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SIXTEENTH AMENDMENT
CONGRESSIONAL DEBATE HIGHLIGHTS

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1 Legislative Intent of President Taft

44 Cong.Rec. 3344 (June 16,1909): "The decision in the Pollock case left power in the National Government to levy an excise tax which accomplishes the same purpose, as a corporation income tax, but is free from certain objections urged to the proposed income tax measure. I, therefore, recommend an amendment to the tariff bill imposing upon all corporations and joint stock companies for profit, except National banks (otherwise taxed) savings banks and savings and loan associations, an excise tax measured by two percent on the net income of such corporations. **This is an excise tax upon the privilege of doing business as an artificial entity and of freedom from a general partnership liability enjoyed by those who own the stock.**"

2 Issues of the Day

2.1 Income Tax

44 Cong.Rec. 4013 (1909): "That the language has been carried along through a series of decisions of the court, where it was held various provisions of taxation not to impose direct taxes, and therefore not to be subject to the constitutional provision for apportionment. It has spoken of them in slightly varying forms of language, as being with respect to the use or the privilege or the business or the facility or carryong on business; thus attaching the tax not to the thing, not to the property, but to the incorporeal, intangible privilege or power or process. These words are designed to accomplish that; and I think they are taken from the very words of the court in the Spreckels Case."

44 Cong.Rec. 4393 (1909): "I agree with the chairman of the Ways and Means Committee (Mr. Payne), who made the opening remarks in this discussion, that we ought to have the power to lay an income tax in time of war, but I am not in favor of giving this Government the power to lay an income tax in time of peace. With an amendment limiting it to time of war or other extraordinary emergencies, I would gladly vote for it; yes, I would vote to take every dollar of the property of every citizen of the United States, if need be, to defend the honor, dignity, or life of this Nation in the stress of war; but when it comes to a question of current expenses in time of peace, I would cut the expenses of the Government so as to keep them within our natural income."

2.2 Election of Senators: 44 Cong.Rec. 4435 (1909)

"Mr. ADAIR. The action of the Senate in dealing with the tariff emphasizes the fact that we have too many millionaires in that body and that a few high-priced funerals would be a good thing for the country. As I am informed, there are now in the United States Senate 38 millionaires representing over $140,000,000. What can the people expect at their hands but legislation designed to aid the special-privileged class. I surely hope, Mr. Speaker, that the day will soon come when the Senators will be elected by popular vote of the people, and that the United States Senate will no longer be the dumping ground for millionaires, who have nothing in common with the plain people.

"The power to rule men by intellectual and moral force, the test of statesmanship of a former day, is fast passing away, while the wealth, the uncrowning king, oftentimes lacking both and coveting neither, arrogantly seeks to rule in a domain where it is only fitted to serve.. Patriotism has given place to material expediency, and the love of country is supplanted by the love of money. AN aptness of percentages and the successful manipulation of railroads and stock boards are often regarded as the most essential of senatorial equipments.

"I hope the day will soon come when the United States Senate will be composed entirely of men who will represent more loyalty and less wealth, more patriotism and less plutocracy; men who love their country more than their money. When that body is so made up, such tariff bills as the one we are now considering will never emanate from that end of the Capitol."

2.3 Evils of Corporations, Trusts, and Holding Companies

2.3.1 44 Cong.Rec. 4036 (1909): Corporations are destroying individual pursuits

"Mr. DAVIS. We find that the corporations of the country are invading every avenue of business and trade. In my State we have trust companies formed for the purpose of transacting every kind and character of business. They administer upon

your estate; they are guardians for your children; they absolutely carry their business to such an extent that it closes up the avenue of every individual effort. The individual is entirely destroyed and the law-made creature takes his place. Whenever an individual seeks an opportunity for employment or for business, he finds the doors closed ot him by the law-made creature, the corporation."

2.3.2 44 Cong.Rec. 4041 (1909): Exempting holding companies from the income tax

[Senator Cummins commenting on proposed legislation to tax corporations while exempting holding companies] "Mr. CUMMINS. Senators, I do not believe that such a law will stand. I do not mean that it will not stand the investigation of the courts. I mean that it will not stand the criticism of the people, who are above all the courts and all legislatures and all other authorities of the land."

2.3.3 44 Cong.Rec. 4046 (1909): Excise taxes don't tax corporations, but shift taxes to poor

"You talk about the power of great aggregations of capital; you talk about the crushing out of the life of the rights and of the opportunities of the individual-the policy against which we have struggled for several years…

"But when the American people come to learn that this is simply a shifting of a tax in most cases upon the consumer, when they come to learn that millions of dollars can be invested in a corporation which will not pay one dollar of tax [a holding company], when they come to learn that this is a plain invitation to go on and enlarge a system which we have battled against these seven years, there is no danger of this or any other Congress taking the second step. The American people will attend to that in their own behalf…

"Based upon the theory that it is an excise tax, it exempts from that excise the very corporations [the holding companies] that in all human probability are the best able to pay the tax. It exempts the great bondholders, the great accumulated fortunes of this country."

2.3.4 44 Cong.Rec. 4233 (1909): Corporations have no moral concerns

"Mr. NEWLANDS. We now come to the monopolistic holding company, the great trust organizations like the steel trust, for the purpose of holding the stock of other constituent companies, with the view to controlling and monopolizing production in certain lines. Such an organization is not sustained by any moral consideration and is against public policy and the spirit of the interstate commerce law."

2.3.5 44 Cong.Rec. 4424 (1909): Abuses of the wealthy

"The idea that men like Carnegie, now the holder of more than $300,000,000 worth of the bonds of the United States Steel trust, escape federal taxation is indeed absurd."

2.4 Protective Tariffs

2.4.1 General comments

2.4.1.1 44 Cong.Rec. 4235 (1909): Affect of tariffs

"Mr. NEWLANDS. In this connection I wish simply to state briefly that the [protective tariff] schedule presented by the Finance Committee of the production in this country of commodities covered by the tariff act shows that the total production amounted to about $13,000,000,000, and that the total imports of such commodities equaled about one-twentieth of the domestic production, and that the amount expended for wages in producing these commodities [totaling] over $13,000,000,000 amounted to about $2,500,000,000.

"This act imposes a duty of about 45 percent upon the foreign commodities which come in competition with our domestic production. So that it is safe to say that the value of this $13,000,000,000 worth of domestic products would be counter balanced on the outside of our tariff wall by an equal amount of commodities valued at only $9,000,000,000. In other words by the imposition of these duties we give to the American manufacturers the right to add to the foreign price of these

commodities a total of over $4,000,000,000 annually-an amount more than sufficient to pay for the entire labor cost of all the commodities, aggregating, according to the statement of the Financial Committee, two billions and a half.

"Of all the privileges enjoyed by corporations, the most valuable is this charter [protective tariff], given to the domestic corporations, which permits them to impose upon domestic consumers a charge of nearly $4,000,000,000 in excess of what they would pay if the competitive products on the outside were given free entry."

2.4.1.2 44 CongRec.4237 (1909): Poor people pay most consumption taxes

"Mr. DANIEL. You consider the prices of the ordinary necessities of life, and you will find that the poor people pay more for what they consume than do any other people. It is because they have to buy 'by the small,' on account of their small capital, while the great can have large transactions and in wholesale ways get the lowest prices."

2.4.1.3 44 Cong.Rec. 4415-16 (1909): Injustice of consumption taxes

"Mr. BYRD. Its very name (protective tariff) means inequality of tax burden. It means a tax upon consumption and no upon wealth, upon what one eats and wears and no upon his property; it means that the citizen who can scarcely provide food and raiment for his wife and children contributes as much or more to the support of the Government as does the multimillionaire, and it means that the consumer is not only taxed for the support of his country, but is compelled to contribute five times more to swell the fortunes of millionaire manufacturers and trust manipulators."

2.4.1.4 44 Cong.Rec. 4417 (1909): Tariffs and protectionism designed to enrich the rich

"Mr. BYRD. If the rich are to be taxed by these measures to run the Government, and the poor are to be taxed by high protection to enrich the manufacturers and trusts, then, in the name of reason, what good can you expect from this legislation? The income tax is right, and it is the only fair means to raise revenue to run the Government, and when it is adopted, it is to be hoped that the American people will raise in rebellion against your famous protective system which is designed for no other purpose than to enrich the rich."

2.4.2 Comments from the Democrats

2.4.2.1 44 Cong.Rec. 3761 (1909): Injustice of protectionism

"Mr. SULZER. Mr. Chairman, all legislation [the protective tariff] bestowing special benefits on the few is unjust and against the masses and for the classes. It has gone on until less than 8 per cent of the people won more than two thirds of all wealth of our country. It has been truly said that monarchies are destroyed by poverty and republics by wealth. If the greatest Republic the world has ever seen is destroyed, it will fall by this vicious system of robbing the many for the benefit of the few."

2.4.2.2 44 Cong.Rec. 4396 (1909): Stolen fortunes

"Mr. JAMES. Mr. Speaker..He [Mr. Hill, senator from Connecticut] tells us that Connecticut, which has been taxing all the rest of the people of the United States under the protective-tariff system until it has grown rich, if this taxation upon incomes is placed upon her wealth, would pay more than 30 other States in the Union. Yet the gentlemen is so patriotic that he is willing to state that when the poor man is willing to give his blood or his life when the Republic is in peril, when the battle is on, that not until then is he willing that his people shall make any contribution to sustain the Government out of the abundant fortunes they have piled up under the system of the protective tariff.

"Mr. HILL. I challenge any man to say that the New England States did not pour out their blood as well as their wealth in the war of the rebellion. [Applause on the Republican side]

"Mr. JAMES. They have been pouring out their blood upon the battlefields. And if they have, I deny that you speak for them when you say they are unwilling to bear their part of the burden of taxation to keep up this Government, which has blessed them so abundantly. [Applause on the Democratic side.] I would state to the gentleman that his party is not for the income tax even as a war measure. The history about this question has been written. No declaration of any man can affect it; and the record lives which tells us that when this Government was in the throes of war with Spain [1898], when from shop and field and factory brave men had left loved ones at home and were at the front, offering their lives upon their

country's altar and in defense of its flag, the Democratic side offered an income-tax law as a part of the war-revenue measure, which placed a tax on the [unearned] income of the rich, asking that as the poor were standing in the front of the cannon on the fields of conflict the fortunes of the corporations and the rich, which in peace were exempt from taxation, might pay something to sustain the Government in the hour of its peril. But even in this great crisis you gentlemen upon the Republican side were unwilling to cast your votes in favor of the income tax, even as a war measure, and the whole Republican side voted no. [Applause on the Democratic side.] But, instead, you put the burden of taxation upon the poor, who were at home and at the front. You made them not only fight the battles, but pay the taxes too. [Applause on the Democratic side.]

"Mr. Speaker. … the immense fortunes, which President Roosevelt called 'swollen fortunes,' but which might perhaps have been more appropriately called 'stolen fortunes,' must bear some part of the burden of taxation in this Republic."

2.4.2.3 44 Cong.Rec. 4398 (1909): Democrat Platform of 1908

Democrat Presidential Platform, 1908: "We favor an income tax as part of our revenue system, and we urge the submission of a constitutional amendment specifically authorizing Congress to levy and collect a tax upon individual and corporate incomes, to the end that wealth may bear its proportionate share of the burdens of the Federal Government."

2.4.2.4 44 Cong.Rec. 4398 (1909): Inequity of consumption taxes

"Mr. JAMES. Who is prepared to defend a system of taxation that requires a hod carrier, who for eigh long hours each day winds his way to the dizzy heights of a lofty building with his load of mortar or brick, to pay as much to support this great Republic as John D. Rockefeller, whose fortune is so great that is staggers the imagination to contemplate it and whose property is in every city and state in the Republic and upon every sea protected by our flag..How men can defend a system of taxation in a republic which requires of the poor all of its taxes and exempts the rich absolutely I am totally unable to see. In the everyday walks of life we expect more for church, for charity, for the uplifting of society, and education from those who are more prosperous, most wealthy, most able to give. Yet the system of taxation advocated by the Republican Party drives the taxgatherer to the tenement house and makes him skip the mansion, drives him to the poorhouse and lets him pass the palace…

"I have heard it urged by some gentlemen upon the Republican side that the passage of an income tax law would undermine and at last destroy the protective-tariff system. This Mr. Speaker, is the equivalent to saying that in order to give a few monopolists and manufacturers the right to reach into the pockets of all the people, you have kept the taxgatherer from reaching into the pockets of the few, the fortunate few, the intrenched few, the successful few; but you have driven the taxgatherer to the same pockets which monopolies pillaged under the protective tariff for taxes to sustain the Government. The protective-tariff system is vicious enough in itself without adding to it the iniquity of saying that in order to perpetuate it you must place the taxing burden of the Government upon the masses of the people, who must also bear the heavy burden the protective-tariff system inflicts upon them.

"Mr. Speaker, no tax was ever more unjust, in my opinion, than a tax upon consumption, for all must eat to live, all must wear clothes, and when you place a tax upon what it takes to sustain one[self], you announce the doctrine that all men share alike in the blessings of government, that all men prosper equally. But we have only to look about us to see how false this doctrine of taxation is. A tax upon what some people eat and what they wear would deny them the necessities of life, while others, rolling in opulence and accumulation of their wealth into the millions, would not feel such a tax. Then, besides this, Mr. Speaker, the protective-tariff system has become so vicious in this Republic that the Republican Party's candidate, Mr. Taft, promised the country a revision, and a revision downward. But, like that party always does, it procrastinated this relief. It said it would come to the people after the election. The Democrat Party said the reason it wanted first to be entrenched in power and put off this promised relief until after the election was because the Republican Party intended to deceive the people. What a shameless violation of the promised revision downward do we now behold! The betrayal of the people by the Republican Party is written in this House and at the other end of the Capitol, for the revision has been upward and not downward. The reason the Republican Party would not reform the tariff before the election was they knew if they did reform it in the interest of the people, the corruption fund, which they were so used to receiving, would be denied them by the favored few with whom they were in partnership."

2.4.2.5 44 Cong.Rec 4420 (1909): Insidiousness of consumption taxes

"Mr. HEFLIN. The Aldrich bill strikes hard the necessities of life all along the line, and if gentlemen here think that the people are ignorant of what you are doing you will find in the next election that you are mistaken.

"Mr. Speaker, the States wisely and justly provided that every taxpayer should know the exact amount of taxes that he pays every year-taxes on money loaned or hoarded, so much on personal property and so much on real estate. The taxpayer knows, as he has a right to know, just how much [in] taxes he is required to pay to the city, county, and state government. But, Mr. Speaker, under your mysterious tariff-tax law, you tax the citizen and you refuse to let him know just how much he is taxed by the Federal Government. The tariff tax is hid in the price of the things that he must buy, and at the end of the year he knows that the cost of living has increased but he does not know how much you have taxed him under the system of a high protective tariff. This is wrong, and you should amend this tariff bill now, … so that the consumer may know as he buys the necessities of life what the tariff tax is, and at the end of the year he will know the amount of the tariff tax that you have compelled him to pay."

2.4.2.6 44 Cong.Rec. 4421 (1909): Injustice of tariffs

"MR. HEFLIN. The great body of consumers struggling for the 'wherewith' to buy the simple necessities of life are taxed, and heavily taxed, by this Adlrich bill, not only to raise revenues to meet the extravagant expenditures of the Republican Party, but taxed for the benefit of those who profit by the Republican policy of high protection-those who furnish the Republicans with campaign funds with which to corrupt the ballot box and debauch American manhood. (Applause on Democratic side.)

"When you, by tariff taxation, lay heavy burdens upon the things that a man needs and must have to make his wife and children comfortable and happy, you are working injury to this man and his family-you are standing between them and a worthy existence, and you are committing a crime against the American home.

"Mr. Speaker, I want someone on that side of the House to tell me the difference between the bold robber who holds you up on the highway and robs you of your money, and the government that does the bidding of a band of robbers who prescribe the conditions by which you shall come and surrender your money? I will tell you the difference: One takes his chances and runs the risk of losing his own life in his efforts to rob others, while the other gang uses the governmental machinery to hold up and plunder the citizen and in the same of law commits its crime against humanity.

"Their patriotism is measured by the size of the fortunes that you permit them to filch from the American consumers. The stars on the flag resemble dollar marks to them, and the stripes represent the special favors that they enjoy at the hands of a government controlled by the Republican Party.

"The Republican Party regards the presence of a few money kings as evidence of American's prosperity; but not so. These are the product of governmental favoritism, the creatures of unjust tariff taxation. The laws that made them millionaires have robbed millions of people of the necessities of life."

2.4.3 Comments from or about the Republicans

2.4.3.1 44 Cong.Rec. 4416 (1909)

"Mr. BYRD. You are compelled, in order to save your political scalps, to make his [Dem. Presidential candidate Bryan, 1898] favorite theory the law. It is indeed a bitter pill, but you know that something must be done to assuage the increasing wrath of the people on account of the grievous wrong that is now being perpetrated by the tariff…"

2.4.4 Press articles of the day on the subject of tariffs

2.4.4.1 1894: Seligman, Edwin, R.A., *The Income Tax*, 9 Political Science Quarterly 610, 615 (1894)

"The Taxation of Incomes is a comparatively modern idea. Its introduction may be ascribed to two distinct causes: on the one hand the need of increased revenues, and on the other the professed desire to round out the existing tax system in the direction of greater justice…

"But the point to be emphasized here is that the income tax, whenever introduced into any American commonwealth, was enacted with the avowed purpose of removing inequities in the tax system." Seligman, Edwin, R.A., *The Income Tax*, 9 Political Science Quarterly 610, 615 (1894)

2.4.4.2 1910: The Proposed Income Tax Amendment to the Federal Constitution, 15 Virginia Law Register 737, 751 (1910)

"I will doubtless be argued that the adoption of this amendment will open a way to the curbing of swollen and ill-gotten fortunes, or at least will compel the owners to pay a larger share of the expenses of the government than they now do, and that the poor will be relieved of the taxes in the same proportion." [Raleigh C. Minor, The Proposed Income Tax Amendment to the Federal Constitution, 15 Virginia Law Register 737, 751 (1910)]

2.4.4.3 1910: The Income Tax Amendment, 25 Political Science Quarterly 193, 218 (1910)

"To deny to a great empire like the United States the possibility of utilizing so powerful a fiscal engine in times of national stress would be almost equivalent to advocating national suicide." [Edwin R.A. Seligman, The Income Tax Amendment, 25 Political Science Quarterly 193, 218 (1910)]

2.4.4.4 1911: Governor A.E. Wilson (Kentucky), February 26, 1911

"The poor man does not regard his wages or salary as 'an income.'" [Governor A.E. Wilson (Kentucky) on the Income Tax Amendment, N.Y. Times, part 5, page 13, February 26, 1911]

3 Background on Taxation

3.1 44 Cong.Rec. 4028 (1909): Corporate Excise Tax of 1909

"It is a tax laid upon the business and privileges of a corporation, and the measure of the tax is the net profits of the corporation."

3.2 44 Cong.Rec. 3988-3989 (1909): History of our Tax System

"Mr. BORAH. Mr. President, to illustrate further, our system of taxation had its origin in the period of feudalism when the tax was laid upon those, and those only, who could not resist the payment of it. That was the first tax under our present taxing system. The plan then was, as stated by a noted writer- and it was earnestly argued in those days-that it was a proper distribution of the burdens of government that the clergy should pray for the government, the nobles fight for it, and the common people should pay the taxes. The first fruits of that system, and the first modification of that system, we had during that economic and moral convulsion which shook the moral universe from center to circumference- the French revolution. Historians dispute today as to the cause of the French revolution. If you would know the cause, you will not find it in the days transpiring with the fall of the Bastile; you will not find it in the days when Robespierre, drunk with human blood, leaned against the pillars of the assembly, as he listened to his own doom. It is back of that. It is in those immediate years preceding, when the burden of government had become intolerable, when the stipends paid to the miserable satellites of royalty had become criminal; when bureaucracy reached out into every part of the nation and bore down upon the energies and the industries of the common man; and when, Mr. President, 85 percent of that fearful burden was collected from the peasantry of France, which forced them from their little homes and farms into the sinks and dives of Paris, [this is] where the French revolution was born.

"The history of taxation is well worthy of the attention of those who believe that in order to maintain a republic, we must always have at the base of our civilization an intelligent, free, and, to some extent, an unburdened citizenship.

3.3 45 Cong.Rec. 4420 (1909): Definition of "Income"

"The income tax seeks to reach the unearned wealth of the country and to make it pay its share."

4 Purpose of the Sixteenth Amendment

4.1 Aldrich's Republican Scheme

4.1.1 44 Cong.Rec. 4418: Ulterior motives

"Mr. SULZER. Sir, let me say, however, that I am not deceived by the unanimity in which this resolution is now being rushed through the Congress by the Republicans, its eleventh-hour friends. I can see through their scheme. I know they never expect to see this resolution [the 16th Amendment] become a part of the Constitution. It is offered now to placate the people. The ulterior purpose of many of these Republicans is to prevent this resolution from ever being ratified by three-fourths of the legislatures of the States, necessary for its final adoption, and thus nullify it most effectually…I have been here long enough to know, and I am wise enough to believe, that its passage now is only a sop to the people by the Republicans, and that their ulterior purpose is to defeat it in the Republican state legislatures."

4.1.2 44 Cong.Rec. 4063 (1909)

"Mr. BACON. I particularly protest, however, that it is not proper parliamentary procedure to endeavor to force us to first vote on this amendment [the Corporate Tax Act of 1909] under a device which was given out to the public as intended for the purpose of preventing a vote on the income tax, which was given out as a great parliamentary achievement on the part of the Senator from Massachusetts [Lodge] and the Senator from Rhode Island [Aldrich], that they had so shaped matters that we would be compelled to vote upon the corporation-tax amendment [to the tariff bill] before we were allowed to vote first on the income-tax amendment [to the Constitution]. This amendment [the Corporate Tax Act of 1909] is avowed by the Senator from Rhode Island to be intended to defeat the income tax. If so, we should have the opportunity to vote first on the income tax amendment [to the Constitution].

4.1.3 44 Cong.Rec. 3929 (1909)

"Mr. ALDRICH. I do not expect the income tax to be adopted…And if it were adopted, I do not expect to destroy the protective system now…I think perhaps it would be destructive in time…I shall vote for the corporation tax as a means to defeat the income tax…I will be perfectly frank with the Senate in that respect…I am willing that the deficit shall be taken care of by a corporation tax. That corporation tax, however, at the end of two years, if my estimate should be correct, should be reduced to a nominal amount or repealed…at the end of two years."

4.1.4 44 Cong.Rec. 4415 (1909): Alrdich's influence on Tariff Law

"Mr. BYRD. It is a well known fact that the tariff law will be the product of the brain of one Senator [Aldrich], and however infamous the measure may be, it will receive the unqualified support of enough Republicans to pass both Houses.

"It seems that the Republican Party has permanent control of the Government, and that Senator Aldrich absolutely dominates this party. As long as it triumphs, he will be czar of the Nation."

4.1.5 44 Cong.Rec. 4236 (1909): Aldrich's influence in Senate

"Mr. DANIEL. Mr. President, if this was a class of competitive examination in order to show who was the most tired man of this debate, I would expect to win the first place in the competition. The Senator from Rhode Island [Aldrich] is a great actor, a great wizard, and he is also a great ventriloquist. With an activity, eagerness, earnestness, and freshness which are unsurpassed in this body, he comes upon the stage and says we must adjourn right now; that he is tired out. That is only on phase of his divers genius. He is very different from the rest of us plain and prolix people. He does by magic what we have to try to do by toil. He waves his wand and utters his incantations, and so-called 'insurgents' march with the vigor and measured tread of Roman soldiers following Caesar to victory. More than that, Mr. President, we hear a murmur yonder; we hear a murmur here and a murmur there. Presently the Senator rises and flings his voice around the Senate and the next moment everybody is talking just like him, and Senators think that right which before they had murmured was wrong."

4.1.6 44 Cong.Rec. 3998 (1909): Aldrich's plan to kill income tax

"Mr. BORAH. Take the…Senator from Rhode Island [Aldrich]. He has been perfectly frank. He has been open and candid. No friend of the income-tax law now dare go home and say to his constituents: "The Senator from Rhode Island fooled me.' He has been open and above board. He has told you that he brought this measure [the Corporate Tax Act of

1909] here to kill the income tax, and he has told you furthermore that it is an enemy of protection. He has said unhesitatingly that if it is in his power he will throttle it for all time to come. Do you underestimate his influence?"

4.2 Supreme Court View

4.2.1 1895: Pollock v. Farmers' Loan and Trust Co., 158 U.S. 601 (1895)

"Taxation is the equivalent for the protection which the government affords to the persons and property of its citizens; and as all are alike protected, so all alike should bear the burden, in proportion to the interests secured. [Cooley's Constitutional Limitations, 6th Ed. 598, 607, 608, 615]" Rehearing, Brief for Appellants at 79, Pollock v. Farmers' Loan and Trust Co., 158 U.S. 601 (1895)

4.2.2 1920: Eisner v. Macomber, 252 U.S. 189 (1920): Meaning of "income"

"[I]t become essential to distinguish between what is and what is not 'income,' as the term is there used, and to apply the distinction, as cases arise, according to truth and substance, without regard to form. Congress cannot by any definition it may adopt conclude the matter, since it cannot by legislation alter the Constitution, from which alone it derives its power to legislate, and within those limitations alone that power can be lawfully exercised."

4.3 Congressional intent

4.3.1 44 Cong.Rec. 4006 (1909)

"Mr. CUMMINS (Iowa). Our people are separated into three classes: The men who work, who are laying up out of their earnings provision for the future, and on whom the hand of the taxgatherer should be laid most lightly; the owners of land, the farmers and other landowners, whom it is universally acknowledged that it was the intention of the fathers of the Constitution to protect by the provisions regarding the apportionment of Direct Taxes; and the possessors of the stored-up wealth of the country, which is being invested in the corporations that are doing the business of the country. And by the simple course of dropping out from this income-tax measure the parts that are unconstitutional under the decision of the Supreme Court, that are unjust according to the acknowledged judgment of all students of the income tax, that are incapable of enforcement within such a time as to relieve the deficiency that may be before us and by saving the tax upon the stored-up wealth of the country invested in corporations, called an 'excise,' we shall have accomplished the great object of the income tax."

4.3.2 44 Cong.Rec. 4048 (1909)

"Mr. NEWLANDS. Now, what form of aggregations of capital have come under the just criticism of the country? The great combinations of capital. Has there been any complaint of the small corporations, of the commercial corporations, of business corporations, of the small manufacturing corporations? There is no complaint regarding them. The complaint is against the great combinations of capital in this country, and the abuses which exist today are the abuses which these great combinations of capital have originated and practiced.

"Inasmuch as this measure has in view not only revenue, but publicity with a view to ending such abuses, why put the light of publicity upon these numberless small corporations of the country, overburdening the records, and so confusing the inquiry that we may not be able to discern the abuses of the great combinations themselves?

"Our legislation, both with reference to revenue and publicity, should be concentrated upon those forms of wealth that have become most oppressive and upon those forms of wealth with reference to which the greatest abuses have existed; those forms of lawless wealth that have brought the law-abiding wealth of this country itself into discredit."

4.3.3 44 Cong.Rec. 4390 (1909)

"Mr. PAYNE. But if this Nation should ever be under the stress of great war, exhausting her resources, and the question of war now being a question as t6o which nation has the longest pocketbook, the greatest material resource in a great degree, I do not wish to be left, I do not wish this Nation to be left, without an opportunity to avail itself of every resource to provide an income adequate to the carrying on of that war.

"I hope that if the Constitution is amended in this way the time will not come when the American people will ever want to enact an income tax except in time of war."

4.3.4 44 Cong.Rec. 4412 (1909)

"Mr. HENRY of Texas. From that day to this we have urged and pleaded for its [an income tax] adoption. The Republican Party has scoffed at it and scorned to believe in it until lashed by public conscience. In 1908 the Democracy [Democratic Party platform] pronounced in favor of such law and amendment. We said:

"We favor an income tax as part of our revenue system, and we urge the submission of a constitutional amendment specifically authorizing Congress to levy and collect tax upon individual and corporate incomes, to the end that wealth may bear its proportionate share of the burdens of the Federal Government.

"We have no reached a point where an income tax seems an inevitable necessity. The appropriations of the Federal government have become so great that the internal-revenue taxes and import duties no longer suffice…There is a shortage in that regard of more than $150,000,000 annually. IN accordance with my judgment that amount should be laid upon the incomes of the country by the enactment of a genuine income-tax law."

4.3.5 44 Cong.Rec. 4414 (1909)

"Mr. BARTLETT of Georgia. Therefore the decision, [Pollock] in effect, puts the dollar of the millionaire beyond the pale of being equitably taxed according to his wealth, unless a constitutional amendment be invoked…However, there should be some method by which the untold wealth and riches of this Republic may be compelled to bear their just burdens of government and contribute an equitable share of their incomes to supply the Treasury with needed taxes.

"As I see it, the fairest of all taxes is of this nature [a tax on gains, profits and unearned income], laid according to wealth, and its universal adoption would be a benign blessing to mankind. The door is shut against it, and the people must continue to groan beneath the burdens of tariff taxes and robbery under the guise of law."

4.3.6 44 Cong.Rec. 4420 (1909)

"Mr. HEFLIN. An income tax seeks to reach the unearned wealth of the country and to make it pay its share."

4.3.7 44 Cong.Rec. 4423 (1909)

"Mr. HEFLIN. But sir, when you tax a man on his income it is because his property is productive. He pays out of his abundance because he has got the abundance. If to pay his income tax is a misfortune, it is because he has the misfortune to have the income upon which it is paid."

4.3.8 44 Cong.Rec. 4424 (1909)

"Mr. COX. It is not my intention to belittle wealth, but, on the other hand, I believe it should be the duty of all to uphold it where it is honestly procured. The idea that men like Carnegie, now the holder of more than $300,000,000 worth of the bonds of the United States steel trust, escape federal taxation is indeed absurd…and then, to realize that all these enormous fortunes are escaping their just and proportionate share of taxation while the people themselves are staggering under our present system of indirect taxation, it is no wonder to me they cry for relief. If it be the determination of the so-called "business interests' in this country to maintain an enormous navy at a cost of hundreds of millions of dollars annually, as well as an army, to protect and defend their various business interests, I insist that this part of the wealth of the country ought to stand its proportionate share of taxation, and I know of no way to compel them to do it as justly and equitably as an income tax. [Loud applause.]"

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Allotted lands of: bill to lease for mining purposes (see bill H. R. 66).

BURLEIGH, and Mr. HAY managers at the conference on the part of the House.

The message further requested the Senate to return to the House the bill (H. R. 1438) to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes.

THE CENSUS.

The VICE-PRESIDENT laid before the Senate the action of the House of Representatives disagreeing to the amendments of the Senate to the bill (H. R. 1033) to provide for the Thirteenth and subsequent decennial censuses, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. LA FOLLETTE. I move that the Senate insist upon its amendments, that it agree to the request of the House for a conference, and that the Chair appoint the Senate conferees.

The motion was agreed to; and the Vice-President appointed Mr. LA FOLLETTE, Mr. HALE, and Mr. BAILEY conferees on the part of the Senate.

THE TARIFF.

Mr. ALDRICH. I ask that the message from the House of Representatives relative to the tariff bill be laid before the Senate.

The VICE-PRESIDENT. The Chair lays before the Senate a message from the House of Representatives, which will be read.

The Secretary read as follows:

Ordered, That the Clerk be directed to request the Senate to return to the House the bill (H. R. 1438) to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes.

That when said bill shall have been returned the Clerk shall reengross the same with the following amendment:

"At the end of paragraph 637 of section 2 strike out the period after the word 'refined' and insert a comma and the words 'and the products thereof.'"

And when the said reengrossment shall have been completed the said bill shall be returned to the Senate.

Mr. ALDRICH. I move that the Senate comply with the request of the House of Representatives and return the bill referred to to that body.

The motion was agreed to.

EXPENSES INCIDENT TO PRESENT SESSION.

Mr. HALE. I ask the Chair to lay before the Senate House joint resolution No. 45.

The joint resolution (H. J. Res. 45) making appropriations for the payment of certain expenses incident to the first session of the Sixty-first Congress was read the first time by its title and the second time at length, as follows:

House joint resolution 45.

Resolved, etc., That the following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated, for purposes as follows:

HOUSE OF REPRESENTATIVES.

For stationery for Members of the House of Representatives, Delegates from Territories, and Resident Commissioners from Porto Rico and the Philippine Islands, at $125 each, $49,750.

For the following employees from April 1 to June 30, 1909, inclusive: Forty-six pages (including 2 riding pages), 4 telephone pages, press-gallery page, and 10 pages for duty at the entrances to the Hall of the House, at $2.50 per day each; 14 messengers in the post-office, at $100 per month each; and for 3 telephone operators, at $75 per month each; in all, $15,340.

For services of 1 additional messenger in the post-office from March 4 to June 30, 1909, inclusive, at $100 per month, $390.

For folding speeches, $1,000.

Mr. HALE. I ask that the joint resolution be put on its passage.

There being no objection, the joint resolution was considered as in Committee of the Whole.

The joint resolution was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

PROPOSED INCOME TAX.

Mr. BAILEY. Mr. President, I offer an amendment which at the proper time I intend to propose to the tariff bill. I offer it this far in advance of the consideration and amendment of that bill because I desire to invite every Senator who feels interested in the subject to make any suggestion or to propose any amendment to it which in his judgment may seem proper.

With the permission of the Senate and occupying but a moment, I desire to say that the amendment is, in the main, the same as the law of 1894 with some important and some immaterial exceptions. Perhaps the most important exception is that I have raised the exemption from $4,000, as provided in the old act, to $5,000 in this amendment; and I have sought to supply what might have been a loss of revenue resulting from that change by increasing the rate of taxation from 2 per cent, as specified in the old act, to 3 per cent, as provided in this amendment. I have no doubt that 3 per cent on incomes above $5,000 will raise much more revenue than 2 per cent on incomes above $4,000 would provide.

I have also responded to the unanimous decision of the Supreme Court of the United States that Congress has no power to levy a tax upon the incomes derived from state, county, and municipal securities, and I have specifically exempted them. I regarded it as unfortunate when the old act was passed that they were then included. I thought it certain, then, that the court would decide—and I think that the court ought to have decided—that part of the old act unconstitutional.

In the early days of the Republic that court, in a decision, announced by its most illustrious member, declared that States, counties, and municipalities could not levy a tax upon Federal obligations, holding that to permit it would be equivalent to a permission for the States to lay a tax upon the operations and the instrumentalities of the Federal Government. I have always believed that decision wise and just; and if it is, then it necessarily follows that its reasoning applies with equal force against a federal tax upon the operations or instrumentalities of the States and their subdivisions. But even if I doubted that, I would have conformed the amendment to what was the unanimous judgment of the court.

I want to say, however, and perhaps it is due to the Senate and to the country that I should say here and now, that this far, and only this far, have I drawn this amendment for the purpose of meeting that decision. Except in that respect, no effort has been made to meet the requirements as announced in that judgment of the court. In all other respects, instead of trying to conform the amendment to the decision of the court, the amendment distinctly challenges that decision. I do not believe that that opinion is a correct interpretation of the Constitution, and I feel confident that an overwhelming majority of the best legal opinion in this Republic believes that it was erroneous. With this thought in my mind, and remembering that the decision was by a bare majority, and that the decision itself overruled the decisions of a hundred years, I do not think it improper for the American Congress to submit the question to the reconsideration of that great tribunal.

The administrative provisions of the amendment are largely a reprint of the administrative features of the old act.

At the proper time, which is not now, I shall lay before the Senate such reasons as occur to me in the support of this amendment. But I will say now—and it can not violate the proprieties of this occasion for me to say that much—that I do not offer this income-tax amendment simply because I desire to tax prosperous people. I regard all taxation as a necessary evil. I regard every tax as a burden, whether it be laid directly at so many mills on every dollar's worth of property, or whether it be laid indirectly, at such a per cent on every imported article. I regard every tax as a subtraction to that extent from either the comfort or the earnings of every man who must pay it, and if it were not necessary to levy and collect taxes in order to support the Government I would not myself propose or advocate a tax on any man.

But knowing, as we all do know, that it is necessary for the Government to raise a vast sum of money to support its administration, my judgment is that a large part of that money ought to be raised from the abundant incomes of prosperous people rather than from the backs and appetites of people who, when doing their best, do none too well.

I believe, myself, that there never was, and that there never will be, a juster or wiser tax devised than an income tax. I believe it is the only tax ever yet devised by the statesmen of the world that rises and falls with a man's ability to pay it.

The people who have incomes subject to tax under this amendment can not complain that we unduly burden them. The exemption of $5,000 leaves the man with an income of $10,000 to contribute, under the provisions of this amendment, only $150 to support the General Government; and surely a man whose abounding prosperity nets him an income of $10,000 a year may be fairly asked to contribute the moderate sum of $150 to the expenditures of this great Government.

Mr. President, I am tempted, but I shall not yield to the temptation, to present some reasons why I think that the court, upon a reconsideration of this question, will adjudge an income tax a constitutional exercise of power by Congress. That temptation addresses itself to me because I would like to have it so ordered that when we come to consider the question we could consider it upon its merits as an economic proposition apart from the legal perplexities. But to enter upon that would occupy very much more time than the Senate has the patience

at this time to accord, and I will wait for some more suitable occasion.

The VICE-PRESIDENT. Will the Senator from Texas indicate what disposition he would like to have made of the amendment?

Mr. BAILEY. I should like to have the amendment printed and lie on the table.

The VICE-PRESIDENT. If there be no objection, that order will be made. No objection is heard.

Mr. BACON. I would like to ask the Senator from Texas if he will not amend his suggestion to the extent of having the amendment printed in the RECORD?

Mr. BAILEY. Mr. President, I did not think it altogether modest to suggest that I was submitting a proposition worthy to place in the RECORD, but I would not object to it if the Senator from Georgia desires to make that request.

Mr. BACON. I hope that will be done.

The VICE-PRESIDENT. Does the Senator from Georgia make the request? The Senator from Texas does not so modify his request, the Chair understands.

Mr. BACON. I make it, if the Senator from Texas does not.

The VICE-PRESIDENT. Is there objection to the request of the Senator from Georgia that the amendment be printed in the RECORD?

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

Amendment intended to be proposed by Mr. BAILEY to the bill (H. R. 1438) to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes, viz: Insert the following:

SEC. —. That from and after the 1st day of January, 1910, there shall be assessed, levied, collected, and paid annually upon the gains, profits, and income received in the preceding calendar year by every citizen of the United States, whether residing at home or abroad, and by every person residing in the United States, though not a citizen thereof, a tax of 3 per cent on the amount so received over and above $5,000; and a like tax shall be assessed, levied, collected, and paid annually upon the gains, profits, and income from all property owned and of every business, trade, or profession carried on in the United States by persons residing elsewhere. The tax herein provided for shall be assessed by the Commissioner of Internal Revenue and collected and paid upon the gains, profits, and income for the year ending the 31st of December next preceding the time for levying, collecting, and paying said tax.

SEC. —. Such gains, profits, and income include all interest received upon notes, bonds, and all other forms of indebtedness, except the obligations of the United States, States, counties, towns, districts, and municipalities; profits realized within the year from the sales of real estate purchased within two years previous to the close of the year for which the income is estimated; the amount of all premiums on bonds, notes, or coupons; the amount received from the sale of merchandise, live stock, sugar, cotton, wool, butter, cheese, pork, beef, mutton, or other meats, hay, grain, vegetables, or other products; money and the value of all property acquired by gift, bequest, devise, or descent; and all other gains, profits, and income derived from any other kind of property, or from rents, dividends, interest, salaries, or from any profession, trade, business, employment, or vocation, carried on in the United States or elsewhere: *Provided, however,* That it shall be proper to deduct from such gains, profits, and income all expenses actually incurred in carrying on any business, occupation, or profession, including the amounts actually expended in the purchase or production of merchandise, live stock, and products of every kind; all interest, due or paid within the year, on existing indebtedness, and all national, state, county, town, district, and municipal taxes, not including those assessed against local benefits; all losses actually sustained during the year, incurred in trade or arising from fires, storms, or shipwreck, and not compensated for by insurance or otherwise; all debts ascertained to be worthless, and all losses within the year on sales of real estate purchased within two years previous to the year for which profits, gains, or income is estimated, but no deduction shall be made for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate; the amount received from any corporation, company, or association as dividends upon the stock of such corporation, company, or association if the tax of 3 per cent has been paid upon its net profits by said corporation, company, or association as required by this act: *Provided further,* That only one deduction of $5,000 shall be made from the aggregate income of all the members of any family composed of one or both parents and one or more minor children, or husband and wife, but guardians shall be allowed to make a deduction in favor of each and every ward, except where two or more wards are comprised in one family and have joint property interests, when the aggregate deduction in their favor shall not exceed $5,000.

SEC. —. It shall be the duty of all persons of lawful age having an income of more than $5,000 for the taxable year, computed on the basis herein prescribed, to make and render a list return, on or before the second Monday in March, in such form and manner as may be directed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to the collector or a deputy collector of the district in which they reside, of the amount of their gains, profits, and income as aforesaid; and all guardians and trustees, executors, administrators, agents, receivers, and all persons or corporations acting in any fiduciary capacity, shall make and render a list or return, as aforesaid, to the collector or a deputy collector of the district in which such person or corporation acting in a fiduciary capacity resides or does business, of the amount of gains, profits, and income of any minor or person for whom they act, but persons having less than $5,000 income are not required to make such report; and the collector or deputy collector shall require every list or return to be verified by the oath or affirmation of the party rendering it, and may increase the amount of any list or return if he has reason to believe that the same is understated; and in case any such person having a taxable income shall neglect or refuse to make and render such list or return, or shall render a willfully false or fraudulent list or return, it shall be the duty of the collector or deputy collector to make such list, according to the best information he can obtain, by the examination of such person, or any other evidence, and to add 50 per cent as a penalty to the amount of the tax due on such list in all cases of willful neglect or refusal to make and render a list or return; and in all cases of a willfully false or fraudulent list or return having been rendered to add 100 per cent as a penalty to the amount of tax ascertained to be due, the tax and the additions thereto as a penalty to be assessed and collected in the manner provided for in other cases of willful neglect or refusal to render a list or return, or of rendering a false or fraudulent return: *Provided,* That any person, or corporation, in his, her, or its own behalf, or as such fiduciary, shall be permitted to declare, under oath or affirmation, the form and manner of which shall be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, that he, she, or his or her, or its ward or beneficiary, was not possessed of an income of $5,000, liable to be assessed according to the provisions of this act; or may declare that he, she, or it, or his, her, or its ward or beneficiary has been assessed and has paid an income tax elsewhere in the same year, under authority of the United States, upon all his, her, or its gains, profits, and income, and upon all the gains, profits, and income for which he, she, or it is liable as such fiduciary, as prescribed by law; and if the collector or deputy collector shall be satisfied of the truth of the declaration, such person or corporation shall thereupon be exempt from income tax in the said district for that year; or if the list or return of any person or corporation, company, or association shall have been increased by the collector or deputy collector, such person or corporation, company, or association may be permitted to prove the amount of gains, profits, and income liable to be assessed; but such proof shall not be considered as conclusive of the facts, and no deductions claimed in such cases shall be made or allowed until approved by the collector or deputy collector. Any person or company, corporation, or association dissatisfied with the decision of the deputy collector in such cases may appeal to the collector of the district, and his decision thereon, unless reversed by the Commissioner of Internal Revenue, shall be final. If dissatisfied with the decision of the collector such person or corporation, company, or association may submit the case, with all the papers, to the Commissioner of Internal Revenue for his decision, and may furnish the testimony of witnesses to prove any relevant facts, having served notice to that effect upon the Commissioner of Internal Revenue, as herein prescribed. Such notice shall state the time and place at which, and the officer before whom, the testimony will be taken; the name, age, residence, and business of the proposed witness, with the questions to be propounded to the witness, or a brief statement of the substance of the testimony he is expected to give: *Provided,* That the Government may at the same time and place take testimony upon like notice to rebut the testimony of the witnesses examined by the person taxed. The notice shall be delivered or mailed to the Commissioner of Internal Revenue fifteen days previous to the day fixed for taking the testimony, in which to give, should he so desire, instructions as to the cross-examination of the proposed witness. Whenever practicable, the affidavit or deposition shall be taken before a collector or deputy collector of internal revenue, in which case reasonable notice shall be given to the collector or deputy collector of the time fixed for taking the deposition or affidavit: *Provided further,* That no penalty shall be assessed upon any person or corporation, company, or association for such neglect or refusal or for making or rendering a willfully false or fraudulent return, except after reasonable notice of the time and place of hearing, to be prescribed by the Commissioner of Internal Revenue, so as to give the person charged an opportunity to be heard.

SEC. —. There shall be assessed, levied, and collected, except as herein otherwise provided, a tax of 3 per cent annually on the net gains, profits, and income over and above $5,000 of all banks, banking institutions, trust companies, saving institutions, fire, marine, life, and other insurance companies, railroad, canal, turnpike, canal navigation, slack water, telephone, telegraph, express, electric light, gas, water, street railway companies, and all other corporations, companies, or associations doing business for profit in the United States, no matter how created and organized, but not including partnerships. It shall be the duty of the president or other chief officer of every corporation, company, or association, or in the case of any foreign corporation, company, or association, the resident manager or agent thereof, to file with the collector of the internal-revenue district in which said corporation, company, or association shall be located or be engaged in business, a statement verified by his oath or affirmation, in such form as shall be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, showing the amount of net profits or income received by said corporation, company, or association during the whole calendar year last preceding the date of filing said statement as hereinafter required, and the corporation, company, or association whose officers or agents shall fail to comply with the requirements of this section shall forfeit as a penalty the sum of $1,000 and 2 per cent on the amount of taxes due, for each month until the same is paid, the payment of said penalty to be enforced as provided in other cases of neglect and refusal to make return of taxes under the internal-revenue laws.

The net gains, profits, and income of all corporations, companies, or associations shall include the amounts paid to shareholders, or carried to the account of any fund, or used for construction, enlargement of plant, or any other expenditure or investment paid from the net annual profits made or acquired by said corporations, companies, or associations. But nothing herein contained shall apply to States, counties, or municipalities; nor to corporations, companies, or associations organized and conducted solely for charitable, religious, or educational purposes, including fraternal beneficiary societies, orders, or associations operating upon the lodge system and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations and dependents of such members; nor to the stocks, shares, funds, or securities held by any fiduciary or trustee for charitable, religious, or educational purposes; nor to building and loan associations or companies which make loans only to their shareholders; nor to such savings banks, savings institutions, or societies as shall, first, have no stockholders or members except depositors and no capital except deposits; secondly, shall not receive deposits to an aggregate amount, in any one year, of more than $1,000 from the same depositor; thirdly, shall not allow an accumulation or total of deposits, by any one depositor, exceeding $10,000; fourthly, shall actually divide and distribute to its depositors, ratably to deposits, all the earnings over the necessary and proper expenses of such bank, institution, or society, except such as shall be applied to surplus; fifthly, shall not possess, in any form, a surplus fund exceeding 10 per cent of its aggregate deposits; nor to such savings banks, savings institutions, or societies composed of

members who do not participate in the profits thereof and which pay interest or dividends only to their depositors; nor to that part of the business of any savings bank, institution, or other similar association having a capital stock, that is conducted on the mutual plan solely for the benefit of its depositors on such plan, and which shall keep its accounts of its business conducted on such mutual plan separate and apart from its other accounts.

Nor to any insurance company or association which conducts all its business solely upon the mutual plan, and only for the benefit of its policy holders or members, and having no capital stock and no stock or share holders, and holding all its property in trust and in reserve for its policy holders or members; nor to that part of the business of any insurance company having a capital stock and stock and share holders, which is conducted on the mutual plan, separate from its stock plan of insurance, and solely for the benefit of the policy holders and members insured on said mutual plan, and holding all the property belonging to and derived from said mutual part of its business in trust and reserve for the benefit of its policy holders and members insured on said mutual plan. All State, county, municipal, and town taxes paid by corporations, companies, or associations shall be included in the operating and business expenses of such corporations, companies, or associations.

SEC. 7. That there shall be levied, collected, and paid on all salaries of officers, or payments for services to persons in the civil, military, naval, or other employment or service of the United States, including Senators and Representatives and Delegates in Congress, when exceeding the rate of $4,000 per annum, a tax of 2 per cent on the excess above the said $4,000; and it shall be the duty of all paymasters and all disbursing officers under the Government of the United States, or persons in the employ thereof, when making any payment to any officers or persons as aforesaid, whose compensation is determined by a fixed salary, or upon settling or adjusting the accounts of such officers or persons, to deduct and withhold the aforesaid tax of 2 per cent; and the pay roll, receipts, or account of officers or persons paying such tax as aforesaid shall be made to exhibit the fact of such payment. And it shall be the duty of the accounting officers of the Treasury Department, when auditing the accounts of any paymaster or disbursing officer, or any officer withholding his salary from moneys received by him, or when settling or adjusting the accounts of any such officer, to require evidence that the taxes mentioned in this section have been deducted and paid over to the Treasurer of the United States, or other officer authorized to receive the same. Every corporation which pays to any employee a salary or compensation exceeding $4,000 per annum shall report the same to the collector or deputy collector of his district and said employee shall pay thereon, subject to the exemptions herein provided for, the tax of 2 per cent on the excess of his salary over $4,000: *Provided,* That salaries due to state, county of municipal officers shall be exempt from the income tax herein levied.

SEC. 10. It shall be the duty of every corporation, company, or association doing business for profit to keep full, regular, and accurate books of account, upon which all its transactions shall be entered from day to day, in regular order, and whenever a collector or deputy collector of the district in which any corporation, company, or association is assessable shall believe that a true and correct return of the income of such corporation, company, or association has not been made, he shall make an affidavit of such belief and of the grounds on which it is founded and file the same with the Commissioner of Internal Revenue, and if said commissioner shall, on examination thereof, and after full hearing upon notice given to all parties, conclude there is good ground for such belief he shall issue a request in writing to such corporation, company, or association to permit an inspection of the books of such corporation, company, or association to be made; and if such corporation, company, or association shall refuse to comply with such request, then the collector or deputy collector of the district shall make from such information as he can obtain an estimate of the amount of such income and then add 50 per cent thereto, which said assessment so made shall then be the lawful assessment of such income.

SEC. —. Every corporation, company, or association doing business for profit shall make and render to the collector of its collection district, on or before the first Monday of March in every year, beginning with the year 1895, a full return, verified by oath or affirmation, in such form as the Commissioner of Internal Revenue may prescribe, of all the following matters for the whole calendar year last preceding the date of such return:

First. The gross profits of such corporation, company, or association, from all kinds of business of every name and nature.

Second. The expenses of such corporation, company, or association, exclusive of interest, annuities, and dividends.

Third. The net profits of such corporation, company, or association, without allowance for interest, annuities, or dividends.

Fourth. The amount paid on account of interest, annuities, and dividends, stated separately.

Fifth. The amount paid in salaries of $4,000 or less to each person employed.

Sixth. The amount paid in salaries of more than $4,000 to each person employed and the name and address of each of such persons and the amount paid to each.

SEC. —. The taxes on gains, profits, and incomes herein imposed shall be due and payable on or before the 1st day of July in each year; and to any sum or sums annually due and unpaid after the 1st day of July as aforesaid, and for ten days after notice and demand thereof by the collector, there shall be levied, in addition thereto, the sum of 5 per cent on the amount of taxes unpaid, and interest at the rate of 1 per cent per month upon said tax from the time the same becomes due, as a penalty, except from the estates of deceased, insane, or insolvent persons.

SEC. 5. Any nonresident may receive the benefit of the exemptions hereinbefore provided for by filing with the deputy collector of any district a true list of all his property and sources of income in the United States and complying with the provisions of section —— of this act as if a resident. In computing income he shall include all income from every source, but unless he be a citizen of the United States he shall only pay on that part of the income which is derived from any source in the United States. In case such nonresident fails to file such statement, the collector of each district shall collect the tax on the income derived from property situated in his district, subject to income tax, making no allowance for exemptions, and all property belonging to such nonresident shall be liable to distraint for tax: *Provided,* That nonresident corporations shall be subject to the same laws as to tax as resident corporations, and the collection of the tax shall be made in the same manner as provided for collections of taxes against nonresident persons.

SEC. 11. It shall be the duty of every collector of internal revenue, to whom any payment of any taxes is made under the provisions of this act, to give to the person making such payment a full written or printed receipt, expressing the amount paid and the particular account for which such payment was made; and whenever such payment is made such collector shall, if required, give a separate receipt for each tax paid by any debtor, on account of payments made to or to be made by him to separate creditors in such form that such debtor can conveniently produce the same separately to his several creditors in satisfaction of their respective demands to the amounts specified in such receipts; and such receipts shall be sufficient evidence in favor of such debtor, to justify him in withholding the amount therein expressed from his next payment to his creditor; but such creditor may, upon giving to his debtor a full written receipt, acknowledging the payment to him of whatever sum may be actually paid, and accepting the amount of tax paid as aforesaid (specifying the same) as a further satisfaction of the debt to that amount, require the surrender to him of such collector's receipt.

SEC. —. Sections 3167, 3172, 3173, and 3176 of the Revised Statutes of the United States as amended are hereby amended so as to read as follows:

"SEC. 3167. It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return by any person or corporation, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof, to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law, any income return or any part thereof or the amount or source of income, profits, losses, or expenditures appearing in any income return; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding $1,000 or by imprisonment not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employee of the United States, he shall be dismissed from office and be incapable thereafter of holding any office under the Government.

"SEC. 3172. Every collector shall, from time to time, cause his deputies to proceed through every part of his district and inquire after and concerning all persons therein who are liable to pay any internal-revenue tax, and all persons owning or having the care and management of any objects liable to pay any tax, and to make a list of such persons and enumerate said objects.

"SEC. 3173. It shall be the duty of any person, partnership, firm, association, or corporation, made liable to any duty, special tax, or other tax imposed by law, when not otherwise provided for, in case of a special tax, on or before the 31st day of July in each year, in case of income tax on or before the first Monday of March in each year, and in other cases before the day on which the taxes accrue, to make a list or return, verified by oath or affirmation, to the collector or a deputy collector of the district where located, of the articles or objects, including the amount of annual income, charged with a duty or tax, the quantity of goods, wares, and merchandise made or sold, and charged with a tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for which such person, partnership, firm, association, or corporation is liable: *Provided,* That if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, articles or objects liable to pay any duty, tax, or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax as aforesaid, then, and in that case, it shall be the duty of the collector or deputy collector to make such list or return, which, being distinctly read, consented to, and signed and verified by oath or affirmation by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person: *Provided further,* That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post-office a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law, within ten days from the date of such note or memorandum, verified by oath or affirmation. And if any person on being notified or required as aforesaid shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is false or fraudulent, or contains any undervaluation or understatement, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person, or any other person he may deem proper, to appear before him and produce such books, at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects liable to tax or the returns thereof. The collector may summon any person residing or found within the State in which his district lies; and when the person intended to be summoned does not reside and can not be found within such State, he may enter any collection district where such person may be found, and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned.

"SEC. 3176. When any person, corporation, company, or association refuses or neglects to render any return or list required by law, or renders a false or fraudulent return or list, the collector or any deputy collector shall make, according to the best information which he can obtain, including that derived from the evidence elicited by the examination of the collector, and on his own view and information, such list or return, according to the form prescribed, of the income, property, and objects liable to tax owned or possessed or under the care or management of such person, or corporation, company, or association; and the Commissioner of Internal Revenue shall assess all taxes not paid by stamps, including the amount, if any, due for special tax,

Mr. GALLINGER. I am always delighted to be associated with the Senator in any good work, but I think the Senator had better introduce a separate resolution for that purpose.

Mr. TILLMAN. Of course, if the Senator from New Hampshire objects to including South Carolina in a good work—and he says this is a good work—I shall not intrude on him.

Mr. GALLINGER. I think the Senator had better introduce a separate resolution.

The VICE-PRESIDENT. Is there objection to the present consideration of the resolution submitted by the Senator from New Hampshire?

Mr. SMITH of Michigan. I should like to ask that the resolution be read again.

The VICE-PRESIDENT. Without objection, the Secretary will again read the resolution.

Mr. GALLINGER. Before it is read, I desire to modify it so as to insert "and the date of his or her appointment."

Mr. WARREN. May I ask the Senator from New Hampshire if we have anything in print now that purports to give the names and residences of the employees from all the States?

Mr. GALLINGER. Not that I am aware of, so far as the classified service is concerned.

Mr. WARREN. There is no general publication?

Mr. GALLINGER. None, so far as the classified service is concerned, I think.

The VICE-PRESIDENT. The Secretary will read the resolution as modified.

The Secretary read the resolution as modified, as follows:

Resolved, That the Civil Service Commission is hereby directed to communicate to the Senate, at the earliest practicable day, a list of the names of those now in the service charged to the State of New Hampshire, including the city or town and the county which each clerk or other employee claims as his or her residence, and the date of his or her appointment; also a statement as to the number to which said State is entitled under the provisions of the civil-service law.

The VICE-PRESIDENT. Is there objection to the present consideration of the resolution?

The resolution was considered by unanimous consent, and agreed to.

PROPOSED INCOME TAX.

Mr. CUMMINS. Mr. President, I desire to present an amendment to the pending tariff bill, and after it has been stated, I ask the indulgence of the Senate for a few moments in respect to it.

The VICE-PRESIDENT. The Secretary will state the proposed amendment.

The SECRETARY. An amendment providing for fixing duties on certain incomes.

The VICE-PRESIDENT. The amendment will be printed. Does the Senator prefer to have it referred to the committee, or to lie on the table?

Mr. CUMMINS. Let it lie on the table.

The VICE-PRESIDENT. The amendment will lie on the table.

Mr. LA FOLLETTE. I should like the Senator from Iowa to request, or if I may properly do so I request, that the proposed amendment be printed in the RECORD.

The VICE-PRESIDENT. Is there objection to the request of the Senator from Wisconsin that the amendment be printed in the RECORD?

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

Amendment intended to be proposed by Mr. CUMMINS to the bill (H. R. 1438) to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes, viz: Insert the following:

SEC. —. That for the calendar year 1909, and for each calendar year thereafter, duties shall be assessed, levied, collected, and paid upon the incomes herein specified received in such calendar year by every citizen of the United States, whether residing at home or abroad, and by every other person as to an income received from any property, business, trade, occupation, profession, or employment, situated or carried on within the United States. The dutiable incomes shall be those in excess of $5,000, and from every such dutiable income the sum of $5,000 shall be deducted in order to ascertain the amount upon which the duty shall be assessed, levied, and collected. The rate of duty upon dutiable incomes shall be as follows, to wit: Upon incomes not exceeding $10,000, 2 per cent; upon incomes not exceeding $20,000, 2½ per cent; upon incomes not exceeding $40,000, 3 per cent; upon incomes not exceeding $60,000, 3½ per cent; upon incomes not exceeding $80,000, 4 per cent; upon incomes not exceeding $100,000, 5 per cent; upon all incomes exceeding $100,000, 6 per cent.

SEC. —. That the incomes upon which the duties hereinbefore specified are to be assessed and levied shall be incomes received during the calendar year and derived as follows, to wit:

First. Salaries, wages, or compensation for personal labor or service of whatever kind and in whatever form paid or received: *Provided*, That there shall be excluded the compensation of the existing President of the United States during the term for which he has been elected, and of the judges of the supreme and inferior courts of the United States now in office; and there shall be also excluded the salaries and compensation of all officers and employees of a State or any political subdivision thereof.

Second. Earnings in any profession, after deducting the expense actually incurred in conducting such profession.

Third. The gains or profits of any trade, vocation, or business.

Fourth. The gains or profits of all sales or dealings in property, whether real or personal, provided that the gains and profits from sales of real estate purchased more than two years prior to the close of the year for which the income is being ascertained shall not be included.

Fifth. Any other gains or profits growing out of the ownership of or interest in real or personal property, or the transaction of any lawful business carried on for gain or profit.

Sixth. The amount received as dividends upon corporate stocks, together with the proportionate share of the undivided profits of corporations issuing such stocks, the amount received as interest upon bonds, obligations, or other evidences of indebtedness: *Provided*, That interest upon the bonds or other obligations of a State or any political subdivision thereof, and interest upon the bonds or obligations of the United States, exempt by their terms from taxation, shall not be included.

SEC. —. That incomes or parts of incomes derived from any business, trade, vocation, or profession carried on wholly within a foreign country, or derived from property situated in a foreign country, shall not be included in the return hereinafter required.

SEC. —. That it shall be the duty of every person of lawful age having an income of more than $5,000, computed upon the basis herein prescribed, for the year 1909 and for each year thereafter, to make and render a return on or before the first Monday of March, 1910, and on or before the first Monday of March of each year thereafter, in such form and manner as may be directed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury, to the collector or deputy collector of the district in which he or she resides, of the amount of his or her income computed as aforesaid; and every guardian, trustee, executor, administrator, agent, receiver, and every person or corporation acting in any fiduciary capacity shall make and render a return, as aforesaid, to the collector or deputy collector of the district in which such person or corporation acting in a fiduciary capacity resides or does business, of the amount of the income of any minor or person for whom they act whose income exceeds $5,000. The collector or deputy collector shall require every return to be verified by the oath or affirmation of the person rendering it, if it be an individual, or the proper officer or officers of a corporation, if it be a corporation. If the said collector or deputy collector has reason to believe that any return understates the income therein reported, he may increase the amount subject to the appeal hereinafter provided; and in case any such person having a dutiable income shall neglect or refuse to make and render such return, or shall render a willfully false or fraudulent return, it shall be the duty of such collector or deputy collector to make or correct such return from the best information he can obtain, either by the examination of such person or by any other evidence, and to add 50 per cent as a penalty to the amount of the duty in all cases of willful neglect or refusal to make or render a return, and in all cases of a willfully false or fraudulent return to add 100 per cent as a penalty to the amount of the duty ascertained to be due; the duty and the additions thereto as a penalty to be assessed and collected in the manner provided for in other cases of willful neglect or refusal to render a return or of rendering a false and fraudulent return. Any person aggrieved by the decision of the deputy collector in either of the cases above mentioned may appeal to the collector of the district, and his decision thereon, unless reversed by the Commissioner of Internal Revenue, shall be final. If dissatisfied with the decision of the collector, originally or on appeal, such person may submit the case with all papers to the Commissioner of Internal Revenue for his decision and may furnish the testimony of witnesses to prove any relevant facts, having served notice to that effect upon the Commissioner of Internal Revenue as herein prescribed. Such notice shall state the time and place at which and the officer before whom the testimony will be taken, the name, age, residence, and business of the proposed witnesses, with the questions to be propounded to each witness and a brief statement of the substance of the testimony he is expected to give: *Provided*, That the Government may at the same time and place take testimony upon like notice to rebut the testimony of the witnesses examined by the person against whom the collector rendered decision. The notice shall be delivered or mailed to the Commissioner of Internal Revenue a sufficient number of days previous to the day fixed for taking the testimony to allow him after its receipt at least five days, exclusive of the period required for mail communication with the place at which the testimony is to be taken, in which to give, should he so desire, instructions as to the cross-examination of the proposed witness or witnesses. Whenever practicable the affidavit or deposition of a collector or deputy collector of internal revenue shall be taken, in which case reasonable notice shall be given to the collector or deputy collector of the time fixed for taking the deposition or affidavit. No penalty shall be assessed upon any person for such neglect or refusal or for making or rendering a willfully false or fraudulent return except after reasonable notice of the time and place of hearing to be prescribed by the Commissioner of Internal Revenue, so as to give the person charged an opportunity to be heard.

SEC. —. That the duties on incomes hereby imposed shall be due and payable on the 1st day of July, 1910, for the year 1909, and on the 1st day of July of each succeeding year for the duties assessed and levied upon the incomes of the preceding year, and if the duty on any income remains unpaid after the 1st day of July as aforesaid and after ten days' notice and demand thereof and therefor by the collector, there shall be collected as a penalty for such nonpayment the sum of 5 per cent on the amount of duty unpaid, and also interest at the rate of 1 per cent per month upon said duty from the time it becomes due. The Commissioner of Internal Revenue is authorized to relieve the estates of deceased, insane, or insolvent persons from the aforesaid penalty if the failure to pay at maturity was without fault of the person or persons in charge of said estates.

SEC. —. That if at any time after the duty upon any income is paid, or, becoming due, is unpaid, the Commissioner of Internal Revenue ascertains that the person returning the said income for duty knowingly made a false return respecting the same, the amount of dutiable income so concealed shall be assessed for the year in which the discovery is made and there shall be collected for and on account of any such concealed income double the duty prescribed in this act.

SEC. —. That at any time after September 1 in each year the internal-revenue collector in any district shall proceed to enforce by distraint upon any property belonging to any person upon whose income a duty has been assessed and levied and which duty or any part thereof remains unpaid, and all the property of any such person wherever situated subject to execution shall be liable to distraint for the collection of the unpaid duty.

SEC. —. That it shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or make known in any manner whatever not provided by law to any person any information obtained by him in the administration hereof concerning the amount or source of income, profits, losses, expenditures, or any particular thereof set forth or disclosed in any income return by any person or corporation, or permit any income return or copy thereof or any book containing any abstract or parts thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return or any part thereof or the amount or sources of income, profits, losses, or expenditures appearing in any income return. Any offense against the foregoing provisions shall be a misdemeanor and punished by a fine not exceeding $1,000, or by imprisonment for a period not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employee of the United States, he shall be dismissed from office and be incapable thereafter of holding any office under the Government.

SEC. —. That every internal-revenue collector shall, from time to time, cause his deputies to proceed through every part of his district and to inquire after and concerning all persons therein who may be in receipt of dutiable incomes hereunder, and concerning all persons or corporations having the care and management of property which may produce such income, and to make a list of such persons or corporations and to enumerate said properties.

SEC. —. That only one deduction of $5,000 shall be made from the aggregate income of all the members of any family composed of one or both parents and one or more minor children or husband and wife. No penalty shall be assessed upon any person, corporation, or association for a neglect or refusal to make return or for making or rendering a willfully false or fraudulent return, except after reasonable notice of the time and place of hearing, to be prescribed by the Commissioner of Internal Revenue, so as to give the person charged with such neglect or refusal, or charged with such false or fraudulent return, an opportunity to be heard.

SEC. —. That in the event that any person with a dutiable income fails to make the return prescribed in section — hereof to the collector or deputy collector, and the person shall be absent from his or her residence or place of business at the time the collector or deputy collector shall call for such annual return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business with some one of suitable age and discretion, if there be such person present, otherwise to deposit in the nearest post-office, a note or memorandum addressed to such person requiring him or her to render to such collector or deputy collector the return required by law within ten days from the date of such note or memorandum, verified by oath or affirmation. And if any person, on being notified or required as aforesaid, shall refuse or neglect to make such return within the time required as aforesaid, or delivers any return which, in the opinion of the collector, is false or fraudulent or contains any undervaluation or understatement, it shall be lawful for the collector to summon such person or any other person having possession, custody, or care of books of account containing entries relating to the business of such person or any other person he may deem proper, to appear before him and produce such books at a time and place named in the summons, and to give testimony or answer interrogatories under oath respecting any subjects which will tend to disclose the true income. The collector may summon any person residing or found within the State in which the district lies; and when the person intended to be summoned does not reside and can not be found within such State, he may enter any collection district where such person may be found and there make the examination herein authorized. And to that end he may there exercise all the authority which he might lawfully exercise in the district for which he is commissioned. This procedure shall apply to all cases of failure to make return and to all cases in which the collector shall be of opinion that the return is incorrect, false, or fraudulent.

SEC. —. That when any person, corporation, or association refuses or neglects to render any return required by law, or renders a false or fraudulent return, the collector or any deputy collector shall make, according the best information which he can obtain, including that derived from the evidence elicited by the examination of the collector and on his own view and information, such knowledge as he can obtain, a return according to the form prescribed of the income derived by any person under the care or management of such person, corporation, or association, and the return so made and subscribed by such collector or deputy collector shall be held prima facie good and sufficient for all the above purposes.

SEC. —. That every corporation or association organized under the law of the United States or of any State or Territory doing business for profit shall make and render to the collector of the district in which its principal office is situated, on or before the first Monday of March in every year, beginning with the year 1910, a full return verified by oath or affirmation, in such form as the Commissioner of Internal Revenue may prescribe, of all the following matters for the whole calendar year last preceding the date of such return—

First. The gross profits of such corporation or association from all kinds of business of every name and nature.

Second. The expenses of such corporation or association exclusive of interest, annuities, and dividends.

Third. The net profits of such corporation or association without allowance for interest, annuities, and dividends.

Fourth. The amount paid on account of interest, annuities, and dividends, with a list showing the names and post-office addresses of the persons to whom any such interest, annuities, and dividends were paid, stating the amount paid to each of such persons separately.

Fifth. The amount paid in salaries of $5,000 or more to each person employed, giving the amount of the salary paid to each person and his name and post-office address.

Sixth. If the net profits mentioned in the third paragraph of this section were not wholly divided, then to state the amount which would have been paid to each person if the said profits had been wholly divided, giving the name of each such person and the amount of his distributed share and his post-office address.

SEC. —. That it shall be the duty of every such corporation or association doing business for profit to keep full, regular, and accurate books of account, upon which its transactions shall be entered from day to day in regular order, and whenever a collector or deputy collector in the district in which any such corporation or association has its principal office shall believe that a true and correct return as hereinbefore provided has not been made, he shall make an affidavit of such belief, and of the grounds on which it is founded, and file the same with the Commissioner of Internal Revenue, and if said commissioner shall, on examination thereof and upon full hearing of notice given to all parties, conclude that there is a ground for such belief, he shall issue a request in writing to such corporation or association to permit an inspection of the books of such corporation or association to be made, and if such corporation or association shall refuse to comply with such request, then the Commissioner of Internal Revenue shall take such action as will enforce the duty herein imposed upon such corporation or association.

Mr. CUMMINS. Mr. President, this amendment proposes duties upon certain incomes. I intend at a later time in the consideration of the pending bill to address the Senate with respect to the wisdom and the justice, the history, and the validity of income duties. Until very recently it was not my purpose to accompany the amendment with any observations whatever; but in view of the statement with respect to the expenditures and the revenues of the Government made by the Senator from Rhode Island [Mr. ALDRICH] on Monday morning, and in view of the comments of certain newspapers with respect to the motives of the Republican Senators who favor raising a portion of our revenue by a duty on incomes, I have been tempted to depart from my original intent and to enter at this moment upon a very brief discussion of the subject.

First, with regard to the amendment itself. It differs in two important particulars from the amendment offered by the Senator from Texas [Mr. BAILEY]. The first essential difference is that the duty laid upon incomes is a graduated duty instead of a flat duty. According to the terms of this amendment the duty begins with incomes not exceeding $10,000, those under $5,000 being exempt, attaches to such incomes a duty of 2 per cent, and finally reaches incomes of $100,000 or more, upon which there is imposed a duty of 6 per cent.

In this connection I may be permitted to state as a mere conjecture and opinion that this amendment, if it became a part of the law, would raise substantially $40,000,000, a greatly less sum than would be raised, according to the estimate of the Senator from Texas, upon the amendment presented by him.

The second important particular in which this amendment differs from the amendment already before the Senate is that it is confined to individual incomes; that is to say, the duty is not imposed upon corporate incomes. The reasons that moved me in preparing the amendment in this wise are that the policy of an income law, the policy indeed in almost every kind of law, is to exempt those who are least able to bear the burden from the burden. An income duty imposed upon the aggregate income of a corporation rests with equal weight upon those persons who derive some income from a corporation and yet have an aggregate income below the minimum fixed by the statute and those large incomes upon which it is the policy of the Government to attach a duty.

Further than that, I regard a graduated income duty as impossible if levied upon the incomes of corporations. The reason is obvious. This amendment, for instance, imposes a duty of 2 per cent in the case of an income not exceeding $10,000 upon that part of such income exceeding $5,000. It imposes a duty of 6 per cent upon all incomes in excess of $100,000.

I will take the instance which is in every mind the very moment a corporation is mentioned, namely, the United States Steel Corporation. It had last year, according to its report, an income, not deducting the rewards upon its capital, of $91,000,000. Under any logical or scientific system of graduated tax this income would bear the highest rate, and yet, as we know, there are twenty-five or thirty million dollars of the stock of the United States Steel Corporation held by employees of the corporation whose incomes will average less than $1,200 per year. Therefore, if a graduated tax be accepted and the duty is imposed upon the aggregate income of corporations, the stockholders whose incomes are below the minimum fixed by the amendment would bear the highest rate of duty attached to the largest income. In my opinion, such a result would not only be unjust, but it would destroy the essential and fundamental principle that underlies an income duty.

There is another reason of a legal character which led me to attach these duties to individual incomes only. The very moment that you include a corporation within the scope of an income tax, that moment you must begin a classification of corporations. The law of 1894 excluded from its operation a great number of corporations, and properly excluded them. But this classification had a tendency, in the opinion of the Supreme Court, both of its majority members and its minority members, to destroy the uniformity which the Constitution requires shall inhere in an indirect tax.

I do not suggest, Mr. President, that the amendment I have presented removes all the objections found to such a law in the decision of the Supreme Court in the Pollock case. I recognize that it challenges that opinion in one particular, but I believe that it removes all the points of collision save one. That is this: Is a tax levied upon an income derived from an investment in either real or personal property a direct tax? That

question is one so broad and fundamental, that, in my opinion, it is utterly impossible to frame any income-tax law that will not run counter to the opinion expressed by a majority of the members of the Supreme Court. If that opinion is to stand in its full scope and with its full vigor, then the United States must abandon for all time, or until the Constitution be amended, the exercise of a power and authority which had been recognized for a hundred years before the opinion was announced.

Therefore, in these two particulars, or, broadly speaking, in this one particular, the amendment I have presented challenges the opinion of the Supreme Court in just the same manner that the amendment offered by the Senator from Texas does.

Mr. BURKETT. Mr. President——

The VICE-PRESIDENT. Will the Senator from Iowa yield to the Senator from Nebraska?

Mr. CUMMINS. With pleasure.

Mr. BURKETT. It seems to me that there is another challenge which it must make. If I understand it aright, this income tax is either a direct tax or it is an indirect tax. A direct tax must be apportioned. If it is an indirect tax, it must be uniform.

Of course, I have not read the Senator's amendment to the bill, for it has not yet been printed, but I take it, from what he says, it is not attempted to make an apportionment. It seems to me that it also must attack the other proposition of uniformity, which was one of the questions, if I remember correctly, that was raised in the Pollock case. I have not read that opinion for some years, but if I remember aright, the question was raised in the Pollock case whether there might be a different rate of tax upon different incomes or the tax on some incomes eliminated; for example, a limitation of $4,000, as there was, if I remember correctly, in the act of 1894.

If the Senator has not conformed to the requirement of a direct tax and an apportionment, would not his amendment also run counter to the decision in the Pollock case in not conforming to the other requirement—that of uniformity in the case of an indirect tax?

Mr. CUMMINS. Mr. President, as I suggested in the beginning, it has been my purpose at a later time to consider this question from the constitutional standpoint. But in answer to the inquiry of the Senator from Nebraska, I beg to say that in the Pollock case the question of uniformity related to the classification of corporations, not to the graduation of the tax, for the reason that there was no graduation of duties under the law of 1894. It is quite true that in both the majority opinion and the minority opinion in the Pollock case there was some criticism with respect to the exemption of incomes below $4,000. That criticism, however, did not lead, as I remember, any judge uttering it into the opinion that therefore the law was unconstitutional.

Mr. President, I believe it to be the bounden duty of Congress at this time to again invoke the deliberate reexamination of this question by the Supreme Court. The decision in the case to which I have referred is so serious an invasion upon federal power and it so vitally restricts federal authority that we ought not to permit a single moment longer than necessary to pass without again asking for an examination of this power upon the part of the Government of the United States.

It is true that we are not in the midst of war; but there is no Senator so keen in his prophecies as to attempt to declare the moment in which we may become involved in war, and then, at least, there will be the same imperious necessity for invoking this authority that there was in 1861.

Do not misunderstand me. I am not contending that we ought to enter upon this experiment as a mere experiment. If we do not need the revenue that would be produced by an income tax, then I agree that it would be the height of folly to collect money in any manner whatsoever not needed for the reasonable expenditures of the Government. But if we do need this revenue, or if this revenue can be substituted for another still more burdensome, then there never was a moment in which it became more imperatively the duty of the American Congress to set in motion this power than at the present time.

So much, Mr. President, with regard to the amendment that I have presented.

Mr. RAYNER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from Maryland?

Mr. CUMMINS. I do.

Mr. RAYNER. Without committing myself in any way to any of these propositions of an income tax, for or against, I respectfully call the attention of the Senator from Iowa to the proposition that the suggestion of the Senator from Nebraska [Mr. BURKETT] has been completely answered in the case of Knowlton *v.* Moore (178 U. S.), in which the Supreme Court held that "uniformity" meant geographical uniformity and not individual uniformity.

I think the Senator from Iowa even goes too far when he says that there could not be a classification of corporations. There could undoubtedly be a classification of corporations if the taxes operate uniformly throughout the United States. In this case the proposition was discussed, and the Supreme Court said:

> The two contentions, then, may be summarized by saying that the one asserts that the Constitution prohibits the levy of any duty, impost, or excise which is not intrinsically equal and uniform in its operation upon individuals, and the other that the power of Congress in levying the taxes in question is by the terms of the Constitution restrained only by the requirement that such taxes be geographically uniform.
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> Thus it is apparent that the expression "uniform throughout the United States" was at that time considered as purely geographical, as being synonymous with the expression "general operation throughout the United States," and that no thought of restricting Congress to intrincis uniformity obtained, since the powers recommended were absolutely in conflict with such theory.

Mr. CUMMINS. I agree with the Senator from Maryland perfectly. The difficulty about classification to which I referred was not that the Constitution inhibited the classification of corporations, but that the classification must not be arbitrary; it must be founded upon some reason, and it is exceedingly difficult to classify the corporations of the United States.

However, the chief reason which leads me to present an amendment levying duties upon individual incomes alone is the inequality and the injustice which must necessarily result to the smaller stockholders, the men whose incomes derived from that source and from others do not reach the point fixed by the law for duties.

Mr. President, I shall recur to some phase of this subject at a later time; but I am now prompted to call to the attention of the Senate some comments that I have read within the last two or three days with regard to the income-tax measure, especially relating to the motives of those Republican Senators who believe that a substantial part of the burdens of our country should be borne through a revenue raised in this manner. It is said that it is a Democratic proposition, a Democratic doctrine. If it were, Mr. President, that would not deter me from accepting it, if it commended itself to my conscience and my judgment. We are long past that era in the world's affairs when men repeat that old inquiry, "Can any good thing come out of Nazareth?" I am willing to accept a wholesome, sound, and just principle, no matter what its origin may be.

But, Mr. President, it is not a Democratic doctrine; it is not a Democratic principle in any other sense than that the Democratic party shares with all other political organizations a belief in the fundamental principles of society. The last campaign, from the Republican standpoint, was full of pledges of fidelity and loyalty to an income-tax law; and, more than that, it will not be forgotten that the most successful and the most effective income-tax law ever passed by Congress or administered by an Executive was an income-tax law passed by a Republican Congress and administered by a Republican Executive.

The only difference between those conditions and the ones which surround us is that, in 1861, we levied an income tax to meet the demands of the Government in the most critical moment of its existence—in the time of war. But the demands of peace may be just as imperative as the demands of war. If if was constitutional in 1861 to levy an income tax to support the Government of the United States, it is constitutional in 1909 to levy an income tax to support the Government of the United States. War may make a great difference with respect to the extent of the revenue required; but granting that in a time of peace we need the revenue, it is just as constitutional now, it is precisely as just now, as it was in 1861.

I congratulate the Senate and the country upon the happy and fortunate fact that we can consider this subject without tinge of partisan bias, without tinge of partisan color. I congratulate you and your constituents upon the fortunate conditions that enable us to debate and to decide this question without any regard whatsoever to any party and without any obligation save that which we owe to a common country.

Mr. RAYNER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from Maryland?

Mr. CUMMINS. Certainly.

Mr. RAYNER. We have not had an opportunity of reading the Senator's amendment. I ask the Senator the question: Does the amendment exempt all corporations in the United States from the payment of an income tax?

Mr. CUMMINS. It levies an income tax solely upon the incomes of individuals.

Mr. RAYNER. Then you have an amendment providing for an income tax which practically exempts every corporation in the United States from paying an income tax? That is the point.

Mr. CUMMINS. Just exactly as the law of 1894 did. The law of 1894 provided that the income derived by the individual from a corporation that had paid an income tax should be deducted from his individual income, and this amendment reaches precisely the same result in, I think, a much more satisfactory and equitable way.

Mr. RAYNER. This amendment, in my judgment, does not at all reach the same practical result. What I want to get at is this: Under the law of 1894, corporations paid taxes on their incomes, while under the Senator's amendment no corporation in the United States would pay a dollar to the Government of the United States except in a roundabout way in which the Senator figures it out that it comes out of the pockets of individuals who get dividends from corporations.

Mr. CUMMINS. The Senator from Maryland is too good a lawyer and is too intelligent a man, I am sure, to put a misconstruction upon this amendment. I ask him again to recur to the point. The steel corporation——

Mr. RAYNER. What I want to ask the Senator is this: When you are imposing an income tax—I am not arguing the income tax at all—why not put the income tax on corporations and exempt whatever corporations you think are proper from the operation of the income tax, provided it is a geographically uniform tax? Why not put a tax on corporations? Why do you exclude corporations from the tax? We have not read the amendment; and I should like to hear some reason for such a provision.

Mr. CUMMINS. I will answer the Senator with pleasure.

Mr. RAYNER. We are after the corporations also, and I thought you were, too.

Mr. CUMMINS. I am after justice; I am not after the corporations.

Mr. RAYNER. No; I am after equal justice, but you are letting the corporations out.

Mr. CUMMINS. I favor an amendment which will accomplish justice throughout the United States. I answer the Senator from Maryland further in this way: The amendment which I have offered provides that the tax shall be levied upon all the dividends received from corporations. It is to be levied not only upon all the dividends received from corporations, but it is to be levied upon all undivided surplus or undivided profits of corporations. In that way it reaches every penny that is accumulated by a corporation in the way of net income.

Now, mark you, the reason that I prefer to reach the individual directly rather than the corporation is the one I have so repeatedly expressed. If you tax the corporation alone, or if you tax the corporation upon its entire net income, suppose that I were receiving from that corporation and from other sources an income of $100,000—a most impossible hypothesis, but I nevertheless assume it for the moment—and the Senator from Maryland was receiving an income from all sources, partially from the dividends of corporations, of $5,000——

Mr. RAYNER. That is impossible.

Mr. CUMMINS. Which is no impossible hypothesis——

Mr. RAYNER. It is impossible to myself in the same sense that it is as to the Senator.

Mr. CUMMINS. But do you not see the immediate injustice of it? The Senator would pay an income tax of 6 per cent on the income that he received from that corporation, although his entire income was less than the taxable amount, and I would be taxed also 6 per cent, being in the enjoyment of an income taxed at the highest rate. I am sure that if you once indorse a graduated income tax you must agree that it should be levied in the way that I have suggested, because in the end, I repeat, the income tax reaches the earnings of every corporation in the land and at the same time it does absolute justice among individuals.

Mr. SMITH of Michigan. Mr. President——

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from Michigan?

Mr. CUMMINS. With pleasure.

Mr. SMITH of Michigan. I should like to ask the Senator from Iowa just how he proposes to reach this net income—whether in the form of surplus or undivided profits, where the advantage to the stockholder is in the book value of his stock, or in a suspense account that may not even take the form of surplus? Does the Senator propose to reach that value by some inquisitorial means?

Mr. CUMMINS. Mr. President, it will be necessary for the Senator from Michigan to define what he means by the word "inquisitorial." In a sense every taxing process is inquisitorial.

Mr. SMITH of Michigan. I use it in that way, and not as a criticism.

Mr. CUMMINS. And this amendment is not relieved of that character. But I will answer the Senator from Michigan, anticipating somewhat a full discussion of this measure. This amendment provides that the individual having an income of more than $5,000 shall make a report just as the law of 1894 and just as the law of 1861 provided.

Mr. SMITH of Michigan. That is, the individual citizen?

Mr. CUMMINS. Just wait a moment. Precisely; the individual citizen. It provides that every corporation shall make a report showing its gross income and its net income, showing the amounts that it has paid in the way of interest, in the way of dividends, showing what the amount of the undivided profits of the year are, and also showing the distributive share of each stockholder in the undivided profits, and that is added to the income of the individual precisely as the income that he has actually received in money.

Mr. SMITH of Michigan. Then, Mr. President, the proposition is to assess this income in the hands of the individual stockholder?

Mr. CUMMINS. It is, whether he is a stockholder or not—the individual.

Mr. SMITH of Michigan. In the hands of the individual stockholder. Then if you propose to do it in that way, how are you going to reach the individual stockholder who is not a resident of the country, who lives abroad, and over whose person you have no jurisdiction whatever?

Mr. CUMMINS. We shall reach that individual in precisely the same way he has always been reached; by just the same process as was employed in 1861, and just the same process as was employed in 1894.

Mr. SMITH of Michigan. Will the Senator from Iowa point that out?

Mr. CUMMINS. I pointed it out just a moment ago. We reach it by providing that a corporation must return all its earnings, its gross income, its net income, the names of its stockholders, and those persons, in so far as it knows them, to whom it pays dividends. If those persons be citizens of the United States residing abroad, their income is thus ascertained, just as it was in 1894. If they be aliens and residing in their own countries, then their incomes are reached precisely as under the law of 1894. There is no difference.

Mr. SMITH of Michigan. Mr. President——

The VICE-PRESIDENT. Does the Senator from Iowa yield further to the Senator from Michigan?

Mr. CUMMINS. I do.

Mr. SMITH of Michigan. The foreigner, then, is to be reached by some process under our law. He may also be reached by some process of similar nature in the country in which he resides. Is that the situation that we find him in?

Mr. CUMMINS. I do not know what situation the Senator from Michigan would find him in. I am reaching the property precisely as it was sought to be reached in 1894. We might not be able to find the property of those nonresident aliens upon which to levy a distress warrant.

Mr. SMITH of Michigan. Mr. President——

The VICE-PRESIDENT. Does the Senator from Iowa yield further?

Mr. CUMMINS. I do.

Mr. SMITH of Michigan. Then, if you did not find his property, he would escape paying his proportion, notwithstanding his participation in American dividends.

Mr. CUMMINS. Oh, no.

Mr. SMITH of Michigan. For instance—if I do not interrupt the Senator against his wish——

Mr. CUMMINS. Not at all. Although I had not intended at this time to enter upon any such detailed discussion of this measure, I am willing to answer any inquiry.

Mr. SMITH of Michigan. The Senator's remarks are very interesting; but I think it is a well-known fact that much stock in American corporations is held abroad; that there are many stockholders and bondholders in American enterprises who live abroad subject to the jurisdiction and laws of their own countries. Now, it is just a little beyond my ability to comprehend how the Senator is going to reach that class of stockholders unless he puts his tax upon the corporation itself.

Mr. CUMMINS. Mr. President, I will delay making a full answer to that question until the Senator from Michigan has had an opportunity to read the amendment. He will find, however, that there is just as effective a way of reaching the income of the individual whom he has in mind as there was in the law of 1861 or the law of 1894.

Mr. SMITH of Michigan. Mr. President——

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from Michigan?

Mr. CUMMINS. Certainly.

Mr. SMITH of Michigan. I sincerely hope that that is so.

Mr. CUMMINS. If that is not so, the Senator from Michigan can amend the amendment.

Mr. SMITH of Michigan. No. I sincerely hope that the scope of the Senator's amendment is such that its operation and effect will not be to make it convenient or desirable for dummy holders in American corporations to have their residence abroad. If we are to have an income-tax law, it should be uniform, and it should apply to all people alike, whether natural or artificial, and in proportion to their incomes.

But I do not hesitate one moment to say that there is a large part of the stock and securities of prosperous American corporations held abroad in the leading financial centers of the world. I do not understand why these corporations should be relieved of this additional burden or the exactions by the Government, unless it is as a favor to them and not as a right.

Mr. CUMMINS. Mr. President, with the general sentiment expressed by the Senator from Michigan I am in entire accord, and I think that he does not mean to be understood as accusing me of any desire to favor corporations.

Mr. SMITH of Michigan. No.

Mr. CUMMINS. There is a history behind every man which either approves or condemns his course in any such respect as that; and I have a history which, I think, relieves me of any such imputation.

Mr. SMITH of Michigan. Mr. President——

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from Michigan?

Mr. CUMMINS. I do.

Mr. SMITH of Michigan. With that history I am very familiar. I am well aware of the consistent record of the Senator from Iowa in his desire to have all property, whether corporate or personal, bear its just proportion of the expenses of the Government. I have no criticism to make upon him; in fact, I have nothing but praise for him, and I am listening to what he has to say with a great deal of interest. I regret very much that he seems by force of circumstances to be obliged to speak so briefly this morning, for I had hoped to hear him more at length, and shall examine his amendment with a great deal of care. My respect for the Senator from Iowa is such that I acquit him promptly of any desire to furnish immunity to corporations.

Mr. CUMMINS. Mr. President, I did not believe for a moment that the Senator from Michigan entertained a thought of that character. I said what I did only to prevent the possibility of misapprehension on the part of others. In this amendment I have used all the ingenuity I possess to reach the very persons to whom he has referred. If I have failed in that respect, I can not doubt that before the discussion has gone far in a tribunal of this character that defect will be remedied.

Mr. SUTHERLAND. Mr. President——

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from Utah?

Mr. CUMMINS. Certainly.

Mr. SUTHERLAND. If I will not disturb the Senator from Iowa, I should like to ask him a question for my own information. I did not have the opportunity of hearing the amendment read.

Mr. CUMMINS. It has not been read.

Mr. SUTHERLAND. But if I understand what the Senator has said, his amendment proposes to tax the incomes of individuals only; it makes an exemption of incomes under $5,000, and entirely relieves the incomes of corporations from the tax, provided it has been paid in the shape of dividends. Am I correct about that, I will ask the Senator?

Mr. CUMMINS. The Senator is correct.

Mr. SUTHERLAND. Let me ask the Senator this question: Suppose we have a corporation which distributes dividends amounting to $100,000. It has 50 shareholders, and we will assume that each shareholder has an equal amount of stock, so that each shareholder would receive $2,000 in dividends. Under the Senator's proposed amendment none of those shareholders would pay any tax at all, as I understand.

Mr. CUMMINS. I have not so said.

Mr. SUTHERLAND. Well, then, the Senator did not——

Mr. CUMMINS. If the Senator will permit me, I will correct him just at that point.

Mr. SUTHERLAND. I will be glad to have the Senator do so.

Mr. CUMMINS. In the case that he has imagined, if the $2,000 received as dividends on stock in the corporation constitutes the only income received by the shareholders, then that income would be exempt. If, on the other hand, the income from other sources raises the income of the individual to $5,000 or more, then this tax would fall upon him.

Mr. SUTHERLAND. Mr. President, I did not misunderstand the amendment, only I did not put my supposition quite far enough. We will suppose, then, that the 50 shareholders receive an equal amount of the dividend, $2,000 each, and that no one of them has an income from any other source, so that the $2,000 represents the entire income. In that case not one of those shareholders would pay a cent of tax. That is correct, is it not?

Mr. CUMMINS. That is true.

Mr. SUTHERLAND. And, notwithstanding the fact that the corporation had an income of $100,000, the corporation would pay no tax?

Mr. CUMMINS. That is true—no income tax.

Mr. SUTHERLAND. So that there is an income of $100,000 of the corporation upon which no tax at all is paid? Is that the result?

Mr. CUMMINS. That would be the result in the particular instance the Senator has given. But, Mr. President, I am not to be terrified by any such result. I do not believe that an individual with an income of $2,000 derived from a corporation should be taxed any more than an individual receiving $2,000 by way of a salary. I am attempting to reach the aggregate, the ultimate, the final result. The corporation is simply the instrumentality for the enrichment of its stockholders, and if that instrumentality results in conferring upon its stockholders an income above the minimum fixed by the amendment, then it should be taxed; but if that income is below the minimum, there is no more reason for imposing a tax upon it than there would be if it were derived as a salary or as profit in a real-estate transaction or as the profits of a farm.

Mr. RAYNER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from Maryland?

Mr. CUMMINS. Certainly.

Mr. RAYNER. We have not had an opportunity to look at the Senator's amendment. I should like to give the Senator a concrete, but at the same time a supposititious, case. Let us take the case, for instance, of Mr. Carnegie. That merely exemplifies hundreds of cases, because there are hundreds of people living abroad who draw their income and dividends from domestic corporations. There is no doubt about that. Now, suppose that Mr. Carnegie to-day was getting an income of $500,000 a year in the way of dividends from the Bethlehem Steel Company. The Senator's amendment does not touch the steel company, and there is no way on the face of the earth to collect an income tax from him unless he has property in the United States that you can distrain on.

Mr. CUMMINS. The Senator has not read the amendment.

Mr. RAYNER. You can not make an amendment to cover that case.

Mr. CUMMINS. Very well.

Mr. RAYNER. If the man has no property, how will you collect an income tax if he lives abroad?

Mr. CUMMINS. It is evident the Senator does not desire to ask me a question, and I will yield at the proper time to any argument that he may desire to make.

Mr. RAYNER. I ask the Senator how he would get that tax?

Mr. CUMMINS. The Senator says it can not be done.

Mr. RAYNER. If I may be permitted to ask a question, How does the Senator propose to collect an income tax in such a case as I have given?

Mr. CUMMINS. I propose that the corporation shall pay that tax.

Mr. RAYNER. Does the amendment of the Senator say that the corporation shall pay it?

Mr. CUMMINS. As I understand, the duty could be collected from the corporation, but I will strengthen it in that particular.

Mr. RAYNER. I have not read it. I should like the Senator to point that clause out. It is a very important feature if it says so. The Senator from Michigan [Mr. SMITH] and myself both think that it does not cover that case.

Mr. SMITH of Michigan. Mr. President——

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from Michigan?

Mr. CUMMINS. I do.

Mr. SMITH of Michigan. I do not wish to annoy the Senator from Iowa.

Mr. CUMMINS. The Senator does not annoy me at all.

Mr. SMITH of Michigan. The suggestion of the Senator from Utah [Mr. SUTHERLAND] impressed me very much, and the answer given by the Senator from Iowa, it seems to me, leads to this, that under his amendment you can not reach an individual income until it exceeds $5,000. Is that correct?

Mr. CUMMINS. Yes.

Mr. SMITH of Michigan. Then, if the income of $2,000 from a given corporation, as suggested by the Senator from Utah,

is the income of the head of a house, until it reaches the $5,000 mark you can not touch it, and it is not the Senator's desire to reach it. Is that correct?

Mr. CUMMINS. That is correct.

Mr. SMITH of Michigan. Now, suppose the income gets to be $10,000 for the same individual, that he has five children in his family, and that each one of the children is given an equal share in the dividend-producing stock, how are you to reach it? I should like to know whether the amendment of the Senator will reach such an income as that?

Mr. CUMMINS. Mr. President, the amendment provides that there is to be but one exemption of $5,000 in such a case as that suggested by the Senator from Michigan.

Mr. SMITH of Michigan. That is, in the family?

Mr. CUMMINS. In the family.

Mr. SMITH of Michigan. Well, does that include the collateral family, in which distant relatives have a share?

Mr. CUMMINS. I do not know, Mr. President, what a collateral family is. It is supposed to be against good morals to maintain a collateral family. [Laughter.]

Mr. SMITH of Michigan. I congratulate the Senator from Iowa heartily that he does not know what a collateral family is. [Laughter.]

Mr. CUMMINS. In turn, if the Senator from Michigan has any experience about that——

Mr. SMITH of Michigan. I have a very large experience.

Mr. CUMMINS. I suppose we will hear of it later on.

Mr. SMITH of Michigan. Probably; but my experience grows out of the fact that my name happens to be "Smith." [Laughter.]

Mr. CUMMINS. I again congratulate the Senator.

Mr. President, I am sure the Senate will acquit me of any original intent to delay the regular order of the Senate by such an extended discussion. I am not at all blamable, I think. I rose simply to make some observations with regard to an income tax generally. The details of the amendment I have offered will be better understood and more intelligently debated after the amendment shall have been printed and after Senators shall have carefully considered it.

But I was rather entertained this morning in reading a newspaper containing the suggestion that it was the purpose of Republican Senators who favor an income-tax law to invade in some way the system of protection—that it was an insidious attack upon this fundamental principle of the Republican organization. I desire to disclaim any such purpose upon my part. There is no Senator who yields allegiance to the Republican party who is more firmly wedded to the doctrine of protection than I. I understand that I came into the Senate with some suspicion respecting my soundness upon the policy of protection. I frankly admit, if I am to be measured by the test imposed by that association of selfishness and slander known as the "Protective League," that I am not sound upon the doctrine of protection; but if I may be measured by Republican platforms, by the utterances of McKinley and of Garfield and of Allison and of Blaine, then I am as sound as any Senator who marches under the political banner to which I yield my loyalty.

I am not in favor of an income tax for the purpose of destroying the efficiency of the system of protection, and if it be true that an import-duty law can not be adjusted so as to afford ample and adequate protection to American industry without foreclosing the opportunity for the operation of an income-tax law, then I abandon the income-tax provision, for I have no desire to invade by a hair's breadth the established and long-continued policy of the party to which I belong of giving full and ample protection to the American as against every other man on the face of the earth.

I have heard it said—and I think it was first said by a very distinguished Democrat—that an income tax was a Populistic doctrine. If it be Populistic, if it be the emanation of that party that we know as the Populist party, then we owe that party a deep and abiding obligation.

But, again, I must call your attention to history. It is of ancient origin, for when the forefathers were fighting the Revolutionary war, the mother country was levying an income tax; and when the Constitution of the United States was adopted more than one of the colonies was raising its revenues in this manner. It is, so far from being what is ordinarily accepted as Populistic, a long-established and almost universally recognized principle of political economy.

I shall say no more upon that subject; and I come immediately to the phase which I think most interests Republican Senators, and to which I intended when I rose to devote my principal attention. It is this: If we do not need the revenue that would be derived from an income tax, then there ought to be an end of the discussion. The Senator from Rhode Island [Mr. ALDRICH] on Monday morning stated in substance, as I understood him, that we did not need more revenue than will be received at the custom-houses, and that, if the adjustment of the import duties presented by the committee is disturbed, we will have either too large a revenue or too little protection. This, in effect, was the statement made by the distinguished chairman of the Committee on Finance. If these conclusions are sound, I for one abandon my proposal for an income tax, for I say without hesitation that if in securing adequate protection a revenue is necessarily raised that will meet the reasonable expenditures of the Government, then, from my standpoint, it would be an economic crime to impose a tax on incomes. Therefore let us examine the validity of the conclusion.

I take up, first, the expenditures for the year ending June 30, 1910. Do not understand me to oppose my inexperienced and immature judgment upon those matters which fall within the scope and within the learning of the chairman of the Finance Committee against his. There are some things upon which I yield to him an immediate superiority; but there are some things involved in the statement made by the Senator from Rhode Island on Monday morning concerning which every Senator in this Chamber, no matter how brief his service may have been, is just as good a judge as is the Senator from Rhode Island.

As I have said, I take up, first, the expenditures for the year ending June 30, 1910. Congress has already appropriated $1,044,000,000 for those expenditures. The Senator from Rhode Island first adds $20,000,000 for the postal deficit of the year. I take no issue with him with respect to that item. It makes the total expenditures for the coming year $1,064,000,000. He then deducts appropriations for the Post-Office Department, $235,000,000; the sinking fund, $60,000,000; the national-bank fund, $30,000; and the Panama Canal expense, $37,000,000. The result, to be entirely accurate, is a probable expenditure of $702,000,000. The reason for the deduction of the Panama Canal expense is obvious, but the reason for the elimination of the sinking fund of $60,000,000 is not so clear, at least to me, unless the Senator contemplates an abandonment of all effort to reduce the national debt, and proposes to establish it as a permanent institution.

I shall not, however, at this time inquire into the wisdom of eliminating the sinking fund, and shall assume, in accordance with the judgment of the Senator from Rhode Island, that a prudent Congress will make provision for a revenue to at least the extent of $702,000,000, without impairing seriously our present surplus.

I turn now to his statement with respect to the receipts for the year ending June 30, 1910. His estimate is $655,000,000, leaving a deficit, upon his own showing, of $47,000,000. While I am willing to accept implicitly the conclusions of the Senator from Rhode Island growing out of the application of any given schedule to any given importation, I am not willing to accept his estimate of the probable receipts at the custom-houses for the coming year. He assumes that the importations for 1910 will equal the importations of 1907, and, applying the duties recommended by the committee, he estimates that the receipts will be $340,000,000 at the custom-houses, and to this he adds $5,000,000 for better administration of the law, making a total of $345,000,000.

My skepticism with respect to this conclusion does not arise from any lack of confidence in the skill of the Senator from Rhode Island in applying rates to importations. It arises because I do not believe we will reach in 1910 the enormous volume of business done in 1907.

It required nine years of extraordinary conditions, nine years of such prosperity as the American people never before knew to reach the climax of 1907. The severity of the depression which began in October of that year is just fairly dawning upon our minds, and I can not concede that for the year beginning now in two months and ending on the 30th of June, 1910, importations will reach the wonderful volume of that unparalleled year, 1907. It seems to me it would have been more prudent—and I submit it to you, Senators, whose judgments are better than mine—to take the average of 1907 and 1909 or the average of 1906 and 1907——

Mr. RAYNER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from Maryland?

Mr. RAYNER. I was only going to ask the Senator a question for information.

Mr. CUMMINS. I do.

Mr. RAYNER. Am I correct in the statement that in 1907 the importations ran from fifty to a hundred and fifty million dollars more than they did for any of the years from 1900 to 1909?

Mr. CUMMINS. You are.

Mr. RAYNER. What is giving me trouble about the statement is this: The Senator from Rhode Island takes the importations from the 1st of March to the 15th of April and shows by actual figures that there was a $12,000,000 increase between the 1st of March and the 15th of April. Then he makes the calculation that if the increase in 1910 is at the same ratio, we will, in that year, equal the importations of 1907. Does the Senator from Iowa propose to take up that part of the statement which the Senator from Rhode Island submitted to the Senate?

I will make it clearer. I have not the figures before me now. He stated that the importations from the 1st of March to the 15th of April increased, as compared with the corresponding days in 1908, $12,000,000. That is correct, is it not?

Mr. CUMMINS. I do not distinctly hear the figures given by the Senator from Maryland.

Mr. RAYNER. I will give the figures in a moment. Here is the statement. The Senator from Rhode Island said:

> Business activity and the movement for increased importations has already commenced. We can feel the change in the air—

That is the only place where we will feel it, I am afraid—

> The customs receipts for the thirty-nine business days from March 1 to April 15, inclusive, increased, as compared with the corresponding days in 1908, $12,031,093.08, or an average daily increase of $261,545.50. If this rate of increase should continue throughout the next year, it would lead to an increase in the customs revenue for that year of $81,600,000.

I understand the Senator takes that showing and proves by it that we will have the importations that we had in 1907, and while there will be a deficiency of about $45,000,000 in 1910, which he proposes to pay from what he calls the "surplus" in the Treasury—I call it the cash balance, but call it surplus or what you will—there will be a surplus of revenue in 1911. Has the Senator from Iowa examined the statement to which I have referred, to see whether it would carry out the conclusion the Senator from Rhode Island said it would, and that we would in all probability in 1910 have receipts running up to $663,000,000 as we did in 1907?

Mr. ALDRICH. Mr. President——

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from Rhode Island?

Mr. ALDRICH. I did not understand the last remark of the Senator from Maryland.

Mr. RAYNER. I will read the balance of it.

Mr. ALDRICH. No; that is not necessary; but I do not understand the last statement about $663,000,000. What does the Senator refer to?

Mr. RAYNER. Those were the receipts for 1907—six hundred and sixty-three million one hundred and forty-odd thousand dollars.

Mr. ALDRICH. That is not from customs.

Mr. CUMMINS. That is the entire revenue.

Mr. ALDRICH. The entire revenue.

Mr. RAYNER. I understand it is. The customs receipts were three hundred and odd million dollars.

Mr. CUMMINS. Three hundred and thirty-two million dollars.

Mr. RAYNER. Three hundred and thirty-two million dollars. The Senator from Rhode Island says this, and I thought he might make a further explanation of it.

I am not attacking these figures. I have simply risen for the purpose of information. I am very frank to say I am opposed to this bill and I shall vote against it, and in a few days I hope to address the Senate against it. I should like to see this bill or such a bill framed as will raise sufficient revenue.

The Senator from Rhode Island says:

> It will thus be seen that by taking the importations of 1909 as a basis and making proper allowance for increases, we obtain practically the same figures as those based upon the importations of 1907, confirming the result of my first calculation.

Mr. ALDRICH. I will explain that in this way: I think the Senator from Maryland will see in a moment what I was trying to get at in that sentence. The customs revenue for the current year will be $300,000,000, approximately. It can not vary more than three or four million dollars from that sum. If we add to that the increased ratio which has already taken place—that is, from the 1st of March until the 15th of April—we shall have more than $350,000,000, or approximately $350,000,000, of revenue, exclusive of the added amounts of revenue which will be derived from the Senate bill, as compared with existing law.

Mr. RAYNER. One moment, before the Senator takes his seat.

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from Maryland?

Mr. CUMMINS. I yield. I assume the Senator is asking a question of the Senator from Rhode Island.

Mr. RAYNER. Yes.

Mr. CUMMINS. I say the Senator is asking the Senator from Rhode Island.

Mr. RAYNER. I will ask it of you.

Mr. CUMMINS. I yield.

Mr. RAYNER. I will ask the Senator from Iowa. I suppose he will answer it.

Mr. CUMMINS. I yield.

Mr. RAYNER. Is this increase in duties largely derived, and almost entirely derived, from the increase in the wine schedule and the change from ad valorem to specific duties on silks?

Mr. ALDRICH. Almost entirely.

Mr. CUMMINS. In this very interesting colloquy I have really failed to catch the question desired to be put to me by the Senator from Maryland. Will he restate it?

Mr. RAYNER. The question which "the Senator from Maryland" wanted to ask the Senator from Iowa is whether or not he agrees with the Senator from Rhode Island that the increase from the 1st of March to the 15th of April will keep on, so that we will have the importations we had in 1907? I only want the Senator's opinion upon that point.

Mr. CUMMINS. I will reach that in a moment.

At the time I was interrupted by the Senator from Maryland I was dealing with the comparison instituted by the Senator from Rhode Island with respect to the probable importations for the year 1910. It was his opinion, inasmuch as we were recovering from the depression of 1907, the volume of business for the coming year would be as great as for the year 1907, and it was with regard to his judgment or opinion upon that point that I ventured the dissent. I do not believe that Congress can safely proceed upon that hypothesis, and I desire especially to impress it upon Senators. We can not in 1910 attain that high point either in consumption or in production which we enjoyed in 1907, and I was suggesting that it would have been more prudent to have combined the revenues of two years, say of 1906 or of 1909 with the revenue of 1907, and ascertain in that way what will probably be gathered at the custom-houses for the year ending June 30, 1910. I have done so, and the result, adding the eight millions that the Senator from Rhode Island says, and I accept his judgment upon that point, will be added to our revenues upon the same importations, will be that our revenues for the year 1910, gathered at the custom-houses, will be approximately $342,000,000.

Mr. ALDRICH. Mr. President——

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from Rhode Island?

Mr. ALDRICH. Will the Senator yield to me for a moment?

Mr. CUMMINS. I do.

Mr. ALDRICH. The average increase of revenue for the thirty-nine business days between the 1st of March and the 16th of April was $261,000 per day. I have just before me the receipts for the period from the 17th to the 20th day of April. They have just reached me this morning. The average is $261,000 a day. For the 20th of April the customs receipts were $1,040,000, against $570,000 a year ago, being an increase on this day of $462,000 against an average of $261,000 for the total period from March 1 to April 15.

Mr. CUMMINS. I was about to reach that point in the comparison. I take it for granted, then, that if there had been no increase within the last few days, as compared with similar days in 1908, even the Senator from Rhode Island would hesitate to affirm that the revenues from the custom-houses in the year 1910 would exceed $324,000,000. He supplements, strengthens, and corroborates that conclusion by a reference to the dealings at the custom-houses within the last month or so.

Mr. ALDRICH. As we are discussing now the probable revenues for the year 1910, will the Senator allow me to put into the RECORD a statement made by the Chief of the Warrant Division of the Treasury? I prepared these figures and estimates by myself, after having consulted with the various experts of the Treasury Department. After they were prepared, I asked the Chief of the Warrant Division of the Treasury Department, who is recognized as a better authority than any other man in the country, to give me his idea as to what the revenue would be in the year 1910; and if the Senator will bear with me, I will be glad to read his statement.

Mr. CUMMINS. I shall be very glad to yield for that purpose.

Mr. ALDRICH. It was received by me after my own computation had been made. He says:

> Considering the growth of population, with its future demands, and noting the increase of revenue now coming to the Treasury, indicating renewal of business activity, it seems most probable that the customs receipts will show material gains in the ensuing year over the increase commenced in February, 1909.
>
> Therefore, the receipts for 1910 should be at least $340,000,000, or an average of twenty-eight and one-half millions a month.

This does not take into consideration the increase in revenue which would necessarily follow the enactment of the Senate bill of about $9,000,000 over the present law, the Dingley rates. That would bring the estimated receipts, upon the basis of this estimate, to $350,000,000, which is $5,000,000 more than my own estimate. I feel that I ought to put in this statement in justice to the officials of the Treasury Department, who have given this matter careful attention.

Mr. CUMMINS. The statement just read by the Senator from Rhode Island, in so far as I am concerned, adds nothing whatsoever to the weight or force of the conclusions announced by the Senator Monday morning. I will accept the opinion of the chief of any department—a man of skill, a man of experience—with regard to the application of the law to a given business; but in attempting to determine what the business of the United States will be in the coming year, how rapidly we will recover from the depression we have suffered, I would vastly rather have the opinion of the Senator from Rhode Island, with his wide observation, with his years of experience, than the opinion of any official of any department of the Government; and I am asking the Senators to weigh the judgment of the Senator from Rhode Island, expressed, I have no doubt, with absolute honesty and entire sincerity. But his conclusion and the conclusion of the chief of the Treasury Department are based upon the hypothesis that the American people will do as much business in 1910 as they did in 1907. I dissent from that hypothesis. I do not believe we will so speedily recover, and I can not think it prudent for the American Congress to adjust its affairs—affairs of so vital moment—upon the opinion of any man, if you please, with respect to the recovery from a financial and industrial depression.

Mr. NEWLANDS. Mr. President——

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from Nevada?

Mr. CUMMINS. I do.

Mr. NEWLANDS. May I ask the Senator from Iowa what revenue he expects to obtain from the measure he has introduced?

Mr. CUMMINS. The revenue that would be obtained from an income-tax law, as I have suggested, is conjectural. There are no statistics, at least at my command, that will enable me to answer that question save approximately. I believe that if the bill were in operation it would produce during a calendar year from forty to forty-five million dollars of revenue.

Mr. NEWLANDS. Will the Senator indulge me further?

Mr. CUMMINS. I will for a question. I feel exceedingly reluctant to consume the time of the Senate contrary to my original intention. If the Senator desires to ask a question, I will gladly yield.

Mr. NEWLANDS. I wish to ask a question, but a short statement will be necessary before I put it.

Mr. CUMMINS. I can not yield for the interjection of an argument.

The VICE-PRESIDENT. The Senator from Iowa declines to yield.

Mr. NEWLANDS. Very well. Then I will ask the Senator a question. Does the Senator believe that the entire constructive work of the country, such as the work on the Panama Canal, the work which we anticipate entering upon regarding the improvements of rivers and harbors, aggregating some $50,000,000 annually, the work which we expect to enter upon in the construction of public buildings upon some comprehensive plan, involving an expense of from thirty to fifty million dollars annually, should come entirely out of bond issues, or does he think it wise to provide additional revenue in order to meet those expenditures?

Mr. CUMMINS. In answer to the Senator from Nevada I will state, although my judgment may not be of great value upon that point, that in my opinion the expense connected with the construction of the Panama Canal ought to be borne entirely from the proceeds of an issue of bonds.

With regard to the other public improvements suggested in the question, I believe they ought to be borne out of the general revenues of the Government; and it is one of the purposes of this amendment so to enlarge those revenues that the improvements can be carried forward.

Mr. NEWLANDS. I will state that I am entirely in sympathy with the Senator from Iowa in that purpose——

The VICE-PRESIDENT. Does the Senator from Iowa yield further to the Senator from Nevada?

Mr. CUMMINS. I will yield, though I have answered the question. However, recurring again to a point which it seems difficult to pass, if you will take the two years, 1907 and 1906 or 1907 and 1909, and combine the customs revenues of those two years and apply the very same rule that has been applied by the Senator from Rhode Island, you will have a revenue from the custom-houses of $324,000,000, that being $21,000,000 less than the amount estimated by the Senator from Rhode Island; and, added to the deficit which it is acknowledged will exist in the year 1910, we have a deficit of $66,000,000 instead of a deficit of $44,000,000.

I now come for a moment to the comparison instituted of the work done in the last few weeks.

I decline to accept the results of importations since we entered upon the composition of the tariff bill as any index of the importations throughout the year. At their best, a few days or a few weeks do not furnish sufficient basis for any prudent conclusion. But least of all do the days and weeks through which we have passed now for a month furnish the evidence upon which you would act in determining whether importations will grow as rapidly as suggested in the comparison. I can not think that in determining what revenues we ought to have, a wise and a prudent Congress will assume that the importations will be accelerated and multiplied as they have been during the last few days.

I have now suggested everything I desire to say with regard to the expenditures of 1910. I pass over now to 1911, that being the last period covered by the Senator from Rhode Island. In ascertaining our condition at the close of the year 1911, he assumes that the customs revenues will increase $40,000,000 over and above his estimate for the year 1910. I can not think that it is in harmony with what we know about the business of this country to assume that in 1911 our customs revenues will exceed the revenues of 1910 by $40,000,000.

Mr. ALDRICH. The Senator does not take into consideration any other source of revenue.

Mr. CUMMINS. I assume that you do not expect any great addition in any other revenues than the customs.

Mr. ALDRICH. I do expect——

Mr. CUMMINS. There has not yet been pointed out, so far as I know, any increase in revenue other than at the custom-houses of the country.

Mr. KEAN. If the Senator will allow me——

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from New Jersey?

Mr. CUMMINS. I do.

Mr. KEAN. For the month so far the internal-revenue receipts are $12,000,000, while last year they were $11,521,000, being half a million dollars more.

Mr. CUMMINS. I understand perfectly the point made by the Senator from New Jersey; but if I were estimating a revenue for the United States, especially a revenue derived by a tax upon liquor, I would conclude that within the immediate future the result of that tax would be diminished rather than increased, for I believe it to be true, and I hope it is true, that there will be, under the vast, overwhelming development of sentiment sweeping now over this country, a marked diminution in the consumption of this seductive article.

Mr. KEAN. I will say to the Senator that my information is that the increase in internal revenue was not on liquors, but on tobacco.

Mr. ALDRICH. And beer.

Mr. KEAN. And beer.

Mr. CUMMINS. Let me ask, Is there any proposal to increase the duty on beer? I did not know that there was any such suggestion. I am heartily in favor of an increase in the duty on beer of half a dollar a barrel, but I did not understand that the Finance Committee had reported any such measure. Is it not true that the duty remains the same in the bill as reported?

Mr. ALDRICH. It does, as far as the committee is concerned. Of course I do not know what is in the mind of the Senator from Iowa.

Mr. CUMMINS. I can not blame the Senator for not knowing. He has made no effort to ascertain.

So, Mr. President, it is hardly prudent to assume that the receipts of 1911 will be increased $45,000,000 over those of 1910. I refer now to the very last item that has been under consideration. In reaching the conclusion that no further reve-

nues were needed, the Senator from Rhode Island assumes that in the year 1911 the appropriations made by Congress for conducting the Government of the United States will be $35,000,000 less than are now appropriated for the management of our affairs in 1910. I will join the Senator from Rhode Island in reducing the expenditures of this country to the very lowest point of efficiency. Here is a matter of judgment for every Senator. Do you believe that we will be able when we come to make our appropriations for 1911 to reduce those appropriations below the limit of 1910?

I grant you that there is abundant room for reform; I grant you that large sums of money can be saved by a prudent revision of some of our departments; but do you not believe that it will require all the strength and all the virtue held by the Congress to limit for the year 1911 our expenditures to the sum appropriated for 1910?

If when we consider the growth of this country, the rapidity with which the Government takes on new functions, we can hold our expenditures to the amount appropriated in 1910, we will have done more than most of the optimistic and sanguine Senators believe can be done. If this country grows in its importations, if it grows in its internal revenues, it will also grow in its demands upon the Government in the exercise of duties and of functions not now provided by law, and if we will join hands in the effort to prevent the increase of the aggregate amount appropriated for this year in the coming year, we will have served the people whom we represent faithfully and well.

If I am right with respect to these things, Senators, we need the revenue that will be raised by an income-tax provision. We need it for the wise and economical and efficient administration of a government like ours. We may differ with regard to the propriety of an income-tax law. Some of you may prefer an inheritance-tax law; some of you may prefer some other form of adding to the revenues of the Government; but I hope that the merits of the measure which I have offered will be considered not upon the assumption that it creates a useless, unnecessary revenue, but that it will be considered in comparison with other proposals for adding to the revenue of the United States, and when so considered I can not doubt that a wise, just, and honest result will be attained.

Mr. BACON. Before the Senator takes his seat I desire to ask him a question, with his permission.

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from Georgia?

Mr. CUMMINS. With pleasure.

Mr. BACON. I have listened with very great interest to the Senator's speech from beginning to end, and my inquiry is prompted by the fact that I have failed to hear from the Senator an allusion to a certain phase of this question. I understand the distinguished and learned Senator to base his support of the proposition for an income tax solely upon the ground that the bill as proposed by the committee will not yield, in all probability, a sufficiency of revenue for the support of the Government. I understood the Senator further to say that if he was wrong in that contention, he abandoned his advocacy of the income tax. Am I correct in that understanding?

Mr. CUMMINS. The Senator from Georgia does not state my meaning, at least with perfect accuracy.

Mr. BACON. I shall be very glad to be corrected, then.

Mr. CUMMINS. I will restate it. I said that if I must choose between an adequate and complete protection to the industries of the United States and an income-tax law, I unhesitatingly would choose the former.

Mr. BACON. I understood the Senator to say that; but what I understood him to advocate was the adoption of his amendment or some kindred proposition exclusively upon the ground that the bill as proposed would, in his judgment, not yield a sufficiency of revenue, and the Senator did not base his advocacy of it upon any other ground.

Mr. CUMMINS. It is my opinion, answering the Senator from Georgia, Mr. President, that the bill as reported by the Senate committee will not yield sufficient revenue for the fair and economical administration of the concerns of the United States, and that an income-tax law is the fairest and justest supplement that can be added to create the necessary revenue.

Mr. BACON. Then I will put the question to the Senator in another form. If the Senator can be satisfied that he is not well justified in the apprehension which he has expressed this morning as to the insufficiency of the revenue to be raised under the bill to meet the demands of the Government, that he is wrong in that particular, and that the Senator from Rhode Island is, on the contrary, correct, does the Senator from Iowa then abandon his advocacy of an income tax as an amendment to this bill?

Mr. CUMMINS. I do not——

Mr. BACON. That is what I wanted to find out from the Senator, because——

Mr. CUMMINS. If the Senator will allow me to conclude my answer——

Mr. BACON. Certainly.

Mr. CUMMINS. I do not, because I believe that the bill as reported by the Senate committee can be so readjusted as to decrease the revenue and still afford adequate protection, and for that diminution I would prefer a revenue raised by an income tax.

Mr. BACON. That is the point upon which I wished to hear the Senator, and I listened with very great interest and attention to his speech from the beginning to the end to see if the Senator would touch upon that which I regard as the vital consideration in connection with the advocacy of an income tax.

Now, Mr. President, as the Senator has concluded his speech, and I have not completed my inquiry of him, I ask him to pardon me for being a little more prolix than I would otherwise be if he were in the delivery of his address. I have purposely omitted interrupting him pending that time, my object being to have a little more opportunity to make myself plain and clear in the inquiry which I desire to make of the Senator.

From my standpoint, believing as I do in the policy and propriety of the laying of an income tax, the important consideration in connection with it is not based upon the apprehension which has so disturbed the Senator from Iowa, that there may not be sufficiency of revenue, because I have great confidence in the judgment of my learned and distinguished friend from Rhode Island [Mr. ALDRICH] in regard to that matter, but my trouble is this: If I have understood correctly the demand which has come up from the American people for a revision of the tariff law, it is a demand so loud that the Republican party itself could not turn a deaf ear to it, and was unwilling to go into the campaign until it had made a pledge upon that subject.

My understanding of the cause of that demand was that the burden of taxation rested so heavily upon the great masses of the people of the United States; and when I say that, I am not speaking of those who are poverty stricken, but of the masses of the people who are in moderately good circumstances, people who live by salaries and who live by wages, and people who live from incomes in small business. The burden upon them was so great as to become intolerable, and the people of the United States desired that the tariff law should be revised in order that that burden might be decreased and that they might be put in a more tolerable condition in the bearing of the expense of comfortable living. In other words, the great masses of the people of the United States were in a condition where food cost them too much, where raiment cost them too much, and where the expense of every incident of life necessary for a comfortable living was in excess of that which they could reasonably supply from ordinary incomes.

Now, the point of the inquiry which I desire to make——

Mr. ALDRICH. Mr. President——

Mr. BACON. If the Senator from Rhode Island will pardon me a moment, my point is this: Does the Senator from Iowa believe that the bill which has been reported from the committee will relieve the great masses of the people of this country of the burden of the excessive cost of living? Will it enable them to get their food cheaper? Will it enable them to get their raiment cheaper? Will it enable them to put shoes upon the feet of their children and hats upon their heads and coats upon their backs cheaper than has been the case heretofore?

Mr. President, of course all this matter is to be thrashed out during the debate on this bill. I do not propose now to enter upon a discussion of the details, but I wanted to bring the attention of the Senator from Iowa to the fact that, with some of us a least, the ground upon which we base the advocacy of an income-tax law is not that there shall be an increase of revenue, as was suggested by the Senator from Rhode Island in his speech on Monday, but that even if there should be no increase of revenue it may be so readjusted through the enactment of an income-tax law that a large part of the burden of the revenue may fall where it does not now rest, upon the wealth of the country, and that it may be taken off where it now rests in such an intolerable burden, from the masses of the people, destroying their efforts to secure a comfortable living for themselves and their families.

Mr. ALDRICH. Will the Senator allow me?

The VICE-PRESIDENT. The Senator will suspend. The hour of 2 o'clock having arrived, the Chair lays before the Senate the unfinished business, which will be stated by the Secretary.

The SECRETARY. A bill (H. R. 1438) to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes.

Mr. ALDRICH. The suggestion which I wish to make to the Senator from Georgia is this: I am very glad that he has asked this question in the form he has, because if I did not misunderstand the Senator from Iowa he agrees substantially with what the Senator from Georgia is now saying. There may be a question of degrees, perhaps, between himself and the Senator from Georgia, but I would be glad to have this matter thoroughly understood. I am glad the Senator from Georgia has asked the question, because if I did not misunderstand the remark of the Senator from Iowa a moment ago he is desirous of reducing the taxes imposed by the pending bill.

Mr. BACON. I suppose the Senator from Iowa would have given that assurance if the Senator from Rhode Island had not kindly relieved him of the trouble or necessity of doing so.

Mr. CUMMINS. I did not hear the Senator's remark.

Mr. BACON. I am glad to have the assurance that such is the desire of the Senator from Iowa, even if it has been given through the medium of his distinguished leader, the Senator from Rhode Island.

Mr. ALDRICH. I understood the Senator from Iowa himself to say it.

Mr. BACON. I suppose so, and I said that I had no doubt the Senator from Iowa would say it if the Senator from Rhode Island did not anticipate it and say it for him.

Mr. CUMMINS. Mr. President——

Mr. BACON. But I want to say this, if my distinguished friend from Iowa will permit: As the Senator has said in the course of his remarks, he has a history, one which was known to many of us before he came to this Chamber, at least in part. We had marked the very active and efficient advocacy by the then distinguished governor of Iowa, not only in his official utterances, but in his addresses before the people, his great concern, his well-founded concern, and most admirably expressed concern at, I will not use the word "iniquities," but the oppression of the tariff, and in the injustice which was imposed by it upon the consumers of the country.

I confess that when the Senator from Iowa rose in his place this morning to advocate an income tax, I expected to hear a most instructive and, to me, a most gratifying disquisition upon the suggestion that the income tax was one which should be laid and which should have its greatest foundation in the great necessity to shift the burden of taxation from the shoulders of the ordinary consumers, those who are so little able to bear it, and should rest it in part, at least, so far as the machinery and the constitutional power of this Government may permit, upon the shoulders of those who have the great wealth of the country and who, under our peculiar system of government, bear no appreciable part in the support of the Government, the entire support of the Government resting upon consumers and being almost per capita, regardless of the wealth and ability of the respective citizens to bear each his part.

Therefore, I desired to ask the Senator from Iowa whether or not, in his judgment, the ground for the imposition of the income tax in this particular juncture was rested upon the necessity for an additional revenue, or whether it was rested upon the importance of shifting the burden of taxation from the great masses of consumers, so far as we may be able to do it, to rest it in part, at least, upon the shoulders of those who have the wealth of the country. I wanted to know which, in the opinion of the Senator from Iowa, is the more important consideration, he having given his entire time to the one and having entirely omitted the other.

Mr. CUMMINS. Mr. President, in answer to the question of the Senator from Georgia, I must remind him that it was not my purpose when I rose this morning to present the amendment respecting an income tax to say everything that I think with regard to the tariff. I shall hope as the discussion proceeds to disclose my views with regard to certain duties that are reported in the bill now before the Senate.

I am a protectionist. I believe in protecting the American markets against unfair competition from other countries. I believe, however, that upon many of the articles which are found in the schedules of the bill reported by the Finance Committee the duties are higher than are necessary to accomplish that result, and I expect, as time goes on, to vote for such reductions as I believe ought to be made, but never for any reduction that will open unfairly the American market to the foreign producer.

I want that to be so distinctly understood that hereafter there can be no possible misapprehension about it. My complaint about the tariff law as it now exists, my complaint about the report as it is now before the Senate, is that it attaches duties that are too high to a great many of the articles which are fairly within the scope of a tariff law. I believe, as I said before, that I could, if I had the power, produce tariff schedules that would give to the American producer his due protection, that would diminish the revenues that are derived from the necessaries of life, to which the Senator from Georgia has referred, and that would give more ample room than now exists for the operation of an income-tax law.

But my purpose this morning was simply to show that even upon the bill as presented by the Finance Committee, with the revenues that could fairly be expected from such a law, we shall still need the income-tax law to supply the deficiencies of revenue.

Mr. BACON. If the Senator will pardon me, I still do not understand him, even with the assistance of the learned Senator from Rhode Island, to have entirely answered the question which I propounded, which is, If the Senator were satisfied that the Senator from Rhode Island is correct in his judgment that the bill will raise a sufficiency of revenue, would the Senator then be in favor still of an income-tax law?

Mr. CUMMINS. I would.

Mr. BACON. I would be glad to have the Senator state on what ground.

Mr. CUMMINS. Simply because if I could change the situation I would so rearrange and readjust these schedules as to decrease the revenue derived from the custom-houses and place it where it should belong—upon those fortunate people who enjoy large incomes.

Mr. BACON. Now, the Senator has stated exactly the thing I wanted him to state.

Mr. CUMMINS. I am very glad that I have at last made myself understood.

Mr. ALDRICH. Mr. President, I have heard too many discussions in the Senate over terms, as to whether a man was a protectionist or otherwise, to be anything but sanguine that sooner or later the Senator from Georgia and the Senator from Iowa will reach a satisfactory conclusion upon this question.

THE TARIFF.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 1438) to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes.

Mr. ALDRICH. I ask that the reading of the bill be proceeded with; that the reading be by paragraphs, with the understanding that no paragraph or no amendment suggested by the committee shall be acted upon about which there is any contention, and with the further understanding that we may go back at any time and take up any of the provisions of the bill which have been passed over.

Mr. BACON. I suggest to the Senator from Rhode Island that his motion possibly was not anticipated by the Senate, and——

Mr. ALDRICH. It was anticipated by the minority members of the committee, and the request is made on a full understanding with the minority members.

Mr. BACON. The Senator did not hear me through. I was simply suggesting that it might be well to have Senators now put upon notice of the fact that the motion is being called up which is now made by the Senator from Rhode Island.

Mr. ALDRICH. It is not a motion. The bill is now before the Senate.

Mr. BACON. Very well. I simply wish that Senators may be in their seats; that is all; and I think it very important.

Mr. ALDRICH. Does the Senator suggest the absence of a quorum?

Mr. BACON. I did not myself desire to make any suggestion, but I thought perhaps the Senator from Rhode Island would make it.

Mr. ALDRICH. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. CARTER in the chair). The Senator from Rhode Island suggests the absence of a quorum. The Secretary will call the roll.

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

Aldrich	Clarke, Ark.	Hughes	Piles
Bacon	Clay	Johnson, N. Dak.	Rayner
Bailey	Crane	Johnston, Ala.	Richardson
Beveridge	Cullom	Jones	Root
Borah	Cummins	Kean	Scott
Bourne	Depew	La Follette	Smith, Md.
Bradley	Dick	Lodge	Smith, Mich.
Brandegee	Dillingham	McCumber	Smith, S. C.
Bristow	Dolliver	McLaurin	Stephenson
Brown	du Pont	Money	Stone
Bulkeley	Elkins	Newlands	Sutherland
Burkett	Fletcher	Nixon	Taylor
Burrows	Flint	Oliver	Tillman
Burton	Frye	Overman	Warner
Carter	Gamble	Page	Warren
Chamberlain	Guggenheim	Paynter	Wetmore
Clapp	Hale	Penrose	
Clark, Wyo.	Heyburn	Perkins	

A bill (S. 2024) granting a pension to Eliza A. Miller Bradley;

A bill (S. 2025) granting an increase of pension to Frank E. Bickford;

A bill (S. 2026) granting an increase of pension to Gertrude Smith; and

A bill (S. 2027) granting a pension to John L. Penwell; to the Committee on Pensions.

By Mr. CURTIS:

A bill (S. 2028) to create in the War and Navy departments, respectively, a roll to be known as the "civil-war officers' annuity honor roll," and for other purposes; to the Committee on Military Affairs.

By Mr. OWEN:

A bill (S. 2029) for the relief of the Absentee Shawnee Indians in the State of Oklahoma, and for other purposes; to the Committee on Indian Affairs.

By Mr. BURROWS:

A bill (S. 2030) granting an increase of pension to Lewis B. Moon (with the accompanying paper); to the Committee on Pensions.

By Mr. CULBERSON (by request):

A bill (S. 2031) for the relief of the heirs of Francisco Guilbeau, deceased (with the accompanying paper); to the Committee on Claims.

By Mr. BEVERIDGE:

A bill (S. 2032) to amend an act entitled "An act granting to certain employees of the United States the right to receive from it compensation for injuries sustained in the course of their employment," approved May 30, 1908; to the Committee on Education and Labor.

By Mr. WARREN:

A bill (S. 2033) for the exchange of certain lands situated in the Fort D. A. Russell Military Reservation, in the State of Wyoming, for lands adjacent thereto, between the city of Cheyenne, a municipality organized and existing under the laws of the State of Wyoming, in the State of Wyoming, and the Government of the United States; to the Committee on Military Affairs.

A joint resolution (S. J. R. 26) to establish in the State of Wyoming a winter game reserve (with the accompanying paper); to the Committee on Forest Reservations and the Protection of Game.

AMENDMENT TO THE TARIFF BILL.

Mr. PAYNTER submitted an amendment intended to be proposed by him to the bill (H. R. 1438) to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes, which was ordered to lie on the table and be printed.

INCOMES AND INHERITANCES.

The VICE-PRESIDENT. The morning business is concluded.

Mr. BROWN rose.

Mr. ALDRICH. I ask that House bill 1438 be laid before the Senate.

The VICE-PRESIDENT. Without objection, the bill will be laid before the Senate.

Mr. ALDRICH. I am told by the Senator from Nebraska [Mr. BROWN] that he would like to have the joint resolution which he introduced yesterday laid before the Senate as a part of the morning business, and I am quite willing that that shall be done.

The VICE-PRESIDENT. The Secretary will read the joint resolution.

The Secretary read the joint resolution introduced yesterday by Mr. BROWN, as follows:

A joint resolution (S. J. R. 25) to amend the Constitution relative to incomes and inheritances.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following section be submitted to the legislatures of the several States, which, when ratified by the legislatures of three-fourths of the States, shall be valid and binding as a part of the Constitution of the United States:

"The Congress shall have power to lay and collect taxes on incomes and inheritances."

Mr. BROWN. Mr. President, I have no intention at this time to detain the Senate with a discussion on the merits of the several income-tax amendments pending before this body. It is sufficient for the purpose that I have in mind this morning to say on that subject that I am in full accord with the proposition of laying some of the burdens of taxation upon the incomes of the country; but I rise this morning for the purpose of challenging the attention of the Senate to the fact that the Constitution of our country stands to-day in need of an amendment upon this subject if we are to have an income-tax law at all about the validity of which there can be no question.

Mr. President, the history of the income-tax proposition in the United States, both as written by the economists of the country and as written and discussed by the framers of the Constitution and as interpreted by the courts of the country, has been given to the Senate during this discussion in the last two days. It occurs to me that my distinguished friend from Texas [Mr. BAILEY] undertook to keep faith with the Senators when he told us that he intended to demonstrate that under the Constitution as it stands to-day an income-tax law ought to be sustained. In other words, he undertook to demonstrate that the decision of the courts of the country as last pronounced was wrong. I want to suggest to the Senate this afternoon just briefly that if we take everything as true as stated by the Senator from Texas, and if we accept his conclusion as absolutely right, that the decision of the court in the Pollock case was wrong, I ask you, Senators, of what avail that would be to the country or with what satisfaction could it be received? Suppose it be true that we are convinced as Senators that the decision of the court was a mistake, does it help us? Does it help to place the burdens of taxation upon those who are earning the large incomes of the country?

Mr. President, we may have the satisfaction this hour of knowing that the opinion of the court, in our own minds, was not only not sustained by the law for a century, but was contrary to the law for a century. However, I call the attention of Senators to the fact that though we may be satisfied as to what the law is we are not on the bench of this country. We do not have the right to enter a judgment. We have no power to pronounce a decree. We have no power to write our opinions in the court records of the country, which may become a basis for any execution to enforce them.

But let us go a step further. Suppose we are not only convinced that the court made a mistake on its last decision, but we are so fully convinced of that fact that we undertake and succeed here at this extraordinary session of Congress to amend this proposed law by attaching an income-tax amendment, what have we accomplished? We have carried out our judgment and written into the statute our judgment, but when the law is passed and reaches the White House and is signed by the President, it yet must come to the door of that court which very recently vetoed legislation of that character. Let it be remembered, Senators, that when a veto comes from the White House we have the power, constitutionally, if we have the votes, to override it, but when a veto comes from the court, that veto overrides us—it is final.

We then have given again to the court an opportunity to adhere to its last opinion, declaring us without power to pass such a law or to declare the reverse. I want to inquire if there is a Senator in this Chamber who is willing to stand up and tell us that he has any reason to suppose that the court has changed its mind on the law of this question. I have always been taught the good old doctrine that when the courts have spoken it is the law of the land. I have always believed in that precept which the fathers had in their hearts when they wrote the Constitution, that the legislative branch of Government was vested with the power to write laws, and that another branch of Government, the courts of the country, were vested with the power to interpret them and the Constitution upon which they were based.

But suppose, Mr. President, that not only we pass the law and it is signed by the President, but it reaches the court of last resort and we get an opinion the reverse of the last one. The law is sustained. Those of us who believe in the principle of levying taxes on incomes are satisfied, are we? The country that to-day believes in the principle of taxing incomes will be satisfied, will it? Yes, Mr. President and Senators, it will for the time being; but tell me how long will that decision stand? Our courts have demonstrated a faculty to change their opinions on this question, for they have decided it at different times different ways, and while we might hope and believe that that decision would be permanent, no man can justify a conclusion with any certainty that it would be permanent.

It is for that reason, Senators, that I present to you to-day the imperative and commanding necessity for an amendment to the Constitution which will give the court a Constitution that can not be interpreted two ways. I undertake to say that the people of the United States have a right to have an opportunity to amend the Constitution and to make it so definite and so certain that no question can ever be raised again of the power of Congress to legislate on the subject.

Mr. RAYNER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Nebraska yield to the Senator from Maryland?

Mr. BROWN. Certainly.

Mr. RAYNER. In looking at the joint resolution I see that it reads "The Congress shall have power to lay and collect taxes

on incomes." It has that power now. Congress has the power now to lay and collect taxes on incomes and on inheritances.

I will just call the Senator's attention to the fact that unless you change the clause of the Constitution which provides for apportionment the joint resolution would not repeal that clause. The two clauses would stand in pari materia together and you would still have an apportionment.

The resolution proposes to say that Congress shall have power to lay and collect taxes on incomes and inheritances. The Supreme Court has held in Noble *v.* Moore that we have the right to tax inheritances. I merely take the liberty of calling the Senator's attention to the fact that if this amendment to the Constitution were to go through, it would not affect the prior article and there would still have to be an apportionment.

Mr. BROWN. I am very glad to have the Senator shed light on this subject. I had never become so beside myself that I dreamed that my resolution in all particulars would satisfy the critical judgment of the Senator from Maryland. I want to say to the Senator that I am aware that under the law and the Constitution now Congress has the power to tax incomes, and if he had been able to possess his soul in patience long enough he would have found out that, in my judgment, when Congress was granted that power, limited, however, to apportionment according to population, it in effect denied the right of Congress to levy taxes on incomes.

On that branch of the subject I expect to be heard briefly in a moment.

Mr. President, if there can be any doubt about the language of the proposed resolution carrying into effect the purpose of it, I think the Committee on the Judiciary, to which it must go, and of which the distinguished Senator from Maryland is a member, will be able to clarify the literature of the resolution.

Now, then, to follow out my suggestion, I want to appeal first to those of us who believe in passing a law which shall reach the luxurious incomes of this country and ask them to help pass this resolution that the Constitution may have in it a section that can not be misunderstood. When we have an income-tax law passed, we want the law to be enforceable and to be operative.

Mr. PAYNTER. Mr. President——

The VICE-PRESIDENT. Will the Senator from Nebraska yield to the Senator from Kentucky?

Mr. BROWN. Certainly.

Mr. PAYNTER. In order to give the Senator some hope that the courts will always be glad to correct an error, I will ask his permission to allow me to give an instance in which the court did do it.

Mr. BROWN. With pleasure.

Mr. PAYNTER. I was a member of the Kentucky court of appeals when the question arose as to whether the banks of Kentucky had an irrevocable contract with the State with reference to taxation. The banks claimed that they were permitted, under a contract which they alleged they had with the State, to pay a certain sum in lieu of all state, county, and municipal taxes, the effect of which was to deprive the counties and the municipalities of Kentucky of a large sum of money each year.

That court, in June, 1895, decided that the banks had that contract. In March, 1897, that court with a great deal of pleasure took back the previous opinion and held that the banks did not have an irrevocable contract. A dissenting opinion delivered in its first case was made the opinion of the court in the last named. I know of another instance in that same court where the same thing occurred. I mention it here to give the Senator hope that the Supreme Court of the United States may on this question as in other cases—including income-tax cases—change its opinion upon important questions.

Mr. BROWN. I want to say to the Senator that I am in full accord with the proposition to give the court an opportunity to correct the last judgment. I am so strongly in favor of the proposition to tax incomes that it is immaterial to me which one of the several measures now pending meets the approval of this Congress. I have my preference among those measures, but I would rather see any one of them become a law than to see them all defeated. I am anxious and willing that the court shall have an opportunity to pass again upon this proposition. But, Mr. President, the people of this country are entitled to something more than an opportunity.

They are entitled to have a Constitution, if they see fit to adopt it, as to which, when the opportunity does come to the court to pass again on this question, there will be no doubt about what the decision will be. Nothing has been illustrated more in the last two days than the examples given by my friend from Kentucky.

Mr. PAYNTER. If the Senator will allow me, I will also add to what I said, that the Supreme Court sustained the second opinion of the court of appeals, and the second opinion was simply the dissenting opinion that was delivered in the previous case.

Mr. BROWN. It illustrates that courts as well as men change their minds. It recalls the history that we heard yesterday and the day before as to Madison, one of the framers of the Constitution, one of the men who helped to write into the Constitution this very provision under which the court first held that Congress could pass an income-tax law, and later, in the Pollock case, held that it could not. Madison, one of the framers of that provision, took the stand as an American citizen when the case was before the court that it did not confer upon Congress this power, and yet afterwards, when Madison became President, he not only changed his opinion upon the subject as a man and a citizen, but as a President of this country signed a bill embodying that very principle. Courts change their minds, like men, and they have a right to do it. But when the people of this country find that courts are changing their minds on a subject in which they are interested and which they want to have settled, then I contend that it is the duty of Congress to give them an opportunity to settle it themselves by amending the Constitution.

Now, then, I want to speak one moment to those Members of this body who are opposed to any income tax at all. I want to appeal to them, standing as they do to-day ready to vote against the proposition to levy and collect taxes on incomes, that they join the friends of this measure in an effort to amend the Constitution so that if the Nation ever does require in their judgment an exercise of the power of collecting taxes from incomes, we may be permitted to do it. There is not an enemy of the income-tax law proposition on this floor who will tell the Senate that the time will never come when he would be in favor of collecting taxes upon those who earn incomes.

Let me emphasize the effect of the decision of the court in the Pollock case. Unless it is remedied by a reversal of that decision or by an amendment to the Constitution, it leaves this Republic in a position far below that of any other enlightened nation on the face of the earth.

Let me just call your attention briefly, Senators, to the words of Justice Harlan upon the effect of conceding Congress to be without power to levy a tax upon incomes. I wish to say, in passing, that I am willing to concede there are men on the floor of the Senate able to make most exhaustive and convincing and persuasive arguments showing that the decision of the court in the Pollock case was wrong. But I want also to stand on the proposition that no man upon this floor or elsewhere will ever be able to present an argument to that end as clear and as strong as was presented to that court by Justice Harlan in his dissenting opinion. Now, as to the effect, I want to read the words of Justice Harlan:

> In my judgment, to say nothing of the disregard of the former adjudications of this court and of the settled practice of the Government, this decision may well excite the gravest apprehensions. It strikes at the very foundations of national authority, in that it denies to the General Government a power which is or may become vital to the very existence—

Mark you—

> and preservation of the Union in a national emergency.

Senators, we had a national emergency in this country once. I want to call the attention of the country and of Senators to the fact that it was the tax upon incomes that equipped and helped to maintain the men engaged in that controversy. Justice Harlan may have been moved to these words by the fact that he had seen service in that crisis.

> It tends to reestablish that condition of helplessness in which Congress found itself during the period of the Articles of Confederation, when it was without authority by laws operating directly upon individuals, to lay and collect, through its own agents, taxes sufficient to pay the debts and defray the expenses of government, but was dependent, in all such matters, upon the good will of the States and their promptness in meeting requisitions made upon them by Congress.

Why—

Says the justice—

> do I say that the decision just rendered impairs or menaces the national authority? The reason is so apparent that it need only be stated. In its practical operation this decision withdraws from national taxation not only all incomes derived from real estate, but tangible personal property, "invested personal property, bonds, stocks, investments of all kinds," and the income that may be derived from such property. This results from the fact that by the decision of the court all such personal property and all incomes from real estate and personal property are placed beyond national taxation otherwise than by apportionment among the States on the basis simply of population. No such apportionment can possibly be made without doing gross injustice to the many for the benefit of the favored few in particular States. Any attempt upon the part of Congress to apportion among the States, upon

the basis simply of their population, taxation of personal property or of incomes would tend to arouse such indignation among the freemen of America that it would never be repeated.

Now, listen to the justice—

When, therefore, this court adjudges, as it does now adjudge, that Congress can not impose a duty or tax upon personal property, or upon incomes arising either from rents of real estate or from personal property, including invested personal property, bonds, stocks, and investments of all kinds, except by apportioning the sum to be so raised among the States according to population, it practically decides that, without an amendment of the Constitution—two-thirds of both Houses of Congress and three-fourths of the States concurring—such property and incomes can never be made to contribute to the support of the National Government.

This is the trouble that confronts the Nation. Unless we have a Constitution about which courts will not disagree, giving Congress the power to pass this legislation which we favor, Congress is without power to levy the taxes on this vast volume of property, even though Congress might desire to pass such a law.

Mr. President, it ought to make the blood run to our faces when we stop to think that there is not another enlightened nation on the face of the earth that does not have and exercise the power to levy taxes on this kind of property except ourselves. What is there about this Republic that it should not be clothed with all the rights and powers and prerogatives enjoyed by every other sovereign nation on the face of the earth?

Mr. President, I come now for a moment to the proposition raised by the Senator from Maryland. Upon that question I simply want to demonstrate to him, as well as to the Senate, that as construed now the power of Congress to levy taxes on incomes by apportioning them according to population amounts practically to a denial of the power of Congress to levy such taxes. In the dissenting opinion of Mr. Justice Brown this was shown conclusively. Similar illustrations were made in the arguments to the court. There was shown mathematically the practical impossibility, tested by any measure of approximate justice, to apportion those taxes, and this illustration of the learned justice has never been impeached by word or intimation by anybody disagreeing with him in his general conclusions. On page 608, the justice makes an application of the law according to population. He says:

By the census of 1890, the population of the United States was 62,622,250. Suppose Congress desired to raise by an income tax the same number of dollars, or the equivalent of $1 from each inhabitant. Under this system of apportionment, Massachusetts would pay $2,238,943. South Carolina would pay $1,151,149. Massachusetts has, however, $2,803,645,447 of property, with which to pay it, or $1,252 per capita, while South Carolina has but $400,911,303 of property, or $348 to each inhabitant. Assuming that the same amount of property in each State represents a corresponding amount of income, each inhabitant of South Carolina would pay in proportion to his means three and one-half times as much as each inhabitant of Massachusetts. By the same course of reasoning, Mississippi, with a valuation of $352 per capita, would pay four times as much as Rhode Island, with a valuation of $1,459 per capita. North Carolina, with a valuation of $361 per capita, would pay about four times as much, in proportion to her means, as New York, with a valuation of $1,430 per capita; while Maine, with a per capita valuation of $740, would pay about twice as much. Alabama, with a valuation of $412, would pay nearly three times as much as Pennsylvania, with a valuation of $1,177 per capita. In fact, there are scarcely two States that would pay the same amount in proportion to their ability to pay.

Mr. President, no man in this Chamber need have any doubt about how the apportionment proposition would work. All we need to do to be satisfied is to recall what would happen in our own States if the tax were to be distributed between the counties according to population or between the wards of the cities according to population. It is the theory of the friends of the income-tax proposition that property should be taxed and not individuals. I do not believe the fathers ever contemplated that income taxes must be apportioned according to population, but the courts have said that they did. I am here to-day presenting an amendment to the Constitution which will compel the courts to announce the contrary doctrine.

Mr. President, I ask to have the joint resolution referred to the Committee on the Judiciary.

The VICE-PRESIDENT. The joint resolution will be so referred.

THE TARIFF.

The VICE-PRESIDENT. The morning business is closed, and the Senator from Rhode Island has asked that House bill 1438 be laid before the Senate.

There being no objection, the Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 1438) to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes.

Mr. SIMMONS. Mr. President, in the remarks which I desire to submit to the Senate to-day I shall confine myself almost entirely to a discussion of the schedule with reference to woods and the manufactures of woods, especially lumber. I shall address myself particularly to the two amendments, one offered by the Senator from North Dakota [Mr. MCCUMBER], proposing to put lumber upon the free list, and one by the Senator from Washington [Mr. PILES], proposing to raise the duty specified in the bill to $2, the rate prescribed in the present law.

Mr. President, I am reminded by the Senator from Maryland [Mr. SMITH] who sits at my side that the Senator from West Virginia [Mr. ELKINS] has introduced an amendment similar to that introduced by the Senator from Washington.

The bill under consideration reduces the duty upon rough lumber—that is, sawed board—from $2 to $1 per thousand feet. The equivalent ad valorem rates are, respectively, about 11 per cent and 5½ per cent.

I am opposed to this reduction and in favor of retaining the present duty upon lumber, because the present rate is upon a revenue basis, and because the proposed reduction will probably not reduce the price of lumber to the farmer and the home builder, or, if at all, only slightly and in a comparatively limited area, while it would work great hardship to the lumber industry and the sections of the country in which this industry is conducted, by enlarging the market zone of Canada for this product.

Lumber, Mr. President, is one of the greatest industries in this country. With one exception, it is the greatest manufacturing industry in this country, iron and steel alone being greater. Lumber is the principal industry in 12 States of this Union. More than a thousand cities and towns of our country are directly dependent upon this industry for their prosperity.

The present law and the proposed bill catalogue all of the dutiable products of this country into 12 great schedules, and woods and manufactures of woods are at the bottom of those schedules with reference to the amount of duties imposed upon them. The duty imposed upon wood as a whole is 15 per cent ad valorem; that imposed upon lumber, as distinguished from woods in general, is about 4 per cent less, or 11 per cent.

The other duties comprised in these great schedules run all the way from 20 per cent ad valorem to 87 per cent. Under the present law, the average ad valorem upon all the dutiable products of the country is about 44.16 per cent, while that upon lumber is about 11 per cent, or only about one-fourth the average. In the proposed bill the average ad valorem upon all of the dutiable products of the country is substantially unchanged. It is about 44 per cent, while the ad valorem proposed upon lumber is only about 5½ per cent, or a little less than one-seventh of the general average.

Mr President, in considering the question of the removal, or the reduction of the duty on lumber, two things ought to be taken into consideration:

First, the fact that labor constitutes a larger element in the cost of producing lumber than of any other manufactured product. The raw material of lumber is the tree standing in the forest. As it stands there, where God planted it, it is worth probably less than $3 a thousand feet. When it has been converted into boards, there has been expended upon it eight or ten dollars; and nearly every item in this "bill of cost," so to speak, is represented either by labor or by labor's products. At least 75 per cent of the cost of lumber—I mean at the mill, before the element of transportation has entered into it, before it has started upon its mission of distribution—75 per cent of the cost of lumber is labor.

Another essential element that must be taken into consideration in reaching a just conclusion on this subject is the fact that almost, if not every, item in this "bill of cost" is protected under the present law, and will be protected under the proposed law, by a high rate of duty. Labor, which constitutes such a large part of the cost of production, is professedly protected by all of the schedules of the present and the proposed tariff acts. The ax and the saw which fell the tree in the forest, the log carriage that hauls the tree to the station, the locomotive, and the steel rails over which the locomotive runs in transporting it to the sawmill, the machinery, and even the belts that connect the machinery and put it in motion are protected under the present law and in this bill at an ad valorem rate ranging from 30 to 40 per cent.

By reason of these tariff duties upon the things which enter into the cost of its manufacture the cost of the production of lumber in this country is increased over 30 per cent. Not only is nearly everything that enters into the cost of manufacturing lumber protected by this high duty of over 30 per cent, but lumber itself is a competitor of some of the chief articles which add to the cost of its production. Iron, steel, and cement, all entering into the cost of manufacturing lumber, in the form of machinery and structural material, are among the chief competitors of lumber in the construction of homes and houses and for many other purposes for which both are used.

Mr. President, I submit that there can be no more cruel repression of an industry than by adding 30 per cent to the cost of its product by your tariff laws, while it is exposed to competition, on the one hand, with a foreign product which, on account of the difference in the labor, stumpage, and transportation cost, can be produced at 30 per cent less than it can and while, on the other hand, it must compete with products of our own country the price of which has been advanced 30 per cent by your tariff laws.

It is obvious if under these circumstances lumber is placed on the free list, that a double handicap will be imposed upon it.

Mr. DIXON. Mr. President——

The VICE-PRESIDENT. Does the Senator from North Carolina yield to the Senator from Montana?

Mr. SIMMONS. Certainly.

Mr. DIXON. I am very largely in sympathy with what the Senator from North Carolina is now saying regarding the equity of a duty on wood and lumber products, but I want to inquire at this time how he squares his advocacy of a tariff on lumber with the declaration of the Democratic national platform adopted at Denver a year ago, when that platform declared:

> We demand the immediate repeal of the tariff on wood pulp, print paper, lumber, timber, and logs, and that these articles be placed upon the free list.

