The VICE-PRESIDENT. Is there further morning business? If not, the Calendar is in order.

Mr. SHERMAN. Pending the Calendar, I move that the Senate proceed to the consideration of the unfinished business of Friday.

Mr. HARRIS. I ask the Senator from Ohio if it would not be well for us to devote the hour between now and 2 o'clock to the regular order, which is the Calendar under Rule VIII, and take up the unfinished business promptly at 2 o'clock. We are making very slow progress upon the Calendar, and I think it important that we should proceed with it.

The VICE-PRESIDENT. The report upon the bill under consideration is now in the possession of the Senate.

Mr. SHERMAN. Very well.

Mr. EDMUNDS. Let it be read. It is short.

The VICE-PRESIDENT. The report will be read.

The Chief Clerk read the report submitted by Mr. BLAIR February 11, 1890, as follows:

The Committee on Pensions, to whom was referred the bill (S. 2391) granting an increase of pension to Elmer A. Snow, have examined the same, and report:

Elmer A. Snow was discharged as a trumpeter of M Troop, Third United States Cavalry, March 19, 1877, on surgeon's certificate of disability, a copy of which, from the files of the Pension Office, says:

"Gunshot wounds of right elbow and both wrists and all the joints of both hands; unable to dress or feed himself. Disability total."

And from the Adjutant-General's Office:

"Gunshot wound left wrist and right arm; fractures of bones of wrist and arm."

And Examining Surgeon T. B. Hood says:

"Gunshot wound of left wrist. The ball entered near the head of radius and passed through, fracturing the bones and injuring the joint, also cutting of the radial artery; the motion of the wrist is limited, flexed on the forearm, the palm stiff, the fingers extended and impossible of but limited and feeble flexion; can not grasp a fork or knife in this hand, and can certainly not use it in any kind of labor. Equal to the loss of hand and permanent. Gunshot wound near the right elbow-joint, injuring the nerves supplying forearm and hand, which are paralyzed and useless; fingers stiff and unmovable by the will; can grasp nothing in this hand; equal to the loss of a hand. We believe this man's disability is permanent and he requires, and always will require, aid and attendance."

James H. C. Gaskins, an attendant, says on oath:

"I have undressed and dressed him, cut up his food and buttered his bread, brushed his clothes, and undressed him in the water-closet sufficient for him to obey the calls of nature, and other minor aid."

Patrick H. Briscoe, another attendant, on oath says:

"I have undressed him, cut up his food, buttered his bread, put on his overcoat, buttoned his shoes, and rendered much other aid; said aid being necessary, as said E. A. Snow has lost the use of both his hands."

Samuel G. Wooding, on oath, says:

"I have undressed and dressed him and washed him at the bath-rooms in the House of Representatives at different times."

All the above were sworn to March 20, A. D. 1879. He now receives a pension of $72 per month under act of Congress approved June 16, 1880.

He was before your committee with his supporters off, and it was apparent to us that he was as utterly helpless and as totally disabled as if his hands were amputated; and he is constantly obliged to wear a supporter on his left forearm and hand to hold his left wrist-joint together, and also one on his right arm from above his elbow to his hand to support his right elbow-joint, arm, and hand.

The act of Congress approved February 12, 1889, contained a clause for the loss of use of both hands. The House committee, in striking out that clause, said:

"While it is probable there are some soldiers whose hands were not amputated who suffer as great a disability as though amputation had been performed, most of that class have some use of their hands; to include this class necessarily will complicate the matter. There are twenty-one soldiers whose hands have been amputated. When they are cared for, other classes, if suffering as great a disability, can urge their claims."

It is very clear to your committee that Mr. Snow is suffering from as great a disability, and has been since the 12th day of February, 1889, and has been as great a sufferer, requiring the same aid and attention, and is one of the cases contemplated in the report.

Your committee recommend the passage of the bill with the following amendments: Strike out the word "Treasury," in third line, and insert the word "Interior." Strike out all after the word "month," in the seventh line, and insert the following words: "in lieu of the pension he is now receiving."

The bill was reported to the Senate, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

Mr. SHERMAN. Now, I insist on my motion.

Mr. BLAIR. I move that the bill (S. 2391) granting an increase of pension to Elmer A. Snow be indefinitely postponed.

The motion was agreed to.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. MCPHERSON, its Clerk, announced that the House had agreed to some and disagreed to other amendments of the Senate to the bill (H. R. 7496) to provide for certain of the most urgent deficiencies in the appropriations for the service of the Government for the fiscal year ending June 30, 1890, and for other purposes; that it had agreed to the fifty-fifth amendment of the Senate with an amendment; and that it asked a conference with the Senate on the disagreeing votes of the two Houses, and had appointed Mr. HENDERSON of Iowa, Mr. CANNON, and Mr. BRECKINRIDGE of Kentucky managers at the conference on the part of the House.

DEATH OF REPRESENTATIVE GAY.

The message also announced that the House had passed resolutions commemorative of the life and services of Hon. Edward J. Gay, late a Representative from the State of Louisiana.

TRUSTS AND COMBINATIONS.

Mr. SHERMAN. I insist now on my motion to proceed to the consideration of the unfinished business of Friday, being the bill (S. 1) to declare unlawful trusts and combinations in restraint of trade and production.

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.

Mr. TURPIE. Mr. President, I do not believe that the clause of the Constitution concerning controversies in which the United States shall be a party, controversies between two or more States, between a State and citizens of another State, between citizens of different States, has any relation except to the named controversies and to suits in equity and at law known and recognized to be such at the time of the adoption of the Constitution and now known and recognized to be such. I do not think such personal or mutual relations as are named in this clause have any connection with that large domain, the jurisdiction conferred in the beginning of the section arising "under the Constitution and laws of the United States." On the contrary, while the laws of the United States have granted special rights, remedies, or recoveries, those rights, remedies, and recoveries are to be entertained by the Federal courts without reference to the personal condition of the parties who may be interested in them. Such, I think, has been the invariable interpretation and practice under the first grant of power in this section, as far as we have gone into the domain characterized as "arising under the Constitution and laws of the United States."

I apprehend there are very few of us of this generation who have the slightest conception what this domain, very extensive in its character, shall yet include or embrace. Congress has seen fit heretofore to enter this domain very partially, only upon one or two or at the most three lines, and then to go no very great distance. The progress made in it has been always and must be dual. The jurisdiction conferred on the United States courts, arising under the Constitution and laws of the United States, is not self-operative. It always requires the act of Congress in the first place and the judgment of the court in the second place to make any progress at all in that domain. Congress must take the initiative. We must take action upon the subject-matter, and if our own jurisdiction in respect to such subject-matter is sustained by the courts the judicial jurisdiction in the courts is then sustained in respect to such subject-matter and the methods by which it is to be adjudicated.

The Senator from Missouri [Mr. VEST] spoke the other day about the difficulty of defining the word "commerce," especially as contained in the phrase "interstate commerce." I recollect one judicial decision upon this subject very definitely. The Supreme Court has decided that insurance is not commerce, and I suppose by following the circle of negations long enough and excluding all the things not commerce we should come at last to the residuum, which must be commerce or interstate commerce, because it can be nothing else. *A fortiori*, judging from this principle, I should myself have decided that transportation is not commerce nor interstate commerce either. It can not be. It is only a means of conducting commerce, notwithstanding the courts and Congress have decided and have judicially determined that transportation is a matter so nearly related to interstate commerce that both Congress and the Federal courts have jurisdiction in relation to it under the clause giving us the power to regulate interstate commerce.

Now, sir, we have created a special tribunal to try cases under the interstate-commerce act. We have legislated very fully and very elaborately upon the incident to interstate commerce called transportation by railway. We need not have created a special tribunal. We could have referred the whole matter to the Federal courts in the first instance. But whether this matter of interstate transportation by railway be dealt with by Congress or the courts, by special tribunals or by the regular tribunals, the law with regard to it provides for a special class of cases arising under the law of Congress, affording special remedies and relief, affording special rights for recovery, and it is not therefore necessary that litigants in this subject-matter should occupy to each other the personal relations mentioned in the latter clause of the section, and no inquiry has been made by the commission upon interstate commerce, upon transportation, or by a court trying a cause in relation to such measure, as to whether litigants were residents of different States or whether the suit was between a citizen of one State and a citizen of another State, or what might be their personal or official relations. It is only required to give jurisdiction in such matter that the party shall be interested in the subject-matter which Congress has taken under its jurisdiction; that is, railway transportation in interstate commerce.

Take another instance. I should myself have determined, reasoning in the same manner as before stated, that if there were any subject necessarily committed solely and exclusively to State action, it would be the relation between debtor and creditor. Had it not been for a long precedent history of determination upon the subject, I should say that it was clear Congress had no power to deal with such relations; yet the history of the general bankruptcy law in this country has been so long settled, so well known, that our authority to deal herein is no longer questioned, it is *res adjudicata*, and the only inquiry now made with respect to the passage of a general bankrupt law, with all its special rights and remedies and its utter indifference to parties, would be

whether it is expedient to do so. Congress having taken jurisdiction of the subject and having created special writs, processes, rights, remedies, recoveries, and defenses in this matter, it is never inquired in any case in a Federal court as to whether the parties in such cases were citizens of different States, were litigating with their own State or another, or whether they were representing any of the peculiar relations named and alluded to in the closing clause of the jurisdictional section which I first read.

I have known, and so has every attorney here known, litigants in the Federal courts under this special act of Congress, under both the acts of Congress in relation to bankruptcy, to be residents of the same State, of the same town in the same State, next-door neighbors, so absolute is the usage upon that subject-matter and so absolutely does the special provision of rights and remedies under an act of Congress confer unquestioned jurisdiction without any inquiry in respect to peculiar personal relations or official relations between the litigants.

I feel inclined to make the prediction, as one of the things to come in this vast domain, scarcely touched, of cases arising under the Constitution and laws of Congress, that the whole mass of merchantable paper known as negotiable by the law merchant, made at one place, negotiable at another, payable at another, transcending in its negotiation State lines, will be remitted to Congressional action, and with respect to its creation, its formation, its negotiation, with respect to all the rights and liabilities which may arise under it, the people, stunned with the eternal dissonance of conflicting decisions and judgments of forty-eight or fifty tribunals of last resort in the States upon the subject of interstate negotiable paper, will require Congress to act therein, and that, unconstitutional as I now deem it or think it, it will as a matter of necessity be done, and in any such legislation with respect to that paper, the whole bulk of it, the personal and peculiar conditions of litigants will not be inquired about, but simply whether the one party or the other is entitled to relief or liable to recovery against him by reason of being a party to interstate commercial paper, negotiable and payable and suable under the action of Congress which may finally take place upon that subject.

I go now, though, to another department of the domain which has been partially entered. I think we have only three times entered it since the existence of the Government.

Mr. MITCHELL. Will the Senator allow me to ask a question on that interesting subject?

Mr. TURPIE. Yes, sir.

Mr. MITCHELL. In discussing this negotiable paper business——

Mr. TURPIE. That was a mere suggestion.

Mr. MITCHELL. I understand the law is now that where the parties to negotiable paper are citizens of different States the Federal courts have jurisdiction.

Mr. TURPIE. Certainly.

Mr. MITCHELL. Does the Senator hold that Congress could go further and give parties a remedy in the Federal courts irrespective of the question as to whether the real parties to the paper were citizens of different States at the time?

Mr. TURPIE. I have stated what I have to say on that subject. The RECORD will show it, and I do not wish to be asked except as to what I have said.

Congress passed a law concerning the creation and existence of national banks, one entering upon this same domain of formerly disputed, and in fact now disputed, questions. One of the sections of that bill provided that the national banks should have the right to sue in the Federal courts and conferred jurisdiction upon the Federal courts, and suits were brought under that section in the Federal courts. No question was ever made as to what the relation of the parties was to each other in respect to residence—none whatever. It was simply necessary, Congress having conferred jurisdiction, that one of the parties should be a national bank to avail itself of this special remedy, and that the other should be liable or claimed to be liable as a debtor in some way to such national bank.

The legislation respecting transportation, the legislation respecting bankruptcy, and the other partial legislation respecting national banks are perhaps the only three instances in which we have entered upon this great domain of cases arising under the laws of Congress.

From the interpretation and practice under all three of these instances, I should think that when we assume special legislative jurisdiction and create causes of action by special enactment and confer the judicial jurisdiction upon Federal courts, it is not necessary to define further any relations, personal or official, as between the litigants in these courts. No inquiry will ever be made, should Congress assume this jurisdiction, create the rights and remedies, and give to the courts the power to pass upon them, where the parties live, whether they are private citizens or otherwise, what the corporations may be, except that they shall be both related as plaintiff and defendant, adversely or favorably, to some question connected with this subject-matter, the prevention of trusts in interstate commerce.

I do not feel like entering into any strictures upon the phraseology of the bill of the honorable Senator from Ohio. I am too favorably inclined to the main purpose of this measure to indulge in any criticism of any effort made in good faith to prevent or avert these evils. There are some of them with which I think it is necessary to deal; but there is nothing in the bill which is not amendable. I am very far from saying with the Senator from New York [Mr. HISCOCK] that the objections to the bill of the Senator from Ohio are fundamental and that the scope of the measure lies beyond our power.

On the contrary, I believe that Congress has the same power to regulate interstate commerce that the States have to regulate commerce within their own lines, and that, as a matter of public policy, we have the same right to make this regulation affording civil remedies for those injured by the trusts, denouncing the trusts penally and all the others which are contemplated, as a State has under similar circumstances. Nor do I think with the Senator from New York that we are discharged from duty or released from our obligation to legislate upon the subject of trusts because the States have a right to do so.

They unquestionably have a right to do so, but there comes a time when the States have not that right. There comes a time, sometimes it may be a few hours, sometimes a few days, it is always a brief time, but it is a time of transit, in which the goods are moving from one State to another. It is a creating, formative, procreative, profit-bearing time. If at that time, by reason of the condition imposed by it, we may at that very moment strike a blow at these mischiefs, it will be more effective and more remedial in its character than any amount of State legislation upon the subject; and although with reference to a single transaction it is admitted it may be very brief, yet with reference to the whole of the transactions of trusts in interstate commerce there is not an hour of the day or night whose moments are not filled by violations of the law here proposed, whose moments are not filled with the perpetration of that crime against the people which this bill denounces and which these measures aim to punish.

The purpose of the bill of the Senator from Ohio is to nullify civilly the agreements and obligations of the trusts of these fraudulent combinations; I favor it. There is another purpose: to give to parties injured a civil remedy in damages for injury inflicted; I am in favor of that.

Those are the two principal measures embraced in that bill. I am willing to go much further, and I think the Senators generally will also. There is a bill introduced by the Senator from Texas [Mr. REAGAN]. It is a most carefully and elaborately prepared bill as far as the penal section is concerned. It has been introduced into the Senate, but I am sorry that the Senator himself speaks of it as a substitute for the bill of the Senator from Ohio. It is in no sense a substitute. Allow me to suggest that it be made an additional section in the one bill which is to receive our sanction.

There can be no objection to the proposition to nullify civilly trust-contracts, the contracts of fraudulent trusts described here. There can be no objection to giving a civil remedy for those injured thereby. And there ought to be still less objection to punishing penally those who are guilty of these fraudulent combinations. This much will be accomplished by a bill embracing such sections as those proposed by the Senator from Ohio and the Senator from Texas, not using either as a substitute, but all as additional, incidental, and closely connected with the main object and purposes of the whole body of legislation upon the matter about which and over which we are about to assume jurisdiction.

There is another bill here having very great merit. I allude now to the bill of the Senator from Mississippi, [Mr. GEORGE] upon the same subject. I have not heard that Senator say that it was offered as a substitute, but I suggest that it ought to go into the same bill as auxiliary thereto. I am perfectly willing to authorize the President to suspend the collection of duty with respect to commodities which have become the subject of fraudulent trusts, so that we shall have the action of Congress, the action of the courts, and the action of the Executive all directed to the same purpose.

Sir, a good deal has been said about the difficulties which are involved in this kind of legislation and the difficulties of administering a law or passing a law of this nature. We should have all these sections put into the same bill, making an act of only six or seven sections, upon the subject of trusts, and I think that would be a very brief enactment upon that subject. I do not think it would be a perfect enactment. No first legislation is ever perfect. I would rather favor imperfect legislation upon this subject than to be silent. It is only by commencing and prosecuting these different projects to the form of law, entering this domain, and asking the opinions of the Federal tribunals as to our own jurisdictional power, first, that we shall ever be able to lay hands upon these conspiracies which have done so much to injure the commercial credit and prosperity of interstate trade. It is our duty to do that first.

After all, these difficulties may be greatly overrated. It is a very difficult thing to convict a man under the numerous penal statutes in all the States of fraudulent conveyance. I have known a great many prosecutions of that kind in my life and not a single conviction; yet I would not vote for the repeal of such a statute. It is a valuable law, and has prevented much fraud. It is *in terrorem* over offenders, and whether prosecutions have been sustained or not it has exercised a valuable moral influence in the business of the country.

