

to me (I make the suggestion with all deference) that if the question is to be again looked into it ought to be by a commission.

Mr. DAWES. I do not know what the intention of the Secretary of the Treasury may be under this bill. I do not know exactly whether the Senator from Maryland intends by his remarks to reflect upon the agent who went out under the old bill twenty years ago, nor do I know who this particular agent is who has gone into the employ of this new company. If any agent of the Treasury has done that thing, of course it unfits him for this service. The agent who went out under the other law, which was a bill introduced by myself twenty years ago, made a report which has been the guide for twenty years of the whole Treasury Department. His report has gone into the census as a monograph upon the subject of the seal fishery. I have never heard until this moment—and I do not know that the Senator intended to reflect upon that report or upon that gentleman; I agree with the Senator—

Mr. SHERMAN. The person alluded to by the Senator from Maryland is not the one the Senator from Massachusetts refers to. The one is Mr. Elliott and the other is Mr. McIntyre.

Mr. GORMAN. I had no reference to the gentleman who made the original report. What I stated was what I have seen in the newspapers, for I have no access to the Departments, that an agent of the Treasury Department who has been there within the last four or five years, perhaps sent there by the last Administration, or, at all events, who has been there within the last three or four years watching the interests of the Government and making reports upon the conduct of the old company, immediately after the new contract was made became an officer of the new company.

Now, as I understand it, he was simply one of the special agents of the Treasury Department. I suggest that, if we are to legislate at all, we ought to appoint a commission with higher authority than a mere agent such as is provided for by this bill.

Mr. DAWES. That shows the impropriety of relegating this service to the agents sent out under the existing law, which was the Senator's first suggestion when he took the floor the first time. I agree with the Senator that it is the duty of the Secretary of the Treasury to employ the best possible talent for this service. The importance of the revenue justifies it, the importance of the whole work justifies it, but, more than all that, I failed to make the slightest impression upon anybody else in respect to it the other day when we discussed the seal matter; but what impresses me all the time is the effect upon the future of Alaska. For forty years, taking the twenty years that are passed and the twenty years that are to come, the whole fate and development of all Alaska is put under the control of private enterprise. That control has been exercised in the past as well as it could possibly be, for aught I know, and I have no reason to suspect that it will not be in the future. But it is a serious question with reference to what seem to me to be the possibilities of Alaska in the future, whether it should be entirely under the control of a private enterprise, however well conducted that enterprise may be. Now, here is possibly some means of alleviating that which seems at present to be a necessary evil, some means of bringing to the knowledge of the administrator of this great work information on the subject-matter, if he can get it in no other way. Are we to presume that he will not employ the best possible talent for the end? If so, he will not have done his duty. I have no doubt he will do that. If he does not do it, he does not do his duty.

Mr. FAULKNER. In reference to the allusion made by the Senator from Maryland [Mr. GORMAN] to the gentleman to whom I understand he has referred, Mr. George Tingle, I desire to state that he was formerly a citizen of my State and subsequently a citizen of Montana. I know him well. The Senator is laboring under a misapprehension as to the facts when he connects Mr. Tingle, while in the Government service, with a subsequent employment by the company which has the lease of these islands. He was employed in the Government service for some time. He subsequently left that service and became a citizen of Montana, and during the present winter, after his entire connection with the Government service had ceased, he was employed by gentlemen who compose the company and who had leased these islands as one of their employes. I am satisfied from my knowledge of that gentleman's character that nothing could have occurred by reason of his conduct in connection with this subject to justify any criticism as to his employment. I think it is but just to him that this should be stated to the Senate.

Mr. MORRILL. I desire to state that I happen to know the person who will probably be selected. He is an employe of the Smithsonian Institution, and there is no man in this country who is better qualified to discharge the duties that will be imposed upon him than the selection which will be made by the Secretary of the Treasury, and he is as much above being bought off by any company as any member of the Senate on this floor.

The VICE-PRESIDENT. The question is, Shall the bill pass?

The bill was passed; there being on a division—ayes 25, noes 17.

LA ABRA SILVER MINING COMPANY.

Mr. VEST submitted the following resolution, and asked for its present consideration:

Resolved, That the President be requested to communicate to the Senate, if not in his opinion incompatible with the interests of the public service, copies of all correspondence between the La Abra Silver Mining Company or its officers,

attorneys, or counsel, or any of them, and the Department of State or President of the United States, and also between the said Department and the Mexican Government since the publication of the last executive document touching the award rendered in favor of the said company by the United States and Mexican Claims Commission or the distribution of the moneys paid on account of the said award by the Mexican Government.

By unanimous consent, the Senate proceeded to consider the resolution.

The VICE-PRESIDENT. The question is on the passage of the resolution.

Mr. DOLPH. Who offered the resolution?

The VICE-PRESIDENT. It was offered by the Senator from Missouri [Mr. VEST].

Mr. DOLPH. I should like to have it read again.

The VICE-PRESIDENT. The resolution will be read again.

The Chief Clerk read the resolution.

Mr. DOLPH. I have no objection to the resolution now. As I understand, it calls for all documents since the last publication.

The resolution was agreed to.

LAND IN SEVERALTY TO INDIANS.

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

Resolved, That the Secretary of the Interior be directed to communicate to the Senate the number of patents issued up to date to Indians under the severalty act, and on what reservations, in detail, and what number of allotments, if any, now await patent.

SENATORS FROM MONTANA.

Mr. HOAR. I desire to give a notice which it may be convenient to the Senate to have given now. I gave notice yesterday that I should call up the Montana election case for action on Thursday, the day after to-morrow; but I have been informed by the Senator from Alabama [Mr. PUGH], who is a member of the committee, that it will be more convenient to him and some other members of the minority to have a short postponement of the case. Therefore I shall defer calling it up until next Monday.

TRUSTS AND COMBINATIONS.

The VICE-PRESIDENT. If there be no further morning business, the Calendar under Rule VIII is in order.

Mr. SHERMAN. I believe it is necessary to submit a motion in order to take up the unfinished business now, it being before 2 o'clock, and I therefore move that the Senate proceed to the consideration of the trust bill.

The motion was agreed to; and 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 VICE-PRESIDENT. The pending question is on the amendment submitted by the Senator from Texas [Mr. REAGAN].

Mr. STEWART. Let the amendment be read.

The CHIEF CLERK. It is proposed to add as additional sections the following:

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, company, or person employed in any such business, 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.

Mr. GEORGE. Mr. President, the wish has been expressed in my hearing by several Senators that this bill and the various amendments which have been offered to it and which are proposed to be offered shall be referred to the Committee on the Judiciary. I concur in the propriety of that course. I shall make that motion and do now make it, and on that I ask the indulgence of the Senate to state some reasons why that course should be pursued.

Certainly there is no subject likely to engage the attention of the present Congress in which the people of this country are more deeply interested than in the subject of trusts and combinations. These evils have grown within the last few years to an enormous magnitude; enormous also in their numbers. They cover nearly all the great branches of trade and of production in which our country is interested. They grow out of the present tendency of economic affairs throughout the world. It is a sad thought to the philanthropist that the present system of production and of exchange is having that tendency which is sure at some not very distant day to crush out all small men, all small capitalists, all small enterprises. This is being done now. We find everywhere over our land the wrecks of small, independent enterprises thrown in our pathway. So now the American Congress and the American people are brought face to face with this sad, this great problem: Is production, is trade, to be taken away from the great mass of the people and concentrated in the hands of a few men who, I am obliged to add, by the policies pursued by our Government, have been enabled to aggregate to themselves large, enormous fortunes?

This is the evil before us. Any time within the last nine years since I have had the honor to be a member of this body I would have introduced a bill to prevent these evils, to suppress these combinations and these trusts if I could have found the constitutional power to enact the bill. I find myself to-day, with every wish to exercise every power conferred by the Constitution upon Congress to suppress these trusts, unable to find in that instrument a power under which the Senate can originate a measure that in my opinion will be efficient.

The people complain; the people suffer; the people in many parts of our country, especially the agricultural people, are in greater distress than they have ever been before. They look with longing eyes, they turn their faces to us with pleading hands asking us to do something to relieve them from their trouble. I believe the sentiment that something ought to be done pervades this body almost universally. The question for us and the problem for us is how, consistently with the limited powers which the Constitution has conferred upon us, we can deal with these great evils.

There is a power, a power which the learned and distinguished Senator from Ohio [Mr. SHERMAN] on the 14th day of September, 1888, declared in this body was the only power which could be efficiently used. That is the taxing power. But by the forms of our Constitution no tax law, no bill to raise revenue can originate in this body. But for that the amendment offered to this bill by the Senator from Kansas [Mr. INGALLS] would receive and ought to receive the vote of every member of this body. We can go further. In that amendment the taxing power is applied to options and to futures. There is no reason why this same power could not be applied as it was applied for the purpose of suppressing the circulation of State bank notes, to the suppression of these trusts, the suppression of these combinations which are eating up the substance of our people. But, sir, we can not originate that in this body; a revenue bill must be first sent to us from the other House before we can enter into that business. The Senate, however, seems determined, leaving out the taxing power, to pass some measure on this very intricate and very difficult subject.

I say it is difficult and intricate, and if the Senate will bear with me while I call attention to the several bills which have been introduced by the Senator from Ohio partly on his own account and partly as the organ of the Committee on Finance, the Senate will see what difficulties that Senator and the great committee of which he is the organ have encountered in the pursuit of this subject.

On the 14th day of August, 1888, the Senator from Ohio introduced a bill. I desire all these bills to be printed as a part of my remarks. I do not wish to read them all, and I shall ask that the Reporter will note at this point the bill to be inserted.

The bill referred to is as follows:

A bill to declare unlawful trusts and combinations in restraint of trade and production.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all arrangements, contracts, agreements, trusts, or combinations between persons or corporations made with a view or which tend to prevent full and free competition in the production, manufacture, or sale of articles of domestic growth or production, or of the sale of articles imported into the United States, and all arrangements, contracts, agreements, trusts, or combinations between persons or corporations designed or which tend to advance the cost to the consumer of any such articles are hereby declared to be against public policy, unlawful, and void; and any person or corporation injured or damaged by such arrangement, contract, agreement, trust, or combination may sue for and recover in any court of the United States of competent jurisdiction double the amount of damages suffered by such person or corporation. And any corporation doing business within the United States that acts or takes part in any such arrangement, contract, agreement, trust, or combination shall forfeit its corporate franchise; and it shall be the duty of the district attorney of the United States of the district in which such corporation exists or does business to institute the proper proceedings to enforce such forfeiture.

Mr. GEORGE. This was the first bill that was introduced in the Senate on this subject. In that the Senator from Ohio assumed, as the Senator from Alabama [Mr. PUGH] did yesterday, that Congress had full, complete jurisdiction over the subject of trusts and combinations, whether they affect interstate or foreign commerce or not. It will be seen by reading the bill that it denounced all arrangements, contracts, agreements, and trusts made by anybody about anything which is an

article of commerce, whether in domestic, interstate, or foreign commerce.

Mr. REAGAN. Is the Senator from Mississippi sure that is the first bill introduced on that subject?

Mr. GEORGE. That is the first one introduced here that I know of.

Mr. REAGAN. I introduced one the same day, or previously to that time, on the same subject.

Mr. GEORGE. I stand corrected upon that. I have been pursuing in most of my investigations the action of the Senator from Ohio and the committee of which he is the organ.

That bill had no reference to transactions in interstate or foreign commerce, but assuming that the Congress of the United States had throughout the Union, as a separate State has within its own borders, full and complete jurisdiction over the subject of trusts it legislated in that way. It applied to contracts made by anybody; it applied to all subjects of commerce, interstate, foreign, and domestic; and it contained the remarkable provision that Congress could enact a law declaring the ground of forfeiture for a State corporation of its charter and directing proceedings in a Federal court by a Federal officer against a State corporation for the purpose of declaring the forfeiture of its charter. That was the first bill introduced by the Senator. That was introduced August 14, 1888.

The Committee on Finance kept the bill under consideration until September 11, nearly one month, and then we have bill No. 2, which the Reporter will note.

The bill reported September 11, 1888, is as follows:

That all arrangements, contracts, agreements, trusts, or combinations between persons or corporations made with a view, or which tend, to prevent full and free competition in the importation, transportation, or sale of articles imported into the United States, or in the production, manufacture, or sale of articles of domestic growth or production, or domestic raw material that competes with any similar article upon which a duty is levied by the United States, or which shall be transported from one State or Territory to another, and all arrangements, contracts, agreements, trusts, or combinations between persons or corporations designed, or which tend, to advance the cost to the consumer of any such articles, are hereby declared to be against public policy, unlawful, and void.

SEC. 2. That any person or corporation injured or damaged by such arrangement, contract, agreement, trust, or combination may sue for and recover in any court of the United States of competent jurisdiction, of any person or corporation a party to a combination described in the first section of this act, the full consideration or sum paid by him for any goods, wares, and merchandise included in or advanced in price by said combination.

SEC. 3. That all persons entering into any such arrangement, contract, agreement, trust, or combination described in section 1 of this act, either on his own account or as agent or attorney for another, or as an officer, agent, or stockholder of any corporation, or as a trustee, committee, or in any capacity whatever, shall be guilty of a high misdemeanor, and on conviction thereof in any district or circuit court of the United States shall be subject to a fine of not more than \$10,000 or to imprisonment in the penitentiary for a term of not more than five years, or to both such fine and imprisonment, in the discretion of the court. And it shall be the duty of the district attorney of the United States of the district in which such persons reside to institute the proper proceedings to enforce the provisions of this act.

Mr. GEORGE. By that bill all of the first bill was stricken out and the committee sought to get jurisdiction upon a ground which I will now proceed to state. The committee began to discover that this subject of trusts and combinations in restraint of trade was not a matter of Federal jurisdiction in its full extent. They began to discover that they must look to some particular power granted by the Constitution to Congress under which they could pass this bill. So they undertook and so they provided that these arrangements and contracts should be in reference to preventing "full and free competition in the importation, transportation, or sale of articles imported into the United States, or in the production, manufacture, or sale of articles of domestic growth or production, or domestic raw material that competes with any similar article" introduced into the United States "or which shall be transported from one State or Territory to another."

The committee sought jurisdiction upon the ground that these trusts were interfering with full and free competition with articles imported which were dutiable articles. The idea of the committee seemed to be this: If Congress can impose a duty upon a foreign article, Congress may prevent an arrangement or a trust which interferes with the sale of that imported article. That was the first ground. The second ground was that if these arrangements were made about articles which were afterwards transported in interstate commerce that would bring them within Federal jurisdiction.

At this stage there was some discussion in this body, in which cases were cited and principles of constitutional law well known were introduced and brought to the attention of the Senate, which showed the utter fallacy of the grounds upon which the committee had placed the jurisdiction of Congress to enact the bill. Some discussion followed and some amendments were made, so that on the 25th of January, 1889, there was another bill reported from the committee. That is bill No. 3.

The bill referred to is as follows:

A bill to declare unlawful trusts and combinations in restraint of trade and production.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all arrangements, contracts, agreements, trusts, or combinations between persons or corporations made with a view or which tend to prevent full and free competition in the importation, transportation, or sale of articles imported into the United States, or in the production, manufacture, or sale of articles of domestic growth or production, or domestic raw material that in due course of trade shall be transported from one State or Territory to another, or to the District of Columbia, or from the District of Co-

lumbia to any State or Territory, and all arrangements, contracts, agreements, trusts or combinations between persons or corporations designed or which tend to advance the cost to the consumer of any of such articles are hereby declared to be against public policy, unlawful, and void.

SEC. 2. That any person or corporation injured or damaged by such arrangement, contract, agreement, trust, or combination may sue for and recover in any court of the United States of competent jurisdiction, of any person or corporation a party to a combination described in the first section of this act, the full consideration or sum paid by him for any goods, wares, and merchandise included in or advanced in price by said combination.

SEC. 3. That if one of the purposes of any such arrangement, contract, agreement, trust, or combination shall be to compel any person, partnership, or corporation to become a party thereto, or to cease from doing any lawful business, or to sell and dispose of any lawful business, or if acts shall be done under any such arrangement, contract, agreement, trust, or combination, which have for their purpose, or which shall tend to compel the giving up or sale of any lawful business, the person, partnership, or corporation injured thereby may sue for and recover in any court of the United States of competent jurisdiction the damages sustained thereby of any person or corporation a party to any such arrangement, contract, agreement, trust, or combination, or of all or any number less than all of such parties. And if any purchaser of articles specified in the preceding section shall be put to additional cost by the advancing of the price of such articles by means or because of any such arrangement, contract, agreement, trust, or combination, he may, in like manner, sue for and recover the damages sustained, which shall in such case be estimated at the full consideration or sum paid by him for the articles so advanced in price as aforesaid.

SEC. 4. That all persons entering into any such arrangement, contract, agreement, trust, or combination described in section 1 of this act, either on his own account or as agent or attorney for another, or as an officer, agent, or stockholder of any corporation, or as a trustee, committee, or in any capacity whatever, shall be guilty of a high misdemeanor, and, on conviction thereof in any district or circuit court of the United States, shall be subject to a fine of not more than \$10,000 or to imprisonment in the penitentiary for a term of not more than five years, or to both such fine and imprisonment, in the discretion of the court. And it shall be the duty of the district attorney of the United States of the district in which such persons reside to institute the proper proceedings to enforce the provisions of this act.

SEC. 5. That any person who, ninety days after the passage of this law, shall act as a manager, officer, trustee, or agent of any arrangement, contract, agreement, trust, or combination as described in the first section, shall be liable to the penalties prescribed in the fourth section.

Mr. GEORGE. In that bill, either by the acceptance of the Senator from Ohio or by the vote of the Senate—and I do not remember which—section 3 and section 5 were introduced for the first time in this legislation.

Mr. SHERMAN. What bill is that?

Mr. GEORGE. This is Senate bill 3445, ordered to be printed January 25, 1889. I will read section 3 so that the Senator can catch my idea more perfectly. I believe this section was offered by the Senator from Massachusetts [Mr. HOAR]. At all events it appears to be ordered reprinted as amended. In section 3 of this bill it was proposed—

That if one of the purposes of any such arrangement, contract, agreement, trust, or combination shall be to compel any person, partnership, or corporation to become a party thereto, or to cease from doing any lawful business, or to sell and dispose of any lawful business, or if acts shall be done under any such arrangement, contract, agreement, trust, or combination, which have for their purpose or which shall tend to compel the giving up or sale of any lawful business, the person, partnership, or corporation injured thereby may sue for and recover in any court of the United States of competent jurisdiction the damages sustained thereby of any person or corporation a party to any such arrangement, contract, agreement, trust, or combination, or of all or any number less than all of such parties.

And then there was a provision in that same section for recovering further damages. The fifth section was intended to have operation upon trusts and combinations already formed, and is in the following words:

That any person who, ninety days after the passage of this law, shall act as manager, officer, trustee, or agent of any arrangement, contract, agreement, trust, or combination as described in the first section, shall be liable to the penalties prescribed in the fourth section.

In that connection there was also some discussion. It was shown in that debate very fully that under the power to regulate foreign and interstate commerce the provisions of the bill could not stand. It was also shown that the bill covered very innocent combinations and transactions, such as the alliances among farmers and grangers and combinations among laborers to advance their wages, etc. That bill submitted on the 25th day of January, 1889, after that debate was closed, was never called up for action during the last Congress.