Understand, I am in sympathy with what the Senator is now saying.

Mr. SIMMONS. Yes; I understand that. Mr. President, the Senator's question does not embarrass me. The Senator has simply read one of the declarations of the Democratic platform. There were other declarations. That was a specific declaration; but there was a general declaration in favor of a reduction of import duties upon all articles, with the ultimate end of placing the whole system of tariff taxation in this country upon a revenue basis; and this specific declaration must, of course, be taken in connection with the general declaration and interpreted as a part of the whole. That platform declared if the Democrats were given power they would so revise the tariff as to put the whole system upon a revenue basis. The declaration with reference to lumber must be construed in connection with this general purpose in regard to the tariff. If we had been successful, we would, I assume, have revised the tariff along the lines indicated. Iron and steel and such other structural materials as either directly or indirectly compete with lumber or enter as an element in its cost of manufacture would have been put upon the free list, or the duty on them have been reduced to a revenue basis. As it is impossible for us to carry out our general declaration, the conditions upon which our declaration with regard to lumber was predicated do not exist.

The proposed tariff bill, like the McKinley and Dingley tariffs, is a highly protective measure. Did the Democrats mean to promise free lumber without regard to the character of the general measure of which it was to be a part, or without regard to the discrimination that would necessarily result if that measure covered with highly protective or prohibitory duties other articles in the same general classification? I think not. To give the declaration in question that construction would be holding to the letter of that promise while disregarding its spirit. At least that is my view of the matter, and upon that interpretation and construction I am willing to stand. If I am satisfied, why should the Senator from Montana object to it, as he says he is in sympathy with my position as to lumber?

If the Senator from Montana will consent to put in operation that general declaration of the Democratic platform in favor of a revenue tariff, if he will consent to take off all of the prohibitory and protective elements of the rates prescribed in the bill which has been presented here and reduce those rates to a revenue basis from beginning to end, then he may put lumber and hides and coal and iron ore on the free list if he desires to do so.

Mr. President, returning to my argument at the point where I was interrupted by the Senator from Montana, let me ask, Why single out for discrimination this great industry, an industry which to-day is giving employment to between seven and eight hundred thousand men—not men, women, and children, but men—which to-day is feeding and clothing between three and four millions of laboring people; an industry the output of which is about equal to that of cotton; an industry the output of which is nearly $100,000,000 more than that of our wheat crop; an industry which furnishes a larger volume of the tonnage of transportation than any other, with the possible exception of one, and is of all our industries the largest consumer of farm products; which is the principal industry of 12 States of this Union, and upon which more communities are dependent for the business prosperity they are now enjoying than any other industry in our great country? I repeat, Why single out this great industry for discrimination and slaughter? Why place these high duties upon coal and iron and wool and leather, while placing lumber, the greatest product of the South and Pacific coast, upon the free list? Why place upon it these great burdens of the tariff while denying it any of its benefits?

Mr. President, this unfair and discriminatory treatment of this industry can not be justified, in my opinion, except upon grounds of extreme necessity or overwhelming urgency; and I think no such reasons exist. I have heard but three arguments, and I think but three general reasons can be assigned, in support of the proposition that the duty on lumber ought to be either reduced or removed. One of them is a political argument. It is used only by Democrats who are in favor of free trade in lumber. Their objection to the duty on lumber, either that in the present law or the small duty proposed in the pending bill, is that it is a protective duty. I want to examine and analyze that argument, because there are many Democrats who would not feel, whatever might be its effect upon an industry in their section, like supporting a proposition imposing a distinctively protective duty. I assert here—and I think, if my strength holds out and the patience of the Senate does not become exhausted, I can show—that the rate of duty which I am advocating is not in any sense a protective duty as contradistinguished from a revenue duty. On the contrary, Mr. President, I assert, and I think I can show, that the duty of $2 imposed in the present law, which I am in favor of retaining, is not only a revenue duty, but that it is a better revenue-producing duty than the rate which it is proposed to substitute for it.

The McKinley law of 1890, as Senators will recall, imposed a duty of only $1 upon lumber of hemlock and white pine. That is the kind of lumber that is imported into this country from Canada, and practically all the lumber that is imported into this country comes from Canada. There was imported into this country under the McKinley tariff of $1, during the last three years of the operation of that law, from 1891 to 1893, inclusive, 1,341,000,000 feet of lumber. The law of 1897, the Dingley Act, as we all know, imposes a duty of $2 upon lumber. The importation into this country under this tariff of $2, from 1906 to 1908, inclusive, was 2,448,892,000 feet; in other words, there has been imported into this country under the $2 rate of the Dingley law, in the last three years of its life, 1,000,000,000 feet more lumber than was imported during the last three years of the McKinley Act under the $1 rate. So that the $2 rate of the present law has proved twice as good, nay, more than twice as good, a revenue producer as the $1 rate under the McKinley Act. The amount of revenue actually derived by the Government was nearly three times as much under the $2 rate as under the $1 rate. The $2 rate is therefore a better revenue rate than the $1 rate.

Mr. CLAPP. Mr. President——

The PRESIDING OFFICER (Mr. CARTER in the chair). Does the Senator from North Carolina yield to the Senator from Minnesota?

Mr. SIMMONS. Certainly.

Mr. CLAPP. While the argument just made of course applies to the volume of revenue, yet, as bearing upon the question of the necessity for protection, it might be important to know the relative increase, and I ask the Senator if he has at hand the increase in the home production during the same time, so that we may compare with that the increased importation?

Mr. SIMMONS. I have, unfortunately, not in my possession the figures as to the increase in the home production.

Mr. CLAPP. I did not know but that the Senator had the information convenient.

Mr. SIMMONS. But I will say to the Senator, that when the Dingley Act went into operation the annual imports of lumber into this country were only about 500,000,000 feet. Last year, under the operation of that law, there was imported about 900,000,000 feet, showing—and I am arguing the point as to its revenue-producing capacity—that the $2 rate does not operate to check importations, but that importations under this very law have in seven years multiplied nearly 300 per cent.

Mr. SMITH of Maryland. Three hundred per cent in eight years.

Mr. SIMMONS. Yes, sir; 300 per cent in eight years, and that establishes the fact for which I am contending, namely, the present rate is a revenue and not a protective duty.

Mr. CLAPP. Mr. President, I understood the Senator to take the position that the present tariff was necessary as a protective measure, and that to reduce that tariff would be to imperil this industry.

Mr. SIMMONS. I did not say it was necessary as a protective measure.

Mr. CLAPP. Then I misunderstood the Senator.

Mr. OWEN. Mr. President, I desire to offer an amendment, which I shall propose at the proper time, to the woolen schedule, paragraph 375, and to every other schedule where the duty is shown by our records to be prohibitive; and at the convenience of the Senate I desire to address it with regard to that subject-matter.

I should like to have the amendment entered on the face of the RECORD, so that it may be seen by the Members of the Senate.

The PRESIDENT pro tempore. The Senator from Oklahoma asks that the amendment be printed in the RECORD. Is there objection? The Chair hears none, and the order is made.

The amendment is as follows:

After the last line of paragraph 375 insert:

"That the rate fixed on all articles enumerated in this paragraph shall be reduced 5 per cent per annum of the rate fixed in this act, annually on June 30, for each of the next ensuing ten fiscal years: *Provided*, That if such graduated reduction shall cause a diminution of the annual revenue from any one or more of the above-enumerated articles, the President is authorized and directed to fix the rate on any such article or articles at the point at which such article or articles severally are found to have the greatest normal revenue-producing power, but not at a rate higher than the rate fixed in this act: *Provided further*, That the rate shall not be reduced or fixed below the point at which it would produce an amount equal to the difference in the cost of the production of any such article in the United States and abroad."

Mr. CULBERSON. I offer two amendments to the pending bill, and ask that they be printed and lie on the table. They are intended to put bagging and ties on the free list.

The PRESIDENT pro tempore. The amendments will be received, printed, and lie on the table.

Mr. BORAH. Mr. President, those who are members of the majority party in this Chamber and who are advocating an income tax do not concede that they are outside of party lines or that they are advocating policies or principles which are new or radical. We believe we are advocating policies and principles that are well accepted as a part of the faith to which we subscribe, and that we are advocating principles as old as the revenue laws of the United States. We advocate an income tax not as a temporary measure for the purpose of securing revenue for temporary purposes, but because we believe it should be a permanent part and portion of the revenue system of the United States.

I have reread within the last few weeks the cultured and faithful biography of John Sherman, written by one of the honored Members of this body. Although read with that object in view, I did not find that that great leader in his day was given to radicalism, socialism, or that he was often swung from his moorings as a conservative statesman. He was one of the steadfast and sturdy councilors of this country in a very trying hour. Long after the war had closed and after we had had the experience of an income tax for some several years, after we had known its benefits and its defects, its failures and its virtues, and after the necessity of maintaining it as a war tax had passed, this distinguished leader of his party, in 1871, said:

They have declared it to be invidious. Well, sir, all taxes are invidious. They say it is inquisitorial. Well, sir, there never was a tax in the world that was not inquisitorial; the least inquisitorial of all is the income tax. * * * There never was so just a tax levied as the income tax. There is no objection that can be urged against the income tax that I can not point to in every tax. * * * Writers on political economy as well as our own sentiments of what is just and right teach us that a man ought to pay taxes according to his income. * * * The income tax is the cheapest tax levied except one.

Referring at that time to the bank tax.

Again he said:

It is the only tax levied in the United States that falls upon property or office or on brains that yield property, and in this respect is distinguished from all other taxes levied by the United States, all of which are levied upon consumption, the consumption of the rich and the poor, the old and the young.

Mr. Sherman at the same time declared in favor of the constitutionality of the tax and defended it against the assaults which are usually made against the income tax, because at that time the same arguments were used against the tax that are used to-day. You will not see even in the discussion now anything that was not foremost in the arguments against the tax at the time it was in existence.

Many years afterwards, and long after this tax had been repealed by the narrow vote of 1 in Congress, and upon an occasion when he was discussing in a general way the revenue system of the United States, he used this language:

The public mind is not yet prepared to apply the code of a genuine revenue reform. But years of further experience will convince the whole body of our people that a system of national taxes which rests the whole burden of taxation upon consumption and not one cent on property or income is intrinsically unjust. While the expenses of National Government are largely caused by the protection of property, it is but right to require property to contribute to their payment. It will not do to say that each person consumes in proportion to his means. That is not true. Everyone can see that the consumption of the rich does not bear the same relation to the consumption of the poor that the income of the one does to the wages of the other. * * * As wealth accumulates this injustice in the fundamental basis of our system will be felt and forced upon the attention of Congress.

It would be useless to amplify upon that statement of this great statesman and distinguished party leader. It states in a brief paragraph the whole contention of those who are to-day advocating an income tax, not, as has been suggested here, for the purpose of raising revenue for temporary purposes alone, but that it may become engrafted in and a part of—an inseparable part of—the general revenue system of the United States, in order that we may arrive as nearly as we can, as human ingenuity can make it, at a tax which is levied upon a man's ability to pay and in accordance with what he derives as a measure of benefit from his Government.

I am aware it will be said that Mr. Sherman voted against the income tax of 1894, but I have reread within the last few days the debate which occurred at that time, and especially the speech of Mr. Sherman, and he was careful to say that he himself had reread the speech which he had made in 1871, and that there was nothing in that speech which he desired to modify or in any way change; that he voted against the income tax at that time because of the details of the bill, and especially with reference to its exemptions, and also for the reason that he thought that at that time there was no necessity for it.

Senator Morton, one of the safe and conservative counselors of his party and his Nation, said upon one occasion:

State taxation in Indiana, and I undertake to say in every other State in the Union, has in it every inquisitorial feature that the income tax has. The income tax of all others is the most equitable because it is the truest measure that has been found of the productive property of the country.

And another great leader of that era used this language:

There is not a tax on the books so little felt, so absolutely unfelt in the payment of it as this income tax by the possessors of great fortunes upon whom it falls. There is not a poor man in this country, not a laborer in this country but who contributes more than 3, more than 10, more than 20 per cent of all his earnings to the Treasury of the United States, under those very laws against which I am objecting, and now we are invited to increase their contributions and to release those trifling contributions which we have been receiving from incomes heretofore.

In this connection I call attention to a later Republican leader. While he was not at the time specifically discussing the income tax, he was discussing the basic principles upon which that tax is based, and that is the obligation of property and wealth to the Government, which protects property and wealth. This is the language of Mr. Harrison, after he had retired from the presidency:

We live in a time of great agitation, of a war of clashing thoughts and interests. There is a feeling that some men are handicapped; that the race is sold; that the old and much vaunted equality of opportunity and of right has been submerged. More bitter and threatening things are being said and written against accumulated property and corporate power than ever before. It is said that, more and more, small men, small stores, and small factories are being thrown upon the shore as financial drift; that the pursuit of cheapness has reached a stage where only enormous combinations of capital, doing an enormous business, are sure of returns.

Again he says:

The great middle class of our people has never failed to respond to the fire alarm, though they have only small properties at risk, and these not immediately threatened. But there is danger that they will lose their zeal as firemen if those in whose apartments the fire has been kindled do not pay their proportionate share of the cost of the fire department.

The people who consider themselves as conservative upon the question of making revenue laws ought not to forget that this principle spoken of by the ex-President inheres in the discussion of all these matters, and that is that unless there is a corresponding obligation faithfully met there may arise that condition in the public mind which will unsettle not only the property interests, but the stability of the Government under which the property exists.

Again he says:

The plea of business privacy has been driven too hard. If for mere statistical purposes we may ask the head of the family whether there are any idiots in his household and enforce an answer by court process, we may surely, for revenue purposes, require a detailed list of his securities. The men who have wealth must not hide it from the tax-gatherer and flaunt it on the street. Such things breed a great discontent. All other men are hurt. They bear a disproportionate burden. A strong soldier will carry the knapsack of a crippled comrade, but he will not permit a robust shirk to add so much as his tin cup to the burden.

Again he says:

I want to emphasize, if I can, the thought that the preservation of this principle of a proportionate contribution, according to the true value of what each man has, to the public expenditures is essential to the maintenance of our free institutions and of peace and good order in our communities.

Mr. BEVERIDGE. I wish to ask the Senator if that is not General Harrison's speech at Chicago? Is it not the Chicago speech?

Mr. BORAH. It is a Chicago speech, but I apprehend that it does not take anything from it because it was delivered in Chicago.

Mr. BEVERIDGE. It might add something to it. I will ask the Senator if that speech was not devoted solely to the evils of all taxation—of people making false returns of their property? It was addressed to state taxation. It did not have anything to do, except as the Senator might draw inferences, with the income tax. Is that correct?

Mr. BORAH. I stated before I read the remarks that the ex-President was not discussing, specifically, the income tax; but I stated that he was discussing that which is the basis of the income tax, and that is the obligation of property and wealth to the State and to the Government. And the entire argument of the ex-President is as applicable to the income tax and its relations to the General Government as it is to the state government, to which he was specifically addressing his remarks.

Mr. BEVERIDGE. I have no quarrel with the Senator's inference from the speech, but I wanted it fixed upon the attention that that speech was specifically directed to what President Harrison thought were the evils in this country in all taxes, state and municipal, of men making false returns of their property, scaling it down, and so forth. I did not understand that ex-President Harrison was in favor of an income tax. I may be wrong about that.

Mr. BORAH. Mr. President, I would not be misunderstood, of course, in what I said as quoting the ex-President specifically in favor of an income tax, and I was only quoting him to the extent of the matter to which he was addressing himself.

But we are now asked, as an American Congress, to connive at the attempt of wealth to relieve itself from its obligation to government and the obligation which wealth owes to government.

As we contend—those who favor this measure—and as General Harrison said, it is but proper that wealth bear its fair proportion of the burden of government. It takes nothing from the argument of General Harrison to say that he had before him at the time the particular matter of state government or the obligation of property within a State, because he enlarged his address and included before he concluded the National Government and the obligation of property and wealth throughout the Nation both to the State and to the National Government. There can be no reason why the income tax should not become a law other than the reasons which were answered by General Harrison in his address before the Chicago Club.

Coming closer home, ex-President Roosevelt, in his message of December 3, 1906, which I read again for fear that it is not remembered, said:

> The National Government has long derived its chief revenue from a tariff on imports and from an internal or excise tax. In addition to these there is every reason why, when next our system of taxation is revised, the National Government should impose a graduated inheritance tax and, if possible, a graduated income tax. The man of great wealth owes a peculiar obligation to the state, because he derives special advantages from the mere existence of government. Not only should he recognize this obligation in the way he leads his daily life and in the way he earns and spends his money, but it should also be recognized by the way in which he pays for the protection the state gives him. On the one hand, it is desirable that he should assume his full and proper share of the burden of taxation; on the other hand, it is quite as necessary that in this kind of taxation, where the men who vote the tax pay but little of it, there should be clear recognition of the danger of inaugurating any such system save in a spirit of entire justice and moderation. Whenever we, as a people, undertake to remodel our taxation system along the lines suggested, we must make it clear beyond peradventure that our aim is to distribute the burden of supporting the Government more equitably than at present; that we intend to treat rich man and poor man on a basis of absolute equality; and that we regard it as equally fatal to true democracy to do or permit injustice to the one as to do or permit injustice to the other.
> * * * The question in its essence is the question of the proper adjustment of the burden to the tax. As the law now stands it is undoubtedly difficult to devise an income tax which will be constitutional. But whether it is absolutely impossible is another question; and if possible, it is most certainly desirable.

I will read further from the ex-President's message of 1907:

> When our tax laws are revised the question of an income tax and an inheritance tax should receive the careful attention of our legislators. In my judgment both of these taxes should be part of our system of federal taxation. I speak diffidently about the income tax because one scheme for an income tax was declared unconstitutional by the Supreme Court, while, in addition, it is a difficult tax to administer. In its practical workings great care would have to be exercised to see that it is not evaded by the very men whom it was most desirable to have taxed, for if so evaded, it would, of course, be worse than no tax at all, as the least desirable of taxes is the tax which bears heavily upon the honest as compared with the dishonest man. Nevertheless, the graduated income tax of the proper type would be a desirable feature of federal taxation, and it is to be hoped that one may be devised which the Supreme Court will declare constitutional.

I may say, I presume, without offense, here that the ex-President was and is a Republican, and that he shaped the destiny, molded the policy, and stood sponsor for the faith of his party for at least seven years; and, in my judgment, without the policies which he advocated, the masterly leadership which was his, his party would have gone out of power ere this. And without continual adherence to those policies and a faithful husbanding of them the party will go out of power. No man is politically so shortsighted or politically so blind as the man who thinks that the steamer *Hamburg* carried away the policies and principles, the public interests, the aroused public conscience, and the searching inquisitive public concern which this remarkable man bequeathed to his countrymen.

Our present President, in his speech of acceptance, said:

> The Democratic platform demands two constitutional amendments, one providing for an income tax, and the other for the election of Senators by the people. In my judgment an amendment to the Constitution for an income tax is not necessary—

Whatever differences of opinion might possibly exist among men as to the President, very few will doubt his ability as a lawyer or his greatness as a judge—

> In my judgment an amendment to the Constitution for an income tax is not necessary. I believe that an income tax, when the protective system of customs and the internal-revenue tax shall not furnish income enough for governmental needs, can and should be devised, which, under the decisions of the Supreme Court, will conform to the Constitution.

The junior Senator from West Virginia [Mr. SCOTT] was quoted a few days ago as saying:

> I favor a tax on incomes and also on the dividends of corporations. In my opinion, this is a just and equitable method of raising revenue for the support of the Government. The tax on individual incomes should be graduated. I would not tax an income as low as $2,000 or $3,000, or even $5,000. I think the minimum income against which a levy is made should be $8,000 or $10,000, preferably the latter. To tax incomes of $2,000 would be to assess clerks, small farmers, and mechanics, who now have a hard enough time to make ends meet.

Mr. SCOTT. Will the Senator allow me? If he is quoting me, that is partly true and partly not. I said if it became necessary in order to raise revenue, if this bill was not sufficient without putting a duty on tea and coffee and other necessaries of life, first I would put it on the net incomes of corporations, and then, if it became necessary, on the incomes of individuals.

Mr. BORAH. Mr. President, I am very sorry the Senator corrected it, because it seems to me much better the way the newspaper got it.

Mr. SUTHERLAND. Mr. President——

The PRESIDING OFFICER (Mr. DIXON in the chair). Does the Senator from Idaho yield to the Senator from Utah?

Mr. BORAH. Certainly.

Mr. SUTHERLAND. The Senator read a moment ago an extract from a statement which had been made by the present President of the United States. Does the Senator understand from that that Mr. Taft believes in the constitutionality of a general income-tax law; in other words, that Mr. Taft believes that the law which the Supreme Court of the United States in the Pollock case condemned as unconstitutional is constitutional?

Mr. BORAH. Mr. President, of course I am not authorized to speak for the President. I only know what he said to the American people when he was a candidate for President of the United States, and that is that he was in favor of an income tax which would be drawn, as he said, in accordance with the decision of the Supreme Court of the United States. If we are correct in our interpretation of that—I do not know what his interpretation is—all we would need is the income-tax amendment which we now have before the Senate.

I am not willing to believe, however, that the President of the United States believes in drawing an income-tax law which would correspond to the decision in the Pollock case. I am not willing to believe that the President of the United States would advocate the proposition of putting an income tax upon men who toil in their profession, and of a limited number, and then say that the vast accumulated wealth of this Nation shall go without its burden of government.

Mr. BEVERIDGE. Mr. President——

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from Indiana.

Mr. BORAH. Certainly.

Mr. BEVERIDGE. Just for a moment. Referring to the opinion of ex-President Harrison on this subject, I thought I recognized, when the Senator read from his speech at first, that it was the Chicago speech; but I thought I remembered that in President Harrison's great speech, perhaps the greatest public address he ever made, which was the Carnegie Hall address in the campaign of 1896, he had referred to the income tax, and perhaps on some other occasion. Merely that his view may be known on this specific subject, I will read this one sentence, with the Senator's permission.

Mr. BORAH. Very well.

Mr. BEVERIDGE. Ex-President Harrison said:

So eager were our Democratic friends to put directly upon our people according to the English system taxes to support our Government that they passed an unconstitutional act in order to levy internal taxes and help out a tariff bill which had reduced the duties upon imports.

I have a general impression, though I do not know, that General Harrison was not favorable to an income tax as a system of taxation, except in case of an emergency; and that he agreed with the Supreme Court as to its unconstitutionality. His statement in his Carnegie Hall speech is not favorable to the tax. I merely pointed this out, without indicating my own position on this question, that the quotation might be perfected.

Mr. BORAH. Mr. President, I am sure I did not intend to do so.

Mr. BEVERIDGE. Surely not.

Mr. BORAH. I am satisfied that anyone who was listening could not conceive that there was any misrepresentation, because I said distinctly, and I state again, that Mr. Harrison was not discussing specifically the income tax. What I read was in support of the principle of the obligation of wealth and property to the Government, which we reach by an income tax.

Now, let us go back a little further, Mr. President. I have quoted some late authorities, because I am a little anxious that those of us who advocate an income tax shall not be considered in the light of advocating radical or new principles, not for the reason that I am opposed to a new principle, if I find it once in a while, but for the reason that it sometimes retards its movement through this body.

The man who was the father of the protective tariff system, who formulated it, in whose great mind it really originated in all its fullness, was the man who first gave to us the argument and the basic principles for an income tax. The first law of 1794, which brought up the question of what was a direct tax, was suggested, if not actually written, by Alexander Hamilton. While he was not in Congress, he was in a position where he had much to do with what was submitted to Congress by his party at that time, and he was its great adviser at all times. He advocated this tax for the same reason and upon the same principle that we advocate an income tax to-day, and that is, that there should be a tax upon property and upon wealth in connection with the tax upon consumption, and that it should all be one general revenue system. Though ill and broken in health when this question was presented to the Supreme Court, Mr. Hamilton nevertheless presented it upon the part of the Government, advocating not only the tax from the standpoint of its validity, but for the reason that it was right and proper.

He furnished the argument and submitted the legal proposition upon which the Supreme Court sustained that tax for a hundred years.

I am one of those, Mr. President, and there are thousands of them, who look upon Alexander Hamilton, all things considered, as the greatest intellectual force that ever dealt with the science of government. There was in all that he did that fascinating air of mysterious power, that indescribable force which moved with triumphant ease to its immeasurable purpose. His career was the most sudden, the most startling, the most brilliant, and the most masterly of all of his compatriots. And he was never greater, never more of a statesman and a patriot, than when he advocated the policy as a part of his general-revenue policy of laying a portion of the burdens of government upon property and upon wealth, along with consumption. He was charged in his day with being the special advocate of property and of property interests and of wealth, the minion of power, the advocate of royalty. He was in favor of a government strong enough and stable enough to protect the vested rights and the gathered fortunes of men against the passions and the prejudices of a day, but he did not belong to that shortsighted class of statesmen who, believing in protecting property and property interests, believe also in relieving property and wealth from its corresponding obligation to government. You will search in vain through the works of Alexander Hamilton to find any help or any argument which would enable you to relieve property and wealth from the obligation of meeting a portion of the burdens of government.

The first "income tax," so called, bore the name of Abraham Lincoln, and was supported by the great men who surrounded him upon that occasion.

I am not willing, Mr. President, for one, to concede that the policy which fixes the burdens of government upon property and wealth is not a Republican principle. I am not willing to concede, above all things, that there has been engrafted upon our constitutional power that which is an absolute exemption of property and wealth from the burdens of government. I am not willing to have it admitted that the Constitution, as made and framed by the fathers, was such as to exempt the great property interests of this country from the taxing power of the Government even in the hour when the very exigencies of government may involve the life of the Government itself. Yet I say to you that if the Pollock case be the correct interpretation of the law, there is no exigency by which this Government can call upon the great property and wealth of this Nation to meet a portion of its burdens, even if it involves the very life of the Nation itself.

Those who believe that to be a policy of my party are welcome to the belief. I will not accept it.

I know that there are those who say that it is un-Republican and that it tends to incite men to perjury. I read an interview the other day by that distinguished American, always interesting and sometimes amusing, Mr. Carnegie. He said that it was not Republican, that its only result was to incite men to perjury. Well, Mr. Carnegie did not make the Republican party. I wish I was just as sure that the Republican party did not make Mr. Carnegie. I have read a thousand times, more or less, his protection utterances.

My first conception of politics was when I used to read the speeches of Mr. Blaine and Mr. Carnegie on protecting American industries. Mr. Carnegie told us time out of mind that he could not run his mills or manufacturing plants without the protection which he demanded. In view of the fact that he did run his mills after the protection was given, and accumulated wealth which he will not live long enough to distribute, it seems to me that the Republican party did make Mr. Carnegie.

I never have much use for a man who turns his back upon his own creator, which it seemed to me he did before the Ways and Means Committee. The only trouble about these deathbed confessions, Mr. President, is that "they seldom reach to restitution."

I favor an income tax not for the purpose of putting all the burdens of government upon property or all the burdens of government upon wealth, but that it may bear its just and fair proportion of the burdens of this Government.

We believe that every tax system based upon consumption should be supplemented by a system which taxes property and the wealth of the country; not for the purpose of inciting class feeling, but simply calling upon the great interests of the Nation to share that part of the burden of government for which they receive an unquestioned benefit.

I am aware it is often said that we will not be able to enforce the law. That is not the basis upon which we legislate or upon which we make laws with reference to taxation. In one of the great States of this Union I noticed some time ago that out of 107 estates which were then in the course of probating, those 107 estates had property to the value of $215,000,000, and that they had never paid taxes at any time upon over $3,000,000.

In another one of the States of the East the assessed valuation of the real estate is counted at $2,000,000,000. The assessed valuation in that State of stocks, bonds, personal property, choses in action, and franchises is $500,000,000. It is conceded that we do not reach over 20 per cent of the property of this country, so far as personal property is concerned. Yet I apprehend that it will not be urged and it will not be argued that we should repeal our laws with reference to the taxation of personal property upon the basis that those who should pay escape, for the logical result of that kind of programme would be that we would finally rest all the taxes upon the people who are honest enough to pay.

But I advocate it for another reason—and this will seem strange, I have no doubt, to some—and that is as a teacher of economy in public expenditures. For more than a hundred years we have been making speeches in favor of retrenchment and curtailing public expenditures, and as consistently and persistently voted the other way. It is a notorious fact in our political history that the Congresses at which the voice of retrenchment has been the loudest have been followed invariably by Congresses in which the appropriation was largest.

We knew when we met here last fall that we were facing a deficit. We knew that there was the cry going up all over the country that there should be a revision of the tariff downward, and we know that in the midst of universal peace and of prosperity we were actually contemplating putting a tax upon the necessaries of life which we do not produce in this country.

If there was ever a time in the world when the voice of retrenchment should have been heard and heeded, it was at the beginning of that Congress; and yet we are told by the leader on the Republican side that Congress appropriated $50,000,000 which we could just as well have left in the Treasury and without embarrassing the Government one particle. If that be true, what a fearful indictment of this Congress, and how futile it makes all the promises with reference to retrenchment.

I do not wish to be misunderstood. I have no kind of doubt but what the Senator from Rhode Island is entirely in earnest

and wholly sincere when he says that there should be and shall be retrenchment or the curtailing of public expenditure. If he shall succeed in that matter, he will be entitled to a vast amount of credit from the American people, and he will come very near demonstrating that the age of miracles has not passed. If he shall succeed in keeping the expenditures of this Government down to the present figure, he will still be entitled and still be accredited a great deal of honor for his work.

Even while he was speaking there wafted in from Boston the voice of our Secretary of the Navy, who told us that we must have another navy as large as the one we have. This sounds to me like discord. He must have spoken with authority. I am not about to discuss the question of the necessity of these ships; that is for another day; but I do say that if we are to build new ships and to continue to compete with the naval building of the world that expense should be visited to some extent at least upon the property and the wealth of this Nation.

If this is the part of retrenchment, if these expenses are to be met, can anyone contend that we should continue to impose that burden upon consumption? It may be necessary to continue to build these ships. It may be necessary to go on until we will be able to overawe the nations of the earth, and until, like the father of Frederick the Great, we are lonesome without the music of the sentry's tread. But if it be true that we must continue to do so, upon what basis and upon what theory can men say that the whole burden should rest upon the men who pay practically as much when worth $500 as the man who is worth $500,000,000? Take a part of the burdens off the backs and appetites of men and put it upon the purses of those who will never miss it, those who enjoy the pomp and circumstances of glorious war—without the war.

Mr. President, has the constitutionality of this tax been foreclosed? Is it an open subject for discussion, and is a fair presentation of the matter admissible?

Mr. LODGE. Before the Senator takes up that legal aspect of the question will he yield to me?

The PRESIDENT pro tempore. Does the Senator from Idaho yield to the Senator from Massachusetts?

Mr. BORAH. I do, very gladly.

Mr. LODGE. It seems to me that in speaking of taxation falling exclusively on the consumer, the Senator does not appear to recognize the fact that the municipal and state taxation, which is very heavy—especially the municipal taxation—falls practically exclusively upon property.

Mr. BORAH. I was speaking, of course, with reference to the policy of the National Government.

Mr. LODGE. Certainly; but I am speaking of taxes paid by the American people as a whole, of all the taxes they have to pay; and under our system of States and Nation, direct taxes have been left in practice usually to the States and cities to local taxation. That taxation, which is extremely heavy in many cases, especially the municipal taxation, falls exclusively on property. I merely wish to suggest that I think that is one reason for the general policy, that has been pursued by the General Government from the beginning, of leaving the direct taxes and the taxes on property as much as possible to the States. That is the objection made to this form of inheritance tax, and I think soundly, because there are 32 States that impose an inheritance tax.

Mr. BORAH. Very well, Mr. President. I will only say at this time, in reply to that suggestion, that, of course, the general proposition which the Senator from Massachusetts [Mr. LODGE] states is true and correct; but we ought not to overlook the fact that while the taxgatherer for the municipality or the county is gathering his taxes, statistics show beyond a question that the man who has his farm or who has his property in sight pays a vastly greater per cent of even that heavy tax than the man who has money in the form of bonds, stocks, and so forth, which you would be unable to reach, which statistics show you are unable to reach, and it falls in the same way upon the man of limited means.

The tariff tax—and I am a believer in the American protective policy—reaches at last most heavily the man of limited means. It is passed from the importer to the general merchant, from him to the retail merchant, and from the retail merchant to the consumer. When you are taxing personal property, every cow, every horse, every animal, every piece of property that the man of limited means has is found, but the undiscovered millions locked in safe-deposit boxes never pay their proportion of taxes. I favor a system that will get them coming and going, if you can, for that is the only way you can get them at all.

I was going on to say, Mr. President, that, discussing the constitutional feature of this question——

Mr. BACON. Will the Senator permit me to make a suggestion?

The PRESIDENT pro tempore. Does the Senator from Idaho yield to the Senator from Georgia?

Mr. BORAH. I do.

Mr. BACON. I wish merely to suggest that it is also true that a very large part of the wealth of those whose property the Senator is now seeking to reach, or which this bill proposes to reach, is invested in securities which are not liable to taxation—bonds of the United States and things of that kind.

Mr. BORAH. That is true.

Mr. LODGE. Mr. President——

Mr. BACON. I mean under state laws.

Mr. LODGE. I will not interrupt the Senator if he objects.

Mr. BORAH. Not at all.

Mr. LODGE. It is undoubtedly perfectly true that a great deal of property escapes taxation; but I think the Senator is mistaken in saying—I judge only from my own State—that the state and city taxes fall on the poor man. In the city of Boston, which, I think, has about 110,000 or 120,000 registered voters, the taxes are paid by 18,000 persons.

Mr. BORAH. Mr. President, speaking with reference to the Senator's own State, I know that in one year not very far back the assessed valuation of real estate in that State was $2,000,000,000, and of the personal property which was owned, all the stocks, bonds, notes, and everything else, only amounted to $500,000,000.

Mr. NELSON. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Idaho yield to the Senator from Minnesota?

Mr. BORAH. I do.

Mr. NELSON. I want to call the Senator's attention to a fact in connection with the question suggested by the Senator from Georgia [Mr. BACON], and that is that while there seems to be an apparent inequity in the fact that you can not tax government bonds and state bonds, yet there is another side to the question that we ought to take into consideration, and that is that because such securities are exempt from taxation the Federal Government, the state governments, the county governments, and the municipalities borrow their money at a lower rate of interest than could be done upon any other securities. Take our government bonds, for instance, paying only 2 or 3 per cent interest. One of the reasons why those bonds can be sold drawing such a low rate of interest is the fact that they escape taxation.

Mr. LODGE. I did not suppose for a moment that all the property was reached. My proposition simply was that the taxes of the State and the city fall almost exclusively on property. I know that is the case in my own State, and the illustration I have given of Boston is indicative of the rest of the State. Such taxation falls almost exclusively on property. Of course the tax on real estate is the most direct kind of tax, and in Massachusetts we have an income tax as well as an inheritance tax.

Mr. BORAH. It is estimated that in Massachusetts they pay a tax upon 20 per cent of their personal property. That is the estimate of the tax commission for Massachusetts.

Mr. LODGE. But property bears it all, although some of it escapes; it is not fairly distributed, I quite admit. It does not fall on the poor man, but it falls on property in the State exclusively.

Mr. BORAH. The property, however, which escapes there would be reached by an income tax.

Mr. LODGE. We find great difficulty in reaching it with the state income tax, and I am inclined to think that it would be very difficult to reach it by a national income tax. I think a great deal would escape, and that which would escape would be the property of the dishonest who would be willing to make false oaths.

Mr. ROOT. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Idaho yield to the Senator from New York?

Mr. BORAH. I do, very gladly.

Mr. ROOT. Mr. President, I wish to ask the Senator from Idaho whether it is not a fact that the personal property which escapes taxation—for example, the surplus of personal property in Massachusetts over and above $500,000,000—does not escape, for the most part, because it consists of the stocks of corporations which themselves pay the taxes on their own property, so that to tax that description of personal property which consists of corporate stock would be to tax the same property twice? I know that is the case in New York, where we have a tax upon real estate and a tax at the same rate upon personal property; but we exempt from the tax upon personal property the stocks of corporations which themselves pay the tax. Of course, that is not really an escape from taxation, but is merely imposing upon the property which is represented by the stocks taxes in

the corporator can not have the collection of the tax enjoined, it seems obvious that he can not have the corporation enjoined from paying it, and thus do by indirection what he can not do directly.

* * * * * * *

The rule which forbids the granting of an injunction to restrain the collection of a tax is founded on broad reasons of public policy and should not be ignored. In Cheatham *v.* United States (92 U. S., 85, 89), which involved the validity of an income tax levied under an act of Congress prior to the one here in issue, this court, through Mr. Justice Miller, said:

"If there existed in the courts, state or national, any general power of impeding or controlling the collection of taxes or relieving the hardship incident to taxation, the very existence of the Government might be placed in the power of a hostile judiciary. (Dows *v.* The City of Chicago, 11 Wall., 108.) While a free course of remonstrance and appeal is allowed within the departments before the money is finally exacted, the General Government has wisely made the payment of the tax claimed, whether of customs or of internal revenue, a condition precedent to a resort to the courts by the party against whom the tax is assessed. In the internal-revenue branch it has further prescribed that no such suit shall be brought until the remedy by appeal has been tried; and, if brought after this, it must be within six months after the decision on the appeal. We regard this as a condition on which alone the Government consents to litigate the lawfulness of the original tax. It is not a hard condition. Few governments have conceded such a right on any condition. If the compliance with this condition requires the party aggrieved to pay the money, he must do it.

It will be observed from the reading of the record in this case, as I said, that there was an attempt on the part of those interested in the controversy to do what they could toward waiving the jurisdiction of the court. The court refers to it in the opinion as having been waived so far as it could be and the dissenting opinion calls attention to the fact that it is the first time in the history of the court that they have ever entertained an injunction suit to restrain the Government in the collection of a tax. I call attention to that for the purpose of extending it in the RECORD.

Mr. President, the sole arguments against an income tax have consisted of two propositions, first, those who contend that the economic definition of an income tax is the proper definition, and, second, those who contend that the language of the Constitution itself, taken in connection with the history of the times, discloses that the framers intended to extend the phrase "direct taxes" to all property, personal and real, and the income therefrom.

The economic definition, or the definition given of direct taxes by the economic writers, was a tax which could not be shifted, a tax which must be paid by those against whom it is laid, a tax which must be responded to by the property upon which the charge is made, and which could not be shifted to property or to someone else other than the party against whom the tax was laid. This was illustrated in the Hylton case in the particular statute which was involved. There the tax was laid in one clause of the statutes against the carriage which was used personally by the proper party owning it, and, secondly, carriages used for hire. In one instance the owner must necessarily pay it. In the other instance the owner might transfer the charge to the party who paid for the use of the carriage. That illustrates the difference between a direct tax and an indirect tax as defined by the economic writers.

This is one of the contentions which has been made in regard to an income tax or the definition of a direct tax from the beginning of the discussion of this matter. It was presented in the first place in the Hylton case. It was re-presented in Seventh Wallace in the Pacific Insurance case. It was re-presented in Eighth Wallace in the Veazie Bank case. It was re-presented in Scholey *v.* Rew in Twenty-third Wallace, and re-presented again in the Springer case. In all these different briefs, which were filed by able counsel, this particular proposition was amplified and urged. It was contended that the framers of the Constitution being familiar with Smith and Turgot and the other economic writers as to what they considered an income tax or a direct tax had followed the definition given by those writers.

This proposition was specifically answered by Chief Justice Chase in the Veazie Bank case. Chief Justice Chase, in passing upon the income tax in that decision, took up specifically the proposition of an economic definition and answered it, and contended that the framers of the Constitution were not controlled by that definition.

It was, therefore, a proposition which had been presented from the beginning. It was not new to the court in the Pollock case. It was as old as the argument upon this question from the start. But it was revived in the Pollock case and re-presented to the court with much ability, and unquestionably was taken and accepted by the court as a controlling factor in the determination of the proposition.

It has been said, since the Supreme Court has come to pass upon other questions in connection with taxation, that it was not a direct and controlling factor in the income-tax decision. And therefore I beg the indulgence of the Senate for a moment while I call attention to the opinion of the court—both the opinion of the court and the dissenting opinion—to show that the Supreme Court accepted, to a considerable extent at least, that proposition which had been rejected for a hundred years, reaching a conclusion at last that it was the economic definition which controlled the framers in the making of the Constitution to some considerable extent at least.

Mr. RAYNER. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Idaho yield to the Senator from Maryland?

Mr. BORAH. I do.

Mr. RAYNER. Has the Senator observed the language of Chief Justice Chase in Veazie Bank *v.* Fenno, that he just referred to? Let me read a few lines:

Much diversity of opinion has always prevailed upon the question, What are direct taxes? Attempts to answer it by reference to the definitions of political economists have been frequently made, but without satisfactory results. The enumeration of the different kinds of taxes which Congress was authorized to impose was probably made with very little reference to their speculations. The great work of Adam Smith, the first comprehensive treatise on political economy in the English language, had then been recently published; but in this work, though there are passages which refer to the characteristic difference between direct and indirect taxation, there is nothing which affords any valuable light on the use of the words "direct taxes" in the Constitution.

Then he goes on to say:

What does appear in those discussions, on the contrary, supports the construction. Mr. Madison informs us that Mr. King asked what was the precise meaning of direct taxation, and no one answered.

That was Rufus King, in speaking of a definition of a direct tax. Rufus King rose in the convention and asked what direct taxes were. There sat Madison and Hamilton and Martin and Pinckney and all the rest of the great lawyers of that day, and no one answered him.

What I want to ask the Senator is this: Does the Senator think that at the time that provision was put in the Constitution there was any accurate definition of what direct taxes were? I am just asking the question, not to interrupt the Senator or by way of any opposition to what the Senator says.

Mr. BORAH. I am aware, Mr. President, that there are those who believe that the framers of the Constitution did not know the meaning of the language that they were using in the great charter which they were making. I am not of that faith. I believe that the fathers, when the history of the surrounding circumstances is closely studied, will be found to have known and understood precisely the definition of the phrase "direct taxes," and that especially would the careful makers of that great instrument have refrained from putting into the Constitution a phrase which was ambiguous after their attention had been called to the fact that it was ambiguous.

I believe, on the other hand, the mere fact that the question of Mr. King was not answered was a mere incident in the discussion. It does not indicate for a moment that those who used the phrase did not, as a general rule, understand precisely how it was being used.

I think I will show before I go very much further that Mr. Hamilton, to whom reference was made, did understand and had a direct and definite idea of the meaning of direct taxes; that he explained at the time in his own proposition which he submitted to the convention; that while there might have been those in the convention who did not have a definite or specific idea sufficient to express it, yet as a consensus of opinion in the convention it was very well and very thoroughly understood.

Mr. SUTHERLAND. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Idaho yield to the Senator from Utah?

Mr. BORAH. I do.

Mr. SUTHERLAND. The statement is made in the Madison papers, to which the Senator from Maryland has called attention, that Rufus King asked the question, What is a direct tax? I think the question, though, was What is direct taxation? Perhaps there is no difference. Evidently the question challenged the attention of the convention, because Madison goes on to say that no one answered it, and he seems to attach some importance to that fact. If I understand the position of the Senator from Idaho, it is that direct taxes are of two kinds, and two only, namely, a capitation tax and a land tax.

Mr. BORAH. And the improvements of land.

Mr. SUTHERLAND. Well, that amounts to the same thing—a capitation tax and a land tax. The question I desire to submit to the Senator is this: If that was within the intention of the framers of the Constitution, and if the answer to the question "What is a direct tax?" was so simple as the Senator from Idaho now seems to think it is—namely, that it was only a capitation tax and a tax upon land—is it not a little remarkable that somebody did not answer him?

Mr. BORAH. I do not look at it in that way. I think the simplicity of the thing makes it more plain as to why they did not answer it—because of the fact that it might not have been

regarded as a matter of serious contention and of debate. I might ask the question here as to what is an excise tax. A man would know in a moment what the general idea was, but it would take him three hours to tell what it was, in view of all the decisions of the courts upon the matter. It might be true, with reference to that situation, that they had a general and even a definite idea as to what they understood the definition to be, but no one considered it essential to define it precisely; or it might have been due entirely to the exigencies of debate, the matter being asked in a casual way and urged aside by other matters.

Another thing: The framers of the Constitution did not spend any time in making precise definitions of the exact terms which they used. It has been commented upon by such men as Marshall and other writers on the Constitution time and time again that they were not there making a dictionary of political science or political words or law terms; that they were framing a general law for a general government, which they expected to be construed in a general way to meet the conditions and emergencies which should arise in the future, and never in a technical way.

I will come more directly, however, to that in a few moments, when I come to discuss the actual debate which took place with reference to this precise clause.

When I come to that debate we will find out that a definition was given in a general way and that the facts and circumstances surrounding the discussion point without any question to the exact understanding of the framers. It has been said time and time again that very little took place in that convention. Not a great deal did take place, but enough took place to show precisely what they understood by direct taxation.

I was saying that this idea of a shiftableness of the tax had been presented many times to the court and was re-presented in the Pollock case. I further stated that since the Pollock decision it has been said, in view of the necessity of leaning away from it again, that it was not controlling in that case. I want to call attention to the language of the court in the Pollock case:

> The first question to be considered is whether a tax on the rents or income of real estate is a direct tax within the meaning of the Constitution. Ordinarily all taxes paid primarily by persons who can shift the burden upon some one else or who are under no legal compulsion to pay them are considered indirect taxes; but a tax upon property holders in respect of their estates, whether real or personal, or of the incomes yielded by said estates, and the payment of which can not be avoided, are direct taxes. Nevertheless it may be admitted that although this definition of indirect taxes is prima facie correct and to be applied in consideration of the question before us, yet that the Constitution may bear a different meaning and that such meaning must be recognized.

They proceed to discuss the other feature of it. Again the court said, in the majority opinion:

> The Federalist demonstrates the value attached by Hamilton, Madison, and Jay to historical experience and shows they made a careful study of many forms of government. Many of the framers were particularly versed in the literature of the period—Franklin, Wilson, and Hamilton, for example. Turgot had published, in 1764, his work on taxation and in 1776 his essay on the formation and distribution of wealth, while Adam Smith's Wealth of Nations was published in 1776.

All leading up to the final conclusion that this was uppermost in the minds of the framers of the Constitution. Again the court quotes approvingly from Mr. Gallatin's works:

> The most generally received opinion, however, is that by direct taxes in the Constitution those are meant which are raised on capital or revenue of the people; by indirect, such as are raised on their expense. As that opinion is in itself rational and conformable to decision which has taken place on the subject of the carriage tax, and as it appears important for the sake of preventing future controversies which may be not more fatal to the revenue than the tranquillity of the Union that a fixed interpretation should be generally adopted it will not be improper to corroborate it by quoting the author from whom the idea seems to have been borrowed. He then quotes from Smith's Wealth of Nations, and continues: "The remarkable coincidence of the clause of the Constitution with this passage in using the word 'capitation' as a generic expression including the different species of direct taxes—an acceptation of the word peculiar, it is believed, to Doctor Smith—leaves little doubt that the framers of the one had the other in view at the time and that they as well as he, by direct taxes, meant those paid directly from and falling immediately on the revenue, and by indirect those which are paid indirectly out of the revenue falling immediately upon the expense."

The court was evidently relying, as the court had always refused to do before, upon this indirect-tax definition as given by the economic writers.

Mr. Justice White, in his dissenting opinion, specifically refers to this fact. He says:

> Now, after a hundred years, after long-continued action by other departments of Government, and after repeated adjudications of this court, this interpretation is overthrown and Congress is declared not to have the power of taxation, which may at some time, as it has in the past, prove necessary to the very existence of the Government. By what process of reasoning is this to be done? By resort to theories in order to construe the word "direct" in its economic sense instead of in accordance with its meaning in the Constitution, when the very result of the history which I have thus briefly recounted is to show that the economic construction of the word was repudiated by the framers themselves and has been time and time again rejected by the court.

Again Mr. Justice White says:

> It seems evident that the framers, who well understood the meaning of this word, have thus declared in the most positive way that it shall not be so construed in the sense of Smith and Turgot.
>
> The argument, then, it seems to me, reduces itself to this: That the framers well knew the meaning of the word "direct;" that so well understanding it, they practically interpreted it in such a way as to plainly indicate that it had a sense contrary to that now given to it in the view adopted by the court; although they thus comprehended the meaning of the word and interpreted it at an early date, their interpretation is now to be overthrown by resorting to the economists whose construction was repudiated by them.

Mr. Justice Brown says in his dissenting opinion in regard to the shiftableness of the tax:

> By resurrecting an argument that was exploded in the Hylton case, and has lain practically dormant for a hundred years, it is made to do duty in nullifying not this law alone, but every similar law that is not based upon an impossible theory of apportionment.

Mr. Justice Harlan also, in his dissenting opinion, calls attention to the fact that this economic definition which had been urged upon the court for so many years and rejected had been called into life for the purpose of overturning the decisions of the court of a hundred years, and I think we may reasonably conclude that whatever may be said, in view of the later decisions, the Supreme Court of the United States interwove into the argument and into the decision as an elementary fact in the decision the economic definition of a direct tax.

Now, Mr. President, what has become of that definition since the income-tax decision? I think I will show in a few moments—and I do not propose to take up the time of the Senate to read authorities—that that definition, strong as it was in that case, controlling as it was in reaching a conclusion, has, by the unanimous opinion of the Supreme Court, so far as this particular point is concerned, been swept entirely away and rejected in toto, as it had been for a hundred years before the Pollock case.

The first inheritance-tax case which went to the Supreme Court for consideration was the case of the United States *v.* Perkins. It came up from the State of New York. It involved the constitutionality of the inheritance-tax law of the State of New York.

A citizen of the State of New York, having died, left a part of his property to the Government of the United States. The question was raised that it was not within the power of the State to tax property belonging to the Government, which is true, and that it was not within the power of the State to tax the right of the Government to take property, which is true.

Therefore the Supreme Court was confronted with the proposition of meeting that which had been settled so long, that you could not tax the property of one sovereignty by the action of another, and that the instrumentality of one government can not be embarrassed and taxed by another. This property which had been left to the Government was to be subjected to the tax, or at most the right to take the property was to be subjected to the tax. The Supreme Court said that it was not a tax upon the legacy itself after it had become the property of the United States, but it was a tax upon the property before it was distributed to the United States. That it, the property, came to the Government diminished of the tax.

If that is true, Mr. President, what becomes of the economic definition of the shifting of the tax to some one else? Was if not a direct tax upon the property itself? Could the tax on the property be shifted? Could it be transplanted to some other party to be made to pay the tax? That seems to be conclusive.

Again, in the case of Knowlton *v.* Moore, in One hundred and seventy-eighth United States, the national inheritance tax of 1898, which was a part of the war-revenue act of 1898, came before the court for consideration. Those who accepted the income-tax decision and were at the same time contending against the constitutionality of the inheritance tax presented to the court this proposition:

That the income-tax decision rested upon the proposition that that was a direct tax which could not be shifted, and that that was an indirect tax which could be. If that was true, the inheritance-tax law of 1898 must necessarily go out. But the Supreme Court in that case, by a unanimous opinion of the court so far as this particular point is concerned, took up the proposition of this economic definition of a direct tax and rejected it, as it had consistently and without a dissenting voice done for a hundred years before the Pollock case.

So far as this proposition, which had such an important bearing in the Pollock case, is concerned, there can be no possible doubt but what it has been swept away entirely by the unanimous opinion of the Supreme Court of the United States. They have said once and for all that that argument which was presented in the Hylton case, which was presented in the Pacific Insurance case, and the Springer case, and which was rejected,

is by this court rejected again, although no man can read the income-tax decision and not conclude that it was a controlling and elementary proposition in the determination of that case.

In my opinion the presentation of this matter on that one fact alone to the Supreme Court of the United States is warranted in view of the subsequent decisions.

Mr. SUTHERLAND. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Idaho yield to the Senator from Utah?

Mr. BORAH. I do.

Mr. SUTHERLAND. Does not the Supreme Court in the Knowlton case distinguish that case from the Pollock case and say in the Knowlton case that an inheritance tax was not a tax upon the property but a tax upon the devolution of property? Let me ask the Senator whether or not he sees any difference between a tax of that character, upon the devolution of property, and a stamp duty upon a deed? The Senator will concede that we have no power under the Constitution to impose a tax upon land unless by the rule of apportionment. Yet I take it the Senator will also concede that we have power to impose a stamp duty on the deed by which the title was presented.

Mr. BORAH. Mr. President, I am aware the Supreme Court distinguished the Knowlton case from the income-tax case, but that was on another subject entirely. That was not with reference to the economic definition of the tax. They did not distinguish upon that proposition. They took that up bodily, met it, and rejected it. The distinction came when they came to deal with the question whether the tax was upon the property or upon the right to take property, which I will come to later. I may say in passing that I am not discouraged when I find the court distinguishing a case, because it seldom overrules and quite often distinguishes. It distinguished the Hylton case; it distinguished the Pacific Insurance case, the Scholey case, and the Springer case. Yet I think there is no doubt in the mind of any man in the world but what it specifically overruled all those cases in the Pollock case; it was called "distinguishing."

Now, I propose to show briefly, Mr. President, with reference to the historical definition of the tax, having passed from the economic definition, that, in the first place, it had no basis as to historic fact; in the second place, that it also was rejected by numerous decisions of the Supreme Court of the United States; and thirdly, that while it was controlling in the Pollock case, it also has been, in my judgment, although not specifically, I am frank to admit, rejected by the Supreme Court since the Pollock case. The historic definition, as I said a few moments ago, is based upon the proposition that the direct-tax phrase of the Constitution, taken in connection with the historic circumstances and facts which surround it, show that the framers of the Constitution understood by a direct tax a tax upon all kinds of property—personal, real, and the income therefrom. Those who oppose that view contend that the historic definition shows that they had in mind alone the tax upon persons, or a capitation tax, and a tax upon land.

I desire to call attention to the language of the Constitution, in order that we may have it before us for the purposes of the discussion:

SEC. 8. The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States.

* * * * * * *

No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

* * * * * * *

No tax or duty shall be laid on articles exported from any State.

It is conceded, looking at the language alone for a few moments, by all commentators upon the Constitution, and it has been stated by the Supreme Court of the United States time and time again, that it was in the purpose of the makers of the Constitution to grant full and plenary power to the National Government to lay taxes. It was intended that the National Government should have complete power to tax every person and every species of property within its wide and broad domain. There can be no question about that.

It is true that the convention provided two rules by which it should be done, by the manner in which the tax should be laid; but the power to lay taxes was complete and full, and intended to cover all persons and property within the wide domain, wherever they might be found. Those men who had had experience with the Articles of Confederation, who had had experience with drawing upon the States for their sustenance, did not propose to have the National Government shorn of any of its power to lay taxes upon all the property which it had within its control or in its dominion. And yet they say to us, Mr. President, that the makers of the Constitution, who intended to give to the National Government the power to lay taxes fully and completely, then prescribed a rule which destroys the power which they intended to grant, because it is conceded that if you can not lay taxes upon the income from real estate and personal property, except by apportionment, it is a practical impossibility, and that they have prescribed a rule which destroys the power that they fully intended to grant to the General Government.

That of itself upon the face discloses that the framers of the Constitution did not intend by direct taxes that which could not be apportioned. They said direct taxes should be apportioned. They intended to give a full power to tax. They intended to give a practical power to tax, and to give a tax which would be equitable and just, and yet in the next breath you say to us that they have prescribed a rule which makes it impracticable, impossible; in fact, unjust and incapable of apportionment.

Mr. Chief Justice Marshall said many times that we should give to the language contained in that great instrument a reasonable and practical construction.

The English statutes and the English law for a hundred years prior to the adoption of the Constitution of the United States had made the distinction in their statutes and in their laws which is made to a very large extent in the Constitution of the United States. We use the word "duty" to-day in common parlance as applying to a charge laid upon goods which are brought into this country, but for a hundred years in the old ancient statutes and in the English law the word "duty" covered every kind of charge or tax which was laid upon property other than that charge which was laid upon real estate. If you will recur to your old Blackstone you will find that Blackstone in defining taxes refers to the charge which was laid upon land, and when he refers to the other charges upon property, personal property, houses, incomes, salaries, offices, windows, and every species of personal property which was taxed, it is referred to invariably as a duty.

It is much more reasonable to assume that the framers of the Constitution, thirty-one of whom were lawyers, were controlled and influenced by this usage of a hundred years than that they were controlled by an economic definition of a new writer upon a dismal subject, which was at that time receiving very little consideration at the hands of the general public.

You remember that Edmund Burke, in his great speech upon conciliation with America, said that some of the most profound lawyers of the English-speaking tongue were found at that time in the English colonies of America. He said, furthermore, that it was disclosed by the bookstores of London that more copies of Blackstone were sold in America at that time than were sold in London or in England. Governor Gage, the governor of Massachusetts, said in one of his messages across the water: "I have a government of lawyers; the people are lawyers; they are familiar with your statutes; they know your laws better than you know them yourself."

And he complained that they had found technicalities by which they had evaded the laws which were drawn by the best English lawyers. These men were entirely familiar—not only the makers of the Constitution, but their constituents and the people generally—with the English statutes. They knew the phrases which had been used and were in common use.

Let me call your attention to a few extracts on that subject, and I might call your attention to more. Blackstone referred to taxes and duties as follows, not using his exact language, but speaking from memory:

Taxes charge on land, duty, everything else—houses, windows, improvements on real estate, and all kinds of personal property, on servants, coaches, horses, offices, and salaries.

These taxes were incorporated in the act of 1807, which referred to them as "taxes" and duties.

The title of the act of 1703 was as follows: "An act granting aid to Her Majesty by land tax, etc." This was made perpetual in 1798, and was still called a "land tax." The other form of taxes which were assessed were invariably referred to in the statutes as "duties." Thus in 1696 we have an act for granting to His Majesty several rates or duties upon houses. In 1796 we have the terminology for repealing the several duties upon houses, windows, and lights, and another for establishing a uniform duty on dwelling houses. We have also a statute referring to duties on coal, cinders, and so forth. Then we have the tax law of the elder Pitt in 1758 "for granting to His Majesty several rates or duties upon offices, pensions, houses, etc."

These words had well-defined meaning in the English law and were familiar to the framers of the Constitution.

Lands were the only basis of direct taxes in the States at the time of the adoption of the Constitution.

In that connection, too, and as a part of the historic facts leading up to the adoption of the Constitution, we ought to look for a moment at the Articles of Confederation.

Mr. SUTHERLAND. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Idaho yield to the Senator from Utah?

Mr. BORAH. I do.

Mr. SUTHERLAND. Before the Senator leaves the question of the discussion of English writers, I understand he is referring to those authorities for the purpose of attempting to establish that an income tax is not a direct tax. Am I correct in that?

Mr. BORAH. I was referring to those authorities to show that when the fathers referred to taxes, they referred to taxes upon land; and when they referred to duties, they referred to taxes upon all personal property.

Mr. SUTHERLAND. For what purpose does the Senator refer to the English writers—for the purpose of showing that an income tax is not a direct tax, or for some other purpose?

Mr. BORAH. I was referring to the English writers for the purpose of showing that they made the distinction in this way: That when they referred to charges imposed by the Government upon land, they called it a tax; and when they referred to a charge imposed by the Government upon all personal property and income and such things, they called it a duty. Therefore the fathers might very aptly have used the word "duty" in the Constitution as covering the same class of taxes which the English writers have covered.

Mr. SUTHERLAND. Does the Senator think that these English writers bear out his contention that an income tax is not a direct tax?

Mr. BORAH. I think that the English authorities bear out specifically what I have said—that they referred to a charge upon all kinds of property except real estate as a duty.

Mr. SUTHERLAND. The Senator does not answer my question.

Mr. BORAH. I answer your question precisely.

Mr. SUTHERLAND. Let me put it again. Does the Senator think that the English authorities to which he has referred bear out his contention that an income tax is not a direct tax?

Mr. BORAH. Mr. President, I have not cited these authorities with reference to that proposition specifically, and I am not citing them with reference to that proposition. If the Senator will understand me, I will state again that the framers of the Constitution used the word "duty" and the word "tax" in the sense of the English statutes and English law. In the sense they used those words "duty" covered everything except taxes upon land, and "taxes" covered land.

Mr. SUTHERLAND. Let me put the question in a different way, then. Does the Senator think that the position of the English writers prior to the adoption of the Constitution was that an income tax was not a direct tax?

Mr. BORAH. I never ascertained that prior to that time they had that imposition on them. I have ascertained that after that time somewhat, pretty nearly seventy years, they referred to it as a direct tax.

Mr. BAILEY. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Idaho yield to the Senator from Texas?

Mr. BORAH. I do.

Mr. BAILEY. Permit me to say that the English income tax was first levied after our Constitution had been adopted.

Mr. SUTHERLAND. I am quite aware of that fact, and was just about to refer to it. The income tax was levied in England after our Constitution was adopted, and it was called by the English Parliament and by the English courts a direct tax.

Mr. BORAH. Yes; that was after our Constitution was adopted.

Mr. SUTHERLAND. The point to which I desire to call the Senator's attention is that the English Parliament and the English courts, with all of these English authorities before them, held that the income tax was a direct tax.

Mr. BAILEY. Will the Senator from Idaho permit me?

The PRESIDENT pro tempore. Does the Senator from Idaho yield to the Senator from Texas?

Mr. BORAH. Certainly.

Mr. BAILEY. The Senator from Utah must know that the practical construction, however, of that income tax was that a tax on the income upon a security was not a tax on the security itself; in other words, the government obligations had been issued to be free of taxes, and when the younger Pitt came to raise revenue he contended that a tax on an income was not a tax on the obligation itself, and he levied it accordingly in the face of the exemption of the obligation from that tax.

Mr. SUTHERLAND. But what the Senator from Texas [Mr. BAILEY] has stated does not alter what I have said, namely, that the English Parliament and the English courts have uniformly held that an income tax was a direct tax.

Mr. BAILEY. I understand, Mr. President; but I made the rejoinder to the Senator for the purpose of showing that the authorities he has quoted still sustain the Senator from Idaho [Mr. BORAH], because they hold that the tax on the income of a subject is not a tax on the subject itself, and, if they are right, then a tax on the income of land is not equivalent to a tax on the land itself.

Mr. BORAH. Mr. President, I shall now refer to the Articles of Confederation. We find in the eighth article of confederation this statement:

> All charges of war and all other expenses that shall be incurred for the common defense or general welfare and allowed by the United States in Congress assembled shall be defrayed out of the Common Treasury, which shall be supplied out of the several States in proportion to the value of all lands within each State granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled shall from time to time direct and appoint.

The Articles of Confederation, of course, can play very little part in our conception of that situation as we view it to-day; but they were an important matter in the minds of those men met for the purpose of framing the Constitution. There were many men met in that convention who believed that it would be sufficient to rearrange the Articles of Confederation, granting more power, and let the matter stand precisely as it was. In these articles we find the same expression of sentiment with reference to the manner in which they should collect taxes, which they deemed at that time a levy upon the States, and that was by a levy upon land. It is not, of course, conclusive, but one of the incidents, the facts, and the circumstances surrounding the situation. Mr. Hamilton, in his constitutional plan which he submitted to the convention, said:

> Taxes on lands, houses, and real estate and capitation taxes shall be apportioned in each State upon the whole number of free persons, except Indians, etc. (Art. 7, sec. 4.)

Here is certainly a very clear statement of what one of the leading spirits of that convention understood by the phrase "direct taxes." "Taxes on lands, houses, and real estate and capitation taxes" should be apportioned, in the view of Mr. Hamilton.

Mr. SUTHERLAND. But the convention rejected that.

Mr. BORAH. I maintain, Mr. President, that that convention did not reject it. The language was changed, but the principle which was therein enunciated was the exact principle which the convention adopted, although, I repeat, they changed the language. In the Federalist Mr. Hamilton says, referring to taxes:

> Those of direct kind (referring to taxes), which principally relate to land and buildings, may admit of a rule of apportionment. Either the value of the land or the number of the people may serve as a standard.

Now, Mr. President, this leads us up to the convention. What happened in the convention? Upon the 3d of July, 1787, the convention took up in earnest the question of representation. The grand committee accepted as a basis of compromise Doctor Franklin's proposition, that they should have one representative for every 40,000 people; that each State should have an equal vote in the Senate; and that all bills for revenue and appropriation should originate in the House of Representatives. The discussion ranged from the 3d of July until the 12th. Some were in favor of apportionment upon the basis of numbers; some upon the basis of property or wealth. Finally there arose in the convention this discussion, coming particularly from South Carolina and Georgia, that they desired sufficient representation to prevent an unnecessary burden being placed upon their slaves in the way of taxes and upon the vacant and unoccupied lands of the South. More than one thing entered into this question of representation, but one of the controlling propositions in the convention, and one which disturbed it, was upon the part of the South endeavoring to protect their slaves against an unnecessary burden of taxation by reason of the sentiment of the North, and of laying an arbitrary value upon land which would be unfair to the vacant and unoccupied lands of the South.

There is one thing that we ought not to forget here in this discussion, and that is that the agitation upon the slavery question at the time of the meeting of the convention was the most severe that occurred at any time until the abolition movement began, years after the Constitution was framed. It is said that the English, who had for a time stopped in New York and other portions of the country, had started a propaganda, which led to the agitation throughout the colonies with reference to the freedom of the slaves. An antislavery society had just been organized in New York, of which Alexander Hamilton had been made secretary and of which Jay and Livingston were active members; and Doctor Franklin had just been made president of an antislavery society in Pennsylvania. And it will be remembered

that the good old Quakers of Pennsylvania appeared before Congress from 1783 to 1787, petitioning Congress to abolish slavery, and upon the very day and in the very week that the convention met in Philadelphia for the purpose of framing the Constitution the Presbyterian synod met and were discussing the question of abolishing slavery, and they passed a resolution to that effect, and the people of Pennsylvania sent a petition to the Constitutional Convention itself asking for the abolishment of slavery; which petition, however, was not presented.

Mr. BACON. Mr. President, I should like to ask the Senator a question.

The PRESIDENT pro tempore. Does the Senator from Idaho yield to the Senator from Georgia?

Mr. BORAH. Certainly.

Mr. BACON. How many States at that time had the institution of slavery?

Mr. BORAH. Practically all.

Mr. BACON. That is the fact; but I think Massachusetts was probably an exception.

Mr. BORAH. It is true as to practically all, but I think the Senator will agree with me, from reading the debates of the convention, that the discussion with reference to the matter was from the States of South Carolina and Georgia.

Mr. BACON. That is true. I did not mean to take issue with the Senator. I simply wished to supplement the very important information which he is giving.

Mr. BORAH. Yes; I agree with the Senator that practically at that time slavery very generally extended throughout the States, but it was known that the agitation against it was much stronger in the certain Northern States than in the South.

Mr. BACON. It was anticipated even at that time that the climatic conditions would make a difference in the maintenance of the institution.

Mr. BORAH. Yes. Finally, Mr. President, after the discussion had ranged over the different fields of compromise for several days, upon the 10th day of July, 1787, an incident occurred in the convention which ought not to be overlooked. That was the last day that Lansing and Yates, of New York, appeared upon the floor of the convention. Upon the 10th day of July, 1787, Mr. Lansing and Mr. Yates left the convention floor at the request of the governor of their State, Mr. Hamilton alone remaining, without a vote, however, in the convention. This left the convention solely in control of what, in the minds of the convention, were the Southern States. At last it was suggested—and I think the suggestion came from Mr. Williamson, of North Carolina—that in estimating the slaves three-fifths of a slave should be equal to his master; and Old Virginia, although considered a Southern State, with a united delegation voted in favor of that proposition. It was at that time that South Carolina and Georgia, through their representatives in the convention, stated to the convention that they would not be satisfied with that situation; that, in their opinion, in order to protect their slaves from unjust taxation and their vacant land in the South from arbitrary valuation they should have a representation equal to the Northern States, and in order to have that representation they must necessarily have equal representation for their slaves. Upon the night of the 11th of July, 1787, a debate, heated during the day, was closed by Gouverneur Morris, a delegate from Pennsylvania. He said—I can not quote his exact language, but very nearly: "I am placed in the dilemma of either doing an injury to the Southern States or an injury to humanity, and I prefer to do injury to the Southern States. I am not willing," he said, "to give encouragement to the slave trade by giving them equal representation for the negro." That suggestion at that time was answered by the representatives of South Carolina and Georgia stating that what they desired was equal representation, and that was the only way by which it could be had.

Mind you, up to this time, Senators, there had been no suggestion in that convention as to the apportionment of taxes. And so the night of the 11th of July came and went, and it is conceded to be one of the tragic and eventful nights in the history of that convention. Mr. Mason, of Virginia, said that he could ill be spared from his home, but he was willing to bury his bones in that city before going home without some result. Others lamented the unfortunate situation in which they were placed. Upon the morning of the 12th of July, 1787, Gouverneur Morris came into the convention, and for the first time moved the convention to apportion taxes and representation upon the basis of numbers. This gave protection to the people who were uneasy about the taxation of their slaves and their vacant lands.

Mr. President, what was the obstacle that they were trying to avoid? What was the bone of contention of the southern representatives? The southern representatives were asking for sufficient representation to protect that which they deemed necessary to their interests and prevent excessive taxation on their slaves and arbitrary taxation of lands which were not as valuable as those in the North. When we take into consideration what they were seeking to avoid, is it not reasonable to conclude that when Mr. Morris suggested this he was suggesting relief in regard to those specific matters?

I want to call your attention to a witness who was there and who ought to know, and the language of this prominent member of that convention is borne out in full and complete by the records of that convention.

The provision—

Referring to a direct tax—

The provision was made in favor of the Southern States; they possessed a large number of slaves; they had extensive tracts of territory, thinly settled, and not very productive. A majority of the States had but few slaves, and several of them a limited territory, well settled, and in a high state of cultivation. The Southern States, if no provision had been introduced in the Constitution, would have been wholly at the mercy of the other States. Congress in such case might tax slaves, at discretion or arbitrarily, and land in every part of the Union, after the same rate or measure—so much a head in the first instance, and so much an acre in the second. To guard them against imposition in these particulars was the reason of introducing the clause in the Constitution which directs that Representatives and direct taxes shall be apportioned among the States according to their respective numbers.

That is the language of Mr. Patterson in the Hylton case. He was not only an active member of the convention, as the debate shows, but a participant in this particular debate from day to day from the 3d of July to the 12th of July, when it was finally settled. Will men living a hundred years after those who participated in the debates in that convention, and who knew the point of controversy and the obstacle to be avoided, undertake to pass judgment upon what the framers of the Constitution meant by direct taxes when the participants in the convention have given their own interpretation of the charter?

I speak at all times, Mr. President, with due respect and regard for the great tribunal whose judgments we are reviewing, but I can not understand, in the light of the history which surrounds this phrase and the language of the men who made it and interpreted it, how it could ever have been misinterpreted or misconstrued or how there could be misunderstanding as to what the framers understood direct taxes to mean when they put those words in the Constitution.

Suppose, as the Senator from Utah [Mr. SUTHERLAND] has said, somebody had risen to answer Mr. Rufus King, and had stated that the term "direct taxes" means so and so, would it have been more positive, more conclusive, more binding than the facts of the convention and the language of Justice Patterson, who construed it before the ink was hardly dry with which they wrote the parchment?

Now, Mr. President, suppose we pass the Hylton case for a moment as a decision, and review it as an historic fact only, and very briefly, because it has been enlarged upon by the Senator from Texas [Mr. BAILEY], and I will not undertake to glean where he has harvested. As an historic fact alone, here is a decision rendered a very short time after the Constitution was made, and rendered by some of the men who made the Constitution, because Wilson and Patterson were both active in that debate and participated in this particular debate. Does it not seem that they would have had a clear conception of the purposes and objects of the convention, and can it be conceived that those men knowingly would have given a loose construction to the language or one which was not sustained by the facts in the convention? So, if we view it not as a decision, or quarrel about its being dicta, but simply as an historic fact, it is conclusive to the minds of reasonable men that these men understood precisely what they were doing when they put that phrase into the Constitution—that it was put there to overcome a particular obstacle, and that obstacle was to secure the protection of the slaves from a burden of taxation and arbitrary taxation upon land.

Mr. President, I will now briefly refer to some of the decisions since that time——

Mr. SUTHERLAND. Mr. President, before the Senator leaves the Hylton case, I should like to ask him a question.

The PRESIDENT pro tempore. Does the Senator from Idaho yield to the Senator from Utah?

Mr. BORAH. Certainly.

Mr. SUTHERLAND. In the opinion rendered by Mr. Justice Chase in the Hylton case, this language occurs:

The Constitution evidently contemplated no taxes as direct taxes, but only such as Congress could lay in proportion to the census. The rule of apportionment is only to be adopted in such cases where it can reasonably apply, and the subject taxed must ever determine the application of the rule.

If the Senator will follow on the language that succeeds, he will see that, in the opinion of that justice, the test of what was a direct tax was whether or not it could be fairly apportioned.

Mr. BORAH. Yes.

Mr. SUTHERLAND. Justice Chase says nothing about the reasons which the Senator gives, but puts his conclusion upon what I have stated. I want to ask the Senator whether he agrees with that reasoning of the justice?

Mr. BORAH. I do.

Mr. SUTHERLAND. Then, the Senator thinks that the test of a direct tax is whether or not it can be fairly apportioned?

Mr. BORAH. I think that is one test.

Mr. SUTHERLAND. One of the tests. Let me put this question——

Mr. BORAH. That would be the test if we were viewing it aside from any historic fact surrounding it.

Mr. SUTHERLAND. That, as I understand, is one reason why the Senator thinks a tax upon incomes is not a direct tax, because it can not be fairly apportioned. Let me put this case to the Senator: The Senator agrees that a tax on houses and buildings is a direct tax under the Constitution——

Mr. BORAH. Yes; if they are part of the real estate.

Mr. SUTHERLAND. Suppose that Congress should pass a law providing that all buildings 12 stories in height should pay a tax; would the Senator regard that as a direct tax or an indirect tax?

Mr. BORAH. All buildings over 12 stories high?

Mr. SUTHERLAND. All buildings over 12 stories in height. Would the Senator regard that as a direct tax or an indirect tax?

Mr. BORAH. If they were part of the real estate, I would regard it as a direct tax.

Mr. SUTHERLAND. And yet the Senator must concede that that tax could not be as fairly apportioned as a tax on carriages, because there are comparatively few States in the Union that have many buildings of that character, and some that have none at all. If the Senator concedes that, what becomes of the rule laid down by the court that a direct tax is only a tax which can be fairly apportioned?

Mr. BORAH. Well, Mr. President, I may be dull of comprehension, but, if I am not excessively so, the position of the Senator proves conclusively the contention which I am making here. I may have misunderstood the Senator.

Mr. SUTHERLAND. What did the Senator say?

Mr. BORAH. I apprehend that its impossibility makes it pretty hard to answer.

Mr. SUTHERLAND. I think the Senator intended to use the word "inexpedient." It may not be expedient to lay a tax of that kind, but it is not impossible.

Mr. BORAH. I think it is impossible as a practical fact.

Mr. SUTHERLAND. It is inexpedient to do it.

Mr. BORAH. No; I do not agree with the Senator.

Mr. SUTHERLAND. What I am asking the Senator is, suppose Congress did lay a tax of that character?

Mr. BORAH. Suppose there was a railroad to the moon—I do not know how the engine would get up there—but suppose there was, how would it get up there? [Laughter.]

Mr. SUTHERLAND. The Senator is asking a question that does not seem to have very much application to the case I am putting to him. The Senator thinks that sort of a tax is impossible. Let me put this case: Suppose that Congress should lay a tax upon all buildings with a value exceeding $5,000,000. The Senator, in view of his position that wealth ought to pay the burden of taxation, can not regard that as an impossible case.

Mr. BORAH. I regard it——

Mr. SUTHERLAND. Suppose Congress should levy a tax upon buildings exceeding in value $5,000,000. Such a tax could not be fairly apportioned.

Mr. BORAH. Suppose. I ask the Senator how you would frame a law to do that? Then you get to the practical proposition of it, and that illustrates my position exactly, that the framers of the Constitution intended that a direct tax should be such as could be apportioned, and that which could not be apportioned should be an indirect tax.

Mr. SUTHERLAND. Then, if I understand the Senator's answer, it is that a tax upon buildings exceeding in value $5,000,000 would not be a direct tax?

Mr. BORAH. I do not understand that that would be a practical proposition or apportionable under the provisions of the Constitution.

Mr. SUTHERLAND. If the Senator is satisfied with that answer, I am.

Mr. BORAH. I am exceedingly gratified that I have satisfied the Senator at last.

Mr. President, after the Pollock case was decided, the Supreme Court was called upon a number of times to meet the reasoning of that case in different tax cases. I do not, of course, wish to be understood as saying that the Supreme Court has expressly overruled the income-tax case; but I want to call attention to some matters in connection with later decisions which are worthy of some consideration. Before doing so, however, I want to read a rule which has since been laid down by the Supreme Court with reference to the levy of taxes, which is the right rule and ought to have been laid down before the income-tax decision was rendered. It is found in One hundred and seventy-third United States, where the principles of the income tax were presented to the court in a contest against the validity of a certain tax which it was claimed was a direct tax. The court said:

> The whole power to tax is the one great power upon which the whole national fabric is based. It is as necessary to the existence and prosperity of a nation as is the air he breathes to the natural man. It is not only the power to destroy, but it is also the power to keep alive. * * * The commands of the Constitution in this, as in all other respects, must be obeyed; direct taxes must be apportioned, while indirect taxes must be uniform throughout the United States. But while yielding obedience to these constitutional requirements, it is no part of the duty of this court to lessen, impede, or obstruct the exercise of the taxing power by merely abstruse and subtle distinctions as to the particular nature of a specific tax, where such distinction rests more upon the differing theories of political economists than upon the practical nature of a specific tax, where such distinctions rest more upon the differing theories of political economists than upon the practical nature of the tax itself. In deciding on a tax with reference to these requirements no microscopic examination as to the purely economic or theoretical nature of the tax should be indulged for the purpose of placing it in a category which would invalidate the tax. As a mere abstract, scientific, or economic problem a particular tax might possibly be regarded as a direct tax, when as a practical tax it might quite plainly appear to be indirect. Under such circumstances, and while following a disputable theory might be indulged as to the real nature of the tax, a court would not be justified, for the purpose of invalidating the tax, in placing it in a class different from that to which its practical results would consign it. Taxation is eminently practical, and is, in fact, brought to every man's door; and for the purpose of deciding upon its validity a tax should be regarded in its actual, practical results rather than with reference to those theoretical or abstract ideas whose correctness is the subject of dispute and contradiction among those who are experts in the science of political economy.

I think I need hardly say to lawyers that that rule would have made impossible the decision in the income-tax case, because the income-tax decision at last rests upon the technical proposition that a tax upon incomes is a tax upon the real estate, which is technical in the most technical sense, and which has been, so far as it has ever been considered by other courts, rejected as an unsubstantial technicality.

The inheritance-tax cases proceeded upon two propositions: First, that it is a tax upon the property, or, secondly, it is a tax upon the right to inherit or to take property. I do not care for the purpose of this case whether you consider it as a tax upon the property or a tax upon the right to take property. It is irreconcilable with the proposition laid down in the income-tax decision. If it is a tax upon property, it is a direct tax in view of the income-tax decision. If it is a tax upon the right to take property, it indirectly affects real estate just the same as a tax upon incomes indirectly affects real estate.

For instance, a number of state authorities and the Supreme Court of the United States in Seventeenth Howard said that an inheritance tax was a tax upon the property. Of course if that be true, Mr. President, then it must necessarily, in sustaining that tax, overthrow the reasoning of the income-tax decision, because they are laying a tax directly upon the property itself and it is not shiftable.

Mr. HEYBURN. I should like to suggest, without interrupting the Senator, that the principle of an inheritance tax is a fee for the waiver of the Government to the property. In the absence of law the property would all go to the Government, and it is merely the fee that the Government charges for waiving its right.

Mr. BORAH. The question occurs to me——

Mr. BACON. That could not be the reason in the case of the Federal Government.

Mr. BORAH. No.

Mr. HEYBURN. I beg pardon.

Mr. BACON. I say that could not be the reason in the case of the Federal Government, because the Federal Government could not possibly have any right of escheat.

Mr. HEYBURN. I think it would be the case in regard to the lord of the fee, whomsoever it might be. The principle would not be changed by the fact that it was the Federal Government.

Mr. BACON. If the Senator will pardon me, what I mean is that the principle can not apply in the case of the enactment of a law imposing an inheritance tax by the Federal Government, because the fee does not rest in the Federal Government and

can not rest there, and no power of escheat can possibly reside in the Federal Government.

Mr. HEYBURN. In the absence of law it would rest there.

Mr. BACON. Oh, no; never.

Mr. BORAH. I think my colleague is correct with reference to the state decisions. I think he is incorrect when you come to sustain any national inheritance tax. If there is anything well settled by the decisions of the Supreme Court of the United States, if anything may be considered settled by the precedents of years and years, it is that the Federal Government can not tax the powers of the State or the incidents of that power. When you can not tax the thing, you can not tax the incidents of that thing; and when you can not tax the powers of the State to regulate inheritances, you can not tax the incidents of that power, and we are driven to the position either of overturning that long line of authorities or sustaining the inheritance-tax law upon the proposition that it is a tax upon property.

Mr. HEYBURN. I will merely say, with the permission of the Senator, that it is a tax upon the right to inherit property.

Mr. BORAH. And that is a right which rests alone within the power of the States to regulate, and an incident of that power can not be taxed any more than the right itself.

Mr. HEYBURN. I did not intend to go into the question of the difference of the rule as pertaining to the State and the Federal Government. I merely felt impelled to point out what, in my mind, was the difference between a tax upon property and a tax upon the right to take property.

Mr. BORAH. I understand fully the position of my colleague. But, Mr. President, let us examine that for a moment in the light of the national inheritance tax. I am perfectly aware that the state courts have held, time out of mind, that an inheritance tax is a tax upon the right to take property or the right to transmit property. They have varied as to whether it was the right to take or the right to transmit. But, as said by Mr. Justice White, the right to regulate the inheritance of property is a thing solely within the control of the State, and over which the National Government has no control whatever, and that you can not tax the incidents of that right any more than you can tax the right itself.

For instance, way back in the case of McCulloch *v.* State of Maryland, the Supreme Court of the United States held that you could not tax the stock of a corporation organized for the purpose of performing the functions of government. It said in the case of The Collector *v.* Day that the National Government could not tax the salary of a state officer—not the office, not the right to hold the office, but it could not tax the emoluments of the office; and they held in the case of Dobbins *v.* The Commissioners of Erie County, vice versa, that the state government could not tax the salary of a federal officer. They held in the case of Weston et al. *v.* City Council of Charleston that you could not tax the stock of the Government, for the reason that it was taxing the power of the Government to borrow money. In other words, it is well settled and well established that where you can not tax the thing, you can not tax the incidents or the emoluments or the fruits or the functions of that thing. I say, if it is a power of the State to regulate the right of inheritance, you can not tax that right and you can not tax the incidents of it. You can only tax the property.

I wish to call attention to the language of the Supreme Court upon that to show I am entirely correct. For instance, in sustaining the inheritance-tax law they use this language, by way of illustration, because it was contended there that the tax was unconstitutional, and they said:

> These imports—
>
> Referring to imports—
>
> These imports are exclusively within the power of Congress. Can it be said that the property when imported and commingled with the goods of the state can not be taxed because it had been at some prior time a subject of exclusive regulation by Congress?

Certainly not, and what are you taxing? Can it be said, says the justice, that the property which has been subject to regulation of interstate commerce can not be taxed? Unquestionably it can, but you are taxing the property. You can not tax the right to import goods. You can not tax the right to engage in interstate commerce. You can only tax the property after it has passed beyond interstate commerce.

And again he says:

> Interstate commerce is often within the exclusive regulating power of Congress. Can it be asserted that the property of all persons or corporations engaged in interstate commerce is not subject to taxation by the several States because the Congress may regulate interstate commerce.

Certainly not, but again I say we are not taxing the right to engage in interstate commerce or intrastate commerce, but we are taxing the property which has been subject to it, and when you come to examine that authority in the light of the previous decision you will find that the Supreme Court is sustaining a tax which is laid upon the property itself.

But suppose we pass from that for a moment. Suppose we take the Supreme Court and the decisions upon the proposition that it is the right to lay a tax upon the right to transmit property or the right to inherit property. Is it not a tax indirectly affecting all the property a man inherits? The tax in the income case was not upon the rent. It was upon the income, and yet they said that being upon the income it indirectly affected the real estate. No one contended that it was a direct tax upon real estate, but that it simply indirectly affected the real estate. You take, then, and lay a tax upon inheritances. We will assume for the sake of the argument that it is a tax upon the right to inherit, but it indirectly affects the real estate just as it did in the income-tax decision.

Furthermore, the tax law of 1898, which was sustained, provided that the tax should be laid upon the property and that the tax should be a lien upon the property until it was paid, and yet it was sustained.

But, again, that same law had in it a clause which provided that transfers inter vivos should be taxed. In other words, if I, in contemplation of death, should transfer my property to the Senator from Arkansas, has the state granted any right to do so? Has the state any power over that matter? And yet the Supreme Court has said that that is subject to an inheritance tax, and it can only be sustained upon the theory that it is a tax either upon property or a tax upon permission to die.

But let us view this in another way. We remember the case of Scholey *v.* Rew (23 Wallace). That was an inheritance-tax case. It was sustained in the Supreme Court, and I desire to quote the language of the Supreme Court:

> Whether direct taxes, in the sense of the Constitution, comprehend any other tax than a capitation tax and a tax on land is a question not absolutely decided, nor is it necessary to determine it in the present case, as it is expressly decided that the term does not include tax on income, which can not be distinguished in principle from a succession tax, such as the one involved in the present controversy.

They decided in Twenty-third Wallace that an income tax could not be distinguished in principle from an inheritance tax, and Mr. Justice White, in commenting upon that, says:

> Again in the case of Scholey *v.* Rew, the tax in question was laid directly on the right to take real estate by inheritance, a right which the United States had no power to control. The case could not have been decided in any point of view without holding a tax upon that right was not direct, and that therefore it could be levied without apportionment. It is manifest that the court could not have overlooked the question whether this was a direct tax on land or not, because in the argument of counsel it was said that if there was any tax in the world that was a tax on real estate which was a direct tax that was the one. The court said it was not, and sustained the law. I repeat that the tax there was put directly upon the right to inherit, which Congress had no power to regulate and control. The case was therefore greatly stronger than that here presented, for Congress has a right to tax real estate directly with apportionment. That decision can not be explained away by saying that the court overlooked the fact that Congress had no power to tax the devolution of real estate and treat it as a tax upon such devolution. Will it be said of the distinguished men who then adorned this bench that although the argument was pressed upon them, that this tax was levied directly upon the real estate, they ignored the elementary principle that the control of the inheritance of realty is a state and not a federal function? But even if the case proceeded upon the theory that the tax was on the devolution of the real estate and was therefore not direct, is it not absolutely decisive in this controversy? If to put a burden of taxation on the right to real estate by inheritance reaches only by indirection, how can it be said that a tax on the income, the result of all sources of revenue, including rentals after deducting losses and expenses which thus reaches rentals indirectly and real estate indirectly through the rentals is a direct tax on the real estate itself.

This was the case of Scholey *v.* Rew, decided in 23 Wallace, and the same doctrine was upheld again in the inheritance cases since the Pollock case was decided.

Mr. President, just a word with reference to one phase of this matter, and I will close.

The Supreme Court said in the income-tax case that a tax upon rent was a tax upon real esate. I want to submit a few propositions for the consideration of the Senate upon that matter to see whether or not they are correct.

It will be remembered that this tax was not upon real estate, that the tax was not upon the rent, but it was upon the income which might have come from it, and therefore it was twice removed from the real estate, and it could only be considered after the rent had been earned and collected.

I undertake to say it is well established by the authorities that the transfer of earned rent does not transfer the real estate or any interest in real estate.

That the transfer of real estate does not transfer either the earned and uncollected or the collected rents of real estate.

That the transfers of the rents or incomes from real estate for any limited period of time does not transfer any interest in the real estate.

That the earned but uncollected rent is personal property and has always been so considered and held by the courts.

That collected rent is personal property and has always been so considered and held by the court.

That the earned rents and collected rents have been and are considered and treated and taxed where taken at all in the different States of the Union as personal property.

That in the States where the wife owns her separate property and where community interests arise and are recognized that the rents from real estate, which real estate is her separate property and not liable for the debts of her husband, is held to be personal property and community property and liable for the husband's debts.

That there is no other case to be found in the history of American jurisprudence or in the history of English jurisprudence in which it has been held that a tax upon collected rents is a tax upon real estate.

I challenge successful contradiction to that proposition. The income-tax decision is the Alpha and the Omega upon that proposition. I ask the lawyers of the Senate to present from American jurisprudence or from English jurisprudence a single case which has ever held that a tax upon collected rents is a tax upon real estate. All the authorities which are to be found are the other way, and that is when rents are earned they become personal property, separated and treated as personal property. They do not go to the estate as real estate, and they are not considered in any sense as related to or connected with the real estate. (4 Tex. Civ. App., 483; Tiffany, 778–779; Washburn, sec. 1520; Burden *v.* Thayer, 3 Met., 76; Ball *v.* Co., 80 Ky., 503; Condit *v.* Neighbor, 13 N. J. Law, 83; Earl *v.* Grim, 1 Johns Ch., 494; Fonereau *v.* Fonereau, 3 Atk., 315; Robinson *v.* County, 7 Penn. St., 61; Van Rensellar *v.* Dennison, 8 Barber, 23.)

In concluding, Mr. President, I only wish to say that, in my opinion, this matter could very well be resubmitted to the Supreme Court of the United States upon two propositions, and with all due respect and consideration for that high tribunal: First, upon the facts of history, which have been revealed as to the intent and purposes of the framers of the Constitution, which did not appear to be presented to the court at that time; and, secondly, in the light of the decisions which have been rendered by the court since the income-tax decision. We know one thing conclusively—that one of the controlling factors in the income-tax decision has been, by the unanimous court, rejected. We know another thing as lawyers, and that is that the principles laid down in the income-tax cases are irreconcilable with the principles in the inheritance-tax cases; and it is no challenge to that tribunal for men who are engaged in another department of government, seeking to find their way in the discharge of their solemn duties, to ask that this great question, which involves one of the great national powers, be again submitted to that court for consideration.

I place my advocacy of the income-tax proposition upon a higher plane than that of raising a little revenue for the Government for the next few years. I believe it involves a great constitutional power, one of the great powers which in many instances might be absolutely necessary for the preservation of the Government itself. I believe that the Constitution as construed is the same as granting an exemption to the vast accumulated wealth of the country and saying that it shall be relieved from the great burden of taxation. I do not believe that the great framers of the Constitution, the men who were framing a government for the people, of the people, and by the people, intended that all the taxes of this Government should be placed upon the backs of those who toil, upon consumption, while the accumulated wealth of the Nation should stand exempt, even in an exigency which might involve the very life of the Nation itself. This can not be true; it was never so intended; it was a republic they were building, where all men were to be equal and bear equally the burdens of government, and not an oligarchy, for that must a government be, in the end, which exempts property and wealth from all taxes.

Mr. BRADLEY. Mr. President, the Senator from New York [Mr. ROOT] has asked me to allow him to file some figures with the Senate at this time, and I have agreed to do so.

Mr. ROOT. Mr. President, I wish to put upon the record in immediate juxtaposition with the very admirable and able argument of the Senator from Idaho [Mr. BORAH] some figures, and but a few, which bear upon a subject discussed in a few words here yesterday.

Senators who have had long experience in the courts are sometimes led by the habit of advocacy to state the special propositions upon which they rely a little strongly, a little out of drawing with the facts which should accompany them, and I should be sorry to have go to the country the impression that would be derived from some of the statements made by the Senator from Idaho, standing alone, with regard to the present burden of taxation.

It is not a fact that in this Republic property does not now bear a very great proportion of the burden of taxation. I find, in looking at the precise figures since the little colloquy that took place here yesterday, that in 1902, which is the last year as to which I find complete figures available for comparison, the property in the United States upon which the ad valorem taxes for the support of the Government, county, municipal, and other local governments, were levied amounted at a true value to $97,810,000,000; that ad valorem taxes were levied upon that property at the rate of seventy-four one-hundredths of 1 per cent; that is, in round numbers, three-fourths of 1 per cent; and that would amount in round numbers to the equivalent of an income tax of 15 per cent upon all the property in the United States, assuming an income of 5 per cent, which is a high figure to place upon the income from property. It is a very high figure, because as a matter of fact the owners of real estate generally throughout the eastern States do not expect to receive and do not receive any such income.

In the State of New York, which contains substantially one-seventh of the entire taxable property of the United States, the holders of real estate do not expect to realize more than from 3½ to 4 per cent net. And if you assume those figures for the income, this rate of taxation would mount up to the equivalent of an income tax of between 20 and 30 per cent.

Mr. BORAH. Mr. President——

The PRESIDENT pro tempore. Does the Senator from New York yield to the Senator from Idaho?

Mr. ROOT. I do.

Mr. BORAH. May I ask the Senator from New York who at last pays the large portion of the real-estate tax in this country, the real-estate owner or the renter?

Mr. ROOT. That is a question of the shifting of taxes, which can be put regarding every tax. The tax is imposed upon the property. It is paid by the owner of the property. Where the final imposition of the tax is, in the ultimate shifting and distribution, is an entirely different question.

Mr. BORAH. But if an income tax was in existence it would tax a part of the income of the man who had shifted it to the renter, would it not?

Mr. ROOT. Oh, yes; there is no doubt about it. But that is not all the tax that is imposed upon property. There are also a great variety of taxes other than ad valorem taxes—taxes upon corporations, taxes in the nature of licenses, taxes for the right to carry on business of various kinds, income taxes, inheritance taxes. The amount of revenue derived from taxes of that kind falling upon the property owners amounts to so great a sum that in the State of New York no taxes levied directly upon real or personal property are any longer necessary for defraying the expenses of the State. I observe that the appropriations of the state legislature in the State of New York at the session which has recently concluded were about $37,000,000.

All of that, Mr. President, will be paid from taxes of the character I have now described other than ad valorem taxes levied upon real or personal property, and the addition of such taxes brings up the revenues of the local divisions of the country to a substantial equality with the expenditures, which I find for the year 1902—that is, the receipts of the States, counties, and municipalities, and other local subdivisions of the country—were $1,156,447,000. That billion one hundred and fifty-six million and more was all raised by taxes levied in the different ways that I have described upon property in the United States, and making the allowance of 5 per cent income, these exactions from property would amount to the equivalent of an income tax of 23 per cent.

So, while my friend the Senator from Texas [Mr. BAILEY] proposes to levy an income tax of 3 per cent, and my friend the Senator from Iowa [Mr. CUMMINS] proposes to levy an income tax beginning at 2 per cent and graded along up to 6 per cent, and while I am not now arguing against the imposition of an income tax, I beg the Senators to remember in their arguments that property in the United States does now bear a tax for the support of government in the United States equal to nearly eight times the income tax that they are proposing to assess upon it.

I submit to the candor of the Senators who have spoken upon this subject and to those who may speak hereafter that it is an erroneous view, and I think a mischievous view, to present to the people of the country, who have not the ready access to statistical data that we have, that the property owners of the United States do not now bear a substantial part of the burdens of government.

Mr. BRADLEY obtained the floor.

Mr. BAILEY rose.

Mr. BRADLEY. I yield to the Senator from Texas, if he desires to say anything.

Mr. BAILEY. A moment only. I will trespass upon the courtesy of the Senator from Kentucky to say this much in reply to what the Senator from New York [Mr. ROOT] has said. He will not find any statement of mine to the effect that the property of this country does not pay a tax. He will, however, find in more than one place where I have asserted that the property does not contribute to the support of the Federal Government.

The Senator from New York [Mr. ROOT] and the Senator from Massachusetts [Mr. LODGE] both interrupted the Senator from Idaho [Mr. BORAH] yesterday afternoon with this same suggestion. Instead of constituting an argument against an income tax, the statements which they made constitute, to my mind, a strong argument in favor of it. In other words, they have both asserted that in these counties and in these States which are so close to us, and which the people so completely govern, the tax has been laid on property and not on consumption. I perfectly understand that in many States those property taxes have been supplemented, as the Senator from New York now says, by taxes upon corporate franchises and by taxes upon various occupations.

Although it is not pertinent to this discussion, I have no hesitation in declaring that a tax on any useful occupation can not be defended in any forum of conscience or of common sense. *To tax a man for trying to make a living for his family* is such a patent and gross injustice that it should deter any legislature from perpetrating it.

I do not hesitate to say that every occupation tax in America ought to be repealed, because it is a tribute exacted by sovereignty from a man because of his effort to make a living for himself and his family. I do, however, heartily subscribe to the tax upon corporate franchises, because they are the creations of the State and often possess a tremendous value. A franchise of any corporation is valuable. If it were not, the incorporators would not seek it. The value of many has never yet been measured in dollars. Therefore, when the State creates a corporation and endows it with faculties that are so valuable, it should be taxed. It possesses almost every faculty the citizen possesses with respect to property, and it possesses a faculty not possessed by the citizen and the value of which can not be computed. I mean by this to say that the corporation knows exactly the day that has been appointed for it to die, and it can extend its life indefinitely. It not only possesses that valuable faculty, but most of the States exempt those who own its stock from loss beyond a certain extent. The individual who engages in any business embarks his whole fortune in the enterprise. He is responsible for every dollar of debt contracted, and yet he can only earn what his business nets. On the other hand, the corporation can earn, just as the citizen can, the entire net profits of the business, but it does not stand the same risk of loss; it does not incur the same hazard that the man of flesh and blood incurs. A corporation is permitted to make all that is possible, and yet has a limitation on its losses. That is such a valuable advantage that it is small wonder that States have learned to tax them, and the wonder is that they have not learned it sooner and have not exercised it to a larger extent.

But laying aside these taxes on corporations and corporate franchises and laying aside these taxes upon occupations, the States support themselves almost exclusively by a tax on property and not by a tax on consumption.

Now, why is this? The States were older than the Union, because without them the Union could not have been formed. They antedated it. The people who compose the States must at last be the same people who compose the Union. The States are the elementary condition. In that elementary condition the States deemed it just and wise to lay their taxes on property and not on the appetites and the backs of the American people.

The States take the toll from the people for protection; for the protection given in the cities for fire and police protection; in the States for the protection of the property and personal rights, including the great rights of inheritance, accumulation, and descent. It is for those rights that the State compels the citizen to return a portion of his property, the whole of which the State protects. It compels a portion of it to be returned because it is necessary for the State to spend it in protecting these great, fundamental, and natural rights of every man.

But, sir, does the Federal Government protect no right? A costlier one than any State safeguards. The very men with these colossal fortunes are the ones who travel over the world, and about them they carry the American flag, always for their protection. Go and consult the expenditures of the Government. What does this army and what does this mighty navy, whose ships now vex the waters of every sea, cost the American people? More than $200,000,000 a year to maintain them. This vast sum is spent to protect the rights of American citizens at home and abroad. How few of the men who pay this tax on consumption ever invoke the Government's great power to protect them while they travel in a foreign land! Not one of them in ten thousand, because their lean purses do not permit them to indulge in the luxury of foreign travel. It is the rich and prosperous for whose protection these ships and these battalions are sometimes needed.

But if you do not need them for the rich and powerful who travel in idleness abroad, then you need them to protect the Republic; to protect it from foreign invasion, to protect it from foreign insult. I do not think you need as many ships as you build, nor do I think you need as many soldiers as you enlist. But still you need the nucleus of an army and a navy, and they constitute an enormous expense.

The rights protected by the Federal Government are as essential, and I might almost say as sacred, as those protected by the States. If the States lay the cost of the protection which they afford upon the property of men, why should not the Federal Government do likewise? Why is it more just to compel men to contribute according to their wealth to support the state administration than it is to compel them to support the federal administration?

I go further than the Senator from Idaho has gone. I believe not that wealth ought to supplement a tax which consumption pays, but I believe wealth ought to bear it all. I think it is a monstrous injustice for the law to compel any man to wear a suit of clothes and then tax him for buying it. I think it is not right, when God made us hungry, and in obedience to His law we are compelled to appease our appetite, to charge us because we must keep soul and body together by taking food. I believe that the Government ought no more to tax a man on what he is compelled to eat and wear than it ought to tax him on the water he drinks or upon the air he breathes. I believe that all taxes ought to be laid on property and none of it should be laid upon consumption.

Mr. President, there is one addition to the property tax that I would make. I would compel a man whose earning power from brain exercised in one of the professions or from inventive genius is great to pay on his income beyond a certain point. When a lawyer like the Senator from New York can earn at the bar, of which I am glad to say he is the honored head, $150,000 every year, I think he ought to be made to pay the Government a tax on that earning power, because in taking from him the small tribute which the law exacts we subtract no comfort from his home. I believe that any man in law or medicine or any other employment in life who exhibits an earning capacity far beyond the necessities of his home ought to be compelled to pay the Government which protects him in the exercise of his talents and in the accumulation of this wealth. He ought to be willing to pay, and I am willing that he should be made to pay. But save and except only this earning capacity of talent or of genius, I would lay every dollar's worth of the Government tax upon the property of men and not upon the wants of men.

None of us, except the simple Democrat of the old-fashioned school, have all we want, but many of us have all we need. After we have satisfied our needs, then the Government has a right to take its toll.

But what shall our friends on the Republican side say to us? Did they not ask in the bill as it came from the House that we lay a tax on inheritance? That is worse than laying a tax on income, because it may often happen that even under the inheritance provision as it came from the House, an orphan's education would depend upon the moderate bequest that had been made to him or her.

More than that, the attempt to tax an inheritance is an interference not only with the rights, but with the established policy of the States. Thirty-odd of them, and among them the State of New York, levy an inheritance tax, and many of them derive a handsome revenue from its collection. I think an inheritance

in the Payne bill will not insure sufficient revenue to prevent a deficit, then I am heartily in favor of a tax upon incomes. The decision in the Pollock case has never been accepted by the bar of this country as sound, and it never will receive the sanction of public opinion. As the needs of this Nation increase, its annual budget of expense will increase, no matter how conservative and penurious the economy in making appropriations and expending public funds.

We are going on with the great work of building canals, improving navigable streams, building up a navy, reclaiming arid lands, and conserving natural resources. We are going on with the work of prosecuting illegal combinations and regulating interstate commerce. No mere cry of large expense can stop this movement. While our budget of expense will increase, our most powerful manufactures will continue to outgrow the need for a protective tariff and the great labor unions will protect the wages of our workingmen.

The protective system will remain, but it will be supplemented for revenue purposes by federal taxation upon inheritances and incomes. It is not a socialistic scheme for the redistribution of wealth. It is a plan for an equitable distribution of burdens. There are 7,000,000 families of wage-earners in the United States living upon a medium wage of $436 a year and 5,000,000 farmers whose average income is about $350 a year. The vast majority of American families live on $500 or less per year. In the great iron and steel industries, in 1900, the income of the family was about $540 a year, and in 1905, $580 per year. The cost of living has increased from $74.31 in 1896 to $107.26 in 1906; coal increased in price $1 per ton; manufactured commodities advanced 32 per cent. Under these circumstances, it seems to me that where competition has been destroyed and the market price of a commodity is maintained at a high price by a trust the tariff on that commodity should be materially reduced, if not entirely removed, and that the large incomes, both of individuals and of corporations, should be required by an income tax to bear a larger share of the burden of federal taxation than they do now.

INCOME TAX.

A graduated income tax exempting all incomes of less than $3,000 a year would place upon the wealth of the country a share of the burden of maintaining the Federal Government, which it ought to bear and bear gladly and willingly.

England raises an annual revenue of $90,000,000 in the form of death duties, or inheritance taxes, and over $168,000,000 in the form of taxes upon incomes. Her population is 44,000,000 and ours 90,000,000, and yet in this great country of ours, with the richest individuals and the richest corporations ever known since human society was organized, the national revenues are entirely raised by levies upon consumption. We are called here under an implied public obligation to revise the tariff downward. The President is committed to that and the people expect it. On September 5, 1906, in a speech at Bath, Me., Secretary Taft declared that "those schedules of the tariff which have inequalities and are excessive will be readjusted." In his speech at Milwaukee, on September 24, 1908, after his nomination, he said that "there are many schedules of the tariff in which the rates are excessive," adding that "it is my judgment that a revision of the tariff in accordance with the pledge of the Republican platform will be on the whole a substantial revision downward." At Mitchell, S. Dak., at a meeting at which I was present, he declared for thorough revision of the tariff, and in reply to a voice from the crowd which asked, "Which way; upward or downward?" he answered that the test would be the rule of the Republican platform concerning the difference in cost of production, and that, in his opinion, the revision would in most cases be downward.

PARTY PLEDGES.

How, then, can Senators declare that those of us who insist upon reductions are enemies of protection and not orthodox Republicans? I am willing to accept the judgment of the people of the country upon this issue; and so far as my vote will go in determining it, that vote will be for an honest revision of the tariff downward.

Now, then, a word in closing. Mr. President and Senators, I contend that the real principle at the foundation of the Republican party upon the tariff is declared—and declared better than it has ever been declared elsewhere—in our Republican platform. If we will honestly apply that rule here and get the difference in the cost of production abroad and at home, including labor, and apply it to these schedules, it will inevitably result that, in the majority of cases, the revision will be downward.

We are at a disadvantage. I do not want to say anything but what is most kind toward the Committee on Finance. I have not been in entire sympathy with all the criticisms indulged here. I believe that the committee is faithful. I believe its members are striving patiently and earnestly to do their duty as they see it.

But this, nevertheless, is true, no matter if the Senator from Montana [Mr. CARTER] did pile up on his desk a great stack of documents to show how much evidence we have here. We have evidence, of course; an abundance of evidence, but what shape is it in? It is a bewildering mass of undigested material that no man could read carefully in a year's time. I came here not without some knowledge, but I did not know a cotton tie from a necktie. Look at that mass of testimony upon every subject under the sun. It is a sea of confusion, which Members of the Senate are expected to wade through for the purpose of securing some tangible information as to how to vote here.

I say that that is not business. That testimony should have been taken, not during a few weeks here in the Capitol, where only voluntary witnesses appeared who were directly interested, and where the committee could not travel, or investigate, or take time to get the facts from disinterested witnesses; it should have been taken by a competent body of experts, who could deliberately collect the testimony, digest it, and put it into simple, concrete form, and place it on our desks here in a small, handy volume. Why could not that be done? How much more effective would our work then have been than it has been under the circumstances which have faced us here?

For that reason I am in favor of having some tribunal clothed with power the year around to get information upon this great economical and industrial question and present it to the Congress of the United States.

We can not get away from a bad system by criticising the Committee on Finance. It is a system that we ought to be able, it seems to me, to improve. I join in with the spirit that ought to prevail among all of us who belong to the dominant party, responsible for the management of this administration and the Government. Let us keep faith. Let us not stand here criticising and being suspicious of each other, arrayed as standpatters and progressives, but let us go forward in the spirit of true Republicanism, governed by the rule of our party platform; keep faith; discharge our duty in this revision of the tariff.

It seems to me that when we apply that rule to the steel schedule, to the question whether we will impose a duty upon lumber, coal, oil—upon natural resources—we will either remove the duty entirely or we will make it so low that it can answer no purpose except to contribute in a small way to the revenues of the Government.

EXECUTIVE SESSION.

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

The motion was agreed to, and the Senate proceeded to the consideration of executive business. After seven minutes spent in executive session the doors were reopened, and (at 5 o'clock and 25 minutes p. m.) the Senate adjourned until to-morrow, Thursday, May 13, 1909, at 11 o'clock a. m.

NOMINATIONS.

Executive nominations received by the Senate May 12, 1909.

UNITED STATES MARSHAL.

Thomas Cader Powell, of Alaska, to be United States marshal for the district of Alaska, division No. 2. A reappointment, his term having expired January 23, 1909.

UNITED STATES DISTRICT JUDGE.

Henry Groves Connor, of North Carolina, to be United States district judge for the eastern district of North Carolina, vice Thomas R. Purnell, deceased.

CONSULS-GENERAL.

Amos P. Wilder, of Wisconsin, now consul-general of class 2 at Hongkong, to be consul-general of the United States of America of class 2 at Shanghai, China, vice Charles Denby, nominated to be consul-general of class 3 at Vienna.

Charles Denby, of Indiana, now consul-general of class 2 at Shanghai, to be consul-general of the United States of America of class 3 at Vienna, Austria, vice William A. Rublee, nominated to be consul-general of class 2 at Hongkong.

William A. Rublee, of Wisconsin, now consul-general of class 3 at Vienna, to be consul-general of the United States of America of class 2 at Hongkong, China, vice Amos P. Wilder, nominated to be consul-general of class 2 at Shanghai.

AMBASSADORS EXTRAORDINARY AND PLENIPOTENTIARY.

William Woodville Rockhill, of the District of Columbia, now envoy extraordinary and minister plenipotentiary to China, to be ambassador extraordinary and plenipotentiary of the United States of America to Russia, vice John W. Riddle, resigned.

Oscar S. Straus, of New York, to be ambassador extraordinary and plenipotentiary of the United States of America to Turkey, vice John G. A. Leishman, appointed ambassador extraordinary and plenipotentiary to Italy.

next inquires under what circumstances the written instrument was prepared, in order to see whether those circumstances will throw light upon the question.

He then inquires how those who have been charged with the duty of acting under the written instrument have acted so as to determine what the practical construction of it has been, and, last of all, or perhaps in connection with the other methods, he inquires what conclusion has been arrived at by others, skilled in the mysteries and subtleties of language, as to the meaning.

Now, I propose to seek these four sources of information upon this subject in the effort to ascertain what is meant by the Constitution when it speaks of direct taxes being apportioned among the several States according to numbers. First of all I shall discuss the language of the Constitution itself; second, the history and the circumstances leading up to and surrounding the adoption of the taxing provisions; third, the practical construction of the language, in order to see whether or not the various acts of Congress which have been passed upon this subject throw any light upon the question; and, fourth, I shall discuss the decisions of the Supreme Court which have from time to time been handed down upon the subject of the meaning of this expression in the Constitution.

THE LANGUAGE OF THE CONSTITUTION.

There are three clauses in the Constitution which we must consider when we come to apply the first test, namely, to read and compare the various provisions in order to see whether or not they will throw light upon what was meant by this particular provision. Those three provisions are as follows: The third clause of section 2, Article I, provides:

Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers.

The first clause of section 8, Article I, provides:

The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States.

The fourth clause of section 9, Article I, provides:

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

It will be observed that the Constitutional Convention seemed to attach a great deal of importance to the proposition that direct taxes should be apportioned among the several States according to the population, because it is twice expressed in the Constitution, and, so far as my memory serves me, this is the only thought which is twice expressed in the Constitution. It is first expressed affirmatively that direct taxes shall be apportioned in this way, and then, apparently for fear that the affirmative proposition would not be sufficiently strong, it is expressed negatively that no capitation or other direct tax shall be laid except according to this rule.

So it is seen that the Constitutional Convention laid special stress upon this particular thing. It is insisted in this argument that the only kinds of direct taxes are a capitation tax and a land tax. I want to call attention to and put in contrast two of these provisions of the Constitution upon that question. The order in the Constitution is not the order in which I shall speak of them.

That Congress shall have power to lay and collect taxes, duties, imposts, and excises.

* * * but all duties, imposts, and excises shall be uniform throughout the United States.

Why are taxes, the most general term used in the clause, omitted in this limitation upon the exercise of the power? Taking that provision by itself, it is seen that of the four things mentioned, three of them, namely, duties, imposts, and excises, must be laid according to the rule of uniformity. Why did the makers of the Constitution omit the word "taxes" in that enumeration? Because they recognized that "taxes" had already been provided for in another part of the Constitution, where it had been declared that direct taxes should be laid according to the rule of apportionment; and so they provided in this section that duties, imposts, and excises should be laid according to the rule of uniformity. The conclusion, it seems to me, is perfectly clear that, taking those provisions together, what they mean is that taxes which do not fall within the description of duties, or imposts, or excises, are direct taxes and come within the other rule of the Constitution.

I am not without authority on that proposition. Mr. Tucker, in his work on the Constitution, first volume, page 458, speaking upon that subject, says:

From these uses of the term "taxes" in the clauses mentioned and "direct taxes" in the two clauses mentioned, it would seem that the framers of the Constitution had in their minds certain forms of taxes which they called "direct taxes," and other forms of taxes which were the alternate of "duties." So that taxes which were the constitutional synonym of duties were to be distinguished from the taxes which were "direct taxes." In other words, it would seem to be the true construction of the Constitution that taxes which were "direct taxes" were to be laid according to the apportionment plan, which in the second case where those terms are used is connected with their use, and all other taxes which were not embraced in the term "direct taxes" and were synonymous with "duties," etc., were properly embraced within the terms "duties," "imposts," and "excises."

And again, at page 459, he says:

This conclusion results from the fact that while the Constitution limits the power of Congress in reference to direct taxes by requiring them to be laid according to the census apportionment, and that duties, imposts, and excises must be uniform throughout the United States, it could not have meant to allow any taxation which was not included within one or the other of these groups.

Mr. BORAH. Mr. President——

The VICE-PRESIDENT. Does the Senator from Utah yield to the Senator from Idaho?

Mr. SUTHERLAND. Will not the Senator permit me to finish this quotation, and then I will yield? Mr. Tucker proceeds:

For if it did, then it would follow that taxes which were not direct, on the one hand, or within the terms "duties, imposts, and excises," would be laid at the discretion of Congress without being subject to either of the limits prescribed for direct taxes or for duties, imposts, and excises. It would seem, therefore, to be an inevitable construction of the Constitution that no tax could be laid upon the citizen by Congress which was not either subject to the census apportionment or to the requirement of uniformity, else it would leave to Congress some unrestrained power to lay taxes which were neither direct, nor duties, imposts, and excises. All taxation, therefore, which is not direct "taxation," must have been intended to be a general term embraced in the words "duties, imposts, and excises."

Now, I will yield to the Senator from Idaho.

Mr. BORAH. As I understand the suggestion of the Senator from Utah, it is that keeping out of the clause of the Constitution the Senator has just quoted the word "taxes" indicates that there was a belief in the minds of the framers that taxes measured a different kind of charges to what duties did, and that taxes being left out, it necessarily excluded the idea of uniformity as to that. Then why did they put in the words "direct taxes" at all, if they were using duties and taxes in the sense in which the Senator suggests? Why did they not say that Representatives and taxes shall be apportioned if taxes meant something other than duties?

Mr. SUTHERLAND. I think it might have been expressed in that way, but in the general clause conferring the taxing power they were undertaking to confer it as broadly as language would confer it.

Mr. BORAH. But the Constitution says that Representatives and direct taxes shall be apportioned. Therefore, it would seem to follow that when they used the word "direct" they were distinguishing a certain kind of tax, and that there were other taxes which were not direct taxes.

Mr. SUTHERLAND. I think the word "taxes" in the clause to which I have directed attention is the generic word, which includes direct taxes, duties, imposts, and excises—those four classes—and the capitation tax——

Mr. HEYBURN. Mr. President——

Mr. SUTHERLAND. If the Senator will permit me—and Congress carved out of the general expression "taxes" the three classes, namely, duties, imposts, and excises, which were to be laid according to the rule of uniformity, and carved out of the generic term again the expression "direct taxes and a capitation tax," which were to be laid according to the rule of apportionment.

Mr. HEYBURN. Mr. President——

The VICE-PRESIDENT. Does the Senator from Utah yield to the Senator from Idaho?

Mr. SUTHERLAND. Certainly.

Mr. HEYBURN. I would inquire of the Senator from Utah if he does not think that the difference between taxes and duties that was in the minds of the framers of the Constitution was that which had always existed? Taxes are the result of the exercise of the supreme power without considering the will of the party taxed. Duties are the result of a contract between the sovereign and the subject. That always distinguished taxes from duties. One of them was the imperial edict of the sovereign power that he taxes. Duties, I repeat, resulted from the agreement that the subject should contribute to the lord of the fee or whatever the supreme power might be. I think that was in the minds of the makers of the Constitution.

Mr. BURKETT. Mr. President——

Mr. SUTHERLAND. Permit me just a moment. Of course the word "taxes" and the word "duties" are subject to a variety of shades of meaning. I am speaking of the way in which I think the words were used in the Constitution.

Mr. HEYBURN. That is what I was speaking of.

Mr. SUTHERLAND. My idea about that is that the word "taxes" is the broadest and the most comprehensive word of all the words that were used; that the word "taxes," as I have said, is generic, and includes all the varieties by which a citizen may be compelled to contribute to the support of the Government.

Mr. HEYBURN. If the Senator will permit me, it will be apparent that a citizen can not be compelled to contribute to the support of the Government through duties, because he may perform no act, do no thing, to which a duty attaches; but as to taxes, he can not avoid them by anything that he can do. Those distinctions were carried all through the English law before we adopted it. I think the Senator will find that the reason why they left out "taxes" in the second enumeration was because it was the only one that the citizen could not avoid, but he could avoid paying any of the other duties by avoiding the transactions that carried the duty.

Mr. SUTHERLAND. The Senator may be correct about that.

Mr. BURKETT. I wish to make a suggestion to the Senator in connection with this question. The question was asked at one time in the discussion of the Constitution, in the convention, What are direct taxes? and it was not answered. I have sent for the Madison Papers, and I hope I can find it. I call to the Senator's attention the discussion as to what were indirect taxes. A statement was made there that indirect taxes concerned duties, imposts, and excises. There was that definition given of indirect taxes earlier in the discussion. So far as I have listened to this debate, I have never heard that discussed. I have sent for the Madison Papers, and I think I can turn to it.

Mr. SUTHERLAND. If the Senator will do me the honor to listen to me until I finish what I have to say, he will find that I shall refer to that specific matter.

Mr. BURKETT. I am not only doing the Senator the honor, but I am going to do so in justice to myself, because the Senator from Idaho raised that question.

Mr. SUTHERLAND. It has been sometimes suggested by both the Supreme Court of the United States and by counsel appearing before that court, and upon the floor of the Senate, that there may be a form of tax which is not subject to either of these rules. Nobody has ever undertaken to point out what particular subject which was liable to a tax would not come within either the rule of apportionment or the rule of uniformity; but in some vague, general way it has been stated that perhaps there may be a form of taxation that would not come within either class. In the Pollock case (157 U. S., 557) the Chief Justice, speaking upon that subject, observes:

> And although there have been from time to time intimations that there might be some tax which was not a direct tax, nor included under the words "duties, imposts, and excises," such a tax for more than one hundred years of national existence has as yet remained undiscovered, notwithstanding the stress of particular circumstances has invited thorough investigation into sources of revenue.

If I am correct in the construction of these provisions of the Constitution that imposts, duties, and excises, and those forms of taxation alone, are subject to the rule of uniformity, and other "taxes," or "direct taxes," are subject to the rule of apportionment, let me inquire, What becomes of a tax which is imposed upon the corpus of personal property? Both the Senator from Texas and the Senator from Idaho insist that the term "direct taxes" shall be confined to a land tax; that a tax upon personal property is not a direct tax. Suppose a tax is laid upon all of the personal estate of a citizen. That is not a duty; it is not an impost; it is not an excise. If I am correct in saying and if Mr. Tucker is correct in saying that all taxes must be subject to one rule or the other, it must be a direct tax. The Constitution says that "no capitation or other direct tax shall be laid," and so forth.

Mr. OWEN. Mr. President——

The VICE-PRESIDENT. Does the Senator from Utah yield to the Senator from Oklahoma?

Mr. SUTHERLAND. Certainly.

Mr. OWEN. I should like to ask the Senator from Utah if he understands by "a capitation and other direct tax," a capitation and other direct tax on the citizen or on the State exclusively, which must be apportioned?

Mr. SUTHERLAND. I heard the Senator's argument upon that subject the other day, and he presented the matter with great ability and plausibility, but I am not prepared to assent to his view. I think that the language in the Constitution with reference to a direct tax meant a tax levied upon the citizen, and not a tax levied upon the State. That was the very thing which the framers of the Constitution were endeavoring to get away from. Under the Confederation the tax in a way was imposed upon the State in the form of a requisition upon the State, but it was found that the States would not comply with the requisitions. So that whole system was abandoned and the power was conferred upon the Federal Congress of imposing direct taxes upon the citizens of the States.

Mr. OWEN. Mr. President, I should like to ask the Senator from Utah how a capitation tax, apportioned upon population, counting three-fifths of the slaves, can be other than a tax on the State exclusively?

Mr. SUTHERLAND. Well, a capitation tax, of course, would not be imposed upon the slave in the sense that the slave would be compelled to pay it, because the slave was property. That was simply the rule by which the amount of the tax was to be measured. The amount of the tax having been ascertained, then it was imposed upon either the property of the State or raised by a tax upon the heads of the various citizens of the State.

Mr. OWEN. Then I understand the Senator from Utah assents to the proposition that the capitation tax referred to in the fourth paragraph of section 9 of Article I of the Constitution is not a direct tax on the citizen.

Mr. SUTHERLAND. No. The Senator misunderstands me if he understands that, because the Constitution itself says that it is a direct tax. It says a "capitation or other direct tax."

Mr. OWEN. The Constitution, Mr. President, says "capitation or other direct tax," but it does not specify whether it is a direct tax on the State or on the citizen. I call the attention of the Senator from Utah to the fact that a capitation tax, a direct tax on a citizen, can not be apportioned under the constitutional rule, and, therefore, must necessarily be a direct tax upon the State. That is a proposition I wish him to answer.

Mr. SUTHERLAND. Mr. President, it was no part of my purpose to discuss that phase of the question; and to enter upon it would lead me entirely too far afield, if the Senator will pardon me for saying so.

Mr. OWEN. I beg pardon of the Senator from Utah. I did not wish to interrupt his argument. I thought perhaps he had considered that.

Mr. SUTHERLAND. Mr. President, I am discussing this tax upon the assumption that the decisions of the Supreme Court in that respect are right—that it is a tax upon the citizen and not upon the State.

I was about to say, when the Senator from Oklahoma interrupted me, that the language of the Constitution is "no capitation or other direct tax." It is manifest that, according to the argument made by the Senator from Texas and the Senator from Idaho, the words "other direct tax" meant but one kind of a tax, namely, a land tax. If it had been intended by the framers of the Constitution that those words "other direct tax" should include a land tax and nothing more, it seems to me that the plain and direct way would have been for the framers of the Constitution to have said so in precise words—to have simply said that "no capitation or land tax shall be laid, except in accordance with this rule."

The Senator from Texas the other day in his discussion called attention to the language of the Articles of Confederation upon that subject, which provided for a contribution from the several States, to be measured by the value of their lands and improvements. So the framers of the Constitution were familiar with that form of expression. If they had not intended to vary the sense which was conveyed by that expression used in the original Articles of Confederation, it is somewhat remarkable that they varied the language. If they had not intended to include more than was included by the terms used in the Articles of Confederation, why is it that they did not use the same language that was used in the Articles of Confederation instead of using an expression which, at least, apparently seems to include very much more?

Upon this same subject the Senator from Idaho [Mr. BORAH] quoted from the plan of Alexander Hamilton, which was that "taxes on land, houses, real estate, and capitation taxes" should be apportioned; and the Senator argued that that was evidence of what was meant in the Constitution by the use of the words "direct tax." The makers of the Constitution had this language of Alexander Hamilton before them. Alexander Hamilton had used in his proposed plan these precise words: "Lands, houses, real estate, and capitation taxes."

Again, I inquire if the framers of the Constitution intended to limit the taxation subject to the rule of apportionment to taxes on land, houses, real estate, and capitation taxes, why did they not adopt the language proposed by Mr. Hamilton instead of taking the general expression "direct tax," which, again I say, apparently means much more than was meant by the language of Mr. Hamilton.

This construction of the Constitution, according to the plain reading of its terms, it seems to me, is fully borne out by the history and circumstances leading up to and accompanying the adoption of the Constitution.

Mr. CUMMINS. Mr. President——

The VICE-PRESIDENT. Does the Senator from Utah yield to the Senator from Iowa?

Mr. SUTHERLAND. Certainly.

Mr. CUMMINS. Before the Senator passes to a new subject I should like to know definitely whether he assents to the distinction suggested by the senior Senator from Idaho [Mr. HEYBURN] between a tax and a duty.

Mr. SUTHERLAND. No; I do not, as the Senator has stated it. I think that the Senator accurately stated the primitive meaning of the word "duty," but I do not believe that it was used in that restricted sense in the Constitution.

Mr. HEYBURN. Mr. President——

The VICE-PRESIDENT. Does the Senator from Utah yield to the Senator from Idaho?

Mr. SUTHERLAND. I do.

Mr. HEYBURN. I think I perhaps was not explicit enough in my statement to convey the full meaning. I intended to submit the proposition that a tax can not be avoided by any act on the part of a subject, while either of the others, imposts or duties, may be avoided by the subject declining to enter into the business that carries with it that class of taxation. That is a distinction about which there can be no doubt.

Mr. SUTHERLAND. I will agree with the Senator to this extent, that a direct tax does imply the idea of coercion.

Mr. HEYBURN. Sovereignty.

Mr. SUTHERLAND. Of coercion upon the subject who is to pay the tax, while the word "duty," which is imposed upon articles of consumption——

Mr. HEYBURN. Which may not be consumed.

Mr. SUTHERLAND. Articles which may be imported.

Mr. HEYBURN. Or which may not be imported.

Mr. SUTHERLAND. The citizen may pay or not, according as he determines to use or not to use the article upon which the particular duty is imposed.

Mr. HEYBURN. Just a word, and then I will be ready to leave the subject to the judgment of the Senate or of those who may choose to consider it.

I reassert that duties may be avoided by the act of the party—that is, the act of the citizen, because he may do nothing that carries with it the duty. Imposts come within the same class exactly, as do also excises. These three, in my judgment, are distinguished from taxes because they belong to an entirely different class of burdens resting upon the citizen. There is nothing on earth that the citizen can do to avoid taxes except to die.

Mr. SUTHERLAND. Then, if I understand the Senator from Idaho, he agrees with what I have said, namely, that by the word "tax" in that clause of the Constitution is meant direct taxes; and by the words "imposts, duties, and excises" are meant indirect taxes. That is precisely what I am contending.

Mr. HEYBURN. I will reply in my own time.

Mr. CUMMINS. I think the Senator from Utah will recognize that that is not the suggestion made by the senior Senator from Idaho. He did not intend to be understood as saying that excises, duties, and imposts were the only indirect taxes that could be levied by the Government. He intended to say that from the very nature of things a duty arose out of the voluntary act of the person upon whom it was imposed, and that a tax was an exercise of sovereignty imposed in an involuntary way upon the persons upon whom it rests. I want to know whether the Senator from Utah assents to that distinction?

Mr. SUTHERLAND. I have stated to the Senator from Idaho exactly what I did agree to, and I dislike to be obliged to say that I assent to language which has been used by others when I have undertaken to put in clear language precisely what my own view is. The Senator can himself make the comparison.

Mr. CUMMINS. Will the Senator, then, permit me to ask one further question?

Mr. SUTHERLAND. Certainly.

Mr. CUMMINS. Would it make any difference in the constitutionality of the statute if the burden that is proposed to be placed upon incomes is called a "duty" rather than "tax?"

Mr. SUTHERLAND. I do not think it would make the slightest difference. I do not think you can change the substance of things by changing the name.

Mr. CUMMINS. Certainly in that respect I agree with the Senator from Utah, but does the Senator believe that there are any indirect taxes other than those that have historically been classified as excises, imposts, and duties?

Mr. SUTHERLAND. If I understand the Senator's question, I do not. I think that those three terms embrace the indirect taxes, and that all other taxes that do not come within one or the other of those descriptions are direct taxes.

Mr. HEYBURN. Mr. President——

Mr. CUMMINS. Just a moment, if the Senator from Idaho will permit me.

Then it is the Senator's view that those burdens which have been heretofore called in various countries and in various States "excises, imposts, and duties" are the only indirect taxes known to the law?

Mr. SUTHERLAND. Or other taxes of the same kind or description.

Mr. CUMMINS. Precisely.

Mr. SUTHERLAND. I would not undertake to say that the various countries of the world have exhausted all the possibilities of the excise and all the possibilities of imposts and of duties; but either those things which have heretofore been treated as excise taxes, or impost taxes, or duties, or things of the same nature, constitute the indirect taxes.

Mr. CUMMINS. But the Senator has not yet attempted a definition that will describe the difference between indirect and direct taxes, except to suggest that excises, imposts, and duties are the indirect taxes. What is the essential difference between a direct tax and an indirect tax?

Mr. SUTHERLAND. Mr. President, the Senator is asking a question that has been answered in a very great variety of ways. I would not undertake to lay down a hard and fast definition.

Mr. HEYBURN. Now, Mr. President——

Mr. SUTHERLAND. I think—if the Senator from Idaho will permit me for just a moment—that the division between direct and indirect taxes is rather a zone than it is a line; in other words, we may put our fingers upon a particular exaction and say this is a direct tax because it lies entirely outside of the zone upon one side, or we may put our fingers on another form of exaction and say this is an indirect tax because it lies entirely outside of the zone upon the other side; but within the zone there may be more or less doubt as to precisely whether or not a particular exaction is a direct or an indirect tax.

Mr. HEYBURN. Mr. President, I would not like to be understood within the limits suggested by the Senator from Iowa [Mr. CUMMINS], that there is only one class of taxes outside of duties, imposts, and excises, and that that is a direct tax. I believe that there is a class of taxes other than duties, imposts, and excises that is dual in character, divisible in its purpose, and that on one side of the line lie direct taxes and on the other indirect taxes, the indirect purely distinguishable from either duties, imposts, or excises. I do not like to anticipate what I will perhaps feel impelled to say in regard to the subject later, but I believe that it is within the power of Congress to levy a class of taxes—strictly taxes—that are not direct, and at a future time I will perhaps ask the Senate to listen to some suggestions on that matter.

THE HISTORY LEADING UP TO FRAMING THE CONSTITUTIONAL PROVISION.

Mr. SUTHERLAND. Now, Mr. President, I come to the consideration of the second source of information which I laid down in the beginning, namely, the history and circumstances leading up to and surrounding the adoption of the Constitution. Under the government of the Confederation there was no power to lay or collect taxes; the only power was to make requisitions upon the various States.

Article 8 of the original Articles of Confederation provided that war and other expenses should be defrayed out of a common treasury.

To quote the language of the article—

> Which shall be supplied by the several States, in proportion to the value of all land, within each State, granted to or surveyed for any person, as such land, and the buildings and improvements thereon, shall be estimated, according to such mode as the United States in Congress assembled shall, from time to time, direct and appoint.

This measure of the proportion which should be exacted from each State was found to be utterly unsatisfactory, and Congress in 1783 recommended to the several States that the provision should be altered so as to provide that the common Treasury should be—

> Supplied by the several States, in proportion to the whole number of white and other free citizens and inhabitants, of every age, sex, and condition, including those bound to servitude for a term of years, and three-fifths of all other persons, etc.

It will be observed that there is no provision for, and it is not within the contemplation of this article that the contributions which are exacted from the States shall be raised by a levy upon lands and improvements and houses, but only that the value of the lands, improvements, and houses in each State shall be the measure of the amount which the State shall contribute. That measure being found unsatisfactory, another measure of the amount which the State should be compelled to contribute was formulated by the Congress, namely, that the amount should be measured by the number of population. The

value of lands being found unsatisfactory, it was thought that the number of people in each State would afford a better measure of the ability of the State to contribute than the value of its land.

Mr. BAILEY. Mr. President, will the Senator permit me to interrupt him?

Mr. SUTHERLAND. Surely.

Mr. BAILEY. I think the Senator's statement is not exactly accurate. The change was made because in that day, as in this day, people undervalued their property for the purpose of escaping their taxes, and it was concluded that it was possible to ascertain with exactness the number of people, when it was not possible to ascertain the exact value of the land. They adopted it, not because the population was a more satisfactory method of gauging these contributions, but simply because they could make the ascertainment with exactness when counting the people, and they had not been able to make it with exactness in estimating the value of land.

Mr. SUTHERLAND. The Senator from Texas simply states in another and better way than I have stated or could state what I intended to say. What I say is, that the measurement of the ability of the State to pay taxes by the value of its land was found to be unsatisfactory—I am not undertaking to go into any discussion of the reason—but it was found to be unsatisfactory, and the measurement by population was adopted as being more satisfactory.

Mr. OWEN. Mr. President——

Mr. SUTHERLAND. I yield to the Senator.

Mr. OWEN. Would not such a tax, whether based on the value of land or on population, being a requisition on the State to be paid by the State, be necessarily a direct tax on the State and not on the citizen?

Mr. SUTHERLAND. Mr. President, I am not to be beguiled into a discussion of that subject by the Senator from Oklahoma. I said to him a little while ago that I did not agree with him upon that proposition. I believe that the Constitution did not contemplate a direct tax upon the States as such; but, as I have already stated, to enter upon that subject would be entirely afield from what I had intended to discuss.

THE DEBATE IN THE CONVENTION.

In the Constitutional Convention several plans of taxation were submitted. Among them was the plan of Mr. Pinckney, the plan of Mr. Randolph, and the plan of Mr. Paterson. On July 12 Mr. Morris moved to add to the clause empowering the legislature to vary representation according to the wealth and number of the inhabitants a proviso "that taxation shall be in proportion to representation." Some objection was made to this plan, and Mr. Morris admitted the force of the objection, but stated that he supposed that these objections "would be removed by restraining the rule to direct taxation, because," as he explained, "with regard to indirect taxes on exports and imports and on consumption, the rule would be inapplicable." Of course that is manifest. A duty imposed upon goods imported into this country obviously can not be apportioned among the several States at all, while a direct tax upon the capital and property of individuals of the States can be apportioned with varying degrees of fairness.

Mr. Wilson stated that he "approved the principle, but could not see how it could be carried into execution, unless restrained to direct taxation." We are then told that Mr. Morris modified his motion by inserting the word "direct," and the provision passed in the following language:

Provided always, That direct taxation ought to be proportioned to representation.

After that the Constitution was so framed as to provide that duties, imposts, and excises should be laid according to the rule of uniformity, as I have already discussed.

Taking these circumstances and all the debates together, it seems to me clear that the convention intended that every form of taxation should be subject either to the rule of apportionment or of uniformity.

In fixing the rule of population as the measurement for direct taxation, I think it is apparent from a consideration of the debates in the convention itself and of those in the various state conventions called for the purpose of ratifying the Constitution, that there was no intention to limit the rule to taxes on lands alone. I quote, first, from Mr. Madison. Mr. Madison said:

Future contributions, it seemed to be understood on all hands, would be principally levied on imports and exports.

This, by the way, was before the provision in the Constitution forbidding export duties had been adopted.

Further on he said that he would admit that the number of inhabitants was not an accurate measure of wealth. Now, observe, it is not the language of Mr. Madison that the number of the inhabitants is not an accurate measurement of the value of their *lands and houses,* but not an accurate measure of *wealth.*

And again, quoting from the debates:

He contended, however, that in the United States it was sufficiently so for the object in contemplation.

Mr. Gorham said that in Massachusetts it had been found, "even including Boston, that the most exact proportion prevailed between numbers and property."

Not—again it will be observed—between numbers and landed estates, or lands and houses and improvements, but between numbers and *property.* What property? It is not qualified in any way; therefore, *property of every description.*

Mr. HEYBURN. Would it interrupt the Senator if I should ask him a question?

Mr. SUTHERLAND. Not at all.

The VICE-PRESIDENT. Does the Senator from Utah yield to the Senator from Idaho?

Mr. SUTHERLAND. I do.

Mr. HEYBURN. I think there has been a failure to distinguish between tangible and intangible property. The value of real estate is not alone what it will bring as an income. It is the value for which you can sell it, even though it brings you no income. I have been impressed, whenever I have read the last decision of the Supreme Court, with the idea that they got away from that point, and that it is an important distinguishing point. An income tax is a tax upon an intangible thing—a thing that may vary over night or disappear in a day, a thing that may come and go. It is not the same kind of property as the thing from which an income may or may not be derived. That thought has occurred to my mind many times in considering this question.

Mr. SUTHERLAND. Certainly an income from rentals, an income from landed estates, is not an income from an intangible thing.

Mr. HEYBURN. It is not an income from an intangible thing, but it is in itself an intangible, uncertain, indefinite, and varying thing. The house may be rented to-day and not rented to-morrow.

Mr. BEVERIDGE. It may burn up.

Mr. HEYBURN. Yes; as the Senator from Indiana suggests, it may burn up. But I think we must distinguish between the thing of value and the revenue which comes from it or does not come from it, according to the circumstances. I think a direct tax is a tax upon a thing of value, and an indirect tax is one upon a thing that may or may not exist.

Mr. SUTHERLAND. I will undertake to show a little further along—I should be anticipating if I should discuss it now—that a tax upon the income derived from land is, in substance and effect, a tax upon the land itself.

Mr. HEYBURN. Mr. President, I think that that is probably the dividing of the roads in this discussion at all times, whenever it arises.

Mr. SUTHERLAND. But I shall not turn aside to discuss that particular proposition now.

Again, referring to these debates, Mr. Wilson contended that numbers would be a fairly accurate measure of *wealth* and *ability* to contribute to the public wants.

Again, he does not compare the numbers of inhabitants with the value of their landed estates, but regards it as a measure of their wealth and ability to pay taxes.

Doctor Johnson thought that the numbers of population was the best measure of wealth.

Mr. Ellsworth offered an amendment providing that the rule of contribution by direct taxation should be the number of white inhabitants and three-fifths of others; and then added, to quote his language:

Until some other rule, that shall more accurately ascertain the *wealth* of the several States, can be devised and adopted by the legislature.

I pause to ask here, Mr. President, If it had been intended by the members of that convention that the term "direct tax" should be confined to a land tax, why do they constantly say that the rule of population is the best rule by which to ascertain the *wealth* of these States, the *property* in these States, the *ability* of these States to contribute to the General Treasury?

Mr. HEYBURN. Mr. President, I think the Senator is passing over Mr. Franklin's second suggestion as of less importance, when, as a matter of fact, it was of first importance. The subjects referred to by Mr. Franklin in the second paragraph are those that are directly before us for consideration. What do you tax? He suggests that the *per capita* tax is the safest basis until something else is discovered that may be taxed. What is it that you tax? You tax the house; you do not tax the rent that may come from it. You tax the land; you do not tax that which may be derived from it as profit.

Mr. SUTHERLAND. No; either I do not interpret correctly what Mr. Ellsworth says, or the Senator does not. What he says is that the rule of contribution by direct taxation should be the number of population, until some other rule——

Mr. HEYBURN. Yes; "until."

Mr. SUTHERLAND. Until some other rule that shall more accurately ascertain the wealth of the several States shall be found.

Mr. HEYBURN. Yes.

Mr. SUTHERLAND. He is not talking about the subjects of taxation; he is talking about the rule by which it is proposed to measure the ability of the inhabitants of the State to pay the tax.

Mr. HEYBURN. Is that all of that?

Mr. SUTHERLAND. No.

Mr. HEYBURN. Will you not read Mr. Franklin's statement?

Mr. SUTHERLAND. Then he proceeds:

> The sum allotted to a State may be levied without difficulty according to the plan used by the State in raising its own supplies.

First of all, he discusses the rule of measuring the amount of the contribution, and then he discusses the method by which it shall be raised; and he says, with reference to the latter part of it:

> The sum allotted to a State may be levied without difficulty according the plan used by the State in raising its own supplies.

Mr. HEYBURN. Did not the Senator pass over Mr. Franklin's statement in reading Mr. Ellsworth's?

Mr. SUTHERLAND. No; I have not Mr. Franklin's statement at all.

Mr. HEYBURN. I had it in my mind, and therefore may myself have confused it with Mr. Ellsworth's statement.

Mr. SUTHERLAND. It is reported in these debates that Mr. King upon one occasion asked what was the precise meaning of "direct taxation;" and Mr. Madison informs us that no one answered. I suggested to the Senator from Idaho when he was upon his feet the other day that if the question had been susceptible of as simple an answer as has been attempted to be made by some of the decisions of the Supreme Court and by Senators upon this floor, it is a little remarkable that somebody did not answer it.

Mr. BORAH. Mr. President——

Mr. SUTHERLAND. Just a moment. Evidently it challenged the attention of Mr. Madison, because he took pains to observe and record the fact that no one answered.

According to the contention made here, a direct tax is only a capitation tax or a land tax. If it had been understood by the members of that convention in that way, is it not remarkable that somebody did not say "A direct tax is simply a capitation tax or a tax on land?" No one answered the question, however, because no one in the convention could formulate in his own mind at the moment a precise definition; and no one undertook to formulate it, although, as the debates show both there and elsewhere, the general nature of a direct tax was perfectly understood.

Mr. BORAH. Mr. President——

The VICE-PRESIDENT. Does the Senator from Utah yield to the junior Senator from Idaho?

Mr. SUTHERLAND. I do.

Mr. BORAH. Mr. President, I presume the Senator from Utah will concede that the framers of the Constitution recognized this matter of taxation as one of the most important subjects with which they had to deal, and one with which they had to deal with the utmost accuracy. Does the Senator from Utah believe that after the attention of the makers of the Constitution was called to the meaning of the word "direct" they still proceeded to put into the Constitution a term the meaning of which they did not understand? Does the Senator mean to say that after their attention had been specifically directed to the matter, and they did not know, they still continued to insert in the Constitution a phrase the meaning of which they did not understand?

Mr. SUTHERLAND. No; I have not so said, Mr. President. I have said that the members of the Constitutional Convention did understand, but that they were not able to formulate at the moment a precise definition. My contention is that the framers of the Constitution understood by "direct taxes" taxes upon those subjects which were made the subject of direct taxation in the various States at the time the Constitution was framed. As those subjects differed in various States, they could not have undertaken to make an enumeration of them; and they were unable, as I said, to formulate a precise definition.

Mr. BORAH. In other words, if the question had been asked, "What is a duty?" or "What is an excise?" the same silence would likely have resulted, because it covered a wide range of territory, and it would have taken some time to define it.

Mr. HEYBURN. Mr. President——

The VICE-PRESIDENT. Does the Senator from Utah yield to the senior Senator from Idaho?

Mr. SUTHERLAND. Yes.

Mr. HEYBURN. Blackstone's Commentaries were the latest legal publication at the time of the sitting of the Constitutional Convention. Mr. Blackstone defines in very explicit language what are direct taxes, and limits them to per capita and land taxes. I presume the framers of the Constitution took it for granted that a principle that was so well established and so generally recognized was sufficient, and, perhaps, settled this question by an aside, one to the other, rather than by a public discussion.

Mr. SUTHERLAND. It may have been, at the time Mr. Blackstone wrote, that the only form of direct taxation which was in use in England was that form to which the Senator has directed attention. But neither Mr. Blackstone nor any other writer upon English law ever intended to say that direct taxes were confined, at all times and under all circumstances, to capitation and land taxes.

Mr. HEYBURN. Mr. President, a very familiar rule of interpreting statutes is that of taking into consideration the origin of the principle which was being adopted and formulated by the party who was enacting a law or making a constitution; and the very knowledge in the minds of the makers of the Constitution that this term had been interpreted by the English law writer of most distinction at that time would be accepted by them as we accept the decisions of the supreme courts of the States from which we take statutes.

Mr. SUTHERLAND. The Senator from Idaho will agree with me that the English Parliament and the English courts have some familiarity with Mr. Blackstone and the various writers upon English law; and the English Parliament and the English courts, having all those authorities before them, and considering all of those authorities, have uniformly held that an income tax is a direct tax.

Mr. BORAH. Mr. President——

The VICE-PRESIDENT. Does the Senator from Utah yield to the junior Senator from Idaho?

Mr. SUTHERLAND. Certainly.

Mr. BORAH. They never held that, did they, prior to the adoption of the Constitution of the United States?

Mr. SUTHERLAND. No; because prior to the adoption of the Constitution of the United States no income tax had been imposed; and Mr. Blackstone could not have spoken of an income tax at the time he wrote, because if he had he would have spoken of something that did not exist. But the English Parliament and the English judges interpreted Mr. Blackstone's language defining direct taxes in a different manner from that of the Senator from Idaho.

Mr. HEYBURN. Mr. President, there was no occasion for the English courts or the English Parliament to "shy off" from the question of what was and what was not direct taxation, because there was no constitutional limitation that governed the English Parliament in regard to levying a certain kind of tax or that limited them in any way.

Mr. SUTHERLAND. No; but there were evidently other considerations which made it important for the English Parliament and the English courts to assign the income tax to its proper classification; and they assigned it to the class of direct taxes, and not to the class of indirect taxes, with all the information before them from Blackstone and from the other English writers that the Senator from Idaho has before him.

Luther Martin said:

> Direct taxation should not be used but in cases of absolute necessity, and then the States will be the best judges of the mode.

Finally, on September 14, 1787, the provision in section 9 of Article I, "No capitation tax shall be laid, unless," etc., being under consideration, Mr. Read moved to insert after "capitation" the words "or other direct tax."

> He was afraid that some liberty might otherwise be taken to saddle the States with a readjustment by this rule of past requisitions of Congress, and that his amendment, by giving another cast to the meaning, would take away the pretext.

And in that form it was carried.

Mr. OWEN. I wish to call the attention of the Senator from Utah to the report of Luther Martin to the legislature of Maryland, in which he expressly stated that this very Constitution authorized the Congress to lay direct taxes on the citizen in every case.

Mr. SUTHERLAND. I have the report and I shall read from it later on in my remarks.

Now, I want to call attention to the fact that in the debates of the Constitutional Convention there is no hint or suggestion

that direct taxes should be confined to capitation and land taxes, although the question was asked what was meant. The discussion assumed rather a wide range, but nowhere in the debates was it ever suggested that the tax should be confined to a land tax and a capitation tax.

On the contrary, the whole debate from beginning to end indicates that in the minds of the majority population was considered the fair measure, and that landed estates were not considered the fair measure of the ability of the various States to contribute, but that wealth and property generally should be the subjects from which the taxes should be gathered. Population was regarded as the measure of the amount, and the amount itself realized by taxing the wealth and property of the States, and not their landed estates only.

Mr. HEYBURN. I desire to ask the Senator if it is not apparent upon the face of the proceedings that the Constitutional Convention did not get away from the idea of a central government apportioning and levying taxes, for the State to collect and turn in, until almost the last days of the convention? It had been accustomed to it under the articles, and it was only in the latter days of the convention that it adopted the present system, which entirely eliminated the idea of imposing a tax upon the State, to be accounted for to the General Government.

Mr. SUTHERLAND. It was insisted by some that the old plan should be adhered to.

DEBATES IN THE STATE CONVENTIONS.

I now come to a brief discussion of the debates and proceedings in the various state conventions upon the question of the ratification of the Constitution. I shall submit that from a consideration of the various things that were said by the members of these conventions that it was not understood by any of them that the words "direct tax" in the Constitution were used in this restricted sense.

Roger Sherman and Oliver Ellsworth, writing to the governor of Connecticut, September 26, 1787, say:

> It is probable that the principal branch of revenue will be duties on imports. What may be necessary to be raised by direct taxation is to be apportioned on the several States, according to the number of their inhabitants; and although Congress may raise the money by their own authority, if necessary, yet that authority need not be exercised if each State will furnish its quota.

In the Massachusetts convention Judge Dana, after urging the necessity of Congress being vested with the power to levy direct taxes, said:

> It was not to be supposed that they would levy such unless the impost and excise should be found insufficient in case of a war.

Clearly indicating that in the mind of that distinguished gentleman the line of division was between imposts and excises and that character of tax upon the one side and direct taxes upon the other.

Mr. Sedgwick, commenting upon the same subject, said:

> Congress would necessarily take that which was easiest to the people; the first would be impost, the next excise, and a direct tax will be the last; for, * * * drawing money from the people by direct taxes being difficult and uncertain, it would be the last source of revenue applied to by a wise legislature.

In his mind, evidently, the impost and excise included the forms of indirect taxation; all others were direct taxes.

Mr. GORE understood the matter in the same way. He speaks of the imposts and excises being sufficient for the purposes of government in times of peace, but in time of war requisitions must be made to supply the deficiencies of this fund.

Mr. Pierce called attention to the fact that gentlemen in different parts of the House had agreed that Congress would not lay direct taxes except in case of war, for that—

> To defray the exigencies of peace the impost and excise would be sufficient; and, as that mode of taxation would be the most expedient and productive, it would undoubtedly be adopted.

He went on to say, however—

> But, Mr. President, if Congress had the power of direct taxes, in the manner prescribed in this section, I fear we shall have that mode of taxation adopted in preference to imposts and excises.

He was evidently against the system of direct taxation entirely, but in his mind the contrast was between imposts and excises, which he regarded as indirect taxes, and all other kinds of taxes, which he regarded as direct taxes.

In the Connecticut convention Oliver Ellsworth discussed the matter at some length. He first discussed the objection to the clause, that it extended to all the objects of taxation.

Gentlemen in that convention had insisted that the power conferred was altogether too broad; that it should have been limited. But Ellsworth pointed out that while the power had been given to Congress to levy taxes upon all subjects of taxation, it did not extend to all exclusively.

It did not say that Congress should have all these sources of revenue and the States none, but that all, excepting the impost, still lay open to the States.

He said that all nations had seen the necessity and propriety of raising a revenue by indirect taxation—by duties upon articles of consumption.

In the New York convention Chancellor Livingston, after discussing the proposed amendment, that no excise should be laid on the manufactures of the United States, said:

> But if you impose upon the Union all the burdens and take from them a principal resource, what will they do when the imposts diminish and the expenses of government increase? Why, they must have recourse to direct taxes; that is, taxes on land and specific duties.

Mr. HEYBURN. What does he mean by that other expression?

Mr. SUTHERLAND. I do not know precisely what he meant, but I am citing it for the purpose of showing that in his mind the direct tax extended to something beyond the tax on land.

Mr. HEYBURN. What does he name it?

Mr. SUTHERLAND. Specific duties, he calls it. I think in all probability he did not use a happy phrase, but evidently he believed that under the Constitution direct taxes were not confined to a land tax, but extended to something else.

Mr. Jay, discussing the proposed amendment, that direct taxes should not be levied until requisitions had first been made, said:

> It ought to be considered that direct taxes were of two kinds, general and specific. With respect to the latter, the objection could not apply. The National Government would, without doubt, usually embrace those objects which were uniform throughout the States.

Not that under the Constitution they were confined to such objects, but that, considering the expediency of the matter, they would carry out the constitutional provisions so as to tax only such objects as were uniform throughout the States.

In the Virginia convention Mr. Madison, answering the objection that 10 men deputed from that State, and others in proportion from other States, would not be able to adjust direct taxes so as to accommodate the various citizens in 13 States, said:

> Could not 10 intelligent men, chosen from 10 districts from this State, lay direct taxes on a few objects in the most judicious manner?

If these direct taxes under the Constitution were confined to land, what need of 10 men to adjust the direct taxes? What need of 10 men to "lay direct taxes on a few objects in the most judicious manner" if direct taxes meant only a tax upon land?

Again, he said:

> There is a proportion to be laid on each State, according to its population—

Now, mark this—

> The most proper articles will be selected in each State. If one article in any State should be deficient, it will be laid on another article.

Again clearly indicating that it was not in his mind that the direct tax was confined to land, but that it would be laid in the various States upon the most proper articles, and if one article should be deficient in any State, it would be laid upon another article.

Mr. HEYBURN. Would the Senator consider an intangible sum to be derived or not to be derived as an income, as an article within the meaning of the suggestion or expression of Mr. Jay?

Mr. SUTHERLAND. Incomes were taxed. Direct taxes were imposed upon incomes in one or two of the States.

Mr. HEYBURN. Would it come within that definition of an article?

Mr. SUTHERLAND. It would come within that term as used by Mr. Madison——

Mr. HEYBURN. I think that Mr. Jay——

Mr. SUTHERLAND (continuing). As used by Mr. Madison in the Virginia convention.

Mr. BORAH. I presume, perhaps, the Senator from Utah is going to reach that subject. I do not know whether he is or not. But does not the argument which the Senator is now pursuing reason as strongly against an inheritance tax as an income tax?

Mr. SUTHERLAND. I think it does not. I think the inheritance tax proceeds upon an entirely different theory. As I undertook to point out the other day, an inheritance tax is not imposed upon property. It is imposed upon the right to succeed. It is imposed upon the devolution of the property. It is imposed in precisely the same way that a stamp duty is imposed upon a deed by which we transfer a piece of land.

Mr. BORAH. Does the Senator contend that the right to inherit property is not an article within the meaning of the phrase?

Mr. SUTHERLAND. I contend that it is not an article within the meaning of that phrase.

Mr. BORAH. Does the Senator contend that the tax on the right to inherit is any more than the tax on the right to receive an income from the property?