In the same respect we have it as part of the statute of frauds that

such conveyances shall be void; also a very useful enactment. Now, I would add as a part of the Congressional statute of frauds exactly the provision in the bill of the Senator from Ohio that all agreements, notes, bonds, securities, and contracts of any nature made by a trust for trust purposes, or made by one of these fraudulent combinations, shall be null and void. The civil nullification of all the paper creatures of these combinations is a thing we have certainly in our power.

Again, sir, there may be some difficulty in defining this offense. To describe it is impossible. It is like the penal offense of fraud. The courts have never attempted to define it. In the statute the definition of it is very brief, "a conveyance with intent to hinder or delay creditors." Notwithstanding, the definition has been made practical, it has been made useful, and it has become a measure of the first importance in the conduct of the business of the country; and notwithstanding this definition may be imperfect and there may be no description and can be none altogether applicable to fraudulent commercial trusts, they vary so much and are so multiform in their character, yet the definition here attempted will, if it do nothing else, lead us to a better form and a more explicit definition or description of the offense here meant to be denounced.

Notwithstanding the difficulty which courts and juries have had in punishing men, or in investigating cases brought upon complaints of fraudulent conveyance or of procuring goods upon false pretenses, yet this jurisdiction has been of extreme worth and is still of great utility. We know that in the revenue acts there are very great difficulties accompanying sometimes the conviction of a smuggler, at other times of parties who are charged with making false invoices and false inventories, and there are many of the definitions or attempted descriptions of offenses in the customs acts which are even now, after years of adjudication, more vague and more indefinite than anything contained in the bill of the Senator from Mississippi, and the Senator from Ohio, or the Senator from Texas upon this subject; and yet they have not practically failed to prevent those frauds and to punish offenders.

We need not conceive, and I do not think any of us have, that Congress takes upon itself the entire charge of the administration of justice in the country. We have only one branch of it. We make the laws which are to be civilly and penally administered. The moment we denounce these trusts penally, the moment we declare these fraudulent trust combinations to be conspiracies, to be felonies or misdemeanors, that moment, under their own maxim, the courts are bound to carry out the intention and purpose of the legislation, and even to favor that purpose and intention, that the will of the people may prevail and not perish. This is one of the fundamental maxims. I have no doubt that when this law goes into practical operation it will receive a construction and a definition very useful to us; it will be aided by courts and juries; it will be aided by advocates upon both sides in stating different views of construction, and above all it will be supported and upheld by a public opinion expressed in a denunciation of those evils which this kind of legislation would avert and avoid.

Mr. PUGH. Mr. President, it will take me but a short time to give my views to the Senate upon the important bill now before us. I have listened with interest and instruction to the speech of the Senator from Indiana [Mr. TURPIE], and in the main I fully indorse it.

Mr. President, the existence of trusts and combinations to limit the production of articles of consumption entering into interstate and foreign commerce for the purpose of destroying competition in production and thereby increasing prices to consumers has become a matter of public history, and the magnitude and oppressive and merciless character of the evils resulting directly to consumers and to our interstate and foreign commerce from such organizations are known and admitted everywhere, and the universal inquiry is, What shall be done that can be done by Congress to prevent or mitigate these evils and intolerable exactions?

Congress may declare these trusts and combinations to be unlawful, if they are against the public policy of the United States, and without any act of Congress prohibiting their creation or existence they could not now be enforced in any court, because they are manifestly contrary to the public policy of the United States. Such trusts and combinations could not be enforced even as against the parties to them, for the reason that the wrongdoing of any party to them can not be visited upon him by the courts on account of his conduct when to do so would be detrimental to the public policy of the United States, and in such cases the courts relieve the wrongdoer to protect the public policy, which is paramount.

Why are such trusts and combinations contrary to the public policy of the United States? For the plain reason that they hinder, interrupt, and impair the freedom and fairness of commerce with foreign nations and among the States.

To use the language of the bill before the Senate, are "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 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," against the public policy of the United States?

Can any Senator doubt that the recitals of the first section of the bill are true, and that they amount to a violation of the public policy of the United States, and, if so, that Congress can declare such transactions to be unlawful and void for that reason? What public policy of the United States is violated by the acts recited in the bill? Manifestly the public policy founded on and to be encouraged and promoted by the freedom and fairness of our commerce with foreign nations and among the States and the unrestricted interchange of their productions. Has Congress no power to protect the public policy? If no such power exists in Congress, then our public policy is at the mercy of conspirators against it, and, although clothed with an express grant of power to regulate commerce, no power exists by implication which Congress decides to be "necessary and proper" to execute the express grant.

But it may be conceded that Congress has the power under the commerce clause of the Constitution to define what acts are detrimental to our commercial policy and to prohibit them. What is the value of such a power if it is limited to mere declaration and prohibition? If the acts denounced in the bill are unlawful or become so by declaration and prohibition by Congress because they have the effect or tend to violate our commercial policy, why should Congress be powerless to enact penalties and provide remedies? I have heard no answer to this inquiry except that the Federal courts have no jurisdiction and Congress can confer upon them no jurisdiction to enforce any remedies for the evils recited in the bill.

Let us see if this opinion is well founded. In Cohens *vs.* Virginia, 6 Wheaton, page 378, many times cited, Chief-Justice Marshall delivered the opinion of the court in these words:

> 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 the Constitution, the laws of the United States, and treaties," etc. 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.

It is solely from the subject-matter, "the character of the cause," that I desire the power of Congress to pass the bill under consideration and to confer jurisdiction to the Federal courts to execute the law. The subject-matter is commerce with foreign nations and among the States, and the public policy founded on its encouragement and promotion. In my humble judgment it was unnecessary for the bill to make the parties to the trust and combination citizens or corporations of different States, and it should be amended so as to include citizens of the same State or Territory. It matters not where the parties reside if their acts or combinations hinder, delay, interrupt, or prejudice the freedom and fairness of our commerce or violate our commercial policy in the manner specified in the bill. I have no doubt Congress has the power to make such trusts and combinations criminal and punishable by fine and imprisonment.

Whenever the bill before the Senate becomes a law of the United States, the Constitution declares, in the language of Chief-Justice Marshall, that "the judicial power of the United States extends the jurisdiction of the court to all cases in law and equity arising under the laws of the United States, without any exceptions whatever and without any regard to the condition of the party." Make the bill before the Senate a law of the United States. I know of no law Congress has the constitutional power to enact that Congress can not authorize and require the courts of its own creation to execute.

Where did Congress get the power to enact into a law the fifth section of the act "to regulate commerce," known as the interstate-commerce law, which declares—

> That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense?

I know it will be at once claimed that these common carriers are engaged in interstate transportation on public highways, and that it is their pursuit there that subjects them to the jurisdiction of Congress and the Federal courts. This is true; but what I wish to show is that the crucial test urged by Senators opposed to the proposed legislation for want of constitutional power in Congress is the judicial definition of commerce with foreign nations and between the States.

It is claimed that the Supreme Court in the leading case of Brown *vs.* The State of Maryland crystallized the law as to the meaning of foreign commerce by saying that it was "imports in the original package remaining in the hands of the importer unbroken; and when and so long as the original package was in that condition it was the sub-

ject 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."

Again, it is correctly stated that the Supreme Court in three leading cases has also defined the constitutional meaning of "commerce among the States" to be in "articles, commodities, productions that become the subject of sale or barter and are in the custody of the carrier and *in transitu*, actually moving from one State to another to purchasers and consumers." When these articles, commodities, or productions of one State are in the condition of being moved and are labeled for carriage and for sale or other disposition in another State, then they become subject to the operation of the commerce clause of the Constitution as to "commerce among the States."

It is important that Senators should understand that the definitions of commerce with foreign nations and among the States relate exclusively to the *corpus* of foreign and interstate commerce. The physical body, the articles, the productions, the goods, wares, and merchandise, the freight—when these become the subject of "regulations" by Congress they can be reached only when in the original unbroken package in the hands of the importer and when *in transitu* from one State to another. But there is a wide difference, in my humble judgment, between the power of regulating the *corpus* of foreign and interstate commerce in its transition state between the producer and the consumer, and the power of reaching and regulating individuals, companies, and corporations who enter into agreements, trusts, and combines to hinder, delay, interrupt, or in any way to prevent the full, free, and fair transit and interchange of the *corpus* of commerce with foreign nations and among the States.

The one jurisdiction is over the physical body, the other jurisdiction is over persons and corporations who conspire against the freedom, the health, and well-being of the physical body. It is the latter power that Congress exercised in the passage of the fifth section of the interstate-commerce act. There the power is exercised to reach and punish by fine and imprisonment individual carriers who "enter into any contract, agreement, or combination with any other carrier for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads or any portion thereof." The law of the fifth section of the act "to regulate commerce" is aimed at the persons and their trusts and combines that interfere with the freedom and fairness of commerce among the States. It embraces carriers who never handle the freight and railroads that have never had or carried a pound of the freight while *in transitu* or otherwise, the earnings for carrying which by other and different railroads are to be equally divided.

Again, from what source did Congress derive the power of passing the "act for the establishment of a Bureau of Animal Industry, to prevent the exportation of diseased cattle, and provide means for the suppression and extirpation of pleuro-pneumonia and other contagious diseases among domestic animals?" Here is an act of Congress embracing diseased cattle that are not *in transitu* from one State to another, and also their owners who are not common carriers, but citizens of the same State engaged in raising cattle for shipment and sale in another State or Territory, and the cattle, the *corpus* of commerce among the States, are in the range, not even penned for transportation.

Read the beginning of the fourth section:

That in order to promote the exportation of live-stock from the United States, etc.

Read the fifth section:

That to prevent the exportation from any port of the United States of live-stock affected with any contagious disease, etc.

Read the sixth section:

That no railroad company within the United States, or the owners or masters of any steam or sailing or other vessel or boat, shall receive for transportation from one State to another any live-stock affected with any contagious disease, etc.

And I call special attention to the following:

Nor shall any person, company, or corporation deliver for such transportation to any railroad or any vessel or boat any live-stock knowing them to be diseased; nor shall any person, company, or corporation drive on foot or transport in private conveyance from one State or Territory to another any live-stock knowing them to be diseased.

Any of the persons or corporations thus prohibited "who shall knowing violate the provisions of section 6 shall be guilty of a misdemeanor" and punished by fine and imprisonment, and the district attorneys of the United States are required to prosecute, and the district and circuit courts are given jurisdiction to execute the law.

Thus we discover that power was found in the commerce clause of the Constitution to protect commerce with foreign nations and among the States against diseased cattle, but it is denied by the same Senators who voted for the cattle bill that any power exists to protect our commerce against the greater evil of trusts and combines.

The commerce clause of the Constitution has also furnished power to Congress to prevent the spread of cholera and yellow fever and smallpox by prohibiting and punishing the transportation of goods infected or that have been exposed to the infection of these epidemic diseases. There is no epidemic disease that is as destructive to human health and life as trusts and combines are destructive to the health and happiness and well-being of industrial pursuits, and the freedom, growth, and prosperity of our foreign and domestic commerce.

Mr. President, I am thankful that I have no capacity to indulge in hair splitting so I can see how many hairs I can make out of one, neither have I any ambition to excel in ciphering to show into how many decimal fractions I can reduce the constitutional grants of power to Congress. The framers of the Constitution were practical men with a large stock of common sense and not enough uncommon sense to interfere with the wisdom, safety, and perfection of their great work. The grants of power to Congress are defined in plain language, and, although specific, the grants are comprehensive in their scope, to be exercised by Congress within the common-sense limitations of the Constitution.

Mr. PLUMB. I ask unanimous consent that the present order of business be laid aside in order that I may move to take up House joint resolution 117, Calendar No. 704, being a resolution reported from the Committee on Appropriations.

The PRESIDING OFFICER (Mr. HARRIS in the chair). The Senator from Kansas asks unanimous consent of the Senate that the unfinished business be informally laid aside, in order that the Senate may proceed to the consideration of 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. Is there objection to the request of the Senator from Kansas?

Mr. PLUMB. It is suggested by Senators that I allow the Senate to vote on the bill now pending. I supposed other debate would ensue, but I do not care to intrude this into the proceedings if the bill of the Senator from Ohio can be disposed of at once.

Mr. VEST. No; it can not be.

Mr. PLUMB. I will request the Senate, then, to do as I have heretofore indicated.

The PRESIDING OFFICER. The Senator from Kansas asks unanimous consent of the Senate that the unfinished business may be informally laid aside in order that the Senate may proceed to the consideration of the resolution indicated by him. Is there objection?

Mr. SHERMAN. I should like to hear what it is.

The PRESIDING OFFICER. The Secretary will report the title of the resolution.

Mr. SHERMAN. If this is a mere temporary matter I shall not object to the bill being laid aside informally.

Mr. PLUMB. I just asked to have it laid aside informally.

Mr. SHERMAN. If the resolution leads to debate, I shall object to its being taken up now.

Mr. COCKRELL. It is due to say that there will be some discussion of it; I do not know how long it will last.

Mr. SHERMAN. Then I must object.

The PRESIDING OFFICER. There is objection.

Mr. PLATT. I make the point under Rule V, section 2, that there is no quorum of the Senate present.

The PRESIDING OFFICER. The Secretary will read the second section of Rule V.

The Secretary read Rule V, section 2, as follows:

If, at any time during the daily sessions of the Senate, a question shall be raised by any Senator as to the presence of a quorum, the Presiding Officer shall forthwith direct the Secretary to call the roll and shall announce the result, and these proceedings shall be without debate.

The PRESIDING OFFICER. The Secretary will call the roll of the Senate.

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

Aldrich,	Edmunds,	Manderson,	Sawyer,
Allen,	Farwell,	Mitchell,	Sherman,
Allison,	Frye,	Morgan,	Spooner,
Bate,	George,	Morrill,	Stewart,
Blackburn,	Gibson,	Paddock,	Stockbridge,
Blair,	Harris,	Payne,	Teller,
Cockrell,	Hawley,	Pierce,	Vest,
Coke,	Higgins,	Platt,	Walthall,
Cullom,	Hoar,	Plumb,	Washburn,
Davis,	Ingalls,	Pugh,	Wilson of Iowa,
Dixon,	Jones of Nevada,	Ransom,	Wolcott.
Dolph,	Kenna,	Reagan,	

The PRESIDING OFFICER. There being a quorum present, forty-seven Senators having answered to their names, the Senate will proceed with the consideration of the unfinished business. The pending question is on the amendment of the Senator from Kansas [Mr. INGALLS]. Is the Senate ready for the question?

Mr. SHERMAN. I have no objection to so much of this amendment as seeks to make illegal the class of contracts described in the first and second sections of the bill, but the amendment also creates a tax and is therefore not within the originating power of the Senate. I think we ought not to violate the Constitution by voting for an amendment which we have no right to pass as a bill. I shall, therefore, content myself by simply voting against the amendment. I do not know that any question of order can be raised, but it is a question of constitutional law. We have no power in the Senate to originate tax bills,

and I hope, therefore, the amendment will be voted down on this ground, although I am in favor of the general proposition of making these contracts null and void.

Mr. REAGAN. Mr. President, I wish to suggest also in that connection—I do not see the Senator from Kansas present—that the amendment proposed by the Senator from Kansas is not germane to the subject-matter of the original bill. It is on an entirely different subject and has no reference to the bill. It proposes to deal with the question of futures and subjects of that kind, not the subject of trusts.

The PRESIDING OFFICER. The question is upon the amendment proposed by the Senator from Kansas. Does the Chair understand the Senator from Texas as presenting a question of order?

Mr. REAGAN. Yes, sir.

The PRESIDING OFFICER. There is no rule in the Senate of relevancy or requiring that an amendment shall be germane. The Chair overrules the point of order.

Mr. REAGAN. All right.

The PRESIDING OFFICER. The question is upon the amendment of the Senator from Kansas.

Mr. REAGAN. Is it not proper, under the rule, to perfect the original bill before voting on the question of a substitute for it?

The PRESIDING OFFICER. The amendment of the Senator from Kansas is in the nature of perfecting the original bill, as it is offered as an addition to the original bill, and not as a substitute.

Mr. REAGAN. Is that to be voted on before a prior amendment offered to the original bill?

The PRESIDING OFFICER. It, being the first amendment in the nature of an amendment to the original bill, and not offered as a substitute for it, is first in order. The amendment proposed by the Senator from Texas is in the nature of a substitute for the original bill.

Mr. REAGAN. I tried to ask unanimous consent of the Senate to modify that so as to make the measure which I offered an amendment to the bill, striking out all after the third line of section 1 and inserting——

The PRESIDING OFFICER. The Chair holds that the Senator from Texas has a right to modify his amendment.

Mr. REAGAN. And numbering the sections 3, 4, and 5, beginning with the third line of the first section.

Mr. EDMUNDS. The amendment of the Senator from Kansas, as printed, is to strike out all after the enacting clause and insert.

The PRESIDING OFFICER. So the Chair understands, but the original shows it is an addition, and not a substitute.

Mr. SHERMAN. The Senator from Kansas changed it.

Mr. EDMUNDS. It appears, then, that the print is incorrect; it has been changed since, so that the Chair is quite right in holding that the pending question is on the addition proposed by the Senator from Kansas.

