate-commerce act was passed, and the commission constituted by it was not given authority to fix rates until some years afterwards. Of the agencies which those measures were enacted to regulate at the time of the creation of the power, there was no prophecy or conception. Nor was regulation immediate upon their existence. It was exerted only when the size, number, and influence of those agencies had so increased and developed as to seem to make it imperative. Other illustrations readily occur which repeat the intimation that the inactivity of a power, however prolonged, militates against its legality when it is exercised. (United States v. Delaware & Hudson Co., 213 U. S., 366.) It is often the existence of necessity rather than the presence of it which dictates legislation. And so with the regulations of the business of insurance. They have proceeded step by step, differing in different jurisdictions. If we are brought to a comparison of them in relation to the power of government, how can it be said that fixing the price of insurance is beyond that power and the other instances of regulation are not?

#### 4. CONCLUSION.

At the present time the power of the State to legislate as to prices is indisputable. (See as to Stock Yards, 183 U. S., 79; Street Railways, 187 Mass., 436; Ferries, 109 Mass., 506; Bridges, 8 Fed., 190; Turnpike Roads, 164 U. S., 578; Telegraphs, 98 Fed., 335; Telephones, 105 Ind., 259; Artificial and Natural Gas, 71 Fed., 610; Water, 110 U. S., 347; Irrigation, 89 Fed., 274; Wharfage, 121 U. S., 444; Milling, 86 Me., 102; 40 W. Va., 480; Log Booming, 50 Fed., 902; Maximum Fee for Soliciting Pensions, 157 U. S., 160.)

Practically every American State has a commission to regulate the prices of services of so-called public utilities, and the list of services placed in the "public utility" group is an ever-increasing one. It is quite evident that the argument against the power of a State to fix prices generally must stand or fall with the acceptance or rejection of the "public utility" or "monopoly" theories of the basis of regulation. Since the decision of German Alliance Insurance Co. v. Kansas (233 U. S., 389, 1914), the Supreme Court has completely broken away from the old-fashioned notion that a concern must be a monopoly or enjoy the franchise or be like a common carrier before it can be regulated or become an object of public interest. What the court now directs its attention to is the business. Indeed, a careful reading of the opinions in *Munn v. Illinois* (194 U. S., 113, 1876), *Budd v. New York* (143 U. S., 517, 1892) and *Brass v. Stoeser* (153 U. S., 391, 1894), will show that the court has always had its mind intent upon the business, but has been confused in its reasoning by the thought that there was such a thing as private business, a proposition which I have attempted to refute in my studies in the Harvard Law Review already referred to.

In the German Alliance case the Supreme Court abandons all fanciful "public utility" distinctions and lays down the absolute rule that "The basis of the ready concession of the power of regulation is the public interest." On page 416 they say:

"We may venture to observe that the price of insurance is not fixed over the counters of the companies by what Adam Smith calls 'the bidding of the market,' but is formed in the counsels of the underwriters, promulgated in schedules of practically controlling constancy which the applicant for insurance is powerless to oppose, and which, therefore, has led to the assertion that the business of insurance is of a monopolistic character and that 'it is illusory to speak of liberty of contract.' It is in the alternative presented of accepting the rates of the companies or refraining from insurance, business necessity impelling, if not compelling, that we may discover the inducements of the Kansas statute, and the problem presented is whether the legislature could regard it of as much moment to the public that they who seek insurance should no more be constrained by arbitrary terms than they who seek transportation by railroads, steam or street, or by coaches whose itinerary may be only a few city blocks, or who seek the use of grain elevators, or be secured in a night's accommodation at a wayside inn, or in the weight of a 5-cent loaf of bread. We do not say this to belittle such rights or to exaggerate the effect of insurance, but to exhibit the principle which exists in all and brings all under the same governmental power."

Throughout the cases one can trace the progressive application of one general principle—that of the exercise of the police power for the general welfare—to new cases and subject matter. Any limitation based upon the nature of the commodity or service affected is impossible. Take the case of natural gas, the right to regulate the price of which would readily be conceded. It has been expressly held that natural gas "is as much a commodity as iron ore, coal, or petroleum, or other products of the earth, and can be transported, bought, and sold as other products." (221 U. S., 256.) Conversely, iron ore, coal, or petroleum, or other products are no less commodities than natural gas.

This branch of the inquiry may be concluded with a reference to the case of *Oklahoma Gin Co. v. State* (158 Pac., 629), decided by the Supreme Court of Oklahoma on March 14, 1916, sustaining an order of the Oklahoma Corporation Commission under a statute, section 13 of which, based on the constitution of the State, was as follows:

"Whenever any business, by reason of its nature, extent, or the existence of a virtual monopoly therein, is such that the public must use the same, or its services, or the consideration by it given or taken or offered, or the commodities bought or sold therein are offered or taken by purchase or sale in such a manner as to make it of public consequence, or to affect the community at large as to supply, demand, or price or rate thereof, or said business is conducted in violation of the first section of this act, said business is a public business, and subject to be controlled by the State, by the corporation commission, or by an action in any district court of the State, as to all of its practices, prices, rates, and charges. And it is hereby declared to be the duty of any person, firm, or corporation engaged in any public business to render its services and offer its commodities, or either, upon reasonable terms, without discrimination, and adequately to the needs of the public, considering the facilities of said business."

The order sustained was the following:

"It is therefore ordered that the defendant, the Chandler Cotton Oil Co., a corporation; D. R. Owens, L. H. Rooney, Kate Gordon, and the Oklahoma Gin Co., gin custom cotton in the town of Chandler for 50 cents per 100 pounds lint cotton, with minimum charge of \$2.50 per bale; that defendants furnish the standard bagging and ties at a price not to exceed 15 per cent above the wholesale cost thereof, with a

minimum charge for bagging and ties of \$1 per bale, and for the year 1913, the price of bagging and ties shall not exceed \$1.15 per standard pattern. That the order heretofore issued by the commission for the year 1912, which was set aside upon the defendants giving bond to refund the difference to the parties entitled thereto of the amount charged and the amount finally fixed as the legal rate for ginning at Chandler, is hereby reinstated, and the reasonable charge for 1912 is 50 cents per 100 pounds for lint cotton, with a minimum of \$2.50 per bale, with an additional charge of \$1 for bagging and ties.

The defendants are further ordered to permit any person who may have cotton ginned to go upon the premises for the purpose of getting the cotton and the seed; that the parties having cotton ginned shall call for the seed at the time the cotton is ginned, or as soon thereafter as may be convenient to the owner of the gin. That the refunds herein described shall be made by the 1st day of December, 1913. That this order shall be in full force and effect on and after the 1st day of November, 1913."

B.—THE POWER OF THE NATIONAL GOVERNMENT WITHIN THE SCOPE OF THE COMMERCE CLAUSE IS AS GREAT AS THAT OF ANY STATE.

As stated by Judge Cooley in his work on Constitutional Limitations (p. 732):

"It is not doubted that Congress has the power to go beyond the general regulations of Congress which it is accustomed to establish and to descend to the minutest directions if it should be deemed advisable, and that to whatever extent ground shall be covered by those directions, the exercise of State power is excluded. Congress may establish police regulations as well as the States, confining their operations to the subjects over which it is given control by the Constitution; but as the general police power can better be exercised under the provision of the local authority, and mischiefs are not likely to spring therefrom so long as the power to arrest collision resides in the National Congress, the regulations which are made by Congress do not often exclude the establishment of others by the State covering very many particulars."

Again, Judge Hughes, in the Minnesota Rate cases (230 U. S., 352, 398) made this summary statement:

"The powers of Congress to regulate commerce among the several States is supreme and plenary. It is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution." (Gibbons v. Ogden, 9 Wheat., 1, 196.) \* \* \* The words 'among the several States' distinguish between the commerce which concerns more States than one and that commerce which is confined within one State and does not affect other States. 'The genius and character of the whole Government,' said Chief Justice Marshall, 'seem to be that its action is to be applied to all the external concerns of the Nation, and to those internal concerns which affect the States generally; but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the Government. The completely internal commerce of a State then may be considered as reserved for the State itself.' (Id., p. 195.) This reservation to the States manifestly is only of that authority which is consistent with and not opposed to the grant to Congress. There is no room in our scheme of Government for the assertion of State power in hostility to the authorized exercise of Federal power. The authority of Congress extends to every part of interstate commerce, and to every instrumentality or agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations. This is not to say that the Nation may deal with the internal concerns of the State as such, but that the execution by Congress of its constitutional power to regulate interstate commerce is not limited by the fact that intrastate transactions may have become so interwoven therewith that the effective government of the former incidentally controls the latter. This conclusion necessarily results from the supremacy of the national power within its appointed sphere."

To the same effect are the remarks of Chief Justice White in sustaining the constitutionality of the Adamson Act, which included the following:

"In the presence of this vast body of acknowledged powers there would seem to be no ground for disputing the power which was exercised in the act which is before us so as to prescribe by law for the absence of a standard of wages caused by the failure to exercise the private rights as a result of the dispute between the parties; that is, to exert the legislative will for the purpose of settling the dispute and bind both parties to the duty of acceptance and compliance to that end that no individual dispute or difference might bring ruin to the vast interests concerned in the movement of interstate commerce, for the express purpose of protecting and preserving which the plenary legislative authority granted to Congress was reposed. This result is further demonstrated, as we have suggested, by considering how completely the purpose intended to be accomplished by the regulations which have been adopted in the past would be rendered unavailing or their enactment inexplicable if the power was not possessed to meet a situation like the one with which the statute dealt. What would be the value of the right to a reasonable rate if all movement in interstate commerce could be stopped as a result of a mere dispute between the parties or their failure to exert a primary private right concerning a matter of interstate commerce? Again, what purpose would be subserved by all the regulations established to secure the enjoyment by the public of an efficient and reasonable service if there was no power in government to prevent all service from being destroyed? Further yet, what benefits would flow to society by recognizing the right, because of the public interest, to regulate the relation of employer and employee and of the employees among themselves and to give to the latter peculiar and special rights safeguarding their persons, protecting them in case of accident and giving efficient remedies for that purpose, if there was no power to remedy a situation created by a dispute between employers and employees as to rate of wages, which if not remedied, would leave the public helpless, the whole people ruined and all the homes of the land submitted to a danger of the most serious character? And finally, to what derision would it not reduce the proposition that government had power to enforce the duty of operation if that power did not extend to doing that which is essential to prevent operation from being completely stopped by filling the interregnum created by an absence of a conventional standard of wages because of a dispute on that subject between the employers and employees by a legislative standard binding on employers and employees for such a time as might be deemed by the legislature reasonably adequate to enable normal conditions to come about as the result of agreements as to wages between the parties?"



It must be apparent that the power of the National Government in the field of that commerce which concerns the people of the United States generally is in no way different from the power of the State over that commerce which concerns only the people within its borders. In some respects it might be said that the Federal Government has traveled further in the exercise of its power than have the States. The Adamson Act, for example, is a piece of legislation that in many respects is more far-reaching in its effect and implications than anything heretofore done by the States, and it is to be noted that the Supreme Court was unanimous in sustaining the power of the National Government in this field, subject only to the condition that it concerned commerce among the States. The dissenters did not deny the power. They differed on the question whether the statute related to commerce among the States or was a regulation of such commerce. Note their language.

Pitney, J.: "I am convinced in the first place that the act can not be sustained as a regulation of commerce, because it has no such object, operation, or effect.

"The primary and fundamental constitutional defect that I find in the act now under consideration is precisely this: That it undertakes to regulate the relations of common carriers by railroad to their employees in respect to a particular matter—an increase of wages—that has no real and substantial connection with the interstate commerce in which the carriers and their employees are engaged."

Day, J.: "I am not prepared to deny the Congress, in view of its constitutional authority to regulate commerce among the States, the right to fix by lawful enactment the wages to be paid to those engaged in such commerce in the operation of trains carrying passengers and freight. While the railroads of the country are privately owned, they are engaged in a public service, and because of that fact are subject in large measure to governmental control."

McKenna, J.: "I have not heretofore supposed that such action was a regulation of commerce within the fair intendment of those words as used in the Constitution; and the argument advanced in support of the contrary view is unsatisfactory to my mind. I can not therefore concur in the conclusion that it was within the power of Congress to enact the statute."

The concurring opinion of Mr. Justice McKenna dealt merely with the meaning of the act. As to the matter of power he had no doubt.

"When one enters into interstate commerce," he says, "one enters into a service in which the public has an interest and subjects one's self to its restraints. And this is no limitation of liberty; it is the consequence of liberty exercised, the obligation of his undertaking, and constrains no more than any contract constrains. The obligation of a contract is the law under which it is made and submission to regulation is a condition which attaches to one who enters into or accepts employment in a business in which the public has an interest."

In short, as Chief Justice Marshall said (*Gibbons v. Ogden*, 9 Wheat., 1, 1917):

"If, as has always been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations and among the several States is vested in Congress as absolutely as it would be in a single government having in its constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States."

Finally it may be taken as settled that:

"If any one proposition could command the universal assent of mankind we might expect it would be this: That the Government of the Union, though limited in its powers, is supreme within its sphere of action. This would seem to result necessarily from its nature. It is a government of all; its powers are delegated by all; it represents all and acts for all." (Marshall, C. J., in *McCulloch v. Maryland*, 4 Wheat., 316.)

#### C. THIS POWER HAS BEEN EXERCISED BY THE NATIONAL GOVERNMENT IN A NUMBER OF WAYS.

As stated by Judge McPherson in *Shawnee Milling Co. v. Temple* (179 Fed., 517, 524, 1910), sustaining the constitutionality of the Federal pure food and drugs act:

"Congress has enacted a safety-appliance law for the preservation of life and limb. Congress has enacted the antitrust statute to prevent immorality in contracts and business affairs. Congress has enacted the live-stock sanitation act to prevent cruelty to animals. Congress has enacted the cattle contagious-disease act to more effectively suppress and prevent the spread of contagious and infectious diseases of live stock. Congress has enacted a statute to enable the Secretary of Agriculture to establish and maintain quarantine districts. Congress has enacted the meat-inspection act. Congress has enacted a second employer's liability act. Congress has enacted the obscene-literature act. Congress has enacted the lottery statute, above referred to. Congress has enacted (but a year ago) statutes prohibiting the sending of liquors by interstate shipment with the privilege of the vendor to have the liquors delivered C. O. D. and to prohibit shipments of liquors except when the name and address of the consignee and the quantity and kind of liquor is plainly labeled on the package. These statutes, police regulations in many respects, are alike in principle to the act of June 30, 1906, under consideration. Can it be possible they are all void?"

But it is interesting to note that in hardly any case has Congress asserted the full measure or anything approaching the full measure of its power. Examine, for instance, the following statutes:

(1) An act to regulate commerce (24 Stat. L., 379, 1887). This act was limited to "any common carrier or carriers engaged in the transportation of passengers or property" among the States, etc., but with the proviso that provisions of the act are not applied "to the transportation of passengers or property or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory." This statute has been frequently amended, and its comprehensiveness at the present time as to rates, service, connections, etc., is too well known to require repetition here.

(2) An act for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes (34 Stat. L., 768, 1906). This act prohibited "the introduction into any State . . . from any other State . . . or from any foreign country . . . of any article of food or drugs" within the purview of the act and applied to persons shipping, receiving, and delivering.

(3) An act to promote the safety of employees and travelers upon railroads by limiting the hours of service thereon (34 Stat. L., 1415,

1907). This act was made to apply "to any common carrier or carriers engaged in the transportation of passengers or property by railroad" between States, and "railroad" was defined so as to include "all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease"; the term "employee" as used in the act was defined to mean person "actually engaged in or connected with the movement of any train."

(4) An act relating to liability of common carriers in the District of Columbia and Territories and common carriers engaged in commerce between the States and between the States and foreign nations to their employees (32 Stat. L., 232, 1906). This act applied to "every common carrier engaged in trade or commerce . . . between the several States" and made it liable "to any of its employees." This statute was held unconstitutional in *Two Hundred and seventh United States*, 463 (1908) under a false conception, as I believe, of the commerce power, a phase of the matter which will be treated below.

(5) An act relating to the liability of common carriers by and to their employees in certain cases (35 Stat. L., 65, 1908). This statute was passed after the preceding one was declared unconstitutional and was restricted to "every common carrier while engaged in commerce" between the States for the benefit of "any person suffering injury while he is employed by such carrier in such commerce."

(6) Federal farm-loan act (July 17, 1916). This act reaches down to the farmers and the soil and provides that "10 or more natural persons who are the owners or about to become the owners of farm land qualified as security for a mortgage loan under section 12 of this act may unite to form a national farm-loan association"; also that "no persons but borrowers on farm-land mortgages shall be members or shareholders of national farm-loan associations"; also that loans may be made "for the following purposes, and no other:

"(a) To provide for the purchase of land for agricultural uses.

"(b) To provide for the purchase of equipment, fertilizers, and live stock necessary for the proper and reasonable operation of the mortgaged farm; the term 'equipment' to be defined by the Federal Farm Loan Board.

"(c) To provide buildings and for the improvement of farm lands; the term 'improvement' to be defined by the Federal Farm Loan Board.

"(d) To liquidate indebtedness of the owner of the land mortgaged existing at the time of the organization of the first national farm-loan association established in or for the county in which the land mortgaged is situated, or indebtedness subsequently incurred for purposes mentioned in this section."

(7) An act relating to bills of lading in interstate and foreign commerce (Aug. 29, 1916). This act only embraces bills of lading "issued by any common carrier for the transportation of goods in any Territory of the United States or the District of Columbia or from a place in a State to a place in a foreign country, or from a place in one State to a place in another State, or from a place in one State to a place in the same State through another State or foreign country."

(8) Warehouse act (Aug. 11, 1916). "Warehouse" as used in the act was defined to mean "every building, structure, or other protected inclosure in which any agricultural product is or may be stored for interstate or foreign commerce."

(9) An act to prevent interstate commerce in the products of child labor, and for other purposes (Sept. 1, 1916). This act merely provides that "no producer, manufacturer, or dealer shall ship or deliver for shipment in interstate or foreign commerce any article or commodity the product of any mine or quarry situated in the United States" upon which child labor had been employed.

(10) An act to establish an eight-hour day for employees of carriers engaged in interstate and foreign commerce, or for other purposes (Sept. 3, 5, 1916). This act was limited to employees of "any common carrier by railroad, except railroads independently owned and operated not exceeding 100 miles in length, electric street railroads, and electric interurban railroads, which is subject to the provisions of the act of February 4, 1887, entitled 'An act to regulate commerce,' as amended, and who are now or who may hereafter be actually engaged in any capacity in the operation of trains used for the transportation of persons or property on railroads, except railroads independently owned and operated not exceeding 100 miles in length, electric street railroads, and electric interurban railroads, from any State or Territory of the United States or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States; *Provided*, That the above exceptions shall not apply to railroads though less than 100 miles in length whose principal business is leasing or furnishing terminal or transfer facilities to other railroads or are themselves engaged in transfers of freight between railroads or between railroads and industrial plants."

The many different ways in which the general power to regulate commerce among the States has been exerted as illustrated by the statutes above set forth make an interesting study. While many of them apply to transportation, at least in some of its phases, others apply to commodities. All of them are limited and qualified in such a way as to show that while a deduction can be made from them and the cases decided under them as to some of the things that the commerce clause embraces, no such deduction can be drawn as to all that it embraces or the full extent of the power of Congress to regulate commerce among the States. With the exception of the farm-loan act the theory behind most of them is evidently that the power to regulate commerce among the States is limited to actual transportation between the States, articles in the course of such transportation or persons or instrumentalities actually engaged in such work. For example, in a case arising under the second employer's liability act (*Shanks v. Delaware, Lackawanna & Western Railroad*, 239 U. S., 556, 1916), where a railroad which was engaged in both interstate and intrastate transportation conducted a machine shop for repairing locomotives used in such transportation, and an employee, while taking down and putting up fixtures in such machine shop, was injured, it was held that he could not recover although on other occasions his employment related to interstate commerce. The court said (p. 558):

"Having in mind the nature and usual course of business to which the act relates and the evident purpose of Congress in adopting the act, we think it speaks of interstate commerce not in a technical legal sense but in a practical one better suited to the occasion. (See *Swift & Co. v. United States*, 196 U. S., 375, 398.) And that the true test of employment in such commerce in the sense intended is, Was the employee at the time of the injury engaged in interstate transportation or in work so closely related to it as to be practically part of it?"



That this is too narrow a view of the nature and scope of the power to regulate commerce among the States as such, we shall now proceed to show:

**D. NATURE AND SCOPE OF THE POWER OF CONGRESS TO REGULATE COMMERCE AMONG THE STATES.**

**1. SOURCES OF CONFUSION.**

Very little has been added to the interpretation of the commerce clause since the time of Chief Justice Marshall. In *Gibbons v. Ogden* (9 Wheat., 1, p. 195), he says:

"The genius and character of the whole government seem to be that its action is to be applied to all the external concerns of the Nation and to those internal concerns which affect the States generally, but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the Government. The completely internal commerce of a State, then, may be considered as reserved for the State itself."

This passage is sometimes quoted as authority for the proposition that the National Government can not deal with the internal commerce of a State, but in reality it is direct authority for the contrary proposition when such action is necessary for the national good. The "internal concerns which affect the States generally" must necessarily have their situs in a State. The Chief Justice does not deny national authority to concerns which are within a particular State but to those "which are completely within a particular State," and "which do not affect other States, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the Government." The proposition involves two parts, but the first is the one commonly repeated, while the second is all but forgotten.

This is but one of the common sources of confused thought. Another results from failure to make any distinction between commerce and the power to regulate commerce. It is generally assumed that the vital thing is whether an article or commodity is moving in interstate commerce, whereas the only question is whether the regulation proposed or act done has a reasonable relation to commerce among the States. This sort of confusion is illustrated by the reasoning in *Kidd v. Pearson* (128 U. S., 1, 20), where the court said:

"No distinction is more popular to the common mind or more clearly expressed in economic and political literature than that between manufactures and commerce. Manufacture is transformation—the fashioning of raw materials into a change of form for use. The functions of commerce are different. The buying and selling and the transportation incidental thereto constitute commerce, and the regulation of commerce in the constitutional sense embraces the regulation at least of such transportation. The legal definition of the term, as given by this court in *County of Mobile v. Kimball* (102 U. S., 691, 702), is as follows: 'Commerce with foreign countries and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase, sale, and exchange of commodities.' If it be held that the term includes the regulation of all such manufactures as are intended to be subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the States, with the power to regulate, not only to manufactures, but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry. For is there one of them that does not contemplate, more or less clearly, an interstate or foreign market? Does not the wheat grower of the Northwest and the cotton planter of the South plant, cultivate, and harvest his crop with an eye on the prices at Liverpool, New York, and Chicago? The power being vested in Congress and denied to the States, it would follow as an inevitable result that the duty would devolve on Congress to regulate all of these delicate, multifarious, and vital interests, interests which in their nature are and must be local in all the details of their successful management."

Another fruitful source of confusion arises out of decisions dealing with the relative taxing powers of the State and Federal Governments and so-called "direct" and "indirect" restraints. While on the one hand, it is laid down that—

"The States can not tax interstate commerce, either by laying the tax upon the business which constitutes such commerce or the privilege of engaging in it or upon the receipts, as such, derived from it." (Minn. Rate cases, 230 U. S., 352, 400, 1912).

On the other hand, it was stated by the Supreme Court in *Kansas City, M. & B. R. Co. v. Stiles*, December, 1916, that—

"Each case must depend on its circumstances, and that while the State could not tax property beyond its borders, it might measure a tax within its authority by capital stock, which in part represented property without the taxing power of the State. \* \* \* The State may not regulate interstate commerce or impose burdens upon it, but it is authorized to levy a tax within its authority, measured by capital in part used in the conduct of such commerce, where the circumstances are such as to indicate no purpose or necessary effect in the tax imposed to burden commerce of that character."

In *Kansas Railway v. Kansas* (240 U. S., 227, 231, 1916) Justice Hughes said:

"It must be assumed, in accordance with repeated decisions, that the State can not lay a tax on interstate commerce 'in any form' by imposing it either upon the business which constitutes such commerce or the privilege of engaging in it, or upon the receipts, as such, derived from it (citing cases), and, further, in determining whether a tax has such a direct relation to interstate commerce as to be an exercise of power prohibited by the commerce clause, our decision must regard the substance of the exaction—its operation and effect as enforced—and can not depend upon the manner in which the taxing scheme has been characterized (citing cases). \* \* \* It is also manifest that the State is not debarred from imposing a tax upon the granted privilege of being a corporation, because the corporation is engaged in interstate as well as intrastate commerce (citing cases), and agreeably to the principle above mentioned, it has never been and it can not be maintained that an annual tax upon the privilege is in itself, in all cases, repugnant to the Federal power merely because it is measured by authorized or paid-up capital stock."

Referring to the case of *Baltic Mining Co. v. Massachusetts* (231 U. S., 98), Justice Hughes said:

"It is true that in that case it was pointed out that the taxing act did not apply to corporations engaged in railroad, telegraph, etc., business or to those corporations whose business is interstate commerce, but it was also distinctly stated that the products of the corporation before the court were 'sold and shipped in interstate commerce' and

were 'entitled to the protection of the Federal Constitution against burdening commerce of that character.'"

In the *Massachusetts Stock Ticker* case (*Western Union Tel. Co. v. Foster*, 224 Mass., 365, June, 1916) the court decided that the transactions involved did not constitute interstate commerce, and said that in the view which it took of the case it became unnecessary to discuss or decide whether the order of the commission might be sustained also as affecting interstate commerce only incidentally and not imposing a direct burden upon it within the principle declared in numerous cases.

It must be apparent that cases of this kind do not define the extent of the power to regulate commerce among the States; that a given law affects commerce among the States only "indirectly" certainly does not prove that the thing affected is not or may not be commerce among the States within the regulatory power of Congress when it chooses to exercise it. Nor does the fact that a given State law affects commerce among the States "directly" show that that law is beyond the power of the State when that law, looked at in a reasonable way, is seen to be an exercise by the State of its power over things within the State and not an attempt to make its legislation operate extra-territorially. As stated by the Supreme Court of Texas in a case decided in January, 1916, justifying an order of the State railroad commission which required interstate trains to wait 30 minutes at a point for connections—

"The order is very plainly not directed against interstate commerce. It is not an attempt to regulate commerce; it has to do merely with the manner of operation of trains. It has no further object than to bring about dispatch and certainty of operation as essentials of efficient service to the public. And it seeks to do no more than require that kind of operation merely within the limits of the State. The effect of its observance upon commerce, whether domestic or interstate, is purely incidental, since as a consequence of its observance commerce will be affected as the result of only the ordinary operation of trains upon their schedule time. It is no more of a regulation of commerce, and in particular it is no more of a burden upon or interference with commerce in its effect than familiar enactments requiring competency of train operatives as a means of affording safety to passengers and employees."

A number of decisions turn merely upon the construction of State law. Take, for example, the case of *Davis v. Commonwealth of Virginia* (236 U. S., 697, 1915). The headnote reads as follows:

"The business of taking in one State orders for portraits made in another State is interstate commerce, and if the original order contemplates an option on the part of the purchaser to have a frame also sent from the other States, the business is one affair and exempt from imposition of license fee by the State in which the sale is made."

The court below "thought the purchase of the frames was to be regarded as a separate transaction occurring wholly in Virginia. If the Supreme Court had taken the same view of the facts, doubtless it would have sustained the imposition of the license fee, and therefore all that it was necessary to decide was that the practice in question did not fall within the meaning of the statute or ordinance."

In *Sligh v. Kirkwood* (237 U. S., 52), a statute of Florida was sustained which undertook to make it unlawful for anyone to "sell, offer for sale, ship, or deliver for shipment any citrus fruits which were immature or otherwise unfit for consumption." And this in spite of the Federal food and drugs act. Now it is difficult to think of a statute affecting commerce more "directly" than this statute, but it was sustained merely because the action of the State was not regarded as incompatible with the national requirements.

In the case of *Wilmington Transportation Co. v. California Railroad Commission* (236 U. S., 151, 1915) the Supreme Court even held that the State might in the absence of any action by Congress prevent through proper orders of its railroad commission exorbitant charges for transportation having both origin and termination within the State though part of such transportation was over the high seas. Yet it would be a mistake to cite this case as authority for the proposition that the transportation upon the high seas was not foreign commerce and that the State regulation was not a "direct" burden upon that commerce.

The concluding and very searching remarks of Mr. Justice McKenna in the case of *Hall v. Geiger-Jones Co.* (242 U. S., 539, 558), decided last January and dealing with the blue-sky laws, make it apparent that many opinions concerning direct and indirect restraints and goods in the original package must ere long be revised in the light of more enlightened views as to what commerce among the States really means. In that case it was contended that the law under review was a burden on interstate commerce and contravened the commerce clause of the Constitution. He said:

"We might, indeed, ask, When do the designated securities cease migration in interstate commerce and settle to the jurisdiction of the State? Material things, chosen in possession, pass out of interstate commerce when they emerge from the original package. Do choses in action have a longer immunity? It is to be remembered that though they may differ in manner of transfer, they are in the same form in the hands of the purchaser as they are in the hands of the seller, and in the hands of both as they are brought into the State. We ask again, Do they never pass out of interstate commerce? Have they always the freedom of the State?"

"Is there no point of time at which the State can expose the evil that they may mask? Is anything more necessary for the supremacy of the national power than that they be kept free when in actual transportation, subjected to the jurisdiction of the State only when they are attempted to be sold to the individual purchaser? The question are pertinent, the answer to them one way or the other, of consequence; but we may pass them, for regarding the securities as still in interstate commerce after their transportation to the State is ended and they have reached the hands of dealers in them, their interstate character is only incidentally affected by the statute."

But the greatest of all confusions results from a lack of appreciation of the nature of commerce itself.

**2. WHAT "COMMERCE AMONG THE STATES" MEANS.**

It is a significant fact that the early opinions of the Supreme Court speak of "commerce among the States," whereas in these later days that expression is seldom used, but instead we find the phrases "interstate commerce," "interstate-commerce business," "the business which constitutes such commerce," and the like. The reason is to be found in confused notions as to the nature of commerce.

Commerce among the States means business intercourse among the States. As stated by Chief Justice Marshall in *Gibbons v. Ogden*:

"Commerce, undoubtedly, is traffic, but it is something more—it is intercourse. It describes the commercial intercourse between nations



and parts of nations in all its branches and is regulated by prescribing rules for carrying on that intercourse."

The statement of Mr. Justice Johnson in the same case is to the same effect, but has a more modern ring:

"Commerce," he said, "in its simplest signification, means an exchange of goods, but in the advancement of society labor, transportation, intelligence, cars, and various mediums of exchange become commodities, and enter into commerce; the subject, the vehicle, the agent, and their various operations become the objects of commercial regulation. Shipbuilding, the carrying trade, and propagation of seamen are such vital agents of commercial prosperity that the Nation which could not legislate over these subjects would not possess power to regulate commerce."

In other words, commerce is commercial intercourse—business in short—which may involve an infinite number of factors and relations of the greatest intricacy; the power to regulate commerce is a wholly different and much more inclusive thing than the power to legislate as to particular items of commerce. In the case of *United States v. United Shoe Machinery Co.* (234 Fed., 127, June, 1916) the court showed evident confusion on this subject in dealing with the argument that a lease is no more commerce than insurance or manufacturing. The contention was finally disposed of as follows:

"It is sufficient to say that as new methods of transacting business are devised, if they are found to be in effect methods of carrying on commerce in any business, and the means for commercial transactions between the owner of the article, on the one hand, and the person who wants to deal in it or use it in carrying on his business, on the other hand, whether it be manufacturing, selling, trading, leasing, transportation, communication, or information, and it is sent or transported from one State to another, it is interstate commerce, and therefore subject to be regulated by Congress under the commerce clause of the Constitution."

The Sherman Antitrust Act asserts the power of regulation in the broadest way, and its theory is in marked contrast to that of the statutes which have been enumerated. It deals with restraints of commerce among the States in the widest conception of that commerce. It is not limited to transportation or to transit across States' lines. It does not say "every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade between persons of different States, which restrains trade or commerce among the several States," but does say "every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States or with foreign nations is hereby declared to be illegal." So long as attention is centered upon the subject matter or instrumentalities of commerce instead of business intercourse among the States of national concern no real progress can be made.

### 3. EVIL RESULTS OF CONFUSION AS TO THE COMMERCE POWER.

The serious consequences which result or may result from a false conception of the commerce power are in no way better illustrated than by the injustice, if not absurdity, of the practical working of many of the acts of Congress. Take, for example, the first *Employers' Liability Case* (207 U. S., 463). The statute which was held unconstitutional in that case, as above noted, was directed to "every common carrier engaged in trade or commerce . . . between the several States" and in favor of "any of its employees." Mr. Justice Moody, in his dissenting opinion, urged these enlightened views:

"It is settled beyond the necessity of citing cases that the transportation of persons and property is commerce. In other words, that the business of carriers is commerce. Where, therefore, the business is foreign or interstate Congress, it has frequently been decided, has the paramount, if not the sole, power to legislate for its direct control. An obstruction of such commerce by unlawful violence may be made punishable under the laws of the United States, suppressed by the armies of the United States, or, as the instance of the United States, enjoined in its courts. In *re Debs*, *ubi supra*. It is difficult to conceive how legislation may effectively control the business if it can not regulate the conduct of those engaged in the business, while engaged in the business, in every act which is performed in the conduct of the business. The business of transportation is not an abstraction. It is the labor of men employed with the aid of instrumentalities, animal and mechanical, in carrying men and things from place to place. In every form of transportation, from the simplest to the most complex, whether the man carries the burden on his back, or drives an animal which carries it, or a locomotive which draws a car which carries it, the one and only constant factor is the labor of mankind. I am quite unable to understand the contention made at the bar that the power of Congress is to regulate commerce among the States and not to regulate persons engaged in commerce among the States, for in the case of transportation at least the labor of those engaged in it is commerce itself. How poor and meager the power would be if, whenever it was exercised, the legislator must pause to consider whether the action proposed regulated commerce or merely regulated the conduct of persons engaged in commerce. The contention derives some plausibility from its vagueness. Of course the power to regulate commerce does not authorize Congress to control the general conduct of persons engaged therein, but, unless it is an idle and useless power, it authorizes Congress to control the conduct of persons engaged in commerce in respect to everything which directly concerns commerce, for that is commerce itself."

But the majority of the court record their views as follows:

"The act then being addressed to all common carriers engaged in interstate commerce, and imposing a liability upon them in favor of any of their employees, without qualification or restriction as to the business in which the carriers or their employees may be engaged at the time of the injury, of necessity includes subjects wholly outside of the power of Congress to regulate commerce. Without stopping to consider the numerous instances where, although a common carrier is engaged in interstate commerce, such carrier may in the nature of things also transact business not interstate commerce, although such local business may indirectly be related to interstate commerce, a few illustrations showing the operation of the statute as to matters wholly independent of interstate commerce will serve to make clear the extent of the power which is exerted by the statute. Take a railroad engaged in interstate commerce, having a purely local branch operated wholly within a State. Take, again, the same road having shops for repairs, and it may be for construction work, as well as a large accounting and clerical force, and having, it may be, storage elevators and warehouses, not to suggest besides the possibility of its being engaged in other independent enterprises. Take a telegraph company engaged in the transmission of interstate and local messages. Take an express company engaged in local as well as interstate business. Take a trolley line moving wholly within a State as to a large part of its business, and yet as to the remainder crossing the State line."

In consequence of this decision the act was amended and reenacted in the terms set forth above, with the result that we now have such decisions as the following:

*New York Central R. R. v. Carr* (238 U. S., 260, 1915). A brakeman on an intrastate car in a train consisting of both intrastate and interstate cars who is engaged in cutting out the intrastate car so that the train may proceed on its interstate business, while doing so, engaged and employed in "interstate commerce." Page 263. "Each case must be decided in the light of the particular facts with a view of determining whether at the time of the injury the employee is engaged in interstate business or in an act which is so directly and immediately connected with such business as substantially to form a part or a necessary incident thereof."

*Waters v. Guile* (234 Fed., 532, 1916). A brakeman on a train containing cars loaded with interstate freight is engaged in "interstate commerce," though the train runs only between intrastate points.

*Grand Trunk Ry. Co. of Canada v. Knapp* (233 Fed., 950, 1916). A carpenter riding on a train which carried equipment for repair of a bridge used by the railroad company in "interstate commerce" is where the repairs were to be made by him engaged in "interstate commerce."

*Louisville & Nashville R. R. Co. v. Parker* (242 U. S., 13, 1916). A fireman upon a switching engine moving upon a switch track was engaged at the moment of striking a caboose on the main track in transferring an empty car from one switch track to another. This car was not moving in "interstate commerce," but the court held that if the switching movement was simply for the purpose of switching and moving an interstate car "the purpose would control and the business would be interstate."

*C. B. & Q. R. R. Co. v. Harrington* (241 U. S., 177). An employee of the railroad engaged in removing coal from storage tracks to coal chutes is not engaged in "interstate commerce" even if the coal had previously been brought from another State and was to be used by locomotives in interstate hauls.

*Raymond v. C. M. & St. P. Ry. Co.* (233 Fed., 239, 1916). A laborer in a tunnel which when completed was intended to be used by a railroad company to shorten its line over which it transported intrastate and "interstate commerce" is not engaged in interstate commerce.

May it not well be asked in view of these decisions whether the Supreme Court acted wisely in holding the first act unconstitutional? Was not the first act a much better and more enlightened statute? Why, it may be asked, was it not within the constitutional power of Congress under the commerce clause to deal with the transportation system of the country and all its instrumentalities and employees upon the theory that it had become a matter of national concern, and that the things which are interstate and the things which are intrastate had become so intermingled that in its judgment it was impossible to separate them?

In dealing with the safety appliance act, *Texas & Pacific Railway Co. v. Rigsby*, 241 U. S. 23 (1916), where an employee even though he was engaged at the time in intrastate and not interstate commerce was held to have a right of action, the Supreme Court said:

"While it may be conceded, for the purpose of the argument, that the mere question of compensation to persons injured in intrastate commerce is of no concern to Congress, it must be held that the liability of interstate carriers to pay such compensations because of their disregard of regulations established primarily for safeguarding commerce between the States, is a matter within the control of Congress; for unless persons injured in intrastate commerce are to be excluded from the benefit of a remedial action that is provided for persons similarly injured in interstate commerce—a discrimination certainly not required by anything in the Constitution—remedial actions in behalf of intrastate employees and travelers must either be governed by the acts of Congress or else be left subject to regulations by the several States, with probable differences in the law material to its effect as regulatory of the conduct of the carrier. We are therefore brought to the conclusion that the right or private action by an employee injured while engaged in duties unconnected with interstate commerce, but injured through a defect in a safety appliance required by the act of Congress to be made secure, has so intimate a relation to the operation of the act as a regulation of commerce between the States that it is within the constitutional grant of authority over that subject."

It is hard to reconcile this statement with other language of the Supreme Court and it certainly discloses a more enlightened view of the power of Congress to regulate commerce among the States as applied to transportation.

### (4) REAL SCOPE OF THE COMMERCE CLAUSE.

Commerce is a much broader term than transportation, which is only one of the forms of commerce or instruments of commerce. The loose identification of commerce with transportation is probably due to the fact that until recent times the important and "big" business of the country was largely that of railroading.

The term is so broad that it is almost impossible to place limits to the exercise of control by Congress.

When the matter involved relates to commerce and is of national concern, the power of Congress is plenary. In the case of *The Daniel Ball* (10 Wall., 557, 1870), where the power of Congress was asserted over a vessel plying only between two points within a State, but over what the court regarded as part of a highway of commerce among the States, it was argued that if the position asserted was sustained there would be no such thing as a domestic trade of a State; that Congress might take the entire control of the commerce of the country and extend its regulations to the railroads within a State on which grain or fruit was transported to a distant market. The court replied:

"We answer that the present case relates to transportation on the navigable waters of the United States, and we are not called upon to express an opinion upon the power of Congress over interstate commerce when carried on by land transportation. And we answer further, that we are unable to draw any clear and distinct line between the authority of Congress to regulate an agency employed in commerce between the States, when that agency extends through two or more States, and when it is confined in its action entirely within the limits of a single State. If its authority does not extend to an agency in such commerce, when that agency is confined within the limits of a State, its entire authority over interstate commerce may be defeated. Several agencies combining, each taking up the commodity transported at the boundary line at the one end of a State, and leaving it at the boundary line at the other end, the Federal jurisdiction would be entirely ousted, and the constitutional provision would become a dead letter."

To the same effect is the recent case *Seven Cases v. United States* (239 U. S., 510, 514, 1916), where the court said:

"So far as it is objected that this measure, though relating to articles transported in interstate commerce, is an encroachment upon the re-



served powers of the States, the objection is not to be distinguished in substance from that which was overruled in sustaining the white slave act (c. 395, June 25, 1910, 36 Stat., 825). *Hoke v. United States* (227 U. S., 308). There, after stating that 'if the facility of interstate transportation can be denied in the case of lotteries, obscene literature, diseased cattle and persons, and impure food and drugs, the like facility could be taken away from 'the systematic enticement of and the enslavement in prostitution and debauchery of women,' the court concluded with the reassertion of the simple principle that Congress is not to be denied the exercise of its constitutional authority over interstate commerce, and its power to adopt not only means necessary but convenient to its exercise, because these means may have the quality of police regulations.'

Now, what concerns the United States as a whole is a matter for the determination of Congress. "What makes for the general welfare is necessarily, in the first instance, a matter of legislative judgment and a judicial review of such judgment is limited. 'The scope of judicial inquiry in deciding the question of power is not to be confused with the scope of legislative consideration in dealing with a matter of policy.'" (*German Alliance Ins. Co. v. Kansas*, 233 U. S., 389.) In the *Adamson* case the attention of the court was, of course, directed to interstate transportation. But the power to regulate commerce among the States is evidently not confined to transportation (as the legislation of Congress itself shows) and extends to and may affect commodities.

#### E. EXTENT TO WHICH COMMODITY PRICES ARE SUBJECT TO CONTROL UNDER THE COMMERCE CLAUSE.

In theory it is impossible to set any limit to the power of price control by the Nation if the need exists, but to demonstrate this by actual decisions would be difficult, and no practical necessity for making the attempt seems to exist. This memorandum is confined to commodities which are recognized articles of commerce among the States. As to these, it has been held—

(a) That their movements can not be restrained. The *Danbury Hatters' and the Packers' cases* are authority for that proposition. In the case of *Hood Rubber Co. v. United States Rubber Co.* (229 Fed., 583), decided in this district in January of last year, the plaintiff was held entitled to relief under the Sherman Act, although it was not a dealer in lasts, and only desired to buy for its own use, and all purchases would have been intrastate transactions.

(b) A State can not prohibit them from coming in. (*Heyman v. Hays*, 236 U. S., 178, 183.)

In *American Express Co. v. Iowa* (196 U. S., 133, 143), referring to previous rulings concerning the operation of the commerce clause, it was said 'those cases rested upon the broad principle of the freedom of commerce between the States and of the right of a citizen of one State to freely contract to receive merchandise from another State and of the equal right of a citizen of a State to contract to send merchandise into other States'; and again, in *West v. Kansas Natural Gas Co.* (221 U. S., 229), where the law of a State prohibiting the piping out from the State of natural gas was held to be repugnant to the commerce clause, it was observed (p. 260): 'At this late day it is not necessary to cite cases to show that the right to engage in interstate commerce is not the gift of a State and that it can not be regulated or restrained by a State or that a State can not exclude from its limits a corporation engaged in such commerce.'

To the same effect, see *Kirkmeyer v. Kansas* (236 U. S., 568). (c) A State can not prohibit them from going out. *West (Okla.) v. Kansas Natural Gas Co.* (221 U. S., 229, 255, 1911). *McKenna, J.:*

"Gas, when reduced to possession, is a commodity; it belongs to the owner of the land, and, when reduced to possession, is his individual property subject to sale by him, and may be a subject of intrastate commerce and interstate commerce. The statute of Oklahoma recognizes it to be a subject of intrastate commerce, but seeks to prohibit it from being the subject of interstate commerce, and this is the purpose of its conservation. In other words, the purpose of its conservation is in a sense commercial—the business welfare of the State, as coal might be, or timber. Both of those products might be limited in amount, and the same consideration of the public welfare which would confine gas to the use of the inhabitants of a State would confine them to the inhabitants of the State. If the States have such power a singular situation might result. Pennsylvania might keep its coal, the Northwest its timber, the mining States their minerals. And why may not the products of the field be brought within the principle? Thus enlarged, or without that enlargement, its influence on interstate commerce need not be pointed out. To what consequences does such power tend? If one State has it, all States have it; embargo may be retaliated by embargo, and commerce will be halted at State lines. And yet we have said that 'in matters of foreign and interstate commerce there are no State lines.' In such commerce, instead of the States, a new power appears and a new welfare, a welfare which transcends that of any State. But rather let us say it is constituted of the welfare of all the States and that of each State is made the greater by a division of its resources, natural and created, with every other State, and those of every other State with it. This was the purpose, as it is the result, of the interstate-commerce clause of the Constitution of the United States. If there is to be a turning backward it must be done by the authority of another instrumentality than a court."