Mr. SUTHERLAND. If the Senator does not understand what I mean, I have evidently not expressed myself clearly. I say again, a tax on the right to inherit belongs to one class and a tax upon the income from real estate or personal property belongs to an entirely different class, just as the stamp duty upon a deed belongs to one class and the tax upon the land belongs to another class.

Mr. BORAH. Under the statutes of every State in the Union, a man has a right to inherit. That is fixed by law. It is a substantial right, and they tax that right. Now, what is that when taxing it? Is it an article? Is it a property right? Is it an interest? Is it something you may sell, something you may realize from, or what is it?

Mr. SUTHERLAND. They are taxing the transfer of property from the dead to the living, whether that transfer is accomplished in pursuance of a statute or in pursuance of a will, just as they are taxing the transfer of the real estate in the case of a stamp duty on a deed from the living to the living.

Mr. BORAH. Let me put it in another way. Suppose I should be so fortunate as to have an uncle die and leave me a vast amount of property. I have the right to inherit it. I could go and transfer that right, sell my interest, and the other party could step into my shoes, might he not?

Mr. SUTHERLAND. Will the Senator repeat the last part of his question?

Mr. BORAH. I can transfer my right to take an interest in this property?

Mr. SUTHERLAND. I think so.

Mr. BORAH. Then he wills to me a certain amount of property. May I not transfer that right?

Mr. SUTHERLAND. I will make the supposition. What is the question?

Mr. BORAH. What am I selling? What am I transferring?

Mr. SUTHERLAND. You are selling your property, your inheritance.

Mr. BORAH. And that is what we are taxing.

Mr. SUTHERLAND. No; we are not taxing the property.

Mr. BORAH. But you are taxing the right to inherit.

Mr. SUTHERLAND. I can not put it in plainer language. What is being taxed in that case is the devolution of property, the transfer of property, and not the property itself, and in that case it is an excise and not a direct tax.

Now, I will quote very briefly from what was said by Mr. Marshall, afterwards Chief Justice of the Supreme Court of the United States, upon this subject:

> The objects of direct taxes are well understood; they are but few. What are they? Lands—

Does he stop there? No—

> slaves, stock of all kinds, and a few other articles of domestic property.

He was speaking of the objects of direct taxes in his own State and they were not limited to land there. He was interpreting the meaning of the phrase of the Constitution with reference to a direct tax by calling attention to what was understood to be a direct tax in his own State. That is the only way that it could have been arrived at.

Mr. HEYBURN. Mr. President——

The VICE-PRESIDENT. Does the Senator from Utah yield?

Mr. SUTHERLAND. In just a moment. That is the only way it could have been arrived at, because the National Government in existence prior to the Constitution never had had any power to tax anything. Therefore, there could have been no direct tax under the National Government, and the framers of the Constitution could only have referred to the direct taxes as imposed in the various States.

Mr. HEYBURN. I should like to ask the Senator from Utah, is there anything other than tangible property enumerated by Chief Justice Marshall?

Mr. SUTHERLAND. No; I will answer the Senator.

Mr. HEYBURN. Absolutely nothing.

Mr. SUTHERLAND. It so happened that in Virginia nothing but those classes of property were taxed, but if Mr. Marshall had been speaking in Delaware, he would have included in his enumeration incomes, because the taxes in Delaware were realized from incomes at that time. Mr. Marshall proceeds:

He—

> Referring to a member who had spoken upon the subject—
>
> then spoke of a selection of particular objects by Congress, which he says must necessarily be oppressive; that Congress, for instance, might select taxes, and that all but landholders would escape. Can not Congress regulate the taxes so as to be equal on all parts of the community? Where is the absurdity of having 13 revenues? Will they clash with, or injure, each other? If not, why can not Congress make 13 distinct laws, and impose the taxes on the general objects of taxation in each State, so as that all persons of the society shall pay equally, as they ought?

Mr. HEYBURN. When was that stated?

Mr. SUTHERLAND. It was stated during the debate in the Virginia convention preceding the ratification of the Constitution.

Mr. HEYBURN. That was, of course, on the basis of the Articles, rather than of the Constitution.

Mr. SUTHERLAND. Not at all. It was——

Mr. HEYBURN. That is the practice that had been in vogue under the Articles.

Mr. SUTHERLAND. The Senator is entirely mistaken. The debate was on the question of the ratification of the Constitution.

Mr. HEYBURN. It had not been ratified and we had not yet a Government.

Mr. SUTHERLAND. But they were attempting to ratify it, and Chief Justice Marshall was discussing the meaning of the phrase in the proposed Constitution. That was not the language of some layman, of some irresponsible person, but it was the language of Chief Justice Marshall. He saw no difficulty in imposing a direct tax upon one class of articles in one State and a different class of articles in another State, and clearly in his mind the direct tax was not confined to a land tax.

Mr. McCUMBER. Will the Senator read the statement again?

Mr. SUTHERLAND. The Senator from North Dakota asks me to read the statement again.

He—

> Referring to a member who had spoken upon the subject—
>
> then spoke of a selection of particular objects by Congress, which he says must necessarily be oppressive; that Congress, for instance, might select taxes, and that all but landholders would escape.

That is, that Congress might select to impose the direct tax only upon land, and in that event all but the landholders would escape. But answering that objection Mr. Marshall said:

> Can not Congress regulate the taxes so as to be equal on all parts of the community? Where is the absurdity of having 13 revenues? Will they clash with, or injure, each other? If not, why can not Congress make 13 distinct laws, and impose the taxes on the general objects of taxation in each State, so as that all persons of the society shall pay equally, as they ought?

Can there be any mistake as to the understanding of Chief Justice Marshall in reference to this phrase in the Constitution? Can there be any doubt that Chief Justice Marshall understood that the term "direct taxes" in the Constitution did not only include land taxes, but included the great variety of subjects of taxation in the various States which were to compose the Union? Mr. Nicholas said:

> Nine-tenths of the revenue of Great Britain and France are raised by indirect taxes; and were they raised by direct taxes they would be exceedingly oppressive. At present the reverse of this proposition holds in this country, for very little is raised by indirect taxes.

Revenue was raised, as he says, in the main, with what apparently in his mind was an immaterial exception, by the imposition of a direct tax, yet we find in all these various States that not only lands, but horses, cattle, stock, and various other objects were the subjects of taxation by the States.

Mr. Nicholas then discusses the objection——

Mr. HEYBURN. I should like to ask the Senator, Did the United States ever under any circumstances levy a tax upon horses and cattle and stock?

Mr. SUTHERLAND. No.

Mr. HEYBURN. Then that reference is to the power of the State and not of the United States.

Mr. SUTHERLAND. I will come to that in a moment. I think I shall be able to show the Senator that Congress has not imposed direct taxes upon that class of articles, not because Congress recognized that it had no power to do it, but because Congress recognized that it was inexpedient to do it.

He then discusses the objection that the General Government ought not to impose direct taxes, because its Members would not be acquainted with the local situation of the people. He answers this by saying that they can get information from every source from which the state representatives get theirs, so as to enable them to impose taxes judiciously, and that the consequence of laying taxes on improper objects would be to decrease the amount collected.

An examination of all the debates from beginning to end, I submit, will show that the members of these various state conventions, called for the purpose of ratifying the Constitution, called for the purpose of debating the meaning of the various phrases in the Constitution, held that the term "direct taxes" included not only taxes upon land but taxes upon all this great variety of objects in the various States.

Luther Martin, in a most elaborate discussion of this subject before the Maryland house of delegates, uses the language which I shall read, and it is so clear and apposite upon this

question that I desire to quote from it upon that particular subject at some length. He said:

By the eighth section of this article Congress is to have power to lay and collect taxes, duties, imposts, and excises. When we met in convention, after our adjournment, to receive the report of the committee of detail, the members of that committee were requested to inform us what powers were meant to be vested in Congress by the word "duties" in this section, since the word "imposts" extended to duties on goods imported, and by another part of the system no duties on exports were to be laid. In answer to this inquiry we were informed that it was meant to give the General Government the power of laying stamp duties on paper, parchment, and vellum. We then proposed to have the power inserted in express words, lest disputes might hereafter arise on the subject, and that the meaning might be understood by all who were to be affected by it; but to this it was objected, because it was said that the word "stamp" would probably sound odiously in the ears of many of the inhabitants and be a cause of objection. By the power of imposing stamp duties the Congress will have a right to declare that no wills, deeds, or other instruments of writing shall be good and valid without being stamped; that, without being reduced to writing, and being stamped, no bargain, sale, transfer of property, or contract of any kind or nature whatsoever shall be binding; and also that no exemplification of records, depositions, or probates of any kind shall be received in evidence unless they have the same solemnity. They may likewise oblige all proceedings of a judicial nature to be stamped to give them effect. These stamp duties may be imposed to any amount they please; and under the pretense of securing the collections of these duties, and to prevent the laws which imposed them from being evaded, the Congress may bring the decision of all questions relating to the conveyance, disposition, and rights of property, and every question relating to contracts between man and man, into the courts of the General Government—their inferior courts in the first instance and the superior court by appeal. By the power to lay and collect imposts they may impose duties on any or every article of commerce imported into these States to what amount they please. By the power to lay excises—a power very odious in its nature, since it authorizes officers to go into your houses, your kitchens, your cellars, and to examine into your private concerns—the Congress may impose duties on every article of use or consumption, on the food that we eat, on the liquors that we drink, on the clothes that we wear, the glass which enlightens our houses, or the hearths necessary for our warmth and comfort. By the power to lay and collect taxes——

Now, observe the language:

By the power to lay and collect taxes, they may proceed to—

To what?—

they may proceed to direct taxation on every individual, either by a capitation tax on their heads or an assessment on—

On what? Not upon their lands, not upon their houses, not upon their buildings, but an assessment—

on their property. By this part of the section, therefore, the Government has power to lay what duties they please on goods imported; to lay what duties they please, afterwards, on whatever we use or consume; to impose stamp duties to what amount they please and in whatever case they please; afterwards, to impose on the people direct taxes, by capitation tax or by assessment, to what amount they choose.

Mr. HEYBURN. On their property?

Mr. SUTHERLAND. On their property.

Mr. HEYBURN. Now, I should like to inquire if the Senator believes that incomes were intended to be included within the property as there referred to?

Mr. SUTHERLAND. Mr. President, the whole purpose of the discussion I am now engaging in is to demonstrate, or attempt to demonstrate, that precisely what I do claim is that incomes were included within that term.

Mr. HEYBURN. I want to say that I am one of those who believe it is within the power of Congress to enact an income-tax law, but I am not in favor of exercising that power. I make this statement so that there may be no misunderstanding.

Mr. SUTHERLAND. I am sorry that the Senator from Idaho differs with me upon that question, because I have a very high regard for his opinion upon a legal proposition.

It is perfectly clear that Mr. Martin understood indirect taxes to be included within the terms "duties, imposts, and excises;" that he further understood that *duties* were to be confined to stamp taxes, *imposts* to duties on imports, *excises* to taxes upon articles of use or consumption, and that all *taxes outside of these* were *direct* taxes on lands or on other property, because he says, and let me repeat a sentence:

By the power to lay and collect taxes, they may proceed to *direct* taxation on every individual by an assessment on their property.

Showing that in his mind the term "taxes" as used in that clause was equivalent to the words "direct taxes" used in other parts of the Constitution.

In several of the States where the question of the ratification of the Constitution was considered, resolutions were introduced proposing to amend the Constitution so that Congress should not lay direct taxes except when the moneys arising from imposts and excises are insufficient for the public exigencies.

Clearly there was a case which did not depend upon the spoken word which is sometimes uttered without much reflection, but they proposed by a solemn written resolution to amend the Constitution so as to confine the laying of direct taxes to cases where the imposts and excises were insufficient. Is there any doubt that in the minds of the members of the conventions which framed that proposed amendment the words "imposts and excises," and in one State the word "duties" was added, were used as the very antithesis of direct taxes, including in the form of indirect taxes those three things, and in the form of direct taxes everything else?

That was the form of resolution in Massachusetts and that was the form of resolution in New York. In South Carolina the language was "that the direct tax should be only imposed when the moneys arising from duties, imposts, and excises," using the very language of the Constitution, "were insufficient." In New Hampshire the language was that "direct taxes should be only laid when the moneys arising from imposts, excises, and from other resources are insufficient for the public exigencies."

And so it is perfectly clear, as it seems to me, that in the minds of the members of these conventions the words "direct taxes" included all forms of taxation that were not included within the three expressions, "duties," "imposts," and "excises."

The object of the whole of the provisions of the Constitution with reference to the subject of direct taxation was to protect the accumulated capital of the citizens of the various States against the inroads of a majority of the representatives. They recognized, as the Supreme Court has repeatedly recognized and pointed out, that the power to tax is the power to destroy, and they did not propose that a majority of the representatives should impose taxes upon the citizens of a particular State or group of States in such way as to make it unfair or so as to destroy property in the States.

LEGISLATIVE CONSTRUCTION.

Now, I come to the question of the legislative or practical construction. Not only is much stress laid upon that particular matter by the Senator from Texas [Mr. BAILEY] and the Senator from Idaho [Mr. BORAH], but much stress has been laid upon it by the Supreme Court in some of the cases. It is pointed out, in the first place, with reference to the carriage tax, that Congress in the early part of its history imposed a tax upon carriages which were used or hired for use, and thereby recognized that it was not a direct tax. Then attention is called to the fact, which is a fact——

Mr. BEVERIDGE. The carriage tax was held to be an excise.

Mr. SUTHERLAND. Yes; the carriage tax was held to be an excise. I will discuss that in a moment. It is true that in all of the laws which have been passed by Congress levying direct taxes they have been limited to lands, houses, and improvements, except in one case where it was extended to slaves. It is argued from that that that amounts to a practical construction of that provision of the Constitution by Congress. If it stood alone and we had nothing else but that, there would be much force in that suggestion, but when we come to consider the history which led up to the adoption of these various laws we find that Congress in limiting its direct taxes to lands and houses and the improvements on land was doing it not because it recognized that that was the limit of its power, but because it recognized that it was not expedient to extend the taxes to any other objects.

THE CARRIAGE TAX.

First of all, let me discuss very briefly the carriage tax. It was clearly understood, as will be seen by the debates, that the tax on carriages was a tax on the use or consumption and not upon the property itself. Let me call attention very briefly to what Mr. Sedgwick said upon that subject. I quote the language which is reported in the Pollock case (157 U. S., 568).

Mr. Sedgwick said, when the proposition was first presented, that:

A capitation tax, and taxes on land and on property and income generally, were direct charges.

Now, notice the language. These are the debates in Congress leading up to the adoption of the carriage tax:

A capitation tax, and taxes on land and on property and income generally, were direct charges, as well in the immediate as ultimate sources of contribution. He had considered those, and those only, as direct taxes in their operation and effects. On the other hand, a tax imposed on a specific article of personal property, and particularly if objects of luxury, as in the case under consideration, he had never supposed had been considered a direct tax, within the meaning of the Constitution.

Mr. Dexter observed that his colleague had stated the meaning of direct taxes to be a capitation tax, or a general tax on all the taxable property of the citizens; and that a gentleman from Virginia [Mr. Nicholas] thought the meaning was that all taxes are direct which are paid by the citizen without being recompensed by the consumer; but that where the tax was only advanced and repaid by the consumer the tax was indirect. He thought that both opinions were just and not inconsistent, though the gentlemen had differed about them. He thought that a general tax on all taxable property was a direct tax, because it was paid without being recompensed by the consumer.

Afterwards, when the bill was put upon its passage in the House, the following occurred, and this is all that did occur, so far as the debate is concerned, when the bill was finally passed.

On May 29, 1794—and I quote directly from the Annals of Congress—this appears:

Mr. Madison objected to this tax on carriages as an unconstitutional tax, and, as an unconstitutional measure, he would vote against it.
Mr. Ames said—

Now, mark you, Mr. Madison and Mr. Ames upon the final debate are the only ones who spoke upon the question, one representing one side of it and the other the other side of it—

Mr. Ames said that it was not to be wondered at if he, coming from so different a part of the country, should have a different idea of this tax from the gentleman who spoke last. In Massachusetts this tax had been long known; and there it was called an excise. It was difficult to define whether a tax is direct or not. He had satisfied himself that this was not so—

Now mark—

The duty falls not on the possession, but the use.

Mr. BEVERIDGE. Mr. Ames thought that if it had been a direct tax he also would have been against it, but he was for it because he did not think it was a direct tax but an excise, as it was so considered in Massachusetts. Is that correct?

Mr. SUTHERLAND. That is correct. He understood that it was not a direct tax, because the duty fell not upon the possession, but upon the use. He went on to say:

And it is very easy to insert a clause to that purpose which will satisfy the gentleman himself. Mr. Madison had said that the introduction of this tax would break down one of the safeguards of the Constitution. Mr. A. really saw very little danger to the Constitution from it.

Now, the law, in terms, imposes a tax upon carriages kept for use by the owner or kept by the owner for hire to others. I am not quoting precisely the language, but that, in substance, is the language. Therefore it is not a tax directly upon the property, but it is a tax, when reduced to the last analysis, upon the use, upon the consumption.

Mr. BAILEY. Will the Senator from Utah permit an interruption?

Mr. SUTHERLAND. Certainly.

Mr. BAILEY. I think when the Senator examines that statute he will find that those are merely terms of description, and that the tax is upon the carriages described and not upon the use. If I had any doubt about that, that doubt would be solved to my mind by the circumstance that the man who kept a carriage for his own use, though he might not use it in a year, would pay precisely the same tax as a man who kept a carriage and used it every day. In other words, the owner of a carriage who might be abroad or away from home at any given place, and might not have used it once within the twelve months, yet would be compelled to pay the tax the same as another owner who used his carriage every day. That being true, it does not seem possible to conclude that the tax is on the use instead of on the article, because in the cases I have instanced it would not be used in one case, and it would be used daily in the other, and yet the tax would be still the same. It seems to me that the terms of the statute are merely a description of the carriage.

Mr. SUTHERLAND. And so, Mr. President, if any individual who would buy a bottle of whisky had self-control enough not to make use of it for a year, he would pay in the price the excise tax precisely the same as if he had used it in a single day.

Mr. BAILEY. Therefore the excise tax is not on the use of the whisky; it is on the whisky itself. The man who sells it pays an occupation tax, but the man who uses it pays no occupation tax, and the only tax that he pays is on the article. The Senator's illustration is unfortunate for his argument, it seems to me.

Mr. SUTHERLAND. The tax is upon the consumable commodity. It is not upon it as a property, but it is upon it because it is an article of consumption.

Mr. BAILEY. Let us apply the Senator's own illustration. There is an excise occupation tax. Every man who sells whisky in this Republic is required to obtain from the General Government a license, and for that he pays, I believe, the sum of $25; but the sum is immaterial. Then, in addition to that, every man who manufactures whisky has to pay a tax on the article itself. The one is an occupation tax, pure and simple; that is, the revenue license that is issued and paid for. The other is a tax upon the article. One is plainly an excise or an occupation tax, and the other is plainly a tax on the article itself.

Mr. SUTHERLAND. What does the Senator from Texas think Mr. Ames meant when he said, answering the objection of Mr. Madison?—

The duty falls not on the possession, but the use.

Mr. BAILEY. I think Mr. Ames was mistaken, just like I have heard other men in both Houses of Congress quite equal to Mr. Ames explain pending bills, with mistakes sometimes grosser than that. Mr. Ames did not satisfy Mr. Madison with that explanation, and consequently his invention did not serve its purpose. Mr. Madison voted against that law. Mr. Madison followed it from Congress into the public prints, and afterwards into the courts, and attacked it.

Mr. SUTHERLAND. I think, on reflection, Mr. Madison did agree with Mr. Ames, because when Mr. Madison was President of the United States he approved an act almost in identical terms.

Mr. BAILEY. That was because the court had in the mean time decided that Mr. Madison was wrong, and Mr. Madison acquiesced. I use the word "acquiesced" advisedly. Mr. Madison never did adopt the opinion of the court, but he acquiesced in it.

Mr. SUTHERLAND. I think, Mr. President, when we come to consider the circumstance that Mr. Madison was regarded evidently as the spokesman upon that side which declared the statute unconstitutional—for no one else spoke upon that side, but others voted with him—and that Mr. Ames must be regarded as the spokesman for the opposite view—for the majority voted with Mr. Ames and said nothing—it may be well concluded that Mr. Ames spoke the opinion of the majority of the House of Representatives upon that question when he said:

The duty falls not on the possession, but the use.

Mr. BEVERIDGE. Mr. President——

The VICE-PRESIDENT. Does the Senator from Utah yield to the Senator from Indiana?

Mr. SUTHERLAND. Certainly.

Mr. BEVERIDGE. This might be pointed out, that whether Mr. Ames was right or wrong, he fortified his opinion by saying that this was the way the tax was understood in Massachusetts, where it had been known for a long time, and he gave the opinion of the State which had employed this method of taxation. It was not his opinion only, but the opinion of the people who had used it. Is that correct?

Mr. SUTHERLAND. That is correct. In addition to that, Mr. Hamilton, in a brief made in the Hylton case in regard to this very tax, called attention to the fact that in England this sort of tax was regarded as an excise tax, while in England, not at that time but later on, an income tax was regarded as a direct tax.

The other question which is suggested here is, that Congress has given a practical construction to this provision of the Constitution.

Mr. BAILEY. Mr. President, will the Senator permit me just there, before he goes further, to make a suggestion?

The VICE-PRESIDENT. Does the Senator from Utah yield to the Senator from Texas?

Mr. SUTHERLAND. I do.

Mr. BAILEY. A final and a sufficient answer to Mr. Ames's explanation is, that when that very law reached the Supreme Court of the United States, although it was elaborately argued and considered from every point of view, there was not a justice there who adopted the suggestion of Mr. Ames. Not one of them construed the law as a tax upon the use of carriages. Judge Chase, it is true, in arguing as to the character of the tax, said it might be considered as a tax on expense, but the court plainly indicated that they understood the difference between a tax upon use or a tax upon occupation and a tax on the property itself. All of the judges in that case treated it as a tax on the identical article of property as such, in so many terms, but in classifying it as to whether it would be an excise or a duty or a tax, whether direct or indirect, Judge Chase, who delivered probably the most elaborate opinion in the case, did describe it as falling within a tax on expense, and not on the use of the carriage.

Mr. SUTHERLAND. Two of the judges—Justice Chase, and I have forgotten now whether the other was Paterson or Iredell—agreed in the view that it was a tax upon expense, and maintainable as such. They seem to imply—because they quote from Adam Smith upon that subject—that if it had been a tax upon revenue, which is another name for income, applied to income, they would not have sustained it, because they quoted from Adam Smith, who sharply distinguishes between a tax upon revenue which he describes as a direct tax, and a tax upon expense, which is an indirect tax.

Mr. BAILEY. The Senator from Utah, who is usually very accurate, will find himself mistaken when he says that anybody else in that case expressed the opinion that this was a tax on expense. I think it was Justice Paterson who closed what he called his "discourse"—rather a peculiar way to describe a judicial opinion, but a very proper way to describe some modern ones, I should say—he concluded his discourse, as he describes it, by that quotation from Adam Smith. I do not say positively, for those matters are not very material and escape the most attentive of us, but still I think the Senator from Utah will find

upon reference to the case that Justice Chase was the only one who undertook to classify it as a tax upon expense.

Mr. SUTHERLAND. Mr. President, I think the Senator from Texas, and not myself, is mistaken upon that matter. Justice Chase, in the course of his opinion, uses this language:

* * * It seems to me that a tax on expense is an indirect tax, and I think an annual tax on a carriage for the conveyance of persons is of that kind, because a carriage is a consumable commodity, and such annual tax on it is on the expense of the owner.

Mr. Justice Paterson said—and he is the other judge whom I have in mind:

The impossibility of taxing people in proportion to their *revenue*, by any capitation, seems to have given occasion to the invention of taxes upon consumable commodities; the State, not knowing how to tax directly and proportionately—

He quotes from Adam Smith—

the *revenue* of its subjects, endeavors to tax it indirectly by taxing their *expense*, which it is supposed in most cases will be nearly in proportion to their revenue. Their expense is taxed by taxing the consumable commodities upon which it is laid out.

So both of the justices concur in the view that this is a tax upon expense.

Mr. BAILEY. The justices did not concur in saying that the particular tax under consideration was a tax on the use of the carriage. Neither of them said that. Justice Chase did treat it as a tax on expense, but Justice Paterson simply was classifying it——

Mr. SUTHERLAND. But they both say that a carriage is a consumable thing; and that being so, the tax upon that consumable thing is a tax upon expense. How would they otherwise tax the use of a thing?

Mr. BAILEY. Now let us reverse it. Then, it can not be a tax on its use.

Mr. SUTHERLAND. Why?

Mr. BAILEY. Because very plainly the tax on the use of a carriage would be from day to day a tax on something consumed—consumed at once, consumed in the use, and the single use of it, as food. A tax on that would be permissible, but it would not be a tax on the use of it.

Mr. SUTHERLAND. The Senator will not insist that consumable commodities are only those which can be consumed at once?

Mr. BAILEY. Oh, no. The Senator does not contend anything of that kind. The Senator is only contending that a description which includes them can not be accurate for the purpose which the Senator has in hand; in other words, a carriage is a consumable commodity, it is true, but the consumption might extend over a period of five or ten years.

Mr. SUTHERLAND. How is it consumed? By the use, of course.

Mr. BAILEY. No; but by the wear and tear. A carriage will last longer when used every day than it will if stood up in a carriage house and not used at all.

Mr. SUTHERLAND. Then it is not consumed. It wears itself out.

Mr. BAILEY. It wears and rusts.

Mr. SUTHERLAND. We do not speak of anything which has been laid away and left alone and left to rust as having been consumed by any person.

Mr. BAILEY. No; but it is consumed, and that kind of a carriage would have paid the tax under the act in question in the Hylton case precisely as would a carriage that had been used every day. Therefore the tax could not have been on the use, but it was on the possession.

Mr. SUTHERLAND. The Senator from Texas certainly would not insist that an article of food which had been laid away and permitted to spoil had been consumed. Neither has a carriage that is laid away and permitted to wear out in that way been consumed.

Mr. BAILEY. The Senator from Utah confirms my argument.

Mr. SUTHERLAND. When we speak of a carriage having been consumed, or other things having been consumed, we mean they have been consumed by use.

Mr. BAILEY. The Senator confirms my argument, if he will permit me. Take the case of food tainted or diseased, and not used at all, and yet it is subject to a tax. You pay the tax just the same whether you throw it to the dogs or feed it to people.

Mr. SUTHERLAND. But because——

Mr. BAILEY. Not because it may be used. Under my argument that would be true; but under the Senator's argument it would be because it was used; in other words, the Senator says that carriage tax was on the use of the carriage, and I say it was on the possession of the carriage, because the tax was levied on a carriage possessed and not used, precisely as on a carriage possessed and used, and the terms of the statute are merely descriptive. They describe the carriage subject to the tax and not the use.

Mr. SUTHERLAND. The Senator from Texas is always so plausible in what he says that I am never quite certain whether he has convinced my intellect or only stirred my emotions, but it seems to me that when the justices of the Supreme Court say that a carriage is a consumable thing, and that the tax is on the expense of the owner, it is not different when analyzed from their having said that it was a tax upon the use of the carriage. I am unable to see the distinction; and either the Senator from Texas or myself is refining overmuch upon the question. I will not undertake to say which.

THE STATUTES IMPOSING DIRECT TAXES.

Now I come to the second branch of this question, the practical construction of the constitutional provision. It is true, as I have said, that by various acts of Congress which have been passed, beginning in 1796, up to and including 1864 or 1865, Congress has always levied these direct taxes upon lands, houses, and improvements. Therefore it is argued by the Senator from Texas and others who agree with him that Congress by that in effect has said that it had no power to impose taxes upon anything else except those objects. I think I fairly state the proposition. That might lead to this conclusion, which is, of course, an extreme one: If Congress had not levied a direct tax at all according to that sort of reasoning it would be a construction upon the part of Congress that it had no power to levy a direct tax upon any article. Certainly that conclusion can not be justly arrived at. I submit when we come to consider the history surrounding the adoption of this first law—and all the other laws were founded upon it—it is found beyond question that Congress confined its direct taxes to this class of property because it recognized that it was expedient to do so, not because it recognized that it had no power to do otherwise. On April 1, 1796, the House having under consideration a resolution calling on the Secretary of the Treasury to formulate a system for direct taxation, Mr. Williams, after expressing his wish to see a plan brought forth by the Secretary, although such tax should be resorted to only in time of war or necessity, said:

If the tax be indirect, it will be optional with them—

And the context shows that he was speaking of the farmers—

whether they pay it or not, in times of scarcity, and when their crops return they will purchase a larger quantity, and by that means pay a double tax.

His opinion clearly was that an indirect tax is one imposed upon consumption. He proceeds:

Indirect taxes are paid at the option of the consumer, and those taxes operate as a spur to industry, as well as an encouragement to their own manufactories.

Mr. Gallatin, during the course of the debate upon this resolution, said:

By the present resolution the Secretary of the Treasury is ordered to make out such a plan of direct taxation as shall be agreeable to the laws of the different States.

Let me stop there to say that this resolution which was introduced and afterwards passed called upon the Secretary of the Treasury to present a plan for imposing direct taxes agreeable to the laws of the different States. If Congress had been following the dictum in the Hylton case, a direct tax would have been limited to lands, and they would not have submitted to Mr. Gallatin a request to formulate a plan for putting taxes upon the objects which were taxed in the various States. They would have simply followed that dictum and themselves at once imposed taxes upon the articles which had been mentioned by the Supreme Court.

Mr. Gallatin pointed out that the proper objects of direct taxation, in his opinion, were visible, and especially—not alone, but especially—real property; that he thought the only way to tax invisible property was in an indirect way, because of the impossibility of valuing it; and yet his argument concedes that even invisible property may be taxed in a direct way.

Yet in the Eastern States—

He goes on to say—

Yet in the Eastern States they taxed in a direct way real and personal, visible and invisible, known or supposed property, and it was a question with him whether that was not the chief cause of the prejudices which existed against direct taxation in those States.

Mr. Gallatin thought it would be better if the committee had reported—I call your attention to this—for a tax on *houses and land*, which might be raised without difficulty, instead of the *present plan* to be applied to the laws of the different States and to embrace the defects of all.

That was nearly two years after the decision in the Hylton case. Had it been understood that the dictum in the Hylton case to the effect that direct taxes should be confined to land

taxes was controlling, would not Mr. Gallatin or somebody have said, "Gentlemen, there is no use considering this question; the Supreme Court has decided that the tax must be confined to land." But, instead of doing that, Mr. Gallatin said that he was sorry that the committee had not reported for a tax on houses and lands, which might be raised without difficulty, instead of the present plan. If he believed that the Hylton case was controlling, would he not have said that the committee should have reported for that plan, not because it was the convenient one, but because the Supreme Court of the United States had decided that it was the only one?

Mr. BORAH. Mr. President——

The VICE-PRESIDENT. Does the Senator from Utah yield to the Senator from Idaho?

Mr. SUTHERLAND. Certainly.

Mr. BORAH. The Senator from Utah, of course, will remember that Mr. Gallatin was one of the men who insisted that the difference between direct and indirect taxation was the distinction which was made by Adam Smith, that it could be shifted.

Mr. SUTHERLAND. Yes; I will come to that in a moment.

Mr. BORAH. The Senator from Utah knows that the Supreme Court has rejected that doctrine.

Mr. SUTHERLAND. I am not so certain about that. When I come to discuss the decision of the Supreme Court, I am not at all certain that I shall agree with the Senator upon that proposition.

The resolution was finally adopted to report a—

Plan for laying and collecting direct taxes, by apportionment among the several States, agreeably to the rule prescribed by the Constitution, adapting the same—

Now mark this—

as nearly as may be to such objects of direct taxation and such modes of collection as may appear, by the laws and practices of the States, respectively, to be most eligible in each.

The original draft of the resolution left out the words "as nearly as may be," so that it read that it should be "adapted to such objects of direct taxation as were most eligible in each State."

But it was recognized, as the debates show, that perhaps that was unwisely tying the Secretary of the Treasury to a hard and fast rule and that he should be given some leeway, and so the words "as nearly as may be" were inserted, leaving him to select from these various objects some of them if he saw fit.

On December 14, 1796, the Secretary of the Treasury, Mr. Oliver Wolcott, jr., transmitted, in response to this resolution, a most elaborate report. He first discusses the revenue necessary to be raised, and he suggests that a direct tax amounting to $1,484,000 shall be imposed. Then he proceeds to give the amount which shall be apportioned to each State in detail. Then he takes up and reviews at great length the taxing laws of the various States and quotes, not in precise terms, but in substance, all the various state laws with respect to the subject of taxation and the modes of taxation. A review of these various laws shows that the systems in force in the various States were utterly different both as regards the objects of taxation and the methods of imposing the tax.

Mr. BORAH. Mr. President——

The VICE-PRESIDENT. Does the Senator from Utah yield further to the Senator from Idaho?

Mr. SUTHERLAND. Yes.

Mr. BORAH. Before the Senator from Utah leaves that subject, do I understand the Senator contends that Congress did levy direct taxes on other property than that of land?

Mr. SUTHERLAND. I do not. I have already said that Congress, in all of these laws which have been passed upon that subject, has confined indirect taxes to lands and buildings and the improvements upon land.

Mr. BORAH. Then, whatever the argument of Mr. Gallatin and those other men might have been individually, Congress accepted what the Senator calls "the dictum in the Hylton case."

Mr. SUTHERLAND. No; the Senator misconceives entirely what I have said. What I say is that Congress did not follow the Hylton case at all, the dictum of which was that Congress had no power to levy any other direct tax except upon lands and houses and improvements. Congress expressly recognized by this resolution that it had the power to impose direct taxes upon all the things that were taxed in the various States, and it requested the Secretary of the Treasury to report a plan of direct taxation which should be, in the language of the resolution, "adapted as nearly as may be to such objects of direct taxation as are most eligible in the various States," recognizing the power to impose direct taxes upon other objects, but, as I shall show the Senator in a moment, the Secretary of the Treasury reported that it was inexpedient to impose direct taxes upon any other objects except land, and pointed out the reasons why the Congress, as a matter of expediency, and not as a matter of power, should impose the taxes upon land.

Mr. BORAH. Mr. President——

Mr. SUTHERLAND. If the Senator will pardon me—clearly

Mr. BORAH. But the fact remains that, whether the Congress considered it expedient or not, Congress never exercised the power contrary to the dictum, as the Senator calls it, in the Hylton case.

Mr. SUTHERLAND. I have already said so.

Mr. BORAH. And never has in its history?

Mr. SUTHERLAND. Never has in its history.

Mr. BORAH. So expediency has become almost synonymous with power.

Mr. SUTHERLAND. It has been recognized that the opinion of the first Congress regarding the inexpediency of levying a tax upon any other articles was sound; and it has been followed. That is all. Now, let me call attention very briefly to the various things which were the subject of taxation in the States, as shown by this very elaborate report which I have upon my desk. First, there were capitation taxes, which were imposed in Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, North Carolina, and Georgia. Second, taxes on horses and cattle, with certain exceptions, in Vermont, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, and Kentucky. In Virginia horses alone were taxed. All the stock of farms was included in Rhode Island, New York, Delaware, and Maryland. In all the other States no part of the stock on farms was subject to taxation. Third, taxes were imposed on the mass of real and personal property, with certain exceptions, in Rhode Island, New York, Delaware, and Maryland. In the other States specific objects were designated. Fourth, land was taxed in all the States except Vermont and Delaware.

I call especial attention to the fact that lands in all the States except Vermont and Delaware—and it was pointed out that in the case of the latter State they were about to adopt a tax upon lands, leaving only Vermont out—that lands were taxed in all the States, with this exception, and that they were taxed in a variety of ways in the different States. In Massachusetts and New Hampshire they were taxed according to the produce or supposed annual rent or profit. Fifth, stock employed in trade and manufactures, and money loaned were taxed in some States, but not in all. Sixth, assessments at discretion on supposed property or income of individuals were permitted in various degrees, and under different modifications, in some States. In Delaware, for example, the tax is imposed upon the estimated annual income, without reference to specific objects.

The Secretary of the Treasury then proceeded to lay down the plans which may be considered, as follows:

First. Declaring quotas of different States, fixing time for payment, and prescribing in case of delinquency assessment and collection upon the same objects of taxation and under the same rules by which the last taxes are assessed and collected by the respective States.

He dismisses that plan at once, because he points out that that simply undertakes to put in operation the plan of requisitions which had been an utter failure under the Confederation. The second plan was: Assessment and collection under authority of the United States upon the same objects and under the rules by which taxes were collected in the respective States.

The third plan was: Defining certain objects of taxation and principles of assessment, according to which taxes should be assessed, to be collected under uniform regulations.

These two propositions he considers at length. Let us inquire, then, for a moment, what they are. First, a plan which will impose the taxes upon all the various objects which are taxed in the various States of the Union, which, as I have already shown, includes land, houses, the improvements of real estate, horses, cattle, the mass of personal property, and incomes, resulting from whatever source they may. That is the first plan which he proposed. Next, he proposed a plan which would collect out of these various things which were the subject of taxation in the States some articles which are most eligible for taxation, not imposing the tax upon all the articles, but upon some of them. He said:

It appears from the account already given of the fiscal systems of the several States that in many instances they have been long established; that in general they are well approved by the people; that habit has rendered an acquiescence under the rules they impose familiar. A presumption in favor of their intrinsic merit arises from their having been enacted by legislatures possessed of a minute and particular knowledge of the circumstances and interests of the respective States; and it may be conceded that so far as the principles of the state systems can

with propriety be adopted by Congress, the hazards of new experiments and the delays incident to the organization of a new plan will be avoided.

He then proceeded to point out objections to this method which arise from the variety and the lack of harmony in the objects taxed by the various States. He says:

If an article is taxed in one State and is entirely exempted or differently taxed in another State, the action of the tax upon the same subject must be different in these different situations; in the State in which the article is taxed it must suffer not only from the new and disadvantageous relation in which it will be placed in respect to other branches of industry, but it must also suffer from competitions of industry similarly employed in other States.

After discussing that phase of it most exhaustively, he concludes:

The Secretary presumes that it has been evinced that there are weighty, if not insuperable, objections against an adoption of the state systems by the United States; the more difficult task of proposing a plan not attended with difficulties of equal or greater magnitude remains to be attempted. To this end, a review of the principal taxes collected in the several States appears to be necessary.

Then he goes on and reviews the various objects of taxation, and among them he points out capitation taxes, taxes on stock and produce of farms, taxes on stock employed in trade and manufactures, and money loaned at interest, taxes on profits resulting from certain employments, and taxes on land, as to which he observes:

A direct tax, in the sense of the Constitution, must necessarily include a tax on lands; it therefore only remains to determine on a mode of assessment, of which the principles shall be, as nearly as possible, certain, uniform, and equal.

He then goes over the various methods of imposing the tax upon land in the various States. He dismisses a tax on quantities as being manifestly unequal. He says that in some States taxes are imposed proportionate to the annual income or rent, but he thinks this does not afford as correct a standard as taxes proportioned to value; that is, the amount for which lands will sell.

And he concludes, finally, his review of the subject, as follows:

It does not appear expedient that the proposed direct tax should be extended to any other objects than have been mentioned. These are as follows:

First. Lands which it is proposed should be taxed ad valorem, but under limitations, to be prescribed by law, in respect to the estimated value of uninclosed and unimproved lands, in districts to be defined.

Second. Houses exceeding in value those most generally occupied by farmers and laborers; which are proposed to be distributed, in each of the States, into three classes, with reference to their value; to be taxed uniformly in each class, at specific rates, to be prescribed by law.

Third. Slaves in general, or of such descriptions as shall be determined by law, to be taxed at one uniform rate.

The plan, which was suggested by the Secretary, was accepted by the Committee on Ways and Means, and that committee reported a resolution substantially approving the plan.

Let me pause for a moment to call attention to the significance of this situation. The Hylton case had been decided. Undoubtedly the Congress was familiar with that case. But instead of following its dictum on the subject of what constitutes a direct tax as a matter of course, when they came to consider the question of formulating a plan for direct taxation they submitted the question to the Secretary of the Treasury, who was to report a plan of direct taxation adapted as nearly as might be to the objects of taxation in the various States.

If there can be a clearer repudiation of the dictum of the Supreme Court in the Hylton case, I am unable to see it. Instead of following it, they repudiated it. Instead of accepting the dictum of the Supreme Court, they set it aside and called upon the Secretary of the Treasury to report to them, not a plan in accordance with that laid down by the Supreme Court, but a plan of taxation entirely different from that laid down in the dictum of the Supreme Court.

Speaking of this plan in the Congress, Mr. Harper, in discussing the advisability of direct or indirect taxes, said:

The whole question was: Which way will be the most convenient to draw the sum wanted from them—

Meaning as between direct taxes and indirect taxes—

whether by a circuitous or indirect mode or by a direct and positive method?

Mr. Henderson, a Member of the House, speaking against direct taxation, said:

The drawing of revenue by coercion from our citizens appears to me one of the most delicate and difficult subjects that Government can engage in.

Mr. Varnum discussed the comparative advantages of direct and indirect taxation, saying that he thought additional sums needed ought to be raised by duties on imposts and excises, this being a method of taxation with which they were acquainted and which experience had taught them the operation of under this Government. He then proceeded:

But such is the variegated interest of the United States, and such their diversified method of levying and collecting direct taxes, that no uniform system of direct taxation can be devised which will apply to the custom of any two of the States; and unless you adopt the rules of some one of the States, your system will be diverse from any one which has ever been practiced upon in any part of this Union. But if you adopt the method which has been prescribed by any one of the state governments, and which may probably be very properly adopted, to suit the circumstances and conciliate the feelings of the people of such State, even in that case you will have the prevailing opinion of the people in 15 States out of 16 directly opposed to your system. And this opinion having been acquired from long experience of the operation of direct taxes (which most of the States have of necessity constant resort to for the support of their state governments and for discharging the debts contracted in the late war with Great Britain), and which, being founded on social circumstances, habits, and attachments, are very hard to be eradicated, will very much retard the operation of the system, if not render it entirely impracticable.

He then discusses the Secretary's report and the three modes therein set forth. He differs with the Secretary respecting his conclusion that the third mode is preferable, because it destroys the equality of taxation and saddles the farmers with an undue burden. He says:

And shall a system of direct taxation be adopted under the Government, which the people have formed upon the principle of equal liberty, which will oblige the industrious farmer to pay a land tax and a tax on his building—which in most instances includes nineteen-twentieths of his property—and all the money holders, holders of all other kinds of property, and those who, from profession or emolument derived from the operation of our Government, are living in affluence be exonerated from any part of the burden, except a small pittance for the houses they live in? * * *

* * * If a direct tax should ever become necessary under this Government, I hope it will embrace all the objects of taxation which have been designated by the particular state governments; and notwithstanding the ingenious reasonings in the Secretary's report against the practicability of the second mode therein stated, I am unable to figure to myself any possible inconvenience which would arise from it on the ground of the objections. And why that system was not adhered to in the report I am at a loss to know, for the resolve directing the report to be made contemplated no other.

All the way through these debates, which I shall not attempt to quote from further, it clearly appears that the differences of opinion were not upon the question of power, but only regarding the question of expediency. There was absolutely no question raised in the debates, from one end to the other, as to the power of Congress to impose direct taxes upon any of these various objects.

Mr. SMITH of Michigan. Mr. President——

The VICE-PRESIDENT. Does the Senator from Utah yield to the Senator from Michigan?

Mr. SUTHERLAND. I do.

Mr. SMITH of Michigan. I have been very much interested in the quotations from the contemporaneous debates in connection with the report of Secretary Wolcott. I was rather impressed the other day, when the Senator from Texas [Mr. BAILEY] was speaking, with the idea that he dismissed that matter as having no special bearing upon the situation, because of the liberality and freedom with which we introduce resolutions. I should like to ask the Senator from Utah whether he has reached any conclusion as to the deliberation with which that was done in those times as compared with the present? It seems to me it was in a formative situation; and, being in that situation, that Congress called for information and advice and plans with greater care and solemnity than we do now; and that its action in this respect can not be dismissed with a mere wave of the hand as a practice to which no weight should be attached.

Mr. SUTHERLAND. I think the Senator from Michigan is quite correct about that; and in addition to what he suggests, this may be also considered: The early Congresses were not confronted and embarrassed by the great multiplicity of things with which the modern Congress has to deal. Because of the very fact that there were few questions presented to them, they could consider them with greater deliberation. Here is the Congress of this day having literally thousands of bills introduced at every session—literally hundreds of different questions coming up. It is perfectly manifest that we can not give the various questions as much care, as much deliberation as the early Congresses were able to give them, and history bears out that statement.

But the debates themselves show that this question was considered day after day. One Member would speak upon one side of the question of expediency; another on the other side of the question of expediency. But always it was the question of expediency as to whether this tax should be confined to land, and never the question as to the power to do it. Never was there a suggestion made, when that law was being discussed, that the power of Congress in imposing direct taxes under the Constitution was limited to land, houses, and improvements. But there was a concession and a claim, running through all these debates, that the power of Congress reached to all the various objects of taxation; and it was simply a question of expediency as to whether it should be confined to some of them, and, if to some of them, to which?

Senators say here that the Congress was following the Hylton case, which was decided two years previously. Senators may search in vain the debates upon this very tax law to find a single reference to the Hylton case. The Hylton case was left entirely out of consideration. Nobody in the Congress paid the slightest attention to it. The whole debate was upon the report of the Secretary of the Treasury.

I will simply say, with reference to these subsequent statutes, that the questions were not debated. In view of the fact that they had been thrashed out as fully and completely as they were in the First Congress, which adopted the law, subsequent Congresses simply followed its action without question.

Mr. BORAH. Mr. President——

The VICE-PRESIDENT. Does the Senator from Utah yield to the junior Senator from Idaho?

Mr. SUTHERLAND. Certainly.

Mr. BORAH. Does the Senator from Utah mean to say that the subject was not again debated by Congress? There was an extensive and prolonged debate in 1813 in which it was discussed in detail.

Mr. SUTHERLAND. Upon what question?

Mr. BORAH. Upon the question of the advisability of levying a direct tax.

Mr. SUTHERLAND. If I said that was not debated, I was in error. It was debated; but what I mean to say is that Congress never debated the question of the power to impose the tax. What they were debating was the question of the expediency of imposing it. The subsequent Congresses simply followed the pathway which had been marked out by the First Congress upon that subject.

Mr. BORAH. Mr. President, one of the great arguments against this tax law has always been that the direct tax was not contemplated to cover anything but land, because it was inexpedient to levy it upon anything else.

Mr. SUTHERLAND. That may be true, but I fail to see how that detracts in any manner from the suggestions that I have made.

Mr. BORAH. It detracts in this way——

Mr. SUTHERLAND. If the Senator will permit me, the claim of the Senator seems to be that because the First Congress passed laws confining its direct taxes to lands and improvements, that is a concession that Congress has no power to impose them upon anything else. That is the argument of the Senator.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER (Mr. CUMMINS in the chair). Does the Senator from Utah further yield to the Senator from Idaho?

Mr. SUTHERLAND. Certainly.

Mr. BORAH. Was not this law, confining this tax to lands, enacted at a time when Congress was searching everywhere for something to tax? As said by Justice White, in his dissenting opinion, it is rather remarkable that at a time when Congress was searching for things upon which to lay a direct tax, it nevertheless confined its operations to lands under those circumstances. It is just as strong an argument, it seems to me, in favor of the proposition that Congress understood they could not go further than lands in laying a direct tax.

Mr. SUTHERLAND. It seems to me that that argument fails of its weight when we come to consider the fact that the Members of Congress, dealing with the subject over and over again, asserted that they had the power to impose direct taxes upon all the objects of taxation in the various States, but argued the question only as a matter of expediency.

THE DECIDED CASES.

So much for that. The final and last phase of the matter that I desire to discuss is the decisions of the Supreme Court upon this question. Prior to the Pollock case, five cases were decided by the Supreme Court which are relied upon here and elsewhere as establishing the rule that a direct tax within the meaning of the Constitution includes only a capitation and land tax. Those cases are Hylton *v.* United States (3 Dall., 171), Pacific Insurance Company *v.* Soule (7 Wall., 433), Veazie Bank *v.* Fenno (8 Wall., 533), Scholey *v.* Rew (23 Wall., 331), and Springer *v.* United States (102 U. S., 586).

I have read those cases, every one of them, not only once, but some of them several times, with great care, and I think every one of them, with the exception of the Springer case, can be clearly reconciled with the majority decision in the Pollock case; and inasmuch as the Hylton case is the foundation for the decision of the Supreme Court in every one of the cases which followed, I think a somewhat careful analysis of that case should be made first, because if that case, which was the foundation case upon which the other cases rest, is incorrect, they all fall. If you put in a foundation which is insecure, it makes no difference how high the superstructure may be. When you tear out the foundation, the superstructure comes with it. And if the Hylton case is bad law, necessarily the cases which follow it and depend upon it must be equally bad. When I say the cases which follow, I mean the dictum in the various cases upon the subject of direct taxation.

There were three opinions delivered in the Hylton case, seriatim, by Justices Chase, Paterson, and Iredell.

Justice Chase, after discussing the question of taxation under the Constitution generally, says:

> The Constitution evidently contemplated no taxes as direct taxes, but only such as Congress could lay in proportion to the *census*. The rule of apportionment is only to be adopted in such cases where it can reasonably apply; and the subject taxed must ever determine the application of the rule. If it is proposed to tax any specific article by the rule of apportionment, *and it would evidently* create great *inequality and injustice*, it is *unreasonable to say* that the *Constitution intended such tax should be laid by that rule.*
>
> It appears to me that a tax on carriages can not be laid by the rule of apportionment without very great inequality and injustice. For example: Suppose two States, equal in census, to pay $80,000 each, by a tax on carriages of $8 on every carriage, and in one State there are 100 carriages and in the other 1,000. The owners of carriages in one State would pay ten times the tax of owners in the other. A in one State would pay for his carriage $8, but B in the other State would pay for his carriage $80.

Then he goes on to say:

> It seems to me that a tax on expense is on an indirect tax; and I think an annual tax on a carriage for the conveyance of persons is of that kind, because a carriage is a consumable commodity and such annual tax on it is on the expense of the owner.
>
> I am inclined to think—

Notice the caution with which he uses the expression—

> I am inclined to think, but of this I do not give a judicial opinion, that the direct taxes contemplated by the Constitution are only two, to wit, a capitation or poll tax, simply, without regard to property, profession, or any other circumstance, and a tax on land.

How under heaven can an expression of that kind be tortured into a decision that the only direct tax under the Constitution is a tax on land? Does a judge who undertakes to decide a question say, "I am inclined to think, but of this I do not give a judicial opinion?" Is such an opinion binding authority? It is the purest kind of dictum, and it does not rise to the dignity of dictum ordinarily, because when a judge ordinarily uses the expression, he uses it positively.

Mr. Justice Paterson, discussing the question, said:

> I never entertained a doubt that the principal—

Here is another opinion which is said to be the foundation for the decision that direct taxes are confined to land—

> I never entertained a doubt that the principal, I will not say the only, objects that the framers of the Constitution contemplated, as falling within the rule of apportionment, were a capitation tax and a tax on land.

He does not say positively that in his opinion these are the only direct taxes, but only that in his opinion those are the principal ones. Then he goes on and discusses the inability to apportion in somewhat the same way that Mr. Justice Chase has done. Then he proceeds:

> How would it work? In some States there are many carriages, and in others but few. Shall the whole sum fall on one or two individuals in a State who may happen to own and possess carriages? The thing would be absurd and inequitable. * * * All taxes on expenses or consumption are indirect taxes; a tax on carriages is of this kind, and of course is not a direct tax. Indirect taxes are circuitous modes of reaching the revenue of individuals, who generally live according to their income.

He then says he will close his "discourse"—he does not call it an opinion or decision—by reading a passage or two from Smith's Wealth of Nations. Let me read one quotation:

> The impossibility of taxing people in proportion to their revenue, by any capitation, seems to have given occasion to the invention of taxes upon consumable commodities; the State, not knowing how to tax directly and proportionably the revenue of its subjects, endeavors to tax it indirectly by taxing their expense, which it is supposed, in most cases, will be nearly in proportion to their revenue. Their expense is taxed by taking the consumable commodities upon which it is laid out.

Clearly, in the opinion of Adam Smith, which the Supreme Court in this earliest case cited with approval, a direct tax is upon the revenue of the taxpayer, while an indirect tax is a tax upon his expense; and yet the Senator from Texas [Mr. BAILEY] the other day in his remarks said that a tax on expense was not distinguishable from a tax on income. Here we have the Supreme Court asserting and quoting Adam Smith as saying that there is the greatest difference between a tax upon revenue, which is income, and a tax upon expense.

Justice Iredell, on the question of the difficulty of apportionment, discusses the subject in somewhat the same way, and says:

> As all direct taxes must be apportioned, it is evident that the Constitution contemplated none as direct, but such as could be apportioned. If this can not be apportioned it is, therefore, not a direct tax, in the sense of the Constitution.

He then, by an illustration, points out the difficulty of apportioning the carriage tax. He further says:

Perhaps a direct tax, in the sense of the Constitution, can mean nothing but a tax on something inseparably annexed to the soil—something capable of apportionment under all such circumstances. A land or a poll tax may be considered of this description.

But nowhere in that decision, from beginning to end, is it asserted in positive terms that, in the opinion of the Supreme Court, the only kind of direct taxes are taxes upon land. "Perhaps it may be," says one; "I am inclined to think," says another; "the principal direct taxes are taxes upon land," says another. And yet Senators assert and the Supreme Court has asserted that this case was authority for the proposition that direct taxes should be confined in this manner.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Utah yield to the Senator from Idaho?

Mr. SUTHERLAND. I do.

Mr. BORAH. The Senator will concede, I presume, that they did hold that a tax upon personal property was not a direct tax.

Mr. SUTHERLAND. I do not concede that; I concede that they held that a tax upon the *use* of personal property was not a direct tax.

Mr. BORAH. The tax in this case was laid upon the carriages, regardless of use.

Mr. SUTHERLAND. Let me ask the Senator from Idaho the same question I asked the Senator from Texas. What did Mr. Ames mean by saying that this was not a tax upon property, but a tax upon use?

Mr. BORAH. Mr. Who?

Mr. SUTHERLAND. Mr. Ames, in the debate upon the carriage bill, and he spoke for those who voted in favor of the carriage bill.

Mr. BORAH. That is digressing from the subject which I am discussing. That is what the court decided under the statutes as finally enacted, because the tax was upon carriages, whether used at all or not, and the court sustained the tax.

Mr. SUTHERLAND. No; what the Supreme Court decided in that case was this, and I quote its language:

All taxes on expenses or consumption are indirect taxes; a tax on carriages is of this kind, and, of course, is not a direct tax. Indirect taxes are circuitous modes of reaching the revenue of individuals who generally live according to their income.

It was clearly within the understanding of the members of the Supreme Court that this was a tax upon expense, and not upon property.

Mr. BORAH. It is not very material what we call it, but I presume the Senator from Utah will concede that under that definition we might call any kind of a tax on income a tax upon an expense.

Mr. SUTHERLAND. A tax upon incomes is not a tax upon expense. A tax upon income is a tax upon revenue, which the Supreme Court in that case, quoting with approval Adam Smith, says is a direct tax. They distinguish and place in sharp contrast with one another a tax upon revenue and a tax upon expense.

Certainly the Senator will not contend that an income is not revenue.

Now, taking these various opinions together, the result shows that Justice Chase's opinion is based on three propositions:

First, that the Constitution contemplates no taxes as direct except such as can be fairly apportioned.

Second, that in his opinion the only direct tax contemplated by the Constitution is a capitation and a tax on land.

Third, that the carriage tax is a tax on expense.

Justice Paterson proceeds upon the same grounds, while Justice Iredell bases his decision upon two propositions only:

First, the difficulty of apportionment.

Second, that perhaps the only direct taxes contemplated were capitation and land taxes.

Let us take these two propositions: First, that a direct tax is only a tax upon land, and, second, that a direct tax within the meaning of the Constitution is only a tax which can be fairly apportioned.

I put an illustration to the Senator from Idaho the other day when he was addressing the Senate which I think shows that these two propositions of the judges can not possibly stand together, that they are mutually destructive because they say, first, that a land tax is a direct tax, that a tax upon houses and a tax upon improvements on land is a direct tax, and then they say that only such taxes as can be fairly apportioned among the States are direct taxes.

Now, I submit that these two propositions can not possibly stand together. Let me repeat the illustration which I gave the Senator from Idaho the other day. A tax, according to this test, is one which can be fairly apportioned. Suppose a tax is imposed by Congress upon all buildings in the United States over 12 stories in height, or suppose that a tax is imposed upon all buildings in the United States over the value of $5,000,000 each. According to the first test that is a direct tax because it is a land tax, but according to the second test it is not a direct tax because it can not be fairly apportioned. One or the other of these rules must fall.

Mr. BORAH. Does the Supreme Court anywhere say that only such taxes as can be apportioned are direct taxes?

Mr. SUTHERLAND. The Supreme Court has repeatedly called attention to the fact that Congress has passed laws imposing direct taxes upon land and buildings and houses, and those laws are valid. Does the Senator think a tax upon land is a direct tax, or does he think that sometimes it is and sometimes it is not?

Mr. BORAH. I think a tax upon land is a direct tax, but I maintain that the Supreme Court has not anywhere laid down the rule on which the Senator is now testing its decision.

Mr. SUTHERLAND. Mr. Justice Chase says in his opinion he is inclined to think the direct taxes contemplated by the Constitution were only two, to wit, capitation or poll taxes and taxes on land. Justice Paterson agrees with him. Justice Iredell agrees with Justice Paterson. All three of them agree that a tax on land is a direct tax.

Now, suppose the case I have given by way of illustration, a tax imposed upon all buildings of this description. It is perfectly apparent that such a tax could not be as fairly apportioned as a tax on carriages, because in many of the States of the Union there are no such buildings as that at all, and it is only in a few States that there are many such buildings.

Mr. SMITH of Michigan. And there would be less if this rule prevailed.

Mr. SUTHERLAND. Yes; the number would be very much less if this rule prevailed.

So it seems to me these two propositions have destroyed one another and we must come to the conclusion that either the difficulty of apportioning the tax is no test of its being direct or that its being a land tax is no test of its being direct.

Mr. BORAH. I will not interrupt the Senator again, because I know he wants to get through, but I wish to repeat, so that it will not be misunderstood, that the Supreme Court do not anywhere lay down the rule, in my opinion, by which the Senator is now testing their decision. They have simply suggested the question of apportionment as an argument against it, but they have not said that only such taxes as can be apportioned are direct taxes.

Mr. SUTHERLAND. I do not know how the Senator can spell anything else out of their language. I will not undertake to go over it again. This rule of apportionment would destroy a tax upon land itself. Suppose it was imposed according to the value of the land? Here are two States of equal population, one of them having only one-tenth of the value of land that the other has. It is manifest that in that case the taxes could not be fairly apportioned, because for every dollar that was paid in the one State $10 would be paid in the other upon the same valuation. Or, if a tax were imposed upon the quantity of land in two States with an equal population, one having one-tenth of the area of the other, it is manifest that a direct tax imposed under such circumstances would be paid by an assessment upon a citizen in one State ten times as high as in the other State. The final result of adopting the test which the Supreme Court lays down in the Hylton case would be to declare that even a land tax is not a direct tax. After all, whatever the Supreme Court says upon these two propositions is by way of dictum.

The decision of the court upon the validity of the carriage tax in the end is bottomed upon the proposition that it is a tax upon the expense and upon the use of the carriage and not upon the property itself.

This view is confirmed by comments of Albert Gallatin in his Sketch of the Finances of the United States, written a year or two after the decision. He says:

The most generally received opinion, however, is that by direct taxes in the Constitution those are meant which are raised on the capital or revenue of the people; by indirect, such as are raised on their expense. As that opinion is in itself rational and conformable to the decision which has taken place on the subject of the carriage tax, and as it appears important, for the sake of preventing future controversies, which may be not more fatal to the revenue than to the tranquillity of the union, that a fixed interpretation should be generally adopted, it will not be improper to corroborate it by quoting the author from whom the idea seems to have been borrowed. (Naming Doctor Smith's Wealth of Nations.)

He then quotes from Smith the same statements contained in Justice Paterson's opinion, and continues:

The remarkable coincidence of the clause of the Constitution with this passage in using the word "capitation" as a generic expression,

including the different species of direct taxes, an acceptation of the word peculiar, it is believed, to Doctor Smith, leaves little doubt that the framers of the one had the other in view at the time, and that they, as well as he, by direct taxes meant those paid directly from and falling immediately on the revenue; and by indirect, those which are paid indirectly out of the revenue, by falling immediately upon the expense. It has, indeed, been held by some that "direct taxes" meant solely that tax which is laid upon the whole property or revenue of persons to the exclusion of any tax which may be laid upon any species of property or revenue—an opinion equally unsupported by the vulgar, or any appropriate sense of the word itself, and contradictory to the very clause of the Constitution which, instead of admitting only one kind of direct tax, expressly recognizes several species by using the words "capitation" or "other direct tax" and "direct taxes."

Should those considerations be thought correct, it results that all taxes laid upon property which commonly affords a revenue to the owner (whether such property be, in itself, productive or not) in proportion to its value are direct; a class which will include taxes upon lands, houses, stock, and labor, all of which, therefore, must, when laid, be apportioned among the States according to the rule prescribed by the Constitution.

Now, I come to the case of the Pacific Insurance Company against Soulé, reported in Seventy-fourth United States, page 433. That decision was based on the act of June 30, 1864, amended by that of July 13, 1866, which laid a tax on amounts insured, renewed, or continued by insurance companies; and upon the gross amount of premiums received and assessments by them; and upon dividends declared as part of the earnings, incomes, or gains of certain companies (naming them), as well as upon undistributed sums added during the year to their surplus or contingent funds.

That case has been sometimes referred to as though it sustained a statute which imposed a tax upon income, but the statute is upon dividends declared as a part of the earnings, incomes, or gains of certain companies. In other words, the tax is measured by the amount of dividends paid out by the company, which dividends are paid out of course from the earnings, incomes, or gains received. The court declares that this is a tax upon the business of the insurance company, not a tax upon its property, and it calls it a "duty" or "excise." It followed, and they must have had fresh in their minds, the three cases which were decided at the preceding term of the court.

In the first of these cases the court held that a statute which imposed a tax equal to three-fourths of 1 per cent on the amount of deposits in a savings society was not a tax on property—that is, on the money—but on the franchise. In the second case, where the tax was on the amount of deposits for certain periods, it was held to be a franchise and not a property tax. And in the third case, where the statute imposed a tax on the excess of the market value of the capital stock of the corporation over the value of its real estate and machinery, it was held that the tax imposed was a franchise and not a property tax.

So all the way through that case and the cases which preceded, the distinction is made between a tax upon property and a tax upon the franchise or the business of the company, which was not a property tax at all.

In the case of Veazie Bank *v.* Fenno, reported in Eighth Wallace, page 533, the statute imposed a tax on the circulation of state banks or national banks. It was held that the tax was not a direct tax. Surely not, because it was not a tax upon the revenue; it was not a tax upon the notes, but it was a tax upon the circulation of the notes in a certain way. It was a tax upon the act of doing a thing in a particular way and not upon the thing itself. But the court goes out of its way to discuss the question as to what is a direct tax, and follows in that respect the dictum of the Hylton case. The court concludes as follows:

> The tax under consideration is a tax on bank circulation and may very well be classed under the head of duties. Certainly it is not, in the sense of the Constitution, a direct tax. It may be said to come within the same category as the tax on incomes of insurance companies, which this court, at the last term, in the case of Pacific Insurance Company *v.* Soulé held not to be a direct tax.

The court is in error in saying that the Soulé case involved a tax upon incomes. It was a tax upon the dividends paid out. The decision is right that the tax is not upon the property, but on the right to circulate notes and money.

In the Scholey *v.* Rew case (23 Wall., 331), it was held that a "succession tax," imposed by the acts of June 30, 1864, and July 13, 1866, on every "devolution of title to any real estate," was not a "direct tax" within the meaning of the Constitution, but an "impost or excise."

The court says: That it is the succession or devolution of real estate which is the subject-matter of the tax, or, "in other words, it is the right to become the successor of real estate upon the death of the predecessor."

The court further says that the question is not affected by the fact that the tax is made a lien on the land, as that is merely a regulation to secure its collection.

I have already, perhaps, sufficiently discussed during the course of the debate that it is a tax not upon the property, but is a tax upon the devolution of the property; and it is precisely of the same description as the stamp duty upon a deed, which is a tax, not upon the land conveyed by the deed, but an excise upon the act of conveying, upon the transfer. So this is not a tax upon the property inherited, but it is a tax upon the transfer of the property inherited.

In the course of the opinion the court refers to the decisions in the English courts, construing the act of Parliament from which the law in question was largely borrowed, where it was held that a succession duty was neither a tax upon income nor upon property, but upon the benefit derived by the individual.

The English courts did not intend to put that in the same classification with the income tax, because those courts have uniformly held that an income tax is a direct tax, and they distinguish the inheritance tax from an income tax.

Now I come to the final case of Springer *v.* The United States, and I am frank to say that in my judgment that case is authority for the proposition that an income tax is a direct tax. The Supreme Court in the Pollock case does attempt to distinguish it, but I think not very successfully. But that case is based upon the dictum in the Hylton case and upon the dicta in these other cases to which I have referred, and it is dicta after all. So in the end we simply have the Springer case upon the one side of the question and the Pollock case upon the other side of the question, and at most the whole matter may be considered at large.

It is asserted here, and is asserted by the Supreme Court in the Springer case, that a tax upon land is a direct tax, and that a tax upon personal property is not a direct tax. I wish somebody who believes that would point out to me what element of indirection there is in a tax upon the corpus of personal property that is not in the tax upon real estate. Both are paid by the owner of the property and paid ultimately by him. So far as the question of direction or indirection goes there is not a particle of difference between the two cases. Suppose the Senator from Michigan [Mr. SMITH] lives in a house upon his land and I, his next door neighbor, live in a house upon leased land. My lease provides that I shall have the power to remove my house at the end of the lease. The house the Senator from Michigan lives in is real estate. The house I live in is personal property. A tax is levied upon both. What element of indirection exists in the tax upon my house that does not exist in the tax upon the other? Yet, according to these decisions, the tax upon his house is direct and the tax upon my house is indirect.

What element of indirection exists in the tax on rentals derived from land or income derived from personal property that does not exist in a tax on the real or personal property itself? No element of indirection can be pointed out, as it seems to me. What difference in the ultimate result is there between a tax laid on the land in proportion to the rental value or the actual rent received, which would be a direct tax, and a tax on the rent itself? Both taxes fall upon the land. Both are paid out of the land. If my tenant pays me rent and I pay a tax either on the amount of the rent of the land or upon the land itself, the land bears the burden in either case.

We are to look to the substance of things, not to the mere form of things. A tax upon land falls upon the land and a tax upon the rent which comes from the land falls upon the land ultimately as well. If a 10 per cent tax is levied upon the income which I derive from my landed estate, does it not reach it in the most direct and profound manner imaginable? If I own a piece of property that is paying an income of a thousand dollars a year, and a tax is imposed upon that income of 10, or 20, or 50 per cent, can I sell my land for as much money in the market? It affects the land itself directly, not indirectly. The principle is as old as my Lord Coke, because it was he who declared that a conveyance of the profits of land to one and his heirs carries the land itself, because, as he observes, "What is the land but the profits thereof?"

Senators, the other day, in speaking about this matter, said that a conveyance of the receipts of land for a year would not convey the land. That is true, but it is the equivalent of the conveyance of the land for a year, because for the year the person to whom the rents are assigned is getting the entire benefit of the land.

The Supreme Court of the United States has repeatedly decided that where a particular property or a particular status is

not taxable no tax imposed on an incident which substantially falls upon the principal thing can be maintained. Let me take an illustration. Suppose for reasons the constitution of a State should provide that no tax should be imposed upon any fruit orchard for a certain length of time, and the legislature of the State should pass a law providing that the owners of these properties should contribute to the treasury a third of their fruit crop gathered each year, would not that be an evasion of the constitution? It would not be a tax upon the fruit orchard, but it would be a tax upon the proceeds of the fruit orchard and the burden of it would fall upon the orchard itself.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Utah yield to the Senator from Idaho?

Mr. SUTHERLAND. Certainly.

Mr. BORAH. Could the Senator not find a good illustration also in the inheritance case there?

Mr. SUTHERLAND. I have discussed the inheritance tax with the Senator half a dozen times, and I have said to the Senator that I think the inheritance tax proceeds upon altogether different principles.

Mr. BORAH. When you tax a man's right to inherit and collect it out of the property, taxation there is an incident to the right itself.

Mr. SUTHERLAND. I repeat to the Senator you do not do that any more than you tax the land by imposing a stamp duty upon the deed by which it is conveyed. The two propositions can not be distinguished, in my judgment.

As I have said, the Supreme Court has repeatedly insisted that it was the substance and not the form of the thing to which attention should be paid. Shylock, was it not, who said:

> You take my life,
> When you do take the means whereby I live.

And so you take my land when you take everything that makes my land of any use.

Cases of that character could be multiplied without number. In LeLeup *v.* Port of Mobile (127 U. S., 640) the Supreme Court held that a tax imposed by a State on the gross receipts of a telegraph company doing interstate business was void. The State not being permitted to tax the business, could not tax the receipts from the business.

In Welton *v.* Missouri (91 U. S., 275) it was held that a tax on the occupation of selling imported goods was in effect a tax on the goods themselves and invalid, as it interferes with the power to regulate commerce.

In Cook *v.* Pennsylvania (97 U. S., 566) it was held that a tax on sales by an auctioneer of imported goods in original packages was a tax on the goods themselves.

In Brown *v.* Maryland (12 Wheat., 419, 444) a tax on the importer of goods was held to be a tax on the goods. The court said:

> A tax on the sale of the article imported only for sale is a tax on the article itself—

And in effect—

> varying the form without varying the substance.

In Railway Company *v.* Jackson (7 Wall., 262) it was held that the State could not impose taxes on the income derived from bonds where it could not tax the bonds by reason of the fact that they were issued upon railroad property in another State, and therefore beyond the jurisdiction of the taxing State.

In the case of the State Freight Tax (15 Wall., 232, 274) it was held a tax imposed on certain companies proportioned to amount of freight coming into and going out of the State was a tax on interstate commerce and void. The court said: The constitutionality of the law is to be determined "not by the form of agency through which it is to be collected, but upon the subject upon which the burden is laid," and the court submits as the test question: Where does the substantial burden rest?

Suppose the Constitution had declared that no land tax should be imposed at all. Would not the Supreme Court have held within the principles of the cases cited that a tax on rentals derived from land was, in substance, a tax on the land itself?

I undertake to say that there is no distinction in principle between a tax on personal property and a tax upon land, and I may repeat the same question with reference to that. If a tax upon personal property is a direct tax, what is there to distinguish it from a case where the tax is imposed upon the income, which is the incident that makes the personal property valuable?

I come, finally and lastly, to the Pollock case. I shall not attempt to review that case, because I have already spoken longer than I had any intention of doing and much longer than I should have spoken. This is a case which was decided after most elaborate argument and after most elaborate consideration. It has been denounced as having set aside the opinions of the Supreme Court and of Congress for a hundred years. Lawyers and judges are usually conservative. Their training makes them so. They have a high regard, and properly so, for precedent, and a departure from precedent is always made reluctantly. But, after all, a precedent is only the opinion of a former traveler as to the location of the pathway. It is not the pathway itself. A decision is not law in another case. It is only evidence of the law. We may question the opinion of the traveler as to the location of the pathway; we can not question the pathway itself. That is an indisputable finality.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Utah yield to the Senator from Idaho?

Mr. SUTHERLAND. I do.

Mr. BORAH. Then the Pollock case ought not to deter us from enacting a law providing for an income tax?

Mr. SUTHERLAND. The Pollock case ought to deter the Senator from Idaho from enacting it, because he complains of the Pollock case as being a dangerous invasion of the rule of stare decisis, and he ought to be willing to be bound by his own rule upon that subject.

Mr. BORAH. But the Senator says that a precedent is not the law; that it is simply pointing to the pathway and is not the law itself, as I understand him.

Mr. SUTHERLAND. I stand by that. The Senator invokes the rule of stare decisis. I do not. Stare decisis is an adviser, not a dictator. Stare decisis operates by way of persuasion, not by way of compulsion. I submit that there is as much virtue in setting aside a wrong precedent as there is in following a right precedent.

It has been said that this decision in the Pollock case is entitled to little weight because it overrules former decisions; but, on the contrary, it may be entitled to more than ordinary weight, for the very reason that it does overrule the former opinions, if it does so.

The Supreme Court of the United States is the greatest court this world has ever seen. In the year 1895, when the Pollock case was decided, its members were as magnificently equipped in learning and ability as any who have sat in that august tribunal before or since. It is apparent from the reading of this case and the opinion upon the rehearing, that they gave to the question more careful consideration by far than was ever given to it in any preceding case. If the effect of their decision is to set aside the prior decisions of the court for a hundred years, we may be sure that those judges did not do that for light or trivial reasons. The rule of stare decisis was invoked there; indeed it was made the basis of at least one dissenting opinion, that of Mr. Justice Brown; but even if we concede its application, the reasons for a contrary judgment were so imperious and controlling that a majority of the court refused to be governed by the rule. The majority decision in the Pollock case is condemned on the ground that it is a dangerous infraction of the rule of stare decisis, and yet those who make this complaint in the same breath take the astounding position that the Pollock case which is now stare decisis upon that question in its turn shall be reviewed, discredited, and reversed.

Mr. DEPEW obtained the floor.

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

The PRESIDING OFFICER (Mr. CUMMINS in the chair). The Secretary will call the roll.

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

Bacon	Curtis	Johnson, N. Dak.	Piles
Bailey	Depew	Johnston, Ala.	Rayner
Bankhead	Dick	Jones	Richardson
Beveridge	Dillingham	Kean	Root
Borah	Dolliver	La Follette	Scott
Brandegee	du Pont	Lodge	Simmons
Bristow	Elkins	McCumber	Smith, Md.
Brown	Fletcher	McLaurin	Smith, Mich.
Bulkeley	Flint	Martin	Smith, S. C.
Burkett	Foster	Money	Smoot
Burrows	Frazier	Nelson	Stephenson
Burton	Frye	Newlands	Sutherland
Carter	Gallinger	Nixon	Taylor
Chamberlain	Gamble	Oliver	Tillman
Clark, Wyo.	Gore	Overman	Warren
Clay	Guggenheim	Page	Wetmore
Crane	Hale	Paynter	
Cullom	Heyburn	Penrose	
Cummins	Hughes	Perkins	

The VICE-PRESIDENT. Seventy-three Senators have answered to their names. A quorum of the Senate is present.

Mr. DEPEW. Mr. President, I doubt if it is possible to shed much new light upon the question of the tariff. It has been the subject of legislation for centuries. It has been the cause of many great wars and internal revolutions. The present discussion has wandered far afield. The experience which Senators have had with the wants of their constituents and the requirements of their States has developed the almost insurmountable

difficulties which are in the way of the preparation of a fair and just bill. New York is the largest manufacturing State, and there is hardly an industry in the 2,000 items in this measure which does not directly or indirectly affect our citizens.

One result of this discussion has been to rescue the fame and rehabilitate the reputation of the lamented General Hancock. Little things, single remarks, make and mar the careers of statesmen. General Scott's request that he might delay his letter accepting the nomination for the Presidency until he could take a hasty plate of soup closed his campaign. General Hancock's answer to the committee of notification that the tariff was a local issue in his State of Pennsylvania laughed him out of the canvass. In the cloud of generals who were famous in the civil war he is nearly forgotten. I remember as if it was yesterday the telegram which General McClellan sent to his wife after one of the great battles of the civil war, "Hancock was superb to-day." All that is forgotten by the crowding events of advancing time. But now it is brought home to every Senator and to the whole country that General Hancock uttered a pregnant truth, and his fame is likely to be embalmed in his phrase "The tariff is a local issue" everywhere. It is breaking party lines in States where its productive energies are producing prosperity. The favorite method now of attacking the protective principle is to proclaim loyalty to the principle of protection and oppose its application.

The wool schedule gave to the Senate and the country one of the most entertaining addresses ever delivered upon this floor by the senior Senator from Iowa [Mr. DOLLIVER]. We are apt to think that wool is American as a political question. But wool created and then destroyed Florence and Flanders; impoverished and then enriched Great Britain. Without going into a general tariff discussion, the history of wool is illuminating. In the middle ages the people of civilized countries were clothed in woolen garments. Wool and its manufactured products were the commerce of the world. England grew the wool and sold it to Flanders, where it was turned into the finished product. England did not have the machinery nor could she procure from the Papal states alum, a substance absolutely necessary in those days for the finishing of cloth. But in the reign of Elizabeth alum was found in sufficient quantities in England, and then began the tariff legislation which we have inherited. England placed an export duty upon wool which made it impossible for continental nations to compete with her manufactures. She placed a tariff duty which shut them out of her market.

When Lancashire, the greatest cotton-manufacturing center in the world, demonstrated in a small way that it could make cotton goods, Great Britain prohibited the importation of cotton goods from India into England. Then the great English inventors, Arkwright and Hargreaves, gave to their country the perfected spinning jenny, and Great Britain controlled the cotton market of the world. Her own markets were closed to the foreigner, and the English statesmen saw that this little island, with its growing population which had come from manufactures, must find foreign trade. The greatest of English statesmen, Pitt, saw that the philosophers whose ideas created the French Revolution were controlling the policy of France. Knowing that Great Britain, because of her cheap coal and because of her monopoly of inventions, could make woolen and cotton goods cheaper than France, he proposed to the idealists that there should be free trade. The proposition was hailed by the disciples of Rousseau and Quesnay as an approach to the millennium. In a few years every factory in France was closed. There have been many causes assigned for the French Revolution. Undoubtedly tyranny and bad government had much to do with it, but the French Revolution began in Paris, which was the manufacturing center of France, and then spread to the other manufacturing cities. It was the starving unemployed who had been driven from all occupations by the genius of the British statesman and the folly of their philosophers which more than anything else precipitated and prolonged the French Revolution. Then came the struggle by the Jacobins to support the people from the plunder of the nobility and the cutting off of their heads; then the plunder of the rich business men in every branch; then the plunder of the farmers, because they would not accept the worthless paper money.

A million lives were sacrificed by the French terror, of whom only 2,000 belonged to the noble class and the rest to the productives who still had a little property in their farms or in their small occupations and against whom was directed the rage of the unemployed who had got possession of the Government. Then, when the revolutionists had guillotined each other, Napoleon came to the front. His first idea was that France could be supported by the plunder of the Continent, but that great original genius, when in supreme power, soon saw his mistake and built a tariff wall not only around France, but around the Continent, and the reviving industries of his country provided the means for his wars and recruited, clothed, and fed his armies.

Two men have had dominating influence upon American industries, both men of extraordinary ability, and one a commanding genius of all time. They were Alexander Hamilton and Robert J. Walker. Hamilton was one of those marvelous intelligences which can be accounted for by no rule, who have no predecessors or successors. We know little or nothing of him before he landed in New York at 17. He asked Princeton if she would graduate him if he could do the four years in two, and that sturdy old president, Doctor Witherspoon, said: "No; the curriculum must be gone through." Kings College, now Columbia, in New York, accepted the proposition. Before he was 20 he had so stated in a pamphlet the American argument that its authorship was ascribed to the greatest minds of the revolution. He proposed to Morris, the banker of the revolution, a scheme for refunding the continental currency which would have saved the national credit, and which was substantially adopted during and after the civil war. He organized the customs and the internal revenue of the country upon a basis which continues with few modifications to this day. He found our country purely agricultural. He knew that Great Britain had prohibited manufacturing in the colonies and the entrance into the market of products of any other lands except the mother country. He grasped as no other man of his time did the boundless natural resources of the United States. He saw that if we remained purely agricultural we must be a country of limited populations, widely distributed, and so dependent upon the rest of the world that we never could become a prosperous, powerful, and productive people. He was the first to recognize the fact that there is no limit of growth to a country of sufficient area if it possesses both the raw material and productive power. His report upon manufactures made as Secretary of the Treasury to the Congress is the foundation upon which we have builded the greatest industrial nation the world has ever known.

Robert J. Walker lived and was educated in a part of our country whose almost sole product was cotton. Its people manufactured nothing. They even relied upon outside territory for their food and clothes. The practical question with him was the cheapest products in clothing, food, machinery, and all the necessities of life for a people engaged in one form of agriculture. But it was more than that which created Robert J. Walker. If we read the speeches of the southern statesmen of his period, we find in them a wealth of learning in the classics of English literature and a complete absorption in the theories of Adam Smith. Many of them were educated in the best schools abroad. They had leisure for wide reading and refined culture at home, and they had no touch with or understanding of those thriving industrial communities which were inviting immigration, building cities, constructing railroads, and planting factories beside the water powers. He declared that the tariff should be levied for the purposes of revenue only, and he committed his party to the principle.

The ideas of Hamilton and of Walker have been struggling ever since for the conquest of the world. Hamilton is master of every State in our Union. No matter what plea may be entered as to the purpose for which protection is desired, the Senator who asks for it acknowledges at once the supremacy of Hamilton. Hamilton's policy has repaired the ravages of war. It has created in the States which were—and some still are—dominated by the Walker view new industries, which are developing local and national wealth and supporting large populations. The ideas of Hamilton have crossed the oceans; they have captured every country in the world except Great Britain; they have become the controlling policy in every one of the British colonies. The fight to the death is now going on in the last citadel of Adam Smith, Richard Cobden, and Robert J. Walker—the British Isles. It is a contest which I believe must result there, as everywhere else, in the triumph of the ideas of Alexander Hamilton.

Great Britain's control of the wool and cotton industries now is shared with protective countries whose markets she formerly monopolized. She is fighting with them a losing battle in Asiatic markets, where all the world competes. Her great rival, Germany, with as good machinery and cheaper labor and an equal command of the raw materials, is entering the English market under that well-known economic rule by which manufacturers of every country, in order to keep their mills in operation and their men employed, sell the surplus practically at cost in other countries. This process is filling the English market and driving one industry after another to the wall. Great Britain is grasping slowly the economic fact that anything pro-

duced in another country and sold within her territory puts out of employment and reduces to public charity exactly the number of men in England who are employed in producing this article in Germany.

The unemployed wandering idly about the streets looking for any stray job, however poor it may be, to satisfy the pangs of hunger, see in the shop windows everywhere the things upon which they at one time worked and could make a good living for themselves and families, marked "Made in Germany." It is stated that there are to-day in Great Britain 7,000,000 of unemployed. How to care for them or furnish them support is the most anxious problem of the British statesmen. John Morley has stated in one of his speeches that at one time in the course of their lives 45 per cent of the workingmen of Great Britain who have reached 60 years of age have been in the pauper class.

Great Britain made a tentative experiment recently in protection, though disavowing any such intention. A law was passed affecting patents. Under it the goods manufactured under a foreign patent must, to enjoy the advantages of the patent, be made in Great Britain, otherwise the patent was open for use to British subjects. Before that was in operation two years a hundred and thirty millions of continental capital had been invested in England and tens of thousands of the unemployed found again remunerative labor and wages. If England to-day had a tariff which would equalize the cost of production with Germany, Belgium, France, and Holland, including fair wages to her people, she might again become not the workshop of the world, as she once was, but very much nearer to it than she is to-day. Anyway, she could hold her own.

The eloquent and learned speeches which have been delivered here have developed a new kind of protection. The new school believe in the principle, but oppose its application. Our southern friends reject the principle of protection, but believe in its application to their own products. I believe if a committee were appointed, composed exclusively of the Senators on our side who object most violently to this bill, that they would have more difficulty in agreeing with one another than it is understood our Democratic Members had when they caucused the measure.

Human nature is fallible and so is human testimony. When a committee whose ability, experience, industry, and integrity are cordially admitted on all sides, after months of examinations which have included the testimony of both sides, the manufacturer and the importer, and have had constantly at their sessions and to aid in the review of this testimony the trained experts of the Treasury Department, the General Appraiser's Office, and the custom-house, make a report, I hesitate to place my judgment against theirs, when theirs is unanimous, upon subjects on which superficial inquiry and a limited amount of information only are possible to any Senator. I have found that I can do better after hearing the statements of both sides to ascertain if I have gained any information which was not available to the committee in arriving at their conclusions. I know it is possible in the many subdivisions of the different schedules for some article to have had its relations to the markets so changed by invention or discovery that a new light has come not visible before even to the parties most interested; but I have found in all such cases on a fair presentation of the matter if there was anything new the committee had an open mind for a review. There is scarcely an article in these schedules upon which I have not received conflicting testimony from the parties interested, upon which it would be possible to base an argument on either side. But it would be an enormous and an impossible task for any Senator to constitute himself a court of appeal and claim that he had greater sources of information upon which to base a judgment than it was possible during all these months for our committee to obtain. They had the benefit of the 13 volumes of testimony taken by the Ways and Means Committee of the House as well as their own.

The Senators who have criticised so severely the Finance Committee are especially severe upon its chairman, the distinguished Senator from Rhode Island. Some of these Senators complain that the Senate is not informed. Their argument amounts to this: That if the Senate would sit as a committee of the whole month after month and listen to and question the witnesses and sift the testimony, which work has been so faithfully, ably, and laboriously done by the Finance Committee, they would understand the bill. Such a system would produce chaos from which eternity could not evolve order. Some Senators claim that they can not vote intelligently upon these 2,000 schedules unless the chairman of the committee, the Senator from Rhode Island, will furnish a detailed statement with each item of the cost in the country or countries where it was produced and the cost in the United States. Would these critical Senators read the volumes which contained such information after a couple of years had been spent in gathering it? On the contrary, I fear that, still claiming they had no access to information upon which they could intelligently vote, they would demand of this most amiable, as well as most capable, of chairmen, who has so superbly done the work which we elected him to do for us, the data upon which he had furnished these figures and then denounce the data as both insufficient and incorrect.

Nothing so amazes me as the frequent statement of certain Senators that in some way they are deprived of their rights on this floor by the chairman of the Finance Committee, and insisting they will have them, as if anybody stood in their way. There are 91 Members of this body; we are all equals. We have practically no rules. Any Senator can talk when he likes, on any subject he chooses, and as long as he is able. We select our own committees in our own way by vote, and the Committee on Finance, which is so much criticised, received on its appointment the unanimous vote of the Senate. The intelligence of the entire Senate is never so seriously questioned as when such statements are made.

The Senator from Minnesota [Mr. CLAPP], in a very eloquent and attractive address, feared that the Republican party was rushing rapidly and blindly upon the rocks because the pledge of the party and the expectation of the people were that there should be a general revision downward. In my judgment the pledge of the party and the expectation of the people are that we should do exact justice in this matter, upon every schedule in the bill, and upon every one of the 2,000 items which are affected. I believe that the practice of protection, which has made our country what it is and our people what they are, has as firm a hold upon the electorate as ever. I believe that it is thoroughly understood and assented to by the masses that we should so arrange our tariff policy as to constantly enlarge the area of production and employment within our own borders, and do it by imposing a duty which will equalize the cost of production, with due regard to the higher wage which we expect our artisans to have over those which prevail in countries in competition with us.

We have lost sight in this debate of changes in the cost of production; that from 1860 to 1909 wages have more than doubled; that they have advanced 25 per cent since the Dingley bill was enacted; that the hours of labor have been reduced from a third to a quarter; and that, inasmuch as in every production labor is from 60 to 90 per cent of the cost, we have thus increased our cost from 25 to 50 per cent. We have lost sight of the fact that this beneficent but almost revolutionary movement for the benefit of the workers has not advanced in anything like the same proportion in European countries.

Our labor leaders recognize that one of the acute difficulties which meet them is that the immigrants who come here are glad at first to accept from a quarter to a third less in wages than we are accustomed to. It is only the labor unions and the contract-labor laws against immigration which prevent us being swamped in this respect. Congestion of population always results in lower wages and longer hours. When the line is closely drawn between employment and starvation, because there are two, or three, or four, or ten hungry for a single job, there is a loss of independence and individuality, and the doctrine of self-preservation compels conditions which are abhorrent to us. The first principle of that American citizenship upon which must rest our future, as has rested our past, is adequate compensation for the American standard of living and the comforts of the American home. Immigrants, when they first come here and receive our wages on a scale to which they have never been accustomed, are apt to live as they did in their own country, with the result that they save 60 per cent, and in a few years are able to return to the land of their birth as capitalists. That process is going on constantly with us to the extent of hundreds of thousands a year. It is not healthy for our body politic to have that kind of citizenship.

The telegraph, the cable, the flying steamers, have made practically all the world one. No country to-day of the highly organized industrial nations has any superiority over another in its machinery. The inventions of one land are quickly copied and duplicated in another. The German chemists, who are the most expert and patient workers in the world, have produced some 400 different articles out of coal tar. They have enormously enlarged the pharmacopœia of all nations. The formulas are soon understood and other nations can use them. We have the raw material. To the extent to which we can duplicate we have that much more employment among ourselves. To the extent that we purchase on the other side we lose just that amount of employment in our own country. If all the world was alike, if the cost of production was the same everywhere, if wages and hours were the same in all nations and among all

races, then we could have the same conditions that exist between our own States.

The city of Dundee in Scotland had a very large industry in the making from jute of cotton bagging. It was a monopoly. They made the bagging for the cotton not only for the United States, but for all the other countries. Our manufacturers found that with a sufficient tariff this bagging could be successfully produced in this country. It led to the creation in different States of some 300 mills with the employment of many thousands of people. The tariff did not destroy the Dundee factories, because it was not high enough to prevent competition, and the Dundee factories still had other fields than the United States for their operation. But mills were established in India where labor was 30 cents a day, against 75 in Dundee and $1.50 to $2 in the United States. Great Britain being a free-trade country the Dundee millers were bankrupted, and a large population added to the already increasing numbers of the unemployed. Now we are met with a demand to wipe out our own mills and throw out of employment our own people in order to let in this cheap Indian production, with which it is impossible to compete except by tariff protection. Who would be benefited? There are no shrewder manufacturers and merchants in the world than the English, and they control these factories and are already in our market. When they have a monopoly the cost to the cotton farmer will be raised far beyond what he pays to-day and he will be utterly helpless. You may say he could escape that by again renewing the tariff, but it takes hundreds of thousands of dollars to organize a mill, and capital after such an experience would never enter upon the uncertain sea of hysterical legislation.

Eighty per cent of the petroleum in this country is produced from wells owned by 500,000 farmers who are independent producers. It is purchased by the Standard Oil Company, which is a refining corporation and not an oil-producing one, and by a few independent refiners who are still in business. There has been discovered in Mexico, on the coast, an exhaustless field of petroleum. It can be piped to the tank steamers of the Standard Oil Company on the Gulf at 20 per cent of the cost which carries the oil from the Oklahoma field, or New York, or Illinois, or West Virginia. The bogy of the Standard Oil Company creates a sentiment dangerous to the politician against giving any protection to the American farmer who produces oil for fear it might help the Standard Oil Company, when it is as plain as two and two make four that the Standard Oil Company would be the sole beneficiary at the expense of the American independent producers of the free trade in oil between Mexico and the United States.

I might cite a hundred such instances where the changing conditions of production and of cost, as governed by wages, by hours, and by invention, make the rule of a revision downward simply the adoption of practically free trade.

What has been accomplished by protection is happily instanced in our State of New York among many industries. Hats have built up a thriving city at Yonkers and are building other industrial communities in other parts of the State. The protection for men's gloves has created a community of 30,000 people and reduced the price from two and one-half to three dollars, as it was when England had the monopoly, to a dollar and a dollar and a half. Now, the great English manufacturers are moving to Gloversville. An equivalent protection for women's gloves would lead in two years to the employment of 50,000 men to the destruction of the foreign monopoly and would give to our own people an article much cheaper and better than they have now. The same results have followed in a thriving community of 30,000 in the finishing of lumber at Tonawanda and corresponding results at Ogdensburg and other places. I might enlarge this list almost indefinitely.

No country can show figures like these: That since Republican protection became a fixed policy the wealth of the United States has increased six times, our foreign trade three times, the wages in our factories three times, our railroad mileage six times, our foreign commerce three times, and the value of our manufactured products seven times, our exports from 1897 to 1909 300 per cent. Except for these conditions we never could have had our railroads carrying populations to the farms and productive possibilities carrying the factory near to the raw material; we never could have had manufacturing centers which brought the markets to the farmer's door; we never could have had the consumers, whose numbers and whose prosperity give the farmer his opportunity, the manufacturer his opportunity, the merchant his opportunity, the railroad its opportunity, and the steamboat and the canal their opportunities.

There never was greater nonsense than this attempt to establish irreconcilable antagonism between producers and consumers. They are constantly interchangeable. Our country buys one-third of the productions of the earth. Why? Because we have the money. Why the money? Because we have the employment, and with the employment the wages, and with the wages the acquisition of the habits which make the luxuries of to-day the necessities of to-morrow.

My friend, the senior Senator from Iowa, in one of the ablest and most eloquent addresses delivered in this Chamber, has attacked the wool and cotton schedules. That speech has been very widely quoted, more, I think, than any which has been made here. A can of dynamite intelligently exploded will get more headlines and editorial comment than all the railroad trains of the country carrying the products of the farmer to the factories and the market, and of the markets of the country in distributing the results of their sales back to the farms and the factories. Automatic prosperity is like the air we breathe—it has to be questioned to interest anybody.

A close examination of the picturesque presentation of my distinguished friend reduces his criticism more to the manner of administration than to the subject-matter of the law. No tariff act could be prepared covering, as we are attempting to do now, the whole field of protective legislation without having paragraphs which are highly technical. Wool at one time was used only for clothes; now the subdivisions in which it is used are almost infinite. The difficulty of compressing within the law language which will not permit the shrewd and dishonest to escape its protection is exceedingly difficult.

The moment a tariff law is enacted tariff lawyers, importers, and experts are at work to find out how its provisions may be evaded by some change in manufacture or some device in the mixture of other articles which will enable what was intended to be placed under the highest duty to come in under the lowest. That is the most subtle and ingenious method of smuggling. No one can have read over even cursorily this testimony or listened to the people from his own State who are engaged in these manufactures without learning to what extent this species of smuggling is carried on. It is right here that the customs expert must be both able and honest. A deficiency in this respect is the opportunity of the importer and the injury of the domestic manufacturer and home labor.

The appraiser, the customs officer, the treasury official on a salary of five or six thousand dollars a year is thus pitted against the $50,000 lawyer and the $25,000 expert in the service of the importer. It is a magnificent tribute to the civil service of our Government that it has officers to do this work so ably and honestly. There are men in these departments who have ability sufficient to be at the head of great business enterprises or to be Cabinet officers who are proud to serve their country in these minor positions with an intelligence and devotion deserving of the highest commendation.

There is nothing which gives me more pain than to have my idols broken. I wish that those professors of destructive criticism who have murdered William Tell and Arnold Winkelried and almost destroyed our faith in George Washington and Napoleon Bonaparte had never lived. The Bacon cryptograph which demonstrates that there never was a Shakespeare does not appeal to me. Much of the argument made by professing protectionists has been to throw from their pedestals the statues of William Allison, William McKinley, and Governor Dingley. These three eminent creators and advocates of tariff bills are charged to have known little about what they were doing. No one charges them with dishonesty, either in thought or purpose, but the general impression left by the criticisms upon them is that their countrymen were never more mistaken than in the estimate which they have of them that they were the most distinguished as well as the best informed of protectionists. We must believe, if we are to credit the mistakes and failures which they are alleged to have made in 1892 and 1897, that no statesmen ever occupied permanent positions in either House who were so easily fooled. My faith in them is unimpaired.

There is nothing new under the sun, and the oldest of free-trade cries is the one of revision downward. In all the speeches that have been made here, so far as I can recall them, the only open and direct attack upon the protective system as a policy or a system has been from the distinguished Senator from Georgia [Mr. BACON], but attacks have, nevertheless, been effective and deadly, and have produced their impression upon the country because they came from our own household, from those who proclaim their undying faith in the principle, but claim that in practice it leads to nearly all the disastrous results which are charged against it by its open enemies. Congressman Morrison presented the only true rule if we are to adopt a revision downward. He proposed a horizontal reduction in the whole schedule of 25 per cent. To have accepted his plea would have been to admit his contention that there should be no such

thing as a duty upon any article which should equalize the cost of production between this and other countries with due regard to the wages of American labor.

I was a delegate to the national convention at Chicago, and mingled as much as anyone with the representatives of the Republican party. I was one of the vice-presidents. At dinners given to favorite sons I frescoed and covered with flowers of rhetoric their candidates, and while admiring friends prophesied his success, we all, except him, knew that he was in the class of those "mentioned." I spoke at public gatherings and in the halls of hotels for the candidate I wanted, and he, happily, as Vice-President, is the presiding officer of the Senate. I was up as late as the youngest and as early as the oldest member of the convention. The absorbing question was not revision of the tariff, but the hope that Roosevelt would accept and the fear that he might take a renomination. The subject uppermost in all minds was not the tariff, but whether anarchy or sanity would prevail in the resolutions. When sanity won, there were the same progressive predictions of disasters, which were answered at the election by the largest of our popular majorities for Taft and the platform. There was no discussion of, public or private, and no committals to, public or private, any method of the revision of the tariff. There was an understanding, in which all Republicans are agreed, that the constantly changing conditions of production and invention and in cost in different countries not only justified but demanded an examination of the tariff schdules which have been in existence for ten years, with a view to doing equal and exact justice to every one of these items within protective principles which have been inserted in the Republican platform ever since the formation of the party.

There has been brought to my attention by constituents of mine changes which have taken place within the last few years which entirely alter the relations of the American manufacturer to particular articles. There are many industries which have grown up in this country since the Dingley tariff, in which are invested many millions of dollars and employment given to tens of thousands of people. I refer now specially to industries where the raw material has come from India, South America, or the East. The change has come about by the English starting factories in the countries where the raw material is produced and where labor is nominal compared with ours. It is easy to name several industries which were prosperous at one time which are now struggling to live because the manufactured article comes into this country either under no duty, because it was not produced anywhere else at one time, or under a duty which is now wholly inadequate because the English manufacturer in India, South America, and the East has the raw material at his door; has his wages at one-quarter those paid in the United States, and much less when you consider the length of hours; with whom transportation is a negligible quantity; and who, unless the revision is upward instead of downward, will command the American market, drive our manufacturers out of business, and then, with his monopoly, make his own prices to us, his helpless victims. Undoubtedly there are other articles where the perfection of American machinery, the command of the raw material, the opportunities for transportation, and the elements of cost, including higher wages, justify a reduction to a point where the tariff shall not be prohibitive. Competition and not prohibition is the real object of the principle for which we are contending.

The newspapers tell us that France is on the eve of a revolution and that it originates, as always, in Paris. The remark was once made by a distinguished observer that, to maintain peace and order, Paris had to be shot over about once every thirty years. I do not know that there is any truth in this broad generalization, because broad generalizations are seldom true, but it is true, and that has been our history, that it requires a lesson in modified free trade to bring our people to a full realization of its effects. The lambs in their gambols frisked us fifteen years ago into a wool schedule which reduced the flocks from useful producers of national wealth to expensive ornaments on the plains and on the hillsides. The lambs of the present day have forgotten their experience, and it may require 11-cent wool to smash, as it did twelve years ago, the rainbows and dreams of the college idealists and the political theorist.

It has been charged here that the United States Steel Corporation made last year $9 a ton profit in excess of any legitimate return to which they were entitled. As the duty on their product was $7, if that statement is true, it is evident, after taking the entire duty off, they would still have made $2 more than a legitimate return upon their investment. There must be some error in the calculation which would justify the remark quoted by my eloquent friend from Iowa, that the chief practical use of statistics was to keep the other fellow from lying to you. Out of the Carlyle generalization has grown an American one that figures will not lie unless a liar makes the figures. No one charges and no one believes that there has been an intentional misrepresentation of the figures which have been presented by any Senator on any of the schedules in these debates, but if the profits of the United States Steel Corporation had been so preposterous, then the independent companies which are as well situated, without any water in their capital, with the latest machinery and the best of management, would have been able to make large money.

Even if it is true that the United States Steel Corporation made $9 in excess of any fair and legitimate return, even if it is true that the United States Steel Corporation can make iron $2 a ton cheaper than the independent companies, there would still have been for the independent companies $7 of profit in addition to a legitimate return upon their capital. As a matter of fact, they got no return at all.

The question has been raised why we should keep a tariff upon steel to protect independent producers, who have 50 per cent of the business and employment, at the expense of the American public. Why not, in order to reach the United States Steel Corporation, take the tariff all off and let the independent companies be absorbed and the whole iron and steel business of the country placed in one great monopoly? No one would dare argue or urge that, because the sufferers would be the consumers on the one side and the wage-earners on the other, with no possibility of relief in sight. Then why does not the United States Steel Corporation, having the power, as it apparently has, to produce more cheaply, crush its independent rivals? The American business man above all other qualities has good sense. With equal opportunities he fears no rivals. With too great opportunities he fears public opinion and legislation. To crush out the independent steel companies it would be necessary for the United States Steel Corporation to forego dividends upon its common and preferred stock and carry on its business on a scale of meager profits for a number of years, while by dividing and leaving the market open to fair and reasonable competition, with the independent companies controlling one-half of the output and the business, it is enabled to earn profits which keep its works up to the standard, which give value to its bonds and its preferred stock, and which now and then permit a return upon the common. If it had a monopoly and the American market was thrown open to competition, the laws of trade would lead to an understanding with those gigantic trusts which control the markets of Great Britain and of the Continent, especially Germany, to whose tyranny and operations the lamp post would not be an effective remedy. You can hang a man, not a corporation. You can hang a man upon a basis which would bring about the terrors of the French Revolution and the disruption of society, but the United States Steel Corporation is owned by 100,000 stockholders, of whom 27,500 are workers in the mines, the mills, and the furnaces, and on the railroads, and the steamboats of the corporation.

My eloquent friend from Georgia, in his brilliant defense of the South, claimed that the prosperity which has created a new South would have come without any protective tariff, and that the protection which, in our judgment, has made the new South, has created a class who live by placing tax burdens upon their neighbors who owe them nothing and receive no benefits whatever from their existence. Now let us see. At the close of the war the South, as he says, was purely agricultural, and all its property destroyed but land, and, as the Senator from Massachusetts has so ably demonstrated, it was that which presented such a frightful handicap during the civil war upon as gallant, brave, and resourceful a people as ever existed.

Soon after the civil war protection enabled capitalists to take advantage in the South of the principle that where the raw material and the manufactory are side by side there is prosperity for both. Now, see this remarkable result: The manufactured products of the South in 1880 were four hundred and fifty millions; in 1900 one billion four hundred and fifty millions; in 1908 $1,908,000,000. In view of these figures, where is the claim that the South is still an agricultural country and dependent entirely upon agriculture for its living? There is not a person, I believe, interested in the manufacturing industries of the South, who intelligently understands them, who would assent to-day to the repeal of the tariff upon cotton products and iron products because protection is an oppression upon their farming neighbors.

Now, my friend the Senator from Georgia gave a very illuminating exposition, as he always does, the other day upon conditions in the South in reference to the principle of protection. He is the only real, honest free trader who has spoken here, and I love his courage.

Mr. BACON. I will accept a part of it, but not the other.

Mr. DEPEW. The other means, I think, that there are others.

Mr. BACON. No. I am very much obliged to the Senator for connecting my name with the very honorable epithet of honest, but I am not such a doctrinaire as to be a free trader. I believe in a very liberal tariff, but I do not believe in one for the protection of any particular business at the expense of everybody else.

Mr. DEPEW. That means that you are in favor of a tariff for revenue only?

Mr. BACON. The Senator has expressed it with absolute accuracy.

Mr. DEPEW. And that is free trade?

Mr. BACON. No; it is not. It has no relation to free trade. They are as far awide as the poles.

Mr. DEPEW. The relationship is so near that it would take a genealogist to describe the difference.

Now, in that admirable speech of his he defends the South. The South needs no defense. In the North to-day, wherever you may find the northern man of to-day or the northern woman of to-day, there is nothing but fraternal feeling; and, more than that, admiration for the courage and the sacrifice of the South during the civil war for their ideals, under conditions which to any other people than ours would have been absolutely hopeless.

As the Senator says, the South was handicapped so that she could not make her arms, she could not clothe her people, she could not do any of the things necessary for her, except as she got them from the outside.

Mr. BACON. Mr. President, the honorable Senator will pardon me, but I said no such thing.

Mr. DEPEW. Substantially.

Mr. BACON. I did not mean to even imply any such thing. On the contrary, I said that the resources were ample, but that the odds were 5 to 1 against the South, and that the resources there were in the course of a merciless and bitter war absolutely destroyed.

Mr. DEPEW. My memory is at fault. That was the statement of the Senator from Massachusetts. Now we have come to the point I wished to make just now. All her industries were destroyed, all her property of a personal kind was destroyed, her houses were burned, her stock was gone, and she had the bare land to start anew on.

Now, accepting that, suppose there had been no protection, would capitalists have been found in the South for industry, especially for the cotton and iron industry?

Mr. BACON. What is the Senator's question?

Mr. DEPEW. Suppose there had been no protection upon cotton and iron as protection, would capitalists have been found in the South or elsewhere for the cotton and iron industry?

Mr. BACON. Mr. President, if the Senator will permit me to reply, there certainly has been no protection as to the production of cotton.

Mr. DEPEW. I mean the manufacture of cotton.

Mr. BACON. And cotton has not been produced——

Mr. DEPEW. I mean the manufacture of cotton and iron.

Mr. BACON. Well, Mr. President, the manufacture of cotton and iron in the South has grown up after the prosperity had been restored there, but their agricultural products, far from having any assistance from the protective tariff, bore an onerous and grievous burden all the time that they were thus restoring prosperity. The manufactures of the South have been the result of the wealth which has been dug out of the ground by the agriculturists of the South, and without any aid either from the protective tariff or, generally speaking, from any other source outside of their own energy and their own perseverance and labor.

Mr. DEPEW. The manufactures of the South in 1880 were $450,000,000; in 1900, $1,450,000,000; and in 1908, $2,000,000,000, in round numbers.

Mr. BACON. And, Mr. President, all that magnificent growth and development is the surplus profit which has been piled up by the southern people in the prosecution of their agricultural interests at a time when they have borne a most tremendous tax to the manufacturing producer under the protective tariff, when they themselves were receiving no reciprocal benefits from it.

Mr. DEPEW. Now, if that view of the Senator is correct, and if his view is correct that no capital has come in from outside sources, and these manufacturing developments have been wholly by the profits of agriculture in the South, then the profits of agriculture in the South must be beyond anything ever known in agricultural production and in surplus income anywhere in the world. For instance, from 1865 to 1880, when the South is acknowledged to have had no personal property, there was $250,000,000 capital put into manufactures.

Mr. BACON. Mr. President, what is $250,000,000 to a section that makes $800,000,000 worth of cotton and its by-products a year? Of course, when I speak of the agricultural industry, mercantile and other kindred industries grow up with it, and there are reciprocal benefits between those who produce the cotton and those who furnish other things upon which the men who produce the cotton must live.

As I have said, it has been the result of the agricultural industry, and, of course, other industries have accompanied it, but they have been the industries of our own people. If the Senator will figure a little, and not despise figures, as he indicated just now he would be prone to do, he will find that the cotton crop of the South has not only enriched the South and that out of its profits have grown these immense industries of other kinds, manufacturing included, but he will find if he will examine the balance sheets that but for that cotton and but for that agricultural profit which has been made in spite of the protective tariff and not through any aid of it, the balance of trade would have been frequently against the people of the United States.

Mr. President, the cotton crop sends out of this country something like five hundred million dollars a year which is the equivalent of gold, and it brings back into this country either actual gold or keeps gold from going out of the country by furnishing bills of lading, which stand for gold.

Mr. ALDRICH. Will the Senator permit me to ask him a question?

Mr. BACON. With pleasure.

Mr. ALDRICH. What is it that makes the marketing of that great cotton crop of the South possible?

Mr. BACON. The world's demand for it.

Mr. ALDRICH. It is the industrial prosperity of the world, and the industrial prosperity of the United States is the one important and controlling factor in that prosperity.

Mr. BACON. Mr. President, the prosperity of the United States is not the factor which makes the demand of the world for cotton.

Mr. ALDRICH. If you will look at the statistics showing the consumption of cotton in the United States, you will find that we are the great and important factor in the consumption of the cotton of the South.

Mr. BACON. Between two-thirds and three-fourths of the cotton of the South is exported for the consumption of the world—of the whole world.

Mr. ALDRICH. Yes; but $73,000,000 of that comes back to the United States in the form of manufactured goods, every dollar's worth of which should be produced in the Southern States.

Mr. BACON. Oh, well, what may be done is no matter, but what is $73,000,000 compared with this $500,000,000 that comes back in gold for the raw product? If I am not intruding on the Senator from New York, I will say that of course I do not underrate the importance of manufacturing. I am proud of the manufactures of the South. The three States, North Carolina, South Carolina, and Georgia, manufacture, I will not say the most of, but much the larger portion of the cotton that is manufactured in the South, and my State is close up to the other two, South Carolina being in the lead and North Carolina following, and Georgia being behind them. In general manufacturing, the money product of Georgia leads the others. But, Mr. President, the manufacturing industry of the South has been the product and the result of the agricultural prosperity of the South, and it is not due to the protective tariff.

Mr. ALDRICH. Mr. President, one other question. Where would the price of cotton be to-day if you should lose the American market, the market of the producers of the United States, of the men who are employed in the mills and upon the farms of this country? Does the Senator think the cotton growing in the South would be prosperous if it were to depend entirely upon the foreign market?

Mr. BACON. For what?

Mr. ALDRICH. For purchasers.

Mr. SMITH of South Carolina. Let me ask one question. Will the chairman of the Finance Committee state where the price of cotton is fixed?

Mr. ALDRICH. The price of cotton is fixed in the markets of the world and it is fixed by the law of supply and demand. Of that demand the United States furnishes by far the most important portion.

Mr. BACON. Mr. President, if there was not a bale of cotton spun and woven in the United States there would still be the demand for it and there would be the same price of cotton. There has got to be a certain amount of manufactured cotton.

If it were not manufactured in this country, it would be manufactured in another. I am not speaking about the question whether it is to our advantage to have any manufactured here. I am speaking of the question whether the manufacture of cotton here increases the price of the staple of the raw cotton. The world requires more than 13,000,000 bales of cotton to clothe the people of the world in garments that are made out of cotton.

I will not trespass further on the time of the Senator from New York. It is unjust.

Mr. DEPEW. Mr. President, to continue one moment. As I said, from 1865 to 1880 the South got $250,000,000 of capital in manufactures, from 1880 to 1890 she found $650,000,000, from 1890 to 1900 she found $1,150,000,000, and from 1900 to 1908, $2,100,000,000. It would make the farmers of the world stand up and listen if told that that $2,100,000,000 came from the surplus profits of agriculture in the South, by which in that brief period people who had no money and no personal property to begin with could give to manufactures such fabulous capital.

Mr. GALLINGER. And, Mr. President——

The VICE-PRESIDENT. Will the Senator from New York yield to the Senator from New Hampshire?

Mr. DEPEW. Certainly.

Mr. GALLINGER. If we did not have a tariff on the finished product of cotton, and foreign countries were supplying us with cotton goods, as they did in the early days, what would become of the $2,100,000,000 now invested in cotton manufactures in the South?

Mr. DEPEW. I believe that if the protective principle was taken out of our legislation the cotton industries of the South would disappear.

Mr. GALLINGER. Of course they would.

Mr. DEPEW. And with that would come a paralysis of all industries of the South. I believe that if this protective principle was taken out of legislation, instead, as the Senator from Georgia believes, the agriculturists contributing from their surplus for the support of other people, they could do nothing for them, and the iron and coal industries of West Virginia and of Alabama and of Kentucky and of Tennessee would be destroyed.

Mr. BACON. If the Senator will pardon me, I wish to make a statement, in order that what I have said may not be misunderstood. When I speak of the manufacturing industries of the South being solely the representative of the profit upon the agricultural industry of the South, of course I do not mean that absolutely the clear profit made is the only money which has been invested in those industries. Of course the people of the South have utilized their land and other property, which has resulted from this agricultural prosperity as a basis for credit to secure money which they have invested in manufacturing enterprises. Money has been borrowed, but borrowing money by our own people upon satisfactory security is a very different thing from money being sent in by others for investment.

Mr. DEPEW. Repeal the protection upon cotton and you wipe out the manufacturers in North Carolina, South Carolina, and Georgia. Repeal the protection upon iron and the phenomenal progress and development of Alabama, Tennessee, and West Virginia will cease. I do not wish to differ with my friend from Georgia, but it is hard for me to understand, if his statement is correct, that the South found its own capital for these manufacturing enterprises, where a purely agricultural people, who had no personal property in 1865, got two hundred and fifty millions of capital in 1880, six hundred and fifty millions in 1890, one billion one hundred and fifty millions in 1900, and two billions one hundred millions in 1908 and that none of it was contributed from outside sources. The profits of cotton must be beyond precedent.

My friends from Florida, I think, state as fairly as any of the Senators on the Democratic side the Democratic position, which is, that they wish the idea of protection to be entirely eliminated from the schedules and that the tariff should be based upon the Walker doctrine of only sufficient revenue to yield the sum required for carrying on the Government. Upon that basis the junior Senator from Florida made a most eloquent appeal on behalf of a revenue upon pineapples, not for protection, but purely for revenue. Under the schedule proposed by Florida, the duty upon pineapples will be raised to 128 per cent. The distinguished Senator, in the course of his eloquent remarks, said the nerves of the human anatomy were gathered at the base of the spine, and an injury to the base of the spine attacking the whole nervous system led to the paralysis of the entire body. In the anatomy of our country, with the head in Maine, the base of the spine, as he believes, is Florida. Then, a failure to put 128 per cent, not for protection, but for revenue, upon pineapples would lead to national paralysis. We will take care of pineapples, but not on a revenue basis. Under the practice of protection, the national nervous system will be unimpaired.

New York is the largest manufacturing State and has the greatest variety in the product of her mills and her factories. I have been in receipt of at least a hundred letters a day for months and have had at least a thousand of my constituents here upon these questions. They have been the manufacturers and the employees, men and women, in the factories, and the farmers and the people of the localities in which these manufacturing industries are located. There is almost unanimity of sentiment that they are all consumers as well as all producers.

The 30,000,000 people who are in gainful pursuits, eliminating those who are single, and giving an average family to those who are married, make up nearly the entire population of the United States. In their living as well as in their prosperity they are absolutely dependent upon each other. None of them can live by himself and no occupation can exist by itself. It is the interdependence of the industries of our States which constitutes the strength of the American people and the wealth of the American Union. I was asked by Mr. McKinley in 1896 to make campaign speeches through the wheat and corn belts of the West. I found the farmers everywhere looking to free silver or any other panacea for relief from their condition. Wheat was 60 cents and corn 15 cents a bushel. Upon that they could not meet the interest upon their mortgages and they had difficulty in paying their taxes and there was no market for their horses and cattle. Why was there this condition among the farmers? We had a larger population in 1896 than we had in 1890 when they were prosperous. It was because the experiment of modified free trade had closed the factories and turned 3,000,000 wage-earners in possession of jobs to 3,000,000 out of a job and out of money. In other words, the farmer had lost his market because the consumer had lost his job.

We have had since 1897 phenomenal prosperity, employment, and wages, the farmers now getting a dollar and twenty-five cents a bushel for wheat and sixty cents for corn, and there is an open market for their stock. The farmers have paid off their mortgages, they have large surplus in the banks, and they are enjoying a prosperity such as has never been known by any agricultural people in the world and never known by our farmers before. It is because protection has created the market, has created the money maker, has created the money spender, and has demonstrated the interdependence between the farm and the factory and between the producer and the consumer. The rise in the cost of living is not in rents, clothes, boots and shoes, or railroad travel, but it is in food. To suppose that under these conditions the farmers of the country believe that under this principle they are burdened and oppressed in order to support their fellow-countrymen who are engaged in other pursuits and who, by being engaged in these remunerative pursuits, are their consumers and customers, is absurd.

I have admired the Senate all my life. The giants of the early period—the great triumvirate, Webster, Clay, and Calhoun—created the sentiment that this is the most august assembly in the world. But their speeches, wonderful in their literature, covering exhaustively a wide range of subjects, very platitudinous and lengthy, would not command a Senate of to-day. They are devoid of humor, and humor is necessary for a modern statesman. The thoughtful and thoroughly prepared speeches delivered during this session are worthy the best efforts of the greatest reputation of the Senate and more interesting.

An income tax has been urged by the Senators from Texas [Mr. BAILEY], Iowa [Mr. CUMMINS], and Idaho [Mr. BORAH]. It is advocated with great ability and a great array of precedents is cited to support their contention, and the answer of the Senator from Utah [Mr. SUTHERLAND], who has just taken his seat, has been most able and conclusive.

The whole question rests upon these words of the Constitution:

> Direct taxes are to be laid in such a manner that each State shall bear a proportion of the whole tax equal to its proportion of the whole population.

In rendering the opinion of the court in the Pollock case, Chief Justice Fuller summed up his conclusions as follows:

> Our conclusions may therefore be summed up as follows:
> First. We adhere to the opinion already announced that taxes on real estate, being indisputably direct taxes, taxes on the rents or income of real estate, are equally direct taxes.
> Second. We are of opinion that taxes on personal property or on the income of personal property are likewise direct taxes.
> Third. The tax imposed by sections 27 to 37, inclusive, of the act of 1894, so far as it falls on the income or real estate and of personal property, being a direct tax within the meaning of the Constitution, and therefore unconstitutional and void because not apportioned according to representation, all those sections, constituting one entire scheme of taxation, are necessarily invalid.

The object and aim then of these long speeches which are as able as any ever delivered at any time in this body are to have the Senate reverse the Supreme Court. It is better when a decision of the court of last resort is against the judgment of counsel to present to the public what the counsel would have said if he had been a judge than to adopt the remedy which Judge Grover, of our New York court of appeals, said was the only one left for the defeated attorneys and that was to go down to the tavern and curse the court. One Senator wishes distinctly to challenge the Supreme Court with the idea that the argument and decision in the Pollock case will be reversed. Another Senator wishes to have it introduced as a principle in our political economy, even if the tariff is to be reduced in order that there may not be an excess of income over expenditures.

Unless, as in war times, there is an absolute necessity for an income tax, it is the most direct possible attack upon the protective system. The only way in which the surplus revenues it would produce, and which are not now needed, could be taken care of, would be either a horizontal reduction of the tariff to bring the revenues down to the expenditures or else to enter upon a bacchanalian saturnalia of extravagance.

No one has been able to refute the conclusions of the Finance Committee that the bill under discussion will yield several millions in excess of expenditures. It is claimed that the income tax will produce between sixty and eighty millions of dollars annually. This would create a dangerous surplus and impose a burden for no other purpose than to establish a theory. A theory which will cost the taxpayers of the country, and, in the analysis of distribution, all the people, $80,000,000 which the Government does not need and for which it has no use, is the most expensive educational propaganda ever exploited. It has been suggested by its advocates that the tariff could be reduced to meet the excess caused by the income tax, but a reduction would lead to larger importations and greater revenues and at the same time take our American market from our own workers and give it to their foreign competitors. On the other hand, if a prohibitory tariff was adopted to decrease customs revenues, that would defeat the Republican doctrine of competition with protection and create monopolies.

There is one point which strikes me in the question as to whether the fathers in forming the Constitution intended that the clause providing that direct taxes should be apportioned among the States according to population referred only to revenue from land and not income from personal property. The Constitution was a compromise between the large and populous and the small and sparsely populated States. The small States demanded that in some way they should be protected. The device to protect them was that, regardless of their population, each State should have in the Senate practically two ambassadors with equal vote and equal power. There was as great disparity then as there is now between the States of large population and those of smaller population. The taxing power and its destructive possibilities were thoroughly understood, and the great States of New York, Pennsylvania, Virginia, and Georgia never intended that they should be outvoted and made to bear undue burdens because of the votes in the Senate of the smaller States. There are 15 States with 30 Senators in this body whose aggregate population differs only a few thousand from that of the single State of New York with two Senators. New York has one-seventh of the property of the country. It has one-twelfth of the population. Yet, under an income tax, it would pay 33 per cent of the burdens of the Government. It is absurd to suppose that with the States rights views that existed among the statesmen of the formative period and in the Constitutional Convention they ever intended that any system should prevail which would distribute so unequally the burdens of the Government among the various States.

There is another view which strikes me very forcibly and which has not been presented. The time has come to draw the line between the sources of revenue for the Federal Government and those which shall be left with the States. The Federal Government has unlimited opportunities for revenue through the customs and by internal-revenue taxation of almost limitless varieties and by other methods. The States must deal directly with their people. I was talking a few days since with the Hon. Edwin A. Merritt, chairman of the committee on ways and means of the lower house of the New York legislature, who expressed alarm at the inheritance and income taxes being absorbed by the Federal Government. The expenses of the States, with the public improvements which have become necessary by the extraordinary development of the last quarter of a century, are increasing in geometric ratio.

When I was chairman of the committee on ways and means in the lower house of the New York legislature, forty-six years ago, a tax levy of $8,000,000 would have led to a political revolution. The tax levy this year is thirty-seven millions, and it has increased from twenty-two to thirty-seven within the last decade. There was levied in the State of New York in 1907 by direct taxes—that is, city, village, county, and town—$180,942,341.27, and by indirect tax, $32,339,707.49, making a total of direct and indirect taxes of $213,282,048.76. A direct tax for State purposes has been abolished in our State. The State government is carried on by indirect taxation. This came because of the enormous burdens of local taxation, amounting to $181,000,000 a year. Our indirect taxation comes from taxes on corporations, organization of corporations, inheritances, transfers of stock, traffic in liquor, mortgages, and racing associations, according to the following table:

Tax on corporations	$8,581,223.44
Tax on organizations of corporations	391,423.18
Tax on inheritance	5,435,394.97
Tax on transfer of stock	5,575,986.64
Tax on traffic in liquor	9,697,504.24
Tax on mortgages	2,442,249.73
Tax on racing associations	215,925.29
Total	32,339,707.49

It is evident from this that, with the budget five millions more than the amount raised from these sources last year, the State must soon find other sources of revenue. Several States have already adopted an income tax. No one would advocate that there should be double taxation by the General Government and by the States, for the burden would be intolerable. It seems to me, therefore, that it is a fair claim on behalf of the States that this direct contact with their citizens by inheritance and income taxes should be left to their administration.

My colleague, Senator Root, clearly and ably answered the question the other day as to whether the property owners bore a substantial part of the burdens of the Government by proving what they paid and its percentage in the country as a whole. This New York tax levy, I think, is a close and up-to-date illustration of the same point from our own State. I know from personal experience with the estates for which I am counsel that real estate located in the best parts of New York City pay to-day double the taxes which they did eight years ago and without any increase in rents. The effect of this is that the income from real estate in New York is nearer 3 than 4 per cent.

The taxes on railroads in the State of New York are first upon their real estate, at full value, in the several towns, then a franchise tax, then a tax upon capital stock, then a tax upon bonded debt, gross earnings, and dividends. In the case of the New York railroads which pay dividends, this amounts to over 15 per cent of their net income. Of course this is an assessment upon the income of the stockholders to that amount.

The income and expenditures of the Government can be calculated for a series of years to come with almost mathematical certainty. I have heard no criticism which successfully controverts the conclusions of the Ways and Means Committee of the House and the Finance Committee of the Senate. Including pensions, 55 per cent of our total expenditure is on account of war. Expenditures are not likely to increase as fast as revenues, and there will necessarily come in the course of nature, now that forty-four years have passed since the close of the civil war, an annual decrease in pension appropriations. The civil expenditures are entirely in administrative control.

All European nations are burdened with gigantic national debts. These debts are the inheritances of great and little wars. Our national debt has been so reduced since the civil war that it is a negligible quantity compared with our resources. We should enlarge the national debt, not for war but for the most beneficent purposes of peace, if we are to enter upon a proper policy. We have begun on the right course in the Panama Canal by borrowing the money for its construction. It is proper that posterity should bear their proportion of a burden of which they are to be the principal beneficiaries. If we enter upon, as we will in the future, an intelligent and thoroughly prepared scheme of inland waterways, that also should be done by the issue of long-time bonds, for posterity again will be the beneficiaries and ought to bear their share of the burden.

We are all in receipt of letters and resolutions of commercial bodies in reference to the creation of a permanent tariff commission. The Senator from Indiana [Mr. BEVERIDGE] and the Senator from Nevada [Mr. NEWLANDS] have ably and eloquently presented the affirmative of that proposition. They base their argument largely upon the success of the Interstate Commerce Commission; but there is no analogy between the duties performed by and the obligations which rest on the Interstate Commerce Commission and those which would devolve on a permanent tariff body. It is the nature of a commission to seek to enlarge its powers and to exploit its beneficence. A permanent tariff commission, with a permanent lobby representing the 2,000 items in the tariff bill and backed by the influence of the

Mr. DIXON. I have been very much interested in the Senator's description of the apparent inconsistencies on this side of the Chamber, and I am frank enough to say, with some degree of truth, I think. But now, as the great expounder of Democratic doctrine, how does he at this time square his present declaration of a tariff for revenue on lumber with that provision of the Democratic national platform adopted at Denver last June, which declared:

We demand the immediate repeal of the tariff on wood pulp, print paper, lumber, timber, and logs, and that those articles be placed upon the free list?

Mr. BAILEY. I understand that, just as I do the declaration for free raw materials generally. I utterly refuse to be bound by it, because it is not a Democratic doctrine. I understand it was declared by a Democratic convention, but, Mr. President, yielding obedience, absolute and implicit obedience, to any declaration of principles which my party may make—and when I can not yield that obedience I will withdraw from membership in it—I yet refuse to allow a set of delegates, selected by the people absolutely without reference to a question of that kind, but selected almost solely with a view to the candidacies of men, to assemble in a convention and assume the function of legislators. The business of a national convention is to declare the principles of the party; and if they are not willing to trust the Senators and Representatives belonging to that party to apply those principles according to wise details, they ought to select some other Senators and Representatives, and they will have to do it in my case. That is my answer.

Mr. President, the Walker tariff act was the consummate wisdom of a Democratic Secretary of the Treasury, and perhaps the greatest Secretary of the Treasury the Democratic party ever contributed to the Nation; and I say that, admitting at the same time that I do not revere his memory. He sat in this Senate from my native State, whose people honored him as they would have honored one of their own flesh and blood, and yet, when that cruel conflict between the sections came, he bore the commission of the General Government to a foreign nation and libeled the people of Mississippi. I have not forgotten that, and I shall not forget it. But, holding his memory in abhorrence for that disloyal deed to the people who had loved, honored, and trusted him, I yet pay him the just and well-deserved compliment of saying that the Democratic party has never contributed to a cabinet created since the foundation of this Republic an abler man than Robert J. Walker; and, even among his adversaries, he is esteemed in intellect second only to Alexander Hamilton among the men who have occupied the high position of Secretary of the Treasury.

I prefer to accept the doctrine written in a Democratic bill upon the recommendation of the greatest of Democratic Secretaries of the Treasury, written there deliberately after weeks and months of consideration, than to surrender my judgment and my conscience to a national convention whose delegates were not authorized or commissioned to speak upon such matters of detail.

More than that, Mr. President, I have the satisfaction in this case of living up to the Democratic doctrine, without the suspicion of a desire to serve the people whom I have the honor in part to represent in this Chamber. It makes no difference to the people of Texas whether you impose a duty on lumber or put it on the free list, for freight rates make it impossible for Canadian imports to affect the price of lumber in Texas.

Mr. ALDRICH. Mr. President——

The PRESIDING OFFICER. Will the Senator from Texas yield to the Senator from Rhode Island?

Mr. BAILEY. I will.

Mr. ALDRICH. I agree with the Senator from Texas in his admiration of Mr. Robert J. Walker. The Democratic party have twice since 1846 had the opportunity in the House of Representatives to frame a tariff bill. Once they had the control of both Houses and prepared and passed a tariff bill. Those bills were as unlike the act of 1846 as the act which is now pending in this Senate is unlike the first tariff bill passed in 1789.

Mr. BAILEY. That is true; and there is an explanation for that, but it would require more time than I now care to consume in making it, and, besides, it is not relevant.

Mr. President, having said what I did about Mr. Walker, I think I am required to be a little more specific than I was. I dismissed him with the statement that he had libeled the people of my native State who had honored and trusted him, and that statement needs some qualification. What Mr. Walker did do was this: As the agent of the Government of the United States in Great Britain, he told the British people that Jefferson Davis, once a Senator here, afterwards, and at the time Mr. Walker made the misrepresentation, president of the Confederate States, had advocated and secured the repudiation of the Mississippi state debt.

Walker did not have the excuse of ignorance for making that statement. He knew it was not true. He knew that when that Mississippi public debt was repudiated Jefferson Davis had not entered public life. He knew that a part of the time that the controversy raged Mr. Davis was an officer in the Army of the United States, from which he resigned; and when the question was at its point of decision, Mr. Davis was spending seven years of retirement in diligent study, in the quiet of his Briarfield plantation, and took absolutely no part in that controversy. And yet, with a knowledge of that fact, Mr. Walker, in order to prevent the sale of confederate securities, represented to the British people that Mr. Davis was responsible for the repudiation of Mississippi's public debt.

Now, Mr. President, I want to say, and I can not reiterate it too often—because no matter how much I reiterate it, it will be misrepresented—that a Democrat must vote for low duties which raise revenue and must not vote for high duties to afford protection. But when I state this Democratic maxim some shallow-minded men call me a "protectionist." They seem to think that a Democrat must vote for every motion to put any article on the free list, and when we point to a low rate, a good revenue, and fortify the low rate and abundant revenue with the authority of an ideal Democratic tariff act, they still say we are protectionists.

Mr. President, I would like to see a Democrat of that kind make a tariff act. What would he do? He would have nine-tenths of our imports on the free list and one-tenth on the dutiable list, and the more articles he would put on the free list the higher he would be compelled to make the duty on those left on the dutiable list, and it is the sagacity of our Republican friends, who understand that, which furnishes the explanation of such a long free list in the pending bill.

For the enlightenment of Democrats and Republicans alike, I want to show you that the shortest provision in the Walker tariff act was its first, and one of the shortest was its last schedule. The first was the schedule whose duties reached 100 per cent, and it was just three lines. I will read them:

Brandy or other spirits distilled from grain, or other materials; cordials, absinthe, arrack, curacoa, kirschwasser, liqueurs, maraschino, ratafia, and all other spirituous beverages of a similar character.

That was the shortest. Now, except for the provisos, one of the shortest schedules of that act was its free list, and that free list was largely confined to articles that were not for sale and were not brought into the United States for the purpose of selling them. And yet, when Mr. Walker was advising Congress how to construct a tariff act, he advised that if this act, as then framed, would not raise sufficient revenue, not to put a higher duty on any of the dutiable articles, but to take some articles off of the free list and put them on the dutiable list.

The philosophy of that is apparent. The more numerous the articles on which you lay a duty, the lower we can make the duty on every article.

To illustrate: Suppose you have 2,000 articles imported, and you have $300,000,000 of revenue to raise through your custom-houses. If you place 1,000 articles on the free list, you are compelled to make the other 1,000 articles raise the $300,000,000. In other words, under a tariff bill so constructed, a thousand articles must yield $300,000,000; whereas under a tariff bill where a duty was levied on every imported article, 2,000 articles would raise the $300,000,000. The more numerous the subjects of taxation the less onerous the tax can be made on every subject. That is elementary. That is so plain that the marvel is that any man has ever misunderstood it.

The free list is not a Democratic invention, except in rare instances. The free list is a Republican invention. They understand that by taking the duties off of those articles which they do not choose to protect, they can make an excuse for laying a higher duty on those things which they do choose to protect.

Mr. President, the Senator from Minnesota [Mr. CLAPP], at the conclusion of his very interesting address, indulged in a burst of generosity. I do not say that in any satirical sense, because he is both a just and a generous man; and while I do not agree with him upon the principle which underlies the construction of a tariff bill, I do pay him the compliment of saying that I believe he earnestly strives to do what he thinks is best for all the people. In a burst of generosity the Senator from Minnesota turned to us and said that there is not a man on this side who would strike down an American industry; and he is right. But, Mr. President, while no man on this side would strike down an industry, neither would any man on this side compel a thousand men to hold up any one man's industry. That is our objection to your protective tariff.

Mr. ALDRICH. Will the Senator yield?

Mr. BAILEY. Certainly.

Mr. ALDRICH. When did the doctrine of free raw material cease to be a Democratic doctrine?

Mr. BAILEY. When men like myself came into power in the Democratic party.

Mr. ALDRICH. Were there any exponents of that doctrine before the Senator from Texas——

Mr. BAILEY. Oh, yes.

Mr. ALDRICH. Or since, outside of the Senate Chamber? I have failed to observe them.

Mr. BAILEY. If the Senator from Rhode Island will read the Democratic platform of 1896 on the tariff question, he will find the renunciation of the old doctrine. I drew it, and I drew it with that distinct idea in my mind.

Mr. ALDRICH. But, Mr. President——

Mr. BAILEY. If the Senator will permit me, one of the purest and best men who ever occupied a seat in this Chamber, or who ever served this Republic in any capacity, offered it in the Democratic platform committee. I drew it at the request of the late John H. Reagan, who was, in that convention, a delegate from our State.

Mr. ALDRICH. But Grover Cleveland was still living.

Mr. BAILEY. And did not support the ticket.

Mr. ALDRICH. And the galaxy of brilliant men who made the Democratic party great in his time were then alive, and no one of them, and no leader of any conspicuous character except the Senator from Texas, at that time was courageous enough to say that the Democratic party proposed to abandon the doctrine of free raw materials.

Mr. BAILEY. The Senator from Rhode Island surprises me. About Mr. Cleveland I shall utter no word of censure. He has accounted in another place for the deeds done in his body, and, at least until the clods have settled on his grave, he shall be exempt from my reproaches; but without intending to suggest that he refused to support our party, though our party had three times supported him, the Senator from Rhode Island is not unmindful of the fact that Mr. Cleveland and the brilliant men who, he says, made the Democratic party, did not then support the Democratic ticket, and it was not merely on the money question, about which many men honestly differed, but it was also on the tariff question; because, while speaking in the name of Democracy, they spoke against the Democratic party and denounced us for having abandoned the Democratic attitude on the tariff question as well as for having assumed a false attitude on the financial question.

Mr. ALDRICH. There was one man who at that time was even perhaps more conspicuous in Democratic circles than Mr. Cleveland—Mr. William J. Bryan. He was then, as he is now, so far as we can judge by his platforms and his doctrines, in favor of free raw materials.

Mr. BAILEY. If that was true, it would not convince me. It is true that Mr. Bryan came into Congress under Mr. Cleveland's administration; or rather, Mr. Bryan was serving his second term when Mr. Cleveland was inaugurated the second time. It is true, and we make no concealment of it, as we make no explanation of it, except to state the fact, that at that time the Democratic party did advocate the doctrine of free raw materials. The Democratic party did not, as a party, believe in it. It was a matter of expediency with nearly all of them. In our southern country we were told that if we would agree to take all the burden off of the manufacturer's raw material he would agree to relieve us from some of the burdens imposed upon us when we purchased his finished product; and to that proposition we yielded our support; but it never convinced our judgment.

It was not only an absurdity, but it was the grossest absurdity that any set of men ever attempted to impose on any other set of men in the history of American politics. Think of it. For a hundred years the Democratic party had denounced protection as a special favor to manufacturers; for a hundred years the Democratic party had denounced the manufacturers as the advocates and beneficiaries of an unjust system of taxation; and yet, all at once, by some mysterious and unexplained and unexplainable power, we were persuaded to change our attitude and to solemnly announce that we would give the beneficiaries of the protective tariff the benefit of free trade. Denouncing protection as a robbery of the many for the enrichment of the few, denouncing it as a system of special favor, we were persuaded to agree that the very beneficiaries of protection in what they sold should be the only people in the United States to enjoy the advantage of free trade in what they bought. There never was anything more absurd and unjust. It was indefensible then; it is indefensible now; and in my judgment no real Democrat will ever again attempt to defend it as a policy of the Democratic party.

That men make mistakes I grant you. But I have the candor to repudiate in express and unequivocal language the mistakes which my Democratic predecessors have made, and it is a pity that the Senator from Rhode Island does not imitate my example.

Mr. ALDRICH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Texas yield to the Senator from Rhode Island?

Mr. BAILEY. When I finish the Senator will probably see the point. I have an income-tax amendment pending to this bill. The Republican party passed the first income-tax law. It passed it, I grant you, in a time of war, but it passed it when the Government of the United States was spending less money than it is spending to-day in these piping times of peace. Now, when they came to repeal it, in time of peace, the most distinguished Republicans resisted its repeal and declared that it was a sound and philosophic method of taxation. Why do you not say they were wrong, or else vote like they voted?

Mr. ALDRICH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Texas yield to the Senator from Rhode Island?

Mr. BAILEY. I do.

Mr. ALDRICH. The Republican party, charged with the greatest responsibility ever placed upon any party, imposed, under the stress of those days, many onerous taxes. That constitutes, in my judgment, no reason why we should reimpose onerous duties at this moment.

Mr. BAILEY. That answer would suffice if we did not have an onerous government to support. But the Senator from Rhode Island can not forget that with eighty years of history behind us—eighty glorious years; eighty years of peace, contentment, and marvelous progress—when the rude alarm of that great war called this country to arms, the expenditures of the Federal Government were only about $60,000,000—a frugal government; a happy people, of simple tastes and habits—and we were expending the sum, then sufficient, now considered paltry, of $60,000,000. Eighty years we lived, we prospered, we were honored abroad and content at home, and yet the expenditures for the federal administration took but $60,000,000 from the energies and from the savings of the American people.

In these last fifty years or less we have multiplied that expenditure from $60,000,000 to $600,000,000, and, not content with that wasteful extravagance, we have now multiplied six hundred million by almost two.

As against the $60,000,000 which the Government was spending in 1861 we have a burden now of more than a billion every year, and yet the Senator from Rhode Island seems to forget that a burden can be as great in time of peace as it is in time of war. Who would have prophesied that the Republican party, born in a protest against what it called the arrogance and wealth of a class, would ever have so forgotten its primitive lessons that now its great leaders stand here and denounce those of us, or, if they do not denounce us, they denounce our protestations against this modern extravagance?

If the Senator from Rhode Island will go back to the earlier and the better, the simpler, and happier days of this Republic and retrench these expenses, I will agree to withdraw the income-tax proposition. In other words, if he will lift the burden under which the toiling and consuming masses are stooping to-day, I will not quarrel with him about how he lifts it. I protest against the injustice which lays upon the people who toil, and who toil, thank God, without much complaint, this enormous burden of a billion dollars every year.

Mr. President, if you will add what our towns, our cities, our counties, and our States are spending to the stupendous sum which the Federal Government is spending, it amounts to more than the value of our cotton and our wheat and our corn crops all combined. This vast sum would be too much for any kind of a government, and for the kind which you are now giving the people it is a criminal waste.

Let the Senator from Rhode Island and those associated with him in responsibility for this administration reduce this burden until the people can bear it without subtracting from their comfort and their happiness, and I will join him. But unless they retrench the expenditures until they shall reach a point where the people can endure them without serious inconvenience, I shall insist to-day and to-morrow and all the to-morrows that come, as long as I have the honor to remain a Senator, until an income tax is adopted as a part of our fiscal policy; and it will be advocated within the next ten years by Senators who will vote against it in this Congress.

Why, sir, the very argument—and I violate nobody's confidence when I say that—with which they are seeking now to persuade Republican Senators to vote against the income-tax

amendment is that they will try this bill, and if it does not raise revenue enough, they will have an income tax of their own. To some Senators they say they will frame a law agreeable to the opinion of the Supreme Court, but they select their man when they make that statement. They never make that to a lawyer who is entitled to a license to practice in any court, because there is not a lawyer in America entitled to admission to the bar who does not know that it is impossible to frame a law conforming to the decision of that court which could pass the Senate or any other body of sensible men that you could assemble in the United States; for the only law that would conform to the decision of that court would be a law that exempts the incomes arising from colossal fortunes and taxes only the incomes that arise from the exercise of brain and muscle. A good many people would escape the tax if it were laid on the exercise of brain who would have to pay it if it is laid on the income of property.

I am anxious for the vote, because I want to see how much progress they have made with that kind of persuasion. I do not call it an argument, for it is not an argument. When this measure was first introduced, we had a clear majority for an income tax. A vote will disclose if that majority has been converted into a minority. I am eager to see whether that is true, and the country wants to learn the truth.

So anxious am I, Mr. President, to know the result that I now ask unanimous consent that the Senate vote on the income-tax amendment to the tariff bill before it adjourns on Thursday next.

The PRESIDING OFFICER. The Senator from Texas asks unanimous consent that on Thursday next a vote be taken on the income-tax amendment.

Mr. ALDRICH. I have already suggested several times in the hearing of the Senator from Texas that I shall object to fixing any time for a vote upon the income tax or any of the other provisions of the bill until we can agree to take a final vote on the bill itself.

Mr. BAILEY. That is unreasonable. I am perfectly willing myself for the Senator to have a vote on his bill. I interpose no objection, and I only ask that I may have a vote on my amendment. When the vote is taken on my amendment, I will not object to the Senator's request for a vote on his bill; and if Senators on that side object, he can apply his discipline.

Mr. ALDRICH. I am in hopes that within a very short time we can get a general agreement, which will include everybody on both sides of the Chamber, for fixing a time to vote on the bill.

Mr. CLAPP. I wish to remind the Senator from Texas that the only time it came to the point of an objection, if I remember correctly, the objection came from his side.

Mr. ALDRICH. The Senator from Virginia [Mr. DANIEL] objected.

Mr. BAILEY. There was an objection before that on your side.

Mr. ALDRICH. I will compromise with the Senator from Texas by taking a vote on the pending amendment now, if that will be agreeable to him.

Mr. BAILEY. I want to give notice to this effect, that just as soon as the pending amendment is disposed of I shall offer the income-tax amendment. I give that notice in fairness and in justice to everybody, so that all Senators may know. Of course the better place for it would be at the conclusion of the bill. It could then be sectionized. But that is a mere matter of form and unimportant, because in the conference committee they can transpose it and insert it at the end of the bill, with the sections numbered without any trouble.

Mr. ALDRICH. We are now considering the dutiable list of the tariff, and I will assume that the Senate will not proceed to the consideration of a provision which is entirely foreign to that. I assume they will not.

Mr. BAILEY. Of course the Senator means to say by that that he will make a point of order that it is not germane.

Mr. ALDRICH. No; I will ask the friends of the bill, who are considering the bill by paragraphs, to go on with the consideration and not take up any extraneous matter.

Mr. BAILEY. I have agreed time and again, and every Senator on this side has agreed, that for the convenience of those in charge of the bill they might pass provisions, and they have gone from the first to the last, and then back to the first and then to the middle. All that has been done by common agreement, by unanimous consent, nobody attempting to impede it, nobody attempting to waste any time.

This matter must be voted on. I want to say, furthermore, and I say it so that everybody can understand it, the distinguished Senator from Iowa [Mr. CUMMINS] has also an income-tax amendment. If we can not adopt one, we shall try to adopt the other. If we can so arrange the provisions of one as to be acceptable to all friends of an income tax, we will do that. If we can not do that, then we will do the best we can in that direction.

If the Senator from Rhode Island will withhold his objection and allow us to take a vote on my amendment on Thursday, I think undoubtedly he will expedite the consideration of his own measure. Somebody else can object. I give notice to the Senator from Rhode Island now that if he objects to my request I will object every time he prefers a request to fix a day to vote on the bill. I do not make that as a threat, but I simply say that we are going to fix a time for a vote on this amendment before we will ever fix a time for a vote on the bill. I say, besides that, I will not couple them again. The Senator from Rhode Island will permit me to vote on this amendment before he ever gets unanimous consent to vote on his bill. That is the orderly way, and I hope the Senator will not interpose an objection.

Mr. McCUMBER. I wish to amend my amendment so that it will be limited somewhat. I move to strike out all after the word "measure," in line 8, page 69, paragraph 197, down to and including the rest of the paragraph. That simply leaves the paragraph read:

Sawed boards, planks, deals, and other lumber of white wood, sycamore, and basswood, 50 cents per thousand feet, board measure.

It leaves in all of the other schedules except the part of paragraph 197 following the word "measure;" for instance, it leaves in paragraphs 199 and 200, paving posts and so forth; paragraph 201, clapboards; paragraph 202, hubs for wheels and so forth; and it also leaves in laths, pickets, and shingles.

Mr. ALDRICH. I ask that a vote be taken by yeas and nays on this amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment proposed by the Senator from North Dakota.

Mr. McCUMBER. I offer it as a substitute for the former amendment.

Mr. ALDRICH. There is no objection, I take it, to the Senator modifying his own amendment.

Mr. McCUMBER. Very well; I withdraw the other amendment and substitute this amendment for it.

Mr. STONE. I ask that the amendment be read.

The SECRETARY. Instead of striking out all of paragraph 197, it is proposed to strike out all of the paragraph after the word "measure," in line 8——

Mr. McCUMBER. I am not affecting anything now but paragraph 197. I move to strike out all of paragraph 197, after the word "measure," in line 8.

Mr. DANIEL. I ask that the words proposed to be stricken out be read.

Mr. ALDRICH. The effect of the amendment, I understand, is to put rough lumber and finished lumber on the free list.

Mr. JOHNSTON of Alabama. I have a substitute that I desire to offer.

The PRESIDING OFFICER. The Senator from Alabama offers an amendment to the pending amendment.

Mr. JOHNSTON of Alabama. I offer as a substitute what I send to the desk.

Mr. BEVERIDGE. Is the amendment in order?

Mr. GALLINGER. Certainly, it is in order.

Mr. JOHNSTON of Alabama. It is not an amendment to a committee amendment.

The PRESIDING OFFICER. The Chair understands that it is a substitute for the amendment of the Senator from North Dakota.

Mr. ALDRICH. Which is an amendment to the provision of the House.

Mr. BEVERIDGE. And not an amendment to the committee amendment?

Mr. ALDRICH. It is not.

Mr. CULLOM. It is in order.

The PRESIDING OFFICER. The amendment proposed by the Senator from Alabama will be read for the information of the Senate.

The SECRETARY. It is proposed to insert as a substitute the following:

Nothing contained in this act shall prevent the admission free of duty of the following articles: Lumber of all kinds, laths, shingles, doors, and door locks and hinges, window frames, window sashes, bricks, lime, cement, slate roofing, nails, carpenter's tools, common window glass not exceeding 16 by 24 inches, tin plate for roofs, linseed oil, and white lead.

The PRESIDING OFFICER. The question is on the amendment proposed by the Senator from Alabama [Mr. JOHNSTON] to the amendment proposed by the Senator from North Dakota [Mr. McCUMBER].

intend to raise necessary to be collected from customs duties, and therefore every rate in this tariff bill would have been adjusted—and they would have been compelled by the necessities of their situation to adjust every rate in this tariff bill—with a view to the collection of this $80,000,000 from an income tax; and yet, strange to say, the Senator from Rhode Island and his associates on the committee insist that they shall be permitted to go through with this bill, which they constantly avow will raise enough revenue without any additions or amendments, until they have perfected it, and then they will be permitted to stand up here and say that it raises all the revenue which the Government needs, and therefore this amendment would simply impose unnecessary taxation.

Now, what I want to do, and what I believe the country has a right to demand that the Senate shall do, is, first, to determine whether or not an income tax shall be levied; and if that question shall be determined in the affirmative, then every other rate and schedule in the act must be dealt with accordingly; while on the other hand, if the Senate, by deliberate action, shall reject this income-tax amendment, then it can address itself to these schedules with the single purpose of so framing them that they will raise the necessary $320,000,000.

I appeal to our friends on that side who are sometimes described as "progressive Republicans," and who have been striving from the beginning to reduce what they themselves denounce as the exorbitant rates of this bill, and I ask them if they are willing to wait until the Finance Committee have finished their work, arranged their rates, perfected their schedules, and are thus able to say that an income tax is wholly unnecessary?

If you progressive Republicans are in earnest—and I believe you are—then let us here and now take the judgment of the Senate. Let us here and now determine if we intend to raise any important amount of revenue outside of these tariff duties; and if we so decide, then the chairman of the Finance Committee, with all his skill in the management of this measure and with all his power among his political associates, will find it impossible to resist a reasonable reduction in its rates. The chairman of the committee now says that the bill as he has reported it will raise enough money. Then, certainly, if we add an amendment which of itself will yield some $80,000,000, the chairman of the committee must agree to reduce the collections under the customs provision of the law. It will not do for him to answer and say that if he reduces the rate he will increase the revenue and thus aggravate the situation, because we answer that statement by saying that if we can not reduce the duty on all things, which I think we can, and thus remit to the consumer of every article a proportion of the burden which he bears to-day, we can at least transfer some of the common necessities of life to the free list, and we can afford a much needed relief in that manner. But whether it shall be by transferring particular and necessary articles to the free list or whether it shall be by a general reduction running through every schedule, the obvious and sensible thing for the Senate to do is to decide whether it intends to collect this $80,000,000 from an income tax and then adjust all schedules to that decision.

Mr. CLAPP. Mr. President——

The VICE-PRESIDENT. Will the Senator from Texas yield to the Senator from Minnesota?

Mr. BAILEY. I do.

Mr. CLAPP. Realizing and appreciating the force of what the Senator says, if this proposed income tax was, without any question, to be taken as a matter of course as to its validity, I do concede the force of the argument that it ought to be disposed of before we attempt to fix the schedules with reference to the customs revenue. I shall vote against the motion, because I shall vote against any motion to fix any time or place any limitation upon our right to vote here. But I want to ask the Senator if he thinks it would be wise to adopt this amendment, and then—no matter how thoroughly he and I and others are convinced of the validity of it—still risk a revenue measure based upon the absolute elimination of any question as to the validity of this amendment? I think that is a matter which should commend itself to our very serious consideration.

Mr. BAILEY. I thoroughly agree with the Senator from Minnesota. If Congress was not required by the Constitution to convene every year, and if, as a matter of fact and under the law as it now stands, Congress would not convene within the next eight months, I should hesitate about passing any law that might leave the Government without the means to promptly meet its current expenses. But in view of the fact that Congress must convene the first of December, and in view of the fact that Congress is apt to be in session when the final decision in this case is rendered, if it shall be taken to the courts, and will thus be able to supply any deficiencies between the revenue and expenditures immediately and without embarrassment to any department of the Government, I have no hesitation in voting to put the amendment on this bill. If Congress, like some of the state legislatures, only met in biennial session, I would even go so far as to insert in this bill an authority that the bill will probably carry, even if this amendment is rejected, to borrow money to meet unexpected deficiencies.

Mr. CARTER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Montana?

Mr. BAILEY. I do.

Mr. CARTER. I ask the Senator this question, for the purpose of ascertaining whether or not I correctly understand his position: Do I understand the Senator to mean that he would raise by customs duty only such an amount as equaled the deficiency in the revenue raised by an income tax?

Mr. BAILEY. The Senator states it differently, I think, from what he intends to state it. If he means to ask me if I would deduct from customs duties the amount to be collected through the income tax, I answer "yes."

Mr. CARTER. Then I will put my question in a different form. The Senator, according to my understanding, would first pass an income tax, and rely upon customs duties to raise such revenue as the income tax did not raise to meet public necessities. The amount of the revenue duties would therefore be dependent upon the proceeds of the income tax, instead of having the proceeds of the income tax rest on deficiencies arising from the failure of the customs dues to meet the needs of the Government. Do I correctly understand the Senator?

Mr. BAILEY. The Senator undoubtedly understands me, and has stated my position correctly. I do not propose the income tax as a mere means of providing for an emergency. I propose it as a deliberate, fixed, and permanent part of our fiscal policy.

Mr. CARTER. Mr. President——

The VICE-PRESIDENT. Does the Senator yield further?

Mr. BAILEY. I do.

Mr. CARTER. I understand, then, that the Senator would depart from the policy which has prevailed from the beginning, of resorting to an income tax as an emergency measure, and would now and hereafter rely upon an income tax as a main basis of revenue.

Mr. BAILEY. Not as a main basis.

Mr. CARTER. As one of the chief sources of revenue, relying upon customs dues as only an incidental source to make up deficiencies.

Mr. BAILEY. Mr. President, that does not precisely state my position. I recognize, as I stated here, that we will collect three times as much from the custom-houses as we hope to collect through this income tax; but it is not an experiment for us to fix the rates of a tariff bill, with a view to other sources of governmental income. For instance, how did the Senator from Rhode Island [Mr. ALDRICH] and his associates determine the amount of revenue which they were required to raise by this bill? They first considered the expenses of the Government; they then took the collections from all other sources, including the Post-Office Department and the collections from internal revenue; and subtracting them from the total expenses of the Government, they ascertained the amount which they were required to raise through customs taxation. With the amount which they were required to raise thus fixed, they proceeded to levy their duties accordingly. And I have no doubt in this world that it would be just as sensible for us to decide this income-tax question and lay it aside, if we adopt it, as so much revenue for which the tariff act need not provide as it was for the committee to take under consideration and into account every other source of revenue now enjoyed by the Government before they began to fix their duties.