Mr. REAGAN. I can not afford to differ with the occupant of the chair on a question of rules, but my understanding has always been, both of the rules of the Senate and of the rules of the House of Representatives, that when amendments were pending to an original bill it was in order to perfect the original bill before a substitute was offered for it.

The PRESIDING OFFICER. In that the Senator is unquestionably right.

Mr. REAGAN. Then I ask for a vote on my amendment to the bill of the Senator from Ohio.

The PRESIDING OFFICER. Is the amendment of the Senator in the nature of a substitute or an addition to the original bill?

Mr. REAGAN. It is an addition to the original bill.

The PRESIDING OFFICER. Then the Senator's amendment is first in order, having been first introduced; and the question is upon the amendment of the Senator from Texas [Mr. REAGAN]. Is the Senate ready for the question?

Mr. CULLOM and Mr. EDMUNDS. Let it be read.

Mr. INGALLS. Before the point of order is finally passed upon, allow me to suggest that my impression is that the Chair may have been misled. I see that the print of my amendment is that it is "intended to be proposed," to wit: "Strike out all after the enacting clause and insert the following."

The PRESIDING OFFICER. The Chair will say to the Senator from Kansas that the original manuscript shows that his amendment was intended as an addition, not as a substitute.

Mr. INGALLS. That is right. Then, that being the case, the amendment of the Senator from Texas was to strike out and insert.

Mr. REAGAN. That I have modified by the consent of the Senate.

The PRESIDING OFFICER. The Senator from Texas has modified it so as to make it an addition, and, it having been first introduced, the Chair holds that it is first in order.

Mr. INGALLS. The Chair is right.

The PRESIDING OFFICER. The amendment will be read.

The SECRETARY. At the end of the bill it is proposed to insert the following——

Mr. GEORGE. Before commencing the reading I should like to inquire, Is that the amendment of the Senator from Kansas [Mr. INGALLS]?

The PRESIDING OFFICER. It is the amendment of the Senator from Texas [Mr. REAGAN].

Mr. GEORGE. Is it offered as a substitute?

The PRESIDING OFFICER. It is offered as an addition to the original bill.

The SECRETARY. At the end of the bill it is proposed to insert the following additional sections:

SEC. 3. 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. 4. That a trust is a combination of capital, skill, or acts by two or more persons, firms, 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. 5. 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 PRESIDING OFFICER. Is the Senate ready for the question on the amendment of the Senator from Texas?

Mr. GEORGE. Mr. President, I regard that amendment as I do the bill, as utterly without warrant in the Constitution, by which Congress is bound, but I regard it as more efficient, if an unconstitutional bill can be efficient, than the original bill, and at this stage of the proceedings, as we are perfecting the bill, and if the bill is passed at all in my opinion the Constitution will be violated, I think it is well, if we are to have a violation of the Constitution, that we shall have a bill that will do the people some good, if it is to operate at all, and for that reason I shall at this stage of the proceedings vote for the proposition of the Senator from Texas as an amendment to the bill of the Senator from Ohio.

Mr. TELLER. Mr. President, I am in full sympathy with the efforts on the part of the Senator who introduced this bill and the several amendments to it to control the trusts, of which we hear so much complaint. The only question seems to be just how the trusts can be controlled. My own judgment on that point is that the States are the most competent to control trusts and to control them efficiently. It is suggested by a Senator near by, "Suppose the trusts control the State." I do not know that they are any more likely to control a State than they are to control this body or any other legislative body. These combinations have, of course, become very powerful; they have vast sums of money at command and generally a vast army of people engaged in connection with them whose interests are with them, and of course they have become powerful, but still not so powerful, I think, but that the States can and ought to control them.

So far as the General Government can control them, I am in favor of the General Government undertaking to control them. I am inclined to vote for this bill because it seems to me that it is possible to do something in that direction. I want to say, however, that I am not so sanguine of its accomplishing the purpose for which the bill is intended as some who have spoken upon the subject. I doubt whether very much benefit will be derived from this bill, and unless the States take hold of the question and devise appropriate legislation for suppressing these trusts or limiting the amount of capital that can be aggregated in one corporation this trouble will continue, in my judgment.

I understand that some of these trusts have been disturbed by the recent decisions of the courts of the country, which, as the Senator from Ohio [Mr. SHERMAN] showed the other day, have been all in one line, and I suppose no lawyer needs to have any argument made to him that these combinations and trusts are illegal without statute. But frightened somewhat by the decisions of the courts they have gone to work and have united what were many corporations into one with all the characteristics of a corporation and none of a trust as we now speak of and treat trusts. When that is done, it is beyond the power of this body to deal with them unless they impede or impair or hinder or delay interstate commerce. When they do that, of course they bring themselves within the jurisdiction of the General Government. But the

great evil against which the people are complaining, these corporations perpetrate at home in the respective States, untouched by any legislation of ours.

I do not know whether this bill will be used for the benefit of the people or whether it will be used against them, especially the amendment which is now proposed to be voted on. I realize that the Senator from Texas [Mr. REAGAN] is an honest enemy to these combinations, and that he intends as far as possible to control them by the legislation proposed. But take the fourth paragraph of section 2 of the Senator's amendment. Among the things that are spoken of and made illegal is this:

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.

The second is:

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

There are legitimate and proper efforts that can be made for the advancement of prices. This refers to reduction in price as well as to advance in price. If there is a combination to put down the price of an article or to put it up, it is equally punishable under this provision by a criminal prosecution. There may be a condition of things where it is perfectly proper to put down the price of an article and on the other hand there may be a condition of affairs where it would be perfectly proper and legitimate to put up the price of an article.

I know it will be said in answer that these things should be left to the natural course of affairs, of commerce, and trade. But there has been recently organized all over this country what is called the Farmers' Alliance. What is the object and what is the purpose of it? The very purpose of it is to increase the price of farm products, and that I regard as a thing most desirable to be done, and I regard it as absolutely essential to the prosperity of this country. There has recently been organized, in the Northern States more particularly, and I suppose it will spread all over the country, what is called a National League amongst the farmers for the same identical purpose that the Farmers' Alliance has been organized for. Shall it be said that these organizations are forbidden by law? Is it possible that we are putting it in the power of some men to coerce and force the farmers to abandon these organizations? Does anybody believe that these organizations are inimical and hostile to the public welfare? On the contrary, does not everybody know that unless we can by some method increase the price of farm products in this country a great many farmers in the United States will be in bankruptcy and turned out of their homes?

Mr. GEORGE. Will the Senator allow me to ask him a question?

Mr. TELLER. Certainly.

Mr. GEORGE. I think that is a very good point that the Senator has made against the amendment offered by the Senator from Texas, but can not the same point be made against the original bill as introduced by the Senator from Ohio and amended by the Committee on Finance?

Mr. TELLER. The same point can be made with this difference, that one is a civil proceeding and the other is criminal. That is all the difference. I was going to say the same of the original bill.

Mr. GEORGE. But still, if I understand the Senator, he admits that under the bill as last reported by the Committee on Finance the Farmers' Alliance, being composed of citizens of different States, is an organization which is condemned by the bill.

Mr. TELLER. I think so, by the bill itself. I think it is objectionable to that criticism, although, of course, it is not so objectionable, because the one is a civil and the other is a criminal proceeding.

Mr. GEORGE. Will the Senator allow me further?

Mr. TELLER. Certainly.

Mr. GEORGE. Under the original bill as reported by the Committee on Finance, every farmer belonging to one of these alliances would be liable to a civil action and to the recovery of double damages against him for being a member of that organization, the tendency of which is to increase the price of his farm products.

Mr. TELLER. That is what I was saying. It seems to me that is the fact. While I am extremely anxious to take hold of and control these great trusts, these combinations of capital which are disturbing the commerce of the country and are disturbing legitimate trade, I do not want to go to the extent of interfering with organizations which I think are absolutely justifiable by the remarkable condition of things now existing in this country.

I believe this bill will go further than that. I believe it will interfere with the Knights of Labor as an organization. While I have never been very much in love with the Knights of Labor, because of some of their methods, yet their right to combine for their mutual protection and for their advancement can not be denied. While in many instances I think they have gone beyond what they should have done, beyond what was legitimate and proper, yet on the whole we can not deny to the laborers of the country the opportunity to combine either for the purpose of putting up the price of their labor or securing to themselves a better position in the world, provided always, of course, that they use lawful means. I do not believe the mere fact of combining to secure to themselves a half-dollar a day more wages or greater influence and power in the country can be said to be an unlawful combination.

Mr. GEORGE. Will the Senator allow me to interrupt him there?

Mr. TELLER. Certainly.

Mr. GEORGE. The Knights of Labor, as I understand, are an organization composed of citizens of the different States of the Union, probably of every State of the Union. The object of that organization, as I understand furthermore, is to increase the price of their wages. Now, increasing the price of wages has a tendency, in the language of this bill, to increase the price of the product of their labor. Are they not also included, then, in the bill of the Senator from Ohio?

Mr. TELLER. When I said that the Knights of Labor were included I meant that they were included both in the civil provisions and in the criminal provisions. In my judgment they are in both. I do not believe that anybody in the Senate proposes to go to that extent. It is suggested to me by a Senator near me that the Typographical Union would come in in the same way.

Mr. HISCOCK. And it would practically include all the trades unions.

Mr. TELLER. It would practically include perhaps all the trades unions in this country. Many of these organizations are corporations If they are not, at least they will be termed "combinations" under this bill.

Mr. President I admit as a general rule the principle should be to let trade and commerce go on in the natural way, and yet we can not object to men putting up the price of certain things or under some circumstances putting down the price of certain things when the great mass of the people are benefited by that movement. I have not learned the doctrine that cheapness is the only thing in the world that we are to go for. I do not believe that the great object of life is to make everything cheap. I have before me now, in the morning papers, a statement of the condition of tailors in London. It is headed:

PATHETIC PLEA FOR AID—EAST END TAILORS OF LONDON PETITION THE QUEEN FOR HELP—A HOPELESS SET OF WORKMEN.

It is dated yesterday, London, March 23:

LONDON, *March* 23.

The East End tailors held an enormous mass meeting to-day, at which their wretched condition was mournfully discussed. A more hopeless set of men perhaps never existed. All the spirit is crushed out of them by the remorseless "sweating" system, into the miseries of which they have fallen. Even the wild eloquence of the socialist Lions, who has devoted much time to the attempt to organize and energize these poor creatures, failed to arouse them to any confidence in their own powers of self-salvation or any hope of relief except from what seems to them the all-powerful arm of the governing class. Accordingly the outcome of the meeting was the adoption of a resolution to petition the Queen for help; and also to send an appeal to the international labor conference at Berlin to consider their case and if possible take some action on their behalf.

If a condition of that kind existed in this country and a class of laborers should combine to raise the price of their labor, and thus have a tendency to increase the price of the product, whether it was in a mill or in a shop or on a farm, would it not fall within the inhibition of this bill, both the original bill and the amendment of the Senator from Texas?

Mr. REAGAN. Will the Senator allow me to make an explanation so that he can reply to it if he will?

Mr. TELLER. Certainly.

Mr. EDMUNDS. Will both the Senators allow me to say a word in explanation before they go on?

Mr. President, the amendment proposed by the Senator from Texas [Mr. REAGAN] is the substance and for aught I know now literally the body of the bill that he introduced, I see by the top of it, on the 4th day of December last, I think about the first day of the session, and which was referred to the Committee on the Judiciary. I think it due to the Senator and to the Senate to state that according to our course the chairman very soon, almost immediately, referred that bill to a subcommittee of three among the most eminent and earnest of the members of that committee, but the committee has not yet been able to act upon it, owing, I have no doubt, to other important business in the committee, our time having been almost exclusively and necessarily devoted to the consideration of executive business. I think it is due to the Senator from Texas and to the Senate, he having introduced the bill so early, to say that.

Mr. REAGAN. I am not surprised that there should have been some delay, for the subject is certainly one that I have found it very difficult to get any remedy for; and I am not surprised that there should be some delay in preparing a bill.

In reference to the point made by the Senator from Colorado [Mr. TELLER], I wish to remark that he is doubtless misled as to the effect of the fourth clause of the second section of my amendment, to which he has referred, by considering it isolated from the provisions of the first section. He will see that the first section, as introduced by me, limits its operation to matters involved in commerce with foreign nations and between the States, in this language:

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—

The second section of the bill as I introduced it, but the fourth section of this amendment—

shall be deemed guilty of a high misdemeanor, etc.

The second section in each of these clauses relates back as to the question of authority to the first section, so that whatever view may be taken as to the constitutional question presented by the Senator from Indiana [Mr. TURPIE] and the Senator from Alabama [Mr. PUGH], that point can not arise on this, which relates to the criminal part of the proceeding because it is limited to business in international or interstate commerce, and I suggest that the Farmers' Alliance and the Knights of Labor would not come under that clause; but, if they did, the way to prevent all such organizations is to strike down first the organizations which give rise and necessity to this local labor association.

Mr. PLATT. If the Senator from Colorado will permit me, and if the Senator from Texas will give me his attention, I desire to say a word.

I had supposed it to be true that the first part of the section, that is, down to line 6, referred to trusts employed in any business carried on with any foreign country or between the States, or between the States and the District of Columbia, or between the States and Territories, but from line 6 down I supposed, as the language reads "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," had no reference whatever to a business carried on which might be called foreign commerce or interstate commerce, but was intended to punish a stockholder in any corporation who should do any of the things included in the several heads of the second section. That is the way I have understood it.

Mr. REAGAN. The object was as I have stated.

Mr. TELLER. The Senator from Connecticut has explained that provision exactly as I understood it. Of course I may be all wrong about it and it may be entirely different. It may not be objectionable but it would be well to put this in form so that there can be no question about it.

Mr. President, I had not quite concluded reading the newspaper extract which I wanted to read. It continues:

The petition sets forth in vivid and pathetic terms the condition of the tailors, who [which], since the days when Kingsley selected them for portrayal in Alton Locke as types of industrial misery, which led to the Chartist uprising, has been, if possible, growing more wretched, until now their life is merely a short and bitter struggle with starvation. They pray the Queen to interfere and save their families, who are dying of consumption and inanition in their filthy dens.

The Queen will hardly be able to do anything for these unfortunate subjects of hers, as she has but recently received the report of a royal commission on the subject, the gist of which is that nothing can be done but to trust in the operation of the Malthusian law of population.

The boot and shoe makers are also dissatisfied with their condition, and a strike in that trade is imminent. The employers are trying to conciliate them, but have thus far failed, and a mass meeting of the men will be held to-morrow, at which it will be decided whether or not to quit work.

I know that nobody here proposes to interfere with the class of men I have mentioned. Nobody here intends that by any of these provisions, either in the original bill or in any amendment; and I have only called attention to it to see if the efforts of those who have undertaken to manage this subject can not in some way confine the bill to dealing with trusts which we all admit are offensive to good morals.

I do not myself desire to interfere with the management of this bill which has been reported from the Committee on Finance and is in the hands of such able gentlemen as those who proposed it originally, or those who have attempted to interfere with it and to aid in its perfection.

Mr. President, I was greatly struck with the amendment offered by the Senator from Kansas [Mr. INGALLS], and I believe if that can be enacted into law it will greatly relieve the agricultural interests of this country. I was, however, somewhat disturbed in my idea of supporting that proposition by the suggestion made by the Senator from Ohio that it was beyond the jurisdiction of this body to pass it. That is the only objection I can see to it. It seems to me that the measure is well intended and very desirable; and it strikes me that if it could be carried out it would go far to relieve the people of this country. I do not know what the Senator who introduced it would say upon the constitutional question, but I shall listen when he takes the floor on that point.

I want to repeat that I am exceedingly anxious myself to join in anything that shall break up and destroy these unholy combinations, but I want to be careful that in doing that we do not do more damage than we do good. I know how these great trusts, these great corporations, these large moneyed institutions can escape the provisions of a penal statute, and I know how much more likely they are to escape than the men who have less influence and less money. Therefore, I suggest that the Senators who have this subject in charge give it special attention, and by a little modification it may be possible to relieve the bill of any doubt on that point.

Mr. SHERMAN. Mr. President, all I desire is that this bill, the object of which I believe is approved of by more than three-fourths of the Senate, should be treated like all other bills that have been carefully considered by a committee of this body and reported to the Senate. To attempt to defeat this bill by offering various other bills from other committees or from the other House on different branches of the same subject or on entirely different subjects, is not the proper way to deal with the work of a committee.

Now, let us look at it. The bill as reported contains three or four simple propositions which relate only to contracts, combinations, agreements made with a view and designed to carry out a certain purpose, which the laws of all the States and of every civilized community declare to be unlawful. It does not interfere in the slightest degree with voluntary associations made to affect public opinion to advance the interests of a particular trade or occupation. It does not interfere with the Farmers' Alliance at all, because that is an association of farmers to advance their interests and to improve the growth and manner of production of their crops and to secure intelligent growth and to introduce new methods. No organizations in this country can be more beneficial in their character than Farmers' Alliances and farmers' associations. They are not business combinations. They do not deal with contracts, agreements, etc. They have no connection with them. And so the combinations of workingmen to promote their interests, promote their welfare, and increase their pay if you please, to get their fair share in the division of production, are not affected in the slightest degree, nor can they be included in the words or intent of the bill as now reported.

