A bill (H. R. 16) to pension Hiram Wilbur.

Mr. DAVIS, from the Committee on Pensions, to whom was referred the bill (S. 3180) for the relief of John M. Robinson, asked to be discharged from its further consideration, and that it be referred to the Committee on Claims; which was agreed to.

Mr. FAULKNER, from the Committee on the District of Columbia, to whom was referred the bill (S. 1988) to establish a hospital and home for inebriates and dipsomaniacs in the District of Columbia, reported it with amendments.

He also, from the same committee, to whom was referred the bill (S. 3115) to punish the unlawful appropriation of the use of the property of another in the District of Columbia, reported it without amendment.

Mr. PLUMB. I am instructed by the Committee on Appropriations, to whom was referred the joint resolution (H. Res. 117) authorizing the appointment of thirty medical examiners for the Bureau of Pensions, fixing their salaries, and appropriating money to pay the same to June 30, 1890, to report it without amendment.

The VICE-PRESIDENT. The joint resolution will be placed on the Calendar.

Mr. PLUMB. I give notice that to-morrow, at the conclusion of the formal morning business, I shall ask the Senate to proceed to the consideration of the joint resolution which I have just reported.

Mr. COCKRELL. I desire to state that that is not a unanimous report by any means, and that a motion will be made when the joint resolution comes up to strike out the words providing that the examination for the appointment of these medical examiners shall be in the discretion and under the direction of the Secretary of the Interior. I give notice that I shall move to strike that out and subject these gentlemen to examination and appointment under the civil-service law and regulations to which the Republican party is solemnly pledged.

Mr. PASCO, from the Committee on Public Buildings and Grounds, to whom was referred the bill (S. 249) providing for the completion of the public building in the city of Pensacola, Fla., as originally designed, reported it with an amendment, and submitted a report thereon.

FORT ABRAHAM LINCOLN, NORTH DAKOTA.

Mr. PIERCE. I ask that the action by which the bill (S. 1406) making appropriation for extending and repairing the military quarters at Fort Abraham Lincoln, North Dakota, was indefinitely postponed yesterday be reconsidered, and the bill placed on the Calendar.

The VICE-PRESIDENT. That order will be made if there be no objection. The Chair hears none and it is so ordered.

BILLS INTRODUCED.

Mr. MANDERSON introduced a bill (S. 3209) providing for the extension of the coal laws of the United States to the district of Alaska; which was read twice by its title, and referred to the Committee on Public Lands.

Mr. FARWELL introduced a bill (S. 3210) granting an increase of pension to George W. Shears; which was read twice by its title, and referred to the Committee on Pensions.

Mr. SHERMAN introduced a bill (S. 3211) for the relief of Carl F. Kolbe; which was read twice by its title, and referred to the Committee on Claims.

He also introduced a bill (S. 3212) for the relief of Jacob Barr; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Military Affairs.

Mr. PADDOCK introduced a bill (S. 3213) to make the Commissioner of Fish and Fisheries an officer of the Department of Agriculture, and for other purposes; which was read twice by its title, and referred to the Committee on Agriculture and Forestry.

He also introduced a bill (S. 3214) granting a pension to Mary S. Miller; which was read twice by its title, and referred to the Committee on Pensions.

He also introduced a bill (S. 3215) to remove the charge of desertion from the military record of De Witt C. Hood; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Military Affairs.

Mr. MOODY. My colleague [Mr. PETTIGREW] has prepared two bills, but he is necessarily absent now on account of his position as a member of the Committee on Immigration. At his request I introduce the bills for proper reference.

The bill (S. 3216) to ratify and confirm an agreement with the Sisseton and Wahpeton bands of Dakota or Sioux Indians, and for other purposes was read twice by its title, and referred to the Committee on Indian Affairs; and

The bill (S. 3217) to authorize the Pierre and Fort Pierre Ponton Bridge Company to construct a ponton bridge across the Missouri River at Pierre, S. Dak., was read twice by its title, and referred to the Committee on Commerce.

Mr. COKE introduced a bill (S. 3218) for the relief of Adams & Wickes; which was read twice by its title, and referred to the Committee on Claims.

Mr. BARBOUR (by request) introduced a bill (S. 3219) to authorize the Washington and Western Railroad Company of Virginia to extend its line into and within the District of Columbia; which was read twice by its title, and referred to the Committee on the District of Columbia.

Mr. TELLER introduced a bill (S. 3220) increasing the pension of Isaiah Mitchell; which was read twice by its title, and referred to the Committee on Pensions.

Mr. DAVIS introduced a bill (S. 3221) granting a pension to Kate M. Smith; which was read twice by its title, and referred to the Committee on Pensions.

He also introduced a bill (S. 3222) granting a pension to Jared D. Wheelock; which was read twice by its title, and referred to the Committee on Pensions.

He also introduced a bill (S. 3223) for the relief of C. T. Trowbridge, George D. Walker, and John A. Trowbridge; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Military Affairs.

Mr. CULLOM introduced a bill (S. 3224) granting a pension to Robert A. Stuart; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Pensions.

Mr. HOAR introduced a bill (S. 3225) to amend an act relating to the importing and landing of mackerel, etc., approved February 28, 1887; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Fisheries.

ENROLLED BILLS SIGNED.

A message from the House of Representatives, by Mr. MCPHERSON, its Clerk, announced that the Speaker of the House had signed the following enrolled bills; and they were thereupon signed by the Vice-President:

A bill (H. R. 5751) to increase the pension of Isaac Endaly;

A bill (S. 140) to prevent the introduction of contagious diseases from one State to another and for the punishment of certain offenses;

A bill (H. R. 3592) granting a pension to Mrs. Anna Butterfield;

A bill (H. R. 417) for the erection of a public building at Houlton, Me.; and

A bill (S. 1332) granting to the city of Colorado Springs, in the State of Colorado, certain lands therein described for water reservoirs.

TRUSTS AND COMBINATIONS.

The VICE-PRESIDENT. Is there further morning business?

Mr. SHERMAN. If there is no further morning business, I move that the Senate proceed to the consideration of the bill (S. 1) to declare unlawful trusts and combinations in restraint of trade and production. It is really the unfinished business.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill.

Mr. SHERMAN. I ask that the bill be read.

The VICE-PRESIDENT. The bill will be read at length.

The Chief Clerk read the bill.

Mr. SHERMAN. I will state that upon further consideration the Committee on Finance have reported a substitute for the bill, which I ask to have read.

The VICE-PRESIDENT. The substitute proposed by the Committee on Finance will be read.

The CHIEF CLERK. The Committee on Finance report to strike out all after the enacting clause of the bill and to insert:

That all arrangements, contracts, agreements, trusts, or combinations between two or more citizens or corporations, or both, of different States, or between two or more citizens or corporations, or both, of the United States and foreign states, or citizens or corporations thereof, 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, or with a view or which tend to prevent full and free competition in articles of growth, production, or manufacture of any State or Territory of the United States with similar articles of the growth, production, or manufacture of any other State or Territory, or in the transportation or sale of like articles, the production of any State or Territory of the United States into or within any other State or Territory of the United States; and all arrangements, trusts, or combinations between such citizens or corporations, made with a view or which tend to advance the cost to the consumer of any such articles, are hereby declared to be against public policy, unlawful, and void. And the circuit court of the United States shall have original jurisdiction of all suits of a civil nature at common law or in equity arising under this section, and to issue all remedial process, orders, or writs proper and necessary to enforce its provisions. And the Attorney-General and the several district attorneys are hereby directed, in the name of the United States, to commence and prosecute all such cases to final judgment and execution.

SEC. 2. That any person or corporation injured or damnified by such arrangement, contract, agreement, trust, or combination defined in the first section of this act may sue for and recover, in any court of the United States of competent jurisdiction, without respect to the amount involved, of any person or corporation a party to a combination described in the first section of this act, twice the amount of damages sustained and the costs of the suit, together with a reasonable attorney's fee.

Mr. REAGAN. If the Senator from Ohio will permit me and if it is the proper time now, I wish to present for consideration the amendment that I submitted on a former day.

Mr. SHERMAN. It would not now be in order. An amendment is pending.

Mr. REAGAN. It is an amendment in the second degree, and I believe that is allowable under the rules.

Mr. SHERMAN. If the Senator prefers to offer it now, very well.

Mr. REAGAN. I desire to do so now because I do not wish to be cut out by some other amendment coming in ahead.

Mr. SHERMAN. Very well; offer it now and let it be pending.

Mr. REAGAN. I offer it now, not to interfere with the Senator from Ohio at all.

Mr. PLATT and Mr. ALLISON. Let it be read.

The VICE-PRESIDENT. The amendment proposed by the Senator from Texas [Mr. REAGAN] will be read.

The CHIEF CLERK. It is proposed to substitute for the amendment reported by the Committee on Finance the following:

That all persons engaged in the creation of any trust, or as owner or part owner, agent, or manager of any trust, employed in any business carried on with any foreign country, or between the States, or between any State and the District of Columbia, or between any State and any Territory of the United States, or any owner or part owner, agent, or manager of any corporation using its powers for either of the purposes specified in the second section of this act, shall be deemed guilty of a high misdemeanor, and, on conviction thereof, shall be fined in a sum not exceeding $10,000, or imprisonment at hard labor in the penitentiary not exceeding five years, or by both of said penalties, in the discretion of the court trying the same.

SEC. 2. That a trust is a combination of capital, skill, or acts by two or more persons, firms, corporations, or associations of persons, or of any two or more of them for either, any, or all of the following purposes:

First. To create or carry out any restrictions in trade.

Second. To limit or reduce the production or to increase or reduce the price of merchandise or commodities.

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

Fourth. To fix a standard or figure whereby the price to the public shall be in any manner controlled or established of any article, commodity, merchandise, produce, or commerce intended for sale, use, or consumption.

Fifth. To create a monopoly in the making, manufacture, purchase, sale, or transportation of any merchandise, article, produce, or commodity.

Sixth. To make or enter into or execute or carry out any contract, obligation, or agreement of any kind or description by which they shall bind or shall have bound themselves not to manufacture, sell, dispose of, or transport any article or commodity or article of trade, use, merchandise, or consumption below a common standard figure, or by which they shall agree, in any manner, to keep the price of such article, commodity, or transportation at a fixed or graduated figure, or by which they shall, in any manner, establish or settle the price of any article, commodity, or transportation between themselves or between themselves and others, so as to preclude free and unrestricted competition among themselves and others in the sale and transportation of any such article or commodity, or by which they shall agree to pool, combine, or unite in any interest they may have in connection with the sale or transportation of any such article or commodity that its price may, in any manner, be so affected.

SEC. 3. That each day any of the persons, associations, or corporations aforesaid shall be engaged in violating the provisions of this act shall be held to be a separate offense.

The VICE-PRESIDENT. The question is on agreeing to the amendment submitted by the Senator from Texas to the amendment reported from the Committee on Finance.

Mr. SHERMAN. Mr. President, I did not originally intend to make any extended argument on this trust bill, because I supposed that the public facts upon which it is founded and the general necessity of some legislation were so manifest that no debate was necessary to bring those facts to the attention of the Senate.

But the different views taken by Senators in regard to the legal questions involved in the bill and the very able speech made by the Senator from Mississippi [Mr. GEORGE] relative to the details of the bill led me to the conclusion that it was my duty, having reported the bill from the Committee on Finance, to present in as clear and logical a way as I can the legal and practical questions involved in the bill.

Mr. President, the object of this bill, as shown by the title, is "to declare unlawful trusts and combinations in restraint of trade and production." It declares that certain contracts are against public policy, null and void. It does not announce a new principle of law, but applies old and well recognized principles of the common law to the complicated jurisdiction of our State and Federal Government. Similar contracts in any State in the Union are now, by common or statute law, null and void. Each State can and does prevent and control combinations within the limit of the State. This we do not propose to interfere with. The power of the State courts has been repeatedly exercised to set aside such combinations as I shall hereafter show, but these courts are limited in their jurisdiction to the State, and, in our complex system of government, are admitted to be unable to deal with the great evil that now threatens us.

Unlawful combinations, unlawful at common law, now extend to all the States and interfere with our foreign and domestic commerce and with the importation and sale of goods subject to duty under the laws of the United States, against which only the General Government can secure relief. They not only affect our commerce with foreign nations, but trade and transportation among the several States. The purpose of this bill is to enable the courts of the United States to apply the same remedies against combinations which injuriously affect the interests of the United States that have been applied in the several States to protect local interests.

The first section declares:

That all arrangements, contracts, agreements, trusts, or combinations between two or more citizens or corporations, or both, of different States, or between two or more citizens or corporations, or both, of the United States and foreign states or citizens or corporations thereof, 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; or with a view or which tend to prevent full and free competition in articles of growth, production, or manufacture of any State or Territory of the United States with similar articles of the growth, production, or manufacture of other State or Territory, or in the transportation or sale of like articles, the production of any State or Territory of the United States, into or within any other State or Territory of the United States; and all arrangements, trusts, or combinations between such citizens or corporations, made with a view or which tend to advance the cost to the consumer of any such article, are hereby declared to be against public policy, unlawful, and void. And the circuit courts of the United States shall have original jurisdiction in all suits of a civil nature at common law or in equity arising under this section, and to issue all remedial process, orders, or writs, proper and necessary to enforce its provisions, and the Attorney-General and the several district attorneys are hereby directed, in the name of the United States, to commence and prosecute all such cases to final judgment and execution.

This section will enable the courts of the United States to restrain, limit, and control such combinations as interfere injuriously with our foreign and interstate commerce, to the same extent that the State courts habitually control such combinations as interfere with the commerce of a State.

The question has arisen whether express jurisdiction should be conferred on the circuit courts of the United States to enforce this section, with authority to issue the ordinary remedial process of courts of law and equity, or whether such power is already sufficiently contained in the several acts organizing the courts of the United States. The third article of the Constitution vests the judicial power of the United States in one Supreme Court and in such inferior courts as Congress may ordain and establish.

The judiciary act of 1789 defines the jurisdiction of the several courts, and, by separate acts, this jurisdiction has been, from time to time, extended to new subjects of legislation. The committee therefore deemed it proper by express legislation to confer on the circuit courts of the United States original jurisdiction of all suits of a civil nature at common law or in equity arising under this section, with authority to issue all remedial process or writs proper and necessary to enforce its provisions, and to require the Attorney-General and the several district attorneys, in the name of the United States, to commence and prosecute all such suits to final judgment and execution.

The second section of the bill provides that any person or corporation injured or damnified by such a combination may sue for and recover in any court of the United States of competent jurisdiction, of any person or corporation a party to such a combination, all damages sustained by him. The measure of damages, whether merely compensatory, putative, or vindictive, is a matter of detail depending upon the judgment of Congress. My own opinion is that the damages should be commensurate with the difficulty of maintaining a private suit against a combination such as is described.

These two sections are distinct and different in their scope and object. The first invokes the power of the National Government, in proper cases, to restrain such a combination, by mandatory proceedings, from interfering with the trade and commerce of the country, and the second section is to give to private parties a remedy for personal injury caused by such a combination.

A third section was added when the bill was first reported by the Committee on Finance which declares that all persons entering into such a combination, either on his own account or as an attorney for another or as an officer, attorney, or as a trustee or in any capacity whatever, shall be guilty of a misdemeanor, and on conviction shall be punished by fine or imprisonment, in the discretion of the court.

The amendments, then, proposed by the Committee on Finance to the first section would be proper amendments to the third section, but not to the first, where they have no proper place. The first section, being a remedial statute, would be construed liberally, with a view to promote its object. It defines a civil remedy, and the courts will construe it liberally; they will prescribe the precise limits of the constitutional power of the Government; they will distinguish between lawful combinations in aid of production and unlawful combinations to prevent competition and in restraint of trade; they can operate on corporations by restraining orders and rules; they can declare the particular combination null and void and deal with it according to the nature and extent of the injuries.

In providing a remedy the intention of the combination is immaterial. The intention of a corporation can not be proven. If the natural effects of its acts are injurious, if they tend to produce evil results, if their policy is denounced by the law as against the common good, it may be restrained, be punished with a penalty or with damages, and in a proper case it may be deprived of its corporate powers and franchises. It is the tendency of a corporation, and not its intention, that the courts can deal with. Therefore the amendments first reported to the first section are not in the substitute.

The third section is a criminal statute, which would be construed strictly and is difficult to be enforced. In the present state of the law it is impossible to describe, in precise language, the nature and limits of the offense in terms specific enough for an indictment. This section is applicable only to individuals.

A corporation can not be indicted or punished except through civil process. The criminal law can only reach officers or agents employed by the corporation. Whether this law should extend to mere clerks, as was proposed in the third section, is a matter of grave doubt. The business conducted by them may be innocent and lawful, and they should not be punished or threatened for the offenses of others. I am, therefore, clearly of the opinion that at present at least it is not wise to include this section in this bill. Such penalties may come later when the limits of the power of Congress over the subject-matter shall be defined by the courts.

It is sometimes said that without this section the law would be nugatory. I do not think so. The powers granted by the first section are ample to check and prevent the great body of illegal combinations that

may be made; but, if not, it is easy enough hereafter to provide a suitable punishment for a violation of this statute. But if the criminal section is retained the amendments first proposed by the Committee on Finance should apply only to that section, and not to the civil section. Every corporation engaged in business must be responsible for the tendency of its business, whether lawful or unlawful, but individuals can only be punished for criminal intentions. To require the intentions of a corporation to be proven is to impose an impossible condition and would defeat the object of the law. To restrain and prevent the illegal tendency of a corporation is the proper duty of a court of equity. To punish the criminal intention of an officer is a much more difficult process and might be well left to the future.

This bill, as I would have it, has for its single object to invoke the aid of the courts of the United States to deal with the combinations described in the first section when they affect injuriously our foreign and interstate commerce and our revenue laws, and in this way to supplement the enforcement of the established rules of the common and statute law by the courts of the several States in dealing with combinations that affect injuriously the industrial liberty of the citizens of these States. It is to arm the Federal courts within the limits of their constitutional power that they may co-operate with the State courts in checking, curbing, and controlling the most dangerous combinations that now threaten the business, property, and trade of the people of the United States. And for one I do not intend to be turned from this course by fine-spun constitutional quibbles or by the plausible pretexts of associated or corporate wealth and power.

It is said that this bill will interfere with lawful trade, with the customary business of life. I deny it. It aims only at unlawful combinations. It does not in the least affect combinations in aid of production where there is free and fair competition. It is the right of every man to work, labor, and produce in any lawful vocation and to transport his production on equal terms and conditions and under like circumstances. This is industrial liberty and lies at the foundation of the equality of all rights and privileges.

The right to combine the capital and labor of two or more persons in a given pursuit with a community of profit and loss under the name of a partnership is open to all and is not an infringement of industrial liberty, but is an aid to production. The law of partnership clearly defines what is a lawful and what is an unlawful partnership. The same business is open to every other partnership, and, while it is a combination, it does not in the slightest degree prevent competition.

The combination of labor and capital in the form of a corporation to carry on any lawful business is a proper and useful expedient, especially for great enterprises of a quasi public character, and ought to be encouraged and protected as tending to cheapen the cost of production, but these corporate rights should be open to all upon the same terms and conditions. Such corporations, being mere creatures of law, can only exercise the powers specially granted and defined. Experience has shown that they are the most useful agencies of modern civilization. They have enabled individuals to unite to undertake great enterprises only attempted in former times by powerful governments. The good results of corporate power are shown in the vast development of our railroads and the enormous increase of business and production of all kinds.

When corporations unite merely to extend their business, as connecting lines of railway without interfering with competing lines, they are proper and lawful. Corporations tend to cheapen transportation, lessen the cost of production, and bring within the reach of millions comforts and luxuries formerly enjoyed by thousands. Formerly corporations were special grants to favored companies, but now the principle is generally adopted that no private corporation shall be created with exclusive rights or privileges. The corporate rights granted to one are open to all. In this way more than three thousand national banks have been formed with the same rights and privileges, and the business is open to all competitors. In most of the States general railroad laws provide the terms on which all railroads may be built, with like rights and privileges. Corporate rights open to all are not in any sense a monopoly, but tend to promote free competition of all on the same conditions. They are mere creatures of the law, to exercise only well defined powers, and are not in any way interfered with by this bill.

This bill does not seek to cripple combinations of capital and labor, the formation of partnerships or of corporations, but only to prevent and control combinations made with a view to prevent competition, or for the restraint of trade, or to increase the profits of the producer at the cost of the consumer. It is the unlawful combination, tested by the rules of common law and human experience, that is aimed at by this bill, and not the lawful and useful combination. Unlawful combinations made by individuals are declared by the several States to be against public policy and void, and in proper cases they may be punished as criminals. If their business is lawful they can combine in any way and enjoy the advantage of their united skill and capital, provided they do not combine to prevent competition. A limited monopoly secured by a patent right is an admitted exception, for this is the only way by which an inventor can be paid for his invention.