*Penn. R. R. Co. v. Sonman Shaft Co.* (242 U. S., 120, 1916).

It was held to be a duty of a carrier in "interstate commerce" to furnish cars for coal to be loaded at the mine and forwarded promptly for delivery to purchasers in other States, notwithstanding the sale of the coal is f. o. b. at the mine.

*Van Deranter, J.:* "The coal company sold its coal f. o. b. cars at the mine, and when the cars were loaded the coal was promptly forwarded to the purchasers at points within and without the State, largely to points in other States. This was well understood by both companies—by the coal company when it asked for cars and by the railroad company when it supplied them. Cars were not requested or furnished merely to be used in holding or storing coal, but always to be employed in its immediate transportation. While furnishing some cars for this service, the railroad company failed to furnish as many as the coal company needed and requested. It is plain that supplying the requisite cars was an essential step in the intended movement of the coal and a part of the commerce—whether interstate or intrastate—to which that movement belonged. It was expressly so held in *Pennsylvania R. R. Co. v. Clark Coal Co.* (238 U. S., 456, 465-468). We there said of the sale and delivery of coal f. o. b. at the mine for transportation to purchasers in other States: 'The movement thus initiated is an interstate movement and the facilities required are facilities of interstate commerce.' Here the State court ruled that, as the coal was sold f. o. b. at the mine, the commerce involved was intrastate, even though the coal was going to purchasers outside the State. This

was error, but it plainly was without prejudice unless it led the State court to exercise a jurisdiction which it did not possess."

*Rosenberger v. Pacific Express Co.* (241 U. S., 48, 1916).

A statute of Texas imposing special licenses on express companies maintaining offices for C. O. D. shipments of intoxicating liquors was held unconstitutional as a burden on and interference with interstate commerce and not to justify an express company accepting such a shipment in not delivering the same. It had been argued that the act imposing the burden on the contract to collect on delivery did not reach over into the domain of shipment, was independent of the same, and therefore was not repugnant to the commerce clause. To this the Chief Justice answered:

"The reasoning referred to rests upon a misconception of the elementary notion of interstate commerce as inculcated and upheld from the beginning and as enforced in a line of decisions of this court beginning with the very birth of the Constitution and which in its fundamental aspect has undergone no change or suffered no deviation; that is, that the interstate commerce, which is subject to the control of Congress, embraces the widest freedom, including as a matter of course the right to make all contracts having a proper relation to the subject. Indeed, it must be at once apparent that if the reasoning we are considering were to be entertained the plenary power of Congress to legislate as to interstate commerce would be at an end and the limitations preventing State legislation directly burdening interstate commerce would no longer obtain and the freedom of interstate commerce which has been enjoyed by all the States would disappear."

In the light of these decisions, there can no longer be any doubt as to the power of Congress under the commerce clause to legislate as to the prices of commodities which are the subject matter of commerce among the States; in other words, as to its power to regulate such commerce. The term "police power" means no more than the power to legislate. The power to regulate commerce among the States is in reality the power to legislate with respect to that commerce—in short, to exercise a police power over it. If price regulation is not a regulation of commerce, it would be difficult to describe it.

In the case of *Landon v. Public Utilities Commission of Kansas* (234 Fed., 152, 164) the court, speaking by Judge Sanborn, were unanimously of the opinion—

"(1) That the gas purchased or procured in Oklahoma, transported from Oklahoma, and sold or delivered by the receiver or by the gas company to parties in Kansas or Missouri, is an article of interstate commerce, as is the gas procured in Kansas and sold or delivered by them, or either of them, to parties in Missouri; (2) that this gas, which is probably at least 95 per cent of all the gas the receiver or the company handles, does not lose its interstate character by the fact that a small portion, probably not exceeding 4 per cent, of the gas they handle is procured and delivered in Kansas, is an article of intrastate commerce, and is inseparably mingled in the pipes with the interstate gas; (3) that the purchase or procuring of interstate gas in Oklahoma, its transportation, sale, and delivery by the receiver or the gas company to parties in Kansas and Missouri is interstate commerce, and the receiver and the company are engaged in interstate commerce; (4) that the enforcement by a State through its officers of any legislative act preventing interstate commerce in this article of interstate commerce, either by a direct prohibition of such commerce in this article by State law, or by an inhibition of a sale of the article in the State at any price whatever, or at any price above a price so low that the laws of trade make it impossible to purchase or procure it in another State, and to sell and deliver it in the prohibiting State at that price with profit, substantially burdens and unduly interferes with interstate commerce in violation of the commerce clause of the Constitution of the United States."

That Congress not only has the power to control the price of commodities entering into commerce among the States, but that the time is fast approaching when Congress must exercise this power, is emphasized by the case of *Manufacturers' Light & Heat Co. v. Ott* (215 Fed., 940, 1914). This was a bill to enjoin putting into effect an order of the public-service commission of West Virginia fixing the rates to be charged consumers by a Pennsylvania corporation and certain West Virginia corporations, all of whose stock was held by the Pennsylvania company. The court said (p. 944):

"The regulation of companies engaged in the transportation of gas is expressly excluded from the scope of the interstate-commerce statute. Neither the West Virginia statute nor the orders of the commission purport to interfere in any manner with the transportation of natural gas from West Virginia to other States. Nothing is attempted except regulation of prices of natural gas to the citizens of West Virginia to be charged by corporations operating in West Virginia under State authority. The action of these corporations in uniting their operations with those of like corporations of Ohio and Pennsylvania in pumping gas into a common system of pipes, supplying customers in the three States, may produce the result that some gas from Ohio and Pennsylvania comes into West Virginia, although it is undisputed that a much larger quantity of gas goes out of West Virginia into Ohio and Pennsylvania than can possibly come in from those States. But this overflow of gas from one State to another, according to the pressure from the main gas pipes as common reservoirs, can not affect the power of the State of West Virginia to make reasonable regulations as to rates for gas furnished to its own citizens. *West v. Kansas Gas Co.* (221 U. S., 229) relied on by complainant, has no application, for in the present case no effort is made to prevent the transportation and sale of natural gas from West Virginia into other States. It is not necessary to decide whether the Congress may not regulate charges for natural gas under such conditions, and under the well-known rule the court should not anticipate that question. In the present state of the law, the Congress having taken no action, it was fairly within the power of the State legislature to provide for the protection of its own citizens against excessive charges. If it be assumed that interstate commerce will be incidentally affected, yet the regulation of the local charges of a natural gas company as a public-service corporation is within the police power of the State until the Congress sees fit to act. The recent and full review of the subject by the Supreme Court in the *Minnesota rate cases*, *Simpson v. Shepard* (230 U. S., 352), leaves no room for discussion."

One need only imagine a time when the several State legislatures as to the prices of commodities which are the subject of commerce among the States and upon the free circulation of which the general welfare depends, to vividly realize the existence in Congress of the power of price regulation and the necessity of its exercise. If Congress would have that power at that time and under those circumstances, it has the power now, because that depends upon the language of the Constitution and not upon the circumstances. Congress in fact has the right to legislate generally as to business of national concern, as to stock



and produce exchanges, and the coal and oil industries, for example, on the principle of the Munn, Budd, Stoesser, and German Alliance Insurance Co. cases.

National legislation is obviously destined to take the same course that State legislation has already taken, and so far as business of national importance is concerned will without doubt eventually equal and even surpass it. This is not because of any change in the law, but is to be explained by changing conditions, the increasing complexity of our national life, which is daily adding to the number of matters of national concern. Instead of being a thing to be feared this is a consummation devoutly to be wished. It by no means involves a centralization of power, but does imply a unification of business law, a law which shall not interfere with the domestic concerns of the State, and shall be administered alike in the local tribunals throughout the breadth of the land.

BOSTON, MASS., May 18, 1917.

EDWARD A. ADLER.

AMENDMENT OF INTERSTATE-COMMERCE ACT.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 2356) to amend the act to regulate commerce, as amended, and for other purposes.

Mr. NEWLANDS. Mr. President, I understand that there is no disposition to prolong the debate, and I ask unanimous consent that the Senate proceed at or before 4 o'clock this afternoon to vote on the bill and pending amendments, and that meanwhile no Senator may speak more than once nor longer than 15 minutes upon the bill or more than once nor longer than 15 minutes upon any amendment offered thereto.

Mr. SMITH of Michigan. Let me ask the Senator if it is very essential that we should vote to-day. Could not the unanimous-consent agreement be so framed that we might vote on Monday morning immediately after convening the Senate?

Mr. NEWLANDS. The Senator understands that we ought to proceed with all possible expedition to the consideration of another bill now pressing upon the attention of the Senate.

Mr. SMITH of Michigan. Senators have engagements which are imperative during the afternoon, matters have been put off and hearings are being held. I think Monday morning would be much more preferable.

Mr. CUMMINS. Mr. President, I am as anxious as the Senator from Nevada can be to see the bill passed. I believe that all Senators who have been engaged in the debate are willing to accept the amendment proposed by the Senator from Minnesota [Mr. NELSON].

Mr. HARDWICK. With an amendment. I understand there is to be an amendment offered to it.

Mr. CUMMINS. I was about to suggest that I think we could conclude the consideration of the bill within an hour.

Mr. SMITH of Georgia. There has been no agreement about any additional amendment, but I will read one which I may offer and which I think will be acceptable. It does not in any way affect the amendment proposed by the Senator from Minnesota. It adds an additional provision for handling congested transportation. This is what I expect to offer:

In addition to the authority hereinbefore conferred upon the President and subject to such priority of shipments as the President may direct by reason of said authority, the Interstate Commerce Commission is hereby authorized whenever in its judgment such action is necessary as an incident to the congested condition of transportation, after such inquiry as it may deem proper, to direct such preferences or priorities in kinds of traffic or shipment or other service to be observed by common carriers under such arrangements, rules, and regulations as the commission may prescribe; and it shall be the duty of the commission where practicable to give priority to shipments of food and fuel. The commission is further authorized to create a division composed of not less than three of its members, and when so created the said division shall have and may exercise the authority herein conferred upon the commission.

I do not make it a condition that this amendment shall be accepted, and I am willing to accept and to vote for the amendment of the Senator from Minnesota.

Mr. CUMMINS. My first impression is that I would not favor the proposed amendment of the Senator from Georgia, because it bears the implication at any rate that the successful prosecution of the war might not require priority or preferences in food or fuel. I think the prosecution of the war may require preferences in both food and fuel. Therefore there would be an inconsistency between the amendment proposed by the Senator from Minnesota and the one proposed by the Senator from Georgia.

Mr. SMITH of Georgia. I will strike out that clause if the Senator desires. I do not propose in any way to restrict control by the President of food and fuel for war purposes. Suppose there is a shortage of coal here in Washington entirely disconnected with the war and private citizens not in the war need coal, that would not be connected with the war or be covered by the Nelson amendment.

Mr. CUMMINS. Does the Senator from Georgia propose in his amendment a continuing statute not limited to the war?

Mr. SMITH of Georgia. During the war only. The whole provision is limited to the war.

Mr. CUMMINS. That very clearly indicates that we intend to take care of the situation created by war. However, be that as it may, I will be very glad to see the amendment of the Senator from Minnesota adopted.

Mr. SMITH of Georgia. I do not seek an agreement to vote for anything else as a condition upon which the Nelson amendment will be supported. I am entirely satisfied with the amendment of the Senator from Minnesota, and I hope it will be adopted. It limits the direction of priorities in transportation to commodities essential to the prosecution of the war. It does not permit direction of priorities in transportation of traffic not needed for war purposes. It does not go to the extent even in allowing priorities which I have been willing to concede.

Mr. NELSON. Mr. President, I have not kept track of the proceedings. Is the bill up now?

Mr. NEWLANDS. The bill is up, and I am about to attempt to secure a unanimous-consent agreement for a vote at 4 o'clock upon the bill and amendments, meanwhile limiting the debate to 15 minutes on the part of each Senator.

Mr. NELSON. Probably if this amendment is accepted, it will not delay the proceeding. If the bill is up, I will offer the amendment.

Mr. REED. There is an amendment pending.

Mr. BRANDEGEE. The Senator from Nevada is asking unanimous consent now.

Mr. NEWLANDS. All right, let the Senator from Minnesota present his amendment now.

Mr. BRANDEGEE. The Senator does not want to secure unanimous consent before—

The VICE PRESIDENT. One moment. The Senator from Nevada has presented a unanimous-consent agreement. Adopting the usual practice before ordering the roll to be called, the Chair will ask whether there is any objection to the agreement upon the part of any Senator present.

Mr. BRANDEGEE. I wish to cooperate with the Senator in getting an agreement, but I desire to ask if he has his proposed agreement written out so that it may be read by the Secretary?

Mr. NEWLANDS. I will ask the Secretary to prepare the order pursuant to the suggestion that I have made.

The SECRETARY. It is proposed by unanimous consent that, at not later than 4 o'clock p. m. to-day, the Senate will proceed to vote, without further debate, on the bill (S. 2356) to amend the act to regulate commerce, as amended, and for other purposes, through the different parliamentary stages to its final disposition—

Mr. SMITH of Georgia. I do not think it best to fix a time to vote on the bill. So far as I am concerned, I am perfectly willing, without any roll call, to limit debate now to 10 minutes on any amendment and on the bill. I think we shall finish the bill by 3 o'clock, but I should like to have Senators here voting on the amendment and hearing what takes place.

Mr. NEWLANDS. I ask unanimous consent that the suggestion of the Senator from Georgia be adopted.

Mr. REED. Mr. President—

Mr. SMITH of Michigan. What is the request, Mr. President?

The VICE PRESIDENT. To limit the debate to 10 minutes.

Mr. NEWLANDS. That from now on debate on the bill and amendments be limited to 10 minutes on the part of each Senator.

Mr. SMITH of Michigan. Is that the understanding?

Mr. NEWLANDS. That is the understanding.

Mr. BRANDEGEE. But for the fact that many times when such agreements have been made we have been almost trapped by all the time being taken up upon one or two amendments I would not object to the suggestion of the Senator from Georgia, if it were to be a part of the agreement that it shall not be in order to move to table an amendment until the Senator who offers it has had an opportunity to explain it.

Mr. SMITH of Georgia. I think that ought to be considered a part of the agreement, and I should be glad to have it embodied in the agreement.

Mr. BRANDEGEE. Under the language proposed all we are agreeing to is that no Senator shall speak more than 10 minutes upon the bill or upon any amendment proposed, but that in itself—

Mr. SMITH of Georgia. And that no motion to table an amendment shall be made.

Mr. BRANDEGEE. That will fix it to-day, but the agreement would leave it so—

Mr. NEWLANDS. I have no objection to that, Mr. President. Mr. REED. Mr. President, I hope the Senator from Nevada will not insist upon even that agreement at this time. If we



could dispose of the amendment proposed by the Senator from Minnesota [Mr. NELSON], which I regard as a fundamental proposition, I would have no objection to making an agreement to limit the debate to 10 minutes or to 15 minutes by each Senator; but I should like to have that proposition first disposed of, because, as I have said, I think it is fundamental.

Mr. SMITH of Georgia. What is that?

Mr. REED. Answering the Senator from Georgia, I desire to say that I should like to have the amendment of the Senator from Minnesota disposed of before we make any agreement with reference to limiting this debate, because the amendment is a fundamental proposition. If that is disposed of and is accepted as a part of this bill I shall be reasonably content with the bill. There will be one or two matters which I should like to offer, but I can submit them very briefly.

Mr. BRANDEGEE. Mr. President, if the Senator from Missouri will allow me to ask him a question, would the Senator not be satisfied if the unanimous-consent agreement should read that after the amendment to which the Senator from Missouri refers has been disposed of, then this unanimous-consent agreement shall be in operation?

Mr. REED. The unanimous-consent agreement can be called up as soon as the amendment to which I refer has been disposed of.

Mr. SMITH of Georgia. I should like to suggest, in addition, that amendments to be offered must be germane to the bill.

Mr. BRANDEGEE. I think that would raise a question that nobody can decide. I should like to have it so if there were any way of finally deciding the germaneness of amendments, but if that is agreed to we shall spend most of the time appealing to the Senate as to whether or not amendments are germane.

Mr. SMITH of Georgia. If the food-control bill should be offered as an amendment to this bill we would not wish to be bound by a 10-minute debate as to that.

Mr. BRANDEGEE. If the proposition of the Senator from Georgia as to the germaneness of amendments were agreed to, much time of the Senate would be taken up in discussing the question of their germaneness and in appeals from the decision of the Chair—

Mr. SMITH of Georgia. No.

Mr. BRANDEGEE. For Senators would not be content with the ruling of the Chair on the question of the germaneness of amendments.

Mr. SMITH of Georgia. We can not afford to make a 10-minute agreement as to speeches upon amendments at all if under our liberal rule of amendments some independent bill should be offered as an amendment. I believe we can go right on and finish this bill without any agreement in two hours.

Mr. REED. Let us try it.

Mr. SMITH of Georgia. Yes; let us try it.

Mr. NEWLANDS. Well, I shall not press the request for a unanimous-consent agreement.

The VICE PRESIDENT. The pending amendment is the amendment proposed by the Senator from Nevada [Mr. NEWLANDS].

Mr. REED. Mr. President, since we have had so much discussion about the amendment of the Senator from Minnesota [Mr. NELSON], I ask the Senator in charge of the bill if he will not withhold his amendment temporarily and let us dispose of what I call the Nelson amendment?

Mr. NEWLANDS. I have no objection to that, but the Senator from Minnesota has not yet offered the amendment in a formal way.

Mr. NELSON. I will offer my amendment if the Senator from Nevada will temporarily withdraw his amendment.

Mr. NEWLANDS. I will withdraw my amendment.

The VICE PRESIDENT. The Senator from Nevada withdraws his amendment; and the Senator from Minnesota presents an amendment, which will be stated by the Secretary.

Mr. NEWLANDS. Mr. President, I wish to state that I have had no conference with the members of the Committee on Interstate Commerce regarding the proposed amendment of the Senator from Minnesota, and I should like to have it presented and printed.

Mr. NELSON. It has been printed in the RECORD.

Mr. NEWLANDS. I desire to confer with members of the Interstate Commerce Committee in regard to the amendment.

Mr. REED. The amendment is printed in the RECORD.

Mr. NEWLANDS. I know that, but—

Mr. NELSON. If the bill is up for consideration, I offer the amendment which I send to the desk.

Mr. NEWLANDS. While the amendment appears in the RECORD, there does not appear what words in the original bill

are to be displaced and what lines of the pending bill shall remain upon the subject.

Mr. HARDWICK. Mr. President, may we not have the amendment which is proposed by the Senator from Minnesota stated at the desk?

Mr. NELSON. I repeat, if the bill is under consideration, I will offer the amendment. As I have said, it has already been printed in the RECORD.

The VICE PRESIDENT. The Senator from Minnesota is in order to offer the amendment.

Mr. NELSON. My amendment is to strike out all of lines 14, 15, 16, 17, 18, 19, 20, and 21, down to the end of the line, including the word "prescribe," and to insert what appears in the RECORD on page 3914.

The VICE PRESIDENT. The Secretary will state the amendment proposed by the Senator from Minnesota.

The SECRETARY. In section 2, page 2, line 14 of the original print, it is proposed to strike out down to and including the word "prescribe," on line 21, and in lieu of the words stricken out to insert:

That during the continuance of the war in which the United States is now engaged the President is authorized, if he finds it necessary for the successful prosecution of the war, to direct that such traffic or such shipments of commodities as may be essential to the prosecution of the war, shall have preference or priority in transportation by any common carrier by railroad or water, under such rules and regulations as he may prescribe.

Mr. THOMAS. Mr. President, my duties on the Committee on Finance have prevented my giving that attention to the arguments which have been directed to and against this bill which their importance and the importance of the bill demand. I have endeavored but imperfectly to inform myself of the progress of the discussion, however, by reading the CONGRESSIONAL RECORD during such few spare moments of my time as have been available for that purpose; and last night I read the bill for the first time since it has been before the Senate.

I have had some curiosity regarding its purpose because of the existing law on the subject, and I have tried to ascertain in what respects it differs from the act of August last, either as enlarging or as placing a limitation upon it. Under that statute the President has the power in time of war to take over and operate the railroads of the country or such of them as, in his judgment, may be necessary. It is very brief but very comprehensive.

The first section of this bill imposes penalties for the disregard of its requirements. The second seems to impose a limitation upon powers which the President already possesses. Whether it is wise to do so may be a debatable question; but, if the authority which we have given the President to take control of the railroads in times of war is one which he should have the right to exercise, I do not believe that we should impose any restrictions upon its exercise. If, on the contrary, it is not a power which he should possess, then the act now upon the statute books should be repealed.

In times of war, Mr. President, there must be concentration of power and authority. It is of the very essence of our military and naval departments that responsibility should be concentrated, and obedience to that responsibility made absolute. Any measure which tends to diffuse authority, to create different heads of divisions which may act independently of or even in subordination to a general one, should be avoided, except where absolutely necessary to the public welfare.

Mr. President, any violation of the law as it exists should be punished by the courts, and any penalty exacted for such violation should be inflicted upon the citizen only after conviction by due process of law. Therefore the first section of this bill, in my judgment, would be a desirable piece of legislation as a complement to the present law; but everything else should be stricken out of the bill unless it be the intention of Congress, as I have already stated, to place a limitation upon powers already granted.

Of course, every Senator within the sound of my voice recalls the military appropriation act for the fiscal year 1917, which contains a clause that I had the honor of presenting to the Committee on Military Affairs, and prompted by the then very acute relations between this country and Mexico.

Mr. LA FOLLETTE. Mr. President, I ask that better order may be preserved in the Chamber. It is next to impossible to follow the Senator.

The VICE PRESIDENT rapped with his gavel.

Mr. THOMAS. Mr. President, I am speaking with some difficulty, but I hesitate to be so rude as to object to conversations, which are audible all around me, and which, of course, must be extremely important or they would not be conducted on the floor of the Senate.



That clause reads as follows:

The President in time of war is empowered, through the Secretary of War, to take possession and assume control of any system or systems of transportation or any part thereof, and to utilize the same to the exclusion, as far as may be necessary, of all other traffic thereon for the transfer or transportation of troops, war material, and equipment, or for such other purposes connected with the emergency as may be needful or desirable.

Now, Mr. President, my purpose in framing that amendment was to make it as brief and, at the same time, as comprehensive as possible, to give the President the supreme power of drafting into the service of the country every mile of railway within our borders, if at any time during a period of war such action was necessary in his opinion and in the opinion of his advisers.

Mr. SMITH of Michigan. Does that cover water transportation also?

Mr. THOMAS. It was not designed to cover water transportation, although its terms are broad enough to include them. It is directed to land transportation, and was prompted, although I do not recall the facts distinctly, by the conditions on the Mexican border. The difficulties which the Government then encountered in its efforts rapidly to transport its troops to the border, which were the direct outcome of the conflict between Government business and the regular business of the railroads, prompted the thought from which this amendment proceeded. At that time soldiers en route to the front were being sidetracked while private—if I may use that expression in connection with a public carrier—while private transportation was given the right of way. The demands made by the ordinary passenger traffic upon these roads were at that time so great as to make the acquiring of cars of sufficient capacity for the conveyance of our troops extremely difficult. I saw passing through the city of Toledo on the 16th of last June, while waiting for a belated train, some half dozen or more troop trains composed of cars which doubtless had seen service in the War between the States, cars which were unfit for actual use, and in which the soldiers of the United States were crowded and compelled to occupy during the period of transit from their homes to the Mexican border. I heard many of their very just complaints, especially when they contrasted their own accommodations with the more luxurious trains that swept through that great center of population while they were waiting for orders to move. I thought then that of all the war powers which the Government should possess the control of transportation was perhaps the most important, and that such a power should be given with as few limitations as possible, so that the Government business would not only have the right of way but the Government officials should determine what other traffic should move during times of exigency, in what direction, and to what terminal points, since otherwise, there being divided authority—that of the Government upon the one hand and the railroad companies upon the other—both sorts of traffic would very naturally be injured by the collision and by absence of a common source of supreme authority.

Mr. CUMMINS. Mr. President—

Mr. THOMAS. Just a moment.

Hence this provision of the law, which in my judgment confers upon the President everything, and more than everything, sought to be conferred upon him by the pending bill. I now yield to the Senator from Iowa.

Mr. CUMMINS. May I say for those who had in charge the preparation of the bill now before the Senate that they had in mind the amendment offered by the Senator from Colorado to the military bill? It was not intended in any wise to impair or affect that legislation; and I should like to have the Senator's view with respect to the point at which the present bill conflicts in any way with the former bill. I do not think there is the least conflict. I agree that the President of the United States ought to have the power to take possession of and manage and operate the railroads if necessary for military purposes; but this is intended to give him another power in the event that he does not want to take possession of the railway systems themselves.

Mr. THOMAS. Mr. President, I heard the Senator yesterday state that he did not believe in a division of authority upon so important a subject as this, and in that statement I fully concurred. The bill contained a clause with regard to preferential or preferred shipments which I believe has been modified by the report of June 14. Am I correct in that?

Mr. CUMMINS. So far as the report of the committee is concerned, it gave to the President the right to direct priority or preference in any and all shipments that were necessary for the public security and the national defense. It did not divide the authority in any way. There has been an effort, since the bill came to the Senate, to divide the authority by trans-

ferring a portion of it to the Interstate Commerce Commission; but that is not in the bill as reported by the committee.

Mr. THOMAS. No; that is not in the bill, and perhaps I questioned the Senator inaccurately in the form in which I put it. That is one of the controverted propositions which is before the Senate in the shape of amendments which are offered.

Mr. CUMMINS. Well, in the shape of debate. No amendment of that sort has yet been offered, but there has been notice of amendments to be offered.

Mr. THOMAS. I am glad the Senator interrupted me to make that statement, and my necessary absence from the Senate Chamber, and my inability to keep up entirely with the proceedings of the Senate, must be my apology for not being entirely acquainted with what has occurred during the progress of the discussion.

However, coming to the Senator's statement, I may say that wherever the effect of this bill is to impose a limitation upon the powers of the President outlined in the act of 1917, I think it is objectionable. The power which the Senator says this bill seeks to confer upon the President is one which he has under the provisions of the existing law, upon the principle that the greater includes the less.

Mr. HARDWICK. Mr. President—

Mr. THOMAS. I yield to the Senator from Georgia.

Mr. HARDWICK. I wonder if the Senator thinks that the power in the Army appropriation act, which he drafted, includes the power to direct shipments utterly disconnected with the war?

Mr. THOMAS. I have not a particle of doubt but that it gives the President entire control of the traffic of the United States, of whatever character, whenever he acts under it and takes possession of these systems.

Mr. HARDWICK. Will the Senator read the language, though, as to the cases in which he is authorized to do it, and for what purposes?

Mr. THOMAS (reading)—

The President, in time of war—

And we certainly are in time of war now—

Mr. HARDWICK. Yes.

Mr. THOMAS (reading)—

is empowered, through the Secretary of War, to take possession and assume control of any system or systems of transportation, or any part thereof—

Which includes all or any portion of the railway system of the country—

and to utilize the same to the exclusion, as far as may be necessary, of all other traffic thereon, for the transfer or transportation of troops, war material, and equipment, or for such other purposes connected with the emergency as may be needful or desirable.

Can the power be broader?

Mr. HARDWICK. The Senator drafted that, and I admit that it is pretty broad; but it seems to me what the Senator had in mind was that the President should have that power if it were necessary to move the troops, their equipment or supplies, or anything reasonably connected with those objects, and for no other purpose. I do not know, of course. That is what I should think the language meant.

Mr. THOMAS. Of course, Mr. President, what I had in mind might be one thing, and the effect of the language used in the act might be somewhat different. It might be broader or it might be narrower.

Mr. HARDWICK. I think that is what the language means, too.

Mr. THOMAS. But I disagree with the Senator in his construction of the language. Who is to determine, under the exercise of a power like this, what shipments may be necessary, and what must give way to that necessity? Who is to determine what are the other purposes connected with the emergency out of which springs into exercise the power given by the Congress of the United States to the President under this provision? Certainly the authority which is empowered to exercise the power thus conferred, to wit, the President of the United States and his advisers.

Mr. HARDWICK. I wonder, though, if we have a right to assume that, in exercising the power, the President will take into full account the reasons and purposes for which it is given, and will undertake to exercise it only for those purposes.

Mr. THOMAS. Why, Mr. President, I have not a doubt of it. I do not think this power is going to be subject to abuse. I do not believe the present President, or any other President of the United States, would assume the responsibility of utilizing this vast authority to the wanton injury of a single individual, however humble,



Mr. HARDWICK. If that is true, then the President will be confined to the interpretation I suggested.

Mr. THOMAS. That would depend upon whether the President's interpretation and that of the Senator from Georgia should happen to agree.

Mr. HARDWICK. If the Senator assumes that he is only going to exercise this power for the purposes that Congress confers it for—

Mr. THOMAS. I assume that, but what are those powers? It depends upon what particular emergency calls forth the exercise of those details with regard to shipments. The war is the emergency under which the railroads are taken possession of; but let us assume, Mr. President, that coal was absolutely essential for our allies in France, or wheat, if you please, or medical supplies. I have no doubt that under this power the President could suspend traffic, interfere with the transportation of such materials, and get them to the seaboard as rapidly as possible. Suppose that there should be a food famine in the city of Chicago, or the exorbitant prices that now prevail there and elsewhere, which is another name for the same thing—because it makes no difference how much food there may be in a place; if the people are unable to comply with the requirements of those possessing it, it means starvation, although it may be starvation in the midst of plenty. Now, let us assume that the attitude of the people of Chicago should, because of that condition, become so threatening, should so menace the peace and security of that great community, as to require the instant relief of the situation by throwing trains loaded with Government supplies into Chicago at once. Does anyone doubt that in time of war the President should have the authority to suspend all other traffic, if necessary, for the purpose of relieving that tense situation? And if he did otherwise would he not be justly reprehensible? Could we not then justly charge him with a disregard of his duty, with the nonperformance of obligations in the anticipation of which Congress passed this act of 1917?

Mr. CUMMINS. Mr. President—

Mr. THOMAS. I yield to the Senator from Iowa.

Mr. CUMMINS. The reply of the Senator from Colorado to the interruption of the Senator from Georgia is absolutely unanswerable, and I do not rise to direct the attention of the Senator from Colorado to that phase of it. I think I failed to make myself understood in a former interruption, however. My suggestion is that the act approved August 29, 1916, requires for its efficiency the taking possession by the President of the railway instrumentality. I am in favor of that; but the President could not do what he is authorized to do by the act of last year unless he took possession of the railway itself and directed and controlled it. Our committee thought that he might find an instance in which it was not necessary to take possession of a railway, and still very necessary, for the very purposes so well stated by the Senator from Colorado, to direct the railway company still in possession of the property as to the order of shipments that were to be made upon it, so as to give to the United States and to the successful prosecution of the war the first right in a congested or confused system of transportation. I do not think there is any conflict between the two from that point of view.

Mr. THOMAS. I understood the Senator. He is always very clear in his statements. I did not further refer to his interruption, because I did understand the distinction which he drew so very clearly.

Mr. CUMMINS. I feared I had not made it clear.

Mr. FLETCHER. Mr. President, may I call the attention of the Senator to another phase of that matter?

Mr. THOMAS. I yield to the Senator from Florida.

Mr. FLETCHER. I was going to suggest another thought in that connection. The national-defense act provides for the taking over of systems of railways, or parts of systems.

Mr. THOMAS. Or all of them.

Mr. FLETCHER. But does it cover waterways? Does it cover also foreign commerce as well as interstate commerce? This provision is intended to reach not only transportation by railways but transportation by water carriers, and it refers not only to interstate commerce but to foreign commerce; so that it would seem to be broader in that respect than the provision in the national-defense act.

Mr. THOMAS. I shall take a very few more minutes of the time of the Senate in what I want to say, and I should have by now concluded but for the interruptions—which, however, are always welcome.

I think that in so far as this bill enlarges the powers of the President so as to include traffic by waterways, which may not be included in the act of 1916, it is unquestionably appropriate. I think that so far as foreign or domestic commerce is concerned, the powers of the President under the existing law are

ample to meet any and all exigencies they may present. I think that the first section of the law, which is designed to define offenses against the power hitherto granted, and to provide for their punishment through the processes of the courts, is very desirable if designed as a supplement to the statute of 1916, because every good citizen abhors punishment by military tribunals wherever it is possible to avoid them. They are always arbitrary, and therefore frequently unjust. The right to trial by jury in the courts of the country is too sacred a one, it has cost the Anglo-Saxon people too much blood and too much treasure, to be lightly disregarded or set aside at any time. Consequently, that provision seems to me to be desirable, coupled, of course, with the extension of the President's authority to which the Senator from Florida refers.

But, Mr. President, all efforts to diffuse the authority of the Executive, to make it dependent upon some board, however capable and experienced; upon some other individual, however great the confidence of the public in that individual, constitute, in my judgment, unwise legislation. The concentration of power in times of national peril is an absolute essential to national safety. A diffusion of power at such times will inevitably invite disaster. Hence, the suggestions which have been made regarding the danger of confiding to the President a power which must be exercised by some subordinate, while they may be well founded, are mild, in my judgment, in comparison to the probable dangers, aye, the disasters, which may ensue from a conflict of powers in a great moment fraught with crisis both to the Government and to the people.

I hope, therefore, that so far as that feature of the discussion is concerned, the Senate will reject its application to the bill in hand; and such portions of the bill as may be designed for that purpose should be eliminated.

Mr. NEWLANDS. Mr. President—

Mr. THOMAS. I yield to the Senator from Nevada.

Mr. NEWLANDS. I wish to state to the Senator that the Senator from Minnesota [Mr. NELSON] has offered a substitute for the first sentence of section 2 of the pending bill, with which the Senator is probably familiar.

Mr. THOMAS. I am not familiar with it. I heard it read just before I took the floor.

Mr. NEWLANDS. I will state what it is:

That during the continuance of the war in which the United States is now engaged, the President is authorized, if he finds it necessary for the successful prosecution of the war, to direct that such traffic or such shipments of commodities as may be essential to the prosecution of the war shall have preference or priority in transportation by any common carrier by railroad or water, under such rules and regulations as he may prescribe.

Mr. THOMAS. Let me ask the Senator if that is designed as a substitute for all of section 2?

Mr. NEWLANDS. Oh, no; only for the first sentence, down to the word "prescribe" on line 21.

Mr. THOMAS. I should like it better if it were a substitute for the entire section.

Mr. NEWLANDS. Now, it is stated by those who thus far have been critical of the bill that they are willing to accept the amendment offered by the Senator from Minnesota. I took time for its consideration; I have consulted all the members of the Interstate Commerce Committee on the floor, and the Senator from Virginia [Mr. MARTIN], the leader of the Democratic side, and they all agree that if the acceptance of this amendment will secure the speedy passage of the bill it would be wise to make no objection to it. I will ask the Senator whether he has any objection to it?

Mr. THOMAS. If that is the consensus of opinion, it would be presumptuous in me, having been engaged elsewhere on other business, to object to its adoption. Indeed, I am not objecting to any specific part of the bill. I am merely calling attention to it for the purpose of emphasizing the law as it exists, and also of criticizing that character of legislation which would deprive the President of any part of the power with which, in my judgment, he must be clothed in a great emergency like the present. I think, so far as the amendment is concerned to which the Senator has called my attention, the fact that it includes water transportation as well as railway transportation makes it quite desirable, and if it is otherwise unobjectionable it should be enacted into law.

Mr. NEWLANDS rose.

Mr. THOMAS. Just one word more and I will yield the floor.

Mr. NEWLANDS. I will state that at the conclusion of the Senator's remarks I will ask the Senate to consider the amendment offered by the Senator from Minnesota, and will make no objection to the amendment.

Mr. THOMAS. I will yield the floor in a moment. I merely wish in conclusion to add that there must be a concentration of



authority, because by that means and by that means alone can we fix responsibility and hold those clothed with the duty of its exercise but of its wise, its constant, and its efficient exercise as long as the emergency exists which originally called it forth.

Mr. NEWLANDS. I ask for a vote upon the amendment offered by the Senator from Minnesota.

The VICE PRESIDENT. The question is on agreeing to the amendment offered by the Senator from Minnesota [Mr. NELSON].

The amendment was agreed to.

Mr. NEWLANDS. I now ask for a vote on the amendment offered by me.

The VICE PRESIDENT. The Senator from Nevada offers an amendment which will be read.

The SECRETARY. Strike out the following words, on page 4, line 2, beginning with the word "President":

The President is hereby authorized, whenever in his judgment it becomes necessary in order to expedite transportation and to do justice between carriers, to enter into agreements with two or more carriers looking to a proper division of earnings for a time to be specified and upon kinds of traffic to be prescribed.

And in lieu thereof insert:

The President is hereby authorized, whenever in his judgment it becomes necessary in order to expedite and provide for needed transportation and to do justice between carriers, to permit and authorize carriers to enter into agreements looking to a proper and equitable division of earnings for a time to be specified and upon kinds of traffic to be prescribed.

Mr. NEWLANDS. I will state that that is a committee amendment.

Mr. REED. Mr. President, on two or three occasions I have tried to state what I understand to be the import of this amendment. I simply desire to make that statement and to occupy only a moment in so doing. I do not desire to argue the question.

As the bill stands and as it was originally reported by the committee, as I understand its language, if the President finds it necessary in order to expedite transportation and to do justice between carriers, the President is authorized to enter into agreements with two or more carriers looking to a proper division of the profits. Thus under the bill as it was reported by the committee in any agreement for the pooling of profits the President's presence and consent and supervision are necessary. Of course, it would not be his individual presence but probably some expert or man designated by him.

Under the language as it is now submitted in the amendment, as I understand that language, the President would merely give permission to make pooling arrangements, and thereupon, that order having been made, the railway companies will proceed in their own way and according to their own desires, without any governmental supervision of any kind, to make such pooling arrangements as they see fit.

It does seem to me that if we are to permit railroads to enter into pooling arrangements there should be some representative of the Government to supervise those arrangements, to know what they are, to protect the small railway company against the large railroad company, and to protect the public in so far as the public's rights may be affected.

Mr. NEWLANDS. May I suggest to the Senator from Missouri that this section does not permit carriers to enter into agreements looking to a proper and equitable division, such agreements to be absolutely operative according to their will. They enter into such agreements only as shall be permitted and authorized by the President of the United States.

Mr. REED. If that was the language of this amendment, if that were the purpose of this amendment, I would have no objection to it, but if that is the purpose of the amendment then it means exactly the same as the text did before the amendment was offered.

I know why this amendment is here. The Senator who offers it knows why it is here. The railroad presidents appeared before the committee asserting the right of the railroads to make their own agreements among themselves. If it means the same as the text does now, why do you offer it? Why do you insist upon it?

Mr. BRANDEGEE. Mr. President—

Mr. NEWLANDS. Does the Senator wish an answer to his question?

Mr. REED. Yes.

Mr. BRANDEGEE. The other day I called the attention of one of the members of the committee to what I consider an ambiguity in this language, because as it was printed it authorized the President to enter into agreements with the carriers looking to a proper division of earnings, and so forth, and I did not understand what was intended to be done. I think there is no doubt about the effect of the amendment offered by the Senator from Nevada, but in order to clarify my own views upon it,

and to enable me to appreciate the point about to be made by the Senator from Missouri, I should like to have the amendment read by the Secretary.

Mr. REED. Or the Senator will have a copy sent to him. It is printed. I think when the Senator reads it he will catch its import.

Mr. BRANDEGEE. I did not know that it had been printed.

Mr. REED. I ask the Senator from Nevada, is it not his purpose to change the effect of the language in the original bill when he offers this amendment?

Mr. NEWLANDS. Of course it is.

Mr. REED. Is it not the effect of the change, then, that under the amendment the railway presidents once they have obtained permission to pool will make their own agreements without any interference by any officer of the Government?

Mr. NEWLANDS. I do not so understand it.

Mr. REED. Why not?

Mr. NEWLANDS. If the Senator is not through, I will wait until he concludes, for it will take some little time.

Mr. REED. I thought perhaps the Senator could explain it to me in a moment. I do not want to stand here and take any time on the bill.

Mr. NEWLANDS. If the Senator yields to me, I will explain it.

Mr. REED. I yield.

Mr. NEWLANDS. It is perfectly evident that the language contained in the original bill is faulty. What does it provide? It provides that the President shall enter into agreements with two or more carriers looking to a proper division of earnings for a time to be specified and upon the kinds of traffic to be prescribed. It is not a function of the President to enter into agreements with carriers regarding the public regulation of their transactions. The carriers are subject to public regulation and control. They are now forbidden by law to make any arrangements for pooling or for a division of earnings. Inasmuch as the bill provides for priorities and preferences which may act disastrously or injuriously as to one of the roads and beneficially as to others, and inasmuch as we have stricken out that section of the bill which authorizes those who are injured to apply to the Interstate Commerce Commission for compensation, that compensation to be paid out of the Treasury, we have provided that they can agree among themselves for a division of the earnings, and that agreement must be permitted and authorized by the President of the United States. It is entirely, it seems to me, lacking in dignity; it is a withdrawal from the dignity of the office of President of the United States to require him to enter into an agreement, but it is the duty of the Government to regulate and control. Now, we regulate and control.

Mr. REED. I am trying to ask the Senator a question, with all due courtesy.

Mr. NEWLANDS. Very well.

Mr. REED. The Senator states that the President must authorize the agreement.

Mr. NEWLANDS. Yes.

Mr. REED. Does the Senator mean that the agreement before it becomes effective must be submitted to the President and that agreement by him authorized, or does the Senator mean that all the President will do will be to say, "I hereby authorize an agreement to be made between the railway companies with reference to a division of their earnings," and thereupon, after that general permission has been given, the railway companies shall go on and make their agreement?

Mr. NEWLANDS. My understanding of the bill is that each agreement with reference to earnings must be approved.

Mr. REED. Very well. Will the Senator change his amendment now and add the language so that it will read:

The President is hereby authorized, whenever in his judgment it becomes necessary, in order to expedite and provide for needed transportation and to do justice between carriers, to permit and authorize carriers to enter into agreements looking to a proper and equitable division of earnings for such time as may be specified and upon kinds of traffic to be prescribed, such agreement in each instance to be approved by the President or his duly authorized representative.

Mr. NEWLANDS. I have no objection to that.

Mr. REED. I ask the Senator to accept that amendment.

Mr. NEWLANDS. I accept it.

The PRESIDING OFFICER (Mr. KING in the chair). The amendment to the amendment will be stated.

The SECRETARY. At the end of the proposed amendment insert:

Such agreement in each instance to be approved by the President or his duly authorized representative.

The PRESIDING OFFICER. The Chair understands the Senator from Nevada to accept the amendment.

Mr. NEWLANDS. I do.



The PRESIDING OFFICER. Without objection, the amendment will be so modified. The question is on agreeing to the amendment of the Senator from Nevada as modified.

The amendment as modified was agreed to.

Mr. REED. Has the chairman of the committee any other amendments that he desires to offer?

Mr. NEWLANDS. I have not.

Mr. REED. I offer the following amendment to be added as a new section. I send it to the desk to be read.

The PRESIDING OFFICER. It will be read.

The SECRETARY. Add as a new section at the end of the bill the following:

Sec. —. The Interstate Commerce Commission is hereby authorized and directed, after proper investigation and hearing, to require the various railway companies of the United States engaged in interstate commerce to provide with all possible dispatch sufficient cars and equipment to promptly move and transport all traffic tendered to them, and it is hereby made the duty of the said railway companies to comply with such orders when so made.

Mr. POMERENE. Does the Senator intend that they shall provide all the cars needed?

Mr. REED. They must get them.

Mr. POMERENE. In what way? By purchase?

Mr. REED. Yes.

Mr. POMERENE. The amendment does not provide any appropriation for the purpose. If I may give the Senator the benefit of a little information which I received yesterday, I think the Senate will perhaps conclude that there is not any occasion for the amendment, and if it were adopted that the Interstate Commerce Commission, even if they had the funds on hand, would not be able to procure the cars.

Mr. REED. The Senator did not hear the amendment correctly. There is no proposition that the Interstate Commerce Commission shall buy the cars.

Mr. POMERENE. As I understood it, it read that the Interstate Commerce Commission shall provide the cars.

Mr. REED. Oh, no; the Senator did not hear it correctly.

Mr. POMERENE. Then I misunderstood it.

Mr. REED. Let the Secretary again read the amendment.

The PRESIDING OFFICER. The Secretary will again read the amendment of the Senator from Missouri.

The SECRETARY. Add as a new section at the end of the bill the following:

Sec. —. The Interstate Commerce Commission is hereby authorized and directed, after proper investigation and hearing, to require the various railway companies of the United States engaged in interstate commerce to provide with all possible dispatch sufficient cars and equipment to promptly move and transport all traffic tendered to them, and it is hereby made the duty of the said railway companies to comply with such orders when so made.