Every rate in this bill—I will not say every rate, either, because some of them are designedly and purely protective and prohibitory, but I will say that every schedule in this bill—is drawn, even by the extreme protectionists, with a view to the revenue which must be collected through the customs. In other words, there are probably duties here that would be higher than they are except for the necessities of the Government. The Senator from Rhode Island and the most ultra of the protectionist Senators in this Chamber can not escape, and do not attempt to escape, the fact that a tariff bill must be drawn so as to produce a given amount of money.

Now, in drawing that tariff bill to raise that given amount of money, undoubtedly they distribute the rates purely with a view of protection; and it is possibly true that if the Government needed no money at all, the extreme school of protection would still levy tariff duties for the purpose of protecting our home industries against foreign competition; but while they

are animated by this purely and essentially protective purpose, they can not escape, and do not attempt to escape, the necessity for raising revenue. Therefore, according to their own proceeding, they ought to take this $80,000,000 into account, if it is to be collected, and lay it aside, just as they laid the collections under the internal-revenue law aside, just as they laid the post-office receipts aside, and calculate, with this added to the other present and permanent sources of revenue, what the deficiency would be, and raise that deficiency through the custom-houses.

Mr. President, I am not inclined, upon the motion to postpone, to occupy the time of the Senate in discussing the merits of the question. I shall perhaps find some other occasion for that, and I am content to have stated, as they appear to me, the reasons why the motion to postpone ought not to prevail.

I took the Senate into my confidence a few days ago and explained to it my great anxiety for a vote. I am no novice here. I know how bills are passed and how amendments are rejected. I know the arguments and the persuasion at the command of a majority, and I know the outside influences which from time to time have been employed to insure the defeat of this income-tax amendment. I am perfectly sure that the quicker we vote on it the more votes it will receive, and I make no concealment of that fact.

Mr. President, before I resume my seat, I believe I will call attention to an article which was printed last Sunday, I believe, in the New York Times. The Senate will recall that something like a week or ten days ago I stated that I believed there had been a deliberate and systematic effort made to misrepresent the attitude of Democratic Senators with respect to the tariff schedules. I then confined my statement to tariff rates. But last Sunday my attention was called to an article which goes much further than a mere effort to exaggerate our differences and misrepresent our attitude. I find in the New York Times of Sunday, under a Washington date line, a statement that the income-tax amendment was introduced for the purpose of aiding the Senator from Rhode Island. I want to read the matter, and then I wish briefly to comment on it. Referring to the Democrats of the Senate, this article proceeds:

> They are headed by that distinguished son of Texas, JOSEPH WELDON BAILEY. Again and again BAILEY has taken a position on one fight or another in the Senate that has played directly into ALDRICH'S hand. His action on the income-tax amendments, now pending, is the latest demonstration of his willingness to help his Rhode Island leader out of a difficult situation. He has maneuvered so as to divide the adherents of the income-tax proposition while apparently favoring it, and himself introducing an amendment providing for such a tax. The result, despite the efforts of the real friends of an income tax to effect a compromise, will no doubt be to defeat the proposition which ALDRICH has been vigorously opposing.

Of course the man who wrote that is an infamous liar, and I am not therefore at all surprised that he wrote this particular lie. I am, however, very greatly surprised that a paper like the New York Times could be induced to print it, because it is a challenge to the intelligence of every man who reads that paper. Of course the miserable creature who penned this libel did not attempt to explain how I have assisted, or how I could assist, those in charge of the measure by introducing an income-tax amendment, and he did not do so because he knew that the dullest man who read it would easily detect the fallacy of any explanation which he could invent. Unable to explain it, because it was not susceptible of explanation, he simply made the statement on the calculation that if he could make one man in twenty who read his article believe his lie he had helped his side just that much.

Mr. President, this creature, and all his kind, forget that for twelve years I have been trying to force the adoption of an income-tax law. I offered an income-tax amendment to the war-revenue measure when a Member of the House, something like eleven years ago. From that day till this I have been an earnest advocate of it, and these men know it, but they do not want the people to know it, and they seek to create the impression that Democrats are trying to muddy the water and to aid the men in charge of this bill. If any other Democrat had proposed this amendment, they would have told about him the same lie they have told about me.

Mr. President, suppose I reverse the position. Suppose the Senator from Iowa [Mr. CUMMINS] had introduced his amendment, and then I had introduced mine. A shallow-thinking man might find some extenuation, and an ignorant man might find some excuse, for saying that my purpose in introducing a second amendment was to divide the friends of an income tax. But the RECORD shows—and every Senator recalls—that I introduced my amendment a week before the Senator from Iowa introduced his. And yet there is no suggestion that that Senator, a distinguished Republican, was trying to divide the honest friends of an income tax.

But the suggestion is that this side, which made the first attempt to secure the adoption of such an amendment, are actuated by some purpose to disturb the harmony and divide the councils and dissipate the strength of those who favor this just and wise and philosophic system of taxation.

I go further, Mr. President. Suppose I had introduced the kind of an amendment which the honorable Senator from Iowa has introduced. Suppose I had graduated the tax as he has. These people would have said at once that I had tried to introduce a new and a dangerous question before the Supreme Court upon the rehearing. Or suppose I had concurred with him, and had levied a tax on the individual and exempted all corporations. Every penny-a-liner who will repeat that libel would have sworn that I was trying to exempt the great corporations and to lay the burden of government upon the man of flesh and blood, made in the image of his God. If I had introduced that kind of a proposition, they then might have excused themselves for such a libel.

But that, Mr. President, is in line with the deliberate, sedate, and steady policy, not only to misrepresent individual Democrats, but to misrepresent all on this side. I desire, however, in this public and explicit way, to acquit Republican Senators of that charge. I do not believe they have inspired it. I doubt if a Republican Senator in this body is low enough to associate with a man who would write a lie like that. I know if he would he is not fit to associate with the other Senators here. A fearless, a truthful, an incorruptible press is the greatest safeguard of a free republic. But a venal, a treacherous, and a lying newspaper is one of the most corrupting agencies that can exist in a free government. The man who defames an honest representative of the people is almost as vile as the man who defends a dishonest one.

Mr. President, so far as I am concerned, I am ready to support any measure which will at all commend itself to my conscience and my judgment, having for its object a relief for the consumers of this country and a tax on those who are able to bear it. I believe we ought to decide that question now. I know we must decide it later.

I understand what is the present programme on the other side, and I will put it in the RECORD, in the hope that it will deter them from following it out. I will at least have the satisfaction of having outlined it for them in a public way. Their present plan is to move to postpone the present consideration of this amendment, and then when the time comes that they must vote, according to their own motion, they intend to refer it to the Judiciary or some other standing committee of the Senate. That is their purpose. And thus they hope and plan to prevent a direct and decisive vote on the question, so that every man who advocates an income tax at home and votes against an income tax in the Senate can say he did not vote against adoption of this amendment.

I do not think there are many Senators of that kind. I know there ought not to be a single one of that kind. A Senator whose judgment and conscience tell him this amendment ought not to be the law, ought to be willing to vote against it. He ought to be willing to take his political destiny in his hands and sacrifice it, if need be, as a tribute to his conscientious judgment. If a Senator believes it is a just and a wise and an equal tax, why postpone the adoption of it? Surely it is as fair to tax a man on an enormous income as it is to tax him on a moderate appetite, and, as between your tariff schedules that tax men on what they eat and wear, and an income tax which assesses them according to what they own, I think the people of this country will have small difficulty in choosing.

Mr. CUMMINS. Mr. President, as Senators know, I have also proposed an amendment imposing an income tax. I am as deeply interested in the subject as can be the Senator from Texas, and I have been somewhat concerned in the efforts that have been made to embroil the advocates, the defenders, and supporters of an income tax sitting upon opposite sides of this Chamber. I very earnestly hope that these efforts will be unsuccessful, and that, when the moment arrives, the income-tax amendment, whether it comes from the Senator from Texas or whether it comes from a Senator upon this side of the Chamber, will receive the full strength that is here in favor of such a provision in the law.

I say for myself that I prefer in some respects the amendment I have presented; and I may say, in passing, that in deference to the wish of friends of the income tax upon this side of the Chamber I have eliminated from my amendment its graduated feature, hoping that I might in that way gather together all the strength there is here for a measure of that character. But while I like it better, if the amendment proposed by the Senator from Texas shall first come on, I shall vote for his amendment. I shall do whatever I can to see to it

that we commit ourselves to the policy of raising a part of the revenue necessary to carry on the affairs of our Government by a tax of this character.

But I can not agree wholly with the Senator from Texas with regard to the logical procedure. If I were helping to create a law, having as my guide simply the raising of a revenue upon imports, I would quite agree that the reasonable thing would be first to fix the revenue to be created by the income tax. However, inasmuch as I am doing what I can—although some of my Republican friends think my efforts are very ill directed—not only to create a revenue by duties upon imports, but to protect our markets against unfair competition, from my point of view, the time at which we ought to consider the income-tax amendment is the moment we pass from a consideration of the paragraph which imposes duties upon imports and before we pass to other portions of the bill.

I believe that in our work touching duties we ought to give some consideration to the part that that income tax is to play in the drama of our Government. I am one who is firm in the belief that when you pass this law, if it is passed precisely as it came from the committee, or if passed as we have reason to believe it will be passed, there will still be a deficiency of $40,000,000 a year between it and the necessities of our Government. Therefore I have no fear whatsoever that we will create such a revenue in this bill, aside from the income tax, as will make it unnecessary to impose a burden of that character. That is one of the reasons why, believing that we did not need protection on iron ore, I voted for free iron ore, for I wanted no revenue from that source. That is the reason, in part, why I voted for free lumber, believing that we need no protection upon lumber; that it is amply able to care for itself. I would rather raise the revenue that is created by an impost on lumber by an income tax.

So we pass on through the bill, and when we reach that part of our work I believe there will be no doubt in the minds of Senators that we will need some revenue from an income tax. We can then determine better than at any other time whether the tax shall be 2 per cent or 3 per cent or 1 per cent.

Therefore, as a sort of composition of the whole subject, I ask unanimous consent to take up the income-tax amendments as soon as we have considered and disposed of the paragraphs imposing duties on imports, and that we continue that consideration until the matter is disposed of. That involves a direct vote upon the income-tax amendment and suggests, at least, that there be no motion to refer these matters to the Judiciary Committee or any other.

Mr. ALDRICH. Mr. President, it would be impossible to get unanimous consent to that suggestion.

Mr. BAILEY. If the Senator from Rhode Island will agree that we may have a direct vote on the amendment, I will cheerfully concur in the suggestion of the Senator from Iowa.

Mr. CUMMINS. I very much hope the Senator from Rhode Island will not make the unanimous consent impossible. It can not do the country any harm to have a vote upon the income-tax amendment.

Mr. BAILEY. I want to say to the Senator from Iowa, before the Senator from Rhode Island responds, that while I think now is the time to settle it, I do not regard that as of sufficient importance to justify any division among the friends of the measure. I will agree to let the Senator modify his motion to take it up then and dispose of it. All I want is a distinct understanding that we are to have a direct vote instead of an indirect one. I prefer to vote now, but will yield that preference.

Mr. CUMMINS. I understand that the rules of the Senate preclude a motion of that character; that is, the motion must be to postpone to a time fixed, and that what I have suggested can only be accomplished by unanimous consent.

Mr. ALDRICH. Mr. President, I am willing to agree that this amendment and that all amendments with reference to the income tax shall be postponed and be taken up immediately after the agreement upon the schedules of the bill, to be then proceeded with and disposed of according to the rules of the Senate. I do not intend to make any agreement as to any particular disposition or as to any votes upon any particular amendments or proposition.

Mr. BAILEY. The Senator from Rhode Island, then, declines to agree that we may have a direct vote on the question.

Mr. ALDRICH. I can not agree to that, because that is a matter for the majority of the Senate at the time to dispose of.

Mr. BAILEY. A unanimous agreement would bind not only the majority but every Senator. An agreement of that kind I think——

Mr. ALDRICH. I have never known in my experience an agreement of that kind made. I think this is the first time I have ever heard a suggestion of that kind made. It is simply impossible for me to agree to bind the Senate as to any particular form of disposition to be made of the proposition.

Mr. BAILEY. The Senator from Rhode Island is not asked to bind the Senate. The Senator from Rhode Island is asked to allow the Senate to bind itself, and it would do it, in my opinion, except for his objection.

Mr. ALDRICH. I think not. It is my purpose, in making the motion which I have made, to have the income tax taken up on the date to which it would be postponed if the motion should prevail, and it was my further purpose, if the schedules have not then been disposed of, to move a further postponement of the consideration until the schedules are disposed of. It seems to me perfectly apparent, and it must be to everybody, that the orderly way to dispose of the bill is to go on and consider the bill by paragraphs and by schedules, and fix upon the rates and upon the consequent revenue which may be expected from them. After that is accomplished we can then tell whether an income tax is necessary and what rate of taxation should properly be fixed.

So all this seems to me to be premature. It does not affect really, I think, the judgment of the Senate, and I do not believe it misleads anybody in the country either. I shall object to any arrangement by unanimous consent which includes any agreement to vote in any particular way upon that amendment.

Mr. CUMMINS. Mr. President, I hoped very much that the Senator from Rhode Island would not prevent unanimous consent to the disposition of the income-tax amendment at the time and in the manner I suggested. I can not conceive a reason that will prevent or ought to prevent a vote upon this subject on its merits. However, I recognize that if the subject were postponed until June 10, or if it were determined now, the amendment would be subject to the motion that is in the mind of the Senator from Texas and in the mind of the Senator from Rhode Island.

Therefore I bow to what seems to be an imperious necessity, and I ask unanimous consent to take up and consider the income-tax amendments immediately after the disposition of the paragraphs relating to the duties upon imports, without further qualification.

Mr. BAILEY. Mr. President, I am not going to agree to that unless I can get an agreement to vote on the direct question.

Mr. ALDRICH. As far as I am concerned, I have no objection to the suggestion of the Senator from Iowa. In fact, I have no disposition to try to prevent the Senate from considering this question. I realize that it is bound to come up and bound to be disposed of. I am quite willing to accept the suggestion of the Senator from Iowa as far as I am concerned.

Mr. BAILEY. I do not intend for the Senator from Rhode Island and the Senator from Iowa to get together, if I can help it. I withdraw that objection.

The PRESIDING OFFICER (Mr. CARTER in the chair). The Senator from Iowa asks unanimous consent that upon the completion of the schedules of the pending bill the amendment known as the "income-tax amendment" be taken up by the Senate——

Mr. CUMMINS. I beg pardon of the Chair; I put it in the plural.

The PRESIDING OFFICER. That the amendments be then taken up for consideration. Is there objection?

Mr. DOLLIVER. There appears to be an amendment to the amendment to strike out the House provision in respect to an inheritance tax. I think that ought to be considered in the same connection.

Mr. ALDRICH. I think that would be included in the order for amendments relating to an income tax.

Mr. BEVERIDGE. It would not, perhaps, be necessary, I will say; but such an amendment may be offered as a substitute for the income tax. Any legislative procedure of the kind will necessarily be included in the unanimous consent.

Mr. BAILEY. Mr. President, the request is now pending. Of course the motion of the Senator from Rhode Island will be disposed of. I will leave it to go that way, because I believe that a number of Republicans on that side who say they are in favor of an income tax and who, I have no doubt, will favor it, would feel constrained to vote for the motion of the Senator from Rhode Island. Rather than to divide the friends, I ask the Senator from Rhode Island if he will not modify his motion to postpone until the schedules have been disposed of?

Mr. ALDRICH. That is taken care of by the unanimous consent.

Mr. BAILEY. Not exactly. I have another idea in my mind. I do not know but what the Senator from Rhode Island would arrange it so that the particular amendment I have offered would not be voted on.

Mr. BAILEY. Therefore we ought to adopt it first, so that we would not have to go back.

Mr. ALDRICH. I say to every friend of this measure, sitting on either side of this Chamber, that if we now take up the question of an income tax and proceed to the consideration of it to the exclusion of all the tariff schedules, and if we adopt a tax which will levy on the people of the United States $80,000,000, I shall be ready to join the Senator from Texas in revising the schedules. It would be our imperative duty to revise them, not in the interests of protection, but for the opposite reason.

Mr. BACON. The Senator means in the interests of the consumer.

Mr. ALDRICH. If Senators sitting on this side of the Chamber desire deliberately to abandon the protective policy and to impose an income tax for the purpose plainly avowed by the Senator from Texas to reduce and destroy the protective system, I will say to those Senators that I do not intend to consent to that programme so far as I am concerned; and that I intend, so far as it is within my power, to proceed with the consideration of the bill; and that when the schedules are completed we will then take up the propositions involved in the income tax and consider those. But until, under the leadership of the Senator from Texas, this bill is taken from my charge, I intend to press its consideration, and I say that to every Senator. I do not intend to be swerved from that duty by any suggestions from any source.

Mr. BAILEY. Mr. President, that is a right touching appeal to the loyalty of the Republican side. I have no idea that they are going to displace the Senator from Rhode Island or select me as their leader on this particular occasion.

But the Senator from Rhode Island risks quite too much when he appeals to Republicans that they must put their conscience and judgment in duress, or that if they vote the way they think they are voting to depose him from the leadership of his party in the Senate.

The Senator from Rhode Island, unwittingly, of course, made a strong argument in support of my position and against his motion, because he says that if we adopt this income tax we must go back and revise the schedules. I want to adopt it to begin with so that we will go on and revise them in accordance with what we have done. The Senator from Rhode Island makes it manifest, indeed he asserts, that after he has finished the bill and after he has laid it here as the work of his hands it will produce revenue enough, and that if we then adopt an income-tax amendment we must go back and revise the tariff bill under the leadership of the Senator from Texas.

The Senator from Texas can never aspire to equal the Senator from Rhode Island in his knowledge of the tariff and in his management of men, but in a spirit of becoming modesty I must be permitted to say that the Senator from Texas could make for the people of the United States an incomparably better tariff bill than the one the Senator from Rhode Island is now engaged in making. I not only would make it better in that I would make the duties lower, but I would make it better still in that I would lift from the backs and the appetites of the toiling millions of this Republic and lay a large part of the burden of this Government upon the incomes of those who could pay the tax without the subtraction of a single comfort from their homes.

We are ready to go to the American people upon that proposition; and yet as I stand here this evening in the presence of my colleagues and my countrymen I affirm that I would rather see this income tax adopted and have it eliminated from politics than to have the advantage which I know your defeat of it will give to the Democratic party. I do not pretend to know much about the people's sentiment; I am not accurate in gauging what the voters think; but if I can judge by the voluntary messages which have come to me, and, singularly enough, most of them have come from Republican States, if I can judge of what the people think by what a part of them have said to me, I have no hesitation in saying that, submitted to a direct vote of the people of the United States, 9 voters out of every 10 would vote to impose this income tax.

Yet the Republican party, in the face of this universal and overwhelming demand, will stand here and trifle with the judgment and conscience of Republican voters and refuse to lighten the burdens of the American people. If you choose to do it, the responsibility and the injury are on you; the advantage and the victory will come to us.

And yet, seeing an advantage of that kind, I have conferred more freely with Republicans upon this measure than I have with Democrats. The fact is, my Democratic associates have done me the honor to take my judgment about it, and they have not demanded of me many explanations or amendments. Most of the time that I have spent in conference on this amendment has been spent with Republican Senators who have at heart not only the welfare of the country, but the success of the Republican party.

Gentlemen, go ask them; put it to them. Do you believe they are truthful men? Ask them how the vote would stand, and they will answer you, as I now declare, that nine men out of every ten believe this is a wise and a just and an equal system of taxation. If it is, you may postpone it, but that is all you can do. You can not ultimately defeat it. You have no chance to reduce the expenditures of the Government, and therefore your only chance to meet these enormous and increasing expenditures is to lay a part of the burden upon the incomes of the rich. You will do it. Your consciences and your judgment now demand of you to do it now, and it is only a party loyalty, to which the Senator from Rhode Island has but just now appealed, that restrains you.

If I were framing an issue upon which the embattled hosts should decide the next election, I would not ask a better advantage than this. I would not ask a greater assurance of success than that we may go to the country advocating the reduction of tariff duties and the levy of an income tax, while you are opposing both. If you dare to repudiate this demand of the people, if you turn a deaf ear to this voice that calls upon you for justice, yours is the responsibility, ours will be the triumph.

Mr. LODGE. Mr. President, I want to say a word, as the question of order has been raised.

The PRESIDING OFFICER. The Chair does not understand that any question of order was presented.

Mr. LODGE. I do not know that it has been put in the direct form, but the question of order was raised by the Senator from Georgia. I merely wish to say that if we were under general parliamentary law, no doubt it would have great weight resting on the principle of an amendment not being separable from the original.

But, Mr. President, we are not under general parliamentary law. We are living under the rules of the Senate, which is a very different proposition. I served in the House of Representatives for some weeks under general parliamentary law, and it was a very different system from the system under which the Senate does or fails to do business. Senators would find a great many rights and privileges which they are very much attached to sadly curtailed if they were put under general parliamentary law.

Now, Mr. President, we are doing business, or trying to, under the rules of the Senate in accordance with the general proposition which is laid down in Jefferson's Manual and familiar to everybody—

> It is proper that every parliamentary assembly should have certain forms of questions so adapted as to enable them fitly to dispose of every proposition which can be made to them.

And those are enumerated. We have adopted a series of motions under the rule which is found on page 20, Rule XXII. It is a great deal more than precedence of motions. The rule is: "When a question is pending, no motion shall be received"—except the enumerated motions. They are not limited, and they can be applied in any case. They are not under the control of general parliamentary law.

Moreover, Mr. President, if we turn to Rule XXVI, which applies to motions for reference, which is all that this contest is about (it is an attempt to cut off the motion to commit, which is one of the privileged motions), we find that the motions are made for reference, not of a question, not of a bill, but of a subject. It is made as broad as possible that any subject can be referred; and if at any time a Senator chooses to move the reference of a subject to a committee, that motion is in order in the line of precedence established by the Senate in Rule XXII.

Mr. President, I do not think there can be any doubt that the motion is in order.

Now, one word about the income tax and the proposition which has been made. I am not likely to be very much prejudiced against an income tax, for we have one in my State and have had one always, in addition to a general property tax. I believe, without going into a constitutional question, that it is an eminently proper tax to levy when necessity requires.

But, Mr. President, there is a great deal more involved in this question than the mere question of the imposition of an income tax. The Senator from Texas stated that he believes nine out of ten of the people of this country want an income tax. They embodied in the Democratic platform, which I hold in my hand, a declaration in favor of an income tax last year, and we put none in our platform. I did not observe at the election that nine out of ten supported the proposition for an income tax.

But, Mr. President, that is only by the way. We are here to decide what is best for the public business and what is best for the country. The country intrusted the work of the revision of the tariff to the Republican party, and the Republican party in each Chamber has undertaken that work and is responsible for it when it is done. If in the middle of the custom schedules, before we know what the rates are to be, before we have any idea as to what, on the final summing up, our income from imposts and duties is likely to be, we are to inject an income tax carrying seventy or eighty million dollars, we utterly and totally change the character of the bill. It makes no difference, as far as that goes, whether it is at the end or in the middle. We have gone half way through the schedules imposing duties. We should have to change them all. We should have to cut off in all directions, for it would be, to my mind, a very great mistake to impose by internal-revenue taxes, added to customs duties and imports, an amount of taxation largely and obviously in excess of our needs.

Mr. President, after the schedules are agreed to, and we can determine what deficit, if any, exists, we can then determine not only whether we need an income tax or whether we need an inheritance tax or a tax on the dividends of corporations, but we shall then be in a position to determine how much, if any, of such taxes should be imposed. Up to this point the bill has been intrusted to the majority on this side of the Chamber. They are responsible for the result; they are charged, under their platform, not only with the duty of revising the tariff and raising sufficient revenue for the needs of the Government, but they are charged specifically with the maintenance of the protective system. If the two things are to remain together, if we are to have sufficient revenue and the maintenance of the protective rates, it is impossible to tell what other taxes are needed until we know what the rates may be.

I do not mean to be unduly partisan, Mr. President, and I have nothing but admiration for my friend from Texas [Mr. BAILEY]; but, on the whole, I think, so long as we are charged with the making of this bill, we had better do it under the Republican organization and under Republican responsibility.

There is one thing much worse for the country, much worse for the party, and much worse for every individual than whether we have an income tax or whether we leave it off, or just how high or just how low we make the rates, and that is to have the legislation fail entirely. It would be better to proceed with caution and circumspection, so that we may not endanger the passage of any legislation, and find ourselves thrown back without revision and with a continued tariff agitation pending over the country with the Dingley law rates.

Mr. BACON. Mr. President, I shall occupy the attention of the Senate but for a moment in replying to what the Senator from Massachusetts has said upon the question of parliamentary law. The Senator says that we are not acting under general parliamentary law. We are acting under general parliamentary law, except so far as the general parliamentary law has been varied by particular rules. The only particular in which the rule says that an amendment shall not be removed from the consideration of the body by any collateral motion is the rule which permits that amendment to be laid on the table. I am not going to discuss that any further, because I have stated the proposition, I think, quite fully. I am very frank to say that I had hoped, when it was stated, that it would be so apparent in its correctness that it would not be necessary to proceed further with its discussion.

I challenged the other side, and I repeat the challenge, to show any rule in any work on parliamentary law which permits it, or any precedent by any parliamentary body which has ever practiced it. I make that broad challenge, not simply for the present—for, of course, it will take some investigation to find a precedent, and Senators will have the whole range of parliamentary practice within which to make the search—but I will prophesy that they will not find it, whilst I have to go but a very short distance to find a precedent to the contrary.

I presume Senators who disagree with me this afternoon will not dispute the precedent when it is found in our own body. But the Senator from Maine and the Senator from Massachusetts both rest their contention upon the fact that in the order in which it is stated motions may be made, there is the specification of the motion to postpone to a day certain, and it is argued that therefore that must be now permitted which otherwise would not be permitted. I shall not stop to discuss that, Mr. President, because I think it is really so very untenable as to not require discussion. That is simply a question of order of precedence. If you extend it to the field of jurisdiction, it is only those things which legitimately belong to it that can be in order.

Unfortunately for the Senators, in that enumeration there is also the authority to make a motion to commit. Therefore any argument which would be used in support of the contention that a motion to postpone to a day certain is in order, would apply with equal force to a motion to commit. Unfortunately, we have a precedent in the Senate, in which the Senate on a vote decided that that motion was not in order, and the Senator from Massachusetts and the Senator from Maine were both present when that precedent was established, and doubtless contributed to the result one way or the other. I will read it. It so happens that the point of order was made by the junior Senator from Texas [Mr. BAILEY]. It occurred in the Fifty-ninth Congress, first session, on May 9, 1906, and is found in the CONGRESSIONAL RECORD, at pages 6552 and 6559:

> The railroad rate bill (H. R. 12987) to amend an act to regulate commerce, etc., being under consideration in Committee of the Whole,
> On motion of Mr. Hopkins, to refer an amendment as amended, together with a proposed amendment thereto, to the Committee on Interstate Commerce,
> Mr. BAILEY raised a question of order: That it was not in order to refer to a committee an amendment to a pending bill, and the Senate decided by a vote of 25 yeas to 48 nays that it was not in order. (See CONGRESSIONAL RECORD, pp. 6552–6559.)

Mr. President, when I stated my proposition, my distinguished friend from Massachusetts nodded his assent, that the same rule which would control in the case of a motion to commit would apply and control in the case of a motion to postpone to a day certain.

It might be stated that that rule would remove from the Senator from Texas the apprehension which he had that the Senator from Rhode Island would move to commit when the time came for consideration, if we had a general agreement that the proposition should be considered at a certain time. I would only reply to that, that the same influence which would cause the Senate now to override—which they would now do if they should persist in maintaining the motion of the Senator from Rhode Island—the same consideration which would induce them to override the proposition as contained in this parliamentary question, would also induce them to set aside this precedent and to commit, if they had the votes to do it.

Mr. President, I have not made any motion. I have not made any point of order, for the reason, as stated by me, that I supposed when I suggested so plain a parliamentary proposition as this one, buttressed by every principle of parliamentary law, the Senators on the other side would recognize it and yield the point; but as they evidently do not do so, it would be a vain thing to offer it, for the reason that if they have got the votes to pass the motion made by the Senator from Rhode Island, they also have the votes to vote down the point of order.

Mr. LODGE. On the question of parliamentary law, if we were proceeding under general parliamentary law, the amendment of the Senator from Texas [Mr. BAILEY] would be ruled out in a minute, because it is not germane. So we are not proceeding under general parliamentary law, but, as I stated before, under the rules of the Senate. The precedent which the Senator from Georgia produced simply meant that the Senate at that moment did not care to refer those amendments.

Mr. BACON. I suppose that it now means that the Senate at this moment proposes to support the proposition of the Senator from Rhode Island [Mr. ALDRICH].

Mr. LODGE. Very likely; but I am speaking of the general principle. There is not an appropriation bill which goes through this body where we do not refer amendments to the committee. We have done so in this bill. Amendments have been introduced here and have been referred since this bill has been under consideration.

Mr. BACON. If so, it has been by consent. The Senator can not show a precedent——

Mr. LODGE. So is this by consent. This would be by consent after the Senate has voted.

Mr. BACON. That is a very different thing. The consent does away with all rule; but I prophesy the Senator can not find a precedent for the position that, upon a vote, the Senate, or any other parliamentary body, has ever referred an amendment or postponed an amendment to a day certain.

Mr. LODGE. Unanimous consent is a vote, Mr. President.

Mr. BACON. That is a different thing.

Mr. GALLINGER. It is a unanimous vote.

Mr. LODGE. It is absolutely equivalent to a vote.

Mr. BACON. The Senator begs the question there.

Mr. LODGE. Whether that is so or not, Mr. President, I think it is equivalent to a unanimous vote; but to call one a consent and the other a vote is, it seems to me, begging the question, to begin with. Unanimous consent implies a unanimous vote, of course. That is only differing over words.

Mr. BACON. You would not need any unanimous consent if you do it by vote.

Mr. LODGE. If I understand the distinction which the Senator makes, that you can do anything by unanimous consent, I quite agree.

Mr. BACON. If the Senator will pardon me, we have unanimous consent to do a thing when it is not in order to do it by a majority vote. That is when we ask consent.

Mr. LODGE. Certainly.

Mr. BACON. Otherwise we do it by vote.

Mr. LODGE. You could not exclude these motions if you did not have unanimous consent. They are all privileged.

Mr. NELSON. Mr. President——

The PRESIDING OFFICER. Does the Senator from Massachusetts yield to the Senator from Minnesota?

Mr. LODGE. Certainly.

Mr. NELSON. I was about to say, Mr. President, that I expect my colleagues here regard me as a kind of heretic on a great many of these tariff schedules; but, if it is permissible for a heretic to speak on this occasion, I want to suggest this thought to Senators: No man in this Chamber, no matter how ardent a friend he may be of an income tax, can ever guarantee to us what the Supreme Court may do. The Supreme Court, if the question is put up to them again, may decide as they did in the last decision; and what would be the effect?

If we frame this bill on the theory of supplying a part of our revenues from the income tax and the Supreme Court should decide against it, it would leave the country entirely without sufficient revenue. So, Mr. President, while, as a general proposition, I am in favor of an income tax, it seems to me that the only safe way to proceed in this case to guard against any contingency that might happen by an adverse decision of the Supreme Court is to proceed with the tariff bill and complete it on the theory that that bill will supply us with sufficient revenue.

I may add as a postscript—and then I will sit down—that I was very warmly in favor of an income tax, but it has occurred to me since the vote on the lumber schedule that there is less reason for an income tax than ever before, and that we probably shall have revenues enough without it. [Laughter.]

Mr. NEWLANDS. Mr. President, I do not know whether the Senator from Rhode Island has withdrawn or not his motion to postpone.

Mr. LODGE. No.

The PRESIDING OFFICER. The motion is pending.

Mr. NEWLANDS. But what I have to say will apply to the situation, whether the pending question be the motion of the Senator from Rhode Island or the amendment of the Senator from Texas.

I wish to state briefly my views upon the question of an income tax. I shall favor an income tax, and I shall vote for any amendment for an income tax, whether it be a graduated tax or a flat tax, or a tax limited in its operations. I shall vote for any income tax that does not violate the essential principles of what an income tax should be.

As to the necessity for an income tax, I wish to call the attention of the Senate briefly to the fact that there is to-day a deficiency which it is hoped to remedy by economy in administration. The country is intent upon constructive work in the future, constructive work which as yet has not been undertaken in any comprehensive way. The country has already undertaken the constructive work of irrigation, and has provided a fund for that purpose derived from the sales of the public lands. It has entered upon the constructive work of the Panama Canal, and has provided for that work by the issue of bonds. The country is determined to enter upon other constructive work, the development and the improvement of the waterways of the country; and there is a popular demand, voiced by both parties, that that work shall be entered upon in some scientific and comprehensive way, and that there shall be a total annual expenditure upon it of at least $50,000,000.

In addition to this the country will doubtless enter upon constructive work on its public buildings in some orderly way under a bureau of construction and arts, utilizing the talents of the great architects and artists and the great constructors of the country, and there will be a demand that at least $30,000,000 annually be spent in this work.

We have there before us at least $80,000,000 of constructive work annually, which must be provided for.

While I should, if necessary, vote for bonds to carry out a part of this work—that relating to the waterways—I think it is incumbent upon us to provide in our general scheme of taxation for ample revenue that will cover this great constructive work which must be conducted by the country, in addition to the constructive work of our navy, in addition to the constructive work of our fortifications, in addition to the constructive work of our irrigation system, and in addition to the constructive work of our Panama Canal system. Eighty million dollars, therefore, in addition, must be provided. I believe that there is but one way of providing for it, and that is by an income tax; and, regardless of the revenue afforded by this bill, which will all be used for administrative purposes, there will still be the ever-present demand for $80,000,000 annually in order to meet the great constructive work of the future.

As the administrative expenses of the Government, amounting to over $600,000,000 annually, are to be paid by taxes on consumption, derived from internal revenue and customs, it is but fair that the additional burden, made necessary by needed public improvements, should be imposed upon wealth; and a tax on the surplus incomes over and above $5,000 annually, gradually increasing with the income, is a tax upon that form of wealth which can best stand the burden. I believe we should test this question now, in the light of the new views presented in the recent debates, and not leave the present decision to get the sanctity which age will give it. I believe that unless the Nation now asserts its right to this form of taxation the States will gradually adopt it; and then, when a time of emergency comes, the objection will be made that we ought not to reach out for fields of taxation already occupied by the States. In time of emergency, such as war, this tax may be required to save the life of the Nation; and we should assert now the right of the Nation to this form of taxation, or it may be forever lost.

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

Mr. ALDRICH. On that I ask for the yeas and nays.

The yeas and nays were ordered.

The Secretary proceeded to call the roll, and Mr. ALDRICH responded to his name.

Mr. BACON. I think, Mr. President, where there has been a debate on a question that, whenever a motion is to be put to the Senate, it ought to be stated what the motion is. The Chair puts the question, and the Secretary, without giving an opportunity for any Senator to even ask that the question be stated, begins to call the roll. That seems to have become the invariable practice.

The PRESIDING OFFICER. The Chair stated that the question was on the motion of the Senator from Rhode Island.

Mr. BACON. Yes, sir; but I desire to know what that motion is.

The PRESIDING OFFICER. That motion, as the Chair understands, is to postpone the consideration of the amendment presented by the Senator from Texas [Mr. BAILEY] until the 10th day of June. The Secretary will call the roll.

The Secretary resumed the calling of the roll.

Mr. SMITH of Michigan (when his name was called). I am paired with the Senator from Mississippi [Mr. McLAURIN]. If he were present, I would vote "yea."

The roll call was concluded.

Mr. DANIEL. I desire to announce that my colleague [Mr. MARTIN] is paired with the Senator from Oregon [Mr. BOURNE]. If my colleague were present, he would vote "nay."

The result was announced—yeas 50, nays 33, as follows:

YEAS—50.

Aldrich	Crane	Gamble	Penrose
Beveridge	Crawford	Guggenheim	Perkins
Bradley	Cullom	Hale	Piles
Brandegee	Curtis	Heyburn	Root
Briggs	Depew	Johnson, N. Dak.	Scott
Brown	Dick	Jones	Smoot
Bulkeley	Dillingham	Kean	Stephenson
Burkett	Dixon	Lodge	Sutherland
Burnham	du Pont	McCumber	Warner
Burrows	Elkins	McEnery	Warren
Burton	Flint	Nelson	Wetmore
Carter	Frye	Oliver	
Clark, Wyo.	Gallinger	Page	

NAYS—33.

Bacon	Cummins	La Follette	Smith, Md.
Bailey	Daniel	Money	Smith, S. C.
Bankhead	Dolliver	Newlands	Stone
Borah	Fletcher	Overman	Taliaferro
Bristow	Foster	Owen	Taylor
Chamberlain	Frazier	Paynter	Tillman
Clapp	Gore	Rayner	
Clay	Hughes	Shively	
Culberson	Johnston, Ala.	Simmons	

NOT VOTING—8.

Bourne	Davis	Martin	Richardson
Clarke, Ark.	McLaurin	Nixon	Smith, Mich.

So Mr. ALDRICH's motion was agreed to.

Reciprocity, silent.

Income tax, silent.

1908.

TARIFF REVISION PROMISED.

The Republican party declares unequivocally for a revision of the tariff by a special session of the Congress immediately following the inauguration of the next President, and commends the steps already taken to this end in the work assigned to the appropriate committees of Congress, which are now investigating the operation and effect of these schedules. In all tariff legislation the true principle of protection is best maintained by the imposition of such duties as will equal the difference between cost of production at home and abroad, together with a reasonable profit to American industries. We favor the establishment of a maximum and minimum rate to be administered by the President under limitations fixed by the law, the maximum to be available to meet the discrimination by foreign countries against American goods entering our markets, and the minimum representing the normal measure of protection at home, the aim and the purpose of Republican policy being not only to preserve without excessive duties the security against foreign competition to which American manufacturers, farmers, and producers are entitled, but also to maintain the high standard of living of the wage-workers of this country, who are the most direct beneficiaries of the protective system.

TRUSTS.

The Republican party passed the Sherman antitrust law over Democratic opposition, and enforced it after Democratic dereliction. It has been a wholesome instrument for good in the hands of a wise and fearless administration; but experience has shown that its effectiveness can be strengthened and its real objects better obtained by such amendment as will give the Federal Government greater supervision and control over and greater publicity in the management of that class of corporations engaged in interstate commerce having power and opportunity to effect monopolies.

competition, or fixing prices should be prohibited and punished by law. We especially denounce rebates and discrimination by transportation companies as the most potent agency in promoting and strengthening these unlawful conspiracies against trade.

CAPITAL AND LABOR.

We favor enactment and administration of laws giving labor and capital impartially their just rights. Capital and labor ought not to be enemies. Each is necessary to the other. Each has its rights, but the rights of labor are certainly no less "vested," no less "sacred," and no less "unallenable" than the rights of capital.

RECIPROCITY.

We favor liberal trade arrangements with Canada and with peoples of other countries where they can be entered into with benefit to American agriculture, manufactures, mining, or commerce.

Income tax, silent.

1908.

TARIFF.

We welcome the belated promise of tariff reform, now offered by the Republican party, as a tardy recognition of the righteousness of the Democratic position on this question; but the people can not safely intrust the execution of this important work to a party which is so deeply obligated to the highly protected interests as is the Republican party. We call attention to the significant fact that the promised relief is postponed until after the coming election—an election to succeed in which the Republican party must have that same support from the beneficiaries of the high protective tariff as it has always heretofore received from them; and to the further fact that during years of uninterrupted power no action whatever has been taken by the Republican Congress as to correct the admittedly existing tariff iniquities.

We favor immediate revision of the tariff by the reduction of import duties. Articles entering into competition with trust-controlled products should be placed upon the free list; material reductions should be made in the tariff upon the necessaries of life, especially upon articles competing with such American manufactures as are sold abroad more cheaply than at home; and gradual reductions should be made in such other schedules as may be necessary to restore the tariff to a revenue basis.

Existing duties have given the manufacturers of paper a shelter behind which they have organized combinations to raise the price of pulp and of paper, thus imposing a tax upon the spread of knowledge. We demand the immediate repeal of the tariff on wood pulp, print paper, lumber, timber, and logs, and that those articles be placed upon the free list.

TRUSTS.

A private monopoly is indefensible and intolerable. We therefore favor the vigorous enforcement of the criminal law against guilty trust magnates and officials, and demand the enactment of such additional legislation as may be necessary to make it impossible for a private monopoly to exist in the United States. Among the additional remedies we specify three: First, a law preventing a duplication of directors among competing corporations; second, a license system which will, without abridging the right of each State to create corporations, or its right to regulate as it will foreign corporations doing business within its limits, make it necessary for a manufacturing or trading corporation engaged in interstate commerce to take out a federal license before it shall be permitted to control as much as 25 per cent of the product in which it deals, the license to protect the public from watered stock and to prohibit the control by such corporation of more than 50 per cent of the total amount of any product consumed in the United States; and, third, a law compelling such licensed corporations to sell to all purchasers in all parts of the country on the same terms, after making the allowance for the cost of transportation.

Income tax, silent.

INCOME TAX.

We favor an income tax as part of our revenue system, and we urge the submission of a constitutional amendment specifically authorizing Congress to levy and collect a tax upon individual and corporate incomes, to the end that wealth may bear its proportionate share of the burdens of the Federal Government.

Reciprocity, silent.

EXHIBIT 12.

[Tables prepared by Byron W. Holt, October 15, 1906, 42 Broadway, New York.]

TABLE 1.—*Showing differences in discounts between export and home prices.*

Articles—Description.	Export discount from list.	Home discount from list.	Per cent difference.
	Per cent.	*Per cent.*	
Auger bits, Snells or Mathieson	70 and 10	60	48
Auger bits, Jennings pattern	70, 10, and 10	60	60
Auger bits, Kings or Star	60, 10, and 5	60	17
Auger bits, Bates	80 and 10	75	38
Auger bits, handled	33⅓	25	13
Auger bits, car, Jennings pattern	60, 10, and 10	60	23
Alarms, electric	55 and 10	55	11
Axle pulleys	60 and 10	60	11
Ash cans, galvanized	25, 10, and 2	25	17
Bread or meat slicers	50	40	20
Box trucks	50	40	20
Barber's shears	75 and 5	70	26
Bellhanger's gimlets	60, 10, and 5	60	17
Boring machine augers	80 and 10	70 and 10	50
Boring machine ship augers	50 and 10	40	33⅓
Butts, door	50	40	25
Bolts, window	55, 20, 5 and 5	60	23
Bells, hand, nickel-plated	60 and 5	60	6
Bells, jingle	60 and 10	60	11
Bits, expansive, Clark Brown	70 and 10	50 and 10	66
Bits, expansive, Clark's genuine	60 and 10	50 and 10	25
Bits, expansive, cutters and screws	70 and 10	50 and 10	66
Bootjacks	55, 5 and 10	55 and 5	11
Bench hooks	70, 10, 5 and 10	70, 10 and 5	11
Blacksmith's butteries	75, 10, 5 and 10	75, 10 and 5	11
Bridle rings	70, 10, 5 and 10	70, 10 and 5	11
Belt hooks	80, 10 and 10	80 and 10	11
Blind hinges	75, 10 and 10	75 and 10	11
Brass pulleys	60 and 10	60	11
Bird-cage hooks	50	40	20
Bell pulls	55 and 10	55	11
Bells, door	70, 7½ and 10	70 and 7½	11
Bell cranks	70, 5 and 10	70 and 5	11
Barn and cabin door catches	60, 10, 10 and 10	60, 10 and 10	11
Box corners	80 and 10	80	11
Bench screws	10	Net.	11
Cattle ties	60, 10, 10 and 10	60, 10 and 10	11
Cornice hooks	90, 25 and 10	90 and 25	11
Chandelier hooks	70, 5 and 10	70 and 5	11
Chain bolts	70 and 10	70	11
Cake turners	50	40	20
Compasses and calipers	75, 10 and 7½	75 and 5	13
Chisels, box	60	50	20
Carpet stretchers, No. 5	75	60 and 10	44
Casters, stove leg	50	40	20
Casters, rubber tire	40	30	17
Casters, boss	80	70 and 10	35
Coat holders	50	40	25
Coat and hat hooks, crescent	80 and 5	70	53
Carriage washers, perfection	20, 10 and 2	20	17
Chains, hitching	25, 10 and 2	25	17
Carts, hand	50 and 5	40	27
Coal tongs	60, 10 and 10	60 and 10	11
Coal shovels	60, 10, 10 and 10	60, 10 and 10	11
Cow bells	70, 10, 5 and 10	70, 10 and 5	11
Can openers	10	Net.	11
Clamps	60, 10, 10 and 10	60, 10 and 10	11
Cotton, box, and hay hooks	60, 10 and 10	60 and 10	11
Curtain pins	50 and 5 and 10	50 and 5	11
Chest handles	60, 10 and 10	60 and 10	11
Corner braces	80, 10 and 10	80 and 10	11
Clothes line pulleys	70 and 10	70	11
Door bolts	60 and 10	60	11
Door springs	75 and 10	75	11
Door checks	75 and 5 and 10	75 and 5	11
Door holders; pulls and knobs	60, 10, 10 and 10	60, 10 and 10	11

gaged in the manufacture of galvanized sheet iron and sheet steel. I am receiving telegrams from those people to the effect that this rise in the cost of spelter, which has already occurred, increases very greatly the cost of galvanizing steel and iron sheets.

The average quantity of zinc used in galvanizing a ton of sheet steel or sheet iron is 325 pounds. This spelter has increased of late about $10 a ton, which means an increase per ton of their material, as they estimate, of nearly $2 a ton. There is a differential in paragraph 126 of this bill between ungalvanized and galvanized of two-tenths of a cent a pound. It was no doubt intended that a large share of that two-tenths of a cent would provide for additional labor; but if this duty is imposed the price of zinc will so increase that the actual difference in the material will be more than two-tenths of a cent a pound. So I must ask, if any duty is imposed, that the schedule with reference to galvanized iron shall be changed to meet the changed conditions.

Mr. President, the principle of protection does not demand that this duty be imposed. It is not a languishing industry; it is not an industry that requires a penny of duty to make it profitable and increasingly profitable in the years to come.

While its imposition will tend to destroy secondary industries which depend upon this for their raw material, the increase in price will also threaten not only a decrease in the quantity made, in the zinc that is smelted, and thus in the zinc ore which is taken from the mines, but the very decadence and almost destruction of the industry itself. I can hardly understand how those who are interested in zinc ore, who have certainly as profitable mining interests as any in the United States, the one that has shown the greatest increase in profits, should be coming here to Congress and asking for this absolutely unnecessary duty—a duty not only unnecessary to themselves, but hurtful to all the related industries. So I trust, Mr. President, that this paragraph will be stricken out of the bill, and that the law will be left as it is.

Mr. HEYBURN. Mr. President——

The PRESIDING OFFICER. The Chair lays before the Senate a message from the President of the United States, which will be read:

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

The PRESIDING OFFICER. The Secretary will call the roll.

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

Aldrich	Clark, Wyo.	Gamble	Overman
Bacon	Clay	Gore	Page
Bailey	Crane	Guggenheim	Paynter
Bankhead	Crawford	Heyburn	Perkins
Borah	Culberson	Hughes	Piles
Bourne	Cullom	Johnson, N. Dak.	Rayner
Brandegee	Cummins	Johnston, Ala.	Root
Briggs	Curtis	Jones	Scott
Bristow	Daniel	Kean	Simmons
Brown	Davis	La Follette	Smith, Md.
Bulkeley	Dick	Lodge	Smith, S. C.
Burkett	Dillingham	McCumber	Smoot
Burnham	Dixon	McLaurin	Sutherland
Burrows	Dolliver	Martin	Taliaferro
Burton	du Pont	Money	Tillman
Carter	Elkins	Nelson	Warner
Chamberlain	Flint	Newlands	Wetmore
Clapp	Gallinger	Nixon	

The PRESIDING OFFICER. Seventy-one Senators have answered to their names. A quorum of the Senate is present. The Secretary will read the message from the President of the United States.

The Secretary read as follows:

To the Senate and House of Representatives:

It is the constitutional duty of the President from time to time to recommend to the consideration of Congress such measures as he shall judge necessary and expedient. In my inaugural address, immediately preceding this present extraordinary session of Congress, I invited attention to the necessity for a revision of the tariff at this session, and stated the principles upon which I thought the revision should be effected. I referred to the then rapidly increasing deficit and pointed out the obligation on the part of the framers of the tariff bill to arrange the duty so as to secure an adequate income, and suggested that if it was not possible to do so by import duties, new kinds of taxation must be adopted, and among them I recommended a graduated inheritance tax as correct in principle and as certain and easy of collection. The House of Representatives has adopted the suggestion, and has provided in the bill it passed for the collection of such a tax. In the Senate the action of its Finance Committee and the course of the debate indicate that it may not agree to this provision, and it is now proposed to make up the deficit by the imposition of a general income tax, in form and substance of almost exactly the same character as that which in the case of Pollock *v.* Farmers' Loan and Trust Company (157 U. S., 429) was held by the Supreme Court to be a direct tax, and therefore not within the power of the Federal Government to impose unless apportioned among the several States according to population. This new proposal, which I did not discuss in my inaugural address or in my message at the opening of the present session, makes it appropriate for me to submit to the Congress certain additional recommendations.

The decision of the Supreme Court in the income-tax cases deprived the National Government of a power which, by reason of previous decisions of the court, it was generally supposed that Government had. It is undoubtedly a power the National Government ought to have. It might be indispensable to the Nation's life in great crises. Although I have not considered a constitutional amendment as necessary to the exercise of certain phases of this power, a mature consideration has satisfied me that an amendment is the only proper course for its establishment to its full extent. I therefore recommend to the Congress that both Houses, by a two-thirds vote, shall propose an amendment to the Constitution conferring the power to levy an income tax upon the National Government without apportionment among the States in proportion to population.

This course is much to be preferred to the one proposed of reenacting a law once judicially declared to be unconstitutional. For the Congress to assume that the court will reverse itself, and to enact legislation on such an assumption, will not strengthen popular confidence in the stability of judicial construction of the Constitution. It is much wiser policy to accept the decision and remedy the defect by amendment in due and regular course.

Again, it is clear that by the enactment of the proposed law the Congress will not be bringing money into the Treasury to meet the present deficiency, but by putting on the statute book a law already there and never repealed will simply be suggesting to the executive officers of the Government their possible duty to invoke litigation. If the court should maintain its former view, no tax would be collected at all. If it should ultimately reverse itself, still no taxes would have been collected until after protracted delay.

It is said the difficulty and delay in securing the approval of three-fourths of the States will destroy all chance of adopting the amendment. Of course, no one can speak with certainty upon this point, but I have become convinced that a great majority of the people of this country are in favor of vesting the National Government with power to levy an income tax, and that they will secure the adoption of the amendment in the States, if proposed to them.

Second, the decision in the Pollock case left power in the National Government to levy an excise tax, which accomplishes the same purpose as a corporation income tax and is free from certain objections urged to the proposed income-tax measure.

I therefore recommend an amendment to the tariff bill imposing upon all corporations and joint stock companies for profit, except national banks (otherwise taxed), savings banks, and building and loan associations, an excise tax measured by 2 per cent on the net income of such corporations. This is an excise tax upon the privilege of doing business as an artificial entity and of freedom from a general partnership liability enjoyed by those who own the stock.

I am informed that a 2 per cent tax of this character would bring into the Treasury of the United States not less than $25,000,000.

The decision of the Supreme Court in the case of Spreckels Sugar Refining Company against McClain (192 U. S., 397) seems clearly to establish the principle that such a tax as this is an excise tax upon privilege and not a direct tax on property, and is within the federal power without apportionment according to population. The tax on net income is preferable to one proportionate to a percentage of the gross receipts, because it is a tax upon success and not failure. It imposes a burden at the source of the income at a time when the corporation is well able to pay and when collection is easy.

Another merit of this tax is the federal supervision which must be exercised in order to make the law effective over the annual accounts and business transactions of all corporations. While the faculty of assuming a corporate form has been of the utmost utility in the business world, it is also true that substantially all of the abuses and all of the evils which have aroused the public to the necessity of reform were made possible by the use of this very faculty. If now, by a perfectly legitimate and effective system of taxation, we are incidentally able to possess the Government and the stockholders and the public of the knowledge of the real business transactions and the gains and profits of every corporation in the country, we have made a long step toward that supervisory control of corporations which may prevent a further abuse of power.

I recommend, then, first, the adoption of a joint resolution by two-thirds of both Houses, proposing to the States an amendment to the Constitution granting to the Federal Government the right to levy and collect an income tax without apportionment among the States according to population; and, second, the enactment, as part of the pending revenue measure, either as a substitute for, or in addition to, the inheritance tax, of an excise tax upon all corporations, measured by 2 per cent of their net income.

WM. H. TAFT.

THE WHITE HOUSE, *June 16, 1909.*

The PRESIDING OFFICER. Without objection, the message will be printed (S. Doc. No. 98) and referred to the Committee on Finance.

Mr. HEYBURN and Mr. GORE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho [Mr. HEYBURN] has the floor. He rose first, and has been recognized.

Mr. HEYBURN. I think I was recognized before the message was received.

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from Oklahoma?

Mr. HEYBURN. For what purpose?

Mr. GORE. I wish to object to the reference. I should like to make a suggestion.

Mr. HEYBURN. I yield for the Senator to make his objection.

Mr. GORE. I desire to make a motion, Mr. President. I inquire if the Senator from Idaho has yielded?

The PRESIDING OFFICER. The Senator has yielded.

Mr. GORE. Mr. President, as I understand, the Chair proposed——

Mr. HEYBURN. I did not yield for remarks accompanying the motion. I thought the Senator merely desired an opportunity to object. I have the floor for the purpose of discussing another matter.

Mr. GORE. Mr. President, I did not want the announcement made that the message was referred, because I desired——

Mr. ALDRICH. It has already been referred.

The PRESIDING OFFICER. The reference has already been made, and the Senator from Idaho has been recognized upon another subject.

Mr. GORE. I was trying to get the attention of the Chair.

Mr. BACON. Mr. President, if you will pardon me a suggestion, the question of reference of a measure of any kind is always in the control of the Senate. It is the custom to yield that to the Chair, subject, of course, to the right of the Senate to decide that matter. I submit to the Chair that the Senator from Oklahoma was in time, because the Chair did not put any question with reference to it and there was no opportunity to make any objection.

Mr. HEYBURN. Mr. President, I had asked for and obtained recognition, if I am not entirely mistaken, before the message from the President was received.

Mr. BACON. Very well.

Mr. HEYBURN. And I merely yielded the floor for the purpose of having the message received and read.

The PRESIDING OFFICER. The Chair is of the opinion that the question of reference may be considered open. The Senator from Idaho [Mr. HEYBURN] had the floor. He yielded for the reading of the message, and if the yielding of the Senator from Idaho gave room for the reference of the message by consent, it gave room also for a motion regarding the reference or for an objection. So the Chair does not think that the question ought to be considered closed by the rather peremptory treatment of the subject, which is customary, and which ordinarily is treated as being subject to being open for any objection or motion. The Chair will recognize the Senator from Oklahoma for the purpose of making an objection to the reference of the message or a motion in regard to it.

Mr. GORE. Then, I move that the President's message just read be referred to the Committee on Finance, with instructions to that committee to report, on or before Friday next, a joint resolution proposing an amendment to the Constitution of the United States authorizing the levy and collection of an income tax in accordance with this message.

Mr. HEYBURN. I retain the floor, Mr. President.

Mr. McLAURIN. Is that debatable?

Mr. HEYBURN. If it is debatable, I have the floor.

Mr. McLAURIN. I understand.

Mr. ALDRICH. I move to lay the amendment upon the table.

Mr. GORE. I wish to modify the motion by striking out "in accordance with this message."

Mr. ALDRICH. I move to lay the motion on the table.

The PRESIDING OFFICER. The Senator will modify his motion in accordance with his own wishes. The question then will be upon agreeing to the motion of the Senator from Rhode Island.

Mr. ALDRICH. To lay the motion for instructions upon the table.

Mr. LODGE. To lay the motion for instructions upon the table.

Mr. GORE. Mr. President——

Mr. LODGE. That is not debatable.

Mr. GORE. Under the motion to table I have no right to discuss it, but by unanimous consent——

Mr. LODGE. The motion is to refer to the Committee on Finance. The Senator from Oklahoma proposes to amend it by adding instructions. The motion of the Senator from Rhode Island is to lay the amendment on the table.

Mr. TILLMAN. I think the Senator from Massachusetts is in error there. There is no motion in regard to this message at all, but it is the action of the Chair in having under the ordinary course referred it to the committee without a motion.

Mr. ALDRICH. The Senator, I think, is mistaken in that. The suggestion was made that it be referred to the Committee on Finance.

Mr. TILLMAN. By whom?

Mr. ALDRICH. By the Chair.

Mr. TILLMAN. But the Chair can not make a motion.

Mr. ALDRICH. That is the motion.

Mr. MONEY. I rise to a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. ALDRICH. It goes there under the rule.

Mr. TILLMAN. But there is no motion.

Mr. MONEY. I understood that the Senator from Oklahoma had the floor to make a motion. He had a right to move, and he had a right to say what he pleased upon that subject; and who could take him off the floor by a motion to table? He had the floor. The motion to refer is not privileged. You can not take a Senator off the floor who has it by the recognition of the Chair——

Mr. HEYBURN. He had it by unanimous consent.

Mr. MONEY. Not by unanimous consent, but by the recognition of the Chair. You were on the floor for something else, as you stated yourself, and the Chair ruled you were not in order or did not have the floor because the matter of reference had not been concluded. The Chair then recognized the Senator from Oklahoma, who proceeded in his own right to make a motion to refer with instructions; and he has the right to say what he chooses on that subject, and can not be taken off the floor by some other Senator who wants to make a motion to table.

Mr. ALDRICH. The Senator from Oklahoma had taken his seat, and I was recognized in due course by the presiding officer and made the motion.

Mr. HEYBURN. I——

Mr. MONEY. I did not know that was the fact. I thought the Senator from Oklahoma was standing all the time——

Mr. ALDRICH. Oh, no.

Mr. MONEY (continuing). And waiting an opportunity to continue what he had to say. Of course if he had taken his seat and abandoned the floor, that is another question.

Mr. HEYBURN. I yielded the floor for a purpose that was expressed and limited. I had the floor before the message came into the Senate.

Mr. MONEY. I know you had.

Mr. HEYBURN. I yielded for the purpose of receiving it. I did not yield for the purpose of considering the question whether it should go to this committee or that committee, and all that has intervened since the reading of the message was concluded has been under a waiver on my part, as a matter of courtesy. I was proceeding to speak upon the question under consideration, which is not the message——

Mr. MONEY. The Chair has already ruled, as I understand, against the position of the Senator from Idaho; but whether he has or not, he certainly will rule that way when his attention is called to it, because, having the message here, the Senator can not resume the floor upon another question, and thus interrupt the proper reference of that message. He has no right to the floor until that is disposed of.

Mr. HEYBURN. The disposition of a message is not privileged. The receiving of a message is. I yielded to privileged business. I had not yielded to the question of the disposition of this message. That might involve a week's discussion; and having had the floor, I am entitled to retain it. I may yield

it within the rules of the Senate for a limited purpose, for a question, or for a more extended purpose. That is entirely——

The PRESIDING OFFICER. The Chair is of the opinion that the——

Mr. NELSON. I rise to a point of order.

The PRESIDING OFFICER. The Senator from Minnesota will state his point of order.

Mr. NELSON. I make this suggestion to the Senator from Rhode Island: A motion to lay this amendment on the table lays the whole proposition on the table. That is the general rule of parliamentary law.

Mr. KEAN. Not in the Senate.

Mr. NELSON. The only exception to the rule is found in Rule XVI:

> Any amendment to a general appropriation bill may be laid on the table without prejudice to the bill.

This is not a general appropriation bill, and it does not come within the rule.

Mr. LODGE. If the Senator will excuse me, he is not quoting the rule which applies. It reads:

> When an amendment proposed to any pending measure is laid on the table, it shall not carry with it, or prejudice, such measure.

"Any pending measure."

Mr. NELSON. This is a motion to refer.

Mr. LODGE. This is a pending measure.

The PRESIDING OFFICER. The Chair is of the opinion that since the Senator from Idaho yielded to permit the reading of the message of the President and the reference of the message to the appropriate committee, or other disposition of the message, it is no longer within his power so to limit the opportunity as to say whether or not the Senator from Oklahoma has the right to discuss the proposition for the reference of the message. The Chair, however, understood the Senator from Oklahoma, having offered his resolution, which was in the nature of an amendment of the proposition to refer the message of the President to the Finance Committee, to yield the floor. He refrained from supplementing his motion by any observations.

Thereupon the Senator from Rhode Island rose and moved to lay on the table the amendment offered by the Senator from Oklahoma. That motion having been made, the Chair is of the opinion that it must be voted on by the Senate without debate, and that if the Senate refuses to lay the motion of the Senator from Oklahoma on the table, the Senator will then have the right to discuss it at such length as he desires.

Mr. McLAURIN. I should like to hear the motion of the Senator from Oklahoma reported.

Mr. MONEY. Wait a moment.

The PRESIDING OFFICER. The Secretary will report the motion of the Senator from Oklahoma.

Mr. MONEY. One moment.

Mr. HEYBURN. I will inquire of the Chair as to the status of my right to the floor. Have I lost it? If so, when?

The PRESIDING OFFICER. The Senator from Idaho has the floor, subject to the disposition by the Senate of the message of the President which has been read.

Mr. HEYBURN. I will resume the floor when that is concluded.

The PRESIDING OFFICER. The Secretary will report the resolution offered by the Senator from Oklahoma.

The SECRETARY. That the Finance Committee be instructed——

Mr. MONEY. Mr. President, I have something to say, if you will permit me for a moment. I want to explain to the Senate and the Chair that I think the Chair has ruled correctly upon this matter throughout. I apologize to the Senator from Rhode Island, because I was not aware that the Senator from Oklahoma had yielded the floor. I did not see him sit down, and consequently I was under the mistake of supposing that he was still on the floor, with the intention of submitting some remarks on this subject.

The PRESIDING OFFICER. The Secretary will report the resolution.

The SECRETARY. The Senator from Oklahoma moves that the Finance Committee be instructed to report on or before Friday, June 18 next, an income-tax amendment in accordance with the recommendations in the message of the President.

Mr. GORE. Mr. President——

Mr. McLAURIN. I just want to say that, as I caught the motion of the Senator from Oklahoma—and that is the reason I called for the reading of the motion—his motion was to refer to the Committee on Finance, and with these instructions. I think the stenographer's notes will bear that out.

Mr. ALDRICH. Question!

Mr. GORE. The statement made by the Secretary does not quite state my motion.

Mr. ALDRICH. I insist upon the regular order, Mr. President.

Mr. GORE. I wish to reform my motion.

Mr. ALDRICH. That is not possible now.

Mr. BAILEY. I hope the Senator from Rhode Island will not object to that. I will not vote for this motion as it is worded, because if they are to report a constitutional amendment to the Senate I shall insist on giving Congress the power to graduate the income tax, and I think we will give Senators on the other side a little more than they bargain for when we get to that proposition. The Senator from Oklahoma, I am sure, agrees with me that if we are to have the necessity of a long and tedious constitutional amendment it shall be one that will not need to be amended for many years to come.

I hope the Senator from Rhode Island will not insist upon the technical rule which will prevent the reformation of the Senator's motion in accordance with the Senator's views.

The PRESIDING OFFICER. The Chair is of the opinion that while the Senator from Oklahoma is not now at liberty to vary in any respect the motion which he actually made, if the Secretary has failed to correctly record the motion which was made, the Senator from Oklahoma may correct it.

Mr. GORE. I withdraw it, and make it in this shape. In fact, the Secretary did not report it as I suggested it. The motion was to instruct the Finance Committee to report a joint resolution submitting a constitutional amendment. The Secretary did not read it in that way. I wish to submit the motion in this shape, that the Finance Committee shall be instructed to report, on or before Friday next, a joint resolution submitting a constitutional amendment authorizing the levy and collection of an income tax.

Mr. CLAPP. The Senator from Oklahoma will allow me to call his attention——

Mr. ALDRICH. I must insist upon the regular order.

Mr. CLAPP. I rise to a point of order.

The PRESIDING OFFICER. The Senator will state his point of order.

Mr. CLAPP. The point of order is that the Chair had already announced in pro forma manner that the message would be referred to the Finance Committee. The Senator from Oklahoma rose, and when he got the opportunity to make his motion, his first words were—they struck some of us with surprise, because we supposed he wanted to refer the message to some other committee—that he moved to refer it to the Committee on Finance, with instructions.

Mr. McLAURIN. That is correct.

Mr. CLAPP. That is not an amendment to anything. There was no proposition before the Senate to refer it to any committee.

Mr. ALDRICH. I am quite willing that the vote shall be taken upon the proposition now made by the Senator from Oklahoma.

The PRESIDING OFFICER. The Chair is of the opinion that the message of the President having been referred to the Finance Committee without objection——

Mr. GORE. It was not without objection.

The PRESIDING OFFICER. The Senator will suspend for a minute until the Chair has stated the matter fully. That has been, by common consent, regarded as open, for the purpose of an objection or a motion in respect to the reference of the message. Inasmuch as the Senator from Oklahoma does not object to the reference to the Finance Committee or propose any other reference, his motion must be regarded as a motion pure and simple to instruct the Finance Committee. The question is now upon the motion of the Senator from Rhode Island to lay on the table the motion of the Senator from Oklahoma.

Mr. GORE. I desire the yeas and nays.

The yeas and nays were ordered.

Mr. GORE. I wish it understood——

The Secretary proceeded to call the roll.

Mr. GAMBLE (when his name was called). I am temporarily paired with the junior Senator from Indiana [Mr. SHIVELY]. I transfer the pair to the senior Senator from New York [Mr. DEPEW]. I make this announcement for the day. I will vote. I vote "yea."

Mr. McLAURIN (when his name was called). I am paired on this vote with the junior Senator from Michigan [Mr. SMITH]. If he were present, I should vote "nay." I announce this pair for the day.

Mr. NEWLANDS (when his name was called). I am paired with the senior Senator from Pennsylvania [Mr. PENROSE]. I transfer the pair to the senior Senator from Oklahoma [Mr. OWEN], and will vote. I vote "nay."

The roll call having been concluded, the result was announced—yeas 51, nays 25, as follows:

YEAS—51.

Aldrich	Clark, Wyo.	Frye	Nixon
Borah	Crane	Gallinger	Oliver
Brandegee	Crawford	Gamble	Page
Briggs	Cullom	Guggenheim	Perkins
Bristow	Cummins	Hale	Piles
Brown	Curtis	Heyburn	Root
Bulkeley	Dick	Johnson, N. Dak.	Scott
Burkett	Dillingham	Jones	Smoot
Burnham	Dixon	Kean	Sutherland
Burrows	Dolliver	La Follette	Warner
Burton	du Pont	Lodge	Warren
Carter	Elkins	McCumber	Wetmore
Clapp	Flint	Nelson	

NAYS—25.

Bacon	Davis	Martin	Smith, S. C.
Bailey	Fletcher	Money	Stone
Bankhead	Foster	Newlands	Taliaferro
Chamberlain	Gore	Overman	Tillman
Clay	Hughes	Paynter	
Culberson	Johnston, Ala.	Rayner	
Daniel	McEnery	Simmons	

NOT VOTING—15.

Beveridge	Depew	Penrose	Smith, Mich.
Bourne	Frazier	Richardson	Stephenson
Bradley	McLaurin	Shively	Taylor
Clarke, Ark.	Owen	Smith, Md.	

So the motion to table was agreed to.

The PRESIDING OFFICER. The message stands referred as upon the original declaration, and the Senator from Idaho is recognized.

Mr. BEVERIDGE subsequently said: Mr. President, I was necessarily absent when the vote was taken on the motion of the Senator from Oklahoma [Mr. GORE]. If I had been present, I should have voted "yea" upon the motion of the Senator from Rhode Island to lay that motion on the table.

Mr. HEYBURN. Mr. President——

Mr. BROWN. Will the Senator yield to me for a moment?

Mr. HEYBURN. I will yield for a moment, but for nothing that will displace the pending business.

Mr. BROWN. Out of order I offer a joint resolution.

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from Nebraska?

Mr. HEYBURN. I yield for the purpose of allowing the Senator to introduce a joint resolution.

The PRESIDING OFFICER. Out of order the Secretary will——

Mr. HEYBURN. Not for any comment.

Mr. BROWN. No.

Mr. BACON. Under the rule, the Senator can not yield for that purpose.

Mr. ALDRICH. That is true.

Mr. HEYBURN. I think that is true, but I did not care to suggest it.

The PRESIDING OFFICER. Except by unanimous consent——

Mr. BROWN. I ask unanimous consent.

Mr. BACON. The rule is that the Chair shall enforce it without any point of order being raised.

Mr. BROWN. I ask unanimous consent that the joint resolution——

Mr. HEYBURN. It can not be given.

The PRESIDING OFFICER. The Chair is of the opinion that it can not be done until the Senator from Idaho has yielded the floor and the Senator from Nebraska proceeds in his own right.

Mr. HEYBURN. Mr. President, I do not suppose there ever was an occasion in the history of the Senate where the conditions that confronted us and the questions to be determined changed so radically between the time that a Senator was recognized and the time that he came back five minutes later upon the floor. We were engaged in considering how we might raise revenue to conduct the affairs of this Government and, incidentally, protect the American people in the field of competition against foreigners.

Since I first addressed the Chair, about ten minutes ago, it would seem that one of these great questions was pretty nearly eliminated from consideration. When the Finance Committee first reported this bill, they reported correctly, in my judgment, that it would provide the revenue necessary to conduct the affairs of the Government. If that is true, and I believe it is true, where is the necessity of proposing these statutes providing for a tax upon the incomes of the people or a tax upon the gross earnings of corporations, or any other kind of a tax, in addition to those proposed in the bill, which already provides a sufficient fund for this Government?

I have never known such a revolution to occur in proposed legislation in the few minutes that have elapsed. I feel as though the Republican party were brought up in this moment face to face with the question whether or not they shall maintain the old protective tariff policy or whether they shall step aside and seek to carry out the vagaries of those whose idea of government is to get what the other man has and to keep all they themselves have. In other words, to make the statutes that are intended to affect the civil rights of the citizens penal statutes. In other words, to see whether or not you can not devise some means here to meet the demand not of those who think and who benefit by thinking, but of the great mass whose cry goes up at the dictate of a local leader. What occasion can there be, if the Government is provided with sufficient revenue under this law, of enacting some additional law that will provide a larger sum of money? What are we going to do with it? Has some one some covert idea of a new plan of government, by which we are going to branch out and spend more money than is required under the present system? If so, it should be disclosed.

What would you do with the revenue that was received from an income tax when you already have money enough in the Treasury to meet the Government's necessities? There is in my untamed bosom an idea. I would like to see an income tax levied upon certain things and for certain purposes and within certain limitations, but it does not emanate from the conscientious idea that I have of the duty which confronts me. We were not called together here for the purpose of getting even with somebody or punishing somebody. We were called together for the purpose of revising the revenue law that provides the money for the expenses of the Government, and in doing that the man who would allow the spirit of resentment or the spirit of opposition to interest to enter into it—well, in my judgment, he would have forgotten the duty that rested upon him.

I rose to discuss the zinc item in this bill, and in doing so it was my purpose to discuss it, first, from the standpoint of the revenue which we are here to provide, and, second, in its relation to those interested in that enterprise; and I will leave further consideration of the suggestions contained in the message for a future occasion. It may be that we will not succeed in passing any bill that will provide enough revenue through our custom-houses, and then we would be compelled to go out and resort to some other kind of taxation. But the founders of the Government never intended that that should be true. I was proposing to discuss this question along the lines of first intention on the part of the founders of the Government; and I will not enter upon a discussion of the principle of protection at this time, because we have already discussed that question.

Mr. President, it is my purpose to offer an amendment to the substitute offered by the Senator from Rhode Island, my amendment to provide in the beginning of the paragraph—

Zinc contents contained in zinc-bearing ores of all kinds, 1 cent per pound.

I intend, if I can, to have the attention of those who will vote upon this question. I will not spend one minute upon this floor in order to make a record of what I say. I suggest the absence of a quorum.

The VICE-PRESIDENT. The Senator from Idaho suggests the absence of a quorum. The Secretary will call the roll.

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

Aldrich	Clay	Frye	Page
Bacon	Crane	Gallinger	Paynter
Bailey	Crawford	Gamble	Rayner
Bankhead	Culberson	Gore	Root
Borah	Cullom	Guggenheim	Scott
Brandegee	Cummins	Heyburn	Simmons
Briggs	Curtis	Johnson, N. Dak.	Smith, Md.
Brown	Daniel	Johnston, Ala.	Smith, S. C.
Bulkeley	Davis	Jones	Smoot
Burkett	Dick	Kean	Stone
Burnham	Dixon	La Follette	Sutherland
Burrows	Dolliver	McCumber	Taliaferro
Burton	du Pont	McEnery	Tillman
Carter	Elkins	McLaurin	Warner
Chamberlain	Fletcher	Money	Warren
Clapp	Flint	Oliver	
Clark, Wyo.	Foster	Overman	

The VICE-PRESIDENT. Sixty-six Senators have answered to the roll call. A quorum of the Senate is present. The Senator from Idaho will proceed.

Mr. HEYBURN. Mr. President, if I can have the attention of the Senate, the item of zinc in ore is as important as that of the cotton schedule, the wool schedule, the lumber schedule, or of any other schedule; and those who produce it and are interested in it are as large in numbers as those interested in other schedules.

The committee reported a duty of 1 cent per pound on the zinc contents of ore. We had a right to believe that the committee would stand for that report, first, because it was the report of the committee, and as well because it was just.

Mr. ALDRICH. Mr. President, in justice to the committee, I will have to say that the committee have on several occasions stated that they had not arrived at any conclusion about the duty on zinc ore. They made no report upon the subject until this one.

Mr. HEYBURN. Paragraph 190 in the bill provides for a duty on zinc ore.

Mr. ALDRICH. That is the House provision.

Mr. HEYBURN. It was reported here by the Senate committee, and it is figured out with considerable detail and care in the book of imports that accompanies it.

Mr. ALDRICH. Technically, of course, the Senator from Idaho is correct to that extent; but I think there is no Member of this body who does not know that the Committee on Finance have been struggling with this question ever since the bill was reported.

Mr. HEYBURN. I know it.

Mr. ALDRICH. It is the most difficult problem in the whole bill, and if we have satisfied any one Senator outside of the committee I shall be more or less disappointed. The committee, nevertheless, have presented their report, and have done the best they could in this provision.

Mr. HEYBURN. I welcome the statement of the Senator from Rhode Island that this is one of the most important items in the bill.

Mr. ALDRICH. What I said was the most difficult.

Mr. HEYBURN. Yes; and important.

Mr. ALDRICH. I will agree that it is important.

Mr. HEYBURN. It is not a trifling item in the commercial world of this country. For that reason, I took the liberty of inviting Senators who I am quite sure did not know it was under consideration to come in, that they might have an opportunity, at least, of being present.

The danger always in enacting this class of legislation is that when the bill gets well along in consideration so many people have obtained the concessions they want and have such a comfortable feeling about it they can not realize that anybody else can possibly want anything, and they rather feel as though we were all ready to go home because they have what they want. Now, we have in the air the lumber item, which affects a vast number of people. It might have been disposed of——

Mr. BACON. If the Senator will permit me to interrupt him for just a moment, I desire to say that the Senator in the last sentences has given a more important illustration of the relation which all these various interests bear to a protective tariff than any I have heretofore heard in the Senate.

Mr. HEYBURN. Yet I am not inclined at all——

Mr. BACON. A general graft game.

Mr. HEYBURN. I will indorse the first statement made by the Senator and which was doubtless made in sober thought, but the last one I will not indorse. There is a great deal of objection being made by a good many people who have very little interest and take very little interest in it to the time that is being consumed in considering this bill.

The joke sifters in the gallery, I will not say whose daily bread, but whose popularity at least is with the newspapers that they represent, are not interested in the zinc schedule. If you can get up some diverting controversy here that would verge upon a disregard of the rules of the body, then they are happy. I saw an item in the editorial column of a paper this morning—I think I threw it in my desk—which illustrates what I mean very well. I will find it. It suggested an ad valorem duty upon speeches made in the United States Senate. It came in the editorial columns of one of the daily morning papers published in this city, whose representative, by the courtesy of the Senate, occupies palatial and luxurious quarters here, and who is only here by the courtesy of the Senate, and whose other representatives, through some idea that I am not able to understand, walk on the floor of the Senate. They put themselves in the position of the guest who ridicules his host. When you see that in the fugitive columns of a paper away from editorial responsibility you do not pay any attention to it, because, as I say, we know that it merely comes from where it comes from; but when a newspaper editorially undertakes to criticise this body in the responsible performance of its duty, then it places itself in the position of a guest who misbehaves himself at his host's table.

Mr. President, zinc is produced under such a variety of circumstances that you can not possibly determine this question by the consideration of any one condition. I do not believe with those who say that a tariff must be regulated upon the basis of the most prosperous of those who are affected by it, but I believe that just the contrary is the rule. Idaho is a zinc-producing State. Some may possibly say, with some reason, that I bring Idaho into these debates pretty often, but I bring it in when it is a good illustration of the principle. We had not been importing zinc into the United States from Mexico; until within the last five years we never imported any at all. At the time the last tariff bill was enacted there was no occasion for mentioning it, because it was not an item in existence. You have been told here a dozen times within twenty-four hours that zinc in ore had always been on the free list, but no one has before suggested or seemed to understand that the reason why it was on the free list was because there was no zinc ore imported at the time of the enactment of the existing tariff law, or for many years afterwards.

The necessity had not arisen. It has arisen now. There have been developed in Mexico bodies of zinc ore that can be scooped up and put on the cars in vast quantities, and brought into this country, either in the shape of zinc or spelter. They can either bring it here as ore, or they can reduce it to spelter on that side of the line and bring in the spelter. In either event it comes into our market. When it comes into our market it comes in to undersell our product.

What if they can produce ore in certain zinc mines in the United States for practically a little more than it is produced in Mexico? Is the line of protection only to extend to that class of mines? There are zinc bodies in the United States where zinc can be produced nearly as cheaply as in those in Mexico. There is very little money invested in them. They require very little expense. But we have also in this country, and particularly in the State I represent, zinc ores that have to be mined, where, before you take out a pound of zinc, you must expend some hundreds of thousands of dollars. I speak of the Success mines, where the depth already reached is something over 700 feet, and they propose 400 more immediately. It is a mine equipped with a modern, up-to-date plant, for the purpose of concentrating and reducing the zinc, at an expense of some hundreds of thousands of dollars. Would you put those people on a par with the Mexican zinc industry that can scoop it up and put it on the car for $2 a ton or $2.50? The Mexican zinc ore is nearly all produced in connection with lead ores. The lead is a by-product of value, which more than compensates them for the production of the zinc.

That is not true with our mines. I have here an accurate statement that I telegraphed for as to the character of those mines. I telegraphed to Mr. Samuels, who owns the Success mine, one of our foremost business men, a man who has been mining right in that camp for twenty years, and who is mining on a large scale and knows what he is talking about. He says:

The Success mine zinc ore averages 10 to 15 per cent.

That is the crude ore as it comes out of the ground.

A ton of ore would have from 100 to 150 pounds of zinc in it. Concentrates average 45 per cent.

It takes 4 tons of crude ore on that basis to make 1 ton of concentrates, 45 per cent zinc, and the balance waste. That is the kind of zinc mining we are compelled to do. He says:

Mill complete, ready to start at any time and ship 2,000 tons of concentrates per month—

That is the capacity of that mill and that mine—

when the price of zinc justifies—

That is when they can do it. They can not ship that zinc except the price justifies them in doing so—

150,000 tons of ore blocked out.

That means that it has been blocked out in mining, levels run under it and above it, and up and down through it, until they are able to measure up the cubic feet of ore of a given quality in that mine, and all they have to do is to take it out. Of course they will not take it out until they know they have a market for it. Otherwise it would be a dead product on their hands.

He refers me to the official report of the mining inspector of Idaho for 1907 to verify these facts.

The Sunset district, also Pine Creek, average 10 per cent zinc.

Now, the ores on Sunset Mountain and in Pine Creek are of immense value, but it is difficult, of course, to say how valuable a mine is until the ore has been explored and blocked out. He says:

They are lying idle because of the low price of zinc; 1 cent duty, and all these properties will commence working.

Mr. President, that is a live transaction. Here is the statement made by another about that mine:

The Success mine, on Nine-Mile, will not be operated until the tariff question is settled and the price of spelter not less than $5.25 per hundred at St. Louis, and $5.50 per hundred at New York, and a steady market assured.

That is the situation up there.

Mr. CUMMINS. It is perfectly well understood, I think, Mr. President, among Senators, that the Senate Finance Committee will very soon introduce an amendment to the bill, which the committee propose to offer as a substitute for the pending amendment; and in asking for unanimous consent for an agreement to dispose of the matter directly, I did not, of course, intend to exclude the proposed substitute.

Mr. HALE. But some Senators fear that, if that is agreed to in terms, it implies a vote direct on the income-tax proposition. Does not the proposition of the Senator from Rhode Island cover all that—that when this question comes up it shall continue and be considered until the Senate finally disposes of it?

Mr. ALDRICH. To the exclusion of other business.

Mr. HALE. To the exclusion of all other business.

Mr. BAILEY. Let me say this to the Senator, and I am sure the Senator from Iowa and myself are at perfect agreement on that: We know, of course, that the majority of the Finance Committee will report a proposition.

Mr. HALE. A substitute.

Mr. BAILEY. Whether it is a substitute for the inheritance provision of the House bill or whether it is a substitute for the pending amendment, of course, I suppose, has not been finally determined.

Mr. ALDRICH. I will say very frankly that it is my purpose and my expectation, when the matter is taken up, to offer a substitute for the proposition of the Senator from Texas. I have no other purpose in view at all, and I expect the matter to be continued from day to day until it is finally acted on.

Mr. BORAH. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Idaho?

Mr. BAILEY. I do.

Mr. BORAH. May I ask the chairman of the Finance Committee when this substitute will likely be reported to this Chamber?

Mr. ALDRICH. It is my purpose to report the substitute as soon as possible, certainly within twenty-four hours at least, before the matter is taken up. As soon as it can be perfected, it will be presented to the Senate.

Mr. BORAH. Mr. President, I know that the chairman of the Finance Committee, as well as the rest of us, is anxious to get through, but I suggest that the bill will be in the Chamber longer than twenty-four hours before he disposes of it.

Mr. ALDRICH. The Senator did not understand me. I said I would surely have the substitute here and offer it twenty-four hours before the matter is taken up. The committee will prepare a substitute, or be ready to present a substitute, as soon as possible; I should say not later than Monday.

Mr. McLAURIN. Mr. President, I ask the Senator from Rhode Island what is the objection to taking a vote now on this matter? That will dispose of it. The riders are up, and we could get through in a few moments.

Mr. ALDRICH. The substitute is not ready. If the Senator from Mississippi is willing to trust the committee to prepare a substitute and adopt it in advance, perhaps I might be willing.

Mr. BAILEY. I think you would get as many votes for it in that way as you will after you have prepared it.

Mr. McLAURIN. It is not the substitute that I propose a vote on, but the amendment now before the Senate. What is the objection to that? We could get it out of the way, either by adopting it, which would obviate the necessity for any substitute, or by rejecting it; and then the committee's action would be to bring in an amendment——

Mr. ALDRICH. Mr. President, my friend from Mississippi is not so innocent as he looks. [Laughter.]

Mr. McLAURIN. I was innocent enough to believe that we just wanted to find out what was the judgment of the Senate as to the amendment that is now before the Senate, whether a majority of Senators favored it or not. I understood the Senator from Rhode Island to say that it had been fully debated, and that everybody understood his mind on the matter. If that be so, we could then record our votes upon it, and have it settled at once whether we will adopt this amendment or not. We could have done that while we have been wrangling about it.

Mr. ALDRICH. Knowing the Senator's good judgment, I expect he will vote for the substitute which we shall present.

Mr. McLAURIN. No, Mr. President. Knowing the opposition the Senator from Rhode Island has to the income-tax amendment, I well know that he and his committee will not prepare any substitute for which I could vote; and I am satisfied with this amendment providing for an income tax.

Mr. ALDRICH. Has the Senator seen it?

Mr. McLAURIN. Oh, yes.

Mr. BEVERIDGE. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Indiana?

Mr. BAILEY. I do.

Mr. BEVERIDGE. I understood the Senator from Rhode Island to say that he would agree, so far as he was concerned, to unanimous consent to take this matter up at a time that either the Senator from Iowa or the Senator from Texas would request, and that it might be considered from day to day until disposed of. As I understand, that is the broadest form of a unanimous-consent agreement possible in a general way, because it absolutely excludes any other business whatever from the time we begin the consideration of the amendment until the final vote is taken. I want to call the attention of the Senator from Iowa to the fact that I believe that is the broadest form of unanimous-consent agreement possible, because no other business whatever will be transacted—and it might as well be understood now—or under such a form of unanimous consent could possibly be conducted from the time we began the consideration until the time we concluded it except by unanimous consent.

Mr. CUMMINS. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Iowa?

Mr. BAILEY. I do.

Mr. CUMMINS. Mr. President, I understand perfectly that the agreement as suggested by the Senator from Indiana would be very broad and general. It does not, however, exclude the very thing for which we have been contending from the beginning, namely, an effort upon the part of the Finance Committee to dispose of the amendment through a motion to refer to some committee. It seems to me that, as we are in accord with regard to the methods which will be resorted to to settle this question, we ought to have no difficulty whatever in expressing it. The Senator from Rhode Island says the committee intends to bring in an amendment, which it will offer as a substitute for the amendment now pending. That is a direct disposition of the pending amendment and comes directly within my original suggestion.

All I want is that when this amendment is taken up—and I have from the very first agreed it should be taken up at the end of the consideration of the paragraphs that impose duties—it shall then be considered and determined fairly upon its merits. The Senator from Rhode Island heretofore has not been willing to consent to that suggestion. Why? Because it was then in his mind—and I am not at all quarreling about that—that he could more conveniently dispose of it by moving to refer it to some committee, and he was unwilling to surrender that advantage. But now the whole situation has changed. The Finance Committee seems to be convinced that there is some supplement to our revenue necessary, and it proposes, as we understand, an income amendment which differs from ours only in this: That ours proposes a tax upon all the large incomes, whether they are individual or corporate, while the amendment, if we are to be advised by the papers and the influences which are now controlling, proposed by the Committee on Finance, is an income-tax amendment, to be imposed only upon the stockholders of corporations, whether their incomes be large or whether they be small. Here is an issue joined, and my suggestion now is for unanimous consent to decide that issue in a fair, clear vote between the proposal that will be made by the committee and the proposal already before the Senate.

I have no ulterior purposes. I have no ulterior motives. The Senator from Rhode Island knows that I have been anxious from the beginning to reach just this conclusion, and I hope it will be agreed to in some form that will enable us to reach the conclusion. As we now are, there is no time save the present for the consideration of the amendment, and if we do not reach a conclusion harmoniously and amicably with regard to it, then we must necessarily consider another motion, to postpone the income-tax amendment to a day certain, a result which I am sure is not looked upon with favor by anyone who believes in the principles of an income tax.

Mr. LODGE. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Massachusetts?

Mr. BAILEY. I will.

Mr. LODGE. Mr. President, I think we are all agreed as to taking up the income-tax amendment after the conclusion of the schedules and continuing its consideration until it is disposed of. The question arises on excluding a certain motion at that time.

It is the custom in the House to bring in special orders, specifying what motions can be made and excluding others. That has never been done here. I have no more doubt than that I am standing here that the amendment of the Finance Committee will be offered as a substitute for the amendment of the Senator from Texas; but I object on general principles to adopting the system of cutting off the right to make a regular parlia-

cessfully denied that there is much force and logic in all that the gentleman from Nevada [Mr. NEWLANDS] has said in its favor. I agree with him that if we must raise more revenue it should be collected from wealth and not from toil. It is a matter of regret to me, and I believe it will be to the people generally, that the majority members of the Ways and Means Committee did not frame a bill to repeal the Spanish-American war-revenue taxes.

The war act of 1898, which imposed that taxation, was an emergency measure. It was passed hurriedly and without much consideration to raise immediate money for the purpose of successfully prosecuting the Spanish-American war. It was a war measure, and it was so described at that time by the leaders of the Republican party in this House, who gave assurances to the country that just so soon as the war was over these war taxes would be repealed.

The war has been over for more than two years and the Republican party is just now partially reducing the war taxes. I am opposed to a continuance of these war taxes in time of peace. They are obnoxious and vexatious, and should be repealed. In my judgment they could be repealed without causing a deficit. But if gentlemen on the other side believe otherwise and claim more revenue is necessary, not for an economical administration of public affairs, but for the purpose of carrying out Republican political schemes—some of which you now have under advisement—then, I say, that instead of raising the revenue from the poor, from the producers and the consumers of the country, you should raise this additional revenue by a tax on the trusts and the accumulated and idle wealth of the land. That would be fairer, more equitable, and more consistent.

I am opposed to robbing the many for the benefit of the few. I am opposed to unjust and unnecessary taxation. The war-tax law is the worst kind of special legislation, and the bill now under consideration is a species of this special legislation carried to its logical sequence. It can not be justified now; it could only be tolerated in time of war; and I am of the opinion that the people of the country will be sadly disappointed by the action of the Republicans. They expected you to keep your promise and repeal these burdensome taxes.

Mr. Chairman, all legislation bestowing special benefits on the few is unjust and against the masses and for the classes. It has gone on until less than 8 per cent of the people own more than two-thirds of all the wealth of our country. It has been truly said that monarchies are destroyed by poverty and republics by wealth. If the greatest Republic the world has ever seen is destroyed, it will fall by this vicious system of robbing the many for the benefit of the few.

The total population of the United States is about 75,000,000. The total aggregate wealth of the United States, according to the best statistics that can be procured, is estimated at about $75,000,000,000; and it appears, and no doubt much to the surprise of many, that out of a total population of 75,000,000 less than 25,000 persons in the United States own more than one-half of the entire aggregate wealth of the land. And this has all been brought about during the last twenty-five years by combinations and conspiracies called "trusts," fostered by special legislation and nurtured by political favoritism.

The centralization of wealth in the hands of the few by the robbery of the many during the past quarter of a century has been simply enormous, and the facts and figures are appalling. Three-quarters of the entire wealth of our land appears to be concentrated in the hands of a very small minority of the people, and the number of persons constituting that minority grows smaller and smaller every year. I am in favor of repealing the war taxes and making the accumulated wealth of the land pay its just share of the burdens of government. This can readily and easily be done by a graduated corporation tax that will reach the dividends and watered stocks of the great industrial combinations and monopolies, and by a graduated inheritance tax that will reach the idle and accumulated wealth of the land.

I am in favor of making the idle wealth, the monopolies, and all these great trusts, giant corporations, and selfish syndicates do what the Republican party by law compels the toilers, the producers, and the consumers to do, and that is to pay the taxes—pay their just share of the expenses of the Government.

By a graduated corporation tax and a graduated inheritance tax we would lift the tax burdens from the farmers, the workingmen, and the consumers and place them where they justly belong, besides establishing publicity and to some extent preventing the watering of stocks and the centralization of wealth.

In my judgment, this system of a graduated inheritance tax and graduated corporation tax is the fairest, the most honest, and the most equitable system of taxation that can be devised; and I believe if it were put into operation that it would pay more than one-half of the annual expenses of the Government. Believing as I do, I am glad to support this amendment, and I sincerely hope it will be adopted.

To-day more than three-quarters of the idle wealth of this country escapes taxation and practically bears no part of the burdens of government. That is not right. I am glad to say that I believe the amendment offered by the gentleman from Nevada will cure, to some extent, at least, this inequality and injustice in our system of taxation. I trust that gentlemen on the other side of the House will vote in favor of the amendment. You can not say it is not fair and just.

If the gentleman from New York [Mr. PAYNE] answers that it will increase the revenue, then we reply that he and his associates on that side of the House can readily reduce the revenue by repealing some of the taxes on the necessaries of life, and we will help them to do it. [Applause on the Democratic side.]

[Here the hammer fell.]

Mr. PAYNE. I move that all debate on this section and amendments thereto be limited to five minutes.

The motion was agreed to.

Mr. PAYNE. I trust that the gentleman from Nevada [Mr. NEWLANDS] will be allowed to occupy these five minutes.

The CHAIRMAN. The Chair recognizes the gentleman from Nevada.

Mr. NEWLANDS. Mr. Chairman, the gentleman from Ohio appeals to his party to vote against my amendment, and to leave this matter to the consideration of the Ways and Means Committee for future action. He states that the pending amendment has been submitted without consideration and deliberation. I deny that, so far as I am concerned and so far as the minority members of the Ways and Means Committee are concerned.

It is true it has not received the consideration and deliberation of the majority members of that committee, because that committee has pursued the pernicious system which has long prevailed in Congress, and for which both parties are responsible—the consideration of tax bills as partisan measures, practically excluding the minority members from consideration of the various items of the proposed bill. This is a practice that has long existed. It is a pernicious practice, because the framing of a revenue bill affects the very source of all governmental powers. Upon it all the instrumentalities of government depend.

Therefore we have not had the opportunity—I make no charge against the dominant party which might not be made equally against the minority party when it was in power—we have had no opportunity for deliberation with our Republican colleagues of the committee upon this subject. The only opportunity we have of presenting our views is on the floor of the House here, in a constitutional way, by an amendment intended to reach the question under consideration.

What question is under consideration? The question of revenue—a question which involves the consideration of every subject that may justly be taxed. It involves the consideration of the equality of burdens—of the proper apportioning of burdens. It involves a consideration of the question whether a portion at least of this extraordinary tax levied for the purpose of carrying on a war justified by wealth should not be imposed upon wealth, particularly when under existing conditions the accumulated wealth of the country has for years practically escaped taxation.

I present no indictment against wealth as such. There are two classes of wealth in this country. One class—the majority, as I believe—consists of law-abiding persons who are willing to bear their fair proportion of the obligations of government; who are willing to sustain their fair proportion of governmental burdens; not eager to obtain exemption; not eager to obtain special privileges; not eager to utilize the functions of government for their own advancement.

Then there is another class of wealth—the lawless and the predatory wealth of the country—which seeks special exemptions, which seeks special privileges, which seeks to evade and escape the burdens of taxation, which seeks to pervert to its own advancement the functions of government. It is that form of wealth which brings conservative wealth under discredit and creates the discontent that finds its vent in communism and socialism.

I do not believe that the great mass of the industrial corporations of the country belong to that class. I believe that they will cheerfully bear a portion of the national burdens, and that a cheerful acquiescence in the demand for publicity will tend to scientific adjustment of pending problems.

[Here the hammer fell.]

The CHAIRMAN. The question is on agreeing to the amendment of the gentleman from Nevada [Mr. NEWLANDS].

The question was taken; and on a division (demanded by Mr. NEWLANDS) there were—ayes 71, noes 99.

Mr. NEWLANDS. Mr. Chairman, I demand tellers.

Tellers were ordered.

The Chair appointed Mr. NEWLANDS and Mr. PAYNE as tellers.

The committee again divided; and the tellers reported—ayes 75, noes 105.

So the amendment was rejected.

Mr. NEWLANDS. It will be observed that this amendment, also, was lost by a comparatively small majority.

RENEWED EFFORTS TO EXTEND TAX IN 1902, WHEN WAR-REVENUE ACT WAS REPEALED.

Later on, in 1902, the question came up as to the repeal of the war-revenue bill. The Democrats of the Ways and Means Committee, while in favor of the repeal of most of the taxes, were strongly impressed with the view that certain taxes on accumulated wealth should be allowed to remain, and particularly the tax imposed upon sugar and petroleum refiners. And so, in connection with the report of the majority, recommending substantially the repeal of the entire act, the minority members presented in their report their views upon this subject. We contended that the sugar and petroleum tax yielded about a million dollars annually, and there was no reason why the great combinations monopolizing these industries should not pay some part of the national expenses as well as the masses of the people who use and consume the various things which are the subject of customs and internal tax. We urged particularly that this tax should be enlarged so as to cover all industrial corporations, in view of the fact that the Supreme Court had denied Congress the right to tax incomes, and we presented our views regarding publicity of the transactions of corporations as corrective of existing abuses and as enabling Congress to secure the relief necessary for action regarding tariff legislation and trust regulation. I ask leave to print in the RECORD the views of the minority members of the Ways and Means Committee of the House upon this subject.

The PRESIDING OFFICER (Mr. KEAN in the chair). The Chair hears no objection to the request of the Senator from Nevada.

The matter referred to is as follows:

[From the report of the Ways and Means Committee of the House of Representatives on the repeal of the war-revenue act.]

VIEWS OF THE MINORITY.

The minority members of the Ways and Means Committee submit their views on the bill (H. R. 10530) to repeal war-revenue taxation, and for other purposes, as follows:

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While approving in general the policy of repealing the war taxes, we insisted, and shall insist, that certain taxes upon accumulated wealth provided for in that act should be allowed to remain. We refer, as already indicated, to such taxes as are imposed on sugar and petroleum refiners. The tax of one-fourth of 1 per cent on the annual gross receipts of sugar and petroleum refiners in excess of $250,000 yields the sum of about $1,000,000 annually. This tax has been paid without demur or protest, and there is no reason why the great combinations engaged in these refineries, and which monopolize the business in these cases, and from which colossal individual fortunes have been built up, should not pay some part of the national expenses as well as the masses of the people who use and consume the various things which are the subject of customs and internal-revenue taxation.

As the Supreme Court has denied to Congress the right to tax incomes for the support of the Government, it is well to place accumulated wealth under some form of contribution, and we know of none more just or equitable than a tax such as that imposed by the war-

Mr. NEWLANDS. I will ask the Senator whether he thinks sixty days give a sufficient period?

Mr. LA FOLLETTE. In the opinion of the conferees, it was thought to be a reasonable provision and that it would give ample time for——

Mr. NEWLANDS. I wish also to inquire regarding the housing of the census force—some 3,000 or 4,000 men. I understand that the provision was entirely stricken out.

Mr. LA FOLLETTE. With respect to the purchase of property, it was.

Mr. NEWLANDS. What arrangement is proposed to be made regarding the housing of the Census Bureau?

Mr. LA FOLLETTE. Provision is made for that in the appropriation bill. It is expected that the extra force will be housed as in the last decennial census; that is, that the department will rent such rooms and apartments as are necessary to make provision for the census.

Mr. NEWLANDS. Would there be any authority under the bill appropriating $10,000,000 for this work to erect or to purchase a building, if that was thought more advisable than leasing?

Mr. LA FOLLETTE. I will say to the Senator that no provision is made for the purchase of a site or a building.

Mr. NEWLANDS. And no provision is made for leasing?

Mr. LA FOLLETTE. I am not certain whether the appropriation bill——

Mr. KEAN. Mr. President, it is utterly impossible to hear what is going on.

Mr. LA FOLLETTE. The appropriation bill was not assigned to the Committee on the Census. It was considered by the Committee on Appropriations.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The report was agreed to.

TAXES ON INCOMES.

Mr. ALDRICH. From the Committee on Finance, I report a joint resolution proposing an amendment to the Constitution of the United States, and if there is no objection I should be glad to have this disposed of without debate. I ask that it may be read.

Mr. TILLMAN. I thought we had an understanding that we would not deal with any of these constitutional or income tax or other amendments until we got through with the dutiable list.

Mr. ALDRICH. If the Senator proposes——

Mr. TILLMAN. I have an amendment which I wish to offer. I have been waiting here patiently in this oven about six hours to get a chance to present it.

Mr. ALDRICH. I ask that the joint resolution may be read and printed.

Mr. CULBERSON. I ask the Senator from Rhode Island if he has finished with the other schedules.

Mr. ALDRICH. No; I was only making this suggestion now, if it can be done without debate, by unanimous consent; but if there is any objection I shall ask to have the joint resolution read and printed, and I give notice that I shall call it up at the first convenient period and ask to have it disposed of without debate.

The PRESIDING OFFICER. The Senator from Rhode Island, from the Committee on Finance, reports a joint resolution, which will be read.

The joint resolution (S. J. R. 40) proposing an amendment to the Constitution of the United States was read the first time by its title and the second time at length, as follows:

Senate joint resolution 40.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution:

ARTICLE XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States and without regard to any census or enumeration."

The PRESIDING OFFICER. If there be no objection, the joint resolution will be printed and lie on the table.

Mr. BORAH. Do I understand that it is the intention to take up this amendment before the income-tax amendment is disposed of?

Mr. ALDRICH. I thought perhaps the Senate might be able to dispose of it without debate. If they can, that might be done. If not, I shall not press it until after the income-tax provisions are disposed of.

Mr. BORAH. But not before the income-tax amendment if it is to be opposed?

Mr. ALDRICH. I certainly have no disposition to do that unless it can be done by unanimous consent.

THE TARIFF.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 1438) to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes.

Mr. TILLMAN. I ask that the amendment which I offered in regard to tea may be called up.

The PRESIDING OFFICER. The amendment will be read.

The SECRETARY. On page 80, after line 3, it is proposed to add a new paragraph, as follows:

258½. Tea, 10 cents per pound.

Mr. TILLMAN. Mr. President, it is, I think, the tenth week we have entered on that we have been debating the tariff bill, strenuously and with considerable heat at times. It is too warm, or hot, to use a better term, for me to consume much time of the Senate in presenting this amendment, but there are certain facts which stick out very prominently which I want to have Senators consider, though I know in advance, in a way, that many men's minds are already made up, and that it is understood the Committee on Finance have refused absolutely to give any favorable consideration to this proposition. We all know what the refusal of the chairman of that committee, who always speaks for the committee and speaks with authority, means. When that committee says "no," the Senator says "no;" and when the Senator from Rhode Island says "no," the committee says "no." Therefore, I might forego the discussion of this question if it were not that I want to get the protectionists in this Chamber in an uncomfortable condition or situation.

Mr. FRYE. They are in one.

Mr. TILLMAN. The Senator from Maine says we are undoubtedly very uncomfortable now, and I agree with him. I will say I feel we are very near the devil's kitchen and the fumes from below are coming up. Probably some of us are having foretaste of what we are going to get hereafter for our sins committed in this Chamber during this debate. This duty on tea is taken as a joke by many on that side of the Chamber, and I have not taken the trouble to try to proselyte anybody.

I have facts here, with which very few Senators are acquainted, that ought to give me the support of every man on this side, and I shall present arguments which ought to give me the vote of every man on the other side. So I ought to get this duty imposed without a single adverse vote.

Mr. President, this bill is labeled "An act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes." If we consider the tariff question in general, it is very evident to any student of that subject that there are two schools, and that there have been two schools, of political economy in regard to it from the beginning of our Government. There are those who believe that the tariff is a tax, and that no duty should be levied except for the purpose of raising revenue. There are those who have come to believe—and they are in the majority now in this Chamber and probably in the country for the time being—that, in addition to levying a tariff for revenue, it is permissible and lawful to levy a tariff solely to encourage American industries or to protect American labor against foreign labor. I am going to address myself, first, to my Democratic brethren on the subject of revenue.

We are told by the officials that we are from ninety to one hundred million dollars behind on account of the deficit, the revenues not equaling the expenditures; and this bill is ostensibly to be passed to give us additional revenue. Tea, with a tariff of 10 cents a pound, offers to the people of this country and to the Treasury between nine and ten million dollars.

The duty will be generally levied. It is not upon an article of prime necessity, because there are a great many millions of Americans who do not drink tea. There are others who drink tea and love it, and to whom it has become, in a way, a necessity, just as whisky is a necessity for other people and tobacco a necessity for still other people. But it is not a real necessity of life.

As this proposed duty on tea would give us $9,000,000 revenue, we will say, in round numbers, thereby increasing the revenue to that extent, I do not see for the life of me how any Democrat can object to voting for it if he wants additional revenue, and especially when Senators on this side have advocated duties on lumber and iron ore—for which I voted—quebracho, and one thing or another here, which gave revenue while affording some degree of encouragement—I will not say "protection"—to certain local industries. I do not see for the life of me how any man who simply votes for a revenue tariff can object to giving the Government the power to levy and collect this duty on tea.

Mr. President, I expect to vote in favor of an income tax. If I knew that you were going to put $60,000,000 into the Treasury and not reduce the duties on the necessaries of life, I would say that you were unnecessarily taxing the people.

Mr. ALDRICH. Mr. President——

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from Rhode Island?

Mr. CLAY. Yes.

Mr. ALDRICH. Does the Senator from Georgia indulge in the hope that the Senate will reduce the duties on the articles he has mentioned?

Mr. CLAY. I can not hear the Senator.

Mr. ALDRICH. If the Senate should follow him and adopt an income tax, does the Senator think that we should go back and revise the schedules generally?

Mr. CLAY. I always deal frankly. I say to the Senator I would raise enough revenue to support this Government outside of the income tax until the income tax was held to be constitutional, and then, when it was held to be constitutional, I would go all along the line and reduce the duties on the necessaries of life.

Mr. ALDRICH. The Senator probably did not understand my question, or else he does not desire to answer it. Does the Senator——

Mr. BAILEY. I understood it, and I should like to answer it.

Mr. ALDRICH. I should like the Senator from Georgia——

Mr. BAILEY. The Senator from Georgia will pursue his own course.

Mr. ALDRICH. The Senator from Georgia seems to be able to make this speech.

Mr. BAILEY. And he is entirely able to take care of himself, and does not need any help.

Mr. ALDRICH. I would be glad if he would answer the question.

Mr. BAILEY. The Senator from Georgia did not hear it, and I did.

Mr. ALDRICH. My question was this: If the income tax was adopted by his vote, does he expect that we should go back and reduce the duties in the schedules in this bill?

Mr. BAILEY. You said you would.

Mr. ALDRICH. I beg the Senator's pardon.

Mr. BAILEY. The RECORD will show, when you were appealing to your side not to depose you as leader that afternoon when we thought we would probably defeat you on that vote, you said: "If the income tax is adopted, I would feel it necessary to go back and revise every schedule in this bill." I have not looked at the RECORD since that day, but I will have it examined, and the Senator will find that I have substantially quoted him.

Mr. ALDRICH. I do not expect the income tax to be adopted——

Mr. BAILEY. Did you say that?

Mr. ALDRICH. And if it were adopted, I do not expect to destroy the protective system now.

Mr. BAILEY. But did you not say that you would go back——

Mr. ALDRICH. I think perhaps it would be destructive in time.

Mr. CLAY. The Senator said it. I have the RECORD here.

Mr. ALDRICH. What I am trying to find out from the Senator from Georgia is whether he would vote for an income tax if he thought it would not be possible to revise this protective tariff according to his ideas, downward.

Mr. CLAY. I will vote for an income tax, because I believe it to be right, and I would continue to battle before the country to induce the country to send Representatives to Congress who would enact it into a law and who would reduce the tariff duties on the necessities of life in proportion to the amount raised by an income tax.

I want to ask the Senator a question. If we are to raise $50,000,000 per year by a tax on corporation dividends, does the Senator think that such a tax is a vicious assault upon the protective system; and, second, if this bill, as it stands, will produce enough revenue to support the Government and we adopt the corporation tax, raising $50,000,000, does not the Senator think we ought to take up some of the other schedules of this bill and reduce the duty in proportion to the amount that we raise by the corporation tax?

Mr. ALDRICH. Does the Senator from Georgia want an answer?

Mr. CLAY. I would not have asked the question if I did not.

Mr. ALDRICH. I shall vote for a corporation tax as a means to defeat the income tax.

Mr. CLAY. I think that is an honest statement.

Mr. ALDRICH. I will be perfectly frank with the Senate in that respect. I shall vote for it for another reason. The statement which I made shows a deficit for this year and next year. This year I estimated $69,000,000. It will be $60,000,000. And next year I estimate a deficit of $45,000,000. I am willing that that deficit shall be taken care of by a corporation tax. That corporation tax, however, at the end of two years, if my estimate should be correct, should be reduced to a nominal amount or repealed. It can be reduced to a nominal amount, and the features of the corporation tax that commend it to many Senators and a great many other people is that the corporation tax, if it is adopted, will certainly be very largely reduced, if not repealed, at the end of two years.

So I am willing to accept a proposition of this kind for the purpose of avoiding what, to my mind, is a great evil and the imposition of a tax in time of peace when there is no emergency, a tax which is sure in the end to destroy the protective system. I have been perfectly frank with the Senator in stating my own views on the subject.

Mr. BAILEY. Will the Senator from Georgia permit me?

Mr. CLAY. Certainly.

Mr. BAILEY. I simply want to commend the statement of the Senator from Rhode Island to those Senators who say they are in favor of an income tax and who join with him in this subterfuge to defeat it. The Senator from Rhode Island has very frankly served notice on those Republicans whom he has won from the income-tax amendment to the support of the corporation tax that it is to be entirely repealed or at least emasculated within the next two years; and so, after all, it is simply a contest between an income tax as a permanent part of our fiscal system and a corporation tax as a subterfuge for two years. That clarifies the atmosphere, Mr. President.

Mr. ALDRICH. The corporation tax is not a subterfuge in any sense of the word. It is a tax upon the incomes of corporations, which is clearly within the constitutional right of the Congress to impose, and those Senators and others who are honestly in favor of the imposition of an income tax which is constitutional and can be so held and will be operative, will certainly support the proposition offered by the committee, the proposition of the administration, as against the proposition of the Senator from Texas, which is certainly, in the minds of most thoughtful people, unconstitutional and unwise in all its provisions.

Mr. BAILEY. Not the most thoughtful, but the least thoughtful.

Mr. ALDRICH. That is the difference between the Senator from Texas and myself. I used the term "most thoughtful" because I thought it was a most proper designation of the people supporting this proposition.

Mr. BAILEY. I may say that the President of the United States thought with me once, until the Senator from Rhode Island persuaded him or he persuaded the Senator from Rhode Island, and I am not prepared to say which. But I only trespass upon the Senator's time far enough to reassert my characterization of this as a subterfuge, and my direct authority for saying—although I did not need it, for I knew it before—is the statement of the Senator from Rhode Island that he votes for the corporation tax for the purpose of defeating the income tax. If that does not define a subterfuge, I need a new dictionary.

Mr. ALDRICH. I stated, and I will repeat, that the proposition of the Senator from Texas, in the opinion of a great majority of the thoughtful lawyers of the United States, is unconstitutional. It is an attempt in time of peace to take the taxing power, which was only intended for use in emergencies, and try to force it upon the American people, accompanied by the declaration which my friend, the Senator from Texas, has had the courage to make, that it is the purpose to destroy the protective system. Now, I say, on the other hand, that those men who believe that we can tax corporations in a perfectly constitutional way will support the proposition of the administration.

The Senator from Texas says he does not know whether the President of the United States succeeded in persuading me to support this amendment or whether I succeeded in persuading him. I will say to the Senator from Texas that this proposition of the President of the United States was made to the House Committee on Ways and Means long before I considered the subject at all, and I am here as a Republican to support the President and the Republican administration as far as I can consistently with my views of my duty to the country and my position as a Senator. I shall vote for this proposition for the very purposes I have named, and among them the fact that it is a Republican proposition and has the support of the President of the United States is not the least controlling.

the authority of the United States or of any State or Territory thereof; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint-stock companies or associations, and insurance companies, subject to the tax hereby imposed.

Third. That there shall be deducted from the amount of the net income of each of such corporations, joint-stock companies or associations, or insurance companies, ascertained as provided in the foregoing paragraphs of this section, the sum of $5,000, and said tax shall be computed upon the remainder of said net income of such corporation, joint-stock company or association, or insurance company for the year ending December 31, 1909, and for each year thereafter; and on or before the 1st day of March, 1910, and the 1st day of March in each year thereafter, a true and accurate return under oath or affirmation of its president, vice-president, or other principal officer, and its teasurer or assistant treasurer, shall be made by each of the corporations, joint-stock companies or associations, and insurance companies, subject to the tax imposed by this section, to the collector of internal revenue for the district in which such corporation, joint-stock company or association, or insurance company has its principal place of business, or, in the case of a corporation, joint-stock company or association, or insurance company, organized under the laws of a foreign country, in the place where its principal business is carried on within the United States, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, setting forth, (first) the total amount of the paid-up capital stock of such corporation, joint-stock company or association, or insurance company, outstanding at the close of the year; (second) the total amount of the bonded and other indebtedness of such corporation, joint-stock company or association, or insurance company at the close of the year; (third) the gross amount of the income of such corporation, joint-stock company or association, or insurance company received during such year from all sources, and if organized under the laws of a foreign country the gross amount of its income from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia; (fourth) the amount received by such corporation, joint-stock company or association, or insurance company, within the year by way of dividends upon stock of other corporations, joint-stock companies or associations, or insurance companies, subject to the tax imposed by this section; (fifth) the total amount of all the ordinary and necessary expenses actually paid out of earnings in the maintenance and operation of the business and properties of such corporation, joint-stock company or association, or insurance company, within the year, and if organized under the laws of a foreign country the amount so paid in the maintenance and operation of its business within the United States and its Territories, Alaska, and the District of Columbia; (sixth) the total amount of all losses actually sustained during the year and not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in the case of insurance companies the sums required by law to be carried to premium reserve fund, and in the case of a corporation, joint-stock company or association, or insurance company, organized under the laws of a foreign country, all losses actually sustained by it during the year in business conducted by it within the United States or its Territories, Alaska, and the District of Columbia, not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in the case of insurance companies the sums required by law to be carried to premium reserve fund; (seventh) the amount of interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of such corporation, joint-stock company or association, or insurance company outstanding at the close of the year, or in case of a corporation, joint-stock company or association, or insurance company, organized under the laws of a foreign country, interest so paid on its bonded or other indebtedness, to an amount of such bonded and other indebtedness, not exceeding the proportion of its paid-up capital stock outstanding at the close of the year which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia, bears to the gross amount of its income derived from all sources within and without the United States; (eighth) the amount paid by it within the year for taxes imposed under the authority of the United States or any State or Territory thereof; (ninth) the net income of such corporation, joint-stock company or association, or insurance company, after making the deductions in this section authorized. All such returns shall as received be transmitted forthwith by the collector to the Commissioner of Internal Revenue.

Fourth. Whenever evidence shall be produced before the Commissioner of Internal Revenue which in the opinion of the commissioner justifies the belief that the return made by any corporation, joint-stock company or association, or insurance company is incorrect, or whenever any collector shall report to the Commissioner of Internal Revenue that any corporation, joint-stock company or association, or insurance company has failed to make a return as required by law, the Commissioner of Internal Revenue may require from the corporation, joint-stock company or association, or insurance company making such return such further information with reference to its capital, income, losses, and expenditures as he may deem expedient; and the Commissioner of Internal Revenue, for the purpose of ascertaining the correctness of such return or for the purpose of making a return where none has been made, is hereby authorized, by any regularly appointed revenue agent specially designated by him for that purpose, to examine any books and papers bearing upon the matters required to be included in the return of such corporation, joint-stock company or association, or insurance company, and to require the attendance of any officer or employee of such corporation, joint-stock company or association, or insurance company, and to take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons; and the Commissioner of Internal Revenue may also invoke the aid of any court of the United States to require the attendance of such officers or employees and the production of such books and papers. Upon the information so acquired the Commissioner of Internal Revenue may amend any return or make a return where none has been made. All proceedings taken by the Commissioner of Internal Revenue under the provisions of this section shall be subject to the approval of the Secretary of the Treasury.

Fifth. All returns shall be retained by the Commissioner of Internal Revenue, who shall make assessments thereon; and in case of any return made with false or fraudulent intent, he shall add 100 per cent of such tax; and in case of refusal or neglect to make a return or to verify the same as aforesaid, he shall add 50 per cent of such tax. In case of neglect occasioned by the sickness or absence of an officer of such corporation, joint-stock company or association, or insurance company, required to make said return, the collector may allow such further time for making and delivering such return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax originally assessed unless the refusal, neglect, or falsity is discovered after the date for payment of said taxes, in which case the amount so added shall be paid by the delinquent corporation, joint-stock company or association, or insurance company, immediately upon notice given by the collector. All assessments shall be made, and the several corporations, joint-stock companies or associations, or insurance companies, shall be notified of the amount for which they are respectively liable on or before the 1st day of June of each successive year, and said assessments shall be paid on or before the 30th day of June, except in cases of refusal or neglect to make such return, and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as above provided for, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such corporation, joint-stock company or association, or insurance company immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the 30th day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of 5 per cent on the amount of tax unpaid and interest at the rate of 1 per cent per month upon said tax from the time the same becomes due, as a penalty.

Sixth. When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such.

Seventh. It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or make known in any manner whatever not provided by law to any person any information obtained by him in the discharge of his official duty, or to divulge or make known in any manner not provided by law any document received, evidence taken, or report made under this section except upon the special direction of the President; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both, at the discretion of the court.

Eighth. That if any of the corporations, joint-stock companies or associations, or insurance companies aforesaid shall refuse or neglect to make a return as above specified on or before the 1st day of March in each successive year, or shall render a false or fraudulent return, such corporation, joint-stock company or association, or insurance company shall be liable to a penalty of not less than $1,000 and not exceeding $10,000.

That any person authorized by law to make, render, sign, or verify any return who makes any false or fraudulent return or statement, with intent to defeat or evade the assessment required by this section to be made, shall be guilty of a misdemeanor, and shall be fined not exceeding $1,000, or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

That all laws relating to the collection, remission, and refund of internal-revenue taxes, so far as applicable to and not inconsistent with the provisions of this section, are hereby extended and made applicable to the tax imposed by this section.

Jurisdiction is hereby conferred upon the circuit and district courts of the United States for the district within which any person summoned under this section to appear to testify or to produce books, as aforesaid, shall reside, to compel such attendance, production of books, and testimony by appropriate process.

Mr. FLINT. Mr. President, this amendment was offered by the chairman of the Finance Committee after careful consideration by the committee, and is in accordance with the recommendation of the President of the United States in his message of June 16, 1909. Prior to the receipt of the message of the President by the Congress of the United States the Finance Committee had considered the question of obtaining additional revenue. The committee were not altogether united on the question whether it was necessary to have revenue in addition to what would be produced by the pending bill. We considered not only the question of taxing corporations, as recommended by the President, but also the income tax and the tax upon inheritances, as passed by the House of Representatives.

The committee decided that it would be unwise to pass an income-tax amendment in form and substance like those introduced by the Senator from Texas [Mr. BAILEY] and the Senator from Iowa [Mr. CUMMINS]. We felt that, in view of the decision of the Supreme Court of the United States in the Pollock case, it would be indelicate, at least, for the Congress of the United States to pass another measure and ask the Supreme Court to pass upon it, when they had already passed upon the proposition in that case.

We felt in the matter of the inheritance tax that it was unwise to adopt the measure as passed by the House of Representatives, for the reason that a large number of the States of the Union have adopted inheritance taxes as a means of revenue in those States, and that it would be a hardship upon the people of those States to have the additional burden of a national tax on inheritances.

When the President of the United States recommended the passage of a bill for a tax on corporations, on the privilege of doing business, the committee agreed that it was a proper measure to recommend to Congress for additional revenue. As I stated, there were members of the committee who believed that the present bill will produce sufficient revenue, but there are others of the committee—a majority, I believe—who believe it is necessary to have additional revenue.

We were also in favor of having a measure which, in our opinion, would work the least hardship to the people of this country, and we believe the amendment we have recommended will do this.

It provides for a tax of 2 per cent upon the entire net income of all corporations or joint stock companies for profit, represented by shares, or having a capital stock, and insurance companies. It provides for certain deductions from the gross income of the corporation, so as to make definite what the net income will be. It also provides for the taxation of foreign companies doing business in the United States, and a deduction from the gross income of those companies. It also provides a penalty for making false returns. It provides that the penalty for a false return shall be 100 per cent, and a penalty of 50 per cent for failure to make the return. It also provides that in the event of a failure to pay the tax when it becomes due a penalty of 5 per cent shall be added and interest at 1 per cent per month. It provides, in addition to that, that the making of a false return by a corporation shall be punishable by a penalty of not less than $1,000 and not more than $10,000. It provides that the officer who makes the false return shall be punished by fine of not more than $1,000, or by imprisonment for not more than one year, or both.

In addition to the provisions in reference to increasing the income of the Government, there was an additional recommendation by the President of the United States in his message that it would give a certain amount of control of corporations by the National Government, publicity as to the condition of the affairs of corporations, and supervision to a certain extent over those corporations. The bill provides that these returns as made by these corporations to the collector of internal revenue shall be forwarded to the Commissioner of Internal Revenue and become public records. But it provides also that no collector of internal revenue shall have the right to examine the books and affairs of any corporation, unless the Commissioner of Internal Revenue is satisfied that a false return has been made; or, in another instance, where no return has been made, he can then appoint a deputy specially authorized to examine the books and the papers necessary to ascertain the correct amount that should be returned by the corporation, and obtain knowledge sufficient to make a return where no return has been made. By reason of these various provisions in the measure the public will be advised of the condition of the affairs of corporations throughout the country, and at the same time the fear of many people that these internal-revenue agents will be prying into the affairs of corporations is protected, as no investigation of their affairs can be done except by an officer specially authorized for that purpose.

Mr. GALLINGER. Mr. President——

The PRESIDING OFFICER. Does the Senator from California yield to the Senator from New Hampshire?

Mr. FLINT. Certainly.

Mr. GALLINGER. If I do not disturb the Senator, I have had two or three letters of complaints about this proposed law, the complaint largely being based upon the assumption that there was to be an army of agents and inspectors sent out by the Government to pry into the affairs of these corporations. I infer from what the Senator says that that has been very carefully guarded, and that there need be no apprehension on that point.

Mr. FLINT. The Senator is correct. The amendment limits the right of investigation to an officer specially authorized for that purpose and does not permit revenue agents to pry into the affairs of a corporation out of mere curiosity.

Mr. GALLINGER. Or to make a record.

Mr. FLINT. And such investigations can only be made of the affairs of that corporation as are necessary to make this return.

The committee has no pride of opinion as to the form of this measure, for the reason that it is as drawn by the Attorney-General of the United States after conference with the President and with the junior Senator from New York [Mr. ROOT]. After the bill had been prepared, it was then sent to the committee and the committee made certain amendments and changes.

The PRESIDING OFFICER. Does the Senator from California yield to the Senator from Nebraska?

Mr. FLINT. I yield.

Mr. BURKETT. I did not want to interrupt the Senator until he got through with his answer, but I wish to ask him a question in connection with these insurance companies. Does it also include the fraternal beneficiary companies? We have a great many fraternal beneficiary societies not organized for profit. They pay nothing except a salary here and there for those who conduct the organization. As I have looked over the bill, this would include a tax on them. I ask the Senator if that is correct or if there has been any consideration of that phase of the question?

Mr. FLINT. I desire to say that the provision the Senator from Nebraska refers to has also been carefully considered by the committee, and the committee is of the opinion that none of those organizations would be taxed under the provisions of the bill. My attention was called to-day to the matter of the organizations of the Brotherhood of Locomotive Engineers, the Railway Conductors' Association, the Railway Mail Association, and the Trainmen's Association, and numerous organizations of that kind in addition to the organizations the Senator refers to, like the Odd Fellows, the Royal Arcanum, and organizations of that kind. The committee is of opinion that they are not included within the provisions of this bill, and it does not intend to have them included.

Mr. McCUMBER. Will the Senator allow me to make a suggestion right there?

Mr. FLINT. Certainly.

Mr. McCUMBER. The bill applies only to those organizations having a capital stock. None of the corporations the Senator from Nebraska is speaking of have a capital stock.

Mr. BURKETT. I will say that as I read it through I rather thought that they were protected, but I have just had two or three telegrams from lawyers representing some of these fraternal organizations who have a little apprehension the other way. That is why I wish now to have the opinion of the committee, because I expect to confer more with them with a view perhaps, if the bill does not protect them, of offering an amendment.

Mr. FLINT. I can say to the Senator that we intend to exclude those organizations.

Mr. BURKETT. I understood that that was the intention, and that is the reason why I ask the question now.

Mr. CUMMINS. Mr. President——

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

Mr. FLINT. Certainly.

Mr. CUMMINS. I do not want any erroneous impression to get abroad, and an error might be inferred from the suggestion of the Senator from North Dakota [Mr. McCUMBER]. The bill covers all insurance companies.

Mr. FLINT. The Senator is correct in that.

Mr. CUMMINS. Whether they have capital stock or not.

Mr. FLINT. The Senator is correct.

Mr. CUMMINS. And whether a particular organization is an insurance company is to be decided by the laws of the State in which the company is organized.

Mr. FLINT. I take it the Senator is correct.

Mr. CUMMINS. One of the companies mentioned by the Senator from Nebraska in Iowa would be and is an insurance company.

Mr. FLINT. As far as the provisions of this bill are concerned, we are not endeavoring to cover the organizations referred to by the Senator from Nebraska, and his suggestion will have the careful attention of the committee during this debate. I am satisfied in my own mind that they are not within the provisions of the bill.

Mr. BURKETT. I will say to the Senator that I did not mention any particular one.

Mr. FLINT. You did not.

Mr. BURKETT. I took it from the term "organized for profit" that it would exclude the ones to which I referred.

Mr. FLINT. That is true. If the Senator will look at the bill, he will see that it refers to insurance companies. It says insurance companies in the bill; and the question in my mind, and, I think, in the mind of the Senator, is as to whether the organizations such as he refers to are insurance companies. In my opinion they are not. The insurance is a mere incident to the purpose of the organization.

Mr. BURKETT. Of course I had in mind the purely beneficiary organizations, the Ancient Order of United Workmen, and others. It does not include any of those, I understand, and it is intended to cover them in the provisions of this tax. I wanted to get the Senator's opinion because I want to confer more with these attorneys; and if that is not clear I want to offer an amendment later on.

Mr. BULKELEY. Mr. President——

The PRESIDING OFFICER. Does the Senator from California yield to the Senator from Connecticut?

Mr. FLINT. I do.

Mr. BULKELEY. I should like to ask the Senator if the provision in regard to insurance companies he is now explaining, as not affecting organizations of a certain character, how it affects other and very much larger organizations that have

no capital stock whatever? The largest insurance corporations in the country are corporations without any capital stock whatever.

Mr. FLINT. We intend to include those within the provisions of the bill. The great insurance companies in New York and throughout the Union that have accumulated these funds, in our opinion, should pay the tax.

Mr. BULKELEY. Where do you draw the line?

Mr. FLINT. We draw the line between insurance companies and organizations, such as were referred to by the Senator from Nebraska, and organizations such as the Railway Trainmen and like organizations, where the insurance is a mere incident to the other part of their work, which is fraternal and charitable.

Mr. BULKELEY. Does it not include the greater part? I wish to ask the Senator another question. The Senator stated, I think, that the committee abandoned the idea of an inheritance tax for the reason that that subject was attended to largely by the States, and that the inheritance tax had been adopted by the States generally as a source of income for the State. Did I understand the Senator correctly?

Mr. FLINT. The Senator understood me correctly.

Mr. BULKELEY. Did the committee make any investigation into the question as to how the States were taxing these corporations, particularly insurance corporations, for the sake of doing business in the State?

Mr. FLINT. We have.

Mr. BULKELEY. How did it compare, if you made the investigation, with the inheritance tax?

Mr. FLINT. There is no way of comparing it. As a matter of fact the insurance companies that are doing business in States other than the State in which they are incorporated are required to pay taxes. In some States it appears to be very high and in some reasonable.

Mr. BULKELEY. Is the Senator aware that the insurance corporations in the United States are taxed in every State in which they do business?

Mr. FLINT. I am.

Mr. BULKELEY. So the same argument would not apply to insurance companies which would apply to an inheritance tax. They are taxed by the States in which they do business very much higher than any inheritance tax which has been imposed.

Mr. SMOOT. Mr. President——

The PRESIDING OFFICER. Does the Senator from California yield to the Senator from Utah?

Mr. FLINT. I do.

Mr. SMOOT. In answer to the Senator from Connecticut, I desire to call his attention to the bill, and to the wording as found in line 3, page 1, where it says "and every insurance company now or hereafter organized." That, of course, would take in all insurance companies, whether they have capital stock or whether they have not capital stock, but I can not see how it is going to apply to any company that was not organized as an insurance company, as the one mentioned by the Senator from Iowa. The fraternal organization that he speaks of was not organized as an insurance company, as I take it, from his own statement.

Mr. CUMMINS. Mr. President——

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

Mr. FLINT. I do.

Mr. CUMMINS. The insurance company is well known in the law. Whether a particular company is an insurance company depends upon the business it does. If it carries on the business of insuring either lives or property, or against accident, it is an insurance company, if it be an incorporation, and the laws of every State determine for themselves what are and what are not insurance companies. The Congress of the United States can not determine what are insurance companies, inasmuch as——

Mr. FLINT. We are not endeavoring to do that.

Mr. CUMMINS. Inasmuch as these corporations are organized under State laws. I will put you an instance. We have in our State a very large company, known as the "Traveling Men's Accident Insurance Company." No one belongs to it but traveling men. It is a very large concern, and it accumulates in the course of a year a very large amount of money. It is, however, an insurance company under the laws of our State. I could mention a hundred in our State alone, without any capital stock, that are as purely mutual and fraternal as the Order of Railway Conductors or the Modern Woodmen. You will find when we have gone into this subject that the appellation "insurance companies" will cover a very great number of organizations engaged in this business.

Mr. FLINT. Mr. President, I desire to say to the Senator from Iowa he will find the committee in this as in all other matters that have been before the Senate in connection with this bill ready and willing to receive suggestions, our endeavor being to have a bill that will meet with the approval of the people of the country.

Mr. CUMMINS. I have not made the suggestion with any idea of offering an amendment. I think the bill is quite as good in that respect as it is in any other.

Mr. BULKELEY. Mr. President——

The PRESIDING OFFICER. Does the Senator from California yield to the Senator from Connecticut?

Mr. FLINT. Certainly.

Mr. BULKELEY. I wish to ask a question, with a view of offering an amendment at some period in the consideration of the bill. I wish to get the theory upon which the committee had prepared the bill, especially in regard to insurance corporations, which they seem to have singled out from all the other corporations of the country and put into a class by themselves. I do not understand the reason. Certain of the great insurance companies of the United States, the largest ones, have never had any capital stock. They are not organized for profit, and the savings made in those corporations are returned to their policy holders. The committee seem to have singled out a body of that class by themselves. The railroads are in a class by themselves. The insurance company corporations embrace large and very prosperous institutions all over the land and of great character. They are all chartered and organized to do business under the laws of some State. They are taxed, so far as taxation goes, and that is made an excuse by this committee for dropping any form of tax other than a corporation tax. They are taxed in every State not on their profits, but on their gross receipts received in that State. It is not confined to the life-insurance companies. The fire-insurance companies are in the same condition. That seems to be the only reason why these companies are picked out.

Mr. BEVERIDGE. May I ask the Senator a question for information at this point? Is it not true that these companies in the States are not only taxed upon their gross receipts, but in many instances pay what is called a "privilege" tax and are subject to other forms of taxation?

Mr. BULKELEY. In the course of this discussion I will try to inform the Senate on those points. I will say in answer to the Senator's question that in almost every State of the Union, the whole forty-six, life, fire, and other insurance organizations are taxed on their gross premiums, and they are not only taxed in that way, but they are taxed for the support of the insurance department of the State. They are required to pay a license for agents. They are required in many parts of the country to have licenses in every city in which they do business, in addition to the state taxes they pay.

I do not know anybody that has had a chance to talk with the Finance Committee, when a great measure of this character was before it and before it was reported to the Senate; but, as I understand it, nobody has had the opportunity. This measure, according to the Senator from California, was sent to the Finance Committee from other sources. It has not been formed in the Finance Committee after any hearing from anybody that could properly be interested and then sent here to the Senate.

Mr. FLINT. It would be impossible for this committee to define the line between the various corporations the Senator refers to, and we have not attempted to do that in this amendment.

I desire further to say that the Senator is mistaken when he states that there was no consideration given by the committee. On the contrary, there was great consideration given to this subject and it was carefully investigated. We realized that there were problems to meet, just as the Senator from Connecticut pointed out, and we endeavored to meet them in this bill.

There is one more word I want to say in reference to this bill.

Mr. FOSTER. Mr. President——

The VICE-PRESIDENT. Does the Senator from California yield to the Senator from Louisiana?

Mr. FLINT. I do.

Mr. FOSTER. Is it the purpose to include within the operations of this measure homestead associations?

Mr. FLINT. What does the Senator mean by homestead associations?

Mr. FOSTER. I thought the Senator in charge pretty well understood what homestead associations are. The President seems to understand what they are, as I understand in his message he recommended that homestead associations be exempted, I refer to building and loan associations, sometimes called "homestead associations."

Mr. ALDRICH. I do not think they are included.

Mr. FLINT. No; I do not think they are included.

Mr. BORAH. But the difficulty is that you are visiting punishment upon the just and the unjust, as you are doing throughout this entire bill.

Mr. CRAWFORD. The answer to that, so far as building and loan associations are concerned, is that it turns upon whether they are corporations for profit. If they are, why should they have any privilege that other corporations for profit do not have?

Mr. SCOTT. I should like to ask the Senator a question for information.

The VICE-PRESIDENT. Does the Senator from California yield to the Senator from West Virginia?

Mr. FLINT. I do.

Mr. SCOTT. I understand that the amendment provides for the exemption of national banks and savings banks.

Mr. FLINT. Oh, no.

Mr. ALDRICH. There is nothing of that kind in it.

Mr. SCOTT. Banks are not exempted at all?

Mr. ALDRICH. Not at all.

Mr. SCOTT. And no banking institutions?

Mr. ALDRICH. No banking institutions organized for profit.

Mr. SCOTT. Then, I would ask the Senator from California, suppose there was a corporation on one side of the street in business, and on the other side of the street a firm in the same business, would there be any distinction? Could you tax the firm on its profits?

Mr. FLINT. No.

Mr. SCOTT. Although they might be in the same business?

Mr. FLINT. I have just one word more to say in reference to this amendment, and that is as to the income which will be derived from it. I have devoted considerable time in endeavoring to obtain an estimate of the revenue which would be produced from the corporation-tax provision. I have conferred with the Interstate Commerce Commission, the Comptroller of the Treasury, and with the Department of Commerce and Labor, and it is absolutely impossible from the data they have to make any reliable estimate of the amount of revenue that will be derived from the amendment, but I am satisfied that the estimate made by the President of the United States in his message, of $25,000,000, is altogether too low. In my opinion, the revenue that will be derived from it will be from forty to fifty million dollars.

Mr. KEAN. I think the Senator had better revise that and make it $100,000,000.

Mr. FLINT. The question is one that should be carefully considered by the Senate, even by those who are of the opinion that the bill now before the Senate will not produce sufficient revenue. This amendment, if adopted, will produce, in my opinion, an additional revenue of from forty to fifty million dollars.

Mr. BORAH. I should like to ask the Senator a question before he sits down.

The VICE-PRESIDENT. Does the Senator from California yield to the Senator from Idaho?

Mr. FLINT. I do.

Mr. BORAH. For the purpose of information, I should like to know the Senator's view as to what is taxed under this amendment—what it is that we lay this tax upon?

Mr. FLINT. The privilege of doing business.

Mr. BORAH. The privilege of doing business as a corporation, or the privilege of doing business?

Mr. FLINT. The privilege of doing business.

Mr. BORAH. As a corporation, or simply doing business?

Mr. FLINT. Simply doing business.

Mr. BORAH. That is all.

Mr. DIXON. Mr. President, a little over three months ago in this Senate Chamber the President of the United States, in delivering his inaugural address and outlining the policies of the incoming administration, said to the Congress that, in the event the proposed revision of the revenue laws did not yield a sufficient revenue, in his opinion the most plausible source of additional taxation was an inheritance tax. The Ways and Means Committee of the House followed the President's suggestion by a unanimous vote, and incorporated an inheritance-tax provision in this bill. It passed the House of Representatives with not a voice raised in protest. It came to the Finance Committee of the Senate, and, after due deliberation, they struck it from the bill; and in all of the debate over the income tax, the inheritance tax, and the corporation tax you have hardly heard a voice raised in defense of the inheritance tax, which, I think, all of us will agree is the most equitable of all. Before the debate drifts further into the income tax and the corporation tax, I want to address my remarks to the Senate this afternoon especially toward the inheritance-tax feature that was reported by the House committee, passed by the House of Representatives, and eliminated by the Senate Committee on Finance.

Mr. President, I have taken but little of the time of the Senate during the discussion of the tariff schedules, for it has been patent to me from the beginning of this debate that the differences of opinion about which a war of words has raged here during the past few weeks have mostly been concerning only the *degree* of the duty to be levied. It has been a debate over *percentages* rather than one concerning *principles*. My belief is that an honest expression of opinion of the individual Members of both Houses of Congress, whether Republican or Democrat, would in nearly every single individual case result in a confession of faith—that the duty to be fixed in the various schedules of this bill should measure the difference of cost of production of the article in question in the United States as against the cost of production of the same article in a foreign country. And it is my belief that the Finance Committee have, in good faith, attempted to apply that rule in fixing the duties under the various schedules of this bill.

The tariff schedules having been completed, we are now confronted with an entirely new proposition—one about which men may and do differ, on principle, with deep and vehement earnestness.

To my mind the action which this Congress shall take relative to the disposition of the income, the inheritance, and the corporation tax propositions will influence political parties and their individual membership in the immediate future to a far greater degree than we at this time anticipate. My own judgment is that the final results of the action of this extra session of the Sixty-first Congress may result in greater disturbance of the personnel of the present Congress than has been usual in the last few years.

We know, and the country knows, that while the percentages fixed in this bill have not met with the full approval of eight or ten Senators on this side of the Chamber, probably at least as large a number of Democratic Senators on the other side of the Chamber, to put it mildly, have not been at all disturbed by the rates of duty fixed in the bill that particularly affected the industries in that particular portion of the country that they represent.

THE PRESENT REVENUE NOT SUFFICIENT.

Notwithstanding the somewhat cheerful and optimistic view of the chairman of the Finance Committee concerning the revenue that the bill will probably produce, in common with many other Members of this body I am thoroughly of the belief that unless the tariff and internal revenues are largely supplemented we will not have during the next few years a revenue sufficient to meet the rapidly growing demands of the Federal Government, economically administered.

The experience of a hundred years teaches us that the expenditures of the municipal, state, and federal governments are continually on the increase and, with thriving, growing communities, States, and Nation, the expenditures will certainly largely increase in the years that lie before us.

It is not a secret that in preparing the estimates for the appropriation bills for the coming session of Congress the orders to each department chief here in Washington is to cut the estimates to the very bone. This can be done for one appropriation bill, and one only. Except in rare and minor instances, it can not be done and important governmental enterprises not suffer serious embarrassment.

We have not yet forgotten the hue and cry raised by the Democratic party about the "billion-dollar Congress" in the campaign of 1890, and the charges of "Republican extravagance," and how the next Congress, under Democratic leadership, appropriated more than $50,000,000 in excess of its Republican predecessors.

In addition to the ordinary expenses of the past years, Congress is now confronted with the task of raising $300,000,000 for the completion of the Panama Canal; not less than five hundred million will be required to carry out the proposed deep-waterway programme, to dig the ship canal from Chicago to the Gulf, and extend the cross arm of real inland navigation from Pittsburg to Sioux City. The inland waterway from New York southward, along the Atlantic coast line, and from New Orleans to Galveston, along the Gulf coast, will require a hundred million more.

If our foreign commerce is ever to be rehabilitated, whether in the form of a ship subsidy for carrying our mails or otherwise, so we can send a letter to a South American port without the humiliation of first sending it to Europe and thence in a foreign mail steamer to South America, not less than ten millions annually must be appropriated from the Federal Treasury.

For years every western Member of Congress has been embarrassed because of the fact that a pitifully insignificant sum is doled out each year for surveying the public lands of the Government instead of a liberal appropriation sufficient to survey the land already occupied by bona fide settlers.

If Congress were to at once provide the public buildings now badly needed in the city of Washington for actually housing the various departments of the Government that now are occupying rented quarters in fire-trap buildings in this city, not less than twenty-five millions would be required.

If business methods were applied by the Government, we could annually expend fifty millions a year in irrigating the vast stretches of arid land in the West instead of limiting the engineers to the use of the mere pittance that now accrues from the sale of public land. With these overwhelming demands confronting us, we are confronted by a not increasing revenue.

Prophecies are always subject to a discount, but it is not unreasonable to suppose that, with the wave of prohibition that has been sweeping over the country, the receipts from internal revenue will largely decrease—at best, will not yield the same proportion of income as it has in the past.

The free importation of 300,000 tons of Philippine sugar and the rapidly increasing production of beet sugar in the West will, within a few years, largely reduce the amount of money now received from the sugar duty, which is the largest single source of customs revenue.

THREE PROPOSITIONS FOR ADDITIONAL REVENUE.

There are now pending before the Senate three separate propositions for raising additional revenue.

One of the three will undoubtedly become a law within the next thirty days. These are the inheritance tax, the income tax, and the corporation tax.

So that my position may not be misunderstood, I want to say, first, that I shall vote for the corporation-tax amendment as proposed by President Taft in his message, with the full understanding that I believe its chief virtue lies in the publicity feature as applied to large corporations, for I am fearful that the tax that will be imposed by it will, in the end, in many cases at least, be "passed on to the public."

Before casting our vote for or against these three separate measures, I sincerely wish it were possible that the Senators could lay aside their preconceived notions of the merits of the three different methods, and, without regard to past political alliances or party platform declarations or expressed personal allegiance to either of the three proposed measures, approach the subject in a spirit of fair investigation of the merits of each plan, with due regard to the conditions that confront us, and not mere theories.

Seeking only to ascertain the truth, and with no pride of my own opinion, my conclusions are that the inheritance-tax provisions, as passed by the House of Representatives and incorporated in the bill, before its provisions were stricken out by the Senate Finance Committee, met the requirements of the present situation and did so without encountering the objections that have, in good faith, I believe, been urged against both of the other propositions.

In the first place, no question can be raised as to its constitutionality, as the United States Supreme Court, while holding that the former income-tax law was unconstitutional, has already, in the case of Knowlton *v.* Moore (178 U. S., 41, 1900), held that the inheritance-tax provision enacted at the time of the Spanish war was constitutional.

Mr. BORAH. Mr. President——

The VICE-PRESIDENT. Does the Senator from Montana yield to the Senator from Idaho?

Mr. DIXON. With pleasure.

Mr. BORAH. Is not that the same position we were in when we passed the income-tax law in 1894?

Mr. DIXON. In 1894 the Supreme Court had not passed upon the validity of the inheritance-tax law.

Mr. BORAH. But it had passed upon the validity of the income-tax law.

Mr. DIXON. It had, I think, in a dozen different decisions held that the income-tax law was valid, but, unfortunately, afterwards, by a divided court, it held that it was not.

While it had been my intention, in the event the Senate would not adopt the provision of the House regarding the inheritance tax, to have voted for an income-tax provision in this bill, I always realized fully the uncomfortable situation that would follow a second declaration of its invalidity by the Supreme Court, and I was not unmindful of the embarrassment and full lack of confidence in the public mind in the supreme law tribunal of the Republic should that court, with its personnel largely changed, reverse its own former ruling.

To the most sincere and ardent friends of the income-tax theory—and I am one of those who see a large measure of merit in its provisions—I respectfully and earnestly commend the embarrassment that would follow either a favorable or an unfavorable decision by the Supreme Court.

I yield to no man in my allegiance to the principle that wealth should bear more of the burden of federal expenditures than it does under the present system of federal taxation.

Theoretically at least, in apportioning the burden of taxation for municipal, county, and state purposes, men do contribute in proportion to their wealth.

In federal taxation men do not contribute, even theoretically, in proportion to their wealth.

That such a condition of unequal burden and inequality of contribution is inequitable and unfair no one will deny.

That such a condition of inequality will long continue is an indictment of the intelligence of the American people.

I confess that when the discussion of this matter began of providing additional revenues by some form of taxation outside the tariff duties and the internal-revenue laws, that the theory of a revenue based on incomes appeared to me to be the ideal one.

Accepting as correct the theory of Adam Smith, that "the subjects of every state ought to contribute toward the support of its government as nearly as possible in proportion to their respective abilities," and fortified by the dictum of John Stuart Mill, that "equality of taxation means equality of sacrifice; it means the apportioning the contribution of each person toward the expense of the government so that he shall feel neither more nor less inconvenienced from his share of the payment than every other person experiences from his," it seemed to me that the income tax was theoretically the correct and perfect one.

So far as the theory is concerned, I am of that belief still. But when it comes to applying the theory to actual practice, I am fearful of results.

PERSONAL PROPERTY NOT TAXED.

It is a well-known condition that confronts every community in this country to-day that the tax collector finds and collects the taxes upon property that is tangible and revealed to the eye, but finds it most difficult to reach any property than can be hidden from view.

As an example, not many months ago it came under my personal observation that in a certain county in a certain State the returns to the Comptroller of the Treasury by the national banks in that county showed cash deposits by its taxpayers of about $4,000,000. The cash returned by the taxpayers of that county for assessment for taxes that same month showed about $25,000, and most of that belonging to estates of dead men then in the probate court.

The assessment of intangible personal property for taxation not in plain view of the assessor has become a farce in this country. When the person to be taxed makes his return to the assessor, whether under oath or otherwise, the general results are the same in actual experience.

I understand that the government of the city of New York costs annually about $125,000,000; that of this sum only about two and one-half millions are collected from personal property in that great city, where its wealth in personal property is measured by billions of dollars.

A commission on taxation appointed by the mayor of New York recently made public its report on personal-property taxation in that city, and said:

> So far as the personal-property tax attempts to reach intangible forms of wealth, its administration is so comical as to have become a byword. Its practice has come to be merely a requisition by the board of assesssors upon leading citizens for such donations as the assessors think should be made, and is paid as assessed, or reduced, according as the citizen agrees. With the estimate of the assessor, such a method of collecting revenue would be a serious menace to democratic institutions were it not so generally recognized as a howling farce.

The Boston Post of July 27, 1906, in discussing this question, said:

> It is notorious that the greater part of taxable personal property escapes the payment of contribution to the support of the Government during the lifetime of its owners. It is considered no crime to hide such property from the view of the assessors. The practice is well-nigh universal, contrary though it is to the principles of morality. The only point at which the community can lay hands upon such concealed property and levy the contribution which it ought to have paid is when it is exposed to view in the probate court. In New York it was recently shown that estates in probate aggregating $247,000,000 had stood for only $17,000,000 for purposes of taxation during the life of their deceased owners.

What is true in New York City regarding the assessment of personal property where the person taxed makes his own returns, as he must do, of the amount of personal property owned by him, is equally true in all other parts of the United States.

Will not the officers of the United States Government probably confront similar conditions in attempting to enforce an income tax?

NEW YORK TAX COMMISSION.

In 1906 the legislature of the State of New York authorized the appointment of a special tax commission to investigate and consider the various schemes of taxation at that time existing

Mr. DIXON. The Senator from Iowa will realize the fact that unless there is an inheritance tax such a man will escape forever. That is the time when the tax collector does get a chance at him, and we do not propose to limit an inheritance tax to only 2 per cent of the value of the property.

Mr. CUMMINS. Would the Senator be willing to add in the inheritance tax all the tax the man had escaped during his life?

Mr. DIXON. Personally, I should not object to it, and I shall be glad if the Senate will amend the House bill in that regard.

Mr. BAILEY. In that way you would take most of his estate.

Mr. CUMMINS. Something of that sort might be very satisfactory even to the proponents of the income tax.

Mr. BAILEY. If he lived long enough, that would result in taking it all.

Mr. DIXON. And on such estates I would levy such a heavy tax, especially in the case of the collateral heirs, that there would be no question that the State would take its just part of the taxation that had been escaped during life.

I commend to the Members of the Senate the report of the New York tax commission, as containing the most valuable information that I have been able to find in all my research about these various phases of taxation. A minority of 2 members of that commission, out of a total membership of 15, recommended the enactment, by the New York legislature, of a state income-tax law; but in view of the findings of fact above quoted, other members of the commission, believing it would only result in a continuation of the present system of rank inequality in taxation, said:

We therefore conclude that any form of state income tax is at present inadvisable. Some of the undersigned were years ago in favor of such a scheme, but a closer acquaintance with the administrative and economic conditions of American life has forced them to the conclusion that a state income tax would be a failure. The prospect is beautiful in theory, but useless in actual practice.

I quote further from their discussion of the income tax:

We feel that the only result of levying such a direct income tax, resting on the listing of all incomes by the taxpayers, would be, as in the case of a vigorous personal-property tax, to increase, not equality, but perjury and corruption. The law would remain a dead letter, as is the case in most of the American States where the income tax is now imposed, or it would tend to create illicit bargains between the taxpayers and the assessors. * * * The rich experience of the United States shows conclusively that an income tax * * * would be ineffective. Even the national income tax during the civil war was a notorious offender in this respect. The amount of revenue derived from it was ludicrously small; in fact, from careful investigations, it has been shown that in the State of New York during the civil war the federal income tax worked scarcely, if at all, better than the personal-property tax, when its administration became a byword throughout the length and breadth of the land.

Mr. BAILEY. I could hardly be surprised that a commission appointed in a State where such gross frauds are practiced would despair of ever making anyone contribute his due share to the support of the Government. But I rose simply to record my protest against any respectable official body in this country presenting such an indictment against the American people and against the American system of government. To tell us that we should not call upon men to contribute their fair proportion to the support of the Government because they will not obey our call is to indict our system of government as a failure; and I think no valid argument can be made against any tax in this country, except it be against the justice of it. I will never agree that it is a good reason against levying a tax that somebody would perjure himself to evade the payment of it.

Mr. DIXON. With the Senator from Texas, I was astounded at some of the conclusions of the tax commission. They started out apparently to frame an income tax. They frankly say so. It was a nonpartisan commission; five were appointed by Governor Hughes, five by the speaker of the house, and five by the lieutenant-governor—prominent, distinguished, high-grade citizens of New York State, whose names are synonymous with fair dealing and high integrity in private and public life. They argue all through the report that while the income tax is theoretically the beautiful one, they say frankly, after taking into consideration economic, social, and political conditions as now existing, the only way to make the personal-property owner bear his share is through the probate court and an inheritance law.

Mr. BAILEY. That does not fall on him at last. The man who has cheated the Government escapes through the grave, and the burden falls on those who are the beneficiaries of his good will. I thoroughly agree with the Senator from Montana in favor of an inheritance tax, though I would prefer it reserved, as such, to the States. The one man in this world who has no right to complain anywhere or at any time about a tax is the one who is getting something for nothing, and getting it through the agency of the Government, as a man does always when the Government takes from the dead and hands it over to the living, whether under a will or under a statute of distribution; and I have no objection to taxing him. Indeed, I suppose I would tax him somewhat more onerously than the Senator from Montana.

Mr. DIXON. I doubt whether the Senator would.

Mr. BAILEY. If the Senator would go as far as I would, we would go a long way toward eradicating the "posthumous avarice," which Hargrove denounced with such great and just severity in the celebrated case of Peter Thellusson.

Mr. DIXON. If the Senator will kindly listen to the remainder of my argument, I think he and I will be found in absolute accord in the matter of "posthumous avarice."

Mr. BAILEY. I was interested in what I heard. I only want to say that when any official body in this country admits a law is just and then says it can not be enforced because of the greed of the men against whom it operates——

Mr. DIXON. They say there is a more feasible method.

Mr. GALLINGER. I will ask the Senator, if he can, to tell me how many of the States have to-day an income-tax law.

Mr. DIXON. The only ones I personally know of are the States of Massachusetts and North Carolina. I am informed by a Senator on my right that there are four, but I am not acquainted with the fact.

Mr. GALLINGER. I have an impression that the law in Massachusetts——

Mr. BAILEY. Before the Senator from New Hampshire proceeds——

Mr. GALLINGER. Yes.

Mr. BAILEY. The State of South Carolina also has one, I am told.

Mr. GALLINGER. I have an impression that the law in Massachusetts has fallen into, to use a well-known phrase, "innocuous desuetude;" that no effort whatever is made to enforce it, and no returns are made under it. That is my impression.

One other matter. We have in our State a collateral inheritance tax which is producing a very fine revenue to the State; and if it were not for that, I would feel that that was the best possible mode of federal taxation, if it did not interfere to too great an extent with the revenue the State derives from that form of taxation.

