A bill (H. R. 11311) granting a pension to James Metcalf;
A bill (H. R. 11515) granting a pension to Charles G. Sanders;
A bill (H. R. 11571) granting a pension to Isham T. Howze; and
A bill (H. R. 11779) for the relief of J. Harry Adams.

The message also announced that the House had passed the following bills:

A bill (S. 1153) for the relief of Charles Wagemann;
A bill (S. 2318) to extend to the port of Sault Ste. Marie, Mich., the privileges of inland transportation in bond;
A bill (S. 2460) granting arrears of pension to Theodore Rauthe;
A bill (S. 2665) granting a pension to Charles J. Esty;
A bill (S. 2764) granting an increase of pension to James McGowan;
A bill (S. 3628) granting an increase of pension to Emma Biddle;
A bill (S. 3765) for the relief of Harriet Young;
A bill (S. 3804) for the relief of the occupants of the town of Flagstaff, county of Yavapai, Territory of Arizona;
A bill (S. 3824) to provide for an American register for the steam-yacht Nautilus, of New York, N. Y.; and
A bill (S. 3830) to amend an act entitled "An act to authorize the Choctaw Coal and Railway Company to construct and operate a railway through the Indian Territory, and for other purposes," approved February 18, 1888.

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

A bill (S. 1320) granting a pension to Catherine M. Lee; and
A bill (S. 3052) granting an increase of pension to George W. Durfee.

The message also announced that the House had receded from its amendment to the bill (S. 3135) granting an increase of pension to Eliza J. Alexander.

The message further announced that the House had agreed to the concurrent resolution of the Senate providing for the printing of 2,500 extra copies of the report of the health officer of the District of Columbia.

The message also announced that the House insisted upon its amendments to the bill (S. 185) to provide for the admission of the State of South Dakota into the Union, and for the organization of the Territory of North Dakota, agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. SPRINGER, Mr. BARNES, and Mr. BAKER of New York the conferees on the part of the House.

ENROLLED BILLS SIGNED.

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

A bill (H. R. 11854) making appropriations for the support of the Military Academy for the fiscal year ending June 30, 1890; and
A bill (H. R. 12009) to provide for keeping open the Potomac River.

TRUSTS AND COMBINATIONS.

Mr. SHERMAN. I call for the regular order.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 3445) to declare unlawful trusts and combinations in restraint of trade and production.

Mr. JONES, of Arkansas. Mr. President, when the framers of the Constitution of the United States conferred upon Congress the power "to regulate commerce among the several States" they had no conception of what those words would import within a century. "Commerce among the several States" then meant an interchange by slow and laborious methods of a few scattered products, insignificant in quantity and value. Steam was then practically unknown; ships, such as were then in existence, were sailing vessels, while the boats upon the few known navigable rivers were propelled either by the current or by human labor.

Overland transportation of commodities was confined to a few miles from the point of production. Judging at that time by the history of the human race for six thousand years it looked as if there was never to be any "commerce among the States" except this primitive, inconsequential, and slow method of exchanging commodities. "Commerce among the States" as we know it, it had not "entered into the heart of man to conceive."

Man had not learned to harness "that wayward daughter of fire and water, steam." The marvel of vessels driven by this power with the speed of the wind against the current and against the wind was yet to be unfolded to the human mind, while carriages carrying tons of freight overland with the rapidity, smoothness, and ease of our time, and at a cost of less than 1 cent per ton per mile, had never been thought of.

These things have now, however, come to be so common that it seems strange, incredible almost, that the time ever was when they were not. The products of the most remote sections of our Union find their way so easily and so inexpensively into the homes of all classes that the fruits and fish of the Pacific have become to be necessaries of life to even such citizens of the Atlantic seaboard as make no pretensions to wealth. The tropical fruits of the far South are at home in the streets of the cities of the North, while the products of the North are laid at the doors of our Southern homes almost as cheaply as to the neighbors of the producers.

Steam and electricity have well-nigh abolished time and distance, until every citizen of the great Republic is, if not actually present, at least at home in every part of our great country.

Every village in the broad land is the recipient of the blessings that a beneficent Providence has showered upon the varied and diverse soils, climate, characteristics, in endless variety in our wonderful country.

Whether, if this vast and intricate system of "commerce among the States" had been comprehended in all its immensity by the framers of the Constitution, this power of control, unlimited save by the discretion of Congress, would have been conferred upon us we may well doubt; and, doubting this, we should proceed with caution in the exercise of this great power.

For myself, I confess frankly that I have always regarded the exercise of the powers conveyed by this section of the Constitution as full of danger; for if we exercise all the power that we may under this clause, we practically assume control of everything. The details of "commerce among the States" have become so vast and complicated that there is not a home, a business, or a human being who is not more or less affected by it; and the exercise of all the power conferred by this section upon Congress might be made to absorb almost everything else.

No one can deny that there is great danger in centralization, and it becomes every patriotic citizen to watch with jealous care the encroachments of Federal power and to check and restrain them by every legitimate means. Powers once assumed and exercised are rarely, if ever, relinquished, and we should be sure that we never enter upon the exercise of a new power or an old power in a new way except upon the clearest evidence that such exercise is absolutely demanded by the best interests of the nation.

I hesitated long before fully making up my mind that a law regulating interstate commerce should pass, but mature reflection convinced me of the utter inability of the States to deal with the class of evils that it was intended to remedy, and after judicial decisions had settled this as true, there was absolutely nothing left except the exercise of power by the Federal Government. I believe the exercise of that power has already brought great good to the general public, and I hope that the intelligence and patriotism of the people will prevent the evils that might quite naturally grow up out of it.

The enactment of the bill under consideration into a law will be another and a most important exercise of authority conferred by this clause of the Constitution; and for myself, while I am keenly alive to the dangers to flow from it, the demand for some such action is so great that I am most heartily in favor of some such bill. The details of the bill and its construction I leave to the committee having the matter in charge. I simply mean to declare myself in favor of legislation to suppress a gross wrong. The dangers to come from this exercise of power are in the future and may never come, while the wrongs which it is intended to remedy are here present and pressing upon us and demanding attention.

The growth of these commercial monsters called trusts in the last few years has become appalling. For a long while they were limited in numbers and applied to but a few articles, and while even then they excited the detestation of good men, they did not exist in such numbers and power as to cause apprehensions for the public safety.