Mr. POMERENE. I think I did perhaps misunderstand it, but I desire to state what was in my mind in any event as bearing upon this subject. A few days ago a communication taken from a newspaper was read to the Senate in effect that the Advisory Council had given an order for 100,000 freight cars. That matter was under consideration. Upon investigation it was found that the railroads themselves had given orders for about 100,000 cars and they had already financed their proposition. The car builders at that time were unable to provide those cars, because they could not get the necessary iron, steel, and other material. At once an effort was made to increase the output of iron and steel in the furnaces and steel mills. At that time the furnaces and steel mills were operating, according to the best information that could be obtained, to about 90 per cent of their capacity. The effort by the railroad men here was to enable the mill owners to use their capacity to the full limit. Because of that desire, an order was issued requiring the use of certain freight cars in the transportation of coal, coke, ore, iron, and steel; and they are using every effort now to get that extra iron and steel for the express purpose of building these additional cars.

Mr. REED. Mr. President, the Senator from Ohio, I trust, will not oppose this amendment because some cars have been ordered. If cars have been ordered and all due diligence is being employed to get them, and if they are sufficient in numbers, that will be a complete answer, when made, to any request of the Interstate Commerce Commission.

Mr. POMERENE. Mr. President—

The PRESIDING OFFICER. Does the Senator from Missouri yield to the Senator from Ohio?

Mr. REED. Certainly.

Mr. POMERENE. I do not know that I shall oppose the amendment, but my belief is that it is not going to be effective, for the reasons I have stated.

In addition to that, permit me to call attention to the fact that the car-shortage bill, which was passed the other day, gives to the Interstate Commerce Commission plenary power

when it comes to a question of the movement, distribution, exchange, interchange, and return of cars.

Mr. REED. But it does not require any additional equipment.

Mr. NEWLANDS. Mr. President, will the Senator from Missouri allow me to say a word?

The PRESIDING OFFICER. Does the Senator from Missouri yield to the Senator from Nevada?

Mr. REED. Yes.

Mr. NEWLANDS. I can say that, individually, I can see no objection to the amendment which the Senator from Missouri offers; but it has been the custom—and the well-reasoned custom—of the Interstate Commerce Committee to sanction no important change of this kind in the interstate commerce act without referring the proposed legislation to the Interstate Commerce Commission, in order that we may have the benefit of their information and suggestion, and also without having a hearing at which the shippers and the railroad companies may be heard.

If the Senator from Missouri will present this matter in a separate bill, I, as chairman of the committee, will expedite action upon it, because I believe it is a matter of great importance; but I should much prefer that it take the course I have indicated, instead of hastily having passed here a provision that has not been seriously considered either by the Committee on Interstate Commerce, the Interstate Commerce Commission, or the railroads. I ask the Senator from Missouri whether it will not satisfy him to introduce this proposition as a separate bill, with the assurance that it will be speedily presented to Congress in some form or other?

Mr. REED. Well, Mr. President, in normal times and under normal conditions I might be willing to do that, but I hope I shall not be asked to do it under existing circumstances. We all know that the business of Congress is crowded; we all know that there is going to be an attempt, at least, made to adjourn Congress as soon as what is termed war legislation is concluded. This amendment can not by any possibility work any wrong or outrage on any person or on any company, unless it be a wrong or outrage to require a common carrier to provide with all possible dispatch sufficient cars to transact its business.

I have no desire to see these companies placed under hardships; but this is a matter to which I challenge the attention of Senators: I believe that more than one-half of the difficulties that exist to-day with reference to exorbitant prices, especially for coal, arises from inadequate transportation facilities. If you go to a coal merchant in Washington and ask to buy your winter's coal, he will tell you that he can not get the coal into Washington; that he can not get cars to haul it. If you inquire why large quantities of provisions were allowed to go to waste in the western portion of our country a few months ago, you will find that the difficulty arose from lack of transportation.

These transportation companies exist; the public depends upon them to do the business of the country. If they do not do the business of the country, the gravest injury results. We are talking now about having, and many people believe we ought to have, food dictators—men authorized to take charge of the entire industrial organization of our land—the same men or man to be authorized to take charge of the transportation facilities of our land. The proposition that I make is so modest a demand by the Government that I feel very small and insignificant when I put it forward. It is merely that transportation companies shall perform the functions which they have undertaken to perform, and that they shall be required to do it as a matter of law, and not left to do it as a matter of choice. I hope there will be no opposition to the amendment.

Mr. POMERENE. May I ask the Senator from Missouri merely one question?

The PRESIDING OFFICER. Does the Senator from Missouri yield to the Senator from Ohio?

Mr. REED. I do.

Mr. POMERENE. I made a statement a moment ago, and I was satisfied my information was reliable, that the railroads have already contracted for a hundred thousand cars, which can not be built because there is not a sufficient iron and steel supply for that purpose. That being the situation, as a temporary measure, what good would the Senator expect to derive from his amendment if it were adopted?

Mr. REED. But, Mr. President, railroad companies may have ordered that many cars, and they may not be using all possible dispatch to secure them. Suppose, however, that they have ordered them and are using all possible dispatch, there is no harm to be done to them under the amendment, because they will appear before the Interstate Commerce Commission and say, "We have already ordered the cars; we are doing all we



can," and that will be the end of the matter; but if it should transpire that they are not doing all that they ought to do, it will do no harm for the Interstate Commerce Commission to have the authority to say to them, "You must do it." Besides I do not know, and nobody, I imagine, will undertake to say, that every railroad in the United States is doing its duty in this behalf.

Mr. POMERENE. Well, I think they are acting pretty well, as a whole. I can see this effect, as it seems to me, namely, that if the amendment is adopted it will certainly give the railroads another very cogent reason in support of their petition for an increase in freight rates at the present time.

Mr. REED. I can not be frightened by that, because their petition for increased freight rates would be as well bolstered up by the claim that they have ordered the cars, which the Senator from Ohio thinks they have ordered, as by a law which gives the Interstate Commerce Commission the authority to require them to get necessary cars. In any event, it must be plain to every candid man and to every man with an open mind that the country's demands and needs are more transportation; that the place we can get it from is the railroad companies; and that once we require them by law to use all reasonable means to secure it we are only making a reasonable requirement. I hope this amendment may be accepted and go on this bill.

Mr. FLETCHER. Mr. President, it may not be necessary to adopt this amendment, but I can not see any harm in it. It was reported, according to the best authority, that on May 1 there was a shortage of 150,000 cars. I think the Senator from Ohio [Mr. POMERENE] has said that the railroad companies have ordered 100,000 cars. That may be sufficient; and it may be that they are pursuing with energy the whole subject of providing these facilities as they are needed; but this amendment provides, first, that the Interstate Commerce Commission shall investigate the subject. That means they shall give hearings on it where needed; that they shall inquire into it; that they shall find what roads are acting in good faith, what cars are being built, what shops are available, and what the possibilities are for providing this equipment. Then it provides that the railroads shall be ordered, if it is found that they ought to be so ordered, by the Interstate Commerce Commission to provide the cars with as great dispatch as possible. There is nothing unreasonable about that.

If we provided by law that the Interstate Commerce Commission should ascertain how many cars were needed, and that the railroads should be required to provide them at once, it might be said we were doing an absurd thing, because it is possible that they could not be built and furnished at once; but here the language is broad in that respect; and it seems to me entirely reasonable that the railroad companies should be required to supply the needed equipment with as great dispatch as possible. So far as I am concerned, I can see no objection to the amendment.

Mr. SMITH of South Carolina. Mr. President, as a member of the Committee on Interstate Commerce I heartily endorse the amendment proposed by the Senator from Missouri. It does seem to me in this emergency, when so great complaint has been made on the ground of the inadequacy of facilities for shipment, while we are making provision for the mobilization of the resources of this country to meet the emergency upon us, that this amendment is peculiarly fitting now. In my opinion, we should put into the hands of the Government, through the Interstate Commerce Commission, the power to say to the railroads, after investigation, "We find that you have not sufficient equipment to do the business that is now entailed upon you, and in all reasonable time we expect you to furnish the equipment for which your roads were chartered and for which the privileges of common carriers were granted to you." I do earnestly hope that this amendment will be incorporated in the bill, because, according to my judgment, it is one of the most helpful provisions that possibly could be attached thereto.

Mr. HARDWICK. Mr. President, this amendment ought to be adopted, in my judgment, and it ought to be adopted for a great reason of public policy. When we passed the Hepburn law in 1906 we declared the established policy of this country to be the great democratic principle of "first come, first served"—equality of treatment to all of the business of all the industries of this Republic. If for the moment inadequate facilities force us to declare for preferences and for favoritism, according to the merits of each shipment, certainly we ought to take every step to return at the earliest possible moment to the true and safe ground on this question. We can not do that in any other way except by requiring the public carriers, who are public servants, to provide adequate facilities.

Of course it goes without saying, Mr. President, that the Interstate Commerce Commission when it requires this of the carriers, is bound to allow them whatever money is necessary, if any is necessary, in order to enable them to procure this equipment, and I suppose that that will be attended to. It is my opinion, Mr. President, in any event, that possibly, under some of the general provisions of the Hepburn law, the Interstate Commerce Commission already has this power; but I think this an appropriate place, when we are about to enact legislation, departing, temporarily at least from the correct principle, to make some expression of our desire to employ whatever methods are necessary to enable us to return to the true and correct principle and rule about this matter. For that reason I earnestly favor this amendment and hope it may be adopted by the Senate.

Mr. BRANDEGEE. Mr. President, while I was a member of the Interstate Commerce Committee I learned something about car shortage, the conditions of traffic, the degrees of its variation, the uncertainties of provision, and the difficulty of ascertaining what amount of traffic would be offered to each and all the railroads of the country at different seasons of the year and during different years. Of course I agree to the proposition—and I think everybody will—that a common carrier ought to be able to transact its business. If it sets up in the business of carrying traffic in the territory through which it runs, it ought to have sufficient equipment to do that business; but, Mr. President, it is not always the easiest thing for a railroad company to be in that position, in view of the fact that there may be hard times, when hundreds of thousands of its cars are sidetracked, and no freight offers for them at all for a year or two, and then there may come a boom time or a great excess of crops, when everybody rushes at the same time to a railroad and wants his product carried first and at once. I can well understand—and I think any man who will reflect upon the varying conditions that exist in different parts of the country as to its production can understand—that it is not physically possible for every railroad company, rich and poor, at all times to maintain the number of cars which would be adequate to accommodate the maximum rushes that occasionally do arise to congest interstate commerce.

I would have no objection at all to this amendment if the Senator had not included in it the word "direct." This matter comes before us very suddenly. It has not had the consideration of the committee. We are a legislative body—

Mr. REED. If the Senator please, if that is all the objection the Senator has, I am perfectly willing to leave it as an authorization.

Mr. BRANDEGEE. I would have no criticism at all then. That gives the specialists that we have constituted the commission the authority to do this if they think it is necessary.

Mr. REED. Yes.

Mr. BRANDEGEE. But I did not feel in a frame of mind to issue a direct order to our experts to do a thing when we knew nothing about it.

The PRESIDING OFFICER. The Senator from Missouri accepts the amendment.

Mr. POMERENE. Mr. President, that very materially changes the amendment; and I want to say just a word further on the subject of car shortage.

As a member of the subcommittee I went somewhat thoroughly into this question. The fact is that the railroads of the country own about 2,500,000 freight cars. There are some privately owned cars in addition to those. One of the difficulties has been the method of returning cars to the owning company. There have been several different plans adopted by the railroad companies, and until recently they had the plan that if a car was sent out from the owning company it should not be returned from its point of destination to the owning company unless it was loaded. The result was that there was a vast number of empty cars here in the East and at other terminal facilities. One witness suggested that if they had many, many more cars it would not materially change the present state of transportation, because they were lacking in terminal and elevator facilities; and I think there is a good deal of force in that proposition.

I was interested a few days ago to receive a circular which had been issued by this railway committee, in which they suggest to the various railroads methods of improvement of the present service, and in substance they make a statement like this: That if they would increase the speed of the freight trains, as they readily could do, and would load their cars more heavily, which they readily could do, and hurry up repairs on the cars that were out of repair, they could increase the present equipment to what would be the equivalent of 750,000 cars.

Mr. REED. Who made those suggestions?

Mr. POMERENE. This was a statement made by the committee of railway presidents, which was issued to the railroads of the country, urging them to increase the speed, to load their cars more heavily, and to hurry up the repairs on the cars that were out of repair.

Mr. REED. Did the railroad presidents inform the country why they had permitted their roads to be run in such an outrageous manner, as they must have been if all these reforms could be made?

Mr. POMERENE. I can not answer for the railroad companies. I am simply giving the Senate the benefit of a statement which is contained in a circular which was issued by this committee here.

The PRESIDING OFFICER. The question is upon the amendment offered by the Senator from Missouri.

Mr. HOLLIS. Mr. President, I understand that the amendment has been modified. I should like to hear it in its modified form.

The PRESIDING OFFICER. The amendment will be stated. The SECRETARY. It is proposed to add a new section, to be known as section 3, as follows:

SEC. 3. The Interstate Commerce Commission is hereby authorized, after proper investigation and hearing, to require the various railway companies of the United States engaged in interstate commerce to provide with all possible dispatch sufficient cars and equipment to promptly move and transport all traffic tendered to them, and it is hereby made the duty of the several railway companies to comply with such orders when so made.

Mr. NEWLANDS. Mr. President, so far as I am concerned, I wish to say that as to the merits of this amendment I can see no objection; but I think it is objectionable that any legislation so important as this should be passed without committee inquiry and without the usual course of procedure, which involves getting the views of the Interstate Commerce Commission, the railroads, and the shippers. I therefore can not accept this amendment, but I am perfectly willing that it shall go to a vote.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Missouri.

The amendment was agreed to.

Mr. SMITH of Georgia. Mr. President, I desire to state that I shall not offer any further amendments to this bill, with the amendment which has just been placed upon it, the amendment offered by the Senator from Minnesota, and the modification which the Senator from Nevada himself made in the bill. The amendment by the Senator from Minnesota limits the power of directing priorities in shipments to commodities essential to the prosecution of the war. While I have been willing to give the Interstate Commerce Commission the power to direct certain other priorities, I much prefer making it the duty of the commission to take such action as will cause the prompt shipment of all traffic. The amendment just adopted accomplishes even more than the amendment I had suggested. I will now vote for the bill as amended.

Mr. BRANDEGEE. Mr. President, I call the attention of the Senator from Nevada, in charge of the bill, to section 1 of the bill. I do not consider it a matter of great importance; but in line 4, if I have the right print—

The PRESIDING OFFICER. The Chair will state to the Senator that there is a reprint.

Mr. BRANDEGEE. I read from the reprint of June 12. In line 4, page 1, it states that whoever shall "during the war with Germany" do these various acts, and so forth, shall be punished. On page 2, when you come to section 2, the language of the bill is "that during the continuance of the war in which the United States is now engaged the President is authorized" to do certain things.

Is there any difference in the minds of the committee as to the period during which this bill is to operate? If not, unless there is some distinction between those two phrases, I should think it would be better to have a uniformity in describing the period during which the bill shall remain in effect. Of course it may be a purely technical matter; but we are at present at war with Germany, and we may possibly be at war with a dozen other powers before we get through; or some of them may drop out, and we may continue at war with the rest.

Mr. ROBINSON. Mr. President, I suggest to the chairman of the committee that there can be no objection to broadening the language so as to embrace any conflict in which the United States may become engaged before the termination of the present war.

Mr. BRANDEGEE. If you should say in each instance "during the continuance of the war in which the United States is now

engaged," it seems to me it would be better than specifically referring to Germany.

Mr. ROBINSON. Yes; I think that would be the better language. I suggest to the chairman that he offer to make the language uniform, in line with the suggestion of the Senator from Connecticut.

Mr. HARDWICK. Mr. President, I do not think it ought to be exactly that way. We might be willing to confer on the President a lot of powers in connection with this matter, when we are at war with a great power, that we would not be willing to confer if we were engaged in war with a very small power.

Mr. ROBINSON. If the present conflict continues, in all probability the suggestion of the Senator from Georgia would not apply, because when Germany is whipped in all probability the war will be approaching an end.

Mr. SMITH of Georgia. When the war is over between the United States and Germany—

Mr. HARDWICK. We will not need any such power as this.

Mr. SMITH of Georgia (continuing). We can confidently expect that we will be at peace with all the balance of the world for a long time.

Mr. NEWLANDS. May I ask the Senator what amendment he suggests?

Mr. BRANDEGEE. I was going to suggest that, on line 4, page 1, we strike out the words "war with Germany" and insert in lieu thereof the same words that are used on page 2, lines 14 and 15.

Mr. NEWLANDS. There is no objection to that.

Mr. BRANDEGEE. Strike out the words "with Germany" and insert in lieu thereof the words "in which the United States is now engaged."

Mr. HARDWICK. Mr. President, let me ask the Senator a question. Does not that mean the war with Germany?

Mr. BRANDEGEE. Well, while we have not declared war on anybody but Germany, I think we are really engaged in a war against Germany and Turkey and Austria and the allies of the central Teutonic powers, and will be actually fighting them shortly.

Mr. HARDWICK. In my judgment, the words "the war in which the United States is now engaged" would be construed by anybody, in Congress or in the courts, to mean the war we have declared. I do not think there would be the slightest difference if we should use that phraseology.

Mr. BRANDEGEE. I think if our troops on the front continue in the war, we had better have the bill operate during the period of the war, until we make peace.

Mr. HARDWICK. My judgment is that it would operate in exactly the same way no matter whether you say "the war with Germany" or "the war in which the United States is now engaged," because the war in which we are now engaged by law is the war with Germany.

Mr. BRANDEGEE. I was not so anxious about which phrase we used as that we should not use two phrases, unless they meant the same thing.

Mr. HARDWICK. Yes; I agree with the Senator about that.

Mr. BRANDEGEE. And if they do mean the same thing, you had better drop one of them out.

Mr. SMITH of Georgia. We use one in one place and another in another place.

Mr. HARDWICK. Yes; I did not catch the Senator's criticism. I agree with him about that.

Mr. SMITH of Georgia. I desire, however, to express the hope that we will not be involved in war with Austria or in war with Turkey, and that the war will be limited to Germany, and that both of those other countries will realize the danger from submarining one of our vessels. Furthermore, I should be gratified to know at an early date that they have retired from the war.

Mr. BRANDEGEE. I will say to the Senator that if he will read the first account of the meeting of some Austrians or Turks with Gen. Pershing's division over in the trenches, he will agree that we are at war with them.

Mr. NEWLANDS. Mr. President, I have no objection to the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Connecticut, which will be stated.

The SECRETARY. On page 1, line 4, it is proposed to strike out the words "with Germany" and to insert in lieu thereof the words "in which the United States is now engaged."

The amendment was 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.



## THE LIBERTY LOAN.

Mr. LEWIS. Mr. President, prior to adjournment I desire to submit what I hope will not occupy a minute of the time of the Senate.

Mr. President, I assume that I am permitted by the Senate to express its gratification at the display of patriotic support of the Liberty loan. The American Nation has delivered \$3,000,000,000 in response to a call for two billion for the first installment for national defense against Prussian invasion of American rights. Let the once-doubting world note that the people of the United States, when suddenly precipitated from peace to war on a day's demand, rescued themselves from business obligations, commercial undertakings, banking and industrial pledges, and in 15 days paid to their Nation a sum of money the equal of which the warring nations of Britain took six months to deliver, France five months, Germany eight months, and Russia more than a year and two months.

If there be those in America who doubted if America's zeal in this war was aroused, or her interest awakened, or her people unanimously enlisted, let them heed this response to the call of the President and the appeal of the Secretary of the Treasury. Let the world behold that upon the first call to our Nation by her Commander her response was that of the prophet to the Lord, "Here am I." For victory quick and certain, America responded for the largest sum in a given time to a national defense recorded in all history.

To the people whose bankers have taken from their millions, whose business men have taken from their fortunes, whose citizens have given from their possessions, whose women have given from their savings, and whose toilers from their wages, all of our Government sends its praise and gratitude.

Mr. President, I thank the Senate for its indulgence.

Mr. NEWLANDS. I move that the Senate adjourn.

The motion was agreed to; and (at 1 o'clock and 55 minutes p. m., Saturday, June 16, 1917) the Senate adjourned until Monday, June 18, 1917, at 12 o'clock meridian.

## HOUSE OF REPRESENTATIVES.

SATURDAY, June 16, 1917.

The House met at 11 o'clock a. m.

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

Impress us, O God our Heavenly Father, as a people, from the least to the greatest, with the extreme gravity of the situation which confronts us in the world-wide struggle against autocracy and militarism for democracy which insures to the individual the right to think and act according to the dictates of his conscience in the things which are vital to life, liberty, and the pursuit of happiness. What we are called upon to do, let us do it with might, that a peace crowned with the glory of right and truth may prevail, to the honor of Thy holy name. Amen.

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

## LAKES WINNIBIGOSHISH AND POKEGAMA—WATER POWER.

Mr. ADAMSON. Mr. Speaker, I ask unanimous consent to change the reference of the bill (H. R. 156), authorizing the Secretary of War to grant leases or licenses for the use of surplus water at the United States Government dams at Lake Winnibigoshish and at Lake Pokegama, in the State of Minnesota, from the Committee on Rivers and Harbors to the Committee on Interstate and Foreign Commerce. This is a water-power bill, and the Committee on Interstate and Foreign Commerce has always had jurisdiction of the subject.

Mr. SMALL. What is the nature of the bill?

Mr. ADAMSON. It is a bill to authorize the Secretary of War to utilize the surplus water at a couple of dams at the headwaters of the Mississippi River.

Mr. SMALL. Mr. Speaker, I ask unanimous consent to proceed for one minute.

The SPEAKER. The gentleman from North Carolina asks unanimous consent to proceed for one minute. Is there objection?

There was no objection.

Mr. SMALL. In the first place, I ask the gentleman if he will kindly wait until the gentleman from Minnesota [Mr. MILLER] comes into the Hall? The gentleman from Minnesota introduced the bill.

Mr. ADAMSON. I will do that, if I can be recognized then.

Mr. SMALL. At that time I will make the statement I intended to make now.

Mr. FERRIS. Will the gentleman yield to me for a question?

Mr. SMALL. Certainly; I yield to the gentleman from Oklahoma.

Mr. FERRIS. I notice that section 5 of the pending river and harbor bill contains the same proposition.

Mr. SMALL. Yes.

Mr. FERRIS. I have not compared it critically to see whether the words in section 5 of the river and harbor bill are identical with the words in the bill H. R. 156, introduced by the gentleman from Minnesota [Mr. MILLER], but I think they are.

Mr. SMALL. The gentleman from Minnesota [Mr. MILLER] told me they were.

Mr. FERRIS. I think they are. I hope we may have some sort of an agreement to take the water-power provision out of this river and harbor bill altogether.

Mr. SMALL. Mr. Speaker, the point can be made when we reach section 5 in the river and harbor bill. I think there is undue haste as well as undue insistence in this matter; but, at all events, the gentleman from Georgia has agreed to wait until the gentleman from Minnesota comes in.

Mr. ADAMSON. If I can be recognized to make the request, then I will do it.

The SPEAKER. The gentleman will be recognized if the Speaker is in the chair. The House may be in Committee of the Whole.

Mr. ADAMSON. I will state, by permission, that I do not wish to be considered in haste at all, but I do not want to be prejudiced in any rights that my committee may have.

The SPEAKER. The gentleman will not be prejudiced in any rights.

Mr. ADAMSON. I am perfectly willing to register the request, and if it is not granted, to enter a motion to make the change of reference and not press either one at this time.

The SPEAKER. The Chair understands the gentleman from Georgia is going home. How soon is he going?

Mr. ADAMSON. I am going home to-night. I am afraid I will not be here when section 5 of the river and harbor bill is reached.

The SPEAKER. The reason the Chair asked the gentleman the question is that the gentleman from North Carolina [Mr. SMALL] is going to move in a minute that the House go into the Committee of the Whole for the consideration of the river and harbor bill.

Mr. ADAMSON. I am not disposed to hinder the progress of the bill at all, but I do not want to be prejudiced in any right about it.

The SPEAKER. The gentleman will not be prejudiced.

Mr. ADAMSON. I want to give notice that we claim jurisdiction of both questions, and that we want to perfect a better section than that whenever the water-power bill is framed.

Mr. STAFFORD. Will the gentleman yield to me to make this suggestion—

Mr. ADAMSON. I yield to the gentleman.

Mr. STAFFORD. That the gentlemen enter into some understanding that when the gentleman from Minnesota [Mr. MILLER] makes his appearance the committee rise and take up this question for consideration.

Mr. SMALL. Oh, Mr. Speaker, that can be done when we reach the item in the bill or at some other time.

Mr. ADAMSON. I am not even insisting on that. I am afraid I will not be here when section 5 is reached.

The SPEAKER. The gentleman might deputize some other gentleman to represent him in the matter.

Mr. ADAMSON. I am perfectly willing to enter the request for the change of reference, giving notice that if the request is refused I will enter a motion to change the reference, and to let it stand until some future time.

The SPEAKER. All right.

## CALL OF THE HOUSE.

Mr. SMALL. I move that the House resolve itself—

Mr. MADDEN. I make the point of order that there is no quorum present, Mr. Speaker.

The SPEAKER. The gentleman from Illinois makes the point of order that there is no quorum present. Evidently there is no quorum.

Mr. SMALL. I move a call of the House, Mr. Speaker.

The motion was agreed to.

The SPEAKER. The Sergeant at Arms will notify absentees, the Doorkeeper will lock the doors, and the Clerk will call the roll.

The Clerk called the roll, and the following Members failed to answer to their names:

Almon	Bland	Browning	Cantrill
Anthony	Bowers	Bruckner	Capstick
Bacharach	Brand	Butler	Carew
Bell	Brodbeck	Campbell, Kans.	Carlin



Chandler, N. Y.	Goodwin, Ark.	Langley	Saunders, Va.
Clark, Fla.	Gould	Larsen	Schall
Connally, Tex.	Graham, Pa.	Littlepage	Scott, Pa.
Copley	Gray, N. J.	Longworth	Scully
Crago	Griest	Lunn	Shallenberger
Cramton	Griffin	McCormick	Sherley
Crisp	Hamill	McCulloch	Sinnott
Crosser	Hamilton, N. Y.	McKinley	Slayden
Currie, Mich.	Harrison, Va.	Maher	Slomp
Dale, N. Y.	Haskell	Mann	Sloan
Davis	Hayes	Martin, Ill.	Smith, C. B.
Dent	Heaton	Morin	Smith, T. F.
Denton	Helm	Mudd	Snyder
Dixon	Hill	Neely	Stephens, Nebr.
Dooling	Hollingsworth	Nelson	Sterling, Ill.
Doremus	Howard	Nichols, Mich.	Stevenson
Drukker	Hull, Iowa	Oliver, N. Y.	Stines
Dyer	Hutchinson	Olney	Strong
Eagan	Igoe	Paige	Sullivan
Eagle	Ireland	Parker, N. J.	Swift
Edmonds	Johnson, Ky.	Peters	Tague
Estopinal	Jones, Va.	Porter	Talbot
Fairchild, B. L.	Kearns	Pou	Taylor, Colo.
Fields	Keating	Powers	Templeton
Fitzgerald	Kelley, Mich.	Price	Van Dyke
Flynn	Kelly, Pa.	Ramseyer	Vare
Fordney	Kennedy, Iowa	Reed	Walton
Foss	Kennedy, R. I.	Riordan	Ward
Francis	Key, Ohio	Robinson	Wason
Freeman	Kless, Pa.	Rogers	Watson, Va.
Fuller, Mass.	Kitchin	Rose	White, Me.
Gallivan	Knutson	Rowland	Wilson, Tex.
Garland	Kraus	Rucker	Wingo
Garrett, Tenn.	Kreider	Russell	Winlow
Glass	LaGuardia	Sabath	Woodyard

The SPEAKER. On this call 274 Members, a quorum, have answered to their names.

Mr. SMALL. Mr. Speaker, I move to dispense with further proceedings under the call.

The motion was agreed to, and the doors were opened.

#### HOOR OF MEETING ON MONDAY.

Mr. LEVER. Mr. Speaker, I ask unanimous consent that when the House adjourns to-day it adjourn to meet at 11 o'clock a. m. next Monday.

The SPEAKER. The Chair will inquire of the gentleman if he intends to call up the food-control bill on Monday.

Mr. LEVER. Yes.

The SPEAKER. The gentleman from South Carolina asks unanimous consent that when the House adjourns to-day it adjourn to meet at 11 o'clock a. m. next Monday. Is there objection?

Mr. YOUNG of Texas. I object.

#### EXTENSION OF REMARKS.

Mr. LINTHICUM. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD by inserting an editorial from the New York World of May 18, 1917.

The SPEAKER. The gentleman from Maryland asks unanimous consent to extend his remarks in the RECORD. Is there objection?

There was no objection.

Mr. TIMBERLAKE. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD by printing a resolution by the members of the Centennial Chapter, No. 58, Order of the Eastern Star, of Colorado Springs, in favor of the Susan B. Anthony amendment.

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

There was no objection.

Mr. HICKS. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD by publishing some further facts in regard to the flag.

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

There was no objection.

#### LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted as follows:

To Mr. ALMON, for to-day, on account of illness.

To Mr. JOHNSON of Kentucky, indefinitely, on account of critical illness in his family.

#### THE RIVER AND HARBOR BILL.

Mr. SMALL. I move that the House resolve itself into Committee of the Whole House on the state of the Union for the further consideration of the river and harbor bill (H. R. 4285), and pending that I ask to make a statement and to submit a request for unanimous consent.

The SPEAKER. The gentleman from North Carolina asks unanimous consent for two minutes. Is there objection?

There was no objection.

Mr. SMALL. Mr. Speaker, during the consideration of the river and harbor bill to-day in the Committee of the Whole I

respectfully suggest that Members remain in the Chamber during the day. Mr. Speaker, I ask unanimous consent that at 5.30 o'clock p. m. to-day the committee rise and report the bill to the House with all amendments and that the previous question be considered as ordered on the bill and all amendments thereto.

Mr. MADDEN. I object.

Mr. SMALL. Mr. Speaker, I modify the request by making it 8 o'clock.

Mr. MADDEN. Mr. Speaker, there was an understanding yesterday between the gentleman and Members of the House that the committee should rise this afternoon not later than half past 5. If the gentleman from North Carolina does not want to keep it, well and good.

Mr. SMALL. That is gratuitous. I was asking unanimous consent.

The SPEAKER. The time of the gentleman from North Carolina has expired, and the question is on the motion of the gentleman to go into Committee of the Whole House on the state of the Union on the river and harbor bill.

The motion was agreed to.

Accordingly the House resolved itself into Committee of the Whole House on the state of the Union, with Mr. HARRISON of Mississippi in the chair.

The Clerk read as follows:

Government iron pier in Delaware Bay, near Lewes, Del.: For maintenance and repair in accordance with the report submitted in House Document No. 1059, Sixty-fourth Congress, first session, \$68,000.

Mr. TREADWAY. Mr. Chairman, I move to strike out the last word. I think the House is entitled to an explanation as to why this item is included in the present bill. If I remember rightly, it was not in the bill as it passed at the last session of Congress. The present bill under consideration is supposed to be based on that bill. Now, in some way the construction of an iron pier appears to be necessary for the national defense.

I hold in my hand the report of the Chief of Engineers, submitted to the first session of the Sixty-fourth Congress, House Document 1059, and I find that this pier was originally authorized by act of Congress in 1870, and that it has so far cost the Government \$387,839.40. The district officer states, and I read from the report, "that the iron substructure is now heavily rust eaten and the entire timber superstructure is badly decayed," and he estimates that "an expenditure approximately of \$78,000 will be required to place it in proper condition."

The pier has never been used to any extent for commercial purposes.

May I ask the people interested in having this item go into this bill for what purpose it has been used, if not for commercial purposes? Then, again, we read that the Board of Engineers is of the opinion that it is not advisable to repair the pier in the interest of general commerce and navigation, but that repairs are urgently needed if its use is to be continued in behalf of other interests. I take it that "the other interests" there referred to near Lewes, Del., are the interests of yachtmen and possibly some Government lighthouse boats, and that sort of thing, but we are passing here, or the majority of the committee is endeavoring to have passed here, a bill based upon national defense. One of the items in the bill is for repair to a rusted iron pier which was built in 1870 and maintained at an expense of \$387,000. It is now so rusted that the understructure is nearly gone and the upper structure badly decayed. That is the kind of an item which to-day is an emergency proposition, so claimed, in behalf of national defense. My mentality does not carry me to the extent wherein that emergency appears at the present time. It was not a national emergency at the time we passed the river and harbor bill last session, but it becomes one now, and I think the House is entitled to an explanation, which I hope some gentleman will be able to give, as to the national emergency now confronting us requiring an appropriation of \$70,000 for this rusted pier.

Mr. SMALL. Mr. Chairman, it should not be necessary to furnish to a member of the committee the information which I shall now with pleasure submit. This pier was originally constructed in 1870 and was intended primarily for commercial needs. It is true that the commerce there did not develop to the extent anticipated. The present emergency for the repair of this pier is based on these facts: That it is located near the Delaware Breakwater, that in that section during this period of war particularly there will be large numbers of naval craft, patrol boats, submarines, destroyers, and it is absolutely necessary that the pier be repaired to have a convenient landing place for these small naval craft. Col. Newcomer, representing the Chief of Engineers in the hearing before the committee, in explanation for the necessity for this appropriation, made the following statement:

This pier is important at this time on account of the fact that we have so many of these patrol boats, torpedo boats, and other small boats



which now have no good landing at Lewes. This, of course, is the Delaware Breakwater, where they are apt to collect in considerable number.

I hope this statement makes it clear that it is an emergency matter.

Mr. MOORE of Pennsylvania. Mr. Chairman, will the gentleman yield?

Mr. SMALL. Yes.

Mr. MOORE of Pennsylvania. If my colleague cares to he might call the attention of the gentleman from Massachusetts to the report, which the gentleman from Massachusetts had in his hand, and from which he read only a part, and which report following the extract the gentleman read says:

The United States Lighthouse Establishment uses the pier at the place for the storage of boats, the United States Lifesaving Service has a boathouse at a point about midway of the pier, and the United States quarantine service uses it occasionally for landing passengers.

The pier is situated at one of the most vital points of the Delaware River and Bay approaches, and if the gentleman will permit me to say further, it seems absurd that because a pier has grown old and is no longer serviceable in certain of its parts Congress in war times should not put it in order for the use of the Government of the United States.

Mr. POLK. Mr. Chairman, it might be well for me to state to the House that there is located at the land end of this pier a marine hospital, and I have a letter from Gen. Black, which I send to the desk and ask to have read in my time.

The Clerk read as follows:

FEBRUARY 7, 1917.

HON. WILLARD SAULSBURY,  
United States Senate.

MY DEAR SENATOR: 1. Replying to your letter of yesterday, relative to my appearance before the Commerce Committee on the subject of needed repairs to the iron pier at Lewes, Del., I take pleasure in giving you a statement of a portion of my testimony given before the committee.

2. The pier is in need of immediate repairs. The ironwork is badly eaten by the rust, some of the braces are broken, and the decking is so badly decayed that life is risked in walking thereon. This pier was erected for the purpose of providing communication with the shore for vessels coming to the harbor, so that provisions and supplies could be obtained and also to give access to lines of travel and afford mail accommodations.

3. Whether much use is made of this structure for commercial reasons or not is of small importance, due to the fact that it is the only pier extending to deep water behind the breakwater, which forms a harbor of refuge during storms. Its greatest value, however, lies in its use as made by the Lighthouse Department, the Coast Guard Service, the Public Health Service, the War Department, and the use that can be made of it by the Navy. It is a fact that all departments of the Government are anxious to use this pier and the desire to retain it.

4. In view of the need and use of this pier by the various branches of the Federal Government, the factor of commerce should not be considered, and its repair was recommended. It is evident that the repairs and control of the pier can be accomplished most advantageously if this duty is made the charge of one department, and if it is desired that the Engineer Department retain control and make repairs the item has a proper place in the present river and harbor bill.

5. I trust that the foregoing will be sufficient, but if it is not, I will be glad to give any additional data which you may indicate.

Very truly, yours,

W. M. BLACK,  
Brigadier General, Chief of Engineers.

The Clerk read as follows:

Waterway between Rehoboth Bay and Delaware Bay, Del.: Continuing improvement and for maintenance, \$50,000.

Mr. FREAR. Mr. Chairman, I move to strike out the last word. This is an inland-waterway proposition, a canal, but I wish to address myself to another subject which is directly in point, and which is brought forth by the CONGRESSIONAL RECORD. In the Appendix of the RECORD there appears extension of remarks by the distinguished gentleman from North Carolina [Mr. SMALL], the chairman of our committee, for whom I have personally high respect. I desire to call attention to one statement which appears in that extension of remarks wherein he has included an address to the press by Secretary Redfield. Incidentally the chairman of the committee makes use of the following language:

It must seem strange to intelligent citizens that in the face of this crisis some Members of Congress are contending that we should suspend the maintenance and improvement of our waterways during the period of the war, and are indulging in facetious and unfounded criticism of our waterways. Such opposition can not find defense at the bar of public opinion and will be justly rebuked.

Mr. SMALL. Mr. Chairman, will the gentleman permit me to say right there that I still subscribe to that?

Mr. FREAR. Very well. Mr. Chairman, I do not care to undertake the defense of seven members of the committee who have opposed this bill; I do not care to defend the 120 Members of the House who opposed the consideration of the bill, and I do not care to defend a majority side of the Democratic House which directed that there should be no such bill as this river and harbor bill at this session of Congress. It must rest with the chairman of the committee to determine whether or not all of these gentlemen who have been in opposition to the bill are

to be criticized because of their attitude upon this question, That is the chairman's right whether advisable or not.

But I wish to address myself—and this is the point for which I rose—more particularly to the timely remarks of Mr. Redfield, the Secretary of Commerce. Secretary Redfield makes a statement for the press of a commission that has been appointed by the public defense league—a commission or board to carry on inland-waterway expenditures. Secretary Redfield has taken a very active part in some matters, particularly in the city of Chicago, if I remember aright, on a waterway proposition that involved the wreck of the *Eastland*, but I wish to consider the personnel of the commission.

Mr. HARDY. Mr. Chairman, I make the point of order the gentleman is not discussing the amendment or the bill.

Mr. FREAR. I am discussing the statement of the chairman of the committee.

The CHAIRMAN. The point of order is sustained. The gentleman will discuss the amendment.

Mr. FREAR. The amendment is to strike out the last word on this proposition on inland waterways, and I wish to come to the question of the commission that is extended in the RECORD and mentioned by the chairman of the committee. Now, I am trying to find out whether I am in order or not.

The CHAIRMAN. The gentleman will proceed in order.

Mr. FREAR. Let me discuss that commission which is to have charge of this inland waterway work according to the chairman's remarks. First—

Mr. HARDY. Mr. Chairman, I raise the point of order that the commission is not involved in the motion to strike out the last word.

The CHAIRMAN. The gentleman has not proceeded far enough to ascertain whether or not the gentleman is in order.

Mr. FREAR. First, in this commission is Gen. Black—

The CHAIRMAN. The time of the gentleman has expired.

Mr. FREAR. Mr. Chairman, I ask unanimous consent for five minutes more.

Mr. HARDY. I object.

Mr. MADDEN. Mr. Chairman, I move to strike out the paragraph.

Mr. SMALL. If the gentleman will permit me, I ask unanimous consent that all debate on this paragraph and all amendments thereto close in five minutes.

Mr. MADDEN. I object.

Mr. SMALL. I move that all debate on this paragraph and all amendments thereto close in five minutes.

Mr. MADDEN. I have the floor, and I do not recognize the gentleman's right to take me off the floor.

Mr. SMALL. I understood the gentleman to yield for that purpose.

Mr. MADDEN. I did not yield for any such purpose.

The CHAIRMAN. Does the gentleman yield for the purpose?

Mr. MADDEN. No.

Mr. BORLAND. Mr. Chairman, I make the point of order that the gentleman has spoken five minutes to his amendment. Unless the gentleman is recognized for five minutes as opposed to it, he would not be in order.

The CHAIRMAN. The gentleman from Illinois [Mr. MADDEN] moves to strike out the paragraph. There has not been five minutes of discussion yet on that amendment.

Mr. MADDEN. Now, Mr. Chairman, I think this paragraph certainly ought to be stricken from the bill. It has no place in it. It does not amount to anything as a war emergency. We are endeavoring to appropriate \$50,000 for a project that has no value as a war emergency. And I understand that we are considering this bill as a war emergency. And then the question I wish to ask the gentleman from North Carolina [Mr. SMALL], if he cares to answer, is, in what respect will this improvement be used as a war emergency if the appropriation is made? I pause for an answer. The gentleman does not reply.

Mr. MOORE of Pennsylvania. Will the gentleman take an answer from me?

Mr. MADDEN. Yes; I will take an answer from anybody.

Mr. MOORE of Pennsylvania. If you could get foodstuffs over a waterway that you could not get over a railroad in time of war, it is a war proposition. That is exactly what this is.

Mr. MADDEN. The State of Delaware is not so large but that you could haul foodstuffs anywhere with a mule team. I could get on a street car line and go through the State before the 5-cent fare is out. So I do not think the gentleman can come here with the idea that foodstuffs must be carried on a waterway across a State where if you enter a street car and pay a 5-cent fare you would only have half the fare used up before you would cross the State.

Mr. MOORE of Pennsylvania. There are not any street cars.



Mr. MADDEN. If so, the people of Delaware are not progressive.

Mr. POLK. I would like to state to the gentleman from Illinois that while the State of Delaware may not be very large she has oversubscribed her quota to the war loan by three times.

Mr. MADDEN. I am very glad to hear that, and the State of Delaware ought to do that, because there is no State in the Union that has made so much out of war as its citizens have. They have made money out of war and preparations for war when everybody else in the United States was broke. They ought to subscribe. They ought to subscribe for half of the war loan, because they have made their money out of the war. It is no indication of patriotism because they have contributed a small part of that which they have taken out of the blood of the men of the country and of the world by making ammunition and creating sentiment in favor of war.

Mr. CALDWELL. Will the gentleman yield for a minute?

Mr. MADDEN. No; I do not yield now.

Mr. CALDWELL. I did not think you would.

Mr. MADDEN. I think now the time has come when we ought to insist, inasmuch as the chairman of the committee and members of the committee say this is a war-emergency measure, on knowing wherein it is a war-emergency measure. I assert, and I pause for reply again and for any member of the committee to say in denial, that this is not in any sense a war-emergency measure and it can not be justified as any part of this bill.

Mr. CALDWELL. Will the gentleman yield?

Mr. MADDEN. If the chairman of the committee makes the assertion it is, I will accept his word. I deny it, and I ask any member of the committee to assert that it is. Will they refuse to assert what they have already claimed, that this is an emergency-war measure; that this 7-foot channel on which we are proposing to expend \$50,000 of the people's money in these days of stress, when everybody is taxed beyond limit, is a war-emergency measure to carry food supplies to the Army? Ah, it is absurd and ridiculous.

The CHAIRMAN. The time of the gentleman has expired.

Mr. SMALL. Mr. Chairman, I desire to answer the gentleman in my own time. He asserts that this is not an emergency measure. He moves to strike out the paragraph. The committee has a chance to say whether or not it will strike it out.

These are the facts: In this, the lower part of Delaware, there are large agricultural interests. Vegetables and various kinds of fruits, including small berries, are largely grown. These farmers are absolutely without any railroad facilities of any kind, and this waterway furnishes the only outlet which these farmers engaged in agriculture have for sending their produce to market. It is the only opportunity they have of reaching the Delaware River.

The gentleman from Illinois speaks of "war measures." I do not know, when the gentleman from Illinois is discussing this bill, how to distinguish between facetiousness or humor and seriousness. If the gentleman is serious and intends to tell the House that transportation in this hour of stress and war, in consideration of the importance of increasing our agricultural production, is not a war measure, he either displays his humor or his prejudice. [Applause.]

I submit, Mr. Chairman, it is a war measure; and if in face of these facts the committee wishes to strike out this item, it will have an opportunity of doing so.

Mr. COOPER of Wisconsin. Mr. Chairman, will the gentleman yield for a question?

Mr. SMALL. Certainly.

Mr. COOPER of Wisconsin. The gentleman from Illinois indicated that there was a street car system or electric car system which could transport all the products, and so forth. Now, the gentleman from North Carolina says there are no railroads in that section of Delaware at all. Is that true?

Mr. SMALL. That is true. That is the information before the committee. I think there are no street car lines in that part of Delaware.

Mr. POLK. Mr. Chairman, if the gentleman will permit, there are no street car lines there, and the only outlet for this section of the country is the waterway connecting Rehoboth Bay with Delaware Bay.

Mr. SMALL. Mr. Chairman, I ask that the debate on this section close.

The CHAIRMAN. The gentleman from North Carolina asks unanimous consent that the debate on this section close. Is there objection?

There was no objection.

The CHAIRMAN. The question is on agreeing to the motion of the gentleman from Illinois [Mr. MADDEN].

The question was taken, and the Chairman announced that the yeas seemed to have it.

Mr. MADDEN. Mr. Chairman, I ask for a division.

The CHAIRMAN. A division is asked for.

The committee divided; and there were—yeas 25, noes 62.