Any other attempt by individuals to secure a monopoly should be subject to the same law of restraint applied to partnerships and corporations. A partnership is unlawful when its business tends to restrain trade, to deal in forbidden productions, or to encourage immoral and injurious pursuits, such as lotteries and the like; but if its business is lawful and open to competition with others with like skill and capital, it can not be dangerous. A corporation may be, and usually is, a more powerful and useful combination than a partnership. It is an artificial person without fear of death, without a soul to save or body to punish; but if other corporations can be formed on equal terms a monopoly is impossible. If it becomes powerful enough to exercise an undue influence in one State it is met by free competition with producers in all the other States in the Union and by importation from all the world, subject only to such duties as the public necessities demand.

Mr. President, I have thus far confined my argument to the statement of what this bill does not do; that is, it does not interfere with any lawful business in the United States, whether conducted by a corporation, or a partnership, or an individual. It deals only with unlawful combinations, unlawful by the code of any law of any civilized nation of ancient or modern times.

But associated enterprise and capital are not satisfied with partnerships and corporations competing with each other, and have invented a new form of combination commonly called trusts, that seeks to avoid competition by combining the controlling corporations, partnerships, and individuals engaged in the same business, and placing the power and property of the combination under the government of a few individuals, and often under the control of a single man called a trustee, a chairman, or a president.

The sole object of such a combination is to make competition impossible. It can control the market, raise or lower prices, as will best promote its selfish interests, reduce prices in a particular locality and break down competition and advance prices at will where competition does not exist. Its governing motive is to increase the profits of the parties composing it. The law of selfishness, uncontrolled by competition, compels it to disregard the interest of the consumer. It dictates terms to transportation companies, it commands the price of labor without fear of strikes, for in its field it allows no competitors. Such a combination is far more dangerous than any heretofore invented, and, when it embraces the great body of all the corporations engaged in a particular industry in all of the States of the Union, it tends to advance the price to the consumer of any article produced, it is a substantial monopoly injurious to the public, and, by the rule of both the common and the civil law, is null and void and the just subject of restraint by the courts, of forfeiture of corporate rights and privileges, and in some cases should be denounced as a crime, and the individuals engaged in it should be punished as criminals. It is this kind of a combination we have to deal with now.

If the concentered powers of this combination are intrusted to a single man, it is a kingly prerogative, inconsistent with our form of government, and should be subject to the strong resistance of the State and national authorities. If anything is wrong this is wrong. If we will not endure a king as a political power we should not endure a king over the production, transportation, and sale of any of the necessaries of life. If we would not submit to an emperor we should not submit to an autocrat of trade, with power to prevent competition and to fix the price of any commodity. If the combination is confined to a State the State should apply the remedy; if it is interstate and controls any production in many States, Congress must apply the remedy. If the combination is aided by our tariff laws they should be promptly changed, and, if necessary, equal competition with all the world should be invited in the monopolized article. If the combination affects interstate transportation or is aided in any way by a transportation company, it falls clearly within the power of Congress, and the remedy should be aimed at the corporations embraced in it, and should be swift and sure.

Do I exaggerate the evil we have to deal with? I do not think so. I do not wish to single out any particular trust or combination. It is not a particular trust, but the system I am at. I will only cite a very few instances of combinations that have been the subject of judicial or legislative inquiry, to show what has been and what can be done by them.

I quote from the opinion of Judge Baxter, in the case of Handy *et al.*, trustees, *vs.* Cleveland and Marietta Railroad Company, Federal Reporter, volume 31, pages 689 to 693, inclusive, where it appears, to quote the exact language of the learned judge:

> That the Standard Oil Company and George Rice were competitors in the business of refining oil; that each obtained supplies in the neighborhood of Macksburgh, a station of said railroad, from whence the same was carried to Marietta or Cleveland, and that for this service both were equally dependent upon the railroad, then in the hands of the receiver.
>
> It further appears that the Standard Oil Company desired to "crush" Rice and his business, and that under a threat of building a pipe for the conveyance of its oil and withdrawing its patronage from the receiver, O'Day, one of its agents, "compelled" Terry, who was acting for and on behalf of the receiver, to carry its oil at 10 cents per barrel and charge Rice 35 cents per barrel for a like service, and pay the Standard Oil Company 25 cents out of the 35 cents thus exacted from Rice, "making," in the judgment of the receiver, "$25 per day clear money" for it (the Standard Oil Company) "on Rice's oil alone."

It also appears in an equity suit in which the Commonwealth of Pennsylvania was complainant and the Pennsylvania Railroad Company was

defendant, filed in the supreme court of Pennsylvania for the western district, in the year 1879, and where A. J. Cassatt, then third vice-president in charge of the transportation department of the Pennsylvania Railroad Company, testified that the Standard Oil Company were receiving over and above current drawbacks the following rebates and allowances, namely:

Forty-nine cents per barrel on crude oil from the Bradford oil region to tide water; 51½ cents per barrel on crude oil from the lower oil region to tide water; and 64½ cents on refined oil from Cleveland to tide water.

In the year 1878 the railroad shipments of oil had reached 13,700,000 barrels. Assuming 80 per cent. of this to be the traffic of the Standard Oil Company and that but 50 cents per barrel rebate was paid by the railroad companies, the annual illegal receipts by the Standard Oil Company would have been $5,480,000, not including the receipts of the American Transfer Company from such traffic as was not embraced within the 80 per cent. of the Standard Oil Company.

Another case of unlawful combination was the case of David M. Richardson *vs.* Russell A. Alger *et al.*, recently decided in the supreme court of the State of Michigan. I have the opinion by the chief-justice which sufficiently states the nature of the combination and the view taken of it by that court. This is quite a leading case. In order that I may not do injustice to any one I will lay before the Senate the judgment of the court in full, as expressed by the judges of the supreme court of Michigan:

Supreme court of the State of Michigan.

[David M. Richardson *vs.* Russell A. Alger *et al.* Filed November 15, 1889.]

SHERWOOD, C. J. I think no one can read the contract in question and fail to discover that considerations of public policy are largely involved. The intention of the agreement is to aid in securing the objects sought to be attained in the formation and organization of the Diamond Match Company. This object is openly and boldly avowed. Not only does this appear in its organization and in the business it proposes to conduct and in the modes and manner of carrying it on, but the testimony of General Alger himself avers it and settles its character beyond question. The organization is a manufacturing company. The business in which it is engaged is making friction matches. Its articles provide for the aggregation of an enormous amount of capital, sufficient to buy up and absorb all of that kind of business done in the United States and Canada, and to prevent any other person or corporation from engaging in or carrying on the same, thereby preventing all competition in the sale of the articles manufactured.

This is the mode of conducting the business and the manner of carrying it on. The sole object of the corporation is to make money by having it in its power to raise the price of the article or diminish the quantity to be made and used at its pleasure.

Thus, both the supply of the article and the price thereof are made to depend upon the action of a half-dozen individuals, more or less, to satisfy their cupidity and avarice, who may happen to have the controlling interest in this corporation—an artificial person—governed by a single motive or purpose, which is to accumulate money, regardless of the wants and necessities of over sixty millions of people.

The article thus completely under their control has, for the last fifty years, come to be regarded as one of necessity, not only in every household in the land, but one of daily use by almost every individual in the country. It is difficult to conceive of a monopoly which can affect a greater number of people, or one more extensive in its effect in the country, than that of the Diamond Match Company. It was to aid that company in its purposes, and in carrying out its object that the contract in this suit was made between these parties, and which we are now asked to aid in enforcing it.

Monopoly in trade, or in any kind of business in this country, is odious to our form of government. It is sometimes permitted to aid the Government in carrying on a great public enterprise or public work under governmental control in the interest of the public. This tendency is, however, destructive of free institutions and repugnant to the instincts of a free people, and contrary to the whole scope and spirit of the Federal Constitution, and is not allowed to exist, under express provision in several of our State constitutions.

Indeed, it is doubtful if free government can long exist in a country where such enormous amounts of money are allowed to be accumulated in the vaults of corporations, to be used at discretion in controlling the property and business of the country against the interests of the public and that of the people for the personal gain and aggrandizement of a few individuals.

It is always destructive of individual rights and of that free competition which is the life of business, and it revives and perpetuates one of the great evils which it was the object of the framers of our form of government to eradicate and prevent. It is alike destructive to both individual enterprise and individual prosperity, and therefore public policy is, and ought to be, as well as public sentiment, against it.

All combinations among persons or corporations for the purpose of raising or controlling the prices of merchandise or any of the necessaries of life are monopolies and intolerable, and ought to receive the condemnation of all courts.

In my judgment, not only is the enterprise in which the Diamond Match Company is engaged an unlawful one, but the contract in question in this case, being made to further its objects and purposes, is void, upon the ground that it is against public policy.

CHAMPLIN, J. I concur with the chief-justice in dismissing the bill of complaint for reasons which render it unnecessary to discuss the merits of the controversy between the parties.

It appears from the testimony that the Diamond Match Company was organized for the purpose of controlling the manufacture and trade in matches in the United States and Canada. The object was to get all the manufacturers of matches in the United States to enter into a combination and agreement, by which the manufacture and output of all the match factories should be controlled by the Diamond Match Company. Those manufacturers who would not enter into the scheme were to be bought out, those who proposed to engage in the business were to be bought off, and a strict watch was to be exercised to discover any person who proposed to engage in such business and he be prevented if possible.

All who entered into the combination and all who were bought off were required to enter into bonds to the Diamond Match Company that they would not, directly or indirectly, engage in the manufacture or sale of friction matches, nor aid nor assist nor encourage any one else in said business anywhere by doing it, so it might conflict with the business interest or diminish the sales or lessen the profits of the Diamond Match Company. These restrictions varied in individual cases as to the time it was to continue, from ten to twenty years. Thirty-one manufacturers, being substantially all the factories where matches were made in the United States, either went into the combination or were purchased by the Diamond Match Company, and out of this number all were closed except about thirteen.

General Alger was a witness in the case, and was asked by his counsel the following question:

"Q. It appears that during the years 1881 and 1882 large sums of money were expended to keep men out of the match business, remove competition, buy machinery and patents, and in some instances purchase other match factories. I will ask you to state the reasons, if any there are, why those sums should not be treated as an expense of the business and charged off from this account."

To which he replied: "Because the prices of matches were kept up to correspond so as to pay these expenses and make large dividends above what could have been made had those factories been in the market to compete with the business."

It also appears from the testimony of General Alger that the organization of the Diamond Match Company was in a measure due to his exertions. There is no doubt that all the parties to this suit were active participants in perfecting the combination called the Diamond Match Company, and that the present dispute grows out of that transaction, and is the fruit of the scheme by which all competition in the manufacture of matches was stifled, opposition in the business crushed, and the whole business of the country in that line engrossed by the Diamond Match Company.

Such a vast combination as has been entered into under the above name is a menace to the public; its object and direct tendency is to prevent free and fair competition and control prices throughout the national domain. It is no answer to say that this monopoly has in fact reduced the price of friction matches. That policy may have been necessary to crush competition. The fact exists that it rests in the discretion of this company at any time to raise the price to an exorbitant degree. Such combinations have frequently been condemned by courts as unlawful and against public policy:

Hooker *vs.* Vandemater, 4 Denio, 349.
Stanton *vs.* Allen, 5 Denio, 434.
Marice Run Coal Company *vs.* Barclay Coal Company, 68 Pa., 186.
Central Ohio Salt Company *vs.* Guthrie, 35 Ohio St., 672.
Craft *vs.* McConoughy, 79 Ill., 346.
Hoffman *vs.* Brooks, 11 Week. Law. Bl., 358.
Hannah *vs.* Fife, 27 Mich., 172.
Alger *vs.* Thatcher, 19 Pick., 59.

It is also well settled that if a contract be void as against public policy the court will neither enforce it while executory, nor relieve a party from loss by having performed it in part:

Foot *vs.* Emerson, 10 Vt., 44; and see Hannah *vs.* Power, 8 Dana, 91.
Pratt *vs.* Adams, 7 Paige, 616.
Piatt *vs.* Oliver, 1 McLain, 300.
Piatt *vs.* Oliver, 2 McLain, 277.
Stanton *vs.* Allen, 5 Denio, 434.

It is not necessary that the parties, or either of them, should rely upon the fact that the contract is one which it is against the policy of the law to enforce. Courts will take notice of their own motion of illegal contracts which come before them for adjudication, and will leave the parties where they have placed themselves.

Campbell, J., concurred with Mr. Justice Champlin.

Mr. PLATT. What was the conclusion of the court?

Mr. SHERMAN. They declared the combination null and void, against public policy, and refused to entertain jurisdiction to settle the accounts between the parties, because this case arose on a dispute between two of the parties, Mr. Richardson and General Alger. They declared it unlawful and void and set aside the contract.

Mr. PLATT. If the Senator will permit me, the object of my inquiry was to make it appear clearly that the court as at present constituted has so decided.

Mr. SHERMAN. That was a State matter between parties living within the State, and therefore did not involve any of the questions which are requisite to impart jurisdiction to United States courts under this bill.

Mr. CULLOM. Where was this?

Mr. SHERMAN. It was in Michigan. The supreme court of Michigan made the decision. I have here the case of Craft *et al. vs.* McConoughy, in the supreme court of Illinois, reported in the seventy-ninth volume of Illinois Reports. I am showing that the State courts in different States have declared this thing, when it exists in a State, to be unlawful and void.

Mr. CULLOM. Everywhere.

Mr. SHERMAN. In every case, everywhere, and all I wish is to have the courts of the United States do by these greater combinations what has been done already by the courts of the States.

In the case of Richard C. Craft *et al. vs.* James O. McConoughy, in the supreme court of Illinois, reported in the seventy-ninth volume of Illinois Reports, it was decided that—

A contract entered into by the grain dealers of a town which, on its face, indicates that they have formed a partnership for the purpose of dealing in grain, but the true object of which is to form a secret combination which would stifle all competition and enable the parties, by secret and fraudulent means, to control the price of grain, costs of storage, and expense of shipment at such town, is in restraint of trade, and consequently void on the ground of public policy.

I will insert in my remarks the decision of Mr. Justice Craig without reading it at this time.

Mr. GEORGE. Will the Senator state what was the decision of the court in that case?

Mr. SHERMAN. They set aside the contract.

Mr. GEORGE. The suit was to annul the contract?

Mr. SHERMAN. To annul the contract, and they said they would treat it as illegal. This is the decision:

While these parties were in business, in competition, they had the undoubted right to establish their own rates for grain stored and commissions for shipment and sale. They would pay as high or low a price for grain as they saw proper and as they could make contracts with the producer. So long as competition was free the interest of the public was safe. The laws of trade, in connection with the rigor of competition, was all the guaranty the public required, but the secret combination created by the contract destroyed all competition and created a monopoly, against which the public interest had no protection.

I find another case, that of the Chicago Gas-Light and Coke Company *vs.* The People's Gas-Light and Coke Company, on page 531, 121 Illinois Reports, in which it appears that the Chicago Gas-Light and Coke Company was incorporated in 1849 with the exclusive privilege of supplying Chicago and its inhabitants with gas for a period of ten years. Subsequently another company, under the name of the People's Gas-Light and Coke Company, was chartered, with power to manufacture and sell gas in the city of Chicago and to erect the necessary apparatus for that purpose, with the usual provisions as to laying their pipes in the streets of the city. Subsequently the two companies divided the city between them, allowing each the exclusive right of supplying gas therein for one hundred years and stipulating that neither would interfere with the business of the other in its own territory.

Here is the judgment of the court setting aside that contract as preventing competition, as null and void by the rules of the common law. I have only now been able to get this, but I will see that it is correctly quoted from the regular report, and will read the brief statement I have:

The defendant company, claiming as the assignee of the exclusive privilege in the territory set off to it, filed a bill against the other for a specific performance of the contract of assignment. The court refused the relief sought, holding "that by the grant of the second charter the Legislature intended to do away with the monopoly" granted under the first; "that, although the contract involved a partial restraint of trade, and therefore might not, by the general rule of law, be invalid, yet that the general rule does not apply to corporations engaged in a public business in which the public have an interest," and that the contract was void.

In a recent case, that of the People of Illinois *vs.* The Chicago Gas Trust Company, which I find reported in a late paper—

the trust combination consisted of a new corporation holding a separate charter under the general incorporation law of Illinois. In applying for its charter the Gas Trust Company stated the objects of its incorporation to be "the erection and operation of works in Chicago and other places in Illinois for the manufacture, sale, and distribution of gas and electricity, and to purchase and hold or sell the capital stock of any gas or electric company or companies in Chicago or elsewhere in Illinois." Having received its charter the company purchased a majority of the capital stock of each of the gas companies doing business in Chicago, four in number.

The information charges that, by so purchasing and holding a majority of the shares of the capital stock of each of the four companies, the appellee usurps and exercises "powers, liberties, privileges, and franchises not conferred by law."

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"That by purchasing and holding such stock it secured the control of each of the companies; that such control 'by the appellee, an outside and independent corporation, suppresses outside competition between them and destroys their diversity of interest and all motive for competition. There is thus built up a virtual monopoly in the manufacture and sale of gas.' It also held that 'a corporation thus formed for the purpose of manufacturing and selling gas * * * has no power to purchase and hold or sell shares of stock in other gas companies as an incident to the purpose of its formation, even though such power is specified in its articles of incorporation.'"

Mr. CULLOM. That is a recent decision.

Mr. SHERMAN. Yes, a very recent decision, and it has not yet gone into the reports. There is a still more recent case, and I am reminded of it by the remark of the Senator from Connecticut [Mr. PLATT], that of The People of New York *vs.* The North River Sugar-Refining Company, a trust which was investigated by a committee of the House of Representatives, of which Mr. Bacon was chairman, and which came before the supreme court of New York at circuit in January, 1889, was carried to the general term in November last, and is reported in volume 2, Abbott's New Cases, page 164, both decisions being against the defendant, a member of the so-called trust company. This is a statement of the case together with the decision of Mr. Justice Daniels in rendering judgment:

The case was that seventeen corporations, in at least six different States, all engaged in the sugar-refining business, arranged to transfer their stock to a board of eleven members and were to receive in return from the association shares of stock to be issued by it and to be distributed among the several corporations in proportion to the amounts of stock held by them. The profits of the business were to be divided among the holders of certificates for shares issued by the board. No limit for the duration of the association was fixed, and its capital stock was fixed at $50,000,000. A suit was brought by the attorney-general in the name of the people of New York against one of the associate corporations to vacate and annul its charter for "abuse of its powers" and for exercising "privileges or franchises not conferred upon it by law" by participating "in a combination with certain sugar refineries." Upon both grounds the court found against the defendant.

Daniels, Justice, in rendering his judgment, said:

"The defendant had disabled itself from exercising its functions and employing its franchises, as it was intended it should by the act under which it was incorporated, and had by the action which was taken placed itself in complete subordination to another and different organization, to be used for an unlawful purpose detrimental and injurious to the public. * * * This was a subversion of the object for which the company was created, and it authorized the attorney-general to maintain and prosecute this action to vacate and annul its charter."

This case may be said to be a leading case and was thoroughly discussed and considered. The opinion of the court at the general term pronounced by Mr. Justice Barrett covers the whole ground upon which the great body of the trusts in the United States rests. The suit presented the distinct question raised by many of the contracts which are the bases of these combinations. To use the language of that judge:

Any combination the tendency of which is to prevent competition in its broad and general sense, and to control, and thus at will enhance, prices to the detriment of the public, is a legal monopoly. And this rule is applicable to every monopoly whether the supply be restricted by nature or susceptible of indefinite production. The difficulty of effecting the unlawful purpose may be greater in the one case than in the other, but it is never impossible. Nor need it be permanent or complete. It is enough that it may be even temporarily and partially successful. The question in the end is, does it inevitably tend to public injury?

Then follows a long and elaborate decision, and I think it is the unanimous judgment of the court—at least I see no dissent marked, and I presume it is the unanimous judgment of that high court of the State of New York—in a case which occurred only last year when it had before it this sugar company. That being a corporation of New York, it could deal with that corporation alone, but the combination was between that company and sixteen others, if I remember aright—perhaps the number was greater. In the courts of the United States all of them might have been parties, but as a matter of course the supreme court of New York could not extend its jurisdiction beyond the limits of its own territory.

I might add to the cases cited innumerable cases in nearly all the States and in England, and in all of them it will appear that while the law in respect to contracts in restraint of trade and combinations to prevent competition and to advance the price of necessaries of life has varied somewhat, but in all of them, whether the combinations are by individuals, partnerships, or corporations, when the purpose of the combination or its plain tendency is to prevent competition, the courts have enforced the rule of the common law and have vigorously used the judicial power in subverting them.

And now it is for Congress to say, when the devices of able lawyers and the cupidity of powerful corporations have united to spread these combinations over all the States of the Union, embracing in their folds nearly every necessary of life, whether it is not time to invoke the judicial power conferred upon the courts of the United States to deal with these combinations; when lawful to support them and when unlawful to suppress them.

I might state the case of all the combinations which now control the transportation and sale of nearly all the leading productions of the country that have recently been made familiar by the public press, such as the cotton trust, the whisky trust, the sugar-refiners' trust, the cotton-bagging trust, the copper trust, the salt trust, and many others, some of which have been the subjects of legislative inquiry and others of judicial process; but it is scarcely necessary to do so, as they are all modeled upon the same plan and involve the same principles. They are all combinations of corporations and individuals of many States forming a league and covenant, under the control of trustees with power to suspend the production of some and enlarge the production of others, and absolutely control the supply of the article which they produce, and with a uniform design to prevent competition, to break it down wherever it appears to threaten their interest.