One other point. I am not going to apologize for men who do not make returns on securities that they hold, and yet there is a reason for it founded in human nature. In my own little city the rate of taxation is either 2.20 or 2.30—I have forgotten which—and bonds are held by our people that pay 3½ or 4 per cent. If those bonds were returned, the owners would have from 1 to 1½ per cent return on the investment that they had made, and I apprehend that that circumstance induces many of them to persuade their consciences that it is not expected that they will make the return, and, to a very large extent, they do not make the return.

It is no excuse, but it is a pretty common practice. I do not know how a national income-tax law might work, whether it would be evaded, as it seems to be very largely evaded in the States that have such laws, but I do believe that if it were not for the fact that thirty-odd States have collateral and direct inheritance taxes, that that, after all, would be the best form of taxation that we could devise.

Mr. DIXON. When I show the Senator from New Hampshire, by the actual returns from these 32 States that take a little toll, that the state tax, with that proposed in the House bill itself, is a mere bagatelle, why is not this the most equitable form after all?

Mr. GALLINGER. I shall be glad to listen to the Senator.

Mr. DIXON. I want Senators to listen, especially to the latter part of my speech, for, with all due deference to my fellow-Senators, I think they will find some things in it that will be of interest. I will not detain you very long.

Mr. BEVERIDGE. Just one word on the point the Senator from New Hampshire raised. Because a State has an inheritance tax it does not follow that the Nation ought not to have an inheritance tax also, and its enactment, of course, would not deprive the State of that source of revenue; and so just is an inheritance tax, since the inheritance is given only by law and not by natural right, that it might not only be doubled and trebled, but quadrupled and still be more infinitely just than any other form of taxation, because it is taxation upon some person who has never earned one dollar of it.

I would ask the Senator from Montana, who, I see, has given this subject very careful research, if his research shows this: The States, of course, have both sources of revenue, and the experience of one hundred years has made them nearly all adopt inheritance tax, whereas only three or four of them have adopted the income tax. I ask whether the reason of that has been that they found in the one case that the inheritance tax gave a better return of revenue than the income tax gave. Is that the case?

gives the State the right to take large toll for the privilege of inheriting wealth that the beneficiary never created.

During the past few years the inheritance-tax idea has appealed most strongly to thinking men. Practically every civilized nation except our own has already adopted it as a permanent part of its national revenue.

The inheritance tax has been imposed by the United States Government temporarily on three separate occasions. First, by the act of July 6, 1797; second, by the act of July 1, 1862; and more recently by the act of 1898, that was repealed four years later.

President Roosevelt in his message to Congress on the 4th day of December, 1906—and I want the junior Senator from Idaho to listen to this—said, in reference to inheritance and income taxes:

> There is every reason why, when our next system of taxation is revised, the National Government should impose a graduated inheritance tax, and, if possible, a graduated income tax. The man of great wealth owes a peculiar obligation to the State, because he derives special advantages from the mere existence of government.

Mr. BORAH. I agree with the President entirely. I think the man of great wealth owes it before he dies and while he is here as well as after. I agree with the President also in the proposition that we should have a graduated inheritance tax, and I would graduate it so that with the birth of the child, the direct heir, it would be very light.

Mr. DIXON. President Taft in his inaugural address delivered in this Chamber less than four months ago said:

> Due largely to the business depression that followed the financial panic of 1907, the revenue from customs and other sources has decreased to such an extent that the expenditures for the current fiscal year will exceed the receipts by $100,000,000. It is imperative that such a deficit shall not continue, and the framers of the tariff bill must, of course, have in mind the total revenues likely to be produced by it and so arrange the duties as to secure an adequate income. Should it be impossible to do so by import duties, new kinds of taxation must be adopted, and among these I *recommend a graduated inheritance tax* as correct in principle and as certain and easy of collection.

The Committee on Ways and Means of the House of Representatives adopted the recommendation of President Taft and inserted the provision in the present bill, based on the New York State inheritance-tax law, and estimated to yield, as I understand from members of the House committee, about twenty-five millions per year.

Why this wise provision should be rejected by the Senate now and in its stead to send the country into a laborious and circuitous campaign for an amendment to the Constitution in order to make an income tax surely possible, I am at a loss to understand.

The reasons advanced, that many of the States have already adopted inheritance-tax provisions for raising revenue, to my mind is not a tenable one. For the income tax must be levied from the same general class of citizens from whose estates the inheritance-tax revenue must come.

The fact that 32 States have already adopted inheritance-tax laws in my mind detracts but little from the argument for a national inheritance tax. The field is so fertile that both State and Nation can easily take tribute and no individual be damaged.

As a matter of fact, while the States have inheritance-tax laws on their statute books, the amount collected is at the present time a mere bagatelle.

I heard in the beginning of this debate, when the question was asked why the Finance Committee did not report the House provision regarding the inheritance tax, that 32 States have already adopted it and we do not want to invade the domain of States in this collection of revenue. I do not believe the Senate as a whole realize what a farce the inheritance tax is in the 32 States that have already adopted it. With the exception of 2 or 3 States it does not amount to enough hardly to pay for the printing of the statutes by which the tax was enacted.

I want you to listen to the returns. We have heard so much about the great field of taxation to the individual States, I want you to know the truth about it.

The whole amount of tax levied from this source by all the 32 States in 1905 was only $10,028,451.71; and I think, about $5,000,000 of the total amount came from the State of New York.

The fact that 7 States enacted inheritance-tax laws while the National Government was also collecting the same tax from 1898 to 1902 shows that no fear was entertained on that score by the state legislatures.

I ask permission to here insert a table showing the amount of revenues collected by the inheritance-tax laws of the different States for the year 1905, which was the only accurate complete return that I could find.

The table is as follows:

State revenue from inheritance taxes.

State.	Fiscal year.	Inheritance-tax receipts.
Arkansas	1905-6	$850.18
California	1905-6	[a] 292,704.89
Colorado	1905-6	[b] 48,646.40
Connecticut	1905-6	274,258.52
Delaware	1905-6	3,101.63
Illinois	1905-6	[b] 688,311.96
Iowa	1905-6	190,747.62
Louisiana	1906	86,654.88
Maine	1906	70,534.42
Maryland	1905-6	107,820.26
Massachusetts	1906	712,720.18
Michigan	1905-6	[c] 289,024.64
Minnesota	1905-6	159,454.91
Missouri	1906	213,131.09
Montana	1905-6	[b] 6,038.22
Nebraska	1905-6	[b] 2,120.24
New Hampshire	1905-6	[d] 3,276.55
New Jersey	1905-6	200,780.80
New York	1905-6	4,713,311.33
North Carolina	1905-6	4,673.41
North Dakota	1903-4	[e]
Ohio	1905-6	[f] 124,456.69
Oregon	1905-6	15,289.81
Pennsylvania	1905-6	1,507,962.11
South Dakota	1905-6	[d] 1,450.41
Tennessee	1905-6	[b] 34,309.93
Utah	1905-6	39,889.09
Vermont	1905-6	40,581.14
Virginia	1905-6	28,741.59
Washington	1905-6	[b] 33,267.34
West Virginia	1905-6	26,052.10
Wisconsin	1905-6	103,916.88
Wyoming	1905-6	[b] 4,372.99
Total continental United States		10,028,451.71
Hawaii	1905-6	5,879.69
Porto Rico	1905-6	14,413.68
Total		10,048,745.08

[a] Direct inheritance tax not fully in operation. Refunds ($45.12) deducted.
[b] One-half of receipts for two years.
[c] Refunds ($20) deducted.
[d] Law of 1905 not fully in operation.
[e] Law of 1903 not yet fully in operation.
[f] Including direct inheritance tax repealed 1906.

The great State of Ohio, with hundreds of estates of great wealth being transmitted to beneficiaries that year, who had toiled not, neither had they spun, for the vast accumulated wealth handed down to them, collected from her inheritance-tax laws only $124,456.69.

The State of West Virginia——

Mr. BORAH. What is the per cent in that State?

Mr. DIXON. As I recall it, the state government of Ohio cost about $15,000,000 a year to administer.

Mr. BORAH. What was the per cent that was levied as an inheritance tax?

Mr. DIXON. About the same amount, I think, provided for in the House provision.

Talk of robbing the States! In the great State of Ohio it did not produce——

Mr. BORAH. Of course, if no one died——

Mr. DIXON. But they are always dying. That is one of the beauties of this inheritance-tax law. It can not be escaped.

Mr. SCOTT. The climate of West Virginia is so good that we live to be very old there.

Mr. DIXON. I want the Senator from West Virginia now to listen. The great State of West Virginia, with its accumulated wealth of billions of dollars represented by its immense coal, iron, and oil fields, its timber lands and railroads, scores of millions of which that year were handed down to the people who had little or nothing to do with its creation, collected from her inheritance-tax laws the insignificant sum of only $28,052.10.

Yet you talk about holding back the inheritance-tax provision of this bill and not "robbing the States."

Mr. SCOTT. I will say to the Senator from Montana, if he will allow me, that I will admit that the inheritance tax has remained a dead letter on the books of West Virginia for a great many years, but from the showing of last year you will find much more.

Mr. DIXON. This is for the years 1905 and 1906.

Mr. SCOTT. It was a dead letter virtually before.

Mr. BRISTOW. I should like to inquire if the cause of such a small collection is due to the evading of the tax.

Mr. DIXON. The tax can not be evaded, for the reason that the probate court records are an open book.

Mr. BRISTOW. Why was it not collected, then, if it can not be evaded?

That year great States like Indiana, Texas, Kentucky, Alabama, Kansas, Idaho, South Dakota, Rhode Island, and a dozen others having no inheritance-tax laws, neither State nor National Government, took anything from the hundreds of millions of dollars that passed from their dead owners to the living beneficiaries, who did nothing only take and spend their "unearned increment." One or two of these States have since adopted inheritance-tax laws.

During this year (1905–6), while this great Nation, as a National Government, took nothing and the constituent States took only $10,000,000 from inherited wealth to help defray an expense of more than $3,000,000,000, largely expended in protecting property, the nations of Europe collected from this, the most equitable of all forms of taxation, enormous amounts.

INHERITANCE TAX IN EUROPE.

During the year 1908 England collected about $94,230,000 from inheritance—England, with a population of 44,000,000; the United States, with 90,000,000 population.

France from her inheritance-tax laws collected last year $57,123,000, and in addition thereto an additional local tax from the same source.

In Germany, until 1906, an inheritance tax had only been imposed by the separate States of the Empire. But by the imperial financial act of July 3, 1906, a federal inheritance-tax law was enacted, which allots to the separate States a part of the proceeds and at the same time allows them the privilege of levying additional inheritance taxes on their own account. The imperial tax produces about 72,000,000 marks annually, of which 48,000,000 marks go to the Empire, leaving the States 24,000,000 marks, about the same amount as they formerly received from that source.

Mr. CRAWFORD. Mr. President——

The VICE-PRESIDENT. Does the Senator from Montana yield to the Senator from South Dakota?

Mr. DIXON. I yield to the Senator.

Mr. CRAWFORD. I should like to know if the Senator has ascertained how much was received by the Government under the inheritance tax when it was in force?

Mr. DIXON. About $5,000,000 a year.

Mr. CRAWFORD. No more than that?

Mr. DIXON. I think before the act was repealed, subsequent to the Spanish-American war, it yielded altogether about $20,000,000; but it was a very slight tax.

Switzerland, Italy, Australia, New Zealand, each have inheritance-tax laws, in every case taking much larger toll than any similar law in any State of the Union, and far more drastic than that proposed by the House bill. In fact, the United States is practically the only civilized Nation that has not made the inheritance tax a part of its system of national revenue.

The inheritance-tax scheme in the House bill is most mild-mannered in its provisions as compared with that imposed in Europe.

Under its provisions, estates valued at $10,000 and not exceeding $100,000 pay a tax of 1 per cent of the market value; if exceeding $100,000 and not exceeding $500,000, 2 per cent of the market value; if exceeding $500,000, 3 per cent.

The foregoing provisions apply to the direct heirs, including father, mother, husband, wife, child, brother, sister; to the collateral heirs the rate is 5 per cent straight.

I find that the rate imposed in the House provision is approximately that in force in the various States that have adopted an inheritance-tax provision. So that in the event this present House provision regarding inheritances should be adopted, an estate upon which the tax was collected both by the State and National Governments would only contribute to both 2 per cent through the direct heirs and 10 per cent through the collateral heirs.

As against this tax the French Government takes from the direct heir from 4 to 7 per cent and from the collateral heir from 12 to 20 per cent, the tax there, as in all foreign countries, varying both according to the amount involved and the varying kinship.

In France, where the estate exceeds 50,000,000 francs (about $10,000,000), the State takes 5 per cent from the direct heir and as much as 20 per cent from the second cousin.

In Germany the rates are so sharply progressive that inheritances exceeding 1,000,000 marks ($250,000) going to distant relatives are taxed 25 per cent.

England sharply graduates her inheritance tax from about 1 per cent on estates between $500 and $2,500 in value to from 10 to 15 per cent on estates exceeding £750,000 ($3,500,000) in value. In addition to the above "estate duty," there is a "legacy duty" on personal property and a "succession duty" on real estate passing to collateral heirs, graduated according to the relationship existing between the decedent and the heir, from 3 per cent for brothers and sisters to 10 per cent for distant relatives.

Mr. HEYBURN. Mr. President——

The VICE-PRESIDENT. Does the Senator from Montana yield to the Senator from Idaho?

Mr. DIXON. Certainly.

Mr. HEYBURN. I rise merely to suggest that the comparison between England or Germany and this country is hardly a fair comparison. The presumption in both of those countries is, and always has been, that the estate belongs to the lord of the fee. There is a natural presumption in favor of it thus passing, and the inheritance tax is a fine in the nature of a release. We have no corresponding element in our Government whatever. There is no presumption that the Government of the United States is the owner of the estate of a deceased person. We are purely creatures of legislation, and I think it is hardly fair to compare the principle in those countries with this country.

I do not very much differ in the ultimate conclusion from the Senator from Montana; but I do not think, as an argument, that it is entirely fair to compare the conditions in those countries with conditions in this country. I think the Senator will find a stronger reason for the imposition of an inheritance tax under our system of government.

Mr. DICK. Mr. President——

The VICE-PRESIDENT. Does the Senator from Montana yield to the Senator from Ohio?

Mr. DIXON. I do.

Mr. DICK. I may suggest a little further extension of the illustration made by the Senator from Idaho in this, that in the foreign countries referred to they levy their tax as one general tax upon all the people, while here we are dealing with 46 States.

Mr. DIXON. The Senator from Ohio is mistaken. The German Government expressly levies the tax and divides it pro rata in certain proportions from the tax received from the collateral heirs, and leaves the individual States of the German confederation the right to levy on the direct heir.

Mr. DICK. Then there is a very great difference, because they levy the tax and distribute it, while we do not permit the States to be disturbed in their methods of taxation by the Federal Government from any standpoint whatsoever.

Mr. DIXON. I can not conceive of the reasonableness of that argument. We are proposing to do in the House provision exactly what the German Government is doing.

Mr. CUMMINS. Before the Senator passes on——

The VICE-PRESIDENT. Does the Senator from Montana yield to the Senator from Iowa?

Mr. DIXON. Yes.

Mr. CUMMINS. I was very much impressed a few moments ago by the statement of the Senator from Montana to the effect that the United States was about the only civilized nation in the world that did not levy an inheritance tax.

Mr. DIXON. As a national tax.

Mr. CUMMINS. As a national tax. Undoubtedly the Senator, as he has been examining this matter, can also answer whether the United States is not about the only civilized nation that does not levy a national income tax.

Mr. DIXON. The United States is about the only civilized nation that does not levy an income tax. I want the Senator especially to understand my position. I believe that both the income tax and the inheritance tax reach the same source of supply. One, I contend, is easily collected and the other is not, especially in view of the adverse decision of the Supreme Court.

Mr. CUMMINS. I think I understand the Senator from Montana. I know that he is not hostile to the income tax; but I wanted those two statements to go out together——

Mr. DIXON. They are both in the RECORD.

Mr. CUMMINS. So that the country might know that we were not only the only nation which did not levy a national inheritance tax, but we were the only considerable nation in the world that did not levy a national income tax.

Mr. DIXON. That is correct.

Mr. SUTHERLAND. Mr. President——

The VICE-PRESIDENT. Does the Senator from Montana yield to the Senator from Utah?

Mr. DIXON. I yield to the Senator from Utah.

Mr. SUTHERLAND. Can the Senator from Montana tell us whether or not the German Empire levies an income tax?

Mr. DIXON. The German Empire levies a tax on collateral heirs.

Mr. SUTHERLAND. No; an income tax?

Mr. DIXON. I think they do.

Mr. SUTHERLAND. My understanding is to the contrary.

Mr. DIXON. I am not positive.

Mr. SUTHERLAND. I understand that the German Empire does not levy a national income tax, but some of the States of the German Empire do.

Mr. DIXON. That may probably be correct.

Mr. OWEN. Mr. President, I do not agree with the Senator from Montana [Mr. DIXON] that the psychological moment is at hand for the adoption of the inheritance tax. I have not the slightest idea that there is any probability of the programme laid down by the committee being changed in any respect. But I am in thorough accord with the view of the Senator from Montana in regard to the wisdom and propriety of an inheritance tax. I favor, equally, the income tax. But I regard the inheritance tax as a matter of far greater importance, and that it ought to be added to our permanent fiscal system, not only for the purpose of raising revenue, but for the further and more important purpose of abating the increasing danger of the accumulation of fortunes swollen beyond all reason, which now constitute a menace to the stability of our finance and of our commerce and to the liberties of the people of the United States and of the civilized world.

I suggest to the Senate a progressive inheritance-tax amendment, which I ask the Secretary to read.

The VICE-PRESIDENT. Without objection, the Secretary will read the amendment proposed by the Senator from Oklahoma.

The Secretary read as follows:

PROGRESSIVE INHERITANCE TAX AMENDMENT.

Suggested to the Senate by Mr. OWEN.

In lieu of sections 34 and 35, insert the following:

"A legacy duty shall be and is hereby imposed upon the transfer of any right, title, and interest in or to any property, real or personal, by will, grant, or transfer in any manner, or under the intestate law of any State or Territory, or of the United States, from any person in anticipation of death, or of any person dying, who is seized or possessed of such property while a resident of the United States, or of any of its possessions; or when the property of such decedent lies within the United States, or within any of its possessions, and the decedent or grantor was a nonresident of the United States, or of any of its possessions, at the time of his death, in accordance with the following schedule, to wit:

"Where the clear value of the entire estate is less than $100,000 it shall be exempt from legacy duty, otherwise, subject to the following duties, to wit:

"Where the clear value of the entire estate is between $100,000 and $300,000, 1 per cent; between $300,000 and $500,000, 2 per cent; between $500,000 and $600,000, 3 per cent; between $600,000 and $700,000, 4 per cent; between $700,000 and $1,000,000, 5 per cent; and upon every excess in the clear value of such estate over and above $1,000,000 there shall be automatically added in addition to 5 per cent, and accumulative as to each additional increase, 1 per cent additional legacy duty to be laid upon each increase in the clear value of such estate of $1,000,000, or the major fractional part thereof, until such duty reaches 100 per cent cumulative duty upon such additional increase in the clear value of such estate.

"*Provided*, That when such estate, by will, devise, grant, or inheritance law goes to collateral kin, there shall be imposed the following additional legacy duty upon such portion only of such estate as may descend to such persons severally, to wit:

"Brothers and sisters, or their descendants, 3 per cent; uncles and aunts, or their descendants, 5 per cent; other persons, not children or parents, 10 per cent.

"*Provided*, That any property conveyed, in anticipation of death, by any person, as a gift or grant to the extent conveyed without adequate consideration, where such estate would come within the rule imposed by this act, fixing such legacy duties, such conveyance, gift, or transfer, however made, shall be subject to the legacy duty herein provided, as if it were the estate of a decedent, and the estate shall be chargeable therewith unless otherwise paid. Where corporate stocks or bonds are transferred or placed under a trust for transfer within five years previous to death, as a gift, either in whole or in part, to that extent such transfer shall be conclusive evidence of its character as a legacy.

"*Provided, however*, That property devised or bequeathed to any religious, educational, patriotic, charitable, or benevolent corporation or institution shall be exempt from legacy duty.

"The legacy duty hereby imposed shall be a lien and charge upon the property of every person who may die as aforesaid, from the date of the death of such person, and shall be payable within one year, bearing 6 per cent from the date of the death for the first twelve months, and thereafter at the rate of 10 per cent until fully paid.

"The Secretary of the Treasury is authorized and directed to submit to Congress rules and regulations for the collection of the same for further congressional action."

Mr. OWEN. Mr. President, the Finance Committee has struck out the inheritance-tax provision of the House of Representatives. It should have been heavily increased and made progressive on the swollen fortunes of the country. The most important need of the people of the United States of this generation requires the abatement of the gigantic fortunes being piled up by successful monopoly, by successful stock jobbing, by skillful appropriation under the protection of the law of all the opportunities of life, and which have brought about a grossly inequitable distribution of the proceeds of human labor and of the values created by the activities of men.

I have framed this provision for the express purpose of proposing a readjustment in the distribution of wealth in this country in a manner which will restore to the people who have created these values the gigantic sums appropriated either by fraud or by the permission and the assistance of the law itself.

DISTRIBUTION OF WEALTH.

Mr. President, I have heretofore shown to the Senate in a manner most conclusive that the very great part of all of the wealth of this country has already passed into the hands of less than 10 per cent, and over half of the national wealth into the hands of less than 1 per cent of the people. (P. 3282, CONGRESSIONAL RECORD, June 15.)

Spahrs's table for the distribution of wealth in the United States, taken from his work, "The Present Distribution of Wealth in the United States," when our national wealth was $60,000,000,000, is as follows:

Class.	Families.	Per cent.	Average wealth.	Aggregate wealth.	Per cent.
Rich	125,000	1.0	$263,040	$32,880,000,000	54.8
Middle	1,362,500	10.9	14,180	19,320,000,000	32.2
Poor	4,762,500	38.1	1,639	7,800,000,000	13.0
Very poor	6,250,000	50.0			
Total	13,500,000	100.0	4,800	60,000,000,000	100.0

The inequalities have been steadily growing worse, and when a single person's fortune is estimated at a thousand millions and is gathering in $50,000,000 per annum of the net proceeds of the products of the labor of this country, while millions of human beings can not lay aside $50 apiece per annum, what must be the inevitable result? It is this condition, half understood, that is developing rapidly a sentiment of radical socialism, discontent, and social unrest.

Moody's Manual of 1907, page 30, presents a "General Summary" of corporations offering stocks and bonds for sale to the stock exchanges and recorded by him in great detail in a volume of nearly 3,000 pages, as follows:

	Total stocks and bonds.
Steam railroad division	$15,436,758,000
Public utilities division	8,130,464,000
Industrial division	10,156,333,000
Mining division	2,525,173,000
	36,248,668,000

In addition to this enormous volume of corporate wealth, which comprises a registered one-third of our national wealth, there is an unregistered volume of corporations which are close corporations which do not sell stock, which are personal corporations, amounting to thousands of millions of dollars.

I respectfully call your attention to the Statistical Abstract of 1907, Table 244, which sets forth the wealth of the United States, which shows clearly where its approximate ownership may be found, to wit:

Table 244, Statistical Abstract, 1907.

Real property	$62,341,492,134
Live stock	4,073,791,736
Farm implements and machinery	844,989,863
Manufacturing machinery, tools, etc	3,297,754,180
Railroad equipment	11,244,752,000
Street railway, shipping, waterworks	4,840,546,909
Agricultural products	1,899,379,652
Manufactured products	7,409,291,668
Imported merchandise	495,543,685
Mining products	326,851,517
Clothing and personal ornaments	2,000,000,000
Furniture, carriages	5,750,000,000
Total for United States	107,104,211,917

Where do the city laborers under protection come in as joint heirs of modern prosperity?

What part of this wealth created by labor is theirs?

They have no real estate, no live stock, farm machinery, manufacturing machinery, railroads, or under any visible classification. The only thing that they can have under this tabulation is clothing and a little personal property.

And yet the products of the labor in our specified manufacturing industries of 1905 reached a total of $14,802,147,087, for 5,470,321 wage-earners, whose product was therefore worth $2,708 per capita.

These people received $2,611,540,532 in wages (Stat. Abst. U. S., 1907, p. 144), or $479 per capita.

This $479 each must feed and shelter and clothe and educate and provide leisure and the joyous participation in the common providences of God for an average of three people, or about $160 each per annum, or about an average of $13.33 per month.

There can hardly be much margin of saving under the circumstances for sickness, ill health, accident, or loss of employment.

In New York City, with over four millions of people, less than 1 in 40 has any real estate.

ENORMOUS WEALTH INHERITED BY A MAN'S CHILDREN IS WORTHLESS IN THE HIGHEST AND BEST SENSE.

Mr. President, it takes a human being of the first magnitude to administer an estate of $10,000,000 with wisdom and efficiency. No human being can properly consume the income of such an estate, which, at 5 per cent, will make an income of $500,000 per annum, $1,366 per diem—about a hundred dollars an hour for every waking hour.

Since such vast sums of money can not be properly used by the individual in the gratification of any just personal needs, and since its possession frequently leads to the wildest extravagances, to the establishment of false standards of life, and often leads to harmful dissipation and vice, and sometimes even to the corruption of our legislatures, of our administrative offices, and of the judiciary itself in the crafty ways by which we all know human beings can be misled, a wise public policy should establish a system of government which will restore to the people so much of the swollen fortunes developed by our modern methods as justice demands.

No thoughtful student will deny that these gigantic fortunes represent values created by the labors and the activities of our people. No man can deny the moral righteousness of restoring to the people by legacy duty that which they have created and which has been taken from them under legal processes and by fair legal means, in the best view of the case, and by crafty, unfair, and illegal means in the worst view of the case.

THE TAX MORALLY AND ETHICALLY JUST.

It will do no harm to the legatees of these swollen fortunes to contribute to the State a reasonable percentage of such fortunes. They receive these fortunes as a gift, without effort, without service, and are purely beneficiaries of a public legal gratuity, which permits them to receive, without consideration, vast sums by authority of a public statute.

It is true, Mr. President, that the usual inheritance statute itself, based upon the obligation of the parent to provide for his child, is thereby justified; that the child, the wife, the dependents have moral claim for support out of the proceeds of the labor, self-sacrifice, ambition, or providence of the parent; but these considerations are abundantly recognized and provided for in the amendment which I have the honor to submit. They are more than provided for; they are left rich beyond every possible desire or need of a well-ordered mind or a well-disposed heart.

We all agree that it would be unwise to remove or weaken the incentive of an abundant reward as a compensation for the great personal virtues of industry, providence, enterprise, self-sacrifice, and labor, and the proposed legacy duty will not remove a reasonable incentive, while it will put, perhaps, a check on unrestrained ambition not content with tens of millions, but greedily disposed to acquire hundreds of millions at the expense of a just distribution of wealth. Common sense and sound public policy demand that a fair incentive be not taken away from the humbler citizens, who now, in vast numbers, have not a sufficient supply of this world's goods to protect themselves against an illness of thirty days, and from whom every incentive of hope is removed except the pittance of a meager daily bread.

While we should be considerate of the incentive to labor, industry, providence, and self-sacrifice on the part of strong and powerful men, we should see to it that this incentive is not taken away from millions of weaker men, or permit one man, with the advantage of the accumulated millions drawn from his ancestors, UNDER THE AUTHORITY AND PERMISSION OF OUR LAWS, to appropriate all of the opportunities of life, and thus deprive millions of feebler men of the incentive which we all agree is of the highest importance in developing human beings.

THE PRACTICE SUSTAINED BY FOREIGN COUNTRIES.

Mr. President, the plan proposed is lawful and has been passed upon by the Supreme Court of the United States in Magoun *v.* Illinois Trust and Saving Bank (107 U. S., 283), in which the court held that the inheritance-tax law of Illinois makes a classification for taxation which the legislature had power to make, and that the inheritance-tax law does not conflict in any way with the provisions of the Constitution of the United States.

The court in this case shows that these laws have been in force in many of the States of the United States—Pennsylvania, 1826; Maryland, 1844; Delaware, 1869; West Virginia, 1887; Connecticut, New Jersey, Ohio, Maine, Massachusetts, 1891; Minnesota, by constitutional provision.

The constitutionality of said taxes has been declared and the principles explained in many cases referred to in the case above mentioned. For example, in the United States *v.* Perkins (163 U. S., 625), Klapp *v.* Mason (94 U. S., 589), United States *v.* Fox (94 U. S., 315), Mager *v.* Grima (8 Howard, 490), and so forth.

With the consent of the Senate, I submit a record of the inheritance tax of the British Empire, the German Empire, and of the German Independent States; and, without objection, I will print in the RECORD these tables without reading them.

THE PRACTICE SUSTAINED BY FOREIGN COUNTRIES.

D. Max West, in his work on Inheritance Tax, fully sets forth the practice of every nation in this regard. I freely quote from his work and call attention of the country to it.

England has adopted the progressive inheritance tax, reaching as far as 15 per cent on great estates.

Inheritance tax of the British Empire:

In the finance act of 1894 (57 and 58 Vict., chap. 30) Sir Vernon Harcourt simplified the system of death duties, removed the more glaring anomalies, and greatly extended the application of the progressive principle. For the old probate, account, and estate duties he substituted a new estate duty graduated according to the size of the estate, real and personal, from 1 to 8 per cent, as follows:

When the principal value of the estate—
Exceeds £100 and does not exceed £300, 30 shillings.
Exceeds £300 and does not exceed £500, 50 shillings.
Exceeds £500 and does not exceed £1,000, 2 per cent.
Exceeds £1,000 and does not exceed £10,000, 3 per cent.
Exceeds £10,000 and does not exceed £25,000, 4 per cent.
Exceeds £25,000 and does not exceed £50,000, 4½ per cent.
Exceeds £50,000 and does not exceed £75,000, 5 per cent.
Exceeds £75,000 and does not exceed £100,000, 5½ per cent.
Exceeds £100,000 and does not exceed £150,000, 6 per cent.
Exceeds £150,000 and does not exceed £250,000, 6½ per cent.
Exceeds £250,000 and does not exceed £500,000, 7 per cent.
Exceeds £500,000 and does not exceed £1,000,000, 7½ per cent.
Exceeds £1,000,000, 8 per cent.

By the finance act of 1907 the estate duty on estates exceeding £150,000 was increased to the following scale:

When the principal value of the estate—
Exceeds £150,000 and does not exceed £250,000, 7 per cent.
Exceeds £250,000 and does not exceed £500,000, 8 per cent.
Exceeds £500,000 and does not exceed £750,000, 9 per cent.
Exceeds £750,000 and does not exceed £1,000,000, 10 per cent.
Exceeds £1,000,000 and does not exceed £1,500,000, 10 per cent on the first £1,000,000, 11 per cent on the remainder.
Exceeds £1,500,000 and does not exceed £2,000,000, 10 per cent on the first £1,000,000, 12 per cent on the remainder.
Exceeds £2,000,000 and does not exceed £2,500,000, 10 per cent on the first £1,000,000, 13 per cent on the remainder.
Exceeds £2,500,000 and does not exceed £3,000,000, 10 per cent on the first £1,000,000, 14 per cent on the remainder.
Exceeds £3,000,000, 15 per cent on the remainder.

In addition to this estate duty, calculated on the value of the estate as a whole, collateral heirs still have to pay legacy duty on their legacies or distributive shares of personal property, and succession duty on the corresponding shares of real estate and on leaseholds, settled personalty, and legacies charged on land, which are not subject to legacy duty, according to the following consanguinity scale:

	Per cent.
Brothers and sisters and their descendants	3
Uncles and aunts and their descendants	5
Great uncles and great aunts and their descendants	6
Other persons	10

The German Empire has a similar system, imposing the following imperial inheritance tax.

	Per cent.
Parents, brothers, and sisters, and their children	4
Grandparents and more distant ancestors, parents-in-law and stepparents, children-in-law and stepchildren, grandnephews and grandnieces, illegitimate children acknowledged by the fathers and their offspring, adopted children and their offspring	6
Brothers and sisters of parents and relatives by marriage in the second degree in collateral lines	8
In other cases	10

The tax is progressive, the rates given above being increased in the case of inheritance over 20,000 marks by one-tenth; for each further sum, at first of 20,000 or 25,000 marks and afterwards of 50,000 or 100,000 marks. For amounts over 1,000,000 marks the tax is levied at two and one-half times the basic rates, making the maximum rate 25 per cent. In the case of the immediate relatives, subject to the 4 per cent rate, the progression applies only when the value of the inheritance is more than 50,000 marks. On large amounts the German tax is considerably heavier than the French, because the progressive rates apply to the entire amount of the inheritance, not merely to their respective fractions; but when an inheritance is valued at a sum slightly in excess of that to which a lower rate applies, the higher rate will be collected only in so far as it can be paid out of half the amount by which the inheritance exceeds the preceding class limit.

Besides this, the German independent States also have a progressive inheritance tax, according to degree of consanguinity, as well as a progressive rate.

Switzerland in like manner has the progressive inheritance tax, a full account of which will be found on page 41, West, Inheritance Tax.

In the Netherlands; Austria-Hungary; Italy; Russia; the Scandinavian countries, Norway, Sweden, and Denmark; Belgium; Spain; Portugal; Greece; Roumania; Bulgaria; and in Spanish America, Uruguay, Chile, Brazil, Argentina, Guatemala, and Mexico, and Japan this system prevails.

In Australasia they have heavy, progressive taxes imposed, not for the financial consideration alone, but *also for the purpose of breaking up large estates*, rising to 10 per cent in Victoria, New South Wales, South Australia, and Western Australia; 13 per cent in New Zealand; and to 20 per cent in Queensland.

Mr. President, some time ago I called the attention of the Senate to the fact that the mortality tables of Australia, and particularly of New Zealand, show that they do not have much more than half the death rate we have in this country; and it is directly due to the more equal distribution of wealth and the better opportunity of life afforded to the man who toils.

Sir Charles Dilke, in Problems of Greater Britain, part 6, chapter 1, declares that the institution of private property has not been weakened nor capital driven from the colonies by these progressive taxes. The Cape of Good Hope, Cape Colony, has like duties. Seven of the principal colonies of Canada have succession duties with elaborate progressive scales: Ontario, Quebec, Nova Scotia, New Brunswick, Manitoba, Prince Edward Island, and British Columbia.

INHERITANCE TAX IN THE UNITED STATES.

The inheritance tax has been recognized in the United States by the act of July 6, 1797; by the war-revenue act of July 1, 1862; by the act of June 30, 1864; by the act of April, 1898.

This law was repealed April 12, 1902 (32 U. S. Stats., 92).

The receipts from the inheritance tax of 1898 are shown in the following table:

Fiscal year.	Receipts.	Percentage of internal revenue.
1898–99	$1,235,435.25	0.452
1899–1900	2,884,491.55	.977
1900–1901	5,211,898.68	1.698
1901–2	4,842,966.52	1.781
1902–3	5,356,774.90	2.322
1903–4	2,072,132.12	----------
1904–5	774,354.59	----------
1905–6	142,148.22	----------

American inheritance-tax laws, by States.

State.	Collateral.		Direct.	
	Rates.	Exemption.	Rates.	Exemption.
	Per cent.		*Per cent.*	
Arkansas	5	----------	----------	----------
California	1½–15	$500–$2,000	1–3	[a] $4,000
Colorado	3–6	500	2	10,000
Connecticut	3	10,000	1–2	10,000
Delaware [b]	5	500	----------	----------
Idaho	1½–15	500–2,000	1–3	4,000
Illinois	2–6	500–2,000	1	20,000
Iowa	5	1,000	----------	----------
Kentucky	5	500	----------	----------
Louisiana [c]	5	----------	2	10,000
Maine	4	500	----------	----------
Maryland	2½	500	----------	----------
Massachusetts	3–5	1,000	1–2	10,000
Michigan	5	100	[d] 1	2,000
Minnesota	1½–5	10,000	1½–5	10,000
Missouri	5	----------	----------	----------
Montana	5	500	[d] 1	7,500
Nebraska	2–6	500–2,000	1	10,000
New Hampshire	5	----------	----------	----------
New Jersey	5	500	----------	----------
New York	5	500	1	10,000
North Carolina	1½–15	2,000	3–4	2,000
North Dakota	2	25,000	----------	----------
Ohio	5	200	----------	----------
Oregon	2–6	500–2,000	1	[e] 5,000
Pennsylvania	5	250	----------	----------
South Dakota	2–10	100–500	1	5,000
Tennessee	5	250	----------	----------
Texas	2–12	500–2,000	----------	----------
Utah	5	10,000	5	10,000
Vermont	5	----------	----------	----------
Virginia	5	----------	----------	----------
Washington	3–12	----------	1	10,000
West Virginia	3–7½	----------	1	20,000
Wisconsin	1½–15	100–500	1–3	[a] 2,000
Wyoming	5	500	2	[f] 10,000

[a] Widows and (except in Wisconsin) minor children taxable only on the excess above $10,000 received by each.
[b] Tax payable only by strangers in blood.
[c] Tax not payable when the property bore its just proportion of taxes prior to the owner's death.
[d] Applies to personal property only.
[e] Decedents' estates of less than $10,000 are also exempt.
[f] For the surviving husband or wife and children, if residents of Wyoming, $25,000.

NEED OF FEDERAL LAW TO PREVENT EVASION.

I call the attention of the Senate to this important fact in considering this matter, that whenever a fortune grows very large the owner of that fortune can easily transfer his residence from a State which has an inheritance-tax law to a State which has no inheritance-tax law, and in that manner evade it. For that reason it is of the highest importance that the Federal Government should lay its hand upon the inheritance tax and upon the gigantic fortunes which are built up under our system of laws permitting monopoly to grow and flourish in this country, so that, at the death of the ambitious individual who has profited by our system, the people of the United States may have restored to them that which has been created by their labor.

Mr. President, I have no idea whatever that the amendment which I have the honor to propose will receive respectful consideration now; I do not offer it with any such view. I offer it because I desire the people of the United States to consider it, not because I expect the Finance Committee to consider it. This provision, if adopted by the people of the United States, will provide an enormous amount—not tens of millions, but hundreds of millions—that ought to go back to the people of the United States; and with that fund we could then have available a supply sufficient to improve the roads of the United States from the Atlantic to the Pacific, to improve the waterways of the United States and make transportation cheap, so that the tremendous outflow of the wealth of the people of the United States and their products might find an easy pathway to the sea and to the commerce of the world.

When this policy shall have been adopted by the people of the United States, it will check the very dangerous accumulations of gigantic fortunes which now comprise a serious menace to the people of the United States. Where a single fortune reaches *a thousand millions and an annual income of fifty millions*, increasing, as it must, in compounding geometric ratio and being typical, it is obvious that such an unequal distribution of the proceeds of human labor is not only unjust, unwise, but is dangerous to the peace and stability of the world.

Fifty millions of annual accumulations in one hand means the deprivation of many millions of people of a part of their slender earnings, and the accumulated force of all the demands of all of the great fortunes of the country, with their total exactions, means the impoverishment of the weaker elements of society by artificial exactions, depriving them of their reasonable opportunity to the enjoyment of life, of liberty, of the pursuit of happiness, and of the enjoyment of the fruits of their own industry.

Monopoly and plutocracy have more power in this Republic than they have in the kingdoms of Europe, where duties on inheritances universally prevail.

If the managers of this bill strike out the inheritance tax on any pretense whatever, I shall certainly regard it as a temporary triumph of selfishness over the influence of patriotism and righteousness. It will be impossible to prevent for a great while the imposition of inheritance taxes, first, because it is right; second, because the judgment and the conscience of the American people, with their increasing intelligence, will not sustain the party now in power in such a gross lack of its obvious duty—a duty earnestly recommended by the President of the United States in his message of December 3, 1906, and approved by such men as the noble-hearted Andrew Carnegie, who, in 1889, wisely said:

> By taxing estates heavily at death the state marks its condemnation of the selfish millionaire's unworthy life. It is desirable that nations should go much further in this direction. Indeed, it is difficult to set bounds to the share of a rich man's estate which should go at his death to the public through the agency of the state.

He also said:

> There are exceptions to all rules, but not more exceptions, we think, to this rule than to rules generally, that the "almighty dollar" bequeathed to children is an "almighty curse." No man has a right to handicap his son with such a burden as great wealth.

He also said:

> This policy would work powerfully to induce the rich man to attend to the administration of wealth during his life, which is the end that society should always have in view, as being by far the most fruitful for the people. Nor need it be feared that this policy would sap the root of enterprise and render men less anxious to accumulate, for, to the class whose ambition it is to leave great fortunes and be talked about after their death, it will attract even more attention, and, indeed, be a somewhat nobler ambition, to have enormous sums paid over to the state from their fortunes.

Mr. President, I sincerely hope that the managers of this bill will do themselves the credit, and the Republican party the honor, to put into this bill a substantial progressive inheritance tax, even if they do not approve the form of the amendment I have the honor to propose.

Mr. President, I submit a table of the proceeds of the inheritance taxes in the United States, and also in the several States.

my distinguished colleagues the Senator from Texas [Mr. BAILEY], the Senator from Idaho [Mr. BORAH], and the Senator from Utah [Mr. SUTHERLAND] have said substantially all that can be said, and they have said it so well that I despair of imitating their excellence. But in the twinkling of an eye the issue before the Congress was changed. It is not now "shall an income tax be added to the revenue bill under consideration;" it is rather what kind of an income-tax law shall be added to the bill.

The Senator from Texas and myself offered early in the session, within a very few hours, indeed, after the Finance Committee had reported the bill which we have so long debated, proposed amendments. There was no substantial difference between them, although they had their varying characteristics. These amendments proposed to levy a tax, I care not whether you call it an excise tax, a duty, or what not, I prefer the generic term "tax." We proposed to levy a tax upon all incomes, whether corporate or whether individual, above $5,000. Upon the question growing out of such a proposition we have debated from time to time the propriety, the wisdom, and the constitutionality of such a law.

But that is not now so much the question before the Senate as is the proposition, Shall we substitute for an income tax, bearing equally upon all persons and all corporations enjoying an income of more than $5,000, another sort of income tax—and I give it my own name, and I shall endeavor to sustain its title to that name before I have finished. The proposition now is, Shall we levy an income tax upon the stockholders of all corporations for pecuniary profit, without respect or regard to the extent of the income earned or enjoyed by those stockholders; and shall we levy an income tax upon the members of other corporations doing an insurance business, an income tax or a tax upon the premiums and other sources of income, and that without regard to the extent of the income possessed, earned, or enjoyed by the members of those corporations?

The issue, Senators, is plain and simple. I do not intend to hide behind any technicalities. I do not intend to be disturbed by mere names. I intend, if I can, to penetrate to the very heart of the thing; and I want to begin what I have to say by making it clear that the income-tax amendment proposed by the Senator from Texas [Mr. BAILEY] and myself rests as a burden only upon those natural and artificial persons with incomes of more than $5,000; but the income tax presented by the Finance Committee, and explained so clearly by the Senator from California [Mr. FLINT], rests upon the incomes of all the stockholders of our corporations, whether such stockholders be rich or poor, with little or great incomes, and upon many members of insurance companies, without regard to their ability to bear these additional burdens.

I do not shrink from the issue, although I confront it with more regret than I ever before experienced in taking up for discussion a public question. I do not blind my eyes to the fact that I am opposing the recommendation of the President of the United States. I do not shrink from acknowledging that I am refusing, in what I have to say and in what I shall do, to carry out the suggestions that he has so recently made. Do not misunderstand me. I am not admitting, nor shall I for a moment admit, that the amendment reported by the committee is in consonance with the message laid before Congress by the President. It is not a faithful and complete reproduction of his recommendation, but that does not change the general situation. He has recommended the passage of a law which shall impose a tax upon corporations alone, and I am opposed to that proposition—unalterably opposed to it, and therein lies my regret. I find no pleasure in differing from the President of the United States. I have the deepest respect for the high office he holds, and I have unlimited and profound admiration for and confidence in the character of the man. I have attempted to receive his recommendation with all the weight to which a message from such a source is entitled.

Mark you, I am not criticising the President of the United States for communicating his views upon this subject to Congress. He was quite within his privilege; he exercised but his constitutional right in expressing to Congress his opinion upon this matter of public concern, and I have received it, and I hope every Senator has received it, with the profoundest respect, and has given it all the consideration which the importance of the subject it touches and the high station and great abilities of the man who wrote it can command; but there I am compelled to stop. Recognizing the right of the President to communicate with Congress upon such a subject, I do not recognize his right, nor do I believe that any Senator will recognize his right, to command convictions. It is for him to recommend. It is for us to decide.

This subject is one which, as suggested by the Senator from Montana, will be discussed at every fireside. It is one which will fill the minds of the people from now until the moment they have an opportunity to express their judgment upon it. It is one which vitally touches one of the most important prerogatives of the Government; and it is for every Senator to act upon it in exact accordance with his own conscience and his own judgment.

The message of the President is entitled to just that weight that its reason compels for it. I would allow—I would gladly allow—the scales to tip in favor of the judgment expressed by the President, if I could; but I have an abiding conviction that somewhere and somehow that great patriotic mind of his has failed to comprehend this question in its entirety, and I, with entire respect for him, continuing the affection I hold for him as a man, intend to speak and to vote as I believe to be right. I will not follow him or any other man to a conclusion that I believe to be wrong, and therefore I intend to examine the question just as carefully as I can. I begin with the proposition that the tax proposed by the amendment now offered by the committee is fundamentally wrong. It is vitally wrong. It repudiates not only our unerring instinct with regard to taxation, but it violates and contravenes the most sacred traditions of the American people with respect to taxation. There is one thing that we have always held high, one principle we have always elevated above every other in taxation, and that is that it must be fair and equal, and as uniform as practicable under existing circumstances.

This tax proposed by the committee is not fair; it is not equal; it does not distribute the burdens of government as they ought to be distributed; it does not put upon the shoulders of those who can best bear the weight of this great structure; but, without any regard to ability to pay or bear, it puts the burden on a certain class of men, namely, those who have invested their capital in the stock of corporations.

I know it has been said that a general income tax such as is proposed in the amendment offered by the Senator from Texas [Mr. BAILEY], and to which I have contributed some part, is unconstitutional. I will enter that inquiry presently. All that I care to say about it now is that the proposition submitted by the Finance Committee is subject to all the constitutional objections which have been urged against the amendment proposed by the Senator from Texas and myself; and under a possible interpretation it has one constitutional objection peculiar to itself, an objection which may be fatal to it, even though—and I have no doubt that that event will occur—even though the next decision of the Supreme Court entirely annihilates the opinion in the Pollock case. There is an invalidity, there is a weakness, there is a defect in the amendment proposed by the committee which will render it futile as an instrument for the collection of revenue; and I will endeavor, as time goes on, to lay that defect clearly before the Senate.

But, prior to all these things, I recur to a statement that I made when I originally introduced the amendment which I proposed, namely, that it would be folly for the Congress of the United States to arrange for any additional revenue, either through the instrumentality of an income tax, an inheritance tax, a stamp tax, or any other tax, unless we need the money; and the instrument or medium that we should employ ought to have some relation to the amount of money that we need. I would be the last Senator to vote for a law that would raise $80,000,000 if we only needed $25,000,000; I would be the last Senator to vote for a law that would raise $25,000,000 if we needed none to supplement the revenue from our tariff schedules.

I think, therefore, in developing the subject logically, I ought to give some attention to the study of our finances, and I am very glad that I am honored with the presence of the Senator from Rhode Island [Mr. ALDRICH] because, if I go astray in this maze—I do not mean it is a maze to him, but it is a maze to a novice like myself—I know he will correct me. I understand perfectly that the revenues and expenditures of the Government in the future can not be stated with absolute precision. Necessarily we must exercise our most mature judgment in reaching conclusions respecting these things; but I shall endeavor to be so conservative as to be always on the safe side. I shall take the two years immediately before us—that is, the fiscal year ending June 30, 1910, and the fiscal year ending June 30, 1911. With respect to the first, the expenditures have already been determined.

We appropriated during the last session $1,044,401,857.12 to carry on the affairs of the Government for the year ending June 30, 1910. This sum, however, vast as it is, does not represent

Mr. President, Mr. Cleveland characterized the Wilson-Gorman bill as an act of party perfidy and party dishonor. There is no doubt that in the passage of that bill the Democracy defaulted its bond. There is no doubt that the American people rebuked and repudiated the Democracy for that breach of faith. In my judgment it would have been infinitely better both for the fame of Mr. Cleveland and for the fortunes of his party if he had vetoed that measure outright instead of suffering it to become a law without his approval.

It seems to me that the Republican party is now following in the footsteps of the Democratic party, and that it may follow that party into either temporary or permanent retirement. The Republican party is now breaking its plighted faith. It is now breaking its sealed and sacred covenant with the American people. I do not doubt that the people will rebuke and repudiate the party for its violated faith and for their disappointed hopes. It will be better for the fame of Mr. Taft and better for the fortunes of his party if he should veto this Payne-Aldrich bill, this badge—if I may appropriate the phrase—of party perfidy and dishonor.

I confess myself less concerned about that fame and that fortune than I am for the welfare, the prosperity, and the emancipation of the American consumer. The people of this country will not again be cheated by the specious and illusive plea that the tariff should be revised by its friends and that the trusts be curbed by their friends. That is a mild-mannered remedy which is satisfactory in the highest degree to the beneficiaries of the tariff and the trusts, but this nostrum will not again deceive and ensnare the victims of the tariff and the trusts, the long-suffering American people. The President's veto is the people's hope and their only hope.

I may have something further to say upon this subject before the debate closes.

The VICE-PRESIDENT. The resolution goes over.

THE TARIFF.

The VICE-PRESIDENT. The morning business is closed, and the first bill on the calendar will be proceeded with.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 1438) to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes.

The VICE-PRESIDENT. The Senator from Iowa [Mr. CUMMINS] will proceed.

Mr. CUMMINS. Mr. President, I do not at all wonder that there is difficulty this morning in securing a quorum——

Mr. CLAPP. Mr. President——

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from Minnesota?

Mr. CUMMINS. I do.

Mr. CLAPP. That awakens a suggestion in my mind. I suggest the want of a quorum.

Mr. CUMMINS. I hope the Senator from Minnesota will withdraw that suggestion.

The VICE-PRESIDENT. Had the Senator yielded to the Senator from Minnesota?

Mr. CUMMINS. I yielded to the Senator from Minnesota.

The VICE-PRESIDENT. The Secretary will call the roll.

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

Bacon	Clark, Wyo.	Gore	Page
Bailey	Clay	Guggenheim	Perkins
Beveridge	Crawford	Heyburn	Piles
Borah	Culberson	Hughes	Root
Brandegee	Cullom	Johnson, N. Dak.	Scott
Briggs	Cummins	Kean	Simmons
Bristow	Curtis	La Follette	Smith, Mich.
Brown	Davis	Lodge	Smoot
Burkett	Dillingham	McCumber	Stone
Burrows	Flint	McLaurin	Sutherland
Carter	Foster	Money	Taliaferro
Chamberlain	Frye	Nelson	Warner
Clapp	Gallinger	Oliver	Wetmore

The VICE-PRESIDENT. Fifty-two Senators have answered to the roll call. A quorum of the Senate is present. The Senator from Iowa will proceed.

Mr. CUMMINS. Mr. President, I repeat that I do not wonder it is somewhat difficult to secure a quorum this morning, because it is uncomfortable in every sense. The weather is disagreeable. The amendment we are considering ought to make people uncomfortable. We are told by the morning's paper that the distinguished chairman of the Finance Committee has gone upon a sea voyage. I hope that it is true, for he has not only earned a rest during the last few weeks, but after the acknowledgment which he made yesterday to the Senate with respect to his motive in bringing forward the amendment we are now considering he needs the inspiration and the recuperation of a sea voyage. I would want to take a trip lasting about a thousand years if I should be compelled to make a confession of that sort with respect to a bill brought forward by myself. I will give some attention to that particular phase of the matter a little bit later.

Mr. CLAPP. Will the Senator pardon me? He is alluding to people who are comfortable or uncomfortable.

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from Minnesota?

Mr. CUMMINS. I do.

Mr. CLAPP. I also notice by the newspapers that the large corporations are not uncomfortable. They are reported as being satisfied with this proposition.

Mr. CUMMINS. I should think they would be exceedingly well satisfied with it. I can hardly conceive an instrument better calculated to further their desires than the amendment now before the Senate. It is true it levies some tribute upon them, but not so much tribute or under such rigorous conditions as the amendment offered by the Senator from Texas, and myself. I shall have occasion also to examine that part of the matter before I shall have finished.

But I resume an examination of our financial condition, because, as I said yesterday, I would not favor an income tax or an inheritance tax or any other sort of a supplemental revenue-producing measure if I did not believe we needed some supplement to our revenue. I had stated yesterday that, deducting the appropriations for the postal service, our appropriations for the last session for the year ending June 30, 1910, aggregated $798,790,362.12. I had shown that our revenue from all sources other than custom-houses would aggregate not more than $319,000,000, and the Senator from Rhode Island [Mr. ALDRICH] admitted that my estimate of revenue from other sources than the custom-houses was rather more than less than it ought be. I had shown that we must raise, then, from the custom-houses or some other kind of taxation $479,790,362.12. It was at this point that the Senator from Rhode Island yesterday questioned the accuracy of my computation. It was at this point that he declared there should be deducted from this fund some $90,000,000, composed of an item of $60,000,000 to replace or to reimburse our sinking fund and $30,000,000 in order to make good deposits which had been made by our national banks for the purpose of redeeming or retiring their circulating notes.

I intend in a very few moments to give some consideration to the item of $60,000,000 for our sinking fund and $30,000,000 for the retirement of our national-bank notes.

But it will be remembered that the Senator from Rhode Island also said that the expenses of the Government from year to year were notably and sensibly less than our appropriations year after year. In this the Senator from Rhode Island is mistaken, if my information can be relied upon.

While I do not intend to go into the items just now, I am having prepared a table showing the appropriations for the years 1900 to 1906, inclusive. I will not come further down, because we do not secure a fair comparison if we enter those years in which the appropriations have not yet been fully expended.

I ask leave to print as a part of my remarks a table showing the appropriations in these six years and the expenditures of the Government for these six years.

The VICE-PRESIDENT. Without objection, permission is granted.

The table is as follows:

Total regular annual appropriations for fiscal years as follows:

1900–1901	$577,438,642.88
1901–1902	605,980,355.99
1902–1903	626,573,276.55
1903–1904	620,468,686.02
1904–1905	639,700,555.18
1905–1906	673,348,314.96
1906–1907	739,512,865.16

Total expenditures as shown by report of the Secretary of the Treasury.

1900–1901	$590,063,371.00
1901–1902	621,598,546.54
1902–1903	593,038,004.90
1903–1904	640,323,450.28
1904–1905	725,984,945.65
1905–1906	720,105,498.55
1906–1907	736,717,582.01

Mr. CUMMINS. This does not include permanent annual appropriations or expenditures for such funds as sinking fund, currency-redemption fund, and the like.

The very fact that every year we are called upon to supply deficiencies in our appropriations ought to be a sufficient answer to the suggestion of the Senator from Rhode Island. I therefore take it as a matter established beyond any reasonable doubt that for the year ending June 30, 1910, we must have from the custom-houses or from an income tax or from an inheritance tax or from a so-called "corporation tax" the sum of at least $479,000,000.

I recapitulated yesterday our receipts from the custom-houses for the last four years. I will not repeat that statement, save

bonds, or otherwise, as the works are constructed, and let the generations as they come along pay each its due proportion, if it is interested in the improvements, and perhaps provide for enough of a sinking fund ultimately to extinguish the indebtedness. I had no idea of conveying the impression to the Senator that I did not want to continue this system of improvement. I only desired to convey the impression that I would not go with the Senator as far as he might want to go—I do not know how far he wants to go—to the extent of imposing taxes at this time and assessing the burden on this generation for these purposes.

Mr. CUMMINS. Mr. President, of course the Senator from Nebraska asked a question which implied a certain position on my part, and I answered it as I thought it ought to be answered. No question is ever asked here for information. I never knew a question to be asked except to reply to an argument. I was attempting to show the money which we would probably need in the year 1911. I had said that I had included $50,000,000 in that for public buildings and for the improvement of waterways. That did not seem to me to be a very large estimate for the appropriations that we would certainly make. I have not suggested raising $500,000,000 or a billion dollars for the carrying on of these improvements by taxation.

I have suggested a much less sum than has hitherto, at times, been appropriated for that purpose. But the Senate, if it pleases, can deduct the $50,000,000 that I have put into my estimate, and make up its mind that it will never spend a cent for public buildings or for waterways, discard the idea entirely, and you will still be $95,000,000 short when you reach the end of the year 1911; and $95,000,000 is more than is contemplated by the general income tax which has been proposed. You will have a deficit even if you succeed in raising every penny that a 2 per cent general income tax would raise.

I now pass from that; and I have expended altogether too much time upon it; and yet it seemed to me that it was the foundation of it all to show that we needed the money. How should it be raised, or how should any part of it be raised? We have proposed a general income tax. There are some Senators, I know, on this side of the Chamber who fear a general income tax, because they have made themselves believe that in some way or other it would become an enemy to protection, and that we could not maintain an efficient protective law together with an efficient income-tax law. I beg that they will put away any such delusion, for the truth is that if such a law as we have now does not raise the revenue that we need, then an income-tax law, or some other supplemental revenue law, is absolutely necessary in order that we may maintain protection.

Mark my words that it will not be many years until it will be seen that if we are to maintain protection in the United States we must supplement our revenues in some such way. Why? A protective law upon competitive commodities that is properly adjusted will not yield much revenue. If it is adjusted as it ought to be—although that may be beyond the power of man—it will admit little importation upon competitive commodities, because the duty will be placed just at that point that will make it unprofitable for the foreigner to export to this country if our domestic producers are willing to sell at a fair price. Therefore our duties upon competitive commodities must necessarily grow less; I mean the amount collected at the custom-houses must necessarily grow less from time to time. If the law that we have now in course of preparation does what its distinguished author expects it will do, it will lessen the importation of competitive commodities; and as our domestic producers, under the inspiration of the protection given them in the law, shall more nearly absorb and occupy our domestic markets, the importation of those things must grow less and less from year to year, and the duties received at the custom-houses must therefore decrease from time to time just as the protective system becomes more efficient from year to year. Then the friends of protection will be compelled either to lower duties upon competitive products so that they may enter our ports, or to increase the duties upon noncompetitive commodities in order to raise the revenue that is desired. The American people will not long endure the increase of duties upon noncompetitive things. When you ask them to choose between placing the burden of government upon wealth, upon those who enjoy incomes of more than $5,000, and placing the burden of government upon the necessities of life, or even upon the luxuries of life, which they must buy abroad, they will not be slow in answering the question thus put to them. So I say that every protectionist, every man who desires an ally for protection, ought to stand firm for the adoption of some permanent supplement to our revenue.

Nor is the income-tax law inconsistent with the doctrine maintained by Senators upon the other side of the Chamber. Standing, as they do, for a tariff for revenue, it is still true that an income tax, levied upon those who ought to bear the burdens of government, those who are able to bear the burdens of government, will meet even that principle more perfectly than to levy duties upon the things that the people must use, and impose the weight of government only by the rule of consumption. It is consistent with the doctrine of protection, and it is consistent with the doctrine of a tariff for revenue. It bears just the same relation to both that our internal-revenue taxes bear to taxation at the custom-house.

I intend to consider presently the constitutional situation; but I want now, if I have been successful in showing that you are to be met with a deficit, to ask how are you going to meet it? You can not meet it by direct taxation. You know as well as I that the people of the United States would not submit for a single year to a tax levied according to the rule of apportionment. I care not whether direct taxes include something more than land, I care not what they include; but the Senate knows—every Senator knows—that the time has passed forever at which the Government of the United States will lay any tax by the rule of apportionment. Wealth and population have so far separated themselves in the United States that no man is or will be venturesome enough to suggest that a permanent income of the United States be raised by a tax levied according to the population of the several States.

If, therefore, you are not to adopt some form of direct taxation, you are remitted to some form of indirect taxation; and what shall it be? If it is your duty to provide for sixty millions or seventy-five millions or one hundred millions of dollars to meet the necessities of the Government in the next few years, how will you do it? You must adopt one of three general forms of taxation.

You must adopt one of two or more methods. First, there is the inheritance-tax law, suggested by the Senator from Montana [Mr. DIXON]. I say, in passing, that it meets with my entire approval. I believe in the justice of an inheritance tax; I believe that the devolution of property in the course of passing from the dead to the living should bear a reasonable tax, and should in that way restore to the Government some compensation for the protection that has been given it in the course of its accumulation. The income tax that we propose includes the inheritance tax.

I pass from that. Your next recourse is a stamp tax. It has often been resorted to; it has always irritated the people; it is attached or affixed to transactions of all kinds, without any discrimination with respect to the ability of the person who pays the tax to bear it; it is vexatious, and I do not believe that this Congress or the next Congress will desire to reenact the ordinary stamp-tax law. You are then compelled, as it seems to me, to resort to some form of property tax.

I shall presently examine the difference between a direct and an indirect tax, if there is any; but I want you to come with me now to the conclusion that, if there is to be the deficit that I have attempted to point out, Congress must adopt some form of tax upon property, and I am not now attempting to shroud the subject of property with any technicality whatsoever. I am speaking of property in its broad and generic sense, because every Senator here knows that every tax, except a capitation tax, is a tax laid upon property. There is no tax, I care not whether it is direct or indirect, that is not laid upon property, except a poll tax. I am now, of course, disregarding many of the niceties and many of the distinctions between the various kinds of property and rights.

I go one step further. Every tax, no matter whether it be direct or indirect or whether it be a capitation tax, is paid out of property. No tax can be paid unless the man who pays it has accumulated enough property with which to discharge the obligation; and many times, as it seems to me, we wander into a good deal of confusion by failing to discern and to discriminate between these technicalities, and we fall short of reaching the conclusion, which we all must reach, that when the man pays the tax he pays it out of some accumulation that he has successfully made.

Mr. HEYBURN. Mr. President——

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

Mr. CUMMINS. I do.

Mr. HEYBURN. I would like to suggest that this tax itself is property—the thing itself—the tax is property, of course.

Mr. CUMMINS. The Senator means the money with which the obligation is discharged is property.

Mr. HEYBURN. It is of the same character as that out of which it is created.

Mr. CUMMINS. Precisely. There is no doubt about that.

Mr. HEYBURN. I should like to make this suggestion: Of course the Senator will not answer if he does not care to at this time; but would it occur to the Senator, as a reasonable solution, that we first determine the necessity, or whether such necessity exists at all, as that which is sought to be anticipated by these extraordinary methods of taxation? Would it not be well, or, rather, would it meet with the Senator's approval—and I speak only for myself—that we adopt the schedules and let them be in force until a sufficient time has elapsed to test the question as to their revenue-producing character; and then, if we find that the necessity that the Senator is seeking to anticipate exists, take up the three proposed methods and select between them? No evil can happen in the meantime.

Mr. CUMMINS. Mr. President, in answer to the suggestion of the Senator from Idaho, I would agree with him, if the expenditures of the Government that must be met could be brought within the income. I am not asking for the imposition of an income tax to meet even what seems to me the positive obligations of the Government to do the things that have not yet been authorized by law.

Mr. HEYBURN. Will the Senator permit me?

Mr. CUMMINS. In just a moment. I have shown that our income for the next year will be $156,000,000 less than our expenditures already authorized; I have shown that our income for the following year will be $95,000,000 less than our expenditures, even excluding everything that is problematical or uncertain; and I have shown that, even upon the establishment that we have now authorized, we need every penny that can be raised by the income-tax law proposed by the Senator from Texas and myself.

Mr. HEYBURN. Will the Senator from Iowa permit me now?

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

Mr. CUMMINS. I do.

Mr. HEYBURN. Of course that statement is based upon the accuracy of the calculation made by the Senator; but very surprising conditions arise. For instance, last month there was a jump of nearly $5,000,000 in our revenues from customs. There is not any danger, the Senator I am sure will agree with me, in there not being available cash enough in the Treasury under existing conditions, with the present deficit, to meet all calls upon the Government, and the danger that the Senator anticipates is only subject to the calculation made by the Senator from Iowa being correct.

Mr. CUMMINS. Mr. President, I can not agree with the Senator from Idaho with respect to that. The estimates I have made concerning our income are in every instance most favorable to the extent of the income. I have given to the growth of the income the benefit of every doubt, and there is no man who will look into this subject but who will agree with me that there will be, at the end of the year coming, at the end of the following year, and at the end of every year following that, a large deficit unless we supplement the present methods of taxation by other modes or other kinds of taxation.

Now, Mr. President, I pass to what to me is the most interesting phase of this discussion. I have been held here for three hours discussing the financial situation of the Government. I did not intend to occupy twenty minutes with it when I began this address, but Senators will bear me witness that I have not willingly extended my observations upon that subject. They have been necessarily prolonged on account of the inquiries that have been made of me from time to time.

I want now, just for a few minutes, to address myself to the inherent justice of a tax on incomes. It is a subject to which I have given a great deal of thought. It is an important part of the political economy of the world. No Senator can discharge his duty, and no Senator will endeavor to discharge his duty, without looking carefully over the field of history, in order to ascertain how burdens can be best borne and upon whose shoulders they ought to be placed. It is an interesting, it is a fascinating study to endeavor to trace the relation of individuals to the Government and see to what extent they are actually contributing to the execution of the laws which protect them.

I say—and I say it with utmost deference to my friend from Montana [Mr. DIXON], who seems to think that an income-tax law would be defective or inoperative—that, in my judgment, some form of income tax is the first tax that ought to be imposed.

The inheritance tax, of course, is a part of any properly adjusted income-tax law, because the inheritance or the gift or the bequest or whatever it may be is a part of the income for the year in which it is received, and therefore we can not separate the equity and the justice of an inheritance-tax law from the justice of an income-tax law, although in some countries they are divided for the economy and for the efficiency of administration. But an income-tax law ought to be in force in every State. The States, as well as the General Government, ought to raise a large part of their revenues for the maintenance of their governments by a tax upon ability to pay, instead of upon inability to pay; a tax upon fortune, rather than a tax upon misfortune; a tax that rests as lightly upon those who are called upon to bear it as the most trifling weight that can be put into a strong hand.

Senators, I can not conceive how there can be objections to the justice of an income-tax law. It places the burdens where they belong; it discards unproductive property and unprofitable labor, and exacts but a small percentage of gains and profits, and earnings actually received. It is impossible to conceive of any injustice in taking a little part of a surplus in hand over and above a most liberal allowance for the maintenance of a family. It exacts not a penny that is in fact needed for either the necessities, the comforts, or the luxuries of life.

I was deeply impressed with a question put the other day to the Senator from Idaho [Mr. BORAH] while he was discussing the income-tax proposition by the Senator from Massachusetts [Mr. LODGE], immediately followed by a question from the junior Senator from New York [Mr. ROOT]. Out of both questions there could be drawn but one inference, and that was a belief on the part of these Senators that property was already sufficiently burdened with the taxes imposed by the Government; that property already bore more than its just weight of the taxes imposed for the maintenance of the laws. Ah, Senators, a little examination will disclose to you the fallacy of that inference, if it was intended to be so drawn. Property pays all the taxes, and, as the Senator from Idaho [Mr. HEYBURN] well suggested, taxes are paid with property.

Mr. HEYBURN. And are property.

Mr. CUMMINS. And out of property. There is no tax that is not in its substance, in its essence, laid in the first instance upon property itself, although it takes on various and divers forms; but if it was intended by the suggestion to have Senators believe that property which has been accumulated in the hands of a few bears more than its just share of the burden, then I dissent from the proposition. If it is intended to infer that the accumulations of the property bear an unjust or disproportionate share of the taxes, I dissent from the inference.

Mr. HEYBURN. Mr. President——

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from Idaho?

Mr. CUMMINS. I do.

Mr. HEYBURN. The tax provided for in the amendment under consideration by the Senator is an excise tax. It is a tax, a proportion, cut out of something.

Mr. CUMMINS. I will come to that presently. That is a mere figure of speech.

Mr. HEYBURN. What I said to the Senator was that the tax itself is property. The Senator, I think, did not understand me accurately. As the right of taxation is property, so the tax is property cut out of the other.

Mr. CUMMINS. If that is what the Senator meant, I entirely disagree with him. The right to tax is not property, because the right to tax is a sovereign right and is not a property right. If he means the right of the Government to say that I shall contribute $10 to the support of the Government is property, I can not agree with him.

Mr. HEYBURN. That is sovereignty. But what was the character of the right of tithes, which was the first and original tax, so far as we know? Was that sovereignty or was that property?

Mr. CUMMINS. It depends entirely upon how the obligation to pay tithes arose. If it was imposed as a sovereign act, it was sovereignty. If it grew out of a contract, either express or implied, it may be considered as property.

Mr. HEYBURN. Does the Senator know whether it was a gross or a net tax?

Mr. CUMMINS. I do not intend, Mr. President, to enter upon the discussion of these questions.

Mr. HEYBURN. I thought the Senator referred to it.

Mr. CUMMINS. They are entirely apart from the subject I am now considering. I shall be glad, at some other time, to take up that interesting discussion.

Mr. HEYBURN. I should not have interrupted the Senator except that he referred to the statement I had made.

Mr. CUMMINS. Very well. I make no complaint whatever of the interruption. In fact, I shall be glad at any time to have any supporter of the proposition made by the Senate committee interrupt me. That is the trouble, the Senator from Idaho does

Mr. SUTHERLAND. The point I make about it is that if it is not a tax upon property, using the word "tax" in a very broad sense, it is not a tax within the meaning of the Constitution. Within the meaning of the Constitution it is then a duty or an excise and not a tax within the meaning in which the word "tax" is used in the Constitution.

Mr. BORAH. Of course that is purely arbitrary. What the Constitution says is that no direct tax shall be laid, not that it shall not be laid upon property, but that no direct tax shall be laid except by apportionment. Therefore, when the court held this was not a shiftable tax, at the same time it was a leviable tax without apportionment. I say it is not to be harmonized with the Pollock case.

Mr. FLINT. Mr. President——

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from California?

Mr. CUMMINS. I do.

Mr. FLINT. It is exceedingly warm, and the Senator from Iowa has spoken for some time. I move that the Senate take a recess for half an hour.

The motion was agreed to; and at the expiration of the recess (at 1 o'clock and 45 minutes p. m.) the Senate reassembled.

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

The VICE-PRESIDENT. The Secretary will call the roll.

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

Bacon	Clay	Gamble	Penrose
Bailey	Crawford	Guggenheim	Perkins
Beveridge	Cullom	Hughes	Root
Borah	Cummins	Johnson, N. Dak.	Scott
Brandegee	Curtis	Johnston, Ala.	Smith, Mich.
Briggs	Dick	Jones	Smoot
Bristow	Dillingham	Kean	Stone
Bulkeley	du Pont	La Follette	Sutherland
Burkett	Elkins	Lodge	Tillman
Burnham	Fletcher	McEnery	Warner
Burrows	Flint	Nelson	Warren
Burton	Foster	Oliver	Wetmore
Carter	Frye	Overman	
Clapp	Gallinger	Page	

Mr. BACON. I desire to announce that the senior Senator from Tennessee [Mr. FRAZIER] is detained from the Chamber by personal sickness.

The VICE-PRESIDENT. Fifty-four Senators have answered to the roll call. A quorum is present. The Senator from Iowa will proceed.

Mr. CUMMINS. Mr. President, I was a little diverted from the course of my argument by the interruption which took place immediately before the recess. I will endeavor to recall Senators to the point under discussion. I was attempting to show that the term "direct taxes" as used in the Constitution of the United States, when viewed abstractly, has no definition. I had referred to the fact that at the time of the Constitutional Convention, so far as I can now recall, this term had been mentioned by but two economic writers—one, Adam Smith, in his Wealth of Nations, and the other a French writer by the name of Turgot. Their general idea was that a direct tax was a tax upon property or revenue and an indirect tax was a tax upon consumption or expense. But later economic writers have amplified that general idea by supplying the fundamental thought, namely, that an indirect tax was one which could be shifted from the person who was called upon to pay it to another who was to buy the thing upon which the tax was imposed.

I have no doubt that the framers of our Constitution held varied opinions with regard to the meaning of the term "direct taxes." I have no doubt that they thought of this term largely as it had been applied to taxation in their own colonies. But I believe it to be true that a great majority of the framers of the Constitution thought of direct taxes as those imposed upon land with its improvements and the capitation tax. I believe that by far the greater number limited it in their own minds, though little was said about it, to these two objects of taxation.

Because of this vagueness of definition, because of this want of clear, precise application of the term, it was all the more essential; it was all the more imperative that whenever that phrase came before the Supreme Court for interpretation and a construction had been given it as the sense in which the greater number of the framers of the Constitution intended it, and once being applied, a concrete definition once being agreed upon, it should never thereafter have been departed from, because the moment that departure was made from that definition or that application there was no sure, certain resting place.

The very moment that any court drifts away to an application of this term, according to the views of economic writers, that very moment the subject becomes one of pure confusion, for there is no definition, I repeat, of the term from an abstract standpoint that can be applied to the varying cases as they arise in government. It is wholly impossible to be consistent or to be logical with regard to the application of the term if you depend wholly upon the abstractions which may surround it.

I will give an illustration. Adam Smith thought direct taxes were taxes imposed upon the expense or the consumption of the people, and he thought they were equitable and fair, because he assumed that the expense of a particular man or the consumption of a particular man was substantially his revenue, and that a tax upon the consumption of the people would be the equivalent of a tax upon the revenue or the property of those people, a fact which, if true when Adam Smith wrote, has long ago ceased to be true, and therefore is of no value in the present interpretation of the phrase.

However, I repeat that if an indirect tax is a tax upon consumption or expense, what will you say about a tax upon inheritance? Is that a consumption or an expense? What will you say with regard to the tax laid upon the circulation of state banks during the war in order to suppress or to prevent the state banks from issuing circulating notes as money? Was that a tax upon consumption?

Now, mark you, you can not confuse this by saying some of these may be excise taxes or imposts or duties, because they must all fall within the term "indirect taxes." What will you say with respect to the tax upon the incomes of insurance companies imposed as a part of the revenue act of the civil war? The fatal error of the Pollock case, to which I shall come presently, the inherent mistake, was in attempting to apply to the income-tax law of 1894 the exploded notion that in order that a tax shall be an indirect tax it must be a tax that can be easily shifted or it must be a tax upon expense or consumption. That is the reason the Supreme Court in the Pollock case departed from the rule that had been laid down in the many decisions which preceded that case. I may say in passing that the Supreme Court is busily engaged at every convenient opportunity in narrowing the decision in the Pollock case—in discarding it just as fast as it can—because in the case of Knowlton *v.* Moore, that followed the decision in the Pollock case, being a tax upon inheritances, it expressly repudiated the proposition that a tax in order to be an indirect one must be a tax upon expense or consumption.

With this general review of the matter in your mind, I want to call your attention very rapidly to the history of the development of this subject prior to the Pollock case. The first case that came before the Supreme Court was the Hylton case, as you all remember. So much has been said of it historically, so much has been said of it analytically, that I do not pause to consider the composition of the Supreme Court or the composition of the Congress which passed the law. I only say it was a tax imposed upon specific personal property. There is no refinement of reasoning that can escape that conclusion. It was imposed upon carriages kept for use, and therefore it fell upon a tangible species of personal property.

Now, it has been said—and the Supreme Court in one of its decisions, in the Hylton case, said it might be—that carriages could be brought within the Smith definition of an indirect tax, because carriages were consumable by use, and that therefore this might be considered as a tax upon consumption, but evidently the decision did not rest upon any such distinction as that, because if so, the tax upon a house and lot would be an indirect tax, because it was a tax upon a thing that would be consumed by use. A house will wear out as well as a carriage, and I do not think the Senators upon the other side of this question would agree that a tax upon a house and lot was an indirect tax because the house would wear out in the course of time. I do not suppose that they would agree that a tax upon the property of a railway company is an indirect tax because its property will wear out just as rapidly as a carriage of the Hylton case would wear out. We must, therefore, find some other distinction in the Hylton case, and we find it in what was repeated by each justice as he delivered his opinion, namely, that the phrase "direct taxes" must be so construed as to make the Constitution an efficient, workable instrument, and that no taxes can be construed as direct taxes unless they can in fairness and in equity be apportioned among the States according to the population of the States.

If there is one thought dominant in the Hylton case, it is this, and it ought to have been the prevailing and controlling thought of every court as it came to construe the Constitution in this respect: The Constitution was not intended as a vague and a futile thing, and when it said that direct taxes should be apportioned according to population, it meant only those taxes which could in fairness be apportioned. In those days the tax upon real estate was the only tax that could be fairly apportioned. There is some stability in real property—that is to

say, there was some relation in those days between the value of real property and population, and it was thought then that that relation might continue.

Of course now even that has passed away. As I said long ago, there never will be a Congress, unless the very life of the Nation is at stake, that will levy a direct tax. A tax upon land levied now would be intolerable, distributed among the States according to their population. You will never read in the whole future history of the United States a suggestion with respect to levying a direct tax, and whatever taxes Congress does employ must be indirect taxes. Therefore the term "direct taxes" should be limited to the fewest possible objects. So the court in the Hylton case decided that direct taxes embrace nothing but poll taxes and taxes upon land with its improvements.

Mr. SUTHERLAND. Mr. President——

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from Utah?

Mr. CUMMINS. I do.

Mr. SUTHERLAND. I think the Senator from Iowa is in error in saying that the Supreme Court in the Hylton case decided that the only direct taxes were those imposed upon land and upon polls. No judge of the three who spoke upon that question authoritatively made any such decision. One of the judges said——

Mr. CUMMINS. Mr. President, the citation the Senator from Utah is about to read has already been read in the RECORD more than once. I know perfectly well his interpretation of that case. I have my own, and I would a great deal rather that any answer the Senator from Utah desires to make to my interpretation of that decision should be made at a later time.

Mr. SUTHERLAND. May I ask the Senator, then, what language he finds in the Hylton case that will justify him in saying that they decided this question?

Mr. CUMMINS. I will answer that question. The Senator from Utah [Mr. SUTHERLAND] very cleverly confines his question to the language used by the Supreme Court in the Hylton case. I have not said that any judge said in exact terms in the Hylton case that direct taxes were limited to land taxes and poll taxes. I have said that that was the decision, and I repeat it. The Supreme Court in language said that probably no other taxes were within that term than land taxes and capitation taxes, but they decided that a specific tax upon specific personal property was not a direct tax, and that decision excludes every other species of property from the operation of the term.

It is utterly impossible to conceive any property that can fall within the term "direct taxes" after you pass real estate, unless it be tangible personal property. Therefore, if I show, as the Hylton case does show, that the Supreme Court there decided that a tax upon tangible personal property was not a direct tax, I have proved, it seems to me, to the satisfaction of every reasonable mind that all kinds of property except land are excluded from the operation and interpretation of that phrase.

It to me is a demonstration. It is not possible to name any sort of property upon which the term "direct taxes" can fall except land, if personal property be excluded from the term. Every other sort of property is, as will be universally admitted, farther removed from the notion that we have in our minds when we speak of direct taxes than is tangible, specific personal property.

Therefore from the moment that decision was rendered it was decided that the Constitution intended only to require taxes on land and slaves in those days to be apportioned according to the population of the States. I do not speak of poll taxes, because they apportion themselves without any description or interpretation.

We therefore began in 1796 not only with the expression of the opinion of the several judges that direct taxes were so limited, but we began with a decision which in its terms excluded everything else, if the rule adopted by these judges should continue to be the rule of the United States.

Now, I pass along. I will not refer to the fact that four times Congress found it necessary to levy a direct tax, four times after this decision in the Hylton case. I know the Senator from Utah feels that because in a certain resolution that Congress passed, asking the Secretary of the Treasury for a report where other things than lands were included, therefore, Congress had in its mind that direct taxes might be levied upon something else than land. I will not pause to consider that, because it has already been discussed at sufficient length. I only stop long enough to emphasize the fact that in the four times that Congress since the decision in the Hylton case had occasion to levy a direct tax, each time it limited the direct tax to land, the improvements of land, or, in the early instances, to lands and slaves. There could not be a more emphatic construction of the Constitution and of these decisions, rendered in the early days of the Republic, than the repeated acts of Congress with respect to it.

The question relating to indirect taxation did not arise again until the revenue acts of the civil-war period came under judicial review, for it was not until the war of the rebellion increased the expenses of the Government beyond the ordinary sum that Congress found it necessary to employ this power beyond the point at which it is usually employed, in the imposition of internal-revenue taxes and import duties. Then came the struggle. Congress levied taxes upon a great many things. As I remember it, among other things, upon insurance companies, what would now be called, I suppose, "excise taxes;" and, I think, as they were levied then, they were excise taxes. Out of the exercise of that power there arose, first, the case of the Pacific Insurance Company *v.* Soulé. I believe then for the first time the Supreme Court had occasion to directly examine this question after it had left it in the Hylton case.

What was the act of Congress under consideration? It was an act imposing a duty upon the incomes of insurance companies—all the income of insurance companies. It was assailed on the ground that it was a direct tax. It was not a tax upon consumption; it was not a tax upon expense; but it was a tax imposed upon the property of insurance companies under the guise of taxing—and I am not speaking of it disparagingly—under the guise of taxing insurance companies for the privilege of doing business.

Then the Supreme Court had occasion to examine the validity, the strength, and the soundness of the Hylton case. I will not enter the case further than to say the court put away once, and it should have been for all time, the fallacy that an indirect tax must be one that is levied upon consumption or upon expense; and it affirmed, as it ought to have been for all time, the proposition that a tax levied upon property—for I care not whether it was upon the privilege of doing business or whether it was upon the property itself—was valid. It was so held upon the authority of the Hylton case; and it was so held because the Supreme Court understood that in the Hylton case all kinds of property, except land, had been put away from the operation of the clause providing for direct taxation according to population. I may not recite these cases in order; I only recite them as they come into my mind.

The next case, as I remember it, was Veazie Bank *v.* Fenno. What was it? During the course of the war, and toward the close of the war, it became apparent that it was not wise to allow the state banks to continue their circulating medium. Therefore it was determined that there should be a tax of 10 per cent put upon the amount of the circulating notes of banking institutions. Personally I do not believe the tax was levied for revenue. It was in the form of a tax for revenue, but in fact it was a tax to prohibit the circulation of state banks. Out of that law there came a case to the Supreme Court. Again it became a question of whether such a tax was a direct tax or an indirect tax. Again the Supreme Court was called upon to determine whether it would adopt the rule of the Hylton case or whether it would disregard it, for the tax upon these notes was not a tax upon expense; it was not a tax upon consumption; it was not a tax that could be shifted; it was not a tax that answered any of the abstract definitions of economic writers respecting indirect taxes; and yet again the Supreme Court, upon the authority of the Hylton case, upon the assumption that nothing but land came within the constitutional provision with regard to direct taxes, declared that it was an indirect tax. I believe it put the decision upon the ground that it was an excise tax or duty for the privilege of issuing and using circulating notes as a part of the banking business.

So it went on to other cases. I think the next case was that of Scholey *v.* Rew. There was here involved the validity of the law taxing the devolution of the title to property. Again the Supreme Court sustained the Hylton case; again it announced the principle to which I have referred.

Then came the Springer case, which confessedly decided the exact question which we have now before us, or that the Supreme Court had before it in the Pollock case.

Thus for a hundred years there had been a continuity of decisions sustaining this vital power upon the part of the Congress of the United States to levy a tax upon property, upon income without apportionment. For a hundred years it had been the accepted doctrine that no tax except a land tax need be apportioned among the States according to population. If we are to appeal to the rule stare decisis, I have a better title to appeal to it than those who seem to think that what we propose is in disparagement of the Supreme Court; that we are attacking in some way the confidence that ought to be reposed in that exalted tribunal. I have a better right to appeal to the his-

now to consider that. I do not like the way it came into Congress. I do not asperse anybody's motives; but I know, and you know, that if it had not been likely that the income-tax amendment that we proposed would have passed the Senate, this amendment would not have appeared. I have a right to say that, because of the avowal of the chairman of the Finance Committee yesterday. I knew something of that kind; but I never would have disclosed on the floor what I had heard in confidence or semiconfidence, had not the admission been made upon the floor. It is here simply because it was necessary to have an instrument of this sort in order to defeat the general income-tax provision.

What is the general income tax? It is a tax laid upon every income, whether of individuals or of corporations, that exceeds $5,000. It is fair; it is just; it makes all men under like conditions contribute equally to the support of the Government. What is the amendment which is proposed by the committee? I shall not now attempt to describe it in technical language. I describe it in commonplace language. With our amendment, every man who had an income of more than $5,000, or every corporation that had an income of more than $5,000, would have been compelled to have paid 2 per cent upon the income in excess of $5,000 for the support of the Government.

And what does the committee amendment mean? Needing a revenue, as we do need a revenue, it proposes that every man who has a share of stock in a corporation, whether he has an income of a hundred dollars or a million dollars, shall pay a part of the expenses of the Government because he is a shareholder in a corporation. It does not observe the essential, the fundamental principle of the taxation which is proposed in the original amendment. It is a mere figure of speech to say that it is a tax upon corporations. So far as taxes are concerned, corporations are mere trustees for their shareholders; and their shareholders must pay the tax. When you levy a tax on a corporation, you are levying it upon either the shareholder or the person who deals with the corporation, who employs it for services, or who buys from it a commodity. One or the other of these classes will bear the tax which it is now proposed to put upon corporations.

But what is it? I believe it is a property tax. I believe it is an income tax. It levies a duty upon the incomes in excess of $5,000 of all corporations with capital stock and of all insurance companies. Disregarding the husks and artificialities with which we surround our legal thought, it simply levies this duty upon the men who have invested their money in the shares of corporations, whether they be rich or poor, whether their incomes are great or small, and upon the contributions of the policy holders of insurance companies, no matter how great or how little those contributions may be or no matter how profitable or unprofitable the ventures may be.

Mr. HEYBURN. Will the Senator permit me a question?

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

Mr. CUMMINS. I do.

Mr. HEYBURN. I should like to inquire whether there is any difference in regard to the question whether it is a personal or a property tax between the Senator's proposed amendment and the amendment under consideration? Is not the income tax a property tax as proposed by the Senator from Iowa?

Mr. CUMMINS. It is.

Mr. HEYBURN. Then, so far as being a property tax is concerned, there is no difference?

Mr. CUMMINS. If the tax proposed in this new amendment is what I believe it to be——

Mr. HEYBURN. A property tax.

Mr. CUMMINS. A property, an income, tax—it is, from the constitutional standpoint, precisely like the income tax we have proposed. It is subject to the same objection. It is either overridden by the Pollock case or sustained by the previous cases, just as our amendment is overridden or sustained. And if we adopt it and that construction is the one to put upon it, you will meet in the Supreme Court precisely the same objection that is proposed against our amendment.

Mr. HEYBURN. Then, if the Senator will permit me, the only difference between the proposed tax on the income of corporations and that proposed by the Senator from Iowa is in the classification of the subjects of taxation? There is no difference in the principle of taxation?

Mr. CUMMINS. Legally speaking, if I have put the right interpretation upon it, there is no difference. I know very well that those who stand for this proposition of the committee will not agree that it is a property tax; they will not agree that it is an income tax. They pretend, through a method that I shall presently mention, to escape the objection that it is a tax upon property or a tax upon income, and thus avoid the decision in the Pollock case.

I, however, believe that the effort to do so is merely erecting a barricade of words behind which they endeavor to shelter themselves. I shall come presently to the consequences, if it is not an income tax or a property tax. But my first proposition is that it is a property tax, and therefore I say it challenges the decision of the Supreme Court in just the same way, to the same extent, and will meet the same fate when it reaches the Supreme Court as our amendment would experience. I believe that so viewed it is constitutional in so far as the levy of a tax upon incomes is concerned. It has other infirmities which I shall presently point out.

Mr. BRANDEGEE. Mr. President——

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

Mr. CUMMINS. I do.

Mr. BRANDEGEE. I understood the Senator from Iowa to state that the proposed committee amendment is not really a tax upon corporations, but is a tax upon the stockholders or upon the dividends of the corporation. If that is so, is not the same thing true of the proposed income tax upon corporations contained in the Senator's proposed amendment?

Mr. CUMMINS. It is, with this difference: In the amendment I propose if the total income of the shareholder does not reach $5,000, he is then not taxed. It preserves the central, fundamental idea of an income tax. In the case proposed by the committee, if a poor devil has 1 share of stock in a corporation, and it is all the income he has, he is nevertheless taxed. My desire is to relieve the incomes of men to the extent necessary to maintain their families, to support and educate their children, because I believe that they owe a higher duty to their families than they owe to the Government.

Mr. GALLINGER. Mr. President——

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

Mr. CUMMINS. I do.

Mr. GALLINGER. The Senator meant to say, I assume, that if the income in the first place added to other items of income does not aggregate $5,000, the man is not taxed?

Mr. CUMMINS. Precisely—in our case?

Mr. GALLINGER. Yes.

Mr. CUMMINS. That is true. Possibly I ought to correct that. I had it in my mind. The effect of our amendment is that no tax is laid upon a person unless his income from all sources exceeds $5,000; while in the proposal of the committee the tax is laid upon the income of every shareholder of a corporation that has a net income of more than $5,000, without regard to the extent of the individual income, whether that is the only income the shareholder receives or whether he receives other income from different sources.

That is the injustice of this proposal. It is not in accord with the humane civilization of this age. It is not in accord with the modern thought. It totally disregards every advance we have made in these years toward relieving those who are unable to bear the burdens of government from a greater share than is necessary, and giving them, as I said before, the opportunity to devote the first of their energies, the first of their income, the first of their earnings, to a dearer and more sacred object than the maintenance of the Government, viz, the maintenance of their citizenship and the support of their families.

But I now come to another point. Suppose this is not an income tax?

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

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

Mr. CUMMINS. Yes.

Mr. SUTHERLAND. The Senator says that so far as the constitutional question is concerned, he thinks there is no difference between the tax imposed by his amendment and the tax proposed to be imposed by the committee amendment.

Mr. CUMMINS. I did not quite say that.

Mr. SUTHERLAND. The Senator certainly said that both are taxes upon property, and that if one is subject to the constitutional objection that it is a direct tax, the other is.

Mr. CUMMINS. That I said.

Mr. SUTHERLAND. Does not the Senator recognize the fact that in the Soulé case the Supreme Court expressly held that the tax was imposed upon the business and not upon the property of insurance companies?

Mr. CUMMINS. Does the Senator want a categorical answer to that question?

Mr. SUTHERLAND. Yes; if the Senator can give it.

Mr. CUMMINS. I do recognize that the tax in the case of Pacific Insurance Company *v.* Soulé was a tax which was laid by law upon the business of insurance.

Mr. SUTHERLAND. On dividends derived from the income of insurance companies.

Mr. CUMMINS. That is, it was laid only upon those corporations that were engaged in the insurance business.

Mr. SUTHERLAND. Now let me ask the Senator if he is familiar—as I have no doubt he is—with the case of the Spreckels Sugar Refining Company, to which the President called attention in his message?

Mr. CUMMINS. I have it right here, open; and I expect to read to you to your heart's content in a very few minutes.

Mr. SUTHERLAND. Will the Senator permit me to call his attention to a single phrase in that case?

Mr. CUMMINS. Do not, if you please, call my attention to any part of the case until I reach it. I shall come to it presently, and then I shall invite any questions the Senator may have to ask. I shall be glad to have them asked.

Mr. McCUMBER. Mr. President——

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

Mr. CUMMINS. I do.

Mr. McCUMBER. I appreciate that there is a good deal of complexity about this slight differentiation between a tax upon property and a tax upon the right to do business; and there is a good deal of rather delicate refinement, it seems to me, between the two.

Mr. CUMMINS. Unnecessary refinement.

Mr. McCUMBER. Yes; unnecessary refinement. I should like to ask this question, which either the Senator from Iowa or the Senator from Utah can answer. The Senator from Iowa states that so far as these two amendments are concerned, the amendment he proposes and the amendment the committee proposes, they are both really a tax upon property. We will take the case of the Senator's amendment, and instead of saying that we shall levy a direct tax upon the income, we will suppose that he should so modify it as to say that we shall levy a tax upon the business and make the basis of it the income; that is, that it shall be proportioned upon the income. What difference would there be, in principle, between that case and the amendment the committee has introduced?

That is a matter that has puzzled me somewhat—to say what the court would decide provided you put the Senator's amendment in that language.

Mr. CUMMINS. Mr. President, the Senator from North Dakota has touched the very heart of things, as he usually does. We could just as well say in our proposed amendment that the tax was levied upon the right to receive and spend income. We could say that it was a tax levied upon the business of receiving income. There is no limit to the ingenuity of man when he attempts to hide the real truth. I have no patience with these nice and unnecessary and extraordinary distinctions.

Mr. BORAH. Mr. President——

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

Mr. CUMMINS. I do.

Mr. BORAH. In view of the suggestion of the Senator from North Dakota, I will state that the Senator from California said yesterday evening that this was not intended as a tax upon the privilege of doing business as a corporation, but a tax upon the privilege of doing business. If that be true, and the amendment is to bear that interpretation, why can you not lay a tax upon the man who engages in the business of buying bonds and collecting interest upon them for the privilege of doing so just as well as you can lay it upon the privilege of conducting a business of any kind?

Mr. CUMMINS. I had thought of another illustration.

Mr. FLINT. I will ask the Senator if that is not just what was decided in the Spreckels case—that that could be done?

Mr. CUMMINS. I will come to that directly. You might just as well levy a tax upon the privilege of being blue-eyed or brown-eyed or white-haired. You might just as well levy a duty upon the privilege of doing business on the north side of a street or the south side of a street. The occupations and the avocations of men and their conditions are capable of infinite variety. There must be, however, as it seems to me, some substantial reason in the classifications in which the legislature indulges.

But I come now, if I can, to again take up the thread of my argument. Assuming for the moment that this is not a tax upon property, that it is not a tax upon the incomes of corporations, and therefore the incomes of stockholders in corporations, but assuming that it is a tax upon something else, what is it upon? According to the answer given yesterday by the Senator from California, it is a tax upon the privilege of doing business. You might just as well say that men should be taxed upon the privilege of breathing.

Mr. HEYBURN. Will the Senator permit me to call his attention to the language——

Mr. CUMMINS. I am coming to that presently. Do not anticipate me. I do like to occasionally spring a surprise upon the Senate.

The PRESIDING OFFICER. The Senator prefers not to yield.

Mr. CUMMINS. But Senators are all so keen and alert that they prevent me from having the opportunity that I very much covet.

Mr. HEYBURN. I regret it. I would not for anything outrun the Senator's mind in this matter.

Mr. CUMMINS. The Senator is, I presume, about to call my attention to the fact that this tax is laid upon their business as corporations.

Mr. HEYBURN. No; I was going to call attention to the fact that the bill names this item; it gives it a specific name. It says, "a special excise tax."

Mr. CUMMINS. Oh, yes; of course. But it does not make any difference what it is named.

Mr. HEYBURN. It may make a difference.

Mr. CUMMINS. It does not; it can not. The character of a tax, the validity of a tax, must be determined by its essential characteristics. It must be determined by the circumstances under which it is laid and the thing or things upon which it is laid. Congress can not make an income tax a special excise tax by so denominating it. It can not make an excise tax a direct tax by so denominating it. We must look further into the subject than the language used by the committee.

I now come back to the question I was considering a little while ago. The Senator from California says this is a tax levied upon the business of corporations. I deny the right of Congress to levy a tax upon the business of corporations as such—that is, merely because they are corporations. I deny the right of Congress to make any classification of that sort. It is an arbitrary one; it is an unfair one. It has no predecessor, and I hope it will have no successor. If you depart from the construction I have put upon it and say that it is not a tax upon the income or the property of corporations, then it is a tax upon the right to do business as a corporation as distinguished from the right to do business as an individual or as a copartnership. You are necessarily driven to that conclusion.

I know that those who will attempt to defend the validity of this tax will say that it is not an income tax, and will say that it is not a property tax. But when they say that, they declare that it is a tax upon the franchises of the corporations created by the several States of the Union—a tax upon their right to do business as corporations. It is not a tax upon the privilege of carrying on the dry goods business; not a tax upon the privilege of carrying on the beef-packing business; not a tax upon the privilege of doing a manufacturing business; but a tax upon the right to do business of any kind as a corporation. And I should like to ask the Senator from California whether I have expressed the real construction and interpretation of the amendment as he views it?

Mr. FLINT. I may state to the Senator what I said last night when I was asked for my construction of this amendment, and that was that it is an excise tax upon the privilege of doing business. It is true that this amendment limits the taxes to certain corporations, and that we have the power to do this is sustained by several cases which the Senator himself has quoted. In one case they selected insurance companies and taxed them; in the Spreckels case they selected two different classes—sugar refineries and oil refineries. In this amendment we have made a classification which includes certain corporations and all insurance companies.

Mr. CUMMINS. Precisely. I think, Mr. President, that I gather the meaning of the Senator from California. But he also is leaning on a very weak and insecure reed. He also is endeavoring to conceal thought with language, instead of using language to express his thought. Congress can not justly levy a tax on business unless it includes all those who are engaged in that business. I deny the right, in fairness, of Congress to levy a tax upon John Smith because he is engaged in the dry goods business, if John Jones is next to him and is doing the same dry goods business without being taxed. That is not an excise tax. I realize that Congress can levy an excise tax upon any specified kind of business, but it must include all persons who are in that business and within those conditions in order that the law may be just and in order that it may answer the fundamental requirements of taxation.

In the present case the Senator from California says we have a tax on the privilege of doing business. Let us see. Here is a corporation, the John Smith Company, carrying on a dry goods business on one side of the street and here is John Jones & Co., a copartnership, carrying on a dry goods business upon the other side of the street. They are doing the same extent of business and making the same profits. I deny the power

of any legislative tribunal to levy a tax on the one as an excise tax without levying it at the same time upon the other. Classifications may be made, but they must be reasonable. They must have some substantial basis to support them.

The real truth is that this is not a tax on business, because corporations carry on the same kinds of business that individuals do and that copartnerships do. It is not a tax on business. I think it is a tax on property. I think it is a tax on incomes. But if it is not a tax on property or on incomes, it is a tax upon the right to do business in a corporate capacity. There is no wit of man that can relieve the proposed law of that construction if it is not a tax on incomes. And if that interpretation be put upon it, there is not a lawyer in the Senate who will insist that it can be done.

Is there anyone here who asserts that the Congress of the United States can levy an excise tax upon the right to exist, the right to do business, of a corporation created by the States? The United States did not create these corporations. It has conferred no authority or power upon them. It may have the power, under certain other provisions of the Constitution, to regulate and supervise them; but it did not create them. It did not invest them with power. The authority to tax involves the authority or the power to destroy, and I should like to know whether there is on the part of any Member of the Senate a belief that the Congress of the United States can, through the medium of taxation, destroy the corporations that have been created by the several States?

Can a State tax the franchise, the right to do business, of a corporation created by the United States? Will any Senator here affirm that the State of Iowa can seize the franchise of a corporation created under an act of Congress and tax it out of existence? If you can levy a tax of 2 per cent upon a corporate franchise, you can levy one of 50 per cent upon it. There is no limit to the power when once it is conceded to exist.

I do not intend to examine the cases upon this point. I know that before my friend the Senator from Idaho shall have finished he will have abundantly satisfied the Senate with regard to that proposition. I have the cases here, or some of them, but I have already occupied so much of the time of the Senate that I do not intend to enter upon them.

I shall content myself with again asserting that this is either an income tax, and therefore subject to all the objections that are urged against the income tax proposed by the Senator from Texas and myself, or it is a tax upon the right of doing business as a corporation, which is simply a synonym for the right to exist as a corporation; and if so, it is condemned by every decision of which I know or with which I am familiar.

I await with a great deal of pleasure the interpretation that shall be put upon this law by its distinguished framer, because I feel sure that if that bold and original navigator escapes Scylla, he will very speedily fall into all the dangers of Charybdis.

Senators, so far from escaping the difficulties you thought surrounded the income tax proposed by the Senator from Texas and myself, the law you have proposed has simply multiplied those difficulties, and, as I think, multiplied them almost infinitely. Some one has suggested that there is another possible construction that might be put upon the committee amendment.

Mr. OVERMAN. Mr. President——

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from North Carolina?

Mr. CUMMINS. I do.

Mr. OVERMAN. If a legislature grants a franchise to three or four men to form a corporation, the State then parts for the time being with a portion of its sovereignty. If this is a privilege tax, is it not indirectly a tax upon the sovereignty of the State?

Mr. CUMMINS. That, of course, lies at the very bottom of the argument I have just been making. It is a general proposition that the State can not tax the instrumentalities of the General Government, nor can the General Government tax the instrumentalities which the State may employ in the exercise of its sovereignty. The United States can tax the property of every corporation in the land; the States can tax the property of every corporation created under an act of Congress.

But Congress can not touch by a tax, the equivalent of a power to destroy, the right to do business as a corporation of an association organized under the law of a State, nor can the State touch with a tax the right of an association of persons organized as a corporation under the law of Congress. These rights are mutual. We have observed them already in the discussion of this question. Everybody concedes that the United States can not tax the bonds of a state government or of a municipal government organized by state law. No more can the State tax the bonds of the United States or any other instrumentality of the Nation. It is by a parity of reasoning that the Federal Government can not destroy a corporation created by the State, nor can the State destroy in that manner a corporation created by the General Government.

But it will be said, and it was suggested here a few moments ago, that this is not an income tax, it is not a tax upon the corporate franchises or the right to do business as a corporation, but it is simply a tax upon the business of corporations. Senators, it is not possible that you will pass a law that will tax the business of corporations and leave untaxed the business of copartnerships and individuals of the same kind, of the same extent, of the same profit. I deny that right of classification.

I want to make my meaning perfectly clear. I agree that the Government can impose an excise tax upon the business of dealing in real estate. I agree that it can impose a tax upon the business of selling dry goods or manufacturing iron or steel. I agree that it can impose a tax upon the business of refining sugar and oil. I agree that it can impose a tax upon the business of transportation. But when it imposes that tax it ought to impose it upon all who are engaged in the business, whatever it may be. You can select for your law, and you will select of course, only those kinds of business which according to your own observation are best able to bear the tax, but that, however, is at your own discretion. But having selected the business that is to be taxed, then all who are engaged in the business must fall within the provisions of your law. If you do not so frame your law, you have encountered not constitutional difficulties, but you have encountered the vital principle of our social compact. There are some things that are higher than constitutions, higher than laws. There is an underlying conception of justice and fair dealing upon which constitutions and laws are founded. If you were to tax the business of one man and not tax the similar business carried on under the same conditions of another man, you would destroy the very principle that brought us together in governmental relations.

Mr. CLAPP. Will the Senator pardon me for an interruption?

Mr. CUMMINS. Certainly.

Mr. CLAPP. I know the Senator is weary; he has made a long speech, and in my humble capacity of judging it is one of the greatest I ever listened to in this Chamber. It is a speech that must have effect. At the risk of trespassing upon the good nature of the Senator and his endurance, I am going to suggest that it seems to me he ought to refer to the cases he spoke of, that they may go out as a part of his speech. I simply make that suggestion to the Senator.

Mr. CUMMINS. Those cases will be inserted in the RECORD. They are to be used and will be used in a very short while by my colleague, the Senator from Idaho [Mr. BORAH]. We in a measure divided this field, although I feel like apologizing to him, because if you estimate the breadth of the field I have traversed by the time I have taken in getting over it, it might be assumed that I had taken the whole subject in my care. But it is not so.

I come now, however, to one of those cases, in answer to the Senator from Utah and the Senator from California. It is said that this amendment finds its justification or its legal defense in the case of the Spreckels Sugar Refining Company against McClain (192 U. S., p. 397). If this case does not sustain the proposed law, then I assume from what I have heard that the Finance Committee will withdraw it from the consideration of the Senate, because we are pointed to this case as the one which discriminates or differentiates the amendment proposed by us from the amendment proposed by the committee, and in the message of the President the only reason——

Mr. FLINT. Mr. President——

Mr. CUMMINS. Excuse me just a moment. The only reason the President gives for preferring the tax upon the net income of corporations as against the general income of corporations and individuals is that he has been led to believe that this case sustains the proposed amendment and will enable the tax laid by it to be collected without litigation, which it might be feared would prevent the receipt of the revenue so much desired from our measure.

I now yield to the Senator from California.

Mr. FLINT. I do not want the Senator to state my views or those of the Finance Committee to be that we rely solely upon the Spreckels case. There are many other cases we rely upon and to which the Senator has referred that we believe sustain the provisions of this amendment. It is true the President of the United States referred to the Spreckels case in his message, and that in the brief remarks I made I referred to it, but I do not want to be understood as saying this is the only case we relied upon. There are other questions raised in the amend-

First. With few, if any, exceptions, each State in which we transact business collects a tax on the premiums on the business in that State. In some States deductions are permitted for death losses paid, but in many the levy is made on the gross premiums. In many States the rate is 2½ per cent. In a few it is higher. The average must, we think, be at least 2 per cent of the gross premiums. This is certainly ample as a contribution on our part toward the maintenance of government. To double it by a like amount in favor of the Federal Government would, as we believe, be unjust, oppressive, and a burden which the system of life insurance could hardly be made to bear.

While we are willing to bear a fair and equitable burden of taxation, equal to the burden of taxation that shall be borne by other corporations of this country, we insist that a general law made applicable to all corporations based upon the net increase of assets that may be used for dividend purposes, will place a much larger burden of taxation upon life insurance companies proportionately than will be placed upon other corporations. For example, all premiums collected by an Iowa insurance company outside of its own State are subject to an income tax of at least 2½ per cent. This same money when it arrives in the State of Iowa is subject to a tax of 1 per cent (less death losses and reserve liability for the current year). This same money when it appears at the end of the year in the increased surplus of the corporation has an additional tax of 2 per cent levied upon it by local authorities. If the Federal Government now levies a tax upon the increased surplus which this same money goes into from year to year, a fourth tax will be added, which will be that much more of a tax than is paid by every other form of corporation.

Therefore we insist and maintain that justice and right require that an exception be made in the general law proposed by your committee to the extent that the taxes required by States other than the home States of insurance corporations shall be deducted from the operation of the proposed federal law. We insist that at the present time and for several years in the past insurance corporations, by reason of the action of the various States in this country, are paying 2½ per cent tax upon the premium income, which tax is 2½ per cent greater than is being paid by other corporations doing business in this country. In other words, certain States have anticipated the proposed action of the Federal Government and are already collecting a general income tax from life insurance companies, and we insist that we are already paying this item of taxation more than other organized corporations are paying; and we ask your honorable Finance Committee, in the preparation of the proposed income law, to provide a remedy for this injustice of burdening insurance institutions with a tax that is not carried by other corporations; or, in other words, we ask your honorable committee to place us on the same basis of taxation as all other corporations.

It is understood that a proposal to impose a federal tax upon inheritances was abandoned for the reason that the States had already imposed such levies for the raising of state revenues.

It must certainly be desirable, so far as possible, that the revenues of the National Government should be so raised as not to interfere with the operations of the taxing departments of the States or to duplicate the state levies.

Upon this principle the proposed federal law might well provide that such corporations as are required to pay taxes upon their receipts to the States may deduct the amounts so paid from the levy made upon them under the proposed United States statute.

We appeal to your judgment and fairness in this matter, and ask that the proposed law may be so amended as not to impose twice the burden of taxation upon life insurance corporations that will be imposed upon other forms of corporations in this country.

Yours, very respectfully,

ROYAL UNION MUTUAL LIFE,
By FRANK D. JACKSON, *President.*
AMERICAN LIFE INSURANCE CO.,
By J. C. GRIFFITH, *Secretary.*
EQUITABLE LIFE INSURANCE CO. OF IOWA,
By CYRUS KIRK, *President.*
DES MOINES LIFE INSURANCE CO., OF IOWA.,
By L. C. RAWSON, *Vice-President.*
CENTRAL LIFE ASSURANCE SOCIETY OF THE UNITED STATES,
By GEO. B. PEAK, *President.*
THE BANKERS' LIFE ASSOCIATION,
By E. E. CLARK, *President.*

OFFICE OF GREEN BAY LUMBER COMPANY,
Harlan, Iowa, June 26, 1909.

Hon. J. P. DOLLIVER,
Washington, D. C.

DEAR SENATOR: With some hesitancy I am undertaking this letter to you in the matter of the proposed income tax upon corporations as such; not in any advisory sense, but simply as an informal expression of interests that seem to me likely to be overlooked, or at least overshadowed, by more striking features in the situation. I refer to the interests of those people of moderate and even slender means, whose savings are largely if not wholly invested in corporation stocks. These corporations are generally concerns with which the investor has been connected for years as a faithful employee, though there has been a growing tendency toward such investments among our farmers, and more especially their widows who dread the care of the farm. The prominent business figures of the country or community really own a decided minority of the concerns that they dominate or even manage.

The writer has always understood the economic principle of an income tax to be that when an individual's income became sufficient to support himself and family in a high degree of comfort any further increase of that income—which could only serve the purpose of luxury or more extensive investment—should be subject to a special tax for the common good; in short, the surplus income of one would be taxed to relieve a similar burden upon the scant income of another.

Inasmuch as a corporation has no personal needs, it has no income in the sense above defined. The net earnings of a corporation are really a trust fund, held for distribution among the stockholders to whom the dividends become income in the meaning here to be considered. The corporation is already taxed upon its holdings in the assessment of its property, real and personal; further taxation would be double taxation and, it seems to me, indefensible from the standpoint of logic or equity. It would be just as reasonable to call the net returns of an estate the income of the administrator.

The last few years have developed a very general desire on the part of employees to participate in the investment as well as the labor in those lines which they have made their life work. In most cases, the employers have shown a commendable disposition to meet this demand. Aside from the material benefit likely to result from this arrangement, the spirit of mutual interest and good will thus shown must be highly gratifying to every good citizen. In my humble judgment, the growth and success of such arrangements means much to the Nation, and I would deeply deplore any legislation to the contrary.

Yet the levying of a so-called "income tax" upon the net earnings of corporations, as such, can not fail to discourage this desired partnership between labor and capital, in that it places a special tax upon the smallest stockholder and tempts capital to avoid all forms of incorporation; and there is no other form of business association so well adapted to the common needs of both large and small interests. Within my personal knowledge, more than 60 per cent of the corporation stock held by employees is acquired upon credit, the purchaser relying upon the dividends to pay him out if he can save the interest from his earnings. Thrifty and efficient men win out on this plan nearly every time, but it is plain to be seen that even a small addition to this burden would tend to discourage the attempt, even if it were not actually a serious handicap.

In conclusion, I will ask you to pardon so lengthy a communication to one as busy as yourself, but this participation by employee in the stock of the employing corporation is a hobby of mine, and it is hard for me to quit. At the risk of discrediting all that I have said, I will confess that I am a Democrat and a believer in income tax; but I can not refrain from protesting against a measure that will, I believe, seriously interfere with the successful operation and further development of the most important organ in the body economic—human labor. Hoping again that my earnest interest in the matter may excuse my presumption, I am,

Very truly, yours, ——— ———.

SECURITY TRUST AND SAVINGS BANK,
Charles City, Iowa, June 24, 1909.

Hon. A. B. CUMMINS,
Washington, D. C.

MY DEAR SENATOR: I feel that it is the duty of every citizen to express himself upon the proposed corporation income tax. It seems to me that of all the unfair propositions that was ever proposed, this one takes the cake. While personally I would not be in favor of an income tax, still, an income tax upon all incomes, it seems to me, would be "a king" compared to the corporation income tax which is proposed.

In every progressive community at the present time a large part of the business which is a benefit to the community and to the laboring man is conducted by corporations. These corporations are in almost every instance backed and supported by the men who believe in keeping their money at work for the good of the laborer and for the good of his city. In order to do this he must invest his money in corporations doing business in his city.

There is another class of men in every community who have amassed fortunes, which they see fit to hold and only use for their own personal benefit to see how much "per cent" they can receive upon it, who never take any interest in the community and never do anything which will benefit anybody except themselves.

The progressive up-to-date citizen, who is constantly on the move and trying to make things go, must pay this corporation tax. The "10 per cent fellow" sits back and pays nothing. It seems to me that it is utterly and absolutely absurd to ask him to do this.

In our own city we have a little bunch of people who have every dollar they can gather together invested in the stocks of corporations and who are doing more for the city and the State than hundreds of the other people who will not invest their money in anything except securities which bring them dollars for their investment.

The result, as I have said before, seems to me is absolute unfairness and injustice. I can not speak of other communities, but I can say that for this community the proposed corporation income tax would certainly be very unpopular.

I wish again to congratulate you upon the fight that you have been making upon the tariff bill, and while you have not accomplished much in apparent results, I am satisfied that the future will justify you and that you will gain largely by the course you have taken and that the people of the whole United States will eventually justify your course.

With kind personal regards, I remain,

Yours, very truly,

A. E. ELLIS.

BETTENDORF METAL WHEEL COMPANY,
Davenport, Iowa, June 21, 1909.

Hon. A. B. CUMMINS,
United States Senate, Washington, D. C.

DEAR SENATOR: I take the privilege of writing you in regard to the proposed tax on the income of corporations. The object of the proposed law is twofold—revenue and publicity. As regards revenue, the tax is discriminating and unjust. It does not affect the incomes of individuals not derived from stocks, in many cases enormous, while taxing people of small means, who derive their income from stocks.

As regards the publicity feature, I appreciate the desirability of giving accurate information to the public in regard to stocks and bonds of the great corporations whose securities are listed on the exchanges and sold to the public. There are, however, in Iowa and other States a vast number of what might be called "private corporations," with but few stockholders, whose securities are not on the market for sale to the public. These corporations are in constant competition with individuals and partnerships, and it is an act of discrimination to compel them to make public their earnings and comply with federal regulations without requiring the same of the individuals and partnerships doing a like business. A general income tax applicable to all, individuals, partnerships, and corporations, with proper provision to prevent double taxation, will obviate the injustice and discrimination.

The effect of the proposed law for taxing the earnings of corporations only will be to drive many industrial enterprises from the corporate to the partnership form of organization, causing a useless and unwarranted expense. To encourage the conduct of business through less advantageous forms of organization means an economic loss, indirectly affecting the entire country.

While your views may not agree with those expressed above, I have taken the liberty of laying them before you for your consideration.

While writing you, I wish to express my appreciation of your able efforts to secure a substantial reduction of the tariff.

Yours, truly,

NATH. FRENCH.

PITTSBURG, PA., *June 18, 1909.*

Senator CUMMINS,
Senate Chamber, Washington, D. C.:

I respectfully urge you to demand tax amendment providing that corporation tax be small graduated tax upon gross earnings of corporations instead of straight 2 per cent tax on net earnings, said tax to be made to bear more heavily upon those corporations which control, or nearly control, prices in their respective lines. This would be

assessments of persons, firms, public companies, and local authorities on gross incomes as follows:

Grade of income.	Number of assessments.	Gross amount of income.
Not exceeding £160, but not exempt	318,570	£22,841,134
Exceeding £160 and not exceeding £200	237,775	43,946,713
Exceeding £200 and not exceeding £300	205,914	52,105,397
Exceeding £300 and not exceeding £400	80,019	28,676,015
Exceeding £400 and not exceeding £500	44,176	22,509,034
Exceeding £500 and not exceeding £600	23,175	13,094,198
Exceeding £600 and not exceeding £700	13,811	9,127,473
Exceeding £700 and not exceeding £800	11,154	8,509,841
Exceeding £800 and not exceeding £900	6,350	5,457,305
Exceeding £900 and not exceeding £1,000	8,758	8,552,798
Exceeding £1,000 and not exceeding £2,000	23,032	33,758,188
Exceeding £2,000 and not exceeding £3,000	7,407	18,592,178
Exceeding £3,000 and not exceeding £4,000	3,863	13,376,481
Exceeding £4,000 and not exceeding £5,000	2,533	11,560,511
Exceeding £5,000 and not exceeding £10,000	4,831	34,909,592
Exceeding £10,000 and not exceeding £50,000	4,188	87,275,455
Exceeding £50,000	949	174,174,323

There was also £29,336,128 gross amount of income from agents, bankers, and coupon dealers deducting tax on behalf of the revenue, but this can not be given in terms of grades of income and numbers of assessments.

It may be noted that the assessments on incomes of £50,000 and upward, or on $250,000, include 20 individuals and 92 firms.

The national income of the United Kingdom is variously estimated by economists and statisticians at from £1,600,000,000 to £2,000,000,000 annually. Since gross income of more than £900,000,000 and net income in excess of £600,000,000 is brought under contribution, it would appear that one-half the national income is subject to the tax and one-third pays it.

Recent history of the income tax is embodied in the finance act of 1907. Numerous changes were made by this legislation, some of them being on the recommendation of a select committee, which was appointed in 1906, to inquire into and report upon the practicability of graduating the income tax and of differentiating for the purpose of the tax between permanent and precarious incomes. The relief given to "earned" incomes up to £2,000 by a smaller rate of charge was the result of this recommendation. Among other recommendations of the committee was one that it should be made obligatory on every individual to fill up a form of return of income, even where the return would merely be a statement that the individual had no income directly chargeable to the tax. This was made effective. A recommendation for improvements in the methods of claiming allowance for depreciation and wear was also enacted. It was under the finance act of 1907 that the taxpayer was entitled to be charged on the actual profits made during the year, instead of on an average of those profits for the preceding three years, if he preferred that method.

In the budget submitted to Parliament for the current fiscal year by the chancellor of the exchequer the tax on unearned incomes is increased by 2d., making it 1s. 2d., and the tax on earned incomes over £2,000 is raised to 1s. Persons earning under £500 a year are given a new abatement of £10 for every child under 16 years. On incomes exceeding £5,000 a year there is to be a supertax of 6d. in the pound. The chancellor estimated that the extra yield from the income tax proper would be £3,000,000, and from the supertax £2,300,000.

Mr. BORAH obtained the floor.

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

The VICE-PRESIDENT. The Secretary will call the roll.

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

Bacon	Cummins	Hughes	Page
Bailey	Curtis	Johnson, N. Dak.	Perkins
Beveridge	Davis	Johnston, Ala.	Piles
Borah	Dick	Jones	Root
Bourne	Dillingham	Kean	Scott
Brandegee	Dixon	La Follette	Simmons
Bristow	Elkins	Lodge	Smith, Mich.
Bulkeley	Fletcher	McCumber	Smith, S. C.
Burkett	Flint	McEnery	Smoot
Burrows	Foster	Money	Stone
Carter	Frye	Nelson	Sutherland
Chamberlain	Gallinger	Newlands	Tillman
Clapp	Gamble	Oliver	Warner
Clark, Wyo.	Guggenheim	Overman	Warren
Culberson	Heyburn	Owen	Wetmore

The VICE-PRESIDENT. Sixty Senators have answered to the roll call. A quorum of the Senate is present.

Mr. BORAH. Mr. President, a noted member of this body once said that it was a rule of his life to quarrel with principles and not with men. I think it is especially important, in dealing with a subject of this kind, that we bear that in mind, and that whatever difference of opinion there may be with reference to the merits or demerits of the corporation tax, we should discuss it from the standpoint of principle rather than that of personalities.

I make this suggestion early, for the reason that I shall be compelled to quote the language of different Members of this body with reference to their views upon this matter; and I do so, not with a view or purpose of criticising anyone from a personal standpoint, or assuming any change of view, but with an idea of putting before the Senate, if I may, what I conceive to be the best thought and the best judgment, not only of my party, but of the leading men of the country, upon such a measure.

For the first seventeen years of my life I was privileged to listen almost entirely in the way of public addresses to those men, beneficent in purpose and in service to the public, who always insist on taking a text before they begin their address. Bearing in mind that early lesson of childhood, I wish to take as my text for this address the language of the distinguished Senator from Rhode Island, as contained in the CONGRESSIONAL RECORD at page 3929.

> I shall vote for a corporation tax as a means to defeat the income tax. * * * I am willing to accept a proposition of this kind for the purpose of avoiding what, to my mind, is a great evil and the imposition of a tax in time of peace when there is no emergency, a tax which is sure in the end to destroy the protective system.

I desire also to quote in that connection the language of ex-President Harrison, wherein he said:

> The great bulk of our people are lovers of justice. They do not believe that poverty is a virtue or property a crime. They believe in equality of opportunity, and not of dollars. Equality is the golden thread that runs all through the fabric of our civil institutions—the dominating note in the swelling symphony of liberty.

I quote this last expression from ex-President Harrison for the reason that I shall refer sometimes to the principle of equality, not in a strict constitutional sense, not confining my views to the technical equality denominated by the Constitution with reference to certain rights and powers, but referring to that golden thread of equality which runs all through our civil institutions as a fundamental principle, regardless of any written constitution—a fundamental principle which we can not afford to ignore any more than we can afford to ignore a specific proposition enunciated in the Constitution.

It is not my purpose at this time to discuss in a comparative way the merits or demerits of the income tax and the corporation tax. I realize—and I had just as well be frank—that the chance for the enactment of an income tax has practically been removed, so far as this session is concerned. I am, however, sufficiently of the faith to state that I believe it is only removed for a time. But I want this evening to inquire particularly with reference to the measure which has been submitted to us and which, I presume, we are to assume at this time is to be enacted into law. I want to view it as if it were submitted here as an original proposition, without reference to the effect it may have upon the income tax, from the standpoint of whether or not it would be proper to enact it into law, even if it were not designed to kill what some conceive to be an erroneous measure.

So far as I am individually concerned, regardless of the question of an income tax, I could not bring myself to the support of this measure by reason of any personal or political relation I may have to individuals or to my party. That is not altogether a pleasant attitude to assume. In many ways it is extremely unpleasant.

But I want to inquire first, Mr. President, who is to pay the tax we are about to levy? It has been given out to the country, and has been somewhat extensively assumed, that this is another means of placing a tax upon the wealth of the country; that by this process of singling out corporations we will reach the wealth of the land rather than place a tax upon consumers, or that great body of American citizenship which now bears its undue proportion of the taxes of the country. I am very frank to say that if I were convinced of that one proposition as stated by those who support this tax—that it will reach the wealth of the country—I should support it as a temporary measure, for the purpose of wiping out the deficit that now confronts us. I would not support it as a permanent measure, for the reason that I know that it can not and will not reach that already earned, now inactive, wealth which pays practically no tax, and never will if certain influences in this country can have their way. But as I am convinced beyond all question that by this means we are about to proceed, under a thin guise of doing otherwise, to place another heavy burden and tax upon those who already bear an unjust and undue proportion of the burdens of the Government, I prefer, rather than to support the tax, to go back to the statesmanlike view announced by the Senator from Rhode Island in the opening of this tariff debate. That is to say, if we can not by the tariff bill raise sufficient revenue to run the Government, I should resort to extreme measures of retrenchment in expenditures rather than place this extra burden upon the great mass of American citizenship.

The Senator from Rhode Island has not, to my knowledge, at any time made in this Chamber a declaration that ought to command the support and respect of this body to a greater extent than that statement, which he made in the opening of this debate. I will say here that I have never been enthusiastic in the support of an income tax as a mere proposition to meet the temporary expenditures of the Government. My enthusiasm has arisen out of the proposition that it will enable us to distribute

the already great burden of government between consumers and wealth. But if we are now to lay a tax—as I believe we are about to do—which will finally rest not upon wealth, but upon consumption, then I go back to the principle announced by the Senator from Rhode Island, and say that it is our duty as Senators to accept his statement that if there is not sufficient revenue to run the Government we must retrench. For, to my mind, it is almost a moral crime to place an additional expense upon the very people who are to-day bearing the great burdens of government.

The Senator from Rhode Island, in opening the tariff debate, said:

I am asked what would happen if it should be found that I am oversanguine or wholly inaccurate in my statements of probable results. What shall we do if the revenues actually received are less than those I have anticipated and large deficiencies are threatened? I answer, with all the emphasis at my command, that it would then be the imperative duty of Congress to reduce expenditures and make them conform to the actual revenue conditions, and not impose new and onerous taxes.

In the next place, after having inquired as to who is to pay this tax, I want to make some inquiry as to the attitude of the Republican party upon a measure of this kind; for those of us who have been inclined to support the amendment submitted by the Senator from Texas have been criticised—not publicly, but to some extent privately—as inclined to support a Democratic measure. I am a pretty strong partisan, but I believe the rule can not always be invoked in the discharge of legislative duty.

I therefore propose to show this afternoon, if I can, and I believe I shall be able to do so, not so much upon any original idea of my own as upon the ideas of those who are better informed, first, that this tax will not be paid by wealth, but by consumption. Having shown that, I propose to show, in the second place, that it is wrong at this time, under the circumstances which confront us, to place any greater burden upon that class of people. Third, I propose to show that the party of which I am an humble member has always opposed this tax upon principle; that it is unjust, unfair, discriminating, and of doubtful constitutionality.

Of course it is proper to say at the beginning, because that is now conceded, that this amendment was born of fear. No one seems to love it, or to care particularly what becomes of it after it has served its temporary purpose. But notwithstanding the fact of its manner of coming before us and the reasons for bringing it here, if we should find that it is actually a good measure, perhaps that should not be used against it. It is admitted, of course, by those who support it, that it was not brought in for its merits, but because of the ulterior purpose it would serve.

With these preliminary statements, I want to go back for a time into the political history we have just passed over and within the memory of all men who sit in this Chamber, many of them participating in it, and trace out, if I can, from the declarations of those men, whose wisdom and whose position in the party can not be questioned, something as to the merits and demerits of this tax; where the burden will fall; who will pay it; and why, upon principle and authority, it should not become a statute.

We recall the fact that in 1898, among other amendments which were suggested to the war-revenue act of June 13, 1898, there was a proposition to levy a tax upon the right to do business in the sugar-refining industry and the industry of refining petroleum. The amendment to which I am now addressing myself referred solely to those two industries. But the principle was discussed, and was discussed at length, by the Senate.

Senator Platt, of Connecticut, said at the time:

I desire to say a word why I propose to vote against this amendment. * * * It is picking out from all the interests of the country two classes of business where it is absolutely certain that the corporations will not pay the tax, but that it will be paid by the consumer. There is no other business in the country where the corporations or the persons engaged in it can so surely and certainly evade the payment of the tax as in the case of the business of oil refining and sugar refining, and what is more, the persons engaged in the business will be very careful in raising the price of oil and sugar to raise it a little more than the tax, so that the consumer will pay not only the tax, but the additional profit to these two companies.

Senator Platt was a profound statesman. He was not a man who spoke at random. He proved himself upon this occasion to be somewhat of a prophet, because it transpired that exactly what he said would take place did take place, with the exception of the fact that when the tax was removed the trust forgot to take off the extra charge which it placed on to meet it, and the price covers the tax when it existed and when it does not exist.

The Senator from Indiana [Mr. BEVERIDGE] disclosed a few days ago beyond all doubt, it seems to me, that the extra tax which was placed upon tobacco in 1898 was transferred at once, without even the respect of delay which they ought to have had for legislators, and that the consumers began to pay it immediately, have paid it ever since, and are paying it now.

Yet while the interested American people are looking on, thinking that we are trying to get a tax upon wealth, we are solemnly engaged in putting this burden where it will not be confined to corporations, but will all be charged to those who deal with them, by adding the tax to the price or reducing wages.

Mr. PAYNE, who was then and still is a prominent factor in legislative affairs, a man of vast experience in such matters, when the time came to repeal the portions of the revenue tax of 1898, said:

It is true that there were two classes of special taxation in the war-revenue bill. These were put in by an amendment offered in the Senate, and when they came to the committee of conference they were acquiesced in. I remember making a remark at that time to my associates on the conference committee that they knew and I knew that if this tax should be imposed the people who were expected to pay it would simply put up the price of sugar and petroleum enough to reimburse themselves for the tax which they paid and allow them besides a handsome profit. No doubt such has been the case. I have no doubt that those interests that have been required to pay this tax have collected from their customers more than the amount which they have paid over to the United States in the form of taxation.

President McKinley, in speaking of the repeal of the war-revenue act of 1898, insisted upon its repeal, for the reason that it was apparent the great burden of these taxes instead of falling upon wealth had fallen upon the great mass of the American people.

This tax which we laid for the purpose of meeting the expenses of war, and of a war which the Republican party was pledged to carry on to a speedy and successful termination, and which, as soon as the war was over, we repealed for the purpose of relieving the burdens of the mass of the people, now, at a time of profound peace, we come back and put in the same place and in the same way, but more extensive and more burdensome. I am not old in the service of politics, and perhaps it will seem to some more trained in that business impertinent upon my part to say so, but when it is found what the real effect of this corporation tax is and who will have to pay the greater portion of it, and it is found that the Republican party in time of peace must lay this extra burden upon the mass of the people in order to sustain the running expenses of the Government, if we do not answer for it at the polls it will be because the opposition party has absolutely disintegrated.

We collected in those three years $211,000,000. It was a war measure. Wealth did not pay it. They were just as thoroughly exempted and protected by their process of transferring the tax as this bill would exempt the bondholders in this country. Without saying that it was drawn for the purpose of exempting them, admitting, for the sake of argument, with the President that it was legally necessary to do it, yet we are confronted with the proposition that this measure absolutely exempts those who can not transfer the tax and taxes those who can transfer it to the consumer.

In his opening speech upon the repeal of the war taxes, in December, 1900, Mr. PAYNE said:

Of course, Mr. Chairman, some may say why not put this tax directly upon the express companies and telegraph companies? Well, we did consider that, but the express companies had a right to say to their customers how much they would charge for carrying packages from place to place and could easily add the amount of the government tax to their charges. I know sometimes gentlemen will close their eyes and proceed blindly, as was the case in dealing with the tax on the Standard Oil Company and putting a tax on a sugar refinery, as was done. They forget to consider that these taxes might possibly not affect the companies at all, but the consumers; and a review of the history of the last two years shows what some gentlemen then anticipated when the tax went on in the Senate, that the companies not only got the amount of the tax back, but that the companies got a little additional sum from their customers to enable them to swell their dividends. That was the legislation in that regard. In other words, the tax in all instances seeks the consumer, and usually, if not arrested in its progress, it finds him and forces him to pay the amount due the Government and a little additional also to help swell the dividends of the companies upon whom it was supposed the tax was levied.

Again he says:

This latter tax—

Speaking of the tax upon insurances—

is paid almost entirely by the man who receives the insurance. The man who provides for the future of his family in the event of his death by securing a life insurance or in providing an indemnity for the family—for his wife and children in case the home should burn down—was forced to pay this tax.

In another place Mr. Payne said:

If we impose this tax upon the express companies they will simply add it to their rate of freight. * * * They would simply put it back in additional charges on the people who send packages by express.

Mr. Moody, who now occupies an honored position upon the Supreme Bench, in discussing the tax states one of the vices of the tax in a very definite and specific way. He says:

The ad valorem weight of such a tax as is proposed here would be absolutely crushing to these small companies.

Referring to the express companies:

Every one of the men engaged in this business with whom I have conversed has shown me that they could not continue their business. They could not endure a tax such as that proposed here and hope to operate the business which they have already built up. The whole tax has been annoying, vicious, and burdensome to the people when they deal with large companies, because the tax has been shoved upon them by the action of the companies, sustained by the opinion of the Supreme Court. In whatever form you leave it, the companies will still shove the burden to the people. To the small companies who have carried the burden themselves it has been a calamity, which, if continued, means destruction.

Mr. President, that, to my mind, is one of the inherent vices of this measure. The great corporations, which do business upon a large scale practically without competition, where they can raise the price or lower the price in spite of the objection of anyone, may include this tax in their charges to the public; while the small company, composed of the small stockholders throughout the country, running into thousands and millions, which compose the common citizenship of the country, will have to pay the tax. So in the end it is the common citizenship throughout the country that must meet this burden from the beginning to the close.

Mr. SUTHERLAND. Mr. President——

The PRESIDING OFFICER (Mr. DIXON in the chair). Does the Senator from Idaho yield to the Senator from Utah?

Mr. BORAH. I do.

Mr. SUTHERLAND. The income-tax amendment which the Senator is in favor of proposes a tax of 2 per cent on the incomes of the same corporations, as I understand it. If the Senator's argument is sound with reference to the tax proposed upon the business of these corporations as measured by their income, and if the Senator is correct in saying that it will be shifted to the consumer, why will not the same argument apply to that portion of the income-tax amendment for which the Senator stands?

Mr. BORAH. I propose to discuss that later; but in passing I will say that any tax to some extent can be transferred to the consumer. But the income tax as drawn by us reaches the vast amount of wealth in this country represented by bonds and interest upon bonds, fixed and settled incomes, where it can not be transferred. This bill is drawn so as to absolutely exclude those people.

I do not contend that you can place all the burden of any tax upon the wealth of the country, and that is the reason why we should not be so anxious to protect it by law, because it can protect itself to some extent under any bill that you will draw.

But I want to call the attention of the Senator from Utah to the fact that under our amendment the untold millions of bonds in this country would be called to pay their proportionate tax, while we have a bill here specifically exempting them from the tax.

Mr. SUTHERLAND. Mr. President——

The PRESIDING OFFICER. Does the Senator from Idaho yield further to the Senator from Utah?

Mr. BORAH. I do.

Mr. SUTHERLAND. If the Senator, however, is right in saying that the tax imposed by the proposed amendment now under consideration would be shifted to the consumer, it seems to me it can be equally true that that portion of the tax imposed by the income-tax amendment upon corporations will be likewise shifted. Why should not the Senator eliminate that portion of the income-tax amendment?

Mr. BORAH. The Senator from Utah is acquainted with the fact that the first income-tax measure, to which I gave my support in this Chamber, did eliminate it, but when we were forced to confront the organized and combined efforts of those who in this country are determined that wealth shall not bear its proportion of the burden, we compromised for the purpose of getting strength in this Chamber.

Mr. CRAWFORD. Mr. President——

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from South Dakota?

Mr. BORAH. I do.

Mr. CRAWFORD. Would not the objection that a tax levied upon a great corporation can be passed on to the patrons of that corporation if it is a defect in this bill be a defect universally? In the State of South Dakota we had, as in a number of Western States, a very active contest with reference to the amount of taxes paid by public-service corporations.

We often heard the claim made that it made no difference if we did increase the amount of the taxes of the public-service corporations 50 per cent or 100 per cent, we would simply be putting that additional burden upon the people, because the corporation could increase their charges and recoup the amount, whatever it might be. If that be carried to its legitimate conclusion, would it not follow that we had better remove all taxes from public-service corporations and great trusts, because, after all, when we put a tax upon them we are simply putting it in their hands to pass it on to their patrons, and it is ineffective so far as being a burden on them?

Mr. BORAH. While the Senator does not seem to appreciate the fact, he has submitted here a reason why every Senator ought to support an income tax and should oppose this corporation tax, because it does not lie within the ingenuity of man to place the burden of taxation, as it should be placed, with equal force upon wealth and consumption, in spite of anything and all we may do. Our system of taxation is based upon the principle that the incident to the tax finally reaches the low man, the bottom man, in this cruel and merciless system of ours. The only thing we can do is to mollify it as much as it is possible to do, and we can only mollify it by taxing those things where they can not shift it. But instead of undertaking to tax things where they can not shift it, we always exempt them from taxation and put it where they can shift it.

Unquestionably the great trusts of this country have transferred their taxes to the consumer. Unquestionably the great corporations of this country have transferred their taxes to the consumer to a very large and alarming extent. The men who do not transfer their taxes and can not transfer them are the uncounted holders of uncounted millions of bonds whom we are exempting from this proposed law at the present time.

Mr. JONES. Mr. President——

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from Washington?

Mr. BORAH. I do.

Mr. JONES. I should like to ask the Senator whether he believes it is possible to transfer an inheritance tax to any extent to the consumer. Is not that a tax which can not be transferred to the consumer?

Mr. BORAH. I do not think you can transfer an inheritance tax. Therefore I am thoroughly in favor of an inheritance tax. The only reason why I do not favor it as a national measure is because some 35 or 36 States of the Union have adopted it, and I would hesitate to take away from or embarrass the States in their power to collect this tax. I would not hesitate a moment to say that I would support the inheritance tax in preference to this tax, although it is, in a measure, double taxation.

Mr. JONES. Would the passage of a national inheritance tax take away from the States their right to tax inheritances?

Mr. BORAH. Only in the sense that it levies an extra burden and it is in the nature of a double taxation. It would not legally take it away. Of course we can tax inheritances as a matter of law the same as the States can, if we have a mind to do so.

Mr. JONES. Is it not also true that the inheritance tax levied by the States is comparatively small? I understand that the percentage is very low.

Mr. BORAH. It is of course a matter of policy as to whether we shall go into that field. I have no doubt that it is a fruitful field, and one which we should utilize. Whether we should leave it to the States, because of the great burdens which are piling upon them exclusively, or go there ourselves is a matter of policy. It reaches, however, that class of property which can not shift the burden.

Mr. JONES. It would meet very largely the objection the Senator is making to this proposed tax.

Mr. BORAH. It would.

Mr. JONES. As well as the possible transference of the income tax to a greater or less degree.

Mr. BORAH. It would.

Mr. BEVERIDGE. Will the Senator permit me a question? Is not the inheritance tax so just that even if it were double, by having both State and Nation tax it, still no injustice would be done? The person from whom the tax is taken has never earned a dollar of it. It is given him by the grace of the Government. Is not an inheritance tax so profoundly just that if it were doubled or even tripled no injustice would result?

Mr. BORAH. That is true, Mr. President. I am not taking a position against the inheritance tax at all. I was just coming to the point of saying that the inheritance tax was one form which can not be transferred. I want to call the attention of the Senate to the fact, however, that there are a great many people in this country to-day enjoying incomes that they did not make a single dollar of; that they do not even furnish sufficient brains to take care of for any reasonable length of time, and have to have guardians appointed. They ought to pay some of the expense of the Government also.

There are vast incomes that the people who are enjoying them did not make any more than the unborn children made the property of their parents. We saw an exhibition of this kind of incomes in the city of New York only a few days ago that reads like one of the chapters from Ferrero's Rome, in

the time of Augustus. Yet we are made to enact laws here for the purpose of protecting that class of wealth when we know that already by its ingenuity it protects itself beyond all human endurance.

Mr. President, when this tax was levied, in 1898, the express companies came out boldly and said, "You have levied a tax upon us; we notify you that we are not going to pay it; we will pass this tax without any hesitancy completely over to the people who do business with us." There was objection to it, and the question was asked, Is there no means or method known to the law by which when a tax is levied upon a corporation it can be made to pay it?

The consumer said, "Does our Republic furnish us no means by which we can compel you to pay that tax? We will try it." And so out of the State of Michigan came a contest in which the specific question was raised as to whether that tax could be transferred to the consumer. I was interested in this question for the reason that it was my purpose, if we could do so, to propose an amendment. I was examining the subject with the idea of introducing an amendment to enable this efficient and powerful publicity bureau to inquire into the question whether or not the tax was being transferred, and if the Government found that it was being transferred under the oleomargarine case to levy an extra excise upon those who did transfer it. I said to myself, "If the laws of the country permit it, why not put in here an amendment which will enable the men who are going out to examine the matter of running corporations to find out whether they are paying it or whether they charge it up to the consumer, and if they do, to make that the base of action under the publicity bureau. When I examined this case I found the Supreme Court of the United States held that not only could they transfer it under that law, but it was not within the power of Congress to enact a law which would prevent them from transferring it; that we are powerless under our form of government to prevent them from transferring this tax openly and boldly from themselves to the consumer.

Mr. President, I call attention to the language of the Supreme Court:

But, as we have said, though the correctness of the claim be arguendo taken for granted, such concession does not suffice to dispose of the essential issues. They are that by the statute the express company is forbidden from shifting the burden by an increase of rates, although such increased rates be in themselves reasonable. As no express provisions sustaining the propositions are found in the law, they must rest solely upon the general assumption that because it is concluded that the law has cast upon the express company the duty of paying the 1-cent stamp tax, there is hence to be implied a prohibition restraining the express company from shifting the burden by means of an increase of rates within the limits of what is reasonable. In other words, the contention comes to this, that the act in question is not alone a law levying taxes and providing the means for collecting them, but is moreover a statute determining that the burden must irrevocably continue to be upon the one on whom it is primarily placed. The result follows that all contracts or acts shifting the burden, and which would be otherwise valid, become void. To add by implication such a provision to a tax law would be contrary to its intent, and be in conflict with the general object which a law levying taxes is naturally presumed to effectuate. Indeed, it seems almost impossible to suppose that a purpose of such a character could have been contemplated, as the widest conjecture would not be adequate to foreshadow the far-reaching consequences which would ensue from it. To declare upon what person or property all taxes must primarily fall is a usual purpose of a law levying taxes. To say when and how the ultimate burden of a tax shall be distributed among all the members of society would necessitate taking into view every possible contract which can be made, and would compel the weighing of the final influence of every conceivable dealing between man and man. A tax rests upon real estate. Can it be said that by the law imposing such a tax it was intended to prevent the owner of real property from taking into consideration the amount of a tax thereon, in determining the rent which is to be exacted by him? A tax is imposed upon stock in trade. Must it be held that the purpose of such a law is to regulate the price at which the goods shall be sold, and restrain the merchant therefore from distributing the sum of the tax in the price charged for his merchandise? As the means by which the burdens of taxes may be shifted are as multiform and as various as is the power to contract itself, it follows that the argument relied on if adopted would control almost every conceivable form of contract and render them void if they had the result stated. Thus the price of all property, the result of all production, the sum of all wages, would be controlled irrevocably by a law levying taxes, if such a law forbade a shifting of the burden of the tax, and avoided all acts which brought about that result. It can not be doubted that to adopt, by implication, the view pressed upon us, would be to virtually destroy all freedom of contract, and in its final analyses would deny the existence of all rights of property. And this becomes more especially demonstrable when the nature of a stamp tax is taken into consideration. A stamp duty is embraced within the purview of those taxes which are denominated indirect, and one of the natural characteristics of which is, although it may not be essential, that they are susceptible of being shifted from the person upon whom in the first instance the duty of payment is laid. We are thus invoked by construction to add to the statutes a provision forbidding all attempts to shift the burden of the stamp tax when the nature of the indirect taxation which the statute creates suggests a contrary inference. And, in this connection, although we have already called attention to the consequences which must generally result from the application of the doctrine contended for, it will not be inappropriate to refer to certain of the provisions of the act now under consideration, which more aptly served to make particularly manifest the consequences indicated, thus perfumery, patent medicines, and many other articles are required by the statute to be stamped by the owner before sale. The logical result of the doctrine referred to would be that the price of the articles so made amenable to a stamp tax could not be increased, so as to shift the cost of the stamp upon the consumer. Yet it is apparent that such a construction of the statute would be both unnatural and strained.

The argument is not strengthened by the contention that as the law has imposed the stamp tax on the carrier, public policy forbids that the carrier should be allowed to escape his share of the public burdens by shifting the tax to others who are presumed to have discharged their due share of taxes. This argument of public policy, if applied to a carrier, would be equally applicable to all the other stamp taxes which the law imposes. Nor is the fact that the express company is a common carrier and engaged in a business in which the public has an interest and which is subject to regulation of importance in determining the correctness of the proposition relied upon. The mere fact that the stamp duty is imposed upon a common carrier does not divest such tax of one of its usual characteristics or justly imply that the carrier is in consequence of the law deprived of its lawful right to fix reasonable rates. Unquestionably a carrier is subject to the requirement of reasonable rates; but, as we have seen, no question of the intrinsic unreasonableness of the rates charged arises on this record or is at issue in this cause. As previously pointed out, to decide as a matter of law that rates are essentially unreasonable from the mere fact that their enforcement will operate to shift the burden of a stamp tax would be in effect but to hold that the act of Congress, by the mere fact of imposing a stamp tax, forbids all attempts to shift it, and consequently that the carrier is deprived by the law of the right to fix rates, even although the limit of reasonable rates be not transcended. This reduces the contention back to the unsound proposition which we have already examined and disposed of. (American Express Co. *v.* Michigan, 177 U. S. Repts., p. 412.)

Mr. SUTHERLAND. Mr. President, will the Senator permit me to ask him a question right there?

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from Utah?

Mr. BORAH. I do.

Mr. SUTHERLAND. Mr. President, does not the argument of the Senator from Idaho, carried to its logical conclusion, prove altogether too much? If it is a valid objection to this proposed amendment that the burden of the tax may be shifted to the patron or to the consumer, is that not also a reason why we should repeal all existing taxes—state taxes upon common carriers and upon other persons who may likewise shift the burden? For example, it is perfectly clear that when a tax is imposed upon a railroad company, the amount of that tax is shifted to the patrons of the road. If the argument of the Senator be sound, why should he not go far enough to say that that tax should be repealed and that we should not tax railroad companies or similar corporations at all?

Mr. BORAH. Mr. President, bearing in mind that we have a Government which has to be supported and that civilization depends upon the fact that we maintain a government rather than to follow the somewhat startling suggestion of the Senator from Utah [Mr. SUTHERLAND] and repeal all taxes, I should prefer, if I can, to put a part of the taxes where they can not be shifted. I do not want the Senator from Utah to forget that this contest in this Senate Chamber is not over the raising of a small temporary revenue, but it is over the proposition of whether we shall change the great principle of taxation in this country and place a part of the tax where it can not be shifted to the common citizenship of the country. We are not going to go back, Mr. President, to the owls and bats. Rather than to say we shall not put a part of this tax where it can not be shifted, we shall continue this contest until the uncontrollable wrath of the American people shall waken us to the fact that the great disparity between wealth and poverty in this country arises more out of our system of taxation than it does from the so-called "trusts." When you can put all the burden of government in one place, it is not long before you have that condition of affairs, whether it is in a republic or a monarchy, where the great masses are bearing the burden and the few are living upon the efforts of the masses.

Mr. President, to illustrate further, our system of taxation had its origin in the period of feudalism, when the tax was laid upon those, and those only, who could not resist the payment of it. That was the first tax under our present taxing system. The plan then was, as stated by a noted writer—and it was earnestly argued in those days—that it was a proper distribution of the burdens of government that the clergy should pray for the government, the nobles fight for it, and the common people should pay the taxes. The first fruits of that system, and the first modification of that system, were had during that economic and moral convulsion which shook the moral universe from center to circumference—the French revolution. Historians dispute to-day as to the cause of the French revolution. If you would know the cause, you will not find it in the days transpiring with the fall of the Bastile; you will not find it in the days when Robespierre, drunk with human blood, leaned against the pillars of the assembly, as he listened to his own doom. It is back of that. It is in those immediate years preceding, when the burden of government had become intolerable, when the stipends paid to the miserable satellites of royalty had become criminal; when bureaucracy reached out into every part of the

nation and bore down upon the energies and the industries of the common man; and when, Mr. President, 85 per cent of that fearful burden was collected from the peasantry of France, which forced them from their little homes and farms into the sinks and dives of Paris, where the French revolution was born.

The history of taxation is well worthy of the attention of those who believe that, in order to maintain a republic, we must always have at the base of our civilization an intelligent, free, and, to some extent, an unburdened citizenship. No, Mr. President, we will not repeal all taxes; but we will distribute the burdens; though we may not do it this session, and I do not suppose we will, we will do it before this fight is over.

Mr. President, I have called attention to that period when the revenue act of 1898 was before Congress. Certain newspapers of the country and, to a certain extent, all the great corporations without any exception, bitterly opposed that tax. They did not know how easy it would be apparently, not theretofore having had a special tax laid upon them, to transfer it. The main proposition of taxing corporations was defeated, but the amendment covering two classes of business went through. Of course certain stamp taxes were enacted which the corporations were supposed to pay. Then they began this contest. They demonstrated the fact, as a practical proposition, that they could transfer it; they demonstrated, as a matter of law, *that they had a right to transfer it; and they demonstrated*, as a matter of law, that there was no power in Congress to prevent the transfer. So to-day we are advised through newspapers that the great corporations in the land are saying, "put on this tax in preference to the income tax."

I do not want it to be understood that I am charging that the Finance Committee has gone about this for the purpose of doing such a thing. They may stand upon the legal proposition that, rather than submit another question to the Supreme Court, they would do this; but the result of the legislation is the same. Whether from one motive or another, the result of it is that the great corporations, controlling the great industries in this country, are standing side by side with the Committee on Finance in support of this proposition in preference to the income tax. Why? Because they can transfer this tax; while that class of men, that vast amount of wealth to which the Senator from Iowa [Mr. CUMMINS] called attention, can not transfer.

Speaking of the decisions, Mr. President, and the idea of going to the Supreme Court again, I will digress to say just a word now, rather than later. It seems to me, with all due respect to those who suggest this proposition, that it is based upon an incorrect idea both as to the function of the court and the relation of the people to the court. It is a great tribunal; it is a tribunal having power to wreck or to sustain the Government, although without command of sword or purse.

But, Mr. President, think of this argument: Away back, just after the Constitution was adopted, Congress put a tax upon what they then called "luxuries" or "wealth;" those who had carriages, and could use them for their own personal use. Wealth went to the Supreme Court of the United States and tested that proposition, and said that it was a direct tax under the Constitution; but the Supreme Court sustained the tax.

We come down to the great civil war, and the fathers who organized the Republican party—Abraham Lincoln, Salmon P. Chase, Charles Sumner, and that class of men—again laid the taxing power upon the wealth of this country in the form of tax on incomes. Wealth went again to the Supreme Court, and did what? Asked them to reconsider the opinion of fifty-odd years before, when they had settled and said what a direct tax was. The court passed upon it again. In a short time the same class of people went again to the Supreme Court; and, notwithstanding the fact that there had been a unanimous opinion as to what a direct tax was, they again asked them to reconsider it.

The next time those who were seeking to escape taxation, having three decisions of the Supreme Court before them, they went again to the Supreme Court and asked them to reconsider; and the Supreme Court, with that patience and broad mindedness which has always characterized that great tribunal, again went carefully into the question, reviewed its former decisions, went into the history of the Constitution and its making, and again told the wealth of this country what constituted direct taxes. Four times they had interpreted the Constitution by a unanimous judgment of the court; but still again they came and asked the Supreme Court to once more review its decisions. For nearly one hundred years, beginning with those who wrote the Constitution of the United States, down until years after the close of the great war those who were seeking to escape taxation went again and again to the Supreme Court, and in the face of those decisions, unanimous as they were, asked for a review and a reconsideration of the question. The Supreme Court, with patience and care, examined the subject again in all its ramifications. Time passed on, and in 1894 another law was enacted taxing the incomes of the country, and notwithstanding the five decisions of the Supreme Court defining a direct tax, the untaxed wealth and the untaxed incomes of this country traveled their way to the Supreme Court again and asked the Supreme Court to review five unanimous decisions as to what is a direct tax. They succeeded in what? By a bare majority of one, against the decisions preceding, they succeeded in establishing a different rule of interpretation. As to that decision Mr. Justice White said:

> My inability to agree with the court in the conclusions which it has just expressed causes me much regret. Great as is my respect for any view by it announced, I can not resist the conviction that its opinion and decree in this case virtually annuls its previous decisions in regard to the powers of Congress on the subject of taxation, and is therefore fraught with danger to the court, to each and every citizen, and to the Republic.

As to that decision these are searching words of Mr. Justice Harlan:

> In my judgment, to say nothing of the disregard of former adjudications of this court and of the settled practice of the Government, this decision may well excite the gravest apprehensions. It strikes at the very foundation of national authority, in that it denies to the General Government a power which is, or may become, vital to the very existence and preservation of the Union in a national emergency such as that of a war with a great commercial nation, during which the collection of duties upon imports will cease or be materially diminished. * * * The decision now made may provoke a contest in this country, from which the American people would have been spared if the court had not overturned its former adjudications and had adhered to the principles of taxation upon which our Government, following the repeated adjudications of this court, has always been administered. Thoughtful, conservative men have uniformly held that government could not be safely administered, except upon principles of right, justice, and equality—without discrimination against any part of the people because of their owning or not owning visible property, or because of their having or not having incomes from bonds and stocks. But by its present construction of the Constitution the court, for the first time in all its history, declares that our Government has been so framed that in matters of taxation for its support and maintenance those who have incomes derived from the renting of real estate or from the leasing or using of tangible property, bonds, stock, and investments of whatever kind, have privileges that can not be accorded to those having incomes derived from the labor of their hands or the exercise of their skill or the use of their brains.

Since that bare majority of one has been obtained, Senators urge that the great masses of the American people, who are asking to have this tax burden distributed, shall not go again to the court to have that question considered, out of a mere delicacy of consideration for that tribunal.