So the motion was rejected.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

Improving inland waterway from Delaware River to Chesapeake Bay, Del. and Md., in accordance with the project recommended by the Chief of Engineers in paragraph 3 of his report, dated August 9, 1913, as published in House Document No. 196, Sixty-third Congress, first session: The Secretary of War is hereby authorized to enter into negotiations for the purchase of the existing Chesapeake and Delaware Canal, and all the property, rights of property, franchises, and appurtenances used or acquired for use in connection therewith or appertaining thereto; and he is further authorized, if in his judgment the price is reasonable and satisfactory, to make a contract for the purchase of the same, subject to future ratification and appropriation by Congress. In the event of the inability of the Secretary of War to make a satisfactory contract for the voluntary purchase of said canal and its appurtenances, he is hereby authorized and directed through the Attorney General, to institute and to carry to completion proceedings for the condemnation of the said canal and its appurtenances, the acceptance of the award in said proceedings to be subject to future ratification and appropriation by Congress. Such condemnation proceedings shall be instituted and conducted in, and jurisdiction of said proceedings is hereby given to, the District Court of the United States for the District of Delaware substantially as provided in "An act to authorize condemnation of land for sites for public buildings, and for other purposes," approved August 1, 1888, and the sum of \$5,000 is hereby appropriated to pay the necessary costs thereof and expenses in connection therewith.

Mr. MADDEN. Mr. Chairman, I reserve a point of order on that paragraph.

Mr. FOSTER. I make the point of order, Mr. Chairman.

Mr. SMALL. Mr. Chairman, will the gentleman withhold his point of order just a moment? There is a clerical error in the paragraph.

Mr. MADDEN. I reserve it, but my colleague [Mr. FOSTER] makes it. I do not think the gentleman from North Carolina can correct the paragraph until we have disposed of this point of order. It is not before the House yet for consideration.

Mr. SMALL. I hope the gentleman will withdraw his point of order.

Mr. FOSTER. I make the point of order, Mr. Chairman; if it is to be made at all, it might as well be made at one time as another. This is not authorized by law.

Mr. MOORE of Pennsylvania. I understand the gentleman from Illinois [Mr. FOSTER] makes the point of order against the paragraph?

The CHAIRMAN. Yes.

Mr. MOORE of Pennsylvania. I ask the gentleman from Illinois, in all fairness to this proposition, to reserve his point of order until its merits can be explained.

Mr. FOSTER. I will reserve it for five minutes, but not for a long discussion.

Mr. MOORE of Pennsylvania. I ask that the gentleman reserve it without limit. I shall not be unreasonable as to time.

Mr. FOSTER. Certainly.

The CHAIRMAN. The gentleman from Illinois [Mr. FOSTER] reserves his point of order.

Mr. MOORE of Pennsylvania. I desire to speak on the merits for a brief period.

Mr. MADDEN. Is the gentleman going to talk on the merits or on the point of order?

Mr. MOORE of Pennsylvania. On the merits. Does the gentleman object to that? Because if he does, we might as well understand it now, if that is the move to be made.

Mr. MADDEN. No.

The CHAIRMAN. The gentleman from Pennsylvania [Mr. MOORE] asks unanimous consent to proceed in the discussion of this section on its merits. Is there objection?

Mr. MADDEN. Mr. Chairman, while the point of order is pending, I assume that the gentleman will have that right?

The CHAIRMAN. The Chair does not care to express himself as to that.

Mr. SMALL. How much time does the gentleman from Pennsylvania desire?

Mr. MOORE of Pennsylvania. This is one item in the bill that will probably be more contested than any other, and there ought to be at least 20 or 30 minutes for the explanation of the project. I should like to have 30 minutes.

The CHAIRMAN. The gentleman from Pennsylvania asks unanimous consent to proceed for 30 minutes to discuss the merits of the proposition. Is there objection?

Mr. FOSTER. Reserving the right to object—

Mr. LENROOT. Reserving the right to object; Mr. Chairman, I shall not object, provided that an understanding can be



had that an equal amount of time shall be given to those opposed to the proposition on the merits. That is only fair.

Mr. SMALL. That will consume an hour.

Mr. MOORE of Pennsylvania. I have no objection to that, of course.

Mr. SMALL. The gentleman knows that the gentleman from Pennsylvania is quite familiar with and interested in this proposition.

Mr. LENROOT. May I make this suggestion to the chairman of the committee, that if this shall be held in order, the chairman of the committee will not move to close debate until the opposition has had an equal amount of time?

Mr. SMALL. I will agree to 30 minutes.

Mr. LENROOT. Very well.

Mr. MADDEN. Let us see if we understand that. If the gentleman from Pennsylvania is given unanimous consent to talk for 30 minutes, speaking on the merits in favor of this project, when the point of order is decided and the item is held to be in order those in opposition to it shall have 30 uninterrupted minutes to speak on the other side? Is that what the gentleman understands?

Mr. SMALL. That is a new descriptive word "uninterrupted." [Laughter.]

Mr. MADDEN. I mean they will have 30 minutes without question.

Mr. SMALL. Yes.

The CHAIRMAN. The gentleman from Pennsylvania asks leave to proceed for 30 minutes.

Mr. FOSTER. Reserving the right to object, Mr. Chairman, if it is going to take a long time to discuss the point of order after the merits of the proposition are discussed—

The CHAIRMAN. The Chair will state that he would like to hear argument on the point of order.

Mr. MADDEN. Does the Chair want to hear an argument on the point of order now?

The CHAIRMAN. The Chair does not desire to express a positive opinion on that.

Mr. MADDEN. I will discuss the point of order with the Chair after the gentleman from Pennsylvania has discussed the merits.

The CHAIRMAN. The gentleman from Pennsylvania asks unanimous consent to proceed for 30 minutes to discuss the merits. Is there objection?

There was no objection?

Mr. MOORE of Pennsylvania. Mr. Chairman, this matter has been before the committee previously, and I shall regret it if the statement of the facts appears to be reiteration. It is an old story, but an intensely interesting one, to those who live along the Atlantic seaboard and who are interested in the development of commerce and in the welfare and defense of our country.

The gentlemen from the Mississippi Valley are naturally proud of their territory. They have a fertile soil, and they have it well irrigated by the Mississippi River and its tributaries, and they have labored in this House valiantly to obtain improvement of that river and those tributaries, and have succeeded wonderfully well.

While all this has been going on in the Middle West the Atlantic seaboard has not received the same attention from Congress in a commercial sense that the Mississippi Valley has received. Not that those of us living along the Atlantic seaboard are at all envious of the progress of our friends in the Middle West, but we feel that the time has come when recognition should be given to the worthy projects of the East.

It is a geographical fact that the Atlantic seaboard is dotted inland with lakes, ponds, sounds, bays, and rivers, which, if linked up into one united chain, would make a complete inland waterway, safe from the dangers and risks of outside sailing, all the way from New England to the Gulf.

Mr. Chairman, I feel constrained to ask for order, and that gentlemen who are opposed to this project refrain from loud conversation. It is a strange thing that those who oppose a proposition will persist in irritating those who are endeavoring to make a fair presentation of it; but that seems to be the rule in the consideration of this bill, and it is not fair play. [Applause.] Now, I am asking for fair play, and I have been here long enough to know how to get it, and I notify the gentlemen who are constantly keeping up a noise by conversation that I propose to get a square deal for the presentation of this proposition.

Mr. MADDEN. What does the gentleman want to get peevish for?

Mr. MOORE of Pennsylvania. I am not getting peevish. The gentleman could not get me peevish if he tried.

Mr. MADDEN. It does not help the gentleman's case any for him to make threats.

Mr. MOORE of Pennsylvania. I am not making any threats. I am appealing to those who are not obstinate and who are willing to listen.

Mr. FREAR. I am satisfied that there was no intention to create any interruption, and of course there are only two or three gentlemen talking, so I think the gentleman ought to withdraw his remarks which he made about those who are engaged in conversation in view of the fact that an extension of time has been given him without any question.

Mr. MOORE of Pennsylvania. At the special request of the gentleman from Wisconsin, who, I assume, is in favor of this bill, I withdraw what I said. [Laughter.]

Here is a geographical situation that deserves consideration at the hands of this Congress, particularly now in these times of war. Gentlemen in the interior may not understand this situation so thoroughly as we do who are more directly affected by it. But we have tremendous wealth along the Atlantic coast; we have great industries there. The gentleman from Illinois [Mr. MADDEN] a little while ago made merry over a proposition at Wilmington, Del., because men had made money out of munitions of war. Yet I recall no one who was more enthusiastic for war than the gentleman from Illinois, and I am amazed that he should stand here in the face of a proposition to make ammunition to carry on that war, and deride those who are doing their best to further the interests of the country in that regard. That is a dog in the manger policy that I object to, even if the gentleman insinuates that I get peevish in making the statement.

Here is the great coast line of the Atlantic [indicating]. Inland all the way from Boston—and we can carry it farther north—are a series of sounds and bays back from the shore line, back from the dangers of this great ocean out here, safe from the danger in ordinary times of storm and at present from the danger of the submarines of a hostile country. Here is the city of Boston. Vessels leaving Boston now proceed to the open sea. Here is a short canal cut through Cape Cod to save an outside sailing distance from Boston to New York of upwards of 70 miles and to save the outside risk of fog and shoal and storm. The Government did not build that canal, which is 8 miles in length. It was built by a private company and is now being used not only by vessels of commerce but by submarines and small war craft of the United States Navy and of the United States Army, which of itself has a fleet of more than 2,500 vessels. Now, this is a great saving to the Government. It cheerfully and willingly pays toll through that privately owned canal on Cape Cod to save time and get from Cape Cod Bay down through Buzzards Bay into Long Island Sound.

For strategic reasons, therefore, that canal may be used as an inland course for vessels of war, passing them practically safe from the sea into Long Island Sound, which was described here the other day, and with which every schoolboy should be familiar—one of the best sheets of water for harboring vessels in the United States. Here is the entrance from the north to Long Island Sound, and here is the entrance from the south. But, so far as war vessels are concerned, the difficulty is this: That while certain vessels now may pass from Boston inland for our own purposes or to circumvent an enemy who may be lurking out here somewhere, if we once get into Long Island Sound on this inland course with battleships we strike Hell Gate in the East River before we can get beyond the port of New York, and large vessels of the Navy do not pass Hell Gate. So that, as a matter of fact, if Hell Gate stands as it now is, and if our large vessels find it advisable to use Long Island Sound and to come into New York Harbor either to protect it or to drive out an enemy or to seek repairs at the Brooklyn Navy Yard, they are blocked here at Hell Gate.

The argument that the gentleman from New York made the other day was that we should make the necessary improvements that have been so long delayed at Hell Gate now, so that during this year, or should the war continue for three years, we may have the inside passage to New York and points south. And why should we not have two entrances to Long Island Sound? These little dots on the map indicate where a foreign fleet might be outside the port of New York waiting for our vessels to come out, just as the submarines outside the ports of England are waiting now for English vessels to come out or for our vessels to go in.

This of all times seems to be the best time for us to properly protect our coast line. We can not begin too soon to make these necessary defensive and strategic improvements.

Mr. FESS. Will the gentleman yield?



Mr. MOORE of Pennsylvania. Yes.

Mr. FESS. How long would it take to clear the channel at Hell Gate?

Mr. MOORE of Pennsylvania. I will let the gentleman from New York answer that. The War Department has approved the project as necessary now. It may take two years, speaking offhand, but if it takes two years, would it not be well to begin now rather than to wait until the two years have expired?

Mr. FESS. I think it would.

Mr. MOORE of Pennsylvania. Is it not cheaper to buy property now than to buy it when the price has gone up? Is it not cheaper to prepare ourselves for war now than to wait until the enemy has sacked our shores?

Mr. LENROOT. Will the gentleman yield?

Mr. MOORE of Pennsylvania. Certainly.

Mr. LENROOT. The project, as the gentleman states has been approved, is a 12-foot channel.

Mr. MOORE of Pennsylvania. I have not reached the project that I want to talk about. The Cape Cod Canal is 25 feet and there is good water—

Mr. WALSH. Will the gentleman yield?

Mr. MOORE of Pennsylvania. Yes.

Mr. WALSH. Does the project the gentleman is speaking of include the taking over of the Cape Cod Canal?

Mr. MOORE of Pennsylvania. It does not; the Cape Cod Canal is a private enterprise, and while it has been approved by waterways men, the project, which includes the Chesapeake & Delaware Canal, contemplates getting to Boston by a still more inland route, at a 12-foot depth, although the plans provide for a larger depth if need be.

Mr. SMITH of Michigan. Will the gentleman yield?

Mr. MOORE of Pennsylvania. I will.

Mr. SMITH of Michigan. How long will it take to complete that improvement?

Mr. MOORE of Pennsylvania. I regret I can not take time to go into the Massachusetts project until I get through with the discussion of the Chesapeake & Delaware paragraph.

Mr. TOWNER. Will the gentleman yield?

Mr. MOORE of Pennsylvania. Yes; I will yield.

Mr. TOWNER. The gentleman states that the depth of the Cape Cod Canal is 25 feet?

Mr. MOORE of Pennsylvania. Twenty-five feet is the ruling depth.

Mr. TOWNER. That depth is insufficient to pass a large battleship.

Mr. MOORE of Pennsylvania. It is not sufficient to pass a battleship, but is sufficient for minor craft.

Mr. TOWNER. Is it proposed to deepen the canal by private owners or by an appropriation?

Mr. MOORE of Pennsylvania. That canal was built wholly from private funds by a private company.

Mr. TOWNER. I know it was, but is it proposed to deepen it?

Mr. MOORE of Pennsylvania. I have not heard that they have any such intention. I am using the Cape Cod Canal as a going canal as an argument and because the inner Massachusetts canal is not in existence. It is a short cut, as is the East River here at Hell Gate. There is a good depth at Hell Gate now. Vessels owned by the New York, New Haven & Hartford Railroad traverse the channel and get back and forth with safety, as gentlemen who travel to Boston know. But battleships—

Mr. SLAYDEN. Will the gentleman yield?

Mr. MOORE of Pennsylvania. Yes.

Mr. SLAYDEN. How much do these vessels that go through there draw?

Mr. MOORE of Pennsylvania. I do not know, but probably 13 or 14 feet, and they may draw more.

Mr. FESS. Will the gentleman yield?

Mr. MOORE of Pennsylvania. Yes.

Mr. FESS. May I ask the gentleman whether the item that we adopted yesterday takes care of the Hell Gate proposition?

Mr. MOORE of Pennsylvania. I understand that it does to the satisfaction of the engineers at the present time.

Now, here is the Delaware & Raritan Canal, a very old canal, opened in 1834, bisecting the State of New Jersey from Raritan Bay, which is south of New York Bay, across to the Delaware River at the point indicated on the map. It is about 33 miles long, but it is impossible as a modern proposition. It was a great carrier between New York and Philadelphia in the old days, but when the railroads became active this, in common with other canals in the South and West that did a great business, began to slump.

They had come before the era of railroads, and when the railroads came the canals began to go, and this one, although it competed with the railroad after it did come, was subsequently absorbed by one of the railroads, which owns it now.

This old canal across New Jersey is in operation and is carrying considerable tonnage. Under war pressure it has been carrying special lines of barges suited to its dimensions back and forth from New York to Philadelphia. That is not Philadelphia and New York commerce exclusively, it is the commerce of the country that has squeezed itself through the canal because of the incompetence of the railroad to carry all the freight presented.

That canal is not under discussion now except that the State of New Jersey has passed an act providing \$1,000,000 for a right of way which it will dedicate to the Government the moment the Government is ready to begin operations on a new canal. That project enters the Delaware River at a point near Trenton, and a 12-foot depth carries it down to the city of Philadelphia, where the 35-foot channel begins, and to the sea, in this direction. As is well known the Delaware River has grown in importance enormously during the last two years.

The Delaware always was a great commercial river. As a matter of State pride I have contended that it is the most important commercial river in the United States. There are 100 miles of the Delaware River from the sea to Philadelphia, inland, that does a tonnage business of more than 26,000,000 a year. That is an enormous tonnage for an inland river. There is nothing like it upon an inland river in the United States. Great establishments, factories, industries of one kind and another, oil refineries, and recently munition establishments, as well as shipbuilding plants have come along the Delaware River, until from a point at or near Wilmington up to Philadelphia it is a perfect beehive of industries upon both sides of the river in New Jersey and Pennsylvania. There is a splendid depth of water. We take the largest vessels afloat, certainly those that have a draft under 31 feet, all the way up to Philadelphia. It is a most unusual proposition for an inland river, and we do an enormous business upon it and are proud of it.

Now comes the point that I desire to discuss. Gentlemen seek to strike out the paragraph in the bill proposing to take over what is known as the Chesapeake & Delaware Canal, and gentlemen will probably use as an argument against that canal that the owners of it want to dispose of it, which is not the fact. If anyone would know that fact, I would know it. I have investigated this matter for 10 years, and the fact is that the old canal, the Chesapeake & Delaware Canal, has been in the possession of estates and heirs since long after its completion in 1829, and there is no power within the corporation, as I understand it, to dispose of it. It must be either condemned or seized by the Government of the United States.

Mr. LENROOT. Mr. Chairman, will the gentleman yield?

Mr. MOORE of Pennsylvania. Yes.

Mr. LENROOT. Did they have a charter for that canal?

Mr. MOORE of Pennsylvania. Yes.

Mr. LENROOT. Will the gentleman tell us from whom they got the charter?

Mr. MOORE of Pennsylvania. The gentleman will find upon my desk the first report upon the canal, which the Pennsylvania State Historical Society sent to me the other day, and I shall be glad to give the gentleman the particulars as soon as I am able to examine it. As a matter of fact, this canal was regarded of great importance to the people of the United States when it was agitated prior to 1825, as much so as was the construction of the Union Pacific Railroad to the people of the West.

Mr. BATHRICK. Mr. Chairman, will the gentleman yield?

Mr. MOORE of Pennsylvania. Yes.

Mr. BATHRICK. Is it not a fact that the Government of the United States owns stock in that canal?

Mr. MOORE of Pennsylvania. It owns stock in it now, and the State of Pennsylvania does, as do also Delaware and Maryland.

Mr. BATHRICK. And the final determination of whether it is constitutional to appropriate money for waterways or to engage in the construction of canals was determined in this case?

Mr. MOORE of Pennsylvania. That may be.

Mr. BATHRICK. It was decided then that it was constitutional for the Government to do so?

Mr. MOORE of Pennsylvania. Just as we began to finance the early stages of our Government by lotteries, so we induced the Government and the States to invest in canals before we ever dreamed of railways, and some of these antiquated conditions, though matters of great historical interest, are not understood by the modern generation.

Mr. ROWE. How long is that canal?

Mr. MOORE of Pennsylvania. Thirteen miles, and one of the difficulties about any one State or individual or corporation getting control of the property there is that it bisects two



States. It is an interstate canal. It runs from the Delaware River at a point near Delaware City across lowlands, until it enters what is known as the Elk River, on the Maryland side, and then goes out into Chesapeake Bay. The builders of the canal, according to this first report, had 850 men working upon it with horses and carts and picks and shovels, and it cost them upward of \$2,100,000 when it was completed in 1829—a wonderful job, done in that way. Gentlemen say that when the Government appraises this property at \$2,500,000 now it is appraising a defunct and worthless property, and yet when it was completed in 1829, when money was certainly more valuable than it is now, when it would go much further than it goes now, it cost upward of \$2,100,000.

Mr. MADDEN. Mr. Chairman, will the gentleman yield?

Mr. MOORE of Pennsylvania. Yes.

Mr. MADDEN. Of course, the gentleman knows, as does everyone else, that when this canal was dug there was no machinery such as is now used in the construction of great public works, and whereas it would cost a dollar and a half a yard or two dollars a cubic yard for the materials taken out then, moved by horses and wagons, to-day it would cost fifteen cents by machinery.

Mr. MOORE of Pennsylvania. And labor was cheaper then than now.

Mr. MADDEN. Machinery is more advanced than it was then, so that what you could do at a dollar and a half a cubic yard then, even at low wages, you could do for fifteen cents to-day at high wages.

Mr. MOORE of Pennsylvania. If I understand the gentleman, he would not make any allowance whatever for the value of the property at the time of construction or the improvements made upon it, and since it is a going property, without any friends in particular, he would just take it and drive the people out of business who own it?

Mr. ROWE. And at that time Illinois farms were worth about a dollar an acre.

Mr. MOORE of Pennsylvania. That is a fact, and I have plenty of proof here to show that Illinois was working very strongly for canals subsequent to the construction of this one, which is of so great value to the coast. Let me explain the value of this canal if I can. I have records here which, of course, I can not quote in half an hour, but here is a great waterway lined with tremendous industrial improvements and activities, and here is one of the most vital sheets of water from a naval standpoint to the Government of the United States. If foreign vessels were to approach Delaware Bay, they could proceed, of course, if we were not to meet them at sea, as far up this bay as these three lines of fortifications marked upon the map, a little more than 40 miles below the city of Philadelphia. They would have substantially a free run of 60 miles up that bay before they were halted. If our fleet happened to be in Chesapeake Bay maneuvering somewhere around Hampton Roads or going into Norfolk Navy Yard for repairs, and should not care for strategic reasons to come outside to meet the enemy, but should prefer to go inside or send supplies inside up the Chesapeake Bay, it would be all over the minute they got up here to Chesapeake City, on the Maryland side of the Chesapeake & Delaware Canal. They would be blocked.

That old canal carries only 10 feet of water, which would permit the passage through it of vessels of a draft of certainly not more than 9 feet. Any vessel with a draft of more than 9 feet would be helpless or hopeless either on this Chesapeake side of that canal or on the Delaware side. Is it not possible that sometime in this war with Germany we may find it advisable, being very active along the coast here, at Boston, or active down here at Norfolk, or active at the Panama Canal, or active on the Pacific coast, or while helping our allies upon the other side of the water—is it not possible we might find it advisable to pass vessels inland from the New York Navy Yard to the Philadelphia Navy Yard, and from the Philadelphia Navy Yard through that canal down to the sheltered waters of the Chesapeake Bay and the Norfolk Navy Yard? Is not this possible?

Mr. LENROOT. Will the gentleman yield?

Mr. MOORE of Pennsylvania. I will.

Mr. LENROOT. I will ask the gentleman a question. What is the depth of the water proposed in the option of the project in this paragraph?

Mr. MOORE of Pennsylvania. Engineers have recommended two depths.

Mr. LENROOT. This project is for 12 feet?

Mr. MOORE of Pennsylvania. Yes.

Mr. LENROOT. Did not the engineers of the War Department testify in the hearings before this committee that a 12-foot depth would not be of the slightest value to the Navy

and would not afford access for submarines, and that the Navy would consider nothing less than 16 feet?

Mr. MOORE of Pennsylvania. And I testify to that statement myself. I admit it on all fours. It is absurd to think that a 12-foot channel would carry war vessels. It could not be done. But I am asking the gentleman from Wisconsin in all fairness and reason to answer me this, whether when Congress is obstinate as it has been on the 12-foot proposition, and apparently still more obstinate on the proposition which the engineers have presented, to give a 25-foot depth through that 13 miles, whether we had not better take a 12-foot depth and put it in the hands of the Government to get the work started?

Mr. LENROOT. The gentleman asks me that question?

Mr. MOORE of Pennsylvania. Yes.

Mr. LENROOT. I say that if we are going to have only a 12-foot depth it is of no value from a military standpoint.

Mr. MOORE of Pennsylvania. There is a report, and I would be delighted if I had time to quote it, from officials of the Navy, from men who have investigated this for the last 50 years and who have reported to Congress from time to time, that there must be a start, and that if it is a question of money it is better to take 12 feet and get started and prove up the worth of the enterprise rather than to postpone until it is too late.

Mr. LENROOT. Then the gentleman admits that this would have nothing to do with the present war?

Mr. MOORE of Pennsylvania. I do not admit that. I certainly do not admit it. I have evidence here from the Secretary of the Navy, evidence from experts of the Army and the Navy, that even now this canal would be of tremendous value to the Government in the passage of supplies on such ships as are able to pass through. And I want to say to the gentleman what I have said to the House before, and it is not bombast but the solemn truth, that this old canal in its present condition was the saving clause when Abraham Lincoln was calling for troops to save the National Capital, because the Confederates were right across the river here, and the railroad bridges from the North were burned, just as they could easily be burned and destroyed now, and it was through this old canal, so much berated at times in this argument, that the northern troops were taken on barges down to Annapolis in order that they might move up to Washington and save the day at Lincoln's call. [Applause.]

Mr. HAMILTON of Michigan. Will the gentleman yield?

Mr. MOORE of Pennsylvania. I will.

Mr. HAMILTON of Michigan. How long is it estimated it would take to dig this canal to a depth of 16 feet?

Mr. MOORE of Pennsylvania. Why does the gentleman ask about 16 feet, because that is confusing?

Mr. HAMILTON of Michigan. Put another depth, then, for a more practical proposition, and say 32 feet.

Mr. MOORE of Pennsylvania. Thirty-two feet would destroy the project just now, because of the cost. It did before. It was the little joker.

Mr. HAMILTON of Michigan. I was speaking about the practical utility of this canal for the purpose the gentleman is arguing.

Mr. MOORE of Pennsylvania. My judgment is, if you want my judgment, that if you give the Army engineers authority to build this canal you will have it ready within a year or two, so that it will be available for the defense of the country. The point is to get started.

Mr. LENROOT. The gentleman speaks about the possible destruction of railroads by a foreign foe. In the event that should happen, would it not be just as easy, and in fact easier, to destroy the canal than the railroads?

Mr. MOORE of Pennsylvania. The situation there is fairly well fortified, I will say to the gentleman, and it would be as difficult to get to the canal as it would be to get to the railroads.

The CHAIRMAN. The time of the gentleman has expired.

Mr. MEEKER. How much would you save in mileage in going through there than around the other way?

Mr. MOORE of Pennsylvania. The saving in mileage from Philadelphia—which is 90 miles from Baltimore, as the bird flies—the saving in distance would be 325 miles.

The CHAIRMAN. The time of the gentleman has expired.

Mr. LENROOT. Mr. Chairman, the gentleman has generously yielded, and I ask that he have 10 minutes more.

The CHAIRMAN. Is there objection?

Mr. MOORE of Pennsylvania. I am very serious about this matter, and I would like to get it presented to the committee properly.

The CHAIRMAN. Is there objection? [After a pause.] The Chair hears none.

Mr. GOOD. How wide is this canal?



Mr. MOORE of Pennsylvania. At present?

Mr. GOOD. Yes.

Mr. MOORE of Pennsylvania. It is 24 feet wide in the locks.

Mr. GOOD. How wide outside of the locks?

Mr. MOORE of Pennsylvania. They fix the limit. There are three locks in the canal. Let me explain to the gentleman. That is interesting and apropos.

Mr. GOOD. Just another question before the gentleman gets to the locks. In the event this was authorized it would take three years to cut deep enough for naval purposes during that time, and the canal would be entirely out of commission for commercial purposes and defensive purposes?

Mr. MOORE of Pennsylvania. I think not.

Mr. GOOD. And for defense purposes?

Mr. MOORE of Pennsylvania. I think it has been so stated by the engineers. I have seen it stated in some of the reports that they could manage to keep the canal going.

Mr. GOOD. So that if we went ahead and appropriated this money it would practically eliminate the use of this canal?

Mr. MOORE of Pennsylvania. No. The engineers have indicated that it would not. The use of the canal would go on. I am so advised by the engineers.

Mr. MADDEN. I think that is so.

Mr. MOORE of Pennsylvania. Here is an expert in engineering. I refer to the gentleman from Illinois [Mr. MADDEN]. [Laughter.] He coincides with me.

Mr. MEEKER. Mr. Chairman, will the gentleman yield?

Mr. MOORE of Pennsylvania. Yes.

Mr. MEEKER. Of course the gentleman understands that a railroad does not quit business when it builds a new bridge.

Mr. MOORE of Pennsylvania. That is true. They simply provide another means. But that question has been discussed by the engineers and has been answered in the negative. It would not stop the operation of the canal.

Mr. FESS. Mr. Chairman, will the gentleman yield?

Mr. MOORE of Pennsylvania. Yes; I yield to the gentleman from Ohio.

Mr. FESS. I was going to suggest that in view of the time being extended only 10 minutes, I am very anxious to hear the statement which the gentleman is about to make, and unless the time can be still further extended I suggest that the gentleman be permitted to go on uninterrupted. I want to hear him.

Mr. MOORE of Pennsylvania. I am obliged to the gentleman from Ohio.

Let us take the element of cost from the official report; and incidentally I must repeat, because it has often been said before here, that this project has several times been approved in official reports. The United States Army engineers have several times officially indicated that the Government ought to have this property; that the property ought to be improved and developed even to the extent of a ship canal, which I think would be the present war demand, if the Government was given authority by Congress to proceed.

The cost of this project has been the bone of contention, and I think it is due largely to the fact that Congress has authorized the purchase of other canals, some of them in the West, which have fallen down and have been failures and waste. I will not refer to any of them now, because I do not want to harass any particular Representative; but Congress has authorized the purchase of numerous canals in this country in the past at large expense, and those canals have not been workable.

Mr. MADDEN. Why not state them?

Mr. MOORE of Pennsylvania. Well, the Hennepin Canal, if the gentleman wants to go near home, is one of them.

Mr. MADDEN. The Government authorized the construction of it, not the purchase of it. It is a fake.

Mr. MOORE of Pennsylvania. The gentleman is very frank about it, and condemns a canal in his own State. I am commending mine, although it is not in my State.

Mr. SWITZER. Mr. Chairman, will the gentleman yield?

Mr. MOORE of Pennsylvania. Yes.

Mr. SWITZER. Does the gentleman know what the annual tonnage of traffic through the canal is?

Mr. MOORE of Pennsylvania. There is a business now of upward of a million tons a year, privately carried and paying tolls to the owners of the canal. That tends to answer the constant charge that this is a worthless property. The owners of the bonds of this property—the stock being valueless, it is said—the bonds, which are substantially equivalent to the appraised value of the canal, pay 4 per cent interest, and these old estates which own those bonds are thoroughly satisfied to draw that interest.

The canal is a paying property, even ancient and limited as it is in capacity.

Now, the appraisal of this canal by the engineers—and I trust I may not be asked to quote their report—is \$2,500,000 with some odd figures. That appraised value includes locks, engines, towboats, barges, and such other equipment, buildings, land, right of way, and other property as the company possesses.

The engineers have reported that the cost of a 12-foot channel, making it a sea-level waterway, which would dispense with the locks and unite the waters of Chesapeake Bay with the waters of Delaware Bay, would be \$7,900,000.

Now, that, plus \$2,500,000, would be the cost of taking over the property and improving it and deepening the channel to a depth of 12 feet and making it a sea-level proposition; and 12 feet will carry some of the vessels of the Navy, some of the torpedo boats, and many supply boats, and it will carry a major portion of the fleet of vessels that are now attached to the Army of the United States.

Mr. MADDEN. Mr. Chairman, will the gentleman yield?

Mr. MOORE of Pennsylvania. Yes.

Mr. MADDEN. What is the tonnage of the vessels that now run through the canal?

Mr. MOORE of Pennsylvania. I will give that later in my speech. There is a line known as the Ericsson Line, a very old and respected company, that does business between Philadelphia and Baltimore, taking freight from the region round about Philadelphia and New York to New England and then carrying it to Baltimore, where it is distributed to points south and southwest and vice versa. It has three or four boats that are built to fit the dimensions of these locks. I think they are exactly 23 feet 4 inches wide, which gives them a leeway going through these locks of a few inches, and they are built so high that their proportions attract attention as they pass up and down the river or the bay. They are peculiarly constructed, and their capacity is limited. But, even limited as it is, they still seem to be engaged in a paying business through that canal, and they have been doing it for generations.

Mr. MADDEN. Are they of 50 tons?

Mr. MOORE of Pennsylvania. Oh, more than that.

Mr. MEEKER. Down on the Potomac they haul 115 tons on boats of this type.

Mr. REAVIS. Mr. Chairman, will the gentleman yield?

Mr. MOORE of Pennsylvania. Yes.

Mr. REAVIS. I am reluctant to take any of the gentleman's time, but have any Government experts expressed any opinion as to the utility of this canal if it were improved so as to accommodate the larger warcraft?

Mr. MOORE of Pennsylvania. Yes; they have very emphatically, and always favored taking it over. I say on my honor as a Representative that the reports of the Army engineers are in nearly all instances—for there are many reports—strongly in favor of taking this property over as a war proposition.

Mr. REAVIS. Are they in favor of taking it over with the ultimate purpose of deepening it for the larger craft?

Mr. MOORE of Pennsylvania. That is the idea. I make no concealment as to that. We would never be content with a 12-foot depth in that waterway. It will not be a canal if the Government takes it over. It will be a waterway. Every canal feature will be dispensed with. The canal to-day is a positive obstruction to navigation along the coast. It is a hindrance to business. It is a hindrance to the proper defense of the coast line in time of war, and we want to get rid of these old locks and these old appurtenances of a canal and make it a sea-level waterway, so that the water will flow from one bay to the other at a depth sufficient to carry our ships of war; and if we do that, then it will follow logically that, the canal being open and free, business will sweep through the canal and commerce will be stimulated.

Mr. JAMES. How much will it cost to deepen it to a depth of 25 feet?

Mr. MOORE of Pennsylvania. To deepen it to a depth of 25 feet will cost, according to the engineers, \$12,424,500.

The CHAIRMAN. The gentleman's time has expired. Does the gentleman from Illinois desire to make the point of order?

Mr. MADDEN. I make the point of order. If the Chair wants to hear arguments upon it I shall be glad to present them.

The CHAIRMAN. Does anybody desire to say anything against the point of order?

Mr. MOORE of Pennsylvania. I certainly do.

Mr. SMALL. I desire to be heard, but would it not be better to have the proponents of the point of order heard first?

Mr. MADDEN. I shall be glad to hear the gentleman.

The CHAIRMAN. The Chair would like to hear from those who conceive that the point of order should be overruled.

Mr. SMALL. Mr. Chairman, I submit that the point of order against this paragraph providing for the Chesapeake and Delaware waterway can not be sustained. In the first place,



because this item appears in this bill, and for other reasons which I shall submit, this committee has prima facie jurisdiction of this item. This item is in this bill by reason of an authorization reported by the Committee on Rivers and Harbors for an examination and survey of an intracoastal waterway from Boston, Mass., to Beaufort Inlet, N. C. That was authorized in the river and harbor act of 1909, if I am not mistaken, and this item is based upon that and the supplemental report, being the final report of the Chief of Engineers. So that, for the reason that the item is in the bill, for the reason that it occurs here as the result of a favorable recommendation based upon an examination and survey authorized by Congress, as reported in the river and harbor bill, I say that the River and Harbor Committee prima facie has jurisdiction, and that the burden is upon those who make the point of order involving the jurisdiction of the committee to sustain the point of order. I think that is an elementary proposition of law, and I submit it is applicable to points of order involving the jurisdiction of the committee.

Mr. Chairman, the making of this point of order is not for the purpose of preserving the jurisdiction of the alleged Committee on Railways and Canals. Further, it is not for the purpose of attacking the jurisdiction of the River and Harbor Committee on similar projects. The sole purpose of it is to use this moribund Committee on Railways and Canals as a refuge for defeating the consideration of this item and its enactment into law.

What is the Committee on Railways and Canals, which gentlemen assert has jurisdiction of this proposition? Fortunately or unfortunately there is such a committee, and yet most Members of the House have to be reminded of its existence, or else its existence would not be recalled.

Mr. LENROOT. Will the gentleman yield for a question?

Mr. SMALL. Certainly.

Mr. LENROOT. Is the gentleman aware that the Committee on Railways and Canals has, in fact, exercised jurisdiction over this very canal, and upon two occasions reported upon it?

Mr. SMALL. I am coming to that in a moment upon another phase of this matter. I say that the purpose of this point of order, Mr. Chairman, is to defeat this item, and not in behalf of the preservation of any jurisdiction upon the part of the Committee on Railways and Canals. That committee is called "Railways and Canals," and yet there are precedents for the proposition that it has lost its jurisdiction of railways by custom of the House, and by the activities of that most assiduous and industrious committee in asserting its own jurisdiction, the Committee on Interstate and Foreign Commerce. So that although it is called "Railways and Canals," and has jurisdiction of railways, nobody would rise in his place and make a point of order against a bill reported by the Committee on Interstate and Foreign Commerce or any other committee of the House upon the ground that the Committee on Railways and Canals had and should assert jurisdiction of it. I submit that in this case it ought also to be ruled that the Committee on Railways and Canals has lost jurisdiction of the waterways denominated canals. Now, I come to the suggestion of the gentleman from Wisconsin [Mr. LENROOT], who, I presume, will support the contention that the point of order ought to be sustained. I hold in my hand here a report by the Secretary of War based upon a resolution of the Senate asking him to furnish information containing summaries of reports of Government commissions, officers, and engineers on the commercial, naval, and military advantages of this canal. I refer to Senate Document No. 14, Sixty-fourth Congress, first session. In that report, on page 5, is a summary of all the reports which have been made upon this canal. And I presume the gentleman from Wisconsin, who is always industrious in whatever he presents to the House, has assimilated this valuable report. Among these reports which have been submitted to Congress—

Mr. HARDY. Before leaving that point will the gentleman permit an interruption?

Mr. SMALL. Certainly.

Mr. HARDY. It seems to me a very serious fact that the time to raise the question as to which committee has jurisdiction of a matter is upon the reference of the bill, and that when it comes before the House the point of order ought not to be sustained on the ground that the matter belongs to another committee. On the question of reference, the reference might be to the right or the wrong committee, but this House has jurisdiction of everything, and this Committee of the Whole has jurisdiction, whether it comes from the right or the wrong committee, if there is no other ground for objection.

Mr. STAFFORD. Mr. Chairman, will the gentleman yield in that connection?

Mr. SMALL. I yield to the gentleman.

Mr. STAFFORD. Is not my friend the gentleman from Texas [Mr. HARDY] aware that this bill has never been referred, but is an original bill presented by the chairman of the committee as a privileged matter, and that all points of order were reserved as soon as it was presented to the House?

Mr. HARDY. So it may be, but whether the right committee or the wrong committee presents the bill, the Committee of the Whole has jurisdiction over every matter involved in it.

Mr. STAFFORD. There are two points of order in this case: First, that the Committee on Rivers and Harbors has not jurisdiction over the subject matter, because it relates to a canal; and, second, because even if it had jurisdiction over the subject matter it is not privileged under the rules of the House.

Mr. HARDY. I submit that both committees have jurisdiction—the River and Harbor Committee and the Committee on Railways and Canals—for that matter.

Mr. REAVIS. Will the gentleman yield to me before he leaves the question of committee jurisdiction?

Mr. SMALL. I will yield.

Mr. REAVIS. If the gentleman from Pennsylvania is correct that the purpose of putting the item in the bill was to change its character from a canal into a waterway, that purpose would defeat the jurisdiction of the Committee on Railroads and Canals.

Mr. SMALL. Without commenting on the quotation of the gentleman from Pennsylvania, I shall endeavor to assert, before taking my seat, and to prove that this project does not involve a canal within the meaning of the rules of the House.

Mr. REAVIS. The point I had in mind is, if the gentleman will indulge me that supposing the Committee on Railways and Canals has jurisdiction of it as a canal, would that prevent another committee having jurisdiction for the purpose of changing its character from a canal into a waterway?

Mr. FOSTER. The gentleman from North Carolina does not contend that this is anything but a canal?

Mr. SMALL. If the gentleman thinks otherwise, I will beg him to examine some of the reports—

Mr. FOSTER. Because you intend to change it from a canal into a waterway does not prevent it being a canal.

Mr. SMALL. That is not any canal proposition. I will come to that later.

Mr. GALLAGHER. Will the gentleman yield?

Mr. SMALL. Yes.

Mr. GALLAGHER. Is it not a fact that a proposition was taken away from the committee the other day that was originally lodged in another committee in answer to the gentleman from Texas?

Mr. SMALL. That did not settle any question of jurisdiction. I do not desire now to be diverted to another question. Mr. Chairman, I said as to this proposition that the Committee on Railways and Canals had gone into innocuous desuetude, and in this report by the Secretary of War in respect to the Senate resolution there are a large number of reports, I think 18, which have been made on this waterway connecting the Chesapeake Bay and the Delaware River. The only reports based on legislation reported by the Committee on Railways and Canals was one in January, 1907, authorizing a commission to be appointed, which consisted of Gen. Felix Agnus, Maj. C. A. F. Flagler, and Mr. F. T. Chambers, civil engineer of the United States Navy, and a report based on the action of the Committee on Railways and Canals, February 5, 1886, and a report of April 24, 1904, by Representative Davidson and Representative Strong. All the other reports were recommended and were reported from the Committee on Rivers and Harbors.

The CHAIRMAN. The Chair would like to ask the gentleman if any part of this appropriation is to be used for anything else than for the improvement of rivers and harbors?

Mr. SMALL. To be perfectly frank with the Chair, a part of it is to be used for the purchase of a canal.

The CHAIRMAN. That is what the Chair wished to know.

Mr. DEMPSEY. Will the gentleman pardon me for a question?

Mr. SMALL. Yes.

Mr. DEMPSEY. Is it not a fact that on page 18 of the bill there is a project set out of which this committee has had jurisdiction for 10 or 12 years, which involves, and has involved during all that time, the improvement of connecting a canal with waterways, precisely the thing that is done in this case?

The CHAIRMAN. The Chair would like to have gentlemen argue this proposition, that if any part of this appropriation is used for the purchase of a canal, how does the Committee on Rivers and Harbors get jurisdiction under the rules of the House?



Mr. SMALL. That is a most pertinent inquiry, and I am coming to that.

Mr. SWITZER. Will the gentleman yield?

Mr. SMALL. Yes.

Mr. SWITZER. I would like to ask the gentleman if in making a waterway under the jurisdiction of rivers and harbors, some of the money to purchase a canal, or some other piece of property, would preclude the River and Harbor Committee from building it any more than if it was a roadway or a railroad we had to purchase?

Mr. HARDY. Will the gentleman allow me a suggestion?

Mr. SMALL. Yes.

Mr. HARDY. There is this statement on page 514 of the Manual, that when a bill embraces subjects belonging to the jurisdiction of several committees the main object of the bill may be taken as the test to show to which committee it should go to.

Mr. SMALL. I am glad that the gentleman cited that, and I call the Chair's attention to it without further citation on my part.

Mr. ALEXANDER. Will the gentleman yield?

Mr. SMALL. I will.

Mr. ALEXANDER. I understand the proposition contained in the river and harbor bill is not to improve the canal. That might be given to the Committee on Railways and Canals, but they take the territory of a right of way now occupied by the canal, propose to abandon it as a canal and make it a waterway and appropriate money for that purpose. Is not that true?

Mr. SMALL. That is entirely correct.

Mr. TREADWAY. Will the gentleman yield?

Mr. SMALL. I will.

Mr. TREADWAY. Is it not a fact that the present Chesapeake & Delaware Canal is an 8-foot canal?

Mr. SMALL. Nine feet.

Mr. TREADWAY. Is it not the purpose of the bill to make it 12 feet in depth?

Mr. SMALL. Yes.

Mr. TREADWAY. The proposition is to enlarge and deepen it, but it still remains a canal of 12 feet rather than one of 9 feet.

Mr. SMALL. Instead of a private waterway it becomes a public waterway.

Mr. TREADWAY. But still a canal.

Mr. SMALL. I do not think so.

Mr. DEMPSEY. Does not it become not a canal but, as the gentleman from Pennsylvania [Mr. MOORE] said, a sea-level waterway, a sea-level waterway at both ends, so that it is a continuous sea-level waterway?

Mr. FOSTER. I would like to ask the gentleman from North Carolina what he calls the work at Panama. Is that a canal?

Mr. SMALL. The so-called Panama Canal does not furnish an analogy to the case illustrated by the gentleman from New York [Mr. DEMPSEY].

Mr. Chairman, the gentleman from New York [Mr. DEMPSEY] made a suggestion to which I wish to respond. The gentleman said there were items in the bill which were as susceptible to points of order, perhaps, as this. There have been such items in every bill. This point of order is invoked only for the purpose of defeating some proposition which some Member or group of Members may wish to defeat, and is not universally made against projects in the river and harbor bill.

Mr. FESS. Mr. Chairman, before the gentleman leaves that question I desire to state that I am somewhat confused. This project is now a canal, and when it is completed, if I understand the gentleman correctly, it will then be a waterway. I would like to know the distinction technically.

Mr. SMALL. If the gentleman will listen, I shall try to make it as plain as I can, but I am not making refined distinctions here; I am discussing broad propositions involving the jurisdiction of a committee. I would like to advert to and discuss the proposition which was so clearly stated at length by the gentleman from Missouri [Mr. ALEXANDER]. This does not involve a canal in such a way as to defeat the jurisdiction of the committee. What is it? It is a waterway connecting Chesapeake Bay with the Delaware River. It is true that there exists now what may be denominated a canal, about 13 miles long, and originally constructed many years ago by private capital, and still owned and controlled by a private corporation. The project which is sought to be carried out in this item involves the improvement of natural waterways, leading to this alleged canal at both ends. It involves the improvement of the Delaware River leading up to it at a cost of \$57,000.