Now, however, having been allowed to grow and fatten upon the public, their success is an example of evil that has excited the greed and conscienceless rapacity of commercial sharks until in schools they are to be found now in every branch of trade, preying upon every industry, and by their unholy combinations robbing their victims, the general public, in defiance of every principle of law or morals.

The iron hand of the law must be laid heavily upon this system, or the boasted liberty of the citizen is a myth. If the proceeds of the labor of our men and women are not to be their own we have no liberty and our Government is a farce and a fraud.

The interstate-commerce law was aimed at a tendency to combination in railroading. This was wise; but it will be utterly useless if combinations in restraint of competition in all other branches of trade should be allowed. We are advised by the newspapers that a monster salt trust intended to control the salt market of the world, and which is to pay an annual dividend of 25 per cent., is now in process of organization.

The steel trust has with a mailed hand laid the entire country under tribute for years; its profits, if the "swag" it has pocketed may be called by so respectable a name, has reached fabulous sums; and now we are regaled by assurances that a pig-iron trust is to come in and control the trade and the price in that article.

The iniquities of the Standard Oil Company have been enumerated and recounted until some of them are familiar to every one, and the colossal fortunes which have grown from it, which in all their vastness do not represent one dollar of honest toil or one trace of benefit to mankind, nor any addition to the products of human labor, are known everywhere.

The sugar trust has its "long, felonious fingers" at this moment in every man's pocket in the United States, deftly extracting with the same audacity the pennies from the pockets of the poor and the dollars from

the pockets of the rich. But why name them? There is scarcely an article of commerce which is not now or soon to be controlled by some combination of plunderers.

When Robin Hood undertook to rob his fellow-citizens he took his life in his hand and with at least some sort of courage took the consequences of his crimes, but these modern foot-pads have not the grace of his courage, but commit their robberies by stealth. I am in favor of so changing the laws that their robberies can not be committed in safety any longer, and so that even planning them will make the offenders amenable to punishment.

This bill is a step in the right direction, and if it shall prove the beginning of the end of this system of conspiracies and combinations it will be hailed as the dawn of genuine freedom, and if it is not so constructed as to accomplish this purpose, I hope the Senate will so amend it as to make it effective. I hope it may serve to set people to thinking of the wrong of either permitting people or authorizing people to combine to plunder the public. If it does this there will not be a repetition in this Chamber of what has recently passed here. Proposed financial legislation, which has received the sanction of the majority here, will, if it ever becomes law, promote and build up just such conspiracies, combinations, trusts, "sympathetic movements," as we propose in this bill to condemn. We have been actually paving the way for such things for weeks—making the way for them easy—practically making the Government of the United States *particeps criminis* in those that are to grow up hereafter.

If, however, this bill shall become a law, and I hope it will, it may prove a great educator, and people may come to believe after awhile that no class of persons in this country has any right to be enriched by indirect means at the expense of the many, and if this shall come to be fully accepted as correct and just by the whole people, your system of protection—that system of "concealed bounties," to use the expressive words of the honorable Senator from Iowa—will, like many another pirate that has gone before, have to "walk the plank."

Mr. GEORGE. Mr. President, this is a very important subject. The bill undertakes to deal with very great evils which in the last few years have done great injury to the people of the United States. I am in favor of legislation to prevent trusts and combinations, but I want effective legislation—legislation that will crush out these combinations and trusts. The trouble is in finding the constitutional power to do exactly what ought to be done, and if we exceed our constitutional power, our action, however well meant, will be of no value; it will be utterly void. The bill before us seeks to get under the commercial clause of the Constitution jurisdiction to pass a criminal law in relation to trusts, agreements, and combinations as described in the bill. This power is simply the power to regulate interstate and foreign commerce.

I have given some thought and some reflection to this matter, and I am extremely anxious that some bill shall receive the assent of this Congress which will put an end forever to the practice, now becoming too common, of large corporations, and of single persons, too, of large wealth, so arranging that they dictate to the people of this country what they shall pay when they purchase, and what they shall receive when they sell.

I have considered with some care the provisions of this bill. I do not believe that the effect of its provisions is accurately understood by members of this body. I propose, therefore, to make an analysis of its provisions to see, if we can, what it means, what evils it undertakes to remedy, and what remedy it provides, and how efficacious this remedy may prove to be.

In the beginning, I desire to call the attention of the Senate to the fact that the provisions of this bill are not confined to trusts, to combinations, to arrangements and agreements made between parties who are engaged in business; or, in other words, taking the language of the bill in its plain meaning, it refers to and brings within the punitory provisions of the fourth section not only arrangements and agreements between manufacturers, between sellers, between transporters, but it brings within its grasp arrangements made by any persons, though merely for moral and for defensive purposes. The bill provides—

> That all arrangements, contracts, agreements, trusts, or combinations between persons or corporations made with a view, or which tend, to prevent full and free competition in the importation, transportation, or sale of articles imported into the United States shall be unlawful.

That would apply to an arrangement, to an agreement, to a combination, not of a business character, but, as I before remarked, to such as is purely moral and defensive. It does not say that all arrangements, contracts, etc., made between persons and corporations engaged in selling, transporting, importing, manufacturing, or producing the articles described in the bill shall be unlawful; but it applies to all persons whether so engaged or not. So if this bill passes as it now stands, the farmers and laborers of this country who are sending up their voices to the Congress of the United States, asking, pleading, imploring us to take action to put down trusts, these farmers and these laborers will find that they themselves in their most innocent and necessary arrangements, made solely for defensive purposes against the operations of these trusts, will be brought within the punitory provisions of this bill.

It will strike the Senate probably with some astonishment if it be ascertained that under this bill the arrangements made by the Southern farmers during the last season to prevent the consummation of the robbery of them by the jute-bagging trust are made highly criminal. Under it the farmers of the South who combine to prevent and defeat that most iniquitous and unjust combination will find that they themselves rather than the jute-bagging trust will be the subjects of severe punishment.

The bill declares that any arrangement, any agreement, any combination made by any person, whether engaged in trade or not, which tends to prevent full and free competition in the importation, transportation, or sale of the articles described in the bill, shall be subject to indictment, and, on conviction, to punishment by fine of $5,000 or imprisonment in the penitentiary not exceeding five years, or to both such fine and imprisonment.