That disposes, Mr. President, of the history of this legislation or attempted legislation in the Fiftieth Congress. But the Senator from Ohio was not disposed, as he understood his duty, to let the matter rest there; so that on the first day or the next day after we met at this session, at least on December 4—I believe we met on the 2d—the Senator from Ohio introduced this bill:

Be it enacted, etc., That all arrangements, contracts, agreements, trusts, or combinations between persons or corporations made with a view or which tend to prevent full and free competition in the importation, transportation, or sale of articles imported into the United States, or in the production, manufacture, or sale of articles of domestic growth or production, or domestic raw material that competes with any similar article upon which a duty is levied by the United States, or which shall be transported from one State or Territory to another, and all arrangements, contracts, agreements, trusts, or combinations between persons or corporations designed or which tend to advance the cost to the consumer of any such articles, are hereby declared to be against public policy, unlawful, and void.

SEC. 2. That any person or corporation injured or damaged by such arrangement, contract, agreement, trust, or combination may sue for and recover, in any court of the United States of competent jurisdiction, of any person or corporation a party to a combination described in the first section of this act, the full consideration or sum paid by him for any goods, wares, and merchandise included in or advanced in price by said combination.

SEC. 3. That all persons entering into any such arrangement, contract, agreement, trust, or combination described in section 1 of this act, either on his own

account or as agent or attorney for another, or as an officer, agent, or stockholder of any corporation, or as a trustee, committee, or in any capacity whatever, shall be guilty of a high misdemeanor, and on conviction thereof in any district or circuit court of the United States shall be subject to a fine of not more than \$10,000 or to imprisonment in the penitentiary for a term of not more than five years, or to both such fine and imprisonment, in the discretion of the court. And it shall be the duty of the district attorney of the United States of the district in which such persons reside to institute the proper proceedings to enforce the provisions of this act.

In this the effort was made to evade—I suppose I ought not to use the word “evade,” as that is sometimes used in a sinister sense, and I do not use it in that sense—but an effort was made to get rid of the constitutional objections which had been urged in the last Congress; so that we have here some provisions which had been left out of No. 3. The committee seem to have been uncertain about the ground upon which they had placed it. In No. 2, the second bill introduced, one of the grounds of jurisdiction was stated in these words: The article must “compete with any similar article upon which a duty is levied by the United States.” That was left out of the next bill. The committee thought they could get along with the jurisdiction without this competing clause, and so with that omission the Senator from Ohio, in the original bill introduced at this session, presented the bill in other respects substantially like the last bill that had been reported in the last Congress, except that section 3 and section 5 which I have read were omitted.

That went to the committee, and on the 14th of January, 1890, it was reported back to the Senate with some changes with the view of getting at jurisdiction. It had been shown in the debate, and conclusively shown by citations from the decisions of the Supreme Court of the United States, that articles which might become subjects of interstate commerce did not so become until they were actually delivered at the depot of the common carrier for transportation. Several cases were cited which settled that doctrine beyond dispute. So when the Committee on Finance, able and learned as it, came to consider the bill introduced by the Senator from Ohio on the second day of the session, they discovered that the bill would not stand the constitutional test, and so they changed the bill in the particulars to which I will now call the attention of the Senate.

The bill reported January 14, 1890, is as follows:

Be it enacted, etc., That all arrangements, contracts, agreements, trusts, or combinations between persons or corporations made with the intention to prevent full and free competition in the importation, transportation, or sale of articles imported into the United States, or in the production, manufacture, or sale of articles of domestic growth or production, or domestic raw material that competes with any similar article upon which a duty is levied by the United States, intended for and which shall be transported from one State or Territory to another for sale, and all such arrangements, contracts, agreements, trusts, or combinations between persons or corporations intended to advance the cost to the consumer of any such articles are hereby declared to be against public policy, unlawful, and void.

SEC. 2. That any person or corporation injured or damaged by such arrangement, contract, agreement, trust, or combination may sue for and recover, in any court of the United States of competent jurisdiction, of any person or corporation a party to a combination described in the first section of this act, twice the amount of the damages sustained, and the costs of suit.

SEC. 3. That all persons entering into any such arrangement, contract, agreement, trust, or combination described in section 1 of this act, either on his own account or as agent or attorney for another, or as an officer, agent, or stockholder of any corporation, or as a trustee, committee, or in any capacity whatever, shall be guilty of a high misdemeanor, and on conviction thereof in any district or circuit court of the United States shall be subject to a fine of not more than \$10,000 or to imprisonment in the penitentiary for a term of not more than five years, or to both such fine and imprisonment, in the discretion of the court. And it shall be the duty of the district attorney of the United States of the district in which such persons reside to institute the proper proceedings to enforce the provisions of this act.

As the bill originally read it stood as follows:

That all arrangements, contracts, agreements, trusts, or combinations between persons or corporations made with a view or which tend to prevent full and free competition.

The committee struck out the words “a view or which tend” and inserted the words “the intention,” so that the bill read in this way:

That all such arrangements, etc., made with the intention to prevent full and free competition.

And then in order to meet the objection which has been made, based upon the decision in *Coe vs. Errol*, in 116 United States Reports, the committee inserted in that part of the bill which referred to the transportation of these goods the words “intended for,” so that that part of the bill read in this way: That these arrangements and contracts made “to prevent full and free competition in the” goods above described, which goods are “intended for and which shall be transported from one State or Territory to another for sale,” and then in the general clause which condemns all sorts of arrangements and trusts between persons or corporations to advance the cost to the consumer, the committee again struck out the words “designed, or which tend” and inserted the word “intended.” So the effort of the committee in this bill was to get jurisdiction under the commercial clause upon the ground that the articles about which the arrangement was made, about which the trust was formed, were intended for and afterwards transported in interstate commerce.

In that condition the bill stood on the 17th day of last month when it was called up for discussion in this Chamber, and was discussed by myself. I claim that the debate showed, not by force of the argument of the speaker, but by the citation of cases decided by the Supreme Court, that the words “intended for transportation in interstate com-

merce" gave no additional power to Congress. That argument has never been answered. I believe I might say it has never been attempted to be answered. I feel authorized to say that it can not be answered because every position taken was based upon a decision of the Supreme Court of the United States.

With that array of authority it was supposed by some that this controversy was at an end, and yet in that we were mistaken, for on the 18th day of March, 1890, we had the bill in its present shape, as thus reported by the Senator from Ohio:

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

SEC. 2. That any person or corporation injured or damaged 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.

In the first bill the jurisdiction was claimed to be absolute, plenary, and original, not dependent upon the commerce clause of the Constitution. In the four subsequent ones the committee undertook to get jurisdiction from the commerce clause of the Constitution. In all these efforts the committee have been defeated, and now we have this bill based upon the extraordinary proposition, the unparalleled proposition that, because the Constitution has granted to the courts of the United States jurisdiction in controversies between citizens of different States and between citizens of the United States and of foreign countries, therefore the Constitution has granted to Congress legislative power to regulate the transactions between citizens of different States and between citizens of the United States and of foreign countries.

A judicial power, it is unnecessary for me to state, I hope, in this body, is a power *jus dicere*, a power to say what the law is. A legislative power is a power *jus dare*, a power to say what the law shall be. The judicial power ascertains the existing law and applies it to transactions occurring, the legislative power makes new rules, new regulations for transactions thereafter to occur. Yet strange as it may seem, because the Constitution gave a judicial power to settle controversies between citizens of different States and between citizens of the United States and of foreign countries, the bill is formulated to legislate to make rules and regulations concerning these transactions.

I am not going into that argument any further at present. I shall do it, though, unless my motion prevails. I have only gone thus far to show to the Senate the difficulty which the Committee on Finance have encountered in framing this bill. I have pointed out the differences between the various bills to show that all along for now more than a year the committee have not been able to find a single solid stone in the Constitution upon which it could place this bill, but as often as it has been discussed, as often as the fallacies upon which one of these bills rests have been exposed, the committee, uncertain, doubtful, have sought refuge in another pretense. That is the meaning of the history which I have given this morning. The committee in no part of all these six bills which they have presented for the consideration of the Senate have ever been able to place the jurisdiction of Congress to enact them twice upon the same proposition. When beaten from one rampart behind which they have fortified themselves, they have fallen back and made another. Beaten out of that they have retreated to a third; beaten out of that they have retreated to a fourth, and so again to a fifth, and so again to this last ditch in which they place the jurisdiction of Congress on the extraordinary proposition to which I have called the attention of the Senate.

Mr. President, under these circumstances of doubt and difficulty, this changing attitude of the Committee on Finance, the immense importance of this question to the people of the United States, our grave and solemn duty which we owe to the people of the United States to do something, and something effectual, it becomes us to stop, to think, to deliberate. Are Senators willing, in face of this great demand of the people of the United States for redress against these enormous evils, to give to these crying and supplicating sufferers a mere sham? The people call to us for redress. They ask us for security against wrong and evil. Shall we, upon any idea that we will do something, that we will throw some sop to the dog Cerberus, pass a bill which will accomplish nothing, unless it be to demonstrate the inability or the unwillingness of the American Congress to pass an efficient measure?

In view of these things, Mr. President, I think I do a duty, I think I discharge a proper duty to the people of the United States when I ask the Senate to refer all these various propositions to that committee which by the rules of the Senate has charge of these great questions.

Mr. REAGAN. Mr. President—

Mr. MORGAN. Before the Senator from Texas proceeds, if he will allow me just a moment, I wish to ask the Senator from Mississippi whether he does not also desire to put some limitations upon the time within which the Committee on the Judiciary shall report a bill.

Mr. GEORGE. I do not know. That is usual, but this is a grave matter and I should be willing, so far as I am concerned, that the committee be required to report in any reasonable time, say in two or three weeks.

Mr. MORGAN. Well, twenty days, say?

Mr. GEORGE. Yes, twenty days, if that is proper. I dislike to make a proposition of that sort in the motion to commit.

Mr. MORGAN. In view of the pressure of business here, I will move an amendment to that effect, that the committee be required to report a bill within twenty days.

Mr. GEORGE. Very well; I do not object to that.

The PRESIDING OFFICER (Mr. MOODY in the chair). The question is on the motion of the Senator from Mississippi to refer the bill and amendments to the Committee on the Judiciary.

Mr. INGALLS. What was the motion of the Senator from Alabama? To amend?

The PRESIDING OFFICER. The Chair understands the amendment to the motion has been accepted by the Senator from Mississippi.

Mr. GEORGE. No; the Senator from Alabama moves the amendment himself. I do not accept it, because I doubt the propriety of it.

Mr. INGALLS. What is the amendment to the motion?

The PRESIDING OFFICER. The Senator from Mississippi moves that the bill and pending amendments be referred to the Committee on the Judiciary. The Senator from Alabama moves to amend by instructing the committee to report within twenty days. The question is upon the amendment of the Senator from Alabama, to limit the time within which the committee shall report. The Senator from Texas [Mr. REAGAN] has the floor.

Mr. REAGAN. Mr. President, the honorable Senator who makes the motion to refer these bills to the Judiciary Committee is a member of that committee. He told us in his opening remarks this morning that for several years he had been endeavoring to formulate in his mind some bill that would give relief against the great evil to which he has referred growing out of unlawful trusts and combinations. He favored us a few weeks ago with a very learned and able argument to demonstrate that the bill reported by the Committee on Finance was not warranted by the Constitution. He is a member of a committee which has had a bill before it from the first day of this session of the Senate until now and has never acted upon it. I confess that it seems to me not very encouraging to refer bills of this description to that committee.

Mr. GEORGE. If the Senator will allow me, I will state (I am not sure I am right about it, but I think I am) that one reason of the delay in the action of the Judiciary Committee upon the matter was that the subject was before the Committee on Finance.

Mr. REAGAN. But the honorable Senator has just told us that the Judiciary Committee is the right committee for this subject to be before, and it had a bill referred to it. I think that is an answer to his suggestion.

Mr. VEST. Will the Senator allow me? I do not know that it is a matter which is very material, but the reason why the Judiciary Committee did not act upon this matter was on account of the sickness of the chairman of that committee. I am not a very experienced parliamentarian and never took much interest in that sort of business, but if it is within the rules for me to state what happened in committee, I wish to say that more than six weeks ago, two months ago, I moved myself, as a member of the Judiciary Committee, for the appointment of a subcommittee to take under consideration the subject of trusts, there being then pending before us the bill of the Senator from Texas and one other measure. I collated all the bills that had been offered in Congress, together with a large number that had been before the State Legislatures; but the sickness of the chairman of the committee delayed the matter until a few days ago. That subcommittee has now been appointed, and about the time that we commenced the consideration of this matter the bill coming from the Committee on Finance of which the Senator from Ohio has charge was called up in the Senate. Those are the facts, and it is but justice to the Judiciary Committee to state them.

Mr. HOAR. Will the Senator from Texas allow me to make a little additional statement? I suppose it is not a breach of any rule of this body to say that a very large number of nominations for important offices have been before that committee during the few months of the present session, marshals, district attorneys, judges for various States and Territories; and also, I suppose, it is matter of public notoriety that in regard to nearly all of those officials, from the importance of the offices and in some cases from questions of fact which were raised by Senators or by the public elsewhere, inquiries have had to be made into facts transpiring at a distance from the seat of Government, and the time at

the command of that committee has been very much occupied and engrossed by that class of its duties.

Mr. REAGAN. I have no doubt that the Judiciary Committee has had a great deal of such labor before it, as is suggested by the Senator from Massachusetts. In connection with these explanations, I desire to read what the Senator from Vermont [Mr. EDMUNDS], the chairman of the Judiciary Committee, said on that very point yesterday:

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.

I can understand very well, with the multiplied duties of the Judiciary Committee and with the difficulties which attend the formulation of a bill on this subject, that there may have been delay; and I do not complain of the delay, because the members of that committee were the better judges of what they were able to do than I can be, who was less informed as to what was before them. The point I made was this: The motion to refer comes from a member of the committee who confesses his inability to formulate a bill upon the subject and who combats, as far as I know, all the bills presented.

I can not state in as strong terms as the Senator from Mississippi has done the great need for legislation upon this subject, the demand of the public for legislation upon this subject, the importance and necessity of legislation upon this subject; and is it possible that the Senate of the United States, having this subject before it in the last Congress and the present, has not been able to reach a conclusion that it could act or that it could not act, and to state the reasons why it could act or why it could not act? I think the country has a right to expect the Senate of the United States, if it can, to say that it has the power to act and the extent and character of that power, or to say that it has not power to act and that the people must rely exclusively upon the action of the State governments.

Mr. President, I have stated from the beginning that the power of Congress over this subject comes from the commerce clause of the Constitution. If there is any other power for legislation by us upon this subject I do not know where it comes from. I know when I say this that the oleomargarine bill, which became a law a few years ago, was passed under the revenue power. I have no disposition to discuss that. At the time, it was almost a confessed fact in the House of Representatives, of which I was then a member, that the revenue provision was simply inserted to give jurisdiction, because there was a surplus of money and no cause for increased revenue. However that may be, my judgment is that where taxes are involved, whether a necessity or as an expedient, the courts would be likely to sustain as constitutional a law based upon that idea.

I have examined with a good deal of care, and certainly with no disposition to be hypercritical, the bill reported by the Finance Committee, to which I shall refer for one moment. I think, as I stated on a former occasion, that the country owes to the distinguished Senator from Ohio a debt of gratitude for his efforts to bring this subject before the Senate and to secure action, whether he has been successful in bringing it before the Senate in a proper form or not. The bill, as I understand it, which is reported by the committee, is not wholly unconstitutional. The first clause of the first section, it seems to me, is clearly within the Constitution.

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

What is here described is made unlawful. The words "or sale of articles" ought to have added to them, "while the original packages remain unbroken," to have brought it within the constitutional clause. Then, it does not seem to me to have been necessary to say that these individuals or corporations should be citizens of different States, when it refers to the importation of articles under the Constitution. That brings it under the commerce clause. The other part of the paragraph was unnecessary to give Congress jurisdiction, in my judgment. So, while I would not employ the words used in this bill, because it assigns for jurisdiction some things not necessary to give jurisdiction, it is, within the purview of the Constitution, a regulation of foreign commerce.

Then the second provision pointing out the ground of jurisdiction, which I shall not go over, beginning on line 10, and the third provision giving jurisdiction, which I shall not read, beginning on line 3, on the second page, and ending at line 21, while well intended, it seems to me can not be sustained by the courts of the country, for they do not lay any known predicate for jurisdiction; that is, any predicate that I have learned from the Constitution or from the reading of the commentaries upon it.

The Senator from Mississippi spoke of the various bills introduced by the Senator from Ohio and reported from the Finance Committee in his argument in favor of a reference of all these bills to the Judiciary Committee. I listened to see whether he would not take up the bill now under consideration as an amendment, and give his reasons why that ought to be referred to the Judiciary Committee. I allude to the bill which I have offered as an amendment to the Finance Committee's bill. My amendment has been read two or three times, but I will venture to tax the Senate to read it again, prefacing what I have to say by the statement that it is based alone upon the commerce clause of the Constitution of the United States, and that in my judgment, though we may seek as many sources of power as we choose, we shall find none outside of that and outside of the taxing power, which can not be applied to bills originating in the Senate.

Besides what Congress can do under the commerce clause of the Constitution, the rest, as I took occasion to say a few days ago, must be done by the State Legislatures. One of the great mistakes that seem to me to be made by the people of the country—and it appears to some extent to permeate the Halls of Congress—is that all grievances must be dealt with by Congress, without reference to the question of the source of power enabling us to deal with the subject. When we have exhausted our power under the commerce clause of the Constitution, which must be a confessed power for this purpose, then the people must rely upon the Legislatures of the several States for the rest of the legislation on the subject. I do not mean by this to be understood that no legislation ought to be adopted by Congress. I believe that it is the duty of Congress to pass such legislation as is within its constitutional power in order that it may be supplemented by appropriate legislation of a much larger scope in the several States.

With these preliminary remarks I desire again to call attention (and I am sorry the Senator from Mississippi is not in his seat) to the provisions of the amendment pending before the Senate:

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, company, or person, employed in any such business, 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.

It has been suggested to me that the penalty is pretty high. It will be observed that simply the maximum penalties are given, and they are given the same as in the committee's bill. The courts have all the way from nothing up to the maximum given here in their discretion in trying these cases, so that the judgment of the court will determine how much of this penalty shall be applied in each case, according to the special circumstances of the case. I would have no objection if it was thought necessary to reduce the maximum; but when we remember that these penalties have relation to great and powerful corporations as well as to less important combinations, it will be seen that strong measures will be necessary to control and repress the mischievous action.

The second section of my amendment, which would be the fourth section of the bill, if adopted, is:

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

These are trusts under the power of the first section, resting upon the commerce clause of the Constitution—

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.

That is for the purpose and under the authority mentioned in the first section.

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.

The third section, which will be the fifth of the bill if it shall be adopted, provides that each day's violation of the law shall be a separate offense.