It involves the improvement of several natural waterways at the southern end. First, the improvement of Back Creek for a distance of 4½ miles at a cost of \$405,000. Back Creek empties

into Elk River, and it involves the improvement of Elk River a distance of 8½ miles at a cost of \$314,000, and it involves further improvement in the upper part of Chesapeake Bay for a distance of 10 miles, involving a cost of over \$500,000.

Mr. MADDEN. Mr. Chairman, will the gentleman yield?

Mr. SMALL. In just a moment. So that this project recommended by the engineers involves and must carry necessarily appropriations and expenditure of money for the improvement of natural waterways constituting the approaches. I now yield to the gentleman.

Mr. MADDEN. The question I desired to ask the gentleman was, Whether he contends that the purchase of this canal can in any wise be connected with the proposition which he has just stated and thereby be made to appear what it really is not?

Mr. SMALL. I think so, if the gentleman desires to put it in that way. I say this project involves a waterway. What is proposed? In addition to the improvement of natural waterways, the approaches to either end of this so-called canal, it is proposed to purchase the canal, and instead of a lock canal as at present to convert it into a tide-level canal or, as some call it, a sea-level canal, so that the water will flow freely by natural processes from Chesapeake Bay at the southern end to the Delaware River at the northern end, and vice versa. So there we have a project involving the improvement of natural waterways and the acquisition of some property which is to-day, if you please, claimed by private owners, enlarging it from 9 feet deep to 12 feet in width, and widening it from its present inadequate width to 90 feet bottom width and about 150 feet top width, and in addition removing the three present locks in the canal and converting it into a tide-level canal, making it a public waterway, the property of the United States; so that when this project shall have been completed we will have, to all intents and purposes, a waterway or artificial river connecting the Chesapeake Bay and the Delaware River—by the way, two of the busiest interior waterways in the country excepting the Great Lakes—making what will be a river between the Chesapeake Bay and the Delaware River.

Mr. Chairman, there ought not to be any narrow construction placed upon this. How frequently is it known by gentlemen familiar with river and harbor legislation that we cut off bends in rivers by making a new channel across a bend to save sharp curves and distance in a tortuous river. Yet no complaint is made. How often have we needed land, for instance, for repairing the banks of streams by revetment work or otherwise? How often have we required contiguous land to deposit the material dredged from streams? How often do we have to go into various phases incidental to river and harbor improvement, and so, forsooth, because the purchase of an existing canal claimed by a private corporation is involved in carrying out this project it is said that the Committee on Rivers and Harbors has no jurisdiction, and that it ought to be buried with the Committee on Railways and Canals. To that proposition we protest, and we say that whatever jurisdiction upon a narrow construction may be claimed by the Committee on Railways and Canals arising out of the report on this project, it is incidental and is not the primary purpose of the improvement. The primary purpose of the improvement is a waterway, making it a free waterway, open to commerce of all the people, and that brings it within the jurisdiction of this committee. We contend that no strained construction ought to be taken by the Chair as to the jurisdiction of respective committees, so as to cut the matter up, having one committee having jurisdiction of a part of it and another committee having jurisdiction of another part of it.

Mr. Chairman, with just a citation I shall close.

On February 15, 1910, CONGRESSIONAL RECORD, volume 45, part 2, page 1945, the river and harbor bill was under consideration in the Committee of the Whole. The item of survey with a view to locating a channel from the Gulf of Mexico to the Apalachicola and St. George Sound by "an artificial cut across St. George Island" was under consideration.

Mr. Keifer, of Ohio, made the point of order against the paragraph because it provided a survey for an artificial waterway or canal. Mr. MANN, of Illinois, in discussing the point, stated that the survey was for a channel which could not be considered a canal in the ordinary sense. He said: "It is simply making an entrance from the Gulf of Mexico to this city, where there are now large bodies of water, much of which is shallow, and where it may be desirable in making the entrance to cut through St. George Island rather than run away around an island; to cut through that island, which is a small island, in order to make a direct channel." The Chair overruled the point of order.

On January 15, 1915, CONGRESSIONAL RECORD, volume 52, part 2, pages 1656-1658, in the consideration of the item involving a waterway from Rehoboth Bay to Delaware River, the point



of order was made against the paragraph because it involved a canal and also the construction of a bridge. The first point of order was overruled and the latter sustained.

The CHAIRMAN. Does that appear in Hinds' Precedents?

Mr. SMALL. My memorandum does not show. I desire now to call the attention of the Chair to Hinds' Precedents, section 4218, volume 4, where it is stated that the jurisdiction of the Committee on Railways and Canals as to railways has been absorbed by the Committee on Interstate and Foreign Commerce.

I only mention that in connection with the proposition I previously submitted, that jurisdiction of alleged canals has been more largely with the Committee on Rivers and Harbors—very much more with that committee—than with the Committee on Railways and Canals. And I make the further statement that certainly for the last 18 years the Committee on Railways and Canals has never reported, or, if it has reported, there has never passed the House, any constructive legislation involving the improvement or construction of any canal. And all that it has reported to the House which passed has been these two or three resolutions for the appointment of commissions, which died there, nothing more ever being done about it.

Mr. STAFFORD. Will the gentleman yield?

Mr. SMALL. Certainly.

Mr. STAFFORD. Does the gentleman recall about 12 years ago—maybe 10—the Committee on Railways and Canals, as I recall it, brought in a bill providing for the construction of the Lake Erie & Ohio River Canal? It was discussed here and passed the House after a very vigorous fight.

Mr. SMALL. Instead of for the construction, was it not for a commission and examination?

Mr. STAFFORD. It was for the construction of that canal.

Mr. SMALL. I remember there was such a proposition, but the exact nature of it I do not recall. But it did not become a law.

Mr. STAFFORD. It passed the House, though. I was citing that instance to show that the Committee on Railways and Canals was not moribund at that day.

Mr. REAVIS. Will the gentleman yield for a question?

Mr. SMALL. Certainly.

Mr. REAVIS. I understand the jurisdiction of the Committee on Railways and Canals, so far as it pertains to canals, is restricted to canals. The committee could not construct a waterway out of a canal.

Mr. SMALL. The gentleman is right.

Mr. REAVIS. And if it should be held that the Committee on Rivers and Harbors could not construct a canal, once a canal always a canal.

Mr. SMALL. Certainly.

Mr. REAVIS. There must be jurisdiction in this House somewhere to change the character of a canal. It is self-evident the Committee on Railways and Canals can not do it. What other committee can do it than the Committee on Rivers and Harbors?

Mr. SMALL. The query of the gentleman, Mr. Chairman, very strongly sustains the proposition that this point of order is based merely upon technicalities and not upon substance, and that the only purpose, if it should be sustained, will not only be to deny the Committee on Rivers and Harbors jurisdiction of this item but virtually—perhaps as some of its proponents hope—to defeat and kill a meritorious proposition.

Mr. FOSTER and Mr. MOORE of Pennsylvania rose.

The CHAIRMAN. Does the gentleman from Pennsylvania [Mr. MOORE] desire to be heard?

Mr. MOORE of Pennsylvania. I do. I would like to follow the gentleman from Illinois.

The CHAIRMAN. The Chair would like to hear a full discussion of this matter before ruling.

Mr. MOORE of Pennsylvania. Supplementing the statement of the gentleman from North Carolina [Mr. SMALL], I wish to make reference to the authorization for a survey for the intercoastal waterway. The act of March 3, 1909, carried this provision:

SEC. 13. \* \* \* The Secretary of War is hereby authorized and directed to cause preliminary examinations and surveys to be made at the localities named in this section, as hereinafter set forth.

Survey for the construction of a continuous waterway, inland where practicable, from Boston, Mass., to Long Island Sound, including a waterway from the protected waters of Narragansett Bay through the ponds and lagoons lying along the southern coast of Rhode Island to Watch Hill and Fishers Island; thence to New York Bay; thence across the State of New Jersey to a suitable point on Delaware River or Bay; thence to Chesapeake Bay; thence from Norfolk, Va., to the sounds of North Carolina and Beaufort Inlet, N. C., for the purpose of ascertaining the cost of a channel with a maximum depth of 25 feet, or such lesser depths along any section or sections of the said waterway as may be found to be sufficient for commercial, naval, or military purposes.

Such survey shall include an examination of all practicable routes, the preparation of plans and estimates of cost along the most available route, and a report upon the desirability of utilizing as a part of such waterway any existing public or private canal, or any part thereof, and the probable cost of acquiring the same.

Now, that was the authorization for what is known as the intercoastal waterway. Congress appropriated \$100,000 to make that survey. The complete report included certain points of the intercoastal waterway that had been covered in preceding reports of the United States Army engineers, some of which had previously approved sections of the entire projects. The law contemplated that the waterway should be opened up inland along the entire course. After the survey was completed and reported upon to Congress, Congress made appropriations for certain sections of the intercoastal waterway consistent with the plans laid down by the Army engineers in their report. For instance, the upper Delaware was improved to a depth of 12 feet from Philadelphia to the approach to the contemplated waterway across the State of New Jersey. That improvement was made so that the upper reaches of the Delaware would connect with the lower reaches of the Delaware, in consistency with the general plan. An appropriation was also made for the purchase of the so-called Norfolk-Beaufort Canal, extending from a point south of Norfolk into the sounds of North Carolina. That purchase was made, and Congress proceeded to improve that Norfolk-Beaufort link of the entire waterway by ample appropriations, which still continue, for maintenance and completion; so that the coastal plan has not only been written into the law but has been provided for in certain sections which are now being worked together under the plans of the United States engineers to secure a continuous chain.

What is known as the Beaufort Cut, south of the sounds of North Carolina, leading into the Atlantic Ocean, has been completed by an appropriation made by Congress, so that the act of 1909, authorizing a survey, which survey resulted in the report of a plan, has led to the adoption of that plan by Congress along certain links of the chain considered most important by Congress at the time the appropriations were made.

Now, as to the particular project before the committee, that of the so-called Chesapeake & Delaware Canal, connecting up the Delaware Bay and River with the Chesapeake Bay, that is a part of the plan for which appropriations have already been made by Congress in acts heretofore passed, and is simply in line and in harmony with the continuation of the general waterway thus contemplated. It is an essential link of the waterway. Without its inclusion in the plan the appropriations heretofore made for other parts of "the intercoastal waterway," which is the term used in the law, would be of little or no national avail.

The doctrine heretofore held with respect to continuing work in the matter of public buildings and appropriations for public works, I assume, would hold in this case. That is one point, Mr. Chairman.

Another point in respect to the Chesapeake & Delaware link in this coastal plan as approved by law is as to the jurisdiction, it being contended that the Committee on Rivers and Harbors has stepped in where the Committee on Railways and Canals should operate. The fact of the matter is that such decisions as the Miami Canal decision, which will be cited by gentlemen arguing the point of order, and other decisions that may be cited, contemplate the purchase and taking over of canals to be operated as canals. Now, even if the Committee on Railways and Canals had jurisdiction there—and I suppose it is a fair statement to make that it had jurisdiction, because it is proposed to take over and operate canals—that is not this proposition. This proposition is that this canal shall be taken over, not to be maintained and operated as a canal, but to be translated into a sea-level waterway.

Mr. COOPER of Wisconsin. Mr. Chairman, will the gentleman permit a question?

Mr. MOORE of Pennsylvania. Yes.

Mr. COOPER of Wisconsin. Suppose that this canal were bought by the United States Government and then made a sea-level waterway 25 feet in depth, with no locks, just open water 25 feet deep. Is there any question that the subsequent appropriations for dredging and maintenance of that open sea level affair would be under the jurisdiction of the Committee on Rivers and Harbors?

Mr. MOORE of Pennsylvania. There is no doubt in the world that that is where it would go.

Mr. COOPER of Wisconsin. It would not go to the Committee on Railways and Canals?

Mr. MOORE of Pennsylvania. It would not go to the Committee on Railways and Canals. It would no longer be a canal. I made that statement in a general way in stating the merits



of the proposition. The whole purpose of this project is to get rid of a canal and to establish a waterway.

Now, Mr. Chairman, the Government issues through the Department of Commerce an inside coast pilot, which shows existing routes of waterways from the northern tier of States to the Southern States, all the way to the lower extremity of Florida, so that it has been for a long time the policy of the Government, apart from these laws especially applicable to this intercoastal waterway, to encourage the development of a continuous waterway along the coast. Here is an inside coast pilot, issued by the Coast and Geodetic Survey for the use of mariners, for use up and down the inland waters of the Atlantic coast, substantially in line with the plan that is here adopted and approved by the United States Army engineers, and which in large part has already been appropriated for by Congress.

I contend that the question of jurisdiction is not sound in this instance, because the jurisdiction must necessarily go to the Committee on Rivers and Harbors, once this canal is taken over and turned into a waterway. It must be kept improved for the purposes of the Government. Surely the Committee on Railways and Canals would have no jurisdiction to report appropriations for the improvement of this waterway once it is established.

Now, I contend that this is an essential link in the waterway chain that has been approved by the Government and by Congress; that the Committee on Rivers and Harbors has jurisdiction over it, because it is not a canal proposition; it is a waterway proposition.

Moreover, Mr. Chairman, I make the point that the point of order in this instance comes too late, and I call to the attention of the Chair a decision by Mr. Speaker CLARK in connection with the jurisdiction of the Committee on Flood Control. I was aware that certain chairmen had had this question of jurisdiction before them, and personally raised it in the matter of the Committee on Flood Control.

When the first flood-control bill was called up by the gentleman from Mississippi [Mr. HUMPHREYS], the chairman of the Committee on Flood Control, I made the point of order that the committee had exceeded its power, that the work that it was reporting was properly the work of the Committee on Rivers and Harbors. Mr. Speaker CLARK ruled upon that question. At that time this colloquy took place:

Mr. MOORE of Pennsylvania. I desire to call the attention of the Speaker to the fact that on numerous occasions when canal bills have been introduced here, simply because the word "canal" appears, although they pertained exclusively to waterways and navigation, they have been taken away from the Committee on Rivers and Harbors and referred to another committee. Navigation comes under the jurisdiction of the Committee on Rivers and Harbors—

Then the Speaker said:

That was because they were put in a privileged bill. The history of this discussion and the rights of everybody are these: This bill was introduced—the Chair does not know who introduced it; but that does not matter. It is a public bill. It was referred to the Committee on Flood Control. If the gentleman or any other gentleman felt aggrieved or thought his rights had been trampled on or the jurisdiction of the Committee on Rivers and Harbors was being usurped, the proper remedy was for the gentleman to come in here and move that it be re-referred.

Mr. MANN. Mr. Speaker—the Speaker will pardon me—but no one can move, except one of the committees, unless by unanimous consent.

The SPEAKER. The gentleman is technically right, that it takes one committee or the other to ask it.

Mr. MANN. Or unanimous consent.

The SPEAKER. Or unanimous consent.

The Speaker, further ruling on the point of order that the Committee on Flood Control had usurped jurisdiction of rivers and harbors matters, said:

These gentlemen sinned away the day of grace, and the Flood Committee took charge of this bill and worked on it, and it was a matter of public notoriety that they were doing it. It was not done in a corner. They went to work and investigated the matter and made this report here. As to the proposition of the gentleman that it takes a piece out of the jurisdiction of the Committee on Rivers and Harbors, of course the whole scheme of the Flood Committee did that very thing. That was what it was intended to do, to relieve the Committee on Rivers and Harbors of a part of its work. It was overloaded.

You can not put water into a river and you can not take water out of a river and you can not do anything about controlling the waters of a river that it does not in some way affect the improvement of the river and the navigation thereof. So the point of order is overruled.

Now, Mr. Chairman, we were alive to the probability that a point of order would be raised, and have been alive to it for some time, and this question was raised before Mr. Speaker CLARK in order that a ruling might be had as to whether it was too late to come in when a bill is called up, after it had been under consideration for weeks, and after it was a matter of notoriety, as the Speaker said in his decision. Mr. Speaker CLARK ruled that the gentleman who made the point of order at that stage of the proceedings was too late, and he ruled against the point of order.

Now, I make these points: The Committee on Rivers and Harbors has jurisdiction; this is not a canal proposition but a proposition to do away with a canal and to complete a waterway au-

thorized in part by appropriations already made; that the operation and maintenance of a canal is not contemplated, as was the case of the Miami Canal; and that it is too late to make the point of order against the jurisdiction of the Committee on Rivers and Harbors at this time.

Mr. BRUMBAUGH. Mr. Chairman—

The CHAIRMAN. Does the gentleman from Ohio desire to be heard?

Mr. BRUMBAUGH. Mr. Chairman, I want only one moment, to say this: Something has been said during my temporary absence from the Chamber about the Committee on Railways and Canals. Just a few days ago I was elected by the House to the chairmanship of that committee. It has been stated that this committee has been a dead committee. I propose to make it a live committee, or else to ask that it be abolished altogether. [Applause.]

Mr. MOORE of Pennsylvania. No one receives that statement with more pleasure than myself; but I would like to ask the gentleman whether his predecessor, or whether he since he has become chairman has indicated in any way that he desired to have control over this proposition, as of the Railways and Canals Committee?

Mr. BRUMBAUGH. I have not, because, as I stated, I have been chairman only a week or such a matter.

Mr. MOORE of Pennsylvania. The gentleman does not know that his predecessor asked to have this matter referred to his committee?

Mr. BRUMBAUGH. I know he did not, because the former chairman resigned, and Congress did not act upon that resignation until recently; but as soon as Congress will give the committee a clerk I propose to call the committee together and make it a live committee. The fact that it has been a dead committee in the past does not indicate that I do not propose to make it a live committee in the future. I want to say this one word in a general way, that I am opposed to a few gentlemen on large committees taking every bill of every conceivable kind and character and having all these bills referred to them and monopolizing all the legislation that should properly go to other committees. And while I am not at this time going to make a fight to have any legislation or bills referred to this committee before I have had time to organize it or even to occupy the committee room, I do propose to insist that this committee be treated fairly, and I propose to make it a live committee, and any time that Members of the House desire to send any bills to this committee we will meet and give them proper hearing and take action upon them.

Mr. FOSTER. Mr. Chairman—

The CHAIRMAN. The Chair is ready to rule, and does not care to have the time of the committee occupied by further discussion.

Mr. MADDEN. Does not the Chair want to hear anything from our side?

The CHAIRMAN. The Chair has made up his mind on the proposition.

The Chair, without regard to what his personal desires are in the matter of these appropriations, must decide these questions according to the rules of the House. The Chair's own district is vitally interested in the inland-waterway proposition, but the Committee on Rivers and Harbors has jurisdiction to report on certain matters. In Rule XI, paragraph 8, we find that jurisdiction over questions relating to the improvement of rivers and harbors is given to the Committee on Rivers and Harbors.

In section 56 of Rule XI we find that certain committees of the House are given a privileged status, that is, that they can make reports at any time, and have questions over which they have jurisdiction immediately considered by the House, and under that rule this bill is now being considered. The rule says the following-named committees shall have leave to report at any time on matters herein stated, and then it names the committees. It says—

The Committee on Rivers and Harbors, of bills for the improvement of rivers and harbors.

It has jurisdiction to report at any time on bills for the improvement of rivers and harbors. Now, that removes it from the case cited by the gentleman from Pennsylvania [Mr. MOORE], because the flood-control bill is not a privileged bill. The Committee on Flood Control is not a committee that can report at any time, but you must introduce your bill and have it referred to that committee, and if there is a question of jurisdiction, some gentleman in the House must move to transfer the bill from that committee to the committee having jurisdiction, and any Member can take advantage of that opportunity. Now, the precedents hold that if Members wait until it is too late they can not take advantage of that rule. But when this



privileged bill was reported to the House by the Committee on Rivers and Harbors, delegated by its privileged character to report on improvements for rivers and harbors, the gentleman from Illinois [Mr. MANN], on May 9, reserved all points of order. He could not have made that reservation sooner, because the bill was then for the first time reported to the House, so he took prompt advantage of the situation.

Now, the question is presented to us whether or not this paragraph goes beyond the jurisdiction of the Committee on Rivers and Harbors. If no part of the appropriation was to be used other than for the improvement of rivers and harbors, clearly it would not be subject to a point of order; but the gentleman from Pennsylvania [Mr. MOORE] and the gentleman from North Carolina [Mr. SMALL] both concede that part of the appropriation is for the purchase of a canal, which clearly removes it from the privileged status given to the Rivers and Harbors Committee under section 56, Rule XI, to report bills for the improvement of rivers and harbors.

Every other appropriation that would go for the improvement of rivers and harbors would be clearly within the jurisdiction of that committee and would not be subject to a point of order; but under the precedents, if any part of the paragraph is subject to a point of order, then all of it is subject to a point of order. The Chair must follow the precedents in this matter, and every time a question similar to this has come up the point of order has been sustained. The Chair has made diligent investigation into this question, giving it the most careful consideration, hoping that possibly the committee had not exceeded its authority and that the point of order could be overruled, but he has not been able to find any decision sustaining that point of view, and for that reason he has not desired to hear from gentleman on the other side of the question.

The gentleman from North Carolina [Mr. SMALL] has cited one case applying to the Apalachicola Bay and St. George Sound improvement, which was with a view to determining the best location for a deep-water harbor with entrance channel from the Gulf of Mexico by way of East Pass, West Pass, New Inlet, or by an artificial cut across St. George Island, consideration being given to the respective needs of the cities of Apalachicola and Carrabelle for increased harbor facilities.

Mr. SPARKMAN, who was chairman of the Committee on Rivers and Harbors, in speaking at that time on that proposition, said:

Mr. Chairman, this is in no sense a canal even if that should make any difference, nor would the improvement be in the nature of a canal.

The gentleman from Illinois [Mr. MANN], in speaking on the proposition, not speaking in favor of the point of order, but speaking on the other side, used this language:

Mr. Chairman, I did not make the point of order against this paragraph, because I am familiar with the situation there, having made a personal visit to this place with the distinguished Committee on Rivers and Harbors, and I remember very distinctly much of the situation there. This clearly is not a canal. It is no more a canal and no more the construction of a canal than it was when we made a new entrance to New York Harbor. It is simply, as I understand, making an entrance from the Gulf of Mexico to this city where there are now large bodies of water, much of which is shallow, and where it may be desirable in making the entrance, rather than run away around an island, to cut through that island, which is a small island, in order to make a direct channel.

So the facts in that case were, without question, that it was for the improvement of a harbor and did not either appropriate for or take over a canal.

Now, in Hinds' Precedents we find, in section 4219, that on February 19, 1885, a question arose over a paragraph in the river and harbor bill providing for the construction of the Hennepin Canal, and the chairman sustained the point of order on similar grounds to those the Chair has just stated.

On January 15, 1915, on an amendment to a paragraph in the river and harbor bill to improve an inland waterway between Raritan Bay and Delaware Bay there was a point of order made that it was to improve a canal. At that time the chairman, the gentleman from Illinois [Mr. RAINEY] held, in a very elaborate opinion, that it was clearly subject to a point of order and sustained the point of order.

Mr. MOORE of Pennsylvania. May I ask the Chair when that decision was rendered?

The CHAIRMAN. January 15, 1915.

Mr. MOORE of Pennsylvania. Was not that the case where the opinion was withheld?

The CHAIRMAN. No; the gentleman has in mind the following year or the year before, when Mr. DENT offered an amendment to improve an inland waterway near Mobile, Ala., and the point of order was made, but the opinion was reserved for argument, and subsequently the amendment was withdrawn and the Chair did not pass on that proposition.

The Chair is very clearly of the opinion that in the present case the Committee on Rivers and Harbors did not have juris-

dition to make the appropriation to improve the canal, and for that reason sustains the point of order to the paragraph.

Mr. MOORE of Pennsylvania. Mr. Chairman, I respectfully appeal from the decision of the Chair.

The CHAIRMAN. The gentleman from Pennsylvania appeals from the decision of the Chair, and the question is, Shall the decision of the Chair stand as the judgment of the committee?

Mr. LENROOT. Mr. Chairman, before the question on the appeal is put I desire to say just a word. Upon every decision where a similar question has come up the same ruling has been made that the present chairman of the committee has made. There is not one single exception. As a question of parliamentary law there can be no question but that the chairman is correct in his ruling. Now, upon this appeal I want to make this observation—

Mr. AUSTIN. A point of order, Mr. Chairman.

The CHAIRMAN (Mr. FOSTER). The gentleman will state it.

Mr. AUSTIN. Is this question debatable?

The CHAIRMAN. It is debatable. The present occupant of the chair some time ago made an erroneous statement, saying that it was not debatable, but afterwards corrected that statement by saying an appeal was debatable, subject to the will of the committee.

Mr. AUSTIN. I have been in the House eight years and I never heard it discussed.

The CHAIRMAN. It is debatable in Committee of the Whole. The committee can close it in the committee or rise and close debate in the House. In the House debate is avoided by moving to lay the appeal on the table, but no such rule applies in the committee, so the only way to close debate is by moving that it be done.

Mr. LENROOT. Mr. Chairman, I want to make this one observation: Criticisms have been made to certain items in the bill. Other criticisms will be made, no doubt, as to items when reached, but if the supporters of this bill are so desperate and the bill is of such a character that they shall refuse to sustain the decision of the Chair upon a question of parliamentary law upon which the Chair is undoubtedly correct—and the gentleman who made the decision is one of the best parliamentarians in the House and one of the fairest—if the supporters of this measure now desire to overrule the Chair upon this proposition, they will demonstrate to the country beyond peradventure that this bill is not being considered upon its merits, and that wherever there is a piece of pork in it they are willing to violate the rules of this House in order to keep that pork in it, so that the pork may be had for other items in the bill that they are afraid might be lost unless all the other items remain in.

Mr. MOORE of Pennsylvania and Mr. HARDY rose.

Mr. LENROOT. I will yield to the gentleman from Pennsylvania.

Mr. HARDY. I thought the gentleman had yielded the floor.

Mr. LENROOT. I am through.

Mr. MOORE of Pennsylvania was recognized.

Mr. STAFFORD. The gentleman from Pennsylvania has discussed the point of order.

Mr. MOORE of Pennsylvania. But I made the appeal and the gentleman from Wisconsin has attacked the appeal.

Mr. HARDY. I would like to be heard for five minutes.

Mr. MOORE of Pennsylvania. Mr. Chairman—

Mr. LENROOT. Will the gentleman yield?

Mr. MOORE of Pennsylvania. Yes.

Mr. LENROOT. I did not mean to intimate that the gentleman from Pennsylvania had not made his appeal in good faith. I simply meant that the majority of the House ought to sustain the Chair.

Mr. MOORE of Pennsylvania. I understand the gentleman. Mr. Chairman, I do not regard a favorable vote upon this appeal as in any way reflecting on the gentleman from Mississippi, the chairman of the committee. He has rendered his decision in good faith according to the precedents as he understands them, but I submit that the House some time or other ought to have an opportunity to vote on this question to take over an important waterway absolutely necessary at this time for the preparedness of the defense of the country. For more than 10 years to my knowledge this project has been the victim of "battledore and shuttlecock," and always subject to points of order. How long is the country to submit, in a matter of this kind, to one precedent after another, based on technicality, and the decision of some one long since dead? I have such a regard for the gentleman from Mississippi that I would hesitate to vote against his decision; and I wish the gentleman had exercised his own judgment in the matter rather than have fallen back on precedents.



It seems to me that if the President of the United States were to be guided altogether by precedents from the Revolution to the present time, we would never be prepared to conduct a war with Germany. Sometimes we have to cut the red tape and get down to business. That is the reason I made the appeal. I respect the high parliamentary qualities of the gentleman from Mississippi [Mr. HARRISON], as does the gentleman from Wisconsin [Mr. LENROOT], but the question is whether we shall so hamstring ourselves to precedents and what has passed as never to meet absolute necessities of the present time. I hope the appeal from the decision of the Chair will be sustained in the interest of the common defense of the people of the United States. [Applause.]

Mr. HARDY. Mr. Chairman, I want to answer the lecture that the gentleman from Wisconsin [Mr. LENROOT] has been giving us about pork. The anxiety that certain gentlemen here have about pork is very amusing. I have such a contempt for this denunciation of pork-barrel legislation which comes from newspapers and from various sources that I can not make any other reply than that the man who is influenced by it signs a warrant of his own shame. As to the merits of the point of order that this canal item ought to belong to the Committee on Railways and Canals, I wish to say that I was a member of the Committee on Railways and Canals at one time, and I know it to have been a fact that the Speaker of the House never referred a single bill to that committee. That committee went into a state of innocuous desuetude, and to-day the House at this session has refused to grant it even a clerk. Are we to be confronted with a situation in which a nonexistent or moribund committee is allowed to intervene or be thrust in in order to prevent proper and needed legislation? It is pertinent to observe that the Committee on Railways and Canals did not inject itself into this matter, but that the opponents of the bill have injected it here. The truth of the business is simply this, that the functions of committees in this House overlap each other in many instances. There is not a phase of the jurisdiction of the Committee on Railways and Canals that has not been absorbed by either the Committee on Rivers and Harbors or the Committee on Interstate and Foreign Commerce. I soon found that out when I was on the committee in the days of Republican rule in the House. I concluded that it was useless and got off the committee.

Mr. LENROOT. Mr. Chairman, will the gentleman yield?

Mr. BRUMBAUGH. Will the gentleman yield?

Mr. HARDY. I yield to the gentleman from Ohio.

Mr. BRUMBAUGH. Is not the condition the gentleman is describing the result of the chairman not calling the committee together and organizing to receive business?

Mr. HARDY. In my innocent ignorance when I first came here, from the name of it, I thought that the Committee on Railways and Canals would be an important committee, but I found that it did not have anything to do and could not get anything to do. I think we did ourselves frame a bill that some reference has been made to, and tried to get some attention paid to it, but we could not. Let me say one thing further. It seems to me that this is a matter in which the jurisdictions of more than one committee overlap each other. Here is a project and that project is to make navigable the waterways from Philadelphia down to Baltimore. That waterway consists of one river, the Delaware River, about 50 miles of it, and a canal of 13 miles, and then of a land-locked bay, and then two harbors, and are you going to cut that project up into half a dozen different committee jurisdictions and have the bill cut up in three or four pieces? Will you give a part of one project to Rivers and Harbors, one part to Interstate Commerce, and one part to the Railways and Canals Committee? It seems to me that common sense demands that the House treat the matter as a whole, and, according to the argument made here, no one committee could pass the bill, because it would not have jurisdiction of all of it. If the Committee on Railways and Canals were here in charge of this bill, objectors would say that they had nothing to do with the Delaware River or the harbor at Philadelphia or Baltimore, and that every item, except the one, for this 13 miles of canal. Common sense says that it ought to be handled and presented in one bill, and this bill, which is, in the main, a rivers and harbors bill, is a most appropriate bill for it to stand in. I have the greatest regard for the gentleman from Mississippi [Mr. HARRISON]. He followed the precedents in this matter, but it is time that precedents should yield to common sense, and that we should cut the red tape and technical rules that prevent all possible action. Further, gentlemen, I cited a moment ago an authority which stated that a bill should be referred to that committee which had jurisdiction of the major part of the subject matter of the bill. You can not frame a bill that would treat this whole project unless you include

that 13-mile canal, and also include any necessary improvements in the Delaware River or the harbors of Philadelphia and Baltimore. Let us have more common sense. Here is a whole project, and let the House break away from any precedents that have crippled it for years and have stood in the way of legitimate improvement. Now, to him who says there is pork in it I simply say, "Evil be to him who evil thinks." If any gentleman believes this item is pork or is worthless, he ought to vote against it, but he ought not to stigmatize every other man who does not think as he does, and if he has a decent and proper respect for himself, he will not do so.

For one, and for the sake of this discussion only, I am glad to say that my district has not one item in this bill, and I certainly have no interest in the item here in question, but I would be ashamed of my intellect if the facts presented did not convince me of the merit of the item, and ashamed of my manhood if I permitted the pork-barrel cry to drive me from its support.

Mr. AUSTIN. Mr. Chairman, I have as much respect for the gentleman from Mississippi [Mr. HARRISON], who rendered this decision, as any Member of this House. My attachment and affection for him is as deep and as sincere as any colleague who sits on the other side of the House. Why should we, when the interest of the country is involved, be tied and gagged by some precedents or rulings of the presiding officer of this House? Is that of more importance than the consideration of a great public measure involving the safety of the country in time of stress and war? There are revolutions necessary at times throughout the world, and this is a time when a legislative revolution against being tied down by precedents and rulings and opinions of presiding officers of this House is necessary. The individual ruling or judgment of one man out of 435 should not absolutely make us powerless to do something which a majority of us conscientiously believe is for the best interest of the country.

A word now in relation to the reflection of the gentleman from Wisconsin [Mr. LENROOT], who in closing his speech said that if we do not sustain the ruling of the Chair we will have committed an offense in the interest of pork-barrel legislation.

Mr. DUPRÉ. Mr. Chairman, will the gentleman yield?

Mr. AUSTIN. Not now. This is supposed to be the greatest lawmaking body in the world. I believe every Member of this House is honest, faithful, and conscientious, and while some may differ, as they do upon this bill, ill does it become any Member to reflect upon the honor of his colleagues in the discharge of what they believe to be their conscientious duty in supporting one of these bills. I give every man in this House—the gentleman from Wisconsin [Mr. LENROOT] and every other man—the same right to think and act which I claim for myself. I believe he is just as honest, just as conscientious, and just as patriotic as myself, but not one bit more so, and I repudiate the conduct or the utterance of any man in this House who will ascribe improper or unpatriotic motives to those who do not see as he sees or act as he acts. [Applause.] If this body has incurred public disfavor through the public press in criticizing this measure and other bills as pork-barrel legislation, as graft, let us think too much of our own character and the standard of this great lawmaking body to make ourselves voluntary witnesses for such a contemptible, scornful utterance or public opinion of ourselves and colleagues. How can you expect the American press, yellow or otherwise, to hesitate to denounce and criticize us when some of our own colleagues stand here and by their public utterance furnish proof that what they say is true? I believe every one of the 435 Members of this House is honest.

They are acting here under oath. I repudiate and condemn the language of the gentleman from Wisconsin. I believe it to be my duty to do it. I resent it on my own part and in behalf of every man in this House. [Applause.]

The CHAIRMAN. The gentleman from Wisconsin [Mr. STAFFORD] is recognized for five minutes.

Mr. STAFFORD. Mr. Chairman, after recognition, I believe there is no limit on time. At the end of that time I would like to be heard on the proposition, before the Chair rules.

The CHAIRMAN. The Chair will decide the question now.

Mr. STAFFORD. I would like to be heard, if the Chair will hear me, on that question.

The CHAIRMAN. The Chair will state that the mind of the Chair is fully made up.

Mr. STAFFORD. I would like to show the precedents that the five-minute rule does not apply in the Committee of the Whole on the argument of the question of appeal, and I have precedents here to that effect. If the Chair will permit, the five-minute rule in the Committee of the Whole, as the Chair will note, extends to amendments that are then pending. A gentleman may offer an amendment, and under that rule five minutes may be granted in favor of the amendment and five



minutes in opposition. The rule that I refer to is Rule XXIII, subclauses 5 and 6. Subsection 6 says:

The committee may, by the vote of a majority of the Members present, at any time after the five minutes' debate has begun upon proposed amendments to any section or paragraph of a bill, close all debate upon such section or paragraph or, at its election, upon the pending amendments only (which motion shall be decided without debate); but this shall not preclude further amendment, to be decided without debate.

Subsection 5 of that rule provides:

When general debate is closed by order of the House, any Member shall be allowed five minutes to explain any amendment he may offer, after which the Member who shall first obtain the floor shall be allowed to speak five minutes in opposition to it, and there shall be no further debate thereon, but the same privilege of debate shall be allowed in favor of and against any amendment that may be offered to an amendment; and neither an amendment nor an amendment to an amendment shall be withdrawn by the mover thereof unless by the unanimous consent of the committee.

Mr. Chairman, under those clauses that I have just read, which have been frequently put into practice, the chairman of the committee having the bill in charge can move to limit debate whenever debate has occurred on an amendment. I wish to direct the Chair's attention to the history of proceedings in the Committee of the Whole, and it is only by the Chair understanding the history and the early procedure and practice of the House when the Committee of the Whole was first established in the early times of this Government that he will appreciate there is no limit and that the hour rule applies on questions of this kind. If the Chair will examine the precedent closely, he will see that when the Committee of the Whole was first organized, and when business came up after the morning hour and the House resolved itself into the Committee of the Whole House on the state of the Union to consider legislation that was on the calendar, to consider matters relating to the state of the Union, or just merely private matters, that the Member gaining recognition was entitled to one hour's time. That is the basis for the rule at present when we go into Committee of the Whole on general debate. It recognizes the old-established rule that the Member who gets recognition when the House resolves itself into the Committee of the Whole House on the state of the Union, without any limitation by the House, is entitled to an hour's time, which he can parcel out as he sees fit.

Mr. Chairman, the Chair has ruled here that there is no limit of debate and that debate can only be limited by the committee rising to go into the House.

Now, I wish to call the Chair's attention to that rule—

The CHAIRMAN. Let the Chair state to the gentleman right here that debate can be closed any time by the gentleman having the floor moving to close debate. It can be done either way.

Mr. STAFFORD. Does the Chair agree that we are not limited to five minutes?

Mr. MADDEN. You can move to close debate.

Mr. STAFFORD. I call the attention of the Chair—

The CHAIRMAN. Let the Chair state that under the precedents, and there are not very many of them, he is led to believe that the question of appeal does not come under the one-hour rule but under the five-minute rule, the same as discussions upon amendments. So the Chair would be inclined to hold that it is under the five-minute rule.

Mr. STAFFORD. I hope the Chair will bear in mind because we are establishing precedents here and I do not wish to argue unnecessarily—

Mr. HARDY. A point of order, Mr. Chairman.

The CHAIRMAN. The gentleman will state it.

Mr. HARDY. I make the point of order that the gentleman should address himself to the appeal from the decision of the Chair upon this amendment.

The CHAIRMAN. The Chair begs to state that when the gentleman from Wisconsin [Mr. STAFFORD] took the floor the Chair stated that he was recognized for five minutes, and the gentleman from Wisconsin took exception to that, and is now trying to convince the Chair that the Chair is wrong and that the gentleman is entitled to an hour.

Mr. HARDY. Can he superimpose that question?

The CHAIRMAN. The Chair thinks he has a right to do it.

Mr. STAFFORD. I am addressing myself to that point, if the gentleman from Texas [Mr. HARDY] will give attention.

Mr. HARDY. I withdraw my point of order.

Mr. STAFFORD. I am very thankful to the gentleman that he saw the difference. Now, Mr. Chairman, I ask the Chair's especial attention to this rule, which is directly applicable, and that is clause 2 of Rule XIV, which forecloses the Chair from holding that the five-minute rule applies. I grant that the chairman of the committee has the right to move to close debate in committee—

Mr. SMALL. Mr. Chairman, a parliamentary inquiry.

Mr. STAFFORD. The gentleman can not take me off the floor with a parliamentary inquiry.

Mr. SMALL. Will the gentleman yield?

Mr. STAFFORD. I yield for a question.

Mr. SMALL. I wanted to ask the Chair a question.

Mr. STAFFORD. It may interfere with my argument, and I will be willing to yield in a very few minutes.

What does that clause 2 say? It says:

And no Member shall occupy more than one hour in debate on any question in the House or in committee, except as further provided in this rule.

Remember it says, "In the House or in committee." I again direct the attention of the Chair to the original practice in the Committee of the Whole House on the state of the Union, or merely in the Committee of the Whole, before the establishment of the five-minute rule, and that was, that any Member gaining recognition on any amendment, or on the bill itself, was entitled to one hour's recognition. The only limitation that you find anywhere in these rules cutting down the hour recognition to discuss any question is that which I have cited before, which is the five-minute rule in the Committee of the Whole, so far as amendments are concerned. You can not find any other rule anywhere else that limits the discussion of any question to five minutes except on amendments.

Here we have a direct mandate on the Chair, not only on the Speaker but on the chairman of the Committee of the Whole, that no Member shall occupy more than one hour in debate on any question in the House or in the committee, except as further provided for in this rule.

Mr. Chairman, there can be no escape from it. I do not intend to take much more than 10 or 15 minutes at the outside.

The CHAIRMAN. The Chair would kindly suggest to the gentleman, in order to avoid any further delay, that he proceed if he desires to do so.

Mr. STAFFORD. I do not intend to abuse the patience of the House, and when I conclude the gentleman from North Carolina [Mr. SMALL] can move to close debate.

The CHAIRMAN. The Chair would want some additional time to look this matter up. Even if the gentleman is right, the Chair suggests that the gentleman proceed for the present without deciding the point of order just now.

Mr. STAFFORD. I will not take more than 10 minutes, or perhaps 15 at the outside.

Mr. SMALL. I am not assuming that the gentleman is purposely consuming time. May I ask a question of the Chair at this time?

Mr. STAFFORD. I yield to the gentleman to ask a question of the Chair.

Mr. SMALL. I did not understand the Chair to decide that the chairman of the committee in charge of the bill did not have the right to move to close debate or to move that the committee rise and go into the House during a discussion under the five-minute rule. Is the Chair in doubt about that?

The CHAIRMAN. The Chair believes from the rules and precedents that he has examined—and the precedents are not quite clear on many of them—that they apply to discussion under the five-minute rule; but the gentleman from Wisconsin has contended that the Chair is wrong, and if so the Chair would be glad to be corrected. There is no question in the mind of the Chair, so far as the right to control debate is concerned. That has been decided as shown by paragraph 6949 of volume 5 of Hinds' Precedents.

Mr. STAFFORD. I admit that contention of the Chair.

Mr. SMALL. I did not intend to take the gentleman off the floor.

The CHAIRMAN. It is within the province of the committee to close debate when it sees fit, or the chairman of the committee in charge of the bill has the right to move that the committee rise and go into the House and so close debate.

Mr. SMALL. Mr. Chairman, while the Chair is considering that matter, the gentleman is proceeding in that indefinite situation?

The CHAIRMAN. The Chair would suggest at the same time that the Chair will examine further into the matter; for the Chair's benefit the gentleman from Wisconsin has kindly consented to proceed for the present.

Mr. LENROOT. Mr. Chairman, will the gentleman yield there for a question?

Mr. STAFFORD. Just for a brief question.

Mr. SMALL. I hope the gentleman will yield.

Mr. LENROOT. This is a very important matter, and it ought not to be decided—because it is so important—without the fullest care, and I suggest that the gentleman proceed for a reasonable time on the merits of the appeal, and then it will be in order to close debate when he gets through.



Mr. HARDY. Why should the five-minute rule be made to apply to everybody except the gentleman from Wisconsin?

Mr. STAFFORD. Because "the gentleman from Wisconsin" knew what his rights were, and the Chair is most fair.

The CHAIRMAN. While the Chairman has not yet been convinced that his opinion is not right, he is endeavoring to be fair and right in the matter to all members of the committee, and he would want time to look it up more fully. The Chair made the suggestion which he did make for the purpose of saving time, and the gentleman from Wisconsin [Mr. STAFFORD] is proceeding with the understanding that his rights will be preserved.

Mr. STAFFORD. On the question of appeal, no more serious question can confront this committee or any committee than to take an appeal from the decision of the Chair on a parliamentary question which it is acknowledged that the Chair was right in his rulings and is supported by all the precedents. These rules have been established and the precedents have been placed here in permanent form so that we can proceed in regular order. If at any time when, perchance, a majority of the committee might be in favor of some proposition that was not in order a Member should rise and appeal from a decision of the Chair and overrule the Chair, there would be chaos rather than order in the control of the discussions of this House.

There was not a quorum and far less than a quorum present when this matter was under discussion. There is not a quorum present now, and yet you are attempting to make in order something that Members of the House have reason to believe is out of order, something on which every precedent that has ever been passed upon this question has been one way, as the Chairman of the committee ruled, and attempt to overset it, so that it might be considered in order.

This is not the only proposition that is out of order in this bill. In the back part of this measure there are provisions after provisions that the Chairmen in times past have ruled were not in order, provisions relating to water powers in this country, as to which there is no question but that the Committee on Rivers and Harbors has no jurisdiction.

Think for one moment, gentlemen, of what would happen if the Members who would be interested in that special provision in section 5, relating to singling one single water-power proposition in Minnesota against many other water-power companies seeking a like privilege from Congress, and not receiving the privilege because we have not passed any general dam law, could come in here and overrule the decision of the Chair declaring that provision out of order. What consistency or regularity would there be in the proceedings of this committee or of this House?

I can not recall at the present time any decision of the Chair in committee where the precedents have all been one way and where the decision has been overruled in Committee of the Whole House. Certainly on this provision you should not be swayed by the merits of it. I am frank to say to you, gentlemen, that a year ago when this item was under consideration I did not make a point of order against it because it was in a different form from what it is to-day. Then it provided merely for a lump-sum amount to be paid to the owners of this canal. The provision in this bill now authorizes condemnation proceedings in the courts whereby the owners, because of its peculiar value, could go into court and obtain all manner of return upon the showing that they might make, which this House might not be willing to favor under such conditions.

Mr. MOORE of Pennsylvania. Mr. Chairman, will the gentleman yield?