Upon the formation of this bagging trust the cotton farmers of the South, many of them in their granges and in their alliances, agreed that they would not purchase jute bagging, and by that agreement to a very large extent the rich rewards anticipated by the men who formed that trust were defeated. These combinations tended to prevent full and free competition in the sale of this article. But if that is not very clear, if Senators think these arrangements of the farmers did not have the effect of preventing this full and free competition, I call their attention to another provision contained in the third section of the bill, which reads in this way:

> If acts shall be done under any such arrangement, contract, agreement, trust, or combination, which have for their purpose, or which shall tend to compel the giving up or sale of any lawful business, the person, partnership, or corporation injured thereby may sue for and recover in any court of the United States of competent jurisdiction the damages sustained thereby.

The very object of this combination of Southern farmers was to break down the trust in jute bagging, to compel the men who had seized and got control of the bagging manufacture of this country to give up their business—to loose their grip upon the business of the farmers. It also very clearly violated the other provision of the bill to which I have just called attention. The fact that the bill does not restrict these combinations, these agreements, to persons engaged in trade, engaged in transportation, engaged in importation, engaged in selling—the fact that it applies to all arrangements, all agreements, all combinations, by whomsoever made, would bring within its reach all defensive agreements made by farmers for the purpose of enhancing the price of their products. This bill, instead of preventing trusts, would have the effect of crushing out all efforts of the people to rid themselves of their injurious effects.

Mr. SHERMAN. Mr. President——

The PRESIDING OFFICER (Mr. HARRIS in the chair). Does the Senator from Mississippi yield to the Senator from Ohio?

Mr. GEORGE. I do.

Mr. SHERMAN. Do I understand my friend from Mississippi to claim that under this bill an agreement made by farmers not to buy cotton-bagging or not to buy anything else is a combination within the meaning of the act?

Mr. GEORGE. Yes, sir; directly within the meaning of the act.

Mr. SHERMAN. That is a very extraordinary proposition. There is nothing in the bill to prevent a refusal by anybody to buy anything. All that it says is that the people producing or selling a particular article shall not make combinations to advance the price of the necessaries of life. However, I simply wished to get the answer of the Senator.

Mr. GEORGE. That is the true construction of this bill which I put on it.

Mr. SHERMAN. I desire to say distinctly that that is not my idea or the idea of any one of the committee.

Mr. GEORGE. I presume it is not.

Mr. SHERMAN. Nor do I believe it is a fair construction of the bill.

Mr. GEORGE. But yet that is the legal meaning and force of the bill; and I will state to the Senate and to the Senator from Ohio that it is directly within the terms of this bill to forbid any number of persons belonging to or joining a temperance society whose object is to compel retailers of intoxicating liquors to give up their business.

Mr. SHERMAN. Where men agree that they will not drink at all, does the Senator think that is a combination in restraint of the trade of liquor-sellers?

Mr. GEORGE. What is it?

Mr. SHERMAN. The Senator, as I understand, now claims that an agreement among several people not to drink whisky or brandy is in restraint of the trade of selling whisky or brandy and is therefore a combination within the meaning of this bill?

Mr. GEORGE. I insist that a society, making an agreement or a combination between citizens of a town anywhere in the Union not to drink, not to use in any way vinous or spirituous liquors, and to persuade others to a similar abstention, does, in the language of this bill, tend to compel persons engaged in retailing liquor in that community to give up their business, and the doing of that is expressly condemned by the third section of this bill.

Mr. STEWART. Will the Senator allow me?

The PRESIDENT *pro tempore*. Does the Senator from Mississippi yield to the Senator from Nevada?

Mr. GEORGE. Certainly.

Mr. STEWART. If an organization for the purpose of having laws passed creating high license is formed, would not that enhance the value of the things prohibited in this bill?

Mr. GEORGE. I have considered that question. I have thonght possibly that the courts might say that the right of political organization to bring about political results by legislation was not embraced within the provisions of the bill.

But this bill not only prevents combinations between farmers to raise the price of their products, but it would (though not so intended by the framers) embrace combinations among workingmen to increase the amount of their wages. For an increase in their wages would tend to increase the price of the product to the consumer, and thus the combination would come within the express terms of the bill.

But the bill is futile; it amounts to nothing. In the first place there are two subjects, as named in the first section, concerning which these arrangements or agreements are to be made. The first subject is imports. Now, if there is anything settled in the constitutional law of this country, commencing with the decision of Chief-Justice Marshall in the case of Brown *vs.* Maryland, in 12 Wheaton's Reports, and coming down to the present time, it is that the jurisdiction of the Government of the United States under the commercial clause of the Constitution over imports ceases at the moment the import passes out of the hands of the importer, or, remaining in his hands, the package in which it was imported is broken up.

So, then, the first clause of the first section can have no effect beyond an agreement with reference to imports whilst they are still in the hands of the importer and before the package is broken up. Will any Senator say that there has ever been a trust, a combination, or an agreement within the United States between importers before the package had been broken up and before sale in reference to the sale of the imported goods? In all the long list of trusts, of combinations, of arrangements, and of agreements which have been made within the United States for the purpose of fleecing the people I have not as yet heard of a single combination between importers made with reference to the sale of the goods imported by them in the original package. So, then, the first clause of this bill is aimed at a phantom, is aimed at an evil which does not exist and which can not exist.

As soon as the article passes out of the hands of the importer, or, remaining in his hands, as soon as the package in which it was imported is broken, it passes beyond the jurisdiction of the United States and is subject to State authority alone, and therefore combinations with reference to these imports in that condition are not reached by this bill, because they are without the jurisdiction of Congress.

We will next go to the other provision in the first section and see how that is. It is as follows:

That all arrangements, contracts, agreements, trusts, or combinations between persons or corporations made with a view, or which tend, to prevent full and free competition * * * in the production, manufacture, or sale of articles of domestic growth or production, or domestic raw material that in due course of trade shall be transported from one State or Territory to another—

Shall be unlawful.