I have seen within a few days in the public prints a notice of a combination intended to affect the price of silver bullion, as follows:

WITH A CAPITAL OF TWENTY-FIVE MILLION DOLLARS.

CHICAGO, *March* 2.

The Herald to-day says that, with the exception of five companies, all the refining and smelting companies of the United States have formed a trust, with a capital of $25,000,000, of which $15,000,000 is to be common stock and the remaining preferred.

If such a combination is formed it will enable a few corporations in different States to corner the Government of the United States in its proposed effort, by a bill pending in the Senate, to purchase silver bullion as the basis and security for paper money. Can any one doubt that such a combination is unlawful, against public policy, with power enough to control the operation of your laws, and destructive to all competition which you invite? It is scarcely necessary on this point to quote further from the law books. Every decision or treatise on the law of contracts agrees in denouncing such a combination.

Judge Gibson, in the case of the Commonwealth of Pennsylvania *vs.* Carlisle, states the general principle in terse and vigorous language:

A combination is criminal whenever the act to be done has a necessary tendency to prejudice the public or to oppress individuals by unjustly subjecting them to the power of the confederates, and giving effect to the purpose of the latter, whether of extortion or of mischief.

The solicitor of the Standard Oil Trust, Mr. Dodd, in an argument which I have before me, admits that certain combinations are null and void. He says:

When I speak of unrestricted combinations I do not mean that combinations should be allowed under all circumstances and for all purposes. While combination is not, *per se*, evil, its purposes may be. The law is possibly our best guide on this subject. It has progressed as experience and the necessities of business required it to progress, from the idea that all combinations were wrong to the idea that all persons should be left free to combine for all legitimate purposes. To this day, however, the law is properly very jealous of certain classes of combinations, such as—

First. Where the parties combining exercise a public employment or possess exclusive privileges, and are to that extent monopolies.

Second. Where the purpose and effect of the combination is to "corner" any article necessary to the public.

Third. Where the purpose and effect of the combination is to limit production, and thereby to unduly enhance prices.

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These things are just as unlawful without combination as with it. In other words, the evil is not in the combination, but in its purposes and results.

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The law condemns any arrangement the purpose or necessary tendency of which is to destroy all competition and thus to prejudice the public.

I accept the law as stated by Mr. Dodd, that all combinations are not void, a proposition which no one doubts, but I assert that the tendency of all combinations of corporations, such as those commonly called trusts, and the inevitable effect of them, is to prevent competition and to restrain trade. This must be manifest to every intelligent mind. Still this can not be assumed as against any combination unless upon a fair hearing it should appear to a court of competent jurisdiction that the agreement composing such combination is necessarily injurious to the public and destructive to fair trade. These modern combinations are uniformly composed of citizens and corporations of many States, and therefore they can only be dealt with by a jurisdiction as broad as their combination. The State courts have held in many cases that they can not interfere in controlling the action of corporations of other States. If corporations from other States do business within a State, the courts may control their action within the limits of the State, but when a trust is created by a combination of many corporations from many States, there are no courts with jurisdiction broad enough to deal with them except the courts of the United States.

I admit that it is difficult to define in legal language the precise line between lawful and unlawful combinations. This must be left for the courts to determine in each particular case. All that we, as lawmakers, can do is to declare general principles, and we can be assured that the courts will apply them so as to carry out the meaning of the law, as the courts of England and the United States have done for centuries. This bill is only an honest effort to declare a rule of action, and if it is imperfect it is for the wisdom of the Senate to perfect it. Although this body is always conservative, yet, whatever may be said of it, it has always been ready to preserve, not only popular rights in their broad sense, but the rights of individuals as against associated and corporate wealth and power.

It is sometimes said of these combinations that they reduce prices to the consumer by better methods of production, but all experience shows that this saving of cost goes to the pockets of the producer. The price to the consumer depends upon the supply, which can be reduced at pleasure by the combination. It will vary in time and place by the extent of competition, and when that ceases it will depend upon the urgency of the demand for the article. The aim is always for the highest price that will not check the demand, and, for the most of the necessaries of life, that is perennial and perpetual.

But, they say, competition is open to all; if you do not like our prices, establish another combination or trust. As was said by the supreme court of New York, when the combination already includes all or nearly all the producers, what room is there for another? And if another is formed and is legal, what is to prevent another combination? Sir, now the people of the United States as well as of other countries are feeling the power and grasp of these combinations, and are demanding of every Legislature and of Congress a remedy for this evil, only grown into huge proportions in recent times. They had monopolies and mortmains of old, but never before such giants as in our day. You must heed their appeal or be ready for the socialist, the communist, and the nihilist. Society is now disturbed by forces never felt before.

The popular mind is agitated with problems that may disturb social order, and among them all none is more threatening than the inequality of condition, of wealth, and opportunity that has grown within a single generation out of the concentration of capital into vast combinations to control production and trade and to break down competition. These combinations already defy or control powerful transportation corporations and reach State authorities. They reach out their Briarean arms to every part of our country. They are imported from abroad. Congress alone can deal with them, and if we are unwilling or unable there will soon be a trust for every production and a master to fix the price for every necessity of life.

But it is said by the Senator from Mississippi [Mr. GEORGE], who honors me with his attention, that this bill is unconstitutional, that Congress can not confer jurisdiction on the courts of the United States in this class of cases. I respectfully submit that, in his subtle argument, he has entirely overlooked the broad jurisdiction conferred by the Constitution upon courts of the United States in ordinary cases of law and equity between certain parties, as well as cases arising under the Constitution, laws, and treaties of the United States. Much the greater proportion of the cases decided in these courts have no relation to the Constitution, laws, or treaties. They embrace admiralty and maritime law, all controversies in which the United States are a party, controversies between two or more States, between a State and citizens of another State, between citizens of different States, between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign states, citizens, or subjects.

This jurisdiction embraces the whole field of the common law and of commercial law, especially of the law of contracts, in all cases where the United States is a party and in all cases between citizens of different States. The jurisdiction is as broad as the earth, except only it does not extend to controversies within a State between citizens of a State. All the combinations at which this bill aims are combinations embracing persons and corporations of several States. Each State can deal with a combination within the State, but only the General Government can deal with combinations reaching not only the several States, but the commercial world. This bill does not include combinations within a State, but if the Senator from Mississippi can make this clearer any proposition he will make to that effect will certainly be accepted and I will cheerfully vote for his proposition. Can any one doubt the jurisdiction of the courts of the United States in all cases in which the United States is a party and in all cases between citizens, including corporations, of different States? I will read a note from Story on the Constitution:

It has been very correctly remarked by Mr. Justice Iredell that "the judicial power of the United States is of a peculiar kind. It is, indeed, commensurate with the ordinary legislative and executive government and the powers which concern treaties. But it also goes further. When certain parties are concerned, although the subject in controversy does not relate to any special objects of authority of the General Government, wherein the separate sovereignties of the separate States are blended in one common mass of supremacy, yet the General Government has a judicial authority in regard to such subjects of controversy; and the Legislature of the United States may pass all laws necessary to give such judicial authority its proper effect.

The judicial power of the United States extends to all questions of law and equity which arise between citizens of different States or between the other classes named. The jurisdiction of the courts of the United States may depend either upon the nature of the cause arising under the Constitution, laws, or treaties of the United States, or upon the parties to the case.

Chief-Justice Marshall, in the case of Cohens *vs.* Virginia, 6 Wheaton, page 378, says:

The second section of the third article of the Constitution defines the extent of the judicial power of the United States. Jurisdiction is given to the courts of the Union in two classes of cases. In the first, their jurisdiction depends on the character of the cause, whoever may be the parties. This class comprehends "all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority." This clause extends the jurisdiction of the court to all the cases described, without making in its terms any exceptions whatever, and without any regard to the condition of the party. If there be any exception, it is to be implied against the express words of the article.

In the second class the jurisdiction depends entirely on the character of the parties. In this are comprehended "controversies between two or more States, between a State and citizens of another State, and between a State and foreign states, citizens, or subjects." If these be the parties, it is entirely unimportant what may be the subject of controversy. Be it what it may, these parties have a constitutional right to come into the courts of the Union.

The same question was involved in the celebrated case of Osborn *vs.* Bank of the United States (9 Wheaton, page 738), in which it was contended that the courts of the United States could not exercise jurisdiction because several questions might arise in such suits, which might depend upon the general principles of law, and not upon any act of Congress. It was held that Congress did constitutionally possess the power and had rightfully conferred it in that charter. Chief-Justice Marshall said there, in one of the most famous of his opinions involving grave constitutional questions:

A cause may depend upon several questions of fact and law. Some of these may depend on the construction of a law of the United States; others, on principles unconnected with that law.

It was held in that case that the Bank of the United States being created by Congress the right might be conferred upon it by Congress to sue in the courts of the United States without respect to the nature or character of the controversy.

The clause giving the bank a right to sue in the circuit courts of the United States stands on the same principle with the acts authorizing officers of the United States who sue in their own names to sue in the courts of the United States.

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If it be said that a suit brought by the bank may depend in fact altogether on questions unconnected with any law of the United States, it is equally true with respect to suits brought by the Postmaster-General.

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Cases may also arise under laws of the United States by implication as well as by express enactment, so that due redress may be administered by the judicial power of the United States.

This goes to show that, the jurisdiction once acquired by having the parties before the court, it extends to any kind of remedial jurisdiction, any kind of a case.

It has also been asked, and may again be asked—

Chief-Justice Marshall says—

why the words "cases in equity" are found in this clause. What equitable causes can grow out of the Constitution, laws, and treaties of the United States? To this the general answer of the Federalist seems at once clear and satisfactory. There is hardly a subject of litigation between individuals which may not involve those ingredients of fraud, accident, trust, or hardship which would render the matter an object of equitable rather than of legal jurisdiction, as the distinction is known and established in several of the States. It is the peculiar province, for instance, of a court of equity to relieve against what are called hard bargains. These are contracts in which, though there may have been no direct fraud or deceit sufficient to invalidate them in a court of law, yet there may have been some undue and unconscionable advantage taken of the necessities or misfortunes of one of the parties which a court of equity would not tolerate.

By the Constitution of the United States this jurisdiction of the courts of the United States extends to all cases in law and equity between certain parties. What is meant by the words of "cases in law and equity?" Does this include only cases growing out of the Constitution, statutes, and treaties of the United States? It has been held over and over again that, by these words, the Constitution has adopted

as a rule of remedial justice the common law of England as administered by courts of law and equity.

Judge Story, in his work on the Constitution, volume 2, page 485, says:

What is to be understood by "cases in law and equity" in this clause? Plainly, cases at the common law, as contradistinguished from cases in equity, according to the known distinctions in the jurisprudence of England, which our ancestors brought with them upon their emigration, and with which all the American States were familiarly acquainted. Here, then, at least, the Constitution of the United States appeals to and adopts the common law to the extent of making it a rule in the pursuit of remedial justice in the courts of the Union. If the remedy must be in law or in equity, according to the course of proceedings at the common law, in cases arising under the Constitution, laws, and treaties of the United States, it would seem irresistibly to follow that the principles of decision by which these remedies must be administered must be derived from the same source. Hitherto such has been the uniform interpretation and mode of administering justice in all civil cases in the courts of the United States in this class of cases.

But I need not pursue the matter further. The question of the character and nature of the controversy when the proper legal parties are before the court is never entered into. In some cases, where the rules of law and equity have been modified by legislation, the courts of the United States have followed the local law as construed and administered by the courts of the State where the controversy arose, but it is clearly within the power of Congress to prescribe the rule as well as to define the methods of procedure in the courts of law and equity of the United States; so I submit that this bill as it stands, without any reference to the specific powers granted to Congress by the Constitution, is clearly authorized under the judicial article of the Constitution. This bill declares a rule of public policy in accordance with the rule of the common law. It limits its operation to certain important functions of the Government, among which are the importation, transportation, and sale of articles imported into the United States, the production, manufacture, or sale of articles of domestic growth or production, and domestic raw materials competing with a similar article upon which a duty is levied by the United States.

If this bill were broader than it is and declared unlawful all trusts and combinations in restraint of trade and production null and void, there could be no question that in suits brought by the United States to enforce it, or suits between individuals or corporations of different States for injuries done in violation of it, it would be clearly within the power of Congress and the jurisdiction of the court. The mere limitation of this jurisdiction to certain classes of combinations does not affect in the slightest degree the power of Congress to pass a much broader and more comprehensive bill.

Nor is it necessary to limit the jurisdiction of the courts of the United States to suits between citizens of different States. It extends also to suits by the United States when authorized by law. It is eminently proper that when a combination of persons or corporations of different States tends to affect injuriously the interests or powers of the United States, as well as of citizens of the United States, the proceeding should be in the courts of the United States and in the name of the United States. The legal process of quo warranto or mandamus ought, in such cases, to be issued at the suit of the United States. A citizen would appear in such a suit at every disadvantage, and even the United States is scarcely the equal of a powerful corporation in a suit where a single officer with insufficient pay is required to compete with the ablest lawyers encouraged with compensation far beyond the limits allowed to the highest government officer. It is in such proceedings that the battle with these great combinations is to be fought.

But, aside from the power drawn from the third article of the Constitution, I believe this bill is clearly within the power conferred expressly upon Congress to regulate commerce with foreign nations and among the several States and its power to levy and collects taxes, duties, imposts, and excises.

And here, Mr. President, I wish to again call attention to the argument of the Senator from Mississippi [Mr. GEORGE]. He treats this bill as a criminal statute from beginning to end, and not as a remedial statute with civil remedies. He says:

The first thing which attracts our attention, therefore, is that if the agreement or combination, which is the crime, be made outside of the jurisdiction of the United States it is also without the terms of the law and can not be punished in the United States.

It is true that if a crime is committed outside of the United States it can not be punished in the United States. But if an unlawful combination is made outside of the United States and in pursuance of it property is brought within the United States such property is subject to our laws. It may be seized. A civil remedy by attachment could be had. Any person interested in the United States could be made a party.

Either a foreigner or a native may escape "the criminal part of the law," as he says, by staying out of our jurisdiction, as very many do, but if they have property here it is subject to civil process. I do not see what harm a foreigner can do us if neither his person nor his property is here. He may combine or conspire to his heart's content if none of his co-conspirators are here or his property is not here.

Again he says:

But suppose, what I think, however, is highly improbable, some of these great combinations should be made in the United States. Will the case be any better for the people in whose interest we profess to legislate? The combination, agreement, or trusts, etc., must, under the bill, be made "with the intention to prevent full and free competition in the importation, transportation, or sale of articles imported into the United States."

The word "intention" is not in the bill. It was proposed as an amendment.

Mr. GEORGE. It was in the bill as reported.

Mr. SHERMAN. Ah, it was proposed as an amendment.

Mr. GEORGE. By the Committee on Finance?

Mr. SHERMAN. Yes, but the Senator treated it as being a part of the bill. It was a proposed amendment to the bill and was never adopted.

Mr. GEORGE. The original bill was proposed by the Senator from Ohio.

Mr. SHERMAN. That had no such word in it.

Mr. GEORGE. That had no such word in it, but when the bill came back from the committee it did have the word in it.

Mr. SHERMAN. But the bill as it comes from the committee now has certainly no such word in it. It was proposed as an amendment, but has no place in the first section. The language is: "made with a view or which tend." The "*intention*" can not be proved, though "*tendency*" can. The tendency is the test of legality. The intention is the test of a crime.

And so all through his speech he quotes the phrases of a "certain specified intent," "specific intent," "penal legislation," "reasonable doubt," "indicted must be acquitted." He treats this bill very much as he does the Constitution of the United States, something to be evaded, to be strictly construed, instead of being what it is, a remedial statute, a bill of rights, a charter of liberty. He no doubt is partly justified in this by the amendments proposed but not adopted, and by the third section, which would be subject to his criticism, and which I will join him in striking out.

Mr. GEORGE. It was an amendment proposed by the committee?

Mr. SHERMAN. Yes. Now, Mr. President, what is this bill? A remedial statute to enforce by civil process in the courts of the United States the common law against monopolies. How is such a law to be construed? Liberally with a view to promote its objects. What are the evils complained of? They are well depicted by the Senator from Mississippi in this language, and I will read it as my own with quotation marks.

Mr. GEORGE. I am very much obliged for the compliment.

Mr. SHERMAN. "These trusts and combinations are great wrongs to the people. They have invaded many of the most important branches of business. They operate with a double-edged sword. They increase beyond reason the cost of the necessaries of life and business, and they decrease the cost of the raw material, the farm products of the country. They regulate prices at their will, depress the price of what they buy and increase the price of what they sell. They aggregate to themselves great, enormous wealth by extortion which makes the people poor. Then, making this extorted wealth the means of further extortion from their unfortunate victims, the people of the United States, they pursue unmolested, unrestrained by law, their ceaseless round of peculation under the law, till they are fast producing that condition in our people in which the great mass of them are the servitors of those who have this aggregated wealth at their command."

One would think that with this conception of the evil to be dealt with he would for once turn his telescope upon the Constitution to find out power to deal with so great a wrong, and not, as usual, to reverse it, to turn the little end of the telescope to the Constitution, and then, with subtle reasoning, to dissipate the powers of the Government into thin air. He overlooks the judicial power of the courts of the United States extending to all cases where the United States is a party, or where a State may sue in the courts of the United States, or where citizens of different States are contesting parties with full power to apply a remedy by quo warranto, mandamus, judgment, and execution. He treats the question as depending alone upon the power to regulate foreign and domestic commerce and of taxation. I submit that, without reference to the judicial power, they are amply sufficient to justify this bill. What are they?

Congress shall have power to regulate commerce with foreign nations and among the several States and with the Indian tribes.

The want of this power was one of the leading defects of the Confederation, and probably as much as any one cause conduced to the establishment of a Constitution. It is a power vital to the prosperity of the Union; and without it the Government could scarcely deserve the name of a National Government and would soon sink into discredit and imbecility. It would stand as a mere shadow of sovereignty to mock our hopes and involve us in a common ruin. (Story on the Constitution, volume 2, page 2.)

What is the extent of this power? What is the meaning of the word "commerce?" It means the exchange of all commodities between different places or communities. It includes all trade and traffic, all modes of transportation by land or by sea, all kinds of navigation, every species of ship or sail, every mode of transit, from the dog-cart to the Pullman car, every kind of motive power, from the mule or horse to the most recent application of steam or electricity applied on every road, from the trail over the mountain or the plain to the perfected railway or the steel bridges over great rivers or arms of the sea. The power

of Congress extends to all this commerce, except only that limited within the bounds of a State.

Under this power no bridge can be built over a navigable stream except by the consent of Congress. All the network of railroads crossing from State to State, from ocean to ocean, from east to west, and from north to south are now curbed, regulated, and controlled by the power of Congress over commerce. Most of the combinations aimed at by this bill are directly engaged in this commerce. They command and control in many cases and even own some of the agencies of this commerce. They have invented or own new modes of transportation, such as pipelines for petroleum or gas, reaching from State to State, crossing farms and highways and public property.

Can it be that with this vast power Congress can not protect the people from combinations in restraint of trade that are unlawful by every code of civil law adopted by civilized nations? It may "regulate commerce;" can it not protect commerce, nullify contracts that restrain commerce, turn it from its natural courses, increase the price of articles, and therefore diminish the amount of commerce?

It is said that commerce does not commence until production ends and the voyage commences. This may be true as far as the actual ownership or sale of articles within a State is subject to State authorities. I do not question the decision of the Supreme Court in the case of Coe *vs.* Errol, quoted by the Senator from Mississippi, that property within a State is subject to taxation though intended to be transported into another State. This bill does not propose to deal with property within a State or with combinations within the State, but only when the combination extends to two or more States or engages in either State or foreign commerce. It is said that these combinations can and will evade this bill. I have no doubt they will do so in many cases, but they can do so only by ceasing to interfere with foreign and interstate commerce.

Their power for mischief will be greatly crippled by this bill. Their present plan of organization was adopted only to evade the jurisdiction of State courts. They still maintain their workshops, their mode of production, by means of partnerships or corporations in a State. If their productions competed with those of similar partnerships or corporations in other States it would be all right. But to prevent such competition they unite the interests of all these partnerships and corporations into a combination, sometimes called a trust, sometimes a new corporation located in a city remote from the places of production, and then regulate and control the sale and transportation of all the products of many States, discontinuing one at their will, some running at half time, others pressed at their full capacity, fixing the price at pleasure in every mart of the United States, dictating terms to transportation companies, controlling your commerce; and yet it is said that Congress, armed with full power to regulate commerce, is helpless and unable to deal with this monster.

Sir, the object aimed at by this bill is to secure competition of the productions of different States which necessarily enter into interstate and foreign commerce. These combinations strike directly at the commerce over which Congress alone has jurisdiction. "Congress may regulate interstate and foreign commerce," and it is absurd to contend that Congress may not prohibit contracts and arrangements that are hostile to such commerce.