Mr. STAFFORD. Let me make my argument, because I do not want to take up unnecessary time. [Laughter.]

Mr. BATHRICK. Mr. Chairman, will the gentleman yield?

Mr. STAFFORD. If it is a brief question, I will yield.

Mr. BATHRICK. I want to ask the gentleman this: Suppose it was generally conceded that this enterprise was very important, where could it go so that no point of order could be made against it?

Mr. STAFFORD. That involves the consideration of a very close parliamentary question, which I will proceed upon with the indulgence of the committee just for two or three minutes.

Mr. MOORE of Pennsylvania. Will the gentleman yield?

Mr. STAFFORD. No; I want to answer the question of the gentleman from Ohio [Mr. BATHRICK]. Even granting that the Committee on Rivers and Harbors has jurisdiction of this subject matter, nevertheless under the rules of the House and the precedents based upon those rules, it has not the right to incorporate legislation into a river and harbor appropriation bill, which is privileged, unless the legislation relates to the improvement of rivers and harbors. I will not prejudge that

question and say that the Committee on Rivers and Harbors has not the right to introduce a special bill relating to this individual project, and have it dropped in the basket and take its regular course on the calendar; but the Committee on Rivers and Harbors occupies a unique position, and that is that while this river and harbor bill is not considered a general appropriation bill, it is a regular appropriation bill, and all legislation which is in order under that paragraph of the rule which provides that the Committee on Rivers and Harbors shall have the right to report at any time, is privileged, but it has not the right to incorporate in that bill, which is limited to the improvement of rivers and harbors, other matters of legislation over which it has jurisdiction. The Committee on Rivers and Harbors may have jurisdiction of this subject, but it has no right to bring it here in this privileged bill, because the rule limits the privilege to matters relating to the improvement of rivers and harbors. This distinction has been recognized time and again in the rulings of the Chair, so I think I have sufficiently answered the question by saying that the Committee on Rivers and Harbors may have jurisdiction to report this very provision, but not to incorporate it into a river and harbor appropriation bill.

Mr. MOORE of Pennsylvania. Does the gentleman think we ought not to have a connecting waterway between the Chesapeake and Delaware Bays for war purposes?

Mr. STAFFORD. Oh, I would support it much more freely on commercial grounds than for war purposes. I think for war purposes it is an iridescent and chimerical dream—a proposition involving a depth of 25 feet—

SEVERAL MEMBERS. Vote! Vote!

Mr. FREAR. Mr. Chairman, I ask for order.

Mr. STAFFORD. I will say in all fairness to the committee I stated that I did not intend to speak more than 15 minutes without interruption.

Mr. LINTHICUM. The gentleman has spoken 25 minutes.

Mr. STAFFORD. The gentleman from Maryland is very shortsighted. I have not spoken over 10 minutes.

Mr. LINTHICUM. I think I was very shortsighted when I said 25 minutes. I ought to have said 40 minutes.

Mr. STAFFORD. Oh, well, the gentleman is always verbose on these matters and always wrong.

Mr. LINTHICUM. I desire to say that the gentleman from Milwaukee is not always wrong.

Mr. STAFFORD. Mr. Chairman, we are not going to gain any time—

Mr. SMALL. How much more time does the gentleman desire?

Mr. STAFFORD. I will conclude certainly in five minutes if not interrupted. I was about to conclude when interrupted by the gentleman from Ohio [Mr. BATHRICK] and the gentleman from Maryland [Mr. LINTHICUM].

Mr. GALLAGHER. How long will it take to finish the condemnation proceedings?

Mr. STAFFORD. This item differs from the item contained in last year's appropriation bill, because it authorizes condemnation proceedings, and there is no limit of cost, whereas the proposition of last year was limited to a certain definite amount, a little over \$1,000,000, as I recall; and now the owners of these bonds may go into court and claim that by reason of war conditions this canal has been made much more valuable than it was a year ago. As I said before, I did not seek to interpose a point of order against this provision a year ago, when the cost was limited. I was willing to give the benefit of the doubt in favor of the proponents of that measure. I am not opposed to the improvement of the waterway, but I have the right, and the Members of this House have the right, to adhere to the rules of the House when an attempt is made here to bring in matters that may go contra to the best policy of the country. If you are going to overrule the decision of the Chair on this proposition, then you must concede that those who desire to single out a dam proposition should also have the right, when a point of order is sustained against them, to appeal from the decision of the Chair. I do hope that those who are in favor of river and harbor improvement will not go to the extreme of establishing a revolutionary precedent, that they will overrule the decision of one of the best-known parliamentarians in the House in order to try to bring before it something that is not in order under the rules of the House. You certainly do not want it to go out to the country that in the Committee of the Whole, where no roll call can be had, you are willing to take up for consideration a proposition that has never, under the rules of the House, been regarded as in order in the consideration of a river and harbor bill. You should be very loath to take that step, because if you do it will result in disorder and confusion, and will be against orderly parliamentary procedure.



Mr. SMALL. Mr. Chairman, I ask unanimous consent that all debate close in six minutes, that the gentleman from Ohio [Mr. BRUMBAUGH] be recognized for one minute, and that I may be recognized for the remainder of the time.

The CHAIRMAN (Mr. FOSTER). The gentleman from North Carolina asks unanimous consent that all debate be limited to six minutes, one minute to go to the gentleman from Ohio [Mr. BRUMBAUGH] and the other five minutes to himself. Is there objection?

There was no objection.

Mr. BRUMBAUGH. Mr. Chairman, I want the membership of the House to understand me thoroughly. In behalf of myself as chairman of the Committee on Railways and Canals and my colleagues on that committee, we are not bidding for the reference of this proposition. In fact, I think it should not at this date be referred to our committee.

Mr. MOORE of Pennsylvania. Should your committee report an appropriation bill anyhow?

Mr. BRUMBAUGH. Now, Mr. Chairman, I want to say that I do not see the propriety or good taste in regard to the eternal fitness of things for the chairmen of other committees making adverse remarks about committees outside of their own. I did not inject myself into this; others have done it. I want to say that this House should treat this committee fairly and on the level, as it does other committees. We shall organize for business, and in the future I do not propose to consent that other large committees take these bills that properly should be referred to this committee. I want to repeat that because this committee has not been alive in the past is no indication that we do not intend to make a live one of it in the future. Having been elected chairman of this committee only a few days ago, I do not ask a clerk at this short session, but when the regular session opens we will expect a clerk and get down to business as a live committee ready to receive and consider any bills which may be referred to it.

Mr. MADDEN. As I understand, the gentleman does not consider his committee moribund?

Mr. BRUMBAUGH. I certainly do not; and all these remarks that have been made are gratuitous and unjust, so far as the present is concerned, and so far as our intention for the future is concerned.

Mr. SMALL. Mr. Chairman, I desire to submit a few remarks on the appeal from the decision of the Chair holding this paragraph with reference to the Chesapeake & Delaware Canal out of order. While I do not desire to retravel the same ground, I am as strongly of the opinion now as I was when I endeavored to present the question that the Rivers and Harbors Committee has jurisdiction of the proposition as it appears in the bill, and that the ruling of the Chairman is wrong. We have appealed from the decision of the Chair. Does that involve any discredit to the Chairman? What is involved in his ruling? Only an expression of an opinion upon a question of parliamentary law—a disputed question, a doubtful question, on which there are two sides. Lawyers who are familiar with trials in nisi prius courts know that where the judge holds a certain way upon a question of law that an appeal is taken to the supreme court of appeals, which may consist of three judges or five judges or nine, as the case may be, and which is the court of last resort. The rules of this House provide that there may be an appeal from the decision of the Chair, and it involves no more discourtesy to the Chairman of the committee than does an appeal from a nisi prius judge involve a discourtesy to that judge.

Gentlemen like my good friend from Wisconsin [Mr. STAFFORD] and his colleague [Mr. LENROOT] seem to regard with dismay this appeal from the decision of the Chair. I think there is not a gentleman in this House, upon either side, who in his past record as a Member has exhibited the ingenuity and skill in parliamentary law by presenting appeals from the decision of the Chair more frequently than my distinguished friend the gentleman from Wisconsin [Mr. STAFFORD].

Mr. STAFFORD. Mr. Chairman, the gentleman does not wish to misrepresent me.

Mr. SMALL. I do not.

Mr. STAFFORD. I do not recall—I may be short of memory—but I do not recollect that I ever appealed from the decision of any Chairman or from the decision of any Speaker.

Mr. SMALL. Or argued in favor of an appeal? Did not the gentleman argue at some length to sustain an appeal from the decision of the Speaker in the cotton-tax proposition?

Mr. STAFFORD. The gentleman is confusing me with some other Member.

Mr. AUSTIN. Let the gentleman ask him if he did not vote to overrule the decision of the Speaker [Mr. CLARK].

Mr. SMALL. My colleague instances one occasion when the gentleman from Wisconsin [Mr. STAFFORD] was in favor of an appeal. The gentleman has corrected me in my assertion as to the cotton tax, and I yield to his recollection. But the gentleman himself, I have no doubt, would not deny that he has voted to overrule the Chair, either the Chairman of the Committee of the Whole or the Speaker, in various rulings that have been made, sustaining the contention that I am making that there is no discourtesy intended by this appeal from the ruling by the distinguished gentleman from Mississippi, the chairman of the committee.

The rules provide that the Members of the House sitting in Committee of the Whole shall be a court of last resort and a finality. The Committee of the Whole ought to vote on this appeal in the light of law and reason and in furtherance of wise legislation. The Committee on Rivers and Harbors reported the legislation authorizing the examination and survey of this project. The report of the Chief of Engineers when submitted to the House was referred to the Committee on Rivers and Harbors. The same Committee on Rivers and Harbors now reports the legislation embraced in this paragraph adopting the project for the Chesapeake and Delaware waterway. Now, for the first time the jurisdiction of the Committee on Rivers and Harbors is assailed. It comes too late. The point of order is a subterfuge and a snare and is actuated primarily by the desire to defeat the project. Let us assert ourselves and maintain the rightful jurisdiction of the Committee on Rivers and Harbors.

Mr. DUPRÉ. Mr. Chairman, I ask unanimous consent for just one minute.

The CHAIRMAN. The gentleman from Louisiana asks unanimous consent for one minute. Is there objection?

There was no objection.

Mr. DUPRÉ. Mr. Chairman, some very handsome sentiments have been uttered regarding the gentleman from Mississippi [Mr. HARRISON], in which I heartily concur; but I do not see how a vote to overrule the decision of the Chair involves any disloyalty to him or disrespect of his high parliamentary qualifications. In fact, I gravely suspect that no gentleman in the House would be more pleased than the gentleman from Mississippi if his own decision were repudiated by the House. [Laughter and applause.]

The CHAIRMAN (Mr. FOSTER). The question is, Shall the decision of the Chair stand as the judgment of the committee?

The question was taken; and there were 42 ayes and 55 noes.

Mr. GILLET. Mr. Chairman, I ask for tellers.

Tellers were ordered; and the Chair appointed Mr. BOONER and Mr. MOORE of Pennsylvania.

The committee again divided; and the tellers reported that there were 40 ayes and 64 noes.

So the decision of the Chair was not sustained as the judgment of the committee.

Mr. LENROOT. Mr. Chairman, I move to strike out the paragraph.

Mr. SMALL. Will the gentleman yield to let me perfect the paragraph?

Mr. LENROOT. I will.

Mr. SMALL. Mr. Chairman, I offer the following amendment.

The Clerk read as follows:

Committee amendment: Page 7, after the word "in," at the end of line 6, insert the words "House Document No. 391, Sixty-second Congress, second session, in."

Mr. SMALL. This merely inserts the document, which was omitted by a clerical error.

The amendment was agreed to.

Mr. MADDEN. Mr. Chairman, it is understood now that the opponents to this paragraph of the bill shall have 30 minutes.

Mr. SMALL. That was the agreement.

Mr. LENROOT. Mr. Chairman, what has just transpired in this committee in overruling the decision of the Chair would not have happened on any bill other than a river and harbor bill. It could not and would not have happened had it not been that members of this committee determined to overrule the Chair not upon the merits of the proposition, many of them—some of them did—but it is no secret that many members of this committee voted to overrule the decision of the Chair to sustain the river and harbor committee upon all of the items in this bill, fearing, some of them, that their own items might suffer if they did not do so. I listened to the reply of my friend from Tennessee [Mr. AUSTIN], in which he undertook to criticize me for suggesting that there was anything in the action of any Member of this House in the consideration of this bill before the House but the most patriotic motives.



He asserted that in the consideration of every item in this bill every member was actuated only by the best interests of his country. My friend from Tennessee may make such a statement as that, but it seems to me it rather ill becomes a Member of this House to make such a statement when his boast is that in this House he never votes against an appropriation or for a tax; and yesterday when I asked him whether he would be willing to vote for a tax to raise the expenditures provided for in this bill he declined to answer, and I yield now and ask him that question and ask for a reply.

Mr. AUSTIN. Mr. Chairman, I shall answer the gentleman in my own time.

Mr. LENROOT. I thought that would be the reply that the gentleman would make, but I yield now for a reply.

Mr. AUSTIN. I want to talk a little longer than that when I get after the gentleman.

Mr. LENROOT. Does this House realize that if the doctrine of the gentleman from Tennessee should prevail, voting for all appropriations and against all taxes, it would leave the United States helpless in this crisis, in this war time, with Germany winning the war, leaving the United States nothing with which to carry it on? Mr. Chairman, there does not seem to be a realization on the part of some Members of the House that we are in war. When you talk about carrying on all of these projects involving millions and millions of dollars, do you stop to realize that in the liberty-bond sale, which was concluded yesterday, we had gone to the humblest laboring man in the country and asked him to buy a \$50 liberty bond, because we said to him that we needed the money to carry on this war? What do you suppose would have been thought by the thousands of laboring men in this country who have made sacrifices to buy liberty bonds if we told them that we wanted this money to spend a million dollars on the Missouri River, to spend \$1,200,000 on the Mississippi River, such as is proposed in the bill? Do you suppose they would have come to the front?

The CHAIRMAN. The time of the gentleman from Wisconsin has expired.

Mr. LENROOT. Mr. Chairman, I ask unanimous consent to proceed for five minutes more.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. MEEKER. Mr. Chairman, will the gentleman yield?

Mr. LENROOT. In a moment. In this revenue bill that has passed the House and is now pending in the Senate, we have taxed the necessities of life, we have taxed sugar, we have taxed heat and light and various other things. Did we impose that taxation for the purpose of carrying on the improvements that are proposed in this bill? Can any Member of this House justify taking money next winter from possibly starving women and babies for the purpose of expending millions of dollars shown by the hearings themselves to be unnecessary either in the maintenance of existing projects for commercial purposes or for the carrying on of the war? I yield now to the gentleman.

Mr. MEEKER. I just wanted to inform the gentleman that not long ago I filed a petition of 3,500 workmen of the city of St. Louis in favor of these improvements.

Mr. LENROOT. That is always so. I have no doubt there are 3,500 workmen in St. Louis who, because they think they have a peculiar and special benefit in this proposition, might be willing to take the bread from the mouths of millions of other people of the country.

As to this proposition which is now pending, which I have made the motion to strike out, the only member of the Office of Engineers who appeared before the Committee on Rivers and Harbors in discussing the proposition made no pretense that it was a military necessity, so far as the Navy is concerned. Of the canal he said that "it is not, of course, important for the movement of vessels of defense"; that is, naval vessels; that the Navy Department desired nothing less than 16 feet as of any special value for their purpose, for the movement of submarines or naval boats and things of that kind; and yet this is being urged as a war measure—a 12-foot canal, when the Navy says they can make no use of it whatever for naval purposes.

Mr. Chairman, in this crisis, whatever we may believe in times of peace when we are going along in a normal way with reference to these appropriations, in this time of war when all of the resources of the country are necessary for the carrying on of the war, every one of us ought to be willing to forget our own projects, to forget the few votes that might come to us from our districts by favoring this bill, if there be such, and remember only that never since the foundation of the Government has there been a time when Members should forget themselves and their districts more than in this hour, when we should consider

this question only from the standpoint of the country. If that is done, this bill without any injury to anyone, can be cut down several millions of dollars. [Applause.]

Mr. GOOD. Mr. Chairman, I was interested and somewhat amused the other day when the gentleman from Illinois [Mr. MADDEN] characterized this item as being rotten, and the criticism was taken as a personal affront by the gentleman from Pennsylvania [Mr. MOORE], who at once defended it; and he became so bitter in his criticism I thought we ought to look into the history of this item a little and see whether or not it was above reproach, whether or not there was anything rotten in this item, whether all of the transactions connected with the canal it is proposed to purchase were straight and legitimate. So I got a copy of this letter of the Secretary of War, and what do you suppose I found? I find here that the men in charge of this canal, of a concern where 38 per cent of the stock was paid for out of the Treasury of the United States, and is now owned by the Government, had stolen or permitted to be stolen \$609,000 of the bonds of this canal, and the company owning the canal, and the Government owns 38 per cent of the stock in this company, is now paying interest upon that amount of bonds that were spirited away, and now we are about to appropriate money, we do not know how much, ten or twelve million dollars, and the fellows who got those bonds will get \$609,000 out of the Treasury of the United States for the bonds for which not a dollar, according to this report, was ever paid to the canal company.

Mr. MOORE of Pennsylvania. Mr. Chairman, will the gentleman yield?

Mr. GOOD. Yes.

Mr. MOORE of Pennsylvania. Does not the gentleman know that that whole matter was thoroughly investigated by a Senate committee?

Mr. GOOD. I know that whole matter was thoroughly investigated by a commission appointed by Congress to investigate it, and the secretary of the company in his letter says that the total bonds of the company amount to \$2,609,000, and that there was included a fraudulent overissue of \$609,000.

And yet the gentleman from Pennsylvania complains because the gentleman from Illinois used the mild term of "rotten" when referring to the very rotten canal transaction, a transaction which the secretary of the company itself characterizes as fraudulent.

Mr. MOORE of Pennsylvania. Will the gentleman yield now? The gentleman tries to be fair at times. Because a bank clerk has speculated from a bank, has been arrested and put in jail, should the bank be forever condemned as rotten because it brings the crooks to terms?

Mr. GOOD. I am not condemning the bank. I am criticizing the rotten canal transaction. The canal company was responsible for these bonds. It permitted \$609,000 of its bonds to be stolen, and now this concern wants to get into the Treasury of the United States.

Mr. MOORE of Pennsylvania. The gentleman is harping on something that occurred years ago, of course.

Mr. GOOD. I am complaining that this canal company, owned in part by the Government, permitted \$609,000 of its bonds to be stolen.

Mr. MOORE of Pennsylvania. And the mote has grown to such proportions that it obliterates his sight. Will the gentleman yield?

Mr. GOOD. I decline to yield for a speech. If the gentleman has information and wants to give it, I shall be very glad to yield, but he seems to be ignorant of the early history and fraudulent action of the officers of this canal company. But I want to make this observation, that a company like this, owned in part by the Government, that will permit others to rob it will, if given a chance, itself rob the Government. Remember that we are starting on a project now that was conceived in fraud. The men who had charge of the building and financing of this canal, of which 38 per cent of the stock was subscribed by the Government, stole or permitted to be stolen from the company \$609,000. How much will they be able to get away with of the \$10,000,000 that you are about to appropriate for the purchase and repair of this canal?

Mr. MOORE of Pennsylvania. Here is a report dated 1829. Those men are dead long since. The gentleman is thrashing over their graves.

Mr. GOOD. You see when you put your finger on these tender spots, not only spots that are tender but spots that are rotten, spots that are corrupt and fraudulent, and admittedly so, the gentleman rises immediately and tries to interrupt one who is trying to give the House a little information that the committee has tried to keep in the dark. Not a word in the report of the



chairman of this committee that reported the bill of the \$609,000 of fraudulent overissue. Why?

The CHAIRMAN. The time of the gentleman has expired.

Mr. MADDEN. Mr. Chairman—

The CHAIRMAN. The gentleman from Illinois is recognized for five minutes.

Mr. MADDEN. Mr. Chairman, this scheme we are about to vote upon very soon now was conceived in iniquity and sin, and it is still iniquitous, and still rotten, and still undeserving, and now we are to purify it by the expenditure of millions of dollars out of the Treasury of the United States. [Applause.]

Mr. SMALL. Will the gentleman allow me to ask him a question?

Mr. MADDEN. Yes, sir.

Mr. SMALL. Can not the gentleman possibly be serious while indulging in those violent adjectives? [Laughter.]

Mr. MADDEN. I will say to the gentleman from North Carolina I never was more serious in my life, and never more serious in my purpose to expose the iniquity involved in this nefarious enterprise, never more serious in my purpose to prevent the consummation of an iniquity, than I am in my purpose to defeat this rotten measure. Does the gentleman think that is serious enough? [Laughter.] If he thinks I am not sufficiently serious I will say a few more things that are still more serious. Is the gentleman serious in his endeavor to foist this rotten incubus onto the Treasury of the United States? Does he believe that this wart, known as an inland waterway, sought to be purchased on the recommendation of the gentleman from North Carolina [Mr. SMALL], chairman of the Committee on Rivers and Harbors, is justified as an emergency war measure?

Mr. MOORE of Pennsylvania. Mr. Chairman, I ask that the gentleman's words be taken down.

Mr. MADDEN. Does the gentleman want to come to the defense?

Mr. MOORE of Pennsylvania. He says it was being foisted on the Government at the recommendation of the gentleman from North Carolina.

The CHAIRMAN. Does the gentleman ask that the words be taken down?

Mr. MOORE of Pennsylvania. If the gentleman will modify his language I will not ask that they be taken down.

Mr. MADDEN. I demand the gentleman prove his statement that I am stating an untruth. I challenge the statement of the gentleman.

The CHAIRMAN. Does the gentleman from Pennsylvania [Mr. MOORE] desire the words to be taken down?

Mr. MOORE of Pennsylvania. If the gentleman yields to me to prove to him the inaccuracy of his statement—

Mr. MADDEN. I do not yield the floor. The gentleman seems to think he has a right to the floor no matter who occupies it.

Mr. MOORE of Pennsylvania. I will defend those who are in their graves.

The CHAIRMAN. Does the gentleman from Pennsylvania desire the words be taken down?

Mr. MOORE of Pennsylvania. If the gentleman withdraws what he said about the personal interest of the gentleman from North Carolina about this rotten scheme I will.

Mr. MADDEN. Mr. Chairman, I deny I made any such statement.

The CHAIRMAN. The gentleman from Illinois [Mr. MADDEN] is recognized.

Mr. MOORE of Pennsylvania. Then the gentleman will proceed in order, and I will call him again.

Mr. SMALL. I do not desire that he withdraw it.

Mr. MADDEN. I made the statement and continue to reiterate the statement that this measure is being considered upon the recommendation of the gentleman from North Carolina [Mr. SMALL] as chairman of the Committee on Rivers and Harbors. That is what I said. That is what I still say. Does anyone deny it? Does the gentleman from Pennsylvania deny it? Does the gentleman from North Carolina deny it?

Mr. MOORE of Pennsylvania. I do not deny it.

Mr. MADDEN. Then why do you want to inject interruptions into what I say?

Mr. MOORE of Pennsylvania. The gentleman said it was a rotten scheme.

Mr. MADDEN. I say so now. It is still rotten.

The CHAIRMAN. The time of the gentleman has expired.

Mr. MOORE of Pennsylvania. The gentleman from North Carolina holds a different opinion.

The CHAIRMAN. The gentleman's time has expired.

Mr. FREAR. Mr. Chairman, the time is to be occupied equally by those who were in favor of this and those who were opposed to it.

The CHAIRMAN. The present occupant of the chair was not in the chair at the time.

All time has expired. The question is on agreeing to the amendment offered by the gentleman from Wisconsin.

Mr. GILLETT rose.

The CHAIRMAN. The gentleman from Massachusetts is recognized for five minutes.

Mr. GILLETT. I rose simply to call the attention of the Chair to the fact that the time has not elapsed.

Mr. GREEN of Iowa rose.

The CHAIRMAN. The time has elapsed. The Chair will recognize the gentleman from Iowa [Mr. GREEN].

Mr. GREEN of Iowa. Mr. Chairman, I do not intend at any length to discuss the merits of this proposition, nor the merits of any other proposition in the bill, beyond saying that it seems to be quite clear that this can not be considered as a military necessity at this time, for the reason that it is utterly impossible for the canal to be completed in time to be used or to be of any use before this war is over and we either win the war or are beaten.

Such being the case, I can not approve appropriations of this kind at this time. As a member of the Committee on Ways and Means, I sat with the other members of that committee for many weeks hunting and searching in every direction possible to find something upon which we could lay a tax without inflicting any hardship upon the American people. After all our searching and hunting we were unable to find anything that did not surpass either in degree or in form taxes which were proper in times of peace, and we were obliged in some measure to levy taxes which necessarily inflict hardship on those who will have to pay them. Unfortunately, too, we felt compelled, in order to raise the great amount of money necessary, to put taxes to some extent on the necessities of life, although our bill only carried taxes on necessities to a small extent. Now, another body has been searching and hunting to find some other means of revenue and other objects of taxation, and after all their searching, as I understand it, they have found simply a tax on candy—some method of taking pennies from the children—and a tax on checks.

In addition to this enormous sum that we have called upon the people of the United States to raise, and which we will eventually go out and tell them as patriotic citizens they ought to pay—in addition to this enormous sum of \$1,500,000,000 or \$1,800,000,000 that we have thought proper to raise, we have been conducting a canvass from house to house all over this country, asking the citizens to do their patriotic duty and subscribe for liberty bonds. To do what? To build these canals, to dredge some of these creeks, to widen some of these channels? No; to carry on this war and save the country and win the war. And that is what the people subscribed for, and nothing else.

Mr. Chairman, I think this proposition ought to be voted down. [Applause.]

The CHAIRMAN. The question is on agreeing to the amendment offered by the gentleman from Wisconsin [Mr. LENROOT].

The question was taken, and the Chairman announced that the yeas appeared to have it.

Mr. LENROOT. Mr. Chairman, a division.

The CHAIRMAN. A division is demanded.

The committee divided; and there were—ayes 24, noes 52.

So the amendment was rejected.

The CHAIRMAN. The Clerk will read.

The Clerk began to read.

Mr. MADDEN. Mr. Chairman, I make the point of no quorum.

Mr. MOORE of Pennsylvania. I make the point, Mr. Chairman, that that is too late. The Clerk had begun to read.

Mr. SMALL. I hope the gentleman will withdraw that.

Mr. MADDEN. Mr. Chairman, it has been suggested to me by a number of gentlemen that I should let that go, and I will withdraw it.

The CHAIRMAN. The gentleman from Illinois withdraws the point of no quorum. The Clerk will read.

The Clerk read as follows:

Baltimore Harbor and Channels, Maryland: For maintenance of Patapsco River and Channel to Baltimore, including channel of approach at York Spit, Chesapeake Bay, \$104,000; for improvement in accordance with the report submitted in House Document No. 799, Sixty-fourth Congress, first session, and subject to the conditions set forth in said document, \$250,000; and the Secretary of War is hereby authorized to prosecute maintenance work in the inner harbor in accordance with the recommendation submitted in said document; in all, \$354,000.

Mr. AUSTIN. Mr. Chairman, in reply to the gentleman from Wisconsin [Mr. LENROOT] I wish to read from his speech which called forth my criticism. He said:

If the supporters of this measure now desire to overrule the Chair upon this proposition, they will demonstrate to the country beyond



peradventure that this bill is not being considered upon its merits, and that wherever there is a piece of pork in it they are willing to violate the rules of this House in order to keep that pork in it, so that the pork may be had for other items in the bill that they are afraid might be lost unless all the other items remain in.

Mr. Chairman, the Secretary of War, who is charged under his oath with the responsibility of caring for river and harbor improvements, has O. K'd and approved every item in the pending bill, and that Cabinet officer is at the head of the Army which is to wage a successful war against Germany. Now, can the gentleman from Wisconsin [Mr. LENROOT] be more deeply concerned in the successful prosecution of this war than a high Cabinet officer who is directly charged with the management of the Army?

Mr. GOOD. Will the gentleman yield for a question?

Mr. AUSTIN. No; I have only five minutes.

Mr. GOOD. I had only five minutes, and I yielded to several questions.

Mr. AUSTIN. I have only five minutes. Each and every item in this bill has been approved by the Secretary of War.

What else? Why, the gentleman from Wisconsin [Mr. LENROOT], who aspires to the leadership of this side of the House, is unkind and unjust enough to say that his Republican colleagues and his Democratic colleagues are not voting for or considering this bill upon its merits. Is not that a challenge to the honor of every man on this floor? If those of us who favor it—and a majority of us favor it—are not considering it upon its merits, but alone upon the lines of "pork," is it not a challenge to our honor; and if that challenge holds good, is it not a reflection upon the integrity and the conscience of every man here who favors this bill, and has he not, according to the statement of the gentleman from Wisconsin [Mr. LENROOT], violated his oath of office? If the gentleman from Wisconsin is proud of his utterance, I do not envy him. I think he owes it to himself and to his colleagues who have honored, respected, and trusted him to apologize to them before the close of this day's session.

Now, the gentleman says something about voting for revenue bills. I voted for the last Republican tariff bill which passed this House, and the gentleman from Wisconsin [Mr. LENROOT] voted against it. I voted with more than nine-tenths of the Republican Party, and he voted with all the Democrats. I put my record for voting for the last Republican tariff bill against the record of the gentleman [Mr. LENROOT] and of Senator LA FOLLETTE, who also voted against it. I repudiate the reflection sought to be cast upon the gentleman's colleagues by him. I stand here for the integrity and the honor of the membership of this House. If we do not respect ourselves and stand up here for our own honor, who will stand up for us? I prefer to believe in the honor and integrity of my colleagues, rather than to stand up with the yellow journalism of this country, in reflecting upon their honor and questioning their motives in supporting this and other measures. [Applause.]

Mr. LENROOT. I have only this to say in reply to my good friend from Tennessee—and we are personal friends—that whenever I find the gentleman from Tennessee voting against any appropriation that is proposed in this House I shall be prepared to apologize to him for the remark that I have made, but not until then.

Mr. GOOD. Mr. Chairman, will the gentleman yield?

Mr. LENROOT. I yield to the gentleman.

Mr. GOOD. A short time ago the gentleman from Wisconsin [Mr. LENROOT] propounded an inquiry to the gentleman from Tennessee as to whether or not he would vote for a tax to pay this appropriation, and the gentleman was going to answer it, but I listened patiently, and the gentleman from Tennessee did not state whether he would vote for such a tax, and I hope the gentleman will yield his time so that the gentleman from Tennessee can answer that question.

Mr. AUSTIN. I have said that I voted for the last Republican tariff bill, and the gentleman from Wisconsin [Mr. LENROOT] voted against it. I voted for these appropriation bills because I believed them to be meritorious; and the Members of this House who compose those committees, acting under their oaths, reported out those bills that were meritorious and deserved my support.

Mr. LENROOT. Now, I have some time left, and I ask the gentleman will he not answer the question I have several times propounded to him, whether he is willing to vote at this session for taxes to pay these appropriations?

Mr. AUSTIN. I voted against the late revenue bill, which the gentleman from Wisconsin supported and the country repudiated, and which the United States Senate is going to repudiate. [Laughter.]

Mr. LENROOT. That does not answer my question.

The CHAIRMAN. Without objection, the pro forma amendment will be withdrawn, and the Clerk will read.

The Clerk read as follows:

Rockhall, Queenstown, Claiborne, Tlghman Island, Cambridge, and Crisfield Harbors, Elk and Little Elk, Chester, Corsica, Choptank, Tuckahoe, Warwick, La Trappe, Tred Avon, Wicomico, Manokin, and Pocomoke Rivers, Slaughter, Tyaskin, and Broad Creeks, Twitch Cove and Big Thoroughfare River, and Lower Thoroughfare, Deal Island, Md.; Nanticoke River (including Northwest Fork), Del. and Md.; and Broad Creek River, Del: For maintenance, \$15,800.

Mr. FREAR. Mr. Chairman, I invite the attention of the committee—

Mr. SMALL. Is there any motion pending?

Mr. FREAR. I move to strike out the last word. I invite the attention of the committee to this paragraph of the bill which has just been read by the Clerk. Heretofore the statement has been made to the House that it will not be difficult to move to strike out certain items from this grouping system wherever they occur, whenever it is the disposition of the House to do so. I point out here that about 30 items are placed in this group, which never before have been grouped together, with a \$50,000 balance remaining to their credit substantially. According to the bottom of page 8 of the bill, substantially 30 items, possibly 29, are grouped, while heretofore some of these items have been criticized in the House. I do not propose to enter into any discussion with regard to the individual items now, but I call the attention of the House to the fact that no one hereafter will ever be able to challenge one of these items when it appears in this bill, nor in any other grouping system can you challenge a single item. When it is placed in the bill it stays there. It is no matter whether it may be worthless, no matter whether there is no commerce on the stream, the money may be poured in there, as we have seen in so many cases, without any return whatever to the public, and we continue to pay that money without an opportunity to know where the money is going or how to get rid of the objectionable items.

Here are 30 items strung all along the coast in this neighborhood and grouped, and some of them have been already criticized. This is only one evidence, possibly one of the worst of the system, in which you have covered up for all time any effort hereafter to get after these specific items or to show up the character of them, because the appropriation goes to the total and the engineers can give it to any item they choose.

As I stated early in the discussion, in the case of the Toms River and in the case of Cold Springs Inlet and two or three other items that were in that group, the most of which will not stand the light of day, the Army engineers can turn the money over in the same way. It is said, "Oh, yes; you can pick them out; you can move to strike out," but you can not move to strike out unless you have before the committee the amount of money that is to be expended on the item. So I say that the Army engineers have succeeded in preparing a bill which I have no doubt will be followed in the future, and which will prevent the striking out of any items by the House.

Mr. MADDEN. Mr. Chairman, I move to strike out in this group the word "Queenstown."

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Page 8, line 20, strike out the word "Queenstown."

Mr. MADDEN. Mr. Chairman, I move to strike out this word because no one would know from the reading of this bill whether any money is appropriated for the Queenstown improvement or not. No one will know if that paragraph is passed whether Queenstown will ever have any part of the \$15,800 appropriated for the total aggregate expended at the improvement.

Mr. JAMES. Will the gentleman yield?

Mr. MADDEN. Yes.

Mr. JAMES. On page 103 of the report of the committee, it states that the value of the commerce in 1913 was \$1,307,000. In 1914 it was \$1,067,000 and in 1915 \$323,000.

Mr. MADDEN. So it appears from the record of the War Department that the commerce has fallen off two-thirds since 1913, and the presumption is that if we keep that up another year or two there will be no commerce at all.

Mr. JAMES. And the next item in reference to Claiborne Harbor, the value of the commerce in 1913 was \$9,075,000, and in 1915 it was \$1,502,000.

Mr. MADDEN. So it seems that even Claiborne, once a great mart of trade, having a commerce valued at \$9,000,000 has now fallen into a state of innocuous desuetude. And then, it seems to me, Mr. Chairman, that with a paragraph like this, with 30 or 40 items in it, with no indication given as a matter of information as to the value of the commerce in either case, or is no evidence as to what amount of money is to be expended for



any item in the paragraph, with an appropriation of \$15,800 for them all, it is utterly lacking in information. Who knows but that the whole \$15,800 will not be expended on the least meritorious item in the paragraph? Who knows that it will not be spent on one item in the paragraph that has no merit whatever? Does not the chairman of the Committee on Rivers and Harbors believe that the time has come when evidence or information, or whatever you may call it, should be furnished to Members of the House charged with the responsibility of legislating on these great propositions in the name of war emergency? Does not the gentleman know and ought he not to accede to the request of the Members of the House to furnish information to the effect that at any rate each one of the items in this paragraph has something to do with the war emergency?

Mr. GREEN of Iowa. Will the gentleman yield?

Mr. MADDEN. Yes.

Mr. GREEN of Iowa. Is there any way of finding out whether the creeks or duck ponds mentioned here are located on any map?

Mr. MADDEN. The gentleman from North Carolina and the gentleman from Pennsylvania, his successful ally, have not condescended to furnish to the ordinary Members of the House any information as to the location of these places where the money of the Treasury is to be expended and for which the people, already overburdened with taxation, are to be taxed again in order that they may be able in the name of an unknown war emergency to take large sums of money out of the Federal Treasury.

Mr. MOORE of Pennsylvania. Does the gentleman want the information?

Mr. MADDEN. Certainly; but I do not believe that the gentleman from Pennsylvania can give it, and therefore I decline to yield. [Laughter.]

Mr. MOORE of Pennsylvania. I thought the gentleman would, although he asked for it.

The CHAIRMAN. The time of the gentleman from Illinois has expired. All time has expired, and the question is on the amendment offered by the gentleman from Illinois.

The question was taken, and the amendment was rejected.

Mr. MADDEN. Mr. Chairman, I move to strike out the words "Elk" and "Little Elk" on page 21.

The Clerk read as follows:

Page 8, line 21, strike out the words "Elk" and "Little Elk."

Mr. MADDEN. Mr. Chairman, I want to elicit some information with reference to these animal names.

Mr. MOORE of Pennsylvania. Does the gentleman want the information?

Mr. MADDEN. I decline to yield. I do not know whether this is to be a hunting ground of some member of the committee that reports the bill or one of those places where you meet in social gayety in some backwoods town or whether it is a place where we have commerce that has something to do with the war. Elk and Little Elk would seem to indicate some condition that would enable a man to exercise his disposition and privilege of hunting. But it might mean that it belongs to some feature of the Elk Order where men can enjoy social converse with their fellows when they find themselves in a town where they are unknown except to brother Elks.

It certainly can not mean that it has anything to do with the conduct of the war, and yet the chairman of the Committee on Rivers and Harbors tells the House that the Secretary of War was persuaded by him to certify to the fact that this is an emergency war measure, and he also tells the House that the President of the United States certified to the fact that this bill is an emergency war measure. I wonder if the President of the United States and the Secretary of War were taken into the confidence of the gentleman from North Carolina with respect to what Elk and Little Elk mean, and where they are—whether they are animals to be shot at or things to eat or places of social converse; whether they have anything to do with moving the food supply to the starving soldiers abroad or the people in Belgium who have been put into a position of starvation by the conduct of the Germans; whether we are going to be able to float ships to carry the seasickness out of the sea through one of the channels known as Elk and Little Elk, or whether this is just a pleasantry that has been put into the bill for the delectation of the Members of the House; and if so, or in any case, however the thing happens, about how much money is to be spent upon it, and what is the amount of commerce carried upon it, if it is water, and, if it is beer, why we will not call attention to the commerce in connection with it. But in any case, it seems to me that the chairman of this committee, otherwise industrious, intelligent, patriotic, insistent upon bringing this bill to the light of day, ought to tell the Members of the House what these Elks consist of, whether they are simply the skins of

elks or the horns of elks, or whether they have four feet and are able to run, or whether it is simply a channel that carries water between two banks, or one of these streams that sleeps in its own bed, or whether it is a sluggish stream that has no current; whether it contains water hyacinths that have to be removed as the result of the appropriation out of the Public Treasury, and whether water hyacinths are really good food for elks, and, if they are not good food for elks, if they are good food for the soldiers that are to fight the battles to preserve the honor of the Nation—whether, in short, as a matter of fact, Elk and Little Elk have any place in this bill or any other bill.

The CHAIRMAN. The time of the gentleman from Illinois has expired.

Mr. SMALL. Mr. Chairman, in listening to the gentleman from Illinois [Mr. MADDEN] we have difficulty in determining whether he is humorous or merely serious, but on this occasion there is no doubt whatever. He varies in his opposition to items. Sometimes he exhausts his vocabulary in applying derogatory adjectives, in which he is unjustified, and sometimes he indulges in facetiousness and satire. It is for him to judge how successful he is in either rôle; but I do call the attention of the committee and, if possible, the country to the kind of opposition to the river and harbor appropriation bill, of which this is a fit sample. Mr. Chairman, if the gentleman had consulted the reports of the Chief of Engineers, which are available to him and to every other Member of the House, consisting of three volumes, on page 425 of the first volume he would have found a full discussion of the Elk and Little Elk Rivers, in Maryland, which constitute one project, and in that he would have learned that there was no estimate or recommendation for any appropriation in the bill, and none is carried, the reason being that the available balance on hand is sufficient to take care of this project during the ensuing fiscal year ending June 30, 1918. And I commend to the gentleman these reports, with which he does not seem to be familiar, before indulging with such satisfaction in humor and facetiousness in discussing river and harbor items.

I desire further to submit this observation: We had an attack here a moment ago upon the Chesapeake & Delaware Canal. I say, upon my reputation as a man for intelligence and official integrity, that it is a proposition of great merit, both for commerce and for national defense.

I have here before me these reports, all recent ones, first, Senate Document No. 215, Fifty-ninth Congress, second session, which is a report made by the commission of which Gen. Felix Agnus, the distinguished editor of the Baltimore American, was chairman, which is filled with arguments and recommendations in favor of the project. Gen. Agnus is an eminent economist and a distinguished Republican. I have before me another report, House Document No. 391, Sixty-second Congress, second session, a general report of a special board of engineers, followed by a report of the Board of Engineers for Rivers and Harbors, and then followed by the report of the Chief of Engineers, all favorable to this project. One feature of the project was left for final conclusion, and a final report was embodied in House Document No. 196, Sixty-third Congress, first session. Then I cite another document, Senate Document No. 14, Sixty-fourth Congress, first session, being the report of the Secretary of War upon a Senate resolution asking him to report as to the military value of this waterway. I commend those reports to gentlemen. I think it is fair to say that no gentleman who rose in his seat this afternoon and criticized this project has read any of those reports. I further say this, that I would be willing to hand these reports to the distinguished gentleman from Massachusetts [Mr. GILLET], a man of trained mind, and in whose intellectual integrity I have confidence, give him several days to digest them, and I say that I will abandon the advocacy of this project if that gentleman will then come in and say that the characterization of the project by these other gentlemen is well founded. [Applause.]

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois.

The amendment was rejected.

Mr. MADDEN. Mr. Chairman, I move to strike out, on page 8, line 24, the word "Slaughter."

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. MADDEN: Page 8, line 24, strike out the word "Slaughter."

Mr. MADDEN. Mr. Chairman, I do not know what this item in the bill entitled "Slaughter" refers to, whether it is a slaughter pen for mosquitoes or bedbugs or flies or gnats or muskrats, or what, whether it is something over which they carry commerce; but in all events it has no place in the report of the committee, and this is not the only item in this paragraph that



is not printed in the report of the committee. For example, we have Tilghman Island, Cambridge, neither of which is reported, Crisfield Harbor not reported, Elk and Little Elk not reported, Chopstank not reported, Tuckahoe not reported, and Warwick not reported, Tred Avon not reported, Wicomico, Manokin, Pocomoke Rivers, Slaughter, Broad Creeks, Twitch Cove, and so forth, not reported.

Now, it may be that the word "Slaughter" should have been annexed to the words "Elk" and "Little Elk." And then we would have understood by the words that "Elk" and "Little Elk" had appeared on a former line. Then we would have realized that the hunting ground of the men who shoot elk could be found in the neighborhood of these titles. But as it is we find the words "Elk" and "Little Elk" in one place and "Slaughter" in another place, way down on the page.

Mr. COX. It may be that the word "Slaughter" there may mean slaughter of the Treasury of the United States.

Mr. MADDEN. I had forgotten that. I know the Committee on Rivers and Harbors never thought of that side of the case, for they have no consideration for the Treasury of the United States. That is the last thing they think about.

The question with them is, Are there any streams anywhere in the United States upon which the money of the Treasury can be used? Not the question of how much traffic there is on the stream, not the question of how much we can economize, not the question of how much the burden of taxation may be upon the already overburdened tax-laden people of the United States, not the question of what is an emergency war measure, not the question of how we can transport troops, not the question of how we can transport the food to the troops, but how can we slaughter the Treasury. That is the question. That is the question that is foremost in the minds of those who advocate these improvements for rivers and harbors.

True there are items in the bill that are worthy, and I am proud to certify to that, and I am for the items in the bill that are worthy, and I would like to see a river and harbor bill framed every item of which is worthy, so that we could have unanimous support for it and let it go to the people of the country as the work of the unanimous membership of the Congress of the United States.

Mr. GREEN of Iowa. Will the gentleman yield?

Mr. HUMPHREYS. Mr. Chairman—

Mr. MADDEN. Does the gentleman from Mississippi wish to ask me a question?

Mr. HUMPHREYS. No.

Mr. MADDEN. I thought the gentleman was curious.

I yield to the gentleman from Iowa [Mr. GREEN].

Mr. GREEN of Iowa. The gentleman from Illinois [Mr. MADDEN], as I understand, does not see the value of these creeks in a military and naval way, and the thought has just occurred to me that possibly if we get the mouths of these creeks open the Germans might sail up there and get stuck in the mud.

Mr. MADDEN. The trouble is that these creeks are getting the mouth of the Treasury open. That is where the trouble lies. They eat up every dollar we have in the Treasury that ought to go to other and more valuable purposes.

Mr. SMALL. Mr. Chairman, I ask unanimous consent that debate on this paragraph and all amendments thereto close in five minutes.