By this provision is drawn within the punitive provisions of this bill every agreement made by farmers not to sell any particular article of their production unless they receive a certain price for it, for that would be an agreement which, under the clause of the first section, which is under consideration, would tend to advance the cost to the consumer of any such articles, and is therefore condemned by the bill. This is another phantom at which this bill is aimed. There is no complaint, there have been no complaints that the farmers of this country have combined for the purpose of raising the price of agricultural products. There have been combinations of that sort, lawful in their character, meritorious in their aims, which have tended to prevent the farmers of this country from being fleeced by these great trusts; and yet under this bill they are condemned and punished. Under its plain provisions, if any grange in the United States, if any agricultural club, if any society called a farmers' alliance, if any number of farmers not embraced in these organizations should agree that they would withhold their products from sale until they could receive a certain price for them, every one of them would be liable to be fined $5,000 and put in the penitentiary for five years. The same is true, as I have shown, of combinations and arrangements made by laborers to increase their wages.

I am not prepared to sustain a bill of that sort merely because it is entitled "A bill to declare trusts and combinations unlawful." It seems that the bill, however honestly intended for good, has its effectual aim at phantoms, and not at the real grievances of the people, nor at the real culprits who have combined to plunder the great mass of the people.

I have shown how little can be done under the import clause to relieve the people of trusts; now let us see how much can be done under the interstate-transportation clause. Let me read that so that we may understand it:

That all arrangements, contracts, etc., made with a view—

I am reading from the first section—

or which tend, to prevent full and free competition * * * in the production, manufacture, or sale of articles of domestic growth or production, or domestic raw material that in due course of trade shall be transported from one State or Territory to another—

Are prohibited.

How much can be done under that? And here note that in the first section of the bill there is not a single provision against the unlawful acts themselves done under these agreements. The first section of the bill is aimed at the agreement alone. If the agreement be made, whether or not it does in fact increase the price or does in fact prevent full and free competition, if it be made with that purpose or with that view, or if it have that tendency, whether these evil results follow or not, then it is liable to the condemnation of the bill. No act however injurious done in pursuance of it is made criminal. The country may be robbed to the amount of millions, and, so far as these acts of pillage and plunder are concerned, they are not condemned by the bill. It is only agreements that are condemned. Here we find another trouble upon that subject. If the agreement be not made within the jurisdiction of the United States, as if it be made in Canada, it is not within the terms of the bill. So that under this bill an agreement may be made at Montreal or on the other side of Niagara Falls or at any other place outside of the jurisdiction of the United States, and then the wrongful acts may be done within the United States and there is no punishment, no redress. Yon can not punish the agreement, because it was made outside of the jurisdiction of the United States; you can not punish the acts done under the agreement, because there is no provision in the bill which makes these acts subject to its punitory provisions. Scrutinize the bill, read it, study it, and you will find that is its legal effect.

But here is another anomaly about this second clause of the first section. Suppose the agreement be made within the United States. Then whether it shall be held lawful or unlawful, whether it shall come within the provisions of this bill or not, depends upon an act to take place after the agreement is made. So far as this bill is concerned, the agreement may be perfectly lawful at the time it is made and it will become unlawful by a matter which may take place months afterwards, and by an act—and I desire to call the especial attention of the Senator from Ohio to that—and by an act to which the parties to the agreement were in no way privy, and for which they are in no way responsible. For instance, A and B combine to raise the price of domestic products. If the thing stops there they can not be punished under this bill, although that agreement be made within the city of New York; but if C, months afterwards, having acquired some of the goods, some of the articles of merchandise with reference to which this original agreement was made, transports them from one State to another, then the crime is consummated.

What a remarkable anomaly is that in legislation! The agreement when made is lawful, it only becomes unlawful by the subsequent act of men, not parties to it, not privies to it, and, what is more remarkable, it becomes unlawful by the lawful act of these subsequent parties, for it must be noted there is nothing in this bill which makes it unlawful to transport from one State to another goods, merchandise, or articles which are the subject-matter of the prohibited agreement. The original agreement is and so remains lawful because the fact has not transpired and may never transpire, or if it transpires at all it may not transpire for months after the agreement is made, and when that fact does transpire it is a thing which is perfectly lawful in itself. It is not only lawful, but it is meritorious, and yet this subseqent innocent, lawful, and meritorious act relates back to the agreement, and makes it criminal without bringing on itself any criminality whatever. So, then, we have this remarkable anomaly, that two acts both of which are perfectly lawful, done by separate and distinct persons without any privity or connection between the two, just simply by the mere sequence in time of one to the other are compounded into a high crime, and punished by a heavy fine and imprisonment in the penitentiary.

Mr. President, I make that statement deliberately. Senators who have not studied this bill will be astonished to find it so, but it is so nevertheless. The original agreement is not made unlawful until the subsequent transportation takes place. The transportation is not unlawful, nor is it made so by this bill, but it is a meritorious act, being commerce between the States; and yet these two acts done by two separate and distinct persons without the slightest privity, without the slightest concert between them, both being innocent and lawful when they are performed, are by this bill compounded into a high misdemeanor punished by a fine of $5,000 and imprisonment in the penitentiary for five years.

Mr. President, a bill of that sort will not do. You can not make a crime out of a lawful act by matter *ex post facto* done by a person without connection with the original actor. It is lawful to make a gun, but it is unlawful to kill a person with it. In that case when one of the acts was manifestly unlawful, the mind and the conscience would be shocked if by the subsequent unlawful act of the man who committed murder with the gun you should provide that the maker of the gun should be guilty of a crime. In that case one of the acts would be unlawful, but in the case made by this bill both are lawful, and yet a crime results; results, too, from the performance of the subsequent act, which under no circumstance does the bill condemn, but seeks to promote and encourage.

I am asked by a Senator who sits near me to give a specific illustration of the argument which I am making. I will do so. There is a combination made in relation to jute bagging, for instance, produced in this country, not imported. That combination, under the terms of

this bill, is not unlawful until there shall be a transportation of the article from one State to another. I will again read the clause under consideration:

That all arrangements, contracts, * * * to prevent full and free competition in the production, manufacture, or sale of articles of domestic growth or production, or domestic raw material that in due course of trade shall be transported from one State or Territory to another, etc., shall be unlawful.

So that the Senator will clearly see that it is not the agreement or combination *per se* that is made unlawful, nor is the subsequent transportation unlawful; but if the lawful agreement be followed, however distant in time, by the subsequent transportation, then by this sequence alone a crime is made of the agreement.