On the other hand, the Senator from Kansas [Mr. INGALLS] offers a bill which was framed by one of my colleagues in the House of Representatives, and the fact that it is pending there is a matter known and shown by the record, and it is still being considered by a committee of that body. It proposes to deal with a class of contracts that do not have to do with production, that are based upon the idea that there is no production at all. They are options on property that does not exist. They are what are called mere contracts without regard to production, based upon nothing, upon empty air. They are gambling contracts. If the Senator from Kansas wishes to introduce a proposition to prevent gambling in property which does not exist, to prevent agreements to deliver property without any intention to deliver it, that is one question and an entirely different matter from the one covered by the bill. That is a question to be considered by itself, and it ought not to be attached or annexed to this bill.

But there is another fatal objection to that measure, it seems to me. We can not vote for it without violating our obligations under the Constitution of the United States. The Senate has no power to originate any form of taxation, and yet here is a proposition to tax in various ways these illegal contracts, with a view to deter them from being made, just as we imposed the tax upon the issue of State bank paper, in order to drive it out of existence, but still we levied it in the form of a tax; it was part of a tax bill, and the proper place for this proposition, so far as it attempts to levy a tax, is upon a tax bill. It would be proper upon the tariff bill when it comes to us, but it has no relation to the subject-matter of the pending bill.

The original bill deals with a combination, agreement, or contract to advance the price of productions on hand; it relates to actual commerce in things tangible passing from State to State; while the proposition of the Senator from Kansas is to deal with things intangible, with contracts in the nature of gambling, and it has no relation to this matter, and to put it on as an amendment to this bill, it seems to me, is not treating the subject fairly unless the Senate wants to defeat the original proposition. It seems to me it is a great deal better for us to have a fair vote on the original proposition, disconnected with any other measure pending at this time.

Take the proposition of the Senator from Texas. It does contain some matter germane to or connected with the original proposition, but it introduces into this debate a criminal law, and that was one of the objections made to the original bill as first reported by the Committee on Finance. When we undertook to amend it and put on a criminal clause, and after full reconsideration of the subject, it was thought best to omit the criminal clause and to leave that for future consideration, because we were dealing with a new subject-matter and it was deemed a great deal better to declare the general principle of law, without any criminal section, leaving Congress to provide hereafter criminal penalties, as I have no doubt it will do if they shall be found to be necessary.

The objection I have to the proposition of the Senator from Texas is, first, that it is a proposition pending in another committee of this body, and there it is being considered. The Senator from Vermont says it has been referred to a subcommittee and they have not reported upon it. Now, is it wise to ingraft here that proposition which has not yet been considered by the committee in charge of it, relating to a different subject-matter? I think it is not fair; it is not right. In this way, by antagonizing friendly propositions, you may defeat any bill.

Suppose, for instance, the amendment of the Senator from Kansas should be ingrafted on the bill; a Senator might say, "I can not vote for that because it undertakes to do what the Constitution plainly declares the Senate can not do," and that would result in defeating the original proposition. So with the proposition of the Senator form Texas. He offers here a criminal statute defining various kinds and various forms of combinations; it has not yet been subject to scrutiny, and it is now pending before a committee of this body which has not yet considered it. Suppose that is ingrafted on this bill. Some member of the Senate might with great propriety say, "Why, this is a new proposition; it has never been fully considered; it does not come to us perfected by the judgment of a committee; it is drawn out, wrested, taken from the jurisdiction of the Judiciary Committee, and put upon a bill which has already been considered and fully considered by another committee."

I am actuated by no desire to have this bill and nothing else, because I would accept any amendment that met my judgment, and I will vote for any proposition that will make it clear and confine it to its proper objects; but I do think the Senate of the United States in dealing with a question which at this time commands the attention the people of the United States as much as any other should deal with it in a fair way. In other words, there should be fair play on all these various propositions, and we should not combine incongruous elements in order to defeat the original proposition. If you do not like the bill, vote it down. If you can propose any amendments to carry out the object of the bill, to limit its operation, or in any way to improve it, they are proper and ought to be offered; but do not put on different propositions. I might with the same propriety take the pension bill which is now pending here, giving a pension to dependent relatives of soldiers, and a thousand other bills on the Calendar and offer them as amendments. That is sometimes a way of trying to defeat an original bill. I think, however, it is better for Senators of the United States to defeat it squarely by a fair vote, and say that the original bill ought not to pass rather than to encumber it with propositions that lead to endless argument.

I shall vote against all these amendments which do not seem to carry out the object defined in the original bill, not because I disapprove of them, for I approve of all attempts to destroy and to declare illegal, null, and void all those gambling contracts which now pester the business of the country. I shall at the proper time be perfectly willing to denounce criminal penalties upon any man who violates the principles of this bill; but I do not think at this time it is wise for us to introduce criminal legislation upon a remedial bill of this character. As I said in my argument—and I do not want to repeat it over again—this bill is simply an attempt to extend the jurisdiction of the courts of the United States, to declare unlawful contracts which have been held unlawful in every State of the Union where the subject has been brought before the courts; nothing more, nothing less.

The only ground of objection to this is that we can not extend the jurisdiction of the courts of the United States thus far. That argument has been fully answered by Senators on the other side. I attempted to answer it myself by showing a great number of authorities. The honorable Senator from Alabama [Mr. PUGH] and the honorable Senator from Indiana [Mr. TURPIE] have shown that this bill as it now stands is not only constitutional, but that it is the duty and right of the United States to aid the States in declaring null and void these combinations and agreements in restraint of trade. I hope, therefore, we shall have a fair vote on these different measures as they come up and as they are reported by committees, and that when the bill of the Senator from Texas is reported from the Judiciary Committee we shall have the judgment of that committee upon that bill. When the proposition which is now made by the Senator from Kansas comes up to us it is to go first to the Committee on Finance, because it is a part of a scheme for raising revenue and can only be treated as a revenue measure. The other provisions of that bill are simply incidental to the main point.

I say it is better and fairer in dealing with this great subject to take the bill which has been reported by the Committee on Finance, reject it if you will, improve it if you can, and confine the attention and intelligence of the Senate to the provisions and objects of this bill, and go no further until the other bills are reported and have gone through the same scrutiny, and then we shall have time enough to do it. So far as I can see, there are no provisions in the bill offered by the Senator from Kansas but what meet my judgment in a general way. I have only had time to read it this morning. The first two sections I am entirely agreed to, but they have never been matured, never have been reported by any committee, never have been considered by a committee. When they are so considered, we shall have time enough to act upon them.

Mr. HOAR. I should like to ask the Senator from Ohio to explain one or two provisions of this bill or amendment, as it is reported to the Senate, before he leaves the floor.

Mr. REAGAN. I should like to reply to the Senator from Ohio.

Mr. HOAR. I wish to ask the Senator from Ohio one or two practical questions about the details of the bill, which will take but a moment. The bill provides that—

The circuit court of the United States shall have original jurisdiction of all suits of a civil nature at common law or in equity.

I suppose it is the purpose of the Senator from Ohio to give private citizens who are injured by these combinations or monopolies for the advancement of cost or preventing men from freely competing, a civil remedy in the courts, is it not?

Mr. SHERMAN. Certainly.

Mr. HOAR. I suppose that is the object, and I suppose any citizen of the United States might bring a suit in the courts if he had been wronged or claimed that he had been wronged in this way. Now the bill goes on and says:

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.

Mr. SHERMAN. That is confined to the first section of the bill.

Mr. HOAR. I understand that, and my question is confined to the first section of the bill.

Mr. SHERMAN. The first section of the bill does not give a civil remedy at all; it is the second section that gives a civil remedy.

Mr. HOAR. The first section says that—

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.

Now the Senator says the first section does not give the civil suit at all.

Mr. SHERMAN. It does give a suit in the name of the United States:

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.

Mr. HOAR. Then the Senator avoids my first question and does not mean to answer it.

Mr. SHERMAN. I do.

Mr. HOAR. Let me put the question again. The first section of the bill declares:

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.

Now, this section has declared that all these arrangements are wrongful and unlawful, and that is the only declaration which gives any private citizen any right to sue under them. That is the declaration of the first section. It seems to me that as the Senator has got this bill so drawn that any citizen of the United States can invoke the civil remedy and the civil jurisdiction provided in the first section under the bill—it seems to me there is no doubt of it whatever—and when he has done it the bill makes it the duty of a United States officer, the Attorney-General or the district attorney, not merely to commence and prosecute the suit, but to prosecute it without compromise or abandonment, because he is expressly commanded to prosecute it "to final judgment and execution."

Mr. SHERMAN. Well, Mr. President, the Senator has confounded the two sections together. They are absolutely distinct and independent, each conveying the proper authority and jurisdiction to the courts of the United States. The first deals only with combinations made in restraint of trade or to prevent free competition in the importation, transportation, etc., of articles. They are in the nature of public offenses against public policy. In regard to those in the first section it is declared that—

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.

And before that it is provided—

The circuit court of the United States shall have original jurisdiction of all suits of a civil nature.

Mr. HOAR. Are they of a civil nature? The Senator has just said that these are public offenses and the statute says that they are suits of a civil nature.

Mr. SHERMAN. Can not the United States commence a suit of a civil nature?

Mr. HOAR. For a crime?

Mr. SHERMAN. Not for a crime, but for a remedial proceeding. It is a proceeding such as is known in every State of the Union, as in the Commonwealth of Massachusetts and in other States. There are suits by the people of New York against these combinations. We have a suit of the people of Ohio and the people of Missouri; I quoted here a decision in a suit of the people of Illinois—just such things as are contemplated by this bill. If the Senator from Massachusetts will read the second section of the bill he will find that that alone deals with private suits.

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.

It is the second section that gives the civil suit, and that is not to be prosecuted at all by the United States or by the officers of the United States. The first section deals with the public injury to the people of the United States and there the suit is brought in the name of the United States to restrain, limit, and control such arrangements so far as they are illegal. The second section gives a private remedy to every person injured. It seems to me the two sections are as distinct from each other as possible.

Mr. HOAR. The Senator from Ohio states, in my very humble judgment, two entirely different and conflicting and inconsistent propositions. I agree and thoroughly understand that the second section of the bill gives individuals the right to private suits. I leave that out as settled. I am looking at the first section alone. The Senator says that the first section provides nothing but suits for public offenses, which are criminal suits and to be tried in the name of the United States, as for an offense against the United States. The language of the section is:

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.

I should like to ask the Senator again, does he understand that the United States is to enforce this proposed statute by a civil suit, and not by a criminal proceeding?

Mr. SHERMAN. I say that in a civil suit brought in the name of the United States the United States may sue on a contract; they may sue for a neglect; they may sue for a great many things. Those are civil suits. The distinction between a civil suit and a criminal suit, I need not tell the Senator from Massachusetts.

Mr. HOAR. I understand that. What will be the judgment?

Mr. SHERMAN. It may be a judgment of ouster of the corporation; it may be a judgment for damages. Civil suits and criminal suits are easily distinguished.

Mr. HOAR. There is no difficulty in that.

Mr. SHERMAN. Very well. This is a civil proceeding commenced by the people of the United States against these corporations, and a judgment may be, as in ordinary cases, an ouster of the power of a corporation; it may be for damages; there may be an injunction; there may be proceedings in *quo warranto*, and so of the other ordinary civil proceedings which are fixed by the judiciary act of the United States.

But the second section provides purely a personal remedy, a civil suit also by citizens of the United States. The Senator from Texas wishes to add to it a criminal remedy. In that I differ from him. I think it is better not to put a criminal section in this bill. Still, if it is adopted by the Senate, that would not deter me from voting for the measure, because that at least is in harmony with the bill and seeks to carry out the same object. However, in my judgment, his measure ought to undergo the same scrutiny that this bill has undergone. Let it be reported from the Judiciary Committee, and then we can consider it and probably vote for it, if so reported after full scrutiny.

Mr. REAGAN. I ask unanimous consent, if it is necessary, to modify my amendment by inserting after the word "corporation," in line 9 of section 3 (in the first section of the amendment), the words "company or person employed in any such business." I make this modification because I think there was force in the objection made by the Senator from Connecticut [Mr. PLATT], and I think these words cure that difficulty. That puts it all under the interstate and international commerce clause.

The VICE-PRESIDENT. Without objection that modification will be considered as agreed to. The Chair hears no objection, and the amendment of the Senator from Texas is so modified.

Mr. REAGAN. Mr. President, I confess to a little surprise at the suggestions of the Senator from Ohio that the amendment which I have submitted is different in character from the measure which he has reported, and that they ought to be separately acted upon by the Senate. What is the object of the bill reported by the Senator from Ohio? It is to prevent and to punish persons engaged in trusts and combinations for unlawful purposes. What is his remedy? It is a civil suit, and a civil suit to be brought in the circuit court of the United States. Who can avail themselves of that remedy? Rich corporations and rich men may, but the great mass of the people are not able to employ counsel and go with witnesses to the circuit court for the vindication of their rights.

So the remedy as presented (and I intend at the proper time to offer an amendment to meet that) is inadequate; it is insufficient. I propose to aid the Senator in the prevention and punishment of trusts and combinations for unlawful purposes by providing that their formation, and the action under them when in connection with the international and interstate trade, shall be unlawful and shall be punished as provided in my bill. That certainly gives an efficient remedy, and a much more efficient remedy than that proposed by him for the very evil which he seeks to prevent.

The Senator suggests that my amendment ought to undergo the revision of a committee. I may say to the Senator that much of it is copied out of a law, not a law of Congress but of one of the States, which underwent very thorough and searching discussion. So all I had to do in this case (and that is the purpose I had) was to make the provisions of the State law applicable to international and interstate commerce. That is as far as it has seemed to me our powers go.

When first discussing this bill I suggested that I thought it proper that a clause giving a civil remedy should be inserted, but that the most efficient means of preventing the very evil which the Senator from Ohio is driving at is to make these offenses penal and provide for their prosecution in the courts of the country. I suggest that if the purpose is to prevent these things it is much more efficient than the remedy proposed by the Senator and exactly in the same line and for the same purpose.

I call again the attention of the Senator to the fact that his bill gives this jurisdiction to the circuit court of the United States, and that only the corporations and the rich men will be able to go into that court to assert the remedy which he proposes; and that the great mass of the people who are the sufferers from these combinations and trusts will not have the means to employ counsel and to take witnesses to the Federal courts, often at a great distance from them, to vindicate and enforce their rights.

We need a law upon this subject that will punish every man engaged in this business and that will give an adequate remedy in a convenient jurisdiction to every person who is damaged by these associations. I trust that the Senate will sustain the amendment which I have offered to the bill for the purpose of giving it efficiency, for the purpose of affording to the people that protection which he desires to secure.

Mr. STEWART. Mr. President, this whole subject is surrounded by difficulties of the gravest character. Men must unite their efforts to have any civilization at all. An individual by himself can be but a savage. Combination, co-operation, is the foundation of all civilized society. When you permit that at all, the question is where you are to stop and say there shall be no more combinations.

These combinations seem almost like a necessary evil resulting from civilization. Our ancestors have tried to check them in England for hundreds of years. They had their common-law rules, they had their statutory regulations, and finally they came to the conclusion in that country that legislation would not reach the subject, but that it simply retards trade and embarrasses those whom they do not desire to embarrass. If we attempt it in this country, we shall have a similar history. Besides, the Congress of the United States is laboring under special difficulties on account of its limited jurisdiction.

To show the experience in England in dealing with this particular question, I have here a statute passed in 1844 which wiped out all that had preceded it, and left trade and commerce free, and I think it is so instructive a lesson that it ought to be incorporated in the RECORD. I send it to the desk and ask that the statute be read. The statute itself is its own commentary.

The VICE-PRESIDENT. The Chief Clerk will read, as requested.

The Chief Clerk read as follows:

An act for abolishing the offenses of forestalling, regrating, and engrossing, and for repealing certain statutes passed in restraint of trade.

Whereas divers statutes have been from time to time made in the Parliaments of England, Scotland, Great Britain and Ireland, respectively, prohibiting certain dealings in wares, victuals, merchandise, and various commodities by the names of badgering, forestalling, regrating, and engrossing, and subjecting to divers punishments, penalties, and forfeitures persons so dealing; and

Whereas it is expedient that such statutes, as well as certain other statutes made in hindrance and in restraint of trade, be repealed; and

Whereas an act of the Parliament of Great Britain was passed in the twelfth year of the reign of King George the Third, intituled an act for repealing several laws therein mentioned against badgers, engrossers, forestallers, and regraters, and for indemnifying persons against prosecutions for offenses committed against the said acts, whereby, after reciting that it had been found by experience that the restraint laid by several statutes upon the dealing in corn, meal, flour, cattle, and sundry other sorts of victuals, by preventing a free trade in the said commodities, have a tendency to discourage the growth and to enhance the price of the same, which statutes, if put in execution, would bring great distress upon the inhabitants of many parts of this kingdom, and in particular upon those of the cities of London and Westminster, sundry acts therein mentioned, and all the acts made for the better enforcement of the same, were repealed, as being detrimental to the supply of the laboring and manufacturing poor of this kingdom; and

Whereas, notwithstanding the making of the first-recited act, persons are still liable to be prosecuted for badgering, engrossing, forestalling, and regrating, as being offenses at common law, and also forbidden by divers statutes made before the earliest of the statutes thereby repealed: For remedy thereof, and for the extension of the same remedy to Scotland and to Ireland,

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That after the passing of this act the several offences of badgering, engrossing, forestalling, and regrating be utterly taken away and abolished, and that no information, indictment, suit, or prosecution shall lie either at common law or by virtue of any statute, or be commenced or prosecuted against any person for or by reason of any of the said offenses or supposed offenses.