The CHAIRMAN. Is there objection? [After a pause.] The Chair hears none.

Mr. HUMPHREYS. Mr. Chairman, the gentleman from Illinois [Mr. MADDEN] said that I looked curious, and I am. It is enough to excite the curiosity of any man to listen to the address just delivered by the gentleman from Illinois on the Slaughter Creek proposition, and it is in keeping with a great many criticisms that are made of the river and harbor bill. Up to date all the appropriations the Government has ever made for Slaughter Creek are less than \$5,000, all put together. Yet the commerce floated on Slaughter Creek last year was valued at more than \$1,000,000. [Applause.] A great many gentlemen object to appropriations because they are carried for creeks, or, as they frequently say, "Carried for 'cricks.'" The fact of the business is, that is due entirely to the ignorance of the critics concerning the geography of this country, and not due to any lack of merit in the creeks. [Applause.]

Now, let us take the Suez Canal as a standard by which to measure values. It floats around 20,000,000 tons a year. The creeks in this country for which we provide appropriations carry annually more than 7,000,000 tons, all of it American commerce and tonnage, valued at, last year, \$185,000,000. [Applause.] We have spent in all the tide of time combined less than \$3,000,000 for all the creeks in the United States since we began to make appropriations. And yet those creeks float annually approximately \$200,000,000 of American commerce. And

because gentlemen are not informed, because they have not taken the time to ascertain where the creeks are located, and what the creeks are named, they assume that they are some worthless, trivial, unimportant waterways, and, as one gentleman expressed it yesterday, that a terrapin would grow thirsty in.

Now, there is carried in this bill \$35,000 of appropriations for all these creeks put together. There never has been and never will be a railroad constructed in the United States that can carry the commerce borne on the creeks provided for in this bill for \$35,000 annual maintenance. There may be just criticism of items in the bill. It may be there are things here that ought not to be here, but certainly the creeks are not those items. And gentlemen who pick out that particular feature of the bill to level their criticisms against are simply giving evidence, if evidence were needed, that they were striking blindly, as a gentleman suggested yesterday.

Now, although there is nothing specifically mentioned in this bill for Slaughter Creek, last year it carried \$1,000,000. There are \$15,000 carried for all the small streams mentioned in that particular paragraph. If Slaughter Creek should be allotted out of this appropriation as much as has been allotted to it in all the years put together heretofore, it would be \$4,000, and I submit to the gentlemen of this House that a stream that carries \$1,000,000 worth, or more, of commerce every year is worthy to be allotted \$4,000.

Mr. MADDEN. That is the information I have been searching for and which I would not have received if I had not made the statement that I did make.

The CHAIRMAN. The question is on the amendment of the gentleman from Illinois [Mr. MADDEN].

The question was taken, and the amendment was rejected.

The Clerk read as follows:

Potomac River, at Washington, D. C., at Alexandria, Va., and at Lower Cedar Point, Md., Anacostia River, D. C., Occoquan, Aquia, Upper Machodoc, and Nomini Creeks, Va.: For maintenance, \$30,000.

Mr. GILLETT. Mr. Chairman, I move to strike out the last word.

The gentleman from North Carolina [Mr. SMALL] a few moments ago criticized the tactics of those who are opposing this bill, and I wish to say just a word about the tactics of the majority who favor this bill. There happened a few moments ago a very unusual incident. The Chairman of the Committee of the Whole on appeal had one of his decisions overruled. Now, the Chairman of the Committee of the Whole is always from the majority party, and it is a very rare thing that his decision is reversed, because appeals from the decisions of the Chair are generally taken by the minority on the ground that they think the Chair has been partisan and has ruled against their interests. That is the usual cause of an appeal, and being supported by the minority it is very rare that it succeeds. But when it does it is generally by the votes of the minority supported by a very few from the majority. In this case the facts are quite different. The gentleman from Louisiana [Mr. DUPRÉ] suggested that the Chair would probably be delighted to have its decision overruled, indicating that the Chair's sympathies were with the resolution, but that performing his duty as a presiding officer he looked not to the merits of the proposition but at the legal problem before him.

Mr. DUPRÉ. Mr. Chairman, will the gentleman yield?

Mr. GILLETT. Certainly.

Mr. DUPRÉ. The gentleman from Louisiana does not presume to speak with any authority.

Mr. GILLETT. I did not suppose so.

Mr. DUPRÉ. My remarks were largely jocular.

Mr. GILLETT. They were very effective, I think.

Mr. DUPRÉ. Somebody said I talked as well as the gentleman. [Laughter.]

Mr. GILLETT. The fact that he ruled against his sympathies did credit to the Chair, of course. The Chair, under the responsibility of his position, did as the Chairman of the Committee of the Whole and as the Speaker of the House generally do, looked not at the merits of the question involved but at the legal question brought before him, and so the Chair sustained the point of order. He subordinated his wishes to the law. And, as I say, it did him credit. But we, when we come to vote on the appeal, ought not to be influenced by our feelings toward the merits any more than the chairman is. We, when we are voting on an appeal, are just as much subject to the duty of following parliamentary law as the chairman is. His responsibility is no greater than ours. He decides what he thinks is parliamentary law. When an appeal is taken from his decision and we vote upon that appeal we are acting as judges, and we ought to vote not according to our wishes but according to parliamentary law.



Mr. LONGWORTH. Mr. Chairman, will the gentleman yield?  
Mr. GILLETT. Certainly.

Mr. LONGWORTH. I think the gentleman is correct in saying that the overruling of the decision of the Chair on a river and harbor bill is unusual, but it is not altogether unprecedented. I recall an instance, and probably the gentleman will recall it, when an amendment offered not to the river and harbor bill, but to the sundry civil bill containing items for public buildings, requiring that the public building at Cleveland should be constructed of granite rather than sandstone, was ruled out of order by the Chair, and the House overruled that decision of the Chair.

Mr. GILLETT. I remember that proposition well, and as the gentleman also will recall, the incidents that led up to it. There were some alleviating circumstances. But although I sympathized with the gentleman who took the appeal yet, because I thought the Chair was right in his ruling, I voted to sustain the Chair.

Mr. LONGWORTH. I merely desired to call it to the attention of the House that this was not absolutely unprecedented.

Mr. GILLETT. No; it is not absolutely unprecedented, but it is very unusual, and that very vote was on what is known as pork legislation, on an item for a public building, that shows the viciousness and meaning of this vote. The river and harbor bill, more than all others, is considered by the outside world as a question where men's own interests are involved as against the public good, and therefore it is a question where we should scrupulously observe parliamentary law and not vote down the decision of the Chair, because we do not like the effect of that decision. But to secure a certain appropriation the Chair was overruled, and the votes were cast mainly by members of his own party, while we on this side were the ones who supported him.

The CHAIRMAN. The time of the gentleman from Massachusetts has expired.

Mr. SMALL. Mr. Chairman, I ask unanimous consent that the debate on this paragraph and all amendments thereto now close.

The CHAIRMAN. The gentleman from North Carolina asks unanimous consent that debate on this paragraph and all amendments thereto close. Is there objection?

Mr. FESS. Reserving the right to object, Mr. Chairman, I would like to ask the chairman of the committee one question. It will not take more than a minute.

Mr. SMALL. I withdraw the request temporarily, then.

Mr. FESS. I wanted to ask whether there is carried in this bill anywhere an item with reference to the narrowing of the channel in the Potomac out beyond Potomac Park?

Mr. SMALL. Of course, there are so many items which are under improvement by the Government that it is difficult sometimes to be correct by memory, but I do not think there is any recommendation for any narrowing of the channel, and I am confirmed in that opinion by the Clerk.

Mr. FESS. I wanted to make some inquiry as to the policy of the Government in narrowing the channel, and I wondered whether this was the place to make the inquiry.

Mr. SMALL. It would be perfectly appropriate. It would not be narrowed except as the result of an investigation. I renew my request, Mr. Chairman.

The CHAIRMAN. Is there objection to the gentleman's request?

There was no objection.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

Norfolk Harbor and Channels, Va.: For improvement, including channel to Newport News, in accordance with the report submitted in House Document No. 605, Sixty-third Congress, second session, and in accordance with the report submitted in Senate Document No. 3, Sixty-fifth Congress, first session, item "B," page 5, \$900,000. The unexpended balance of appropriations heretofore made for improvement of channel to Norfolk, Va., is hereby made available for continuing improvement of said channel in accordance with the report submitted in said document.

Mr. SMALL. Mr. Chairman, I offer a committee amendment.

The CHAIRMAN. The gentleman from North Carolina offers a committee amendment, which the Clerk will report.

The Clerk read as follows:

Committee amendment, page 9: Strike out the words "Senate Document No. 3," in lines 13 and 14, and insert in lieu thereof the words "House Document No. 140."

The CHAIRMAN. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. MADDEN. Mr. Chairman, I move to strike out the last word in order to ask the gentleman from North Carolina a few questions about this.

The CHAIRMAN. The gentleman from Illinois moves to strike out the last word.

Mr. MADDEN. We have been spending a good deal of money down at Norfolk. Is this an extension of the project that we entered upon some years ago and upon which we have spent a large amount of money? Exactly what does it do that we have not been doing?

Mr. SMALL. I can explain that very briefly. There has been an existing project for several years for 35 feet up to the navy yard. That depth prevails there now. This new project which is adopted here provides for widening the channel up to the navy yard, which is on the southern branch of the Elizabeth River, and also for widening the anchorage grounds at Lamberts Point, and also on the western branch at Pinners Point, and also widening the channel up to Newport News. That is the House document referred to—the first document that is referred to. The second document—House Document No. 140, Sixty-fifth Congress, first session—according to the amendment that I have just sent to the Clerk's desk, is based upon the recommendation of the Secretary of War and the Secretary of the Navy in response to a provision in the last naval appropriation bill asking for recommendations as to harbors and channels for the better operation of the fleet, and so forth, and that report recommended an increased depth of 40 feet up the southern branch of the Elizabeth River to the navy yard and a little further widening of the channel up to the navy yard.

Mr. MADDEN. That will cost \$900,000 more than the project we have under way. Is that right?

Mr. SMALL. That does not include the entire cost. The entire cost of the larger project adopted here is \$4,039,000, but the engineers said that this was all we could profitably expend during the next fiscal year. The greatest expense there is in acquiring the additional width of 750 feet.

This appropriation is to be used first in giving the increased channel of 40 feet in order to accommodate these large capital ships that are in process of construction or authorized.

Mr. MADDEN. Has this project any connection whatever with the appropriation of \$1,600,000 that we made a day or two ago in the war deficiency bill for the deepening of the channel at Jamestown?

Mr. SMALL. None whatever. Has the gentleman ever been in Norfolk?

Mr. MADDEN. No.

Mr. SMALL. The southern branch of the Elizabeth River begins between the cities of Norfolk and Portsmouth. There the river divides into the Southern and Eastern Branches, whereas this Jamestown site is 12 miles farther down and fronts on Hampton Roads, so that it is an entirely different location. This does not include any improvement of the channel anywhere near the naval site.

Mr. MADDEN. So that we are adding to the expense of the project already adopted \$4,250,000 in this project?

Mr. SMALL. No; I would not say that. The \$4,039,000 project supersedes the former project as to the southern branch of the Elizabeth River, and but for the fact that the former document recommended also enlarging the anchorage ground off Lamberts Point and the widening of the channel up to Newport News and the anchorage ground up to Pinners Point, there would be no necessity at all for citing the former report, being House Document No. 605, Sixty-third Congress, second session.

Mr. MADDEN. I am very much obliged to the gentleman for the information. I think it is one of the meritorious projects in the bill, and of course I am anxious to promote meritorious projects wherever I can discover them. [Applause.]

The CHAIRMAN. The time of the gentleman has expired.

The Clerk read as follows:

James, Nansemond, Pagan, and Appomattox Rivers, Va.: For maintenance, \$26,000; continuing improvement of James River, \$46,000; in all, \$72,000.

Mr. FREAR. Mr. Chairman, I move to strike out the last word. I desire first to offer, as a part of my remarks, a proposed substitute for section 16 of the bill when we reach the commission proposition. I just want to have it printed at this time.

The CHAIRMAN. The gentleman asks unanimous consent to extend his remarks in the RECORD by inserting his proposed substitute for section 16. Is there objection?

There was no objection.

The proposed substitute is as follows:

Mr. FREAR'S substitute for section 16:

"That a commission is hereby created and established, to be known as the National Waterway Commission, hereafter referred to as the commission, which shall be composed of five commissioners who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the commissioners shall be members of the same political party. The first commissioners appointed



shall continue in office for terms of three, four, five, six, and seven years, respectively, from the date of the taking effect of this act, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed. The commission shall choose a chairman from its own membership. No commissioner shall engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the commission shall not impair the right of the remaining commissioners to exercise all the powers of the commission.

"SEC. 2. That each commissioner shall receive an annual salary of \$10,000, payable in the same manner as the judges of the courts of the United States. The commission shall appoint a secretary, who shall receive an annual salary of \$5,000, payable in like manner. The commission shall have the authority to employ and fix the compensation of civil engineers, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated by Congress, and in making appointments for continuous service the commission, so far as practicable, shall select its employees from the classified service.

"All property of the United States in the hands or under the control of Army engineers or other officials or of private individuals or public contractors, including dredges, steamboats, barges, yards, and other property used in the improvement of public waterways, shall be placed under the jurisdiction and authority of the commission.

"SEC. 3. That the Secretary of War may, if practicable, detail such Army engineers as are requested by the commission to assist in organizing and establishing a comprehensive system of waterway improvement, providing that such details of engineers shall not be made to the detriment of their military duties.

"SEC. 4. That the commission shall have the authority and it shall be its duty to make an investigation of all waterway projects now constructed in whole or in part by Federal aid. The commission shall prepare a complete and succinct statement, by years, of the amount heretofore appropriated for each project, the estimated amount required to complete such project, a report of the commerce now served and to be served, the character of such commerce given by separate items so far as can be furnished, the source of information, the interests to be served, the kind of water craft used, and such other information as may be useful in determining the public use and value of the project. The commission shall also furnish Congress, at the earliest practicable date, information concerning all harbors and waterways now improved or being improved in whole or in part by Government aid, showing the amount of commerce, character of terminals or landings, ownership thereof, and, so far as practicable, ownership of regular lines of craft used thereon; and the commission shall also report its recommendations for the finishing of the projects now being constructed or modifications of existing plans or abandonment of work on any project, together with findings upon which such recommendations are based.

"The commission shall further ascertain and report what projects are now being improved for purposes other than navigation, and if for power development, a full statement of interests concerned, officers and stockholders, public use to be served, if any, private or public contributions toward expense of construction, and the commission's recommendations thereon. Said commission shall further ascertain and report what projects are now being carried on in whole or in part for land reclamation purposes, the character of such project, amount of lands to be recovered, estimated value of such lands, ownership thereof, and contributions now being made by beneficiaries toward such expenditures, together with the commission's recommendations.

"The commission shall make a full investigation into all work now being performed by the Mississippi River Commission, the amount of money heretofore expended on such river, character and permanency of work performed, and reclamation interests now being served, if there be any, a full statement of contributions by public or private interests toward said work, together with a comprehensive and intelligible report of the probable cost of the present plans of levee construction or other river improvement now being undertaken, the percentage of project completed, and this commission's recommendation thereon. Such Mississippi River report shall be separate and distinct from reports on other projects now under improvement by the Federal Government.

"All of such data and all other available information of a pertinent character affecting particular projects or entire waterway improvements now being conducted by the Federal Government shall be collected in convenient form and presented to Congress in installments at the earliest practicable date.

"When the commission shall have reason to believe at any time that the proposed project is not for general use of the public or will not warrant further expenditures, or if contributions shall be required to be furnished before further appropriations are made or further expenditures authorized, such commission shall immediately report to Congress, with a preliminary recommendation thereon, and shall furnish a copy thereof to the United States Treasurer. That thereupon, when so recommended, the Treasurer shall withhold all funds theretofore appropriated not specifically obligated under existing contracts and shall refuse further payments until subsequent and specific action shall be had thereon by Congress.

"SEC. 5. That prior to the presentation of any new waterway project appropriations the commission shall cause a careful survey of the proposed improvement, and if it shall appear such project is to serve a public use and is feasible, the commission shall thereupon collate data showing the estimated cost thereof, commerce to be served, water craft to be used, public terminals furnished, and contributions recommended to be made by public or private interests, together with such additional data as has heretofore been specifically required to be furnished on existing projects. The commission shall thereupon transmit to the Committee on Appropriations of the House of Representatives a full report concerning such new project or projects, its recommendations thereon, and, if requested so to do, all other and further information that may be required by the Committee on Appropriations.

"Whenever the commission shall determine that any waterway project is primarily for power or land-reclamation purposes or to serve special interests, the commission may recommend Government aid for such project, notwithstanding the special interests to be served, and shall prepare data showing the proportionate amount of Federal aid recommended, together with suitable restrictions as to audit and payment of funds from the Public Treasury. Such recommendation shall be presented as a proposed separate bill to the Committee on Appropriations of the House and shall not be embodied in any general waterway appropriation bill by such committee.

"Whenever any new survey shall be proposed for any waterway project, the commission, prior to such survey, may require data to be furnished showing the public use and prospective commerce to be served and such other information as may be desired, and a brief synopsis of such information shall be furnished to Congress by the commission to accompany any recommendations made for new surveys.

"All existing waterways, new projects, and new surveys shall be classified, so far as practicable, prior to each regular session of Congress, together with estimates of appropriations required for maintenance and improvement for the ensuing two-year period, and a brief report as to each project considered shall be separately prepared and, with the commission's recommendation thereon, shall be placed in the hands of the Committee on Appropriations of the House at the beginning of each session.

"Whenever the Appropriations Committee so requires, the commission shall furnish additional data concerning any project, and shall further aid the Committee on Appropriations when requested so to do in the preparation of the regular river and harbor bill, which shall be prepared and presented by the Committee on Appropriations of the House.

"The commission shall further compile and cause to be published at the earliest practicable date for the use of Congress an intelligent, concise statement of past waterway expenditures by the Government and of amounts needed to complete all continuing projects, and shall further give estimates of future obligations to be incurred by new projects recommended for construction. The commission shall give preference in its recommendations to Congress of appropriations needed to complete the more important projects, and, so far as practicable, shall enter upon a program looking toward the early completion of such projects.

"The commission shall make a thorough investigation of reasons for loss of river traffic and shall make recommendations for the reestablishment of such traffic. It shall ascertain and determine the most available craft for river use, and, as soon as practicable, shall prepare plans and build experimental craft for such purpose.

"Whenever reason therefor shall appear the commission may fix reasonable freight rates on all interstate water-borne traffic by common carrier and upon all such traffic on navigable waters wholly within the State, subject, however, to the jurisdiction now conferred by law on the Interstate Commerce Commission to fix maximum joint rates between and over rail and water lines.

"The commission shall determine the reasonableness of wharfage or water-terminal charges, whether such terminals are owned by private persons or municipalities, and all river and harbor improvements, including terminal facilities, shall be under the supervision and control of the commission.

"Whenever the commission shall determine that unprofitable railway freight tariffs are maintained in any given case in order to prevent waterway competition, it shall be the duty of the commission to make a report thereon in duplicate to the Interstate Commerce Commission and to Congress, with recommendations that Congress give power, if need be, to the Interstate Commerce Commission for fixing minimum railway rates.

"The commission shall at the earliest practicable date adopt an intelligent system of natural waterway improvement and shall perform such other and further duties as may present themselves from time to time.

"Whenever it shall be desirable to secure sworn testimony from any witness or witnesses relating to any project or to navigation generally, or whenever the commission shall have reason to believe that private interests are secretly or improperly seeking to influence the commission or to force the passage of any private or public waterway measure through Congress, the commission may cause a hearing or summary investigation to be held, and for that purpose may issue summons, subpoenas, or other writs in the same manner and under the same procedure as is more specifically set forth in the act to regulate commerce approved February 4, 1887, and the amendments thereto, which portions of such act relating to procedure, so far as applicable, are made a part of this act, and may bring before such commission all parties believed to be informed concerning the facts or interested in the passage of such measure. A complete record shall be preserved of the testimony taken at such hearing and a certified transcript thereof shall be transmitted immediately to the Committee on Appropriations.

"SEC. 6. That all unexpended balances to the credit of any project not specifically obligated under existing contracts shall, from the date of the passage of this act, be transferred by the Treasurer to the general fund, and all vouchers thereafter paid by the Treasurer shall be upon order of the National Waterway Commission.

"SEC. 7. That the sum of \$500,000, or so much thereof as may be necessary, be, and the same hereby is, appropriated, out of any money in the Treasury, to carry out the provisions of this act."

Mr. FREAR. I desire further to speak briefly of this particular paragraph, Mr. Chairman, because the James River has been a subject of frequent discussion before the House. Finally the Army engineers, as will be remembered, changed the original project and modified it so that the present work is being undertaken. This item carries \$46,000 for the continuing improvement of the James River. The suggestion has been made occasionally that if this bill fails to pass these projects will be without any moneys with which to carry on the improvements. We have before us the balances and have frequently referred to the balance sheets which were furnished by the Army Engineers. The James River, for instance, has to its credit, or dfd have to its credit on the 1st day of March last, uncontracted, \$185,900. To that is to be added this \$46,000. I speak of that because this proposition is a very expensive one. We are paying over \$11 a cubic yard to take out the rock for this improvement, which work has been carried on for many years. It would seem that at this particular time it is a wasteful and an unnecessary expense. I will not use a harsher term, because it is advised by Army engineers, but it is a project that seems to be an unnecessary burden at this time. However, I have not moved to strike out any of the items, and I wish to leave the subject with the simple statement that with \$185,900 on the 1st of



March uncontracted for on the James River, an additional \$46,000 was recommended by the Army engineer, and appears in the bill.

Mr. SMALL. Mr. Chairman, I deem it only necessary to make this observation, that if any criticism is to be made of this item it is that an insufficient amount has been appropriated.

The CHAIRMAN. Without objection, the pro forma amendment will be considered as withdrawn, and the Clerk will read. The Clerk read as follows:

Waterway from Norfolk, Va., to Beaufort Inlet, N. C.: Continuing improvement, \$100,000: *Provided*, That the route of the waterway may, in the discretion of the Secretary of War, be modified in accordance with the report submitted in House Document No. 1478, Sixty-third Congress, third session: *And provided further*, That not more than \$75,000 shall be expended in acquiring the necessary rights of way between Albemarle Sound and Pungo River.

Mr. FREAR. Mr. Chairman, I move to strike out the last word. This is a proposition that I have discussed many times on the floor, and I do not intend to discuss it now, so far as the merits of the waterway itself are concerned, excepting to call attention to the fact that \$75,000 of the \$100,000 contained in the bill appropriated for this waterway is to be expended for purchasing necessary rights of way between Albemarle Sound and the Pungo River. This is to be a change or a modification or correction of plans for this waterway from the old project, for the Army engineers, as I understand, deem that advisable; that is, it is a waterway which extends down from Norfolk, and this is a branch of it, down below Albemarle Sound. I believe originally \$150,000 was provided for the purchase of this right of way by the Government, but afterwards the amount was reduced. When the Army engineer was before our committee last session, although the hearings are not printed, I think I quote him correctly—if not I ask to be corrected—when I say he testified that about 800 acres of land were to be used for this right of way, the land being, as he stated, largely marsh land of little value, and yet \$75,000 is now set apart for the purchase of a right of way which ordinarily is required by engineers to be given to the Government by the various localities as a consideration or a prerequisite to the making of the improvement. That amount is nearly \$100 an acre for land much of which is practically of no value. The testimony of the engineer was further to the effect that much of the adjoining land would be improved by the dredging and filling in, so that it would be made more valuable. However, we find here an item of \$75,000 for 800 acres of land in addition to the land which may be used at the sides for dumping purposes, which would be benefited instead of damaged. It would seem that under ordinary circumstances that land ought to have been donated to the Government. Under such circumstances land is donated in many cases, and in any event so large an amount for such a small proportion of land ought not to have been allowed. But I will not offer any further statement.

The CHAIRMAN. Without objection, the pro forma amendment will be withdrawn and the Clerk will read.

The Clerk read as follows:

Winyah Bay, Waccamaw, Little Peedee, and Great Peedee Rivers, S. C.: For maintenance, \$70,000.

Santee, Wateree, and Congaree Rivers, S. C.: For maintenance, including the Estherville-Minim Creek Canal and the Congaree River as far up as the Gervais Street Bridge, Columbia, and for improvement of the Congaree River in accordance with the report submitted in House Document No. 702, Sixty-third Congress, second session, \$30,000.

Mr. FREAR. Mr. Chairman, I move to strike out the last word, and I do it with better satisfaction because I know that the gentleman who is interested in the new project on the Congaree River is present.

Lines 13 and 14 of the bill contain items which have been criticized heretofore, and I shall not refer to them, excepting to say that on the Little Peedee River there was spent for office expenses last year \$739, and nothing was spent for actual improvement, according to the report of the Army engineers.

The Congaree River has had spent upon it thus far something like \$668,298, and \$1,268,000 for the Congaree, Santee, and Wateree combined. After all that expenditure of money we have secured 4,000 tons of commerce each year on an average. On page 3 of the document the engineer says:

I therefore report that the further improvement by the United States of the Congaree River, S. C., is deemed advisable to the extent of maintaining a 4-foot navigable channel by dredging, assisted by properly designed bank protection, and recommend that this protection be provided first at Congaree and Gill Creek, and that \$100,000 be provided in one appropriation for that purpose, together with \$10,000 annually for the operation of the dredge now owned by the work, and for other necessary maintenance.

In the hearings that were held upon this proposition—and I have them before me—the engineer, Col. Newcomer, stated it was not deemed advisable to go on with this improvement at this time; but subsequent to that time, it seems, gentlemen interested in the project went before the committee and it was

inserted. It is inserted in this war measure. Let us see what we have before us in that proposition.

It is stated on page 8 of the document that at present "nothing which could be described as terminal facilities in the usual meaning of those terms are on the river." There is only an ordinary river landing with a small tent to protect freight; and that is true at Columbia.

Now we have spent over \$600,000 on this stream, and here we are called upon to spend \$100,000 more for the purpose, apparently, of revetment work along the banks.

That is the report of the board, and the improved facilities for navigation consist of one stern-wheeler, according to the engineers' report, which made last year 36 trips, and in the last three years has averaged about 4,000 tons of commerce annually. After an appropriation of \$600,000 for this river during past years we are asked to spend \$100,000 more, in addition to \$30,000 through this war-measure waterway bill.

Mr. LEVER. Mr. Chairman, in answer to the criticism of the gentleman from Wisconsin [Mr. FREAR] on this item, I think the committee should have the facts. There was a special board of Army engineers appointed a few years ago to examine the Congaree River with a view to further improvement. That board in its report, paragraph 26, suggests the following:

Referring to the list of shoals in paragraph 6, Congaree and Gill Creeks are the only places at which revetment and contraction work is at the present time urgently necessary and where it would produce the most immediate beneficial results. The estimated cost of revetment and contraction work at those points is about \$100,000, with \$10,000 annually for maintenance. The board recommends that this sum, \$100,000, be made available in one appropriation, and that it should be in addition to the cost of maintenance of the river by dredging and snagging. After the works have been completed and their effects on the river have been studied, a definite final project for bank protection and contraction works can be adopted.

That is the first proposition. That recommendation was concurred in by Col. Dan C. Kingman, who was Chief of Engineers of the Army, and his recommendation is as follows:

5. After due consideration of the above-mentioned reports, I am compelled to disagree with the views of the Board of Engineers for Rivers and Harbors and am disposed to accept those of the special board on the Congaree River. I have no doubt that a very large dredge, or a sufficient number of them, would maintain an adequate channel in the Congaree River throughout the period of low water, but, after careful, special study of the river, I am of the opinion that it is best to attempt to reduce the amount of material to be excavated by protecting the badly caving banks and thus reducing the supply of bar-making material. I believe, also, that public terminals at Columbia would be very desirable, and think that the municipality should take advantage of the privilege that it now has to compel a junction to be made between the canal and the river whereby the former can be used as a landing place for boats. But, as the local interests have shown a willingness in the past to provide terminals, I do not think that it would be quite fair to render the moderate appropriation which it is proposed to recommend conditional upon the accomplishment of this rather expensive piece of canal work. I therefore report that the further improvement by the United States of the Congaree River, S. C., is deemed advisable to the extent of maintaining a 4-foot navigable channel by dredging, assisted by properly designed bank protection, and recommend that this protection be provided first at Congaree and Gill Creeks and that \$100,000 be provided in one appropriation for that purpose, together with \$10,000 annually for the operation of the dredge now owned by the work and for other necessary maintenance.

Gen. Black, now Chief of Engineers, in his report says:

Unless the channel below the lock is made more stable and permanent and a low-water depth of about 4 feet secured, the expenditures already made will be of little benefit. It seems advisable, therefore, to undertake some additional work with a view to securing a more permanent channel of about 4 feet in depth at low stages under proper conditions of cooperation.

It will be recalled that the last river and harbor bill that passed the House carried an authorization and an appropriation of \$50,000 for making good that authorization.

That \$50,000 was to be expended for the purpose of revetment work at Congaree and Gill Creeks where the banks are composed of shifting sands and at high rainfall the banks cave in and clog the channel for navigation purposes with the result that the boats are unable to make their connections at Georgetown with the Clyde Line or to make their schedules coming from Georgetown into Columbia, with the further result that necessarily the patronage of the boat line has gradually fallen off.

The Congaree River, according to my information, has had only one year a real 4-foot channel, and that was in the year 1909, and in that year they handled over 12,000 tons of freight. When this item in the last river and harbor bill was passed carrying an appropriation of \$50,000, not now provided in this bill, I telegraphed the chamber of commerce in the city of Columbia, and in response I received this letter:

A committee from the chamber of commerce appeared before the city council yesterday morning, and they agreed to include in the proposed bond issue for city improvements an item of \$50,000 for the construction of municipal wharves, warehouses, railroad track facilities, thereby providing suitable terminal facilities for river navigation.

In addition to that in a letter addressed to me from the secretary of the chamber of commerce, in further response to my telegram he says:



At a meeting of the merchants just held [dated May 28, 1917] I was instructed to proceed in the preparation of papers to organize a \$100,000 company to operate on the river between here and Georgetown.

I happen to know personally that one of the largest capitalists in South Carolina, a man of large public spirit and interest, is back of that proposition, and rather than criticize this item, it seems to me that if there is any criticism it falls upon the Congress of the United States in not heretofore providing for a 4-foot channel which that stream is capable of furnishing 12 months in the year.

It is said that this is not a war measure. I do not know whether it is or not, but I know this: Recently one of the cantonments for the Army was located at Columbia, S. C. I know that freight congestion is increasing each day at the city of Columbia. I know also that the largest cotton manufacturing establishment in the world is at the city of Columbia. The freight which I refer to is nonperishable; it is now being handled by the railroads, and it should be handled by water transportation. Rather than have this item go out, I am going to offer an amendment here to test out the sincerity of this committee, increasing the appropriation \$50,000, to take care of 5 miles of nonnavigable stream in a stream that is navigable for 200 miles, and I move to amend by striking out "\$30,000" and inserting "\$80,000," in line 21, on page 11.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. LEVER: Page 11, line 21, strike out "\$30,000" and insert "\$80,000."

Mr. LEVER. Mr. Chairman, let me be heard for a moment upon that. I never have been more earnest on any proposition than I am upon this. Let me show you what the proposition is and see if it is not a good business proposition. From Columbia to Georgetown by the Congaree and Santee Rivers is a distance of 208 miles, and except for 5 miles there is a 4-foot channel in all that distance. Seven or eight miles below the city of Columbia there is a stretch of caving banks of 5 or 6 miles, where two creeks run into the river. Heavy rains cause these banks to cave in. The boats come up and find the channel clogged with sand. They have got to send to the city of Columbia—7 or 8 miles above—to get the dredge. The dredge comes down and pumps the sand out, opens the channel, and two or three days are lost, and the patrons of the boats in the city of Columbia are waiting for their goods. On the other hand, it would leave Columbia for Georgetown, laden with cotton and other freight, to connect with the Clyde Lines at Winyah Bay or Georgetown for Baltimore, New York, Philadelphia, and northern ports. It runs into a heavy rain, runs into these caving banks, and finds itself tied up for 24 hours probably, or 12 hours—sufficiently long at least to lose its connection at Georgetown.

Does anyone blame the patrons of the boat line of Columbia for complaining? Does anyone blame the Clyde Line for finally refusing to make the connection with this boat line? There is only one cause for it, and that is that Congress has not appropriated a sum sufficient, though recommended by the War Department, to revet the 4 or 5 or 6 miles of caving banks on this river, which revetment work would give you an open 4-foot channel for 12 months in the year.

Mr. FESS. Mr. Chairman, will the gentleman yield?

Mr. LEVER. Yes.

Mr. FESS. I wondered whether the congestion of freight, due to the cantonment that is to be placed there, could be much relieved by this proposed improvement?

Mr. LEVER. My judgment is that the cantonment so far has not congested freight, because the work has not been begun. The congestion is due to the rapid growth of the city of Columbia. We have to take into consideration that Columbia is one of the large interior cotton markets of the State, that it is a market not only for raw cotton, but it is one of the largest markets of the South for the manufactured product. It is not good business, in my judgment, to load your freight cars, which ought to be handling the more perishable stuff, with these nonperishable products, when with the expenditure of a small sum of money within a few months we could have this stretch of water 200 miles long to carry this heavy and nonperishable freight.

Mr. ROBBINS. Mr. Chairman, will the gentleman yield?

Mr. LEVER. Yes.

Mr. ROBBINS. What would these two embankments you speak of cost?

Mr. LEVER. The War Department recommended originally \$100,000, but I think the representative of the War Department who appeared before the Committee on Rivers and Harbors last year recommended the sum of \$50,000. It does seem to me that there could not be any better investment than this small sum of money. The gentleman from Wisconsin [Mr. FREAR] is right.

We have expended \$600,000 on this river. We have been working on it for many years—25 years or more—and yet it is not thoroughly navigable now, and in that connection I desire to say that it does seem to me there should come a time when the War Department should finish some of these projects. I trust that I may have the support of the committee on this small amendment.

Mr. MADDEN. Mr. Chairman, I would like to talk about two minutes before the chairman of the committee makes his reply.

Mr. SMALL. Mr. Chairman, I ask unanimous consent that debate may close in seven minutes, two minutes to be occupied by the gentleman from Wisconsin [Mr. FREAR].

The CHAIRMAN. Is there objection?

There was no objection.

Mr. FREAR. Mr. Chairman, I do not care to add to what I have stated, because I simply read from the report. I do desire to read what Col. Newcomer stated to the committee, which may be of interest in regard to this item. When \$30,000 was mentioned as a maintenance item, Mr. TREADWAY said to the colonel, "May I ask the immediate need for this appropriation?" and the colonel replied:

Col. NEWCOMER. This is mainly for use on the Congaree River. You know that from Columbia out they are maintaining a barge line, and the Columbia merchants claim, of course, that it is a matter of great importance for them to have that barge line in operation, and this is mainly for maintenance work on the Congaree River. In the last bill there was an additional improvement authorized, but we left that out because we thought it was not sufficiently urgent.

That is the statement of the engineer before the committee. I do not question the interest and the anxiety of the gentleman from South Carolina [Mr. LEVER], and I presume it is entirely proper, but I am making this statement for the benefit of this committee to show the lack of necessity for this project at this time. That is the testimony placed before the Committee on Rivers and Harbors which you are now asked to set aside.

Mr. SMALL. Mr. Chairman, I have no disposition to and could not combat the contention of the gentleman from South Carolina [Mr. LEVER] as to the merit of the project involved in this recommendation. The section of the Congaree under improvement extends, as the gentleman says, up to Columbia, S. C., and it is an important project and has rendered and is rendering valuable commercial service to the city of Columbia. I have pleasure in saying that because the minority of the committee in their report use this language:

The adoption of a \$100,000 new project on the Congaree is only cited by way of illustration of the emergency items included.

Mr. HUMPHREYS. Will the gentleman yield for a question?

Mr. SMALL. Certainly.

Mr. HUMPHREYS. As to the extract you just read from the minority report, did the minority favor this, or is it cited as an illustration of an unwise expenditure?

Mr. SMALL. I should say they criticized it as an unwise expenditure. They put it among those projects which are criticized. The committee discussed this matter at length and had the benefit of the opinion of Col. Newcomer.

Mr. MEEKER. That is on all fours with the position we have heard all the afternoon, is it not, on these other items?

Mr. SMALL. The question of the gentleman answers itself.

While the committee, following the recommendation of the War Department, were willing to appropriate \$30,000 for maintenance, they could not see their way to appropriate a larger sum in connection with the improvement under this new project. The reason the new project was adopted without any additional appropriation over and above the \$30,000 was in order that the maintenance might conform to the character of the improvement suggested in the new project. With the expenditure of this \$30,000 maintenance can be carried on and maintenance of a kind to conform with the procedure and plans in the new project. That is the reason for adopting the project without increasing the appropriation. The committee could not without discrimination consent to the increased appropriation. And for that reason, in order that no injustice might be done to various sections of the country, which under similar circumstances have asked for increased appropriations, I hope the committee will vote down the amendment.

Mr. SWITZER. The Chief of Engineers refused to make that recommendation that is asked for here?

Mr. SMALL. Yes. He declined to recommend an increased appropriation.

The CHAIRMAN. The question is on the amendment offered by the gentleman from North Carolina [Mr. SMALL].

The question was taken, and the Chair announced that the yeas appeared to have it.

Mr. LEVER. Division, Mr. Chairman.

The committee divided; and there were—ayes 20, noes 20.



Mr. LEVER. I ask for tellers, Mr. Chairman. Tellers were ordered; and Mr. BOOHER and Mr. LEVER took their places as tellers.

The committee again divided; and the tellers reported—ayes 22, noes 17.

So the amendment was agreed to.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

Waterway between Beaufort, S. C., and St. Johns River, Fla.: For maintenance, \$43,000.

Mr. LENROOT. Mr. Chairman, I move to strike out the last word.

Mr. SMALL. Will the gentleman allow me to present a committee amendment here?

Mr. LENROOT. I will.

The CHAIRMAN. The gentleman from North Carolina offers a committee amendment, which the Clerk will report.

The Clerk read as follows:

Committee amendment: Page 11, strike out the word "for," in line 23, and insert in lieu thereof the words "continuing improvement and for."

The CHAIRMAN. Without objection, the amendment will be agreed to.

The amendment was agreed to.

Mr. LENROOT. Mr. Chairman, I want to say just a word in reference to the amendment last adopted. I am sure the country is now in so much better position to prosecute the war than it was a few moments ago—

Mr. DUPRÉ. Did the gentleman vote for the proposition?

Mr. LENROOT. He voted against it. But it is an illustration of really how this bill is being considered upon its merits. No one will find that a single item is ever stricken out of this bill, and, of course, it is not extremely difficult to get additional items added to it. And this is another illustration of the patriotism of the membership of this House, and how they are regarding all of these items, strictly upon their merits and solely for the purpose of successfully prosecuting this war.

Mr. HARDY. Will the gentleman yield right there?

Mr. LENROOT. Yes.

Mr. HARDY. Does not the gentleman think he would do more credit to himself now in criticizing that measure if he would attempt to answer the argument presented by the gentleman from South Carolina [Mr. LEVER]? I did not vote for it, but I do think the gentleman would do himself credit to answer that argument.

Mr. LENROOT. As I listened to the gentleman from South Carolina [Mr. LEVER], for whom I have the greatest respect, he did not advocate this as a matter of military necessity, did he?

Mr. HARDY. The gentleman knows that this bill is presented as a commercial measure intended and calculated to aid the country in time of war, as well as a military matter strictly.

Mr. LENROOT. Now, the gentleman from Texas is frank enough to get away from what the proponents of this bill have been arguing throughout, from the report of the Secretary of War himself, who advocated that no new projects be considered in this bill except those that were matters of military necessity, and the chairman of the committee has repeatedly said that there were no new projects in this bill except those that were of military necessity.

Mr. HARDY. Now, will the gentleman yield?

Mr. LENROOT. Yes.

Mr. HARDY. The gentleman misunderstands my understanding, for I think every measure that helps to marshal the transportation resources of this country, if they are needed for that purpose, are military measures.

Mr. LENROOT. The gentleman is too intelligent a man to believe for a single moment that in the prosecution of this war this increase of \$50,000, that may possibly mean an increase of 2,000 tons a year in commerce, can be in the remotest degree a matter of military necessity.

Mr. HARDY. Will the gentleman yield again?

Mr. LENROOT. Yes.

Mr. HARDY. I think the gentleman is too intelligent a man not to know that every means that helps the transportation facilities of this country during this war is a war measure.

Mr. LENROOT. According to the gentleman's position, then, for the purpose of carrying some commodities of this country on water we ought to pay ten times what the commodities are worth for the purpose of doing it.

Mr. HARDY. Oh, no. The gentleman does not contend that.

Mr. LENROOT. That is the gentleman's position.

The CHAIRMAN. The time of the gentleman from Wisconsin has expired.

Mr. COOPER of Wisconsin. Mr. Chairman, I move to strike out the last word.

The CHAIRMAN. The gentleman from Wisconsin moves to strike out the last word.

Mr. COOPER of Wisconsin. Mr. Chairman, in view of what my colleague [Mr. LENROOT] has just said, I invite the attention of the committee to the letter of Mr. Secretary Redfield. I think it is apropos, following the remarks just made by the gentleman from Wisconsin. You will find it in the Appendix of the RECORD. He says:

No one who knows the facts will question that the railways of the country are overwhelmed by the threatened traffic.

Then he says they are going to have some new engines and cars, but that even with these the facilities of the railroads will be insufficient for the task laid upon them. On the next page he continues:

If, as is quite possible, the war shall last more than a year, our Nation may find itself a year hence with its industries of all kinds driven to the full and with special energy devoted to more extensive as well as more intensive cultivation. At the same time our troops will have to be moved and the regular flow of supplies maintained for the armies abroad. It will be difficult, if not impossible, to expand the railroad system in time to meet the additional demands upon it which these circumstances may bring. Many of the great waterways of the land, however, are almost unused, and a great opportunity for national service is open by means of them to those who have the energy and foresight to take the matter up and develop water transportation into a practical fact. Every river, lake, and canal should be used. Every enterprise, large or small, looking toward their practical use should have encouragement. The president of one of our greatest railway systems has recently said, "So long as the war lasts the railroads of the United States will cooperate to the fullest possible extent with the waterways of the country in order that the needs of the country may be served."

It must be evident to reflecting men that nothing which advances the interests of the country as a whole can be permanently hurtful to the great transportation systems of the land. There is no reasonable basis for antagonism between the railway and the waterway. Each is the servant of the other, and the success of each is in the long run helpful to the other. It is not to the final and the largest interest of the railway that the waterway should be neglected. Each has its own place in the national economy, and the highest success of each depends in no small measure upon the success of the other.

Listen to this, please:

It is at this time a matter of national duty to develop the interior waterway and to give it that part in the Nation's economic life to which its extent and variety entitles it, and this should be done as promptly and as thoroughly as possible by temporary means if need be in order to get the traffic moving, and then by permanent means in order to make the movement a solid part of our national life.

[Applause.]

Mr. WALSH. Mr. Chairman, will the gentleman yield?

Mr. COOPER of Wisconsin. I can not. I read further:

This process can only be helpful in the long run to everyone concerned and to the country as a whole.

That is a very strong presentation of the facts, showing, he declares, the necessity for the improvement by temporary means—the immediate improvement—of the interior waterways, and then their permanent improvement to the benefit of the industries of the country and the people of the country as a whole.

Mr. LENROOT. Does the gentleman think there should be any limit to the expenditures made by our Government upon waterways?

Mr. COOPER of Wisconsin. The gentleman's question is not germane to anything pending before the House.

Mr. LENROOT. Then I will make it germane.

Mr. COOPER of Wisconsin. I will answer the gentleman's question by saying this: There is a limit. France has expended about \$600,000,000 on her rivers and harbors, and she is less than one-half the size of Texas. We have expended about \$800,000,000 on all the magnificent rivers and harbors of this country. [Applause.]

The CHAIRMAN. The time of the gentleman from Wisconsin has expired. Without objection, the pro forma amendment will be withdrawn. The Clerk will read.

The Clerk read as follows:

Savannah Harbor, and Savannah River, below, at, and above Augusta, Ga.: For maintenance, \$380,000; for improvement of Savannah Harbor in accordance with the report submitted in House Document No. 1471, Sixty-fourth Congress, second session, and subject to the conditions set forth in said document, \$500,000: Provided, That no expense shall be incurred by the United States for acquiring any lands required for the purpose of this improvement; in all, \$880,000.

Mr. FREAR. Mr. Chairman, I move to strike out the last word.

The CHAIRMAN. The gentleman from Wisconsin moves to strike out the last word.