Mr. President, that great tribunal, whose judgments and decrees deal with the destiny of 46 sovereign Commonwealths and with all the plans and purposes of a great Nation, within whose jurisdiction are found the rights and liberties of the humblest citizen, and the complex and ever-haunting problems of state and national sovereignty, can not be too jealously guarded or profoundly honored to suit me. If we differ upon that question we differ only as to the method of making known our respect for its power and our concern for its continued usefulness and honor. As a citizen, I bow uncomplainingly to its judgment; as a lawyer, I seek its decisions as the wisest and most profound expositions of the law to be found among our own people or elsewhere, controlling and authoritative, not simply because the Constitution makes them so, but because of their learning and research and wealth of reasoning; but, sir, as a legislator, sworn to uphold and maintain the Constitution, pledged to preserve it in all its integrity of purpose, I most respectfully submit that I am not precluded from carrying to that tribunal for its reconsideration a question upon which they were all but evenly divided. Where great and powerful intellects trained in constitutional law, each determined to arrive at a sound and righteous conclusion, differ by a bare margin of one, and by such difference overturn the precedents and practice of a century, and by such difference overturn the precedents upon which we had collected millions from the American people and fought the great battles of the Union, who will tell me that under such circumstances it is an assault to the dignity of the court or an undermining of its confidence to ask it again to reconsider that question?

Mr. President, the mere change of opinion upon a specific question of law submitted is a small item to mar the confidence of the people in that august body. Our confidence is best assured and most definitely determined when it is ascertained that although specific errors may creep in, errors which are human, the inherent bent of its innate strength and virtue, the compelling power of its intellectual integrity are to correct those errors, so that, in the wide sweep of the years, its judgments may stand the test of reason and the strain of time. Sir, I honor that tribunal by appealing to its great patience, its tolerance, its willingness so magnificently exhibited upon scores of occasions to reexamine its own opinions. Let us do our

cerned, there is practically no limitation upon the power to levy a tax, except that of uniformity of apportionment and of exemption of exports; that the classification, the purpose, the object, the burden, the oppressiveness of the tax will scarcely be examined into by the court. That gives us a power which it is wholly unnecessary to limit as it is limited in this amendment, if you are going to levy that kind of a tax at all. While I make that statement, I submit there are some limitations, however, upon a free government outside of anything that is written in the Constitution. There are limitations beyond which we can not go as fundamental principles inherent in a republican form of government. I do not believe that we can exercise these powers arbitrarily to the full limit and bent of our mind. I am perfectly willing to say that we can exercise them to the limit which Congress will in all probability ever go. But remember that the Supreme Court has said that "when we consider the nature and theory of our institutions and Government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power anywhere within the Government."

Mr. CRAWFORD. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from South Dakota?

Mr. BORAH. I do.

Mr. CRAWFORD. Mr. President, as I understand the drift of the Senator's argument, then, it is based mainly upon what he regards as the inherent injustice of the discrimination in this amendment in that it is confined to corporations?

Mr. BORAH. That is one of the objections; but that is the slightest objection, in my judgment. The great objection is that it reaches a class of people, burdens a class of people who are already overburdened with taxation, and does not reach the class of people who ought to pay the tax and who ostensibly we seek to reach.

Mr. CRAWFORD. We will take it, for instance, in the manufacturing industries of the United States. There has been quite a strong element—not so large numerically, perhaps, but quite a positive element—in this Senate which from the beginning has voted against an increase in the tariff rates and insisted upon a reduction of rates, because the rates, perhaps it was thought, were unduly favorable to the great manufacturing interests of this country, most of which—practically all of which—are conducting business in corporate form. I suppose the manufacturers of iron, of steel, and of cotton textiles, and in different lines of industry, as a rule, are doing business in corporate form and are reaping the benefit of the protective principle that is being applied to them. Now, is it an unjust discrimination, is it unfair, and is it inherently unfair and unjust that they should have this law applied to them, whereas an ordinary individual following a personal occupation as an individual should escape from it?

Mr. BORAH. Well, Mr. President, in the first place, of course all the people who receive the benefit of the protective tariff in that way—if it is a benefit—are not corporations, and we should reach all who receive it, when there is no legal objection to reaching them, if we are going to reach any.

Mr. CRAWFORD. As a rule, they are corporations.

Mr. BORAH. As a rule, they are. I presume that is true; but that is not true as a whole.

The second proposition, to which I call the attention of the Senate, is that we do not get that surplus when we levy this tax. They just turn around and, after they get the benefit of the protective tariff, they add to the price the tax which we levy upon them, and the people pay that also.

Mr. CRAWFORD. Will the Senator permit me to ask him another question?

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from South Dakota?

Mr. BORAH. I do.

Mr. CRAWFORD. How, then, is it of any avail whatever for a State or the Federal Government, or any municipal body, to impose a tax on a corporation in any form, for, if the Senator's statement is true in part, it is true entirely, that they can always pass it on? Why not, as was suggested by the Senator from Utah [Mr. SUTHERLAND], remit all taxes entirely from corporations because they can pass them on?

Mr. BORAH. Let me ask the Senator from South Dakota a question. Why not, instead of remitting it, tax those who get it and can not shift it?

Mr. CRAWFORD. My answer to that, Mr. President, is that I will stand with the Senator from Idaho and do it if there is any prospect that we can do it effectually, because I agree emphatically with the Senator from Idaho that the ideal taxation, when it is all analyzed, is the general income-tax proposition, but because I can not have that, I do not quite agree with the Senator from Idaho that we shall not go as far as we can effectually here, within the limits admitted to be constitutional, and reach the corporations that we can require to pay—that is the only difference between the Senator and me—and keep on fighting for the general income tax just the same.

Mr. BORAH. In other words, the Senator rather than to breach the rule of courtesy which would pass this great question up to the Supreme Court, rather than to tread upon that delicate ground, so called, would continue to levy this tax upon those who are now bearing the burden, would continue to leave the burden already there, and then levy more. Why would it not be better to consider a little the interests of the people and not quite so much the dignity of the court?

Mr. CRAWFORD. Mr. President, that is not quite so, because——

Mr. BORAH. It is getting practically close.

Mr. CRAWFORD. If I understand the Senator from Idaho and the Senator from Texas, the ability of each being acknowledged without reservation upon legal propositions, it is that the law proposed here in the form of this amendment is constitutional.

Mr. BORAH. But do not overlook the fact——

Mr. CRAWFORD. Now, if the Senator will simply permit me to finish——

Mr. BORAH. Just let me interpose this suggestion: Do not overlook the fact that the Senator from Texas and the Senator from Idaho also insist that the income tax is constitutional.

Mr. CRAWFORD. That is true; but while they also insist upon that, they must admit the fact that there stands, I think, an unfortunate decision, but there stands, nevertheless, a decision of the Supreme Court of the United States, which to-day is stare decisis, to the effect that such a law as, I admit, I should like to see the established law of the land, is unconstitutional; while here is a proposition which lawyers of eminent ability say, without much difference of opinion, is constitutional, which they believe has excellent merit in it; and the question is, Must we throw this away and try to get what is of questionable attainability? That is the proposition which, it seems to me, is here.

Mr. BORAH. Well, there is much in the attitude of the Senator, if he believes that the decision of the Supreme Court of the United States is conclusive.

Mr. CRAWFORD. Until it is changed.

Mr. BORAH. But there is nothing in the position of the Senator, if he concedes that it is not conclusive; and certainly the Senator, as a lawyer, will agree with me that no decision, rendered, as that was, by a bare majority of one in the face of a hundred years of precedents, can be considered as conclusive.

Mr. CRAWFORD. Mr. President, I think if I had been a member of that court, as I am sure the Senator from Idaho would have done if he had been a member of it, I would have sustained the law as constitutional.

Mr. BORAH. If ever I am President, the Senator will have a chance to go there.

Mr. CRAWFORD. Thank you; but it has been decided in a judicial way by the court, empowered finally to speak, to be unconstitutional; and we have got to act here, in passing upon these two amendments, with the principle of stare decisis against us, which before was in our favor.

Mr. BORAH. I call the Senator's attention to the fact that when the court decided the Pollock case the rule of stare decisis was eliminated from the jurisprudence of this country.

Mr. CRAWFORD. I hope not.

Mr. BORAH. It was; and they said they would not be bound by those precedents simply as precedents. Mr. Justice White, in that powerful dissenting opinion of his, which has never been answered and never will be answered, called their attention to the fact that, even aside from the original proposition, the question of stare decisis ought to settle the matter, but the court said, in substance, we will examine the subject again regardless of that proposition.

Mr. CARTER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Montana?

Mr. BORAH. I do.

Mr. CARTER. The position taken by the court, to which the Senator refers, constitutes, to my mind, the most powerfully persuasive argument in favor of the reference of the constitutional amendment here pending to the several States. I regard the settlement of the power——

Mr. BORAH. I hope the Senator will not make a speech, though I am always interested in what the Senator says.

Mr. CARTER. I shall not interpose if the Senator does not desire; but I wish to state my position if he will permit me.

I regard the establishment of the power of the Federal Government to levy an income tax as of infinitely greater importance than the revision of the tariff or the present determination of any basis of taxation. If, as the Senator avers, the doctrine of stare decisis has been practically abandoned by the Supreme Court, then I ask the Senator how anyone can expect that a reversal of the Pollock case will permanently settle the power of Congress to levy an income tax? If a crisis, which I hope will never come, but which we may with prudence anticipate, should arise where an income tax would be necessary to the preservation of the life of the Government, might not a Supreme Court ten, twenty, or thirty years hence return to the doctrine of the Pollock case? I think, in the midst of that bewildering condition, it is infinitely better for us to refer the constitutional amendment to the several States, so that the question involving the power of Congress to levy an income tax may be forever and effectually put at rest.

Mr. BORAH. Mr. President, I am going to discuss in a few moments that identical proposition, but I am going to digress now to make a suggestion in answer to the Senator, as it is in the line of my remarks.

I will say, in passing, that is the only virtue in supporting a constitutional amendment in connection with the proposition of submitting the question to the court. But I do not want the Senator to overlook the fact that when we go before 46 States in this Union to make this fight and turn our backs upon the Supreme Court of the United States, we have sacrificed one of the most important points of prestige in this contest. I will come to that in a few moments. I am perfectly willing, I will say, however, to join in any effort to gather up all the threads in order to make final the success of the income tax; and for that reason, under certain conditions, I would support the resolution to submit to the several States an amendment to the Constitution.

Mr. President, coming back to where I left off awhile ago, I can not leave the speech of the Senator from Massachusetts without quoting a little further. Mr. Allen interjected a question during the discussion of the bill:

Mr. ALLEN. I should like to ask the Senator if the patrons of these corporations will not have to pay the tax? The tax imposed on them will be simply added to the price of the article and the consumer of the article will have it to pay.

Mr. LODGE. Does not the Senator see that the partnerships, which in the shoe and leather industry are quite as numerous, and I think more numerous, than corporations, would not have to pay anything and therefore they would not add it and they would cut the business right out from under those other people?

Senator Spooner then interposed to say that that would not probably be the result, but that when the corporations raised prices to meet the tax, the partnerships, instead of cutting under that, would raise their prices to the prices raised by the corporations, and add that much to their dividends, which would probably be the true result. Mr. Gray said:

Mr. GRAY. May I ask the Senator from Nebraska a question?

Mr. ALLEN. Certainly.

Mr. GRAY. Why does the Senator want particularly to lay a tax on the patrons of this shoe factory, who, I presume, are largely the men, women, and children who wear shoes.

Again, Mr. Allen said in another place:

It is a universal truth that this tax, levied in the first instance on the particular individual or particular corporation or partnership manufacturing these articles, must fall upon the millions of consumers of the articles.

The Senator from Massachusetts [Mr. LODGE], in concluding his speech—and it is a gem and meets the whole controversy in a paragraph, and at least it needs a little explanation before we are called upon to vote upon this measure; it is a part of the history of the discussions here; it stands unanswered to-day; and I want, before I cast my vote, to know whether or not those who debated this question in 1898 were in error, not as to its expediency but as to its principle—the Senator from Massachusetts said:

It is really a blind effort to strike at those people who are supposed to be very rich and are supposed, quite erroneously, to be gathered together in corporations. Most of the people who are gathered together in corporations are in reality persons of small means who will feel this tax severely. You will not catch the great millionaire as you desire in this way; but you will take from the States their normal sources of revenue and you will throw back on the homes of the people—on the farmer, on the man who owns a small house and who has his small savings—you will throw back on his shoulders the burden of state and municipal taxation and your great millionaires will escape readily through the clumsy net which you are trying to draw about him.

Mr. President, if that was true in 1898, it is true in 1909. It was the statement of a fundamental principle, with reference to this kind of taxation. If it is true, then is the Republican party, in the midst of profound peace and at a time when we are enjoying national development and growth, ready to-day to put this $50,000,000 or $100,000,000 as an extra burden upon the small farmer, the man who has saved a little and put it in stocks, the people who buy shoes, and the people who buy things to eat and buy things to wear? It is not a question alone of raising some revenue; it is a question of finding where this burden already rests and relieving it, if we can, if not by some system of taxation, then by imperative reduction of the expenditures of this Government.

The Senator from Maine [Mr. FRYE], during that debate—the veteran Senator, whose life has been consecrated to an unselfish devotion to the public interests, one, in my mind, of the proud characters of American history of these latter days, a man always unselfish in his service, high-minded in his purposes, never a demagogue and never a radical, which some people have come to think is about the same thing—said:

Mr. President, I think the bill has gone a good deal further than is reasonable and proper. My judgment is that this action imposing a tax upon corporations ought to be entitled, "a bill for the encouragement of enlistments in the United States Army," for I fully believe that if it becomes a law there will be a million men in the United States out of work or with wages so reduced they would prefer service in the United States Army to service in manufacturing corporations. If the tax is imposed, it will fall upon the workingmen because the mills must either stop or else they must reduce wages.

The Senator goes on at length and shows that a vast number of these corporations in his section of the country were so situated that they would not be able to or would not pay the tax without reducing expenses, and to reduce expenses meant, of course, to cut wages. While I am not going to read his speech in full, I again invite the Senate and those who are fearful of the fact that they may not be standing with the party when they refuse to support this amendment that they are well within the lines long established by the leaders of the Republican party in this Senate Chamber.

Senator Platt, of Connecticut, said:

Mr. President, this corporation tax is unjust as well as unnecessary. It is unjust for many reasons. It is unjust because it discriminates between persons carrying on the same class of business. * * * Corporations have become to a great extent in this country cooperative societies and nothing more. When you put a tax upon all corporations, large and small—railroad, banking, express, and the like—at the same time trading corporations, small manufacturing corporations, corporations engaged in agricultural proceeds, you put a tax upon the cooperative energy of the people of this country. * * * When you come to lay a tax upon all corporations it should not be forgotten that of the corporations in this country more than one-half in number are small, made up of persons who are putting their skill and energy together just as much as they are their capital, as capital is, indeed, to a large extent their skill and energy, and that when you are seeking to lay your hand heavily upon corporations because it is believed that some corporations have grown wealthy and conduct business in a way which is not sanctioned by the common judgment of mankind, you are at the same time laying a heavy hand upon these most beneficent corporations.

That is the vice of this amendment. The small corporations, as I said last evening, in a competitive field, where they can not change their prices, made up of the small citizenship of the country in the humble walks of life, will have to meet this tax; but the great corporations will deal with prices as they will, they will raise prices when they desire, they will incorporate every dollar of this tax, and the consumers of the country will have to pay it.

Senator Spooner said:

I admit it may tax the property, but may it tax the franchise? Is it not, in other words, the instrumentality employed by the State for a public purpose, and is it not true that the power upon the part of the United States to tax, if at all, involves the power to tax it out of existence, and—I do not say that the power does not exist, but if it does exist, to be exercised without limit, and it may be exercised without limit if it exists at all—may not the Federal Government dismantle the States so far as corporate instrumentalities are concerned? * * * If Congress may tax that, may it not destroy it? [Referring to corporations.] What I want to get at is where he would draw the line in this congressional taxation of state franchises, of property except as the franchise is property. Within the unlimited right to tax such franchises, can it not destroy? I say here it is entirely competent for Congress to tax property. Nobody questions that. The question is whether Congress can any more tax the property, the right to be of the corporation, than the State can tax a federal corporation.

Mr. President, I call attention now to the language of Judge Cooley:

A tax on a corporate franchise may or may not be just or politic. If the business is one in which corporations have a monopoly, a tax on their franchise, however heavy, would not be burdensome because the result would only be to add to the cost of whatever the corporation supplied to the public, so that the tax would really be paid by the community at large. If, on the other hand, the business is one open to free competition between corporations and individuals, and in respect to which corporations would enjoy no special privileges or advantages, a tax upon the privilege of conducting a business under a corporate organization would be wholly unreasonable and unjust, because it would give individuals and partnerships an advantage in the competition, and their competition, keeping down prices, would prevent corporations from indirectly collecting any portion of the tax from the public and leave them to bear the whole burden of a demand which, under such circumstances, must prove ruinous.

a charter to tax the people to the extent of 45 per cent, that they should pay the United States Government at least 1 per cent or 2 per cent upon their gross receipts.

Mr. BORAH. Mr. President, I so radically disagree with the Senator from Nevada [Mr. NEWLANDS] as to the effect of a protective tariff that I do not see any common ground upon which we can discuss that proposition. Even if the Senator's premises with reference to the working of the protective tariff were correct—and I deem them to be entirely incorrect—I think we still would not get the profit in the manner of which the Senator speaks. But we are so far apart with reference to the premises upon which the Senator argues that I think I need not go into a tariff discussion at this time for fear we may have several roll calls before we get through.

As I said, I have called attention at considerable length to the position of my party upon the corporation tax. I am not going entirely into the history of the party upon the income tax; but I want to briefly call attention to it, and then pass on to this bill.

In the first place, I do not claim that an income tax is a panacea for all the evils that afflict the race. I do not claim that it will adjust all the iniquities of taxation. I only claim that it will reach that class of wealth which to-day does not in my judgment pay its proportion of taxation, and will reach that class of wealth which can not shift the tax to the consumer.

It has been said many times that the income tax should be regarded purely as a war measure; that it was regarded by the Republican party as a war measure; and that it was repealed after the war closed because it was regarded as a war measure. In my judgment, in the light of history, that is an incorrect interpretation of the facts. It was repealed in 1870. It was repealed after a vigorous protest upon the part of the very greatest leaders of the Republican party. It was repealed by a bare margin of one vote. It was repealed at a time when Sherman, Morton, Garfield, McCreary, Howe, and all that class of men were standing forth in its defense, not as a temporary war measure, but as a permanent part of the revenue system of the United States. The men who had seen it in operation, who knew how it was administered, who knew the effect of its administration, and whose power to judge can not be questioned, insisted that the repeal of the income tax was unjust, as Morton said, to the great mass of the American people. You will look in vain through the arguments of those men to find an argument sustaining it upon the theory that it should be used only in times of stress.

It was repealed, Mr. President, by means of that power, of that influence, regardless of party lines, which has stood like a solid phalanx against its reenactment. It was repealed because of the fact that there were those who believed that it was better to levy the entire burden upon consumption than to levy any part of it upon wealth. What the reason for believing it was I will leave for those to judge who care to look into the debate.

Mr. McCreary, at the time of its repeal, said:

Mr. Speaker, there is another consideration which, to my mind, is entirely conclusive against the abolition of the income tax. It is the only mode by which a large part of the wealth of this country can be taxed at all. * * * Abolish the income tax and the man who has his fortune in those bonds, and so forth, will continue to receive his interest and contribute nothing to the support of the Government, either state or national.

General Garfield said:

Whenever a man terminates his active career in life and becomes a mere capitalist, living upon the profits of his wealth invested in some permanent form, that man's income should pay a tax.

Senator Morton, of Indiana, said:

If the wealth is in the hands of the few, there is where the tax should come from, because they have got it.

Senator Sherman said:

But there is another thing in a popular government like ours which Senators should not forget. They have heard the clamor raised about our ears by the newspapers and by men whose incomes are large, but when you get down to the solid basis of even-handed justice you will find that all writers on political economy, as well as our own sentiments of what is just and right, teach us that a man ought to pay taxes according to his income. The income tax is the only one that tends to equalize the burdens between the rich and the poor.

Mr. President, I would not, if I could, lay all the tax upon the rich. I would not, if I could, place all the burden there. And I want it understood, once and for all, that my plea is not to oppress wealth, but for equality of burdens, as Senator Sherman said, between the rich and the poor. Who will deny that as a fundamental principle upon which to build Republican institutions?

It should not be overlooked that the repeal of the income tax was opposed by some of the greatest leaders the Republican party has ever had. Among them were Allison, Hale, Davis, Hoar, Howe, Morton, Sherman, and the others whom I have named. If I remember correctly, recurring now to memory, the veteran Senator from Illinois [Mr. CULLOM], now occupying an honored seat in this Chamber, was in Congress and also voted against the repeal of the income tax—a man who has given all the years of his life to the service of his Commonwealth and his Government, and who has nothing to show at the close in the way of personal gain or convenience except the high honor of an untarnished name and a faithful discharge in every crisis of public duty.

It will not do to send out through the newspapers of this country, as I saw published in one this morning, that the advocates of an income tax are enemies of great wealth. They are men advocating a principle as old as the party itself and older than the party by nearly fifty years. It was advocated by men who helped to preserve the Union and maintain the flag, and who fought for the continuation of this great constitutional Government which protects the rights of all citizens regardless of whether they are rich or poor.

You can not long blind the eyes of the American people. You can not always make them think that it is a war upon wealth. We repudiate it and say that it is equally between consumption and wealth, the rich and the poor, nothing more.

Senator Morton, of Indiana, at the close of the debate said:

Mr. President, I was not surprised at the vote we had here this morning. I have expected it for some time, but I regret it deeply. I regard it as a mistake on every point of view, whether we consider it in regard to public sentiment, whether we consider it in regard to public justice, whether we consider it in regard to what is due to the great mass of the people, and especially to the great mass of the poor people of this country. I regard it as a mistake and as a great mistake.

Mr. DRAKE. A blunder.

Mr. MORTON. Aye; it is a blunder, and that in politics is called a "crime," but I will not so designate it this morning. That would not be respectful, but I do designate it as a "blunder," and such a one as legislators rarely commit.

There is about the last word spoken in behalf of that great principle, at the time it was taken from the statute books of the United States, and all the burden of government, the remnant expenses of a great war turned over to be paid, with the great incomes of this country absolutely exempt from that hour to this.

Mr. President, just a word with reference to the publicity feature of this amendment. In the first place, the income tax supporters would be perfectly willing to insert in their bill any provision which the ingenuity of the great constitutional lawyers could draw which would be just as efficient, just as serviceable for the public as the one which we have in this bill.

Second, this question arose after so much discussion about the publicity feature of the bill. I invite the attention of the Senator from New York, whom we all recognize to be the leader of the American bar, and no greater intellectual crown was ever placed upon a man than that of being the leader of the proudest of the professions, I ask him what are you going to do with this data which you gather under this publicity clause, with reference to all the corporations doing intrastate business? What use are you going to make of it? Is the National Government going to undertake by the taxing power to control the corporations engaged in intrastate business?

Mr. President, in the Sugar case, decided in One hundred and fifty-sixth United States, they had all the publicity data they needed. They ascertained beyond question that they had control of 98 per cent of the sugar refining in the United States. They ascertained that they had incorporated and purchased other corporations for the purpose of making that monopoly. They had all the facts. The case was presented to the Supreme Court of the United States, and notwithstanding commerce was an essential element of the business, the Supreme Court of the United States said, "This is something with which we can not deal," and the greatest and most flagrant and infamous criminal in the industrial life of this Nation went unscotched.

What are you going to do with your data? Let it mildew in the pigeonholes of the departments? Who would pay any attention to the publicity facts brought out by this bill? Suppose you were going to buy stock in a corporation, would you take the statement of the men interested in those corporations and filed here in the department as to how much their stock was worth, their income, their expenses? You would not even proceed upon that as a business proposition.

But, Mr. President, that is not all. We recall the fact that the President of the United States in his message said:

Another merit of this tax is the federal supervision which must be exercised in order to make the law effective over the annual accounts and business transactions of all corporations.

The federal supervision over all corporations:

While the faculty of assuming a corporate form has been of the utmost utility in the business world, it is also true that substantially all of the abuses and all of the evils which have aroused the public to

the necessity of reform were made possible by the use of this very faculty. If now, by a perfectly legitimate and effective system of taxation, we are incidentally able to possess the Government and the stockholders and the public of the knowledge of the real business transactions and the gains and profits of every corporation in the country, we have made a long step toward that supervisory control of corporations which may prevent a further abuse of power.

Mr. President, in view of that statement from the President, let me read a declaration from the chairman of the Finance Committee, who has the power to terminate the existence of this bill when he gets ready. A long step! The President should have said a short step:

It can be reduced to a nominal amount, and the features of the corporation tax that commend it to many Senators and a great many other people is that the corporation tax, if it is adopted, will certainly be very largely reduced, if not repealed, at the end of two years.

How long are you going to utilize this data under your corporation tax? At the end of a year do you think you will have reformed the abuses of corporate power? Do you think you will have reformed them by the time that the distinguished Senator from Rhode Island gets ready to terminate its career as a statute? This statute, which is to serve for the purpose of terminating the abuses of corporate power, is a temporary affair and is to have its end certainly in a year or two.

I invite the attention of those who want publicity, and effective publicty, who want something besides the concealed equities of this proposition, to help us insert in the income tax a publicity provision which we propose to leave there so long as the power of the Government exists, if we have the power to keep it there.

Mr. President, just a word with reference to the displacement of the income tax by the corporation tax and then I will conclude. As I have already stated, the law of the sixties was repealed over the protests of our leaders. There have always been a few men in the party who have contended for an income tax. When this special session opened there was a wide gulf between those who supported an income tax and those who opposed it. Those who were in favor of an income tax submitted a plan. What was that plan? The plan was to reenact the law practically as it was in 1894 and resubmit it to the Supreme Court of the United States. That was a speedy plan. We believed it was a certain plan. We now know that they believed it was a certain plan, or else they would not have put their minds to work to prevent us from doing it. We came to the conclusion that the court would reverse its decision. The men who are opposed to an income tax are not willing to take that stand. They submit a plan on the other hand, and what is their plan? Their plan is, they frankly say, to destroy the income tax; not now, not temporarily, but permanently to destroy the income tax. Why? In the first place they reject the proposition of going to the Supreme Court for the reason that they say it would be an indelicate matter to resubmit it.

They ask us, therefore, to start with, to indorse, to ratify, the judgment of that court. This, the greatest constitutional body in America outside of the Supreme Court, when viewed from the standpoint of the supposed knowledge of constitutional law, is asked to put our seal of approval upon a decision in which we do not believe. They, therefore, would cut off any possibility of going back to the Supreme Court with any degree of urgency upon our part that we were correct, and once having ratified it and confirmed it, it would be safe to say that we would not hereafter resubmit an amendment in the face of that decision.

After they have rejected the proposition of our going to the Supreme Court, they then say we will submit an amendment to the Constitution of the United States. They send us around in a contest through 46 legislatures of the Union, when under the Constitution of the United States, by every rule of courtesy, we are entitled to go directly to the Supreme Court itself.

But here is the crux of this contention. The men who submit this plan for an amendment to the Constitution of the United States, every one of them, possibly with one exception, will be found in those legislatures fighting for the defeat of the amendment which we have submitted. When the plan has been taken from the friends of the income tax and another plan submitted, I do not presume, after we leave this Senate Chamber, we will have the support of a single one of them except one. In other words, the legislatures——

Mr. FLINT. Does the Senator refer to the Finance Committee?

Mr. BORAH. Well, I will include the Finance Committee.

Mr. FLINT. I will say that as far as I am concerned I am an earnest advocate of the adoption of this constitutional amendment by the legislature of my State, and I shall use every means in my power to have it adopted.

Mr. BORAH. Of course I am not permitted to discuss the situation in California, but I would a whole lot rather have the indorsement of another man in California, who I know will not indorse the income tax.

Take the State of the Senator from Rhode Island. He has been perfectly frank. He has been open and candid. No friend of the income-tax law dare go home and say to his constituents: "The Senator from Rhode Island fooled me." He has been open and above board. He has told you that he brought this measure here to kill the income tax, and he has told you furthermore that it is an enemy of protection. He has said unhesitatingly that if it is in his power he will throttle it for all time to come. Do you underestimate his influence?

Mr. FLINT. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from California?

Mr. BORAH. I do.

Mr. FLINT. In my opinion, if this bill is enacted by the Congress of the United States it will remain permanently on the statute books.

Mr. BORAH. The corporation tax?

Mr. FLINT. The corporation tax. If the amendment is adopted by Congress it will remain permanently on our statute books until such time as the people of this country through their legislatures ratify the constitutional amendment and then there will be added to it an income tax. In my opinion, finally, we will have in addition to this corporation tax an income tax.

Mr. BORAH. The faith of the Senator from California is sublime. What in the name of justice have the people to do with the enactment of this corporation tax, and what will they have to do with the repealing of it when the time comes?

Mr. FLINT. Through their representatives in the Congress of the United States.

Mr. BORAH. That necessitates a line of discussion which it would be indelicate to enter upon.

Mr. SUTHERLAND. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Utah?

Mr. BORAH. Certainly.

Mr. SUTHERLAND. If the Senator from Idaho thinks that the Senator from Rhode Island is powerful enough to bring about the repeal of the corporation-tax law within two years, does he not think he would be powerful enough to bring about a repeal of the income-tax law?

Mr. BORAH. He will never do that because he is powerful enough to prevent its enactment. He relieves himself of that burden. He has demonstrated beyond question that he has the power to prevent its enactment after there was a majority in the Senate Chamber for its enactment. Why stand here and ask such questions when we see that power demonstrated here day by day? I do not quarrel with the Senator from Rhode Island. I admire his open candor if sometimes he has an almost brutal way of using his power.

Mr. FLINT. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from California?

Mr. BORAH. I always yield to the Senator from California.

Mr. FLINT. The Senator from Idaho must remember that the Senator from Rhode Island stated frankly his position in reference to this particular amendment. He believes the bill itself will produce sufficient revenue to conduct the affairs of this Government, but he does not himself believe in this corporation tax, even though he may have at this time recommended it as a temporary measure. But there are others who believe differently from the chairman of the committee. The Senator must remember that this amendment was not the product of the chairman of the Finance Committee, but of the President of the United States, in a message sent here to the Congress of the United States, and it was adopted by the Finance Committee even though the chairman of the committee did not himself believe in the measure.

Mr. BORAH. While, of course, I am willing to concede that the bill originated, if necessary, with the President of the United States and with the Attorney-General, I am willing to concede, also, that the chairman of the Finance Committee has not any confidence in it; that he has not any love for it; that he has almost contempt for it. Nevertheless, it could not get inside the door of the Senate Chamber without his approval.

Mr. FLINT. But it did get into the Senate Chamber without his approval.

Mr. BORAH. If it did, the Attorney-General carried it in and carried it out. It never came here as a bill until it received the approval of the Senator from Rhode Island.

Mr. BAILEY. And then he expressed his contempt for it by going off and leaving it.

Mr. FLINT. When it came in here it had the approval of the Finance Committee.

Mr. BORAH. Undoubtedly. I do not cast any reflection upon other members of the Finance Committee, but it did come in here, and it would not have come in without his approval; it made no difference what the rest of the Finance Committee said.

Now, Mr. President, a word more with reference to the Senator from Rhode Island, because I do not wish to be misunderstood in his absence. I am not finding a particle of fault with the way he is doing business here on this corporation tax. He is opposed to an income tax. He says so openly and candidly. He is opposed to it from principle. He proposes to take any method and means he can to kill it. Knowing that he is opposed to it, that he proposes to kill it here, he has submitted a plan, and the friends of the income tax are walking into his net. We can not complain of the Senator from Rhode Island; we have no quarrel with him; but we know his plan and his purpose and his object.

Mr. President, if there had been anything concealed about this matter or anything uncandid upon the part of the Senator from Rhode Island, we might quarrel with him; but there has not been. He seldom shoots at a man's camp fire from the bushes, but he certainly is going to kill this income tax. We have been told that was his purpose. He has submitted a plan himself. I quarrel with the man who, knowing that fact, accepts the proposition.

Suppose some of us who have been advocating the income tax should go home and should be called upon by one of our constituents to explain why we did not vote for the income tax; what would we say? Well, we would say we were in favor of the income tax. It is just, it is necessary, it is a great fundamental principle of government, one which we ought to have, and I was in favor of it, but I could not bring myself to believe that I had a right to submit the question to the Supreme Court of the United States again.

That is the only answer it will be possible for us to make to the people of this country as to why we did not pass it, because the plan which is submitted to prevent its passage has been announced, openly and above board, to be a plan to kill it.

Let me submit this final question, then, to the friends of the income tax: Suppose we reject this income-tax amendment upon the theory that the decision of the Supreme Court is correct. That decision receives our indorsement, and if it can be made final, our action would have that effect. Then suppose we go into the campaign with the States and 12 States decide against the amendment. Then the fight is over, and the accumulated wealth of this country has won the greatest victory in the history of republican government.

Mr. President, in conclusion I want to urge, with all the power at my command, that those who consider an income tax from the standpoint of a revenue-producing proposition, after we have reached the point beyond which consumption can bear no greater burden, tear away the great equitable and moral basis upon which our whole contention rests. If we were compelled to rest it upon the argument of expediency we would still be upon solid ground, for even now, while we are in the full tide of national growth and development and in a time of peace, we have a deficit of a hundred million dollars, which, it seems to me, the incomes of this country could well afford to wipe out. The time will not soon come, if we care to test the system to its utmost, when we can not raise enough revenue under our present system to maintain the Government, for men must eat, and civilized men must clothe their persons; but it is unjust and unfair, tyrannical, and, to my mind, brutal to hold on to a system of taxation which continues to put all the burden, the ever-increasing burden of government, the maintenance of our army, of our navy, upon what we must eat and upon what we must wear, and nothing upon the great incomes which fools so often flaunt in the face of the poor and which lead to all kinds of extravagance and public demoralization. There is no possible justification for such a system, except the bias and stubbornness of custom and precedent on the one hand and the viciousness of greed on the other.

But I reject the doctrine of expediency, efficient as it is for present purposes, and insist that the income tax, fair and reasonable in amount, should become and remain permanently part of our revenue system. It is the only method by which we can mollify the rule prevailing under our present system, that the incidence of all our taxes goes in the direction of the man of small or limited or no means. My attention has been called by the honored Senator from New York and the honored Senator from Massachusetts to the fact that it is unfair and even mischievous, say these Senators, to charge that property and wealth do not pay taxes. I did not so state and I do not so state, but I do say and I am prepared at all times to prove that they do not pay their proportion of the taxes. It is to equalize and proportion, to keep equalized and proportioned, this ever-increasing burden that we ask for an income tax. I say the incidence of the tax under the present system seeks the man of limited means. For instance, the great real-estate holders charge up in the item of rent sufficient to cover the taxes and all raises of taxes, and the renter pays it. The public-service corporations include taxes in their charges to the public before they get ready to consider their income—every tax is shoved along and transferred until it reaches so far as possible the last man, the bottom man, the low man, in this strange and indefensible system of ours.

But it is said to be socialistic. The great and honored lawyer, Joseph Choate, the pride of two hemispheres, hard pressed for legal arguments against the tax in the Pollock case, turned and denounced the tax as socialistic—socialistic to lay a fair tax upon wealth, to sustain and keep in operation a great constitutional government. When the State or the Government sees fit to lay a tax which may take 30 per cent of the income, the fruits of the labor, of the man of ordinary means, that is the exercise of constitutional power. But when you lay a tax of 2 per cent upon incomes, so slight a burden that it would scarcely be felt, that is socialism. Man's intelligence should not be so universally discredited. But he says if you can levy a tax of 2 per cent you may lay a tax of 50 or 100 per cent. Who will lay the tax of 50 or 100 per cent? Whose equity, sense of fairness, of justice, of patriotism does he question? Why, the representatives of the American people; not only that, but the intelligence, the fairness, the justice of the people themselves, to whom their representatives are always answerable. There is not a constitutional power but in its last analysis rests for its fair and equitable enforcement upon the sense of fairness and of justice of the people. Especially is that true of the taxing power, a power that has been used more than once confessedly for the purpose of taxing a business institution out of existence as in the case of the state banks. All the powers of this Government in the last and final analysis in the matter of their abuse or nonabuse rest upon the intelligence and the fairness of the people as a whole, and you can safely rest the power to impose this tax with them also, provided you do not dam up the even flow of the stream of equity until it shall burst forth in an uncontrollable torrent of wrath.

Mr. President, I neither envy nor feel ill toward the man of wealth. Moreover, I believe strongly that a government which does not protect property and the gathered fortunes of men when honestly gathered will not long protect either the liberty or the life of the humble citizen. I have never hesitated when property rights were attacked and wealth as such challenged in the name of riot and crime, to help hunt down those who thus sow the seeds of lawlessness in a government of law. I know that when our constitutional safeguards are torn away, when the law becomes the plaything of individual men, that in that fearful struggle the first man to go to the bottom will be the common man, the toiler, and the producer. If there is any man in the world who is interested in maintaining this Government just as it was made, protecting as it does so carefully the rights of individuals, rich or poor, maintaining laws, and protecting rights under the law, it is the common citizen in the common walks of life. The ordinary man, the great toiling millions, have prospered and been made happy just in proportion as government has become a government of law, and in the main just in proportion as laws have been enacted and enforced, just in proportion as established law and order have taken the place of the caprice and ambition of individuals or the passion and hatred of mobs. We all understand this and the people understand it. There is no place in this country to-day where there is such a deep-seated reverence for the Government, such a profound regard for the law and all men's just rights under the law as down among those who constitute the great body of our citizenship, the small banker, the small merchant, the small farmer, and the toiler. The crimes of the century, the contempt for law, and the disregard for the Constitution, the disrespect for our Government so prevalent, are found among the great and powerful—they are the ones who are sowing seeds of lawlessness. Let them return and take their place inside the plain provisions of the Constitution and under the laws of the land before they talk of socialism and of the decay of the Republic.

When I see such things happening as have happened in the last few weeks, a great and shocking fraud like that of the sugar trusts, a transaction which has uncovered the work of

it is accompanied necessarily with serious inconveniences—with indignity, with a violation of that privacy which the people of America have always held most dear. Nevertheless, when it is necessary that the Government shall have more money than it can obtain by ordinary means of taxation, I believe that the income tax, with all its inconveniences and objections, is fair and just as a means of distributing the burdens of taxation.

But, Mr. President, the income tax is not for that reason a thing desirable to have of itself. No tax is a thing which is desirable of itself. Every tax is a burden. Every tax is an inconvenience, and the income tax is especially an inconvenience. We should not impose it unless there are good and sufficient grounds for inflicting the inconvenience and the violation of privacy upon the people of the United States.

But, Mr. President, when I have said that the opinions of the minority of the Supreme Court in the Pollock case commended themselves to my judgment I have not gone very far toward solving the problem that is presented to us here, for those opinions rested chiefly upon the doctrine of *stare decisis*, and the arguments made here and pressed with such force and eloquence upon this body have been mainly rested upon the doctrine of stare decisis. No series of cases ever had their authority raised on high and were held before a law-loving people with greater force and cogency than the series of cases beginning with the Hylton case and coming down to the Pollock case, as held before us by the Senator from Texas [Mr. BAILEY] and by the Senator from Idaho [Mr. BORAH].

But, Mr. President, the Supreme Court of the United States solemnly adjudged that the merits of the question as to whether the income tax was a direct tax or not were so clear that they were bound to disregard the doctrine of *stare decisis* or to

Distinguish and divide
A hair 'twixt south and southwest side,

and find their way around all the line of decisions. They did hold that an income tax is a direct tax, not to be imposed except according to the rule of apportionment, and now the rule of *stare decisis* stands that way. If we go before the Supreme Court again, we have to meet not only the reasoning that convinced the court before, but we have also to meet the controlling effect of the decision made before.

Mr. President, I doubt, I more than doubt, whether even the ability that has been displayed here in the argument of the question could prevail in accomplishing that double task. No cause was ever argued in the courts of this country by abler men, argued with greater force and ability, than the Pollock case was argued in the Supreme Court of the United States; and if Mr. Carter and his associates could not bring the court to believe that they were justified in following their previous decisions so as to hold that the income tax was not a direct tax, how can anyone bring the court to believe that they are justified in overruling their solemn decision in order to hold that it is not a direct tax?

Mr. President, the very arguments that have been made within the past two days on this floor, if reduced to writing and laid before the Supreme Court of the United States, would justify that court in adhering to its former decision, independent of the doctrine of *stare decisis*. The Senators from Iowa and Idaho say that they are for the general income tax as against the corporation tax because the general income tax can not be shifted—that is to say, they are for it because it is a direct tax.

Difficult and doubtful, full of fine discriminations, inconsistent and wavering expressions culled from the distinguished men of our history, is and must be the question as to an income tax upon the merits under the provisions of the Constitution as to apportionment. But to my mind, sir, the course of this debate tends very strongly to sustain the decision of the Supreme Court upon the merits, while the question laid before them anew would be deprived of that great ground for argument found in the doctrine of *stare decisis* and so ably though unsuccessfully pressed upon the court before.

But, Mr. President, what is it that we propose to do with the Supreme Court? Is it the ordinary case of a suitor asking for a rehearing? No; do not let us delude ourselves about that. It is that the Congress of the United States shall deliberately pass, and the President of the United States shall sign, and that the legislative and executive departments thus conjointly shall place upon the statute books as a law a measure which the Supreme Court has declared to be unconstitutional and void. And then, Mr. President, what are we to encounter? A campaign of oratory upon the stump, of editorials in the press, of denunciation and imputation designed to compel that great tribunal to yield to the force of the opinion of the executive and the legislative branches. If they yield, what then? Where then would be the confidence of our people in the justice of their judgment? If they refuse to yield, what then? A breach between the two parts of our Government, with popular acclaim behind the popular branch, all setting against the independence, the dignity, the respect, the sacredness of that great tribunal whose function in our system of government has made us unlike any republic that ever existed in the world, whose part in our Government is the greatest contribution that America has made to political science.

I can not see, Mr. President, in this proposal any result short of a most serious injury to that power in our system which is the weakest, which controls no purse and orders no soldiers, but upon respect for which rests the perpetuity of our institutions and the distinction between the American Republic and those war-torn republics of the past that have so long been the object of compassion and commiseration.

Mr. President, the objection to the adoption now of the general income-tax amendment was in the mind of the President when he made his speech of acceptance. It was in his mind when he gave his instructions to the Attorney-General and sent the substance of this corporation-tax measure to the Committee on Ways and Means of the House and when he sent his message to us. Upon that I for one am with the President, because I believe his view is wise and just.

There is another objection to the general income-tax provision, and that is it fails to conform itself to a principle in the imposition of taxes upon incomes well understood and generally accepted at the present time. This amendment is practically a copy of the provisions of the act of 1894, with some very slight changes. That is true both of the amendment introduced by the Senator from Texas [Mr. BAILEY] and the amendment introduced by the Senator from Iowa [Mr. CUMMINS], and it is true of the combined measure upon which they have united. I think the fact that these gentlemen, with their great learning, their sincere purpose, and their natural disposition to study thoroughly any subject to which they address themselves, have copied the old act without advancing one step beyond the position in which our people were fifteen years ago, very well illustrates the difficulty of injecting a subject of this kind into the haste and engrossment and fatigue of an extra session designed to do an entirely different thing; that is, to revise the tariff.

The act of 1894 and the amendment proposed are alike in failing to make any discrimination between what the English call "permanent and precarious incomes" or "unearned and earned incomes;" and they are alike in failing to grade the tax imposed upon the lower incomes, but make a very high exemption of $5,000. Let me, without dwelling too long upon this, state the reasons why I think those are defects.

In 1853 Mr. Gladstone, at the time of the discussion regarding the making of the income tax a permanent part of the British system, observed that the injustice which arose from imposing the same tax upon earned incomes and the incomes from investments was enough to prevent Great Britain from permanently relying upon that source of revenue.

In 1906 there was a special committee of the House of Commons raised for the purpose of reexamining the whole subject, and they reported in 1907, and upon their report the British system has been largely modified, and they reported a different scale of imposition upon the incomes that were earned and which were therefore part capital from that which they imposed upon incomes coming from invested capital.

It is not just, and it is universally recognized by the people who have thought carefully and deeply upon this subject that it is unjust, to take a man who is in the enjoyment of a few years of earning capacity—it may be ten or twenty or thirty—when he is turning into money his brains and his nerves and his life; when, if he is wise, if he has a grain of common sense, if he possesses those qualities that we all of us wish to foster and encourage among our people, he will be laying up a portion of that income against the days of his age and his illness and the wants of his family, and impose upon that income, the part that he lives on and the part that he is accumulating as capital, the same imposition that is put upon the income that his neighbor gets from invested securities that last forever. Now, I say the latest and the most considerate treatment of the subject of income tax makes a careful distinction between those two.

Mr. President, it has so happened that in the development of the business of the United States the natural laws of trade have been making the distinction for us, and they have put the greater part of the accumulated wealth of the country into the hands of corporations, so that when we tax them we are imposing the tax upon the accumulated income and relieving the earnings of the men who are gaining a subsistence for their old age and for their families after them.

There is another difference that I wish to refer to, and that is the $5,000 exemption. There is a $5,000 limit in the cor-

poration clause of the income-tax provision and also in the corporation-tax provision. I should prefer that it were not there; but it is there.

But the income-tax provision has a $5,000 exemption for individuals. I agree that the income that is necessary to a decent and comfortable living, the income that is necessary to enable an American citizen to clothe and feed and house and educate his children, should be exempted from the imposition of an income tax, just as farming implements necessary for the continuance of his support ought to be, and are, exempted from execution. But when you pass beyond that limit, sir, you are entering upon dangerous ground.

Mr. Choate, in the argument of the Pollock case, said that under the $2,000 limit of the old income-tax law four-fifths of the tax was paid by the States of New York, New Jersey, Pennsylvania, and Massachusetts. Since that time there has been a wide diffusion of wealth, of course, but the limit is moved up to $5,000; and I apprehend that the substantial effect of the adoption by this Congress of the income-tax provision as it is drawn, with that limitation, would be that a large majority of Congress would be imposing a tax from which their constituents would be, in a great measure, free and under which the constituents of others would, in the main, be taxed.

Mr. President, I am quite indifferent about whether my constituents pay the tax. I think in this favored land the burden of taxation bears very lightly. I think that the people of New York can afford to pay this tax or can afford to pay the tax proposed to be imposed in the general income-tax amendment, but I do not like to see Senators of the United States vote for a tax which is free from objection at home because it does not strike their constituents. If once we do that, we are in a fair way to realize the anticipation of Luther Martin in his address to the legislature of Maryland. What limit is there to the extravagance of expenditure, except the fact that the burden will come upon the men who vote the expenditure? What a temptation it would be to our successors, aye, to us, when it is proposed to expend $50,000,000 or $100,000,000 for improvements in the West, if we have a system of taxation which will make the people of the East pay for the improvements; or to vote for the expenditure of $50,000,000 or $100,000,000 for improvements in the East when the money will be paid under our taxing system by the people of the West.

Ah, Mr. President, be tender of the people, whose means are small, in arranging our taxation. I would not make a man whose income is $2,000 or $3,000 or $4,000 pay as large a percentage as a man whose income was three, four, or five hundred thousand dollars or thirty or forty or fifty thousand dollars; but I would have him bear some burden. I would never assent to a law, or I would with the greatest reluctance assent to a law, which seemed to be so framed that it took away from a large part of the people of a geographical section of our Union the burden which leads them to scrutinize expenditures and to measure the load that bears upon the people. In no other way lies safety, sir, for our country. The people of every section, of every class, of every condition and degree and calling ought to bear some part of the public burden.

Mr. BORAH. Mr. President——

The VICE-PRESIDENT. Does the Senator from New York yield to the Senator from Idaho?

Mr. ROOT. Certainly.

Mr. BORAH. Mr. President, if it be true that the tax which is to be levied under the corporation amendment is to be paid by the corporations, would not that inequality between the East and the West be as pronounced as it could possibly be under the income tax?

Mr. ROOT. No; I think not, sir; nor is the exemption so effective. There is quite a different kind of exemption.

Mr. President, I stated some objections to the general income-tax provision. Let me state another objection. What is the purpose of this legislation? Is it to create a substitute for the protective tariff? My friend from Texas [Mr. BAILEY], whose mind always works as true as a Corliss engine, touched the very pith of that question when he was speaking about the time when this income-tax amendment should be voted upon with reference to the schedules. The Senator from Texas observed on a number of occasions that, in his opinion, the first thing that we ought to do was to vote on the income tax, while the Senator from Rhode Island insisted that the first thing we ought to do was to pass on the schedules. In that difference lies the whole theory and practice. If the design of this amendment is to create a substitute for the protective tariff, as Great Britain adopted an income tax in 1842 as a substitute for the protective tariff—following her adoption by putting over 700 articles on the free list—then the Senator from Texas is right; then we should have voted upon the income-tax amendment at the beginning; and when we had determined upon that, we should then have made an estimate of the amount of revenue which it would raise, and we should have made up the difference by a customs tariff.

If, on the other hand, we are going to maintain our protective tariff and are going to adopt some supplemental provision to make up the balance that is needed, the deficiency of revenue coming from the application of the protective tariff and our internal-revenue laws, then the course which we have followed in deferring the vote upon the income tax until the schedules are voted upon is the right course. Our duty now is to make an estimate, as well as we can, of what revenue will be produced by the schedules as we have agreed upon them, and then see what deficiency there is to be made up and determine how we shall make it up.

Mr. President, I have observed in the consideration of these schedules, no matter how strong and sincere have been the efforts of the Members of the Senate to consider first the revenue question, nevertheless, sooner or later, we have all come to a point where, about something or other, we have considered first protection. This bill has been made up, sir, with a primary view to the protection of the articles in the schedules. You can not make it up on any other principle unless you abandon, and entirely abandon, the doctrine of protection; you can not determine the amount of duty to be imposed upon steel rails, upon lemons, upon iron ore, upon lumber, upon barley, upon any of these products of our country under two rules of action.

You have got to choose one and abandon the other. If you fix the duty upon steel rails, upon barley, upon lemons, upon iron ore, with reference to protection, then you can not fix it with reference to yielding a supplemental duty after you have made up so much income from an income tax. The two principles are mutually exclusive, and the wit of man will not avail to employ them both without one taking precedence and pushing the other aside.

What is our principle? Are we ready to give up the protective principle? I think not. There is much controversy here as to the application of the principle; there has been a degree of feeling, in which I am happy to say I do not share, as to the application of the principle to detailed facts. There has been a degree of difficulty in ascertaining the facts, which I deplore, and which has caused me much dissatisfaction, but I have not seen any considerable difference upon the proposition that this country designs to continue its protective policy. There are little variances here and there; but the protective policy is to be continued. If it is to be continued, you must put it foremost in your consideration of revenue. Now, taking this view, the object of the measure which we have before us is to make up for a supposed deficiency which will result from the application of the protective schedules which we have passed upon.

Mr. CLAPP. Mr. President——

The VICE-PRESIDENT. Does the Senator from New York yield to the Senator from Minnesota?

Mr. ROOT. Certainly.

Mr. CLAPP. Mr. President, I should like to ask the Senator, as he criticised the income tax as operating against the protective system—passing beyond the point where Senators may have expressed a desire for that tax for that purpose, preferring it at that time to have a place in advance of the schedules, and now having reached the point where the schedules are disposed of, so far as the Committee of the Whole goes—what difference is there in principle, as applied to its effect upon protection, in the adoption of the one or the other system for supplementing revenue?

Mr. ROOT. I feel complimented by the question, because the Senator from Minnesota, with his customary acumen, has approached the point which I was about to mention. When we make up a provision for the purpose of supplementing revenue, in the first place, we want it to yield revenue. We know perfectly well that the income-tax provision is not going to raise any revenue for this deficiency; it is not going to yield revenue until after a long litigation, and then only in case the Supreme Court of the United States should do the thing which seems to me altogether improbable—reverse its former decision.

Mr. CLAPP. Will the Senator pardon me another question?

The VICE-PRESIDENT. Does the Senator from New York yield further to the Senator from Minnesota?

Mr. ROOT. Certainly.

Mr. CLAPP. Does any Senator in this body assume for one moment that, in case the committee amendment prevails, it will go into operation without resistance?

Mr. ROOT. I suppose every tax will meet resistance, but I do not think the resistance to the committee amendment would be of any particular consequence. The ordinary processes of collection would go on.

The second requisite regarding the measure for the purpose of making up a deficiency of revenue, is that it should be proportioned to the anticipated deficiency. I am not going to follow the Senators who have spent a great deal of time in a very praiseworthy and sincere effort to determine that the pending protective-tariff bill will result in a larger deficiency than the chairman of the Finance Committee supposed; but I am prepared to say that I would rather trust the judgment of the men who have been for a lifetime collecting the revenues and applying the revenue laws of the United States, the men whose daily business it is to collect, receive, and apply the revenues and to forecast the revenues of the future, than I would the amateur efforts of any Senator, however able he may be.

When upon the faith of the deliberate judgment of the Treasury officials of the United States, the chairman of the Finance Committee, who is confessedly the ablest man in that line of government service whom we have, declares it to be his clear judgment that this bill will result in no deficiency after the expiration of two years, I think we can rest with pretty serene confidence upon the fact that the deficiency is not going to be very great.

The income-tax provision will produce—I think it would be a fair conjecture to put it at from one hundred and fifty to two hundred million dollars. Understand, it is not merely a tax upon corporations; it is a tax upon all individual incomes, and it is a tax upon all inheritances. One single State, the State of New York, raises $5,000,000 upon inheritances alone; and, in my opinion, this income-tax provision, if it could be relied on to produce anything to meet this present deficiency, would produce far too much; and the only reason why it will not inflict upon the people of the United States unnecessary taxation is that it will not inflict upon them any taxation.

Mr. President, the provision to which I have referred as the "corporation tax" saves all of the income tax that is constitutional and can be enforced. It avoids the evils of the income-tax provision; it avoids drawing the Supreme Court of the United States through the mire and brambles of political controversy; it avoids the possibility or the probability of creating in the eyes of the world a conflict between two branches of our Government; it avoids the injustice of imposing the same duty upon the toiler, who is earning and laying up the capital for his future years, and upon the possessor of accumulated wealth. I assert, sir, that the income-tax provision as it stands is unwise, unjust, unconstitutional. I assert that the corporation-tax provision is constitutional, is just, and is wise; that it is adapted to the purposes for which it is designed; that it is free from the objections that gather around the broader measure.

It has been said that the corporation-tax amendment is unconstitutional. That is the view of the Senator from Iowa [Mr. CUMMINS]. The Senator from Idaho [Mr. BORAH] takes a different view.

Mr. CUMMINS. Mr. President——

The VICE-PRESIDENT. Does the Senator from New York yield to the Senator from Iowa?

Mr. ROOT. Certainly.

Mr. CUMMINS. I think the Senator from New York ought to add there this statement: I said it was unconstitutional for the same reasons that the Senator from New York alleges a general income tax to be unconstitutional. I believe the amendment the Senate presents is constitutional, as I repeated many times yesterday, but it is constitutional for exactly the same reasons that the amendment that we present is constitutional.

Mr. ROOT. I accept the statement made by the Senator from Iowa, although the Senator did say that it was unconstitutional for another reason.

Mr. CUMMINS. May I add a word there?

Mr. ROOT. Certainly.

Mr. CUMMINS. I said if you put the interpretation upon this amendment that might possibly be put upon it, although not one which I put upon it, namely, that it is a tax upon the franchises of corporations—that is, the right to exist as a corporation—then it is unconstitutional, although I did not put that interpretation upon it; but I felt sure that at some time or other its advocates would be driven to do so.

Mr. ROOT. Well, there does not seem to me very much substance in the attack upon the corporation-tax provision as being unconstitutional. I am sure that I can rest in the opinion of the Senate upon the very fair and candid statement of the Senator from Texas [Mr. BAILEY], who regards the provision as constitutional, although he is in such relation to it that if his intellectual processes were not so clear and distinct as they are, he would naturally be inclined to think it unconstitutional.

I shall therefore not detain the Senate by any discussion upon the constitutionality of this provision further than to say that the Spreckels case, in One hundred and ninety-second United States, holds a law imposing a tax upon the business or process of manufacturing sugar and refining petroleum to be constitutional and not to be open to the objection that it is a direct tax, and therefore void under the income-tax decision.

The Supreme Court of the United States in the case of the Pacific Insurance Company *v.* Soulé, Seventh Wallace, declared that a tax upon the receipts or income of an insurance company was a valid tax and not a direct tax. The Senate will observe that the necessary effect of that case was to establish the right of the Federal Government to take a class of corporations organized under the laws of the States and impose a tax upon the business or the processes of business of those corporations.

Mr. BORAH. Mr. President——

The VICE-PRESIDENT. Does the Senator from New York yield to the Senator from Idaho?

Mr. ROOT. Certainly.

Mr. BORAH. I am not taking issue with the views of the Senator from New York on the constitutionality of the corporation tax, but in the case which has just been referred to by the Senator the court treated the tax all the way through as a tax upon property. While it was the business of the corporation that was involved, the court discussed it as a tax upon property, and then decided that it was not such a class or species of property as had to be apportioned under the Constitution, because it was not a land tax; but it regarded the business of the corporation as property, and taxed it as property.

Mr. ROOT. I never could see any advantage or benefit in finding fault with a case which has decided one point because it does not also decide some other point. So I say this case establishes the fact that it is competent for the United States to make a classification, for purposes of taxation, of certain kinds of corporations created under the laws of the States and to impose a tax upon their business.

In the case of Nicol *v.* Ames the Supreme Court held that it was competent for the United States to impose a tax on the facility or privilege of selling or buying produce or other merchandise at boards of trade or exchanges. The particular case was one which arose in regard to a tax imposed upon the sale of certain grain in the Chicago Board of Trade or Exchange, which was a corporation organized under the laws of the State of Illinois. The objection was made that the tax was one upon the property of some people and not upon the property of others. The court said: "No; it is not a tax upon the property. It is a tax upon the facility or privilege of doing business in this way." The objection was made that the tax was one upon a sale of merchandise made in one place, to wit, in the board room, when no tax was imposed upon the sale of the same merchandise in another place, to wit, out of the board room. The court said: "That makes no difference. There is a certain facility, a certain privilege, a certain opportunity of doing this business in the way afforded by this company; and the United States can impose a tax upon that." And they supported it.

In the case of Knowlton *v.* Moore (178 U. S.) the Supreme Court said, and I quote the language of the court:

> It is not denied that, subject to a compliance with the limitations in the Constitution, the taxing power of Congress extends to all usual objects of taxation. Indeed, as said in the license tax cases (5 Wall., 462, 471), after referring to the limitations expressed in the Constitution, "thus limited, and thus only, it" (the taxing power of Congress) "reaches every subject, and may be exercised at discretion."

The claim has been made that the classification of corporations organized for profit is unfair, unjust, and constitutes no lawful classification. But it is perfectly well settled that the Government of the United States has at least as broad a discretion as the States in the classification of subjects for taxation. And let me call the attention of Senators who think there is something new and strange in the erection of a class of corporations to these words in the report of the taxation commission of Maine in 1890. They say:

> The legislature of 1874 inaugurated a new system of taxation, seeking to equalize it by removing a part of the burden from the productive industries of the State and transferring it to capital invested in railroad, telegraph, express, and insurance companies, savings banks, and like corporations and business. By repeated changes of law a system of taxation has been legalized and sustained by the constitutional authorities of the State which has brought a new revenue into our treasury, and thereby lightened the burden on visible property.
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> At the present time the State of Maine receives its revenue from two systems of taxation. The larger part of our revenue is derived from the taxation of certain classes of property in a manner in sharp contrast to that which is in vogue in the taxation of general property held by the citizens of the State.
>
> The State taxes railroads, savings banks, insurance companies, express companies, building and loan associations, telegraph and telephone companies, parlor and sleeping car companies, and general corporation franchises by principles entirely at variance with the principles in force for the taxation of the property of private individuals.

That principle is followed by a large part of the States of the Union. My own State has for many years grouped all corpora-

tions within its borders, with certain specific exceptions, in a class upon the revenues of which it imposes a tax imposed upon no other members of the community. And it is a late day for us to be told that there is no right in the United States to adopt this old, familiar, general basis of classification for the purpose of imposing an excise tax. It is founded upon reason, sir, and not alone upon authority.

The memories of some of us go back to the time when the most careful precautions were adopted by our States in permitting incorporation. I remember that in the autobiography of Thurlow Weed he tells of going down to Albany and spending the entire winter to get a bank charter. You will remember that in the early charters that were granted the amount of capital was strictly limited, and the amount of property the corporation could hold was strictly limited. For a long period those checks and safeguards were held up against the undue increase and development of corporate enterprise. But at last a freer system prevailed; and, in general, the laws of our States now permit anyone to form a corporation by associating with himself three or four men, filing articles of association, and complying with certain quite easy conditions in the way of payments.

Under this general system the men who avail themselves of it are exempt from personal liability. Who can doubt that that constitutes a distinction between the methods of doing business of all corporations and the methods of doing business of all copartnerships and private persons? Under this system the members of corporations are exempt from those consequences of death and bankruptcy which call a halt upon the progress of ordinary business; and the interest they have in the corporate property is susceptible of easy transfer and devolution. The business, the corporate entity, proceeds without hindrance or interference notwithstanding the death or retirement of its individual members. Who can doubt that that constitutes an exceedingly valuable and peculiar difference between the conduct of business by corporations and the conduct of business by private firms and copartnerships?

It so happens that in recent years our people have availed themselves of these facilities to an extent never before known. So that while the select committee of the House of Commons in England was sedulously searching for some way to discriminate—as it is universally recognized to be desirable to do—between individual earnings, which ought to be treated lightly in order to encourage thrift and frugality and the laying up of means for the future, and that accumulated capital, which never wastes, but the income from which may be safely and wisely taxed, the course of development of our business is accomplishing the same object for us.

Our people are separating into three classes: The men who work, who are laying up out of their earnings provision for the future, and on whom the hand of the taxgatherer should be laid most lightly; the owners of land, the farmers and other landowners, whom it is universally acknowledged that it was the intention of the fathers of the Constitution to protect by the provisions regarding the apportionment of direct taxes; and the possessors of the stored-up wealth of the country, which is being invested in the corporations that are doing the business of the country. And by the simple course of dropping out from this income-tax measure the parts that are unconstitutional under the decision of the Supreme Court, that are unjust according to the acknowledged judgment of all students of the income tax, that are incapable of enforcement within such a time as to relieve the deficiency that may be before us and by saving the tax upon the stored-up wealth of the country invested in corporations, called an "excise," we shall have accomplished the great object of the income tax.

I wish to say one more thing regarding the proposition that a tax upon corporations would be a tax upon the instruments of the States. I have no very great occasion to dwell upon that. In the first place, it is hardly necessary to refute the proposition that when the State of Maryland permits three men to file articles of association, and thereupon to conduct a mercantile business without being liable for debts, they are performing the functions of the State in buying and selling their merchandise; and, in the next place, the Supreme Court of the United States long ago dealt with the subject and decided it in the case of the Veazie Bank *v.* Fenno, in Eighth Wallace, where the court held that it was lawful for the United States to impose a tax upon the circulation of banks chartered by the States, and held it against the objection that it was interfering with the functions of the States. And, of course, a bank which is uttering currency comes the nearest of any conceivable corporation to discharging the functions of a State.

There are one or two other subjects upon which I wish to say a word. One is about the income-tax amendment of the Constitution. Every man must think for himself. I believe the most dignified, the most wise, the most patriotic way to deal with the subject of an income tax is by passing this resolution and submitting the proposed amendment to the States. I think the United States ought to have the power to lay and collect an income tax. I want the United States to have that power. I do not want it used for the purpose of taking money out of one part of the country in order to benefit another. I do not want it used for the purpose of driving out of existence the protective tariff, which, I think, embodies a wise and patriotic policy. But I do want my country to have all the powers that any country in the world has to summon every dollar of the public wealth to its support if ever the time of sore need comes upon it. I shall vote for the income-tax amendment, and I shall advocate it in my State; and I hope it will pass both Houses of Congress by a two-thirds vote and be adopted by three-fourths of the legislatures of the States.

One other subject: That is the subject of publicity.

The phase of that which is most prominent in my mind is to be found in the returns which, under this measure, are to be filed in the office of the Commissioner of Internal Revenue, and are to be public records. The provision is carefully guarded for the purpose of preventing abuse, for the purpose of preventing impertinent inquisition and blackmail. But if this measure becomes a law it will result in having on the files of the Commissioner of Internal Revenue, here at Washington, a statement of the great and essential features, which show the course and progress of the business of every corporation of the United States organized for profit. I believe, sir, that it is most desirable that the Government of the United States should have such a record, renewed from year to year. And while I am not much of a believer in imposing taxes for the purpose of accomplishing an ulterior object, I need not dwell upon that feature to a body which leaves standing on our statute books the 10 per cent tax on the circulation of state banks, imposed solely for its incidental effect, and a large part of whose Members voted for the oleomargarine tax, whose purpose was solely its incidental effect. While I should hesitate, sir, to vote for a law which had no other purpose than the incidental one, yet when by a just, available, and simple measure of taxation we can, by the mere operation of the ordinary machinery for the laying and collection of the tax, bring along an incidental benefit as great as I believe this will be, it is an argument not against, but for, the measure.

I do not wish to place in the hands of the United States the material for absorbing the functions of the States. I cherish as fondly the sovereign powers of the States as I do the sovereign powers of the United States. I believe this country is too great, its people too numerous, its interests too diversified to be ruled in all its local affairs from one central government at Washington. And while I stand for the full extent, the full vigor, the ever-undiminished power of the National Government, I should not abate one hair's breadth from those powers of the States that were established when our fathers drew the line between the two sides of our dual government. But I do want the Government of the United States, in the performance of its functions, to do its work intelligently, thoroughly, efficaciously, and wisely.

In my judgment, in obtaining possession of this systematized information—not too bulky, not in too great mass for anybody to ever get anything out of it, but so arranged as to contain essentials, leaving out the mass of nonessentials, and renewed from year to year—the Government of the United States will take a great and a necessary step forward to the more efficient and creditable performance of the duties it has undertaken and that are imposed upon it under our constitutional system.

We have undertaken to regulate interstate commerce; and a large part of all the great corporations of the country are engaged in interstate commerce. What do we know about those corporations? What source of information has the Congress at its hand when it is determining what laws it is wise to pass and what will be the effect of the laws that it is thinking of passing upon this great multitude of corporations? We have been here for over three months considering and discussing and voting upon the measure of protection that it is necessary to give in order to keep alive and prosperous the business of tens and hundreds of thousands of corporations engaged in manufacture and trade affected by the protective tariff. What do we know about those corporations? Upon one hand we have garbled and partial statements; upon the other equally garbled and partial statements; and no means of distinguishing the truth. We are under the necessity of proceeding by guesswork, by conjecture, always with dissatisfaction, because we recognize the chance that we may have guessed wrong about whose statements come nearest to the truth.

I should like to see in the office of the Commissioner of Internal Revenue the next time a tariff bill comes before Congress statements, under oath, and tested year by year, about the business of all this vast multitude of corporations that come appealing to us here for help, so that we shall not again be compelled to come to the conclusion that all the business of the United States is on the brink of failure.

Sir, this measure, which adopts the possession of the corporate facility and privilege as the basis of classification, will include some other corporations, but the great mass of them are engaged either in matters that are affected by the protective tariff or in interstate commerce or in business which is affected by our treatment of the currency. A full and satisfactory knowledge of the field into which a legislative body is to enter is not accomplished by including only the things that come within its necessary action. The whole field should be before us, and we should be able to form some judgment as to the relative amounts, the relative capacities for answering to taxation, the trade relations between these corporations with which we are most closely concerned, and the other corporations of the country. There will be certain incidental publicity to others than the Government. But whatever there is, let me say to the gentlemen who are opposed to the pending amendment that in entering upon a corporate form for the transaction of their business these corporations have estopped themselves from saying that they ought not to have their business inquired into, for the very basis of corporate life is freedom from personal liability for debt and the confinement of the creditor, the person who does business with the corporation, to the corporate assets.

Mr. BACON. Mr. President, will the Senator permit me to interrupt him for a moment to ask a question?

Mr. ROOT. Certainly.

Mr. BACON. I do not know whether the Senator has completed the particular thought he was upon or not.

Mr. ROOT. Substantially.

Mr. BACON. The honorable Senator has been credited in the public press with having been engaged with those who have perfected this amendment, and I have no doubt he brought to it the labor, industry, and great learning with which he is justly credited by all. I therefore would ask the Senator whether, in the preparation of the amendment, there was an effort made to devise some way by which other large representatives of aggregated wealth could be included within this liability to taxation; for instance, such as the bonds of corporations as well as the dividends of corporations, or the unapplied earnings of corporations.

Mr. ROOT. There was, I will say to the Senator.

Mr. BACON. The Senator says there was. I will be very glad if the Senator will go further and state to what extent that investigation was carried, and what was the conclusion reached in regard to that matter.

Mr. ROOT. It was the subject of repeated discussion in which the President, the Attorney-General, and other members of the Cabinet and members of the Committee on Finance of the Senate took part. The final conclusion was that the imposition of this tax on the entire income, including the income assignable to the payment of interest on bonds, would result not in the taxation of bondholders, but in imposing a double tax on the stockholders, and it was not thought advisable to do it. We all thought that this provision would yield an ample amount to make up any deficiency which the tariff measure will need. Indeed, a number of gentlemen in the discussion thought that we could now well afford to cut in two the percentage to be imposed, because they thought it would yield more than enough.

Mr. BACON. That was not the exact point to which I tried to direct the attention of the learned Senator. The point I desired to know was whether any investigation or effort was made to reach these representatives of wealth, these bonds in the hands of the bondholders; not the question whether the corporations could be made to pay to the Government a part of what they owe the bondholders. That is not the question; but whether there was an effort made to see if there could be devised a constitutional tax which would be levied upon the bonds in the hands of the bondholders. I will not limit it to that. I speak of the large accumulated wealth of any kind of a personal character.

Mr. ROOT. Mr. President, that subject was much discussed, and we were all of the opinion that we could not reach the interest upon the bonds in the hands of the bondholders consistently with the decisions of the Supreme Court.

Mr. BRISTOW. Mr. President——

The VICE-PRESIDENT. Does the Senator from New York yield to the Senator from Kansas?

Mr. ROOT. I think that completes what I have to say. I will yield, of course.

Mr. BACON. I wish to ask the Senator a further question.

Mr. ROOT. Very well.

Mr. BAILEY. Before the Senator from New York resumes his seat, and in order that what I am now about to say shall find a place in what he has said, I want to make a brief statement in reply to his criticism against the general income-tax amendment on account of its failure to recognize the difference between incomes derived from personal service and incomes derived from investments. I did not interrupt the Senator at that point of his very interesting address, because I did not want to disturb the continuity of his thoughts. I desire, however, that this explanation shall appear with his criticism.

I think his criticism is founded in justice; and I would not hesitate, if drawing an original bill, to obviate it.

I believe that in earning an income by personal service every man consumes a part of his principal, and that fact ought always to be taken into consideration. The man who has his fortune invested in securities may find in a hundred years, if he spent his income, that fortune still intact, but the lawyer or the physician or the man engaged in other personal employment is spending his principal in earning his income. That fact ought under every just system of income taxation to be recognized and provided against.

The inquiry naturally rises in the mind of every Senator, then, why I did not do it, and this is the plain answer: We were trying to send this bill back to the Supreme Court with as little change as possible from the old law. I will say to the Senator from New York that if that bill had been adopted and had been sustained by the court, every real and intelligent friend of the income tax would have in time accounted for that difference.

Mr. BACON. Mr. President, I did not finish the inquiry which I desired to address to the learned Senator from New York. The question I propounded was preliminary to another question which I desired to propound to the Senator. If those who were engaged in this investigation or in the framing of the measure came to the conclusion, which I readily recognize, that the bond itself could not be taxed, I want to ask the Senator whether they considered this difficulty?

Of course it is recognized not only as something which can be done, but as something which is frequently done, where the owners of a corporation owning stock convert that stock into bonds, and therefore under that conversion, instead of paying dividends upon stock they pay interest on bonds, and the exact amount which would have been paid upon dividends is diverted to the payment of the bonds, which stand in the place of the stock which has thus been converted. I have seen in the papers, for instance, that one of our great transcontinental railroads is now engaged in that very process of converting stock into bonds.

It seems to me to be perfectly manifest under the provisions of the amendment and under the statement made by the Senator from New York, in response to my first question, that it will be within the power of the corporations which it is thus sought to reach to convert in a large measure their stock into bonds, and, under the reply given by the Senator to my first inquiry, in so doing they will escape the payment of this tax. That is the way it occurs to me. I desire to know from the learned Senator whether that question was considered by them and whether they recognize that as an insuperable difficulty, or whether there is any possibility by which an effort on the part of a corporation thus to convert its stock into bonds and thus defeat the payment of this tax would be prevented by any provision of the amendment.

Mr. ROOT. That was much considered, Mr. President. As we found that the bonded indebtedness of the corporations of the country does not vary very much from the capital stock as it is now, we thought that the simplest and most efficacious way to prevent any abuse on any considerable scale would be to introduce into the measure the limitation which the Senator will find there; that is, not permitting the corporation to deduct from its gross income any amount assignable to the payment of interest upon its indebtedness in excess of the amount of its capital stock. So if you take the corporations of the country by and large, as indeed they are limited by the laws of very many States to bonded indebtedness not in excess of their capital stock, there can be no greater reduction by way of interest from the gross income in reaching the net income than would be made upon the bonds that now exist.

Mr. BRISTOW. Mr. President——

The VICE-PRESIDENT. Does the Senator from New York yield to the Senator from Kansas?

Mr. BACON. Mr. President——

Mr. ROOT. I will keep yielding to the Senator from Georgia until he is through, Mr. President, and then I will yield to the Senator from Kansas.

Mr. BACON. I will trespass only a moment. It will be recognized by the Senator, I presume, that as to a very large proportion, if not the majority, of state corporations, especially those which are organized under general law, in almost all of the States the power to increase stock is almost unlimited. So if that is the only restraint, if that is the only thing which shall hold them within proper bounds, all that a corporation would have to do when it desires to evade the payment of this corporation tax would be, under one pretext or another, to enlarge the amount of the stock, which they can do by simple resolution.

Mr. ROOT. May I call the attention of the Senator to the fact that they would have to pay on the stock or on the proceeds the income from the money received on the stock?

Mr. BACON. Mr. President, nobody knows better than the Senator that we have very large classes of stocks which are deferred in point of preference to other classes of stock.

Mr. ROOT. Mr. President, this measure limits the stock which is the basis of comparison to paid-up capital stock, and I take it that when gentlemen who feel moved to constitute capital stock by putting in cats and dogs have to meet the Commissioner of Internal Revenue of the United States, and the way in which our internal-revenue laws are applied, they will find that they will have to have stock that is really paid up.

Mr. BACON. I do not wish, in the inquiry I addressed to the Senator, to be understood as antagonizing what he said.

Mr. ROOT. I understand.

Mr. BACON. But those are grave questions, in my mind, and I desired to know whether they had been considered and what was the conclusion that had been reached.

Mr. ROOT. I will say to the Senator that both of those questions not only were very fully considered and discussed, but they gave us a great deal of solicitude. We found it difficult to solve them, and we solved them in what seemed to us the best way after the very fullest discussion.

The VICE-PRESIDENT. Does the Senator from New York yield to the Senator from Kansas?

Mr. ROOT. Certainly.

Mr. BRISTOW. I do not know whether I correctly understood the Senator from New York, but as I heard him I understood him to say that the information which he expected to collect in regard to the corporations would be valuable in revising the tariff in the future, because it would give Congress knowledge as to their operations, and so forth. Did I understand the Senator correctly?

Mr. ROOT. Yes, Mr. President; I think that such a record will be the most valuable and effective basis of the action of whatever commission we provide for here. I hope that before we leave this Chamber we shall provide, in one form or another, for a commission which will lay before the Congress the next time it comes to revise a tariff the facts on which they are to proceed. I think that such a record as will follow necessarily from the administration of this proposed law will be the most useful possible basis for such a commission's action.

Mr. BRISTOW. Of course it was not intended, was it, to finally ascertain the comparative cost of the production of an article here and abroad, and so forth? The information that is to be collected does not contemplate any such scope as that?

Mr. ROOT. No; but it will indicate whether a lot of gentlemen are on their way to a poorhouse or a palace.

Mr. CLAPP. Mr. President, realizing that the afternoon is somewhat advanced, I shall try to be very brief in presenting a protest against this proposed legislation.

Mr. President, we are confronted by the question of supplemental revenue. There are four ways in which the revenue provided for in the pending tariff bill, which almost everyone agrees will fall short of the necessities of the Government, might be supplemented. One, to my mind the most natural and logical of all, would be to take tobacco and impose upon tobacco a fair tax, which to-day is not imposed upon it, as was shown so clearly by the Senator from Indiana [Mr. BEVERIDGE]. The other would be by the imposition of an additional tax upon intoxicating liquors. From those sources we could easily obtain sufficient revenue to supplement the revenue provided for in this bill.

But it seems that these plans can not meet with approval here, and so we are relegated to one of three other plans, namely, an inheritance tax, an income tax, or a so-called "corporation tax."

The first tax suggested by the President was an income tax. It was suggested in his speeches before the election. The next tax suggested was an inheritance tax, suggested by his inaugural address, made on the 4th of March. The third tax suggested by him has been the so-called "corporation tax."

Mr. President, for one I am ready to vote for an inheritance tax, although, strictly speaking, an inheritance tax is not a tax, but rather a toll collected only once in each generation, and it would not reach the vast fortunes which in this country escape federal taxation, and which justly ought to contribute their share to the burden of such taxation. But I would readily vote for an inheritance tax, although my own State is opposed to it. I believe that inheritances are so justly the subject of taxation to a point where both the State and the Federal Government can take toll from the passing of an estate, and the taking of the toll by the Federal Government would not militate against the toll taken by the state government.

But there seems to be no possibility of that becoming a law at this session unless it is that we may be able to so portray the iniquities of this proposed corporation tax as to strengthen the hands and the purposes of those who will yet have to deal with the bill after it shall have passed the portals of the Senate.

It is not my purpose, either, to enter into a long discussion of the income tax. I listened with great interest to the Senator from New York and to the objections which he raised against an income tax. One of his objections was the objection which in late years has been developed in English study of economy, between taxing the early energies of the individual and the accumulated fortune which the individual may in later years have laid by. I challenge the Senator from New York, or any other Senator, to point out where and how that defect is cured in this proposed so-called "corporation tax," for, so far as it reaches corporations, so far as it lays its hand upon any individual either by diminishing the income of a stockholder or by the transfer of the tax to the consumer purchasing of the corporation, it lays it with equal weight upon the man who is struggling to secure a competency and the man who has obtained a competency, because it makes no discrimination between the rich stockholder or the stockholder of moderate means, nor between the rich or poor consumer.

Not only does it fail to make such discrimination, but absolutely exempts the man who has gone still further in the process of accumulation and has laid his accumulated savings in the form of bonds.

Then, it is said that the income tax is hostile to the spirit of protection. I asked the Senator to point out why and how the amendments coming in at this late date, after the schedules have been fixed in the committee, the one can be any more hostile to the spirit of protection than the other, and his only answer was that we had underestimated the amount of revenue that would be obtained and some one else had overestimated the amount of revenue to be obtained by the other. There are no figures before the Senate, there is no data to-day in this country, of accumulations upon which any man can base a conservative opinion as to how much would be received from either source. So far as one or the other amendment militates against the spirit and purpose and policy of protection, one does so as absolutely as the other. The Senator from New York left that question unanswered, and it can not be answered. Whether a dollar raised after this tariff has been fixed comes from one source or another, it is only a menace to the spirit of protection when it exceeds the shortage that is left after a fair measure of protection has been secured.

I have heard it claimed about the Chamber for several days that this proposed corporation tax is pursuant to the message which the President sent to this body a short time ago. Mr. President, I for one challenge that assertion, so far as it relates to some of the important and vital provisions of the proposed amendment. Ever since I have been in the Senate, again and again some measure is brought in here, and we are told that the measure has the approval of the President.

The President of the United States has a simple method by which he can communicate his views to this Senate; and he communicated his views to this body in a message a short time ago—a plain message, easy to understand, but which fails to find expression in the details of the proposed amendment. After this message came in, an amendment was drawn and finally presented to the Senate; and the Senate beheld the pitiable spectacle of the presentation of the proposed amendment, with the admission that it was not certain what it covered, and yet it was claimed that in its details it bore the "O. K." of the President of the United States. It was then asserted that if building and loan associations are profit-making institutions, they ought to be taxed; that the amendment claimed to be pursuant to the directions of the President of the United States did tax them. I am not discussing now whether they should be taxed or not; but the President of the United States expressly excepted in his message building and loan associations from those stock and association companies which, under his suggestion, were to be the subjects of taxation. The President, in his message, called attention to three classes of corporations that should be exempted—national banks, because they were already taxed; savings banks; and building and loan associations.

Mr. FLINT. Mr. President, I have made a canvass this afternoon, and have discussed the matter with a number of Senators, and I feel confident that an agreement can be reached to vote upon the substitute at a very early date. A number of Senators have advised me that they desire to discuss the question; but, as I understand them, their remarks will be brief.

I will ask unanimous consent that we take a vote on this amendment not later than Monday.

Mr. CLAPP. Mr. President, I understand that the Finance Committee have not yet reported a drawback amendment.

Mr. FLINT. The Senator is correct.

Mr. CLAPP. Nor has the maximum and minimum proposition been disposed of by the Committee of the Whole.

Mr. LODGE. Yes; it has been reported. It has not been adopted by the Senate.

Mr. CLAPP. That is what I say.

Mr. LODGE. It has not been adopted by the Senate; no.

Mr. CLAPP. And the committee is also investigating the tobacco question.

Mr. FLINT. The Senator is correct.

Mr. CLAPP. I submit that instead of agreeing to-day on a time for a vote, those matters should be brought in. If no one is ready to debate this particular amendment there is no reason why the debate can not go on upon the other questions. At all events, I will not consent.

Mr. HEYBURN. Mr. President, without taking up the discussion of the measure, I might at this time appropriately suggest to the Senator from New York [Mr. ROOT] an inquiry that arose in my mind during his very able presentation of the question. I was at first inclined to ask for some further light upon the language in lines 10 and 11, on page 1, as it is understood by the committee. So far as my investigation shows, it is unusual language. I do not know of any other legislative measure in which similar language has occurred. I refer to the words "shall be subject to pay annually a special excise tax with respect to the carrying on or doing business."

The words "with respect to," are susceptible of a rather wide and varied interpretation. And as they are unusual, if the Senator from New York can define a little more clearly the limitation of the words I think it will perhaps enable some of us to dispose of what might otherwise be an objection.

I should like to inquire just what is included by the words "with respect to."

Mr. ROOT. Mr. President, as I understand, those words were taken from the decision of the Supreme Court in the Spreckels case; and they are designed to attach this tax to the business rather than to permit it to be attached to the property.

Mr. HEYBURN. That is just the thought that caused me to ask the question as to whether those words would constitute it a tax upon the business, as distinguished from a license.

Mr. ROOT. As distinguished from a tax on property. I can not at this moment lay my hands on a copy of the amendment.

Mr. HEYBURN. Would that constitute a property tax, as distinguished from a tax upon the occupation?

Mr. ROOT. No; just the contrary. The Senator will remember that away back in the Hylton case the question was discussed as to whether the tax on carriages was a tax on carriages in respect of or with respect to their use.

Mr. HEYBURN. That is the question.

Mr. ROOT. That language has been carried along through a series of decisions of the court, where it has held various provisions of taxation not to impose direct taxes, and therefore not to be subject to the constitutional provision for apportionment. It has spoken of them in slightly varying forms of language, as being with respect to the use or the privilege or the business or the facility of carrying on business; thus attaching the tax not to the thing, not to the property, but to the incorporeal, intangible privilege or power or process. These words are designed to accomplish that; and I think they are taken from the very words of the court in the Spreckels case.

Mr. HEYBURN. That is a question that must arise in the mind of anyone in determining the character of this legislation; and if the Senator thinks those are the exact words——

Mr. ROOT. I will not be certain about it. I know the Attorney-General took them from some case.

Mr. HEYBURN. But were they not the words used by the court, and not by the legislative body?

Mr. ROOT. I think so.

Mr. HEYBURN. Were they not merely words of description?

Mr. ROOT. They were words used by the court, as I understand it.

Mr. HEYBURN. Yes; but they were not taken from the language of the legislation?

Mr. ROOT. No.

Mr. HEYBURN. The court might very well use them as words of reference, and yet they might not appropriately express just what is attempted in this case. The first time I had occasion to read the amendment those words struck me as being a little bit uncertain in their meaning; and in view of the fact that our legislation must be certain in the expression of the purpose, it seemed to me the court might hold that the purpose of the legislation was not expressed with sufficient definiteness.

I merely call attention to the matter at this time in order that Senators and others who have been responsible for the framing of the language may direct their attention to it.

Mr. NELSON. Mr. President, will the Senator yield to me?

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Minnesota?

Mr. HEYBURN. Certainly.

Mr. NELSON. I desire to call the Senator's attention to the fact that this is practically the language found in the act of 1898 in respect to the tax laid upon sugar-refining companies and on oil-refining companies. It substantially follows that language.

Mr. HEYBURN. I beg the Senator's pardon; my attention was diverted.

Mr. NELSON. I want to say to the Senator that with the exception of substituting the word "with" for the word "in," this is substantially the language of the act of 1898, levying a tax upon sugar-refining companies and oil-refining companies and pipe lines, which is the case upon which the court has passed.

Mr. HEYBURN. Has the Senator the language before him?

Mr. NELSON. I can find it in a minute.

Mr. NEWLANDS. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Nevada?

Mr. HEYBURN. Yes.

Mr. NEWLANDS. I have the section before me—section 27. It contains no such language. The section declares:

> That every person, firm, corporation, or company carrying on or doing the business of refining petroleum, or refining sugar. * * * shall be subject to pay annually a special excise tax equivalent to one-quarter of 1 per cent on the gross amount of all receipts.

The words "with respect to" are not contained in that section; but the Senator will find them, or words similar to them, in the decision of the court in the Spreckels case, where it says:

> Clearly the tax is not imposed upon gross annual receipts as property, but only in respect of the carrying on or doing the business of refining sugar.

The words are not exactly the same, but they are similar.

Mr. HEYBURN. They are not used in legislation, however.

Mr. NEWLANDS. No.

Mr. HEYBURN. But they are used by the court merely as descriptive of the statute.

Mr. NEWLANDS. Yes.

Mr. HEYBURN. I do not think that would justify the use of those words in legislating.

Mr. FLINT. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from California?

Mr. HEYBURN. I do.

Mr. FLINT. I will ask the Senator to yield to me in order that I may ask unanimous consent for a vote upon the pending amendment on Tuesday, at 12 o'clock.

Mr. BAILEY. Mr. President, I had my attention diverted for a moment. I should like to hear that request restated.

The VICE-PRESIDENT. The Senator from California [Mr. FLINT] asks unanimous consent that a vote be taken, the Chair assumes the Senator to mean, upon the amendment of the Senator from Texas and the pending amendments.

Mr. BAILEY. Mr. President, I should not want to preclude the possibility of other amendments, and the way the request was stated it would be confined to the amendment I offered, the substitute offered by the Senator from Massachusetts, and the amendment offered by the Senator from Rhode Island.

Mr. LODGE. I think it is the intention of the Senator from California to ask that a vote be taken on the amendment of the Senator from Texas and all amendments thereto.

Mr. BAILEY. And all amendments permissible under the rule.

Mr. STONE. And at 12 o'clock on Tuesday it is proposed to take the vote?

Mr. FLINT. That the voting shall commence.

Mr. HEYBURN. The distinction would seem to me to be that the words are not sufficient as a grant of power to the executive branch of the Government to do the thing—that is, to collect the tax. They are not a sufficient grant of power; and if the grant of power lies anywhere, it must lie in those words.

Mr. BRANDEGEE. Without disputing the constitutionality of the act—for I think we all admit, or, at least I do, that the Government has a right to select corporations for taxation, and exclude partnerships—it is certainly an injustice to a small corporation to allow a partnership, engaged in the same business and in close competition with it, to go untaxed, while the small competing corporation is compelled to pay a tax of 2 per cent. And I should like to ask the chairman of the committee if he is able to state why it was that the committee did not impose this tax upon partnerships as well as upon corporations?

Mr. ALDRICH. Mr. President, there were a vast number of industries and subjects which the committee might have included, I suppose; but they had to stop somewhere. The committee, with the advice they had, believed the present tax to be constitutional; the President's message advised us as to the character of the legislation which he desired; and the limitation seemed to the committee to be proper and natural. We did not intend to tax everybody and everything in the United States.

Mr. BRANDEGEE. But on principle, Mr. President, there would seem to be no difference between a partnership and a corporation. They are both combinations of men to do business. I wondered whether or not the question had been presented to the committee, and whether or not there was any discussion in the committee as to it.

Mr. ALDRICH. Does the Senator think we could constitutionally tax the incomes of individuals received from real estate, for instance?

Mr. BRANDEGEE. The question whether a copartnership is an individual or not is one that I should want a little time to consider.

Mr. CURTIS. Mr. President, the Senator recognizes, however, that there is a great deal of difference in the extent of the liability of members of partnerships and members of corporations.

Mr. BRANDEGEE. Entirely so; and I will ask the chairman of the committee whether or not that matter was considered by the committee?

Mr. ALDRICH. Mr. President, I suppose the Senator from Connecticut is as well aware as I am that any Senator, even with much less ingenuity than the Senator from Connecticut, could suggest in a five-minute speech questions which could not be answered in the course of a session. There were a great many difficulties surrounding this problem, and the committee decided to hew closely to the line and follow the suggestions and recommendations of the President in this legislation.

Mr. BRANDEGEE. Does the Senator desire to answer my inquiry as to whether the matter of imposing a tax upon partnerships was considered at all by the committee?

Mr. ALDRICH. I will say that it was considered, and the committee thought it raised a cloud of questions which they did not care to discuss or to dispose of.

Mr. RAYNER obtained the floor.

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

The VICE-PRESIDENT. Does the Senator from Maryland yield to the Senator from Florida?

Mr. RAYNER. I yield to the Senator.

The VICE-PRESIDENT. The Secretary will call the roll.

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

Aldrich	Chamberlain	Frye	Newlands
Bacon	Clapp	Gallinger	Overman
Bailey	Clark, Wyo.	Gamble	Page
Borah	Crawford	Guggenheim	Penrose
Bourne	Culberson	Heyburn	Perkins
Bradley	Cullom	Hughes	Piles
Brandegee	Cummins	Johnston, Ala.	Rayner
Briggs	Curtis	Jones	Root
Bristow	Davis	Kean	Scott
Brown	Depew	La Follette	Stone
Bulkeley	Dick	McCumber	Sutherland
Burkett	Dillingham	McEnery	Taliaferro
Burnham	Dolliver	McLaurin	Taylor
Burrows	Elkins	Martin	Warner
Burton	Fletcher	Money	Wetmore
Carter	Foster	Nelson	

Mr. BACON. I desire to state that my colleague [Mr. CLAY] is necessarily absent from the city, and will be absent for several days.

Mr. OVERMAN. I wish to announce that my colleague [Mr. SIMMONS] is unavoidably detained to-day and will not be in the Chamber.

The VICE-PRESIDENT. Sixty-three Senators have answered to the roll call. A quorum of the Senate is present.

Mr. RAYNER. Mr. President, I will kindly ask the attention of the Senate to discuss the legal phases of this amendment.

I want to say that I am in favor of the income tax and I shall vote for the income tax if I have the opportunity of doing so. I may not have the opportunity of doing so, however. I may be forced ultimately to decide whether I shall vote for this corporation tax or not. If I am forced to that ultimate decision, I shall vote for it.

I want to be distinctly understood upon this proposition. Between an income tax and a corporation tax I am decidedly in favor of an income tax, for reasons that have already been given by Senators, and I do not desire to add anything to the literature on that subject. But if ultimately I am either compelled to vote for the amendment of the committee or to vote for no additional tax at all, I shall vote for the corporation tax; and I rise now for the purpose of explaining my vote and justifying it.

I believe that this is a constitutional measure, and I hope that I shall be able to demonstrate that proposition. I do not care for words, Mr. President. I think if you will eliminate the sentence that the Senator from Connecticut desires to have eliminated you will make the law invalid, not that I believe for a moment that a law can be made constitutional by legislation, but a law can certainly be made invalid by leaving something out of the law.

I will state my propositions, and I will indulge in no irrelevant or collateral matter. I will come right to the point of the discussion. I lay down these three propositions: First, that this tax is an excise tax. That is the first proposition. The second proposition is that it is a uniform tax. The third proposition is that it does not infringe upon the reserved rights of the States.

The first proposition is that this is an excise tax. There can not be any doubt upon that proposition. No matter how this bill is worded the word "or" or the word "and" can not change the construction of what this proposed law is. It is an excise tax. It is an excise tax and not laid upon the profits of a corporation. This is not a tax laid upon the net profits of a corporation. If it was a tax laid upon the net profits of a corporation, it might possibly come within the income-tax decision. It is a tax laid upon the business and privileges of a corporation, and the measure of the tax is the net profits of the corporation. That is about as concisely stated as I can state it, and it has been so stated, not once, but a hundred times, in the different decisions upon kindred propositions. When we get away from that proposition we indulge in what seems irrelevant and collateral matter that does not even illuminate the proposition we are discussing.

Let us look at this and see whether I am right or not. I do not like the corporation amendment; I think it is inequitable; but when the time comes and we can not obtain an income tax, then I am in favor of this tax. I am in favor of an income tax upon the proposition advanced by the Senator from Texas and the Senator from Idaho and the Senator from Iowa, and other Senators. When the point is reached, I will vote for this corporation tax rather than vote for no tax, and that is the only ground on which I will vote for it. In voting for it I want to justify my vote on the ground that I believe it is a legal tax, and there will not be a dissenting opinion in the Supreme Court of the United States when the Supreme Court confronts it for the simple reason that the Supreme Court, in a number of cases, has already covered the proposition.

The senior Senator from Minnesota [Mr. NELSON], whose mind always goes to the root of a legal question, settled it just now in answer to the Senator from Connecticut. He said this is not a tax for the right to do business; it is a tax upon the business. It is a tax upon the business privileges of a corporation, and you measure that tax simply as a standard of measurement by the net profits that the corporation obtains. You can take any other standard. You can take any standard you want if it is not an arbitrary standard.

Mr. OVERMAN. Let me call the attention of the Senator to the fact that franchise taxes——

Mr. RAYNER. This is a tax upon the privilege and the business of a corporation and the facilities of a corporation.

Mr. OVERMAN. Franchises are of two classes—primary and secondary. The primary franchise is the right of a corporation to exist, and the secondary franchise is the right, the privilege, to do business. The Senator says this is a tax on the privilege to do business, and therefore it is a tax on the secondary franchise.

Mr. NELSON. Mr. President——

Mr. RAYNER. Let me answer that a moment.

Mr. NELSON. Will the Senator allow me?

from New York [Mr. ROOT]? I have no great concern about the precise words that are used here. I agree entirely with the Senator from New York that it does not make any difference. The essential question is, "What are you trying to do?" It is answered, "He is trying to apply the principle of the Spreckels case."

Congress, in looking around for an object of taxation, believed that those who were engaged in the business of refining oil or that of refining sugar could well bear a tax, because, I assume, of some peculiarities relating to those kinds of business. It therefore imposed a tax upon the business, or upon those engaged in the business, of refining oil and refining sugar.

But let us see with respect to the present measure. Congress does not in this case select any kind of business which it believes ought to bear a tax. It does not impose any tax upon all the persons who are engaged in any kind of business. It selects corporations or joint-stock companies. If I were sitting as a judge, if I did not believe this to be a tax upon property, I should hold it to be a tax on property or on income; and I should sustain it as constitutional, because I believe it to be constitutional. But if I were driven to the position of holding it to be a tax on business, then I should be compelled to hold it to be a tax upon the business of being a corporation—a tax upon the business because it is carried on by a corporation; not because the business has any peculiarities or characteristics or is able to afford a revenue, but because it is conducted by a corporation. And when we are driven to that point in the argument the tax becomes one upon the franchise of the corporation; and under the decision which I think is the last expression of the Supreme Court upon the subject it becomes unconstitutional, as is admitted on almost all hands.

I want to say that much in reply to the suggestions that have been made here with regard to mere words. I do not believe it makes any difference what words we use, because the court will, as it always has and as it always ought to, reach in beneath the husk and discover the real purpose of Congress.

Mr. ELKINS. Mr. President, I should like to ask the Senator from New York just what the words "with respect to the carrying on or doing business" mean? I should like to put that question to him. If he were a judge on the bench or speaking as a distinguished Senator and able jurist, what would he say those words meant? Ordinarily he would say: "Why, they are very clear." But they are causing a great deal of trouble in this discussion, and I should like to have the Senator state what he thinks or knows they mean.

Mr. ROOT. Mr. President, I do not want to contribute to the trouble. I think there is altogether an unnecessary amount of trouble on the subject, and I do not think I can make the words any clearer by any gloss or explanation of mine. I think we all know what the carrying on of business means. I should despair of trying to make it any clearer.

Mr. BACON. As the Senator is being interrogated as to the meaning of these words, I should like to have his understanding of certain words the construction of which are somewhat doubtful to my mind. The Senator has quoted from the income-tax decision this phrase from the Chief Justice which is quoted in the Spreckels case. The Senator has read it. The first two lines are these:

> We have considered the act only in respect of the tax on income derived from real estate and from invested personal property.

I should like to know what the Senator understands to be the meaning of the words "from invested personal property" in that connection? I want to say to the Senator, I am not asking the question simply from idle curiosity, but in view of some other questions connected with this case which those words might throw some light upon. I will say that I have never been able to clearly understand what the court meant in that particular connection. Of course we all understand what invested personal property is, but what classification did the Supreme Court have in mind when it used in the connection "of an income derived from real estate and from invested personal property?"

Mr. ROOT. Mr. President, I think there is a clear line between the two kinds of treatment of personal property, and I assume that the court had that line in mind. There may be, first, an investment in personal property which is not used by the investor, as to which he is passive.

The purchaser of bonds remains quiescent and receives the interest from time to time as it accrues and is paid. The lender of money upon bonds and mortgages does the same, and the lender upon notes does the same. That kind of income which is not associated with any activity or any use on the part of the owner, I understand to be the income from invested personal property which the court had in mind in the first part of the clause, while on the other hand personal property is widely used and must be widely used in the activities of life. The workman uses his tools, the merchant his stock of goods, buying and selling and transporting, taking it from the place where it is worth but little to the place where it is ready for the uses of mankind. The great body of the business of life is done by dealing with personal property on the basis of real property; and that kind of investment, the ownership of the tools, the implements, the materials used in the activities of business life, I understand to be the subject of the second part of the clause.

There was the difference between the two that I think led the court to say that they have considered only the tax on incomes from invested personal property and had not commented on so much of it as bears upon the gains or profits from business privileges or employment.

Mr. BACON. Now, if the Senator will pardon me a moment, we recognize that the general language "invested personal property" would cover not only investments in bonds and things of that kind, to which the Senator has alluded, but would cover investments in all other kinds of personal property. If I understand the Senator correctly, his idea is that the intention of the court was that that absolutely idle property, upon which men live without effort by simply clipping coupons, was intended by the law to be beyond the reach of Congress to tax, whereas all the property which goes into the great activities of life may be subjected to onerous taxation. Is that the view of the Senator?

Mr. ROOT. I think, under the decision in the Pollock case, the property which the Senator speaks of as idle, which is only idle for the investor——

Mr. BACON. That is what I am speaking about.

Mr. ROOT. Of course, it is the representative of somebody else's activity, and I think it is protected against taxation now according to the rule of apportionment, while the other, being incidentally employed in connection with the business of life, is subject to an excise tax or duty, whatever it may be called, which is free from the rule of apportionment.

Mr. BACON. The result is that this property which is thus represented by bonds is practically to be exempted for all time from taxation, because if that interpretation is correct, bonds could only be taxed through apportionment, and we know that on account of conditions which have been explained here in this argument taxation through apportionment is practically impossible.

It will never be resorted to because of its gross inequality; one section would be so much more taxed per capita than another, and one particular locality so much more under direct apportionment than it would be under an ad valorem. Then the natural and necessary result is that the property which I have denominated as idle property, and which I do not think I have incorrectly denominated, is to be for all time exempted from taxation, whereas the class of property which enters into the great activities of life, and out of which our prosperity is to be developed is the property which will be exclusively hereafter burdened with taxation.

I speak of the investment of bonds, and so forth, as the idle property. In a sense, of course, it has been created by great industry and great labor, but taxation at last falls upon the man who owns the property, and the man who owns the bonds and who is himself not engaged in the industry which produces the interest out of which he lives is absolutely to escape, so far as that particular investment is concerned, though he lives upon the use of the labor of others. For myself I am not willing to subscribe to any proposition which will lead us to so very undesirable a result as that.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Rhode Island [Mr. ALDRICH].

Mr. ELKINS. I will ask the Senator from New York, if he is in charge of the measure, if 1 per cent would not be enough instead of 2? I should like to have somebody answer as to the amount of revenue that would be derived from 2 per cent and the amount to be derived from 1 per cent. I do not see any member of the committee here, and I should like to have the Senator from New York state if any attention has been drawn to the matter as to how much revenue would be produced with 2 per cent and if we could do with 1 per cent.

Mr. ROOT. I took occasion yesterday to make some remarks upon the woeful lack of information that we have here at the seat of government regarding the corporate interests and activities of our country. I think the question put by the Senator from West Virginia served to enforce what I said. We ought to have here definite, well-ascertained, and tested information which will enable us to answer such questions. But we have not. The best means by which we could get a result was by

taking unofficial figures that had been published in various magazines and made up by gentlemen who are interested in the subject, and the estimate which the President gave of $25,000,000 seemed to be a reasonable estimate. But there are so many unknown quantities that it is not much more than a guess, and no one can speak definitely.

Mr. ELKINS. I see the chairman of the committee is in the Chamber now, and I will ask him the question that I put during his absence to the Senator from New York. What amount of revenue will 2 per cent bring, and could we not get on with 1 per cent? I think, outside of this amendment and without resorting to special taxes at this time, there are other custom and internal taxes that would raise all needed revenue.

Mr. ALDRICH. As the Senator from New York has just said, it is very difficult to make any accurate estimate of the revenue which would be derived from this tax. My own estimate would be at least twice that of the President. I think it will produce at least $50,000,000 per annum, and I am inclined to think more than that. It is quite impossible, however, to say just what revenue would be produced.

Of course, in response to the other question about 1 per cent, the Senator from West Virginia realizes that my own estimate of the amount of revenue to be produced by the measure itself, with the changes that have been made in the Senate, is that we shall have sufficient revenue without any additional taxes. So it is impossible for me to say whether $25,000,000 or $50,000,000 additional should be required. Of course, for this fiscal year there was a deficit outside of the canal of $60,000,000. I estimate that there will be a deficit the next fiscal year of approximately $40,000,000. It is my impression that beyond that the bill itself will take care of any expenses that are now in sight. Of course, involved in that question is as to what the course of Congress is to be with reference to expenditures. If we are to enter upon a new era of extravagance or of enlarged extravagance, no revenues that are now in sight will be sufficient to meet the expenditures of the Government. If, as I hope and believe, we are to enter upon an era of intelligent economy, then I believe that the revenues to be derived from the bill as it now stands will be sufficient to meet all the expenditures of the Government.

Mr. ELKINS. Just one more question, if the Senator will allow me. With the other ways of raising revenue, placing duties on many other products, would not 1 per cent be safe under the Senator's estimate, and he knows more, I think, about this question than anybody connected with the making of this bill?

Mr. ALDRICH. I should not be willing at this moment to make an estimate of that kind or to state. I will say that I am engaged in making some inquiries along several lines with a view of making a more intelligent estimate, or approximate estimate, of the income to be derived from this tax than I am now able to make. I hope before the bill passes from the consideration of the Senate to be able to state in a more definite form an estimate of the revenue to be expected.

Mr. CUMMINS. Mr. President——

Mr. BRISTOW. Will the Senator from Iowa yield to me for a minute or two?

Mr. CUMMINS. I yield to the Senator from Kansas.

Mr. BRISTOW. Mr. President, I desire to read two letters that I have and make some observations bearing upon the question now before the Senate. A hardware merchant in the State of Kansas writes me as follows:

> We are a corporation, doing business beside a firm that does about the same amount of business that we do. We will be taxed at the rate of probably $1,000 per year, and our competitors will pay nothing. I am not sufficiently posted to discuss the constitutionality of such a measure, but certainly there is no equity nor justice in a measure of this kind.

I have also a letter from a gentleman engaged in the dry goods business, and in that letter he says:

> Is it fair and consistent with the American idea of fairness and a "square deal" to tax our net earnings—taxes which will come out of the dividends to our stockholders, very many of whom are men in very moderate circumstances and working every day for a living and the support of their families—simply because we are doing business under a charter, while a neighbor doing business as an individual or under a copartnership is entirely free from said tax? And further, does the proposition reach the very wealthiest citizens, such as Rockefeller and Carnegie, whose holdings are not in stocks of corporations, but in bonds? * * *
>
> We have neighbors on either side of us, one doing business as a copartnership, the other as a private individual. Both are engaged in mercantile business, each employing about the same capital as ourselves, yet under the proposed law we would be compelled to pay 2 per cent of our net earnings, but they would pay nothing. Would they not as a result of this very law have an undue advantage over us simply because we are conducting our business under a charter and they are not?
>
> You may ask the question, Why are we, then, doing business as a corporation? Simply because it furnished a way for us to allow some of our employees of small means to become interested in the business by allowing them to become shareholders.

Now, Mr. President, I am told by the lawyers that the advantage of doing business as a corporation is sufficient recompense for this additional tax that is being imposed. I am sorry I can not agree with the lawyers. I will not undertake to discuss the constitutional questions involved, for I but poorly comprehend the fine technical distinctions that are made here between the different plans that are alleged to be constitutional and unconstitutional; but I believe I do know that when two men are engaged in identically the same business in the same community, selling goods to the same people for practically the same prices, under similar conditions, and one man prefers to do business under a charter and let his employees share with him the profits of that business, it is not right or just for the Government of the United States to impose upon him a tax and relieve his competitor, who may be doing business as an individual or copartnership, from that tax.

The Senator from New York [Mr. ROOT] yesterday said that an income tax would be unfairly distributed, because the States of New York, Massachusetts, and some other of the eastern States that are densely populated would have to pay a larger share than western States. If the western Senators representing States in this body will think for a moment, they will conclude that an income tax on the incomes of individuals exceeding $5,000 would raise more revenue for the Government from the State of Kansas than this tax law, because there will be more men who will pay it. It would then include the bondholders and those who have large fortunes that are not reached by this tax. It would more equitably distribute the burden as to population than this corporation tax.

Senators, it is not my purpose to discuss this question. I have read from these letters and made these observations to give the reasons why I do not intend to vote for the amendment offered by the Senator from Rhode Island. I vote against it because I believe it is unjust; that it is wrong; that it is an unequal tax; that it places burdens that are not equitable; and I can not vote for it believing, as I do, that it would be an injustice to many of my constituents.

Mr. DAVIS. Mr. President——

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

Mr. CUMMINS. I yield to the Senator from Arkansas.

Mr. DAVIS. Mr. President, the correspondent of the Senator from Kansas [Mr. BRISTOW] seems to overlook the advantage of a corporation over the private individual. While his two neighbors, one upon the right and one upon the left, engage in a partnership and each as a private individual escapes the burden of this taxation, he must remember that he escapes liability for the debts of the copartnership except to the extent of his stock.

I am opposed to the amendment of the Senator from Rhode Island as a substitute for the income tax, but I shall vote for it should the income tax fail—in other words, I choose the lesser of the two evils. We find that the corporations of the country are invading every avenue of business and trade. In my State we have trust companies formed for the purpose of transacting every kind and character of business. They administer upon your estate; they are guardians for your children; they absolutely carry their business to such an extent that it closes up the avenue of every individual effort. The individual is entirely destroyed and the law-made creature takes his place. Whenever an individual seeks an opportunity for employment or for business, he finds the door closed to him by the law-made creature, the corporation.

My stand, Mr. President, is that if we can not tax all the corporations, we should tax just as many of them as we can. If you can not tax the big ones and the little ones, too, then tax the little ones. Get them all, if you can; if you can not get them all, get the biggest number that you can. That is my principle. If we can have the income tax, let us have that.

I shall vote, first, against the amendment of the Senator from Rhode Island as a substitute for the income tax; then, if it is substituted, I shall vote for it as a substitute.

Mr. BACON. Mr. President——

The PRESIDING OFFICER. Does the Senator from Iowa yield?

Mr. CUMMINS. I yield.

The PRESIDING OFFICER. Does the Senator yield the floor?

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

The PRESIDING OFFICER. Does the Senator yield the floor?

Mr. BACON. As the question is raised, I will not ask the Senator to yield.

Mr. CUMMINS. I am quite willing to yield to the Senator from Georgia for any purpose whatever.

Mr. BACON. I am quite sure of that.

The PRESIDING OFFICER. The Senator from Iowa will proceed.

Mr. CUMMINS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The Secretary will call the roll.

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

Aldrich	Clark, Wyo.	Gallinger	Page
Bacon	Crawford	Gamble	Perkins
Borah	Cullom	Gore	Piles
Bourne	Cummins	Guggenheim	Rayner
Brandegee	Curtis	Heyburn	Root
Briggs	Daniel	Hughes	Scott
Bristow	Davis	Johnson, N. Dak.	Shively
Brown	Depew	Johnston, Ala.	Smoot
Bulkeley	Dick	Jones	Sutherland
Burkett	Dillingham	Kean	Taliaferro
Burnham	Dixon	Lorimer	Taylor
Burrows	Dolliver	McLaurin	Warner
Burton	Elkins	Money	Wetmore
Carter	Fletcher	Nelson	
Chamberlain	Flint	Overman	
Clapp	Frye	Owen	

The VICE-PRESIDENT. Sixty-one Senators have answered to their names. A quorum of the Senate is present.

Mr. BACON. Will the Senator from Iowa yield to me for just a moment?

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from Georgia?

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

Mr. BACON. Mr. President, I desire to offer an amendment to the amendment of the Senator from Rhode Island [Mr. ALDRICH]. I do not now ask that the question be decided whether it can be properly offered at this time; but I desire to have the amendment read, and whenever it is in order I shall offer it.

The VICE-PRESIDENT. The Senator from Georgia now presents an amendment for information, to be read and printed in the RECORD.

Mr. BACON. I do.

The VICE-PRESIDENT. The proposed amendment will be stated.

The SECRETARY. It is proposed to insert at the conclusion of the first paragraph of section 4 of the amendment proposed by Mr. ALDRICH the following:

Provided, That the provisions of this section shall not apply to any corporation or association organized and operated for religious, charitable, or educational purposes, no part of the profit of which inures to the benefit of any private stockholder or individual, but all of the profit of which is in good faith devoted to the said religious, charitable, or educational purpose.

Provided further, That the provisions of this section shall not apply to incorporations or associations of fraternal orders or organizations designed and operated exclusively for mutual benefit or for the mutual assistance of its members.

Provided further, That the provisions of this section shall not apply to any insurance or other corporation or association organized and operated exclusively for the mutual benefit of its members, in which there are no joint-stock shares entitled to dividends or individual profit to the holders thereof.

Provided further, That the provisions of this section shall not apply to any corporation or association designed and operated solely for mercantile business the gross sales of which do not exceed $250,000 per annum.

Mr. BACON. I want to make, with the permission of the Senate, the explanation that I have broken the amendment up into several different provisos, so that they may be, if so desired, separately voted upon; otherwise, if any of them should be adopted, the amendment would have to be recast so as to make it simply one proviso. The purpose of making several provisos was, what I have indicated, that the Senate might pass upon them separately.

Mr. CUMMINS. Mr. President, I have already sufficiently taxed the patience of the Senate, I am sure; whether it be directly or indirectly, it is not for me to say, but I can not allow this debate to come to a conclusion without saying a word with respect to certain views advanced by the Senator from New York [Mr. ROOT]. It is to be very much regretted, I think, that those views were not brought before the Senate when this amendment was originally launched, for if they had been I believe that the debate that has ensued would have been very materially limited.

I care nothing about that charming chapter or recitation respecting the genesis of this measure. I am a great deal more concerned in its exodus than I am in its genesis. I have not accused anyone nor shall I accuse anyone of inconsistency with respect to its origin or to its progress. I have little concern anyway about consistency. As I remember, Mr. Emerson once said that consistency is the hobgoblin of small men and mean minds; and I never pause to inquire whether the advocate of a particular measure has been consistent or inconsistent, for I am always ready to assume that the position taken at the time is taken at the suggestion of conscience and of judgment. However, I do desire to review very briefly some of the arguments which have been submitted. I say now if I am unmolested I shall not occupy the time of the Senate more than thirty minutes. Mark you, I do not forbid interruptions, for I shall receive them as they come; but if I am unmolested I shall endeavor to conclude within the limit I have suggested.

The Senator from New York, in that delightful way of his—and it is always a charm to listen to his words and to witness the operation of his mind—expressed several objections to the general income-tax amendment for which I stand. I do not intend to take them all up, but I do intend to refer briefly to three of them.

The first—and it seems to me the one which is nearest his heart—related to the impropriety of passing a law that challenged the decision of the Supreme Court; and he painted a picture, from which we instinctively shrank as we looked upon it, which in glowing colors seemed to portend a great campaign if the general income-tax law should find favor in Congress; that it would be followed by a fierce, hot campaign among the politicians or statesmen of the country in every State, and that their thunders and their clamors would knock at the door of the Supreme Court for the purpose of overcoming the integrity and stability of the members of that exalted tribunal; that the newspapers would pour out their criticisms upon the law or their plaudits upon the law; that those criticisms and those plaudits would find their way into the chambers of the Supreme Court and there assault the citadel of judicial virtue, and that we would have the spectacle of this tribunal deciding a great question of constitutional law under the influences thus aroused.

I compliment the Senator from New York upon the effective way in which he painted this picture, but I am sure it is but the product of his fancy. If we were to pass this law, the United States would go quietly on; there would be no campaign; there would be no issue in political parties respecting it; there would be no storm, but there would be calm everywhere; and in the end, when the case reached the Supreme Court, it would be presented in the dignified manner common to the practice before that tribunal; and the judges, whose tenure of office is secure, who are beyond the influence of the political world, would decide the case according to the justice and the reason of the law. There would not be, as I view it, a single wave of unrest passing over the sea of our life or of our business. Our confidence in this great tribunal would remain unimpaired, because that confidence exists, notwithstanding our knowledge that it may at times mistake the law, that it may at times employ false reasoning, and that it may at times reach unsound conclusions. I beg that you will put away the suggestion that there is any impropriety in asking this tribunal again to examine, again to determine, one of the most vital powers conferred upon Congress by the Constitution of our fathers.

The Senator's next objection to the general income-tax amendment was that it had a tendency to array the East against the West, especially that part of the income-tax provision which exempted incomes not in excess of $5,000. Again, I believe he did scant justice to the intelligence and the patriotism of the American people. I believe that we are strong enough to rise above these accidents in the distribution of wealth. It happens that a great proportion of the accumulated wealth of the United States lies within a narrow compass of our country geographically; it happens that these vast and swollen fortunes, in which many thinking men and many profound statesmen find a menace to our institutions, lie in the eastern portion of our territory. It is naturally so, because in the East is found the cradle of our business, and the progress and the development of the West are but the children of the activity and enterprise of the East. There is no prejudice in the portion of the country from which I come either against wealth, or against wealth because it finds its home chiefly along the eastern border of our land. If, however, we are to tax wealth—if that be our purpose—we must tax it where we find it. It can not be removed from the East to the West; and if we are always to allow wealth to escape, if we are to allow it to shift, if you please, the burden that it ought to bear in the affairs of government, because to tax it is to impose burdens greater in the East than in the West, then we will never tax wealth in proportion to its distribution.

The amendment for which the Senator from New York stands at this moment will do measurably what he claims the general income-tax amendment would do. It will rest more heavily upon the East than the West; and so far and to the extent that we tax wealth it must always so rest until we transfer—as I hope we will some day—the scepter of financial power to the Mississippi River Valley, and then I pledge you that its inhabitants will not ask that wealth be exempted from taxation

or from its burdens because it has found its home upon the prairies of the western country.

The Senator's next objection was that the general income-tax amendment made no discrimination between earned and unearned incomes. I grant you that is a just criticism. The Senator from New York may recall my own view upon that subject expressed to him personally. I believe that there should be a discrimination between earned and unearned incomes. I believe also that there should be graduated taxes on incomes; but I found when I came to ascertain the sentiment of Senators that these propositions seemed somewhat socialistic to them, and therefore, desiring to create no further or greater objection than was necessary and to secure an announcement of the general principle, these modern, these intelligent conceptions of taxation were omitted from the measure as I introduced it; but I will join the Senator from New York at any time in putting into the law these clearly just provisions, these discriminations between the income which is the result of the work of the mind or the result of the immediate work of the hand from the income that arises from long-invested capital.

But I dissent from the Senator from New York wholly in his proposition that the plan of the committee accomplishes this difference or this distinction between earned and unearned incomes. You will remember that it was his proposition that a tax upon the net incomes of corporations imposed a tax upon unearned incomes rather than upon earned incomes, and exempted that active, restless capital which constitutes the real progress of our industrial and commercial world. I dissent from that proposition. On the contrary, I believe that the tax levied upon the net incomes of corporations taxes the very capital and the very incomes that the Senator from New York was so desirous should escape the heavy hand of the Government. I do not say that there is not some unearned income taxed when you lay this burden upon the corporate income, for there is some of this sort of invested capital taxed; but not so greatly as the live, moving capital of the country, which constitutes the real power and the real arm of commerce. Let us see.

Any corporation that divides its investment into capital derived from bonds and from capital stock is a good illustration of the point I am endeavoring to make. The men who invest their money in bonds are the conservative men, the men who do not want to share the vicissitudes and the dangers of business, the men who are not willing to incur the risk and hazards of an enterprise carried on for profit; and they, therefore, take the bonds of corporations. The income arising from those bonds is the very sort of income which the Senator from New York declared, and declared very wisely and very truly, should bear a tax and a heavy tax, or at least a heavier tax than the incomes that arise from the sagacity and the business shrewdness of the men who are engaged in the particular enterprise.

Let me now transfer my thought for a moment to the money that is invested in the capital stock. In our country, filled as it is with little corporations, the men who invest their money in the capital stock are the young, aggressive, energetic men. They are the men who are doing the business of the country, and they are investing in the capital stock of corporations not an accumulation of fortune, but their earnings, their salaries from month to month and from year to year. Therefore it is not true, as the Senator said, that this tax with respect to such corporations divided itself along the equitable and the modern and the intelligent lines which he so distinctly and clearly pointed out.

But, not only so, there is another kind of capital that is taxed here, which I am sure the Senator from New York will see in a moment ought not to be taxed under any such provision. I mean the capital of insurance companies. An insurance company—I refer now to the mutual insurance companies, and nearly all insurance companies are mutual insurance companies—has no money except that which is paid into it by its policy holders—not one penny. The tax that is sought to be placed upon that capital by this amendment is a tax upon the premiums paid by policy holders, in order to do what? Either to gather a fund which may support them in their old age or to protect their families against want after the provider is gone. Every dollar that this amendment extracts, or will extract, from men who pay premiums for life insurance, for accident insurance, for fire insurance, is just so much more laid upon these people, who, of all others, ought to be tenderly dealt with in devising systems of taxation. Therefore I am not ready to admit that the amendment offered by the Senator from Texas and myself is subject to the criticism suggested by the Senator from New York; and certainly I am not willing to admit that the amendment for which he stands sponsor remedies the defect so pointed out.

I pass to my objections to the amendment, and I want to record them just as emphatically as I can. I know that we are making an issue in this measure. I know it is an issue which will be fought out among the people of the United States. It will never be settled until it is settled right, because we are about to ignore the vital principles of organized society.

I am opposed to the measure reported by the committee because it discriminates unfairly and unjustly between the people of the United States and because it lays its burdens, not upon those who are able to bear them, but upon all who happen to be shareholders in corporations, without regard to their ability to pay or the extent of the property which they may have accumulated. I am opposed to it because it serves the purposes of the mighty corporations of the land. I have not heard that any of them have lifted up their voices in opposition to this measure, and they ought not to. Why? Because it is to take the place of one which would not only tax the net incomes of the corporations themselves, but would follow into the hands of the rich and the great the fortunes which they have accumulated either through individual or corporate enterprise.

I do not wonder that a man like Morgan is in favor of this measure, for although his corporations will bear some part of this taxation, his own vast fortune will be untouched. I do not wonder that a man like Harriman should favor this measure rather than the general income tax; because the part of his great fortune, which has been segregated from the corporations in which he is interested, lies beyond the operation of this law. I do not wonder that all these conspicuous examples of riches and of financial power should favor this measure; because while it taxes some part of their investment in a corporate way, it leaves untouched the very part that the American people are most interested in reaching and subjecting to the power of taxation. And the reason these great corporations are not protesting against this measure is that they are all dominated and controlled by the men who, by virtue of this substitution, will escape the taxation that we seek to impose upon them by virtue of the general income-tax law. It is a perfectly natural support; it is a perfectly natural approval. I am not criticising the motives of anyone; I am simply analyzing a situation which must be as obvious to the casual observer as it is to the deepest thinker.

I am opposed to this measure because it does not provide the publicity which is recited here by some Senators as its greatest merit. The Senator from New York [Mr. ROOT] frankly claimed that the general income-tax law which we have proposed is faulty because it allows the officers of the law to investigate the affairs of corporations, and does not require them to secure the explicit direction of the heads of the departments in Washington before they attempt to ascertain what the incomes of these corporations are. I am in favor of publicity.

The measure we have proposed does not go far enough in exposing to the public gaze the affairs of corporations, but the committee amendment stops far short of ours. It will do no good to secure information and hide it under the seal of some officer in the Department of the Treasury, or the Department of Commerce and Labor, or the Department of the Interior. The Government, if it desires to institute a suit for the violation of one of its laws, has no trouble in discovering the evidence. It never has had trouble. It never will find difficulty. It is not in putting the Government in possession of this knowledge that we find the greatest value of the instrument of publicity. Publicity means general knowledge. Publicity means the condemnation of public opinion visited upon a wrongdoer. That is the value of making public the operations of the affairs of corporations—so that the men who control those corporations will be restrained, because they do not want to fall under the condemnation of their fellow-men.

There is no force in organized society so strong as the desire to stand well with our fellow-men. There are a great many people who are willing to violate the law if they can violate it without the knowledge of those whose confidence and whose respect they hold dear. Therefore the publicity that any such law ought to create, if it be a feature of the law at all, is a publicity that will reach the minds and the knowledge of all the people of the country. But this measure does not provide that publicity.

I am opposed to the substitute because it creates a rank, gross, indefensible discrimination between corporations themselves. It exempts from its operation the mutual savings banks of New England, but embraces the mutual insurance companies of the West, of which there are a very great number. I do not say it was by design; I only know it is true. In New England

a dozen men, or fewer, will associate themselves together for the organization of a mutual savings bank, and invite the people in all the country around to deposit their money in the bank. I suppose the officers receive pay, but otherwise they receive no profit from their connection with the institution.

Mr. BULKELEY. Mr. President——

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from Connecticut?

Mr. CUMMINS. I do.

Mr. BULKELEY. I merely wish to state to the Senator that in New England it is not possible to organize a savings bank in the way he suggests, except by a special charter. There is no general law providing for the organization of savings banks.

Mr. CUMMINS. I do not regard that as a material point. I only know that they can come together and in some fashion or other organize a savings bank. It matters not to me whether it is under a general law or whether it is under a special act of the general assembly. The officers get no profit out of the enterprise, though I suppose some of them are paid reasonable salaries. These banks are organized to give the people an opportunity to deposit their money in a secure place, so that it can be put out at interest, and so that the profits which arise upon their deposits can be distributed among them. That is the purpose of the savings bank of New England.

What is the purpose of a mutual insurance company? Exactly the same. It is organized so that a number of people, who can not afford to carry the risks of life or the hazards of the business in which they may be engaged, can deposit their money in a secure place, so that it may be invested safely and profitably, and then, when the event transpires, it can be distributed to those who are entitled to it.

I should like to know why it is thought proper in this measure to tax the payments on the part of members, or policy holders, of mutual insurance companies and not tax the deposits of the mutual savings banks? Mark you, I am not contending for the taxation of the mutual savings banks. I can hardly imagine a government so hard hearted and so insensible to the natural relation of men and business as to impose an income tax or a business tax upon the mutual savings bank. But my wonder is that the same sentiment which exempted them did not carry itself into the exemption of all other kinds of companies or properties which bear practically the same relation to the world as do the mutual savings banks.

Mr. GALLINGER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from New Hampshire?

Mr. CUMMINS. I do.

Mr. GALLINGER. I will ask the Senator precisely what class of companies he has reference to. I think we have mutual insurance companies in the East as well as in the West. They are not peculiar to the West.

Mr. CUMMINS. Oh, no. I mentioned them only because we have so many more of them in the West than are found in the East.

Mr. GALLINGER. I suppose the Senator means companies organized by the Grange, we will say, as an illustration?

Mr. CUMMINS. No. In the city in which I live there are probably 20 mutual insurance companies.

Mr. GALLINGER. Are they life or fire insurance companies?

Mr. CUMMINS. Some of them are life insurance companies, some of them are fire insurance companies, and some of them are accident insurance companies. There is no profit whatsoever derived from any of them. The officers receive fair salaries, and every penny of the money that is collected from the members of these mutual insurance companies is paid back in some form or other to their members.

Mr. GALLINGER. Manifestly, then, that is an institution that prevails to a much greater extent in the West than in the East; and I shall certainly be very glad to join with the Senator from Iowa in having those companies exempted from the operations of the proposed law.

Mr. CUMMINS. I am simply pointing out something of what I conceive to be the inequalities and injustices of the law. I do not regard that inequality and that injustice any greater or any more worthy of criticism than the general discrimination between capital invested in shares and capital invested otherwise. May I continue that thought for just a moment? In our State there is hardly a county in which the farmers do not organize what are known as "county mutuals," largely for protection against fire. Under our law they are all organized for profit. They are all mutual companies, and they organize in order to emancipate themselves from what they believe to be the domination or the extortion of the old-line fire insurance companies.

Mr. GALLINGER. They make assessments, I presume.

Mr. CUMMINS. Every dollar that is paid into one of these companies will be taxed under this amendment. In the same way, our farmers found that the great creamery companies of the land were extorting from them unfair profits and paying them unfair prices for their products. So they organized mutual creamery companies; and all over our State such companies are to be found. Again, we discovered that the elevator companies, in combination with the railways, had monopolized the business of buying grain, and that our farmers were at the mercy of the companies which actually transported their product to the market. Therefore they organized mutual elevator companies; and all over our State are found such companies. Yet the money distributed from time to time, and all the money that is paid into such companies, barring the small expense of conducting the companies themselves, will be taxed under this law.

I can not think that these things were in the contemplation of the lawyers and the statesmen who drew this measure; but they are inherent in it. When you begin to discriminate, there is no good place to stop; so the rule was made general. And I repeat what I said yesterday or day before, that the general clause bringing insurance companies into the "income-tax law," as I call it, is unwise; for I know that there is no part of the capital employed in the business of the United States that is so heavily taxed as the money paid by the policy holders of insurance companies. And therefore these insurance companies were excluded by the terms of the amendment proposed by the Senator from Texas and myself.

It is all wrong. Without regard to the constitutionality of the law, it is not founded in justice, and it can not receive the approval of the American people.

I have no sympathy with the suggestions made by the Senator from Arkansas. I hope they were not the sentiments that animated the men who drew this amendment. I hope that they were not engaged in simply a blind effort to punish corporations. There are some corporations that ought to be punished; but the great mass of the corporations of the United States are as innocent, and are as just, and are as upright as the individuals who carry on business in the United States. They exist only through severe and continued struggle in the great battle where competition is the dominant weapon. It is not right to put upon all these corporations, with their great variety of shareholders—poor shareholders and rich shareholders, shareholders who can pay and shareholders who can not pay—this burden which is proposed, especially when it is now acknowledged upon the floor of the Senate that when you are taxing business you can tax individual business just as constitutionally as you can tax corporate business.

I hope that a better spirit will prevail in the Senate. I appeal from Philip drunk to Philip sober. I hope there will be a careful review of the principles upon which this measure is founded before it is approved by the Senate.

I understand that by those who originally proposed the measure—and I accept the genesis and development recited by the Senator from New York—nothing but the public good was desired. Far be it from me to suggest that there was an ulterior purpose or motive in the original conception of this measure. I know that it was in the mind of the President to find some way in which a tax could be laid that would be in harmony with the decisions of the Supreme Court. But there is a chapter of that development which must be forever closed, and which would add something to the genesis of this measure—a chapter that would at least explain some of the earnestness and some of the persistency with which I and some of my colleagues have pursued the measure.

I want Senators to understand what they are about to do, because the people of the country will understand that it is the shareholders, little and big, who will pay this sum. They will not know anything about excise taxes. They will never stop to inquire whether this is a direct or an indirect tax. They have no time and possibly no learning that will enable them to inquire into the nice discriminations that have been so prominently placed before the Senate this morning. They will know just one thing, and that is that whereas their rich neighbors who are not engaged in corporate enterprises pay no tax, they, because they have endeavored to forward the progress and speed the development of their country, and have taken shares of stock in corporations of an almost infinite number of kinds, have been selected, as it would seem, by the folly of their Government, to bear a burden which they ought not to bear, except in company with others who are similarly situated.

But, Mr. President, I have reserved my most emphatic objection for the last. I object to and protest against this measure because it not only recognizes if it does not legalize—and I will not say that it does—the right of holding companies to

ness of corporations from the business of individuals and copartnerships. When you have answered me that question you will have drifted again back, arguing in a circle, as these arguments have been, mostly, to the proposition that you are taxing the business of a corporation because it is a corporation and because it is not an individual or a copartnership.

Senators, I do not believe that such a law will stand. I do not mean that it will not stand the investigation of the courts. I mean that it will not stand the criticism of the people, who are above all courts and all legislatures and all other authorities of the land.

In order to clearly make the point that I suggested when I interrupted the Senator from Maryland, I wish to recur for a moment to the case of California *v.* the Pacific Railroad Company. I have already stated the law under which this case arose. I merely want to read one paragraph of it from the opinion of the court with regard to the power of a State over a franchise granted by the United States. On page 41 I find the following:

> In view of this description of the nature of a franchise, how can it be possible that a franchise granted by Congress can be subject to taxation by a State without the consent of Congress? Taxation is a burden, and may be laid so heavily as to destroy the thing taxed or render it valueless. As Chief Justice Marshall said in McCulloch *v.* Maryland, "the power to tax involves the power to destroy." Recollecting the fundamental principle that the Constitution, laws, and treaties of the United States are the supreme law of the land, it seems to us almost absurd to contend that a power given to a person or corporation by the United States may be subjected to taxation by a State. The power conferred emanates from, and is a portion of, the power of the government that confers it. To tax it is not only derogatory to the dignity, but subversive of the powers of the government and repugnant to its paramount sovereignty.

That statement of constitutional principle is supported by a long list of authorities with which Senators, I have no doubt, are familiar. It is admitted that the Federal Government has no greater power over a franchise granted by a state government than a state government has over a franchise granted by the Federal Government, and therefore the principle laid down in this decision is as pertinent and controlling in the matter under discussion as it was in the case thus decided.

It may be that there is some virtue in the distinction pointed out by the Senator from Texas [Mr. BAILEY] and the Senator from Maryland [Mr. RAYNER]. I need not pursue that, because the law that you now propose to enact rests with equal weight upon the railway companies, upon gas companies, upon electric light companies, upon street railway companies, and upon all the other public or semipublic instrumentalities of the land. Therefore if that decision be sound and if this measure does levy tribute upon the franchise of such a corporation created by the State, it will go down before the constitutional criticism that will be leveled against it.

I hope, Mr. President, for the honor of our party, the good name of a Congress which should desire always to do equity between all the people, that this substitute will not be adopted.

Mr. HEYBURN. Mr. President, I desire but a moment the attention of the Senate. When the parliamentary situation affords the opportunity, it is my purpose to move to strike out all after the word "tax" on line 10 of the first page down to and including the word "to" on the first line of the second page and to insert the word "of" preceding the numeral "2" on line 1 of the second page. I make this statement now because the parliamentary situation that will confront us after the adoption of the substitute for the amendment of the Senator from Texas sometimes moves rather rapidly. I intend to vote for this substitute to the amendment of the Senator from Texas because of the parliamentary situation that confronts us. I then expect to vote against the adoption of this amendment and for the adoption of the joint resolution to amend the Constitution so as to confer power upon Congress to levy an income tax.

Mr. HUGHES. Mr. President, I apprehend that few measures have been presented to this body which have had presented in their support such conflicting reasons for that support. We have been told by one whose permission therefor was essential to its introduction that he favored this amendment because it would secure the defeat of an income-tax amendment. We have been told by a distinguished Member of this body on this side this morning that he believed this amendment to be dishonest and unjust, and yet that he should vote for it; of course, not because it was dishonest and unjust, but notwithstanding it possessed those objectionable qualities. The distinguished junior Senator from New York [Mr. ROOT] has given us a most interesting historical sketch of the genesis of this most important measure, demonstrating that he is for it, and intimating that the President is for it, because it is an income tax.

For my part, I must now oppose it, because it has the attributes ascribed to it by the Senator from Maryland [Mr. RAYNER], and for other reasons I believe that it is unjust. I hesitate to apply to it the harsher language of being dishonest, which was so emphatically attached to it by the Senator from Maryland. I believe it is unjust, because it does not contain the essential element of every fair and just tax—equality in the burdens it imposes. It is not only unequal, but it is avowedly, intentionally, and grossly unequal in matters of wide extent and vast concern. I look upon it as being further objectionable because it contains in its provisions an irritant intended to excite the indignation of the people against it to the end that it may be speedily repealed after it shall have served its avowed purpose of preventing other and beneficent legislation.

I can not, therefore, under these circumstances bring myself to advocate or favor a measure brought into this body for the purpose of defeating beneficent legislation. I am averse to accepting that which is in its nature maleficent because I can not secure something which is beneficent. It is remarkable, Mr. President, that in the genesis of this amendment which has just been given us, a history half revealing and half concealing the things which we would like to know, it is disclosed that it grew out of the desire and announcement of the President of the United States that an income tax should be laid by act of this Congress.

We have had quoted here as supporting or sustaining that suggestion words of the President, which I called to the attention of this body some days ago, in which the President, in his speech accepting the high honor of the nomination of his party for the Presidency, declared that in order that a valid income-tax law might be enacted a constitutional amendment was unnecessary, and in which he further declared that an income-tax law could and should be devised that would not be obnoxious to the constitutional requirement as to direct taxes.

But the result here presented has been the most marvelous transformation imaginable, because it would seem that the President directed his learned Attorney-General to draw an income tax, and he has written for us not an income tax as distinct from an excise tax, if such a distinction could be maintained, but an excise tax, or at least a measure providing for a tax thus labeled. It further seems that it is hoped and claimed that by thus labeling the amendment, by the mere act of imposing upon it as its name "special excise tax," there is escaped what would otherwise have been a fatal collision with the Constitution as it is now construed by the Supreme Court.

Mr. RAYNER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Colorado yield to the Senator from Maryland?

Mr. HUGHES. Certainly.

Mr. RAYNER. I understand the Senator referred to the remark I made about the measure being dishonest. I was speaking of political dishonesty on account of the statement made by the Senator from Rhode Island, that it was brought forward just for the purpose of defeating the income tax. I had no idea in my mind of any personal dishonesty, I will say to the Senator.

Mr. HUGHES. I thoroughly understood that such was the meaning of the Senator from Maryland, that he had reference to the inherent character of the amendment and the avowed purpose with which it found its way into this body.

But, Mr. President, this amendment, it is claimed, provides for an excise tax, while it is asserted it is not an income tax—if those who contend that an income tax is not an excise tax could be accurate in such a distinction—which to me is inconceivable. It is whatever it is, and, if there is a difference, the one or the other, not because it is labeled the one or the other, but because in its nature, in its substance, it is the one or the other. I have no sympathy with that acuteness and astuteness which plays fast and loose with the language of legislation with the hope that by using one phrase you may accomplish a purpose constitutionally, while by omitting a line or a phrase, the substance and real effect being identical, you come into inevitable and unescapable collision with the Constitution itself.

I repeat, if this law be that which the President directed to be drafted, an income tax, and it is laid upon—includes—all incomes of every character, and from every source it is directly and unmistakably in conflict with the decision in the Pollock case, and there is no refinement of language, there is no subtlety of thought, there is no ingenuity of expression that can dull the edge of that clear, well-marked identification.

We are told that it is an excise tax laid upon something not clearly defined or stated, and yet when we make inquiry here in an honest desire to know the nature of this legislation and clarifying amendments removing vagueness are suggested we are warned that we must not lay the finger of irreverent change upon the draft made in camera by a law officer of this Government. Thus this legislative body is stripped of the

an income-tax law; but if that decision is to stand in its full force, I believe this amendment is just as obnoxious to the opinion the court pronounced against the income tax of 1894 as that law was. I do not believe that in the point of attack there is any difference in them. We are playing with words when we say we are going to tax you, but we are going to make it an excise tax; we are going to take every kind of income you have, whether derived from your business or not, whether it be a donation or from any other source, which comes into your coffers, and which is not expended for certain purposes—we are going to tax all your income—and then say this is a special excise and not a direct, not an income, tax.

Mr. RAYNER. Did not the Supreme Court play with words in the Spreckels case? As I recollect, one of the principal sources of income there was from a wharf. The income was not from ships of the sugar-refining company, but from the rental value of the dock where they received vessels. I think that case is subject to criticism decidedly, but the question was whether the rental value of the wharf was taxable, and in that decision the Supreme Court held that it was taxable. Is not that right?

Mr. HUGHES. I do not exactly so understand. The Supreme Court said in effect, in reaching its result, that the rentals were so mixed up with the business that they were all part of the profits of the refining business, and in some way could be taxed without the levy being a direct tax and without being directly involved in the Pollock case. That, in a general way, without reviewing the reasoning and distinction indulged in, was the net result.

Mr. RAYNER. The Senator is mistaken about that. If he will look at the case, he will find that the court distinctly stated that the rents received and the income derived from the use of the wharves were to be deemed receipts from the business of refining sugar, and, as part of the assets of the company, became taxable. I think the decision is open to criticism. I have sent for the decision.

Mr. HUGHES. I do not wish to get into the habit of criticising the Supreme Court. I suggest that that is hardly good form.

Mr. RAYNER. I think they are decidedly subject to criticism.

Mr. HUGHES. I believe, upon that point, Mr. President, that fair, honest, and well-intentioned criticism of the decisions of that great body, just as the same form of criticism of the work of this body and of any other body of public men, is proper and helpful and ought not to be frowned down or sought to be suppressed. I wish also, in considering these decisions, to get at the real matter decided, and from that ascertain what was really passed upon by the court, and will not judge it by some chance expression or from some word uttered by the way which was not so fully considered as the ultimate result and the intended conclusion with which the court was dealing, and which alone is its decision and binding upon it. Chief Justice Marshall said in a noted case that the court would not be bound, and was not bound, by every expression it used in argument or by every statement of law it made, but only by its direct decision upon some question immediately before it for determination. He advised in that opinion that the bar, the country, and the courts before whom its decisions might be read should not be bound, for the court itself was not, and others ought not to be bound, by language thus used.

But, Mr. President, this draws me off from the matter which I was endeavoring to bring to the attention of the Senate, and that is that in substance, in essence, there is no difference between a law which says that all corporations—I leave out persons, now—shall be subject to an income tax of 2 per cent upon all their incomes derived from all sources, less certain deductions, after having reached $5,000, and another law that says all corporations shall be subject to a special excise tax in respect to the business of being a corporation, to be assessed upon all their income from all sources, less the very same identical deductions up to the same sum. It is the substance of this thing that we go to. In the Pollock case, and again in the Knowlton case, the Supreme Court said, when an argument was made that in certain features the law of 1894 levied an excise tax in character, that they were not to be controlled by names, but would ascertain the substance of the law, and that this substance should determine whether it is in accordance with one contention or the other.

Therefore, when the Senator inquires whether, in my opinion, this law is constitutional, I am confronted with something of a dilemma. Still cherishing the belief, still entertaining the opinion that the income tax of 1894 was constitutional, that we are not forever foreclosed from inquiry into that question before the Supreme Court of the United States, I am compelled to answer that the proposed corporation tax is constitutional; but if, on the other hand, you inquire whether I believe it is free from the objections which led the Supreme Court to hold the income-tax law of 1894 unconstitutional, then I must reply I can not so agree. It is therefore my opinion that unless the Supreme Court shall take the position of holding an income-tax law constitutional—abandons the direct-tax feature of its decision—it can not sustain this amendment; and should we adopt it, we have only abandoned a plain, direct way, to which the adjectives used by the Senator from Maryland are not applicable, for a devious course, which, if it finally reaches the same goal, can be, by its indirection, of no service in securing the result desired.

Mr. RAYNER. Mr. President, will the Senator permit me further? He is very kind in allowing me to interrupt him.

Mr. HUGHES. I have no objection.

Mr. RAYNER. Has the Senator noticed particularly this language in the Spreckels case? I suppose he has. The Spreckels case was decided by Mr. Justice Harlan, who delivered one of the dissenting opinions in the income-tax case, and this reaffirms that portion of the income-tax case. This is what Mr. Justice Harlan, delivering the opinion in the Spreckels case, says of the income-tax case, in which, as I have said, he was one of the dissenting judges:

> For, in the opinion on the rehearing of the income-tax cases, the Chief Justice said:
> "We have considered the act only in respect of the tax on income derived from real estate and from invested personal property, and have not commented on so much of it as bears on gains or profits from business, privileges, or employments, in view of the instances in which taxation on business, privileges, or employments has assumed the guise of an excise tax and been sustained as such."

Mr. HUGHES. I noted that language. It struck me like one of the ancient riddles which led men to go traveling to the temples in the desert, in order to have some goddess or guardian of the fires there reveal the meaning of it.

Mr. RAYNER. But it is a riddle that has been proposed by the justice who delivered one of the dissenting opinions in the Income Tax case, and who was the strongest man on the bench in favor of the constitutionality of that tax.

Mr. HUGHES. Then I submit he should have gone one sentence further, and should have answered the riddle he propounded and which no one else can authoritatively answer.

But I find nothing disturbing in the citation of that expression. It has been one of the admired attributes of the great men who sit upon that bench to gracefully bow to the decisions of the court, even when they are not in accord with their own judgments. They have again and again enforced, even to an extent to which perhaps others might have hesitated to go, the decisions against which they have fought, because they yield their individual opinions, without changing them, to the law as expressed by the court, and then administer that law, but not necessarily accepting it as correct or changing the views which they hold with reference to it. But this statute is not the statute considered in the Spreckels case, and does not contain the element which was construed into a saving difference between it and the act of 1894.

I do not understand that there is anything in the expression quoted by the Senator from Maryland that would make that excise which was before direct or make that direct which was before excise in its nature or that prevents the income tax here presented by the Bailey-Cummins amendment from being an excise tax. In fact, that decision has been most powerfully and persuasively employed in the discussion here to demonstrate that already, and in it the Supreme Court has in effect reversed its position in the Pollock case.

We know something of the history of income taxes generally, and there is nothing in them which would put the proposed tax here revealed outside the pale of income taxes or make it valid when others were invalid or indirect if they are direct. I come back to my proposition, and I ask anyone who considers it, anyone who investigates it, anyone who is seeking only to go to the marrow of this legislation and to know what in fact it is, to point out a single element that is not income, and only income, in its nature, any feature that will eliminate the character of a direct tax, of being a tax upon real estate and invested personal property.

I can take the Bailey-Cummins bill and write into it the words that "this is a special excise tax levied with respect to the business of the corporations, firms, and individuals who are hereby made subject to its terms and provisions," and leave every other word in it exactly what it is to-day, with as much propriety as the similar words are written into this amendment; but would I thereby convert an avowed income tax, if it were not already so, into an indirect or an excise tax?

there is a deep-seated and in many respects well-founded prejudice against corporations, until that word has come to be one with which to conjure up ill will and a desire to do such creatures of the law an injury, regardless of those who control them, regardless of their manner of conducting their business, and regardless of the business in which they are engaged. It would seem that it may have been subtly conceived that if this should be called a "corporation tax," that fact, that name, added to the fact that it was called a "special excise tax," would make it constitutional, acceptable, and palatable, and perhaps secure for it favorable consideration. But I believe that, with one exception, no one here has avowed his purpose of voting for it because it is a corporation tax. We have had no expressed purpose of ignoring the injustice which it would perpetrate, thus avowing a purpose of doing an injustice open eyed and apparently for that purpose.

We can not legislate in that way. I know the feeling to which I have referred. I know its extent, and I think I am dealing only fairly with the people when I say it has its limitation. I know full well that those who have used this form of organization until they have gathered together in vast and almost countless millions profits coming through privilege and favored legislation have withdrawn them in such manner from such corporations that they will utterly and entirely escape this tax.

Mr. President, the "Laird of Skibo" will continue forever in his Marathon race with his millions, haunted by the fear that he may die a rich man, without relief by taxation, if this is the only kind of taxation indulged in by the Federal Government. You are not reaching, nor intending to reach, nor has there been a suggestion made here that by this legislation you will reach those whom, we were told, it was the especial desire of our former President to reach; those whom, we were told by President Taft in at least two speeches, it was his desire to have taxed, and those who the Members of this body, of all parties, have so often united in proclaiming should be subjected to their fair share of the burdens of taxation. They have escaped hitherto, and they escape now. And yet the Senator from Maryland avowed, in answer to the Senator from Iowa, that it was in the power of this Government to lay an occupation tax upon all persons and firms and corporations in this country, and thereby to include in the tax which would be collected under such law and under the Bailey-Cummins amendment the income which is the proceeds of the untaxed accumulated wealth, not the precarious incomes which we were yesterday told ought to be exempt, but the piled-up and secured and safe and untaxed accumulations in this country which are not invested in corporation stocks, unless in exempted holding companies. These fortunes, these incomes, still escape; they go yet untaxed.

Mr. President, in connection with the justification of this proposed law and the fact that it was intended by its propounder to be one thing and turned out to be another, we were told that a direct tax would be levied by the amendment contained in the proposal which the pending amendment was intended to supplant, and therefore it would necessarily be obnoxious to the Constitution as construed in the Pollock case. In order to sustain that proposition, there was quoted a definition given by some writers on political economy as to what is a direct tax. It is sufficient to reply that the Supreme Court of the United States has said, in several opinions, that this definition is not applicable; that it was not the one in the minds of the framers of the Constitution, and does not control. We need not therefore be apprehensive because of this objection.

These are the legal features of this question. There are included in the taxes to be levied by this proposed law provisions which are in themselves unjust, while the entire amendment also is inherently unjust. They discriminate between those engaged in the same occupation without any reason whatever for that discrimination. It was said—and I referred to this a moment ago—that certain privileges were held by those who engaged in doing business through corporations; and that is, to some extent—now much limited—true. In the State of Colorado three or more persons may incorporate to do any lawful business.

There is no other limitation whatever upon the right to incorporate. By the laws of the State of Colorado also several men may enter into a limited partnership, and those who contribute the chief capital of the limited partnership may restrict their liability so that they will be under no individual obligation whatever. They would escape this taxation, while they are freed from the very same individual liabilities that the shareholders in corporations escape. In addition, in the banks of Colorado, which will be taxable under this law, the shareholders do not have that exemption from personal liability to the extent stated. In addition, corporations there are not perpetual. Their life is generally twenty years, and only twenty years, while as to some few companies fifty years. When they are incorporated they pay for the privilege of incorporation, of being a corporation, for the privilege of doing business as a corporation, a high tax or fee based upon the amount of their capitalization. They pay a flat tax, they pay an annual tax, known sometimes as a "corporation tax." These taxes bring into the state treasury thousands of dollars each year. The corporations pay the State for this state-granted privilege. They pay the State, and they pay a full price for it. But those who do business in the other way do not pay these revenues to the State, nor will they pay under this amendment. Some of them escape, while the stockholders of numbers of corporations taxed under this law incur individual liability. They do the same kind of business, and they are favored in a country where taxes are supposed to be equally and equitably apportioned. That is a feature of undisputed injustice.

There is nothing, therefore, in the suggestion of the propriety of the United States taxing the privilege of being a state corporation. The very thing which avowedly can justify an income tax might be a reason why the corporations should be taxed, but it does not change the constitutional nature of the law which lays its burden upon income under the guise and, as I have said, under the pretense of its being an excise and, in some way, an indirect tax. So that feature of the amendment does not relieve the situation.

I shall not, Mr. President, undertake to discuss now all the many objections inherent in the very nature of this amendment. One of them has been called to my attention by a telegram that I have received, while sitting here to-day, from the city of Grand Junction, in the State of Colorado, where they have what they call a "Home Builders' Association." They are building up homes there, where but a few brief years ago there was an absolute and unmistakable desert which they have reclaimed and made fruitful. They say this tax will put them to a disadvantage as it is framed; that it will lay an unjust burden upon those who are building these homes. No one disputes the force of this claim. Attention was called yesterday to the fact that, while the President recommended that this class of companies or organizations, or the business or occupation, or the income from it, should be exempted from this tax, they were included. That fact was given as a reason why we might doubt to some extent the paternity ascribed to the measure.

Again, it is the custom in the East, and in the West, as I know, sometimes, when the burdens of insurance become intolerable because of the high rates exacted, to form mutual insurance companies. The farmers do it, the fruit raisers do it, the cattle owners do it, the manufacturers do it. They carry thus their own insurance. They incorporate a company for that purpose, and they pay into that company in the beginning of the year what would be equal to the premiums they would be required to pay to a regular insurance company, and at the end of the year they pay the losses and then pay back in the form of dividends to the stockholders of the company the remainder of their original contribution.

Under this amendment you will absolutely lay a tax and collect it upon the money which has been put into this business for the purpose of paying insurance, and has not been used up in that way, and which has already paid its tax.

My attention has been called to the fact that in New England—and, I may say to the Senator from Rhode Island, in his own State—there are corporations by means of which the manufacturing companies pay into a company for insurance $5,000, $10,000, or whatever it may be, which is equivalent to the premiums they would pay for insurance, and at the end of the year the remainder is paid back in dividends. A tax will be levied upon it under this proposed law. My attention was called to the fact that in one year the loss had been in one company $5,000, and that this tax would amount to $2,000.

The measure is full, when studied, of injustices of that character. If it was to be considered here, as all laws should be here considered, it should have been laid before this body at a time when it would have been open to scrutiny, to investigation and amendment, and ought not to have been brought in during the heat of the expiration of the session and then hurried through under whip and spur, and under the command of august power, lest there might be discussion, and that discussion might disclose its weakness, and result in its defeat. These objections are all in addition to the avowed purpose for which this amendment was brought here. I surmised a little while ago such purpose was its object, and with a frankness most commendable, and it would be a happy thing if it was universal, we have been told what the object is, and that object ought to and must condemn it. If no other objection were made to this proposed law than the fact that those who framed it and are urging it were

doing so for the purpose of defeating better legislation, then, so far as I am concerned, in that motive alone I should find an overmastering reason for opposing it and of letting the responsibility for its defeat, for the failure to secure just and popularly demanded tax legislation, rest with those who undertake by contrivances and devices of this character to defeat legislation which might otherwise be and should be successful. Let them take the blame, if blame there may be for the result.

One objection to the Bailey-Cummins amendment offered here was referred to by the Senator from Iowa [Mr. CUMMINS], and that is that the income tax would lay a large burden upon certain enumerated States. My response to that also is that they have the wherewithal to pay that tax. The remainder of the country has paid its tribute for a century into these coffers, coerced, and induced to this contribution by the exactions of an unjust system of revenue, and now when this wealth has been piled up mountain high as a result of this discriminating and unjust revenue legislation, the very fact that it is large is used here as an argument why it should not pay its proportionate part of the taxation of the country. In that argument was revealed much of the real ground of objection to the other law which this is being used to defeat. For that reason again I would decline to give my aid, countenance, or support to a law created for a purpose of that kind. I do not believe that it was the executive purpose that it should be fashioned that way. I do not believe that it was the executive purpose that it should be used for the purpose of exempting certain property and wealth which we now know is by it exempted. It does so beyond controversy, and in that fact I find an answer to all that may be said as to the wishes and the desire of those who would legislate patriotically and equally.