II. *And be it enacted*, That the several acts and parts of acts made in the Parliaments of England and Scotland, Great Britain and Ireland, hereinafter mentioned, shall be repealed, but not so as to revive any act repealed by any of the acts hereby repealed; (that is to say,)

The following acts and parts of acts of the Parliament of England, to wit:

So much of an act passed in the fifty-first year of the reign of King Henry the Third, intituled

A statute of the Pillory and Tumbrel, and of the assize of bread and ale, as is now in force:

So much of an act passed in the 12th year of the reign of King Edward the Second, intituled No officer of a city or borough shall sell wine or victual during his office, as is now in force:

So much of an act passed in the reign of King Henry the Third, King Henry the First, or King Edward the Second, intituled The punishment of a butcher selling unwholesome flesh, as provides punishment for a butcher or cook that buyeth flesh of Jews and selleth the same unto Christians:

The whole of an act passed in one of the three last-mentioned reigns intituled No forestaller shall be suffered to dwell in any town:

The whole of an act passed in the 23d year of the reign of King Edward the Third, intituled Victuals shall be sold at reasonable prices:

The whole of an act passed in the 25th year of the same reign, intituled The penalty of him that doth forestall wares, merchandise, or victual:

So much of an act passed in the 27th of the same reign intituled A statute of provisors, as provides that commissions shall be granted to inquire of offenders contrary to the statute of 23 Edw., 3 c., 6, and enacts, "The penalty for forestalling of merchandises before they come to the staple:"

The whole of two acts passed in the 31st year of the same reign, respectively intituled The statute of herrings, and another Statute of salt fish;

The whole of an act passed in the 35th year of the same reign, intituled An ordinance of herring:

So much of an act passed in the 37th year of the same reign, intituled Merchants shall not ingross merchandises to enhance the prices of them, nor use but one sort of merchandise, as is now in force:

The whole of an act passed in the same year, intituled Clothiers shall make cloths sufficient for the foresaid prices, so that this statute for default of such cloths be in no wise infringed:

The whole of an act passed in the second year of the reign of King Richard the Second, intituled A confirmation of the statutes of 25 Edw. 3, St. 4, c. 3, against forestallers:

So much of an act passed in the 13th year of the same reign, intituled The

rates of laborers' wages shall be assessed and proclaimed by the justices of the peace, and they shall assess the gains of victuallers who shall make home-made bread, and the weight and price thereof, as is now in force:

So much of an act passed in the 4th year of the reign of King Henry the Fourth, intituled An hostler shall not make horse-bread; how much he may take for oats, as in now in force:

So much of an act passed in the 25th year of the reign of King Henry the Eighth, intituled Proclamations for the prices of victuals, namely, the pricing of them and proclaiming the prices, as is now in force:

So much of an act passed in the 28th year of the same reign, intituled For prices of wines, as is now in force, not relating to the gauging and measuring of wine, oils, honey, or other liquors or things:

So much of two acts passed in the session of Parliament holden in the third and fourth years of the reign of King Edward the Sixth, respectively, intituled An act for buying and selling of rother beasts and cattle, and An act for the buying and selling of butter and cheese, as is now in force:

The whole of an act passed in the session of Parliament holden in the fifth and sixth years of the same reign, intituled An act against regraters and ingrossers of tanned leather, except the prohibition of currying or dressing tanned leather within the city of London and the suburbs thereof, as provided by the last-mentioned act:

Also the following acts of the Parliament of Scotland, to wit:

An act passed in the year one thousand five hundred and three, intituled Of malt Makaris in burrow towns:

An act passed in the year one thousand five hundred and thirty-five, intituled Off Forstallaris:

An act passed in the year one thousand five hundred and forty, intituled For eschewing of derth of wittalis, flesche, and fysche:

Also an act of the same year, intituled For stanching of derth and prices of wyne, salt, an tymmer:

Also an act of the same year, intituled Anentis forstallaris:

An act passed in the year one thousand five hundred and fifty-five, intituled Anent the disposition of wyne, salt, and tymmer brocht into the realme:

An act passed in the year one thousand five hundred and seventy-nine, intituled For punishment of regrataris and forstallaris:

An act passed in the year one thousand five hundred and ninety-two, intituled Aganis foirstallaris and regraittaris:

An act passed in the year one thousand six hundred and sixty-one, intituled An act for erecting of manufactories:

Also the following acts and parts of acts of the Parliament of Ireland, to wit:

The whole of an act passed in the fourth year of the reign of King Edward the Fourth, intituled An act against engrossers and regraters of corn:

The whole of an act passed in the thirty-third year of the reign of King Henry the Eighth, intituled an act for grey merchants, as revived and perpetuated by a subsequent act passed in the eleventh year of the reign of Queen Elizabeth intituled an act for reviving the statute against grey merchants, the statute for servants' wages and the statute of Jeofails:

So much of an act passed in the second year of the reign of Queen Anne, intituled an act to prohibit butchers from being grazers, and to redress several abuses in buying and selling of cattle, which act is perpetuated by another act made in the ninth year of the reign of Queen Anne, as prohibits any butcher from being a grazier, or keeping in his possession, or in trust for him, above 20 acres of land, or from selling any cattle to any other butcher in Dublin, or within 5 miles thereof, or from keeping at hay or feed oxen or other cattle for above ten days, or from exposing for sale any oxen or other cattle within 20 miles of the place where bought, and which prohibits any person from selling or exposing for sale any cattle or sheep on the same day when bought:

So much of an act passed in the tenth year of the reign of King George the First, intituled an act for regulating abuses committed in buying and selling cattle and sheep in the several markets of this kingdom, as prohibits cattle from being bought within six miles of any market:

The whole of an act passed in the fifteenth year of the reign of King George the Second, intituled an act to explain and amend a clause in an act passed in the second year of the reign of Queen Anne intituled, "An act to prohibit butchers from being graziers, and to redress several abuses in buying and selling of cattle, and in slaughtering, and packing of beef, tallow, and hides:"

The whole of an act passed in the thirty-first year of the reign of King George the Second, intituled an act to prohibit salesmen from being grazers, and to redress several abuses in buying and selling cattle or meat:

So much of an act passed in the session of Parliament holden in the thirteenth and fourteenth years of the reign of King George the Third, intituled an act for paving streets within the city and county of the city of Dublin, as authorizes a market jury to seize provisions or victuals in the hands of any forestaller, regrater, or engrosser:

So much of an act passed in the twenty-seventh year of the reign of King George the Third, intituled an act for establishing market juries in cities as authorizes and empowers certain market juries to seize provisions or victuals found in the hands of forestallers, regraters, and engrossers.

III. *And be it enacted*, That the several acts and parts of acts which were repealed, as to Great Britain, by the first recited act of the twelfth year of the reign of King George the Third, shall be taken, after the passing of this act, to be repealed as to the United Kingdom of Great Britain and Ireland.

IV. *Provided, always, and be it enacted*, That nothing in this act contained shall be construed to apply to the offence of knowingly and fraudulently spreading or conspiring to spread any false rumor, with intent to enhance or decry the price of any goods or merchandise, or to the offence of preventing or endeavoring to prevent by force or threats any goods, wares, or merchandise being brought to any fair or market, but that every such offence may be inquired of, tried, and punished as if this act had not been made.

V. *And be it enacted*, That this act may be amended or repealed by any act to be passed in this session of Parliament.

Mr. STEWART. The difficulty in dealing with this question is well illustrated by hundreds of years of experience in Great Britain, where Parliament was supreme, where they could pass and enforce any law they pleased on this subject. They found after all this experience that such laws were simply hurtful, and so they passed an act repealing the law, changing the common law with regard to it, and leaving trade and commerce free.

The difficulty in the whole subject is in reaching any precise evil or defining the offense. If you say there shall be no combination the tendency of which shall put up prices, how far would that reach? It would reach to nearly every transaction in life and would be particularly oppressive upon the struggling masses who are making combinations to resist accumulated wealth. Accumulated wealth has the power to prosecute, and if the laborers combine in any form to protect themselves there will be means found of prosecuting them.

If small traders combine together to meet some great trust so as to enable them to carry on their business, the power will be in the hands of the great trust and the opposition will be trusts. This scheme seems to me to put in the hands of accumulated capital the power to have all associations that can possibly be rivals prosecuted, because the associations that seek to resist trusts are not organized so artfully. Their purpose has to be avowed; they must state what their purpose is in order to get the inexperienced masses to go with them. It must be for the purpose of protecting themselves, whereas the experienced few who handle accumulated capital can do this in such a manner as to preclude all the possibility of proof.

So I believe the practical working of this bill, if it were constitutional and we had a right to pass it, would be to crush out competition where the people are trying to protect themselves against oppressive monopolies. I think that it is the way it would work practically.

Besides, I do not find any warrant in the Constitution for this particular class of legislation. It is stated in the first section of the bill that when combinations between citizens of different States and citizens of the United States combine with aliens to do certain things they shall be amenable to the law and shall be prosecuted in certain ways. I suppose that is the jurisdictional provision.

Mr. GEORGE. That is the jurisdictional provision.

Mr. STEWART. Now, that jurisdictional provision is referred to citizenship, and the provision in the Constitution gives the United States courts jurisdiction when and of what? First, it gives them jurisdiction in cases of equity and actions at law, and nothing else. This is given in certain cases on account of citizenship. Where citizens reside in different States they can have their controversies settled in the United States courts. But this is not a controversy. On the contrary, it is a combination; it is an agreement.

There is no dispute between these citizens resident in different States, but it is a partnership formed of citizens of different States that confers no jurisdiction upon the Federal courts. There is a difference between a partnership where all the parties agree and a litigation where the two parties disagree. The fact that they reside in different States and agree to do something does not add to the jurisdiction one particle. That part of it may be eliminated from the bill as having nothing to do with it.

Then the bill provides in a separate clause by itself:

And all arrangements, trusts, or combinations between such citizens or corporations—

Meaning combinations between citizens of different States or between citizens of the United States and aliens—

made with a view or which tends to advance the cost to the consumer of any such articles, are hereby declared to be against public policy, unlawful, and void.

It might just as well read, and it would be just as constitutional if it had said, that "all combinations having that tendency should be unconstitutional and void."

Now, it is the struggle of every community, it is the struggle of all the people who are attempting to better themselves, to get a good price for their commodities. Why might not the citizens of Iowa and Kansas unite and say, "We will hold back our corn; we will not sell it at these ruinous prices; we will combine and hold it until prices are better; we will put up the prices; they are robbing us. There is an organization in Chicago that is bearing this article, that is selling it short, that is putting it down; they are robbing us and we will not sell; we will combine?"

Suppose all the people of the different States should combine together and say, "We will stand against this Chicago combine that is attempting to get our produce for nothing," why would not they be liable to prosecution, the whole of them, if it were a constitutional law? But have they not a natural right to hold their products back until they can get a better price?

This is only one of a thousand instances in which this measure would be abused if it were passed. It is not the intention of anybody here to make that construction of it; we are trying to remedy the evil; but it is very probable that if this bill were passed the very first prosecution would be against combinations of producers and laborers whose combinations tend to put up the cost of commodities to consumers. It would be a weapon in the hands of the rich against the poor, and if you will trace the history of such legislation you will find that the experience of Great Britain was that such laws have always been turned against the people. After several hundred years of experience Parliament wiped them all out.

I believe that the true remedy against such trusts is that of counter combinations among the people. I believe in co-operation. Take, for instance, the most notorious trust in the West that there has been so much said about—the beef trust in Chicago. You can not reach that by such legislation as this. But suppose that you had a general law on your statute-books passed by the United States, that has the power to regulate interstate commerce, or suppose there was such a law in Illinois allowing the consumers to combine and have a co-operative organization, and suppose five thousand consumers in Chicago would form an association and supply themselves?

The trouble is, these combinations monopolize the market. Suppose those who are oppressed should do that? They might unite and get beef in for enough people, so that under this law they, too, would unite

together. They could so co-operate that they can supply themselves with beef. It is because they do not take that means that the beef-combine has control. This law would prevent them from combining against the other combine. If they did co-operate, however, they would be certain to get enough inhabitants who consume beef to meet together and say "We will buy of nobody else." That would break up your trust. If you pass this proposed law, however, and such a combination were attempted in Chicago, it would be prosecuted the next day.

These evils of combination, of course, are great, but the question is, do they not grow out of civilization itself, the foundation of which is organization, and without organization men would be savages? Should we not rather encourage organizations among the people to meet the grasping disposition of the favored few? The great trouble from the beginning of civilization has been that the few have combined against the many, being more competent, and that the few in various ways secure to themselves special privileges against the masses. I say let the masses combine.

One of the worst combines that have ever been inaugurated on earth from the beginning has been the combine on money, which has been an organization sanctioned by law to put up prices and put them down at the option of the speculator; to make it scarce or dear whenever they desired. That is the great trust that is pressing upon the country to-day. The labor organizations in this land are beginning to wake up to what is hurting them, and they are demanding legislation whereby the amount of money in the country shall be kept stationary in proportion and business, so that they shall not be robbed by low wages or half pay. They are getting waked up to that.

Let the people organize, I say, to get proper legislation for the whole country, but do not strike at civilization and say that you will abandon the idea of co-operation, which is absolutely necessary, without which we could not exist as a nation or remain in any civilized state.

I think that this bill is on the wrong basis and it will cut in the wrong direction if it passes, inasmuch as I find no warrant in the Constitution for Congress to pass this kind of a law and no warrant in the exigencies of our condition.

The amendment of the Senator from Kansas [Mr. INGALLS] has a good feature in it. It aims at a particular thing. It strikes at these options, where men are selling something they do not have, where they are selling other people's property short. That is one of the few things in the list that might be selected, and dealing in options, selling other people's property short, might be remedied or stopped.

There is some difficulty about that, because there must be limited agreements to deliver property in the future which has not yet been produced; but the mere dealing in other people's property without any intention of furnishing the property, simply to destroy its market value, is a dangerous thing. If that could be properly guarded there might be something gained. It is dangerous also to attempt that. It has been attempted and has thus far failed. I would not advise any legislator to vote to sanction any dealing of that kind, but when you say that all combinations of the people to protect themselves against monopoly shall be criminally prosecuted in the United States courts, you go too far; you attack the wrong people.

Then, the bill provides for another thing which will be very vexatious. It makes it the duty of the district attorney and of the Attorney-General, all the law portion of the Government, to prosecute these actions, and you will have the whole country converted into a most vexatious lawsuit. It will be against people who are illy prepared to defend themselves. Those who are cunning will work by their secret organizations. The power of those who understand this will not be touched; but if it is carried out you will fill the whole country with litigation and retard business and development. You will do the very thing which you would regret the most of all.

If this question is to be dealt with, I say it is within the jurisdiction of the States. What jurisdiction has the United States to go into the States? These combinations and organizations are in the States. Bring suits in the States to abolish them or to punish them for having formed trusts and partnerships in the States! What authority have you? The attempt in the first section to acquire jurisdiction by citizenship in different States will not reach the point. What is the difference? A partnership is not a case presented at all. United States courts have jurisdiction of controversies, not partnerships. Stripped of that, it authorizes the law officers of the United States to sue persons for making business combinations in the States, making it their duty, of course, to bring suits. The law would either be a dead letter or it would be a weapon of injury to the people who want redress in some substantial way.

I think the best way to legislate is to legislate upon those subjects which Congress has the confessed jurisdiction of, and to relieve the present depression in business as rapidly as possible.

The VICE-PRESIDENT. The question is on the amendment of the Senator from Texas [Mr. REAGAN], as modified, to the bill reported by the Committee on Finance.

Mr. BLAIR. Mr. President, I am a little troubled by the amendment of the Senator from Kansas [Mr. INGALLS], which, to be sure, seems to aim at the destruction of the business of gambling, dealing in futures and options, by imposing so heavy a tax upon the articles to be dealt in as to amount to a prohibition. Nevertheless, the amendment does legalize such transactions. It expressly legalizes gambling in options and in futures. It licenses the practice, fixes the conditions and terms under which this gambling, universally denounced to be a crime, is to be conducted, under and by authority of the laws of the United States. It is not business, like the dealing in oleomargarine, which is understood to be useful food, but there being abuses connected with it likely to become serious it was thought worth while, by a very slight tax, so that there could be a regulation of the subject, to guard the public against evils resulting from unrestrained traffic.

Mr. INGALLS. Did the Senator do me the honor to examine section 10 of my proposed amendment before making that remark?

Mr. BLAIR. Section 10 of the Senator's amendment provides—

> 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, etc.