This provision about transportation is inserted to draw this subject within the commercial power of Congress. Without the subject of transportation or without some provision with reference to transportation from one State to another, the bill would be manifestly unconstitutional, and therefore its framers were compelled to put in a subsequent act of transportation from one State to another, so that up to the time that transportation takes place the agreement, the trust, the combination is perfectly lawful, not only by the terms of the bill, but for want of constitutional power in us to make it anything else.

Mr. EUSTIS. In regard to the constitutional point, if the Senator will allow me——

Mr. GEORGE. I will discuss that question hereafter.

The PRESIDING OFFICER (Mr. DOLPH in the chair). Does the Senator from Mississippi yield?

Mr. GEORGE. Yes, sir; I am glad to do it.

Mr. EUSTIS. If I understand the difficulty which is presented by the argument of the Senator from Mississippi, it is that the jurisdiction, the power of Congress is derived from the fact of transportation from one State to another, in order to exercise that power under the commercial clause. I would ask the Senator whether the power of Congress would exist if the language were "shall or may be transported," etc.? In other words, I ask whether the power of Congress is conferred by the Constitution, dependent on the act of actual transportation and is confined to that, or whether the power of Congress may be applied to the transportable merchandise; so that if this bill were to read "shall or may be transported," would that correct the defect which has been pointed out by the Senator from Mississippi?

Mr. GEORGE. Upon that point in the latter part of my remarks I expect to be full and explicit. At this stage I will merely state to the Senator in answer to his question that "shall or may be" would make no difference; that the power of Congress exists only over the subject so far as it comes from transportation, while the transportation is being carried on; that the power of Congress does not begin as to the subject until transportation begins, and it ends when transportation is completed. Upon that point I expect to make some remarks before I get through.

The trouble about this bill is that it is an attempt to do the impossible. It is an attempt to draw within the commercial power of Congress jurisdiction over this subject by the provision about transportation. That is the trouble.

There is another serious defect in the bill. It relates only to agreements, combinations, arrangements between two or more. It leaves wholly out of view acts of oppression and plunder when done by a single individual. If he be a great capitalist, so that by his own unaided means he can so provide to increase prices to the consumer or reduce prices to the producer, he is not touched by this bill. For, as I have shown, it is the agreements, combinations, between two or more, and the like which are punished, and not the wrongful acts which these agreements and combinations were designed to promote.

Mr. President, I believe that I have said about all I desire to say in the way of analysis and comment upon the bill, and I will go now to the point to which my attention was directed by the question of the Senator from Louisiana.

It is not denied anywhere by the friends and supporters of this bill that the power to pass it is claimed under the commerce clause of the Constitution. Certainly under no other clause can there be the slightest pretense for the claim of this power.

Now, let us see what is the extent of that power under the commercial clause of the Constitution. It is a power to "regulate commerce," foreign and interstate, not a police power to regulate the general business of the people. That power is reserved to the States. The Supreme Court said in Railroad Company *vs.* Husen, 95 United States Reports, page 465, that this police power of the States extends—

to the protection of all property within the State. * * * By it persons and property are subject to all kinds of restraint and burdens in order to secure the general comfort, health, and prosperity of the State.

And Judge McLean, in the License Cases, 5 Howard, page 588, said:

The States, resting upon their original basis of sovereignty, * * * exercise their powers over everything connected with their social and internal condition. A State regulates domestic commerce, contracts, the transmission of estates, real and personal, and acts upon all internal matters which relate to its moral and political welfare. Over these subjects the Federal Government has no power.

These combinations and trusts, therefore, are clearly within the police power of the States. I ask the Senator from Louisiana, would it be lawful or constitutional for the State of Louisiana, or any other State, to pass a law punishing persons entering into these combinations and trusts within their respective limits, whether or not the subjects about which the trusts were made should afterwards become subjects of foreign or of interstate commerce?

Mr. EUSTIS. I think the States have the power.

Mr. GEORGE. You think they have, and I agree with you. If they have Congress has not, because there is a dividing line plainly marked by the decisions of the Supreme Court of the United States, upon one side of which rests the police power of the State, and on the other the commercial power of Congress. That power is granted in these words: "Congress shall have power to regulate commerce with foreign nations and among the several States." It is a power of regulation, and a regulation only of commerce, not a regulation of something which may in the near or remote future become a subject of foreign or interstate commerce. The regulation must be of the act or the transaction of commerce itself.

Mr. EUSTIS. Will the Senator from Mississippi allow me right here to ask him a question?

Mr. GEORGE. Yes, sir.

Mr. EUSTIS. In a case where the State of Kansas or the State of Iowa prohibits the sale of intoxicating liquors, I should like to ask the Senator whether, in his opinion, Congress has the constitutional power to prohibit the transportation of liquors into those States?

Mr. GEORGE. The States have no such power. That has been settled.

Mr. EUSTIS. I ask if Congress has.

Mr. GEORGE. Congress would have the power to prevent anything from being transported into the States.

Mr. EUSTIS. Very well. Now the argument of the Senator from Mississippi has been that the actual fact of transportation is what gives Congress power and jurisdiction under the commercial clause. Now he admits that in the absence of any act of transportation Congress can exercise that power.

Mr. GEORGE. Why, Mr. President, the regulation of commerce——

Mr. EUSTIS. It is no transportation.

Mr. GEORGE. It is a prohibition of transportation. It regulates the transportation. This is done in a prohibition of transportation, and this is a regulation of commerce as was decided with reference to the embargo enacted under the administration of Jefferson.

Mr. EUSTIS. Therefore I do not understand how the Senator reconciles the argument he has made with the position he now takes, that the fact of actual transportation is what confers the jurisdiction upon Congress, and yet he admits that Congress has the power to prohibit the transportation of goods and exercises that power in a case where there is no actual transportation.

Mr. GEORGE. The answer to that is this: Congress has the power to regulate interstate transportation; it may either prohibit it altogether, or when it takes place may regulate the means and methods of carrying it on. But because Congress may prohibit the transportation of an article in interstate or in foreign commerce, it does not follow, as would seem to be the view of the Senator from Louisiana, that Congress may assume jurisdiction over matters entirely within the jurisdiction of the States merely because they may become the subject of interstate commerce, transportation being one of the means of interstate commerce.