But, Mr. President, another reason has been given for it. We are told it will tend toward centralization; that it will tend toward federal supervision of state corporations; that it will accomplish by indirection that which the Government of the United States has again and again refused to permit to be done by its express sanction, that which in the calm, patriotic judgment of many thoughtful statesmen and profound students of our Constitution it has not the lawful power to do, should not have the lawful power to do, and which if it possessed it would be unwise to use. In the very elements which are urged in its support I find grounds for opposition to it. If this Government has the power, and ought to exercise it, to supervise the affairs and control the business of the small corporations created by the States and thus wipe out and not merely blur state lines and powers, let it be done in that bold, unquestioned, and undoubted manner that becomes a great nation exercising a power which it believes it honestly possesses. Let it not begin by the indirection of an incident under profession of accomplishing another purpose.

But, Mr. President, that is not the only objection to that feature. It is said that it will secure a desired publicity. I say that it will secure the opportunity for a very undesirable publicity, for we are told that the limited inquiries which are made and the limited information which is disclosed shall be kept secret; that it shall be criminal to disclose it, save at the discretion of the President of the United States. It does not give the publicity of law, so far as it permits any whatever. It is the publicity of personal discretion, of personal like or dislike, for which it provides. We will not always have the one President, and I do not believe that man of woman born was ever yet wise enough or good enough to be intrusted with this discretionary power, fraught with the evil that might come out of its exercise. Think of the political power in a desperate campaign this might confer! Think of some disclosures the country has had of contributions where the power of coercion was less! It is only a few months ago that the leak of secrets of the Agricultural Department of the Government enabled the stock jobbers of New York to wreck fortunes and to build up fortunes, and we are not yet through with that inquiry. There should not be gathered in this way information which can not be lawfully made public to all who may legitimately inquire. When you suggest things that can not be disclosed without injury to those who give the information, you are making taxation an instrument of destruction, and are going beyond the legitimate function of enacting a tax law. When it is done for such purpose avowedly, it furnishes a strong reason why the law should not be adopted.

But, Mr. President, there is a further danger in lodging such power as is here proposed and here and in the manner fixed by this amendment. If it is to reveal the financial conditions of state banks and financial institutions and many other institutions that will come into the hands of those who may make merchandise of it to rivals in business, if it may be bruited about to create and bring on disaster, then it is storing up the dangerous means of injury. If it is to enlighten the discretion of the President, is it to be supposed that he is to make himself familiar with all these hundreds of thousands of returns? No; that is impossible. Thousands of eyes, thousands of hands must deal with this information, and somebody must bring out sometime to the President's attention the reasons which they urge as giving ground for making public this or that information or this or that return. I say, again, that such power ought to be lodged in no one man's hand. The knowledge gathered ought to be of a character that it may be revealed without being done at the mere caprice or in the discretionary exercise of power by one man. This element alone instead of securing the desired publicity may prevent it in the future as it has done in the past.

While the Attorney-General may see, in the misconduct of a great corporation, reasons for calling its conduct to the attention of a grand jury, we know that but a few months since another declined to do that very thing. So that action will depend upon the changing mental attitude of those who advise and inform the Chief Executive as to whether matters gathered up at this expense, enormous as it must be, shall be made public or kept secret for all time. Hence this doctrine of publicity, so much commented upon, is not an effective or valuable publicity, and is not put into such form of legislation as accomplishes the only desirable objects which are urged as proper and desirable to be embraced within it.

Again, it is said that trusts are good things. I have heard before somewhere that there are some good trusts. Now, having been told that trusts are good things, we are further told that the law will foster them. It would seem from this that "trust-busting" is shortly to become one of the lost arts, for this legislation, we are told by one who it is suggested whispered charmingly and convincingly into the Executive ear in its behalf has told us that it will favor not merely centralization and that publicity to which I have referred, but that it will also tend to aid the increasing growth of those great trusts, which are again said to be the natural evolution of our civilization and progress.

There is a gentleman who at Chicago made a speech like that, and was then called into high office in this Government and found a reason why he should and a way to explain and retract it. I had supposed that at least until the antitrust clouds had rolled by we would not again hear as a justification for legislation or decision the doctrine of the benevolent and inevitable growth of the trusts as a necessary factor of modern civilization.

Then if this act is to accomplish this result, I am against it for that reason also. I find not one in all the reasons here urged why I should vote for it. I know that he who has stood here most prominently as advocate of this amendment, who helped to rock its cradle, and who told so entertainingly the story of its paternity and its birth, has said that now he would not lessen the strength of the States to exercise all their functions, and that while he would administer in all their vigor the powers of the National Government, that he would not enlarge or increase them. I have further observed that he also said that in his judgment the Supreme Court had erred in the Pollock case and therein went against the weight of the argument.

In that announcement I found ground for rejoicing. He said he preferred the income tax to this amendment, which is what I do, but he also said the President would prefer this unsatisfactory measure to the Bailey-Cummins amendment. This I regretted for many obvious reasons to hear said. But I am glad now that in undertaking to prove constitutional this amendment, it is to be done by reading it, as we were told yesterday, should be done in the light of the lamps of the fathers who framed it and not in the light of that modern incandescent electrical constitutional construction which is to give to the Federal Government all the powers of the States if they are not exercised pretty promptly by the States. That doctrine lately prominent in political discussion seems now to have lost even the support of its authors, and to have passed away with the "big stick."

So we are not to have the constitutionality of this unconstitutional law removed by any new canons of constitutional construction, but we must go back to the old humdrum fashion of studying the letter, and of evoking the spirit of that Constitution and of gathering out of it the meaning of those who made it, uninfluenced by the suggestion that the dead hand of the Constitution should no longer paralyze the legislative progress of the Nation.

Mr. President, for the reasons I have stated and for a hundred others which utter their own voice against this measure, I am opposed to this measure as a substitute, or as a subterfuge, as has been suggested. By "subterfuge" I believe it is meant—

and I am sorry the Senator from Maryland did not give us his etymological learning on this subject—something under which we could flee, under which we could hide, flee under, for escape. Therefore I am opposed to it. I do not know that this may have here now any effect, but I wish it understood that you may call it a "corporation tax" or call it an "excise tax" or call it anything you please, you can not thus, to my mind, take away its real nature or make that good which is otherwise bad, nor can you so interpret the Federal Constitution that an income tax is unconstitutional as direct when you frankly call it an "income tax," but becomes immediately constitutional and indirect when you write upon a yellow label across its face "special excise tax."

Mr. NEWLANDS. Mr. President, following the line of argument which the Senator from Colorado [Mr. HUGHES] has so ably pursued, I wish to speak briefly regarding the practical form that this measure should take, in case it is enacted into law.

I will say by way of preliminary that I hope it will not be adopted as a substitute for the Bailey-Cummins income-tax amendment, but if it is, I hope that it will be put in such shape as to entitle it to the support of the Senators on this side of the Chamber as a legitimate, just, and constitutional tax upon the wealth of the country.

The Senator from Colorado has well said that the plank between the tax under consideration in the Spreckels case and the Constitution was a very thin one, and that it should not be made thinner. What was that tax? It was not a tax upon corporations per se. Its author, Senator White, of California, expressly disclaimed that in the Senate, and he disclaimed it in such a way as to indicate his view, that he doubted the constitutionality of an occupation tax which was applied only to corporations and not to natural persons. That tax was not a franchise tax; it was a tax simply upon occupation—upon the occupation of all persons, firms, and corporations engaged in the business of refining oil or sugar.

So here we have the basis of a law which can be enlarged to sufficient proportions to give us all the revenue that we require without incurring any risk as to its unconstitutionality, a measure resting firmly upon the decision of the court already announced in the Spreckels case. Under that tax, imposed only upon sugar refiners and oil refiners, and equivalent to one-fourth of 1 per cent upon their gross receipts over $250,000 per annum, an annual revenue of $1,000,000 was raised during the Spanish war. Had that tax been three-quarters of 1 per cent per annum upon gross receipts, the revenue raised from those two classes of refiners alone would have been $3,000,000 per annum. Such a tax, extended to all manufacturing and industrial occupations, whether conducted by persons, firms, or corporations, whose annual gross receipts exceed $250,000 per annum, would raise an enormous revenue and would hardly be felt by the vast wealth employed in them.

So Senator White, backed by the Democratic Members of this body, aided by only a few Republicans, placed upon the statute books this constitutional tax upon wealth, which has been sustained by the Supreme Court, and which has been made the basis of the President's recommendation. Why not follow closely its exact verbiage, whilst extending its application to other occupations?

Now, what form of aggregations of capital have come under the just criticism of the country? The great combinations of capital. Has there been any complaint of the small corporations, of the commercial corporations, of the business corporations, of the small manufacturing corporations? There is no complaint regarding them. The complaint is against the great combinations of capital in this country, and the abuses which exist to-day are the abuses which these great combinations of capital have originated and practiced.

Inasmuch as this measure has in view not only revenue, but publicity with a view to ending such abuses, why put the light of publicity upon these numberless small corporations of the country, overburdening the records, and so confusing the inquiry that we may not be able to discern the abuses of the great combinations themselves?

Our legislation, both with reference to revenue and publicity, should be concentrated upon those forms of wealth that have become most oppressive and upon those forms of wealth with reference to which the greatest abuses have existed; those forms of lawless wealth that have brought the law-abiding wealth of the country itself into discredit. There will be no difficulty in raising ample revenue from such sources. Read Moody's Manual and observe the number of corporations of tens of millions and hundreds of millions of dollars that have been organized within the past twenty years; observe their capitalization; observe their income; realize the extent of their operations; and then you can form some judgment as to the amount that can be raised by a reasonable tax upon the gross receipts of persons, firms, and corporations engaged in such varying businesses as Congress may choose to enumerate in this proposed act.

When this matter came up in the House of Representatives, and when it was proposed that the war-revenue taxes should be reduced, the Democratic party then took strong ground against the repeal of this tax on oil and sugar refiners. I myself introduced an amendment there diminishing the tax, but extending it to all manufactures. It obtained the unanimous vote of the Democrats of that body and only failed of passage by 25 or 30 votes. Our contention was that whilst the war-revenue act should be repealed in most of its features, we should retain in the act those forms of taxation upon wealth which would be serviceable hereafter in emergency as a basis of additional revenue for the country. Later on, in 1902, when the bill repealing the war taxes came up, the report of the Ways and Means Committee was against the repeal of this tax. We insisted that it could in time of emergency be so enlarged as to embrace almost all the oppressive forms of wealth and be a source of great revenue to the country. But we were prevented by a special rule from getting a vote on this question.

Mr. President, all these gigantic corporations, being engaged in interstate commerce, legitimately come within the regulating and controlling power of Congress so far as their interstate operations are concerned, and whilst the Senator from Colorado [Mr. HUGHES] may justly contend that it is not within the power of the National Government, and that the National Government should not exercise the power, to bring all these small corporations, organized by and operating within the States, under national supervision; and whilst he doubts the constitutional exercise of such a power, yet certainly he would not apply that view to these great trusts and combinations engaged in interstate commerce, with reference to which we have repeatedly asserted our power to act, and from which it is our duty to secure such data as will facilitate us in our legislation, not only regarding revenue, but regarding trust regulation—the regulation of interstate commerce and the making of tariff schedules. We can easily, by enumerating certain occupations, certain vocations, certain businesses, enlarge the limit of our investigation beyond that of oil and sugar refineries, and embrace all the occupations pursued by these great trusts and combinations in such a way as to bring to Washington all the data which will enable us to act in legislation regarding their regulation and control.

In addition to this, Mr. President, the Congress of the United States has assumed to become the protector of the manufacturing institutions of the country organized under state laws, and has imposed duties upon competing products from other countries which yield a revenue of over $300,000,000 annually to the Government, and which, at the same time, give these manufacturing interests of the country the power of advancing their prices to the purchasing consumers of the country an average of nearly 50 per cent, a total of about $3,000,000,000 annually.

The question comes up repeatedly in Congress, in imposing these duties upon foreign competing products, as to what is the differential between the cost of production here and the cost of production abroad. In connection with tariff legislation, data may be obtained which will enable us to ascertain the profits of these great manufacturing organizations; which will give us facts instead of conjectures, reality instead of imagination. We know that during this entire discussion of nearly four months we have been able to obtain the differential upon hardly a single product.

The machinery of revenue could be used in such a way as to give us the information that will be of value in tariff legislation.

It seems to me that, above all things, this legislation should be concentrated; that it should not embrace all the small, innocent, and innocuous corporations in the country; that it should be applied, as the petroleum and sugar refinery tax was applied, only to organizations having large gross receipts; in that case $250,000 per annum. In this way we shall limit the tax to a comparatively small area; we shall limit the inquiry and the examination to a comparatively small area, and at the same time we shall be enabled to ascertain the facts in connection with these great manufacturing interests and make them public in such a way that the publicity itself will be a corrective and the facts which we obtain will be of service to us in the legislation upon which we propose to act.

Mr. President, I shall not enter into the constitutional questions which the Senator from Colorado has pursued. Some days ago, at the very opening of this debate, I presented an historical statement regarding the tax upon oil and sugar

refiners, simply making a statement in connection with it that would tie that history together.

Without much inquiry into the law, I then stated that grave danger existed as to the constitutionality of the tax imposed by this amendment; that if it should be regarded as a tax upon occupations, then the question would be raised that it was not a uniform tax; that to tax an occupation in the hands of an artificial person and not to tax it in the hands of a natural person might be regarded as a denial of that uniformity called for by the Constitution; that if it should be regarded as a tax upon the privilege of being a corporation, the power to be and the power to do, the question might be raised as to our constitutional power to tax such a franchise, the creation of a sovereign State acting within its jurisdiction.

It is true that the Supreme Court has declared that that uniformity need be only a geographical uniformity; but the question of classification is always a question upon which hair-splitting decisions can be made.

So with reference to the tax viewed as a corporation tax, it has seemed to me that it is a tax upon the right to be and the right to do of a corporation; and whilst it is contended that such a tax has been upheld, notably in the Adams Express Company case, yet I am unable to see that that decision covers entirely this contention. It seems to me to involve a contradiction to declare that when the Nation, acting within the granted powers, grants a franchise to a corporation, no State can impose a tax upon such franchise, for the power to tax involves the power to destroy; and yet, at the same time, to declare that when the State grants a franchise to a corporation the Nation can, if it so chooses, tax it out of existence. These rights and powers, it seems to me, must be reciprocal. The Nation is supreme within the powers granted by the Constitution over every inch of American territory; the State is supreme within its reserved powers over every inch of territory within its boundaries. The one is just as sovereign as the other within its own acknowledged jurisdiction; and to say that the power and the privilege granted by some one sovereign, the Nation, can not be taxed by the State, and that the power and privilege granted by another sovereign, the State, can be taxed by the Nation, seems to me to involve a contradiction.

So I contend that we should not throw this important matter of revenue into the maelstrom of litigation; that this plank, upon which it is proposed that this particular measure shall rest, is too thin for further splitting. The President has declared that his recommendation is based upon the decision in the Spreckels Sugar Company case; and it is the part of wisdom to purpose closely the lines of the tax that was imposed in that case. If we do that, we shall avoid the inconvenience of taxing all the small corporations of the country, and we shall confine our taxation to these great combinations of capital whose profits have been enormous, whose ability to bear is greater than that of any other class of the community, and whose abuses have awakened the attention of the country and demand legislative cure. The substitution of the corporation tax for the income tax seems to be a foregone conclusion, so far as present action is concerned; but I shall hope that when the bill as amended is before the Senate such amendments will be made as will free the small corporations from its operation, will place the combined wealth of the big manufacturers and corporations under national burdens, will furnish the statistical information necessary to rectify trust and tariff abuses, and, above all, such amendments will make the tax imposed identical with that which has already so successfully stood the test of the courts.

The VICE-PRESIDENT. The question is on agreeing to the amendment of the Senator from Rhode Island [Mr. ALDRICH] to the amendment of the Senator from Massachusetts [Mr. LODGE].

Mr. ALDRICH. Mr. President, I am not sure whether or not there are other speeches that are to be made upon this proposition. I think there are some Senators, perhaps, who are not here who would like to make some short remarks upon either one amendment or the other; and, for the convenience of all Senators, I would suggest that we take a final vote upon the amendments, without further debate, at 1 o'clock to-morrow.

Mr. ELKINS. Why can we not vote now?

Mr. ALDRICH. I am not sure that all Senators who desire to speak have done so. I thought perhaps we might agree to vote to-morrow.

Mr. ELKINS. We came near having a vote yesterday.

Mr. ALDRICH. I am willing, of course, to vote now if there is to be no further discussion.

Mr. ELKINS. I have been waiting here all day to vote.

Mr. BAILEY. I am afraid the Senator from West Virginia would leave if we would let him vote. [Laughter.]

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

Mr. STONE. What is the request of the Senator?

Mr. ALDRICH. That a vote be taken on the proposition of the Senator from Texas [Mr. BAILEY], the pending amendment, the substitute, and any amendments which may be offered to them, without further discussion, to-morrow at 1 o'clock.

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

Mr. BACON. I should like to ask the Senator a question before the matter is determined.

Mr. ALDRICH. Several Senators ask me, "Why not vote now?" I am not sure whether the discussion has been exhausted.

Mr. BAILEY. I know two Senators are in conference now as to whether or not both will speak. One of them will certainly make a brief speech, and consequently we can not vote right now. I prefer that an hour be definitely fixed, so that every Senator can be advised of that hour and be certain to be here, without any inconvenience or any mishap.

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

Mr. BACON. I desire to ask the Senator from Rhode Island a question before the matter is concluded. There has been some difference of opinion in his absence as to the parliamentary situation in case his amendment should be adopted. There are, as the Senator knows, several amendments, either of which it will be difficult to perfect unless there is a liberal construction of the rule as heretofore executed by permitting amendments without regard to strict parliamentary law. For instance, the Senator's amendment is pending, and if it is in the second degree as an amendment—about which there is some little difference of opinion—and it should be adopted, would the Senator then recognize the right of Senators to offer further amendments to his proposition?

Mr. ALDRICH. Of course I am inclined to be liberal about the matter, but I prefer to have an understanding that any minor amendments to perfect the text should be considered before the time fixed for the final vote. There are some amendments, one offered by the Senator from Nebraska [Mr. BURKETT], and other amendments of that kind. I will say to Senators that my impression is that it would be better for the Senate to adopt the amendment as it stands. The committee will then consider its effect; and before the bill finally passes they will perhaps have some amendments to suggest with reference to fraternal and benevolent organizations. My own opinion is that benevolent organizations are all now exempted by the terms of the amendment as it stands. Of course none of us want to tax that class of corporations, and if the amendment should be adopted as it stands, the committee will give very careful consideration to all these propositions for exemption. I do not think it is possible for the Senate in the short time we have to consider them carefully at this moment; and I should be inclined myself, if we are going to have a vote now, to move to lay amendments of that character upon the table, with a view to trying at a later time to perfect some amendments which would carry out the plain intention of the proposed law.

Mr. CUMMINS. Mr. President, I should like to ask a question of the Senator from Rhode Island.

The VICE-PRESIDENT. Does the Senator from Rhode Island yield to the Senator from Iowa?

Mr. ALDRICH. Certainly.

Mr. CUMMINS. I understand the Senator's request would, if granted, preclude debate upon any amendment that may be offered?

Mr. ALDRICH. Yes; but we would have plenty of time between now and the time I have suggested for discussing any amendment, if Senators saw fit to do so.

Mr. CUMMINS. I am unwilling to consent to that request. I am perfectly willing to vote on the amendment as it is offered and as it appears now, or I am perfectly willing to fix a time when it may be voted upon; but I am unwilling to consent to an arrangement by which other amendments may be offered and voted upon without debate. I myself want to reserve the opportunity to be heard upon any amendment that may be offered to the proposition of the Senator from Rhode Island.

Mr. ALDRICH. The Senator from Iowa would have all of his rights in the Senate; that is, any rights which he wanted to reserve in that direction. It seems to me that the debate upon this proposition must terminate at some time; and of course if Senators are not willing to make an agreement, there is nothing left but to go on and dispose of the matter as rapidly as we may.

The VICE-PRESIDENT. In the absence of objection, permission is granted to print the matter referred to in the RECORD.

The matter referred to is as follows:

THE OHIO MUTUAL SAVINGS AND LOAN COMPANY,
Cleveland, Ohio, June 28, 1909.

Hon. CHARLES DICK,
United States Senate, Washington, D. C.

DEAR SIR: I desire to interest you on behalf of the building and loan companies, asking that they be exempted from paying the corporation tax as proposed in the tariff bill now under consideration.

Practically all of the loans of such are in comparatively small amounts and to people making monthly payments thereon. The borrower is usually a member holding stock of the company and depends upon the dividends to help pay the debt; thus, if dividends are decreased for any reason, that much longer time is required to pay the loan. For this reason most building and loan companies have a very large stock account and very small deposits, exactly reversing the usual bank conditions, and for this reason such a tax would cost such institutions an enormously larger proportion of tax than in most other forms of corporation.

For instance, this company, with $425,868 of capital, has only $113,032 of deposits, and total assets of $641,464, while most any bank with that amount of capital would have from five to twenty millions of deposits, and not pay any more tax than we.

Respectfully submitted for your consideration.

C. F. DIXON, *Secretary.*

WOOSTER, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.

DEAR SIR: In your consideration of the proposed corporation tax we wish to urge you favorably to consider the exemptions made in the President's recent message. This tax, if placed upon the local building and loan companies, would certainly work hardship to the many thousands of wage-earners who are its patrons.

Very truly, yours,
THE WOOSTER BUILDING AND LOAN ASSOCIATION CO.,
J. W. HOOKE, *Secretary.*

MARIETTA, OHIO, *June 29, 1909.*

Hon. CHARLES DICK,
Washington, D. C.

DEAR SIR: Representing 1,500 stockholders—for the most part small wage-earners that can ill afford such a penalty upon their thrift—we earnestly request your assistance in securing the exemption of building and loan associations from the operation of the proposed corporation tax.

Respectfully,
THE PIONEER CITY BUILDING AND LOAN COMPANY,
WM. H. H. JETT, *President.*
J. S. H. TORNER, *Vice-President.*
S. J. HATHAWAY, *Second Vice-President.*
FRED W. TORNER, *Secretary.*
J. C. BRENAN, *Attorney.*
J. M. WILLIAMS.
D. G. BORGL.
C. L. BAILEY.

EAST LIVERPOOL, OHIO, *June 16, 1909.*

Hon. CHARLES DICK,
Washington, D. C.

MY DEAR SENATOR: Does the proposed law taxing the net income of corporations include in its provisions the taxing of mutual savings banks or building and loan associations? If so, do you not think they should be exempted from its provisions, and will you not take steps toward that end?

The building and loans of the State have over 400,000 members, with assets of over $140,000,000, and should not be taxed for being thrifty and economical.

Awaiting an early reply, I am,
Yours, most respectfully,

JNO. J. PURINTON,
President of Ohio Building Association League.

AKRON, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
Washington, D. C.

DEAR SIR: We wired you this morning as follows: "Kindly use efforts to have building and loan associations exempted from corporation tax."

Will you please use your best efforts to have building and loan associations exempted, from the fact that these institutions are mutual ones and are operated exclusively for the benefit of the members, and the profits are distributed, and we sincerely hope that the recommendations will be followed and that the associations may be exempted.

Thanking you for any efforts put forth in our behalf, we are,
Yours, respectfully,

THE HOME SAVINGS COMPANY,
W. C. HALL, *President.*

THE BRUNER-GOODHUE-COOKE COMPANY,
Akron, Ohio, June 28, 1909.

Hon. CHARLES DICK,
United States Senate, Washington, D. C.

MY DEAR SENATOR: There is a bill now before the Senate which, among other things, proposes to levy a 2 per cent tax on the net income of building and loan associations throughout the country.

This, as you well know, will be an imposition of a burden which no building and loan association can stand. They are to a certain degree philanthropical institutions, and by imposing a tax on their business it would be the grossest hardship to millions of their patrons. You are well enough versed in the matter and the cheapness with which these concerns are run to know that this tax could not be paid by the associations, and would eventually put them all out of business.

Trusting you will give it your attention, and with kindest regards, I am,

Very sincerely, yours, N. P. GOODHUE.

WAVERLY, OHIO, *June 29, 1909.*

Hon. CHARLES DICK,
Washington, D. C.

DEAR SENATOR: I noticed in last Sunday's paper that the bill introduced in the Senate proposes to tax all corporations 2 per cent on their net earnings, which will include building and loan companies. The State of Ohio has probably the largest number of building and loan companies of any State in the Union, and has more money invested in such companies. Three-fourths of this money was placed in such companies by the frugal laboring man and woman. A 2 per cent tax on the net earnings of such companies will put them out of business or bring about an increased rate of interest to borrowing members. The law now in this State requires at least 5 per cent of the net earnings of such companies to be set apart as a "contingent fund" for contingent losses. I am the attorney for a local company at this place, and our company has only been able to pay a semiannual dividend of 2½ per cent. Not many other companies pay any better. They can not unless they exact an unreasonable rate of interest. You can see what a tax of 2 per cent on the net earnings would do to such companies. I could see no serious objection to the bill recommended by the President, for he proposed that building and loan be exempt. Companies earning less than $5,000 ought to be exempt. The measure anyway, like an income tax, is odious to the average man and will prove to be very unpopular with the people, and such measures ought not to be resorted to in times of peace. I hope you can see your way clear to help defeat this bill so far as it will apply to building and loan companies.

Very respectfully, F. E. DOUGHERTY.

TROY, OHIO, *June 29, 1909.*

Hon. CHARLES DICK,
Washington, D. C.

DEAR SIR: At the regular meeting of the People's Building and Savings Association Company last evening I was directed by the unanimous vote of the directors to write you to use your influence and vote to secure for building associations the exemptions in the proposed corporation tax suggested by President Taft.

Our own deposits represent almost entirely the savings of the wage-earners of this city, and speaking for the directors, who, with one exception, are Republicans, and for myself, a member of the same party and an officeholder by virtue of my membership in it, I do not believe that the Republican party can afford to place a tax upon the thrift of this class of people, while ignoring the opportunities presented by the income tax to lay the burden upon those best able to bear it, and who for the most part escape their just proportion of the Nation's taxes.

Whether it is just or not, there is a feeling that our party has not kept faith in revising the tariff upward, and to impose a direct tax, like that proposed by the corporation tax, would appear to the people only as another evidence of our party's and our representatives' indifference to that great majority—the common people.

I am writing this because I believe that not only natural justice, but party expediency, demands that for the balance of the session of Congress the Republican party should father only such legislation as will remove the feeling that I speak of and make the wage-earner feel that his voice has penetrated Washington and that the party will protect his modest savings from the excise man.

Very truly, yours,

J. C. FULLERTON, Jr.

HAMILTON COUNTY LEAGUE OF BUILDING ASSOCIATIONS,
Cincinnati, April 1, 1909.

Hon. CHARLES DICK,
United States Senate, Washington, D. C.

DEAR SIR: The board of trustees of the Hamilton County League of Building and Loan Association have instructed me to inform you of their fears that the new tariff and taxation bill when completed will contain a clause levying a tax on dividends declared by corporations, Unless otherwise provided, a clause of that kind would tax the earnings of building and loan associations.

The statutes of Ohio, as do the statutes of nearly every other State, require that a building and loan association organize as a stock company, and as such the associations are required to distribute their earnings in the shape of dividends to the credit of the members. Section 25 of the Ohio law governing building and loan associations reads, in part, "and a further portion of such earnings, to be determined by the board of directors, shall be transferred as a dividend annually or semiannually in such proportion to the credit of all members."

We assume that it is not the intention of the Members of Congress to include in its legislation anything that would have a tendency to destroy the influences for thrift and economy exerted by building and loan associations.

We therefore respectfully request that in the framing of the tariff or taxation law you prevent the application of provisions inimical to building and loan associations.

According to the state report, just issued, the assets of the associations in Ohio aggregate the sum of $139,340,424.57, and the membership is 327,662.

Very respectfully, FRED. BADER, *President.*

COLUMBUS, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.

DEAR SIR: Representing the bankers of Ohio, we respectfully urge you to use your influence in exempting from corporation tax all banking institutions.

THE OHIO BANKERS' ASSOCIATION,
By W. F. HOFFMAN, *President.*
S. B. RANKIN, *Secretary.*

FREMONT, OHIO, *June 30, 1909.*

Hon. CHARLES DICK,
Washington, D. C.

MY DEAR SENATOR: I am writing you a few lines, as a friend of yours and a good Republican, to inform you what the people who are stockholders in various corporations in this city think of the 2 per cent tax proposition that Congress is trying to impose upon corporations. If the people all over the country feel as they do around here in regard to it, it will certainly defeat the Republican party in 1912.

You know the corporations have to pay their state corporation taxes, and our taxes at home now are over 4 per cent, which is all that the average person can afford to pay in taxes; and now if we have to pay an additional government tax of 2 per cent, all small corporations might as well go out of business.

If the Government would stop sending out such vast quantities of printed matter, that is scarcely ever read by the average person and only thrown into wastebaskets, it would go quite a ways toward meeting the required deficiency that the Government claim they need; also a great many other extravagant expenses could be curtailed.

I am a high-tariff man, and I firmly believe that the tariff should be kept high enough to meet all legitimate expenses of the Government.

I sincerely trust you and Senator BURTON will do all in your power to defeat the 2 per cent corporation tax.

Yours, very respectfully,

A. H. JACKSON MANUFACTURING COMPANY,
By A. H. JACKSON, *President.*

P. S.—If you are really convinced that a tax should be levied on corporations, it should be on all amounts in excess of all earnings of at least 10 per cent, which would cover dividends and wear and tear of machinery and buildings. After that amount is exempt it would not matter if the tax was even 3 or 4 per cent, as a corporation making more than that amount could well afford to pay it. I trust you will do all you can to get things fixed up properly.

CINCINNATI, OHIO, *July 1, 1909.*

Senator CHARLES DICK,
Washington, D. C.:

We protest against the passage of the proposed bill taxing the net income of corporations. As common stock can receive no dividends until bonds and preferred stocks are cared for, it in effect places the burden entirely upon the holders of common stock, who are usually those actively engaged in the building up of their industry and of such moderate means that it is necessary that they take the risks of the business for the chance of securing greater rate of income. It leaves untouched those securities which are most generally held by people of large fortunes. It is peculiarly unfortunate at this time that this burden should be thrown upon the common-stock holders owing to the growing disposition upon the part of corporations to interest their workmen more closely with them through ownership of common stock in the corporation, as common stock reflects the increased efficiency and not the preferred. That workingmen will avail themselves of such opportunity, I might mention this company has had such plan in effect for twelve years, and its employees other than its officers own in excess of $2,000,000 worth of its stock, every share of which is common. We ask that your efforts be exerted against its passage.

THE PROCTER & GAMBLE COMPANY,
WILLIAM COOPER PROCTER, *President.*

KENTON, OHIO, *July 1, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

We most earnestly protest against corporation-tax amendment as gross injustice to small stockholders. Hope you will vote and use your influence against it.

THE CHAMPION IRON COMPANY.
THE KENTON NATIONAL BANK.
THE KENTON GAS ENGINE COMPANY.
THE CEMENT BLOCK AND ROOFING COMPANY.
THE SCIOTO SIGN COMPANY.
THE ROSER RUNKLE COMPANY.
THE COMMERCIAL BANK.

BLANCHESTER, OHIO, *June 29, 1909.*

Hon. CHARLES DICK,
Washington, D. C.

DEAR SIR: We beg to express the hope that you will oppose vigorously the proposed corporation-tax amendment. It seems to us that this law would be a very unfair discrimination against the corporations that compete with individuals and firms or copartnerships doing a similar business.

Nearly all of our competitors are individuals or copartnerships, and we do not feel that we will be receiving a "square deal" if this act should become a law.

We have no objections to taxing the incomes of corporations, provided a similar tax is charged against the incomes of individuals and firms. We believe that corporations are entitled to and should receive a square deal.

We will be very much pleased to receive a favorable reply from you.

Yours, truly,

THE DEWEY BROS. CO.

COLUMBUS, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.

DEAR SIR: We hope you will oppose and use your influence against the proposed law taxing the net income of corporations. As you are aware, we pay the State 2 per cent on capital employed. In addition to this, our city taxes are 3.30, while the margin of profit in all wholesale lines is constantly growing narrower. This condition and the steady increase in salaries due to the higher cost of living would make this additional tax a greater burden than our business would justify.

Thanking you in advance for any effort you may make, we are,

Respectfully, yours,

THE SHELDON DRY GOODS CO.,
ROBT. E. SHELDON, *President.*

THE COLIN GARDNER PAPER COMPANY,
Middletown, Ohio, April 27, 1909.

Hon. CHARLES DICK,
United States Senate, Washington, D. C.

DEAR SIR: Noting what is being done regarding the tariff and the talk of adding to it tax on dividends of corporations and inheritances, I wish to say that, having talked with a great many of our business men regarding this proposed tax, I have yet to find one who thinks the emergencies demand a tax of this kind. This would be proper in a time of war, but under present conditions I feel sure it would be a deathblow to Republican success in the coming elections, and I feel sure it would result in the Democrats carrying our State. I therefore urge upon you the importance of eliminating such taxes as those above named from the Payne tariff bill.

Hoping your vote may be recorded against them, I beg to remain,

Yours, very truly,

C. GARDNER.

PIEDMONT, OHIO, *April 23, 1909.*

Hon. CHARLES DICK,
Washington, D. C.

MY DEAR SIR: I write to urge that you support the income-tax amendment to the tariff bill. I feel sure that in so doing you will register the will of a large majority of your constituency. This method of raising revenue will inflict no hardship, while a tariff on necessities imposes burdens upon those least able to bear them. You represent a large Commonwealth, in which the middle classes deserve the greatest consideration.

You need not be advised as regards the iniquities of the present tariff system. You well know the fallacy of the protective tariff scheme, though you are perhaps committed to the same. Why not break away from servility to the favored few and finish your senatorial career in defense of the many? You can yet make us all proud of you. No public man who dares stand up in defense of the common people has ever yet gone unrewarded.

Very sincerely, yours,

A. C. WALLACE,
An obscure farmer.

SPRINGFIELD, OHIO, *June 24, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

On behalf of the stockholders of the Springfield Railway Company, who would suffer by the levying of a tax on the net receipts and the discrimination thereby made, and as it is an attempt by indirection to impose an income tax, I desire to protest against the passage of the pending amendment and trust that it will not prevail.

OSCAR T. MARTIN.

DAYTON, OHIO, *June 24, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

The stockholders of the People's Railway Company, Dayton, Ohio, protest against the tax upon corporations as unjust and discriminating.

THE PEOPLE'S RAILWAY COMPANY,
By J. A. MCMAHON, *President.*

CLEVELAND, OHIO, *June 24, 1909.*

Hon. CHARLES DICK,
Senate:

We apprehend that a complete and impartial consideration of the numerous ways that life insurance companies are now taxed will disclose that any additional taxation in that direction would be entirely unjust, and we earnestly hope that you will favor the exemption of life insurance companies from the proposed corporation-tax bill.

WM. H. HUNT,
Acting President the Cleveland Life Company.
W. S. SHELTON,
Secretary.

CINCINNATI, OHIO, *June 23, 1909.*

Hon. CHARLES DICK,
Senate, Washington, D. C.:

We earnestly hope you may see your way clear to assist in securing exemption of life insurance companies from proposed tax on net incomes of corporations. Life companies now bear a heavy burden of taxation in all States and Territories, out of proportion to that paid by other corporations. All these taxes fall on the policy holder or on the beneficiary of insurance, a class of citizens, as a rule, least able to bear such exactions. Letter follows.

JESSE R. CLARK,
President, the Union Central Life Insurance Company.

CINCINNATI, OHIO, *June 24, 1909.*

Hon. CHARLES DICK,
Senate:

Respectfully urge exemption of life insurance companies from 2 per cent corporation tax. Large portion of such tax would unavoidably fall upon policy holders.

THE COLUMBIA LIFE INSURANCE COMPANY,
W. C. CURLKINS, *Vice-President.*

THE CLEVELAND LIFE INSURANCE COMPANY,
Cleveland, Ohio, June 25, 1909.

Hon. CHARLES DICK,
United States Senate, Washington, D. C.

MY DEAR SENATOR: This is merely to confirm telegram sent you today from this office.

We apprehend that a complete and impartial consideration of the numerous ways that life insurance companies are now taxed will disclose that any additional taxation in that direction would be entirely unjust, and we earnestly hope that you will favor the exemption of life insurance companies from the proposed corporation-tax bill.

Expressing kind personal regards, I beg to remain,

Very truly, yours,

WM. H. HUNT,
Acting President.

DAYTON, OHIO, *June 25, 1909.*

Hon. CHARLES DICK,
Washington, D. C.:

We respectfully but earnestly protest against the proposed tax on corporations.

C. W. RAYMOND COMPANY.

CANTON, OHIO, *June 24, 1909.*

Hon. CHARLES DICK,
Washington, D. C.

DEAR SIR: Regarding the contemplated bill to tax corporations on their earnings, beg to advise you of a few reasons why we consider it impracticable and unbusinesslike.

If we are rightly advised, should this bill become a law, it will tax, at the rate of 2 per cent, the earnings of all corporations, but not necessarily partnerships. This will necessarily mean that each corporation must furnish to the proper authorities and make public the result of each year's business. In event a corporation shows, by its balance sheet at the end of the year, that it has lost money, or made little or nothing, and this information is given to the world at large we, as a firm selling to that house, would probably refuse to do business longer with them, except on a C. O. D. basis. Our action would be similar to the action of probably all other firms, and the banks with whom this firm might be doing business would, in all probability, restrict or decrease the line of credit. The resultant effect would be their failure, precipitated solely by the information given as to their financial condition. On the other hand, if this information was not given in a case of this kind, and it was generally known that the firm was not losing money, they would probably pass through the crisis. Now, take the other case: Suppose a firm is capitalized at $1,000,000 and is doing a very lucrative business—let us say they are making $500,000 on their million—this information must be given to the world. What is the result? It immediately invites competition in that particular line. If a man is looking for an investment in business and is undecided where or how to invest his money, and learns that some particular firm is making 50 per cent per annum on a certain investment, the natural conclusion would be that the investor will endeavor to engage in that line of business rather than one that is less lucrative.

Again: The dishonesty of purpose and dishonesty of fact in the average corporation is so much a part of their business that correct returns need not be looked for any more than one puts in an absolutely correct valuation of real estate, personal property, etc., to the tax office. You know, we know, and everybody knows, that proper returns are not made for taxation; and this invites that same thing. Let us suppose, for instance, that this $1,000,000 firm, that makes one-half million a year, does not care to pay $10,000 to the Government annually, or 2 per cent on the half-million earnings. What do they do? Pay out to the president $100,000; to the vice-president, $50,000; to the secretary, $25,000, and so on down the line. These presidents, vice-presidents, secretaries, etc., can become imbued with a philanthropic spirit the next day or two after the returns are made to the proper authorities, and being in a charitable mood they can return, make a present or donation to the firm of $100,000, $50,000, or $25,000. Who can prohibit a man from giving a donation to a charitable institution? And what law will ever be enforced to prohibit a man making a donation to a firm he is interested in? No one on God's earth.

Therefore, for these reasons alone, we believe the bill will be a failure in its operation, if made into a law.

As one of your constituents we would like to have your views on the subject, and if the deductions we have made here are erroneous or incorrect in one or more particulars, we would like to be enlightened and set right.

Yours, truly,

TIMKEN ROLLER BEARING CO.,
W. R. TIMKEN, *Secretary and Treasurer.*

EXECUTIVE DEPARTMENT,
THE UNION CENTRAL LIFE INSURANCE COMPANY,
Cincinnati, June 24, 1909.

Hon. CHARLES DICK,
United States Senate Chamber, Washington, D. C.

DEAR SIR: As president of The Union Central Life Insurance Company, of Cincinnati, I took the liberty of sending you yesterday a telegram as follows:

"We earnestly hope you may see your way clear to assist in securing exemption of life insurance companies from proposed tax on net income of corporations. Life companies now bear a heavy burden of taxation in all States and Territories out of proportion to that paid by other corporations. All these taxes fall on the policy holder or on the beneficiary of insurance, a class of citizens, as a rule, least able to bear such exactions. Letter follows."

Because of the great importance of the subject I have thought it proper to supplement this message with a letter stating briefly some reasons for urging that life insurance companies be exempted from the proposed tax. Without attempting any extended details of arguments supporting the claim that life insurance funds should receive such exemption, I shall refer only to the two propositions suggested in my dispatch, viz:

First. Life insurance companies are already subjected to heavy taxation in all the States and Territories in excess of the proportion paid by other corporations.

Second. Taxes imposed on life insurance companies are a burden, not on the corporations or the stockholders, if any, but on the policy holders—the widows and orphans—the "wards of the law," who have the greatest need for its protection.

Life insurance companies are now paying in taxes on their premium receipts and other assets more than $10,000,000 a year in the various States and Territories, in addition to taxes on real estate and other tangible property, and in addition to fees and miscellaneous charges aggregating over $2,000,000. The Union Central Life Insurance Company has paid during the past year in local taxes and taxes in the various States and Territories in which it is engaged in business the sum of $966,537.26.

These vast sums, in excess of all needs for expenses of state supervision, are taken by the States as revenue for general purposes. If this money were not thus demanded of life insurance companies, it would be used, under the law and policy contracts, to reduce the cost of insurance to policy holders.

In August, 1908, the National Convention of Insurance Commissioners, in session at Detroit, Mich., in an effort to combat this growing evil, adopted a report and recommendation on the "Injustice and inequality of life insurance taxation." In this report the commissioners clearly pointed out that life insurance taxes are a burden on the policy holders and not on the company, and made this statement among others:

"Life insurance taxes either increase the cost of insurance or diminish the amount of it. In the one case they fall on the policy holders, in the other on the beneficiaries of the insurance. The State should not permit the misappropriation of these funds by insurance management; it should not itself divert them from their intended use."

It seems to me this statement of the commissioners applies equally well to the General Government. I sincerely hope you will be able to take that view, and contribute your valuable assistance to the interest and protection of the citizens who invest their money in life insurance policies.

Yours, respectfully, J. R. CLARK, *President.*

COLUMBUS, OHIO, *June 24, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

The executive committee of the Ohio State Life Insurance Company respectfully requests that such companies be not included in the proposed law to tax corporations.

LEWIS C. LAYLIN, *President.*
JOHN M. SARVER, *Secretary.*

DAYTON, OHIO, *June 24, 1909.*

Hon. CHARLES DICK,
Washington, D. C.:

As large manufacturers, we enter vigorous protest against corporation tax.

BUCKEYE IRON AND BRASS COMPANY.

DAYTON, OHIO, *June 24–25, 1909.*

Hon. CHARLES DICK,
Washington, D. C.:

Representing nearly 400 stockholders of the City Railway Company, of Dayton, we protest against the passage of the corporation-tax amendment as an injurious and discriminating measure. We trust that you will vote against passage of same.

THE CITY RAILWAY COMPANY,
E. D. GRIMES, *President.*

DAYTON, OHIO, *June 24–25, 1909.*

Hon. CHARLES DICK,
Washington, D. C.:

We protest against the passage of corporation-tax amendment as an injustice to stockholders in corporations.

THE TOWER VARNISH AND DRYER CO.

DAYTON, OHIO, *June 26, 1909.*

Hon. CHARLES DICK,
Washington, D. C.:

The proposed corporation tax is unjust discrimination. We very respectfully protest.

CRAWFORD MCGREGOER & CO.

DAYTON, OHIO, *June 26, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

We respectfully but vigorously protest against proposed tax on corporations.

HOME TELEPHONE COMPANY,
J. E. FEIGHT, *Vice-President.*

DAYTON, OHIO, *June 26, 1909.*

Hon. CHARLES DICK:

Please file our earnest protest against proposed tax on corporations.

SEYBOLD MACHINE CO.

DAYTON, OHIO, *June 26, 1909.*

Hon. CHARLES DICK,
Senate:

Proposed tax on corporations is a double tax and unjust. We earnestly protest against it.

JOYCE, CRIDLE & CO.

DAYTON, OHIO, *June 26, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington:

We respectfully protest against corporation tax, as we consider it unfair.

BROWNELL CO.

DAYTON, OHIO, *June 25, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

We earnestly protest against taxing the incomes of corporations having unlisted securities.

THE LOWE BROTHERS' COMPANY.

DAYTON, OHIO, *June 25, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

We respectfully but earnestly protest against proposed tax on corporations. It is decidedly unjust.

STOMPS BURKHARDT COMPANY.

DAYTON, OHIO, *June 25, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

We feel corporation tax is an unjust discrimination against corporate interests of the country. We prefer a stamp tax as being more equitable and believe it easier to collect.

BEAVER SOAP COMPANY.

THE DILLER MANUFACTURING COMPANY,
Bluffton, Ohio, June 23, 1909.

Senator DICK,
Washington, D. C.

DEAR SENATOR: The writer incloses a copy of his letter to President Taft, and requests that you use your influence to secure the defeat, or at least the modification, of the proposed measure.

Respectfully, yours, PETER DILLER.

JUNE 23, 1909.

To His Excellency WILLIAM H. TAFT,
President of the United States, Washington, D. C.

ESTEEMED SIR: The writer wishes to voice an earnest protest against your recommendation to tax the net profits of corporations, and begs to point out a few phases of the proposed legislation which, in his opinion, merit your further consideration.

Permit me to state at the outset that such legislation would prove fatal to many small industrial corporations. It would affect a property right, by compelling these corporations to reveal their private business to unincorporated competitors.

Another aspect of the proposed measure, and one which has apparently escaped the attention of the press, is the fact that it would wipe out the close corporation. This is quite right with certain classes of corporations, but not with all. The close industrial corporation is a time-honored institution, and should not be thus ruthlessly dealt with. The stockholders whom I represent in this company would surrender their charter rather than conform to such an invasion of their private rights.

You advance as an argument in favor of the proposed measure the limited liability of stockholders. How about the limited company which is not incorporated?

You also state that it would tax success. Beg to state that the appropriateness of this comment hinges on your definition of the word. Many eminently successful men have nearly all their assets in bonds or real estate. I am therefore obliged to assume that you mean by success the effort and enterprise which rightly lead to the accumulation of property. I am unwilling to believe that you have fully considered this phase of the subject and that you would wittingly substitute enterprise for property as the basis of taxation.

I beg to suggest that a wisely enacted national incorporation act would avoid the objections to the proposed legislation and at the same time yield vast revenue to the Federal Government. Moreover, the honest company would prefer to have a national charter and be freed from unnecessary state restrictions. What has become of our much-vaunted free trade among the States when an Ohio corporation must pay a special tax in several States in order to transact business there?

I think it can be affirmed, without fear of successful contradiction, that small corporations are already paying much more than their proportionate share of taxation. If the present policy of saddling taxation on the corporations is to be continued, the day is not far distant when the small corporation will be taxed out of existence.

There is still another phase of the proposed measure, but the writer holds you in too high esteem to assume that this measure is to be made a subterfuge for tariff reform. This would indeed be "welding a pewter handle to the wooden spoon."

Respectfully, yours,

DAYTON, OHIO, *June 26, 1909.*

Hon. CHARLES DICK,
Washington, D. C.:

We respectfully but earnestly protest against proposed tax on corporations.

JOHN ROUSER COMPANY.

DAYTON, OHIO, *June 25, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

We respectfully but earnestly protest against the proposed tax on corporations.

THE C. W. RAYMOND CO.

DAYTON, OHIO, *June 26, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

We respectfully but earnestly protest against proposed tax on corporations.

SPEEDWELL MOTOR CAR CO.

AKRON, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
Senate Chamber, Washington, D. C.

MY DEAR SENATOR: Judging from the debates in your honorable body in the very recent past, one is almost forced to the conclusion that newspapers and newspaper publishers constitute a class of "undesirable citizens" who, instead of having the right of protest, ought to keep quiet and be glad they are alive. But notwithstanding the unfavorable opinion which your body entertains of that class to which I belong, I am nevertheless going herewith to make my second protest concerning legislation now before your body. And that protest is against the passage of the corporation-tax bill.

In the first place, the day you pass that measure that day you will confess that the principle of protection, that our revenues should be raised by a tariff, is a snare and a delusion; that it is a failure, and that the Republican party admits that it is such. If this attitude is correct, then I would ask how do you expect the Republican papers of this country to meet the issue? So much for the party doctrine.

Now to the merits of the measure. Perhaps I do not understand anything about taxation. Just assume that I do not. Then pardon these questions: Why should the deficit in government expenditures be placed upon one particular class of our people? Why should a corporation doing a business at a profit of $10,000 a year be compelled to pay a federal tax of $200, while a partnership doing the same business, at the same or a greater profit, contributes nothing. The Federal Government extends no protection to the corporation that I am aware of that it does not also extend to the individual. If there are any peculiar benefits arising from the corporate existence, they are derived from the State and not from the General Government. And the State of Ohio has already imposed upon us one corporation tax. I do not want to argue this matter. I just want you to know how I, as the chief owner of one corporation, feel about it. Nor is it on behalf of this company alone that I protest. As an individual I own stock in a dozen other corporations, all of which under this most unjust measure will be affected.

I have not taken a census to find how others regard the measure, but I have yet to encounter the first man who has made a success of his own business who is in favor of it. It will please the socialists. I have heard of no one else who has so far manifested any ecstatic delight over it. We are going to have the devil's own time of it to keep Ohio Republican next year. Pass this bill and, unless I miss my guess, it will be impossible to prevent a Democratic legislature.

Yours, very truly,

THE BEACON JOURNAL COMPANY,
C. L. KNIGHT, *Manager.*

DAYTON, OHIO, *June 29, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

We believe that the tax on corporations, as proposed, would interfere with return of prosperity and be a serious handicap to future development. We respectfully enter protest.

DAYTON BREWERIES COMPANY.

COLUMBUS, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.

DEAR SIR: We write you with reference to the proposition now under consideration looking toward the taxation of net profits of corporations. We do not know whether the idea has taken the form of a bill, but, basing our judgment upon what we gather from newspapers, have no hesitancy in characterizing the move as thoroughly unfair and unjust.

Ours is an incorporated company under Ohio laws. We pay here our city and county taxes. We pay a franchise tax of one-tenth of 1 per cent upon our capital. In return we get from the city and county protection and advantages. The State grants us in return privileges as a corporation not conferred on individuals. It limits the liability of our stockholders, etc. From all three we get certain direct, well-defined benefits in return for the payment of our money. The General Government does not propose to give us nor do anything for us in return for the money we are supposed to pay it.

Another thing is this: There are wholesale houses in the same business we are, both in and out of this State, conducting their business as individuals or partnerships, which come into our territory and city, selling goods to the same people we do. These jobbers will not pay this special tax. To be sure, they pay none of the state franchise tax now; but adding the new tax to that already imposed by the State will enable individuals or partnerships to either undersell us or cut severely into our fair and legitimate profit, or else lose our customers. While we instance our own case, the same thing will apply to all others. This is an unfair advantage in favor of the nonpaying party. The Government virtually reduces the profit coming to us to the advantage of an individual or partnership competitor, and gives nothing in return. This is not only confiscation, but the Government is in addition aiding the party who pays nothing, to the detriment of the corporation whose property it has taken.

Another thing is, that the inquisitorial report a corporation is obliged to make leaves but little to be guessed at concerning its business. The very vitals are exposed. You know any careful business man jealously guards the secrets of his books and business. Yet here is a case where the whole of a company's business becomes a part of the public record. Secrecy upon the official who handles the report may be enjoined, but the idea of divulging that which is required of a corporation is so very repugnant to the average man that it alone should condemn the act. Not only this, but the information given would undoubtedly be, in a good many cases, to the injury of those reporting.

No doubt there are other serious objections to the measure. These suggested are bad enough, from a practical business point of view, to kill such an act.

We respectfully ask you to use your influence against this scheme and vote against this or any like measure.

Very respectfully, yours,

THE GREEN-JOYCE CO.,
By JOHN JOYCE, Jr., *President.*

DAYTON, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.

DEAR SIR: We have just telegraphed you as follows:

"We respectfully protest against the unjust discrimination and inequitable corporation tax proposed."

The collection of a tax on the net earnings of corporations, as proposed in the bill before the Senate, is to us most unjust, discriminating, and inequitable, and we earnestly and respectfully protest against its passage. Were all corporations of the same amount of capitalization, or had they all the same percentage of earnings, there would be less of the inequitable situation than there now exists in its present form. Take, for instance, the company the writer represents: We are one of five subsidiary companies, the stock held by holding company in New York, with a large issue of collateral bonds. As we understand the proposed action, each subsidiary company would pay a 2 per cent tax upon its net earnings, and, after deducting all operating expenses, would pay over to the holding company all of its net earnings, a large portion of which would be paid as interest by the holding company. You will thus see that in reality we would be paying tax upon that portion of our earnings representing interest on bonds.

Then, too, on general principles it seems to us eminently unfair that an individual engaged in business alongside of us, with the same capitalization and equally as large earnings, and as fully protected in his commercial rights as we are protected, would avoid any tax whatever; and on top of this we have registration and annual taxes on account of our incorporation to pay in every State of the Union where we maintain an office in addition to our regular state property tax that we, like all others, must pay, thus piling up against our corporations a vast amount of tax, the burden of which we should not be asked to bear. We hope the measure may not pass the Senate.

Very truly, yours,

THE COMPUTING SCALE COMPANY.

CINCINNATI, OHIO, *June 28, 1909.*

Senator DICK,
Washington, D. C.

DEAR SIR: Referring to the proposed law to tax the income of corporations, we beg to state that while we would not be directly affected by such a measure, we are opposed to the proposed law.

It is, in our judgment, un-American, as it directs toward a particular class. It possesses an element of socialism. In our judgment a stamp tax, or some tax of a general nature that would not be any great burden to any particular class, would be more satisfactory to all and less disturbing to the commercial interests of our country.

The suggestion that the proposed tax would give the federal authorities a full opportunity to supervise the acts of corporations does not seem to us to be valid. A commission appointed for that purpose, similar to the railroad commission, vested with definite authority, would be, to our judgment, more effective.

We trust that you will take a similar view to ours, and we ask you to vigorously oppose the proposed law to tax the income of corporations.

Yours, very respectfully,

LEWIS WALD & CO.

CINCINNATI, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.

MOST WORTHY REPRESENTATIVE: The proposed law taxing the income of corporations, as at present drawn, will apply to mercantile corporations, which under the existing laws are certainly paying all if not more than their just share of the taxes.

It would be unfair to tax us as a corporation unless individuals and copartnerships with whom we come in competition are likewise taxed proportionately the same, whereas it is only proposed to tax corporations.

Please look at it from a reasonable standpoint.

We are, very respectfully, yours,

THE ALMS & DOEPKE COMPANY,
WM. H. ALMS, *President.*

CINCINNATI, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
Washington, D. C.

DEAR SIR: Referring to the proposed Aldrich bill in regard to 2 per cent tax on incomes of over $5,000 to be paid by corporations alone, we think it is unfair, and we can not see why professional men, farmers, capitalists, firms, and others that have incomes over $5,000 should be exempt. At any rate, we believe the merchants throughout the country are taxed sufficiently without any additional burdens. We trust you can see it in this light and that you will vote against this proposed measure.

Respectfully,

THE MEYER, WISE & KAICHEN COMPANY,
By SIG. WISE, *Vice-President.*

DELAWARE, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
Washington, D. C.

DEAR SIR: Will you do me the favor of forwarding to me a copy of the bill now before the Senate providing for the taxation of the net earnings of corporations?

For some clients of mine here I am particularly interested to know whether, by this proposed law, the reports of corporations as to their earnings will be public property. Any information which you can give as to this point will be appreciated very much.

Thanking you in advance for the favor, I am,

Very respectfully,

F. A. MCALLISTER.

DELAWARE, OHIO, *June 29, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

On behalf of members of building and loan associations of Delaware County, Ohio, we respectfully urge that you use your best efforts to exempt these savings institutions of the wage-earners from proposed corporation tax, as was the case in the old income-tax law and the Spanish-American war stamp act.

THE FIDELITY BUILDING ASSOCIATION AND LOAN COMPANY,
D. H. BATTENFIELD, *President.*
PEOPLE'S BUILDING AND LOAN COMPANY,
C. RIDDLE, *President.*

YOUNGSTOWN, OHIO, *June 29, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

Proposed tax on corporations will be disastrous to building associations. Ten thousand working people in this city would suffer. Exempt the associations.

THE HOME SAVINGS AND LOAN COMPANY.

TOLEDO, OHIO, *June 29, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

This association, the pioneer in northwestern Ohio, has been the means of the building of several thousand American homes. Our fifteen hundred members protest against the contemplated 2 per cent corporation tax, unless as proposed by President Taft, that associations of this character be exempt therefrom.

THE TOLEDO SAVINGS ASSOCIATION,
A. L. SPRING, *Secretary.*

TOLEDO, OHIO, *June 29, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

The 18,000 building association members with average holdings of less than $300 each, represented by the Toledo Building Association League, urgently protest against the strikingly unfair discrimination the 2 per cent corporation tax will inflict upon us. If we are not exempted as proposed by President Taft, it will ruin our present investment and will drive beyond the reach of the makers of American homes the 600,000,000 of special home-building funds now held and used by building associations in the United States for that purpose.

A. L. SPRING, *Secretary.*

YOUNGSTOWN, OHIO, *June 30, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

Proposed corporation tax will work a hardship to building associations. In former acts of this nature they have been exempted, and they should be exempt now. Working people everywhere will benefit by their exemption.

J. R. WOOLLY,
Vice-President Home Savings and Loan Company.

BRIDGEPORT, OHIO, *June 28, 1909.*

Senator DICK,
Washington, D. C.:

Please oppose tax on building and loan associations.

W. W. SCOTT.

NORWALK, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
Washington, D. C.:

Can not stand 2 per cent tax. Get building and loan companies exempt.

The Home Savings and Loan Company, C. H. Gallup, president; The Ohio Mutual Savings and Loan Company, Henry C. Ellison, president; The Union Savings and Loan Company, H. Q. Sargent, president; The Mutual Building and Investment Company, J. B. Wilberding, secretary; The Ohio Savings and Loan Company, Henry Grombacher, secretary; The Provident Building and Loan Company, W. R Dunbar, secretary.

CLEVELAND, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

We solicit your earnest endeavor to exempt building and loan associations from the corporation tax, as in this case the burden would fall upon thrifty working men and women trying to pay off mortgages on their houses.

Cleveland Savings and Loan Company, William R. Creer, secretary; The Cuyahoga Savings and Loan Company, Davis Hawley, president; The Equity Savings and Loan Company, H. W. S. Wood, president; The Economy Building and Loan Company, O. J. Hodge, president; The Cleveland West Side Building and Loan Company, Jacob Haller, secretary.

YOUNGSTOWN, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

Building and loan associations should be exempt from proposed corporation tax. Similar acts in the past have always exempted them. Such exemption would benefit 400,000 wage-earners in Ohio alone.

JAMES M. MCKAY,
Vice-President Ohio Building Association League.

HAMILTON, OHIO, *June 27, 1909.*

Senator CHARLES DICK,
Washington, D. C.:

Means ruination to building associations, unless exempted from corporation tax.

THE HOME LOAN AND BUILDING ASSOCIATION,
O. V. PARRISH, *Vice-President.*

DAYTON, OHIO, *June 27, 1909.*

Hon. CHARLES DICK,
Washington, D. C.:

We urge to use your efforts to exempt mutual building and loan associations from income tax. Seven thousand wage-earners and small savers in this association alone would thus be taxed.

AMERICAN LOAN AND SAVINGS ASSOCIATION.

BELLAIRE, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
Senate Chamber, Washington, D. C.

Over 5,000 working people ask you to oppose bill to tax incomes of building associations.

THE BUCKEYE SAVINGS AND LOAN CO.,
By W. G. MCCLAIN, *Secretary.*

COLUMBUS, OHIO, *June 27, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

Building and loan associations should be exempt in proposed corporation tax.

L. L. RANKIN.

DAYTON, OHIO, *June 27, 1909.*

Hon. CHARLES DICK,
Washington, D. C.:

On behalf of 50,000 wage-earners who have their savings in the Dayton building associations you are urged to consider the justice of having building associations exempted from the operation of the proposed tax on corporations.

MONTGOMERY COUNTY BUILDING ASSOCIATION LEAGUE,
S. RUFUS JONES, *President.*

MARIETTA, OHIO, *June 27, 1909.*

Senator CHARLES DICK,
Washington, D. C.:

Exemption building associations from corporation tax earnestly requested.

FRED W. TORNER,
Secretary Pioneer City Building and Loan Company.

NEWARK, OHIO, *June 27, 1909.*

Hon. CHARLES DICK,
Washington, D. C.:

Building associations should be exempt from corporation tax. Your influence should be in this direction and will be appreciated.

E. M. BAUGHER.

ZANESVILLE, OHIO, *June 27, 1909.*

Senator CHARLES DICK,
Washington, D. C.:

Please use your influence to secure exemption of building and loan associations from corporation tax.

THE EQUITABLE SAVINGS COMPANY,
By H. E. BUKER, *Secretary.*

AKRON, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
Washington, D. C.:

Kindly use efforts to have building and loan associations exempted from corporation tax.

THE HOME SAVINGS COMPANY.

DAYTON, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

We respectfully protest against the unjust discrimination and inequitable corporation tax proposed.

THE COMPUTING SCALE COMPANY.

AKRON, OHIO, *June 27, 1909.*

Hon. CHARLES DICK,
Washington, D. C.:

Exempt loan associations from incorporation tax; important to all classes.

F. M. COOKE,
Secretary Akron Savings and Loan Company.

MANSFIELD, OHIO, *June 28, 1909.*

Senator CHARLES DICK,
Washington, D. C.:

A tax on building and loan associations, the savings of the masses, in time of peace would menace its existence.

THE CITIZENS SAVING AND LOAN COMPANY,
FRED T. BRISTOR, *Secretary.*

BARNESVILLE, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

Officers, directors, and more than 1,000 members protest, and ask your influence for exemption of building associations from 2 per cent tax.

PEOPLE'S BUILDING AND LOAN COMPANY.
HOME BUILDING AND LOAN COMPANY.

ASHTABULA, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
Washington, D. C.:

In the bill now pending in the Senate to tax corporations, we urge you, in the name of fourteen hundred stockholders of this company, to use your influence to have building associations exempted from the tax.

THE PEOPLE'S BUILDING LOAN COMPANY,
GEO. B. PAINE, *President.*
A. H. TYLER, *Secretary.*

MASSILLON, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

Our association, representing about two million assets and 4,000 members, pray for exemption of such institutions from operations of corporation-tax bill.

THE FIRST SAVINGS AND LOAN CO.

CINCINNATI, OHIO, *June 26, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

Three hundred and twenty-five thousand building and loan association members in Ohio respectfully urge you to secure proper exemption from proposed tax on corporations. Congress has always granted building and loan associations exemptions from the operation of previous taxes on income. The proposed tax, if it includes building and loan associations, will be unjust and a tax on the thrift of the wage-earner.

AMERICAN BUILDING ASSOCIATION NEWS,
H. S. ROSENTHAL, *Editor.*

CINCINNATI, OHIO, *June 26, 1909.*

Senator CHARLES DICK,
United States Senate, Washington, D. C.:

The Hamilton County League of Building and Loan Associations directs me to again call your attention to the necessity of exempting the incomes of building and loan associations from the operations of the proposed corporation tax.

FRED BADER, *President.*

CANTON, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

Stark County building associations, with 7,500 members, urge necessity of exempting their incomes from operation of proposed corporation tax.

J. KHITING, Jr.

MIDDLETOWN, OHIO, *June 28, 1909.*

United States Senator DICK,
Washington, D. C.:

Use your influence to exempt building associations from corporation tax.

THE MIDDLETOWN BUILDING AND LOAN ASSOCIATION.

COLUMBUS, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

Representing the building and loan associations of Ohio, with half million members and depositors, we respectfully urge that you exempt from the corporation-tax bill the building and loan associations.

CHAS. H. BROWN,
Secretary Ohio Building Association League.

COLUMBUS, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
Washington, D. C.:

The Columbus League of Building and Loan Associations respectfully urges that building and loans associations be exempted from the proposed corporation-tax bill.

JOHN F. FERGUS, *President.*
EDWIN F. WOOD, *Secretary.*

The VICE-PRESIDENT. The question is on the amendment of the Senator from Rhode Island [Mr. ALDRICH] to the substitute proposed by the Senator from Massachusetts [Mr. LODGE]. The Secretary will call the roll.

The Secretary proceeded to call the roll.

Mr. CHAMBERLAIN (when his name was called). I am paired with the junior Senator from Pennsylvania [Mr. OLIVER]; but I transfer that pair to the junior Senator from Maryland [Mr. SMITH], and vote. I vote "nay."

Mr. BACON (when Mr. CLAY's name was called). My colleague [Mr. CLAY] is necessarily absent from the city. He is paired, as I understand, with the Senator from Massachusetts [Mr. LODGE]. If my colleague were present, he would vote "nay."

Mr. DILLINGHAM (when his name was called). I have a general pair with the senior Senator from South Carolina [Mr. TILLMAN], who is absent. I transfer that pair to the senior Senator from Maine [Mr. HALE], and vote. I vote "yea."

Mr. GUGGENHEIM (when his name was called). I have a general pair with the senior Senator from Kentucky [Mr. PAYNTER], who is detained from the Senate by illness. I transfer that pair to the senior Senator from Indiana [Mr. BEVERIDGE] and vote. I vote "yea."

Mr. HUGHES (when his name was called). I am paired with the senior Senator from Oregon [Mr. BOURNE]. If he were present, I should vote "nay."

Mr. JONES (when his name was called). I have a pair with the junior Senator from South Carolina [Mr. SMITH]. I transfer that pair to the junior Senator from Wisconsin [Mr. STEPHENSON] and vote. I vote "yea."

Mr. LODGE (when his name was called). I have a general pair with the Senator from Georgia [Mr. CLAY]. I transfer that pair to my colleague [Mr. CRANE], who would vote "yea" if present, and the Senator from Georgia would vote "nay." I vote "yea."

Mr. McLAURIN (when his name was called). I have a pair with the junior Senator from Michigan [Mr. SMITH]. I transfer that pair to the senior Senator from North Carolina [Mr. SIMMONS], and vote. I vote "nay."

Mr. OVERMAN (when Mr. SIMMONS's name was called). I desire to announce that my colleague [Mr. SIMMONS] is unavoidably absent. He is paired with the junior Senator from Michigan [Mr. SMITH]. If my colleague were present, he would vote "nay."

Mr. RAYNER (when the name of Mr. SMITH of Maryland was called). My colleague [Mr. SMITH] is absent on account of serious sickness in his family. He is paired with the junior Senator from Pennsylvania [Mr. OLIVER].

The roll call was concluded.

Mr. DAVIS. My colleague [Mr. CLARKE] has been detained from the Chamber for several days on account of the very critical illness of his son. He is paired with the junior Senator from Delaware [Mr. RICHARDSON]. If my colleague were present, he would vote "nay."

Mr. BAILEY. I desire to announce that the Senator from South Carolina [Mr. TILLMAN] is unavoidably absent, but that if he were present he would vote "nay."

The result was announced—yeas 45, nays 31, as follows:

YEAS—45.

Aldrich	Cullom	Guggenheim	Perkins
Bradley	Curtis	Heyburn	Piles
Brandegee	Depew	Johnson, N. Dak.	Root
Briggs	Dick	Jones	Scott
Brown	Dillingham	Kean	Smoot
Burkett	Dixon	Lodge	Sutherland
Burnham	du Pont	Lorimer	Warner
Burrows	Elkins	McCumber	Warren
Burton	Flint	Nelson	Wetmore
Carter	Frye	Nixon	
Clark, Wyo.	Gallinger	Page	
Crawford	Gamble	Penrose	

NOT VOTING—17.

Beveridge	Hale	Richardson	Stephenson
Bourne	Hughes	Simmons	Tillman
Clarke, Ark.	Nixon	Smith, Md.	
Clay	Oliver	Smith, Mich.	
Crane	Paynter	Smith, S. C.	

So Mr. BACON's amendment to the amendment was laid on the table.

Mr. BURKETT. Mr. President, some days ago I offered an amendment intended to be proposed by me. I do not care to ask to have it considered this evening; but I shall ask that it be printed in the RECORD, and that it be referred to the Committee on Finance in charge of this bill. I will say that when I offered the amendment I simply asked to have it lie on the table until the proper time arrived for its consideration. I shall not ask for a vote upon it to-night.

The VICE-PRESIDENT. In the absence of objection, the amendment will be printed in the RECORD.

The amendment referred to is as follows:

At the end of line 14, page 2, strike out the period and insert a colon and the words:

"*Provided, however,* That nothing in this section contained shall apply to fraternal beneficiary societies, orders, or associations operating under the lodge system, including labor organizations, and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations, and dependents of such members."

Mr. CLAPP. Mr. President, I have a substitute which I desire to offer. I shall be very brief. It is a reproduction of the amendment introduced by the Senator from Rhode Island [Mr. ALDRICH], with the exception that it strikes out all the provisions of the amendment which exempt a corporation from paying the tax where the income is derived from dividends upon the stock of other companies subject to taxation.

Mr. ALDRICH. I would suggest to the Senator from Minnesota that the amendment is not now in order.

Mr. CLAPP. It strikes me the Senator from Massachusetts [Mr. LODGE] having withdrawn his amendment, that leaves the amendment of the Senator from Rhode Island, as he announced, a committee amendment, and it can be perfected by this amendment.

The VICE-PRESIDENT. It can be perfected by adding thereto, but not by striking out. The Senate has just voted the amendment in. An amendment to add to it is in order, but not an amendment to strike out any part of it.

Mr. CLAPP. I am not particular about it. As suggested, it will be in order in the Senate. It is getting late anyway, and I will not press it now.

The VICE-PRESIDENT. The Senator from Minnesota, then, withdraws his amendment.

Mr. DICK. Mr. President, I send to the Secretary's desk an amendment, which I ask to have printed in the RECORD for future consideration. It is for the purpose of exempting building and loan associations from the operation of this act.

Mr. ALDRICH. I suggest to the Senator from Ohio that he have the amendment referred to the Committee on Finance.

Mr. DICK. Then, I ask, as suggested by the Senator from Rhode Island, that the amendment be referred to the Committee on Finance.

The VICE-PRESIDENT. Without objection, the request will be complied with.

The amendment referred to is as follows:

In the new section, on page 2, line 14, after the word "imposed," insert the words: "*Provided, however,* That for the purposes of this act building and loan associations shall not be deemed corporations for profit."

Mr. BULKELEY. I desire to offer an amendment to the pending amendment at the end of line 9, and I ask that it be printed in the RECORD.

The VICE-PRESIDENT. In line 9, at what point?

Mr. FLINT. On what page?

Mr. BULKELEY. On the first page.

The VICE-PRESIDENT. The amendment may be printed, in the absence of objection, but the amendment can not be received at this time. Does the Senator simply offer it to be printed for information?

Mr. BULKELEY. No, sir; I ask to have it printed in the RECORD; and I shall call it up at the first opportunity.

The VICE-PRESIDENT. There is no objection, the Chair presumes, on the part of the Senate to have the amendment printed in the RECORD, but it can not be received as an amendment offered, as it is not now in order.

Mr. BULKELEY. I ask that the amendment may be printed in the RECORD.

The VICE-PRESIDENT. Without objection, the amendment will be printed in the RECORD.

The amendment referred to is as follows:

After line 9, on page 1, insert:

"Except mutual insurance companies or corporations, and companies or corporations transacting business upon the mutual plan for the benefit of its mutual policy holders."

The VICE-PRESIDENT. The question is on agreeing to the amendment as amended.

Mr. BACON. Mr. President, I want to say a few words in regard to that matter. Some twelve years ago, when the Dingley bill was before the Senate, I voted for an amendment very similar to this, but more carefully guarded. As I favor the principle involved, I shall not vote against this amendment, but I want it put in more proper shape before I vote for it. I am in favor of taxing corporations, but I am also in favor of taxing other accumulated wealth as well as corporations, such as bonds, and so forth. I should now vote for this amendment, if it were properly guarded according to my view of it. If the amendments offered by me, which cared for religious, benevolent, charitable, and educational institutions were adopted; if the amendment were properly guarded as to fraternal orders, which have organizations in which there is profit made, but in which there is no individual profit, where the profit is made solely and entirely for the mutual benefit and assistance of the members of those orders; if mutual insurance companies, which have no stock and which are intended simply for the mutual benefit of those who are insured and who are interested in the corporation, were properly cared for; if there were proper exemptions of the thousands of mercantile houses which have been organized as corporations; if the provision which would sanction the holding of stock by one corporation of other corporations were not in it; and if we had had the opportunity, which I think we were entitled to, to vote, first, upon the question of the income tax, and that had been defeated, I should now vote for this amendment. As it is, while I shall in the end vote for it, if it is put in proper shape, it is now not in proper shape, and therefore while not voting against it, I shall at this time refrain from voting upon it.

Now, Mr. President, it is said that we are to have opportunity to vote on the income tax when in the Senate. It is manifestly improper to call upon us to vote for this amendment and give our sanction to it before we have the opportunity to vote for the income-tax amendment in the Senate. Therefore, Mr. President, when the bill comes finally before the Senate and I have the opportunity to see how far the Senator from Rhode Island carries out the promise which he has made as to guarding the provisions affecting benevolent, charitable, religious, and fraternal orders, and mutual associations, and incorporated mercantile establishments, if it is put in shape in these regards, I will vote for it.

I particularly protest, however, that it is not proper parliamentary procedure to endeavor to force us to first vote on this amendment under a device which was given out to the public as intended for the purpose of preventing a vote on the income tax, which was given out as a great parliamentary achievement on the part of the Senator from Massachusetts and the Senator from Rhode Island, that they had so shaped matters that we would be compelled to vote upon the corporation-tax amendment before we were allowed to vote on the question of the income tax. This amendment is avowed by the Senator from Rhode Island to be intended to defeat the income tax. If so, we should have opportunity to vote first on the income-tax amendment. Therefore, Mr. President, I shall ask to be excused from voting at this time, and I shall wait until I have the opportunity to vote on the income-tax proposition before I vote on the corporation-tax proposition, which I trust will by that time be cured of its present objectionable features relative to religious, educational, charitable, and fraternal associations and the other features embraced in my amendment.

Mr. HEYBURN. Mr. President, before I cast my vote, I desire to say that I do it in vindication of what I believe to be the principles of the Republican party which we represent. I have confidence that the schedules which we have passed upon will provide the revenue necessary for the purposes of the Government; and I do not propose to vote for any "fancy legislation," if I may so term it—and I do not do it in disrespect of any other Senator's wishes—until I am satisfied that the protective tariff policy, represented by the schedules which we have passed upon, is insufficient to provide adequate revenue. I shall therefore be compelled to vote against any measure looking to the providing of revenue in addition to that until I am shown that it is necessary.

Mr. DAVIS. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Arkansas?

Mr. HEYBURN. I yield the floor.

Mr. DAVIS. The Senator from Idaho suggests that he casts his vote in obedience to the principles of the Republican party, believing that the schedules adopted will raise sufficient revenue. I desire to say to him that if they fail, then we can adopt the other Republican policy of issuing bonds.

Mr. BULKELEY. Mr. President, I desire at this time to ask unanimous consent to have inserted in the RECORD the document which I hold in my hand, which covers the rates of taxation imposed by the several States and Territories of the United States upon life insurance companies under the laws in effect on June 1, 1909. I will not detain the Senate by reading it, but I ask that it be inserted in the RECORD.

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

The matter referred to is as follows:

Rates of taxation imposed by the several States and Territories of the United States upon foreign life insurance companies under laws in effect on June 1, 1909, compared with the rates imposed in 1871.

	1871.[a]	1909.
Alaska		No tax.
Alabama	2 per cent and local	2 per cent on gross premiums and local premium tax in two cities.
Arizona	Nothing	2 per cent on gross premiums.
Arkansas	Local	2½ per cent on premiums, less policy claims, including death losses, endowments, and commissions.
California	1 per cent	1 per cent on gross premiums.
Colorado	1 per cent and local	2 per cent on gross premiums.
Connecticut	2 per cent	Reciprocal tax only.
Delaware	2½ per cent	2 per cent on gross premiums.
District of Columbia	1 per cent	1½ per cent on premiums, less dividends.
Florida	Nothing	2 per cent on gross premiums.
Georgia	1 per cent and local	1 per cent on gross premiums and local tax in four cities.
Hawaii	Nothing	2 per cent on premiums, less return premiums, reinsurance, death losses, all other payments to policy holders, and actual operating and business expenses.
Idaho	Nothing	2 per cent on premiums less policy claims.
Illinois	Reciprocal	Reciprocal tax only.
Indiana	Nothing	3 per cent on premiums less death losses only.
Iowa	Reciprocal	2½ per cent on gross premiums.
Kansas	2 per cent	2 per cent on gross premiums.
Kentucky	2½ per cent	2 per cent on gross premiums and local tax in two cities.
Louisiana	1 per cent	⅘ per cent (about) graded license tax based on gross premiums, this tax being duplicated in city of New Orleans.
Maine	Nothing	1½ per cent on gross premiums.
Maryland	do	Do.
Massachusetts	Reciprocal	½ per cent on reserves.
Michigan	3 per cent and local	2 per cent on gross premiums.
Minnesota	2 per cent	Do.
Mississippi	Nothing	2 per cent on first year gross premiums and ½ per cent on renewals since 1902.
Missouri	Reciprocal	2 per cent on gross premiums.
Montana	Nothing	2½ per cent gross on first $5,000 of premiums; 2 per cent on balance: and local county taxes.
Nebraska	Local	2 per cent on gross premiums.
Nevada	1 per cent	No tax on premiums or reserves.
New Hampshire	do	2 per cent, less death losses, but not less than 1½ per cent.
New Jersey	Reciprocal	Reciprocal tax only.
New Mexico	Nothing	2 per cent on gross premiums.
New York	do	1 per cent on gross premiums.
North Carolina	1 per cent and local	2½ per cent on gross premiums.
North Dakota	Nothing	Do.
Ohio	2 per cent	Do.
Oklahoma	Nothing	2 per cent on gross premiums, less cancellations.
Oregon	do	2 per cent on premiums, less policy claims and dividends to policy holders.
Pennsylvania	3 per cent	2 per cent on gross premiums.
Rhode Island	2 per cent	Do.
South Carolina	Nothing	2 per cent, less dividends and municipal taxes.
South Dakota	Nothing	2½ per cent on gross premiums.
Tennessee	1½ per cent and local	2½ per cent on premiums, less dividends to pay premiums.
Texas	Nothing	1 per cent on gross premiums to companies complying with Robertson law; 3 per cent on gross premiums to companies not complying with the Robertson law.
Utah	do	1½ per cent on premiums, less state taxes on property and dividends.

[a] The data with regard to the year 1871 is taken from the proceedings of the first annual meeting of the National Convention of Insurance Commissioners.

Rates of taxation imposed by the several States and Territories of the United States upon foreign life insurance companies, etc.—Cont'd.

	1871.[a]	1909.
Vermont	Reciprocal	2 per cent on premiums, less dividends, reinsurance, and return premiums.
Virginia	2 per cent	1 per cent on gross premiums, plus ⅕ per cent toward expenses of insurance department and local tax in one city.
Washington	Nothing	2 per cent on premiums, less amount paid policy holders as returned premiums (not including annuities, annual dividends, endowments, or losses paid).
West Virginia	3 per cent	2 per cent on gross premiums.
Wisconsin	Nothing	Reciprocal tax only.
Wyoming	Local	2½ per cent on gross premiums.

[a] The data with regard to the year 1871 is taken from the proceedings of the first annual meeting of the National Convention of Insurance Commissioners.

ROBERT LYNN COX,
General Counsel and Manager
Association of Life Insurance Presidents.

Mr. BULKELEY. Further, I want to have inserted in the RECORD a statement, which I have had prepared in my own office for my own benefit and for the information of Senators, as to the effect of the corporation-tax amendment on mutual life insurance companies and how the provisions of the amendment are to be construed, if it is enacted into law, as to the deductions that may be made by life insurance companies from their gross income before the tax is levied. Under the provisions of this amendment, the only items especially specified are the necessary expenses of conducting the business, losses actually sustained during the year where they are not covered by insurance, and the additions which have accrued to the reserve fund during the year. These are but a small part of the items of income of a life insurance company, and a large share of that income during any given year is provided for mortuary purposes and for the payment of maturing endowments and various items of that character.

The income, according to this statement, covers about $18,000,000—a large amount of money for a little Connecticut institution. More than half of this sum was disbursed in the way I have indicated, for death claims, for surrender value of policies, and for matured endowments. The items which, as expressed in the amendment, can be deducted from the income of the year, cover comparatively a small amount. While the statement covers a company of which I have the honor to be the president, it reflects conditions which will be found to prevail in every life insurance company in the United States. I ask to have the matter to which I have referred printed in the RECORD.

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

The matter referred to is as follows:

Ætna Life Insurance Company, Hartford, Conn.

Income, year ending December 31, 1908:			
Life			$13,593,219.44
Accident, health, and life			4,989,123.05
			18,582,342.49
Less deductions as under:			
1. Expenses of management—			
Life	$1,654,424.25		
Accident, health, and life	2,119,824.36		
		$3,774,248.61	
2. Death losses and annuities, life	3,417,548.96		
Matured endowments, life	2,349,739.00		
Surrender values paid in cash, life	1,420,254.81		
	7,187,542.77		
Accident, health, and life	2,277,405.67		
		9,464,948.44	
Increase in reserve—			
Life	2,691,938.00		
Accident, health, and life	225,111.09		
		2,917,049.09	
3. Interest paid on account dividends surrendered		3,176.56	
4. Taxes and fees:			
Life	366,296.53		
Accident, health, and life	80,272.38		
		446,568.91	
5. Dividends on stocks:			
Life	236,389.96		
Accident, health, and life	23,076.00		
		259,465.96	
6. Amount exempt		5,000.00	
Amount of deductions			16,870,457.57
Amount taxable			1,711,884.92
Amount of tax at 2 per cent			34,237.70

EXPLANATORY SHEET.

Life premiums		$10,632,732.31	
Less surrender values	$42,877.87		
Do	1,823.05		
Do	354,638.32		
Consideration for supplementary contracts	34,375.00		
		433,714.24	
			$10,199,018.07
Dividends left with company to accumulate			64,315.68
Interest:			
Mortgage loans	$1,942,760.98		
Collateral loans	63,118.17		
Bonds and stocks	957,315.48		
Premium notes	442,978.19		
Deposits	68,020.41		
Claims paid in advance	3,916.18		
		$3,478,109.41	
Less unearned interest		191,729.97	
			3,286,379.44
Rents			46,506.25
Life income			13,596,219.44
Accident, health, and life premiums		$4,820,195.52	
Less surrender value ten-year return policies		2,926.80	
			4,817,268.72
Interest, accident, health, and life:			
Mortgage loans		97,154.39	
Bonds and stocks		63,276.00	
Deposits		8,264.53	
Other sources		159.41	
			168,854.33
Accident, health, and life income			4,983,123.05
Reserve, life, December 31, 1908		$77,472,139.00	
Special reserve under R. T. contracts		976,848.00	
Present value supplementary contracts not yet due		238,979.00	
			78,687,966.00
Reserve, life, December 31, 1907		74,879,393.00	
Special reserve under R. T. contracts		834,633.00	
Present value supplementary contracts not yet due		232,002.00	
			75,996,028.00
Increase in life reserve			2,691,938.00
Unearned premiums, accident, health, and life:			
One-year policies or less, December 31, 1908		$1,815,542.11	
More than one year		89,583.82	
Special reserve for unpaid liability losses, December 31, 1908		1,419,600.09	
			3,324,728.93
Unearned premiums, December 31, 1907		1,699,285.99	
Special reserve for unpaid liability losses, December 31, 1907		1,400,331.85	
			3,099,617.84
Increase in accident, health, and life reserve			225,111.09

Mr. BULKELEY. While I am on my feet I desire to say that the companies which I have the honor to speak for in this matter, as I said, I think, once before this afternoon, represent 5,324,322 policy holders, of voting age, or supposed to be, and cover insurance to the amount of $10,404,507,725.

Mr. ALDRICH. Mr. President, I hope the Senator will kindly put this matter into the RECORD and allow us to vote on the proposition to-night. I shall be very glad if he will.

Mr. BULKELEY. I have no objection to putting it into the RECORD, provided I can have an opportunity at some time, either while this bill is in Committee of the Whole or when it comes into the Senate, to express what I started to say now. I do not wish to delay a vote, but I want an opportunity at some time to represent this great industry of the country.

Mr. ALDRICH. The Senator certainly shall have that opportunity.

Mr. BULKELEY. I am satisfied, then, and will conclude by saying that this $10,000,000,000 of insurance does not represent the wealth of the country. On the contrary, the average amount of the policies issued to these 5,000,000 voters of the country is only $1,954.

With that I will conclude for to-night, with the assurance that at some future time I shall have the opportunity to speak at greater length on the subject.

Mr. BACON. Mr. President, I do not understand that the Senator is asking that the matter to which he refers be now put in the RECORD.

The VICE-PRESIDENT. The Chair does not so understand.

Mr. STONE. Mr. President, I do not know that I can ever bring myself to the point of voting for this amendment; certainly not in its present form. The statement made by the Senator from Georgia very well expressed the view I hold, and for the reasons he gave, without detaining the Senate with elaborating them, I shall ask leave to withhold my vote.

Mr. OVERMAN. Mr. President, inasmuch as we are now in Committee of the Whole and not in the Senate, and this amendment was admittedly introduced for the purpose of defeating the Bailey amendment, which I favor, I shall withhold my vote. I am in favor of taxing corporations, and also of taxing wealth. I want all to bear equal burdens.

Hoping that in the Senate the Bailey amendment will be introduced as a substitute for this amendment, I withhold my vote.

Mr. BRISTOW. Mr. President, as I understand, this is a proposition to adopt the corporation tax, which imposes a tax upon mutual life insurance companies and does not give them credit for the payments made on death losses. That is, if there is a mutual life insurance company in Kansas that receives a large amount of money each year as premiums, and the greater part of it is paid out in death losses, the tax is imposed upon the amount received, and the company is not credited with the amount that is paid out for such death losses.

While I have not been able to give very careful attention to that provision, it seems to me it will drive out of business a large number of very worthy institutions in the State that I in part represent. A 2 per cent tax on the entire receipts, not giving those companies credit for the death losses, will certainly put them out of business, and result in the favor of the great life and fire insurance companies that are able to stand the tax.

I also understand that building and loan associations that are organized by citizens for mutual advantage in the various communities are taxed on their gross receipts, the same as if they were running a corporation for profit, though the officers of the associations simply receive salaries for transacting the associations' business, and the expenses are only for rent and the incidental expenses in maintaining the offices. Such an association is not a corporation run for profit, except to the stockholders; and it is mutual only. Yet these building and loan associations, which sustain the same relation to the people of the West that the mutual savings banks do to the people of the East, are to be taxed, while the savings banks are not to be. In voting upon this question, if we vote for it we are approving that kind of treatment of mutual life and fire insurance companies, as well as these home building associations.

Again, as I stated in the few remarks I made this afternoon, this measure imposes a tax upon the small corporations doing a retail or a jobbing business, which can not shift the tax, but in these cases must be borne by the stockholders themselves; while the great corporations, such as the Standard Oil, Steel Corporation, railroads, sugar trust, and so forth, that have a monopoly of the things that they produce or transport, are able to shift the tax and put the burden upon the consumer, or the people, whom these corporations serve; so that the small corporation will bear the burden of the tax, while the large corporation can shift it upon the general public.

These statements have been made and not denied. The provisions to which I have referred will have the effect stated, as has been alleged time and again during this debate. Therefore I can not vote for the measure, because I believe it is unjust, inequitable, discriminatory, and morally wrong; and, when the roll is called, I must cast my vote against it.

The VICE-PRESIDENT. The question is on agreeing to the amendment as amended. The Secretary will call the roll.

The Secretary proceeded to call the roll.

Mr. CHAMBERLAIN (when his name was called). I desire to make the same announcement I have heretofore made with reference to pairs, and vote "nay."

Mr. CLAPP (when his name was called). Mr. President, I have a general pair with the Senator from North Carolina [Mr. SIMMONS]. I have been released by him as to the previous vote. But this vote presents a somewhat different question; and not knowing how he would vote, I feel constrained in his absence to withhold my vote. If he were here, I should vote "nay;" or if a transfer could be arranged, I shall vote "nay."

Mr. DAVIS (when the name of Mr. CLARKE of Arkansas was called). I again desire to announce the absence of my colleague.

Mr. DILLINGHAM (when his name was called). I have a general pair with the senior Senator from South Carolina [Mr. TILLMAN]. I am advised that were he present he would vote upon this question "yea." Therefore I will vote. I vote "yea."

Mr. GUGGENHEIM (when his name was called). I make the same announcement as on the previous vote, and vote "yea."

Mr. HUGHES (when his name was called). I wish to announce my pair with the senior Senator from Oregon [Mr. BOURNE]. I transfer that pair to the senior Senator from Tennessee [Mr. FRAZIER], and vote "nay."

Mr. JONES (when his name was called). I announce my pair with the junior Senator from South Carolina [Mr. SMITH]. I transfer that pair to the junior Senator from Wisconsin [Mr. STEPHENSON], and I vote "yea."

Mr. LODGE (when his name was called). I have a general pair with the Senator from Georgia [Mr. CLAY], which I transfer to my colleague [Mr. CRANE], and I vote "yea." I think it proper to state that the Senator from Georgia informed me before he went away that on this vote he would vote "yea."

Mr. BACON. I was about to make the same announcement.

Mr. LODGE. And my colleague [Mr. CRANE] would also vote "yea," if he were present.

Mr. McLAURIN (when his name was called). I transfer my pair with the junior Senator from Michigan [Mr. SMITH] to the senior Senator from North Carolina [Mr. SIMMONS], and vote "yea."

The roll call was concluded.

Mr. CLAPP. A transfer having been arranged with my pair, I desire to vote. I vote "nay."

Mr. RAYNER. I desire to announce that my colleague [Mr. SMITH of Maryland] is detained at home by sickness in his family. He is paired with the junior Senator from Pennsylvania [Mr. OLIVER].

The result was announced—yeas 59, nays 11, as follows:

YEAS—59.

Aldrich	Cullom	Gamble	Page
Bailey	Curtis	Guggenheim	Penrose
Bankhead	Daniel	Johnson, N. Dak.	Perkins
Bradley	Davis	Johnston, Ala.	Piles
Brandegee	Depew	Jones	Rayner
Briggs	Dick	Kean	Root
Brown	Dillingham	Lodge	Scott
Burkett	Dixon	Lorimer	Smoot
Burnham	du Pont	McCumber	Sutherland
Burrows	Elkins	McEnery	Taliaferro
Burton	Fletcher	McLaurin	Taylor
Carter	Flint	Martin	Warner
Clark, Wyo.	Foster	Money	Warren
Crawford	Frye	Nelson	Wetmore
Culberson	Gallinger	Newlands	

NAYS—11.

Borah	Chamberlain	Dolliver	La Follette
Bristow	Clapp	Heyburn	Shively
Bulkeley	Cummins	Hughes	

NOT VOTING—22.

Bacon	Frazier	Owen	Smith, S. C.
Beveridge	Gore	Paynter	Stephenson
Bourne	Hale	Richardson	Stone
Clarke, Ark.	Nixon	Simmons	Tillman
Clay	Oliver	Smith, Md.	
Crane	Overman	Smith, Mich.	

So the amendment as amended was agreed to.

The VICE-PRESIDENT. The hour of 7 o'clock having arrived, the Senate stands adjourned until to-morrow, Saturday, July 3, 1909, at 10 o'clock a. m.

SENATE.

SATURDAY, *July 3, 1909.*

The Senate met at 10 o'clock a. m.

Prayer by the Chaplain, Rev. Ulysses G. B. Pierce, D. D.

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

PETITIONS AND MEMORIALS.

Mr. McLAURIN presented the petition of Eliza Warnock, of Warren County, Miss., praying that she be granted a pension, which was referred to the Committee on Pensions.

Mr. CULLOM presented a joint resolution of the legislature of Illinois, which was referred to the Committee on Commerce, and ordered to be printed in the RECORD, as follows:

STATE OF ILLINOIS,
DEPARTMENT OF STATE.

To all to whom these presents shall come, greeting:

I, James A. Rose, secretary of state of the State of Illinois, do hereby certify that the following and hereto attached is a true copy of house joint resolution No. 25 of the forty-sixth general assembly of the State of Illinois, filed June 22, 1909, the original of which is now on file and a matter of record in this office.

In testimony whereof, I hereto set my hand and cause to be affixed the great seal of State. Done at the city of Springfield this 1st day of July, A. D. 1909.

[SEAL.]

JAMES A. ROSE,
Secretary of State.

House joint resolution 25.

Whereas the rivers and harbors bills passed by the Fifty-ninth Congress provided for the appointment by the Secretary of War of a special board "to examine the Mississippi River below St. Louis and report to the Congress at the earliest date by which a thorough examination can be made upon the practicability and desirability of constructing and maintaining a navigable channel 14 feet deep and of suitable width from St. Louis to the mouth of the river;" and

Whereas this special board has completed this report and forwarded it to the Chief of Engineers in Washington; and

Whereas it is desirable that the information contained in this report shall be made public: Therefore be it

Resolved by the house of representatives (the senate concurring therein), That the general assembly of Illinois petition the House of Representatives of the Congress of the United States of America to take such action as will cause the early publication of the report of the special board of engineers, recently transmitted to the Chief of Engineers, United States Army, upon the improvement of the Mississippi River below St. Louis and particularly between St. Louis and Cairo: Be it further

Resolved, That the secretary of state forward this resolution and petition to the Hon. JOSEPH G. CANNON, Speaker of the National House of Representatives, and send a copy thereof to each Member of Congress from this State.

Adopted by the house May 12, 1909.

EDWARD D. SHURTLEFF,
Speaker of the House.

B. H. MCCANN,
Clerk of the House.

Concurred in by the senate May 18, 1909.

JOHN G. OGLESBY,
President of the Senate.

J. H. PADDOCK,
Secretary of the Senate.

Mr. CULLOM presented a memorial of sundry citizens of Springfield, Ill., indorsing the action of the Senate in imposing a duty on lemons, which was ordered to lie on the table.

THE BEET-SUGAR INDUSTRY.

Mr. DICK. I present a letter, together with certain data, from Truman G. Palmer, concerning the beet-sugar industry of Europe and the United States. I move that the paper be printed as a document (S. Doc. No. 121).

The motion was agreed to.

GOVERNMENT OF PORTO RICO.

Mr. DEPEW, from the Committee on Pacific Islands and Porto Rico, to whom was referred the bill (H. R. 9541) to amend an act entitled "An act temporarily to provide revenues and a civil government for Porto Rico, and for other purposes," approved April 12, 1900, reported it without amendment, and submitted a report (S. Rept. No. 10) thereon.

INTRODUCTION OF BILLS.

Mr. DAVIS. I introduce a couple of little local bills that I want unanimous consent for the immediate consideration of. One is a bill to extend the time of limitation. Congress gave permission to build a bridge across the Ouachita River, a navigable stream in my State. The bridge has not yet been completed, and the time is about to expire. The other is a bill to grant permission to construct a bridge across Salem River in Arkansas, near a little town called Warren.

Mr. GALLINGER. Have the bills been reported from the Committee on Commerce?

Mr. DAVIS. No, sir; they are local bills, and it is not necessary to have them referred.

Mr. GALLINGER. They will have to go to the committee, I will say to the Senator.

The VICE-PRESIDENT. The first bill sent to the desk by the Senator from Arkansas will be read by its title.

The bill (S. 2827) to extend the time for construction of a bridge across the Ouachita River at or near Camden, Ark., was read twice by its title.

Mr. DAVIS. I trust the Senator from New Hampshire will at least not ask to have the bill go to the Committee on Commerce, because the time will expire before we can get a report from the committee. It provides for nothing but the extension of time.

Mr. GALLINGER. I suggest to the Senator the rules provide that all bills shall be referred to committees. I feel certain if the Senator will see the chairman of the Committee on Commerce he will report it promptly. It would be a very bad precedent to consider bills without a reference to committees.

Mr. STONE. I would add to what the Senator has said that under the rules of the Committee on Commerce there is a subcommittee authorized to consider local bills, the chairman of which can report at any time.

Mr. GALLINGER. Without the action of the full committee.

Mr. STONE. Without a meeting of the committee.

Mr. GALLINGER. I think the Senator from Arkansas will have no difficulty in getting the bill out of the committee promptly.

The VICE-PRESIDENT. The bill will be referred to the Committee on Commerce.

Mr. DAVIS introduced a bill (S. 2828) to authorize Bradley County, Ark., to construct a bridge across Saline River in said county and State, which was read twice by its title and referred to the Committee on Commerce.

Mr. WETMORE introduced a bill (S. 2829) granting an increase of pension to Munson H. Najac, which was read twice by its title and, with the accompanying papers, referred to the Committee on Pensions.

AMENDMENTS TO THE TARIFF BILL.

Mr. DIXON submitted an amendment intended to be proposed by him to the bill (H. R. 1438) to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes, which was ordered to lie on the table and be printed.

Mr. LA FOLLETTE submitted an amendment intended to be proposed by him to the bill (H. R. 1438) to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes, which was ordered to lie on the table and be printed.

TAX ON INCOMES.

Mr. BROWN. Mr. President, I ask unanimous consent that the joint resolution (S. J. R. 40) proposing an amendment to the Constitution of the United States be laid before the Senate, and that a vote be had thereon immediately.

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

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

The VICE-PRESIDENT. The Secretary will call the roll.

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

Aldrich	Clark, Wyo.	Frazier	McLaurin
Bacon	Culberson	Frye	Martin
Borah	Cummins	Gallinger	Nixon
Brandegee	Curtis	Gamble	Page
Briggs	Davis	Gore	Penrose
Bristow	Depew	Guggenheim	Perkins
Brown	Dick	Hughes	Scott
Burkett	Dillingham	Johnson, N. Dak.	Smoot
Burrows	Dixon	Johnston, Ala.	Stone
Burton	Dolliver	Jones	Sutherland
Carter	Elkins	Kean	Taylor
Chamberlain	Fletcher	La Follette	Warner
Clapp	Flint	McCumber	Wetmore

Mr. JONES. My colleague [Mr. PILES] has been called out of the city on important business.

The VICE-PRESIDENT. Fifty-two Senators have answered to the roll call. A quorum of the Senate is present. Is there objection to the request of the Senator from Nebraska?

Mr. ALDRICH. What is the request?

The VICE-PRESIDENT. That the Senate now vote upon the joint resolution (S. J. R. 40) proposing an amendment to the Constitution of the United States.

Mr. ALDRICH. I have no objection, with the understanding that there is to be no discussion, or the discussion must be limited. Of course that must be understood.

Mr. McLAURIN. I could not understand the Senator.

Mr. ALDRICH. If there is to be any debate, there must be a time fixed for taking the vote.

Mr. McLAURIN. I do not know about that.

Mr. ALDRICH. It is impossible, the Senator will see, to lay aside the tariff bill indefinitely for the purpose of discussing the joint resolution.

Mr. McLAURIN. That is true. I do not think it ought to be done. I do not think the tariff bill ought to be laid aside for the discussion or the consideration of this proposed amendment. I think it had better come in after the conclusion of the consideration of the tariff bill.

Mr. BROWN. I hope Senators will not object. It seems to me that the joint resolution ought to be passed now, in order that the House may have it before the tariff bill reaches that body.

In view of the objections that appear to be apparent, I change the request and ask that the joint resolution be laid before the Senate, and that it be voted upon by a roll call at 1 o'clock to-day.

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

Mr. BORAH. I could not understand the request.

The VICE-PRESIDENT. It is that Senate joint resolution No. 40 be now considered by the Senate, and that it be voted upon by a roll call at 1 o'clock to-day. Is there objection to the request?

Mr. McLAURIN. Mr. President, I do not believe that there is any necessity for any constitutional amendment to authorize the Congress of the United States to enact an income tax. Whatever may be the intention in bringing forward the proposed amendment, I think the effect will be to defer the enactment of any law providing for an income tax. I think the effect of it will be that there will be probably more than a fourth of the States of the Union which will refuse to ratify the action of Congress when this proposed amendment to the Constitution is presented to the States for ratification, and then I think that will be presented to the Supreme Court of the United States as an argument why an income tax should be held to be unconstitutional. I think it would be urged as a very plausible argument before the Supreme Court of the United States that the people are not in favor of an income tax and do not believe that an income tax would be constitutional.

I can not conceive that there can be any necessity for any constitutional amendment. If I understood the vote yesterday, the proponent of this proposed constitutional amendment voted against the income tax.

Mr. BROWN. I voted for an income tax.

Mr. McLAURIN. I did not catch the vote of the Senator aright if he voted for an income tax. The Senator from Nebraska, as I heard it, voted to substitute the corporation tax for the income tax.

Mr. BROWN. I did. A corporation tax is a tax on incomes, which the court has sustained. I voted for that which the court sustained and rejected that which the court rejected.

Mr. McLAURIN. I do not see that the Congress of the United States should be called upon to zigzag around the inconsistent rulings of the Supreme Court of the United States. Without intending any reflection upon that tribunal, it is composed of men just exactly as the Congress of the United States is composed of men. I believe there are just as good lawyers in the House of Representatives and in the Senate of the United States as there are on the Supreme Bench.

Mr. BROWN. That is true; but they are not on the bench.

Mr. McLAURIN. I can not see that an income tax that would tax a portion of the incomes of the United States is constitutional when an income tax that would be uniform and tax all incomes of the United States over a certain amount would be unconstitutional.

I know that the Members of the Senate and the Members of the House are not on the Supreme Bench, but that does not necessitate nor argue for the abnegation of the right of the Senators and Representatives in Congress to pass their judgment upon a constitutional question. It is for us to pass that which we consider to be a constitutional law, and it is for the Supreme Court to undo it or not, as it sees proper.

Mr. CARTER. Mr. President——

Mr. McLAURIN. I desire to look into this. I do not say that I shall vote against this proposed amendment, but I shall offer to amend the constitutional amendment by striking out the words "or other direct" in one place, and by striking out the words "and direct taxes" in another. The Constitution will then confer all the power which is provided for in the joint resolution and also free Congress from a great many other embarrassments.

I yield to the Senator from Montana.

Mr. CARTER. Do I understand the Senator as objecting to fixing the hour of 1 o'clock to-day for voting upon the joint resolution?

Mr. McLAURIN. I should like to have a little further time than that to consider it.

Mr. CARTER. I suggest to the Senator from Nebraska that it is quite possible a number of Senators are absent this Saturday afternoon who would be glad to be apprised of the time that the vote is to be taken on the joint resolution. I therefore suggest to the Senator from Nebraska that he modify his request for unanimous consent by fixing 1 o'clock on Monday.

Mr. McLAURIN. I do not object to that.

Mr. BROWN. I accept the modification and ask that a vote be taken without further debate at 1 o'clock on Monday.

Mr. McLAURIN. I wish to offer an amendment to the joint resolution and have it acted upon.

Mr. CARTER. The amendment may be offered and then pending.

Mr. ALDRICH. The vote to be taken at that time without further debate.

Mr. BORAH. I could not hear the request.

The VICE-PRESIDENT. The request now is that the vote be taken at 1 o'clock on Monday upon the joint resolution and all amendments thereto, without further discussion.

Mr. BORAH. Without any further discussion between now and then?

Mr. ALDRICH. Oh, no.

Mr. CARTER. It will be open for discussion at any time.

Mr. ALDRICH. Mr. President, I shall at the proper time raise the question that that amendment is not in order. The unanimous-consent agreement relates to an amendment to the Constitution with reference to the income tax and no consent has been given for the consideration of such a proposition. If we can undertake to change the Constitution with reference to the election of Senators, we can change it in every possible respect as to the right of the people to have a regulation of the franchise in all the States and Territories. I object very strenuously to any such amendment, and at the proper time I shall raise the question of order against it.

Mr. BRISTOW. I should like to know what the question of order would be.

Mr. ALDRICH. It will be that we have by unanimous consent agreed to vote at 1 o'clock upon a constitutional amendment providing for an income tax, and that nothing else is in order.

Mr. BRISTOW. But this is an amendment to the joint resolution proposing that amendment.

Mr. ALDRICH. It must be an amendment which is germane to the proposition and not an amendment to change the whole Constitution of the United States.

Mr. BRISTOW. This is not an amendment to change the whole Constitution of the United States. It is simply an addition to the present amendment which seeks to change the Constitution, and it adds another paragraph only.

I desire to say that the election of Senators by the people has been largely discussed, and, in my judgment, there is a very wide sentiment throughout the country in favor of it. Originally, it is known to everyone, it was the purpose of the framers of the Constitution that the President should be elected by an electoral college selected by the people. The membership of such college, it was supposed, would be superior in wisdom and judgment to the average citizen, so that we would have a wiser selection of the President than if it depended upon popular elections. But the evolution of our political affairs has completely changed this system of the election of President. The President is to-day nominated and elected by a direct vote in fact, although in theory the electoral college elects, but only in theory.

The Senate was to be chosen by the legislatures of the various States in joint session, because it was believed that the members of the legislature would be better equipped to select men to fill the office of Senator than would the average citizenship. But in many of the States this part of the Constitution is being done away with by the direct primary, and in some of them by requiring under state laws the Senators to be nominated and voted for at the general election.

There is no reason why in this age of the world, in this period of our progress, the people should not have an opportunity to select the men who will represent them in this body. If there ever was any occasion for the legislature to elect Senators, that occasion has long since passed, because of the wide dissemination of popular knowledge. The American people in the various States are as well qualified to select their Senators as the members of their legislatures representing them in their legislative bodies.

Then the legislatures are elected now to transact state business, and the election of Senators is sometimes an incidental matter. There is not any reason why the people of every State should not have the right and the opportunity to vote directly for the men who are to represent them in this body. I can not understand why any Senator should object to giving the people of his State the right to select the men who will represent them here. My judgment is that any man who is not willing for the people whom he represents to express a direct choice as to whether he shall, or shall not, continue to represent them here, is either afraid that he is not the choice of the people whom he represents, or it is a confession that he does not represent them as they want him to represent them.

So I shall insist, first, that this amendment is in order and, second, that it ought to be passed.

Mr. ALDRICH. Mr. President, I shall raise another question on the amendment, and I give notice of it now, in order that there may be no misapprehension about it. It is in violation of the unanimous-consent agreement that no business shall be done other than tariff business.

Mr. STONE. Mr. President, I desire to consume about ten minutes or so of the valuable time of the Senate to say a few words respecting the resolution proposing an amendment to the Constitution, authorizing the imposition of an income tax. I wish to read a declaration contained in the Democratic national platform which was promulgated at Denver in 1908. It is as follows:

> We favor an income tax as part of our revenue system, and we urge the submission of a constitutional amendment specifically authorizing Congress to levy and collect a tax upon individual and corporate incomes, to the end that wealth may bear its proportionate share of the burdens of the Federal Government.

That declaration, clear and explicit, is alone sufficient to determine my attitude with regard to the resolution to be voted upon to-day. I am gratified to note this one more example, in addition to those I have heretofore pointed out, of Republicans following in the wake of Democratic leadership and along lines blazed by our Democratic pioneers. The President has taken his stand on the Denver platform, and a Republican Senator has culled one of its declarations and formulated it into the legislative proposition now before the Senate. I am happy to note these repeated evidences of enlightened progressiveness on the part of our Republican brethren. I hope, however, that when the Senator from Nebraska [Mr. BROWN], whose resolution has been selected by the Finance Committee as the basis of this proposition, thereby giving to that Senator the distinction of authorship, goes before the people and the legislature of his State to urge the ratification of the proposed amendment, he will not fail to inform them that he got his idea from a Democratic platform and from the utterances of Mr. Bryan, the leading Democrat and the most distinguished citizen of his State. I am entirely willing to have our friends on the other side appropriate the good things of Democracy, but I think they ought to have candor and fairness enough to accord proper credit to the sources of their inspiration, otherwise it would be an act of political piracy.

Mr. BROWN. Mr. President——

The VICE-PRESIDENT. Does the Senator from Missouri yield to the Senator from Nebraska?

Mr. STONE. For a question or an explanation.

Mr. BROWN. Does the Senator from Missouri mean to be understood as being of the opinion that the source, as he calls it—the Democratic source—of this joint resolution is anything against it?

Mr. STONE. Oh, no; I was congratulating the Senator and his party colleagues that they had at last become so favorably impressed by these Democratic influences.

Mr. BROWN. Is the Senator complaining because of what he calls "an appropriation of this idea?"

Mr. STONE. I am not complaining; I am complimenting and congratulating.

Mr. BROWN. Does not the Senator understand that if there is ever anything good found in the Democratic platform and the people are to get the benefit of it, somebody has to appropriate it?

Mr. STONE. I am perfectly willing that you should appropriate it, only I have been urging, as a matter of fairness, that when you go before the people of Nebraska you should not neglect to inform them that you had caught this idea from the Democratic platform. No doubt that would help you to carry it through.

Mr. President, fear has been expressed that more than one-fourth of the States will withhold their consent to the amendment and reject it, and then it is apprehended that an argument will be based on that circumstance to induce the Supreme Court to adhere to the doctrine announced in the Pollock case if ever the constitutionality of an income tax is again before that tribunal. That an effort will be made—a powerful and well-organized effort—to defeat the amendment can be accepted from the start as certain. What the result of that struggle will be I am not wise enough to forecast. I believe there is an overwhelming popular sentiment in favor of the Government, operating through its appointed agencies, being clothed with the power to impose a general income tax. There are many thousands who do not believe that that power should be exercised, or that such a tax should be authorized, except in times of stress and grave emergency; but thousands who thus believe, being patriotic citizens, will support the proposition to clothe the Government with the power. Mr. President, I believe in the policy of an income tax, but I wish here and now to say that I have never regarded with great favor the proposition to exempt incomes below a given sum from the operation of the law. That notion of exempting the smaller incomes from the tax does not appeal to me. Although I have been ready at all times to support what is known as the "Bailey-Cummins amendment," I would prefer a graduated income tax, levying the smallest per cent upon the smallest class of incomes, and then increasing the rate along some well-considered scale of progression. I would prefer, when incomes are being taxed, that every man who has an income, and certainly a net income, should contribute something to the support of the Government; however, it is hardly worth while to enter upon a discussion of that question now, and I will not.

Mr. President, I can not persuade myself that more than one-fourth of our American States will reject this proposed

amendment to the Constitution. But if that should happen it still could not be said that the people, speaking in the larger sense, were opposed to the proposition. If 12 States should by bare majorities in each reject the proposition, and 33 States should agree to it, as they would by large majorities, it would still be manifest that the great body of the people favored the amendment. And then, again, if it be true that the Constitution in its present form is broad enough to authorize the imposition of a general income tax, the failure to secure an adoption of the proposed amendment would not change the constitutional status as it exists to-day. If the Supreme Court should be called upon to review the Pollock case, and should be inclined to return to its earlier and, I think, sounder rulings, namely, that an income tax was within the Constitution, I can see no good reason why the court would hesitate to adopt that course even if this amendment should fail of ratification. If the court should go outside the record to consider extraneous matter, or should listen to an argument predicated on the alleged fact that the people had rejected the amendment, every justice would know that on the contrary the great mass of the people favored the proposition, and every man would know what influences operated, and how they operated, to defeat the proposition. It seems to me this is an opportune time to launch this amendment. If the President is sincere, and I have no doubt that he is, and if such men as the junior Senator from New York [Mr. ROOT] are sincere, and I have no doubt that they are—with all these powerful Republican influences favoring the amendment, and with the Democratic party solidly behind it, it seems to me that our united efforts to write this amendment into the fundamental law ought to succeed. At all events, speaking for myself, I am more than willing to put the issue to the test.

Mr. President, before closing I wish to say a few words upon another subject not wholly dissociated from the question immediately before us. In 1896, the Democratic national convention declared that the deficit in our revenues at that time was due to the decision of the Supreme Court setting aside the income-tax law of 1894; and the convention further declared that that decision overruled previous decisions of the court, and thus announced a new judicial doctrine on the subject of income taxation; and then the convention declared that it was the duty of Congress to use all the constitutional power which remained after that decision, or which might come from its reversal by the court as it might be in future constituted, to the end that the burdens of taxation might be equally and impartially laid, and so forth. During the campaign of that year the Democratic party and the Democratic candidates were furiously and wantonly assailed for attacking the Supreme Court, and for threatening to "pack" the court with subservient judges so as to secure a reversal of the decision referred to. I have recently read some of the wild ravings of Republican orators and editors during that memorable campaign. The Republican candidate, Mr. McKinley, and ex-President Harrison, and Senators and Representatives, and great metropolitan journals joined in this hue and cry. There was never a falser or more vicious charge made against a party declaration or a party purpose. The convention did protest, and on a basis of absolute truth had a right to protest, that the decision of the court was in contravention of repeated previous utterances of that tribunal; and the convention did insist, as with the most perfect propriety it had a right to insist, that Congress should continue to exercise all the power it had remaining after that decision so long as it stood as the judgment of the court, and until it should be reversed, if ever it should be reversed, when the personal composition of the court had changed. There was no threat or desire or thought upon the part of any Democrat to "pack" the court, but we had sense enough to know that the decision would not in all human probability be changed as long as the personnel of the court remained as it then was; and we had sense enough to know that in the natural course of things the elderly men who sat upon the bench would pass away and that new men would succeed them——

Mr. BEVERIDGE. Will the Senator permit a question?

Mr. STONE. I would rather the Senator would wait.

Mr. BEVERIDGE. All right.

Mr. STONE. And we had sense enough to know that the decision complained of not only did not have the popular approval, but did not have the approval of the great majority of the lawyers constituting the American bar. In view of these things, the convention had a right to declare, without being accused of discourtesy to the court or of making an assault upon it, that the questions involved and passed upon should be again submitted for judicial determination. Mr. President, we have passed far beyond that period, I know, and perhaps it does no good to speak of it now. Still, I can not let this opportune occasion go by without impressing as far as I can upon public attention the malevolent and mendacious character of the politics practiced at that time by our overvirtuous Republican friends. Since then Mr. Roosevelt, a Republican President, has spoken with blunt and almost vulgar harshness of decisions rendered by some of our high federal courts, and yet he remained for years the very idol of the great mass of Republicans. Since then we have been told by the present Chief Magistrate, in substance at least, that with the changed personnel of the court the income-tax decision against which the people have been protesting ever since it was made might not be adhered to if the question should be again submitted. Why, Mr. President, that was the very thing, said in 1896, that roused Republican cohorts from far and near into assaulting the Democratic party as a dangerous, if not treasonable, organization. And, sir, during this very debate I have heard great Republican Senators, standing here on this floor, urging the necessity of resubmitting this question to the court, and urging it for the very reasons assigned in the Democratic platform of 1896. I have heard them say that all talk about the proposition to resubmit the question through legislative action as being indelicate was a "morbid, ill-founded sentiment." Ah, Mr. President, our Republican friends, at least, all of them, are not now what they were. A wonderful change has come over the spirit of their dreams, or the dreams of some of them, since the sound and fury of that mighty struggle of near thirteen years ago have died away. What they denounced as almost treasonable then they now applaud as virtuous and patriotic. And this is another instance demonstrating the ultimate wisdom and justice of Democratic policy; and to impress that fact, now so well illustrated, is about the only excuse I have for adverting to a subject which can not be wholly pleasant to everybody.

Mr. President, that is all I care to say regarding the joint resolution proposed by the Senator from Nebraska.

Just a word now relating to the amendment, so called, offered this morning by the Senator from Kansas [Mr. BRISTOW]. I would cheerfully vote for both propositions, for both are well-known Democratic propositions, but it seems to me that it would not be wise policy to couple the two, even if permissible under the rules of the Senate. Both are substantive, distinct, and wholly different propositions relating to wholly different subjects. If they were combined into one single proposition and we should be called to vote upon them in that form, and without division, I fear, while trying to accomplish two things, we would endanger both. I have no doubt there are Senators and Members of the House who might and would vote against the double proposition, being favorable to one proposition and against the other; and for the same reason it might subject the whole scheme to failure if it should be submitted in that form to the legislatures of the States. I think it is in every way far better to deal with the two things separately. If the Senator from Kansas desires to submit a separate amendment for the popular election of Senators, I will join him in supporting it. I would be glad to have the amendment suggested by the Senator from Kansas added to the pending bill, if it can be done under the rules of the Senate, although I doubt if it can be done. The proposition now before the Senate is not offered as an amendment to the tariff bill, but as a distinct and separate proposition. I would be glad to have the amendment proposed by the Senator from Kansas brought to a vote in the Senate and the House, but I do not think it would be wise to combine the two and thus add to the danger and difficulty of passing either. Trying to do too many things, even good things, at one time too often results in doing nothing.

THE TARIFF.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 1438) to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes.

The VICE-PRESIDENT. The Senator from Rhode Island, as the Chair understands, asks that the amendment which he presented be considered section by section.

Mr. ALDRICH. I am not particular about it. I am quite willing to have the amendment agreed to as a whole; but there are some amendments, I think, which Senators would like to offer to the court provisions.

Mr. HEYBURN. Let me offer this amendment——

The VICE-PRESIDENT. Does the Senator from Rhode Island desire to have the sections read?

Mr. ALDRICH. No; the sections have already been read. Of course, the amendment is to the amendment.

The VICE-PRESIDENT. Does the Senator from Rhode Island desire the question put on each section?

Mr. ALDRICH. I am not suggesting that. Unless other Senators desire that, I am quite willing to have it understood that the amendments shall be treated as one amendment, and that amendments to the amendment may be offered from time to time.

Mr. JONES. Mr. President——

Mr. BEVERIDGE. May I ask the Senator from Rhode Island——

The VICE-PRESIDENT. The Senator from Washington first addressed the Chair, and is recognized.

Mr. JONES. Mr. President, I am receiving a great many letters from constituents of mine in regard to the income-tax proposition and also with reference to the corporation-tax measure. These letters come from ordinary, plain citizens, and not from lawyers or constitutional interpreters. I desire to have one letter read, which is a sample of the many letters that I am getting from these people, and shows their view with reference to the proposed legislation.

The VICE-PRESIDENT. Is there objection to the reading of the letter asked for by the Senator from Washington? The Chair hears none. The Secretary will read the letter, as requested.

The Secretary read as follows:

SPOKANE, WASH., *June 29, 1909.*

Hon. WESLEY L. JONES,
United States Senate, Washington, D. C.

DEAR SIR: We have had considerable discussion in our city during the past few days regarding the question of income tax as presented by the Bailey bill, and the question of a tax upon corporations, designated as the "Taft" or "administration" bill. All that I have heard express themselves are in favor of the administration bill, feeling that there is a possibility of, first, illegality of the Bailey bill, and we think that it is better to have temporary relief at this time and formulate an income tax that will serve the purposes and best interests of all the people, which we are in doubt of regarding the present bill.

The Spokane Chamber of Commerce to-day indorsed the administration bill in words as follows:

"Resolved, That the Chamber of Commerce of Spokane indorse the income-tax policy as outlined by President Taft, and urge our Senators and Representatives to support the same."

The bankers' association indorsed a similar resolution. The merchants' association and lumbermen have likewise indorsed it. I believe the citizens of this part of the State would much prefer the Taft bill at this time.

I give this information as a citizen and taxpayer of the State of Washington, trusting that in your wisdom you will reach a conclusion that will give us the fullest and best law.

Very truly,

D. T. HAM.

Mr. HEYBURN. Mr. President, after a conference with the chairman of the Committee on Finance [Mr. ALDRICH], I desire, in the interest of uniformity of the amendment which we adopted on Saturday, on page 2, line 23, after the word "then," to strike out "upon" and to insert "ninety days after the." I have submitted it to the chairman of the Committee on Finance, though I do not see him here at this moment. It is in uniformity with the other amendments, and there is no objection to it. It will be necessary to reconsider the vote by which we adopted the amendment in order to enable me to submit this amendment. I ask unanimous consent for its reconsideration for the purpose of submitting the amendment which I have just proposed.

The VICE-PRESIDENT. The Senator from Idaho asks unanimous consent to reconsider the vote by which the paragraph on page 2, line 23, of the amendment was agreed to on Saturday, for the purpose of offering an amendment at that point. Is there objection? The Chair hears none. The Senator now offers an amendment, which the Secretary will state.

The SECRETARY. On page 2, line 23, after the word "then," it is proposed to strike out "upon" and insert "ninety days after the."

Mr. BAILEY. What is the object of that amendment, Mr. President?

Mr. HEYBURN. It is a corresponding amendment to the one agreed to on Saturday. It occurs twice in the amendment.

Mr. STONE. I should like to hear the amendment. I did not catch it. The amendment made on Saturday to which the Senator from Idaho [Mr. HEYBURN] now proposes an amendment provided for a notice of ninety days.

Mr. ALDRICH. In case of the reimposition of the maximum duties.

Mr. HEYBURN. Notice of any change except the statutory change.

Mr. ALDRICH. Of any change except the statutory change. If that amendment is disposed of, Mr. President——

The VICE-PRESIDENT. The question is on the amendment proposed by the Senator from Idaho [Mr. HEYBURN] to the amendment.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

Mr. ALDRICH. Mr. President, the committee intend to occupy——

Mr. BAILEY. I thought the constitutional amendment joint resolution was before the Senate.

Mr. ALDRICH. No; that is to be voted on at 1 o'clock.

Mr. BAILEY. I want to submit an amendment to that.

The VICE-PRESIDENT. At present the pending amendment is the amendment offered by the Senator from Rhode Island [Mr. ALDRICH].

Mr. BAILEY. I will not interfere with that. I will wait until the Senator gets through.

Mr. KEAN. Let us finish this.

Mr. ALDRICH. If the Senator from Texas wants to give notice now of an amendment, I will yield for that purpose.

TAXES ON INCOMES.

The Senate, as in Committee of the Whole, resumed the consideration of the joint resolution (S. J. R. 40) proposing an amendment to the Constitution of the United States.

Mr. BAILEY. I want to offer an amendment, and I will occupy only two or three minutes.

I move to strike out the word "legislatures," in line 5, and to substitute the word "conventions;" and in line 9, after the word "incomes," I move to add the words "and may grade the same."

Mr. President, of course the Senate will at once understand that the purpose of the first amendment is to submit the ratification of this proposed amendment to conventions called in each State for that purpose, rather than to the legislatures. I perfectly understand that this would involve some additional cost; but I do not think the question of cost should weigh seriously in a matter of this kind. Legislatures are elected with reference to many questions. Legislatures may be chosen upon local issues. The members may change their opinions, as Members of the Senate have done upon this very question, between the time they are chosen to the legislature and the time when they are required to vote.

A very grave situation now presents itself to the Senate and to the country. If this amendment is submitted and defeated, all hope and all possibility of an income tax disappears forever from the consumers of this Republic. With the Pollock case standing unreversed, with the President of the United States sending a message to Congress, in which he asserts that the court can not be reasonably expected to recede from that decision; with both Houses of Congress responding to the President's suggestion, and submitting a constitutional amendment to the various States, if that amendment is rejected, we shall never live long enough to see a Supreme Court reverse the Pollock case. They will say, and they will have reason to say, that with the Pollock case the unchallenged law—and so far as the court is concerned it stands unchallenged—with the executive department recognizing it as the law, and recommending that the effect of it shall be obviated by a constitutional amendment; with the two Houses of Congress acting upon that theory, if the amendment to the Constitution, submitted under those circumstances, fails to receive the approval of 12 States in this Union, that is the end of an income tax.

Believing that to be true, I vote for this amendment, under any circumstances, with reluctance, because I do not think it necessary, and I know the submission of it is fraught with extreme danger; but I think the danger of its rejection will be greatly diminished if its ratification is submitted to conventions chosen for the sole and only purpose of passing on it. For that reason I offer this amendment, committing its consideration to conventions, instead of to the legislatures.

The second amendment, Mr. President, gives distinct and specific authority to graduate an income tax, and I think that necessary only as a matter of abundant caution. I would not, perhaps, have thought it necessary at all, except for the statement of Judge Brewer, in the case of Knowlton *v.* Moore, where he dissents from the opinion of the court sustaining the validity of the inheritance-tax law upon the ground that Congress had no power to grade it. Plainly, if Congress is without power under the Constitution as it now stands to grade an inheritance tax, it would be without power under this amendment to grade an income tax; and if we are to put the people of the United States to the trouble and expense of adopting a constitutional amendment authorizing Congress to do what, in my judgment, it now possesses ample power to do, let us make a complete work of it, and let us not find it necessary hereafter either to exercise the power circumscribed within limits which the people would not adopt or find our law held invalid.

I shall ask for a roll call on both of these amendments, unless some better reason can be advanced against their adoption than has occurred to me up to this time.

Mr. McLAURIN. Mr. President, I concur in the wisdom of what was said by the Senator from Texas [Mr. BAILEY] with reference to the necessity for the amendment of this joint resolution; but I think there is a better amendment than the one he proposes to offer, or, at least, a better amendment than the one which amends line 9.

The mischief in reference to an income tax in every discussion of it before the court has grown out of six words, three of them in clause 3 of section 2 of Article I of the Constitution, and three of them in clause 2 of section 9 of Article I of the Constitution. In the first place it says:

Representatives and direct taxes shall be apportioned among the several States—

The words "and direct taxes" in that instance, and in the next—

No capitation or other direct tax shall be laid.

The words "or other direct" are the words that make the mischief in this clause 4 of section 9. With these six words stricken out of the Constitution in the places where they occur, as I have indicated, there could be no trouble about the levying and collecting of an income tax.

I have heretofore indicated my views in reference to the meaning of the three words "or other direct," and I am not going to elaborate them now. I think the word "direct" there must be construed with reference to the word "capitation." A capitation tax is a tax that is levied directly upon the individual without reference to property. It is what is called in the States generally a "poll tax." When you speak of a "capitation tax" as a direct tax and then speak of "other direct taxes," the word "direct" in this connection must be construed ejusdem generis with reference to the word "capitation"—a capitation tax; that is, a direct tax which operates upon the individual himself, without reference to any property at all—and the words "or other direct tax," of course, always, by all rules of construction, must be construed to mean a tax of the same kind. other direct taxes, that operate upon the individual without reference to any property at all. Out of that confusion has grown all the trouble that has arisen in reference to the question of an income tax.

I think there has been too much learning, probably, on this matter. There has possibly been too much research into what has been said by this man or that man in the Constitutional Convention. You must construe the provision with reference to the language used, for no provision in the Constitution and no provision of a legislative enactment or congressional enactment is to be determined by what one man or another man may say in reference to it.

That is illustrated especially here by the action of Senators on the amendment which is going to be voted upon at 1 o'clock to-day. There are many Senators who believe that it is not necessary to have any amendment to the Constitution. The Senator from Texas made a very able, a very learned, and a very eloquent argument to show that an income tax is within the limits of the Constitution as it is now in existence. Other Senators have done the same thing. I only refer to the argument of the Senator from Texas because it was, if my memory is not at fault, the first one that was made and not to make any invidious distinctions, for I think all the arguments that have been made on this view of the Constitution have been very able and very clear. Nevertheless, the Senators who have made these elaborate arguments and who believe that it is not necessary to amend the Constitution in order to justify Congress in enacting an income-tax law are going to vote for the resolution of the Senator from Nebraska, or a substitute therefor, for an amendment to the Constitution.

I have digressed from what I was going to say. I want to say that if the amendment which I offer should be adopted—and I do not much expect that a majority of the Senate are going to adopt it, but I think every Democrat ought to vote for it—if it shall be adopted, will eliminate from the Constitution every cause of contention over the question of the authority of Congress to levy an income tax, except as to the power of Congress to grade an income tax.

This is the amendment:

Amend the joint resolution by striking out all after line 7 and inserting the following, to wit: "The words 'and direct taxes,' in clause 3, section 2, Article I, and the words 'or other direct,' in clause 4, section 9, Article I, of the Constitution of the United States are hereby stricken out."

That will prevent any mischief hereafter. But let me call your attention to some mischief that may arise over this proposal by the Senator from Nebraska; and I should like to have the attention of the Senator from Nebraska to this. The joint resolution provides that the proposed amendment to the Constitution shall read as follows:

The Congress shall have power to lay and collect direct taxes on incomes without apportionment among the several States according to population.

That is what the Senator from Nebraska proposes to insert in the Constitution as the sixteenth amendment. There is going to be some contention that will go before the Supreme Court as to the provision, because the men who are wealthy, the men who have large incomes do not intend to pay any proportionate part of the expenses of this Government if they can get out of it. They expect that the Government of the United States will protect all their property and protect all of their income, but they expect the expenses of the administration of the Government for the protection of their incomes and of their property shall be paid by the poorer classes of the country, shall be paid by the men in humble circumstances and with modest means. That has been the rule heretofore, and they expect it to continue.

Here is the question they are going to raise at once: They are going to say that when you read the proposed constitutional amendment according to its correct interpretation it means "without apportionment among the several States according to population;" but they are going to say that it does not say "without apportionment among the several States according to anything else." You have specified population, but it may be required; they might contend that the tax should be apportioned upon some other basis than that of population.

Mr. BROWN. Mr. President——

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

Mr. McLAURIN. With great pleasure.

Mr. BROWN. There is no other apportionment known to the Constitution except that according to the census or enumeration; and of course the proposed amendment would be construed together with the other provisions of the Constitution. The language used in the joint resolution is taken from the language of other sections of the Constitution, so that there can be no confusion or misunderstanding at all about the joint resolution.

Mr. McLAURIN. I know there is no other apportionment except in the instance to which I have referred; but it may be contended by those who desire to be exempted from the payment of their proportionate share of the taxes necessary to defray the expenses of the Government that there is an apportionment here provided for. It will be contended by those people that there is an apportionment here, and that the naming of one kind is the exclusion of all other kinds. There is a rule of construction that is not only familiar to all lawyers, but it is a rule that commends itself to the judgment of any man, whether he be a lawyer or not, as soon as it is presented to his mind, and that is that the naming of one is the exclusion of all others. When you name one kind of apportionment and provide that it shall not be required to be made, you exclude, then, all other apportionments; and it may be contended of any other apportionment except that which is named here. That is my idea about the mischief that is going to arise.

Then there is another thing that they may contend for, and that is that Congress has recognized the income tax as a direct tax. That is the conclusion that they will draw from the amendment that is proposed by the Senator from Nebraska. I do not think it is a direct tax. I shall vote for the amendment; and it is my intention to vote for the amendment, even though my amendment shall not be adopted; but it does not, in my judgment, meet the requirements of the case so as to put beyond all controversy the question before the Supreme Court of the United States on the constitutionality of the income tax and as to the meaning of the amendment. I think that it ought to be made perfectly clear. I am going to vote for it because I am in favor of anything that looks to the collection of an income tax. I think it is fair and just that there should be an income tax to compel those of wealth, who have great incomes, to pay some part of the expenses of the Government. I favor it not only because it is just, but because the immensely wealthy then will be interested in an economical administration of the Government instead of extravagance, in which they are not interested now, because they are not compelled to pay for any of the extravagance that is indulged in by the Government.

There are a great many other things, Mr. President, that I should like to say on this matter, but I am not going to take up the time of the Senate now to say them. I will ask that the amendment to which I have referred may be read at the Secretary's desk, to give notice of the amendment that I intend to

Mr. DIXON. Mr. President——

The VICE-PRESIDENT. Does the Senator from Nebraska yield to the Senator from Montana?

Mr. BROWN. I do.

Mr. DIXON. To keep the record straight, when reference is made to the Republican vote, I think the Senator should also add the fact that there was a larger percentage of Republican than Democratic Senators in this body who voted against sending the joint resolution to committee.

Mr. BROWN. I did not care anything about the political significance of it. I simply wanted to show that there is no possibility, with the Senate constituted as it is to-day and on record as it is, of having such an amendment get two-thirds of the majority of this body. Then tell me why load it on this joint resolution? I would be glad to support the Senator's resolution, if it can come up so that it does not kill itself and at the same time kill this one.

Mr. MONEY and Mr. NEWLANDS addressed the Chair.

Mr. BROWN. There are several Senators who want to talk, and I think I will yield the floor. I hope that all these amendments may be voted down. I believe that the joint resolution is drawn simply; it is drawn in language that is not susceptible of two or three constructions; it vests the power in Congress to lay and collect income taxes; and that is the proposition we want to adopt.

Mr. MONEY. Mr. President, I am one of those who believe that there never will be another amendment to the Constitution of the United States. Already, I understand, about 13 States have called for a convention of all the States. If that convention should be called, as it will ultimately be, I have no doubt the first resolution that will be offered will be to abolish the Constitution of the United States for the very reason that we have been for some time acting under a suspension of it, and those who are in authority are heartily tired of it.

The difficulty that presents itself to my mind is to secure the 12 States which everybody admits are quite likely to defeat any amendment of this sort to the Constitution. The method presented by the Senator from Texas is probably the best, but the same influences that will control the votes of the legislature will prevent the legislature from calling a convention. The item of expense will be considered by some of the frugal-minded legislatures in some of the States, also.

The great difficulty that we had in passing the last two amendments to the Constitution, which seemed to be so very necessary in our system of political economy as to fix the status of several million freedmen, would seem to argue the necessity of a ratification of the income-tax amendment, yet we know the difficulty. I am one of those who do not believe that either the fourteenth or fifteenth amendment was ever validly made a part of the Constitution.

It has been said that when a State has voted to ratify or reject, it has exhausted its power. I do not believe there is any authority in good common sense and sound reasoning for any such suggestion. There is no doubt that it has been acted upon; that is true, but the action was forced by the exigency of the political situation. As a matter of fact, 4 Southern States that had rejected the fourteenth amendment afterwards assented to it. But in the meanwhile 2 States that had assented to it had withdrawn their assent and rejected it.

One was the State of Ohio and the other the State of New Jersey. The paper that was then issued by the legislature of New Jersey is one of such high statesmanship that it deserves to rank next only to the Declaration of Independence. It is a paper that can be studied with great profit by any student of our Constitution and of our theory and system of government. My friend from Georgia [Mr. BACON] stated that there was a third; but he is mistaken about that. The State of Oregon, it is true, rejected the amendment, but that was in October, and the promulgation of the ratification was made by the Secretary of State, under the law of 1818, on the 28th of July, 1868. So the action of Oregon simply meant to express a change of sentiment in that State, and in no effect validated or invalidated the ratification. It had nothing to do with it. But it was held that four States had first rejected the amendment and afterwards ratified it; and they were counted, because they came in before the promulgation.

I am not one of those who believe that a promulgation by the Secretary of State of the ratification of three-fourths of the States of an amendment to the Constitution is at all necessary to its validity. It is just exactly as he is required to print the laws of Congress. Nobody will assume that he has got anything to do with passing the laws of Congress or giving them effect. He simply gives notice to the public that they have been passed, and superintends the printing. So, in the same way, the act of ratification consists of the action of the two Houses, then of three-fourths of the States; and the Secretary of State has nothing to do with it, except to announce that to the public; and the event is closed.

However, the State of New Jersey and the State of Ohio had changed; but they were not permitted to make that change. John Sherman, then a Member of the Senate from the State of Ohio, introduced a resolution declaring that three-fourths of the States of the Union had ratified the fourteenth amendment. As a matter of fact, that was ultra vires. The Senate had no business to concern itself any further. That clause of the Constitution which provides for its own amendment particularly points out the way in which it shall be done.

It says that such joint resolutions shall receive the consent of two-thirds of the Members of both Houses. There has been some contention about whether that meant two-thirds of those present or two-thirds of the Members constituting each House. According to my view of it, proper reason and common sense would say it required two-thirds of the membership of both Houses; but it has been uniformly held by both Houses that it only required two-thirds of those present and voting; that all the intermediate steps leading up to a final vote upon the amendment required only a majority of those present and voting, a quorum being always presumed to be present, as a matter of course. I do not accede to that; but there is no way to change it, of which I am aware. That has been the uniform practice of both Houses, and they have declared it over and over again. The last ruling on that subject was by Mr. Reed, of the State of Maine, as able a man as has ever been Speaker of the House of Representatives. I recollect that he said in his ruling that it seemed unnecessary for him to rule, primarily, because the decisions of preceding Speakers had been so uniform upon that point.

But we have had also other decisions, even coming down to the decision of the Supreme Court, that the President of the United States had to sign such amendments. The first 12 amendments proposed by Madison were signed. Ten were adopted afterwards. The eleventh amendment was signed by John Adams, which was adopted. Then the twelfth amendment of Mr. Madison was signed, and that was adopted. The thirteenth amendment was signed by Abraham Lincoln, not because it was believed that it was at all necessary, because the President is not included in the amending of the Constitution as one of those who have anything on earth to do with it, but it was said that it was extremely fitting that the man who had emancipated the slaves by proclamation should have the privilege of signing a legislative amendment to the Constitution, ratified by the States, which did the same high office. Consequently he was permitted to do so. Then it was that Trumbull, of Illinois, offered a resolution that the approval of the President was totally unnecessary, and it passed the Senate without a single dissenting vote. So that, though we have precedents which seem to have no foundation in good reason and that are cut short whenever the opportune moment comes, it seems the President has nothing whatever to do with the amendment of the Constitution.

Mr. President, I do not believe that this amendment to the Constitution will ever be a part of it. I am willing to vote for it, and I should like to see it adopted, if possible; but I am quite sure that those influences which have prevented a vote on the income-tax amendment in this Senate will also prevent a vote in at least twelve of the legislatures of this Union. We can feel quite sure that an act of such far-reaching importance, that touches the pockets of very many rich people, is not very likely to become a part of the organic law of our Republic or of our confederation.

I should be very glad, Mr. President, to proceed upon the lines laid down by the Senator from Texas [Mr. BAILEY], the Senator from Iowa [Mr. CUMMINS], and the Senator from Idaho [Mr. BORAH], which, I believe, is the shortest and the simplest way. I am not one of those who regard the judgment of the Supreme Court as an African regards his particular deity. I respect such a decision just exactly to the extent that it is founded in common sense and argued out on reasonable logic, but when it violates the law of common sense, then I cease to so regard it, except that as a citizen I am bound by it. As a legislator, I have no more regard for it than I should have for a decision of a magistrate in one of the counties of the State of Mississippi, especially when I know it runs counter to the decision of a hundred years and was decided by a vote of five to four and that one judge who voted in the affirmative changed his mind somehow in the shadows between two different hearings.

I do not say that by way of disparagement of anybody, because it is only the fool who never changes his own mind; but there were no new facts brought out; there were no new arguments adduced; and the member of the court, whoever he was,

Mr. TAYLOR (when his name was called). I am paired with the junior Senator from Connecticut [Mr. BRANDEGEE] on all questions except this one. I vote "yea."

The roll call was concluded.

Mr. BACON. I desire to announce that my colleague [Mr. CLAY] is necessarily absent. If he were present, he would vote "yea." He is paired with the senior Senator from Massachusetts [Mr. LODGE], who, I presume, if present, would vote "nay."

Mr. BANKHEAD. I am paired with the junior Senator from Illinois [Mr. LORIMER]. I transfer that pair to the junior Senator from Maryland [Mr. SMITH], and vote "yea."

Mr. SCOTT. My colleague [Mr. ELKINS] is unavoidably detained from the city to-day. I am not prepared to say how he would vote if he were here.

Mr. BAILEY. I am paired with the Senator from West Virginia [Mr. ELKINS], and if it would make any difference in the result of this vote I should of course feel compelled to withdraw my vote. But as it does not make any difference in the result, I shall let my vote stand.

Mr. HEYBURN. I should like to make a parliamentary inquiry.

The VICE-PRESIDENT. The Senator will state it.

Mr. HEYBURN. Should pairs count on a vote of this kind, which requires a majority of two-thirds? It seems to me this is an exception to the rule.

The VICE-PRESIDENT. The question of pairs is not for the Chair to determine.

Mr. BACON. A majority of two-thirds is not required in the case of an amendment.

Mr. MONEY. I believe it has been ruled repeatedly that in the intermediate stages of an amendment to the Constitution only a majority is requisite.

The VICE-PRESIDENT. The Chair thinks that is so, but that was not the question that was asked of the Chair.

Mr. GALLINGER. Let us have the regular order.

The VICE-PRESIDENT. The question asked of the Chair was whether pairs should count. The Chair understands it is not for the Chair to determine whether a pair shall or shall not stand.

Mr. MONEY. The Chair is right about that. It is a matter of agreement between two Senators whether the pair stands or not; and that agreement is not liable to be reviewed by any other party.

The result was announced—yeas 30, nays 46—as follows:

YEAS—30.

Bacon	Cummins	Jones	Shively
Bailey	Davis	La Follette	Simmons
Bankhead	Fletcher	McEnery	Smith, S. C.
Borah	Foster	Money	Stone
Bristow	Frazier	Newlands	Taliaferro
Chamberlain	Gore	Overman	Taylor
Clapp	Hughes	Owen	
Culberson	Johnston, Ala.	Rayner	

NAYS—46.

Aldrich	Crane	Gallinger	Penrose
Beveridge	Crawford	Gamble	Perkins
Bourne	Cullom	Guggenheim	Root
Bradley	Curtis	Heyburn	Scott
Briggs	Daniel	Johnson, N. Dak.	Smoot
Brown	Depew	Kean	Stephenson
Burkett	Dick	McCumber	Sutherland
Burnham	Dillingham	Martin	Warner
Burrows	Dixon	Nelson	Warren
Burton	du Pont	Nixon	Wetmore
Carter	Flint	Oliver	
Clark, Wyo.	Frye	Page	

NOT VOTING—16.

Brandegee	Dolliver	Lorimer	Richardson
Bulkeley	Elkins	McLaurin	Smith, Md.
Clarke, Ark.	Hale	Paynter	Smith, Mich.
Clay	Lodge	Piles	Tillman

So Mr. BAILEY's first amendment was rejected.

The VICE-PRESIDENT. The Secretary will report the next amendment offered by the Senator from Texas.

The SECRETARY. In line 9, after the word "incomes" and the comma, insert the words "and may grade the same" and a comma.

The VICE-PRESIDENT. The question is on agreeing to that amendment.

Mr. BAILEY. Mr. President, I am satisfied that this amendment will be voted down; and voting it down would warrant the Supreme Court in hereafter saying that a proposition to authorize Congress to levy a graduated income tax was rejected. And although I do not believe it would be rejected upon any except a rather blind political reason——

Mr. HEYBURN. I call for the regular order.

Mr. BAILEY. I do not intend to allow that to occur, and I withdraw the amendment.

The VICE-PRESIDENT. The Senator can not withdraw his amendment except by unanimous consent after the yeas and nays have been ordered.

Mr. BAILEY. I did not know the yeas and nays had been ordered on that amendment.

The VICE-PRESIDENT. They have.

Mr. BAILEY. I think not.

Mr. ALDRICH. I think there will be no objection to that course, Mr. President.

The VICE-PRESIDENT. The Chair so understood. However, it is very easy to solve the difficulty. Is there objection to the Senator from Texas withdrawing his amendment? The Chair hears none. The Senator from Texas withdraws his amendment.

The question now is upon the amendment offered by the Senator from Mississippi [Mr. MCLAURIN], which the Secretary will again report.

The SECRETARY. Amend the joint resolution by striking out all after line 7 and inserting the following:

The words "and direct taxes," in clause 3, section 2, Article I, and the words "or other direct," in clause 4, section 9, Article I, of the Constitution of the United States are hereby stricken out.

The VICE-PRESIDENT. The question is on agreeing to the amendment.

The amendment was rejected.

Mr. BRISTOW. I desire to offer as a substitute for the joint resolution the matter which I send to the desk.

The VICE-PRESIDENT. The Senator from Kansas offers the following substitute for the joint resolution.

The SECRETARY. Joint resolution offered by Mr. BRISTOW as a substitute for Senate joint resolution No. 39, Sixty-first Congress, first session.

Mr. ALDRICH. I ask that the substitute be read, subject to objection.

The Secretary read as follows:

Joint resolution offered by Mr. BRISTOW as a substitute for Senate joint resolution No. 39, Sixty-first Congress, first session.

Joint resolution to amend the Constitution.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following section be submitted to the legislatures of the several States, which, when ratified by the legislatures of three-fourths of the States, shall be valid and binding as a part of the Constitution of the United States:

"The Congress shall have power to lay and collect direct taxes on incomes without apportionment among the several States according to population."

That section 3 of Article I be so amended that the same shall be as follows:

"ARTICLE I.

"SEC. 3. That the Senate of the United States shall be composed of two Senators from each State, who shall be chosen by a direct vote of the people of the several States, for six years; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the state legislatures; and each Senator shall have one vote."

Mr. ALDRICH. I make the same point of order in relation to that amendment.

The VICE-PRESIDENT. The joint resolution is not offered as an amendment to anything that is pending.

Mr. ALDRICH. It is not offered?

The VICE-PRESIDENT. It is not offered as an amendment to the pending joint resolution.

Mr. ALDRICH. Then, I object to its presentation.

The VICE-PRESIDENT. It is not in order.

Mr. BRISTOW. I offer it as a substitute for the pending joint resolution.

The VICE-PRESIDENT. But the joint resolution expressly says that it is offered as a substitute for joint resolution No. 39.

Mr. BRISTOW. This is No. 39?

The VICE-PRESIDENT. It is not.

Mr. ALDRICH and Mr. GALLINGER. Regular order!

Mr. BEVERIDGE. Let us have the regular order.

Mr. BRISTOW. May I ask what is the number of the pending joint resolution?

The VICE-PRESIDENT. No. 40.

Mr. BRISTOW. I ask to change the substitute to No. 40 instead of No. 39.

The VICE-PRESIDENT. The change will be made.

Mr. ALDRICH. I make the point of order against it.

Mr. BRISTOW. What is the point of order?

Mr. ALDRICH. I make the point of order that it covers matters not included in the agreement, and that under that agreement——

The VICE-PRESIDENT. The Chair sustains the point of order.

go and ask the Senator from New York. This is not a suit, Mr. President, against the Government. That is a perfectly correct proposition. There is nothing new about it. In this line of cases courts have over and over again passed upon the proposition that when the Government permits a suit against itself it may regulate the condition upon which the suit is brought. This is not a suit against the Government.

Mr. ALDRICH. How does the dissatisfied importer get his money back?

Mr. RAYNER. This is not getting money back. The Senator does not understand the law that he has framed.

Mr. ALDRICH. I think I do.

Mr. RAYNER. Absolutely not.

Mr. ALDRICH. Let us look at it in a practical way.

Mr. RAYNER. Let us look at it in a legal way; I do not care about the practical way.

Mr. ALDRICH. I trust the practical way is the legal way. The importer is assessed a duty by the Board of General Appraisers in New York upon a certain classification. He is obliged to pay the duty, and he can not get that money back except by bringing a suit against the collector. If dissatisfied, he must appeal from the decision of the collector. He becomes a party to the controversy and he becomes a party under the conditions which the United States fixes.

Mr. RAYNER. Of course the Senator is arguing something that nobody is arguing at all. I am arguing criminal jurisdiction here under this statute, and the Senator is arguing about the importer paying money. Money seems to be upon the mind of the Senator all the time. I am arguing for personal liberty.

Mr. ALDRICH. The Senator knows as well as I do that neither the Board of General Appraisers nor the circuit court or the court to be created by this act has any criminal jurisdiction. We are not proposing to give this court any criminal jurisdiction. The Board of General Appraisers have no criminal jurisdiction.

Mr. RAYNER. If the Senator will sit down he will enlighten the Senate by his silence.

Mr. ALDRICH. Does the Senator from Maryland contend that either the Board of General Appraisers or this court have any criminal jurisdiction?

Mr. RAYNER. I have said there is not a lawyer here who believes that.

The Senator from Texas [Mr. BAILEY] has just arrived. The Senator from Rhode Island said in the absence of the Senator from Texas that the Senator from Texas had clearly examined this measure and pronounced it to be constitutional. If the Senator has done that, I should like to hear him upon that subject.

Mr. CLAPP. Mr. President, while I think many of us thoroughly understand the point the Senator is making, I am going to take the liberty of suggesting that to those who may not be lawyers he has not made it entirely plain.

I am going to say, with the Senator's pardon——

Mr. RAYNER. Does the Senator mean that I have not made it plain to the Senator from Rhode Island?

Mr. CLAPP. Well, to a great many Senators. There are a great many Senators who are not lawyers.

Mr. RAYNER. What does the Senator want me to make plain? Can the Senator make it any plainer?

Mr. CLAPP. I do not think I can; but I think the Senator from Maryland can make it plainer.

Mr. RAYNER. In what way?

Mr. CLAPP. If the Senator will pardon me——

Mr. RAYNER. Certainly.

Mr. CLAPP. The Senator is discussing this question as he would discuss it in court, upon the assumption that the court took notice of the general principles and practice; but the Senator ought to remember that, in a measure, he is discussing it to laymen. I merely make the suggestion to the Senator, that he can make the proposition plainer to those who may not be lawyers.

Mr. RAYNER. If I have not made this proposition plain, it is not within my ability to make it any plainer. I will permit the Senator from Minnesota to make it plainer.

Mr. CLAPP. It is certainly plain to lawyers.

Mr. RAYNER. You can not make a legal proposition plain to laymen. You see that by the Senator from Rhode Island. There is a gentleman with as astute an intellect as there is in this body. If I can not explain it to him, how is it possible to explain it to anybody else? The Senator was not here when we were discussing this question. You have not heard the whole of this discussion. The truth is, Senators go out and then come in and expect a Senator to repeat everything he has said. I do not propose to do it. This is the longest speech I have made since I have been in this body, and I have gone over the proposition. I covered the first proposition; that any layman can understand. The proposition is that in a suit above $20, on the question of fact, a man has a right to a jury trial. Every layman understands that. The Senator from Idaho [Mr. BORAH], for whose legal opinion I have great respect, says he thinks I am wrong about that. The Senator from Rhode Island need not shake his head. Now, never mind, Mr. President——

Mr. ALDRICH. It is a self-evident fact, evidenced by the experience of this country for twenty years, without a single exception, that the Senator is wrong.

Mr. RAYNER. That is the same old thing again. I repeat, in the presence of the Senator from Texas, we had one hundred years of experience under the income tax, and decision after decision held it to be constitutional; and after a hundred years the Supreme Court pronounced it unconstitutional. No lawyer who understands his profession will assert the proposition that because there has been a bad practice that makes good law. Your practice may have been wrong. This question has never been discussed before in this body; and notwithstanding the practice, notwithstanding the Senator from Rhode Island, notwithstanding the preparation of this law by the Cabinet, I hold that, for the reasons I have given and especially for the reasons that I am now giving, it is but an unconstitutional law.

Mr. ALDRICH rose.

Mr. RAYNER. Let me finish.

Mr. ALDRICH. Let me say a word.

Mr. RAYNER. I can not stop you.

Mr. ALDRICH. My proposition is that the universal and unbroken practice——

Mr. RAYNER. The same thing again, "universal practice."

Mr. ALDRICH. Of the country shows conclusively that if the litigants who have taken advantage of this situation had been entitled to a jury trial they would have had it, and the fact——

Mr. RAYNER. Mr. President——

Mr. ALDRICH. Wait a minute. The Senator from Maryland will let me make a statement.

Mr. RAYNER. But not such an irrelevant statement as that.

Mr. ALDRICH. I say that the unbroken practice and experience of the United States for twenty years, if there were no other reasons, show that the Senator from Maryland must be wrong in his statement, and it needs neither the ignorance of a layman nor the intelligence of lawyers to convince any man who has heard his argument what his misgivings are upon the subject, because he says himself he doubts whether he is right or wrong. His misgivings have no foundation whatever.

Mr. RAYNER. I think the Senator would have come out much better if he had kept his seat to-day.

Mr. ALDRICH rose.

Mr. RAYNER. Now will the Senator permit me to finish? One can not argue a legal question with a gentleman who admits that he knows nothing about law; that he never studied it; and neither is it his profession. You might as well bring in an astronomer, a fortune teller, a geologist, or a physician, or anybody else, to argue a question of law with me. You do not see the Senator from New Hampshire, Doctor GALLINGER, get up here and argue this question. There is not a layman in this body, except the Senator from Rhode Island, who has intruded into this discussion, for they all appreciate the fact that this is a legal and a constitutional argument, and I have devoted the study of years to these questions, arguing them with lawyers, the best in the land; but the Senator from Rhode Island can not argue this question at all. There is only one point he makes all day long—"this has been the practice." Does not "the Senator from Maryland" know that "this has been the practice?" I do not care what has been the practice. The question is, Is it a valid practice? Is it a constitutional practice?

I am glad the Senator from Texas [Mr. BAILEY] is here. I will read this section over again, and I want to see if the Senator from Texas thinks it is good law. He may so think, or he may not agree with me. I do not know.

Mr. BAILEY. Before the Senator——

The VICE-PRESIDENT. Does the Senator from Maryland yield to the Senator from Texas?

Mr. RAYNER. I referred to the Senator from Texas. I should not have done so if the Senator from Rhode Island had not referred to him in terms, and stated that he had approved of this law.

The VICE-PRESIDENT. Does the Senator from Maryland yield to the Senator from Texas?

Mr. RAYNER. Certainly.