Congress also has power "to lay and collect taxes, duties, imposts, and excises." It may exercise its own discretion in acting upon this power, and is only responsible to the people for the abuse of the power. All parties, from the foundation of the Government, have held that Congress may discriminate in selecting the objects and rates of taxation. Some of these taxes are levied for the direct and some for the incidental encouragement and increase of home industries. The people pay high taxes on the foreign article to induce competition at home, in the hope that the price may be reduced by competition, and with the benefit of diversifying our industries and increasing the common wealth.

Suppose one of these combinations should unite all, or nearly all, the domestic producers of an article of prime necessity with a view to prevent competition and to keep the price up to the foreign cost and duty added, would not this be in restraint of trade and commerce and affect injuriously the operation of our revenue laws? Can Congress prescribe no remedy except to repeal its taxes? Surely it may authorize the executive authorities to appeal to the courts of the United States for such a remedy, as courts habitually apply in the States for the forfeiture of charters thus abused and the punishment of officers who practice such wrongs to the public. It may also give to our citizens the right to sue for such damages as they have suffered.

In no respect does the work of our fathers in framing the Constitution of the United States appear more like the work of the Almighty Ruler of the Universe rather than the conception of human minds than by the gradual development and application of the powers conferred by it upon different branches of the Federal Government. Many of these powers have remained dormant, unused, but plainly there, awaiting the growth and progress of our country, and when the time comes and the occasion demands we find in that instrument, provided for thirteen States, a thread along the Atlantic and containing four millions of people, without manufactures, without commerce, bankrupt with debt, without credit or wealth, all the powers necessary to govern a continental empire of forty-two States, with sixty-five millions of people, the largest in manufactures, the second in wealth, and the happiest in its institutions of all the nations of the world.

While we should not stretch the powers granted to Congress by strained construction, we can not surrender any of them; they are not ours to surrender, but whenever occasion calls we should exercise them for the benefit and protection of the people of the United States. And, sir, while I have no doubt that every word of this bill is within the powers granted to Congress, I feel that its defects are in its moderation, and that its best effect will be a warning that all trade and commerce, all agreements and arrangements, all struggles for money or property, must be governed by the universal law that the public good must be the test of all.

Mr. INGALLS and Mr. VEST addressed the Chair.

The PRESIDING OFFICER (Mr. MANDERSON in the chair). Does the Senator from Kansas rise to speak to this bill?

Mr. INGALLS. I rose to inquire if an amendment in the second degree is now pending.

Mr. REAGAN. There is.

The PRESIDING OFFICER. The amendment of the Senator from Texas to the amendment reported from the Committee on Finance is pending.

Mr. INGALLS. I give notice, then, of my intention, when it shall be in order, to offer the amendment which I send to the desk, and which I ask may be now read, and ordered to be printed.

The PRESIDING OFFICER. The amendment will be read for the information of the Senate, and ordered to be printed.

The CHIEF CLERK. It is proposed to substitute the following:

That for the purposes of this act the words "options" shall be understood to mean any contract or agreement whereby a party thereto, or any person, corporation, partnership, or association for whom or in whose behalf such contract or agreement is made acquires the right or privilege, but is not thereby obligated, to deliver to another at a future time or period any of the articles mentioned in section 3 of this act.

SEC. 2. That for the purposes of this act the word "futures" shall be understood to mean any contract or agreement whereby a party agrees to sell and deliver at a future time to another any of the articles mentioned in section 3 of this act, when at the time of making such contract or agreement the party so agreeing to make such delivery, or the party for whom he acts as agent, broker, or employé in making such contract or agreement, is not at the time of making the same the owner of the article so contracted and agreed to be delivered.

SEC. 3. That the articles of which the foregoing sections relate are wheat, corn, oats, rye, barley, cotton, and all other farm products; also, beef, pork, lard, and all other hog and cattle products.

SEC. 4. That special taxes are imposed as follows: Dealers in "options" or "futures" shall pay annually the sum of $1,000, and shall also pay the further sum of 5 cents per pound for each and every pound of cotton, or of beef, pork, lard, or other hog and cattle products, and the sum of 20 cents per bushel for each and every bushel of any of the other articles mentioned in section 3 of this act, the right or privilege of delivering which may be acquired under any "options" contract or agreement, as defined by section 1 of this act, or which may be sold to be delivered at a future time or period under any "futures" contract or agreement as defined in section 2 of this act, which said amounts shall be paid to the collector of internal revenue, as hereinafter provided, and by him accounted for, as required in respect to other special taxes collected by him. Every person, association, copartnership, or corporation who shall, in their own behalf, or as broker, agent, or employé of another, deal in "options," or make any "options" contract or agreement, as hereinbefore defined, shall be deemed a dealer in "options," and every person, association, copartnership, or corporation who shall, in their own behalf or as broker, agent, or employé of another, deal in "futures," or make any "futures" contract or agreement, as hereinbefore defined, shall be deemed a dealer in "futures."

SEC. 5. That every person, association, copartnership, or corporation engaged in or proposing to engage in the business of dealer in "options" or of dealer in "futures" as hereinbefore defined shall, before commencing such business or making any such "options" or "futures" contract or agreement, make application in writing to the collector of internal revenue for the district in which he proposes to engage in such business or make such contract or agreement, setting forth the name of the person, association, partnership, or corporation, place of residence of the applicant, the business engaged in, and where such business is to be carried on, and in case of partnership, association, or corporation the names and places of residence of the several persons constituting the same, and shall thereupon pay to such collector the sum aforesaid of $1,000, and shall also execute and deliver to such collector a bond in the penal sum of $50,000, with two or more sureties satisfactory to the collector, conditioned upon the full and faithful compliance by the obligor therein with all the requirements of this act; and thereupon the collector shall issue to such applicant a certificate in such form as the Commissioner of Internal Revenue shall prescribe that such applicant is authorized for the period of one year from the date of such certificate to be a dealer in "options" or "futures" and to make "options" or "futures" contracts or agreements as hereinbefore defined, and for the period specified in such certificate the party to whom it is issued may conduct the business of dealer as aforesaid. Such certificate may be renewed annually upon the compliance with the provisions of this act, and any "options" or "futures" contract or agreement as defined by this act shall be absolutely void as between the parties thereto and their respective assigns unless the party making such contract or agreement shall have at the time of making the same a certificate as aforesaid authorizing the making thereof.

SEC. 6. That it shall be the duty of the collector to keep in his office a register containing a copy of each and every application made to him under the foregoing section and a statement in connection therewith as to whether a certificate had been issued thereon and for what period, which book or register shall be a public record and be subject to inspection of any and all persons desiring to examine the same.

SEC. 7. That every "option" or "futures" contract or agreement as hereinbefore defined shall be in writing and signed in duplicate by the parties making the same; and any such contract or agreement not so made and signed shall, as between the parties thereto and their assigns, be absolutely void.

SEC. 8. That it shall be the duty of every person, copartnership, association, or corporation, on the first day of the week next succeeding the date of the certificate issued to them, and on the first day of each and every week thereafter, to make to the collector of the district in which any "options" or "futures" contract or agreement has been made full and complete return and report, under oath, of any and all such contracts and agreements made or entered into by

such person, copartnership, association, or corporation during the previous week, together with a statement of the article or articles embraced in or covered by such contracts or agreements, and the amounts, respectively, of each, and the name of the party or parties with whom such contracts or agreements have been made, and at the same time to pay to such collector the amount of the tax hereinbefore required of 5 cents per pound on each and every pound of cotton, and of pork, lard, or other hog products, and of 20 cents per bushel on each and every bushel of any of the other articles mentioned in section 3 of this act, which are the subject of or covered by such contracts or agreements, or any of them, for which sums such collector shall give his receipt to the party so paying, and the sums so collected shall be accounted for by the collector as provided by law in respect to other taxes collected by him.

SEC. 9. That every person who shall, in his own behalf or in behalf of any other person, association, partnership, or corporation, enter into any "options" or "futures" contract or agreement, as defined by this act, without having a certificate of authority from the collector, as hereinbefore provided, and covering the time at which such contract or agreement shall be made, shall, besides being liable for the amounts prescribed in section 4 of this act, be fined not less than $5,000 and not more than $10,000 for each and every such offense. And every person who shall make to the collector a false or fraudulent return or report required by section 8 of this act shall be subject to a fine of not less than $5,000 nor more than $10,000, or to imprisonment for not less than six months or more than two years, or to both such fine and imprisonment.

SEC. 10. That neither the payment of the taxes required nor the certificate issued by the collector under this act shall be held to legalize dealing in options and futures, nor to exempt any person, association, copartnership, or corporation from any penalty or punishment, now or hereafter provided by the laws of any State for making contracts or agreements such as are hereinbefore defined as "options" or "futures" contracts or agreements, or in any manner to authorize the making of such contracts or agreements within any State or locality contrary to the laws of such State or locality; nor shall the payment of the taxes imposed by this act be held to prohibit any State or municipality from placing a tax or duty on the same trade, transaction, or business for State, municipal, or other purposes.

SEC. 11. That section 3209 of the Revised Statutes of the United States is, so far as applicable, made to extend and apply to the taxes imposed by this act and to the persons upon whom they are imposed.

Amend the title so as to read: "A bill to suppress and punish unlawful trusts and combinations, to prevent dealing in options and futures, and for other purposes."

Mr. VEST. Mr. President——

Mr. SHERMAN. Will the Senator from Missouri allow me to make a suggestion?

Mr. VEST. Certainly.

Mr. SHERMAN. I ask unanimous consent that the substitute reported from the Committee on Finance and read this morning may be considered as the text of the bill. It will be more convenient in offering amendments.

Mr. INGALLS. Then the amendment I have just submitted will be an amendment in the second degree and in order.

Mr. SHERMAN. It will be in order.

Mr. INGALLS. And the pending question?

The PRESIDING OFFICER. The pending question would then be on the amendment proposed by the Senator from Kansas. The Chair understands this to be the position of the question——

Mr. REAGAN. I understand the amendment offered by the Senator from Ohio——

Mr. SHERMAN. That is the amendment reported from the Committee on Finance.

Mr. REAGAN. I have offered an amendment to that in the nature of a substitute, which is pending. That is an amendment in the second degree.

The PRESIDING OFFICER. The Chair will state the parliamentary condition of the bill. The substitute reported by the committee upon the 18th day of March is considered as the original bill for the consideration of the Senate. The amendment proposed by the Senator from Texas [Mr. REAGAN] is an amendment in the first degree, and that proposed by the Senator from Kansas [Mr. INGALLS] an amendment in the second degree. The question now is on the amendment proposed as a substitute by the Senator from Kansas, on which the Senator from Missouri is entitled to the floor.

Mr. VEST. Mr. President, no one can exaggerate the importance of the question pending before the Senate or the intensity of feeling which exists, especially in the agricultural portions of the country in regard to it. I take it that there will be no controversy with the Senator from Ohio as to the enormity of the abuses that have grown up under the system of trusts and combinations which now prevail in every portion of the Union. What we desire is one thing; what we can accomplish under the autonomy of our Government is another.

We live, very fortunately, in my judgment, under a written Constitution, and we are governed by the decisions of the Supreme Court in regard to the legislative powers vested in us. Acts of Congress and treaties are the supreme law of the land, if in accordance with the Constitution. I deprecate as much as the Senator from Ohio can possibly do that spirit of hypercriticism which would consider the Constitution of the United States as a bill of indictment. I believe that it is a great bill of human rights, conservative, liberty-preserving, liberty-administering; and it is conservative, it preserves and administers liberty because it is a written Constitution and not because it is given to Congress to legislate as it sees proper, under the general and nebulous presumption of the general welfare, without regard to the grants that are made by the people to them as their legislative servants.

The grants of power to the courts of the United States are limited also by this written Constitution, and the grants of power in the judicial clause of the Constitution consist of two sorts: first, the jurisdiction which comes from the character of the litigants and, secondly, the jurisdiction that comes from the subject-matter involved. This is elementary law, and I simply announce it as one of the necessary premises in any discussion such as that in which we are now engaged.

As I understand the provisions of the original bill reported by the Senator from Ohio and the amendment which he offers now as a substitute, the attempt is made under one or the other of these two classes of jurisdiction, and then, permit me to say respectfully, by an uncertain and nebulous commingling of the two to give the power to Congress to pass this proposed act.

I know how ungrateful and dangerous it is now for a public man to object to this kind of legislation against this terrible evil, this enormous abuse of trusts and combines which the whole country is properly denouncing. I appreciate fully the significance of the remark of the Senator from Ohio when he says that unless relief is given, to use the language of Mr. Jefferson, "worse will ensue."

But, sir, even in the face of the popular indignation which may be visited upon any one who criticises any measure that looks to the destruction of this evil, I can not violate my oath to support the Constitution and all the habitudes of thought which have come to me as a lawyer educated and trained in my profession.

As I said, what we want is one thing, what we can do is another; and for Congress to pass a law which will be thrown out of the Supreme Court under the terrible criticism that any such law must invoke is simply to subject ourselves to ridicule and to say to our constituents that we are powerless to enact laws which will give them relief.

This bill, if it becomes a law, must go through the crucible of a legal criticism which will avail itself of the highest legal talent throughout the entire Union. It will go through a furnace not seven times but seventy-seven times heated, because the ablest lawyers in this country, it goes without saying, are on the side of the corporations and of aggregated wealth.

Without invoking this spirit of hypercriticism, which the Senator from Ohio deprecates, let us look at the provisions of the original bill and then of the amendment which he proposes shall take its place. In the original bill the Senator from Ohio undertakes to derive jurisdiction in Congress, not from the character of the litigants, but from the subject-matter in litigation, and this is evident from a cursory reading even of the first section of the original bill.

That all arrangements, contracts, agreements, trusts, or combinations between persons or corporations—

Not between corporations or persons residing in different States, not between corporations whose stockholders are citizens of different States, but 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, or in the production, manufacture, or sale of articles of domestic growth or production, or domestic raw material that competes with any similar article upon which a duty is levied by the United States, or which shall be transported from one State or Territory to another, etc.

Here the Senator from Ohio puts the legislative jurisdiction of Congress, which he invokes, not upon the fact that persons living in different States compose these corporations, but the subject-matter is invoked. It must be as to productions going from one State to another or coming from a foreign country into the area of territory composing the United States.

For the able argument of the Senator from Mississippi [Mr. GEORGE], I have no words to express my admiration as a lawyer. I was exceedingly glad that it was made, because it is just through that species of argumentation that this legislation must pass.

It must be subjected to the crucible which was brought here by the Senator from Mississippi in that admirable dissertation upon constitutional power. After that argument was made the Senator from Ohio found it necessary to amend this original bill, and he did so by putting into it another element of jurisdiction; and that was the character of the litigants, in addition to the jurisdiction he had already invoked as to the subject-matter. This is evident from the first clause of the substitute.

That all arrangements, contracts, agreements, trusts, or combinations between two or more citizens or corporations—

Now, there is the original bill, and if it had stopped there the substitute would have agreed with it, but mark the addition—

or both, of different States, or between two or more citizens or corporations, or both, of the United States and foreign states, or citizens or corporations thereof, made with a view, etc.

It is plain that the Senator from Ohio, recognizing the weakness of the original bill, then determined or attempted to invoke that idea which is found in the Constitution of the United States and the judiciary act of 1789, that citizenship in different States conferred Federal jurisdiction.

Now, let us see if the Senator by any such process as that can evade the argument made by the Senator from Mississippi. Sir, I shall not attempt to make any elaborate argument, but will simply read the Constitution and then inquire under what clause the legislative jurisdiction to enact this bill can be found. The Constitution of the United States provides as to the judicial power as follows:

The judicial power shall extend to all cases, in law and equity.

If it had stopped there much of the argument of the Senator from Ohio would have been pertinent; but it goes further:

All cases, in law and equity, arising under this Constitution.

That is to say, you must find the jurisdiction within the limits of this instrument.

Mr. SHERMAN. I do not want to interrupt the Senator, but he reads the clause relating to cases in law and equity when there is an independent clause relating to controversies between citizens of different States.

Mr. VEST. I will come to that.

Mr. SHERMAN. The decisions of Chief-Justice Marshall set forth the power distinctly.

Mr. VEST. I do not think there will be any disagreement among lawyers as to the meaning of this clause. I am simply analyzing the grants of the Constitution.

Mr. SHERMAN. I think Chief-Justice Marshall was a pretty good lawyer.

Mr. VEST. I am taking the clauses as they come. The first is:

All cases in law and equity arising under this Constitution—

Under this particular instrument, coming from the Constitution itself—

the laws of the United States—

There is another grant—

and treaties made, or which shall be made, under their authority.

Now, there are three distinct clauses of jurisdiction: first, under the Constitution; next, under the laws made in pursuance thereof; next, under the treaties made with foreign countries. It proceeds:

To all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States,—between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

Mr. President, let us take these clauses separately and see whether the power to pass this bill can be found under all or any of them. I shall reserve until the last my comments upon the first clause, which is, "To all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority," because I think it can be established beyond any doubt that the jurisdiction is not found in the other clauses that follow. If this bill can be sustained at all, it is because there is a clause in the Constitution which authorizes it outside of the other clauses, which I shall proceed to enumerate. For instance, the next clause is:

To all cases affecting ambassadors, other public ministers, and consuls.

Unquestionably the power is not there. No minister, no consul is involved in this legislation.

To all cases of admiralty and maritime jurisdiction.

Unquestionably it is not found there, because the bill proposes only to affect contracts made upon land, not upon the ocean, and there is no admiralty or maritime question involved. Next:

To controversies in which the United States shall be a party.

Unquestionably it does not affect that unless it be in that uncertain and unsatisfactory statement of the Senator from Ohio that he means in one clause of his amendment to give to the United States the power to proceed by *quo warranto*, injunction, or otherwise. In his original bill he had a direct criminal proceeding on the part of the Government of the United States against these trusts and he struck it out in the substitute. He has eliminated from this discussion the direct criminal proceeding in the name of the United States against the parties composing this trust and against the trust itself. There is no machinery provided for any proceeding by the United States in his amendment; but only the uncertain statement that the United States may proceed by remedial process. There is nothing else to lead us to believe that he intends that the United States shall do anything else except proceed in some fashion by information against the persons composing these trusts or the trusts themselves.

To controversies between two or more States.

Unquestionably the bill is not under that clause.

Between a State and citizens of another State.

There is nothing in this amendment which gives jurisdiction under that clause.

Between citizens of different States, between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign states, citizens, or subjects.

Of course there will be no contention that the jurisdiction is found under that clause. It must be then found under the clause——

Mr. SHERMAN. I have stated that the jurisdiction is sufficiently conferred in the ordinary language of the judiciary act of 1789, in all controversies in which the United States is a party and in controversies between citizens of different States.

Mr. VEST. Unquestionably.

Mr. SHERMAN. Those are the two clauses to which I referred. I did not claim any other power.

Mr. VEST. Unquestionably where there is any litigation between citizens of different States the Federal courts have jurisdiction, no matter what is the subject-matter. That is elementary law known to every student. But here is a bill which is put upon no such ground. The bill says:

All arrangements, contracts, agreements, trusts, or combinations between two or more citizens or corporations, or both, of different States, or between two or more citizens or corporations, or both, of the United States and foreign states.

Not where there are litigants, not where one is plaintiff and the other is defendant. There is where the Constitution gives Federal jurisdiction. If the corporation itself is composed of citizens of different States then this jurisdiction attaches. Any citizen can sue although he lives in the same State with the corporation. There is the distinction.

Let me say that it excludes all the remedy that can be given to any citizen of the United States against the enormous evils depicted by the Senator from Ohio, because if this bill be passed and the Supreme Court of the United States decides it constitutional, you will never hear of the corporation which proposes to create or manipulate a trust that does not have the *personnel* of its stockholders all in the same State. That goes without saying, and it is to impute idiocy to the men whose schemes and machinations we are now attacking to suppose that they would do anything else. The idea that they, with the best counsel in the United States and even in the world, with the highest legal talent upon their side, will not immediately construct their corporations so as to nullify such a law is to impute to them a degree of mental imbecility that is simply ludicrous.

The Senator makes no distinction between the parties to the suit and the composition of the corporation which is itself a plaintiff or a defendant. He puts this jurisdiction upon something unknown to the Constitution, and the result would be (and it can be read between the lines) that if we enacted this into law the Supreme Court of the United States would immediately confront us with that clause of the Constitution and the judiciary act of 1789 and throw the case out of court.

It is very obvious that this attempt to invoke the web and woof of the judiciary act of 1789, which was made in pursuance of the clause of the Constitution that I have read, is an uncertain commingling of two elements utterly incongruous and utterly inconsistent.

Mr. SHERMAN. Does the Senator from Missouri say that there is anything in the bill that confers jurisdiction when they are citizens or members of a corporation of different States? There is nothing of that. The language of the bill is plain. I have read it. I do not see what the Senator is driving at.

Between two or more citizens or corporations—

The corporation is considered as a unit and the citizen as a unit—

or both, of different States.

This must be some persons and some corporations, distinct and separate personalities, not citizens who are members of the corporation. There is no such provision——

Mr. VEST. I am very unfortunate in my expressions if I have not made the Senator understand me.

Mr. SHERMAN. I think the Senator is unfortunate, although he is not very often so.

Mr. VEST. Here is what I mean, and I think the Senator must agree with me: The Constitution of the United States makes one basis of jurisdiction to be the diverse citizenship of the litigants.