Mr. EUSTIS. That is exactly the case that I stated, where Congress prohibits the transportation of liquors, for instance, to the State of Kansas. The power conferred upon Congress is not to prohibit, it is to regulate, and that power of regulation is exercised in the absence of any actual transportation; and the Senator from Mississippi informs us that in his opinion that power is rightfully exercised. Therefore I ask him if that be so how can it be necessary that the actual transportation should be the jurisdictional fact with reference to this bill?

Mr. GEORGE. Whenever Congress undertakes to regulate interstate transportation, as it does in this bill, then there must be transportation to regulate; but where Congress in the exercise of its power, as it has the undoubted power, in regulating interstate commerce, to prohibit the transportation of certain articles, they may do that. The power of Congress, says Chief-Justice Marshall, is to regulate commerce, which includes intercourse.

It is regulated by prescribing rules for carrying on that intercourse.

Not prescribing rules for subjects, as I will show hereafter by the decisions of the Supreme Court, which are within the jurisdiction of the States, merely because those subjects may afterwards become the subjects of interstate commerce. Chief-Justice Marshall's language is, "to make rules for carrying on that intercourse." It is not "carrying on that intercourse" until there is actual commerce or the beginning of commerce between two or more States.

I am now trying to ascertain the limits of the power of Congress on the subject. I now quote from Chief-Justice Taney in the License Cases, in 5 Howard's Reports:

That imports ceased to be such when sold by the importer, or the original package was broken. This—

Chief-Justice Taney understands—

to be substantially the line between foreign commerce, which is subject to the

regulation of Congress, and internal and domestic commerce, which belongs to the States, and over which Congress can exercise no control.

McLean, justice, in the same case, after adopting the rule as to imports ceasing to be such when this happens, says of the imported article:

The imported article becomes mingled with the other property of the State and is subject to its laws.

This power is claimed here, as I understand it, not because there is any actual commerce between States or citizens of States, but because the subjects to which this bill relates may afterwards become the subjects of interstate commerce. Now, let us see how that stands in constitutional law.

The PRESIDING OFFICER (Mr. HARRIS in the chair). The hour of 2 o'clock having arrived, it is the duty of the Chair to lay before the Senate the unfinished business, which is Senate bill 3401, in relation to the Pacific railroads.

Mr. FRYE. How much more time does the Senator from Mississippi desire to complete his remarks?

Mr. GEORGE. Oh, not very long, say half an hour, or perhaps an hour. Probably not more than a half hour will do.

Mr. FRYE. The bill which is the regular order has been laid aside now every day for a fortnight.

Mr. GEORGE. In that case I shall not occupy a great while. I am very nearly through.

Mr. FRYE. I consent that the bill may be temporarily laid aside for half an hour.

The PRESIDING OFFICER. The Senator from Maine asks unanimous consent that the unfinished business be informally laid aside for half an hour, or until the Senator from Mississippi concludes his remarks.

Mr. FRYE. Until the conclusion of his remarks.

Mr. EDMUNDS. He ought to be allowed to conclude.

The PRESIDING OFFICER. If there be no objection the bill will be informally laid aside until the Senator from Mississippi concludes his remarks.

Mr. GEORGE. I have shown as to imports that the power of Congress ceased when they passed out of the hands of the importer or when the original package was broken up. That is the end of the power of Congress. Now, I desire to call the attention of the Senate to some decisions of the Supreme Court of the United States which fix the time when the power begins, and especially I desire to call the attention of the Senator from Louisiana to that subject. This bill is framed on the idea that Congress may take jurisdiction of the subject, because at some time hereafter this subject may become a matter of interstate commerce; and on that point the decisions of the Supreme Court of the United States are uniform without one single break. I propose now to read some extracts from the decisions of the Supreme Court on that point.

In the case of Veazie *vs.* Moore, 14 Howard, 568, the court say:

Commerce with foreign nations must signify commerce which is necessarily connected with these nations, transactions which either immediately or at some stage of their progress must be extraterritorial.

Not "may be," but "must be extraterritorial." This bill is framed on the idea that "may be" will do. This is expressly overruled in the language I have read.

The phrase can never be applied to transactions wholly internal between citizens of the same community, or to a polity and laws whose end and purposes and operations are restricted to the territory and soil and jurisdiction of such community.

Nor can it be properly concluded that because the products of domestic enterprise in agriculture, or manufactures, or in the arts, may ultimately become subjects of foreign commerce, that the control of the means or the encouragements by which enterprise is fostered is legitimately within the import of the phrase "foreign commerce," or fairly implied in any investiture of the power to regulate such commerce.

That decision overthrows the theory of this bill that these products of agriculture, of manufactures, and of the mines may ultimately become the subjects of foreign or interstate commerce, and therefore before they do actually become such the United States Congress will interpose and regulate them. The court go on to say:

A pretension as far-reaching as this would extend to contracts between citizen and citizen of the same State, and would control the pursuits of the planter, the grazier, the mechanic, the immense operations of the collieries and mines and furnaces of the country, for there is not one of these avocations the results of which may not become the subjects of foreign commerce.

And afterwards this same language is applied to interstate commerce. This case is exactly in point, and establishes the unconstitutionality of this bill. Though an old case it never has been overruled nor its doctrines departed from. In a very recent case, to wit, Lord *vs.* Steam-ship Company, 102 United States Reports, it was cited and confirmed. But there is another case, and a very recent one, which defines this matter with some care and precision. I read now from the case of Coe *vs.* Errol, volume 116 United States Reports, page 525:

There must be a point of time when they—

That is, articles of merchandise—

cease to be governed exclusively by the domestic law and begin to be governed and protected by the national law of commercial regulation, and that moment seems to us to be a legitimate one for this purpose, in which they commence their final movement for transportation from the State of their origin to that of their destination. When the products of the farm or the forest are collected and brought in from the surrounding country to a town or station serving as an entrepôt for that particular region, whether on a river or a line of railroad, such products are not yet exports, nor are they in process of exportation, nor is exportation begun until they are committed to the common carrier for transportation out of the State to the State of their destination, or have started on their ultimate passage to that State. Until then it is reasonable to regard them as not only within the State of their origin, but as a part of the general mass of property of that State, subject to its jurisdiction.