I apprehend that those who have looked at my amendment and taken up the clauses in the second section have considered them as independent, and assumed that they were questions to be dealt with by the

State authority, and so they would be if the first section was out of the amendment, but that limits them, as I will read again for emphasis:

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, company, or person employed in any such business, using its powers for either of the purposes specified in the second section of this act—

That is, all those things that I have just enumerated—shall be deemed guilty of a high misdemeanor.

So I beg of those who come to criticize this amendment that they will look to see that it is all brought distinctly and clearly under the commerce clause of the Constitution, and I should like to see some of the constitutional lawyers who are discussing this subject place themselves in opposition to that—if they choose to risk their reputations there as lawyers, I mean.

It was said yesterday by the distinguished Senator from Missouri [Mr. VEST] that a clause of a bill which he read, which made the power to act rest upon the idea that the subject was declared to be contrary to the policy of a State, was the foundation for Federal jurisdiction to enact a law. For safety I will read the clause:

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 State or Territory or the District of Columbia.

That section is the one the Senator from Missouri alluded to as the only oasis in this great desert of unconstitutionality, and he made it to rest upon the fact that the State has passed a law declaring certain things to be against public policy. I am inclined to think my friend, the Senator from Iowa [Mr. WILSON] who sits farthest from me, would accept that for a very different reason from the one which the Senator from Missouri asserts it for. The State of Iowa thinks that the manufacture or sale of intoxicating liquors and wines and beer is against public policy. The State of Missouri and the Senator from Missouri do not so think, but his constitutional argument would enable Congress to determine, not as a constitutional question, but as a question of expediency and morality and policy, that if that State chooses to forbid those things the United States may forbid them also. If the United States can forbid a thing, it must be upon another authority, and not because the State of Iowa has adopted such a provision of law. At least I suggest that; and I suggest further that, if this be a source of constitutional power, it is a new source of power just discovered, not heretofore invoked.

Mr. President, I am inclined to think, in view of the fact that but one member of the Committee on the Judiciary has given any expression that indicates a purpose to mature a law to repress the evil effects of trusts and to punish those engaged in them, that it is not best to refer these measures to that committee. I would rather trust them to the action of the Senate, unless we can have some assurance that that committee will take the subject up and act upon it. If we can have the judgment of that committee, with its reputation for legal and constitutional ability, put to the test, I should be willing to accept it. I do feel that in the multiplied number of bills before us there is danger that we may get provisions adopted which will not be constitutional.

I confess that in offering the measure which I offered as an amendment to the bill reported by the Senator from Ohio, I presented it with the full belief that two of the sources of power invoked by the bill reported by that Senator are not within the Constitution, but I believed if this one is it covers the whole case so far as the criminal part of the law is concerned, and if the other part of it failed the country would not be much at a loss. So I was willing to accept, because I did not well see how to avoid it, that which I did not think strictly conformable to the Constitution, in order to get enough in the law to give it vigor and efficiency, and to protect the people of this country against longer being plundered by the corporations and trusts that are driving the people of the country to despair while other bills are now being acted upon here; and what is the use of sending them to a wet nurse that does not seem to favor them much?

Mr. WILSON, of Iowa, obtained the floor.

Mr. PLATT. The Senator from Iowa yields to me to ask a question of the Senator from Texas.

Mr. WILSON, of Iowa. I only yield for a question.

Mr. PLATT. That is all. I wish to know from the Senator from Texas how far these words in his amendment reach in his construction: "Any business carried on * * * between the States." Let me direct the Senator's attention to what is in my mind—

Mr. REAGAN. In what line are those words found?

Mr. PLATT. In the third and fourth lines of the first section of the Senator's amendment.

The PRESIDING OFFICER. Does the Senator from Iowa yield for an answer?

Mr. WILSON, of Iowa. Provided it does not consume too much time.

Mr. PLATT. It will only take a moment. The Senator's amendment contemplates—

Mr. REAGAN. In the first place it would punish persons engaged in the transportation of things by virtue of trusts, and it is possible that it would go beyond that to some extent, but I am not prepared to say exactly the extent to which it would go.

Mr. PLATT. Then the particular purpose in the use of those words, which are the important words, is to reach the transportation which is carried on between the States?

Mr. REAGAN. That is one of the reasons. I need not repeat to the Senator, as I have stated over and over, that I have given the formulation of what seems to me to meet the question under the commerce clause of the Constitution, and I trust that to the Senate and to the country.

Mr. WILSON, of Iowa. Mr. President, the Senator from Texas [Mr. REAGAN] referred to the State of Iowa in connection with the subject now before this body, and stated that he presumed I might be willing to compromise upon the basis of the doctrine stated by the Senator from Missouri [Mr. VEST] in his remarks made to the Senate yesterday. I suppose the particular subject to which the Senator from Texas referred was that which was embodied in a bill introduced by the Senator from Maine [Mr. FRYE] originally in the Fiftieth Congress and referred to the Committee on the Judiciary, and which related to the subjection of imported spirituous liquors to the operation of the laws of the several States. That bill was considered by the Committee on the Judiciary and an adverse report was made, there being five members of the committee opposed to the bill and four in favor of it. The minority submitted in connection with their report an amendment to the bill in the form of a substitute, which I will read. It is as follows:

That the payment of any tax, duty, impost, or excise upon or in respect of the importation into the United States of any fermented, distilled, or other intoxicating liquids or liquors shall not be held to exempt the importer thereof, or any other person, or any such property from any penalty, forfeiture, or proceeding that now is or hereafter may be provided for by the laws of any State applicable equally to all property of the same nature, respecting the manufacture, sale, furnishing, or possession of liquids or liquors; nor shall the payment of any such tax, duty, impost, or excise be held to prohibit or preclude any State from imposing a tax or duty on any such liquids or liquors or from making regulations in respect of the same, in common with and in respect of other such liquids or liquors not imported, or from enforcing its laws, operating equally in respect of property imported and property not imported, against any such importer or person or against any such property, whether the same be in the original package of importation or not.

That was simply an effort to induce Congress to enable the States to give full force and effect to their efforts to enforce their police power. The Supreme Court of the United States, by a decision referred to in the report which I hold in my hand, seems to have interposed some obstacle in the way of the enforcement of the police power of the State, and this bill was intended to aid the State to get around that judicial obstacle which never should have been interposed. The Senator from Missouri was a member of the committee and signed the majority report, or the report, properly speaking, of the committee, and in that report it is stated:

It should not be overlooked that the province of State control over what concerns the police regulation of domestic health, peace, and general good order and well-being within each State is, under the Constitution, as secure against intrusion from Federal authority as the regulation of foreign commerce by the General Government is from encroachment upon that province by State authority. It is not desirable that Federal legislation should seem, by inference even, necessary to impart or maintain aid or protection to the State's exercise of its authority within the province of State domestic control. The State and the Federal control in the premises are divided by the Constitution, and neither for its vigor depends upon the other. The experience of the wise administration hitherto of this judicial question, in defining these respective provinces, in the opinion of the committee, makes it best to leave this, as it now is, a judicial question, in the highest interest of both the Federal regulation of commerce and the State control of its police authority.

In other words, the Senator and those who concurred with him did not deem it proper to say anything about the constitutional question involved, to even recognize by legislation of that kind the propriety of enabling the States to give full force to those powers which by all have been admitted from the foundation to the present time never to have been surrendered to the General Government. Inasmuch as persons in the State of Iowa were hiding behind these special revenue taxes, protecting themselves against the operation and movements of the State officers and violating the law of the State by the importation of liquors, an appeal was made by the State for that aid, but it was met with such statements as I have just read, and was denied.

Mr. President, I am glad that as time goes on opinions change. It took ten years of agitation to bring about the enactment of the law for the regulation of interstate commerce, but it came at last. Through the processes inducing its final enactment changes of opinion were frequent, and I am glad to see in the RECORD of this morning, as I heard yesterday when the Senator from Missouri was speaking, that a change has come over the spirit of his dream since that report was made in the last Congress. I find that in his remarks upon this bill, referring to an amendment introduced by the Senator from Texas [Mr. COKE], he said as follows:

Sir, I object to the bill—

That is, the one reported from the Committee on Finance—

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 or 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 Territory 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."

After the reading of these sections by the Secretary the Senator from Missouri proceeded as follows:

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. PUGR], 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.

But the broad ground is assumed and occupied by the Senator that the provisions embraced in the three sections of the bill offered as an amendment by the Senator from Texas [Mr. COKE] are wholly beyond constitutional objection. If that be so, I should like to know why that bill of the Fiftieth Congress relating to the importation of foreign intoxicating liquors was obnoxious to constitutional objection. And is it possible that we are to be driven to the extreme of saying that the State is entitled to that remedy provided first (leaving its police power wholly out of the case) it shall declare that a trust exists within its borders in respect of the manufacture and sale of intoxicating liquors; and yet if that should be done what protection would that give to the State of Iowa, or any other State which in the exercise of its police powers should enact legislation similar to that now in force in Iowa?

This only provides that in case the States declare a trust in accordance with the provisions of the first section of the bill, then it shall be operative. But suppose there were no trust for the manufacture and sale of liquor in the State of Iowa, still this flood can be poured on; and yet if in the State of Illinois or the State of Missouri, or any other of the surrounding States, there should be a statutory declaration against a trust or alleging the existence of a trust for the manufacture of these liquors within that State, then the provision of this bill would be effective and remedy might be had under its provisions.

Mr. President, you may debate the question as to where the line of constitutional power to enact legislation of this kind will go, and support it, because it is seemingly a new field where by your Congressional legislation you first ask the State to define the object upon which your national legislation may act, overlooking that more substantial field which has been recognized from the foundation of the Government down to the present time, in which it is affirmed that the police powers of the States were retained by them at the formation of the Government, and not surrendered to the United States, but that in regard to those things not surrendered no Congressional action can be had to aid the States in the enforcement of their laws or in protecting them against the infractions which are practiced under color of the United States laws.

What then? States that do not care to exercise their police powers for the protection of the health and morals of their people may be protected by Congressional legislation against a combination to reduce the price of anything as well as to raise it, and yet I think that Senators who engage in this discussion would find it difficult to induce all the people who have been asking for legislation of this character to approve of a measure which should put up a stone wall against the reduction of price. People are generally willing to accept the advantages of reduction, while they may be crying out against the disadvantages of a sudden rise.

So, Mr. President, it is well enough, in the discussion of these great public questions, to be certain, at least reasonably so, that in our endeavor to answer a widespread public demand such as has induced the

introduction of these trust bills, we do not overlook and trample into the dust the recognized powers of the States in other fields.

I do not care to prolong this discussion, for I know the Senate is weary of it and desires to vote, but I can not resist the temptation to call the attention of the Senate to the strange contrast existing between the position assumed in connection with the bill in the last Congress upon the subject of imported liquors and that assumed in the present with respect to trusts.

Now, Mr. President, I am in favor of legislation upon this subject. I desire to reach it at the earliest practicable moment. I remember well, and I have already stated, that through the long lines of ten years the agitation moved before it brought the result of the enactment of the law for the regulation of interstate commerce. I do not want this agitation to run through ten years of time, and yet I do not expect a perfect remedy from any act which this Congress may pass. These things are of gradual growth, and it is well for us and all the people who are looking for a remedy to keep in mind one prominent fact, and that is that no act of Congress, no act of any legislative body will enforce itself, so that not only officers of the United States intrusted with the administration of the law and the officers of the States intrusted with the administration of the laws must take care to see that it is enforced, but the citizen who may be injured by infractions also must give his attention and aid in order to make the remedy effective and perfect.

Now, in order that we may reach action as early as practicable, I am inclined to, and at present believe I shall, vote against the reference of this bill to the Committee on the Judiciary; not that I fear that it would not have conservative and forceful consideration and reasonably early action there, but for the very different reason that I want some bill passed by this body that may go to the other House for action, and where doubtless there may be disagreement; and if that disagreement should bring us to the position of a conference between the two bodies, from it may be evolved a start at least towards legislation in this very important field. For that reason I shall so vote as to bring us to as early a resolution in the Senate as possible, so that we may put ourselves in the same attitude we were in in connection with the bill for the regulation of interstate commerce, a conference between the two Houses, and the result, at least to a considerable degree, effective legislation looking to the accomplishment of the ends so generally desired.

Mr. VEST. Mr. President, I do not know that, if it were, the fact that I occupied a position inconsistent with that which I occupy in regard to the bills now before the Senate during the last Congress, as to the bill referred to by the Senator from Iowa, would practically affect the question now pending at all. I am unable, however, to see that there is anything inconsistent in the position or the vote which I gave in the Judiciary Committee in regard to the bill to which the Senator has referred with that occupied by me to-day. But whether the inconsistency exists or not is really an immaterial question.

The report to which the Senator from Iowa has referred was concurred in by me, but without a concurrence in the argument then used in its support. I gave my vote against the bill which he introduced in regard to the transportation of liquors from one State to another, but I did not give that vote on the argument which was used in that report and which I did not write. I stated in the committee, if I did not state in the Senate, that my opposition to that legislation was based upon the single fact that the Government of the United States recognized the traffic in liquor as legitimate, that it was an article of merchandise both as to foreign and internal commerce, that we collected a large amount of money as excise duties upon the manufacture of ardent spirits in the United States, and that the legislation proposed by the Senator from Iowa was absolutely inconsistent with the position assumed by the General Government upon that subject.

Now, Mr. President, it is absolutely within the power of the Congress of the United States, under the interstate-commerce clause of the Constitution, in its power to regulate commerce, to prohibit the carrying of any article from one State to another. That is absolutely and exclusively within the power of the General Government and of Congressional action. The police power of the State is an entirely different jurisdiction, as distinct and separate from the interstate-commerce clause in the Federal Constitution as any two subjects can possibly be. What analogy can be drawn between the traffic in ardent spirits and the subject of trusts in regard to which we are legislating now? Is there any State in this Union that can ever be expected to legislate in favor of these unlawful combines and trusts as defined in the first amendment submitted by the Senator from Texas [Mr. COKE]? That section reads as follows:

That a trust is a combination of capital or skill by two or more persons, firms, or corporations for the purpose of creating or employing restrictions on trade, or limiting the production, increasing or reducing the price of merchandise or commodities, or preventing competition in the making, manufacture, sale, or purchase of merchandise or commodities, or creating a monopoly in the manufacture, making, sale, or purchase of any merchandise or commodity with intent to forestall the market value of any merchandise or commodity.

There is a trust unlawful under the common law. There is no common law of the United States, but the common law prevails in all the States of the Union. They have in the State of Louisiana a mixed jurisdiction or a mixed system of laws composed of the common law of

England and the Code Napoléon, or the civil law of France, but in all the other States the common law prevails, and that law without statutory enactment makes all such combinations as are prescribed or defined in the States of the Union and this amendment to be unlawful. The section which I condemned reads 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.

That is surplusage, because by the common law, which obtains in all the States, the combination, as defined in the first section, which I have read, is unlawful and void; and is it pretended that there is anything in the Constitution of the United States that militates against the idea that under the interstate-commerce clause of the Federal Constitution Congress can treat as unlawful and void and prohibit the transportation of the products of any such combinations as are here defined from one State to another?

The Senator from Iowa speaks of a police law which is enacted against a commodity that is unlawful under the common law, an article of merchandise. Alcoholic stimulants are as much an article of merchandise under the common law and under the laws of a majority of the States of this Union as corn or wheat or pork; and because the Senator from Iowa or the Senator from Texas believes that traffic to be unlawful, the law is not changed as it is in the common law or as it is upon the statute-books of the respective States. What analogy is there between the two? In the one case there is an unlawful combination by the laws of all the States, and if there were a common law of the United States it would be unlawful under that. In the other case there is simply a police regulation as to an article of drink which many intelligent and worthy men believe to be absolutely necessary to human life and human comfort.

I must confess, sir, that I am unable to see even in the exigencies of debate a justification for the assumption made by the Senator from Iowa that the two cases are parallel, and that my inconsistency is therefore apparent.

Mr. WILSON, of Iowa. Mr. President, I do not see the inconsistency on this side of the line that the Senator from Missouri has referred to. Now, the remedy that he proposes by giving his indorsement and support to the amendment presented by the Senator from Texas [Mr. COKE] amounts to this, so far as the question that he addressed his attention to is concerned, that if the State of Iowa or the State of Missouri should find within its borders a combination to put down or put up the price of intoxicating liquors it might pass an act declaring that to be an unlawful combination, and then if this amendment should become a law the State would get the help of the United States and its power to prevent the exportation from that State of the products of that trust, but it would not get the aid of the United States to protect the State that had thus declared a trust existing within its borders from the intrusion of the same article from other States where that trust had not been declared. So then, instead of aiding the States in the enforcement of their police powers, it would simply be an additional means for overriding those powers, notwithstanding the desire of the State.

Mr. VEST. If the Senator from Iowa will permit me—

Mr. WILSON, of Iowa. Certainly.

Mr. VEST. He makes his argument from one standpoint and I make mine from another. He is now going upon the assumption that the General Government exercises this power under the interstate-commerce clause of the Constitution to aid the police powers of the State. That is not my idea. I hold and claim that the General Government, under the interstate-commerce clause, has a right to prohibit an article from going from one State into another, without regard to any police regulation by any State in the Union. It is a very broad, comprehensive, general power that is vested in Congress alone.

Mr. WILSON, of Iowa. That is to say, Congress may enact a law which shall declare that certain articles recognized as belonging to the field of interstate commerce may be taken into Missouri from Iowa and taken into Illinois from Minnesota, but they shall not be returned from those States into the States from which they were shipped, nor shall they go there from any other State. That is, there shall be a kind of checker-board enacted by Congress, so that the States may jump from one to another and pick up one another as you do in playing a game of checkers. That is not constitutional law, Mr. President. You must recognize a principle which will apply to all alike, and when you have applied it to one it will allow the application to others. So that, as has always been recognized in regard to the police powers of the State, belonging as they do wholly to the State, recognized as they were in all the early decisions of the Supreme Court as belonging there, you have got to give your aid so that the States will possess them all, and not obtrude obstacles in the way of their enforcement.

Mr. President, as I said when I was on the floor first to-day, the conditions existing in the country seem to change the opinions of men with regard to the same character of question, and I have no doubt that there are supporters of this amendment of the Senator from Texas and other amendments which have been offered here, that if they had been prepared with equal vigor in some other line of action as clearly constitutional as this would have expressed quite a different judgment in respect to them, just as we see in the case of the bill of the last Con-

gress to which I have referred and the bill we are now discussing. But there must be that consistency which will give each State the same rights in the enforcement of its powers and the enjoyment of its privileges under the Constitution and which shall impose the same kind of conditions upon others. The State which I in part represent asks no departure from that line. Her Senators and Representatives are ready to aid in the enactment of proper legislation for the protection and for the indorsement of the rights of the other States as well as hers, and in regard to the illustration which I used in connection with the bill of the last Congress, all that we ask is that there shall be that proper recognition of the doctrine of State rights that will protect the State of Iowa or any other State and recognize her police powers within her own borders without asking any other State to follow her example except by her own voluntary election.

Mr. SHERMAN. I ask the Chair to state the pending question.

The VICE-PRESIDENT. The pending question is the amendment moved by the Senator from Alabama [Mr. MORGAN] to the motion made by the Senator from Mississippi [Mr. GEORGE] to commit the bill to the Committee on the Judiciary.

Mr. SHERMAN. What was the amendment of the Senator from Alabama?