Mr. FREAR. I do this in order to command the attention of the gentleman from Texas [Mr. HARDY] for just a moment. I desire to call the gentleman's attention to the fact that while I desired to discuss the proposition contained in Mr. Redfield's



statement just read, but from the other standpoint earlier in the day, the gentleman from Texas raised a point of order against it because it was not directed to the item in the bill. I recognized that; but the gentleman sat here and heard the discussion of Mr. Redfield's statement on the other side of the question and did not make a point of order. I never wish to transgress the rules of the House if I can help it, but call attention to the manifest unfairness.

That is all I desire to say.

Mr. MADDEN. Mr. Chairman, I move to strike out the last word.

The CHAIRMAN. The gentleman from Illinois moves to strike out the last word.

Mr. MADDEN. I do so in order to ask the chairman of the Committee on Rivers and Harbors if he will kindly explain the importance of Savannah Harbor and Savannah River below Augusta, Ga., and the necessity of spending this large amount of money upon it, and what is the amount of commerce upon it?

Mr. SMALL. The distance from Augusta to Savannah is a little more than 200 miles. The existing project is to provide a depth of 5 feet. The amount carried in the bill is \$30,000, all of which goes to maintenance.

Mr. MADDEN. Three hundred and eighty thousand dollars, is it not?

Mr. SMALL. Thirty thousand dollars of that only is for this section of the river. The remainder of it is for Savannah Harbor.

Mr. MADDEN. What is the nature of the improvement there?

Mr. SMALL. That, the gentleman will realize, is for maintenance. If he reads further in the paragraph he will find that a new project is adopted there, for which \$500,000 is appropriated.

Mr. MADDEN. The whole thing is \$880,000?

Mr. SMALL. One item is for \$500,000, and that, plus \$380,000, makes \$880,000.

Mr. MADDEN. What is the purpose of it?

Mr. SMALL. I can give the gentleman that.

Mr. MADDEN. What is the project under which it is being expended?

Mr. SMALL. I can best give it from the last annual report showing how this money is expended. This is below Augusta. It is between Augusta and Savannah. The Chief of Engineers says:

It is proposed to use the available balance, \$3,421.60, in the care of the plant in use on this river at an average rate of \$500 per month, until such time in the fall as the river will require additional work, probably September 1, 1916, and to expend the balance remaining in the operation of one snag boat for approximately six weeks, making proper reservation for office expenses, surveys and contingencies, and care of plant.

The funds provided in the river and harbor act approved July 27, 1916, will be expended as follows, after reserving \$4,000 for the engineer depot at Savannah, Ga., and proper amount for office expenses, surveys, and contingencies:

For operation, repair, and care of 1 pipe-line dredge 4 months, at \$1,500 per month, in removing bars	\$6,000
For operation, repair, and care of 1 snag boat 6 months, at \$1,500 per month, in removing snags, etc., and in miscellaneous work	9,000
For repair under contract or by day labor of 2,000 linear feet of bank protection and training walls, at \$5	10,000
The following estimate is submitted of funds needed for proposed operations from July 1, 1917, to June 30, 1918, for maintenance work, including proper reservation for office expenses, surveys, and contingencies:	
For operation, repair, and care of 1 pipe-line dredge 6 months, at \$1,500 per month, in removing bars	\$0,000
For operation, repair, and care of 1 snag boat 6 months, at \$1,500 per month	9,000
For repair under contract or by day labor of 2,400 linear feet of bank protection and training walls, at \$5	12,000
Total	30,000

That is from the report of the Chief of Engineers, an excerpt of which appears on page 165 of the report accompanying this bill.

Mr. MADDEN. This is \$380,000.

Mr. SMALL. The \$350,000 goes for the maintenance of the Savannah River, at Savannah, known as Savannah Harbor.

Mr. MADDEN. How much commerce is there all the way down the river?

Mr. SMALL. The commerce between Augusta and Savannah on that part of the upper river is 52,874 tons, at a valuation of approximately \$4,000,000.

Mr. MADDEN. So that we are spending \$6 a ton for every ton of traffic on the river to maintain the river?

Mr. SMALL. Oh, no; only \$30,000 goes to that river.

Mr. MADDEN. Anyway, there are only 50,000 tons of traffic, and we are spending \$380,000,

Mr. SMALL. No; \$350,000 is to be expended at Savannah Harbor, not on this part of the river at all.

Mr. MADDEN. It is all in the project.

The CHAIRMAN. The gentleman's time has expired.

Mr. HULBERT. I ask unanimous consent that the time of the gentleman from Illinois be extended two minutes in order that he may procure enlightenment on this question.

The CHAIRMAN. The gentleman from New York asks unanimous consent that the time of the gentleman from Illinois be extended two minutes. Is there objection?

There was no objection.

Mr. MADDEN. It seems to me that we are spending \$380,000, and while part of it is for the harbor and part of it for the river, it is \$380,000 all told, and then the new project, \$500,000, making \$880,000, and only 52,000 tons of traffic; and if we divide 52,000 into \$880,000 it will be seen that we are paying about \$16 for every ton of traffic.

Mr. SMALL. I am sure the gentleman wishes to be correct.

Mr. MADDEN. Oh, yes; certainly.

Mr. OVERSTREET. Will the gentleman yield?

Mr. SMALL. I wish to answer the remark of the gentleman from Illinois first. Surely the gentleman from Illinois did not understand me when I stated that the \$30,000 was to be expended for maintenance of that part of the river between Savannah and Augusta, a distance of about 200 miles, and with a commerce of a valuation of about \$4,000,000.

Mr. MADDEN. It is not a question of valuation. It is a question of the transportation of tonnage.

Mr. SMALL. And the \$350,000 is to be expended for maintenance at Savannah Harbor, which has a commerce of more than 3,000,000 tons.

The CHAIRMAN. Did the gentleman from Georgia [Mr. OVERSTREET] desire to be recognized?

Mr. OVERSTREET. I only wanted to be recognized in order to correct the gentleman from Illinois [Mr. MADDEN], and that has now been done by the gentleman from North Carolina [Mr. SMALL]. That is all I care to say.

Mr. MADDEN. I was not making a statement at all. I was simply asking questions. I did not make any statement, and therefore did not need to be corrected.

The Clerk read as follows:

Sapelo and Darien Harbors, Cowhead and Satilla Rivers, Club, Plantation, and Fancy Bluff Creeks, Ga., and St. Marys River, Ga. and Fla.; For maintenance, \$12,500.

Mr. WALSH. I move to strike out the last word in order to ask a question of the chairman of the Committee on Rivers and Harbors. I notice that on some of these streams that are appropriated for in this item it is stated that naval stores are transported. I would like to know what sort of naval stores are transported on these various streams.

Mr. SMALL. The term "naval stores" means the products of the long-leaf pine tree. Turpentine is gotten by cutting the base of the tree. Tar is gotten from the resinous part of the pine, and also resin; and spirits of turpentine are distilled from the resin and the raw turpentine. All these go under the general designation of naval stores.

Mr. WALSH. Is that a local term?

Mr. SMALL. No; it is a very old term.

Mr. WALSH. I noticed that that term runs through the report, and I was wondering what it meant.

Mr. SMALL. The production of naval stores has gradually moved south. Formerly naval stores were produced in North Carolina. Then, later the production moved down to South Carolina, and now the production of naval stores is practically confined to Georgia, Florida, and some in Louisiana.

Mr. SLADYEN. And Texas.

The Clerk read as follows:

Santee, Wateree, and Congaree Rivers, S. C.; For maintenance, including the Esterville-Minim Creek Canal and the Congaree River as far up as the Gervais Street Bridge, Columbia, and for improvement of the Congaree River in accordance with the report submitted in House Document No. 702, Sixty-third Congress, second session, \$30,000.

Mr. MADDEN. I move to strike out the last word. I should like to ask the chairman of the committee if he will be kind enough to inform the committee about how much commerce there is in connection with these two appropriations here.

Mr. SMALL. Does the gentleman really wish information about that?

Mr. MADDEN. Certainly. I never was more serious about anything.

Mr. MEEKER. Mr. Chairman, if the chairman has any information, will he kindly give it, for nobody in God's world needs it more than the gentleman from Illinois does. [Laughter.]

Mr. MADDEN. I admit it.



Mr. SMALL. With that prodding, I will be more than delighted to furnish the information. [Laughter.]

Mr. MADDEN. I hope the information will make the gentleman from Missouri [Mr. MEEKER] a little more intelligent in his conception of what we are considering. [Laughter.]

Mr. SMALL. Mr. Chairman, the Oconee and Ocmulgee together form the Altamaha. The Oconee is 300 miles long and the Ocmulgee 350 miles long. The commerce on the Oconee River is 41,425 tons, on the Ocmulgee 33,645 tons, and on the Altamaha 76,763 tons, at a valuation of about \$1,000,000.

Mr. MADDEN. What is the depth of the channel there?

Mr. SMALL. It varies. On the Altamaha, which is formed by the junction of the two former rivers, the project is to maintain a depth of 3 feet, gradually increasing to 4 feet, but with a minimum depth of 3 feet.

Mr. MADDEN. What do they run there, Indian canoes?

Mr. SMALL. No; they have quite a commerce there, as the gentleman can see. There are lines of boats on these rivers, both barges and self-propelled.

Mr. MADDEN. I think I heard some Member of the House—

Mr. SMALL. I can tell the gentleman in all seriousness that this is a valuable system of rivers for a section of Georgia a good part of which is lacking in any other method of transportation.

Mr. MADDEN. Does the gentleman think a 3-foot channel is capable of carrying any commerce of any consequence?

Mr. SMALL. Oh, yes. They have a type of boat which can navigate and carry quite a cargo on a depth of 3 feet.

Mr. MADDEN. What commerce is carried on the rivers?

Mr. SMALL. Mostly agricultural and forest products.

Mr. GILLET. Was it not on one of these rivers where they developed a steamboat that had to stop every time they blew the whistle? [Laughter.]

Mr. SMALL. My friend from Georgia might answer that; I have no information. The gentleman from Georgia suggests that it might have been on a Massachusetts stream.

Mr. MEEKER. Perhaps it was a Massachusetts statesman and not a steamer. [Laughter.]

Mr. HUMPHREYS. Mr. Chairman, let me say, with the permission of the gentleman from North Carolina, that on this question of a 3-foot depth, referred to by the gentleman from Illinois, a great deal of commerce can be floated on a stream 3 feet in depth. For instance, I do not know what it was last year, but I remember a few years ago the Alabama River carried a tonnage value of \$13,000,000 with a depth in that river of only 3 feet. On a great many rivers where they have small boats they push barges in front, putting the cargo on the barges, and they do not require any greater depth than 3 feet, and certainly not beyond 4.

Mr. MADDEN. Are these side-wheel steamers?

Mr. HUMPHREYS. No; stern wheel.

Mr. MADDEN. The gentleman from Mississippi always contributes a great deal of information on any question before the House, and I am obliged to him.

The CHAIRMAN. The time of the gentleman has expired.

The Clerk read as follows:

Indian River, St. Lucie Inlet, Miami Harbor (Biscayne Bay), and Harbor at Key West, Fla.: For maintenance, \$6,000; completing improvement of Miami Harbor, \$160,000: *Provided*, That the work proposed under the project adopted by the river and harbor act approved July 25, 1912, may be done by contract if reasonable prices can be obtained; in all, \$166,000.

Mr. SEARS. Mr. Chairman, I offer the following amendment.

The Clerk read as follows:

Page 12, line 21, after the word "obtained" insert "for improvement, Key West Harbor, by removal of middle ground and other improvements, \$50,000"; and strike out "\$166,000" and insert "\$216,000."

Mr. SEARS. Mr. Chairman, before proceeding under the five minutes allotted to me, I ask unanimous consent that this amendment be passed over until some time next week, at which time I will have the report of Gen. Black. If the House will take my statement for it, I can give the information this afternoon.

The CHAIRMAN. The gentleman from Florida asks unanimous consent to postpone the consideration of this amendment until next week, or until such time as the bill is taken up again. Is there objection?

There was no objection.

The Clerk read as follows:

Tampa and Hillsboro Bays, St. Petersburg Harbor, Hillsboro, and Manatee Rivers, Fla.: For maintenance, \$66,500; for improvement of Hillsboro Bay in accordance with the report submitted in House Document No. 1345, Sixty-fourth Congress, first session, and subject to the conditions set forth in said document, \$300,000; in all, \$366,500: *Provided*, That nothing in this act, nor in the act approved June 25, 1910, entitled "An act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," shall be so construed, as to prevent the use of any

part of the Ybor Estuary zone for industrial or other legitimate purposes when the same is not needed for commercial uses, nor to exclude the building and operation of a railroad or railroads by private parties or railroad companies under such rules and regulations as the Secretary of War may prescribe, subject to the right of the city of Tampa to construct and operate a municipal railroad on said estuary zone as set forth in said report. The Secretary of War is hereby authorized to prosecute the work of improvement on the existing project for St. Petersburg Harbor, in accordance with the modified conditions recommended by the Chief of Engineers and the Board of Engineers for Rivers and Harbors in the report printed in Rivers and Harbors Committee Document No. 6, Sixty-fourth Congress, second session.

Mr. MADDEN. Mr. Chairman, I reserve a point of order on this item in the bill. I would like to have the gentleman from North Carolina give us some explanation. I reserve the point for the purpose of giving the gentleman an opportunity to explain to the House what facilities the Government of the United States furnishes by the expenditure of this money to the railroad companies who are to be authorized to build railroads in connection with the improvement.

Mr. SMALL. Mr. Chairman, the river and harbor act of 1910, in imposing local cooperation connected with the improvement of Ybor Estuary and Tampa Bay, provided that no expenditure be made on that part of the harbor until the Secretary of War is assured that the local municipality will construct wharves and slips which shall be open to the use if the general public under reasonable regulations and charges.

In the line of local cooperation the report of the Chief Engineer adopting this project further provides:

That no work shall be done by the United States under such project until the city of Tampa shall have given assurances, satisfactory to the Secretary of War, that the city of Tampa will within a reasonable time, and when in his opinion the facilities are needed, acquire full ownership and possession of sufficient land for the establishment of terminals fronting on the Ybor Estuary; will complete the construction thereon of piers and slips in accordance with the plans for the development of the Ybor Estuary zone, heretofore approved by the Secretary of War, or such modified plans as he may approve; will build adequate warehouses and storage sheds on these piers and equip them with suitable rail connections and freight-handling appliances; will construct and put in operation a municipal railroad having physical connection with all railroads entering the city of Tampa, and serving the channel frontage on both sides of the estuary, in accordance with the plan of development of the estuary zone approved by the Secretary of War; will open, pave, and make available for use a sufficient number of streets and highways to give proper access to all parts of the estuary channel frontage; and will open these terminals for business under a schedule of reasonable wharfage charges and a set of regulations to be approved by the Secretary of War for the control and operation of the property fronting on the estuary channel, designed to insure its use primarily in the interests of general commerce, on equal terms to all; and provided, further, that no work shall be done in the channels constituting the Harbor of Tampa proper until local interests shall agree to provide, without cost to the United States or to any contractor for the work, a suitable place for deposit of material dredged from these channels.

I think that will constitute an answer to the gentleman's inquiry as to the construction of a railroad contiguous to this improvement.

Mr. MADDEN. Mr. Chairman, the question arises whether the local community contributes anything toward the expense of the improvement, and whether when they build what I assume will be a belt-line railroad connecting all the railroads, the traffic that goes over the main line will be held to pay tribute to the belt-line railroad; and whether that will add to the cost of the commodities which are moved by rail out of Tampa, and whether the city of Tampa is to absorb the charges of moving the supplies and freight over the belt-line railroad to connect with the main line. All these things are important in this question, and I think that as a matter of justice to the membership of the House who are asked to vote on this item, the information should be supplied. I do not know whether the gentleman has the information or not.

Mr. SMALL. I have not the information as to the charges that will be imposed by the belt-line railroad upon the railroads that serve that community in sending their cars over the belt line road. That is a matter for municipal regulation, and I assume the trackage charges are satisfactory to the railroads.

Mr. MADDEN. That is not the question involved here. The question I am concerned about is, How it is going to affect the shipper, the man that pays the bill, the final consumer? It is not how it affects Tampa or the citizens of Tampa or the municipality of Tampa or the railroads that connect with the belt railroad, but how does it affect you and me. That is what concerns me.

Mr. SMALL. I think an answer is carried in this suggestion, that it is to the interest of the municipality owning the belt-line road to attract traffic to its municipal water terminal, and that in obedience to its own interests it will impose only reasonable charges for the use of the belt line, and in subserving its own interests any complaint will be avoided. The committee has no knowledge of any complaint.

Mr. SWITZER. Mr. Chairman, will the gentleman yield?

Mr. MADDEN. Yes.



Mr. SWITZER. I will say this to the gentleman: Has not the gentleman always contended here that all persons who have been interested in river and harbor improvements—that the cities and municipalities should own the terminals?

Mr. MADDEN. Yes.

Mr. SWITZER. Is not that this case; and now you are going to assume that they are going to abuse the privilege which you have always contended they should have?

Mr. MADDEN. Mr. Chairman, I think the gentleman misunderstands me. I am only asking for information. I am not criticizing. I think it is only fair that we who are here as the conservators of public good and public interest ought at least to be permitted to ask questions that would give us an intelligent conception of what we are doing without being criticized for having done so. I am rather surprised at the gentleman from Ohio, a member of the Committee on Rivers and Harbors, questioning the good faith of my questions, when I am trying to elicit information that ought to be in the possession of every person who wants to serve the public good.

Mr. SMALL. May I say that I overlooked the further provision requiring that charges and regulations be submitted to the War Department for approval?

Mr. MADDEN. The main thing that I am concerned about is this: In giving authority to construct a belt-line railway to connect with the main lines running into Tampa, there should be a provision—and maybe there will be, I do not know—which will prohibit the city of Tampa or its citizens from making such charges as will permit the payment of dividends either to the city of Tampa or to any person who might be interested in the road. The charges should be made to cover not more than the cost of the operation and the maintenance of the tracks, and in a case of that sort I believe this terminal would serve a good purpose. I have no intention or desire to in any way embarrass the establishment of institutions of this kind, but, on the other hand, I have every desire to promote them, and at the same time, while wishing to promote them to also protect the man who is not in control, so that he may not be charged an undue price for the thing that he is to receive at the hands of those to whom we grant privileges.

Mr. ROBBINS. Would not that be regulated by the Interstate Commerce Commission?

Mr. MADDEN. No; that is a local terminal.

The CHAIRMAN. Does the gentleman withdraw his point of order?

Mr. MADDEN. I withdraw the point of order.

Mr. FESS. Mr. Chairman, this question brings up a thought that has been in my mind, and which I want the chairman to clear up at once. What is the policy of river and harbor legislation on local cooperation where the Government appropriates for the improvement of harbors? Is there any local cooperation in the way of expenditure of money?

Mr. SMALL. There may be said to be a settled policy to this extent, that local cooperation is required in excavating the channel leading from the main channel furnished by the Government into the slips and up to the wharves to be used by vessels. There ought to be another principle of cooperation which is not so uniform. Individually I believe that no river or harbor ought to be substantially improved without imposing as a condition the construction of adequate water terminals, constructed, managed, and regulated by the municipality in the interest of the public, and also such water terminals should be physically connected with all the railroads serving the community by a belt-line railroad also owned and controlled by the municipality, and in so far as our committee can do so we intend hereafter to insist upon compliance with such a degree of local cooperation.

Mr. FESS. If we expended \$26,900,000 in this bill, that will not represent all of the expenditure for the improvements where this money is applied. There will be some appropriation locally?

Mr. SMALL. Yes; in the aggregate a very large sum.

Mr. FESS. And the gentleman has no estimate of how much?

Mr. SMALL. I am not sure whether that is available or not. The gentleman heard the gentleman from Wisconsin [Mr. STAFFORD] speak yesterday of the city of Milwaukee making a large contribution for excavation in the channel there.

Mr. FESS. And in the case of Boston and New York it is also true?

Mr. SMALL. The city of Boston has been for several years expending millions of dollars in the construction of terminals and of a large dry dock, probably one of the largest in the country, and in the most creditable way cooperating and providing water terminals, and the city of Philadelphia is also engaged in the same activity.

Mr. SLAYDEN. And the cities of Houston and Corpus Christi, in Texas, are other examples where there have been local contributions of importance.

The CHAIRMAN. The time of the gentleman from Ohio has expired.

The Clerk read as follows:

St. Johns River, Fla., Jacksonville to the ocean, opposite the city of Jacksonville, Jacksonville to Palatka, and Palatka to Lake Harney, Lake Crescent and Dunns Creek, and Oklawaha River, Fla.; For maintenance, \$335,000.

Mr. SEARS. Mr. Chairman, I move to strike out the last word for the purpose of asking the chairman of the committee a question. Last year when this appropriation was up, I asked Mr. Sparkman, who was chairman of the committee at that time, if this appropriation included the perfecting of the jetties, and he replied that the appropriation was intended to cover that project. I will state to the present chairman that I understand the jetties are in bad shape and need some repair, and I would like to know if the present chairman believes that this appropriation will cover that work? It was so reported by the Board of Engineers, as I understand it, Mr. Chairman, but I would like to have it definitely understood.

Mr. SMALL. In answer to the gentleman, I think I can state it unequivocally that the maintenance of this jetty is included in the improvements. That was the question?

Mr. SEARS. Yes.

Mr. SMALL. Mr. Chairman, I ask that all debate on this paragraph and amendments thereto close in seven minutes.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. FREAR. Mr. Chairman, I do not know that I care to ask for five minutes, but I wish to ask the chairman this: We have adopted the grouping system, which has been discussed in several cases, but I can not understand the purpose of the group on the bottom of page 13. On the St. Johns River, Fla., there are several different portions of the river included, and the lower portion of the river has a balance of \$239,276 uncontracted for, and \$15,000 is for the next item and \$16,000 for another item. The Oklawaha River is joined with this group. What is the reason for joining the Oklawaha River in a grouping system of that kind, if the chairman has the information? I know the engineers have assumed charge of this, but what possible reason could they have for that method of grouping and for giving for maintenance \$335,000, all of which, of course, might possibly be expended on the Oklawaha River? Of course that would not be likely, but that is a possibility.

Mr. SMALL. I will state that the Oklawaha River empties into the St. Johns River, and that gives it a direct connection with it, and makes the grouping consistent, and of the appropriation \$330,000 is for the St. Johns River from Jacksonville to the sea and \$5,000 for the maintenance of the Oklawaha.

Mr. FREAR. It would be possible under this grouping system for the Army engineers to use any portion or all of that \$335,000, if they desire, on any of these projects, including the Oklawaha River?

Mr. SMALL. No; the gentleman is incorrect. They could divert the money to other projects only if conditions unanticipated should cause any deterioration of the channel, which conditions do not now exist. But unless conditions change from the time when the annual report was submitted on June 30, 1916, and in fact after this bill was formulated—because it was formulated upon information existing at that time—unless some conditions should occur to make additional funds necessary for maintenance none of this \$335,000 will be used upon these other sections of the St. Johns River, but all of it will be expended on that part of the St. Johns River from Jacksonville to the sea.

Mr. FREAR. I presume that is true, but I am calling attention to this to show the powers we have lodged in the hands of the Army engineers by this grouping system, when over \$300,000 can be given for maintenance of any project, two or three of which are on the St. Johns River.

Mr. HULBERT. Mr. Chairman, I ask that I may be recognized for the remaining two minutes.

During my membership in this House and prior thereto I have been much interested in the subject of aeronautics. I rise at this time to call attention to the fact that there will presently be brought into this House a bill to appropriate \$650,000,000 for our aeronautical system. That will represent a greater appropriation than the combined appropriations for the Army and Navy in time of peace. I introduced and put in the basket this afternoon a resolution for the creation of a committee on aeronautics, and I think such a committee should be created at this time, because when bills are brought in here which seek to coordinate the activities of the Government with relation to the aeronautical service in the Army and Navy there will always be arising questions with regard to the committee to which they should be referred. Therefore, I hope



Members of the House will give their earnest and serious consideration to the importance of this matter.

Mr. FESS. Does the bill include also the creation of an extra Cabinet member?

Mr. HULBERT. I will say to the gentleman that I also introduced on the opening day of this session a bill, H. R. 3, and Senator SHEPPARD introduced a counterpart of the bill in the Senate, S. 80, and hearings are now going on before a subcommittee of the Committee on Military Affairs, of which the Senator from Texas [Mr. SHEPPARD] is the chairman, upon that measure. Admiral Peary, Lieut. Col. Rees, of the Royal Flying Corps, and Howard E. Coffin have already appeared and been heard; and Mr. Walker, the editor of the Scientific American, Gen. Goethals, and other noted men connected with aeronautics will appear before that subcommittee on Monday and Wednesday of next week.

The CHAIRMAN. The gentleman's time has expired. The Clerk will read.

Mr. POLK. Mr. Chairman, I ask unanimous consent to extend my remarks in the RECORD on the pending bill.

The CHAIRMAN. Is there objection? [After a pause.] The Chair hears none.

Mr. FREAR. Mr. Chairman, I ask unanimous consent to extend my remarks in the RECORD.

The CHAIRMAN. Is there objection? [After a pause.] The Chair hears none.

Mr. SEARS. Mr. Chairman, two minutes ago, the committee, by unanimous consent, passed the Key West item. I would like for the members of the committee to read page 669 and the following pages, in volume No. 1, and also page 2307, of the report of the engineers on this proposition in order that they may familiarize themselves with it.

Mr. SMALL. Mr. Chairman, I move that the committee do now rise, and pending that to make this statement: I understand the food bill is in order for next Monday, but after the conclusion of the food bill the river and harbor bill will resume its status and will follow for consideration. I think that is the legislative status of the rivers and harbors bill.

The CHAIRMAN. The question is on the motion of the gentleman from North Carolina [Mr. SMALL] that the committee do now rise.

The motion was agreed to.

Accordingly the committee rose; and the Speaker having resumed the chair, Mr. HARRISON of Mississippi, 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. 4285) making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes, and had come to no resolution thereon.

#### THE ITALIAN MISSION (H. DOC. NO. 189).

The SPEAKER laid before the House the following communication:

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,  
Washington, D. C., June 13, 1917.

The honorable the SPEAKER OF THE HOUSE OF REPRESENTATIVES,  
Washington, D. C.

Mr. SPEAKER: The American Chamber of Commerce for Italy, which has its offices in Milan, has sent us a cable in which it requests that we express to the House of Representatives, through you, its appreciation for the splendid reception given to the Italian mission and for the opportunity to improve Italo-American relations.

Very truly, yours,

ELLIOT H. GOODWIN,  
General Secretary.

The SPEAKER. The communication is ordered printed and referred to the Committee on Foreign Affairs.

#### EXTENSION OF REMARKS.

Mr. HULBERT. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD by printing the text of the resolution which I introduced here for the creation of a separate committee on aeronautics, and a statement by Gen. Squiers and Howard Coffin, and an editorial on the subject.

Mr. WALSH. Reserving the right to object, Mr. Speaker, I wish to inquire if this has not already been printed as a separate document?

Mr. HULBERT. It has not yet been printed in the RECORD. I want to put them in the RECORD for information.

The SPEAKER. Is there objection?

Mr. WALSH. I object.

Mr. HULBERT. I ask unanimous consent, Mr. Chairman, to extend my remarks in the RECORD on the subject of aeronautics.

The SPEAKER. The gentleman from New York asks unanimous consent to extend his remarks in the RECORD as indicated. Is there objection?

Mr. FARR. Reserving the right to object, Mr. Speaker, I want to ask if the gentleman is going to give some information as to what the Government itself is doing?

Mr. HULBERT. That is what I am trying to put in if they do not object to it. If they want enlightenment, I am trying to give it to them.

Mr. WALSH. Reserving the right to object, Mr. Speaker, is it the gentleman's intention to insert the same documents that he asked permission to insert?

Mr. HULBERT. Certainly not. I am not going to transgress the objection that the gentleman made against the printing of documents that are already printed.

The SPEAKER. Is there objection?

There was no objection.

Mr. SMALL. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD.

The SPEAKER. Is there objection to the gentleman's request?

There was no objection.

#### LEAVE OF ABSENCE.

Mr. ADAMSON. Mr. Speaker, for providential reasons I ask unanimous consent that I may have leave of absence next week.

The SPEAKER. The gentleman from Georgia asks unanimous consent for leave of absence during next week. Is there objection?

There was no objection.

#### MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Waldorf, its enrolling clerk, announced that the Senate had passed bills of the following titles, in which the concurrence of the House of Representatives was requested:

S. 2203. An act for the establishment of Northgate, in the State of North Dakota, as a port of entry and delivery for immediate transportation without appraisement of dutiable merchandise; and

S. 2453. An act to authorize condemnation proceedings of lands for military purposes.

The message also announced that the President had, on June 12, 1917, approved and signed bill of the following title:

S. 2133. An act to amend an act entitled "An act to authorize the establishment of a Bureau of War-Risk Insurance in the Treasury Department," approved September 2, 1914, and for other purposes.

#### SENATE BILL REFERRED.

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

S. 2203. An act for the establishment of Northgate, in the State of North Dakota, as a port of entry and delivery for immediate transportation without appraisement of dutiable merchandise; to the Committee on Ways and Means.

#### ADJOURNMENT.

Mr. SMALL. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 5 o'clock and 34 minutes p. m.) the House adjourned until Monday, June 18, 1917, at 12 o'clock noon.

#### EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of Rule XXIV a letter from the Secretary of War, transmitting, with a letter from the Chief of Engineers, report on reexamination of Grosse Pointe Channel in Lake St. Clair, Mich. (H. Doc. No. 188), was taken from the Speaker's table, referred to the Committee on Rivers and Harbors, and ordered to be printed.

#### PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS.

Under clause 3 of Rule XXII, bills, resolutions, and memorials were introduced and severally referred as follows:

By Mr. JACOWAY: A bill (H. R. 5072) to authorize condemnation proceedings of lands for military purposes; to the Committee on Military Affairs.

By Mr. KELLY of Pennsylvania: A bill (H. R. 5073) to establish direct contact between the people and the National Government by the creation of the war information commission; to the Committee on Education.

By Mr. CARTER of Oklahoma: Resolution (H. Res. 104) making exercises appropriate to acceptance of statue of Sequoyah the special order of business on June 23; to the Committee on Rules.



By Mr. HULBERT: Resolution (H. Res. 105) as to creation of committee on aeronautics; to the Committee on Rules.

By Mr. JAMES: Resolution (H. Res. 106) instructing the Committee on Immigration and Naturalization to interview the Secretary of State with a view to opening negotiations with the Italian mission relative to naturalization; to the Committee on Foreign Affairs.

By Mr. CARTER of Oklahoma: Concurrent resolution (H. Con. Res. 14) authorizing the printing and binding of the proceedings in Congress, together with the proceedings at the unveiling in Statuary Hall, upon the acceptance of the statue of Sequoyah, presented by the State of Oklahoma; to the Committee on Printing.

By Mr. RAKER: Joint resolution (H. J. Res. 103) extending provisions of section 2296 of the Revised Statutes to all homestead entries; to the Committee on the Public Lands.

By Mr. BORLAND: Joint resolution (H. J. Res. 104) designating the army raised under the act of May 18, 1917, as the "National Army of the United States"; to the Committee on Military Affairs.

By the SPEAKER: Memorial of the Legislature of the Territory of Hawaii, favoring the ratification of the arrangements of certain named persons made with the commissioner of public lands of the Territory of Hawaii, and the issue of land patents to those eligible under the terms of the agreement; to the Committee on the Territories.

#### PRIVATE BILLS AND RESOLUTIONS.

Under clause 1 of Rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. DICKINSON: A bill (H. R. 5074) granting an increase of pension to Levi Covey; to the Committee on Invalid Pensions.

By Mr. DILL: A bill (H. R. 5075) for the relief of Vince P. Brown; to the Committee on the Public Lands.

By Mr. KAHN: A bill (H. R. 5076) authorizing the President to nominate and, by and with the advice and consent of the Senate, appoint Henry S. Kiersted, late a captain in the Medical Corps of the United States Army, a major in the Medical Corps on the retired list, and increasing the retired list by one for the purpose of this act; to the Committee on Military Affairs.

#### PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

By the SPEAKER (by request): Memorial of the International Farm Congress in support of the war; to the Committee on Military Affairs.

Also (by request), petitions of sundry citizens of Clarendon, Pa., and congregations of Disciples of Christ in the State of Missouri, favoring prohibition as a war measure; to the Committee on the Judiciary.

Also (by request), memorial of Northwest Suburban Citizens' Association relative to erection of a memorial hall in the District of Columbia; to the Committee on the District of Columbia.

By Mr. ANTHONY: Petition of Mullinix Cash Store and other merchants of Horton, Kans., in favor of House bill 4737, to regulate postage; to the Committee on the Post Office and Post Roads.

By Mr. AUSTIN: Petition of Centenary Methodist Episcopal Church South, of Knoxville, Tenn., favoring the prohibition of the liquor business as a war measure; to the Committee on the Judiciary.

By Mr. CARY: Petition of the Milwaukee County Council of Defense relative to passage of food-control bills; to the Committee on Agriculture.

Also, petition of I. M. Candlin and 30 others of Wisconsin, favoring the daylight-saving bill; to the Committee on Interstate and Foreign Commerce.

By Mr. DALE of New York: Memorial of the New England Newspaper Alliance against tax on newspaper advertising; to the Committee on Ways and Means.

By Mr. DOWELL: Memorial of letter carriers of Des Moines, Iowa, relative to pay of National Guard while on Mexican border; to the Committee on Military Affairs.

By Mr. GEORGE W. FAIRCHILD: Petition of Oneonta (N. Y.) Trades and Labor Council, against prohibition measure; to the Committee on the Judiciary.

By Mr. FULLER of Illinois: Petition of A. S. Johnson, of Streator, Ill., protesting against Federal tax on gross receipts of agricultural fairs and associations; to the Committee on Ways and Means.

Also, petition of Rev. Almer Pinniwel and 120 others, of Morris, Ill., favoring prohibition as a war measure; to the Committee on the Judiciary.

By Mr. GANDY: Petition of 51 citizens of Rapid City, Mich., favoring prohibition as a war measure; to the Committee on the Judiciary.

By Mr. GRAHAM of Illinois: Petition of Rev. William H. Dickman, pastor of the Bethel Baptist Church, Port Byron, Ill., and 89 other citizens and residents of Coe and Zuma townships in Rock Island County, Ill., for the immediate enactment of prohibition of the manufacture of alcoholic liquors as a measure of food conservation, and for the immediate prohibition of the sale of liquors for beverage purposes in order to conserve the health, wealth, labor, transport facilities, and military efficiency of the people during the period of the present war; to the Committee on the Judiciary.

Also, memorial of members of the Moline Woman's Christian Temperance Union, Moline, Ill., urging conservation of food-stuffs used in making alcoholic beverages and passage of all war prohibition measures, and urging that no added tax be placed on liquor; to the Committee on the Judiciary.

Also, petition of the members and adherents of the United Presbyterian Church of Sunbeam, Ill., asking the prohibition of the use of all grain in the manufacture of beer or whisky; to the Committee on the Judiciary.

Also, petition of Rev. H. T. Jackson, pastor, and the official board of the Methodist Episcopal Church, of Good Hope, Ill., for the passage of a bill to prohibit the manufacture of intoxicating drinks during the period of the war; to the Committee on the Judiciary.

Also, petition of students of Carthage College, Carthage, Ill., for legislation prohibiting the consumption of food products in the manufacture of intoxicating liquors; to the Committee on the Judiciary.

By Mr. HADLEY: Petition of sundry citizens of Hamilton, La Conner, and Home Guard of Anacortes, Wash., favoring prohibition as a war measure; to the Committee on the Judiciary.

By Mr. HAMILTON of New York: Petition of sundry citizens of Jamestown, N. Y., favoring prohibition as a war measure; to the Committee on the Judiciary.

By Mr. KELLY of Pennsylvania: Petition of Woman's Home and Woman's Foreign Missionary Societies of the First Methodist Episcopal Church, of Braddock, Pa., favoring the prohibition of alcoholic liquors; to the Committee on the Judiciary.

Also, petition of the Michael Dwyer Club, of Pittsburgh, Pa., favoring the independence of Ireland; to the Committee on Foreign Affairs.

By Mr. KENNEDY of Rhode Island: Resolution of Roger Williams Association of Baptist Church of State of Rhode Island, and Mount Pleasant Baptist Church of Providence, in the State of Rhode Island, favoring prohibition as a war measure; to the Committee on the Judiciary.

By Mr. LONERGAN: Petition of Connecticut Chamber of Commerce, favoring passage of House bill 4630, the food-control bill; to the Committee on Agriculture.

Also, petition of Glastonbury (Conn.) Grange, favoring prohibition as a war measure; to the Committee on the Judiciary.

By Mr. LUNN: Petition of William A. Campbell, representing all of the Methodist Episcopal Churches of the counties of Montgomery and Fulton, also a part of the county of Schenectady, State of New York, praying for enactment of prohibition of the use of such grain as is now being lost in the manufacture of intoxicating liquors, and also to limit the liquors now on hand to nonbeverage uses; to the Committee on the Judiciary.

By Mr. MAGEE: Petition of Union of Churches and Men's Club of Trinity Church, of Fayetteville, N. Y., favoring prohibition as a war measure; to the Committee on the Judiciary.

By Mr. NOLAN: Petition of Division No. 12, Ancient Order of Hibernians, San Francisco, Cal., praying for the passage of House joint resolution 88; to the Committee on Foreign Affairs.

Also, petition of the San Francisco Theological Seminary, praying for the amendment of the existing Federal estate tax law which provides no exemption for educational, philanthropic, and religious bequests, legacies, and gifts; to the Committee on Ways and Means.

By Mr. O'SHAUNESSY: Petition of the Rhode Island State Federation of Woman's Clubs, urging the creation of effective zones around all military camps; to the Committee on Military Affairs.

By Mr. PLATT: Petition of members of the Home Culture Club of Cold Springs and citizens of Orange, Monroe, and Newburgh, N. Y., favoring prohibition as a war measure; to the Committee on the Judiciary.

By Mr. RAKER: Petition of Drs. Walker and Finney, Baltimore, Md., relative to patents on salvarsan; to the Committee on Patents.

Also, petition of A. J. Harder, president Northern California Editorial Association, Sacramento, and Mrs. Paul R. Sprague.



Woman's Home Missionary Society, Quincy, both in the State of California, favoring prohibition as a war measure; to the Committee on the Judiciary.

By Mr. RANDALL: Petition of 40 citizens of Montebello, Cal., favoring national prohibition; to the Committee on the Judiciary.

By Mr. ROWLAND: Petition of Tenth District Sunday School Association of Clearfield County, Pa., favoring prohibition as a war measure; to the Committee on the Judiciary.

By Mr. SANDERS of New York: Petition of Rev. W. Swales, pastor, and the congregation of the Methodist Episcopal Church of Hamlin, N. Y., favoring national prohibition for the conservation of food and as a war measure; to the Committee on Agriculture.

By Mr. SMITH of Idaho: Petitions of citizens of Payette and Gooding and First Methodist Episcopal Church of Payette, Idaho, favoring prohibition as a war measure; to the Committee on the Judiciary.

By Mr. TAGUE: Petition of American Association of Masters, Mates, and Pilots, indorsing the Wadsworth-Dale bill, providing for the retirement of civil-service employees; to the Committee on Reform in the Civil Service.

By Mr. TILSON: Petition of the Connecticut State Medical Association, urging Congress to enact legislation to prohibit the sale of liquor during the war; to the Committee on the Judiciary.

Also, petition of Connecticut State Association of Letter Carriers, against contributory pension law; to the Committee on the Post Office and Post Roads.

By Mr. TIMBERLAKE: Memorial of Contemporary Alumnae Association of Colorado Springs, Colo., relative to protection for morals of those in training camps; to the Committee on Military Affairs.

Also, petition of the Colorado Metal Mining Association, relative to exemption from military service of employees of metal industries; to the Committee on Military Affairs.

Also, memorial of council of the city and county of Denver, Colo., relative to high cost of living; to the Committee on Agriculture.

## SENATE.

MONDAY, June 18, 1917.

The Chaplain, Rev. Forrest J. Prettyman, D. D., offered the following prayer:

O God, we feel that we gather this morning to consider questions pertaining to the welfare of our Nation upon the very crest of a wave of petition that has gone up to Thee out of millions of hearts seeking Thy divine guidance and blessing in this day of our national trial. O God, answer the prayer of Thy people. Look with infinite compassion upon us as we strive to walk in the light to do that which will be justified before the bar of Almighty God. Give to us wisdom and counsel. Give us a spirit of might and of understanding that we may so direct the affairs of this Nation that Thy approval shall be upon it and that great victory shall rest at last upon our efforts. For Christ's sake. Amen.

The Journal of the proceedings of the legislative day of Friday, June 15, 1917, was read and approved.

### PLANT DISEASES AND PRICE FIXING.

Mr. SMITH of Michigan. Mr. President, I have a letter from the plant pathologist of the Michigan Agricultural College bearing upon the question of food conservation and plant disease survey. I should like to have the letter read.

I have also a letter from Hon. James N. McBride, the Michigan director of markets of the Michigan Agricultural College, bearing upon the question of a minimum price for agricultural products. It contains much valuable information in view of the present food situation and our proposed legislation. I will not ask to have the second communication read, but I will ask that it may be printed in the RECORD and the first communication read.

The VICE PRESIDENT. Without objection, the Secretary will read the first communication.

The Secretary read as follows:

MICHIGAN AGRICULTURAL COLLEGE,  
East Lansing, Mich., June 4, 1917.

Senator WILLIAM ALDEN SMITH,  
Washington, D. C.

DEAR SIR: There is at present before the Senate, the bill having passed the House, the matter of augmenting the food supply by scientific survey work and extension work. I am particularly interested in the matter of plant-disease survey, which is one of the minor items of this larger matter.

Plant-disease survey has for its object the determination by a corps of experts the exact conditions in the various great producing centers with reference to losses by plant disease. The data collected permits of immediately turning of the extension forces of the Department of Agriculture of the various colleges to the amelioration of conditions. It also assembles a body of facts which enable conclusions to be drawn which will permit relief measures to be planned.

As an example of this latter form of return, I might illustrate from my own experience here in Michigan. In 1912 and in 1915 the State was swept by an epidemic of late blight. This disease came in August and September and took, in 1912, 25 per cent of the crop, and in 1915, 50 per cent of the crop. In my work with the plant-disease survey I took up data as to the distribution of the disease, its extent, etc. In making comparisons with the weather maps for the various months of August and September when the blight occurred, I was surprised that other than the evidence that there was a moderate amount of rainfall there seemed no connection between the weather of those two months and the severity of the disease. On the other hand, the weather map for July presented almost the same picture as a disease map of the State in which the percentage of the disease was indicated. A study of the epidemics of the past years shows that in the vast majority of cases late blight epidemics in Michigan have been associated with cold wet Julys followed by months of heavy or even moderate rainfall. The inference drawn from this plant-disease survey study is going to be of great value to us this year, since it will enable us to predict whether late blight is going to attack our potato crop, and it will enable us, in case the disease is imminent, to get spraying started in Michigan.

This is only one instance of the sort of work that we may expect from the plant-disease survey. The work is to be done in the field by trained mycologists and plant pathologists. In this State we are able to secure a few men who have had training along this line who are available in the summer. In the House discussions I noticed that there was some fear expressed that there would be waste in the carrying out of such a large program of agricultural extension and investigation. This particular fear does not seem at all well grounded considering the long record of usefulness behind the Department of Agriculture. I think I can assure you that the plans of the plant-disease survey are carefully made, experts are available, and that the matter promises great returns in conserving our food supplies.

It is very likely that in the near future we shall not increase our yields by discovery of varieties that give phenomenal crops so much as by conserving from plant diseases and insect pests the crops which we already raise. I wish to ask your aid in furthering this particular branch of the Agricultural bill.

Very truly, yours,

G. H. COONS,  
Plant Pathologist.

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

MICHIGAN AGRICULTURAL COLLEGE,  
East Lansing, Mich., May 16, 1917.

Hon. WILLIAM ALDEN SMITH,  
United States Senate Chamber, Washington, D. C.

MY DEAR SENATOR: The question of minimum prices for agricultural products in Michigan is one that farmers are greatly interested in—in fact, not only farmers but business men of all lines. This office sent out a large number of inquiries, and I am inclosing to you a portion of some of the answers. Not 2 per cent of the answers received were in opposition to minimum prices.

I feel certain you would like to know public sentiment in Michigan.

Very truly, yours,

JAS. N. McBRIDE,  
Michigan Director of Markets.

PUBLIC SENTIMENT IN MICHIGAN ON MINIMUM PRICES FOR FARM CROPS.

Colon C. Lillie, Coopersville: "My opinion is that fixing a minimum price would have a tendency to make food cheaper to the consumer and yet release the farmers from any possible loss. I would favor fixing a minimum price."

A. G. Hathaway, Hastings: "The proposition of minimum prices for farm crops was presented to 20 representative farmers Saturday and unanimously indorsed; \$6 beans, \$1 corn, and \$1 potatoes are fair and compensatory."

At a county meeting of bankers and farmers held at Adrian May 3 R. C. Rothfus, banker, said that in case of overproduction, fixing a minimum price would cause all the people to bear the burden that otherwise would be borne by the farmer alone. In case of a short crop, curtailment of consumption would prevent