Mr. SHERMAN. Very well.

Mr. VEST. Nothing can be plainer than that.

Mr. SHERMAN. This points that out. They must be citizens of different States or corporations of different States, or both.

Mr. VEST. Of course. Although it is so simple a matter that it hardly needs elucidation, I may put it thus: If Mr. Brown lives in the State of Missouri and Mr. Smith lives in Ohio they can sue each other without regard to the subject-matter, provided it comes within the limits which was fixed in the judiciary act as to the jurisdiction of a Federal tribunal. The Senator does not put his bill upon that ground at all. He undertakes to put it upon the composition of one of the litigants alone. He does not say, if one of these citizens lives in one State and one in another, which we would all admit to confer Federal jurisdiction, but he gives Federal jurisdiction because the corporation which makes the trust is composed of citizens of different States. If it does not mean that, then the English language has lost all its flavor and I have lost my power to understand it.

Here is what he says; I will read it again *ad nauseam:*

All arrangements, contracts, agreements, trusts, or combinations between two or more citizens or corporations, or both, of different States.

And that gives jurisdiction, provided they go on and undertake to do the other things enumerated in the other part of the section as to goods brought from foreign countries or goods carried from one State to another.

The Senator does not follow the Constitution, which says that when a suit shall be brought by a citizen of one State against a citizen of another State for doing the thing which he enumerates afterwards, which is another matter of argument, but he says if the corporation offending is composed of people living in different States, then the Federal courts have jurisdiction, which I submit is an unheard-of proposition and no lawyer ever advanced it before. As I undertook to show,

how easy is it for these corporations to evade any such provision by simply having their stockholders all living in the limits of any particular State? It affords no remedy, even if the argument of the Senator from Ohio could stand for a moment, which it can not.

But, Mr. President, I proceed now, for it is not my disposition to make any elaborate argument, to the latter clause of the amendment, disregarding entirely the original bill, which for the purposes of discussion has been removed. If a corporation is composed of two or more persons living in different States or if it is composed of citizens or corporations, or both, in the United States and a foreign country, and they make a combination to prevent full and free competition in the importation, transportation, or sale of articles imported into the United States, then this proposed law takes effect, and they become subject to the jurisdiction we invoke legislatively.

I do not propose to make any hypercritical argument, but I do insist that unless we adhere to the opinions of the Supreme Court, especially in the great case of Brown *vs.* The State of Maryland, we are at sea without rudder or compass in this whole discussion.

The Senator invokes the commerce clause of the Constitution, that clause which gives to Congress the power to regulate commerce with foreign countries, among the States, and with the Indian tribes. The first question that meets us *in limine*, which any lawyer would be ashamed to confess that he did not invoke at the very beginning of his argument on this commerce clause, is the material question, what is commerce? What is commerce with a foreign country? There is the point in this whole legislation, the point that has given me the most trouble after long and exhaustive thought to the extent of my ability.

I will confess now, parenthetically but honestly, that in all my experience as a lawyer I have never encountered a subject so full of difficulty as that now before the Senate. I can very well understand how it is full of difficulty. Notwithstanding the eulogium in which I cordially unite with the Senator from Ohio upon the framers of the Constitution, it is simply impossible, unless we attribute to the framers of this instrument the intellect of gods, that they in the thirteen original colonies, poor, struggling for existence, limited in their territorial area to the Atlantic sea-board, should ever have contemplated the immense country for which we are now legislating, and the enormous aggregation of wealth which startles and amazes the world. They undertook in the Constitution to meet contingencies, but here is one which beggars Aladdin's lamp in the reality that is before us and with us to-day. It is no reflection, then, upon their intellect or their patriotism to say that they could not have contemplated an emergency such as that which now rests upon the people of the United States.

Mr. President, I come back to the question, What is commerce? We have the power to regulate it, but we must first find what commerce is in order to exercise our legislative power. I shall not undertake to read the decisions of the Supreme Court of the United States, which are elementary law upon this subject. In the great case of Brown against The State of Maryland, which leads upon this subject, and to which every lawyer goes first, decided by the most eminent men who ever sat upon the bench in this country, and the equals of any in the world, the regulation of foreign commerce was declared to be the regulation of the importation and sale of articles brought from a foreign country before they had left the hands of the importer and been broken as to the original package. I state crudely, but I think accurately.

The Supreme Court in that case settled the question of foreign commerce by declaring, as to the power of a State to tax foreign importations, that so long as the original package remained in the hands of the importer unbroken it was the subject of foreign commerce. When it left his hands and the package was broken, and the goods went into the common mass of the property of the people of the State, then the commercial clause of the Constitution as to foreign commerce ceased to operate.

Mr. President, apply that decision to the provisions of this bill. Here is one clause of the amendment which provides that if a corporation composed of citizens of different States does any act "with a view or which tends to prevent full and free competition in the importation, transportation, or sale of articles imported into the United States," this proposed law shall take effect.

Does the Senator from Ohio pretend that, after the importer has brought in the goods and the package has been broken and the merchandise has been mingled or commingled with the other goods of the people of the State into which the importation is made, under this clause of the Constitution we can enact such a law as is proposed? I take it that the statement of the case is sufficient to answer the proposition. But it is undertaken to get this jurisdiction under another clause of the Constitution. The bill proceeds:

> Or with a view or which tends to prevent full and free competition in articles of growth, production, or manufacture of any State or Territory of the United States with similar articles of the growth, production, or manufacture of any other State or Territory, or in the transportation or sale of like articles, the production of any State or Territory of the United States into or within any other State or Territory of the United States.

I shall not repeat the argument made by the Senator from Mississippi as lucidly and conclusively as any argument could have been made, that we have no power under any clause of the Federal Constitution to legislate as to any article simply because it is manufactured in any State of the Union and may be at some time carried to another State. That clause in the Constitution of the United States which affects interstate commerce, or, to speak more accurately, commerce among the States, has been defined by the Supreme Court in three leading cases to mean the power to regulate commerce in articles, whether manufactured in the State or not, after they have gone into commerce and are *in transitu* from one State to another.

The Supreme Court of the United States has decided that it is not for the manufacturer or the owner to say, "I intend these goods to go into another State." They must actually be *in transitu;* they must be in the hands of the common carrier, or in his depot or warehouse, with the impression distinctively made upon them that, to use the expression of one judge, they are dedicated to commerce among the States.

The Senator from Ohio makes the fatal mistake as a lawyer that, because goods manufactured in one State may be at some time or other taken into another, which as a matter of course is possible in every contingency, therefore he can invoke the general interstate commerce clause of the Constitution. He can not do it. If we pass this bill upon any such assumption and it goes to the Supreme Court of the United States, we shall simply be told that all we have done here is *vox et præterea nihil*, sound and fury, signifying nothing.

Mr. President, one year ago the Senator from Ohio struck the keynote as to all these trusts and combinations in the United States. It was in the expression made in this Chamber that whenever he was satisfied that any trust or combination was protected by a high tariff duty he would be in favor of reducing that duty. This is the remedy; and any other remedy, without an amendment of the Constitution of the United States, any remedy such as is proposed in this bill, will be absolutely nugatory and ineffectual.

The Senator from Ohio has drawn an eloquent picture of the operations of trusts in the United States. Sir, these trusts—and every intelligent man knows it, whether a legislator or a citizen—are protected by your high tariff, and are enabled to work their iniquitous purposes under that buttress which the tariff law erects around them.

Mr. ALLISON. May I ask the Senator a question?

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

Mr. VEST. Of course.

Mr. ALLISON. Am I to understand the Senator as saying that the only remedy as respects trusts is that which enables us to reduce tariff duties upon particular articles, and therefore if a trust or combination is made which is not in any way influenced by duties there is no remedy without an amendment to the Constitution?

Mr. VEST. Mr. President, if I stated it that strongly perhaps I went beyond my exact meaning. I believe there is a remedy if you take the jurisdiction of the State and also the jurisdiction of Congress and put them together, but I do not believe there is any complete remedy in the action of either separately and of itself. What I meant to say was that as to nearly all the trusts which have been denounced here to-day the most apparent remedy is to take away the protection which these trusts have from the high tariff that is now upon our statute-books and in operation.

Mr. PLATT. May I ask the Senator a question?

Mr. VEST. Certainly.

Mr. PLATT. What is the difficulty of the States dealing with this matter? What prevents any State from dealing with the matter of trusts?

Mr. VEST. I do not think there is any difficulty whatever as to that class of cases in which the products, or the transactions, to speak more accurately, take place entirely within the limits of a State; but we know that these trusts evade the State statutes even when they are made, and if we desire to apply a remedy we must remove the cause or else we are legislative empirics. If it is true that the tariff permits these trusts and protects them and we do not seek to remove the cause, all the remedies we attempt to apply are simply surface and skin, expedients that amount to nothing, and the real cause of the difficulty still remains.

Mr. INGALLS. Will the Senator inform me upon what ground the Missouri anti-trust bill was declared unconstitutional in his own State?

Mr. VEST. The circuit court at St. Louis, Mo., decided the act of the Legislature to be unconstitutional upon the ground that the forfeiture of the charter of a corporation was a judicial act, and could not be done by the act of the secretary of state. It was decided in the court at St. Louis by Judge Dillon, but it has not yet been decided in the supreme court, that the forfeiture of the charter of a corporation was a judicial act, and that the act of the Legislature which gave to the secretary of state the power of himself to declare the forfeiture of the charter was therefore unconstitutional. That was the ground.

But, Mr. President, whether it was on one ground or another, these corporations, with the amount of legal talent they are enabled to employ and invoke, will be able in almost every instance to avoid these statutes, and I solemnly assert here that in my judgment the only real remedy is to be found in taking away the protection and origin of these trusts, which is in the high tariff taxes which stand like a wall and enable these trusts to exist.

The Senator from Ohio has spoken of these trusts. Now, Mr. Pres-

ident, I happen to have here a list of them, and these are only a few. The first is the steel-rail trust, buttressed by a tariff tax of $17 per ton.

Mr. GEORGE. What per cent. is that?

Mr. VEST. I do not recollect the per cent. We discussed it in the last Congress. Seventeen dollars is the taxation per ton; steel rails are protected that much. As my friend from Iowa very well knows, I tried to reduce it, and he resisted the attempt.

Mr. ALLISON. I beg to put an interrogatory to the Senator, if he will allow me, right there upon the question of steel rails.

Mr. VEST. I do not want an argument upon every one of these items.

Mr. ALLISON. I will not say a word by way of argument.

Mr. VEST. I yield to the Senator.

Mr. ALLISON. I ask the Senator if it is not true that at this moment the price of steel rails in England is practically the same as it is in the United States, or within a dollar or two? If that be so, how is it that the $17 duty upon steel rails at this moment is injuring the great body of the rail purchasers in this country?

Mr. VEST. Why, Mr. President, if we were told anything in the discussion in which my friend and myself participated rather largely in the last Congress—and I know it was urged by the Senator from New York [Mr. HISCOCK] now in my sight—it was that whenever you reduce the price in any one country you reduce it all over the world, and necessarily in every other country. We know very well that competition always reduces prices. It is no argument to say that steel rails are as cheap, even if it were true, in England to-day as they are in the United States; that will not do. I say if you let these two manufacturing interests compete together and create competition, you then secure lower prices to the consumer. That is the law of trade and that is the law of manufactures the world over.

Mr. TELLER. I should like to ask the Senator a question, if he will allow me.

Mr. VEST. Certainly.

Mr. TELLER. Is not the Senator from Missouri aware that there is a steel trust in Great Britain that includes every steel establishment in Great Britain except one, and includes the German and Belgian establishments also?

Mr. VEST. I know that statement was made, but I never took the trouble to investigate it. Now, I make this statement to supplement it, and it is as absolutely true as that I am standing in this Senate Chamber. I know that there are trusts in Great Britain, and I have no doubt there will be trusts in any country under the present conditions of manufactures and of commerce; but here is the difference between trusts in Great Britain and the United States:

When you make a trust or attempt to make a trust in Great Britain, you must corner the products of all the world and you must have enough capital to do this, because you compete with every part of the civilized globe and you have no tariff to protect you and prevent competition, and therefore the capital necessary to effect the purposes of the combine must be at hand; but when you come to the United States the combine is helped by the tariff because the tariff tax shuts out the foreign producer and foreign importer, and limits necessarily the amount of capital necessary to achieve the purpose.

Mr. FRYE. If that is true, will the Senator from Missouri please account for the fact that 25,000 tons of steel rails manufactured in the United States were last week sold in Mexico, where all the nations of the earth have free competition one with the other?

Mr. VEST. Mr. President, I am obliged to my friend from Maine. That shows the blessings and the equities of the high protective tariff! These very people making steel rails in the United States, who must be protected in order to live by a subsidy of $17 per ton, are able to go into Mexico and in a free-trade market to undersell the English, the Belgians, or anybody else!

Mr. FRYE. But the Senator does not reply to the question which I asked him.

Mr. VEST. I was attempting to do so.

Mr. FRYE. The Senator was asserting that a protective tariff prevented competition and created the trusts. I say there is no protective tariff which prevents competition in Mexico, because there is the same tariff against the products of England as against the products of the United States, and yet the United States sells 25,000 tons of steel rails to Mexico.

Mr. VEST. As a matter of course, Mr. Disston, of Philadelphia, who is protected on his saws, it was testified before the committees of the Senate and the House of Representatives, can sell his saws in England and undersell the English manufacturers, and yet Mr. Disston gets his protection in the United States. How will the Senator answer my proposition when he says that we sell 25,000 tons of steel rails in Mexico?

I have a letter in my possession from a gentleman who lives at Piedras Negras on the Rio Grande, which I believe is translated Black Rock, upon the Mexican side, and opposite to it is a small American village, and there are two stores belonging to the same party, one on American soil and one in Mexico, and in Mexico the same goods are sold one-third cheaper than in the United States, because on the Mexican side this man is bound to compete with the whole world, whilst on the American side he is protected by the tariff and competition does not exist.

Is it any argument to tell me that we sell our saws, our watches, our machinery, our cutlery, all over the world, and do it successfully? I say it is an argument against the high protective tariff because it shows that the subsidy we are paying inside of the United States to enrich these manufacturers is a sham and fraud. They do not need it.

That is what is the matter with the people of the West to-day; that is why the complaint is made of combines and trusts; that is why the farmers are combining or attempting to do so in order to protect themselves against the aggregation of capital, which by this legislation is enabled to compete outside of the United States successfully, and yet to shut out the competition after they reach our own shores. Let me give the facts:

THE TARIFFS AND THE TRUSTS.

[From Justice, Philadelphia.]

1. The Steel Rail Trust, buttressed by a tariff tax of $17 per ton.
2. The Nail Trust, by a tariff tax of $1.25 per 100 pounds.
3. The Iron Nut and Washer Trust, by a tax of $2 per 100 pounds.
4. The Barbed Fence-Wire Trust, by a tax of 60 cents per 100 pounds.
5. The Copper Trust, by a tax of $2.50 per 100 pounds.
6. The Lead Trust, by a tax of $1.50 per 100 pounds.
7. The Slate-Pencil Trust, by a tax of 30 per cent.

I should like to hear my friend from North Carolina [Mr. VANCE] on that.

8. The Nickel Trust, by a tax of $15 per one hundred pounds.
9. The Zinc Trust, by a tax of $2.50 per one hundred pounds.
10. The Sugar Trust, by a tax of $2 per one hundred pounds.
11. The Oilcloth Trust, by a tax of 40 per cent.
12. The Jute Bag Trust, by a tax of 40 per cent.
13. The Cordage Trust, by a tax of 30 per cent.
14. The Paper Envelope Trust, by a tax of 25 per cent.
15. The Gutta Percha Trust, by a tax of 35 per cent.
16. The Castor Oil Trust, by a tax of 80 cents per gallon.
17. The Linseed Oil Trust, by a tax of 25 cents per gallon.
18. The Cottonseed Oil Trust, by a tax of 25 cents per gallon.
19. The Borax Trust, by a tax of $5 per one hundred pounds.
20. The Ultramarine Trust, by a tax of $5 per one hundred pounds.

And so on, and they are adding to them day by day. Now, Mr. President, the favorite argument of our friends who sustain the high protective tariff is that high duties lower the cost of products to the consumer by reason of the competition between the manufacturers inside of the United States. If that be so, why are these trusts created? They are created because when foreign competition has been shut out and competition becomes acute and severe between American manufacturers they come together and create these combines at the expense of the consumer in order to enhance their own profits. If the high protective tariff were removed the foreign competition would furnish, if not an absolute, certainly a most beneficial remedy to remove this evil.

We have been told in some directions that the trusts and combines have nothing to do with the tariff. Mr. President, that reminds me of a very suspicious old gentleman who when the Siamese twins were in this country thought he would invest twenty-five cents in looking at this great natural curiosity. He paid the tax, went into the exhibition room, and there found two grown young men posing before the audience in the most approved style. He was very suspicious and he examined them critically, and finally examined the ligament that bound them together in that world-renowned connection which scientists, even, were not able to explain, and he found in this ligament the pulsation which indicated animal life to the fullest extent. He stepped back, still suspicious, and said to them, "Now, boys, tell me the truth; are you brothers?" [Laughter.] So with the connection between the trusts and the tariff.

Mr. DAWES. Would it interfere with the Senator if I put a question?

Mr. VEST. Oh, no.

Mr. DAWES. I appreciate the difficulties of this subject as well as the Senator does. I understand him to say that the remedy, the method of putting down the trusts in this country is to open these trusts to the competition of the foreign trusts. Now, the query I want to put to him is this: What is to hinder taking one more into a trust and taking the foreign trust into the American trust or the American trust into the foreign trust and then having it beyond all control?

Mr. VEST. Mr. President, I am against all trusts, and the Senator——

Mr. DAWES. The Senator does not get my point. I asked him what remedy he would get by erecting free trade so as to cause active competition between the two trusts. Would there not be just the same motive and just the same opportunity and just the same facility to put these two trusts together when they were competing as there would be to have two competing with each other here at home?

Mr. VEST. Mr. President, any sort of assumption could be made as to what parties would come in as competitors from a foreign country. With that I have nothing to do so far as the purposes of my arguments are concerned. I take it that in the natural course of trade the foreign importer would come in and compete with the American manufacturer. I know absolutely that the purpose of the friends of a high protective tariff is to shut out foreign competition. If I had any doubts about that, they were removed in the last Congress when my friend from Iowa [Mr. ALLISON] and my friend from Rhode Island [Mr. ALD-

RICH] and my friend from New York [Mr. HISCOCK] applied in every case as to every item in the tariff bill that they reported, not the test whether protection was needed for the manufacturer in this country or for the consumer, but how much of the competing article was brought in during the last year.

Mr. ALLISON. Mr. President, will the Senator yield to me for a moment?

Mr. VEST. Certainly.

Mr. ALLISON. Did we not in that bill provide for a reduction of 50 per cent. upon the sugar duty as against 18 per cent. in the House bill, cutting down the profits of the refiners of sugars one-sixth of a cent as compared with the House bill in addition?

Mr. VEST. Oh, yes; they did all that. I understand there was a reduction upon sugar. I do not propose to go into the sugar question just at this time, but in my judgment that reduction was in the interest of the refiner. The raw sugar was permitted to come in, which is their raw material.

Mr. ALLISON. I will say to the Senator that if he will take half an hour to examine the details of that bill he will see that the reduction made by the Senate bill was not only not in the interest of the refiners, but was against their interest as compared with the bill that came to us from the House of Representatives, and against their protest.

Mr. VEST. We discussed all that, and so far from taking a half hour I took something like two months on that bill and examined every provision in it and every item in it, and without wanting to go into that argument and thrash over old straw I say now that the Senator and his colleagues took pains to increase the duties on all the necessaries of life that were imported in competition with American manufactures.

Mr. DAWES. To wit, duties on what?

Mr. VEST. On hardware, on woolen goods, on a dozen other articles that are absolutely necessaries of life, and refused to take them off lumber and salt and other things that enter into the daily consumption of the American people. That is the fact, and the Senators know it.

As a matter of course they reduced the duties upon coarse cotton cloths, because they are made in the South, but they took care to put the duties up on fine cotton cloths, that are made in New England; and now the Senator from Iowa says they reduced the duties on sugar. That was because sugar was raised in Louisiana. It was for a climatic reason, and that only. If the sugar had been raised in the North, all of them, I think, would have "taken sugar in theirs," and if the Senate wanted to reduce the duties upon necessaries why was it not done? It was not done because the Republican party could not afford to do it and did not do it.

Sir, I have spoken longer than I intended. I hope that some member of the majority, because it will be useless for me to do so, will move to refer this question to the Judiciary Committee. The amendment of the Senator from Texas is now pending before a subcommittee of that committee, together with other proposed legislation on this subject, which has been introduced into the Senate. This is a subject so elaborate, so important, so overwhelming, that it should be approached with the greatest caution and treated with the greatest care.

I sympathize with the objects of the Senator from Ohio. I am willing to vote for any bill which I think as a law will stand judicial criticism and construction, but in my judgment to pass a law which the Supreme Court would declare to be unconstitutional is simply to invite additional disaster.