Here is another sentence a little more explicit answering the argument that they were intended for exportation, and when they were thus intended they become the subjects of the power of Congress. The court say on that subject:

Though intended for exportation, they may never be exported; the owner has a perfect right to change his mind; and until actually put in motion, for some place out of the State, or committed to the custody of a carrier for transportation to such place, why may they not be regarded as still remaining a part of the general mass of property in the State?

The court proceeds on page 528 thus:

Some of the Western States produce very little except wheat and corn, most of which is intended for export; and so of cotton in the Southern States. Certainly as long as these articles are on the land which produced them they are a part of the general property of the State, and so we think they continue to be until they have entered upon their final journey for leaving the State and going into another State. * * * This movement does not begin until the articles have been shipped or started for transportation from one State to another.

* * * * * * *

Until actually launched on its way to another State or committed to a common carrier for transportation to such State, its destination is not fixed and certain. It may be sold or otherwise disposed of within the State, and never put in course of transportation out of the State. * * * Until shipped or started on its final journey out of the State, its exportation is matter *in fieri*, and not at all a fixed and certain thing.

So that if anything is settled in the constitutional law of this country it is that an article of commerce, an article of merchandise, does not become the subject of Congressional jurisdiction under the commercial clause of the Constitution until it has actually become the subject of interstate or foreign commerce, and that this does not begin, though it may be intended for that purpose, until transportation has actually commenced. That was the decision in Veazie *vs.* Moore, made many years ago, and also in the case to which I have just called the attention of the Senate.

My attention is called by my colleague [Mr. WALTHALL] to a still more recent case decided at the October term, 1888, the case of Kidd *vs.* Pearson, in which the court say:

This court has already decided that the fact that an article was manufactured for export to another State does not of itself make it an article of interstate commerce within the meaning of section 8, Article I, of the Constitution, and that the intent of the manufacturer—

The intent of the manufacturer—

does not determine the time when the article or product passes from the control of the State and belongs to commerce.

Then the court refer to the case which I have just read and approve it. That was the view of the Senator from Ohio himself in the beginning of this controversy, as shown by the RECORD. I do not state this for the purpose of convicting the Senator from Ohio of any inconsistency, but as a support and a strong support of the views which I entertain. On August 14, 1888, the Senator from Texas [Mr. REAGAN] introduced a bill on the subject of trusts, which will be found printed on page 7512 of volume 19, part 8, of the CONGRESSIONAL RECORD, and is as follows:

Mr. REAGAN introduced a bill (S. 3440) to define trusts and to provide for the punishment of persons connected with them or carrying them on; which was read the first time by its title.

Mr. BECK. Let that bill be read in full.

The PRESIDENT *pro tempore*. The bill will be read the second time at length, if there be no objection.

The bill was read the second time at length, as follows:

"*Be it enacted, etc.*, That a trust is the combination of capital or skill by two or more persons for the following purposes:

"First. To create or carry out restrictions on trade.

"Second. To limit, to reduce, or to increase the production or prices of merchandise or commodities.

"Third. To prevent competition in the manufacture, making, sale, or purchase of merchandise or commodities.

"Fourth. To create a monopoly.

"SEC. 2. That any person who may be or may become a member of any such trust, or who may be or may become engaged in the business of any such trust in any trade or business carried on with foreign countries, or between the States or between any State or Territory and the District of Columbia, or between the District of Columbia and any Territory, or between the United States and the waters adjacent to any foreign country, shall be guilty of a high misdemeanor, and on conviction thereof in any district or circuit court of the United States, after indictment shall be fined in a sum of not more than $10,000 nor less than $1,000, and may be imprisoned in the penitentiary for a period of not more than five years and not less than one year.

"SEC. 3. That the purchase by any trust, or by the agent of any trust, of merchandise or commodities in a foreign country for sale in this country; or the manufacture, making, or purchase of any merchandise or commodity in this country for sale in a foreign country; or the manufacture, making, or purchase of any merchandise or commodity in one State for sale in another; or in any State or Territory for sale in the District of Columbia; or in the District of Columbia for sale in any State or Territory; or in any Territory for sale in any other Territory or in any State or in the District of Columbia, shall constitute a violation of this act, and shall subject the offender to the aforesaid penalties."

On the motion to refer that bill to the Committee on the Judiciary the Senator from Ohio said this:

Mr. SHERMAN. I wish to say that the Committee on Finance has already been charged with the consideration of this subject. I have myself given some

attention to it, to see how far it is within the constitutional power of Congress to prohibit trusts and combinations in restraint of trade. It is very clear there is no such power unless it is derived from the power of levying taxes—

Not from the power to regulate commerce, but from the power of levying taxes—

that it is a power which must be exercised by each State for itself. Similar laws have been passed in England and in other countries. Indeed, in Blackstone's Commentaries there are declarations and denunciations of trusts, monopolies, etc., as strong as can be written in the English language. Whether such legislation can be ingrafted in our peculiar system of government by the national authority there is some doubt. If it can be done at all, it must be done upon a tariff bill or upon a revenue bill. I do not see in what other way it can be done.

So at that time the Senator who is the author of this bill concurred in the views which I have expressed upon that subject; and on July 10 of the same year—I read from the CONGRESSIONAL RECORD, volume 19, part 7—the Senator introduced the following resolution:

Resolved, That the Committee on Finance be directed to inquire into and report, in connection with any bill raising or reducing revenue that may be referred to it, such measures as it may deem expedient to set aside, control, restrain, or prohibit all arrangements, contracts, agreements, trusts, or combinations between persons or corporations, made with a view, or which tend to prevent free and full competition in the production, manufacture, or sale of articles of domestic growth or production, or of the sale of articles imported into the United States, or which, against public policy, are designed or tend to foster monopoly or to artificially advance the cost to the consumer of necessary articles of human life, with such penalties and provisions, and as to corporations, with such forfeitures, as will tend to preserve freedom of trade and production, the natural competition of increasing production, the lowering of prices by such competition, and the full benefit designed by and hitherto conferred by the policy of the Government to protect and encourage American industries by levying duties on imported goods.

The referring of the matter to the Committee on Finance would have been inappropriate, unless it was designed that legislation on this subject should be a part of the revenue system of this country.