The VICE-PRESIDENT. To commit with instructions that the Committee on the Judiciary should report within twenty days.

Mr. SHERMAN. Mr. President, it is a very unusual proceeding in the Senate of the United States, very rarely resorted to, to refer the action of one committee to another. It is not a wise proceeding to take at any time. Although there have been cases of the kind, they are very rare. Such a course would create controversies and contention and rivalry between committees, each of which is supposed to understand the duty that is enjoined upon it. As a general rule, such a proposition ought not to be made; but in this particular case I appeal to every Senator to say whether it would be wise to do it. One of these propositions is now pending before the Judiciary Committee, and it has been there for two, three, or four months—I do not know how long. When did the Senator from Texas introduce his proposition?

Mr. REAGAN. I introduced it on the first day of the session, I think, as a bill.

Mr. SHERMAN. On the first day of the session. It has been in that committee almost four months, and nothing has been done. Now, the Committee on Finance was charged with somewhat the same subject-matter. It has been deliberated upon carefully; the committee revised its decision once or twice. Perhaps the criticism of the Senator from Mississippi [Mr. GEORGE] in that respect is correct. It made changes and withdrew from them. But we have considered the subject and very carefully considered it, and opinions have been expressed to the Senate and they are here. Now to send that work to a committee which has already had charge of the subject-matter for four months and has not acted upon it, is rather a damaging proposition. If it is proposed to kill this measure, let it be done in a fair and legitimate way.

The fact that the two members of the Judiciary Committee, both eminent and distinguished lawyers, have given their opinion in favor of the idea that Congress has no constitutional power to pass such a bill, or any of these bills, it seems to me should show us that we ought to have a better nursing mother than that to send the bill to. Under all the circumstances is it right to do that? Is there any probability if this bill is referred now to the Judiciary Committee that they will be able to come to any satisfactory conclusion in two or three weeks and report a bill back to us? Shall we be one bit advanced in regard to it? Not at all. It will only create new debates and long contention. I think that Senators have had every phase of this question presented to them.

As to the pending amendment, I have no sensibility about it. I am perfectly willing to accept any amendment that may be adopted by the Senate. If the Senate by a vote should adopt the amendment proposed by the Senator from Texas, well and good. As I stated, I do not believe in it; that is, I think it is better not now to put upon this proposed law a criminal proceeding, although I originally voted for such a proposition. Still, if the Senate chooses to put it on, well and good. It will probably, in the opinion of some, strengthen the bill, and in the opinion of others it will probably weaken it. Let the judgment of the Senate be carried out when expressed.

Then as to the proposition made by the Senator from Wisconsin [Mr. SPOONER] that some distinct proposition of law should be inserted in this bill giving the court in proper cases the power to send its process, its summons, or notice to parties in other States, there is no objection to such a provision. Indeed, as I lost the suit of my first client some thirty-five years ago, when I entered public life, I am not very familiar with the practice of the courts; but I find, on examination, that the law already provides, in certain cases, that just that thing may be done. Such a statute has existed for many years, and here is a decision of the Supreme Court of the United States upon the subject regulating and pointing out the necessity of having parties from other States and from all over the jurisdiction of the United States in certain cases. The case decided was a case where the suit was to quiet title to land, a suit in equity, and notice was sent under the law of 1875, I think it was, to different parties in different States. So there is no trouble in meeting

that difficulty. The court may, in the exercise of its discretion, serve notice of the pendency of this proceeding upon all the parties wherever they may live, and it goes broadcast wherever they may live, and even from foreign countries it may summon them to take their part in the trial of the case. The Senator from Wisconsin, who is a practicing lawyer and engaged now in cases in the United States courts, is thoroughly familiar with that matter, and he has prepared a section that will cover it entirely. I have not only no objection to it, but I shall be very glad indeed to have it provided for.

The language which was inserted by the Committee on Finance required these combinations to be made between persons or corporations in different States in order to come within the jurisdiction thereby created. That language was inserted by the Committee on Finance. I did not think it was necessary on the first draughting of the bill, but that was deemed necessary, and now the Senator from Massachusetts [Mr. HOAR] thinks those words ought to be stricken out. I do not care whether they are in or out. It does not make any difference in my judgment as to the effect of this bill. I shall be glad to have it either way in order to satisfy Senators, but I can not satisfy them all.

The Senator from Massachusetts objects to the words "in a civil suit." I have no objection to their being stricken out. I would say, using the language of the Constitution of the United States, "all cases in law or equity," or, which is better, "all controversies between persons living in different States."

Mr. HOAR. The Senator will pardon me.

Mr. SHERMAN. I would have it either way. The second section refers to controversies between parties.

Mr. HOAR. The Senator will allow me to call his attention to one thing. That first section being criticised yesterday, he stated that it was intended to apply to suits brought by the United States. Now, as I understand him, he is willing to substitute the phrase in the first section, "controversies between citizens of different States." That clearly would exclude the United States altogether.

Mr. SHERMAN. The Senator does not correctly state my case.

Mr. HOAR. If the Senator would make that amendment he would have a section which provided that controversies between citizens of different States should be taken possession of by the district attorney or the Attorney-General and conducted to final judgment and execution.

Mr. SHERMAN. I will explain to the Senator from Massachusetts in regard to the bill. It is strange he can not distinguish between the first and second sections. He dislikes the bill so much that he can not state the case fairly. I refer to all actions at law or in equity in the first section of the bill. I use the language of the Constitution of the United States in defining the cases that arise under the Constitution and laws of the United States, and so "all cases at law or in equity of a civil nature." These words he objects to, and I am willing to strike them out. These words are there because they are used in the Constitution of the United States.

When I come to describe these things in the second section, there the words "controversies between citizens of different States" are used, so that there can be no misunderstanding.

The first section deals with suits brought by the United States in the name of the United States to check, and control, and enjoin, and regulate these corporations. The second section provides for suits between parties, and there, I think, they ought to be classed as controversies between parties of different States; and that is the distinction laid down.

Now, Mr. President, all I desire is that this bill shall be voted upon. I believe that in a half-hour we can take the vote on the proposition of the Senator from Texas [Mr. REAGAN]. If that is adopted, well and good. We can vote then upon the proposition of the Senator from Kansas [Mr. INGALLS] and then adopt the amendments that are suggested on either side. Correct this bill as you will, and we can have a bill which, while it may not be perfect, while it may not go far enough to suit me or may in some respects go further than I think is wise, yet we shall have a tangible proposition that we can send to the House of Representatives for their consideration, and in that way we can dismiss from the Senate of the United States, for this session at least, this question and controversy about trusts and combinations. If we send this bill to the Judiciary Committee and await their report to come back to us, we shall have to go over all this ground again and we shall be simply wasting time that is valuable to the people of the United States.

It must be remembered that we have been in session for nearly four months and we have not dealt with any of the great questions which we have to deal with within the next three or four months; and if we now palter with the question, send it to another committee and go over another long debate of three or four days on another report, what is to become of other questions which are pending, the tariff question, the silver question—involving grave consequences and upon which honest men may disagree—the dependent pension bill, and many other like bills? We had better dispose of this bill, and I hope we shall dispose of it before we go to dinner to-day, and end it.

Mr. HOAR. I wish only to say a word. I have a strange incapacity to understand my honorable friend from Ohio. It is entirely owing to my dullness, of course.

Mr. SHERMAN. And mine.

Mr. HOAR. But I think if the Senator from Ohio will look at the Reporter's notes of his speech he will find that he said just now that he had put into this bill the words "all suits of a civil nature at common law or in equity," and that he put them in because they were the words of the Constitution.

Mr. SHERMAN. Substantially.

Mr. HOAR. But he said he thought he would like to substitute for them, as on the whole better, "controversies between citizens of different States." That is exactly what he said. I think that will be found in the Senator's remarks, and I think it will be found in the memory of every Senator who listened to him. Then I called his attention to the fact that he said yesterday the first section was intended to provide for suits by the United States, and that the substitution of the words "between citizens of different States" cut off suits by the United States altogether. He says in reply to that that I misunderstood him, and that he was talking about the second section; but if he will look at the second section he will find that there is no place in that section where those words belong; that there is nothing appropriate to them; that there is nothing to be stricken out for which they are to be substituted. The second section provides—

That any person or corporation injured or damaged by such arrangement, contract, agreement, trust, or combination * * * may sue for and recover, in any court of the United States, * * * twice the amount of damages sustained.

Does the Senator mean to limit the second section to cases of controversies between citizens of different States? Of course not. If the combination against which the bill is leveled has injured me through foreign or interstate commerce, does he mean to say that his purpose in the bill is to provide that I can only have a remedy when I am damaged by citizens of different States from my own? The second section has nothing at all to do with residence in different States.

My honorable friend says that I dislike his bill. I do not. I like his bill very much; and I like it as he had it; but he has proposed this amendment. He has answered to every single criticism I have made upon it, if I recollect aright—there may be possibly one exception—that he was of that way of thinking himself in the first place, but that he yielded his judgment to the opinion of others in order to make the bill go through. What I want is to have the great authority of the Senator in his original judgment, not in his yielding to other people, in favor of a bill which I should like to vote for.

That is the difference between the Senator and me. I want him to strike out these words which make the bill apply to only one-one-hundredth part of the cases that it ought to apply to, and to have it as the Senator first reported it. Then I want a penal provision put in and have it as the Senator originally designed it, and with one or two other little amendments in which I shall have the Senator's entire concurrence, if I understand him, I propose heartily to support his bill.

My honorable friend seems to me, owing to my great dullness of expression and failure of clearness, to have understood a concurrence with his opinion somehow or other as a criticism upon his bill. I say again that in making those amendments I do not see where he can put in the words "controversies between citizens of different States" in the second section. There is nothing to be stricken out for which they can be properly a substitute. The second section is not drawn on the theory that makes it proper, and if he does he will do in the second section what, contrary to his judgment, if put in the first, will make the bill apply to but a very small proportion or fraction of the cases it ought to reach.

Mr. SHERMAN. The whole idea is that the Senator differs as to my statement of the case; but when he comes to offer the amendments he will find them not very important and probably those I shall cheerfully accede to. I hope we shall have a vote on the question of reference.

Mr. STEWART. Mr. President—

Mr. GEORGE. Will the Senator from Nevada allow me to make a personal explanation? It will not take a minute.

Mr. STEWART. Certainly.

Mr. GEORGE. The Senator from Ohio in speaking of the Judiciary Committee as being rather an unfriendly body to send this bill to referred to two Senators upon that committee, by which, I suppose, he alluded to myself and the Senator from Missouri, as having already prejudged the case and having decided in our own minds that there is no constitutional power on the subject. I desire to say that, whilst that is my opinion with regard to the Senator's bill, I think the amendment offered by the Senator from Texas [Mr. COKE] is a valid and constitutional bill, and I certainly think that the one which I prepared and which I shall offer is a valid and constitutional bill.

Mr. STEWART. Mr. President, while this debate has been proceeding I have been thinking about the practical operation of the bill reported from the Committee on Finance if it should be passed and could be enforced as a constitutional law. I call particular attention to the clause commencing in the seventeenth line:

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

Now, it is a well known fact that since the money power abandoned:

the old automatic system of allowing the quantity of money to be governed by the product of the mines or by the quantity of gold and silver obtainable, and provided that only one metal should be manufactured and both should enter into production, there has been a decline in prices and that it has now reached a point where there is great distress in the country. There is now great distress on account of falling prices, which necessarily follow contraction. There are many manufacturing establishments that find they can not make any money; they are losing money and see that they will have to go into bankruptcy if something is not done. Men agree, for instance, that they will manufacture only a certain amount, no more than the market will take, in order to keep up the prices, so as to avoid bankruptcy. Those arrangements are common; they are of every-day occurrence. But under this bill would they not be subject to the pains and penalties prescribed? If producers did not have the power to make such an agreement in times like these, when prices are declining, when they are putting their money in one year and can not get it out the next year because prices have declined—if they could not make an agreement to check production and wait for better times to bridge over the trouble, they would be ruined; and this bill would probably, if carried out literally, in times of depression, break up half the manufacturing establishments in the country. That is one of the ordinary effects, one of the ordinary arrangements which are necessary in times like these, that would be in violation of the bill.

Then again we will take, for example, the beef trust in Chicago. There is a trust which has put up the price of beef, a trust that we have been investigating and want to remedy. There is a plain remedy for that trust, not in legislation perhaps, but in the action of the parties interested. Farmers who are producing beef have to sell it at an enormous sacrifice, at starvation prices. Cattle are cheap all through the country. Still beef is high in Chicago. Suppose the farmers in the West should unite and say, "We will not sell our beef except at a certain price." Suppose they should unite to beat this combination; they would all be criminals under this bill; they could not combine to beat it at all.

Suppose, again, a combination is formed in Chicago by citizens of Chicago, not citizens of different States, but all citizens of Chicago, to bear the prices. The farmers of different States would have no right to combine and say, "We will not sell any wheat; we will help each other; we will advance money to each other; we will not sell any wheat until this combination is broken up; we will not allow them to sell our wheat short, to sell something they have not got and bear the market, and we will not take our wheat to market to be robbed." That they could not do under this proposed law. They would be liable to all the pains and penalties of the law if they did.

Again, suppose that the employers, railroad companies, and manufacturing establishments should say that labor shall be put down to two bits a day. Suppose that capital should combine against labor, as it is very much inclined to do, and there should be a combination among the laborers which would increase the cost of production and increase the cost of all articles consumed. Suppose there should be a combination among the laborers to protect themselves from grasping monopolies; they would all be criminals for doing it.

This measure strikes at the very root of competition. It strikes at the very root of self-preservation. It strikes at the very root of organization. It strikes at the very root of co-operation.

The time was in England when everything was parceled out to some particular favorite. Men who sold beef were not allowed to raise it; they were not allowed to bring it into market in certain ways. It had to pass through certain channels. All were trammelled; there was no liberty, no competition; but after having tried that thing for a hundred years, England wiped it all out and said, "We will have competition."

Co-operation is necessary; but co-operation has its evils. When capital is combined and strong, it will for a time produce evils, but if you take away the right of co-operation you take away the power to redress those evils; it gives rise to monopolies that are protected by law, against which the people can not combine. They can not have other monopolies equal to them. It is that which depresses the people.

For instance, the patent laws of the United States create monopolies, and there is more money made by speculators under the patent laws, because they have monopolies. There is no way for the people to combine and form co-operation against the patent laws. While in England every privilege was parceled out to corporations and to private individuals, favorites of the Crown, there was no way for the people to compete with them; but now, in the march of progress, we find everything has been changed and there is freedom of action, freedom of combination, and when one combination is formed, if it is not beneficial, if it puts up the price, others will be formed that will put the price down, and there will be competition. But if you deny the right to combine in order to compete with the capitalists, in order to compete with strong establishments, you go back hundreds of years.

This bill is a step in the wrong direction. It is a step back towards the dark ages. It is a declaration against the freedom of man, against freedom of action. If one corporation is making too much money there will be other corporations, and that is the remedy which modern civilization has invented. That is the remedy which has brought about

the present development of the civilized world. All the States, instead of having corporations dealt out to private individuals by private statutes, have passed general incorporation laws, and there is as much freedom of competition between corporations now as there is between individuals.

The great harmfulness of corporations was that they were monopolies; that others could not form them. It required special acts or special favors to create them; the people could not form them. If you take away the right to form combinations to meet combination, you will have monopoly in this country to your heart's content. It would be the accumulated capital that would prosecute the new concerns that are starting. This bill would be an engine of oppression to break down all competition, because as soon as one was forming those in existence would bring suit immediately. They would have the power and the money, and the poor people struggling to meet the combinations in existence would not have the power to resist them. What could a labor organization do when its individual members were sued by the Government for belonging to a labor organization, a combination which has a tendency to put up the price of labor or its products? It would be helpless against the power of these great corporations, which have abundance of money to prosecute these suits.

Why take away the right of the laborers of America to compete in production with these great corporations? Why take away from the people the power to resist corporations, the power to organize for the purpose of bettering themselves? Organization is everything; individuals literally nothing. No great enterprises are conducted now without organization. As I said yesterday, the individual man by himself can be but little above a savage. He can not supply himself with the wants, let alone the luxuries of life. He must be as a savage if he is alone. He must avail himself of the labor of others. Inter-association (and in my judgment this bill strikes at the principle of association) is necessary to afford competition; it is necessary to provide means for the development of the country; it is necessary for the laboring men and the producers of the country. If they will develop its resources they will benefit themselves, and if they will resist oppression they must have this right. The bill takes away the sacred right of co-operation, and it ought not to be passed into a law.

Mr. PUGH. Mr. President, as a member of the Committee on the Judiciary I simply desire to say that in my opinion a reference of this bill to that committee will be the last of it for this session. I think I have knowledge enough to enable me to say that the enemies of the bill can not adopt more efficient action to destroy it than to send it to that committee.

I am a friend of this bill and of many of the amendments that have been offered to it. The Senate is in just as good condition, is just as well informed and prepared to pass upon the amendments now as it will be hereafter, or as the Judiciary Committee are. I have no idea that the Judiciary Committee can formulate a bill, that will meet with the concurrence of a majority of that committee, that has any life in it, and I insist that we should dispose of the bill and the amendments, and vote down the proposition to refer to the Judiciary Committee.

Mr. HISCOCK. I should like to make an inquiry of the Senator before he takes his seat. Do I understand from him that he thinks a majority of the very able lawyers constituting the Judiciary Committee would come to the conclusion that the bill is unconstitutional and void?

Mr. PUGH. On that subject I am not prepared to speak; I am not sufficiently familiar with the constitutional opinions of the members of that committee, except as to those who have expressed them in this debate.

Mr. HISCOCK. I suppose if the bill and the amendments should be referred to the Judiciary Committee, it would be for the purpose of having the opinion of that committee upon the constitutional objections that have been urged against the bill, and my inquiry pointed to the fact whether the Senator knows that a majority of the eminent gentlemen who constitute that committee believe that this scheme of legislation would be unconstitutional and void.

Mr. PUGH. We have had the opinion of two very able members of that committee, learned and able lawyers, that there is no power under the Constitution to pass the bill or any amendment now pending or proposed except the one offered by the Senator from Texas [Mr. CORE]. While I am ready to vote for that amendment, I have no idea that a majority of the Judiciary Committee will favor it. The difficulty in that committee is with the variety of opinion that it has both as to constitutional power and as to the provisions of a bill to reach this evil. My opinion is that the variety of that opinion will prevent any concurrence in favor of a bill that has any vitality in it, and we are more apt to give it by voting in the Senate on the amendments as they are presented and will be in order than by letting that committee deal with this question and make a report to the Senate. I have no idea but what any report that it may make of any bill would be subjected to the same number of amendments, if not more, than the bill now pending before the Senate.

Mr. HISCOCK. I will say to the Senator upon the same question and upon the same line that if the bill with the amendments is to be referred to the Committee on the Judiciary I would like the motion to

be modified so as to call for a report from that committee upon the constitutional and legal questions involved, not upon the framework of a bill especially, for that we could take care of here. I could have my opinion as to what the provisions ought to be, as well as any one else. I hope that the Senator who made the motion to refer the bill to the Committee on the Judiciary will amend his motion in that they shall be called upon to express themselves as to the constitutional power of enacting this legislation.