Mr. HISCOCK. Mr. President, I sympathize with a great deal that has been said by the Senator from Ohio [Mr. SHERMAN] and agree to all that he has said against trusts and combinations, and I am willing to join hands with him in every effort that promises success to defeat them. I do not, however, sympathize with the expression which has been made here that a public legislator can not afford to resist efforts in the direction of unwise, illegal, and unconstitutional legislation because his action may be misconstrued. One is always safe in predicating his action upon the intelligence of the people, and they will understand that the bill or the amendment to the bill now offered by the Senator from Ohio is absolutely ineffectual to remedy the evils which he has so elaborately and ably commented upon.

In reference to interstate and foreign commerce, I understand that he states the proposition to be that the initial point with us in respect of foreign and interstate commerce is when the merchandise is launched on its way to its destination, or at least is in the hands or possession of the common carrier who transports it there. There is no doubt that is the law of the land. Bearing that in mind, let us briefly take this amendment and see precisely what it means and what it proposes, what merchandise it covers and what transactions it declares void. It provides—

that all arrangements, contracts, agreements, trusts, or combinations between two or more citizens or corporations, or both, of different States, or between two or more citizens or corporations, or both, of the United States and foreign states, or citizens or corporations thereof, made with a view or which tend to prevent full and free competition in the importation—

It prohibits a contract and arrangement preceding the very act which gives Congress jurisdiction over it—

importation, transportation, or sale of articles imported into the United States,

The provision on the face of it applies to contracts which are made before importation has commenced, before the article is within the purview of the Constitution, and they are declared to be void. It is in the purchase of the goods, Mr. President, within the language of the provision, that the combination may not be made to prevent importation into this country, and "with a view or which tend to prevent full and free competition," is the preceding language. Goods may be purchased and diverted from the United States, and that may be the object of the combination, to send them elsewhere, divert them from coming here and flooding our markets, and the amendment proposed takes jurisdiction of that.

I hope that the Senator from Ohio will point out the clause of the Constitution that gives us the power and the right to take jurisdiction of goods which may never be imported here; never come within the jurisdiction of the Federal Constitution or of the laws which have been passed under it. But an article reaches here, and, as has been well said, it has passed beyond the hands of the importer.

It is then subject to State law, State taxation; and yet this amendment follows it, and under this provision if it becomes a law penalties are imposed. At both ends it legislates with reference to commerce before the merchandise has been dispatched on its way to this country, and after it has reached here and after it has been taken out of the volume of commerce. Let us take the next clause of this amendment:

Or with a view or which tend to prevent full and free competition in articles of growth, production, or manufacture of any other State or Territory of the United States, with similar articles of the growth, production, or manufacture of any other State or Territory, or in the transportation or sale of like articles, the production of any State or Territory of the United States into or within any other State or Territory of the United States.

That clause provides that if the trust may prevent competition of property which is grown in one State or Territory and merchandise which is manufactured in one State or Territory with that produced in another, then it is illegal and void; it need not be transported. I call the Senator's attention to the effect. There may never have been an intention of transporting it into another State, and yet the provision of this section of the bill applies to it.

It takes control of the manufacturing, of the mining, and of the agricultural industries of the whole country wherever there may be competition as between the people of one State and the people of another. The language is explicit. As I remarked, the article may never have been produced for the purpose of transportation or delivery from one State into another, still this amendment reaches out and takes jurisdiction of it.

The damages which may have resulted from the trust may have been incurred by the individual before it has entered upon transit from one State to another, and yet, under the provisions of this bill a plaintiff can recover. What follows?

And all arrangements, trusts, or combinations between such citizens or corporations, made with a view or which tend to advance the cost to the consumer of any such articles, are hereby declared to be against public policy, unlawful, and void.

There is no limitation upon the language. It does not pretend to regulate interstate commerce. Let us go back again to the first lines of the bill, "made with a view or which tend" to do this; and these arrangements are void, under the provisions of the bill, as against public policy. It takes the control of every manufacturing industry; it takes the control of every mine; it takes the control of all the merchants, because, as I have said, it does not limit its operations and effects to goods in interstate commerce.

And the circuit court of the United States shall have original jurisdiction of all suits of a civil nature at common law or in equity arising under this section, and to issue all remedial process, orders, or writs proper and necessary to enforce its provisions. And the Attorney-General and the several district attorneys are hereby directed, in the name of the United States, to commence and prosecute all such cases to final judgment and execution.

Inquisitorial power is given to the officers of the General Government to reach into the management of every industry in the United States, and I repeat it does not depend upon the fact that the merchandise is to be involved in interstate commerce. Not at all. If by its production a certain effect may be had, if it may compete in any way, the penalties follow. Now, with the interchange of commodities we have in this country, it is fair to say that wheat raised in Dakota competes with wheat raised in New York if not a bushel of that wheat is transported to the State of New York. Competition is now in the markets of the world, and it is not confined to States or the markets of States between themselves.

If this bill shall be carried into effect I shall expect the Senator from Ohio to present here next year an amendment to it that manufacturers are to be licensed and their business carried on under the restrictions of that license and under the inquisitorial power of the Attorney-General, the district attorneys, or some other officials.

It seems to me, Mr. President, that I have commented enough on the enormities, the far-reaching effect of this bill if it shall become a law and be declared by the courts to be constitutional. The logic of the decision will be for Congress to take control of every producing interest in the respective States of the Union.

The Senator from Ohio has read several decisions here upon the subject of the power of the courts over this question and the illegality of

these trusts. In each case that he cited the court established its jurisdiction and its power to afford a remedy, and the Senate would have been under great obligation to the Senator from Ohio if he had pointed to a single case as to which there is not a complete remedy or may not be a complete remedy under State laws. I should be obliged to him if, in the progress of this discussion, before its close, he would point out and describe the cases in which there is not ample jurisdiction in the Legislatures and courts of the States, respectively, in respect to all these trusts and combines.

As I have already said, interstate commerce commences when the goods are entered for transportation from one State to another. Up to that point of time every contract made in reference to them, the control of the goods themselves, is within the jurisdiction of the State courts and of the Legislatures of the States, respectively.

I think something has been said here that the framers of the Constitution neglected to put something in the Constitution that might properly have been placed there giving Congress the proper authority in respect to this subject.

Why did they need to put it there? I ask, Mr. President, bearing in mind what I have stated, that up to the point when an article of production is delivered to the common carrier every contract in reference to it and the custody of the goods is within the jurisdiction of the Legislature of the State in which it starts, and when it reaches another State it is subject to the jurisdiction of the courts and of the laws of that State.

It is with reference to interstate commerce that Congress has the right to take jurisdiction; that is the act of exchange from one State to another; and we all know why that provision was placed in the Constitution. One of the chief reasons was that the General Government might prevent States from practically prohibiting commerce between each other, for the purpose of regulating taxation upon property which was to go from one State to another. The purpose was obvious; but it was not the intention of the framers of the Constitution to take the jurisdiction of the property until it had passed beyond the point when it was subject to State taxation and State control.

The Senator from Ohio has seemed to think, and has argued here, that we might take control of this subject on account of that provision of the Constitution which gives jurisdiction to the courts of persons, forms of action, and all that. I hope in the progress of this discussion the Senator will tell us if he believes that our courts can create a cause of action. That is the question involved here as he presents it. They may have jurisdiction of the litigants and of the cause of action in actions of law and in equity, but it should be borne in mind they have no power to create a cause of action. They have ample and full jurisdiction over the remedies, but the creation of the cause of action rests with the law-making power, and not with the court, and Congress, the law-making power, looks to the Constitution for its authority to create a cause of action, and nowhere else.

Mr. President, criticisms have been made upon this bill that in my judgment may be obviated by amendments to it. I have devoted no time to defects of that kind. The objections that I make to the bill are fundamental; they can not be obviated by any amendments that possibly can be proposed.

What I maintain is that whenever property, either in process of manufacture or completely manufactured, has not already been put on its course of transit either into this country or from one State to another, whatever the intention may have been in its production, up to the point of time when it is started to its destination, absolute and complete control of that property is within the legislative power, the law-making power, and the jurisdiction of the courts, of the States and countries respectively in which it is situated.

If the Senator from Ohio will point to a single case in which the Legislature and the courts have not the one the power to give the other jurisdiction, and the latter to administer it, I will join hands with him in an effort to perfect a bill by Congress that shall give to the Federal courts jurisdiction with reference to that subject. But it must be borne in mind that this is not a jurisdiction that can be abdicated by the States. It is not a jurisdiction that can be possessed by a State and the General Government at the same time. There is no partnership in respect to it, and there can be none. If the States have jurisdiction the National Government can not have it, and if the National Government has jurisdiction, or can take it, it can not be possessed by the States.

As I said some time since, my objections to the bill are fundamental; they can not be reached by Congressional legislation. According to the cases that have been read here, there is full and ample power on the part of each State Legislature in respect to this very subject. Why not then leave it there as a matter of right and wrong between the States? Local and State sentiment will take care of these questions. It does not depend upon one State alone. The State from which the goods are started has jurisdiction and the States to which they are consigned has it also.

Mr. President, I have not gone through with this bill to elaborate the different subjects, all the matters of which it proposes to take jurisdiction. The language is remarkable in it:

Made with a view or which tend to prevent full and free competition.

I can summon here to answer those who would be injured by the bill whose voice would be as potential to put up or down the supporter of it as all those who can be invoked by popular clamor against trusts; and I hope we shall be told in the progress of this discussion if there is a labor organization in the United States that is not affected by it. Every organization which attempts to take the control of the labor that it puts into the market to advance its price is interdicted by this bill.

Sir, I am one of those who believe in labor organizations. I believe the only safety to labor rests in the power to combine as against capital and assert its rights and defend itself.

The criminal section of this proposed law has been eliminated from it. Perhaps it was wise to do that, because under that section these organizations and their promoters might have been reached. Possibly under the damage provisions in the bill they never would be pursued; but it strikes at them as viciously as it is possible to conceive of. Will it be said that their combinations are not made with a view of advancing costs and regulating the sale of property? Will it be argued that they do not directly do it? If we have entered upon a race to outstrip each other in the denunciation of capital, the manufacturing industries, the combinations of capital, and it is to be on the line of the support of this bill, I announce that there are two sides to it. If Senators are to be deterred from their opposition to it by this clamor, I call their attention to the fact that the bill takes within its embrace those affected by its provisions and injured by its provisions who are very potential in asserting their rights and respect for their wishes.

In my judgment, Mr. President, neither this bill nor any like it should be enacted into law unless it is within the warrant of our charter, unless we are satisfied that it is legal and constitutional. No attempt should be made to reach into the States and take from the jurisdiction of the State Legislatures the subjects of which they have full and ample control.

AID TO COMMON SCHOOLS.

During the remarks of Mr. HISCOCK,

Mr. BLAIR. By the courtesy of the Senator from New York I ask the floor to enter a motion to reconsider the vote by which the Senate refused to order to a third reading Senate bill No. 185, the educational bill.

Mr. INGALLS. What is the motion, Mr. President?

The VICE-PRESIDENT. A motion to reconsider the vote upon the educational bill.

Mr. INGALLS. Will the Senator from New York yield to me a moment?

Mr. BLAIR. Mr. President——

Mr. INGALLS. I move to lay the motion to reconsider on the table.

Mr. BLAIR. I have the floor. My motion is pending.

The VICE-PRESIDENT. Does the Chair understand that the Senator from Kansas wishes present consideration of the motion which he has just made? [A pause.] The Senator from New York will proceed.

PROPOSED ADJOURNMENT TO MONDAY.

After the remarks of Mr. HISCOCK—

Mr. JONES, of Arkansas. I move that when the Senate adjourn today it be to meet on Monday next.

Mr. SHERMAN. I hope not. I hope the Senate will meet to-morrow.

Mr. JONES, of Arkansas. I did not suppose there would be any objection to the motion.

Mr. SHERMAN. I hope the Senate will meet to-morrow for the purpose of disposing of business on the Calendar.

Mr. JONES, of Arkansas. As far as I am concerned, I have no desire to interfere with the wish of the Senate. I find that I can dispose of a good deal more work by having one day in the week that I can devote to work outside of the Senate Chamber, and I was in hopes that the Senate would adjourn over.

The VICE-PRESIDENT. Does the Senator from Arkansas withdraw his motion?

Mr. SHERMAN. I hope the Senator will withdraw the motion.

Mr. JONES, of Arkansas. I am willing to let the Senate determine the question. I prefer to have a vote upon it.

The VICE-PRESIDENT. The question is on the motion of the Senator from Arkansas, that when the Senate adjourn to-day it be to meet on Monday next.

The question being put, a division was called for, and the ayes were 16——

Mr. CULLOM. I hope the Senator from Arkansas will withdraw his motion.

Mr. SHERMAN. To save time I call for the yeas and nays.

The yeas and nays were ordered, and the Secretary proceeded to call the roll.

Mr. BATE (when Mr. FAULKNER'S name was called). The Senator from West Virginia [Mr. FAULKNER] requested me to state that he is paired with the Senator from Pennsylvania [Mr. QUAY]. The Senator from West Virginia is necessarily absent.

The roll-call was concluded.

Mr. CULLOM. I am paired with the Senator from Delaware [Mr. GRAY], but I take the liberty to transfer my pair to my colleague

[Mr. FARWELL], so that both the Senator from Florida [Mr. PASCO], with whom my colleague is paired, and myself can vote. I vote "nay."

Mr. PASCO. I vote "yea."

Mr. WASHBURN (after having voted in the negative). I have a general pair with the Senator from Louisiana [Mr. EUSTIS] and I withdraw my vote.

Mr. HIGGINS (after having voted in the negative). I am paired generally with the Senator from New Jersey [Mr. MCPHERSON]. I did not observe that he was out of the Chamber when I voted, and I therefore withdraw my vote.

Mr. GEORGE (after having voted in the affirmative). Has the Senator from New Hampshire [Mr. BLAIR] voted?

The VICE-PRESIDENT. He has not.

Mr. GEORGE. I withdraw my vote.

Mr. MORGAN (after having voted in the affirmative). I am paired with the Senator from New York [Mr. EVARTS]. I thought he was in the Chamber when I voted. I withdraw my vote.

The result was announced—yeas 17, nays 25; as follows:

YEAS—17.

Barbour,	Gorman,	Pasco,	Walthall.
Bate,	Hampton,	Pugh,	Wilson of Md.
Berry,	Harris,	Reagan,	
Coke,	Hearst,	Turpie,	
Colquitt,	Jones of Arkansas,	Vest,	

NAYS—25.

Aldrich,	Edmunds,	Pierce,	Stewart,
Allison,	Frye,	Platt,	Teller,
Cullom,	Hawley,	Plumb,	Wilson of Iowa,
Davis,	Hiscock,	Sawyer,	Wolcott.
Dawes,	Hoar,	Sherman,	
Dixon,	Morrill,	Spooner,	
Dolph,	Paddock,	Stanford,	

ABSENT—40.

Allen,	Chandler,	Hale,	Morgan,
Beck,	Cockrell,	Higgins,	Payne,
Blackburn,	Daniel,	Ingalls,	Pettigrew,
Blair,	Eustis,	Jones of Nevada,	Quay,
Blodgett,	Evarts,	Kenna,	Ransom,
Brown,	Farwell,	McMillan,	Squire,
Butler,	Faulkner,	McPherson,	Stockbridge.
Call,	George,	Manderson,	Vance,
Cameron,	Gibson,	Mitchell,	Voorhees,
Casey,	Gray,	Moody,	Washburn.

So the motion was not agreed to.

EXECUTIVE COMMUNICATION.

The VICE-PRESIDENT laid before the Senate a communication from the Secretary of the Navy, transmitting, in response to a resolution of February 28, 1890, a statement in regard to expenses of a three-years' cruise around the world of one line-of-battle ship of 10,000 tons displacement, etc.

The Secretary proceeded to read the communication.

Mr. FRYE. Why should not that be printed and referred to the Committee on Naval Affairs without being read?

The VICE-PRESIDENT. If there be no objection, the communication will be referred to the Committee on Naval Affairs, and printed.

TRUSTS AND COMBINATIONS.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 1) to declare unlawful trusts and combinations in restraint of trade and production, the pending question being on the amendment proposed by Mr. INGALLS to the amendment of Mr. REAGAN.

Mr. REAGAN. Mr. President, with some of the criticisms made upon the bill reported by the Senator from Ohio I agree. I think the country is debtor to that distinguished Senator for his efforts to furnish a remedy for a great and dangerous evil. I know the difficulty of preparing a bill to be enacted by Congress to meet this evil. I have presented an amendment by way of substitute for the bill reported by the Senator from Ohio. I do not know but that when it becomes subject to criticism it may fare as badly as his bill has done, and yet I have tried to formulate a measure which would obviate the objections that have been urged to his. Whatever authority we have here over this subject is derived from the provision in the Constitution which confers upon Congress the power to regulate commerce with foreign nations and between the States. Keeping that in view, I will read the first section of the amendment which I have offered:

That all persons engaged in the creation of any trust, or as owner or part owner, agent, or manager of any trust, employed in any business carried on with any foreign country, or between the States, or between any State and the District of Columbia, or between any State and any Territory of the United States, or any owner or part owner, agent, or manager of any corporation using its powers for either of the purposes specified in the second section of this act, shall be deemed guilty of a high misdemeanor, and, on conviction thereof, shall be fined in a sum not exceeding $10,000, or imprisonment at hard labor in the penitentiary not exceeding five years, or by both of said penalties, in the discretion of the court trying the same.

I concede that the penalty provided here is a very strong one, but it is designed to meet a very great evil perpetrated by powerful and wealthy parties. It is designed to arrest and prevent an evil which can only be met, in my judgment, by strong, coercive measures. Now, I desire to call attention to the second section of my amendment, which is simply intended as a definition of the things prohibited in the first section. The second section is:

That a trust is a combination of capital, skill, or acts by two or more persons, firms, corporations, or associations of persons, or of any two or more of them for either, any, or all of the following purposes:

It will be understood that it is for these purposes when performed under the influence of the first section of this proposed act, that is, by persons engaged in commerce with foreign countries or between the States:

First. To create or carry out any restrictions in trade.

Second. To limit or reduce the production or to increase or reduce the price of merchandise or commodities.

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

Fourth. To fix a standard or figure whereby the price to the public shall be in any manner controlled or established of any article, commodity, merchandise, produce, or commerce intended for sale, use, or consumption.

Fifth. To create a monopoly in the making, manufacture, purchase, sale, or transportation of any merchandise, article, produce, or commodity.

Sixth. To make, or enter into, or execute, or carry out any contract, obligation, or agreement of any kind or description by which they shall bind or shall have bound themselves not to manufacture sell, dispose of, or transport any article or commodity, or article of trade, use, merchandise, or consumption below a common standard figure, or by which they shall agree, in any manner, to keep the price of such article, commodity, or transportation at a fixed or graduated figure or by which they shall, in any manner, establish or settle the price of any article, commodity, or transportation between themselves, or between themselves and others, so as to preclude free and unrestricted competition among themselves and others in the sale and transportation of any such article or commodity, or by which they shall agree to pool, combine, or unite in any interest they may have in connection with the sale or transportation of any such article or commodity that its price may, in any manner, be so affected.

SEC. 3. That each day any of the persons, associations, or corporations aforesaid shall be engaged in violating the provisions of this act shall be held to be a separate offense.

I am advised that some criticisms have been made upon the second section; that it relates to things which it is said Congress has no jurisdiction of. I apprehend that those who make that criticism read the second section of the bill without considering that everything in the second section is controlled by the provision of the first section, which makes the things referred to in the second section those which are involved in commerce with foreign nations or among the several States.

As to the authority of Congress to act upon the subject, that is all I now care to say upon that point. I deem it proper to say that, though I was present when the Senator from Ohio gave notice yesterday evening that he would call the subject up to-day, other duties prevented any consideration of it which might prepare me to discuss it now as its importance and merits deserve.

It will be seen that, as between the bill reported by the Senator from Ohio and my amendment, his provides for civil suits only for damages by persons who conceive themselves to be injured, damaged by these unlawful combinations, while the amendment which I have presented does not make provision for civil suits, but provides for a criminal prosecution and severe penalties against those who may be engaged in these unlawful occupations. After what has been said by other Senators this morning on the subject, if we were better prepared to discuss these points it is not necessary that I should go over the evils which it is intended to prevent by this character of legislation. I am inclined, however, to think that if the amendment which I present should be adopted as a substitute for the bill of the Senator from Ohio, it would be well to incorporate in it after its adoption, or at some time, a provision of that measure authorizing civil suits. I am inclined to think that it would be well that whatever law should be adopted on this subject should embrace both jurisdiction of civil and criminal proceedings to prevent and punish these evils.

In speaking of this subject and in looking at its difficulties, I feel sure, notwithstanding the great demand for action by Congress, that the people interested, the people oppressed and distressed by operation of these trusts, look too much to the Congress of the United States for the desired relief. Congress can go no further, as I understand its authority under the Constitution, than to provide a remedy with reference to those things which come into the category of commerce with foreign nations and commerce between the States. That is as far as it may rightfully go; and it seems to me that it is one of the highest and most important duties under the circumstances that it should go that far. But if the people of this country expect salutary relief on this subject they must look to their State governments, for they have jurisdiction over the great mass of transactions out of which these troubles grow. If the Federal Government will act upon those things which relate to international and interstate commerce, and the States, responding to the necessity of the country and the complaints of the people, will act upon the branch of subjects of which the States have jurisdiction, we may, it seems to me, arrest the evil of trusts and combinations to augment prices or to depress prices in the interest of monopoly and for the oppression and wrong of the people.