So that the Senator who is the author of this bill, with his great learning and his great experience and his well-trained mind, in the beginning of our consideration of this subject took the same view of it that I do. To show what he meant by taking jurisdiction of it in connection with the tariff and the power to levy taxes, I will read from a speech made by that Senator on January 4, 1888, in which he commented upon the President's message, quoting from the President as follows:

But it is notorious that this competition is too often strangled by combinations quite prevalent at this time, and frequently called trusts, which have for their object the regulation of the supply and price of commodities made and sold by members of the combination.

That was a quotation from the President. Now here is the reply of the Senator from Ohio:

When such combinations to prevent a reduction of price by fair competition exist, I agree that they may and ought to be met by a reduction of duty.

That is what was meant by the Senator from Ohio in restricting the power of Congress over the subject of trusts to legislation in connection with the revenue laws of the country.

Mr. President, I have said about all I desire to say on this subject at present. I shall offer some amendments to the bill at a later stage of these proceedings, based upon the ideas announced by the Senator from Ohio, amendments which look to a suspension or a reduction of the duties on imports where combinations and trusts have been formed in this country with reference to similar and competing articles.

I will also offer amendments which look to outlawing these trusts by preventing their admission into the courts of the United States to collect any debt due them or to redress any wrong done them; and also declaring the products and manufactures of all such trusts shall not be lawful subjects of interstate commerce.

For the present I desire simply to say in addition to what I have already said that the bill as now framed is ineffectual to carry out the objects and purposes for which it was introduced, and for which it was designed by its framer; that it is without constitutional authority, as settled by the Supreme Court of the United States in a long line of decisions coming down even to the present term of the court, and that in response to the demand of the people of this country, coming from every part of it, if we now pass this bill and nothing more we shall do nothing effectual in respect to the suppression of trusts. If the bill be constitutional it does not contain the provisions which are necessary to make it effective, and it does contain provisions which bring within the force and operation of the law numerous arrangements and agreements made by the producers of raw material in this country which have hitherto been regarded as a perfectly innocent exercise of the power of combination, and which have never been brought into operation to the extent of injuring a single human being, and which have been used solely for the purpose of defensive measures against the trusts which this bill vainly attempts to put down.

HOUSE BILLS REFERRED.

The following bills, received from the House of Representatives, were severally read twice by their titles, and referred to the Committee on Pensions:

A bill (H. R. 220) granting a pension to John J. Lockrey;

A bill (H. R. 2428) granting an increase of pension to William H. Koch;

A bill (H. R. 3888) granting a pension to Mary H. Stacy;

A bill (H. R. 5790) granting a pension to Mary Whitney;

A bill (H. R. 7566) granting a pension to George W. Lloyd;

A bill (H. R. 9462) restoring Mary Reynolds, widow of Lewis Reynolds, to the pension-roll;

A bill (H. R. 10216) granting a pension to William Fowler;

A bill (H. R. 10337) granting a pension to John Ebert;

A bill (H. R. 10879) increasing the pension of Permelia Smith;

A bill (H. R. 11311) granting a pension to James Metcalf;

A bill (H. R. 11515) granting a pension to Charles G. Sanders; and

A bill (H. R. 11571) granting a pension to Isham T. Howze.

The bill (H. R. 11779) for the relief of J. Harry Adams was read twice by its title, and referred to the Committee on Finance.

The bill (H. R. 317) for the relief of John W. Robinson was read twice by its title, and referred to the Committee on Military Affairs.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. CLARK, its Clerk, announced that the House had passed the following bills; in which it requested the concurrence of the Senate:

A bill (H. R. 12329) making appropriations for the naval service for the fiscal year ending June 30, 1890, and for other purposes; and

A bill (H. R. 10614) to organize the Territory of Oklahoma, and for other purposes.

ELIZABETH J. ALEXANDER.

Mr. SAWYER. I wish to submit a conference report. The House of Representatives has receded from its disagreement and no action is required by the Senate.

The report was read, as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House of Representatives to the bill (S. 3135) granting an increase of pension to Elizabeth J. Alexander, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its amendment.

PHILETUS SAWYER,
C. K. DAVIS,
D. TURPIE,
Managers on the part of the Senate.

A. M. BLISS,
R. R. BUTLER,
MILTON DE LANO,
Managers on the part of the House.

DR. JOHN B. READ.

Mr. EDMUNDS. I move that the proceedings of the board of Army officers—and I ask the attention of my friend of Alabama to it—convened at Washington under orders of the Secretary of War on the 18th of April, 1888, their report, and their proceedings under a recommitment in the War Department of their report, which are official papers, and which by a letter of the Secretary of War now in possession of the Senate in obedience to a resolution of the Senate of the last session were transmitted, and which have not been printed, may be printed, as the case of Dr. John B. Read is in the course of a few days about to come up, and these papers are very important in regard to its consideration. I ask an order that they may be printed. They are official papers.

The PRESIDENT *pro tempore*. The papers will be printed if there be no objection. The Chair hears none.

PERSONAL EXPLANATION.

Mr. SAULSBURY. I should like to make a little personal explanation.

During a speech on the 30th of January by the Senator from Oregon [Mr. DOLPH], wherein he was referring to the construction of the Canadian Pacific Railroad, I made the inquiry whether he was not informed that that railroad was built by an express condition, I meant to say with British Columbia, the condition being that that colony should become a part of the Dominion government. I inadvertently used the words "New Brunswick" and said that in a personal conversation with the governor of that province he had so informed me, that that was the condition upon which the railroad was built. I inadvertently used the words "New Brunswick" instead of "British Columbia."

I desire to make that correction because the conversation was with the governor of British Columbia and not with the governor of New Brunswick.

Mr. DOLPH. I simply wish to say that what followed by myself was necessarily based on what was said by the Senator from Delaware. I understood the condition had been made by British Columbia, but I had not heard that it had been made by New Brunswick.

Mr. SAULSBURY. I was reported as saying "New Brunswick" and undoubtedly I was correctly reported. It was a mere slip of the tongue, however, and I wanted to make this explanation because the conversation I had was with the governor of British Columbia and not with the governor of New Brunswick.

PETITIONS AND MEMORIALS.

Mr. PAYNE presented petitions of citizens of St. Mary's, Pagetown, and Morrow, in the State of Ohio, praying for the submission of a constitutional prohibitory amendment; which were ordered to lie on the table.