Mr. PLATT obtained the floor.

Mr. GEORGE. Mr. President—

Mr. PLATT. I will yield to the Senator from Mississippi.

Mr. GEORGE. The remark made by the Senator from Alabama calls for some response from me. The Senator said if the bill should be referred to the Judiciary Committee, he had no idea it would be heard from during the remainder of this session. The Senator from Alabama has no warrant for making any such statements, I think.

Mr. PUGH. It is merely my opinion, of course.

Mr. GEORGE. The Judiciary Committee, I believe, have been as diligent in performing the duties which the Senate have imposed upon them as any other committee of this body. There is the motion now pending, made by the Senator's colleague [Mr. MORGAN], requiring that committee to report within twenty days, and then there is the parliamentary power in this body, which the Senator seems to have overlooked, that when a matter is referred to a committee and that committee fails and neglects for an unreasonable time to report, to discharge the committee and bring the matter before the Senate directly.

Taking these things into consideration, I think the Senator's remark is wholly unwarranted. It is not the intention of the Senator, that is, myself, who made the motion to refer, to dispose of the bill in that way. My object in making the motion is to give us a bill, if one be possible—and I believe one is possible—which will be a real remedy for the ills and the evils which afflict the people of the United States, instead of the sham which the pending bill will turn out to be.

Mr. PLATT. Mr. President, I shall, notwithstanding the embarrassment which a motion of this sort creates, vote to refer the bill and the various amendments to the Judiciary Committee, and I do it not as an enemy of some bill which may be properly framed to meet the evil complained of, but I do it because I believe there is in the bill nothing at all which will meet the evil complained of. The people who are suffering from the unlawful acts of associated corporations are asking relief, and when they ask for bread the Senator from Ohio proposes to give them a stone; when they ask for fish he proposes to give them a serpent. As the author of this bill he has been, first and last, something over a year in bringing forward his experiments to meet the evil, and constantly revising his own impressions as to the method in which it could be done, until I venture to say the last proposition is the least effective of any one that he has made.

I allude to this, as I do to the fact that five amendments have been presented, and I believe presented in good faith, to this bill, to show the very great difficulty which surrounds the subject. There is not a single member of the Senate who has thought upon this subject who does not recognize that it is one full of difficulty, of legal difficulty, of constitutional difficulty. The very fact that these amendments have been offered proves the difficulty of the situation, and proves, not that Senators are opposed to granting relief from the ills which are complained of, but that they desire to grant efficient relief if they attempt to grant relief at all.

It is no answer to the criticisms which are made on this bill to declaim against the enormities of trusts and combinations. It is no answer to the objection which is made to this bill, that it will not touch any single trust or combination in this country, to denounce the operations of trusts. It will not do to say that a person who is not ready to vote for this bill wants to perpetuate the illegal and injurious acts of combinations and associations and trusts. We are very often as legislators placed in this dilemma: An evil exists, an evil which ought to be remedied, which ought to be remedied in an efficient, legal, and constitutional way, and some measure is proposed which either does not remedy it at all or runs against every constitutional method of reaching it; and then the persons who are not ready to take that measure are held up as being opposed to rendering any relief whatever.

My objection to this bill, which I have already stated, is that it will not touch or reach the unlawful or injurious acts of any trust, association, or combination, whether of individuals or corporations, in this country. The fact that it is confined to arrangements between persons or corporations residing in different States of the Union or residing in this country and in foreign countries, is an admission on the face of it that the author of the bill or the amendment admits his inability to do anything else in this direction. It is an admission on the part of the author of the bill that all trusts, all combinations, all agreements, all associations existing between people of the same State, between corporations of the same State, for the unlawful purposes which we all understand, are beyond the reach of Congressional action.

That is the admission in this bill. It is an admission which I do not make, but it is an admission of this bill, because it is confined simply to those arrangements, associations, combinations, and trusts existing between persons of different States or corporations of different States

or persons of this country and another country or corporations of this country and another country. So having eliminated from the effect of the bill all the great combinations which have been formed and may be formed within States it proposes to deal with them where the parties composing them reside in different States; that, and that only.

If we could do that we should simply transfer the parties who compose these corporations from different States to a single State. The great sugar trust, if it is now a combination existing between corporations in different States, would organize as a single corporation of a single State, and then would be beyond the reach of this bill.

But that is not the real difficulty. The real difficulty is that under the Constitution of the United States you can not reach an agreement made between parties residing in different States, no matter for what purpose. It is the controversies arising between persons residing in different States, between corporations residing in different States, which can be reached in the courts of the United States.

The Senator from Ohio seems entirely unable to comprehend this distinction—but it is a distinction which, as it seems to me, every lawyer ought to comprehend—that he is not providing for controversies between persons residing in different States and corporations of different States, but he is trying to stop agreements between persons of different States and corporations of different States, under that clause of the Constitution which gives the courts of the United States jurisdiction of controversies arising between persons so residing. I believe that I can understand the difference between a controversy and an agreement. It is not claimed (at least I have not heard it claimed by the honorable and able Senator from Ohio) that he reaches these combinations under any provision of the Constitution except that which confers jurisdiction upon the United States courts in controversies arising between citizens of different States. If that be true, then every particle of meat, every particle of efficiency, every particle of force in this bill disappears.

I am not to be told that because I am not willing to stand here and vote for a bill which is a snare and a delusion I am not therefore willing to do all in my power to put down these unlawful acts which are ruining the business and injuring the people of the country.

I think it highly appropriate that the bill should be referred to the Judiciary Committee, and it is no answer to that proposition to suggest, as the Senator from Alabama has done, that it is to be referred to a committee several of whose members are enemies of the bill. Any lawyer ought to be, not an enemy of the bill, but opposed to the bill, if he desires to do anything to remedy the evils which have been complained of.

How far the bill may represent the matured judgment of the Finance Committee we are not informed. Certainly one Senator upon the Finance Committee, and an able lawyer, has expressed his dissent from the bill. The other members of the Finance Committee, with the exception of the Senator from Ohio, have not spoken; but I apprehend that when they come to speak by their vote on the bill it will be seen that the bill represents, not a majority, but a decided minority of the Finance Committee.

I do not vote to refer the bill in any spirit of criticism of the Finance Committee, but I vote to refer it by reason of the difficulty of the subject, by reason of the honest doubts of Senators as to the method of relief proposed in the bill and the power of Congress to exercise such relief, because of the earnest desire on the part of members of the Senate to enact some legislation which shall be effectual. I think it ought to be referred to that committee which by common consent embraces the largest amount of judicial ability in the Senate; and to say that it is to be smothered there is to attack and impugn the motives of the honorable gentlemen who compose that committee. I have every confidence that that committee will deal with the subject; that if there is a constitutional way of reaching this difficulty, of remedying these evils, of punishing the men and the corporations who are engaged in these unlawful conspiracies and acts, it will be found out by that committee, and a bill framed along that line; and if there is none that they will say in their opinion there is none; and if that be true we had better face that proposition now than to deal in what in my judgment will be found, if this bill shall pass, to be nothing more nor less than a humbugging of the people of the United States.

I do not use that language imputing to the author of the bill or to any one who may vote for it a desire to humbug the people of the United States, but in my judgment, after having given this matter careful attention and careful thought for two or three years' time, if we pass this bill we shall show the people of the United States who desire to have these evils remedied that we have passed a bill which is utterly powerless and inefficient to reach the evils, and then they will say that they have been humbugged, and they will say more than that, which will not be true, however, that they have been intentionally humbugged by the Congress of the United States.

Mr. WASHBURN. I should like to ask the Senator from Connecticut if he thinks it is possible for him or anybody else to draw a bill that will be efficient in this respect.

Mr. PLATT. That is precisely the question which I desire to refer to the Judiciary Committee.

Mr. WASHBURN. I ask what the Senator's opinion is.

Mr. PLATT. I believe that a bill can be framed along certain lines which may partially reach this evil, but I am not prepared to indicate precisely the extent and the scope of the bill. There may be in some of these amendments valuable suggestions in that line.

Mr. WASHBURN. I should like to ask the Senator also if any special harm would come to the country or anybody else by the passage of the bill if it should be afterwards held to be unconstitutional by the Supreme Court of the United States. Would any damage be done to anybody?

Mr. PLATT. I pointed out one damage. Whenever Congress passes a bill which the concurrent sentiment of Congress believes to be unconstitutional it does a greater damage to the people of this country than is well to be calculated.

Mr. WASHBURN. I do not see how we are ever going to know whether this bill is constitutional or not until it has been referred to the Supreme Court. The most eminent lawyers in this Chamber differ in opinion, and it seems to me that we shall never reach any definite result until some law goes to the Supreme Court.

So far as I am concerned I know the sentiment of the country with regard to the question of monopolies and trusts, and I believe the people expect the Congress of the United States to make an attempt to secure some valid and satisfactory legislation. While the bill of the Senator from Ohio may not be perfect, while it may not reach every point, and may finally be declared unconstitutional, yet it is a move in the right direction, and for one I should dislike very much to have it sent to the Committee on the Judiciary, which would be sending it to "the tomb of the Capulets," I believe. I believe it would be sent there for that purpose, and I believe, furthermore, that when all other means fail to defeat a bill the constitutionality of it is usually invoked for that purpose. I hope that will not be done in this case.

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

Mr. SHERMAN and others. Oh, no.

Mr. DOLPH. We are not ready for a vote. There is no prospect of reaching a vote for a week.

Mr. GRAY. Will the Senator from Oregon withdraw that motion for a moment while I submit a report?

Mr. DOLPH. I will.

Mr. SHERMAN. I shall ask for the yeas and nays upon the question whenever it is put.

SENATORS FROM MONTANA.

Mr. GRAY. The Senator from Oregon yields to me while I submit a report, of which I gave notice yesterday, on behalf of the minority of the Committee on Privileges and Elections in the Montana case.

The VICE-PRESIDENT. The views of the minority will be printed with the report of the committee.

PROPOSED EXECUTIVE SESSION.

Mr. DOLPH. I renew my motion to proceed to the consideration of executive business.

Mr. SHERMAN. I call for the yeas and nays on the motion of the Senator from Oregon.

The VICE-PRESIDENT. The question is on the motion of the Senator from Oregon that the Senate proceed to the consideration of executive business.

Mr. SHERMAN. On that question I call for the yeas and nays.

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

Mr. FAULKNER (when his name was called). I am paired with the Senator from Pennsylvania [Mr. QUAY].

Mr. MORGAN (when his name was called). I am paired with the Senator from New York [Mr. EVARTS].

Mr. PASCO (when his name was called). I am paired with the Senator from Illinois [Mr. FARWELL]. In his absence I withhold my vote.

Mr. PLATT (when his name was called). I am paired on all subjects with the Senator from Virginia [Mr. BARBOUR]. As he is not in the Chamber, I withhold my vote.

Mr. RANSOM (when his name was called). I am paired with the Senator from Michigan [Mr. STOCKBRIDGE].

Mr. SAWYER (when his name was called). I am paired with the Senator from Georgia [Mr. COLQUITT].

The roll-call was concluded.

Mr. ALLISON (after having voted in the negative). I am paired with the Senator from Missouri [Mr. COCKRELL] and therefore withhold my vote.

Mr. PLATT. I desire to add to the announcement of my pair that if permitted to vote I should vote "yea."

The result was announced—yeas 20, nays 29; as follows:

YEAS—20.

Bate,
Blackburn,
Blair,
Coke,
Dolph,

Frye,
Gibson,
Gray,
Hampton,
Harris,

Higgins,
Ingalls,
Gray,
Jones of Arkansas,
Mitchell,
Payne,

Turpie,
Vance,
Vest,
Walshall,
Wilson of Iowa.

NAYS—29.

Aldrich,
Allen,
Berry,
Chandler,
Cullom,
Davis,
Dawes,
Dixon,

George,
Gorman,
Hale,
Hawley,
Hiscock,
Hoar,
McPherson,
Manderson,

Moody,
Morrill,
Paddock,
Pierce,
Pugh,
Reagan,
Sawyer,
Sherman,

Spooner,
Stewart,
Washburn,
Wilson of Md.
Wolcott.

ABSENT—33.

Allison,
Barbour,
Beck,
Blodgett,
Brown,
Butler,
Call,
Cameron,
Casey,

Cockrell,
Colquitt,
Daniel,
Edmunds,
Eustis,
Evarts,
Farwell,
Faulkner,
Hearst,

Jones of Nevada,
Kenna,
McMillan,
Morgan,
Pasco,
Pettigrew,
Platt,
Plumb,
Quay,

Ransom,
Squire,
Stanford,
Stockbridge,
Teller,
Voorhees.

So the motion was not agreed to.

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.

Mr. MORGAN. Mr. President, when I offered the amendment to the motion of the Senator from Mississippi [Mr. GEORGE], limiting the time within which the Judiciary Committee should report back some measure, I had no idea of imputing in the slightest degree to that committee any want of activity or energy or purpose in the discharge of their public duties. I have heard it said by some Senators here that it would be impossible to get a report from that committee on this bill simply because they were not in a condition to agree about it, on account of the great diversity of opinion among them as to the proper means to accomplish the end the Senator from Ohio and the rest of us desire to accomplish. So I thought if that committee could be required to report back in twenty days it would meet the demand for urgent action, which has been postponed now for about a hundred years in the United States, as well as I understand it, on this question of monopolies and engrossing and all the other offenses against free and proper markets in our country.

The Senator from Ohio says he wants to put at rest this question. He wants to get a bill through here that will put at rest the debate and the discussion about monopolies and about trusts and the like. Well, Mr. President, if we are to have a debate here, as I suppose we are likely to have, upon the protective tariff, which is the great nursery and breeding-ground of monopolies and trusts and combinations and conspiracies, it is not likely that there will be much bating of breath upon this question, even though the Senator may get the shell of a bill through here.

This bill, offered by the Senator from Ohio and reported by the Finance Committee, is nothing but a *brutum fulmen*. It is a shell. It is a tub to the whale. It is not expected, I hope and believe, too, that it will ever yield any fruit in the way of checking conspiracies or combinations or forestallings or regrating or any other of the crimes against the market which the old common law furnished us with rules for defining and punishing also.

Sir, we have now a bill reported by the Committee on Finance, a substitute for a bill that the Committee on Finance had previously reported, which came within range of the batteries of the Senator from Mississippi [Mr. GEORGE], and the bill went to pieces. Its friends had to take it back into the Committee on Finance and bring out another one; and I think from what I hear around on the different sides of the Chamber, without reference to any political divisions at all, but in reference to the opinions of men who profess to understand the Constitution and laws of the country, that the bill of the committee, as reported now, is just as likely to go down as the one that was brought in before. Including that second effort, here are six bills now before the Senate, each of them drawn by gentlemen of experience, and an account of the laborious efforts they have been making here for months, and some of them for years, in the maturing and bringing forth of these bills, is enough to startle one with the intricacy of the question.

It is an intricate question. It taxed the powers of the British Parliament with all of its omnipotence about two centuries to meet these combinations and conspiracies in trade and about trade, relating chiefly, however, to the material subsistence of the people, articles of grain and provisions and the like; and every once in awhile we find the brush of oblivion drawn by the English Parliament across all these enactments; they are all swept from the statute-books. Why? Because of the vain, futile effort on the part of legislators after all to do very much in controlling men, as the Senator from Connecticut [Mr. PLATT] said, in making their agreements. The common law of England has been resorted to time and again, at the end of different long periods of experiment, for the purpose of furnishing remedies for all the complaints we are now hearing about, which complaints were identical in their nature and substance with those that now come forward in vast array to tax the ingenuity of legislators to repress them. It is very certain that no Senator here, no matter what his wisdom or ability may be, can assure himself absolutely that he has a remedy which is in all respects

or in many general respects a solvent and a cure for the difficulties we are now encountering.

We hear the argument made here, and I think it is a perfectly sound one, that the way to get rid of troubles in trade in the nature of conspiracies and combinations is to remove the temptation. We probably could not reach the Standard Oil conspiracy or combination, and several other various important trusts, as they are called, in the United States by a modification of our protective tariff, but it is very certain that we should reach 90 per cent. of them. We would take the underpinning entirely away from 90 per cent. of the trusts and combinations and conspiracies that are forming all over the land if we should so modify the tariff as to remove the temptation to make them; but as long as we enact these temptations in the statute-book we can hardly denounce that as immoral or criminal which men do under our invitation.

There is a great deal of danger. I think I can see it in almost every direction in legislating upon questions of this kind. The Senator from Nevada [Mr. STEWART] has called attention to a very important topic in this connection. I do not know of anything that has a greater or a more direct impression upon our foreign commerce and our interstate commerce than the price of labor. There are combinations among our laboring men of various different fraternities continually being made for the purpose of raising the price of labor. The price of labor when raised by combination—or, if you please so to call it, by a conspiracy, or in the nature of a trust confided to the hands of some managing committee, some steering arrangement—combinations of that kind to raise the price of labor must necessarily increase the price of commodities in interstate commerce and international commerce, at least to the extent of the exports that we send abroad.

Now, while we are legislating against all such combinations and conspiracies that affect the price of commodities interchanged between the States of this Union, what are we to say to the men who, in their Knights of Labor and in their Wheels and in all of their various organizations, meet together for the very purpose of raising the price of labor in the particular industry in which they are concerned or the price of labor generally? Labor is a commodity bought and sold every hour in the day. It is so much a commodity as that we forbid its importation here when it comes under contract; we treat it just as we would spurious medicines, or base coin, or something of that sort; we tax it as we do oleomargarine. We treat labor precisely as if it were a commodity, and it is a commodity that is imported into this country.

If we pass a law here to punish men for entering into combination and conspiracy to raise the price of labor, what is the reason why we are not within the purview of the powers of Congress in respect to international commerce? Who can answer the proposition as a matter of law?

There is great danger in any direction you look in respect of such a measure as this, and I am afraid to take ground on it until that committee of this body which is charged with the consideration of judicial questions have had an opportunity to report a bill, or, if it can not agree upon a bill, to report that it can not agree. But it can agree upon certain principles that ought to control our legislation, and let us agree upon the bill, and in that way we shall be apt to come to some sedate and profitable conclusion about this great controversy, for it is a great controversy.

I think there has been as much ingenious argumentation upon this question as I have ever heard in the same length of time in the Senate of the United States, and it has taxed the abilities of almost every gentleman on this floor to find out exactly what is the extent and boundary of our power and what are the lawful methods by which we can put it into exercise in the Federal courts. It is a very intricate subject, and, in my judgment, we are going entirely too fast if we do not get the opinion of our Judiciary Committee upon it.

There is a feature in this case that nobody has ever suggested, so far as I have heard, that has always struck me with a good deal of force. I think a proceeding *in rem* can be had under a libel for condemnation of goods, wares, and merchandise carried between the States, to seize, condemn, and confiscate goods that may have been manufactured under a conspiracy or bought and collected together under a conspiracy to control the markets. That subject seems not to have had any attention from Senators here. I never have proposed to myself to interfere in any way to try to make the legislation one thing or the other except so far as my mere vote would go, but it seems to me there is a field here for the enterprise of Senators.