I am inclined to say right here, Mr. President, that it seems to me unfortunate that of late years the people of this country, whenever a grievance arises, feel that they must appeal to Congress for the redress of that grievance without considering whether it is one that Congress can redress or not. The idea seems to have become prevalent all over the country that anything which is wrong, anything which oppresses or depresses the people, must be remedied by Congress. I think it most

unfortunate that the people forget that their own local governments at home, controlled by their immediate representatives, are able to furnish the remedies for most of the grievances of which they complain, and for many of which they complain over which Congress has no power whatever. On this subject, however, Congress does have a limited power; but the exercise of its power under the Constitution and the doing of what it may do rightfully under the Constitution will not give relief to the people of the country unless the Legislatures of the several States take hold of the subject and make provisions there which will cover the larger number and the greater amount of the wrongs complained of by the people.

I had intended to make a criticism upon the bill of the Senator from Ohio which has in part been made by the Senator from Missouri [Mr. VEST] and in part by the Senator from New York [Mr. HISCOCK]; and inasmuch as those criticisms have been made I do not feel disposed to occupy the attention of the Senate by going over them again. I simply say in conclusion that I think the bill presented by the committee is objectionable on account of its not being within the provisions of the Constitution for the most part of it. The first clause of the first section is within the provisions of the Constitution, that which relates to commerce with foreign nations. A good deal of it, I think, is not within the provisions of the Constitution; and if the Senate should agree with me upon that point and should then agree with me that the provisions of the amendment which I have presented are within the purview of the Constitution, I shall hope they will adopt the amendment which I have presented.

Mr. ALLISON. Mr. President, I do not desire at this hour of the day, or at any time indeed, to discuss the merits of the bill presented by the Committee on Finance. I only rise now to occupy a few moments somewhat in response to the suggestions made by the Senator from Missouri [Mr. VEST], who has discussed the question so fully.

I must say that his argument as a lawyer discourages me somewhat as respects a remedy for these so-called trusts or combinations. If I understood the Senator correctly, he says that without an amendment of the Constitution the only practical remedy there is at this time is either an abolition or a great reduction of tariff duties or concurrent legislation of the States and of the United States, I suppose as respects interstate commerce; that beyond this narrow limit we have no power here to legislate upon this subject.

To fortify his argument as respects the tariff, he stated, as I understood him, that the tariff is the fruitful source of these combinations. If that be true, it is a curious thing to me that all these great combinations in our country are practically outside of and independent of the tariff.

The Senator read a number of trusts from a statement which he held in his hand, showing that the articles in the combinations alluded to by him were also articles that were included in the tariff schedules. But the complaint of the people, as I understand it, is not in respect mainly to the articles embraced within the tariff. I know it is true as respects the great article of sugar. Those whom I represent upon this floor in part, living in the State of Iowa, and those represented I have no doubt in part by the Senator from Missouri, are in favor practically of no tariff duty upon sugar. They believe that sugar is a necessary of life, and they believe that because of the fact that our entire production of sugar in this country amounts to but one-tenth of the consumption, the duty upon sugar is a tax upon that consumption, and therefore they are for its abolition or practical abolition if we can spare the revenue from that source.

With the exception of sugar and with the exception perhaps of steel rails, I know of no product in this country to-day (and in this I shall be glad to be corrected if I am mistaken) of any great magnitude that is affected by the tariff.

Nor will I admit that the tariff duty in and of itself produces even the sugar trust. I am not sure but that if sugar was to-day free, as it is in Great Britain, there would still be a combination among the sugar-refiners of our country to hold the market of our country. Whilst I have no doubt the present high rate of duty upon sugar has to some extent the effect to enable refiners and others more thoroughly to complete this combination, as fewer men can engage in sugar refining because of the high duty, yet I believe that if there was no duty upon sugar it would still be possible for a combination to exist here as respects the refining of sugar.

So it is practically with steel rails. The price of steel rails in England is substantially the price of steel rails in the United States to-day. Therefore the combination, if there be a combination, has not at this time any effect upon the price of steel rails in the United States. I will join the Senator from Missouri in making a proper and fair reduction of the duty on steel rails when we reach the question of the tariff, but the tariff on steel rails to-day has practically no effect upon the price, because, as I have stated, the price abroad is nearly equal to the price at home.

The Senator from Missouri illustrated his argument by reference to the copper trust. It is well known to every man who has studied the copper question that we can put copper upon the free-list any moment we choose to do so. We reduced the duty one-half upon copper in the proposed act of 1888, and it might just as well have been put upon the free-list. There has been a trust in copper. I do not know whether it exists now, but I presume it does. But that trust has not even an existence in the United States. It is a combination in a foreign jurisdiction which comes here and buys all the copper we produce and all the copper produced in the world. We are the largest producers of copper in the world. We are large exporters of copper to foreign countries. Therefore the duty upon copper has no more effect as respects trusts than if copper was upon the free-list.

The Senator from Missouri read one or two little instances or illustrations of trusts as respects our tariff, but I waited for him to show illustrations from the great tariff schedules as respects trusts and combinations resulting from the tariff. What are the great schedules that we deem important to protect American manufactures against similar manufactures and products of foreign countries? They are the great staples of woolen and cotton and leather and iron and steel.

The Senator from Missouri, with a production of steel of perhaps one thousand five hundred million dollars per annum, only illustrated by his statement as respects steel rails and nails. Those two items as compared with the great production of steel and iron in our country are infinitesimal and mere "leather and prunella." The manufactures of iron extend throughout the length and breadth of our country. Although there may be a few instances where iron production or steel production is under these trust combinations, I maintain that they are not there, because there is a tariff duty upon the articles.

Who has ever heard of a trust in woolen goods and woolen manufactures? The Senator from Missouri said the Committee on Finance of last year failed to reduce the duties upon woolen goods, and upon wool, and thereby oppressed the consumers of the country. Those consumers, whatever may be their conditions and relations to the tariff duties, which I will not discuss now, are not oppressed by reason of trust combinations. I state without fear of successful contradiction that in the two or three hundred millions of woolen goods manufactured in the United States there is no trust combination as respects those manufactures, and if I am mistaken in this I should be glad to be corrected now by any Senator.

Take the great manufacture of cotton, which the Senator from Missouri says in our tariff bill last year we reduced as respects the lower grades of cotton, and not upon the higher, and he undertook to criticise the committee by saying that that was done because the coarser cottons were manufactured in the Southern States and the finer products in the North. Mr. President, for myself, and for myself alone, I want to say to the Senator from Missouri that in dealing with the tariff I know no section of the Union, whether it be North or South. The reason why the duties upon cotton fabrics of a coarser character were proposed to be reduced was because those who produced those fabrics said they could produce them in competition with the world upon the rate we fixed. Yet with all these millions of cotton manufactures in the United States there is not a trust in any one of them of which I have ever heard.

Take another great article which is protected by the tariff, the article of leather and its productions. Boots and shoes and all the products of leather are produced in the United States, and are produced relatively at as cheap a rate as they are produced abroad, notwithstanding our tariff duties. They amount to hundreds of millions of dollars per annum. There is not within the range of all the States of this Union a trust or combination in the manufacture of boots and shoes.

So we are developing in this country a great silk industry. I have not heard, I do not know, how many millions of production we have, certainly up to the fifties, being nearly one-half of the silk consumed in the United States, and protected by a heavy duty upon silk manufactures. If there is now or ever has been a trust or combination as respects the silk manufactures of the United States, I have not heard of it.

So, Mr. President, agreeing to what the Senator says as respects trusts and combinations, I differ with him absolutely in the statement that they originate wholly in our tariff legislation. If we shall put wool and woolens upon the free-list, if we shall put cotton and manufactures of cotton upon the free-list, if we shall put leather and all its products upon the free-list, there will be no more and no less combinations in this country. If we should put practically all the iron upon the free-list, it would not change the trust relations and combinations except as to a few articles which were named by the Senator from Missouri.

These combinations exist, I admit, under the tariff in some of its relations, but the mass of these great combinations exist outside of it and beyond it. The Senator from Missouri himself is chairman of an important committee looking into a very important industry in our Western States, as respects the slaughtering of beef. He has been engaged in taking testimony upon that question. It is the common and the current belief among the farmers of the State in which I reside and of all the West that there is a combination in the city of Chicago which not only keeps down the price of cattle upon the hoof, but also has such relations and situations as respects the internal commerce of this country that its members are enabled to make the consumers of beef pay a high price for that article. Does anybody for a moment say that this great combination, involving the price of cattle perhaps in all the

Northwestern States and Territories, has in the slightest degree its origin in the tariff? Certainly not.

So I might illustrate by going into other great trusts in our country, like the whisky trust. Is that controlled in any way by the tariff? Yet it is perfectly well known that the production of distilled spirits is and has been under a close trust for a good many years.

Take the Standard Oil Trust, another great and ramifying corporation, not only in this country, but throughout the world. That combination, whatever it is, not only controls practically the price of the raw material in our country, but it controls the price of the refined oil throughout the civilized world. Year by year as we go on we not only produce more of this raw material in our own country, but we add year by year to the exports of refined oil in competition with the rest of the globe, and without any relation or without any respect whatever to the tariff.

Mr. President, there has been in our Western country for four years a combination as respects the production of oatmeal. Is that affected in any way by the tariff? Yet the producers of oatmeal have had a local combination whereby they have been enabled to keep up the price of oatmeal, not only to the cost of production, but to a point of reasonable profit, and sometimes beyond it, as I have heard.

So, when I heard the declamation of the Senator from Indiana [Mr. VOORHEES] the other day, and again repeated in substance by the Senator from Missouri [Mr. VEST] to-day, that our tariff system is the fruitful source of all our woes, I can not forbear for a single moment to show, not by going into debate, but by mere illustration, that although I agreed with those gentlemen who are in favor of remodeling and revising the tariff, if we are to correct the great evils which arise from combinations and trusts in this country, we shall fall far short of our duty and far short of accomplishing what we propose if we undertake to do it simply by a change and modification of tariff rates.

Therefore, Mr. President, I welcome this discussion as respects the measure of our duty here and as respects the means whereby we can accomplish the desired result. I undertake to say that it is our duty to the extent of our power, whatever that power may be, to put upon our statute-books such national legislation as we can put there inhibiting these combinations and trusts, and I merely call attention to the fact that that is our duty in connection with the fact, that we can not do it by merely modifying or changing existing tariff rates.

Mr. TELLER. Mr. President, the Senator from Kansas [Mr. INGALLS] has offered a very important amendment. I suppose this debate will not be closed to-day, and I do not propose now to discuss the bill before the Senate particularly, unless there is a disposition to vote upon it to-night. It will not be voted upon to-day, I understand.

I rose to call the attention of the Senate a little more in detail to a question I asked the Senator from Missouri [Mr. VEST], who on several occasions I have heard express the opinion that these trusts, which have become very prevalent in this country, were the result of the tariff, and that, too, in the face of what the Senator from Iowa [Mr. ALLISON] has so well just said, that the principal trusts in this country and against which there is the greatest complaint, and under which the people are suffering the most, have no relation whatever to the tariff. There is not a civilized country anywhere in the world now that is not more or less cursed with trusts. A trust may not be always an evil. A trust for certain purposes, which may mean simply a combination of capital, may be a valuable thing to the community and the country. There have been trusts in this country that have not been injurious. But the general complaint against trusts is that they prevent competition.

I have before me, and I propose to read, testimony taken in 1886 before the British Commission to inquire into the cause of the depression of trade. If I had known that this discussion was coming up to-day (and it is only by accident that I have this book with me) I could have read other testimony showing that there are other trusts besides the one I am going to mention.

Mr. I. T. Smith was called before the commission on the 17th day of December, 1885, and interrogated with reference to a trust that I suppose the Senator from Missouri must have heard about, whether he has ever read this report or not, because I think everybody who has studied the industrial question in this country has known that that trust existed—a trust composed, as will be seen by reading here, of all the steel manufacturers of Great Britain with one single exception, of all of the manufacturers of steel rails in Germany with the exception of two, and of all the Belgian manufacturers. I need not observe that it was composed of the great free-trade country, Great Britain, on the one hand; Germany, a protective country, on the other; and Belgium, the country of free trade *par excellence*, where they have free trade with all its beauties, including the yoking of women and dogs together to do the common work. This Mr. Smith said (I shall read the questions and the answers):

Can you give us any information with regard to the association which we understand has been formed for the purpose of distributing the orders received for the manufacture of rails?

I had something to do with the origin of that association, and the conduct of it since. It was formed two years ago—

That would be in 1883—

at which time steel rails were being sold at less than 4*l.* per ton at the works, that price, I believe, being a loss to the parties selling them varying from 5*s.* to 10*s.* a ton. The quantity of rails that were required then had fallen off to only about one-third of what it had been in previous years; we were all of us working nothing like half time, and when orders came in it became a question, Is it better to take these orders at a known loss or let the works stand and have an indirect loss in that way? The competition became so keen that we got down to less than £4 a ton at the works. After some time the makers in England, all except one firm, agreed to join the association, and it was decided to endeavor to associate the Belgians and Germans with us as being the only two countries that exported rails.

You will see later that when other countries attempted it they interfered with their exportations.

It ended, after taking the figures of three years of the exports from the three countries, that Great Britain kept 66 per cent. of the entire export trade—

Now, this is in the trust—

Belgium had 7 per cent., and Germany 27 per cent. We have since modified the division a very little, and given Germany 1 or 2 per cent. more and Belgium 1½ per cent.; but in effect this country has reserved two-thirds of the export trade. The next thing that we had to do, having agreed upon what proportion each country was to have of the orders of the world, was to agree amongst ourselves how we should divide those orders, and we thereupon assessed the capabilities of each work, each company representing a certain number of parts out of one hundred parts. The effect of this has been that we have gone on for two years dividing the orders in something like a proper proportion, and we have maintained a price of 4*l.* 13*s.* a ton at the works, it having been when we began 4*l.*

In this last distribution he is speaking of the distribution among the English manufacturers, and not the manufacturers of the world. He continues at some length, but as the hour is late I will not read it all. The chairman said:

Who regulates the prices, the council?

A. Yes; we have never altered the price, but once raised 2*s.* 6*d.* a ton four months after we commenced, and we have continued that since. Personally, I should prefer to reduce it again, but in an association of this kind you are obliged to deal very carefully with the opinions of those you are working with, and it is only recently that we have all come to the conclusion that to avoid the competition of firms outside the union we must reduce the price considerably.

Evidently they were making rails at a good round profit or they would not voluntarily reduce the price. Mr. Dale, one of the board, asks this question:

Mr. DALE. Your association is charging more than they really need to charge for profit?

A. We are not charging much profit.

Mr. DRUMMOND. What proportion of the firms in England are in the union?

A. All except one; in Germany all except two, and in Belgium all the firms are in the union.

The CHAIRMAN. What would be the position of a man opening a new firm?

A. The position of a man opening a new firm would be that if he would not join the union we should have to put our price to the point that would prevent other people coming into it. The point to which we regulate our price is to minimize competition as much as we can.

Mr. HOULDSWORTH. When you say all the firms you mean steel-making firms?

A. Yes; steel-rail makers.

Does the association extend to anything except rails?

A. No.

Mr. DALE. Does the firm that stood out at first come in?

A. No; they still stand out.

Have the prices since you established the association been such as were calculated to insure an inordinate profit or such as were calculated rather to insure against loss by undue competition?

A. The price was fixed at very much what we considered the cost price would be at the least favored works, and any amount of profit upon the prices we fixed is due to the better position and better plant of the various works.

There is no competition at all. They took the lowest as they always do in such cases, the price of the least favored works, and made that the standard price, which gave, of course, to the more favored works a great advantage.

And any amount of profit upon the prices we fixed is due to the better position and better plant of the various works.

Did your least favored works agree to that?

A. The least favored works are in a minority.

Mr. PALMER. Could you say how much you advanced the price under the arrangement?

A. I should say that we advanced the price certainly by from 12*s.* 6*d.* to 13*s.* a ton.

Upon what price?

A. Upon the price that was current when the association started; but it is not quite fair to consider it in that way, because it was impossible for the prices that existed when the association started to be maintained for any length of time; it was absolute ruin to almost everybody to go on.

The price would have been about 4*l.* then, according to the figure you have given?

A. Under the extreme competition that was going on just at the time we started it was about 4*l.*, and we put the price up to 4*l.* 15*s.*, but we have only realized about 4*l.* 13*s.*, because there have been a good many cases in which we have had to compete with France, and one or two cases in which we have had to compete with Austria, and when any firm supplies rails under the standard price the price is made up out of the funds of the association.

I hope the Senator from Missouri understands that system of executing a trust. That simply means that when France undertook to export rails and Austria undertook to export rails, some member of the association put down the price of rails to such an extent that he lost by it, and the association made up the difference in order to ruin the export of France and Austria.

This contains very interesting reading, but I will not detain the Senate with the entire volume. After asking as to the amount of rails they had produced, the examination proceeded thus:

Then we may take it that the result of the combination has not assisted at all the quantity, although it has given the iron-masters a somewhat better price?

A. As far as we can make out the combination has not interfered with the volume of trade at all; we can not make out that we have lost a single order that would have been placed if the combination had not existed.

But then you still have the fact before you that you have willingly surrendered to Germany, during the period I have named, 246,000 tons?

A. We have willingly surrendered, that is true; but we should have had probably to surrender an equal quantity if we had gone on competing and to have surrendered it at a less price. The share of work given to the Germans and Belgians in the last two years is based upon giving them the share that they took in 1881, 1882, and 1883, in competition with us.

Mr. PALMER. May I ask why you gave 2 per cent., recently, more to Germany?

A. Because the Germans alleged that there had been an error in the figure upon which our calculation was made two years ago.

Then the witness went on to say that by the terms of this combination they were nearly ready to close, but they were considering the propriety of continuing this trust.

The Senator from Missouri has on several occasions complained of the tariff, especially with reference to steel rails, as I understood he did to-day, and as to steel generally, notwithstanding, as stated by the Senator from Iowa, practically steel rails and steel have been at the same price in Great Britain and in this country for a number of years. In December, 1885, steel rails were sold in Great Britain, according to the testimony to be found in this book, for more money than they were selling for in New York, and I want to call the attention of the Senator from Missouri and the Senate to a statement made here as to the manufacture of steel generally.

This is the testimony of Mr. Vickers, who is a steel manufacturer, and I want to say that the commission which took this testimony did not call before it Tom, Dick, and Harry, but it called men who stood at the front in the industrial enterprises in Great Britain. It took the masters of the question and brought them before it, and there never has been in the history of the world such a collection of important facts connected with the history of the industries of a country as was collected before that commission; and it is important both on account of the industry of the men who took it and on account of the great character and learning of the men who were in business who appeared before the commission. If this book could be put before the American people, if they could read the whole of it, the Senator from Missouri and those who think like him would have very little to say, I imagine, about the benefits of free trade to the industrial enterprises of any country.

Mr. VEST. I should like to ask the Senator from Colorado a question, which it seems to me concerns the people of this country a great deal more than the evidence taken before that commission. Does he not know that it is a fact that the steel-makers, including the steel-rail men, in this country entered into a trust a few years ago; that they made a trust here in the United States in order to put up the price and keep up the price of steel rails and other steel products?

Mr. TELLER. I understand they did, but they made it just exactly as it was made in Great Britain, and they will make it without any tariff; and if we had been exporters of rails, which we are now to some extent, but not largely, our American rail manufacturers would have entered into that trust with the British. I have no doubt about it at all. I am not saying that the men who manage these great industries will not get all they can out of the people. I am not defending trusts. I intend to vote for any measure that is constitutional and legal to break up these trusts, and I propose to say something about the bill which I do not care to say to-night, because I want to examine more carefully the amendment offered by the Senator from Kansas. I wish, however, to read from this volume about the price of steel.

Mr. Vickers went on then to tell about a pool, which is another name for a trust, that existed among the manufacturers of other steel besides steel rails. Let me read the questions put to him and his answers:

Mr. AIRD. Upon that I would ask you whether you do not believe that these pools or arrangements amongst individuals or companies tend to discourage individual enterprise.

A. I do not think they do; if manufacturers combine together and agree to sell at the same price, of course their great aim is to try to manufacture as cheaply as possible, in order to try to get a larger profit than other manufacturers at equal prices.

But surely it has the effect of discouraging an individual who may be an energetic, business-like man in pushing his own individual works to the front.

A. A man can always retire from the pool if he wishes to do so.

But that retiring from the pool would be very likely to bring upon him——

A. The favor of the buyers.

And the opposition of the manufacturers?

A. The opposition of the manufacturers would do him no harm, but the favor of the buyer would do him a great deal of good.

That is proof positive, if he would have the favor of the buyer, that there is an opinion among the buyers in that country that these pools do put up unduly the price of the product.

You are aware that the manufacturers inside the ring contribute to assist each other to the prejudice of those outside the ring when orders are given under certain circumstances.