Certainly I had read that; but the Senator, I suppose, understands very well (at least I understand) that, although there might be a provision of that kind, nevertheless the enactment of conditions under which the business may be conducted is a license; and that the acceptance of a tax on the part of the United States from the party who exercises that business is a practical exemption of the party from all penalties and is a legalization of the practice itself. It is not sufficient to insert these nugatory words in the proposed statute and yet say to the party, "You can do this business if you pay us so much." It is not in the power of the lawgiver to authorize a thing to be done upon condition that a certain amount of money be paid, and then by words which are practically nugatory prohibit the exercise of the privilege a license to do which is given.

The Senator from Nevada [Mr. STEWART] said that dealing in options and futures, or at least in futures, under certain circumstances, is sometimes necessary. Very likely that may be true in some conceivable cases. I do not find fault with the Senator's statement, but the point I wish to make is this: If that be true, a measure like this, which does not except those cases wherein the practice is a right one, a measure like this, which in general terms by this tremendous imposition of taxes upon the exercise of the right renders the exercise of that legitimate and proper right impossible, certainly should not be adopted by the Senate. The amendment contains no exceptions reaching a case such as may have been referred to by the Senator from Nevada. It is an intended prohibition of just those cases, as well as of the abuse of actual gambling, which constitutes the great abuse under which the country suffers.

It is no reply to say that this is an important thing and will prohibit generally the hurtful practices which are ruining the farmers of Kansas and Nebraska, as they understand, and throughout the West generally. It is no remedy for the difficulty under which they are laboring to enact the proposed amendment presented into law. First, it legalizes the practice, and, in the second place, it proposes to put upon the statute book a law which, in the next session—it may be at this very session—may be so amended and modified by the reduction of the taxes as to become practically inoperative as a prohibition of the practice itself. It seems to me that the amendment, if it is to accomplish anything as a remedy to the farmers in the West or elsewhere, should be pretty thoroughly examined.

I think if the sharp and critical Senator from Kansas looks his amendment over he will find that he can correct it grammatically in quite a number of important particulars. I call his attention, for instance, to the fifth line of section 2, where it has the words "when at the time of making such contract or agreement." Then in the eighth and ninth lines he has a repetition of precisely the same phraseology. There are a good many other things in the amendment which I have glanced at which I think would be worthy the attention of the Senator somewhat if he wants to put it upon the statute-book, so far as grammatical construction is concerned. But that is not of so much importance. I call his attention to the possible evil operation of the amendment in the regards I have pointed out of a more substantial character.

I suggest to the Senator from Ohio, in order to meet the difficulties he seems to be laboring under, and which are inevitably to destroy his bill if one may judge from the criticisms of the Senate, that in the fifth line of the first section he strike out the words, "to prevent full and free competition" and insert instead the words "to permit a monopoly." Everybody knows what a monopoly is, and nobody will object to prohibiting a monopoly. In the seventh line I suggest to insert after the word "or" the words "a monopoly;" and again in the eleventh line, where the words "intended for and which" occur, it would be necessary, in order to have good grammar, to insert the word "transportation" after the word "for." Likewise, if he will look a little farther along, in the fourteenth and fifteenth lines I suggest that it would at least make the bill better in the direction which he evidently intends the bill to operate, to strike out the words "intended to advance" before "the cost" and to insert the words "primarily intended to enchance;" so as to read: "primarily intended to enchance the cost to the consumer of any such articles;" and after the word "articles" to insert "and

for the promotion of a monopoly." I give notice that I shall move these amendments. Let them be taken down, with the idea that they may be moved when the proper time comes.

The VICE-PRESIDENT. The Chair desires to call the attention of the Senator from New Hampshire to the fact that the original bill is not now before the Senate for amendment.

Mr. BLAIR. I say I give notice of the amendments and ask that they be taken down for examination. If they do not prove to be of any consequence I shall not trouble the Senate with offering them formally.

Mr. ALLISON. The original bill has been disposed of by a general amendment, so that the lines to which the Senator alludes will not apply to the amendment reported from the Committee on Finance, which is now treated as the original bill.

Mr. BLAIR. They will not apply, I see.

Mr. SHERMAN. The Senator from New Hampshire has a copy of the reported amendment before him, I think.

Mr. BLAIR. I have the amendment. The other phraseology which I thought might be worthy of consideration comes in the fourteenth and fifteenth lines in section 1, striking out, as I indicated, and inserting the words "primarily intended to enhance;" so as to read: "primarily intended to enhance the cost to the consumer of any such articles;" and then to insert after the word "articles" the words "and for the promotion of a monopoly." I shall have these amendments ready to go in a different arrangement, applying the same phraseology to different lines.

Mr. HOAR. Mr. President, I do not understand why the Senator from Ohio has inserted in the bill the language of the first few lines, confining his penalty to citizens or corporations of different States or citizens or corporations of the United States and foreign States. I suppose it was prepared with some idea on the part of the draughtsman of the bill that contracts between citizens of foreign States and our citizens or between citizens of different States were necessarily commerce between those States, and that that was essential to bring the proposed statute within the constitutional power of Congress to regulate commerce between the different States or with foreign States. But that, as it seems to me, is very clearly a mistake. It is not commerce between the States for a citizen of Massachusetts to go into Ohio and buy a farm there, or buy a barrel of flour there, or even make an unlawful contract there.

This bill must stand, if at all, upon the fact that it is a bill to protect what is described alone, and that is the importation, transportation, or sale of articles imported into the United States or transported from one State to another or from a State to a Territory or the District of Columbia.

The Senator, it seems to me, would make his bill much more comprehensive if he struck out, after the word "combinations" in the fourth line, down to the word "thereof" in the seventh line, and it would stand within the Constitution as a measure for the protection of foreign or interstate commerce. I suppose we could punish a single person who did not combine with anybody else in another State who committed an act which was clearly to the injury of foreign commerce or commerce between the States, as, for instance, if he should adulterate some article which was to be exported or taken from one State to another, and perhaps we could punish him even for putting obstructions on the track of a railroad engaged in interstate commerce itself. There are a great many illustrations that could be put.

So it seems to me that the Senator has aimed his shot at a very small portion of the offenders when he has a perfect right to include them all. That is the first criticism of the bill that I have to make.

Mr. SHERMAN. In the bill as originally draughted by myself I did not insert the words "between two or more citizens or corporations."

Mr. HOAR. I do not lose the floor by yielding to the Senator. The Chair will understand that he is merely making an explanation.

Mr. SHERMAN. I have the original bill before me, and it reads precisely as the Senator proposes:

> That all arrangements, contracts, agreements, trusts, or combinations between persons or corporations made with the intention to prevent full and free competition, etc.

But these very words were inserted with a view to confine the operation of the bill to contracts made between citizens or corporations of different States, so as not to invade, by possibility, the jurisdiction of the courts of the States. I prefer a great deal the original draught, but to avoid somewhat the criticism of the Senator from Mississippi [Mr. GEORGE] I put in those words so as to describe contracts made between citizens and corporations of different States dealing in interstate commerce. As a matter of course I have no objection if the Senator should propose to strike out the words "two or more citizens or corporations, or both, of different States," but then it would only lead again to the objection. I do not want to fight both Senators, however.

Mr. HOAR. Of course, if the Senator does not want to interfere with the State jurisdiction and the State does what he would consider its duty in the premises, the State can equally punish as far as the bill is concerned any act which it has the power to make unlawful, whether it is done by two citizens of its own State or a citizen of its own and a citizen of another State, an act done within its borders, if the act be unlawful. The only jurisdiction over this subject is the jurisdiction to protect foreign and interstate commerce. That we have; that we can regulate; that the States can not regulate under the recent railroad decisions of the Supreme Court overruling a case from Illinois and that class of decisions where it was held that the jurisdiction was concurrent.

I suppose that, so far as this is a regulation of the commerce between this country and a foreign country or between two different States of this country, the jurisdiction of Congress is conclusive over it; the States can not touch it. A State can no more touch it when two of its own citizens do the act than it can when two citizens, one of its own State and another of another State, do the act, because it is a regulation of foreign or interstate commerce with which a State does not undertake to deal. If that be true, it seems to me, with great respect to the learned and able Senator, that he was right in his original judgment, and that the error of the amendment is in yielding to an untenable attack which was made on the bill as he originally drew it. I should hope that before the bill is voted upon that amendment will be made, because otherwise it will be easy to avoid its operation altogether by the offenders taking up their residence or citizenship in the same State, and this bill does not touch them.

Mr. HISCOCK. Do I understand that the Senator from Massachusetts is arguing the jurisdiction in reference to this subject on account of residence?

Mr. HOAR. That is the very thing I am attacking.

Mr. HISCOCK. That is, the Senator thinks that no jurisdiction is given on account of residence?

Mr. HOAR. Certainly; that is the proposition I am endeavoring to maintain, and I hope I have the concurrence of my honorable friend from New York.

Mr. HISCOCK. You have.

Mr. HOAR. In the next place, I want to come to the subject which was the matter of a colloquy between the honorable Senator from Ohio and myself when he was addressing the Senate in his own right, in his own time, and that is, that this bill fails to afford any considerable remedy to anybody, either to the public or to any private citizen, except so far as it may give a power to private citizens to bring their suits. It provides, in the first place, only for jurisdiction in the courts of the United States in suits of a civil nature to enforce the provisions of the bill. There is no remedy by penal suit; there is no remedy by indictment or by any other criminal process, if there be any other criminal process known.

The Senator says the suit of a civil nature gives, as against these corporations or partnerships, all the remedy which could exist for individuals when brought on the part of the United States. But what will it amount to? You can not prove in any court that the United States will suffer damages, though you can say why, in a civil suit brought by the Attorney-General or district attorney, the United States shall recover $100,000, or $200,000, or $500,000. It is an injury to the public, but there is no injury to the United States as a Government in respect of any of its property, or ownership, or function.

But the honorable Senator says they can get judgment against the corporation by ouster or *quo warranto*. I respectfully submit to the Senate and to the careful reflection of my honorable friend from Ohio that that is not a sound legal proposition.

A *quo warranto*, as I understand it, is a process by which a corporation is deprived of its corporate power by a judgment in a proceeding instituted in behalf of the authority which created it, because it has exceeded its functions or disobeyed the law in a matter which, by the law of its being, makes that disobedience a forfeiture of its franchise.

Mr. SPOONER. Or by non-user.

Mr. HOAR. Or by non-user, which is another basis of proceeding by *quo warranto*, as the Senator from Wisconsin suggests. But it is perfectly clear to my humble judgment as a legal proposition that an offense by a corporation created by the State of Ohio or the State of Massachusetts against a law of the United States can not, even if it were expressly declared by the law of the United States to accomplish that result (which this proposed law does not at all declare), constitutionally operate as a deprivation of a State corporation of its State charter and function.

Mr. HISCOCK. If the Senator from Massachusetts will allow me to interrupt him again, I will make this suggestion: The purpose of that provision, if it has any purpose, is, first, to make these contracts void. No one, then, has suffered any damages. If the first section has any purpose it is to reach out and commence actions to set aside contracts of that kind that have been made, to institute, so far as you can by suit, investigations into all of the business affairs of the people who may be engaged in interstate commerce possibly. Before there has been any sale of the property, if you please, the contract has been made; before any manufacturing has been done you commence then and there to start a sort of bureau of protection against this sort of thing.

Mr. HOAR. I will answer that presently. I am at present dealing with the suggestion of my honorable friend from Ohio. I submit to the lawyers of the Senate, including my honorable friend from Ohio, who is one of the ablest members of this body, as we all know, that it

is an utterly untenable proposition to claim that the United States can have a forfeiture of the charter of a State corporation for an offense against the United States law. The Senator sees that it is not because of an offense against the law of its being. Then the sole jurisdiction over the right of the corporation to live and go on, to proceed in order, as the Chair says when anybody is out of order, is in the State courts.

The honorable Senator made one suggestion in which I agree with him, that in a proper case there might be an injunction in equity which would prohibit the future exercise of these unlawful powers by these corporations. It seems to me from all the reflection I can give to this section that is all there is left of it, a possibility in proper cases of an injunction in equity where some future offense against this proposed law is threatened; but as a remedy by way of a punishment, as a penal enactment for the past, which of course will be the great terror of these offenders, the injunction will not hurt them much, because they will merely have tried to do the thing and failed, and in nine cases out of ten they will have had their purpose accomplished before the injunction is issued. To that extent I agree that the section has virility.

The honorable Senator from New York inquires whether the object of this section will not be accomplished by treating it as a section which provides for an investigation to inquire into the jurisdiction.

Mr. HISCOCK. I refer to suits brought with reference to declaring these arrangements void, and, if you please, coupled with a prayer for an injunction against the continuance of them, and I ask whether practically the Government is not to follow them up in that way? Wherever they have been effecting a combination of that kind, suit is to be commenced by the district attorney in the locality, and he is to appear against them and have them indicted. As I suggested the other day, I expected, if that is held to be valid, it will be followed by some sort of provision in the future that every concern or every manufacturing industry shall be compelled to take out a license.

Mr. HOAR. When we have the provision in the future presented here, that will be one thing; but who ever heard, either as a matter of sound public policy or as a matter of constitutional authority, a provision for a mere inquiry into the business and affairs of citizens, whether corporations or individuals, which was conducted by a civil suit brought against them on the part of the Government?

Mr. HISCOCK. I agree with the Senator on that question.

Mr. HOAR. That would be one of the unreasonable processes against which all of our constitutional theories militate.

Mr. HISCOCK. I should like to ask the Senator if he can conceive of a possible cause of action on the part of either the Government or a private individual up to the time when the goods have been transported or entered for transportation from one State to another that could be maintained?

Mr. HOAR. I conceive that my honorable friend from Ohio proposes in this section of the bill that if the Attorney-General or district attorney in a proper case is informed that a contract has been made, whether between citizens of different States or of the same State, which is an offense against the provisions of this bill, he can get in with his preliminary injunction. I say again, if he can get in with his injunction between the illegal contract and its execution, I do not see at present why the bill does not answer that purpose and accomplish so much good; and that, it seems to me, respectfully, is all there is in it, so far as that first section goes.

Mr. PLATT. May I ask the Senator from Massachusetts a question? Suppose that there was a combination existing in Chicago to put up the price of wheat? Wheat is a commodity which may be transported between the different States or it may not. Does he think that that combination could be reached under the power of Congress to deal with commerce between the States?

Mr. HOAR. That is a totally different question from the point I was discussing at the moment. It does not relate to it at all. But I will say that unless it can be shown that that combination is to put up the price of wheat elsewhere than in Chicago, that it is to affect the price which is to be paid by the person who is to acquire that wheat of the man in Chicago to be delivered to him in another State or abroad, you can not constitutionally accomplish that.

If I understand the question of my honorable friend from Connecticut, I suppose he means to imply (and certainly I should agree with him if he does), for instance, that an elevator full of wheat or any other quantity of wheat which is bought by one man of another in Chicago to be delivered in Chicago, so that the only transaction between them is the exchange of property in a State, although that property may be intended to be resold in the South, may be intended to be resold in the East, may be intended to be resold in Liverpool, would not be within the constitutional power of Congress, that the States have to deal with that themselves if they can.

Mr. PLATT. So, it seems to me, if the Senator will permit me, that the particular contract, or agreement, or combination which might be reached under the power to regulate commerce between the States must be exceedingly limited. Indeed, since he has been making his argument here I have been sitting listening to the argument and trying to think what particular things could be reached under it, and it is very difficult to see that anything could be reached.

Mr. HOAR. Mr. President, I want merely to add one observation, and I think it is an observation which is worth thinking of by the Senate, especially at the present time. We have great currents of public sentiment in this country, breezes of popular opinion and indignation. Something goes wrong, or the people fancy something is going wrong, or an influential portion of them think that something is going wrong, and they come in here setting forth their grievance or their opinion that they are aggrieved, and there is very great danger that in the haste for the sake of satisfying the present feeling of discontent we shall get up some crude, hasty legislation which does not cure the evil, which keeps the word of promise to the ear and breaks it to the hope, and the people will be contented for a week or two, and then the evil continues, and the discontent grows stronger, and it is aggravated by the popular feeling that they have been played with and juggled with, and that we have given them pretenses of remedies and cures which, if we were fit for our place here, we ought to know are no remedies and no cures.

The history of this country for the last thirty years in finance, in protection, in our land policies, in our homestead policies, in our dealing with the great question which separates the sections, has shown that those statesmen and those parties who deal with the people on the theory that they have some sense themselves and see the difference between sham and reality are those who permanently retain their confidence and maintain their own strength. Every time the price of wheat goes down, or that there is a bad year in agriculture, or that the manufacturers are pinched, or that the mines are unprofitable, or that there is such a good year for agriculture abroad that our people do not get the prices which they have had the year before, I do not believe that it is good policy for me, or for the men who associate with me, or the party to which I belong, or the body of which that party is but a component part, to hold out to the people false remedies or pretended cures.

Mr. FRYE. I should like to ask the Senator from Massachusetts if the pending bill and amendments suggest that last remark.

Mr. SHERMAN. Mr. President, the Senator from Massachusetts looks upon this matter a little differently from what he would if the duty on cotton cloth or woolen cloth was a little too low to protect the people of Massachusetts. Then not one month or one day would pass before there would be a speedy demand for a remedy.