Here is a sugar trust in New York. They say it consists of a number of corporations that are banded together, who have their local habitation in various different States; but they refine sugar under a combination that puts the price up to a certain figure and does not allow it to go any lower than that. Now, when their sugar is in transit from New York to Chicago, what is the reason why some person may not seize it under a proceeding *in rem*, and in that way touch the very chord that would run to the heart of the whole establishment? Why could not that be done? It seems to me that is as easy a way to get at it as any you could mention, certainly far better than the declaration of nullity of the contract or referring some poor fellow who bought ten pounds to a Federal court somewhere to recover double damages according to the percentage of loss he sustained in the amount taxed upon him through the conspiracy.

The subject is not exhausted by any means. There is a great deal to it yet. Senators need not be in a hurry to get something on the statute-book to see if some court will not reverse what we are doing here. I trust the Senate of the United States on great questions of constitutional law affecting the jurisprudence of the United States will always be able to confine itself at least to that period of time when it has a sound and sedate judgment upon the proposition that it puts forward, especially when it is a new and a great one like this one. Unbecoming haste in a matter of this kind will recoil upon us, not merely in the laws set aside by the judgments of our tribunals, but it will recoil upon us, I am fearful, in the contempt that public opinion will have for this body. We ought to be able to interpret the Constitution of the United States or else give place to men who can do it. It is our business to do it; and I am opposed to seeing any measure go out of this body as an enactment merely as a tentative proposition or one that is experimental upon a question of constitutional law.

Here are gentlemen on both sides of this Chamber, some called State-rights men and others called Federalists; whether rightfully so denominated makes no difference. Here are gentlemen who have very strict opinions upon constitutional construction and others who are more liberal in their views. But gentlemen of both classes are objecting to this bill. They find difficulty in it. It strikes those who, like my colleague, say they are not hair-splitters, end foremost sometimes, and knocks them entirely out of position. Others it disturbs with technicalities and refinements and the like so as to disturb the pleasure of their dreams at night. There is difficulty in every direction. The unsettled opinion of Senators as expressed in this debate shows that there is difficulty in every direction; and we ought to appeal to the best organization which we have in this body to try to compose those difficulties, and get a bill back before us upon which we can agree at least on the principles of legislation, and after due effort conform our conduct to those principles.

Mr. President, I belong to what is called the State-rights school of politicians, and in season and out of season, I suppose, year after year, I stand here for the purpose of trying to protect the States of this Union against encroachment on the part of the Federal Government, because I believe that is one of the greatest duties of a Senator, and especially of a Democrat. I think it is a life-long task a man takes upon himself when he joins the Democratic party to try to protect the States in their autonomy and in their rights secured under the Constitution against Congressional encroachment. But, sir, in respect of this matter concerning trusts and combinations and conspiracies, I must say that I think the States are utterly derelict. They have the unquestioned power to handle and to punish every one of these conspiracies and combinations.

Why they do not do it is more than I can understand, unless I am prepared to accept the unpleasant allusion frequently made here that the Legislatures and the authorities of the State governments have not the virtue to withstand the power of the great corporations. My judgment is that to average them they are just as honest as Congress is, and as little likely to be corrupted as Congress is, and I think it is the mere lethargy of the different State governments, inspired by a too confident reliance upon the powers of Congress to remedy public evils, that is leading us to-day into this effort to do what the States themselves ought to do.

Take the cotton-seed-oil trust and take the action of the State authorities of Alabama upon that, the State in which cotton-seed oil was first produced and made an article of commerce. I remember a case in Montgomery where the great New York cotton-seed-oil trust, chartered under a New York law, I suppose, with \$30,000,000 capital or alleged capital, came there and offered a certain price to a young gentleman who had himself, much by his own labor, certainly out of his own resources, built a cotton-seed-oil factory. They could not agree about the price of it. He said he did not want to sell it; that it was a business he wanted to bring his children up to; that it was a nice business; he had gotten it together and completed it himself. He had already made 10,000 barrels of oil and he shipped it down to Savannah, and thence to New York, and thence to Italy, for the purpose of having it made into a first-class article of olive oil.

When this New York combine found that his ship had arrived in New York and found the ship upon which he had freighted his 10,000 barrels of oil, they bought 10,000 barrels and put it upon the same ship and consigned it to the same city. What was the result? When they got there they sold their oil at a dollar a barrel less than he could afford to take for his. They took the market away from him and convinced him that he had no market in the business of trying to make cotton-seed oil in Alabama; that he must surrender his possessions into the hands of these men; and they bought him out and turned him adrift. Now, the State of Alabama ought to have punished that. It should have made a condign example of the men who did that thing, who came there and threatened that they would destroy his business unless he would sell to them.

Mr. SHERMAN. How could the authorities of Alabama punish the combination in New York?

Mr. MORGAN. When they came to Alabama and made a proposition to him that unless he sold out they would establish their business

and break him up they committed an offense against the laws of Alabama.

Mr. SHERMAN. They probably sent some poor clerk down there to make that declaration.

Mr. MORGAN. Suppose they did. Probably he would have better sense the next time if he served a short term in the penitentiary for it.

Mr. SHERMAN. Yes; all that Alabama could do would be to take the clerk and send him to the penitentiary.

Mr. MORGAN. It may be so, and we shall not get anybody but clerks practically out of this measure that the Senator from Ohio has put in here. All the big fish will escape. The little fish are the men who will have the trouble. There will not be a suit brought in twenty-five years to come under the bill of the Senator from Ohio, if it becomes a law. What does a man get? Double damages. For what? The enhanced price that he has to pay for a commodity in the market. You would never trace it back to them in the world. You have got to identify the sugar, or the molasses, or whatever it is, and run it back to the manufacturer or to the refiner and prove the conspiracy. There would not be a recovery in twenty-five years, and it is not expected that there would be. This bill does not contemplate such a thing. This bill is a good preface to an argument upon the protective tariff when that comes up: "We have sunk the trust question out of sight by a bill that has smothered it for the present."

Mr. SHERMAN. Why could not the Senator's friend in Alabama sue the combination in the courts of the United States and make them pay for all the damages he suffered?

Mr. MORGAN. In the courts of the United States?

Mr. SHERMAN. Certainly, why not? Why could not your citizens, whom you describe so pathetically, sue in the Federal court under this bill?

Mr. MORGAN. He would find, as everybody else would find under the bill of the Senator, that it is cheaper not to sue. It is not a pleasant thing to have a lawsuit.

The Legislature of Alabama ought to have a law upon her statute-book now punishing that particular sort of conspiracy with imprisonment in the penitentiary. Whenever they reform their laws and put their machinery in operation to do justice to their own people, their people will not be here clamoring for Congress to stretch its powers inordinately to give them relief. That is what I am talking about, and as a State-rights man I say that the States are not doing their duty in this particular, and we ought to so inform them. Let them strike out on that line and protect their people, as they have a perfect right to do, and we shall hear no more about trusts and combinations and conspiracies.

Mr. VANCE. Mr. President, I never have a bill in which I feel any interest referred to this grand mausoleum of Senatorial literature, the Judiciary Committee, without feeling that I have attended a funeral. This occasion is no exception to that feeling. The grand air of magisterial dominion which surrounds those gentlemen who constitute that committee, the awful profundity and gravity with which they are enveloped, naturally tend to produce a funereal impression upon a serious mind, and the whole atmosphere seems to me resonant with the strains of that familiar old hymn:

Hark! from the tombs a doleful sound;
Mine ears attend the cry.
Come, living men, and view the ground
Where your bills must shortly lie.

[Laughter.]

I recollect very well when a bill was passed through this body forbidding the employment of any Senator or Representative as counsel for any railroad which had been subsidized by the Government. We all thought it was a mighty good bill and a mighty proper one, and so thought the Senate; but a motion to reconsider was made. The question was discussed, and it was finally proposed to refer it to the Judiciary Committee. On that occasion I bade my friend farewell. I was promised, however, that it should come back. It did come back, but, alas, it did not come back in the same body in which it went. It was Greece, but living Greece no more. It came back mangled and mutilated until its parent knew it not and disclaimed its paternity. [Laughter.]

Mr. President, I feel an interest in this bill. I feel that one class of the community in this American country of ours has not partaken of the general prosperity which the country has enjoyed for the last twenty years. A step has been taken to remove some of the obstructions to this prosperity which a portion of our fellow-citizens fail to enjoy. It may not be the proper step; there may be a better step, but it is a beginning, at all events.

Mr. President, I think if it were not so late in the evening and the Senate would give me its patient attention that I could demonstrate the fact that if a man desired to go to any given point he must start, and that he never would get there until after he did start, and my opinion is that we never shall get a bill for the suppression of the trusts and combinations which oppress a large portion of the American people so long as we consign all of our bantlings to the fostering care of the Judiciary Committee. I say it with all due respect to that great commit-

tee, of course. I am a man too cautious of my personal safety to desire to do anything that would bring upon me the enmity or the disregard of that august body. [Laughter.]

So, if it is the determination of the Senate to send this bill to the Judiciary Committee, to deliver the child for nurture to the persons having most interest in its death, I shall have sorrowfully to submit myself to that state of things, but I hope I may be pardoned for saying that I feel a good deal as we are given to understand the Apostle Paul felt when he took leave of the elders at Ephesus. Having told them that he should depart from them never more to return, the record says:

They all wept sore and fell on Paul's neck, sorrowing most of all for the words which he spake, that they should see his face no more.

I am satisfied, sir, that when this bill does come back it will be so mutilated, that it will have everything that can possibly be of any benefit to the people of this country so entirely eliminated and eradicated, that it will for practical purposes not be worth the paper that it is written upon, and the country will so accept it. The country knows the receptacles where we deposit our dead by this time. We can no longer hope to conceal them.

I heard of a Senator who once occupied a seat in this body who boasted that he was no milk-and-cider man, that he was a man of decision on all subjects. Said he, "When a question comes up before me I either vote for it or I vote against it, or I squat like a man." [Laughter.] Mr. President, the country has found out that when we desire the death of a bill and are not particularly anxious to put ourselves on record as having directly struck the blow which caused the demise, we refer it to the Judiciary Committee [laughter], where it sleeps the last sleep known to the literature of this Senate.

The VICE-PRESIDENT. Is the Senate ready for the question? The question is on the amendment offered by the Senator from Alabama [Mr. MORGAN] to the motion made by the Senator from Mississippi [Mr. GEORGE] to commit the bill to the Judiciary Committee.

Mr. GEORGE. I will accept the amendment if I have a right to do so.

The VICE-PRESIDENT. Is the Senate ready for the question?

Mr. SHERMAN. I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. REAGAN. What is the question?

The VICE-PRESIDENT. The motion made by the Senator from Mississippi to commit the bill to the Committee on the Judiciary with instructions.

Mr. REAGAN. I believe the Senator from Mississippi accepted the amendment of the Senator from Alabama.

The VICE-PRESIDENT. He did.

Mr. INGALLS. Let the pending question be now stated.

The VICE-PRESIDENT. The Chair omitted to state that the amendment was instructing the committee to report within twenty days. The roll will be called.

The Secretary proceeded to call the roll.

Mr. DIXON (when his name was called). I am paired generally with the Senator from South Carolina [Mr. HAMPTON], who was unavoidably called from the Chamber this afternoon. He said he would vote in favor of referring this bill to the Committee on the Judiciary. I am of the same opinion, and therefore I shall vote "yea."

Mr. DOLPH (when his name was called). I am paired generally with the senior Senator from Georgia [Mr. BROWN]. I do not know how he would vote on this subject, and I withhold my vote. I should vote against the motion to refer if I was at liberty to vote.

Mr. FAULKNER (when his name was called). I am paired with the Senator from Pennsylvania [Mr. QUAY].

Mr. MORGAN (when his name was called). I am paired with the Senator from New York [Mr. EVARTS].

Mr. PADDOCK (when his name was called). I am paired generally with the Senator from Louisiana [Mr. EUSTIS]. If agreeable to the Senator from West Virginia [Mr. FAULKNER] I suggest that he and I transfer our pairs, so as to pair the Senator from Louisiana [Mr. EUSTIS] with the Senator from Pennsylvania [Mr. QUAY], and then the Senator from West Virginia and I can both vote.

Mr. PASCO (when his name was called). I am paired with the Senator from Illinois [Mr. FARWELL] and therefore withhold my vote.

Mr. PLATT (when his name was called). I am paired with the Senator from Virginia [Mr. BARBOUR]. If he were present, I should vote "yea."

Mr. RANSOM (when his name was called). I am paired with the Senator from Michigan [Mr. STOCKBRIDGE]. I do not know how he would vote on this question. I should vote "yea," if he were present.

Mr. VANCE (when his name was called). I am paired generally with the Senator from Michigan [Mr. McMILLAN], who is not here. I should vote "nay," if he were present.

The roll-call was concluded.

Mr. PADDOCK. I desire to say that if the Senator from Louisiana [Mr. EUSTIS], with whom I am paired, were present, I should vote "nay" upon the proposition.

Mr. KENNA. I am paired on all questions, except the Blair bill, with the Senator from North Dakota [Mr. CASEY].

The result was announced—yeas 15, nays 28; as follows:

YEAS—15.

Bate,	Gray,	Jones of Arkansas,	Vest,
Blackburn,	Hawley,	Payne,	Walthall,
Dixon,	Higgins,	Stewart,	Wilson of Md.
George,	Hiscock,	Teller,	

NAYS—28.

Allen,	Davis,	Ingalls,	Plumb,
Allison,	Dawes,	McPherson,	Pugh,
Berry,	Frye,	Manderson,	Reagan,
Blair,	Gorman,	Mitchell,	Sherman,
Cockrell,	Hale,	Moody,	Turpie,
Coke,	Harris,	Morrill,	Washburn,
Cullom,	Hoar,	Pierce,	Wilson of Iowa.

ABSENT—39.

Aldrich,	Colquitt,	Hearst,	Ransom,
Barbour,	Daniel,	Jones of Nevada,	Sawyer,
Beck,	Dolph,	Kenna,	Spooner,
Blodgett,	Edmunds,	McMillan,	Squire,
Brown,	Eustis,	Morgan,	Stanford,
Butler,	Evarts,	Paddock,	Stockbridge,
Call,	Farwell,	Pasco,	Vance,
Cameron,	Faulkner,	Pettigrew,	Voorhees,
Casey,	Gibson,	Platt,	Wolcott.
Chandler,	Hampton,	Quay,	

So the motion to refer was not agreed to.

Mr. HOAR. What is now the pending question?

The VICE-PRESIDENT. The question now is on agreeing to the amendment submitted by the Senator from Texas [Mr. REAGAN].

Mr. HOAR. I inquire if that be an amendment to the entire bill, a substitute.

The VICE-PRESIDENT. It is not.

Mr. HOAR. I do not care about having it read at length, but I wished to know whether it was a substitute or not.

The VICE-PRESIDENT. It is an amendment adding new sections to the original bill or to the substitute for the original bill. Is the Senate ready for the question?

Mr. SHERMAN. We had better have the yeas and nays.

Mr. REAGAN. I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. GEORGE. I desire to ask the state of the question. Is the amendment of the Senator from Texas offered as a substitute for the bill?

The VICE-PRESIDENT. The amendment offered by the Senator from Texas, as the Chair understands, is an amendment to the so-called substitute of the Committee on Finance for the original bill.

Mr. GEORGE. And not a substitute for it?

The VICE-PRESIDENT. Not a substitute for the bill.

Mr. SHERMAN. It is an addition to the bill.

The VICE-PRESIDENT. Is the Chair correct in that understanding?

Mr. FRYE. Yes, that was so stated.

Mr. SPOONER. I rise to a parliamentary inquiry which I rather wish to address to the Senator from Texas. Is it not the intention of his amendment to take the place of the substitute reported by the Committee on Finance?

Mr. REAGAN. It is an amendment in addition to the amendment of the Committee on Finance.

Mr. BLAIR. I should like to hear the question stated. There is so much confusion that I do not know what the question is.

The VICE-PRESIDENT. The Chair will again state his understanding of the question before the Senate. It is on the amendment offered by the Senator from Texas [Mr. REAGAN] to the substitute agreed upon for the original bill, adding new sections to the substitute accepted for the original bill.

It is not in any sense a substitute for the original bill, but an amendment to the substitute which was accepted in place of the original bill.

The Secretary proceeded to call the roll.

Mr. DIXON (when his name was called). I am paired generally with the Senator from South Carolina [Mr. HAMPTON], who is unavoidably absent from the Chamber.

Mr. DOLPH (when his name was called). I again announce my pair with the senior Senator from Georgia [Mr. BROWN]. As I do not know how he would vote if present, I withhold my vote. If at liberty to vote, I should vote in the affirmative.

Mr. FAULKNER (when his name was called). I transfer the pair I have with the junior Senator from Pennsylvania [Mr. QUAY] to the senior Senator from Florida [Mr. CALL] and vote "yea."

Mr. MORGAN (when his name was called). I am paired with the Senator from New York [Mr. EVARTS].

Mr. PADDOCK (when his name was called). I am paired with the Senator from Louisiana [Mr. EUSTIS]. If he were here, I should vote "yea."

Mr. PASCO (when his name was called). I again announce my pair with the Senator from Illinois [Mr. FARWELL]. If he were present, I should vote "yea."

Mr. PLATT (when his name was called). I am paired with the Senator from Virginia [Mr. BARBOUR]. If he were present, I should vote "nay."

Mr. SAWYER (when his name was called). I am paired with the Senator from Georgia [Mr. COLQUITT].

Mr. VANCE (when his name was called). I withhold my vote in consequence of the pair which I have already announced.

The roll-call was concluded.

Mr. RANSOM. I am paired with the Senator from Michigan [Mr. STOCKBRIDGE]. If he were present, I should vote "yea."

Mr. VANCE. I transfer the pair which I have with the Senator from Michigan [Mr. McMILLAN] to the Senator from Louisiana [Mr. EUSTIS], and I desire to vote. I vote "yea."

Mr. PADDOCK. In accordance with the arrangement for the transfer of the pair of the Senator from Louisiana [Mr. EUSTIS] announced by the Senator from North Carolina [Mr. VANCE], I vote "yea."

The result was announced—yeas 34, nays 12; as follows:

YEAS—34.

Allen,	Faulkner,	Manderson,	Turpie,
Allison,	George,	Moody,	Vance,
Bate,	Gorman,	Paddock,	Vest,
Berry,	Gray,	Payne,	Walthall,
Blackburn,	Harris,	Pierce,	Washburn,
Cockrell,	Hawley,	Pugh,	Wilson of Iowa,
Coke,	Higgins,	Reagan,	Wilson of Md.
Cullom,	Ingalls,	Spooner,	
Davis,	Jones of Arkansas,	Teller,	

NAYS—12.

Aldrich,	Frye,	McPherson,	Plumb,
Blair,	Hiscock,	Mitchell,	Sherman,
Dawes,	Hoar,	Morrill,	Stewart.

ABSENT—36.

Barbour,	Colquitt,	Hale,	Platt,
Beck,	Daniel,	Hampton,	Quay,
Blodgett,	Dixon,	Hearst,	Ransom,
Brown,	Dolph,	Jones of Nevada,	Sawyer,
Butler,	Edmunds,	Kenna,	Squire,
Call,	Eustis,	McMillan,	Stanford,
Cameron,	Evarts,	Morgan,	Stockbridge,
Casey,	Farwell,	Pasco,	Voorhees,
Chandler,	Gibson,	Pettigrew,	Wolcott.