A. I am not aware of that.

Where the pool is used in that way, do you not think it is to the detriment of the trade?

A. I do not think that a pool is at all to the detriment of the trade in the country in which it exists, but it is a subject I have not thought much of.

The CHAIRMAN. Are you aware whether there are any similar pools in America?

A. I am not.

Mr. ECROYD. In reference to an answer you gave to Professor Bonamy Price just now, do you know whether the price of steel in America is just so much higher than the price here as represents the duty?

A. The price of steel in America now is so low that we can hardly send steel at all to America. I have here some prices which were reported by our agents in April, 1885. American steel sold, in competition with our best cast steel, at 7¼ cents a pound, without duty. This price would net us 15*l.* 17*s.* per ton in Sheffield. If the raw materials—that is to say, the iron—were given to us we could not manufacture it at the price.

That is a Sheffield iron manufacturer, and everything is free there. Then the examination proceeds:

That is not quite what I wanted to elicit. If the price of a certain quality of steel at Sheffield is 40*l.* a ton and if the price of the same manufacturer in America were 42*l.* a ton, you could not, of course, export?

A. It would be impossible to compete with them.

Because the duty would bring yours up to 53*l.* 16*s.* a ton, while theirs would be 42*l.*?

A. Yes.

That shows who pays the duty.

Therefore, it does not follow that the consumers pay the extra price represented by the duty?

A. Certainly not. They do not pay anything like the amount that is represented by the duty, because the works have been established and their proprietors must now manufacture at a low price in order to keep the works going; they do not manufacture at a large profit.

The effect of the American tariff is to keep your goods out without raising the price in America to the consumer to anything like the amount represented by the duty?

A. That is so now; it was not so in the past.

Professor BONAMY PRICE. But do you believe that the word "now" is to go on?

A. I believe the duty in the past has fostered the building of these works; these works are there and must be kept going.

At a profit?

A. At a profit or no profit, they must keep them going.

What I wanted to know was this: Whether, supposing the tariff not acting, the works are in the state that they would have been in if they had no duty as far as the steel goes?

A. I believe at the present time they are paying no more for their steel than they would be if they had no duty. When I say "at present" I should say three months ago. I believe prices have risen considerably in the last three months in America. I am informed that trade has very much improved there.

With that improved trade, is the price of steel increasing?

A. The price of steel is still too low to enable us to compete.

That was on the 21st of January, 1886. Now, Mr. President, at the risk of worrying the Senate I want to read one or two other things that I have got here, which I think may prove to be of interest. Several of these witnesses were asked the question directly who paid the duty, and so far as I have been able to find in this testimony—and I think I have read everything in it, and it is pretty voluminous—not a single witness ever suggested that we paid the duty, but they all declared that the duty came out of them, and witness after witness declared over and over again in every department of industry in Great Britain in this volume, and in the other to which I have referred, that it was the hostile legislation of France, of Germany, of the United States, and of Russia that was ruining the business of England so that the English could not compete, that manufactures were being built up in these countries to such an extent that they could manufacture as cheaply as the British manufacturers could, and that they had to pay the tariff duties and they could not do it.

Now, Mr. President, speaking of Germany, Mr. I. T. Smith said:

Then you do not look to the development of the steel and iron industry in England in supplying countries like Germany, America, France, and Belgium, who make so largely for themselves and who have hostile tariffs against us to-day?

A. To those three countries which you have named I do not anticipate that we shall send any material quality of iron or steel, but to other countries we shall, although there are hostile tariffs there also; but in Germany they are making their iron and steel nearly as cheap as we do, and we, having to pay import duty, are necessarily barred from that country.

That is Germany. He said they had been selling some rails to the United States which he thought they sold because theirs were superior; at all events, they had got a higher price than the ranging price in the United States.

Then it is owing to the inferiority of their rails and to your having a better article that the Americans will pay you 6 guineas a ton more for rails manufactured by you than for rails manufactured in their own country?

A. Two pounds ten shillings a ton.

And 3*l.* 16*s.* for duty?

A. No, we pay the extra price; they pay us 2*l.* 10*s.*, and we pay the duty.

Mr. GORMAN. Will the Senator from Colorado permit me to ask a question?

Mr. TELLER. Certainly.

Mr. GORMAN. I understand that the Senator in what he is reading is dealing alone with the question of steel rails.

Mr. TELLER. The Senator is mistaken. I am reading now because I happen to have this volume here; but the Senator will find that same statement running through the testimony of all the men who testified before the commission, all the manufacturers of woolen goods, of Sheffield hardware, and of everything else.

Mr. GORMAN. Take the item of tin-plate, which is not manufactured in this country, on which the duty is three-fourths of a cent a pound. I ask the Senator whether it is not the fact that the consumer pays that entire amount, and if the duty were removed would not the consumer have tin-plate three-fourths of a cent a pound cheaper than he is compelled to pay for it to-day?

Mr. TELLER. No, Mr. President; tin-plate is a high manufacture of iron. That is all there is of it. The Senator from Massachusetts [Mr. DAWES] says he would like to answer the question, and I yield to him for that purpose.

Mr. DAWES. When the Mills tariff bill was reported, which put tin-plate on the free-list, tin-plate went up in the British market just exactly the amount of the duty. If anybody indulges in the delusion that when the foreigner can secure the control of our market he will put down the price to accommodate us, it is not I.

Mr. VEST. I want to call the attention of the Senator from Massachusetts to another startling fact. We took the duty off quinine a few years ago and immediately quinine went up, but it did not stay up, for it is down now.

Mr. TELLER. The Senator from Missouri is not serious in saying or pretending that the fall in the price of quinine had anything to do with our taking the duty off that article. The Senator knows very well that quinine went up for a little while——

Mr. VEST. A little! It went up for a year, and it was pointed to by the protectionists of this country as a horrible example of the fact that taking off duty did not diminish the cost to the consumer.

Mr. TELLER. It would have staid up but for the fact that the production of quinine exceeded anything that had ever before been heard of. The British Government and other Governments had fostered and encouraged the raising of the shrub from which quinine comes, and just about that time they had arrived at the stage when they could begin to realize upon it, and quinine went down, the world over, in its raw state. That is why it went down, and our tariff had nothing to do with it. But I am not to be diverted on the quinine business just now. I am on the steel business.

I continue to read the questions put to Mr. Smith and his answers:

Would you explain a little further your statement to Mr. Pearce about you paying duties on steel rails which went to America?

A. When we deliver steel rails at New York we can not land those rails in New York without paying a duty of $17 a ton.

You do not mean to say that the exporters pay the duty?

A. We do.

You mean that the duty is paid, not by the importing people, but by the exporting people?

A. The price is fixed free to New York, and you can not put the rails into railway trucks for inland transport until the duty is paid.

Mr. JACKSON. That is one of the conditions of the bargain?

A. That is it.

EARL OF DUNRAVEN. Do you mean that you sell the article cheaper per ton to the American importer to the extent of the duty?

A. Yes.

There is not a Senator on the other side of the Chamber who has ever made a speech on free trade or the tariff who has not over and over again reiterated that we paid the duty, not only on steel rails, but on everything else.

Mr. VEST. I suggest to the Senator from Colorado that I wish the Senator from Rhode Island [Mr. ALDRICH] was in the Chamber, who stated in the last Congress that the tariff was put on in order to put up the price. That was said in debate.

Mr. TELLER. The tariff is put on to protect our people from just what these trusts did with reference to France and Austria, so that when we want to export or when we want to trade with our own people these trusts shall not come in and break down our enterprises. That is what he said.

Mr. VEST. No, sir.

Mr. TELLER. And it compels them to do just what he said it was for their interest to do, to sell at a loss rather than to shut up their establishments.

Now, let me read a little further what this witness said:

Then the exporter has to pay the duty?

A. Yes; if no duty had to be levied it would make a difference of $17 less per ton.

There was one other part I intended to read, but I do not remember the page it is on and I shall not stop to find it now.

Mr. President, I suggest that the Senators who are so certain that the tariff always raises the prices of all articles and that the consumer pays the tariff duty under all circumstances should get a copy of this work and give some attention to this testimony. We published the testimony taken by the Commission on the Precious Metals, and I think the Committee on Printing will do a great service to this country if they will cause this volume to be published for free distribution, because the cost of the total publication is, I think, about $15, or something in that neighborhood, and beyond the reach of the great mass of our people. There could be no public document sent out that would give the people so much information and instruction as can be obtained from these volumes. If it was the farmer complaining, he would find that the people of Great Britain have suffered immeasurably greater evils than the farmers of this country have suffered, and he would find a statement of affairs there that would be frightful. I shall take occasion before long, probably when some other question is pending, to present some of the testimony in this report in detail. I can say that the testimony before this commission shows that the income of the farmers of Great Britain for the year before the testimony was taken had been reduced by the depreciation of farm products in round numbers $42,000,000 in one single year; that the farmers, as a rule, had sunk from 40 to 60 per cent. of their capital, and that the landlords had lost from 30 to 40 per cent. of their rents.

Mr. President, I do not attribute this depreciation to free trade. The people of Great Britain attribute it to free trade largely, and the men who appeared before the commission testified that in their opinion very largely it was the effect of free trade, though some of them were so decidedly free trade in their proclivities and in their notions that they declared there was not any reason for it and there could not be any given, that nobody could tell. Some said it was occasioned by bad seasons, but they said with bad seasons or with good seasons the farmer was growing poorer and poorer and losing more every year and had been doing it for twelve straight years. I can demonstrate, and I intend to do so some day on this floor, that the trouble with Great Britain, as with us, is not because of the tariff duties, but it is owing to a lack of money, and that is what the whole world is suffering from to-day.

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

Mr. COKE. I should like, before that motion is put, to submit an amendment, which I intend to propose as a substitute for the trust bill at the proper time. I ask that it be printed and lie on the table.

The VICE-PRESIDENT. The proposed amendment will be ordered to be printed.

Mr. DAWES. I ask the Senator from Illinois to withhold his motion for a moment.

Mr. CULLOM. The Senator from Massachusetts desires to say a word, and I will yield to him.

Mr. DAWES. Mr. President, the Senator from Maryland [Mr. GORMAN] made an inquiry in reference to tin-plate and I made such answer as I was able to make at the time from memory in reference to that. He wanted to know what would be the effect upon the price of tin-plate in this country if those who have now the monopoly of its production abroad should have permission to introduce it free of duty here, and I spoke from memory. I should like now to read from the Pall Mall Gazette of July 25, 1888, this extract:

A RISE IN THE PRICE OF TIN.

The passing by the United States House of Representatives of the Mills tariff bill, which places tin-plates on the free-list, has led to a sharp rise in the price of tin. Yesterday Straits touched 89*l.* 7*s.* 6*d.* cash and 89*l.* 15*s.* three months. This is an advance of from 14*l.* to 15*l.* on the figures quoted recently. If the Senate passes the bill in its present form tin will command higher prices than have ruled of late, and a great impetus will be given to an important branch of manufacture in this country.

The Ironmonger, a paper published about the same time, further speaks of this matter in a manner which will be highly instructive to those of our friends who are teaching those workmen employed on tin-plate that they are taxed because of an effort to furnish them with the raw material in this country. This is what The Ironmonger says:

The promoters of the home-made plan are exceedingly pertinacious and are leaving no effort untried in order to achieve success, and through the Pittsburgh exhibition the way will be made easier for pushing a bill through Congress next session, having for its object the imposition of much heavier duties upon imported tin-plates. Should this scheme succeed, there is no doubt that a great deal of American capital will be promptly embarked in the business and sooner or later the tin-plate will cease to be a monopoly of South Wales and Monmouthshire. Nevertheless, we see no reason why the manufacturers of tin-plate in this country need grow disheartened or despondent.

I hope the Senator from Missouri will listen to this.

Mr. VEST. I suppose that extract is from The Economist.

Mr. DAWES. This is from the London Ironmonger:

They have the advantages of possession, position for shipment, trained labor, and all materials on the spot. These are very important points, but, in addition, the Welsh makers have strong allies in the United States, and if the alliance is made the most of, we should have very considerable doubts of the success of any application to Congress to increase the present duties. But to insure that result the Welsh makers and their business connections must not only watch, but work, and work hard, to checkmate the advance of the American ultra-protectionists.

Mr. CULLOM. I yield to the Senator from Mississippi [Mr. GEORGE] to make an announcement.

Mr. GEORGE. I call the attention of Senators to what I am going to say. With the consent of the Senator from Ohio [Mr. SHERMAN] and one or two others over there, for my personal convenience, I ask that the bill now before the Senate be passed over until the conclusion of the morning business on Monday morning, and be then the unfinished business. I suppose it will require unanimous consent to make that arrangement.

The VICE-PRESIDENT. Is there objection to the request made by the Senator from Mississippi?

Mr. VEST. Will the Senator from Ohio agree to that?

Mr. SHERMAN. I have no personal objection to letting the bill go over if it can be considered as the unfinished business for Monday.

Mr. VEST. I have not the slightest objection. Then, if that is the agreement, I renew the motion that we adjourn over until Monday. I am on two committees which meet to-morrow.

Mr. CULLOM. I think it is pretty generally understood that there is to be a session to-morrow to consider the Calendar of unobjected cases.

Mr. HARRIS. Will not the Senator from Illinois ask unanimous consent that to-morrow shall be devoted to the Calendar under Rule VIII?

Mr. CULLOM. While upon the floor and before insisting upon my motion to proceed to the consideration of executive business, I ask that to-morrow's session be devoted to the consideration of the Calendar of unobjected cases under Rule VIII.

Mr. GEORGE. Now I should like to have my request acted upon.

The VICE-PRESIDENT. Is there objection to the request of the Senator from Mississippi?

Mr. PLATT. Of course there is no objection to allowing this bill to go over, but if unanimous consent is required that this bill is to be pro-

ceeded with on Monday, whatever may come up at that time and no matter what other business may come up at that time, I do not want to agree to that. I do not want to bind ourselves that this business shall proceed on Monday as against all other business.

Mr. HARRIS. There can be no objection to letting this bill remain as the unfinished business.

Mr. PLATT. I have no objection to letting it remain the unfinished business.

Mr. HARRIS. That is all that was implied.

Mr. PLATT. If that is all that was implied, I have no objection to that.

Mr. CULLOM. I ask unanimous consent that to-morrow's session be devoted to the Calendar under Rule VIII.

The VICE-PRESIDENT. Is there objection to the request of the Senator from Illinois?

Mr. INGALLS. Does that include the entire day, from the conclusion of the formal morning business until the adjournment?

Mr. HARRIS. Unless an executive session is interposed, I should think.

Mr. CULLOM. I do not suppose it would preclude an executive session later in the day.

Mr. INGALLS. Everything but that?

Mr. CULLOM. Everything but that.

The VICE-PRESIDENT. Is there objection to the request of the Senator from Illinois? The Chair hears none.

Mr. CULLOM. Now I insist on my motion for an executive session.

Mr. GEORGE. Will the Senator yield to me to offer an amendment?

Mr. CULLOM. I yield for that purpose.

Mr. GEORGE. I offer an amendment which I intend to propose to the pending bill, and I ask that it be printed.

The VICE-PRESIDENT. The amendment will be received and ordered to be printed.

Mr. SHERMAN. I hope Senators will all understand that on Monday we shall proceed with this bill and try to finish it before the adjournment on that day.

The VICE-PRESIDENT. That is the understanding of the Chair.

Mr. PLATT. What is that?

The VICE-PRESIDENT. That the bill under consideration at the present time shall go over until Monday next and be considered as the unfinished business, to be disposed of on that day.

Mr. ALLISON. The unanimous consent does not go to the point of finishing the bill on Monday.

Mr. HARRIS. Oh, no; not to that extent. We do not know how long the bill may take.

Mr. PLATT. No, and it does not go to the point of considering it on Monday either.

Mr. CULLOM. A majority can settle that on Monday. I now insist on my motion that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After three minutes spent in executive session the doors were reopened, and (at 5 o'clock p. m.) the Senate adjourned until to-morrow, Saturday, March 22, 1890, at 12 o'clock m.

CONFIRMATIONS.

Executive nominations confirmed by the Senate March 21, 1890.

UNITED STATES CONSULS.

James F. Ellis, of Wisconsin, to be consul of the United States at Brockville, Canada.

James C. Kellogg, of Louisiana, to be consul of the United States at Stettin.

HOUSE OF REPRESENTATIVES.

FRIDAY, *March* 21, 1890.

The House met at 12 o'clock m. Prayer by Rev. GEORGE ELLIOTT, of Washington, D. C.

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

ORDER OF BUSINESS.

Mr. MORROW. Mr. Speaker, I move that the House now resolve itself into Committee of the Whole House for the purpose of considering the annual pension appropriation bill.

Mr. RICHARDSON. Mr. Speaker, is not this day set apart under the rules for the consideration of the Private Calendar?

The SPEAKER. Under the rules the Committee on Appropriations has the right to make this motion at any time after the reading of the Journal on any day.

Mr. RICHARDSON. Without a formal motion to dispense with the Private Calendar?

The SPEAKER. Without that.

The question was taken on the motion of Mr. MORROW, and the Speaker declared that the ayes seemed to have it.

Mr. RICHARDSON. I ask for a division.

The House divided; and there were—ayes 93, noes 25; so the motion was agreed to.

The House accordingly resolved itself into Committee of the Whole, Mr. BURROWS in the chair.

PENSION APPROPRIATION BILL.

The CHAIRMAN. The House is in Committee of the Whole on the state of the Union for the purpose of considering the annual pension appropriation bill. The gentleman from Indiana [Mr. CHEADLE] is entitled to the floor.

Mr. CHEADLE. Mr. Chairman, the bill under discussion is the largest annual appropriation for pensions ever made, and I would not attempt to underestimate its cost to the country. I know that pension expense is heavy and must be heavier for several years to come. The Government these pensioners saved from destruction solemnly promised its citizen heroes that if they would volunteer in its defense those who were wounded or broken in health, and the widows and children of those who died should be properly cared for. The patriotic soldiers performed their part of the contract; they volunteered and saved the nation's life, and it remains to be seen whether those who are charged with the administration of the Government now will fulfill its promises and redeem its pledges made to the soldiers of the war of 1861–1865.

I wish to call the attention of the House and the country in the time given me to the duty of providing a service pension for life to our citizen heroes and to the duty of providing a pension for the widow of every deceased Union veteran and of properly caring for all who are now broken in health.

I had the honor of introducing House bill No. 235, a bill which authorizes and directs the payment of a service pension to every honorably discharged Union soldier, sailor, and marine who served sixty days in the war of 1861–1865 and who has now arrived or shall hereafter arrive at the age of fifty years.

This bill also authorizes the granting of a pension to the widow of every deceased veteran at the rate of $12 a month. If I could I would make the rate of pension for every widow $20 a month, and then repeal all laws in conflict with this provision, and thus end at once and forever all forms of class legislation upon the disability of widowhood, a disability in which there can be no degrees and yet one for which in this land of constitutional equality of citizenship Congress has dared to grant to one widow $3,500 a year and to another $144 a year.

This bill authorizes the granting of a pension to every disabled veteran and simplifies the ratings for invalid pensions below the specific rates granted for the loss of limbs, eyes, and for deafness, or their equivalents, thus giving practical effect to the statement of our honored President, who in one of his public speeches said, "In granting pensions to our Union veterans they ought not to be weighed in apothecary balances," meaning thereby, I have no doubt, that there never should be such fine distinctions in ratings that it would require these pensions to be divided into the fractional part of a cent per month, as they now are under existing laws. The bill also meets the demand for the repeal of the arrears act by providing that all invalid pensioners whose pensions do not carry arrears shall be granted a pension of $5 a month from the date of the incurrence of the disability to the date of the issuing of the existing pension.

A bill so just and patriotic as this one is, a measure which is in nearly every one of its provisions so thoroughly in harmony with the legislative precedents of the Government from its organization, merits, in my opinion, the most careful consideration and study by every member of this House and by the people of the whole country. I think it is conceded by every fair-minded and patriotic citizen of the Republic that it was the Union soldiers, sailors, and marines who, by their valor, their sacrifices, and their sufferings, suppressed the gigantic rebellion against the life of the nation, conquered an honorable and lasting peace, and thereby secured and re-established this temple of constitutional liberty with all its manifold blessings to the present and coming generations who shall follow us.

If, then, it is to them that we are indebted for all the blessings of this peerless citizenship of ours; if, having suffered so much and risked life itself to secure for us these inestimable blessings, what are the just and legal rights of those who still live, who were of that grandest and noblest of all armies in that greatest of all conflicts? I repeat, Mr. Chairman, what are the just and legal rights of these veterans?

I hold, as I am quite sure the great mass of our people hold and as the solemn pledges of the Government made to these men when they left their homes and enlisted imperatively demand, that it is their right to claim, yes, Mr. Chairman, their right to demand and receive, the same benefits and honors which have heretofore been conferred by the Government upon their fathers who participated in other wars and rendered heroic service to their country in the earlier days of the Republic. If it be true that the Government did recognize and honor its heroes in its earlier history, when its people were poor and its Treasury was hard pressed to meet the current demands of Government, surely a patriotic Congress and people can not consistently refuse to grant a patient hearing to these claims and will not deny so just a demand at this time, when the wealth of the nation has quadrupled since that