Mr. HOAR. And I would have one that would accomplish the object, and not one that would not.

Mr. SHERMAN. By raising the duty. Now, here is a remedy for a greater wrong than can be imposed by a tariff law. We know that within twenty years, for the first time in the history of our country, combinations have been made involving from eighty to one hundred million dollars, combinations so strong that it was impossible for any other combinations to compete with them, combinations so powerful and extensive as to reach every branch of trade and business in the United States. This has been going on during that time. The State courts have attempted to wrestle with this difficulty. I produced decisions of the supreme courts of several of the States.

Take the State of New York, where the sugar trust was composed of seventeen corporations. What remedy had the people of New York in the suit that they had against that combination? None whatever, except as against one corporation out of the seventeen. No proceeding could be instituted in the State of New York by which all those corporations could be brought in one suit under the common jurisdiction of the United States. No remedy could be extended by the courts, although they were eager and earnest in search of a remedy. All that they could do was to declare a forfeiture of the corporate power of one single corporation, while all the associated companies still held together in their combination, and not only did they hold together, but they went on making huge and enormous profits. You may almost say that while we have been sitting here debating this bill, since this bill has been pending, they have made a large dividend to all the associated corporations, and all have shared in it on the amount of watered stock and all other kinds of stock. They could not pay to the defunct corporation, which was suspended and inert for the time, until a final decision could be made by the court of appeals of New York, and so they put the dividend of that corporation in trust, but the other corporations went on; the combination continued and it continues to-day. So it is on many other articles. I do not care to single out all the corporations and point to the history of their transactions as I know it.

Is there no remedy for this? Is this no evil that we ought to remedy? If this remedy proposed is a sham and a quack, where is your genuine remedy? It will never come from the men or the class of men who are engaged in these monopolies. That there is an evil which must be dealt with, which the people of the United States demand shall be dealt with, no man can deny. Where is your remedy? If this is a quack medicine, produce something better. But it will never come from that source, never.

Mr. President, this thing must not be dealt with too lightly. No man can question my object in this matter. I have no interest to subserve and no interest to injure, and care nothing for the consequence; but I say I have seen the gradual growth of these combinations. I have been familiar with them, so far as I could gather from the public prints and public investigations. I know that the evil the bill is aimed at

is growing greater and greater, and stronger and stronger. If you are impotent and unable to deal with the question and can not prescribe any remedy but quack medicine, then you are utterly unfit to perform your duties as the representatives of the people of the United States.

There are classes of contracts springing up here and being enforced day by day which have tended more than all else combined to bring these complaints upon us, complaints from the workingmen all over our land, from the farmers in their alliances and in their other organizations. They can not see the cause or source of this evil, but they demand a remedy and that demand will be heard. Nor will it be turned aside by any combination here or anywhere else. It must be met openly, and if you are unable to do anything with it let it be so and announce your inability.

Look at our dealing with interstate commerce. Some years ago it came up here on the bill of my honorable friend from Illinois [Mr. CULLOM], and it was hooted and jeered at; and when the Senator from Texas [Mr. REAGAN] started out on that road in the other House he was met with constitutional objections without number. The railroads were then too powerful to be dealt with. They combined together. There was one striking case which I introduced in my argument the other day where they gave a single other corporation in the combine the advantage of $5,400,000 a year in one transportation contract. But fortunately my honorable friend from Illinois here and the Senator from Texas and others elsewhere took hold of the matter and they prescribed a remedy, and now do you say that is a quack remedy, that it is an ineffective remedy? Yet their proposition was met by the same class of arguments that this bill is met with.

No, sir; the power of Congress is the only power that can deal with these corporations. The power of Congress is the only one that can regulate the internal commerce of this country. The power of Congress is the only one that can bring all the parties to combinations before a tribunal, and have that tribunal pronounce judgment, not in a criminal suit, but in a civil suit.

These corporations do not care about your criminal statutes aimed at their servants. They could give up at once one or two or three of their servants to bear this penalty for them. But when you strike at their powers, at their franchises, at their corporate existence, when you deal with them directly, then they begin to feel the power of the Government. So in regard to interstate commerce by rail. All those corporations and organizations opposed that law, but when it went into force it produced enormously good effects, and everybody appreciates it, and nobody proposes to dispense with the Interstate Commerce Commission, which was organized to enforce the interstate-commerce law.

Sir, I have that confidence in the courts of the United States that I believe if you even give them a single grip, if you give them jurisdiction of this class of cases by law—because this jurisdiction can only be conferred by the law—they will administer the law. The Senator from Massachusetts says we are providing here only for cases of a civil nature. Strike it out, if you please. I would say "all cases at law or in equity arising under this statute;" or, better yet, I would use the broader terms, "all controversies between citizens of different States," the language used by the Constitution. Strike out the words "of a civil nature." Those words are properly in the bill, because the remedies pointed out in this measure are of a civil nature, and therefore they are properly defined as cases at law or in equity of a civil nature. Strike out the words and then the jurisdiction will be broader. That would be an amendment I should favor.

But the Senator says that I have crippled this measure by inserting words of limitation, so that these combinations must be between citizens and corporations of different States. Only the other day I met with a different kind of objection. It was said here that we were reaching out so as to bring citizens of the same State into court as defendants; that I was reaching out after a jurisdiction that ought to be limited to the State itself; and to avoid that objection I propose to provide that the combinations must extend beyond the State.

I think that is a wise provision. I think it is well to do it. Why? Because these combinations are always in many States and, as the Senator from Missouri says, it will be very easy for them to make a corporation within a State. So they can; but that is only one corporation of the combination. The combination is always of two or more, and in one case of forty-odd corporations, all bound together by a link which holds them under the name of trustees, who are themselves incorporated under the laws of one of the States. You can not make a combination such as is described by this bill unless it embraces the members of many corporations of many States.

Gentlemen say you must show when the commerce commenced and when it ended; you must distinguish between production and commerce. The agreements point out and mean transportation from place to place. What do these great combinations—take for instance the Standard Oil Company—do when they transport oil to Ohio, or Chicago, or Indiana, east and west? They transfer oil from Pennsylvania to every part of the country. It is necessarily a part of their business to do so; it is an incident of their business. If you could confine their business to a single State or if their contracts could only reach commerce within a State, their profits would dwindle into the air; but they are able to make these combinations embracing corporations without number, extending their operations not only through every State of the Union, as the Standard Oil Company does, but throughout the civilized world, competing as they do—and I am glad they do compete—with all foreign nations and all foreign productions. If they conducted their business lawfully, without any attempt by these combinations to raise the price of an article consumed by the people of the United States, I would say let them pursue that business.

I am not opposed to combinations in and of themselves; I do not care how much men combine for proper objects; but when they combine with a purpose to prevent competition, so that if a humble man starts a business in opposition to them, solitary and alone, in Ohio or anywhere else, they will crowd him down and they will sell their product at a loss or give it away in order to prevent competition, and when that is established by evidence that can not be questioned, then it is the duty of the courts to intervene and prevent it by injunction and by the ordinary remedial rights afforded by the courts.

Not only that, but this provision allowing any party to sue is of vital importance. Why, sir, I know of one case where a man in good circumstances, a thrifty, strong, healthy American, was engaged in this kind of competition. He was met in just the way I have mentioned. If he had had the right to sue this company in the courts of the United States under this section he would have been able to indemnify himself for the losses that he suffered. I have known of other cases of the kind. Sometimes the damages would be too slight to give the courts of the United States jurisdiction. In the case of a single individual whose bread has been advanced in price or whose small expenditures have been somewhat increased, there is no remedy for him. The remedy is only for those who are largely enough interested to sue in the courts of the United States.

This bill does only two things. It authorizes the Government officers in a proper case where these combinations are plainly made with a view that is declared by the law of every civilized country to be unlawful and void and destructive to trade—when such a combination does exist the United States may come in and as a suitor in the name of the people of the United States may sue for and prevent and, if possible, enjoin, restrain, or tie up these combinations. That is authorized to be done by the first section.

The first section only provides for that wrong a general remedy, and if any injustice be done a suit is brought in the name of the people of the United States by the Attorney-General, and the courts of the United States must decide. Will they be governed by wild and arrogant feelings, like the Communists or Nihilists? No; the United States, the power of the country, sues these corporations, calls upon them for information, proves, if possible, the extent of the evil, and then administers the remedy.

It is said that damages are not given. Well, sir, it is not so much the object of the first section to give damages as it is to provide restraint, limitation, regulation, and the exertion of the power of the Government over these corporations.

In the other section there is a civil remedy provided. When a man is injured by an unlawful combination why should he not have the power to sue in the courts of the United States? It would not answer to send him to a State court. It would not answer at all to send him to a court of limited jurisdiction. Then, besides, it is a court of the United States that alone has jurisdiction over all parts of the United States. The United States can send its writs into every part of a State and make parties in different States submit to its process. The States can not do that.

Now, sir, under these circumstances it is important to citizens that they should have some remedy in a court of general jurisdiction in the United States to sue for and recover the damages they have suffered. I think myself the rule of damages is too small. It provides double the damages and reasonable attorneys' fees. Very few actions will probably be brought, but the cases that will be brought will be by men of spirit, who will contest against these combinations.

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

Mr. SHERMAN. Certainly.

Mr. HOAR. Is the Senator quite right in saying that without making some change in the law the United States court would have the right to send out its writs at large into the States?

Mr. SHERMAN. To what extent I do not know, but I think so. I suppose myself the writs of the United States courts would go to the several States. How far they may go is regulated by the law, and can be ascertained by an examination of the statutes.

Mr. SPOONER. If the Senator will permit me, I think the statutory rule is that no man can be sued except in the jurisdiction where he resides, with one exception. There is a general exception, as I recollect the statute, and that is where the suit is to enforce a lien upon real estate or remove a cloud from title to real estate, in which case leave can be obtained from the court to serve process in another district and by publication.

Mr. SHERMAN. Then, clearly, here is a matter in which the honorable gentlemen of the Judiciary Committee can give us some relief. Let them frame a provision that will allow the process of the United States courts to go all over the United States. Why not, if that is necessary? I supposed that was provided for in existing law. It is in some cases.

Mr. GEORGE. I should like to ask the Senator from Ohio a question.

Mr. SHERMAN. Certainly.

Mr. GEORGE. The Senator has alluded to the Standard Oil Company as one of the evils which are to be suppressed by this bill. I should like to ask him whether the Standard Oil Company is not a corporation created by the laws of the State of Ohio, and is that not all there is in it? As a combination, who else is to combine with it except its own stockholders in the corporation?

Mr. SHERMAN. The Senator is greatly mistaken. I can show him by the papers—the Standard Oil Company was no doubt the original company—that it was organized in the modest sum, I think, of $200,000 capital, and it is running now an ordinary refining business, but other corporations all over this country——

Mr. GEORGE. What other corporation now besides the Standard Oil Company, located at Cleveland, Ohio, is in that Standard Oil combination?

Mr. SHERMAN. I am not prepared to say, but an examination was made into this matter by a committee of the other House, of which Mr. Bacon was chairman, and, I think, in the report which was made he gave a list of the corporations, and, if I am not mistaken, there are forty or fifty, all interlaced with each other, having different interests nominally, different incorporators, different charters. I think there are forty or fifty great combinations. I do not know the exact number, but perhaps some gentleman who has gone into the reading of that report may be able to answer.

So with the other combinations. I do not wish to single out the Standard Oil Company, which is a great and powerful corporation, composed in great part of citizens of my own State, and some of the very best men I know of. Still, they are controlling and can control the market as absolutely as they choose to do it; it is a question of their will. The point for us to consider is whether, on the whole, it is safe in this country to leave the production of property, the transportation of our whole country, to depend upon the will of a few men sitting at their council board in the city of New York, for there the whole machine is operated? I do not say anything against these men. Many of them are my personal friends and acquaintances. I only refer to them because they are the oldest of these combinations founded upon contracts which have been copied by the other combinations.

That is all I wish to say. If Senators find any difficulty in this bill, if they want to strengthen it in any way, in the name of Heaven let them offer their amendments. If they think it goes too far in any particular, let them strike out the objectionable clauses. If it does not go far enough, do not call it a quack medicine, because it is honestly gotten up, even if it is nothing but paregoric. If it is not strong enough, put some stronger element into it. That is the business of the Senate. What I have done is to aid it step by step. I was in favor of the broad declaration that certain contracts should be null and void, and invoking the jurisdiction of the courts of the United States, but I have modified it to meet the fears and the timidity of others who were afraid we were going too far, and now, as I said the other day, the objection to the bill is its weakness, but it is weakness drawn into the bill because of the objections made in the Senate.

Mr. HOAR. I called the attention of the Senator from Ohio to certain propositions in his bill showing, in the first place, that it did not include a tenth part, and perhaps not a hundredth part, of the cases that would arise in the country; second, that it did not contain all the remedies which he supposed it did, and that it was defective in sundry other particulars; and if I have not misunderstood my honorable friend he has agreed with every one of these criticisms. He says in regard to the first one that he had the bill as I think it ought to have been; but changed that to please some one. Then he says in regard to the next one he thought there ought to have been a provision declaring unlawful contracts criminal and so punishable, but that he did not put it in because of somebody else. Then, he meets all the objections by conceding them, and he says in another place he thinks the bill is very admirable because the process will run all over the United States, and on asking him if he is sure of that he replies that on the whole he is not——

Mr. SHERMAN. I will take your word for it.

Mr. HOAR. And that he thinks some committee will propose a law which he does not provide himself. Then he answers, having agreed to all the objections, which, so far as I now remember, establish the fact that the bill ought to be strengthened, by an impassioned statement of the great evil which he wants to reach. We all agree with that, and we have trusted to him to give us a vigorous remedy. That is what we expect of him. Now, if a member of my family is suffering with an incipient cancer and a doctor comes in who proposes a piece of court-plaster as a remedy, and I ask him if he thinks court-plaster will cure that cancer and save that valuable life, and he says, "No, it will not," and then turns around on me with an impassioned and an eloquent statement of the horrors of the disease called cancer and how much it is going to ruin the lives of my family threatened with it, I am obliged to say—I do not know whether the phrase "quack medicine" would be a proper phrase to use—but I would rather call in another doctor, and if he were a doctor that I had thorough confidence in, like my friend from Ohio, I should ask him to substitute some other prescription for his court-plaster.

URGENT DEFICIENCY APPROPRIATION BILL.

Mr. VEST. Mr. President——

Mr. HALE. Will the Senator yield to me to call up an appropriation bill and have a conference ordered upon it?

Mr. VEST. Certainly.

Mr. HALE. The urgent deficiency bill lies upon the table, and I ask that the Senate agree to the conference asked by the House of Representatives and appoint conferees on the part of the Senate.

The VICE-PRESIDENT laid before the Senate the action of the House of Representatives on the amendments of the Senate to the bill (H. R. 7496) to provide for certain of the most urgent deficiencies in the appropriations for the service of the Government for the fiscal year ending June 30, 1890, and for other purposes.

Mr. HALE. I move that the Senate insist on its amendments and agree to the conference asked by the House of Representatives.

The motion was agreed to.

By unanimous consent, the Vice-President was authorized to appoint the conferees on the part of the Senate, and Mr. HALE, Mr. ALLISON, and Mr. COCKRELL were appointed.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. MCPHERSON, its Clerk, announced that the House had passed a concurrent resolution for the printing of 500 copies of the Digest of Claims referred by Congress to the Court of Claims for a finding of facts under the provisions of the act approved March 3, 1883, known as the "Bowman act," now in manuscript, prepared under resolution of the House of Representatives of March 7, 1888, the same when printed to be placed in the hands of the Clerk of the House for use of Senators and Members of the House.

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 of Mr. REAGAN.

Mr. VEST. Mr. President, I deny the right of the Senator from Ohio to assume that there is no other way to reach this great evil of combines and trusts in this country except through his intellectual effort and through the bill that he has reported to this body. Illustrious as has been the career of that Senator, there is nothing in it which gives him the right to assume that he has discovered the only remedy and the only road to success in a contest against these combinations.

I object to his bill because, in my judgment, it will effect nothing; because, as a lawyer, I believe that the courts will not entertain it for one moment when it is brought before them. I object to it because it destroys all my ideas of the limitations of the Constitution. I object to it because it is against the spirit and letter of the judiciary act of 1789. I object to it because it is "sound and fury, signifying nothing." If I believed that the bill of the Senator from Ohio, coming from him or any other Senator here, would effect what he claims for it, I should vote and speak for it until my strength was exhausted in this Chamber. I am not here to claim that I have any pre-eminence as an enemy of combines and trusts, but I think, although my career has not been as long or as illustrious as that of the Senator from Ohio, but limited and slight as it has been, I have shown in my legislative labors that I am as much opposed to these combines as he can possibly be.

Sir, I object to the bill because I am certain, as a lawyer, that the Supreme Court of the United States will never declare it to be constitutional, and for the Senator to assume that he, and he alone, has found the remedy in this case, is, to say the least, transcending the limits of parliamentary modesty.