So the amendment was agreed to.

Mr. SHERMAN. Mr. President, I offer a proviso at the end of the first section of the bill reported by the Committee on Finance. I take this proviso from the amendment proposed by the Senator from Mississippi [Mr. GEORGE]. I do not think it necessary, but, at the same time to avoid any confusion, I submit it to come in at the end of the first section.

The CHIEF CLERK. It is proposed to add the following proviso to section 1:

Provided, That this act shall not be construed to apply to any arrangements, agreements, or combinations between laborers made with the view of lessening the number of hours of labor or of increasing their wages; nor to any arrangements, agreements, or combinations among persons engaged in horticulture or agriculture made with the view of enhancing the price of agricultural or horticultural products.

Mr. PLUMB. Let me suggest to the Senator from Ohio that the word "their" should come in there, so that the limitation should be upon the exercise of the combination concerning their own products and nobody else's. The point is, if that is carried out, the provisions of the bill would not apply to a person who happened to own a ten-acre tract of land who is engaged in horticulture or agriculture.

Mr. SHERMAN. Let the Senator look at the amendment and see where he will insert his modification. I took the proposition from the amendment of the Senator from Mississippi.

Mr. INGALLS. Let it be read again.

The VICE-PRESIDENT. The amendment will be again read.

The Chief Clerk read Mr. SHERMAN'S amendment.

Mr. PLUMB. Insert the word "their" before "agricultural."

Mr. SHERMAN. The word "their" ought to be inserted before "labor" and also before "agricultural."

Mr. TELLER. I should like to suggest to the Senator from Ohio that he add there something about associations as well as combinations.

Mr. SHERMAN. I do not think those words describe the arrangement.

Mr. TURPIE. I think the amendment would be still clearer by inserting the word "own" after "their," so as to read "their own."

Mr. SHERMAN. Yes, and inserting "associations," because that is what they are.

Mr. BLAIR. Would the Senator have any objection, also, to inserting words which would include those engaged in the cod-fisheries and the manufacture of boots and shoes? There is a good deal of that done up in New England. We do not raise a great deal of wheat and corn, but we do catch cod-fish; and there is a good deal done in my State in the boot and shoe business, and I am afraid, if we except those engaged in production out West, and I vote for that and do not include in the exception those manufacturing boots and shoes in New Hampshire, I shall get beaten next fall and never come back to the Senate again. [Laughter]. Down in Massachusetts they are in the cod-fish business, and I think the Senator from Massachusetts ought to look after that.

Mr. COKE. If in order, I will now offer the amendment I had proposed, which has been printed.

Mr. REAGAN. Before my colleague offers his amendment let us dispose of amendments to perfect the text. Is my colleague's amendment offered as an addition to the bill?

Mr. COKE. I offer mine as a substitute.

Mr. REAGAN. Before that is offered I desire to move an amendment to the second section of the original bill.

Mr. SHERMAN. There is a pending amendment.

The VICE-PRESIDENT. The question is on the amendment offered by the Senator from Ohio [Mr. SHERMAN], which will be read again as modified:

The Chief Clerk read as follows:

Provided, That this act shall not be construed to apply to any arrangements, agreements, or combinations between laborers, made with the view of lessening the number of hours of their labor or of increasing their wages; nor to any arrangements, agreements, associations, or combinations among persons engaged in horticulture or agriculture, made with a view of enhancing the price of their own agricultural or horticultural products.

Mr. PLATT. I should like to inquire of the Senator from Ohio whether he understands by this language agricultural products would include wool. They have, I believe, a wool-growing association—

Mr. BLAIR. There are not many sheep in Connecticut.

Mr. SHERMAN. I think it would include their own wool. [Laughter.]

Mr. PLATT. They have a wool-growers' association in Ohio which we have heard at times a great deal of, and I would suggest to the Senator from Ohio that when we are excepting certain classes of people from the effect of this bill it may be that when the bill comes to be enforced the wool-growers' association of Ohio will inquire why they were not included within the exception.

The VICE-PRESIDENT. Is the Senate ready for the question on the amendment of the Senator from Ohio? ["Vote!" "Vote!"] The amendment was agreed to.

Mr. REAGAN. I desire to offer an amendment in line 4 of section 2 of the committee's bill. After "United States" I wish to add the words "or any State," and then in the next line to strike out the words "without respect to the amount involved;" so as to make the section read:

SEC. 2. That any person or corporation injured or damaged 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 or any State of competent jurisdiction, 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.

The object is, in the first place, to give concurrent jurisdiction to the State courts in civil suits; of course in criminal prosecutions that could not be done; and to that end it would be proper to strike out the words "without respect to the amount involved," because the law of the United States and of the States would fix the jurisdictional amount, and those words would not be necessary.

Mr. HARRIS. Let the amendment be read from the desk.

The VICE-PRESIDENT. The amendment of the Senator from Texas will be read.

The CHIEF CLERK. In section 2, line 4, after "United States," it is proposed to insert the words "or any State," and, in line 5, to strike out the words "without respect to the amount involved;" so as to make the section read:

SEC. 2. That any person or corporation injured or damaged 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 or any State of competent jurisdiction, of any person or corporation a party to a combination described in the first section of this act, twice the amount of damages sustained and the costs of the suit, together with a reasonable attorney's fee.

Mr. SHERMAN. Those words were inserted with a view to giving a remedy to persons who had suffered in a minor degree. The jurisdictional amount in the courts of the United States is a pretty large sum; I understand \$2,000 is the minimum, and it seemed to the Committee on Finance when this was inserted that to limit the jurisdiction to cases of \$2,000 or over that amount would be to close the courts to most suitors. However, it is for the Senate to decide.

The VICE-PRESIDENT. Is there objection to the amendment?

Mr. REAGAN. I could not hear what the Senator from Ohio said.

The VICE-PRESIDENT. Will the Senate agree to the amendment of the Senator from Texas [Mr. REAGAN]?

Mr. SAWYER. What is the amendment?

Mr. TELLER. Let it be again reported.

The VICE-PRESIDENT. The amendment of the Senator from Texas will be again read.

The Chief Clerk read the amendment of Mr. REAGAN.

Mr. TELLER. It strikes me that the words proposed to be stricken out are most desirable to be retained. We want to give the United States courts jurisdiction without reference to the amount involved. It is the subject-matter simply that we want the court to have jurisdiction of, and not the amount, and if we limit the amount there is not one man out of a hundred who are damaged who will ever have an opportunity of getting redress. It may be that there will not be a case prosecuted where there is a large amount of damage. It is to be presumed that there may be cases gotten up for the purpose of trying to

abate what appears to be a sort of public nuisance. I think we had better let the parties go into court on any amount. If they are damaged by these proceedings which we are about to declare illegal, they ought to be allowed to sue, no matter what the amount of damage may be. I am opposed to the amendment.

Mr. PLATT. Mr. President, this is the old question which has been so frequently before Congress and before the Senate, where it is attempted to give State courts of all descriptions concurrent jurisdiction with the United States courts over remedies provided by United States statutes. It has, I think, never been done in Congress, though it has been often attempted. The result of it is to give every court in the United States, certainly every court that is a court of record, and justices of the peace, if they are courts of record, jurisdiction over remedies prescribed by United States statutes. I am opposed to it, as I have been in every case in which it has been attempted before Congress.

Mr. DAVIS. I suppose the amendment would amount to this: That the statute creates a cause of action under certain circumstances, and, that being the case, it gives the right to assert that cause of action in any court of competent jurisdiction. It is not a question of whether the amount involved or the person suing is the jurisdictional test, but the creation by statute of the universal right of action under certain circumstances, which can be enforced in any court of competent jurisdiction, State or national, especially if the jurisdiction of the national court is not made exclusive by the terms of the bill.

Mr. REAGAN. There are a number of statutes which I can not refer to now, but I have referred to them heretofore, saying, in effect, that there are a number of subjects in which civil suits under United States authority may be maintained in the State courts.

Mr. HOAR. Cases of suits against national banks, for example.

Mr. REAGAN. Yes, sir, and a number of other subjects; so that I do not think there is any question about that. My reason for presenting this amendment is that under the original bill persons of moderate means would not be able to go into the Federal courts and employ lawyers and take witnesses there and prosecute suits, so that, while the bill would nominally afford a remedy for the evils, it would really be no remedy at all for the great class of persons who might be injured by the sort of things we are legislating against.

If the law is to be efficient to give a remedy, it seems to me it ought to be put in courts that will be accessible to litigants and as cheaply accessible to the litigants as we can make them. If, as suggested by the Senator from Colorado [Mr. TELLER], there is objection to striking out the words in the fifth line, I have no particular choice about that. I thought, perhaps, it would be safest to let the laws of the United States and of the States fix the jurisdictional amount, but if it is thought better that that part should stand as it is in the committee's bill, I have no objection. If any one objects, I will limit the amendment to the first part which I have proposed.

Mr. SPOONER. Let the amendment be again reported.

The VICE-PRESIDENT. The amendment will be again read.

The CHIEF CLERK. In line 4 of section 2, after "United States," it is proposed to insert "or any State;" so as to make the section read:

SEC. 2. That any person or corporation injured or damaged 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 or any State of competent jurisdiction without respect to the amount involved.

Mr. TELLER. I have no objection to the attempt to confer upon the State courts authority to hear these cases. Of course, that will depend upon what the State says about it. What I objected to was the provision striking out the words "without respect to the amount involved," in line 5.

Mr. SHERMAN. That part of the amendment is withdrawn.

Mr. TELLER. I was under the impression that the present statutes which require that there shall be a certain amount involved to give jurisdiction might be invoked against these claimants, and I think it would; but, if that is withdrawn, I have no objection to the rest of the amendment.

The VICE-PRESIDENT. The question is on agreeing to the amendment offered by the Senator from Texas [Mr. REAGAN] as modified.

The amendment was agreed to.

Mr. HOAR. I move now to strike out, beginning in line 4 of section 1 of the committee's substitute, from the word "corporations," at the end of that line, down to the word "thereof," in line 7, so that the bill will then punish these illegal combinations whether they are in the same State or in different States.

The VICE-PRESIDENT. The amendment will be reported.

The CHIEF CLERK. In line 4 of section 1, after the word "corporations," it is proposed so strike out all down to and including the word "thereof," in line 7, as follows:

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.

So as to read—

Mr. HOAR. Before the Secretary proceeds to read, I wish to say that the words "or both" should not be included in the language to be stricken out. The amendment should begin with the words "of different States," in the fifth line.

The CHIEF CLERK. So as to read:

That all arrangements, contracts, agreements, trusts, or combinations between two or more citizens or corporations, or both, 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, etc.

The amendment was agreed to.

Mr. INGALLS. What became of the amendment I offered some time since?

The VICE-PRESIDENT. The amendment next in order is the amendment of the Senator from Kansas [Mr. INGALLS], which will be read.

The CHIEF CLERK. It is proposed to add to the bill as new sections the following:

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

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

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

Mr. INGALLS. In section 4, after the first word "That," I ask leave to modify the amendment by inserting the following words:

For the purpose of preventing and suppressing, as far as may be, the dealing in options and futures as herein defined.

The PRESIDING OFFICER (Mr. CULLOM in the chair). The section will be read as modified by the Senator from Kansas.

The Chief Clerk read section 4 as modified, as follows:

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

Mr. HOAR. I desire to inquire whether any Senator asked for the reading of this amendment in full. As it has been read more than once, I do not believe that it is necessary to read it through again.

The PRESIDING OFFICER. The present occupant of the chair is not aware whether it has been heretofore read.

Mr. PADDOCK. It has been read at length before.

Mr. HOAR. I suggest that the Chair ask for unanimous consent that its further reading may be dispensed with.

The PRESIDING OFFICER. If no further reading of the amendment be called for it will be dispensed with.

The remaining sections of the amendment are as follows:

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

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

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

SEC. —. That it shall be the duty of every person, copartnership, associa-

tion, or corporation, on the first day of the week next succeeding the date of the certificate issued to them, and on the first day of each and every week thereafter, to make to the collector of the district in which any "options" or "futures" contract or agreement has been made full and complete return and report under oath of any and all such contracts or agreements made or entered into by such person, copartnership, association, or corporation during the previous week, together with a statement of the article or articles embraced in or covered by such contracts or agreements, and the amounts, respectively, of each, and the name of the party or parties with whom such contracts or agreements have been made, and at the same time to pay to such collector the amount of the tax hereinafter required of 5 cents per pound on each and every pound of cotton and of beef, pork, lard, or other hog and cattle products, and of 20 cents per bushel on each and every bushel of any of the other articles mentioned in section 3 of this act, which are the subject of or covered by such contracts or agreements, or any of them, for which sums such collector shall give his receipt to the party so paying, and the sums so collected shall be accounted for by the collector as provided by law in respect to other taxes collected by him.

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

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

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

Mr. HOAR. I should like to ask the Senator from Kansas whether it would not be best to insert in the second section:

Provided, That this shall not apply to contracts or agreements for articles less than \$50 in value to be delivered at one time.

Literally construed, this section would prohibit a man's grocer from engaging to deliver any farm product or articles in common family use. It seems to me there should be some limit in amount. I will suggest an amendment in these words:

Provided, That this act shall not apply to contracts for the delivery at any one time of articles less than \$50 in value.

The PRESIDING OFFICER. The amendment to the amendment will be stated.

The CHIEF CLERK. It is proposed to add to section 2 the following proviso:

Provided, That this act shall not apply to contracts for the delivery at any one time of articles less than \$50 in value.

The PRESIDING OFFICER. This amendment to the amendment will be considered adopted unless objection is made. The Chair hears no objection. The question now is on the adoption of the amendment offered by the Senator from Kansas as amended.

The amendment as amended was agreed to.

Mr. HARRIS. Mr. President, I am inclined to ask that the bill as amended may be printed and that the Senate either go into executive session or adjourn, and let us see in the morning exactly what form the bill is in. I ask that it be printed in bill form with the amendments.

Mr. FRYE. If we do that the debate will last three days longer.

The PRESIDING OFFICER. Does the Senator make any motion? Mr. HARRIS. I move that the Senate proceed to the consideration of executive business.

Mr. SHERMAN. I trust not. I hope we shall remain and pass the bill.

The PRESIDING OFFICER. The question is on the motion of the Senator from Tennessee.

The motion was not agreed to.

The PRESIDING OFFICER. Are there further amendments to the bill as in Committee on the Whole?

Mr. GEORGE. What became of the amendment of the Senator from Kansas [Mr. INGALLS]?

The PRESIDING OFFICER. The amendment was adopted.

Mr. COKE. I desire, if I can get it in the proper shape, to offer what I send to the desk as additional sections to the bill.

The PRESIDING OFFICER. The amendment of the Senator from Texas [Mr. COKE] will be read.

The CHIEF CLERK. It is proposed to add to the bill the following:

That a trust is a combination of capital or skill by two or more persons, firms, or corporations for the purpose of creating or employing restrictions on trades or limiting the production, increasing or reducing the price of merchandise or commodities, or preventing competition in the making, manufacture, sale, or purchase of merchandise or commodities, or creating a monopoly in the manufacture, making, sale, or purchase of any merchandise or commodity with intent to forestall the market value of any merchandise or commodity.

SEC. —. That the formation or organization of a trust within the Territories of the United States or the District of Columbia is hereby declared to be against public policy and unlawful.

SEC. —. That any person acting in his own behalf or as the agent, attorney, or representative of any firm, copartnership, corporation, or any association whatsoever, who shall in any Territory or the District of Columbia aid in the organ-

ization of a trust, or who shall be a party thereto or in any manner interested therein, or who shall, after the passage of this act, knowingly aid in the business of a trust heretofore organized, or be in any way interested therein, 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.

SEC. —. That all contracts made in either of the Territories of the United States or District of Columbia by a trust, or by any person, firm, or corporation acting for a trust in furtherance of the object of such trust, or in respect of the price or sum to be paid for any commodity or merchandise controlled or handled by such trust, are hereby declared to be illegal and against public policy.

SEC. —. 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. —. 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 or 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 Territory 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. —. 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.

SEC. —. That all laws and parts of laws inconsistent with the provisions of this act be, and the same are hereby, repealed.

Mr. SHERMAN. I move that the amendment lie upon the table. This amendment is entirely inconsistent with the bill as it has already been acted upon.

The PRESIDING OFFICER. The Senator from Ohio moves that the amendment be laid on the table.

Mr. COKE. I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. COKE. Mr. President, it was my purpose—

The PRESIDING OFFICER. Debate is not in order.

Mr. SHERMAN. I do not wish to cut off the Senator from Texas from speaking on his own amendment. I will withdraw the motion for the present, but after he gets through I will renew the motion.

The PRESIDING OFFICER. By unanimous consent, the Senator from Texas will proceed.

Mr. HARRIS. The Senator from Ohio withdraws the motion until the Senator from Texas can be heard.

The PRESIDING OFFICER. The Senator from Texas will proceed.

Mr. COKE. My proposed substitute was printed several days ago and laid upon the table. I desire to say a word or two in explanation of my reasons for offering it. It was my purpose to introduce it, if I could have done so, prior to the introduction of the amendment of the Senator from Kansas [Mr. INGALLS], because I did not wish to antagonize that amendment. This was intended as a substitute for the original bill and for any amendment which might be made to it, and I propose, if I can do so in accordance with parliamentary law, to so shape my action with reference to it as to seek to have this amendment, which I now propose, put in the place of the original bill and its amendments, except the amendment of the Senator from Kansas. As I said, I favor the amendment of the Senator from Kansas. I desire to put this measure in the place of the original bill as amended by the amendment of my colleague from Texas. How I shall do that, I am not now fully advised, but I will attempt to do it in proper parliamentary form.

This amendment contains in its first clause a definition of trusts and combinations. It contains in its second clause a declaration that such trusts and combinations are contrary to public policy and unlawful. The third clause denounces the action of persons acting in their own behalf or as agents, attorneys, or representatives of any firm, copartnership, corporation, or any association whatsoever, who shall in any Territory or the District of Columbia aid in the organization of a trust, etc., and declares that such persons shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than \$500 nor more than \$10,000.

In theory the amendment is operative only in the Territories and the District of Columbia until it gets to the fifth section, and that section declares:

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.

Section 6 provides penalties for the breach of the other sections, making it a misdemeanor punishable by fine and by imprisonment in the penitentiary.

Section 7 is the section which requires the President of the United States, when advised that a trust has been or is about to be organized

for either of the purposes named in the first section, to suspend the collection of import duties on articles the subject-matter of such trust.

There is no bill, there has been none before the Senate—and the bill which has already been adopted in the amended form now before the Senate is like all the others—that is not seriously doubted as to its constitutionality by the legal talent of this body.

It is demonstrable that the bill of my colleague, as well as that of the Senator from Ohio, being the original bill amended by that of my colleague, is as liable to all of the objections made by the Senator from Mississippi [Mr. GEORGE] in his argument on this subject a few days ago as was the bill then before the Senate. A brief reference to the bill of my colleague will show this. Bearing in mind that interstate commerce commences only when the product gets into the hands of the common carrier for transportation to another State and ends as soon as it reaches its destination there, I call attention to some of the provisions of the amendment submitted by my colleague. The first thing denounced is:

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

Restrictions in trade is a very general proposition. There may possibly be found some restrictions in commerce after the product has gotten into the interstate channel, but it will be extremely rare that such will be the case. Restrictions, if any, will occur almost universally before the product goes into commerce at all and when under State jurisdiction, out of the reach of Congressional legislation.