Now, Mr. President, I will ask the Secretary to read a bill that I think, although I am not the author of it (and I have been for over six months attempting to find some legislation that would meet this evil)—I freely accord to another gentleman the merit of having framed a bill that, in my judgment, comes nearer to furnishing a remedy than that presented by any other person, and I ask the Secretary to read the fifth, sixth, and seventh sections of the amendment proposed by the Senator from Texas [Mr. COKE]. That is a bill that has been offered in the House of Representatives, and was offered here as an amendment by the Senator, and I ask the attention of the Senate to it.

The Secretary read as follows:

SEC. 5. That when any State shall declare, or heretofore has declared by law, trusts as defined by the true intent and meaning of this act to be unlawful and against public policy, it shall not be lawful thereafter for any person, firm, or corporation to cause to be transported any product or article covered or embraced by such trust from such State to or into any other State or Territory or the District of Columbia.

SEC. 6. That any common carrier or agent of any common carrier who shall knowingly receive such product or commodity for transportation from such State into another State or Territory or the District of Columbia shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five hundred nor more than ten thousand dollars or shall be imprisoned for any period of time not less than one year and not more than five years, or by both such fine and imprisonment, in the discretion of the court. And any person who shall knowingly deliver to any common carrier, or agent thereof, any such product or commodity to be transported into another State or Terri-

tory or the District of Columbia shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than five hundred nor more than ten thousand dollars or by imprisonment for any period of time not less than one year nor more than five years, or by both such fine and imprisonment, in the discretion of the court.

SEC. 7. That whenever the President of the United States shall be advised that a trust has been or is about to be organized for either of the purposes named in the first section of this act, and that a like product or commodity covered or proposed to be covered or handled by such trust, when produced out of the United States, is liable to an import duty when imported into the United States, he shall be, and is hereby, authorized and directed to suspend the operation of so much of the laws as impose a duty upon such product, commodity, or merchandise for such time as he may deem proper.

Mr. VEST. Now, Mr. President, there is a measure much more radical than that of the Senator from Ohio, far more effective, and not subject to any constitutional objection. Not even the most hair-splitting constitutional casuist, such as to-day has been denounced by the Senator from Alabama [Mr. PUGH], can find any objection to that measure; and if my friends on the opposite side of the Chamber object to the seventh section because it deals with the question of import duties, if they do not want to give the President of the United States discretion to take off import duties when they protect a trust, let them strike it out.

If my friend from Illinois [Mr. CULLOM] or my friend from Texas [Mr. REAGAN] objects to the sixth section because it interferes in any way indirectly with the interstate-commerce law, let him strike it out; but in the fifth section is the gist of all legislation upon the subject in the line indicated by the Senator from Ohio. We must rely, as I said on Friday last, in two jurisdictions: in the States and in the Federal Government; and, sir, when the States declare any article to be the product of a trust, when they declare any trust itself to be unlawful, or any combination or corporation or individuals to be unlawful, then let the Congress of the United States supplement that with the declaration, under the interstate-commerce clause of the Constitution, that the products of that trust, so put under the ban of State legislation, shall not be carried from one State or Territory to another.

That bill, more than any other bill introduced into Congress or ever invented, obviates constitutional objections and scruples and at the same time reaches, in my judgment, this great evil, if it ever can be reached by one act upon the part of Congress.

Mr. HISCOCK. Mr. President, I do not believe that by impassioned eloquence the defects of this bill are to be obscured. We have been told that if this bill should be passed into law the Federal courts might take jurisdiction of all the parties to one of these combinations and that the defect in the State law was that the State courts could only take jurisdiction of the subjects of the State, or whoever might be domiciled in the State; and before we get through with the discussion we are told that the process which is to be issued in a suit of that kind can not go out of the district in which the party is found. Where, then, is the difference between the jurisdiction and power of the State courts and of the Federal courts? The State courts take jurisdiction in the State.

In the State of New York we have three Federal judicial districts. Suppose the process can reach a party in the entire circuit; grant that it does extend to him: go as far as that; and are we to be asked on this bill inconsiderately to put in it a provision that process may reach the offending parties in the United States wherever they are, and disregard the settled practice in the United States since the foundation of the Government? An amendment of that kind would be too far-reaching to be adopted in this bill with the consideration that it would receive in this debate. So, then, under the bill we can go no further and we have no more power, it seems to be conceded, than the State courts have.

Now, then, let us look at the only remedy that the bill affords to an oppressed people.

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.

A person sues the corporation or the combination or party to the combination. The combination is in twine, we will say, but the man who is injured is in Minnesota, and he is invited by this bill to travel to New York, where the combination, we will say, was created, or to St. Louis, where I think the last one was created, and commence his action in the circuit court of the United States and recover twice the damages that he has sustained. The middlemen will never commence these actions. I mean the parties who in the first instance purchase of the combination. That will be guarded against, and the people who are to suffer the damages are those who are distributed all over this broad land, the consumers of the article, the consumers of the merchandise, buying perhaps a hundred dollars' worth and damaged possibly $10, and they have the right to follow this combination or a party to it wherever he is domiciled and recover twice the amount of damages they have sustained!

Seriously, Mr. President, it is a fearful attack upon trusts! I am not going over the argument that I have made heretofore against the constitutionality of the bill. I am one of those who believe that because we have parties named in this bill that reside in the different States that gives us jurisdiction. It is only when the property is in commerce and in the course of commerce that we can take jurisdiction, and I say for myself, if I had made up my mind to vote for an unconstitutional measure and one which I believed to be unconstitutional, I should vote for the amendment of the Senator from Texas [Mr. REAGAN], because, unconstitutional as it is, in my judgment it would upon its face afford some remedy.

This bill, however, does not promise any relief, even if it is valid. But I shall not follow the example of the Senator who said that possibly he might vote for the Reagan amendment in some stage of our deliberations, although he believed it was unconstitutional, because I most heartily indorse the sentiment of the Senator from Massachusetts that it is always safe to predicate your action, here or elsewhere, upon the intelligence of your people, and not upon their ignorance.

Mr. TELLER. Mr. President, I do not propose to allow the Senator from Ohio to presume that everybody who does not agree with him on this bill and what it will do is against the relief that he seeks. My real objection to this bill is that it is delusive. I do not know but that it may be of some benefit; possibly it may. As I said before, I do not know but that I may vote for it; but I want it distinctly understood, as far as I am concerned, that I am not very much moved by it.

Now, how does the bill reach the great evil against which it is aimed? The Standard Oil Trust has been spoken of. What is the Standard Oil Trust? A corporation in Ohio, a corporation in Pennsylvania, a corporation in Colorado, and so on through all the States. Each corporation is a creature by itself. Ohio can deal with the corporation in Ohio.

Mr. SHERMAN. But they have combinations in other States.

Mr. TELLER. And the Ohio Legislature can say that any corporation created by that State, which combines with any corporation in another State for this purpose, shall be dissolved. What can we do about it? If Ohio declines to do that, some other State may do that. But what can we do about it? We do not dissolve the corporation. What do we do? Anybody who is damaged can sue them. When they interfere with somebody who has sunk a well in Ohio and they run down the price of oil until they shut him up, he may have his remedy against them. But that is not what we are complaining of. We are complaining that that Standard Oil Company has a tendency to reduce and destroy competition, and thereby, by destroying competition, to put up improperly the price of oil. Who suffers by that? The sixty-five millions of people in the United States who use oil; and how do they suffer? How much damage have they sustained? It is inconsequential individually, but great to the whole mass of the people.

What remedy does this bill give the people for any such misconduct on the part of that corporation? None whatever, because it does not destroy the corporation, it does not attempt to destroy the corporation, and could not if it did. It will not dissolve it. It will remain, although a judgment may be rendered against it. On the contrary, in my judgment, it is a bill that may be seized upon to prevent just what everybody admits ought to be done in this country. It may seize, as I said before, the organizations of labor, the organizations of farmers; it may take hold of them, and while it will not dissolve them they are not the class of men that can afford to be brought into court once or twice even, while these great corporations do not care how frequently they are brought into court where the damages that the parties get are just simply twice what the individual who makes the complaint has sustained.

Mr. President, in France, up to 1884, there was no such thing as cooperation or association amongst the agriculturists of that country and very little among the laborers of that country. In the spring of 1884 there was a law passed in France that enabled the laborers to form associations something like our Knights of Labor, what are called in Great Britain the United Workmen, or associations of that character. It went further. It authorized and encouraged the agriculturists of that country to unite together and form an association for the express purpose of taking care of their interests, and I believe it is not disputed by anybody that that has been done all over France, and done for the benefit of agriculture in that country, and, of course, when it is for the benefit of agriculture it is for the benefit of the whole community.

I do not know—I am not absolutely certain—that under this bill the Knights of Labor, the Alliance, the Wheel, the National League, could be attacked, but it strikes me there is a great deal more probability of their being attacked than there is of these great, strong corporations being. They are the men who, if they keep on, will destroy these combinations in Chicago, these dealers in futures; they are the people who will take hold eventually of the interstate-commerce question in such a way as to make the railroads feel their power, because, after all, the farmers are the moving and the influential body of this country whenever they unite; they have the intelligence and the virtue and the control when they say so.

Mr. President, all other industries are nothing compared with the agricultural interests in numbers and in influence when they take hold, and if you give those who are opposed to their combination the slightest opportunity to interfere with them they will do it. I have not much faith in any national control over these associations. I do not believe it is possible, because, as I have said, we can not dissolve the

corporation; we can not reach it; but the States can. Every corporation that is created is created at the will of a State, and the State can put upon it just such conditions as it sees fit. The State can say, "If you combine with anybody in this State, or out of this State, and do certain acts which we declare improper and unlawful, then your charter shall be taken away by a proper proceeding in court." We can not do that, and therefore it is not possible that we should meet the difficulty by any bill that may pass this body.

It is not to be said to me, because I do not agree with the Senator from Ohio that here is the remedy and here only, that I am not in favor of taking hold of this evil with a strong hand where it can be done. The Senator says if we can not do this then there is no remedy at all. Not so; even if we had the power, the bill, in my judgment, is not well drawn, though I might vote for it as the best thing that could be had. I was glad to hear from a Senator on this floor that the Judiciary Committee was dealing with this subject, and I think it would be well now to refer this bill to the Judiciary Committee and wait until we can hear what they propose, something that would be within the constitutional limits of Congress and at the same time would be vigorous and effective; that would take hold with a strong hand and do what I have no doubt the Senator from Ohio wants to do, but which he does not want to do any more than a majority of this Senate on both sides of this Chamber want to do.

Mr. INGALLS. I move that the Senate do now proceed to the consideration of executive business.

Mr. SHERMAN. Mr. President, can not we have the vote now? I hope we may have a vote on this bill. We might as well have the vote now as at any other time.

Mr. INGALLS. If the Senator from Ohio desires to ascertain whether the Senate is ready to vote on the amendment of the Senator from Texas, I certainly have no objection; otherwise I shall insist on the motion.

Mr. GEORGE. There will be more debate on this matter.

Mr. VEST. I understand the Senator from Mississippi desires to address the Senate.

Mr. INGALLS. I insist on my motion.

The VICE-PRESIDENT. The Senator from Kansas moves that the Senate do now proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After six minutes spent in executive session the doors were reopened, and (at 5 o'clock and 16 minutes p. m.) the Senate adjourned until to-morrow, Tuesday, March 25, 1890, at 12 o'clock meridian.

NOMINATIONS.

Executive nominations received by the Senate the 24th day of March, 1890.

UNITED STATES ATTORNEY.

John F. Selby, of North Dakota, to be attorney of the United States for the district of North Dakota, as provided by section 21, chapter 180, laws 1889, volume 25, United States Statutes at Large.

PROMOTION IN THE ARMY.

Pay Department.

Maj. Thaddeus H. Stanton, paymaster, to be deputy paymaster-general with the rank of lieutenant-colonel, March 15, 1890, *vice* Smith, appointed Paymaster-General.

POSTMASTER.

Calvin L. Spaulding, to be postmaster at Brainerd, in the county of Crow Wing and State of Minnesota, who was commissioned during the recess of the Senate, August 2, 1889, in the place of John H. Koop, resigned.

HOUSE OF REPRESENTATIVES.

MONDAY, *March* 24, 1890.

The House met at 12 o'clock m. Prayer by the Chaplain, Rev. W. H. MILBURN, D. D.

The Journal of the proceedings of Saturday last was read and approved.

WORLD'S FAIR IN 1892.

Mr. CANNON. Mr. Speaker, I desire to make a privileged report. I report back from the Committee on Rules, with a favorable recommendation, the resolution which I send to the desk.

The Clerk read as follows:

Resolved, That Tuesday, March 25, immediately after the approval of the Journal, be set apart for the consideration in the House of the bill (H. R. 8393) to provide for celebrating the four hundredth anniversary of the discovery of America by Christopher Columbus by holding an international exhibition of arts, industries, manufactures, and the product of the soil, mine, and sea in the city of Chicago, in the State of Illinois. And that, unless previously ordered by the House, the previous question shall be deemed ordered on the engrossment, third reading, and final passage of the bill at 4 o'clock p. m. of that day.

The SPEAKER. The question is upon the adoption of this resolution.

Mr. BAKER. One word, if you please. It was the understanding on the part of the Committee on Territories that the Wyoming bill——

Mr. CANNON. I move the previous question upon this report. The Wyoming matter can come afterward.

Mr. BAKER. In connection with this matter I wish to state it was the understanding that the Wyoming bill should be called up to-morrow morning. It was deferred in order to give last week to the World's Fair Committee. I now desire to give notice that immediately after the conclusion of this world's fair bill I shall ask the House to consider the bill for the admission of Wyoming.

Mr. CANNON. I ask a vote on the adoption of the resolution I have reported.

The resolution was adopted.

Mr. CANNON moved to reconsider the vote by which the resolution was adopted; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

URGENT DEFICIENCY BILL.

Mr. HENDERSON, of Iowa. I desire to make a privileged report from the Committee on Appropriations. I report back the amendments of the Senate to the bill (H. R. 7496) to provide for certain of the most urgent deficiencies in the appropriations for the service of the Government for the fiscal year ending June 30, 1890, and for other purposes. I ask unanimous consent that these amendments be considered in the House as in Committee of the Whole. The Committee on Appropriations recommend non-concurrence in nearly all the amendments.

The SPEAKER. The gentleman from Iowa [Mr. HENDERSON] asks unanimous consent that the amendments of the Senate to the bill which he has indicated be considered in the House as in Committee of the Whole. Is there objection? The Chair hears none.

Mr. HENDERSON, of Iowa. I ask that the report of the Committee on Appropriations be read.

The Clerk read as follows:

The Committee on Appropriations, to whom was referred the bill (H. R. 7496) to provide for certain of the most urgent deficiencies in the appropriations for the service of the Government for the fiscal year ending June 30, 1890, and for other purposes, together with the amendments of the Senate thereto, having considered the same, beg leave to report as follows:

They recommend concurrence in the amendments of the Senate numbered 5, 6, 8, 9, 10, 12, 18, 24, 27, 28, 29, 30, 31, 32, 33, 34, and 35.

They recommend non-concurrence in the amendments numbered 1, 2, 3, 4, 7, 11, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 25, 26, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, and 68.

They recommend concurrence in the amendment numbered 55 with an amendment as follows:

Insert after the amended paragraph the following:

"For plastering and finishing committee-rooms on the House side of the Capitol terrace, including steam heating of said rooms, $7,500."

The SPEAKER. The question is first upon concurring in those amendments of the Senate in which the Committee on Appropriations recommend concurrence.

Mr. BLOUNT. I should like to have some idea of what the amendments are.

Mr. ADAMS. So should I.

Mr. HENDERSON, of Iowa. Mr. Speaker, the amendments made by the Senate to this bill aggregate $658,563.77. The Committee on Appropriations has unanimously agreed to recommend concurrence in amendments amounting to $37,201.62 and non-concurrence in the remainder. I will state the items in which we recommend concurrence: We ask the House to concur in the amendment for refuge station at Point Barrow, $8,000; for repairs to Treasury building, $9,450. I will state that the reason why the latter item was not put on the bill by the House was because we thought it might wait for the general deficiency bill; there is really no issue as to the necessity for the appropriation. We also recommend concurrence in the amendment appropriating $7,946.62 for completing public building at Leavenworth; for rent of extra room for Bureau of Statistics, $180; salary of Assistant Secretary of War (the office having been created by this Congress) for balance of the fiscal year, $1,125; for salaries of judicial officers in the new States, $500; for House contingent fund, $10,000. The amount originally appropriated for this fund was $10,000.

Subsequent to the passage of the bill in this House we found that at least $10,000 more would be made necessary by reason of certain orders adopted by the House to be paid out of this fund, and the Committee on Appropriations asked the Senate to so amend the bill, making it $20,000, and hence this $10,000 is put on at the request of the Committee on Appropriations of the House. In addition to this the amendment of $7,500 to complete certain rooms in the new part of the building is recommended to be adopted by the Senate. The Senate amendment was really a House amendment and will save an expenditure we are now paying for rent for committee-rooms outside of this building amounting to about $3,900 annually, besides giving to us additional committee-rooms without delay.

Mr. BLOUNT. Let me ask the gentleman where these rooms are located.

Mr. HENDERSON, of Iowa. In the new part of the building now being prepared.

Mr. ROGERS. Before the gentleman from Iowa leaves this part of