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

These things must result from the production of the commodities or the suppression of their production in the States. They must occur before interstate commerce commences in the commodities, and therefore outside of and beyond the jurisdiction of Congress, and wholly under State jurisdiction.

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

How is competition to be prevented? Every combination must have a local habitation and a name. It must be in a State, and of course under the local jurisdiction. All the conditions denounced in that clause are things that must necessarily occur before the product gets into the channel of interstate commerce where the jurisdiction of Congress can take hold of it.

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.

All the things forbidden in this bill are acts. They are acts which are done in a State, under State, not Congressional, jurisdiction, and are acts which are done before the products get into interstate commerce, and therefore before they come under the jurisdiction of Congress. The intention to do these things contravenes no law. The intention amounts to nothing. Although there may be goods manufactured on one bank of the Mississippi River, in St. Louis, intended to be transported for consumption across into Illinois, that intention cuts no figure whatever in the consideration of the transaction until the goods are actually put into the hands of the common carrier to be taken over the Mississippi River, and as soon as they land in the State of Illinois are again outside of Congressional jurisdiction, and under the State jurisdiction of Illinois.

You may take the bill of my colleague, you may take the bill of the Senator from Ohio, examine them and test them under the rulings of the Supreme Court which we have heard cited here, and they are clearly and, as it seems to me, grossly unconstitutional. I want a bill that will stand. I want a bill that shall not be a promise to be broken, that shall not be a delusion and a sham.

Mr. President, the bill of my colleague is infinitely better and stronger than that of the Senator from Ohio. There is greatly more force and vitality in it, and yet I challenge any man to answer the arguments which can be made against its constitutionality. If you read the different propositions contained in the first, second, third, fourth, and fifth clauses they are plausible, but will not bear analysis or close inspection.

We are all working for the same end. We are all desiring the same purpose. We all want a bill that will accomplish some good, that will relieve the people of the robbery being perpetrated on them, one that the Supreme Court will sustain; and hence we have been offering amendments and suggestions with reference to the subject.

The measure which I have offered I believe to be clear of any constitutional objection. I believe it would be sustained by the Supreme Court. It co-operates with the States, it invokes the power and authority of the States in their own behalf, and does not act upon a State except in aid of her own action.

If there is a State that has not acted, the people of that State will see that they should act in order to get the benefit of the protection of this law if it shall be passed by Congress. If they want the protection they will enact statutes on this subject.

We have all seen that Congress has not the power to deal fully with this subject. My amendment exhausts the power of Congress, and then uses all the aid the States can give in order to carry out its purpose.

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

Mr. COKE. Certainly.

Mr. BLAIR. The Senator claims that his bill, or amendment, is stronger than that of his colleague. I understood him to say so.

Mr. COKE. I think so.

Mr. BLAIR. The suggestion I make is that, if the Senator says his colleague's bill is infinitely stronger than that of the Senator from Ohio, I should like to know how his can be any stronger than his colleague's.

There is another question. I should like to know whether in striking out it strikes out all but the amendment of the Senator from Kansas. If so, what, then, will become of the proviso of the Senator from Ohio, exempting the farmers from prosecution for combinations and trusts and the like?

Mr. COKE. We will not strike that out. I did not propose to strike that out.

Mr. BLAIR. I thought the line was very strictly drawn.

Mr. COKE. I say my colleague's bill is stronger than that of the Senator from Ohio. I regard the bill of the Senator from Ohio as being almost without a clause for its enforcement.

The last section of his bill reads thus:

SEC. 2. That any person or corporation injured or damaged 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.

How would a citizen who has been plundered in his family consumption of sugar by the sugar trust, or in his consumption of cotton-bagging under the trust covering that indispensable article, or in his consumption of iron or steel by the iron and steel trust recover his damages under that clause? It is simply an impossible remedy offered him. The bill is as vague as the world.

Mr. BLAIR. Without form and void?

Mr. COKE. I do not believe that a recovery can be had under it. It is a wasp without a sting; it is a law without a clause for its enforcement. If the party damaged, as has been said heretofore in this debate, were a great corporation, a wealthy association, it could employ lawyers and perhaps be able to show some direct damage, but how could the consumers of the articles produced by these trusts, the great mass of our people—the individuals—go about showing the damages they had suffered?

How would they establish the damage which they had sustained so as to get a judgment under this bill? I do not believe they could do it. I do not believe it is possible to do it. I think the constituents of all of us, the consumers of products which are raised and manufactured in this country, would be absolutely without a remedy under the bill of the Senator from Ohio. The bill of my colleague is more specific and contains clauses under which it can be strictly and fully enforced if the courts should hold it constitutional. But, as I remarked before, I do not think that either of these bills is constitutional and I have offered this amendment hoping that it may be adopted. If it shall be adopted, I shall move to strike out—

The PRESIDING OFFICER. The Chair will suggest to the Senator that if he desires to move to strike out all of the bill after the enacting clause down to a particular line of a particular clause, and in lieu thereof to insert his amendment, the Chair thinks that would be in order.

Mr. COKE. Then I make the motion to strike out as indicated in the beginning of my remarks.

Mr. HOAR. What is the question?

The PRESIDING OFFICER. The question is on the amendment of the Senator from Texas [Mr. COKE] to strike out all of the original bill after the enacting clause and the amendments heretofore adopted, except that offered by the Senator from Kansas [Mr. INGALLS], and insert the amendment last read in lieu thereof.

Mr. COKE. I do not mean to strike out the proviso adopted on the motion of the Senator from Ohio [Mr. SHERMAN].

Mr. SHERMAN. I move that the amendment lie on the table.

Mr. REAGAN. I should be glad if the Senator from Ohio would allow me to say a few words. I do not want to tax the Senate, but I should like a minute or two, and then I will yield to the Senator to renew his motion.

Mr. SHERMAN. I should like a minute or two myself to say something on the amendment, but if I yield to the Senator from Texas I shall be compelled to yield to others. So I must insist on the motion.

The PRESIDING OFFICER. The Senator from Ohio declines to yield. The question is on the motion of the Senator from Ohio to lay on the table the amendment of the Senator from Texas [Mr. COKE], which is to strike out all of the original bill and the amendments heretofore adopted, except that offered by the Senator from Kansas [Mr. INGALLS] and the amendment offered by the Senator from Ohio [Mr. SHERMAN], and insert the amendment of the Senator from Texas.

Mr. HARRIS. I ask for the yeas and nays.

Mr. COKE. I ask the Senator from Ohio to give us a square vote on my proposition.

Mr. SHERMAN. A square vote can be had on the motion to lay on the table.

Mr. COKE. Very well.

The PRESIDING OFFICER. The Chair would suggest that it is impossible to take a vote including the amendment in reference to arrangements, combinations, etc., because it comes in the middle of the original bill in such a way that it can not be touched.

Mr. HARRIS. The suggestion of the Chair is quite right, but I desire to suggest that the Senator from Texas can not exclude if he moves to strike out all of the original bill, but he may afterwards amend, if his amendment is agreed to, in the Senate, so as to insert that language.

Mr. COKE. Very well, then; I accept the suggestion of the gentleman from Tennessee, and if my motion prevails I shall move in the Senate to restore the proviso offered by the Senator from Ohio.

The PRESIDING OFFICER. The motion is to strike out all of the bill down to the amendment of the Senator from Kansas [Mr. INGALLS] and insert the following—

Mr. FRYE. That has been read.

Mr. GORMAN. I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. SHERMAN. The motion is to lay the amendment on the table.

The PRESIDING OFFICER. The Senator is correct. The motion is to lay the amendment on the table. The Secretary will call the roll on that motion.

The Secretary proceeded to call the roll.

Mr. DIXON (when his name was called). I am paired generally with the Senator from South Carolina [Mr. HAMPTON].

Mr. DOLPH (when his name was called). I again announce my pair with the senior Senator from Georgia [Mr. BROWN]. I should vote in favor of the motion if he were present.

Mr. FAULKNER (when his name was called). I transfer my pair with the junior Senator from Pennsylvania [Mr. QUAY] to the senior Senator from Florida [Mr. CALL], and vote "nay."

Mr. HISCOCK (when his name was called). I am paired with the Senator from Arkansas [Mr. JONES], or I should vote "yea."

Mr. BERRY (when the name of Mr. JONES, of Arkansas, was called). As stated by the Senator from New York [Mr. HISCOCK], my colleague [Mr. JONES] is paired with that Senator. My colleague would vote "nay" if present.

Mr. PASCO (when his name was called). I again announce my pair with the Senator from Illinois [Mr. FARWELL]. If he were present, I should vote "nay."

Mr. PLATT (when his name was called). I am paired with the Senator from Virginia [Mr. BARBOUR]. If he were present, I should vote "yea."

Mr. RANSOM (when his name was called). I am paired with the Senator from Michigan [Mr. STOCKBRIDGE]. If he were present, I should vote "nay."

Mr. SAWYER (when his name was called). I am paired with the Senator from Georgia [Mr. COLQUITT]. If he were present, I should vote "yea."

The roll-call was concluded.

Mr. PADDOCK. The Senator from Michigan [Mr. McMILLAN] is paired with the Senator from Louisiana [Mr. EUSTIS] by the transfer of pairs.

Mr. FRYE. My colleague [Mr. HALE] is necessarily detained from the Chamber, and is paired with the Senator from Kentucky [Mr. BECK].

Mr. SAWYER. I reserved the right to vote to make a quorum. I understand a quorum has not yet voted, and I therefore vote "yea."

Mr. HISCOCK. I suggest to the Senator from Arkansas [Mr. BERRY] that the pair between his colleague and myself be transferred, if there is no objection.

Mr. BERRY. I have no objection to the transfer.

Mr. HISCOCK. I transfer my pair with the Senator from Arkansas [Mr. JONES] to—with whom is the Senator from Florida [Mr. PASCO] paired?

Mr. PASCO. I am paired with the Senator from Illinois [Mr. FARWELL].

Mr. HISCOCK. I transfer my pair with the Senator from Arkansas [Mr. JONES] to the Senator from Illinois [Mr. FARWELL] and vote "yea."

Mr. PASCO. Under that arrangement I am at liberty to vote. I vote "nay."

The PRESIDING OFFICER, Mr. CULLOM (after having voted in the affirmative). The present occupant of the chair was paired with the Senator from Delaware [Mr. GRAY] whom he does not see present, and he will therefore withdraw his vote.

The result was announced—yeas 26, nays 16; as follows:

YEAS—26.

Aldrich,
Allen,
Allison,
Blair,
Chandler,
Davis,
Frye,

Hawley,
Higgins,
Hiscock,
Hoar,
McPherson,
Manderson,
Mitchell,

Moody,
Morrill,
Paddock,
Pierce,
Reagan,
Sawyer,
Sherman,

Spooner,
Stewart,
Teller,
Washburn,
Wilson of Iowa,

NAYS—16.

Bate,
Berry,
Blackburn,
Cockrell,

Coke,
Faulkner,
George,
Gorman,

Harris,
Pasco,
Pugh,
Turpie,

Vance,
Vest,
Walthall,
Wilson of Md.

ABSENT—40.

Barbour,
Beck,
Blodgett,
Brown,
Butler,
Call,
Cameron,
Casey,
Colquitt,
Cullom,

Daniel,
Davies,
Dixon,
Dolph,
Edmunds,
Eustis,
Evarts,
Farwell,
Gibson,
Gray,

Hale,
Hampton,
Hearst,
Ingalls,
Jones of Arkansas,
Jones of Nevada,
Kenna,
McMillan,
Morgan,
Payne,

Pettigrew,
Platt,
Plumb,
Quay,
Ransom,
Squire,
Stanford,
Stockbridge,
Voorhees,
Wolcott.

So the motion to lay on the table was agreed to.

The PRESIDING OFFICER. Are there further amendments in Committee of the Whole?

Mr. GEORGE. Mr. President, I gave notice of an amendment and had it printed, which I intended to offer, but substantially the proposition of that amendment is contained in the amendment of the Senator from Texas [Mr. COKE], and as that has been voted down I do not wish to detain the Senate by offering the amendment of which I gave notice.

Mr. STEWART. I offer an amendment to come in in section 1, line 20, after the word "articles," by inserting "or of the value of money by which such cost may be advanced or reduced."

The PRESIDING OFFICER. The amendment will be reported.

The CHIEF CLERK. In section 1, line 20, after the word "articles," it is proposed to insert:

Or of the value of money by which such cost may be advanced or reduced.

Mr. HOAR. I move to amend, and give notice of a motion to amend, after the word "money," by inserting "or of gold or silver."

The PRESIDING OFFICER. If there be no objection, the amendment will be considered as agreed to.

Mr. PLATT. What is the question?

The PRESIDING OFFICER. The question is on the adoption of the amendment of the Senator from Nevada [Mr. STEWART]. The Secretary will again report the amendment.

Mr. PLATT. An amendment has been offered to that amendment.

Mr. HOAR. Has the Chair stated the question on my amendment to the amendment of the Senator from Nevada?

Mr. STEWART. I wish to make a remark in regard to my amendment. It is offered in as good faith as anything in this bill. Every time there is a scheme to affect the price of products, the first thing that is done is for the operators to form a combination to borrow the money from the banks, lock it up, and so make money tight, and they make it a regular business in every gambling center in the United States by forming combinations of that character.

The PRESIDING OFFICER. The amendment to the amendment offered by the Senator from Massachusetts [Mr. HOAR] will be stated.

The CHIEF CLERK. In the proposed amendment, after the word "money," it is moved to insert "or of gold or silver."

Mr. HARRIS. Let the whole amendment be read, as it will be if amended as proposed by the Senator from Massachusetts.

The PRESIDING OFFICER. The amendment as proposed to be amended will be read.

The CHIEF CLERK. In the proposed amendment, after the word "money," it is proposed to insert the words "or of gold or silver;" so that the amendment as amended will read:

Or of the value of money or of gold or silver by which such cost may be advanced or reduced.

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

Mr. STEWART. I think that confuses it. My amendment is simply directed against combinations in money for the purpose of affecting prices as part of a gambling scheme.

Mr. HOAR. Will the Senator from Nevada inform the Senate why an unlawful combination of this kind to raise the price of gold or silver is not as reprehensible as anything in this bill?

Mr. PLATT. That is already in the bill.

Mr. STEWART. But it appears that the Government by law is engaged in raising the price of gold and depressing the price of silver. You will have to make it unlawful for the United States to do that.

The PRESIDING OFFICER. The first question is on the amendment offered by the Senator from Massachusetts.

Mr. ALLISON. I do not think there is any serious objection to advancing the price of silver, if we can. I should like to see both gold and silver at par with each other. I think, perhaps, that the Senator from Massachusetts would strike out silver and let it stand upon the advance of gold.

Mr. ALDRICH. A combination to decrease the price of silver, it may be.

Mr. ALLISON. Not the amendment as proposed.

Mr. ALDRICH. As I understand the proposition—

Mr. INGALLS. Let us hear it read again.

The PRESIDING OFFICER. The reading of the amendment offered by the Senator from Massachusetts is again called for.

The CHIEF CLERK. In the proposed amendment, after the word "money," it is proposed to insert "or of gold or silver," so as to read: Of the value of money or of gold or silver by which such cost may be advanced or reduced.

Mr. TELLER. Mr. President, it is quite evident that we can not finish this bill to-night, and I move that the Senate do now adjourn.

Mr. SPOONER. I ask the Senator to yield to me to have an order made that this bill and the amendments may be printed.

Mr. TELLER. I will yield for anything of that kind.

Mr. SHERMAN. Before the motion to adjourn is put, I ask unanimous consent to fix an hour to-morrow when the final vote shall be taken on this bill.

The PRESIDING OFFICER. The Senator from Ohio, who has the bill in charge, asks that an hour may be fixed to-morrow when the vote shall be taken.

Mr. INGALLS and others. Say 3 o'clock.

Mr. HARRIS. I do not think it probable that the Senate is going to agree to take the final vote at any particular hour, but I was thinking of appealing to the Senator from Ohio to consent that this bill may be printed as amended, so that on to-morrow we can see exactly what we have done and how the bill stands as amended.

Mr. SHERMAN. The order to print has already been made, as I understand.

The PRESIDING OFFICER. The Senator from Wisconsin [Mr. SPOONER] has asked that the bill may be printed with the amendments. That order will be made, if there be no objection.

Mr. SHERMAN. I have no objection to having the bill and amendments printed, but I hope the Senate will be ready to say that at a certain hour to-morrow the debate shall close and the vote be taken.

Mr. HARRIS. So far as I am personally concerned, I shall be ready to vote at any hour to-morrow or any other day, but there are various Senators who may perhaps desire to make suggestions, and the suggestions I have heard made I have found profitable, and I am not unwilling to listen to them.

Mr. SHERMAN. I give notice, then, as I can not do anything more now, that after the morning business to-morrow I shall appeal to the Senate to finish this bill as soon as possible.

Mr. TELLER. I insist on my motion.

The PRESIDING OFFICER. The question is on the motion of the Senator from Colorado that the Senate adjourn.

The motion was agreed to; and (at 6 o'clock and 4 minutes p. m.) the Senate adjourned until to-morrow, Wednesday, March 26, 1890, at 12 o'clock m.

HOUSE OF REPRESENTATIVES.

TUESDAY, March 25, 1890.

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

The Journal of yesterday's proceedings was read and approved.

PURSUIT OF HOSTILE INDIANS, ETC.

The SPEAKER laid before the House the following message of the President of the United States; which was read, and, with the accompanying documents, referred to the Committee on Foreign Affairs, and ordered to be printed:

To the House of Representatives:

In answer to the resolution of the House of Representatives of the 8th instant, in relation to the employment by the regular Army of the United States of Indian scouts for the purpose of pursuing hostile Indians in their raids in the territory of the United States and Mexico, and in regard to the proposed transfer of the Apache Chiricahua Indians from Mount Vernon Barracks, Alabama, to Fort Sill, Indian Territory, I transmit herewith a communication from the Secretary of State on the subject, together with the accompanying papers.

BENJ. HARRISON.

EXECUTIVE MANSION, March 24, 1890.

ADDITIONAL LAND OFFICES IN MONTANA.

The SPEAKER also laid before the House the following amendment of the Senate to the bill (H. R. 525) to establish two additional land offices in the State of Montana:

On page 2, line 18, after "the," insert "town."

Mr. CARTER. I move that the House concur in this amendment. The amendment was concurred in.

LEAVE OF ABSENCE.

Mr. WADE, by unanimous consent, obtained leave of absence for ten days, on account of sickness in his family.

HEIRS OF JOHN JONES AND OTHERS.

The SPEAKER. The Chair desires to lay before the House a bill which was sent for by resolution of the House, having been erroneously sent to the Senate without having been passed by the House. The Clerk will read the title of the bill.

The Clerk read as follows:

A bill (H. R. 2239) for the relief of the heirs of John H. Jones and of the heirs of Thomas D. Harris.