A bill (S. 2949) granting an increase of pension to Daniel B. Morris; to the Committee on Pensions.

By Mr. BORAH:

A bill (S. 2950) granting an increase of pension to David E. Jones (with accompanying paper); to the Committee on Pensions.

By Mr. MONEY:

A bill (S. 2951) for the relief of the estate of Stephen Herren (with accompanying paper); and

A bill (S. 2952) for the relief of the estate of Stephen Herren; to the Committee on Claims.

By Mr. BEVERIDGE:

A bill (S. 2953) granting an increase of pension to Peter Harmon (with accompanying papers); and

A bill (S. 2954) granting an increase of pension to Charles N. Taylor (with accompanying papers); to the Committee on Pensions.

HOUSE BILL REFERRED.

H. R. 11572. An act to authorize the construction, maintenance, and operation of various bridges across and over certain navigable waters, and for other purposes, was read twice by its title and referred to the Committee on Commerce.

BRIDGES OVER NAVIGABLE WATERS.

Mr. CLAPP submitted an amendment intended to be proposed by him to the bill (H. R. 11572) to authorize the construction, maintenance, and operation of various bridges across and over certain navigable waters, and for other purposes, which was referred to the Committee on Commerce and ordered to be printed.

TAXES ON INCOMES.

Mr. BROWN. I submit a concurrent resolution for which I ask present consideration.

The concurrent resolution (S. C. Res. 6) was read, as follows:

Senate concurrent resolution 6.

Resolved by the Senate (the House of Representatives concurring), That the President of the United States be requested to transmit forthwith to the executives of the several States of the United States copies of the article of amendment proposed by Congress to the state legislatures to amend the Constitution of the United States, passed July 12, 1909, respecting the power of Congress to lay and collect taxes on incomes, to the end that the said States may proceed to act upon the said article of amendment; and that he request the executive of each State that may ratify said amendment to transmit to the Secretary of State a certified copy of such ratification.

The VICE-PRESIDENT. Is there objection to the present consideration of the concurrent resolution?

Mr. KEAN. Mr. President, I call the attention of the Senate to the unanimous-consent agreement under which we are meeting. I should like to have it read.

Mr. BROWN. I will say to the Senator from New Jersey that this is not legislation. It is simply the formal and usual resolution calling upon the Executive to submit to the several States the joint resolution proposing an amendment of the Constitution.

Mr. BACON. I should like to suggest to the Senator from New Jersey that the agreement to which he refers can not possibly relate to business which the Senate has already taken up. It might relate to it if it were an original proposition, and if the question were whether we should proceed to a matter of legislation; but the Senate having passed the joint resolution, everything necessary to effectuate it is in order and is not in contravention of the agreement previously made.

Mr. SMOOT. I call the Senator's attention to the agreement, which reads:

It is agreed by unanimous consent that the Senate will adjourn from time to time for three days at a time until the conference report is ready upon the bill (H. R. 1438) "to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," and that no business shall be transacted at the sessions of the Senate prior to the report of the conference committee upon the said bill, other than the transaction of the routine morning business and the consideration of the deficiency appropriation bill now pending in the House of Representatives.

Mr. BROWN. This is routine morning business, so that the agreement would not apply to it. It relates to a formal proceeding made necessary by the action of Congress.

The VICE-PRESIDENT. If it is routine morning business, it can not be considered this morning in the face of an objection. If an objection is made, it will have to go over.

Mr. BROWN. I have not heard any objection made.

Mr. KEAN. Under the unanimous-consent agreement the concurrent resolution is not in order.

The VICE-PRESIDENT. The Senator from New Jersey objects, and the concurrent resolution goes over.

Mr. STONE. At the last meeting of the Senate the Senator from Virginia [Mr. MARTIN] reported a bridge bill and asked unanimous consent to have it passed. The Senator from Massachusetts [Mr. LODGE] called attention to the unanimous-consent agreement, and the Chair ruled that it was not in order to put the bill on its passage.

Mr. BACON. I suggest to the Senator from New Jersey that if his contention is correct, it would not be in order even for the Chair to lay before the Senate a joint resolution requiring his signature. The unanimous-consent agreement can not possibly relate to doing whatever may be necessary to effectuate what has already been determined upon by Congress. The two Houses passed a joint resolution. It is not proposed to add to that joint resolution in any particular, but simply to make it effective. It is not an independent piece of legislation; it is not an independent proposition; and it strikes me that it is no more objectionable to the unanimous-consent agreement than would be the laying of a joint resolution before the Senate with the statement on the part of the Chair that the joint resolution had received the signature of the Vice-President.

The VICE-PRESIDENT. The Chair has not passed upon that question. The Chair has simply ruled that under an objection the resolution must go over in any event.

Mr. CULBERSON. I invite the attention of the Chair to the fact that the Senator from New Jersey did not object generally under the rule, but he put it upon the ground that the resolution is contrary to the unanimous-consent agreement.

The VICE-PRESIDENT. The Chair thinks the objection controls, no matter what ground leads the Senator to object. The concurrent resolution goes over.

RETIREMENT OF EMPLOYEES.

Mr. CUMMINS. I ask unanimous consent that an order be made for a reprint, for the use of the Committee on Civil Service and Retrenchment and the Senate, of the bill (S. 1944) for the retirement of employees in the classified civil service.

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

Mr. SMOOT. I should like to ask the Senator from Iowa the cost, or the approximate cost, of the printing?

Mr. CUMMINS. I do not know.

Mr. SMOOT. Of course, we have already given notice that we shall object to any documents being printed unless the matter is referred to the Committee on Printing.

Mr. CUMMINS. I am perfectly willing that it shall be referred to the Committee on Printing.

Mr. SMOOT. That would be the best course. I will assure the Senator that we shall take the matter under consideration promptly.

Mr. HEYBURN. I have been absent one meeting, and I should like to inquire who has given notice that they will require matters presented by Senators to take a certain course. The Senator says "we have already given notice." I am curious to know who gave the notice.

Mr. SMOOT. The Committee on Printing have these matters in charge, and they decided that the proper course to pursue is to have all requests for printing referred to the Committee on Printing.

Mr. HEYBURN. It strikes me that the Committee on Printing might very well take notice of the rights and privileges of the Senate and of Senators in this matter. The rules say what shall go to the committee and what shall not. The Committee on Printing are not standing at the gate here with a flaming sword to see what shall go through.

Mr. SMOOT. There is no such purpose, I assure the Senator, on the part of the Committee on Printing, but simply, as all expenses of printing are to be passed upon by that committee——

Mr. HEYBURN. My objection is to the use of the word "we;" that "we" have done this and "we" have done that. I am not inclined to be factious, but it is a bad habit to get into. We are all "we's" here.

Mr. SMOOT. That may be true; but——

Mr. KEAN. I think the Senator from Utah does not understand the request of the Senator from Iowa. It is to have a reprint of a bill.

Mr. SMOOT. Then I will withdraw any objection to it.

Mr. KEAN. It is not a request for the printing of a document, but merely for the reprint of a bill.

Mr. SMOOT. I have no objection to that.

There being no objection, the order was reduced to writing, and agreed to, as follows:

Ordered, That there be printed 2,000 additional copies of the bill (S. 1944) for the retirement of employees in the classified civil service, 1,000 copies for the use of the Committee on Civil Service and Retrenchment and 1,000 copies for the use of the Senate document room.

Mr. BAILEY. I wanted to say that the Senator from Minnesota in his question at first asked if it had been considered as presumptive evidence of guilt. Of course, if he means in a criminal proceeding, no.

Mr. ALDRICH. No.

Mr. CLAPP. That is what I meant.

Mr. BAILEY. It can not, in my judgment, be used in that way safely, although I say that with some reluctance, in view of a recent line of decisions in some of the States which have been trying to enforce their prohibition laws. It has been held that the mere possession of liquor was prima facie evidence that it was held for the illegal purpose of selling it. But that is going a long way.

Mr. CLAPP. Yes; but that does not go so far as this provision goes.

Mr. BAILEY. I think if this provision be read carefully—I have read it hastily here—it will be seen that the farthest it can be used is in proceeding to forfeit.

Mr. ALDRICH. That is what I was going to say. That is the precise question. It is used for the purpose of working a forfeiture, and nothing else.

Mr. CLAPP. The Senator from Rhode Island says that this is a substantial copy of existing law. I want to point out that a very little difference in language might make a very great difference in legal effect. The provision contains this language:

And in any legal proceeding that may result from such seizure—

A legal proceeding that might result from such seizure might be a criminal prosecution. If the Senator from Rhode Island is right about that, then the law is good, but if the Senator from Maryland is correct——

Mr. ALDRICH. That is my understanding of the law.

Mr. CLAPP. The law is absolutely void.

Mr. RAYNER. I should like to ask the Senator from Minnesota if a criminal proceeding is not a legal proceeding?

Mr. CLAPP. That is what I have stated.

Mr. ALDRICH. It may be a legal proceeding, but it is not a legal proceeding for the forfeiture of goods.

Mr. CLAPP. This is not limited to proceedings for forfeiture.

Mr. ALDRICH. It relates to forfeiture, and nothing else.

Mr. CLAPP. No; if the Senator will just permit me a moment, it reads:

And in any legal proceeding that may result—

Not for forfeiture, but—

from such seizure, the undervaluation as shown by the appraisal shall be presumptive evidence of fraud.

Then it goes on—

And the burden of proof shall be on the claimant to rebut the same.

When? Clearly only when the claimant is seeking a recovery. If the Senator from Maryland is correct, that in any legal proceeding this shall be presumptive evidence of fraud, I think anyone will agree with me that that would not be a valid enactment.

Mr. HEYBURN. Mr. President——

The VICE-PRESIDENT. Does the Senator from Minnesota yield to the Senator from Idaho?

Mr. CLAPP. With pleasure.

Mr. HEYBURN. I think that is the existing law, and has been for nineteen years. I have just compared the language.

Mr. ALDRICH. It is the same language.

Mr. HEYBURN. Take page 5 of the existing law. As I have it here, that provision——

Mr. ALDRICH. Not a single word or syllable is changed from the law as it has been since 1890.

Mr. HEYBURN. As I have stated, I have just compared the language.

Mr. CLAPP. I want to say that the only escape from it would be that the language, taken together, would not make this evidence in a proceeding against the claimant on the part of the Government.

Mr. ALDRICH. I was one of those who prepared that enactment originally, and I certainly never had any such idea or contemplated that it could be possibly construed in that way. It was only intended, of course, to cover procedure for forfeiture.

Mr. RAYNER. One line will amend it, and why not do so?

Mr. HEYBURN. It has never been construed as suggested by the Senator from Minnesota [Mr. CLAPP]. The construction that the courts have placed upon it is that when an independent criminal proceeding is commenced, it proceeds under the ordinary rules of evidence; but this is only as applied to the provisions of this bill.

Mr. BAILEY. The Senator from Maryland and the Senator from Minnesota are both right, if those words can be construed to include a criminal procedure.

Mr. HEYBURN. They have not been so construed.

Mr. BAILEY. That they have not been so construed is the only way to save the provision from the objection which the Senator from Maryland and the Senator from Minnesota both make to it. Of course, if the langauge has been construed, then it is well enough to leave it; but if it has not been construed, except by no attempt to enforce it in criminal cases, I think, as a matter of proper caution, we ought to confine it so that it could not be invoked, or attempted to be invoked, in a criminal proceeding.

Mr. HEYBURN. The cases are not tried in the same court.

Mr. BAILEY. I understand that.

Mr. HEYBURN. The criminal proceedings are tried in a court having its own independent rules of procedure.

Mr. RAYNER. Are there any cases on the subject, I ask the Senator from Idaho?

Mr. HEYBURN. I have sent for my notes on the criminal code which we enacted. I may probably be able to refer the Senator to some authorities. I do not care to speak offhand, although I may know them.

Mr. ALDRICH. Mr. President, I should like to say to the Senator from Texas that if there is any change that he can suggest that will make the language perfectly clear, I should be glad to have him do so. There never was such an intention as has been expressed here and no such purpose.

Mr. BAILEY. Yet to anybody reading the language for the first time it would naturally occur that it might be broad enough to include that. But, Mr. President, I have no hesitation in saying that I know probably less about criminal law than any lawyer on this floor. I have never practiced it.

Mr. SUTHERLAND. I have just a word to say, and then I will yield the floor. The Senator from Maryland [Mr. RAYNER] would be entirely correct if this provision should be applied to criminal cases. I do not think there could be any doubt about that at all, because under the Constitution every person accused of crime is entitled to be confronted by the witnesses against him; but I think it is quite clear, from a consideration of the proviso, that it does not apply to a criminal case, and can not by any sort of construction be held to apply to a criminal case. After the preliminary portion, the language of the proviso is:

Such entry shall be held to be presumptively fraudulent, and the collector of customs shall seize such merchandise and proceed as in case of forfeiture for violation of the customs laws—

By that phrase the collector of customs is directed in this event to proceed as in the case of forfeiture for the violation of the customs laws—

And in any legal proceedings that may result from such seizure.

Plainly and manifestly referring to the preceding clause, which has reference to an action for forfeiture. So that it seems to me there is no need of any amendment. It is perfectly apparent that the provision only applies to that sort of action.

Mr. McCUMBER. Right there I want to call the Senator's attention to the fact that there is no criminal procedure that originates or could originate from the seizure.

Mr. SUTHERLAND. No.

Mr. McCUMBER. No crime is based upon anything that pertains to the seizure, hence no criminal procedure would arise from that seizure.

Mr. SUTHERLAND. The Senator is right about that. The phrase "in any legal proceeding that may result from such seizure" plainly has reference to the particular legal procedure which is mentioned in the clause preceding.

Mr. ROOT. Mr. President, the Senator from Utah has made the precise suggestion which I rose for the purpose of making, that the only legal proceeding which will arise from the seizure will be a claim.

Mr. RAYNER. I should like to ask the Senator from New York whether a proceeding for the forfeiture of a man's property is a criminal procedure?

Mr. ROOT. It may be, and it may not be.

Mr. RAYNER. If it may be, then the clause is illegal.

Mr. ROOT. But in contemplation of law, when there has been a violation, upon which a forfeiture is visited, the title vests immediately in the Government, and all persons claiming the property are put to their affirmative proceeding to secure possession of it. It has been time out of mind, it has always been, so far as I know, the practice of this Government to determine the rules of evidence upon which such an affirmative proceeding against the officers of the Government could be maintained, and to impose the burden of proof upon the claimant.

The language that is referred to here is taken directly from the act of 1890. It does not change that language, and that language in turn simply states the law as it had existed before, so far as I am able to ascertain it; and it is by no means an

isolated case. There are many instances in which similar provisions of law establishing rules of evidence have been enacted by the Congress of the United States.

For example, under the old smuggling statute, the law which makes the importation of goods contrary to law a criminal proceeding and creates liability to forfeiture of goods or forfeiture of double value, the provision was, and I dare say still is, that the possession of goods which have been imported contrary to law shall be presumptive evidence of a knowledge on the part of the possessor that the goods which he possesses were imported contrary to law. It will be seen that that provision, under which the person's goods may be forfeited, or he may be sued for double their value, throws the burden of proof upon him to show that he had not knowledge of their importation contrary to law. I refer to that as an analogous exercise of power, because I know the law in question went to the Supreme Court of the United States in the case of United States *v.* Claflin.

While I am on my feet let me first congratulate the Senator from Maryland [Mr. RAYNER] on the perfectly beautiful time he has been having. I have never known a more safe or more sane Fourth of July, and I have never known an address upon this inspiring day which gave more delight and joy to the auditors. And let me follow that heartfelt expression of appreciation and gratitude by a simple statement of what I understand this proposed law to do.

Prior to the year 1890, and still, the decision of the appraisers was and is, but for the extension of opportunity afforded by the proposed law, final upon the question of value. That does not come in question. Prior to 1890 the decision of the collector upon the classification of goods, which determined whether they were to be classified under a clause fixing one rate of duty or another clause fixing another rate of duty, was final so far as the question between the Government and the owner or importer was concerned. The importer was bound to pay the duty; but he could pay it under protest, and could then sue the collector individually to recover back any excess which he deemed that he had been obliged to pay over the lawful rate. Before 1890, as I said, those suits against the collector were tried in the circuit court of the United States as jury cases. Originally the recourse was only against the collector individually. It did not concern the Government. The suit was not brought because the collector had been acting under the law, but was based upon the theory that he had been acting without the law; that he had been violating the law. And in order to relieve the collectors from the unfortunate consequences of errors in judgment, Congress provided that upon a certificate of good faith from the court, judgments against collectors should be paid out of the Treasury of the United States.

In 1890 Congress provided that there should be an appeal to the Board of General Appraisers to pass upon the question of classification, and a review upon the question of classification by the circuit court of the United States. That was the first time the importer had an opportunity to go up beyond the collector himself and get a review of that question.

Section 15 of the act of 1890 provided:

That if the owner, importer, consignee, or agent of any imported merchandise, or the collector, or the Secretary of the Treasury, shall be dissatisfied with the decision of the Board of General Appraisers, as provided for in section 14 of this act, as to the construction of the law and the facts respecting the classification of such merchandise and the rate of duty imposed thereon under such classification, they or either of them may, within thirty days next after such decision, and not afterwards, apply to the circuit court of the United States within the district in which the matter arises for a review of the questions of law and fact involved in such decision. * * * Thereupon the court shall order the board of appraisers to return to said circuit court the record and the evidence taken by them, together with a certified statement of the facts involved in the case and their decisions thereon, and all the evidence taken by and before said appraisers shall be competent evidence before said circuit court.

It appears that under that provision for the past nineteen years these questions have been passed upon by the circuit court of the United States reviewing the action of the Board of General Appraisers upon a certified record of the testimony before the Board of General Appraisers and a certified statement by that board as to the facts. A year ago there was an amendment which authorized the court to send the case back for the taking of further testimony if they did not find that the facts were sufficiently before them upon the evidence returned in the first instance.

That seems to be the present state of the law and the practice, and it seems to have gone substantially unchallenged for the past nineteen years. What this bill does is not to create a new kind of practice, but to transfer from the circuit court of the United States to a new customs court the same jurisdiction to pass upon the questions of classification and rate of duty in the same way, upon evidence sent to them exactly as it is sent to the circuit court of the United States.

Mr. RAYNER. May I interrupt the Senator there?

Mr. ROOT. Certainly.

Mr. RAYNER. I will ask the Senator from New York where there is any such provision as that in this law? I have not seen it.

Mr. ROOT. In which law; the new law?

Mr. RAYNER. Yes; the new law.

Mr. ROOT. Look at page 42 of the law, beginning with line 9. You will find there an exact reproduction of section 15 of the act of 1890. It reads:

If the importer, owner, consignee, or agent of any imported merchandise, or the collector or Secretary of the Treasury, shall be dissatisfied with the decision of the Board of General Appraisers as to the construction of the law and the facts respecting the classification of such merchandise and the rate of duty imposed thereon under such classification, or with any other appealable decision of said board, they, or either of them, may, within sixty days next after the entry of such decree or judgment, and not afterwards, apply to the United States court of customs appeals for a review of the questions of law and fact involved in such decision.

Mr. RAYNER. May I ask the Senator another question?

Mr. ROOT. Certainly.

Mr. RAYNER. Further over I find this language, "and all the evidence taken by and before said board shall be competent evidence." There is no doubt about that. Does that preclude this court from taking any other evidence at all? Look at lines 7 and 8, on page 43. That evidence is competent evidence; but it does not preclude the parties from giving any other evidence before a court of review, does it?

Mr. ROOT. That is the precise language of the act of 1890.

Mr. RAYNER. It may be.

Mr. ROOT. These words also occur in the act of 1890.

Mr. RAYNER. I can well understand, if the Senator will allow me, why that evidence should be competent evidence, because both parties were present, and were perhaps represented by counsel, and everything of the kind. I do not know what the practice has been under the act of 1890; but suppose there should be some newly discovered evidence of the highest importance which had come to light after the decision of the appraisers. The Senator from New York will not contend that before this court of customs, which is to be the final court, I could not produce a witness that would absolutely change the decision of the appraisers?

Mr. ROOT. No. It appears, however, that even before the passage of this act of 1908 the courts had adopted the practice of sending cases back to the Board of General Appraisers. I find in the case of Dieckerhoff, in Forty-fifth Federal Reporter, at page 235, that the district attorney and the counsel for an importer united in an application to the circuit court to send the matter back in order to get a further return from the Board of General Appraisers. The same thing was done in the case of Blumlein and a number of other cases in the same volume, at page 236. The law then goes on, using the same words as the act of 1890, to declare that—

The decision of said court of customs appeals shall be final, and such cause shall be remanded to said Board of General Appraisers for further proceedings to be taken in pursuance of such determination.

That, again, merely reproduces the provisions of the act of 1890, substituting the court of customs appeals for the ordinary circuit court. I apprehend that the question of constitutionality does not arise here upon the terms of the proposed statute. It seems to me there is no doubt whatever that it is competent for the Government in all proceedings as between itself and an importer to say that the decision of such a tribunal shall be final, and end the matter there. That is essential to the efficacy of proceedings for the collection of taxes.

While it is a subject I have not examined, there may still be, outside of the limits of this legislation, by force of the operation of the Constitution, a right on the part of the importer or the owner to bring suit for the recovery of money exacted from him without warrant of law, just as he could bring suit under the old act of 1883 when money had been exacted from him without warrant of law by the collector. I do not think, however, that that question is one which arises upon this statute.

Mr. RAYNER. Would he not be entitled to a jury trial in a case of that sort?

Mr. ROOT. Undoubtedly he would.

Mr. RAYNER. If you will give him a jury trial under this amendment, I will withdraw my objection.

Mr. ROOT. But this amendment does not relate in any way whatever to that proceeding.

Mr. RAYNER. Let me ask the Senator from New York—because this is an entirely different argument from that conducted by the Senator from Rhode Island, and we have gotten more in two minutes from the Senator from New York than we have from all these interruptions of the distinguished Sen-

ator from Rhode Island—whether this does not make the decision final?—

The decision of said court of customs appeals shall be final.

I can talk now so that we can understand each other, because the Senator from Rhode Island would not understand this at all. If this decision is final, could it not be pleaded as res adjudicata against any suit that might be brought?

Mr. ROOT. That may be. I say I have not examined the question. It may be, however, that it would be held to be final, just as the decision of the collector before was held to be final as between the Government and the importer. This law does not seem to me to carry the finality of the decision of the proposed customs court any further than the old law carried the finality of the decisions of the collector.

Mr. RAYNER. Then let me ask the Senator another question, because I am quite sure we want to have a law that is valid. What I am after is a jury trial at some stage of the proceedings. In order to avoid all question, what is the objection to putting into the law a provision that after the decision of the court if the party aggrieved wants a jury trial upon the question of fact, he can go into the circuit court of the United States, just as he can go there now and could do under the act of 1890?

Mr. ROOT. The Senator must not ask me that question, for this is not my law.

Mr. RAYNER. No; I know the Senator from New York never drew a law like this.

Mr. ROOT. Personally, I am not in favor of having a new court. I do not oppose it, however, because gentlemen more familiar than I am with the present course of administration of the customs laws think it is necessary. Nevertheless I do not become its advocate; I merely yield to their judgment. So while I am willing to aid the Senator's Roman holiday in any way within my power, he must not ask me a question about what should or should not be done.

Mr. RAYNER. The Senator from New York certainly does not yield to the legal judgment of the Senator from Rhode Island. That would not be a legal holiday.

Mr. ROOT. My understanding is that the Senator from Maryland regards the opinion of the Senator from Rhode Island as being entirely a legal holiday.

Mr. RAYNER. I regard it as an illegal holiday.

Mr. HEYBURN. Mr. President, there should be no misunderstanding of the proposition submitted by the Senator from Maryland. His contention, as I understand it, is that in being deprived of the right to trial by jury these parties are deprived of a constitutional right. I understand that to be the burden of his objection, aside from the finality of the judgment.

All through the laws of this country, and all through its history, Congress has been making just such provisions. Wherever a controversy arises between the Government and one of its citizens as to whether or not the citizen has complied with the provisions of a law under which he may claim something from the Government, Congress has exercised the right to provide a tribunal to limit or prescribe the manner of trial. The case of the public lands is exactly in point. There the party makes an application for a patent to land. Another party files what is known as an "adverse." Congress has said that the case shall then be transferred to the court and tried under the ordinary rules of procedure. But Congress also took the liberty to say that the party should not be entitled to a jury trial. Even though the case involves every question as to character that this one involves, Congress says the party shall not have a jury trial—or the Supreme Court, in interpreting the act of March 3, 1881, has said so, and it has repeated itself since.

That is exactly in point on the question of a jury trial, because the court put it upon the ground that these are special proceedings. The right of action is derived from an act of Congress in regard to an extraordinary proceeding, and it is within the power of Congress to stop the trial at any point or to prescribe any limitations during the trial. Then the court says that the decision of an intermediate court shall be final; but, just as in a customs case, I imagine, if the intermediate court has violated the fundamental principles of law, you can apply to the Supreme Court of the United States for a writ of certiorari to bring up the proceeding for review. Of course that is not a right. That is a privilege the granting of which is discretionary with the court, and the court is governed only by the peculiar conditions and circumstances of the case.

That is an illustration that this proceeding is not extraordinary, and does not stand alone. I can cite a dozen such proceedings, special in their character, in the public laws of the United States, some of them decided finally in the lower court and others in the court next above, and so on; but always, of course, with the right to ask the highest court in the land to bring up the proceedings and review them, to see whether or not, first, the court had jurisdiction——

Mr. RAYNER. Will the Senator from Idaho yield to me?

Mr. HEYBURN. Yes.

Mr. RAYNER. There is no doubt about those cases and that law. But what possible similarity is there between that line of cases and a case that involves the forfeiture of a man's property and his liberty?

Mr. HEYBURN. It does not involve his liberty.

Mr. RAYNER. I beg the Senator's pardon. If a man makes a false entry he goes to prison.

Mr. HEYBURN. He does that in the land cases; but he does it in another court.

Mr. RAYNER. Where is there any such case? If the Senator has such a case, I should like to see it; and upon its production I will withdraw every word I have said. The forfeiture of a man's property is a criminal proceeding. It is one of the severest proceedings known to the common law.

Mr. HEYBURN. Let me answer that argument right there.

Mr. RAYNER. Just let me finish the sentence. You not only forfeit the man's property but you send him to prison. Where is there a case in the United States that says you can do that without giving a man, in the first place—mind you, in the first place—the right to a jury trial to determine the question of classification? And, in the second place, where is there a case which says he can be convicted upon the ex parte statement of a collector? If there is any such case, I should like to have it.

Mr. HEYBURN. I could give the Senator cases directly in point. For instance, the issues in a land case may be, and often are, as to whether or not a man has forfeited rights which were well established in him.

In many cases, perhaps in a large percentage of mining cases, the question is, "Has he forfeited some right which he had under the general law?" The Government determines that he has or has not forfeited the right. That is a determination of forfeiture. It is made in a civil proceeding. If he has forfeited his right, and has made false affidavits or has given false testimony, he is taken into another court, and there punished for the crime. The forfeiture does not necessarily involve the determination of the grade of the crime or its character. It is merely a declaration of forfeiture. The lands revert to the Government of the United States. The forfeiture is then complete, and the criminal prosecution does not arise out of the fact that he has suffered a forfeiture. It arises out of the manner in which he has undertaken to defend an unrighteous claim.

Mr. RAYNER. Mr. President, before the Senator sits down, I should like to ask him whether there is any proceeding of that sort where a man can be convicted upon an ex parte affidavit? That is what I want to know.

Mr. HEYBURN. No; and neither could that be done in these customs cases, because when he is in the criminal court he has certain rights that the Constitution gives him, and he is not tried upon affidavits; he is tried upon testimony.

Mr. RAYNER. I beg the Senator's pardon. If there is no testimony produced—and I want to call the Senator's attention to this—the man is convicted on the ex parte statement of a collector.

Mr. HEYBURN. I know of no such law, and there is no such decision. I have had occasion to review the decisions of the courts on that line. I undertake to say there is no decision recorded in which the court permitted conviction on forfeiture without trying the criminal case upon the facts.

Mr. RAYNER. This proposed law says that he shall be found guilty unless he produces testimony in his favor.

Mr. HEYBURN. Will the Senator kindly point me to the exact words on which he bases that statement? Give me the page and line.

Mr. RAYNER. On page 15:

And in any legal proceeding that may result from such seizure, the undervaluation as shown by the appraisal shall be presumptive evidence of fraud and the burden of proof shall be on the claimant to rebut the same.

There can not be anything plainer than that.

Mr. HEYBURN. That only goes to the question of measuring the weight of the evidence; it does not foreclose him.

Mr. RAYNER. But it throws on him the burden of proving his innocence, which you have no right to do under the Constitution of the United States.

Mr. HEYBURN. That is not a criminal case.

Mr. RAYNER. What is the forfeiture?

Mr. HEYBURN. We have the same presumption in the land laws.

Mr. RAYNER. Is not forfeiture a penal case?

Mr. HEYBURN. Forfeiture is not a case at all. It is simply the thing upon which a case may be based. Suppose, for instance, a man has made a double homestead entry; the same presumption arises against him there, because he is presumed to know the law. He has made two entries when he can make but one, and there is a presumption there of criminal intent in making a second entry, but he can show circumstances that would exonerate him from that presumption and acquit him.

Mr. SUTHERLAND. The Senator from Maryland insists, as I understand it, that the forfeiture of goods is a criminal proceeding?

Mr. RAYNER. Penal.

Mr. SUTHERLAND. A penal proceeding. At common law the forfeiture of goods in some instances may operate as a punishment for crime, but I never have understood that the action on the forfeiture of goods was itself a criminal action. We bring a civil action——

Mr. BAILEY. Not a criminal action, but it is a penal action, and stricter proof is required and stricter proceeding required than in an ordinary act of forfeiture. The Senator from Maryland did once call it criminal procedure, but he corrected himself and described it as it is.

I think that really the only difference between the Senator from Maryland and the other Senators is as to the effect of the words "in any legal proceeding." I believe it satisfies me, and I know it would satisfy the Senator from Maryland, if we may be sure that these ex parte affidavits were not to be used to jeopardize any citizen's liberty. Really the whole controversy revolves around whether that is true or not. If those in charge of the bill, either by amendment or by the show of construction, can satisfy us on that point, I think that would be the end of it.

Mr. FLINT. Let me make a statement. It is the intention of the committee to cover just what the Senator from Texas has stated, and not to include a criminal proceeding in this procedure.

Mr. RAYNER. If there is not any objection to putting that in the bill, it settles this whole business.

Mr. SUTHERLAND. Let me ask the Senator from Texas a question before he enters into negotiations with the committee about this matter. The Senator from Texas speaks of an action before the courts as being a penal action. I think he is hardly accurate in making that description. It is true the law required greater evidence in an action of that character. That was because of the maxim that forfeitures were not favorites of the law. But I do not think it is strictly accurate to speak of an action to forfeit as a penal action.

Mr. BAILEY. The Senator will agree that there are three kinds, the civil, criminal, and the penal acts. The action to enforce a forfeiture is not a criminal action, nor is it a civil action; it is a penal action. Although I do not pretend to much knowledge of these matters, I think the Senator will find upon an examination of the books that the division is in the three classes I state—civil, criminal, and penal.

Mr. BORAH rose.

Mr. BAILEY. I may be wrong. I see that the Senator from Idaho [Mr. BORAH] is on his feet and is smiling. I am not sure whether he is laughing at me or whether he agrees with me.

Mr. BORAH. I am not going to laugh at the Senator at any time.

Mr. BAILEY. I hope I find the Senator agreeing with me, then.

Mr. BORAH. My opinion is that a forfeiture is a civil action of a penal nature.

Mr. BAILEY. They sometimes call it a quasi criminal action.

Mr. SUTHERLAND. The Senator from Texas will agree with me that an action for forfeiture may be brought by one individual against another upon a contract.

Mr. BAILEY. That is a forfeiture of what was stipulated between them.

Mr. SUTHERLAND. Certainly.

Mr. BAILEY. On this kind of a case I can not analyze the nature of it, and I think Senators will agree with me. I admit my ignorance of these matters. I was never employed in half a dozen criminal cases in my life. I found pretty early that it was rather difficult for a man to practice criminal law without engaging in criminal practice, and I sought to eschew it.

In this very case the purpose of the Government is to enforce forfeiture as a part of the punishment for a given offense. If that does not constitute almost a criminal, and certainly a penal, action, I do not know how to define it.

Mr. CARTER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Utah yield to the Senator from Montana?

Mr. SUTHERLAND. I should like to finish my statement, and then I will yield, if the Senator will wait a moment.

Mr. CARTER. I will forego the suggestion for the time being.

Mr. SUTHERLAND. If the Senator from Maryland will give me his attention for just a moment——

Mr. RAYNER. The Senator is speaking of a contractual forfeiture. I submit to leave that out of the question. I ask the Senator if this is not a qui tam action?

Mr. SUTHERLAND. Just at the moment I can not answer the question.

Mr. RAYNER. It is a qui tam action. I might have left out the word "criminal." We have a penal statute under which there is a qui tam action in my State. I do not know how it is in other States. I have brought three or four suits under it.

Mr. SUTHERLAND. It is certainly not a criminal action, so far as to come before a jury. If the Senator from Maryland will give me his attention for a moment, I believe I can convince him that the phrase which is used in reference to criminal proceeding that may result from seizure can not possibly have any application to any criminal proceeding. The Senator will observe, in the first place, the following language is used:

> And the collector of customs shall seize such merchandise and proceed as in case of forfeiture for violation of the customs laws, and in any legal proceeding that may result from such seizure.

Manifestly the phrase "legal proceeding that may result from such seizure" has reference to the legal proceedings that are referred to in the clause immediately preceding. As indicating that, if the Senator will follow on, he will see that it proceeds:

> The undervaluation as shown by the appraisal shall be presumptive evidence of fraud, and the burden of proof shall be on the claimant to rebut the same, and forfeiture shall be adjudged unless he shall rebut such presumption of fraudulent intent by sufficient evidence.

Mr. BAILEY. I suggest to the chairman and the members of the committee that what will satisfy the Senator from Maryland entirely is that we will insert, after the words "any legal proceeding," the words "not of a criminal character."

Mr. ALDRICH. That is perfectly satisfactory.

Mr. RAYNER. I will accept that.

Mr. ALDRICH. That is the clear intention.

Mr. RAYNER. I will accept it.

Mr. BAILEY. That settles it.

Mr. BORAH. Mr. President, I am not going to discuss the constitutionality of the act. I shall examine it with that in mind. I think it is unfortunate that it is constitutional. I look upon the proceedings for the collection of the tax as coming under entirely different rules of law than those in the case which we have been discussing for the last hour.

Mr. President, as it is undoubtedly to be presumed that this measure will become a law in some form, I want to call attention to some features of it I think worthy of the consideration of the committee before it is finally passed.

In the first place, on page 39, beginning with line 15, the act provides that this customs court of appeals "shall always be open for the transaction of business, and sessions thereof may be held annually or oftener by the said court in the several judicial circuits at the following places." Then it provides for a roving court from Boston to New York, Philadelphia, Baltimore, New Orleans, Galveston, Chicago, Seattle, Portland, and San Francisco.

It occurs to me that if it is to be a court in any sense of the term and become a permanent part of our judicial system, it ought not to be in the nature of a roaming commission. It ought to have at least one or two established points for the purpose of holding its sessions.

But that leads up to another suggestion, where it says that "any three of the members of said court shall constitute a quorum." Is it the understanding of the committee, if three constitute a quorum, two agreeing in opinion, that opinion shall be the opinion of the entire court, and that the minority shall establish the opinion for the majority of the court? When you have a court composed of five, it seems to me it would be a rather remarkable condition to prevail if two of the members may render an opinion which is valid.

Mr. FLINT. It must be a unanimous opinion. If the first have failed to agree, then it shall be a decision of the full court of five judges.

Mr. BORAH. That is a portion of the act which I have not been able to find. To what provision does the Senator refer? I went through it with a view to finding whether that was true, and I was unable to find any provision which would annul the effect of the provision upon page 40, lines 6 and 7. If that stands alone, undoubtedly less than a majority of the court could render the opinion.

Mr. FLINT. I have not read it since it was printed, and I can not turn to it.

Mr. BORAH. It is possible that the provision is in the act, but I have not been able to find it.

Mr. FLINT. It may have been omitted. It was a matter which was brought up, I will say to the Senator, after some discussion, and I called it to the attention of the committee. In glancing over it it appears that it was omitted. I am very glad the Senator has called attention to it because it is the intention of the committee that the decision shall be by three, and where an appeal is given it shall be by a majority of the court of five, so that the decisions shall be uniform throughout the United States.

Mr. BORAH. I understand that if it has been omitted it will be inserted.

Mr. FLINT. Yes, sir.

Mr. BORAH. I feel quite sure it has been omitted. I have not been able to find it.

Mr. BACON. I will thank the Senator from Rhode Island if he will accept the amendment which I propose to offer on the thirty-ninth page, inserting the word "Savannah" in the fifth circuit after the words "New Orleans." I will state the fact that the fifth circuit has, I think, twice as much seacoast as any other; in fact, I am sure of it. Unless it is the California circuit, I expect it has four times as much seacoast as any other circuit in the United States.

Mr. ALDRICH. I have no objection to that. It ought to come in after the word "of," in line 22, and before the words "New Orleans," so as to read, "cities of Savannah, New Orleans," and so forth.

The VICE-PRESIDENT. The Secretary will report the amendment.

The SECRETARY. On page 39, line 22, after the word "of" and before the words "New Orleans," insert the word "Savannah."

The amendment to the amendment was agreed to.

Mr. HEYBURN. I ask the chairman of the committee to accept an amendment, on page 23, by striking out the word "evidence," in line 1. I will say that that provision stands alone in legislation organizing and determining the power of courts. It is not in the law as it now exists. It allows the Board of General Appraisers, which is a minor court, to "establish from time to time such rules of evidence, practice, and procedure." The law as it stands now says they may establish from time to time such rules of practice and procedure. That is right, and Congress has never undertaken to come in to give a court the power to establish rules of evidence.

Mr. ALDRICH. Very well, strike out the word "evidence," in line 1, page 23.

The VICE-PRESIDENT. The Secretary will report the amendment to the amendment.

The SECRETARY. On page 23, line 1, strike out the word "evidence" and the comma.

The amendment to the amendment was agreed to.

Mr. SHIVELY. I offer an amendment on page 38, which I send to the desk.

The VICE-PRESIDENT. The amendment will be stated.

The SECRETARY. On page 38, line 2, strike out the word "ten" and insert the word "seven," so as to read:

Each of whom shall receive a salary of $7,000 per annum.

Mr. SHIVELY. Mr. President, I shall not discuss this amendment. In the light of other salaries paid, it requires no explanation. The bill fixes the salary of a judge of the proposed customs court at $10,000 per year. This court is to have jurisdiction over only a single line of cases. The United States circuit court has jurisdiction over a wide range of cases and a large variety of subject-matter. A United States circuit court judge receives a salary of $7,000 a year.

Mr. ALDRICH. I think the committee reached the understanding; I think the amendment has not been made; but the understanding was that the judges should be paid the same salary as the circuit judges.

Mr. McCUMBER. I think it is $7,500.

Mr. ALDRICH. It is $7,500, I think.

Mr. SHIVELY. In your last legislative, executive, and judicial appropriation act you appropriated salaries for 29 circuit judges at $7,000 each.

Mr. GALLINGER. That is right.

Mr. HEYBURN. We remember it. The Senate made it $7,500, but the House knocked it out.

Mr. KEAN. The House knocked it out.

Mr. ALDRICH. I am willing to accept the amendment to the amendment.

The VICE-PRESIDENT. The question is on agreeing to the amendment to the amendment.

The amendment to the amendment was agreed to.

The VICE-PRESIDENT. The question is on agreeing to the amendment as amended.

Mr. CLARK of Wyoming. I should like to make a parliamentary inquiry. It is whether the sections are segregated or to be considered separately.

The VICE-PRESIDENT. The amendment is considered as one amendment. It was offered as one amendment.

Mr. CLARK of Wyoming. There are distinct parts of the amendment. It occurred to me——

Mr. ALDRICH. They are all together as one symmetrical provision. It is all one section.

Mr. CLARK of Wyoming. It occurs to me that the proposition on the composition of the court is a different proposition from the other. I, of course, desire to follow the committee in the general scope of the amendment. I can not say that I am very heartily in favor of the court proposition. I should like to vote separately on it.

Mr. ALDRICH. Of course there is no objection to that; but I think the Senator from California has a long statement, which he is hesitating about making. I think the Senator himself, if he should hear the argument in favor of the question, would be as enthusiastic for it as the members of the committee are. I am quite sure of that. I hope the Senator will not ask for a division, because it is a part of a whole proposition, and if the Senator finds any objection to it——

Mr. CLARK of Wyoming. I should hate to vote on the whole proposition. I desire to state——

Mr. ALDRICH. I think, if the Senator will talk to the Senator from California and read some portion of the argument, he will have no hesitancy at all in supporting it.

Mr. BORAH. Mr. President——

The VICE-PRESIDENT. Does the Senator from Wyoming yield the floor.

Mr. CLARK of Wyoming. I simply make the parliamentary inquiry, if it is intended as one amendment.

Mr. ALDRICH. It is.

Mr. CLARK of Wyoming. And it must be so acted upon. I very much regret I shall have to part from my support of the committee in this matter, because I can not vote for a court that absolutely takes the property and disposes of it and allows the disposition of it without an opportunity to appeal to some other tribunal.

Mr. BORAH. Do I understand it is the purpose of the committee to make any explanation in regard to the court?

Mr. ALDRICH. I think not. The matter has been very carefully considered by the committee, and we have given great attention to it. I feel perfectly certain that if the Members of the Senate should examine the question as carefully as the committee did there would be no vote in the Senate against it. It is not a question of partisan judgment at all. It has been considered by the committee, the Republicans and the Democrats alike. It is simply a question of the honest enforcement of the law. The committee, the officers of the custom-house, the officers of the Department of Justice, everybody, have agreed that this proposition is a necessity if we expect to have the prompt and honest enforcement of the customs laws.

Mr. GALLINGER. Mr. President, I rose to inquire of the chairman of the committee as to the present salary of the general appraisers. Is it $9,000?

Mr. ALDRICH. Nine thousand dollars.

Mr. GALLINGER. That is the present law?

Mr. ALDRICH. Yes; that is fixed by law.

Mr. NELSON. I simply desire to call attention to Rule XVIII. I think under that clearly the amendment is divisible and we have a right to a separate vote upon it.

The VICE-PRESIDENT. The Chair has not ruled that it is not divisible.

Mr. ALDRICH. I did not say it is not divisible.

The VICE-PRESIDENT. The Chair has not so ruled.

Mr. NELSON. We have a right to have a separate vote on the proposition relating to a court, as distinct from the other, if the Senator from Wyoming asks for it.

Mr. BACON. I desire to ask the Senator from Rhode Island a question. I had several inquiries by those who are interested as to section 11. I want to see if I am correct in my understanding of it.

Mr. ALDRICH. The Senate has modified that amendment to-day, I think, along the line suggested.

Mr. BACON. I have examined the amendment, and the question I want to ask the Senator is this: As thus modified there is practically no difference in the rule of appraisement from what there is now, except as to the classification of things where the foreign market value can not be readily ascertained.

Mr. ALDRICH. The Senator is quite right. I have no objection to that.

Mr. CLARK of Wyoming. I ask for a separate vote on sections 29 and 30.

Mr. ALDRICH. I ask for a vote on the other provisions together.

The VICE-PRESIDENT. The Chair calls the attention of the Senator from Rhode Island to the fact that the suggestion made by the Senator from Maryland [Mr. RAYNER] has not been acted upon.

Mr. ALDRICH. I will repeat the amendment as I understand it:

On page 15, after the word "proceeding," at the end of line 21, insert "other than a criminal prosecution."

The VICE-PRESIDENT. The Chair thinks the words suggested by the Senator from Maryland were "not of a criminal character."

Mr. ALDRICH. I prefer the language which I have indicated. After the word "proceeding" insert "other than a criminal prosecution."

The VICE-PRESIDENT. The Secretary will report the amendment to the amendment.

The SECRETARY. On page 15, line 22, after the word "proceeding," insert "other than a criminal prosecution."

The amendment to the amendment was agreed to.

Mr. WARNER. I wish to ask the chairman of the committee what has been done with the salary that was fixed in section 30. You reduce the salary of the judges to $7,000, and I find that the Assistant Attorney-General starts out with $10,000 a year.

Mr. ALDRICH. It was the intention of the Committee on Finance to take care of these matters in conference, but if Senators desire to have the proposed salaries reduced now I have no objection.

Mr. HEYBURN. The Assistant Attorney-General gets more than the judges.

Mr. WARNER. I have no special objection to that salary, but I dislike very much to vote for a measure which places the salary of the attorney of the court at $10,000 when the court is only paid $7,000.

Mr. ALDRICH. I have no objection to reducing the salaries of the attorneys to $7,000.

Mr. HEYBURN. Their salaries ought to be less than the salary of the judges.

Mr. NELSON. I would suggest that the Senator from Rhode Island agree to that amendment now.

Mr. ALDRICH. I will.

Mr. WARNER. On page 45, line 21, if you will strike out the word "ten" and insert "seven"——

Mr. HEYBURN. I would not make the salary the same as that of the judges. I would make it less than that of the judges.

Mr. WARNER. I would suggest that on page 45, line 21, to strike out the second word "ten" and to insert "six."

Mr. ALDRICH. Perhaps we had better make it $7,000.

Mr. GALLINGER. I suggest $6,500, and that the deputy assistant receive $6,000, which follows immediately.

Mr. ALDRICH. I adopt the suggestion of the Senator from New Hampshire, if that is satisfactory.

Mr. WARNER. What is that?

Mr. ALDRICH. To make the salary of the assistant attorney $6,500, and the salary of the deputy $6,000.

Mr. WARNER. I have no objection to that, but I do not know about the deputy being paid $6,000. He may possibly get a class of attorneys not worth that much. That is more than the United States attorneys are paid. I would suggest that the salary be fixed at $5,000.

Mr. ALDRICH. Then, make it $5,000.

Mr. WARNER. Very well.

The VICE-PRESIDENT. The amendment will be stated.

The SECRETARY. On page 45, line 21, it is proposed to strike out the words "ten thousand" and to insert "six thousand five hundred;" in line 24, before the word "thousand," to strike out the word "seven" and insert the word "five;" and in the same line, after the word "thousand," to strike out "five hundred."

The amendment to the amendment was agreed to.

Mr. GALLINGER. Now, as to attorneys——

Mr. WARNER. I have suggested another amendment. On page 45, line 25, after the last word, I move to strike out the word "six" and to insert the word "five;" and on page 46, line 1, to strike out "five" and insert "four."

The VICE-PRESIDENT. The amendment proposed by the Senator from Missouri will be stated.

The SECRETARY. On page 45, at the end of line 25, it is proposed to strike out the word "six" and to insert the word "five;" and on page 46, line 1, to strike out the word "five" and insert the word "four."

The VICE-PRESIDENT. The question is on the amendment to the amendment.

The amendment to the amendment was agreed to.

The VICE-PRESIDENT. The Senator from Wyoming [Mr. CLARK] asks for a separate vote on sections 29 and 30.

Mr. ALDRICH. I ask that the vote be taken first on the other sections.

The VICE-PRESIDENT. If there be no objection, the vote will first be taken on the rest of the amendment. The Chair hears no objection. The question is on agreeing to the amendment as amended, save sections 29 and 30.

Mr. BRISTOW. Mr. President, do I understand that that includes the whole proposition?

Mr. ALDRICH. Except the court provisions.

Mr. BRISTOW. I want to make an inquiry in regard to the matter of valuations. As I understand from reading it as hastily as I have been obliged to do, the ad valorem duties are assessed on the wholesale valuation in this country, instead of the valuation in foreign countries. Is that correct?

Mr. ALDRICH. No; it is not. The ad valorem rates are assessed upon the valuation in foreign countries, as they have been, except in cases when it is impossible to ascertain the foreign value.

Mr. BRISTOW. I misunderstood the Senator.

Mr. CULBERSON. Mr. President, before the vote is taken on section 29 I ask the Senator from Rhode Island if any amendment has been adopted fixing the qualifications of the members of the proposed court?

Mr. ALDRICH. No; it is not intended to fix any qualifications. Their qualifications will be the same, of course, as those for circuit court judges.

Mr. CULBERSON. The same as those for judges of any court of record?

Mr. ALDRICH. The same as those of judges of any other court of record, of course. No qualifications are fixed. The President has the whole field of selection open to him; and these judges have to be confirmed by the Senate the same as other judges.

Mr. CULBERSON. As suggested by Senators sitting in my rear, "the whole field" of what? Can a layman be appointed a member of this court under this bill?

Mr. ALDRICH. I suppose he could be; but it would be impossible to suppose that the President would appoint a layman. These judges are practically circuit judges of the United States; they have the same tenure of office, the same rights, the same privileges, the same duties and responsibilities as have circuit judges. They are appointed just as are the circuit judges. There is no attempt made to limit in any way, and no purpose to limit, the President in their appointment.

Mr. CULBERSON. What I wanted to know distinctly was whether anyone except a lawyer could be appointed a judge of this court under this bill? Is that the opinion of the chairman of the Committee on Finance?

Mr. ALDRICH. Certainly not. The President could, I assume, appoint a man to be Chief Justice of the Supreme Court of the United States who was not a lawyer, but it is impossible to suppose that the President would appoint such a man. There is no restriction in the law or the Constitution to prevent the President appointing anybody he pleases, and there is no restriction in this case; but, I say to the Senator, it is utterly impossible, from my standpoint, to conceive that the President would appoint any man a judge of this court except a first-class lawyer, a man who would be fitted to be the Chief Justice of the Supreme Court of the United States.

Mr. CULBERSON. While the Constitution of the United States does not fix any qualifications, except by implication, I think the statute as to judges does so. That is my recollection.

Mr. ALDRICH. I think not. I do not think there is anything in any statute that undertakes to say that lawyers only shall be appointed to judgeships.

Mr. CULBERSON. The construction, then, is that none but a lawyer can be appointed a member of this court?

Mr. ALDRICH. Absolutely. I think no one has ever had any idea for a moment that not only nobody but lawyers, but nobody but the very best lawyers, would receive such appointments.

The VICE-PRESIDENT. The question is on agreeing to the amendment as amended, save sections 29 and 30. [Putting the question.] The ayes have it; and the amendment as amended, save those sections, is agreed to.

Mr. LA FOLLETTE. Mr. President, I wanted to offer an amendment to section 11, but I have not perfected it, and will simply say that I shall offer it when the bill reaches the Senate.

I think the explanation made by the Senator from Rhode Island [Mr. ALDRICH] with respect to the valuation provision—that is, this new provision of section 11—is not correct, and that under that section very large increases are certain to be made in the rates. It is a fact that in the trade merchandise is not sold in the open market as it was many years ago, but it is sold largely through distributers. Therefore, when the valuation is sought to be predicated upon the usual market price in the wholesale market abroad, and a given article of import is not quoted or not sold usually in the open market, but is sold through distributers, then, under the provisions of this section, as I understand it, the wholesale market price here would be substituted as the basis of valuation upon which the duty would be assessed.

I will not take the time of the Senate to discuss that now, but will look into the matter more carefully; and I will say that if I find that I have interpreted it correctly, I shall offer in the Senate an amendment to that provision.

The VICE-PRESIDENT. The question is on agreeing to sections 29 and 30 of the amendment as amended.

Sections 29 and 30 as amended were agreed to.

The VICE-PRESIDENT. The question now is on agreeing to the entire amendment as amended.

The amendment as amended was agreed to.

Mr. ALDRICH. I now offer certain amendments, which I send to the desk. I will say that they are but formal parts of the House bill. I think there will be no objection to any of them, and I think they will lead to no debate.

The VICE-PRESIDENT. The first amendment proposed by the Senator from Rhode Island will be stated.

The SECRETARY. It is proposed to add as new sections the following:

SEC. 5. That nothing in this act contained shall be so construed as to abrogate or in any manner impair or affect the provisions of the treaty of commercial reciprocity concluded between the United States and the Republic of Cuba on the 23d day of December, 1903, or the provisions of the act of Congress heretofore passed for the execution of the same.

SEC. 6. That the President shall have power and it shall be his duty to give notice, within ten days after the passage of this act, to all foreign countries with which commercial agreements in conformity with the authority granted by section 3 of the act entitled, "An act to provide revenue for the Government and to encourage the industries of the United States," approved July 24, 1897, have been or shall have been entered into, of the intention of the United States to terminate such agreements; and upon the expiration of the period when such notice of termination shall become effective the suspension of duties provided for in such agreements shall be revoked, and thereafter importations from said countries shall be subject to no other conditions or rates of duty than those prescribed by this act and such other acts of Congress as may be continued in force: *Provided*, That until the expiration of the period when the notice of intention to terminate hereinbefore provided for shall have become effective, or until such date prior thereto as the high contracting parties may by mutual consent select, the reduced rates of duty named in said commercial agreements shall remain in force.

SEC. 7. That whenever any country, dependency, colony, province, or other political subdivision of government shall pay or bestow, directly or indirectly, any bounty or grant upon the exportation of any article or merchandise from such country, dependency, colony, province, or other political subdivision of government, and such article or merchandise is dutiable under the provisions of this act, then upon the importation of any such article or merchandise into the United States, whether the same shall be imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by remanufacture or otherwise, there shall be levied and paid, in all such cases, in addition to the duties otherwise imposed by this act, an additional duty equal to the net amount of such bounty or grant, however the same be paid or bestowed. The net amount of all such bounties or grants shall be from time to time ascertained, determined, and declared by the Secretary of the Treasury, who shall make all needful regulations for the identification of such articles and merchandise and for the assessment and collection of such additional duties.

Mr. ALDRICH. I will say that this section is but a reenactment of the countervailing provisions of the existing law.

Mr. BACON. If the Senator will permit me, of course it is very difficult from the reading to gather the full import of the amendment. The Senator speaks of it as a countervailing duty. Would that affect the case, for instance, of the Standard Oil Company?

Mr. ALDRICH. No. In the first place, crude and refined petroleum in this bill are on the free list. It would not affect them, because this only applies to bounties.

Mr. BACON. It does not apply to duties?

Mr. ALDRICH. No; this does not apply to duties.

Mr. BACON. The term "countervailing" is used as to each——

Mr. ALDRICH. The word "countervailing" is used to this effect: Bounties were first put upon sugar, and the provision was used largely to cover the case of sugar. If Germany, for instance, should pay a bounty, as that country did, upon the exportation of sugar, the amount of that bounty would be added to the sugar duties in this country. It is a countervailing duty to that extent. It applies only to bounties paid by foreign governments for exportation, and equalizes conditions by imposing an amount of duty in this country equal to the bounty so paid.

Mr. BACON. Then, it does not reach any case where the article is on the free list?

Mr. ALDRICH. None whatever.

Mr. BACON. And where it is on the dutiable list in another country?

Mr. ALDRICH. Not at all. It only applies to articles that are on the dutiable list in this country, and adds to the amount of duty, it becoming a countervailing duty to that extent.

Mr. HEYBURN. I should like to ask the Senator if the provision applies to cases where the Government pays a bounty for the production of an article within its own borders, if that article is on the dutiable list in this country?

Mr. ALDRICH. Yes.

Mr. BACON. Articles on the free list?

Mr. ALDRICH. Articles in this country on the dutiable list.

Mr. HEYBURN. If an article is on the dutiable list in this country and the foreign country pays a bounty, that bounty is added to the duty?

Mr. SHIVELY. But, if the Senator will permit me, if it is on the free list in this country, the provision has no effect.

Mr. ALDRICH. It is not effective as to any article on the free list.

The VICE-PRESIDENT. The Secretary will resume the reading of the amendment. The reading has not been completed.

The Secretary resumed and concluded the reading of the amendment, as follows:

SEC. 8. That the produce of the forests of the State of Maine upon the St. John River and its tributaries, owned by American citizens, and sawed or hewed in the Province of New Brunswick by American citizens, the same being otherwise unmanufactured in whole or in part, which is now admitted into the ports of the United States free of duty, shall continue to be so admitted, under such regulations as the Secretary of the Treasury shall from time to time prescribe.

That the produce of the forests of the State of Maine upon the St. Croix River and its tributaries, owned by American citizens, and sawed or hewed in the Province of New Brunswick by American citizens, the same being otherwise unmanufactured in whole or in part, shall be admitted into the ports of the United States free of duty, under such regulations as the Secretary of the Treasury shall from time to time prescribe.

That the produce of the forests of the State of Minnesota upon the Rainy River and its tributaries, owned by American citizens, and sawed or hewed or mechanically ground in the Province of Ontario by American citizens, the same being otherwise unmanufactured in whole or in part, shall be admitted into the ports of the United States free of duty, under such regulations as the Secretary of the Treasury shall from time to time prescribe.

Mr. ALDRICH. I will say that we have added the provision in regard to the Rainy River. The Senate has already adopted the provision, and this merely provides for its location in this section of the amendment.

Mr. SHIVELY. If the Senator from Rhode Island will allow me to make an inquiry, do I understand the paragraph as read is the law at the present time?

Mr. ALDRICH. The first part of it, in regard to the St. Croix River and the St. John River, in Maine and New Brunswick, is in the present law. This provision is exactly as it stands in the law now. The provision in regard to the Rainy River was adopted by the Senate upon the motion of the senior Senator from Minnesota [Mr. NELSON] and is simply added to this paragraph to give it a place in the bill.

Mr. SHIVELY. That is, the addition applies to some other part of the Canadian border?

Mr. ALDRICH. Yes; it applies to the Rainy River between Minnesota and Canada.

Mr. SHIVELY. Do I understand that these logs are hewn on the Canadian side of the line?

Mr. ALDRICH. No; on the American side. The mills may possibly be on the Canadian side.

Mr. SHIVELY. Is the timber cut on the American side?

Mr. ALDRICH. It is cut on the American side.

Mr. SHIVELY. What is done on the Canadian side?

Mr. ALDRICH. In the case of the Rainy River proposition I think the mill itself is on the Canadian side.

Mr. CLAPP. The mill is on the Canadian side of the river.

Mr. SHIVELY. It is a mere matter of the location of the mill owned by citizens of the United States and sawing timber cut on the American side of the line?

Mr. ALDRICH. As a matter of fact, I think that mill is in the center of the river; but it is located so that it is technically within the jurisdiction of the Dominion of Canada.

Mr. McCUMBER. I will say to the Senator that there are two mills in the Rainy River. One is on the Canadian side of the thread of the stream and the other on the Minnesota side, but the products are the products of the State of Minnesota.

A bill (S. 2949) granting an increase of pension to Daniel B. Morris; to the Committee on Pensions.

By Mr. BORAH:

A bill (S. 2950) granting an increase of pension to David E. Jones (with accompanying paper); to the Committee on Pensions.

By Mr. MONEY:

A bill (S. 2951) for the relief of the estate of Stephen Herren (with accompanying paper); and

A bill (S. 2952) for the relief of the estate of Stephen Herren; to the Committee on Claims.

By Mr. BEVERIDGE:

A bill (S. 2953) granting an increase of pension to Peter Harmon (with accompanying papers); and

A bill (S. 2954) granting an increase of pension to Charles N. Taylor (with accompanying papers); to the Committee on Pensions.

HOUSE BILL REFERRED.

H. R. 11572. An act to authorize the construction, maintenance, and operation of various bridges across and over certain navigable waters, and for other purposes, was read twice by its title and referred to the Committee on Commerce.

BRIDGES OVER NAVIGABLE WATERS.

Mr. CLAPP submitted an amendment intended to be proposed by him to the bill (H. R. 11572) to authorize the construction, maintenance, and operation of various bridges across and over certain navigable waters, and for other purposes, which was referred to the Committee on Commerce and ordered to be printed.

TAXES ON INCOMES.

Mr. BROWN. I submit a concurrent resolution for which I ask present consideration.

The concurrent resolution (S. C. Res. 6) was read, as follows:

Senate concurrent resolution 6.

Resolved by the Senate (the House of Representatives concurring), That the President of the United States be requested to transmit forthwith to the executives of the several States of the United States copies of the article of amendment proposed by Congress to the state legislatures to amend the Constitution of the United States, passed July 12, 1909, respecting the power of Congress to lay and collect taxes on incomes, to the end that the said States may proceed to act upon the said article of amendment; and that he request the executive of each State that may ratify said amendment to transmit to the Secretary of State a certified copy of such ratification.

The VICE-PRESIDENT. Is there objection to the present consideration of the concurrent resolution?

Mr. KEAN. Mr. President, I call the attention of the Senate to the unanimous-consent agreement under which we are meeting. I should like to have it read.

Mr. BROWN. I will say to the Senator from New Jersey that this is not legislation. It is simply the formal and usual resolution calling upon the Executive to submit to the several States the joint resolution proposing an amendment of the Constitution.

Mr. BACON. I should like to suggest to the Senator from New Jersey that the agreement to which he refers can not possibly relate to business which the Senate has already taken up. It might relate to it if it were an original proposition, and if the question were whether we should proceed to a matter of legislation; but the Senate having passed the joint resolution, everything necessary to effectuate it is in order and is not in contravention of the agreement previously made.

Mr. SMOOT. I call the Senator's attention to the agreement, which reads:

It is agreed by unanimous consent that the Senate will adjourn from time to time for three days at a time until the conference report is ready upon the bill (H. R. 1438) "to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," and that no business shall be transacted at the sessions of the Senate prior to the report of the conference committee upon the said bill, other than the transaction of the routine morning business and the consideration of the deficiency appropriation bill now pending in the House of Representatives.

Mr. BROWN. This is routine morning business, so that the agreement would not apply to it. It relates to a formal proceeding made necessary by the action of Congress.

The VICE-PRESIDENT. If it is routine morning business, it can not be considered this morning in the face of an objection. If an objection is made, it will have to go over.

Mr. BROWN. I have not heard any objection made.

Mr. KEAN. Under the unanimous-consent agreement the concurrent resolution is not in order.

The VICE-PRESIDENT. The Senator from New Jersey objects, and the concurrent resolution goes over.

Mr. STONE. At the last meeting of the Senate the Senator from Virginia [Mr. MARTIN] reported a bridge bill and asked unanimous consent to have it passed. The Senator from Massachusetts [Mr. LODGE] called attention to the unanimous-consent agreement, and the Chair ruled that it was not in order to put the bill on its passage.

Mr. BACON. I suggest to the Senator from New Jersey that if his contention is correct, it would not be in order even for the Chair to lay before the Senate a joint resolution requiring his signature. The unanimous-consent agreement can not possibly relate to doing whatever may be necessary to effectuate what has already been determined upon by Congress. The two Houses passed a joint resolution. It is not proposed to add to that joint resolution in any particular, but simply to make it effective. It is not an independent piece of legislation; it is not an independent proposition; and it strikes me that it is no more objectionable to the unanimous-consent agreement than would be the laying of a joint resolution before the Senate with the statement on the part of the Chair that the joint resolution had received the signature of the Vice-President.

The VICE-PRESIDENT. The Chair has not passed upon that question. The Chair has simply ruled that under an objection the resolution must go over in any event.

Mr. CULBERSON. I invite the attention of the Chair to the fact that the Senator from New Jersey did not object generally under the rule, but he put it upon the ground that the resolution is contrary to the unanimous-consent agreement.

The VICE-PRESIDENT. The Chair thinks the objection controls, no matter what ground leads the Senator to object. The concurrent resolution goes over.

RETIREMENT OF EMPLOYEES.

Mr. CUMMINS. I ask unanimous consent that an order be made for a reprint, for the use of the Committee on Civil Service and Retrenchment and the Senate, of the bill (S. 1944) for the retirement of employees in the classified civil service.

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

Mr. SMOOT. I should like to ask the Senator from Iowa the cost, or the approximate cost, of the printing?

Mr. CUMMINS. I do not know.

Mr. SMOOT. Of course, we have already given notice that we shall object to any documents being printed unless the matter is referred to the Committee on Printing.

Mr. CUMMINS. I am perfectly willing that it shall be referred to the Committee on Printing.

Mr. SMOOT. That would be the best course. I will assure the Senator that we shall take the matter under consideration promptly.

Mr. HEYBURN. I have been absent one meeting, and I should like to inquire who has given notice that they will require matters presented by Senators to take a certain course. The Senator says "we have already given notice." I am curious to know who gave the notice.

Mr. SMOOT. The Committee on Printing have these matters in charge, and they decided that the proper course to pursue is to have all requests for printing referred to the Committee on Printing.

Mr. HEYBURN. It strikes me that the Committee on Printing might very well take notice of the rights and privileges of the Senate and of Senators in this matter. The rules say what shall go to the committee and what shall not. The Committee on Printing are not standing at the gate here with a flaming sword to see what shall go through.

Mr. SMOOT. There is no such purpose, I assure the Senator, on the part of the Committee on Printing, but simply, as all expenses of printing are to be passed upon by that committee——

Mr. HEYBURN. My objection is to the use of the word "we;" that "we" have done this and "we" have done that. I am not inclined to be factious, but it is a bad habit to get into. We are all "we's" here.

Mr. SMOOT. That may be true; but——

Mr. KEAN. I think the Senator from Utah does not understand the request of the Senator from Iowa. It is to have a reprint of a bill.

Mr. SMOOT. Then I will withdraw any objection to it.

Mr. KEAN. It is not a request for the printing of a document, but merely for the reprint of a bill.

Mr. SMOOT. I have no objection to that.

There being no objection, the order was reduced to writing, and agreed to, as follows:

Ordered, That there be printed 2,000 additional copies of the bill (S. 1944) for the retirement of employees in the classified civil service, 1,000 copies for the use of the Committee on Civil Service and Retrenchment and 1,000 copies for the use of the Senate document room.

(S. J. R. 40) proposing to amend the Constitution of the United States in regard to taxes on incomes. It was reported from the Committee on Ways and Means this morning favorably (H. Rept. No. 15).

The SPEAKER. The gentleman from New York asks unanimous consent to consider the following Senate joint resolution, which the Clerk will report.

The Clerk read as follows:

Joint resolution (S. J. R. 40) proposing an amendment to the Constitution of the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution:

"Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

Mr. CLARK of Missouri. Mr. Speaker, is the gentleman from New York calling this up under suspension of the rules, or in the ordinary course of procedure?

Mr. PAYNE. Rather than wait for the process of getting at it by the rules to-day, I am simply asking to call it up at this time.

Mr. CLARK of Missouri. How much time can we have for debate?

Mr. PAYNE. Mr. Speaker, I am willing to have any reasonable time for debate, if we can have a conclusive vote upon the subject to-day. As far as I am concerned personally, my presence is greatly desired at the other end of the Capitol, or at least it seems necessary, on account of the conference on the tariff bill.

Mr. CLARK of Missouri. Do you know whether my presence and that of the other Democratic conferees is wanted over there? [Laughter.]

Mr. PAYNE. My friend is more favorably situated, as far as that is concerned, so that he can attend to his duties in the House much more easily than I can. [Laughter.]

Mr. CLARK of Missouri. Mr. Speaker, I ask for two hours on a side, one-half of the time to be controlled by anybody who may be named on that side, and one-half by myself.

Mr. PAYNE. Well, I will suggest an hour and a half.

Mr. CLARK of Missouri. Let us have two hours.

Mr. PAYNE. There is very little time asked for as far as I am concerned. I think I can say all I have to say about it in five minutes myself.

Mr. CLARK of Missouri. I can, too; but I never had as many applications for time on any proposition since I have been here as I have on this.

Mr. PAYNE. Then, I would suggest, suppose we have an agreement to have a vote at 4 o'clock, and that gentlemen on that side have two hours of the time and we have an hour and three-quarters on this side.

Mr. CLARK of Missouri. That is all right.

The SPEAKER. The gentleman from New York asks unanimous consent to consider at this time the joint resolution which has just been reported, the vote to be taken at 4 o'clock.

Mr. PAYNE. Not later than 4 o'clock.

The SPEAKER. The vote to be taken at 4 o'clock; that the time from now until 4 o'clock to be for general debate, one hour and three-quarters to the majority side and the balance of the time to the minority. Is there objection?

There was no objection.

Mr. PAYNE. Mr. Speaker, I shall support this amendment to the Constitution for reasons which I will very briefly state.

I have had no doubt, since I first examined the question many years ago, that an income tax was unconstitutional under our present form of Constitution. At the time I arrived at that conclusion the decision of the Supreme Court had been favorable to its constitutionality. Of course the late decision, fifteen years ago, only confirmed my own belief, but it seems to me that it ought to have given notice to all the people of the United States that so far as the present Constitution is concerned, such a law is unconstitutional; that the Supreme Court will not go back on their decision; that the doctrine of stare decisis will come in with renewed force and vigor and overcome any question of doubt that there might be as to its constitutionality, although there is no doubt in my own mind.

Now, it has been suggested that an income tax be placed on the present pending tariff bill. That has been recommended sometimes on the ground that it will furnish an opportunity for the Supreme Court to reverse itself and sometimes by those enthusiastic individuals who want that kind of a tax who believe that the Supreme Court will reverse itself. I am sometimes inclined to think that it is because they want to believe that and want it reversed. I am not in favor of putting any litigation into a tariff bill, and especially when I do not believe such a proposition is constitutional.

As to the general policy of an income tax, I am utterly opposed to it. I believe with Gladstone that it tends to make a nation of liars; I believe it is the most easily concealed of any tax that can be laid, the most difficult of enforcement, and the hardest to collect; that it is, in a word, a tax upon the income of the honest men and an exemption, to a greater or less extent, of the income of the rascals; and so I am opposed to any income tax whatever in time of peace. But if this Nation should ever be under the stress of a great war, exhausting her resources, and the question of war now being a question as to which nation has the longest pocketbook, the greatest material resource in a great degree, I do not wish to be left, I do not wish this Nation to be left, without an opportunity to avail itself of every resource to provide an income adequate to the carrying on of that war.

I hope that if the Constitution is amended in this way the time will not come when the American people will ever want to enact an income tax except in time of war.

Mr. GARRETT. Will the gentleman yield?

Mr. PAYNE. Certainly.

Mr. GARRETT. Then they would not be rascals in time of war?

Mr. PAYNE. Oh, all the difficulties about it would still be there, but I regard the preservation of the national life as more important than the preservation even of the morals of some men. I think the preservation of the Nation is of more consequence than it is to keep even the rascals from the temptation of false and perjured testimony.

Mr. GARRETT. If it is agreeable to the gentleman from New York, I want to say that I understood the gentleman to state his objection to an income tax in time of peace was because it promoted falsehood——

Mr. PAYNE. That is one objection. I do not propose to go into a discussion of it. We have only three quarters of an hour on this side, and I wanted to take five minutes to state my views and position.

Mr. SMITH of Michigan. Will the gentleman from New York yield?

Mr. PAYNE. Certainly.

Mr. SMITH of Michigan. Will the gentleman state whether the tariff bill as it passed the Senate will, in his opinion, yield revenue sufficient in time of peace without an income tax, an inheritance tax, or a corporation tax?

Mr. PAYNE. Well, Mr. Speaker, I do not know how the tariff bill will be passed.

Mr. SMITH of Michigan. I said as it passed the Senate.

Mr. PAYNE. I made a careful estimate of the revenue that the bill would provide as it came from the Ways and Means Committee. I have not made any estimate since that time. My views were embodied in a few feeble remarks that I made during the debate in the House, and I commend them to the gentleman from Michigan, and he can figure out himself as to whether it will yield enough or not. But I would prefer a corporation tax or an inheritance tax to anything like a general income tax.

Mr. RUCKER of Missouri. Will the gentleman yield?

Mr. PAYNE. Certainly.

Mr. RUCKER of Missouri. Would it not be just as easy for corporations to escape the corporation tax as for individuals to escape the income tax?

Mr. PAYNE. Not by any means.

Mr. RUCKER of Missouri. Does not the gentleman think that if we coupled with it a criminal statute which would put everyone in the penitentiary who sought to evade the income tax it would have a good effect?

Mr. PAYNE. What is that?

Mr. RUCKER of Missouri. Does not the gentleman from New York think that every one of the rascals he speaks of who are likely to evade the income tax ought to be sent to the penitentiary?

Mr. PAYNE. It does not operate so in the old country and they do not get into the penitentiary.

Mr. RUCKER of Missouri. I think in this country where the people will be taxed $200,000,000 more for their clothes, it would be easier to get these rascals who evade the income tax into the penitentiary.

Mr. PAYNE. Well, the gentleman from Missouri has stated his opinion, and I shall have to decline further interruption on account of my limited time.

Now, Mr. Speaker, because, in my mind, there is no other way to get this war power that may be sometimes vital to the existence of the country, I am persuaded to vote for this

that the swollen fortunes of the land can be justly taxed. The gentleman from Massachusetts [Mr. McCALL] complains that this thing is being done in too much of a hurry; that there is not time enough for debate. There never is in this House and under these rules time enough for debate. Some of us tried to remedy that evil on March 15, and the gentleman from Massachusetts helped vote us down on that occasion. He is estopped from complaining now of the way things are jammed through the House.

A strange thing has happened. During the last campaign President Taft advocated an income tax, and gave it as his opinion that the Supreme Court of the United States, as at present constituted, might hold it constitutional. That was one thing which helped to elect him. In his inaugural address he advocated an inheritance tax. Largely through the influence of my distinguished friend from New York [Mr. PAYNE], chairman of the Ways and Means Committee, the House incorporated into the tariff bill an inheritance tax. Instead of insisting that the Senate agree to the inheritance tax, in the nick of time the base was shifted again and the President sent in a recommendation for a corporation tax.

In fact the newspapers inform us that certain eminent Republican "big wigs," who assemble in another place, are anxious that it shall be known as "the Taft tax." Whether their zeal in that regard is because of their abundant love for the President or because they fear the wrath of their constituents and therefore desire to make a scapegoat of the President this deponent saith not. However that may be, it seems to me that Mr. Chairman PAYNE and his Republican coadjutors on the Ways and Means Committee did not receive a square deal when they were induced to make an inheritance tax part of their tariff bill. On that proposition they have been unceremoniously rolled by the eminent statesmen who meet in another place. The newspapers inform us that, though this corporation tax was cooked up by a coterie of the greatest constitutional lawyers in the land—not one of whom knew that the income-tax law of 1894 had long since expired by limitation—it is to be withdrawn and recooked by the aforesaid coterie of the greatest constitutional lawyers now walking the earth. The result of this proposed recooking may prove to be another illustration of the old saw that "too many cooks spoil the broth." Unless these widely exploited constitutional lawyers know more now than they did when they first cooked up the corporation tax, it may turn out that this whole corporation-tax business, whose sole intent was to defeat the income tax, is a "comedy of errors"—perhaps a "tragedy of errors" to some folks I wot of. If Republican Members are depending on that coterie of great Republican constitutional lawyers, who cooked up the corporation tax, for instruction on constitutional points, it is a clear case of the blind leading the blind, and they are liable to tumble into the ditch together.

So we have all three of these propositions pending now in some shape. We have the inheritance tax in the Payne bill; the corporation tax in the Aldrich-Smoot bill; and now we are fixing to adopt an income tax. I do not suppose there are going to be very many votes on the floor of the House against this proposition, because if this proposition should be defeated here to-day, the chances are that this conference that is going on between the two Houses on the tariff bill will last until the first Monday in December. That is all I have got to say about it. We are in favor of it, and I will welcome the aid of you gentlemen over there.

Mr. BURKE of Pennsylvania. Will the gentleman yield?

Mr. CLARK of Missouri. Certainly.

Mr. BURKE of Pennsylvania. The gentleman has stated that if he had his way, he would increase the exemption beyond the $5,000 mark. I want a little light on this subject, and I will ask the gentleman if he has any objection to stating to the House how much he would increase the exemption, and why?

Mr. CLARK of Missouri. Oh, I do not know. I said if I had my way, I might increase it rather than diminish it; and I certainly would increase it rather than diminish it, and for this reason: Five thousand dollars is not an unreasonable amount for a man to support a family on and educate his children; $6,000 would not be an unreasonable amount; $7,000 would not be an unreasonable amount. But I say that when a man's net income rises above $100,000 a year it does not make any difference to him, practically, whether you take 1 per cent, 2 per cent, 5 per cent, or 25 per cent, as they do in Germany. [Applause on the Democratic side.]

Mr. BURKE of Pennsylvania. That does not answer the question. Will the gentleman state, so that those who desire to follow him may follow him intelligently, what figure he would place the exemption at?

Mr. CLARK of Missouri. I said I might put it above $5,000.

Mr. BURKE of Pennsylvania. How far above?

Mr. CLARK of Missouri. I do not know. I would have to study it.

Mr. BURKE of Pennsylvania. The gentleman does not seem to know any more about the figure at which he would place it than he does about the other propositions involved.

Mr. CLARK of Missouri. What is that?

Mr. BURKE of Pennsylvania. The gentleman stated that he would place it above $5,000, and I would like to have the gentleman state the precise figure how far above he would place it; what would be a fair figure, in his estimation, and why he would fix it at that figure?

Mr. CLARK of Missouri. I would fix it for the public good, whatever figure I fixed. [Applause on the Democratic side.]

I now yield to the gentleman from Alabama [Mr. CLAYTON].

[Mr. CLAYTON addressed the House. See Appendix.]

Mr. PAYNE. Mr. Speaker, I yield ten minutes to the gentleman from Connecticut [Mr. HILL].

Mr. HILL. Mr. President and gentlemen of the House of Representatives, I shall vote against this amendment for the following reasons: In the first place, I do not believe that this extra session of Congress was called to completely change and revolutionize the taxation system of the United States. I think that a question of such magnitude should be submitted to the people and discussed in a campaign preparatory to the presentation of so important a matter as an amendment to the Constitution of the United States. This proposition was found in the Democratic platform and not in the Republican platform on which the presidential campaign of 1908 was won. My understanding is that Congress was called together for the sole purpose of revising the Dingley tariff law on the basis of the difference in the cost of production at home and abroad, and, so far as the House is concerned, an honest attempt has been made to do that. I voted in the Ways and Means Committee for a supplement to that revision in the shape of an inheritance tax. My judgment was then and is now that it was not necessary. I am a firm believer that in times of peace the revenues of this country should be derived from customs duties and internal-revenue taxes, and that if these are not sufficient, as prudent people we ought to reduce our expenses to a point where they will be covered by such revenues; and yet, under all the circumstances, and realizing that the inheritance tax would bear hardly upon the people of my State, I voted for an inheritance tax.

I do not know now but that I may ultimately vote for a corporation tax. My mind is not yet made up on that question. I shall not vote for an income tax. I agree with the chairman of the Ways and Means Committee [Mr. PAYNE], who made the opening remarks in this discussion, that we ought to have the power to lay an income tax in time of war, but I am not in favor of giving this Government the power to lay an income tax in time of peace. With an amendment limiting it to time of war or other extraordinary emergencies, I would gladly vote for it; yes, I would vote to take every dollar of the property of every citizen of the United States, if need be, to defend the honor, dignity, or life of this Nation in the stress of war; but when it comes to a question of current expenses in time of peace, I would cut the expenses of the Government so as to keep them within our natural income.

We are a Nation of 90,000,000 of the most extravagant people on the face of the earth, and yet we are now pleading that the system of taxation which the fathers of the Republic provided and which for more than a century has met all expenditures and furnished a surplus besides, from which we have reduced our national debt incurred in war time faster than any nation on earth ever reduced its debt, that such a system is not sufficient to meet our ordinary peace expenses.

Stop a moment and consider what we are doing in voting to give this Government the power to lay an income tax in time of peace. I know of no better measure of the way in which this burden would fall on the various States in the Union than to judge of it by the inheritance tax laid to meet the expenses of the Spanish-American war, for the last income tax that was collected from our people was back in the civil-war period, and conditions have mightily changed since then; but we did have an inheritance tax in 1900 to 1902.

The last full year of that tax showed as follows: The State of New York paid $1,608,000 of it; the collection district of Connecticut and Rhode Island, $660,000; the State of Pennsylvania, $641,000; the State of Massachusetts, $559,000; the State of Illinois, Mr. Speaker, paid $325,000; making all told in those five collection districts $3,795,000 that was raised out of a total of $4,842,000 in the last full year of this tax, so that of the entire amount collected from the inheritance tax in the whole Union six States paid three-fourths of it.

I hope that if this law is to be enacted, we will yet have an opportunity to discuss its merits and to amend it in some respects. The original measure has already been amended as a result of the opposition interposed to it, so as to exempt labor organizations and fraternal beneficiary societies, agricultural associations, and building and loan associations, but there are other amendments that ought to be made which I have not the time to discuss.

I submit that in view of the importance of the corporation-tax amendment, that both wisdom and our duty dictate but one course to pursue, and that is, to defer action until we can give to it the study, the research, the analysis, and the consideration to which it is justly entitled. [Applause.]

Mr. CLARK of Missouri. I yield to the gentleman from Kentucky.

Mr. JAMES. Mr. Speaker, I desire to say that the argument of the gentleman from Connecticut [Mr. HILL] does not appear to me to be one that will stand analysis. He tells us that Connecticut, which has been taxing all the rest of the people of the United States under the protective-tariff system until it has grown so rich, if this taxation upon incomes is placed upon her wealth, would pay more than 30 other States in the Union. Yet the gentleman is so patriotic that he is willing to state that when the poor man is willing to give his blood or his life when the Republic is in peril, when the battle is on, that not until then is he willing that his people shall make any contribution to sustain the Government out of the abundant fortunes they have piled up under the system of the protective tariff.

Mr. HILL. I challenge any man to say that the New England States did not pour out their blood as well as their wealth in the war of the rebellion. [Applause on the Republican side.]

Mr. JAMES. They may have been pouring out their blood upon the battlefields. And if they have, I deny that you speak for them when you say they are unwilling to bear their part of the burden of taxation to keep up this Government, which has blessed them so abundantly. [Applause on the Democratic side.] I would state to the gentleman that his party is not for the income tax even as a war measure. The history about this question has been written. No declaration of any man can affect it; and the record lives which tells us that when this Government was in the throes of war with Spain, when from shop and field and factory brave men had left loved ones at home and were at the front, offering their lives upon their country's altar and in defense of its flag, the Democratic side offered an income-tax law as a part of the war-revenue measure, which placed a tax upon the incomes of the rich, asking that as the poor were standing in front of the cannon on the fields of conflict the fortunes of the corporations and the rich, which in peace were exempt from taxation, might pay something to sustain the Government in the hour of its peril. But even in this great crisis you gentlemen upon the Republican side were unwilling to cast your votes in favor of the income tax, even as a war measure, and the whole Republican side voted no. [Applause on the Democratic side.] But, instead, you put the burden of taxation upon the poor, who were at home and at the front. You made them not only fight the battles, but pay the taxes, too. [Applause on the Democratic side.]

Mr. Speaker, the Democratic platform of 1896 used this language in reference to the income tax:

> But for this decision by the Supreme Court there would be no deficit in the revenue under the law passed by a Democratic Congress in strict pursuance of the uniform decisions of that court for nearly a hundred years, that court having in that decision sustained constitutional objections to its enactment, which had previously been overruled by the ablest judges who have ever sat upon that bench. We declare that it is the duty of Congress to *use all the constitutional power which remains after that decision, or which may come from its reversal by the court as it may hereafter be constituted*, so that the burdens of taxation may be equally and impartially laid, to the end that wealth may bear its due proportion of the expense of the Government.

Mr. Speaker, we all remember how fiercely the Democracy was assailed for this declaration. We were charged with assaulting the Supreme Court of the United States. You gentlemen on the Republican side charged that Mr. Bryan and the Democratic party were almost guilty of treason for this declaration. This was an honest effort on the part of the Democratic party to have the Supreme Court rehear this question, that, if possible, the immense fortunes, which President Roosevelt called "swollen fortunes," but which might perhaps have been more appropriately called "stolen fortunes," might bear some part of the burden of taxation in this Republic. This declaration arrayed against the Democratic party all the rich, all of the possessors of these fortunes, who were interested in escaping taxation and transferring its burdens to those least able to bear them. Many of those purses that were tightly drawn against the tax collector of the Government were willingly opened to the Republican campaign collector in order that the party that desired to tax the wealth of the country might be kept out of power. For all these years the Democratic party has been battling to have an income tax held constitutional. The Republican party, in full power in every department of the Government, has strongly and successfully resisted our efforts. But how times do change! And I desire here to read from a speech of President Taft, delivered at Columbus, Ohio, in 1907, while he was Secretary of War. It is as follows:

> In times of great national need, however, an income tax would be of great assistance in furnishing means to carry on the Government, and it is not free from doubt how the Supreme Court, with changed membership, would view a new income-tax law under such conditions. The court was nearly evenly divided in the last case, and during the civil war great sums were collected without judicial interference, and, as it was then supposed, within the federal power.

That was virtually the declaration of the Democratic party in 1896. Mr. Taft was not assailed, however, as attacking the integrity of the court or charged with treason to his country for the utterance of these words. I merely desire to parallel these declarations, the utterance of the Democratic party in the national convention, made in 1896, and the utterance of Secretary Taft, as a candidate for the Presidency, asking for the Republican nomination in 1907. The court has changed since this decision upon the income tax. Only four members of the nine who were then upon the bench are now members of that honored tribunal. Five new judges have since gone upon this court. Of the four who yet remain, two were in favor of and two opposed to the income tax. When the income-tax case was first heard only eight judges participated in the hearing; four voted to sustain the law and four voted against it. Justice Jackson, the ninth judge, participated in the rehearing of the case. Everyone thought his decision would determine the question either for or against the constitutionality of the income tax. However, in this they were very sadly disappointed, for Justice Jackson voted to sustain the law, but one of the judges who formerly voted to sustain it changed his mind, or at least changed his vote, and voted against the law, making it five to four in the decision holding the income tax unconstitutional.

I now desire to submit for the consideration of this House the utterance of former President Roosevelt in his message to the Congress of the United States on December 4, 1906, when he used this language:

> In its incidents, and apart from the main purpose of raising revenue, an income tax stands on an entirely different footing from an inheritance tax; because it involves no question of the perpetuation of fortunes swollen to an unhealthy size. The question is in its essence a question of the proper adjustment of burdens to benefits. As the law now stands, it is undoubtedly difficult to devise a national income tax which shall be constitutional. But whether it is absolutely impossible is another question; and if possible it is most certainly desirable. The first purely income-tax law was passed by the Congress in 1861, but the most important law dealing with the subject was that of 1894. This the court held to be unconstitutional.
>
> The question is undoubtedly very intricate, delicate, and troublesome. The decision of the court was only reached by one majority. It is the law of the land, and is, of course, accepted as such and loyally obeyed by all good citizens. Nevertheless, the hesitation evidently felt by the court as a whole in coming to a conclusion, when considered together with the previous decisions on the subject, may perhaps indicate the possibility of devising a constitutional income-tax law which shall substantially accomplish the result aimed at. The difficulty of amending the Constitution is so great that only real necessity can justify a resort thereto. Every effort should be made in dealing with this subject, as with the subject of the proper control by the National Government over the use of corporate wealth in interstate business, to devise legislation which without such action shall attain the desired end; but if this fails, there will ultimately be no alternative to a constitutional amendment.

Mr. Speaker, it will be observed here that he suggests that the court be given another opportunity to pass upon the income-tax question. He says:

> The decision of the court was only reached by 1 majority. Nevertheless the hesitation evidently felt by the court as a whole in coming to a conclusion, when considered together with the previous decisions on the subject, may perhaps indicate the possibility of devising a constitutional income-tax law which shall substantially accomplish the results aimed at.

These statements of Mr. Taft and Mr. Roosevelt show that it took them twelve years to find out the Democratic party was right; for their utterances in support of the position of our party come twelve years after the Democratic party, with marvelous courage and the fidelity and love of country born of patriotism alone, challenged wealth's exemption from taxation and denied that the poor and plain citizens of the Republic, and these alone, should bear by themselves the burden of taxation, and advanced the hope that a rehearing of the case, with the changed membership of the court, would return to the unbroken precedents of the Supreme Court of the United States for a hundred years and hold constitutional the income-tax law. [Applause.]

fore President Taft, as he was explaining it to the House, and he also was pleased at the suggestion and promised cooperation to see that a bill was prepared as a basis for his suggestions. Nothing was said then about an amendment to the Constitution upon the income-tax question. Mr. Speaker, this worming in and worming out of the Republican party and its leaders on the income-tax question forces me almost to question their sincerity in being its friend. I shall vote, Mr. Speaker, to submit this constitutional amendment to the States; but when I do so, I do not concede, nor does the Democratic party concede, that Congress has not now the power to impose such a tax. Our national platform of 1908 says:

We favor an income tax as part of our revenue system, and we urge the submission of a constitutional amendment specifically authorizing Congress to levy and collect a tax upon individual and corporate incomes, to the end that wealth may bear its proportionate share of the burdens of the Federal Government.

There is no contradiction between this position of submitting an amendment to the Constitution to the States and passing an income-tax bill at this session of Congress providing for an income tax, for the reason that there were two or three questions before the Supreme Court upon the question of taxing incomes from various sources, which the court unanimously agreed were not subject to taxation. A constitutional amendment will remedy this situation and give to Congress the power "specifically" to lay such a tax. We could then proceed to resubmit to the "changed membership of this court" these questions where the court stood 5 to 4 by reason of the changed opinion of one member of the Supreme Court, and I believe, as I believe I am in the House of Representatives at this moment, that the Supreme Court will return to the long line of decisions holding the income tax to be constitutional. What shall our Republican friends do about this question? Is the bill promised by the Republican leader [Mr. STEVENS of Minnesota] to fall by the wayside? It delighted Mr. Roosevelt, it pleased Mr. Taft, it met the approval of the Secretary of the Treasury. I believe I speak for the Democratic side when I say we stand ready now, as we have for twelve long years, to pass such a bill. Will you give us the opportunity, or are you attempting to dodge behind 12 States in the Union and defeat the income-tax amendment, and in this way prevent the wealth of the country paying any part of the taxing burden? I am delighted to offer you the platform of 1896 as your remedy for such a bill, as with a delight which equals, if it does not surpass it, I offer the Democratic platform of 1908 providing for the constitutional amendment.

This battle, Mr. Speaker, for the income tax has just begun. We intend to carry it to the last ditch. I sincerely trust that in every State in the Union when a man becomes a candidate for the legislature or for the Senate, whether he be Republican or Democrat, the people will force him to say how he stands upon the question of the income tax. Make him speak out either for or against the people. Wealth is always organized; corporations stand fighting it now. The people must be aroused if they will succeed. Mr. Speaker, in my judgment, the most unfortunate decision ever written was the one holding the income-tax law unconstitutional. For a century this law had been held constitutional by an unbroken chain of decisions reaching from the first link forged by the Revolutionary judges down for more than a hundred years; a chain of decisions so strong that Abraham Lincoln girded it about the Republic in its darkest hour in the war between the States. [Applause on the Democratic side.] It stood all these tests; it grew strong with age. Its repeated upholding by the court through this long line of decisions, its long acquiescence in by the people, its absolute justice, its immeasurable equity, stamp it a law better than stare decisis, for it is a law as just as the Republic ever made, so fair and so righteous that it might be called the "golden rule of taxation." [Applause on the Democratic side.] To my mind the income tax is the most equitable of all systems of taxation. It is the ideal way to support the Government. Let those who prosper little pay little, for they are least indebted to the Government; let those who prosper more pay more; let those who prosper most pay most; let those who prosper greatly pay greatly, for certainly they have been most blessed and are therefore most indebted to the Government. What man is so ungrateful to his country that he is unwilling to pay a small tax upon his income above $5,000 to help sustain and perpetuate the Government under which he enjoys such success? Many bills have made such provision, but to meet defeat at the hands of the Republican party, which has always opposed taxing wealth in any degree.

Who is prepared to defend as just a system of taxation that requires a hod carrier, who for eight long hours each day wends his way to the dizzy heights of a lofty building with his load of mortar or brick, to pay as much to support this great Republic as John D. Rockefeller, whose fortune is so great that it staggers the imagination to contemplate it and whose property is in every city and State in the Republic and upon every sea protected by our flag. [Applause on the Democratic side.] Who believes that it is just to say that 23 farmers in my district, who by a life of self-denial and unceasing toil have been enabled only to accumulate 200 acres of land and a modest home, who in sunshine and storm labor on, who by such a life only own in this world's goods $5,000 each—is it just, I inquire, for these men to pay as much taxes to keep up this Government as the 23 men who compose the directorate of the New York City Bank, which has a controlling financial power of $11,000,000,000, or one-tenth of the wealth of the United States? Should these men, I submit, who control as much wealth as all the people in the States south of Mason and Dixon's line, pay no more taxes to support this Republic than the 23 farmers in my district whose total wealth only amounts to $115,000? Yet under the system of taxation now in operation in this Government, under the Republican party, the 23 farmers pay the most tax to keep up the Federal Government. Is it a matter of great speculation, then, that wealth is so unequally distributed? I am quite free to confess, Mr. Speaker, that it is impossible for me to find one single just reason for opposing the income tax. How men can defend a system of taxation in a republic which requires of the poor all of its taxes and exempts the rich absolutely I am totally unable to see. In the everyday walks of life we expect more for church, for charity, for the uplifting of society, and education from those who are most prosperous, most wealthy, most able to give. Yet the system of taxation advocated by the Republican party drives the taxgatherer to the tenement house and makes him skip the mansion, drives him to the poorhouse and lets him pass the palace. [Applause on the Democratic side.]

No man can be found, Mr. Speaker, with rarest exception, who will deny the equity of an income tax. They offer no argument in opposition to it. Their only refuge that I have been able to observe is that it is unconstitutional; and when they say this they are all afraid to give the Supreme Court another chance to pass upon it [applause] to see whether the court was right for a hundred years and wrong for fifteen, or wrong for a hundred years and right for fifteen.

I have heard it urged by some gentlemen upon the Republican side that the passage of an income-tax law would undermine and at last destroy the protective-tariff system. This, Mr. Speaker, is equivalent to saying that in order to give a few monopolists and manufacturers the right to reach into the pockets of all the people, you have kept the taxgatherer from reaching into the pockets of the few, the fortunate few, the intrenched few, the successful few; but you have driven the taxgatherer to the same pockets which monopolies pillaged under the protective tariff for taxes to sustain the Government. The protective-tariff system is vicious enough in itself without adding to it the iniquity of saying that in order to perpetuate it you must place the taxing burden of the Government upon the masses of the people, who must also bear the heavy burden the protective-tariff system inflicts upon them.

Mr. Speaker, no tax was ever more unjust, in my opinion, than a tax upon consumption, for all must eat to live, all must wear clothes, and when you place a tax upon what it takes to sustain one, you announce the doctrine that all men share alike in the blessings of government, that all men prosper equally. But we have only to look about us to see how false this doctrine of taxation is. A tax upon what some people eat and what they wear would deny them the necessities of life, while others, rolling in opulence and accumulating their wealth into the millions, would not feel such a tax. Then, besides this, Mr. Speaker, the protective-tariff system has become so vicious in this Republic that the Republican party's candidate, Mr. Taft, promised the country a revision, and a revision downward. But, like that party always does, it procrastinated this relief. It said it would come to the people after the election. The Democratic party said the reason it wanted first to be entrenched in power and put off this promised relief until after the election was because the Republican party intended to deceive the people. And behold now, Mr. Speaker, the truth of this prophecy. What a shameless violation of the promised revision downward do we now behold! The betrayal of the people by the Republican party is written in this House and at the other end of the Capitol, for the revision has been upward and not downward. The reason the Republican party would not reform the tariff before the election was they knew if they did reform it in the interests of the people, the corruption fund, which they were so used to receiving, would be denied them by the favored few with whom they were in partnership. They knew if the legislation was in the interest of the monopolies, as

it now is, the people would rebuke them, so they put it off until after the election.

Mr. Speaker, this battle for an income tax will go on. This is the people's Government and the right will prevail. During all these years the mighty rich—an army of millionaires—have been exempted from taxation, but the people are now aroused. There are two lines of battle drawn for this great contest. Under which flag will you stand—the flag of Democracy or the flag of plutocracy?

We shall win, for—

Still, Truth proclaims this motto
In letters of living light:
No question is ever settled
Until it is settled right.

[Applause on the Democratic side.]

And I would scorn, Mr. Speaker, a government whose taxing power provides that Lazarus must divide his crumbs with the taxgatherer, but that Dives shall not give of his riches. [Great applause on the Democratic side.]

Mr. LONGWORTH. Mr. Speaker, I have been requested by the gentleman from New York [Mr. PAYNE] to control the time on this side during his absence from the Chamber.

The SPEAKER. The Chair desires to state that the gentleman from New York was entitled to one hour, and the gentleman from Missouri who was recognized is entitled to one hour.

Mr. CLARK of Missouri. Mr. Speaker, my understanding was that the gentleman from New York [Mr. PAYNE] controlled the time on that side, and that I controlled all the time on this side.

The SPEAKER. The Chair has no objection to the gentleman from New York and the gentleman from Missouri controlling the time.

Mr. CLARK of Missouri. Then, I ask unanimous consent that the time be controlled by the gentleman from New York on that side and that I control the time on this side.

The SPEAKER. The gentleman from Missouri asks unanimous consent that the time which was allowed by unanimous consent for debate shall be controlled, one hour and three quarters by the gentleman from New York and two hours by the gentleman from Missouri. Is there objection?

There was no objection.

Mr. LONGWORTH. I will ask the gentleman from Missouri to use some more of his time, as there is no gentleman at present who wishes to speak on this side.

Mr. CLARK of Missouri. I will yield five minutes to the gentleman from New York [Mr. HARRISON].

Mr. HARRISON. Mr. Speaker, I am in favor of this resolution, and shall vote for it. At the same time I have grave doubts of the advisability of attempting to put through any special form of taxation at the end of this long tariff agitation. However, this income-tax amendment is a confession by the Republican party that they are unable to raise sufficient revenue by means of a tariff and that they must resort to another form of taxation. For seven long years the Nation has been dancing, and now it is called upon to pay the piper. Our spree is over, and we are now realizing how sad is the way of the man who has lived beyond his income. It must be admitted, however, that in such an emergency an income tax is the soundest of Democratic doctrine, and you Republicans, as was well stated by the gentleman from Kentucky [Mr. JAMES], are turning to us in this crisis for remedial legislation.

There is a feature of this resolution, moreover, which especially commends it to me. If the resolution prevails, it should be incumbent on the conferees upon the tariff to drop immediately from consideration the proposed corporation tax put into the bill by the Senate. This resolution now before the House provides for the taxing of incomes from whatever source derived. That means taxes upon incomes of corporations as well as individuals. In my opinion the corporation tax as it passed the Senate is unconstitutional; but if this resolution prevails, and the States give us the constitutional right to pass a law taxing the incomes of corporations as well as individuals, such doubts will be at once removed. Moreover, as it now stands, alone, without an individual income tax, the corporation tax is the most grossly unfair impost ever levied by motion of either Chamber of Congress. It is unfair because it will allow one man with a $100,000 income to go free, while another man who may get $10,000 in income must pay the tax because his business is incorporated. It allows the man conducting a grocery business upon one corner of the street to go scot-free, while another man that carries on the same business on the next corner of the same street is obliged to pay a tax because he has incorporated his business. It thus violates the fundamental principle of taxation, namely, that its burdens should be equally distributed.

But, aside from all that, it tends to what is even more dangerous—an attempt to change our form of government through the taxing power of the Congress.

If such a change toward government control of business is to be adopted, it should be done as is proposed by this resolution, namely, by a constitutional amendment. We should resist to the utmost any attempt of the Congress to change, through the taxing power, the form of government under which we have conducted our affairs for so many generations.

Mr. Speaker, as I have said, I believe that upon the adoption of this resolution, this unfair, this inequitable corporation tax should at once be dropped by the conferees upon the tariff. It was put forward not really as a revenue raiser, but chiefly as a political expedient and primarily to give the Federal Government these gross inquisitorial powers. That is the feature of the corporation tax most commended by President Taft, and that is the feature of the tax to which I am most opposed. Why, gentlemen, suppose that at some time in the future while such a corporation tax was in force some Chief Executive were to send a member of his Cabinet to Wall street to collect campaign contributions for his reelection from the corporations in my city, what a mighty club he would have to hold over their heads.

Mr. Speaker, I hope the corporation tax will go out of the tariff conference, and I hope that the whole question will go over, as it should go, to be considered by the States. A consideration by the States separately of the question of an income tax, both individual and corporate, will provide what was demanded by the last Democratic platform, namely, a constitutional amendment permitting a tax upon all kinds of income. [Applause on the Democratic side.]

Mr. CLARK of Missouri. Mr. Speaker, how much time did the gentleman from New York use?

The SPEAKER. He used ten minutes.

Mr. CLARK of Missouri. He only had five.

The SPEAKER. Five, or whatever it was. The messenger who keeps the time stated that the gentleman's time had expired, and the Chair was under the impression that he had ten minutes.

Mr. LONGWORTH. Mr. Speaker, I yield ten minutes to the gentleman from Ohio [Mr. KEIFER.]

Mr. KEIFER. Mr. Speaker, most everything comes within the scope of this debate, and especially are we allowed to hear what we have heard for many years, that exaltation that comes from the Democratic party when a thing is about to be done that some time in the history of the country some of the Democratic party has favored. It is said that this amendment proposed is to be useful in time of war. If there ever is any necessity for an income tax, of course it is when the Nation is at war. I want to say, Mr. Speaker, with the utmost kindness, that so far as history shows the Democratic party has not been in favor of an income tax in time of a great war, and it might well be that it should stand converted now. In the civil war, in the most trying period of it to the Union, when the question of an income tax was voted upon on this floor, every Democrat present and voting voted against it and denounced it as unconstitutional. [Applause on the Republican side.] Not a single Republican, as the RECORD shows, voted against it.

In the Senate of the United States at that time every Democrat voted against an income tax save Mr. McDougal, of California—one only in both Houses. Now I congratulate the Democratic party after these many years in a conversion to the income tax so that it may be levied in time of war. I am not very much enamored of this proposition. I hope a just, equitable tariff bill will be passed to so levy import duties as to raise all the revenues that we need; but if it is necessary, I want the Republican party to be in a position that they can rely upon the Democratic party in voting for an income tax in times of war and not have the cry then made by Democrats that it was unconstitutional. I do not hear anybody disputing this last statement. [Applause and laughter on the Republican side.]

Mr. SULZER. Ancient history.

Mr. KEIFER. That is admitted; but it is truthful history. Now, Mr. Speaker, there is something said about the necessity of an income tax to reach the idle rich; but if we had only the idle rich, I think I would rather like the programme; but there are in this country thousands and tens of thousands of enterprising spirits who have gone forth with energy, industry, and by displaying economy have acquired fortunes, and they are the persons who are to be reached by an income tax; and I am willing they shall be when the trying times come.

While it may be true that those who by their ability and providence amass an estate are secure, an income must bear a

the burdens of government, and who ought not to be subjected to the dominion of aggregated wealth any more than the property of the country should be at the mercy of the lawless.

In the dissenting opinion of Justice Brown we find the following language:

It is difficult to overestimate the importance of these cases. I certainly can not overstate the regret I feel at the disposition made of them by the court. It is never a light thing to set aside the deliberate will of the legislature, and in my opinion it should never be done, except upon the clearest proof of its conflict with the fundamental law. Respect for the Constitution will not be inspired by a narrow and technical construction which shall limit or impair the necessary powers of Congress. * * *

By resuscitating an argument that was exploded in the Hylton case and has lain practically dormant for a hundred years, it is made to do duty in nullifying not this law alone, but every similar law that is not based upon an impossible theory of apportionment. * * *

It is certainly a strange commentary upon the Constitution of the United States and upon a democratic Government that Congress has no power to lay a tax which is one of the main sources of revenue of nearly every civilized state. It is a confession of feebleness in which I find myself wholly unable to join.

While I have no doubt that Congress will find some means of surmounting the present crisis, my fear is that in some moment of national peril this decision will rise up to frustrate its will and paralyze its arm. I hope it may not prove the first step toward the submergence of the liberties of the people in a sordid despotism of wealth.

As I can not escape the conviction that the decision of the court in this great case is fraught with immeasurable danger to the future of the country and that it approaches the proportions of a national calamity, I feel it a duty to enter my protest against it.

Surely when the members of this high court itself thus express their dissent from the decision, members of the bar and the people should not be expected to have confidence in the decision or to believe that it correctly decides the question, and they are justified in believing and asserting that Congress has been deprived by this decision of the power to levy taxes for the support of the Government in the way and manner intended by the Constitution. Therefore, if it requires a constitutional amendment to restore to Congress this power of levying a tax upon the wealth of the country, in order that it may bear its just proportion of the burdens of government, and to restore to the people and to Congress their right to levy and collect taxes for the support of the Government in the way it had been done for a hundred years prior to this decision, I must vote for the amendment. I believe, however, that if the question was again submitted to the court, as now constituted, that the decision would be different.

STARE DECISIS.

But we are told by the gentleman from New York [Mr. PAYNE] that the court would not change the decision, but would render the same decision, because they would follow the rule of stare decisis. The court did not follow the rule of stare decisis in the Pollock case, reported in the One hundred and fifty-seventh and One hundred and fifty-eighth United States Reports, and they very frequently reverse themselves and reverse prior decisions of the court, and in many cases that might be cited this has been done.

In the case of Pollock *v.* Loan Co. (157 U. S., 429), the very case in which the Supreme Court first considered the income-tax act of 1894, the Chief Justice, who agreed with the majority of the court in the One hundred and fifty-eighth United States Reports, and delivered the opinion of the court declaring the income tax unconstitutional, said:

While the doctrine of stare decisis is a salutary one and is to be adhered to on proper occasions, this court should not extend any decision upon a constitutional question if it is convinced that error in principle may supervene.

Also, on page 576, he declares:

If it is manifest that this court is clothed with the power and intrusted with the duty of maintaining the fundamental law of the Constitution, the discharge of that duty requires it not to extend any decision upon a constitutional question if it is convinced that error in principle may supervene.

And he quotes approvingly the cases in which the same doctrine is held, viz, Lessee of Carroll (16 Howard, 275) and The Gennesee Chief (12 Howard, 443).

In this latter case the court overruled the case of The Thomas Jefferson (10 Wheat., 428). The first case, The Thomas Jefferson, had decided that the Lakes and navigable waters connecting them were not within the scope of the admiralty and maritime jurisdiction of the United States courts, but that the jurisdiction was limited to the ebb and flow of the tides, and this decision had been followed in the Eleventh Peters, 175; but in the decision in the Twelfth Howard both cases were overruled, Chief Justice Taney saying:

We are convinced that if we follow it we follow an erroneous decision into which the court fell, and the great importance of the question as it now presents itself could not be foreseen.

So that in the very Income Tax case in the One hundred and fifty-seventh United States Report the court demonstrates that the court did not adhere to the doctrine of stare decisis any more than they did in the Legal Tender cases, the Greenback cases, the Whisky License cases, and in a number of other cases that can readily be called to mind. In fact, in order to hold the act of 1894 unconstitutional, and that the tax provided for therein was a direct tax, the majority of the court were compelled to abandon and put aside the so-called "doctrine of stare decisis" and make a new rule of construction, for if the court had followed the rule of stare decisis they would have upheld the act, just as that court had for a hundred years prior thereto upheld the right of Congress to enact an income-tax law without violating the Constitution.

THE DEMOCRATIC PARTY'S POSITION.

Ever since this decision in the Pollock case was rendered the Democratic party has repeatedly, in Congress and in its platforms, demanded the passage of an income-tax law, and, if necessary, the adoption of an amendment to the Constitution authorizing the levy of such a tax. In 1896 the Democratic national platform declared that—

It was the duty of Congress to use all the constitutional power which remained after that decision, or which may come from its reversal by the court as it may be hereafter constituted, so that the burdens of taxation may be equally and impartially laid, to the end that wealth may be forced to bear its due proportion of the expense of government.

All who are familiar with the incidents of that campaign well remember how that part of the Democratic platform was assailed as an attack upon the Supreme Court of the United States; and yet the President of the United States, in his campaign for the nomination and after he was nominated, in substance made the same assertion. While discussing this subject, in a speech delivered in Ohio and in New York City during the campaign of 1908, President Taft used the following language:

I believe a federal graduated inheritance tax to be a useful means of raising government funds. It is easily and certainly collected. The incidence of taxation is heaviest on those best able to stand it, and indirectly, while not placing undue restriction on individual effort, it would moderate the enthusiasm for the amassing of immense fortunes.

In times of great national need an income tax would be of great assistance in furnishing means to carry on the Government, and it is not free from doubt how the Supreme Court, with changed membership, would view a new income-tax law under such conditions. The court was nearly evenly divided in the last case, and during the civil war great sums were collected by an income tax without judicial interference, and it was then supposed within the federal power.

The Democratic national platform of 1908 declared that the party was in favor of an income tax and urged the submission of a constitutional amendment specifically authorizing Congress to levy a tax upon individual and corporate income, to the end that wealth may bear its proportionate share of the burdens of the Federal Government. The people were told by the Republican candidate for President and by the Republican campaign orators that this was not necessary; that they favored an income-tax law if one could be enacted that would meet the approval of the Supreme Court of the United States and be held to be constitutional.

In his speech of acceptance President Taft said:

The Democratic platform demands two constitutional amendments, one providing for an income tax and the other for the election of Senators by the people. In my judgment an amendment to the Constitution for an income tax is not necessary. I believe that an income tax, when the protective system of customs and the internal-revenue tax shall not furnish income enough for governmental needs, can and should be devised which, under the decision of the Supreme Court, will conform to the Constitution.

And now this once criticised and despised position of the Democratic party is made one of the chief features of the Republican administration.

When it became apparent that the Democrats of the Senate would vote solidly in favor of an income-tax law and that a sufficient number of Republicans in the Senate would unite with them in such a move to insure the passage of the law, the leaders of the Republican party in the House and the Republicans of the Senate, in their confusion and dismay, consulted the President with a view of defeating the income-tax amendment proposed to the pending tariff bill, and they evolved the scheme known as the "corporation-tax amendment" to the tariff bill, and this amendment to the Constitution and these two propositions were put through the Senate by the leaders of the Republican party simply as a means for defeating the income-tax amendment. Indeed it was frankly stated by those who offered this resolution and the corporation-tax amendment that it was being done solely for the purpose of defeating the income-tax amendment. I do not doubt the sincerity of the President's purpose, but I think I am authorized in saying that the purpose of the chief inaugurators of both the corporation-tax and the income-tax amendment to the Constitution was not a sincere purpose and not a desire to collect taxes from the wealth of the country, but in the end to defeat any such purpose. Both make their appearance in the House in such questionable shape and form as to justify those who are in favor of an income-tax law in doubting the sin-

public. As it was, some States, notably North Carolina and Rhode Island, remained out of the Union many months. It is rarely a wise thing to engage in prophecy, and yet I can not refrain from reflecting that those of us spared to look back upon these scenes enacted here to-day may recognize the committal of a sad mistake in referring this measure to the legislatures and not to the voice of the voters.

INCOME-TAX LAW AND CONSTITUTIONAL AMENDMENT DEMOCRATIC DOCTRINE.

The country should and does understand that the enactment of an income-tax law and the submission of this amendment are of distinctive Democratic origin.

While the Republican party has opposed, ridiculed, and viciously assailed them, the Democracy, undaunted, has made the fight for the people. You have voted against it in this House and not until the wrath of the public has driven you have you ever advocated it. However, when you embrace so good a measure, we rejoice in joining you while another sound doctrine of the Democratic party is indorsed by the country and forced through Congress by public opinion over the unconverted consciences of some men who are voting with us on this occasion.

In 1896 the Democratic convention pronounced unequivocally for an income tax. In plain language we said:

* * * Until the money question is settled we are opposed to any agitation for further changes in our tariff laws, except such are are necessary to make the deficit in revenue caused by the adverse decision of the Supreme Court on the income tax. But for this decision by the Supreme Court, there would be no deficit in the revenue under the law passed by a Democratic Congress in strict pursuance of the uniform decisions of that court for nearly one hundred years, that court having in that decision sustained constitutional objections to its enactment which had previously been overruled by the ablest judges who ever sat on that bench. We declare that it is the duty of Congress to use all the constitutional power which remains after that decision, or which may come by its reversal by the court, as it may hereafter be constituted, so that the burdens of taxation may be equally and impartially laid, to the end that wealth may bear its due proportion of the expenses of the Government.

From that day to this we have urged and pleaded for its adoption. The Republican party has scoffed at it and scorned to believe in it until lashed by public conscience. In 1908 the Democracy pronounced in favor of such law and amendment. We said:

We favor an income tax as part of our revenue system, and we urge the submission of a constitutional amendment specifically authorizing Congress to levy and collect tax upon individual and corporate incomes, to the end that wealth may bear its proportionate share of the burdens of the Federal Government.

Again the Republican party was as silent as the tombs of the Ptolemies. You did not favor it then, or you would have said so in your platform utterances. In season and out of season Mr. Bryan and those who followed him with unfaltering feet have never wavered in their devotion to this principle; and although defeat overtook him, he will live in history as a patriot and benefactor to mankind when those who scoffed at his imperishable name are buried beneath the dust of oblivion. In the Republican party campaign text-book for the year 1894 you issued this declaration to the people:

In this country an income tax of any sort is odious, and will bring odium upon any party blind enough to impose it. * * * Prepare for the funeral of the political party which imposes such a burden.

Evidently, then, your conversion dates subsequent to this announcement.

DESIRABILITY OF AN INCOME-TAX LAW.

We have now reached a point where an income tax seems an inevitable necessity. The appropriations of the Federal Government have become so great that the internal-revenue taxes and import duties no longer suffice. The Republican party must seek other sources of revenue. Dreading to embrace Democratic conventions as a temporary makeshift, they are proposing a so-called "corporation tax," which will be but shifted from the corporation treasuries to the backs of the people. The appropriations and the obligations of the Government for the fiscal year ending June 30, 1910, amount to the exorbitant sum of $1,070,482,732.12. Considering postal receipts and other items that might be properly included and subtracted, this Government must raise about $500,000,000 from customs receipts and other sources, certain items, as explained by the Secretary of the Treasury, being eliminated. The most optimistic advocate of the Payne-Aldrich bill does not contemplate, as now framed, that it will raise from customs receipts much in excess of $350,000,000. Therefore, needing a little short of $500,000,000 from customs receipts and otherwise to supply governmental demands, resort must be had to some source for the residue of $150,000,000 above all the money that can possibly be brought in through the custom-houses under this Payne-Aldrich bill. Hence, we have now reached the point in our fiscal affairs when the revenues from internal-revenue laws and customs duties fail to furnish sufficient funds to run the Government. There is a shortage in that regard of more than $150,000,000 annually. In accordance with my judgment that amount should be laid upon the incomes of the country by the enactment of a genuine income-tax law. In lieu of this some propose an inheritance tax and others a corporation tax. However, if an income-tax statute be properly drawn, it will reach, to a great extent, these sources and the three may be wisely combined in one act, the income tax embracing the corporation and inheritance tax and many other items not within their scope.

Equality in taxation should be the north star to light our pathway and direct our feet in the enactment of such statutes. No tax more equitably and wisely distributes the burdens of government than an income tax. It is resorted to in almost all civilized nations. In England the government collects a "property and income tax" amounting to £33,930,000. A little less than $100,000,000 of this amount comes from incomes alone. In the British Empire wealth is required to shoulder its due proportion of governmental burdens. In fact, there most taxation rests upon the wealth of the Kingdom. And the following countries are among those having income-tax laws: In Prussia for more than thirty years it has been in operation. For more than that length of time Austria has tried this tax and proved it to be a success. In Italy, likewise, it has been demonstrated as a revenue measure. And so with the Netherlands. It is needless to enumerate countries embracing the doctrine, for the trend of the world is to it, and no sentiment can much longer stay it in America. If in this form it is defeated, American voters will rise up and find a way to have the wrong righted by another Supreme Court. We should lay upon the backs of those with sufficient incomes a tax of a hundred millions of dollars. The Bailey-Cummins amendment meets my cordial approval, and if I had the power, it would speedily become a law and the Supreme Court again be given the opportunity to determine its validity. I would cheerfully vote for this amendment with the belief that the Supreme Court would sustain it and obviate the submission of a constitutional amendment. My personal preference would be for a graduated income tax. Being the least inquisitorial of all taxes and based upon sounder principles of equity than all others, such a tax would have my cheerful support. No one has ever stated the best features of such a system more felicitously than Adam Smith. He said:

The subjects of every State ought to contribute to the support of the Government, as nearly as possible in proportion to their respective abilities—that is, in proportion to the revenue which they respectively enjoy under the protection of the State. In the observation or neglect of this maxim consists what is called the "equality or inequality of taxation."

It is undeniable that an income tax will reach millions of wealth—bonds and stocks—that would never be touched by a corporation or inheritance tax. It is advocating no new and strange doctrine to favor an income tax. On many occasions during great emergencies this method of taxation has been resorted to, and proved abundantly satisfactory. And now, with a depleted Treasury, with swollen fortunes all around us evading taxation and receiving the protection of the Government, and civilized communities everywhere recognizing the economic fairness of such a tax, and with the admitted contention that it contains the humane and sublime blessing of equality to all men, the time is ripe and appropriate for this Government to go forward and keep apace with the progress and civilization of mankind.

SUPREME COURT DECISION ERRONEOUS, AND SHOULD BE RECONSIDERED WITHOUT CONSTITUTIONAL AMENDMENT.

Mr. Speaker, no member of his profession has a higher regard for the dignity of the courts than I have; but I refuse to subscribe to the doctrine that "the king can do no wrong" and that the courts are infallible. In a respectful way, as a citizen and a Representative, I have a right to challenge the decision of the Supreme Court in the Pollock Income Tax case. If any opinion of that court ever received practically the universal disapproval of the bar and the bench of the country, it is that case. The very flower of the American bar now concur with practical unanimity that the judgment of the court was erroneous. The court itself is rapidly curtailing the force of the same and stripping it of much of its vital efficiency. It has never received the respect of the bar and country due an adjudication from that august tribunal. Consequently we are warranted in claiming the right to send another similar tax law to that court and ask that the question be reexamined and correctly decided. Such course commends itself to me with much more force than the submission of a constitutional amendment, which might be construed as an admission by Congress that it is now without authority to pass the proposed income-tax law, which acquiescence I am not willing to give.

It is no new thing to challenge an erroneous opinion of this high court. On other occasions they have been questioned, aye, bitterly assailed, and have in the end reversed themselves and righted their judgments. While my respect for the court is adequate, I hope my regard for righteous decision and the just demands of an overburdened, oppressed, and groaning people is equal thereto, and perhaps outweighs in that direction the partiality for that honorable court, who, after all, are but the creatures of government directed by sovereign men who fashioned this Republic. And for those people I have a right to speak in my place here. The court did not hesitate to overturn the established law of a hundred years, and why should we halt in asking them to reconsider, in the interests of more than eighty millions of people, their judgment so universally condemned by the American bar and citizenship? It is peculiarly appropriate here and now to recur to the familiar history of income-tax laws and the decisions of the Supreme Court touching them.

The first act was passed in 1794 and imposed a tax on carriages "for the conveyance of persons." Many Members of Congress who enacted the law had been delegates in the Constitutional Convention. Its validity was violently assailed upon substantially all the grounds raised in the Pollock case and by the ablest lawyers in the land. But in the Hylton case, determining the questions, the Supreme Court unanimously upheld the act. They distinctly laid down the proposition that it was not a direct tax and not subject to apportionment under the Constitution. They undeniably held that the only taxes required to be apportioned were a capitation or poll tax and the tax on land. Although Rufus King asked in the Constitutional Convention, "What is the meaning of a direct tax?" and no one answered him, yet the delegates to that convention, the country at large, and the Supreme Court, some of them coming from the convention, did not doubt that the "direct taxes" referred to by the fathers were capitation taxes and taxes on land, and none other.

It was then the universal belief and acceptation, and of their correctness I have not the slightest doubt this day. In order to get the true proposition in our minds, we can not do better than to quote from the great constitutional lawyer, Mr. Cooley. After maturely considering the question, he writes:

> The term "direct taxes" as employed in the Constitution has a technical meaning, and embraces capitation and land taxes only.

In holding the carriage tax of 1794 constitutional and as blazing the way in jurisprudence, I can not do better than quote from Justice Patterson, one of the four judges unanimously handing down the opinion, and assuring the bench and bar of the validity of the tax and thus setting up a landmark:

> I never entertained a doubt that the principal—I will not say the only—objects that the framers of the Constitution contemplated as falling within the rule of apportionment were a capitation tax and a tax on land.

Thus early the people had the confidence and faith instilled in them by this great court that only two kinds of taxes fell under the apportionment clause of the Constitution—capitation taxes and land taxes; that the others must yield to uniformity alone. Hence, for all the years to come this court heralded to the country that duties, imposts, excises, and incomes should fall under the head of indirect taxes and be uniform. In Congress, Madison opposed this carriage tax as unconstitutional, but afterwards as President approved acts of Congress containing the identical principle. The Government began to collect money under such laws, and for a hundred years collected many millions from the people; and such sums have not been refunded and will never be returned. Thus, with such a law, a unanimous approval of the Supreme Court, and thorough executive indorsement, this Republic began its career in undoubted recognition of the principle of an income tax, and pursued its tenor for a century without a dissent from any source to the system. At the end of a century, when a divided court uproots firmly fixed jurisprudence covering all these years, we are entitled to send the great question again and again to that tribunal. Guided by previous history and such construction by the Supreme Court, Congress has several times provided for direct taxes and apportioned them according to the Constitution.

In 1798 the total amount was fixed at $2,000,000. In 1813 the second tax fixed the sum at $3,000,000. The third tax, in 1815, fixed it at $6,000,000; in 1816, at $3,000,000. Then the law of 1861 came and put it at $20,000,000, and made it annual. By constitutional rule these taxes were duly apportioned among the States. They were upon lands, improvements, dwelling houses, and slaves in 1798, 1813, 1815, and 1816; in 1861, upon land, dwelling houses, and improvements. Analyzing and weighing these things, Chief Justice Chase said:

> It follows, necessarily, that the power to tax without apportionment extends to all other objects. Taxes on other objects are included under the heads of "Taxes not direct," "Duties," "Imposts," and "Excises," and must be laid and collected by the rule of uniformity. The tax under consideration is a tax on bank circulation, and may very well be classed under the head of "Duties." Certainly it is not, in the sense of the Constitution, a direct tax. It may be said to come within the same category of taxation as the tax on incomes of insurance companies, which this court at the last term, in the case of Pacific Insurance Company *v.* Soule, held to be a direct tax.

Thus repeated acts of Congress and decisions of the Supreme Court thoroughly fixed the definition of "direct taxes" mentioned in the Constitution. Following these precedents the Supreme Court, in the Pacific Insurance Company case, held valid a tax "upon the business of an insurance company" as being an excise or duty authorized by the reasoning in the Hylton case. Still adhering to these precedents, the Supreme Court subsequently pronounced, in the Veazie Bank case, a tax on the circulation of state banks or national banks paying out notes of individuals or state banks as falling within the meaning of "duties" as held in the insurance case. The Chief Justice here, holding the statute valid, said:

> It may further be taken as established, upon the testimony of Patterson, that the words "direct taxes," as used in the Constitution, comprehended only capitation taxes and taxes on land, and perhaps taxes on personal property by general valuation and assessment of the various description possessed within the several States.

And proceeding with the same logic, the Supreme Court, in Scholey's case, decreed a "succession tax" to be plainly a duty or excise upon the devolution of estates or incomes thereof. Constantly adhering to their former views, the same court, in the Springer case, upheld a statute whose provisions as to incomes were the same as those of the Wilson bill of 1894. In Springer's case, he was assessed for income on professional earnings and interest on United States bonds. Declining to pay, his real estate was sold. Involving every conceivable point possible to be raised against the income-tax provision, the court held:

> Our conclusions are that direct taxes, within the meaning of the Constitution, are only capitation taxes, as expressed in that instrument, and taxes on real estate; and that the tax of which the plaintiff in error complained is within the category of an excise or duty.

And so, with settled jurisprudence of a century meeting our gaze, we are brought to the spectacle of a great court suddenly halting, turning backward, and uprooting the established laws of more than three generations. Is it any wonder that the populace stood aghast and the bar was amazed? With a mighty stroke, a divided court annihilates precedent and sets up an unheard of standard of law in Pollock's case, nullifying the Wilson income-tax law. In order that it may be plainly stated here, let me recite the action of the court:

First. It held that a tax on rents or income of real estate is a direct tax within the meaning of the Constitution.

Second. That a tax upon income derived from interest of bonds issued by municipalities is a tax upon the power of the State and its instrumentalities and is invalid.

Third. The court in the original opinion did not decide the points pertaining to the provisions held void as invalidating the whole act, or that touching income from personal property being unconstitutional as laying a direct tax, or the point made as to the uniformity provided the tax was construed not to be direct. On these propositions the justices hearing the argument, being equally divided, could not decide the same. Avarice of wealth, not content with the adjudication, asked for a rehearing and begged that every vestige of the law that could possibly lay its hands upon their fortunes be destroyed. The rehearing was granted and the people thwarted with further judicial shifting. It is not amiss here to recite a short excerpt from Justice White in a dissenting opinion that will live in judicial annals when other contrary expressions are slumbering beneath the dust of forgetfulness:

> It is said that a tax on the rentals is a tax on the land, as if the act here under consideration imposed an immediate tax on the rentals. This statement, I submit, is a misconception of the issue. The point involved is whether a tax on net incomes, when such income is made up by aggregating all sources of revenue and deducting repairs, insurance, losses in business, exemptions, etc., becomes to the extent to which real estate revenues may have entered into the gross income, a direct tax on the land itself. In other words, does that which reaches an income, and thereby reaches rentals indirectly, and reaches the land by a double indirection, amount to direct levy on the land itself? It seems to me the question when thus accurately stated furnishes its own negative response. Indeed, I do not see how the issue can be stated precisely and logically without making it apparent on its face that the inclusion of rental from real property in income is nothing more than an indirect tax upon the land.

The rehearing was granted and the cause resubmitted. For a hundred years the avaricious and wealthy had criticised and assailed the court more violently than those challenging the first utterances in the Pollock case. By all the rules of reasoning and equity they should be estopped from criticising us for now in this single instance challenging the action of the courts.

With persistence, vigor, and ability the controverted points were again argued by both sides. Then it was upon final de-

cree that the court, by a vote of 5 to 4, completely overturned all its former holdings. It concluded: First, that taxes on real estate being direct taxes, taxes on rents or income therefrom are also direct taxes. Second, that taxes on personal property or on the income therefrom are direct taxes. Third, that the act being for these reasons unconstitutional, there was not enough of the act left capable of enforcement, and hence the complete income-tax sections of the Wilson bill are necessarily invalid. So, again, by such decree the court overruled five unanimous opinions on the question and totally overturned the jurisprudence of all generations from the beginning of the Government. Perhaps the most important case abrogated by the Pollock decision was the Springer case. It is not inappropriate here to allude somewhat briefly to that case in order to demonstrate how sharp was the departure from previous rulings. In the Springer case the contest was as to the validity of the act of 1864 as amended in 1865. In this act there was levied a duty on profits, gains, and incomes derived from every kind of property, trade, profession, and employment. Mr. Springer alleged that the tax was direct and could not be laid except under the rule of apportionment among the States according to numbers. Here the question was presented squarely to the court and a clear-cut judgment rendered sustaining the constitutionality of the tax. In another unanimous opinion Mr. Justice Swayne, speaking for the court, said:

> This uniform, practical construction of the Constitution touching so important a point, through so long a period, by the legislative and executive departments of the Government, though not conclusive, is a consideration of great weight.

And proceeding with one more great authority, Chancellor Kent said:

> Our conclusions are that direct taxes, within the meaning of the Constitution, are only capitation taxes, as expressed in that instrument, and taxes on real estate, and that the tax of which the plaintiff in error complains is within the category of an excise or duty.

On the warrant of such laws wars have been fought, millions of money raised by taxation of incomes from every kind of real and personal property without apportionment according to numbers, and now this Pollock case holds all these things done in flagrant violation of the Constitution and law of the land. Then is it any wonder that many gave some evidence of mistrust and discord? It has been suggested that the way is now open to another income-tax law, if we but invoke the apportionment clause of the Constitution and let the tax rest according to numbers. This plan would not for one moment be tolerated. Its most grievous fault would be that it favors a few in certain States, to the detriment of the many, and would be a gross discrimination. Antagonism to it would be instantly aroused, and it will never find favor in the slightest degree. Therefore, the decision, in effect, puts the dollar of the millionaire beyond the pale of being equitably taxed according to his wealth, unless a constitutional amendment be invoked. And here let me remark, with all the emphasis at my command, that I would not do violence to the rich to favor the poor. Equal laws and exact justice to both shall be my constant watchword. No man despises class legislation more than I do, and in my opinion he is a dangerous citizen who would seek to arouse one class of men against another in our country. However, there should be some method by which the untold wealth and riches of this Republic may be compelled to bear their just burdens of government and contribute an equitable share of their incomes to supply the Treasury with needed taxes. Returning to the glaring inequalities that are apparent if resort be had to an income tax under the apportionment clause of the Constitution, I can not better illustrate the point than by quoting the language used by Justice Harlan. He suggested:

> Under that system the people of a State containing 1,000,000 inhabitants, who receive annually $20,000,000 of income from real and personal property, would pay no more than would be exacted from the people of another State having the same number of inhabitants, but who receive income from the same kind of property of only $5,000,000.

Hence, I do not hesitate to say that by this decision the Supreme Court yielded the taxing power of the Government to wealth of the country and the moneyed class in a few States.

As I see it, the fairest of all taxes is of this nature, laid according to wealth, and its universal adoption would be a benign blessing to mankind. The door is here shut against it, and the people must continue to groan beneath the burdens of tariff taxes and robbery under the guise of law. If my vote could determine the question here to-day, I would boldly challenge the Supreme Court to a correct decision and reversal of their views by instantly sending the same law before them for readjudication. And not till this course was exhausted and failed would I propose this amendment. But being powerless to make effective such alternative, as the only available avenue open to me, I shall promptly respond affirmatively when the vote is taken on this resolution.

THE DEMOCRATIC PLATFORM AND THE TARIFF.

It is not my purpose here to enter into an extended discussion of the tariff, but at some future day in this session, if sufficient opportunity offers, I shall give in detail some views touching the general principles of the subject and vicious schedules of the bill.

Having on another occasion announced my allegiance to the Denver Democratic platform, I now here reassert my loyalty to its declarations. And let it here be fully understood that no planks appear to me more favorably than those unequivocally declaring for an income-tax law and constitutional amendment to that effect and the tariff pledges. Amongst all its mandates there are none to which I yield more faithful obedience than those. When the convention avowed: "Articles entering into competition with trust-controlled products should be placed upon the free list," it promulgated a wise, Democratic, and patriotic doctrine. They should reappear in every Democratic platform until their righteousness is vindicated by the enactment of such a law. Hence my convictions are unswerving and my pathway clear. And to me it is certain that I can better serve my State, my party, and country by yielding strict adherence to every decree of the Denver Democratic platform, and with unflinching fidelity this spirit shall characterize my course here and elsewhere.

Mr. LONGWORTH. Mr. Speaker, I yield five minutes to the gentleman from Missouri [Mr. BARTHOLDT].

Mr. BARTHOLDT. Mr. Speaker, the gentleman from Georgia [Mr. BARTLETT] in his remarks said a little while ago that in the previous Congresses all the Republicans voted against an income tax and all the Democrats in favor of it.

Mr. BARTLETT of Georgia. If the gentleman will permit, the gentleman did not quote that right. I said with few exceptions all Republicans voted against it.

Mr. BARTHOLDT. I am glad the gentleman from Georgia makes exceptions, because I am one of the exceptions.

Mr. BARTLETT of Georgia. I knew that at the time, and would not have made that statement, because I have the vote before me and knew there were some of them who did.

Mr. BARTHOLDT. I can not resist the temptation, Mr. Speaker, to congratulate my party upon having come over to my view of this subject. [Applause on the Democratic side.] I want to say, however, as one who is somewhat familiar with the prevailing sentiment at the time, that the Republicans of the Fifty-third Congress did not oppose an income tax because they were opposed to the principle of it, but for the reason that they deemed such a tax unnecessary at that time. Of course that was when the Democracy had just come into power with flying colors and had elected a President for the first time in many years. Their feeling was that the custom-houses should be forthwith abolished, and necessarily they had to look around for some sources of revenue other than customs, and one of those was the income tax. At that time, Mr. Speaker, we had not yet become the greatest military power on earth, and when I say "the greatest military power" I mean we had not yet become the power which spends more of its revenues for military purposes than any other nation on earth. It had not yet come to pass that only 28 per cent of the revenues of the Government were spent for the legitimate functions of the Government, while 72 per cent were expended for war, as is the case now, according to the statement recently made in Chicago by the gentleman from Minnesota, the chairman of the Committee on Appropriations. It is quite natural that when we are spending 72 per cent of our revenues for war that other sources of revenue should be looked for.

Mr. HOBSON. Will the gentleman yield?

Mr. BARTHOLDT. In a moment I will yield to the gentleman from Alabama. I merely want to submit a thought in connection with this discussion, and that is this, that I am opposed to all exemptions, not only to an exemption of $5,000, or $7,500 or $10,000, but I am opposed to all exemptions. I believe in equality of taxation. I believe that every exemption you make will be un-Democratic, un-Republican, and un-American, because you will thereby create two classes, a tax-paying class and a nontaxpaying class, namely, all those whose income is below $5,000 will be exempted from that direct tax and consequently will be classed as nontaxpaying citizens.

The SPEAKER. The time of the gentleman from Missouri has expired.

Mr. LONGWORTH. I yield the gentleman two minutes additional.

Mr. BARTHOLDT. I would tax an income of $100, say, at 1 per cent, making the laboring man with an income of $100 pay 1 cent to the Government and the laboring man having an income of $1,000 pay 10 cents to the Government. This 10 cents represents to him as much as the thousands and thousands of

dollars which the millionaire contributes to the Government, and no one can say to him that he has not the same rights, because he is a taxpayer, in accordance with his means, as well as the millionaire.

Mr. CLARK of Missouri. The gentleman got his arithmetic wrong. One per cent on $100 is $1, not 1 cent.

Mr. BARTHOLDT. Let him pay one-tenth of 1 per cent; make it as low as possible and graduate it up higher and higher. Do not exempt him altogether, because, as I said before, that would be un-Democratic and un-American. I now yield to the gentleman from Alabama.

Mr. HOBSON. I merely wish to ask the gentleman if in making his statement concerning the percentage of revenues expended on war he included the amount expended on pensions, amounting now to something like $170,000,000 a year?

Mr. BARTHOLDT. I want to say that if I were computing statistics of this kind I would exempt pensions always; but I was merely citing figures as given by the chairman of the Committee on Appropriations in a recent speech of his.

Mr. HOBSON. Then I will state to the gentleman that the chairman of the Committee on Appropriations included the pensions.

Mr. BARTHOLDT. He included pensions; yes, sir. [Applause.]

Mr. CLARK of Missouri. Mr. Speaker, I yield five minutes to the gentleman from Mississippi [Mr. BYRD].

Mr. BYRD. Mr. Speaker, it is useless for me to say that I favor this proposition. No Democrat can consistently vote against this amendment. While many of us believe that under the present provisions of the Constitution there is abundant authority for the passage of an income-tax law, yet we shall not hesitate to vote for this amendment as the only thing along this line we are permitted by the party in power to consider. The Supreme Court, it is true, held that the Wilson income-tax law was unconstitutional. But we all remember the influences surrounding that tribunal at that time, and the fact that it was rendered by a majority of only one judge, who changed his opinion in a few hours. In this manner a judicial construction of the Constitution that had existed since the days of Chief Justice Marshall was reversed.

Many of the best lawyers in the country are outspoken in their belief in the error of that decision. President Roosevelt evidently had but little respect for it, as is shown in his message to Congress just read by the gentleman from Kentucky [Mr. JAMES]. Also, President Taft must have regarded it with contempt at one time, for in his speech accepting the Republican nomination for President in 1908 he said:

The Democratic platform demands two constitutional amendments, one providing for an income tax and the other for the election of Senators by the people. In my judgment, an amendment to the Constitution for an income tax is not necessary.

I believe that an income tax, when the protective system of customs and the internal-revenue tax shall not furnish income enough for governmental needs, can and should be devised, which, under the decisions of the Supreme Court, will conform to the Constitution.

Mr. Speaker, how does the language that "In my judgment, an amendment to the Constitution for an income tax is not necessary," and that "an income tax can and should be devised, which, under the decisions of the Supreme Court, will conform to the Constitution" compare with his recent message to the Senate advocating the substitution of a tax on corporations for the proposed income and inheritance tax measure, then pending in that body? Before his election, the income-tax law would be constitutional. Now it is unconstitutional. What has brought about that sudden change in the mind of this great lawyer? Can it be that he has been "hoodooed" by the machinations of the grand high priest of Republicanism now engaged in writing the tariff bill?

But, Mr. Speaker, this is not the only "before-and-after-taking" performance of the President. In his campaign speeches he proclaimed from every stump in every section of the country that if he were elected, there would be a revision, and a revision downward of the tariff. The people believed him to be honest then, and they do not seriously question his honesty now, but they do believe that he is guilty of cringing cowardice in permitting certain leaders of his party to belie every promise he made the people. How anxiously are millions of our Republican friends wishing for the return of the "big stick" now being used in clubbing varments in the wilds of Africa. They believe that if this hero of the jungle were again in power, the Samson of the Senate would be shorn of his locks.

Let me here read you a few utterances made by Mr. Taft in his last campaign.

In a speech at Cincinnati on September 28, 1908, he said:

Another thing the Republican party pledges itself to, fixes the date when it will do it, and tells you how it will do it, is the revision of the tariff.

The Dingley tariff has served the country well, but its rates have become generally excessive. They have become excessive because conditions have changed since its passage in 1896. Some of the rates are probably too low, due also to the change of conditions.

But, on the whole, the tariff ought to be lowered in accordance with the Republican principles and the policy it has always upheld of protection of our industries.

Now, Mr. Bryan is greatly concerned, and says that no such tariff revision can be made, in view of the fact that the protective industries control the Republican party. I deny this. If there are protective industries enjoying too great profits under the present tariff, then they would have opposed revision altogether.

The movement in favor of revision has arisen with the Republican party, and is pressed forward by members of the Republican party.

The revision which they desire is a revision which shall reduce excessive rates.

I wish there to be no doubt in respect to the revision of the tariff. I am a tariff revisionist and have been one since the question has been mooted.

At Milwaukee on September 25, 1908, he said:

The encouragement which industry receives leads to the investment of capital in it, to the training of labor, to the exercise of the inventive faculty, of which the American has so much, and in practically every case in which adequate protection has been given, the price of the article has fallen, the difference in the cost of producing the article abroad and here has been reduced, and the necessity for maintaining the tariff at the former rate has ceased.

It is intended under the protective system, by judicious encouragement, to build up industries as the natural conditions of the country justify to a point where they can stand alone and fight their own battles in competition of the world.

It is my judgment, as it is that of many Republicans, that there are many schedules of the tariff in which the rates are excessive, and there are a few in which the rates are not sufficient to fill the measure of conservative protection.

It is my judgment that a revision of the tariff in accordance with the pledge of the Republican platform will be, on the whole, a revision downward, though there will probably be a few exceptions in this regard.

Also, in his inaugural address on March 4 last, which we all heard, he said:

A matter of most pressing importance is the revision of the tariff. In accordance with the promises of the platform upon which I was elected, I shall call Congress into extra session to meet on the 15th day of March, in order that consideration may be at once given to a bill revising the Dingley Act.

The proposal to revise the tariff, made in such an authoritative way as to lead the business community to count upon it, necessarily halts all those branches of business directly affected; and as these are most important, it disturbs the whole business of the country.

It is imperatively necessary, therefore, that a tariff bill be drawn in good faith in accordance with promises made before the election by the party in power, and as promptly passed as due consideration will permit.

Mr. Speaker, the eyes of the Nation are turned upon this Capitol, and the question of the hour is whether the solemn pledges made the people by President Taft are to be redeemed by the defeat and overthrow of the infamous Aldrich-Smoot tariff bill. It is up to the President alone to act. His party in both Houses, it seems, is under the domination of the Speaker and one Senator. The lay Members are as powerless as babes in the hands of these astute leaders. In one breath these emasculated Republicans will advocate a decrease of taxation and in the next they are forced by the bosses to vote for an increase. If all the Republicans who have denounced the Aldrich bill as a travesty upon justice and right would unite with the minority, I dare say the conference report would not receive one-third the votes of the House.

It is a well-known fact that the tariff law will be the product of the brain of one Senator, and however infamous the measure may be, it will receive the unqualified support of enough Republicans to pass both Houses. The 10 patriotic Republican Senators who dared to vote against the bill are branded as traitors, and in due time will be excommunicated by the moguls of the party.

But, Mr. Speaker, will there ever be an end to this outrageous legislation? Will the time never come when the people of the United States are to have a voice in formulating the laws by which they are to be taxed? It seems that the Republican party has permanent control of the Government, and that Senator ALDRICH absolutely dominates this party. As long as it triumphs, he will be czar of the Nation. Compared with his influence and power in the enactment of legislation, the influence and prerogatives of the President are as fruitless and abortive as would be the edicts of a country schoolmaster.

But, returning to the subject of this controversy, let me say to my friend from St. Louis [Mr. BARTHOLDT], who contends that he is opposed to a system of taxation that exempts small incomes and not larger ones from the tax burden, because it would be inequality in the system of taxation, that I am indeed glad that he is beginning to realize that there is such a virtue as equity in bearing the burdens of government. He is certainly reforming in his older age, for it is quite impossible to understand how one who has been wedded to the discriminating doctrine of protection for so many years can conscientiously advocate a policy of justice and equality in taxation, except upon the idea of a complete conversion to a new political faith. His soul must have been cleansed by the saving grace of that justice not found in the doctrine of protection. Its very name

means inequality of tax burden. It means a tax upon consumption and not upon wealth, upon what one eats and wears and not upon his property; it means that the citizen who can scarcely provide food and raiment for his wife and children contributes as much or more to the support of the Government as does the multimillionaire, and it means that the consumer is not only taxed for the support of his country, but is compelled to contribute five times more to swell the fortunes of millionaire manufacturers and trust manipulators.

Well, does my friend know that every time a dollar tax is voted upon any article imported into this country that the domestic producer of such article adds the same as an extra profit on his product? This was once denied by the advocates of protection, but it was conceded by the most stalwart Republican Senators in the recent great tariff debate. I would like for him to tell the country wherein is to be found equality of taxation under such a system. One man is not only taxed for the support of the Government, but for the benefit of his fellow-man. While he pays $1 to the Government, he is compelled to pay from five to seven times this amount to his neighbor who is engaged in a manufacturing enterprise. For instance, the American farmer consumes $25,000,000 worth of agricultural implements annually. The tax thereon is 20 per cent. The Government in 1907 collected only $3,600 in revenue, but according to admissions of Republican Senators the 20 per cent Dingley rate was levied in favor of the manufacturer on the $25,000,000 consumed at home, amounting to a tax of $5,000,000. So the American farmer, while he paid $3,600 to his Government, was compelled to donate $5,000,000 to the agricultural-implement trust. [Applause.]

Another illustration: Only 3 per cent of the lumber consumed in this country is imported. From that the Government derived a revenue of about $3,000,000, while on the 97 per cent of the domestic product consumed at home he was compelled to pay the lumber trust and the lumber manufacturers more than $65,000,000. Now, how does this strike the gentleman as equality in sharing the burdens of government? This same injustice is true on the iron, steel, wire, glass, shoe, leather, meat products, hosiery, clothing, gloves, cotton goods, and many other articles necessary to human life. Were I a Republican and advocated such a fallacy as equality of right under the protective system my hours would be haunted by visions of the judgment that overtook Ananias and Sapphira. [Applause.]

Again, Mr. Speaker, I would like to say a word or two in reply to what the gentleman from Kansas [Mr. MILLER] has just said in his speech advocating the adoption of this measure. He, for the first time in his whole political life, urges the South and the West to unite in the adoption of this measure to thwart the aggressive vandalism of New England. I am, too, proud of his conversion, and when I think of such a speech coming from a Republican from Kansas I am forcibly reminded of the old camp meeting song, "As long as the lamp holds out to burn the vilest sinner may return."

These strange doings on the part of our Republican friends, if sincere, certainly are ominous of much good. When a Kansas Republican is willing to clasp hands with a Mississippi Democrat for the good of the common country, I think it is time for the people to rejoice and offer praises to the Almighty. My friend need not be uneasy about Mississippi or any of the other Southern States on this proposition. I dare say that no State south of the Mason and Dixon line will hesitate for one moment to ratify this amendment. It is right in principle; it means equality in taxation—that every man shall contribute to the support of the country in proportion to the wealth with which he has been blessed. This has always been the paramount doctrine of the South, and even the southern Republicans who understand only the A B C's of political honesty will accept and support this amendment. My friend should look out for the wayward in his own State, for I have always understood that the Republicans of Kansas were the most ubiquitous in principle of all the tribe—always fleeing from one wrong to embrace another.

Mr. Speaker, in my opinion, the greatest danger confronting Democratic success in the next election is the political thievery of the Republicans in appropriating wholesome Democratic doctrine. A few years ago you purloined the Democratic idea of more rigid supervision of transportation companies, and now with unblushing audacity you propose to adopt et literatim the most sacred tenet of our faith. You have denounced Bryan in season and out of season, in this House and upon the hustings, as a dreamer, a Socialist, and an anarchist for advocating the policy you now embrace with impunity. He wrote in the Denver platform this remarkable language:

> We favor an income tax as a part of our revenue system, and we urge the submission of a constitutional amendment specifically authorizing Congress to levy and collect a tax on individual and corporate incomes, to the end that wealth may bear its proportionate share of the burdens of the Federal Government.

You are compelled, in order to save your political scalps, to make his favorite theory the law. It is, indeed, a bitter pill, but you know that something must be done to assuage the increasing wrath of the people on account of the grievous wrong that is now being perpetrated by the tariff conference committee.

But, Mr. Speaker, I am afraid that the unanimous passage of this measure through the Senate and the favor with which it is being received in this House by your party is too hopeful of good to be accepted with a full measure of confidence. I am afraid that this is a case of "Greeks bearing gifts." It was introduced in the Senate for the avowed purpose of defeating the Bailey-Cummins income-tax bill, and I am apprehensive that after it shall have been rushed through this House and goes to the States for ratification all the power and influence that can be marshaled against it by sordid wealth and Republican chicanery will be used to compass its defeat. It is only necessary to debauch the legislatures of 12 States to secure its rejection, and the same evil influences that have corrupted and carried so many elections have already started a crusade against its adoption by the States.

We were warned by the gentleman from Connecticut [Mr. HILL], in his speech a few moments ago, what opposition might be expected from New England. He boldly contends that it is unjust to tax the wealth of those favored States for the support of the common country, stating that that section, because of its great prosperity, was now compelled to contribute more than its part of the internal-revenue tax. The inconsistency of such an argument is only excelled by the seeming avarice that prompted it. New England, that has bled the country of its wealth for quite half a century; that has her millionaires by the thousands—made so by virtue of the infamous policy of protection—should be the last section of the Union to reject this righteous measure. With her millions invested in manufactures, protected by the tax of from 50 to more than 100 per cent, it would be the height of political ingratitude for any statesmen from that section, whether Democrat or Republican, to act otherwise than to urge a speedy ratification of this amendment.

Let me ask my friend where he imbibed such strange ideas of political economy as to contend that taxation should not be based on the wealth of the country? What statesman ever advocated that a poor man without property should contribute as much to defray the expenses of the Government as does the millionaire? The former has nothing to protect save his life and liberty, while not only the life and liberty of the latter is shielded by the Government, but his broad acres and long lines of factories are made secure by the courts and great armies. The former costs the Government nothing, while upon the latter it ofttimes spends thousands of dollars. In the time of war, the former bares his breast as a target to the enemy, while the latter hires a substitute and hikes away to the mountains of Switzerland.

But, Mr. Speaker, the boldest declaration in opposition to the income tax yet heard comes from the distinguished gentleman from Massachusetts [Mr. MCCALL]. It is indeed hard to understand how a statesman possessing his known intellectuality could advocate such a political principle as to oppose this measure upon the grounds that it is violative of the principles upon which the Government was founded. He discussed at length the proposition that the fathers of the Republic, to make secure Democratic equality among the States, intended that when a direct tax was levied, it should be apportioned among the several States according to their population. This doctrine might have appealed to reason at a time when the pro rata wealth of the States was practically equal. Had the framers of the Constitution known that the present policy of spoliation and greed would have been so long saddled upon the country, that one State would have been drained of its wealth to enrich another, I dare say that no such provision would have been in the Federal Constitution. Can anyone believe for a moment that when our patriotic forefathers founded this Republic they thought that the time would ever come when, by a system of unjust taxation, the per capita wealth of Massachusetts would be increased to more than $1,500, while that of Mississippi would be reduced to less than $150, or that they intended that the individual owning $150 should be forced to contribute as much to the support of the Government as one owning $1,500? In the light of these facts, anyone who now advocates a direct tax levied on the several States according to the population thereof exemplifies a statemanship as tyrannical as it is indefensible.

Sir, there is another reason why this direct system of taxation by States should and must be forever abandoned. When the

Constitution was adopted our vast negro population was in slavery, and was not counted as a basis upon which this tax should be levied against any State. Now, there are more than six millions of them in the Gulf States alone made citizens by the Constitution and who, however penniless they may be, must be counted in estimating the population of any State against which a direct tax is sought to be levied. Such a system of taxation would force the white property owners of the South to contribute ten times as much as those living in other sections of the Union. We should remember that since the adoption of the Constitution many changes have taken place in this Republic. This system of taxation was adopted to make steadfast the doctrine of state sovereignty. But the integrity of statehood was partly destroyed by the results of the civil war, and now it has been completely annihilated by Republican executive and judicial encroachment upon the Constitution. At one time the Union existed by the grace of the States. Now, the States survive by the mercy of the Federal Government. The States were the source of all power, but now they have been reduced to mere boroughs in the great federal system.

Sir, if your party will give back to the South the constitutional privileges she enjoyed fifty years ago, and I do not mean African slavery either; if you will give her the right to administer her own affairs unhampered and unmolested by the usurpations of the Federal Government; if you will give her back that system of tariff taxation under which she grew rich and powerful, I dare say that but few statesmen from the South would oppose the present constitutional provisions as to direct taxation. [Applause.]

Mr. Speaker, however much I may favor this measure and however much I may advocate the corporation tax now pending in the conference committee, still I must confess that I am at a loss to know how either measure is going to profit the great masses of people in this country, unless the tax burden imposed by the tariff is decreased in proportion to the amount of revenue derived by the income and corporation taxes. My idea of an income tax has always been that its adoption would relieve the necessity for high tariff taxes, and unless it accomplishes this purpose, in my judgment, but little good can or will come to the masses of the people. If the rich are to be taxed by these measures to run the Government, and the poor are to be taxed by high protection to enrich the manufacturers and trusts, then, in the name of reason, what good can you expect from this legislation? The income tax is right, and it is the only fair means to raise revenue to run the Government, and, when it is adopted, it is to be hoped that the American people will rise in rebellion against your infamous protective system, which is designed for no other purpose than to enrich the rich. The proposed tariff measure is the limit of high protection, and yet you say that it will not produce sufficient revenue for the Government. In this contention you are correct, and the reason for it is as plain as the noonday sun. You have taxed everything out of the country by high schedules. Scarcely anything is imported, and hence the Government gets nothing, while the manufacturer puts the full amount of the tax in his private purse. It is conceded by the best authority on this subject that if you will reduce your tariff schedules one-half, the Government will receive twice the revenue therefrom, and the people will be relieved of a tax burden for the benefit of the manufacturers and trusts to the extent of not less than $7,000,000,000.

Then, Mr. Speaker, there is another thought. The reckless extravagance in the appropriations under the Republican rule is appalling to the Nation. In the last decade it has almost doubled, amounting to quite a billion of dollars annually. By your reckless extravagance you have increased the burden of taxation so greatly that your most experienced financiers in this House are at a loss to devise ways and means for the maintenance of the Government. You are levying the highest tariff tax known to the world. The corporation tax and the income tax, if adopted, together with the increase of the internal-revenue tax, will, in the judgment of many of your own party, be necessary to meet the growing expenses of the Government. It is already noised in the atmosphere that two or three hundred millions of dollars of Panama bonds will have to be sold to fill the already empty coffers of the Government.

Mr. Speaker, when your party took control of this Government it took less than $100,000,000 to defray its annual expenses. From official statistics we learn that in 1860 there was appropriated $71,718,943. In 1880 it was increased to $298,163,117. In 1900 it amounted to $590,068,371; in 1907, $762,488,752. And it continues to increase, it now being a billion dollars or more. These startling figures unfold the story of your reckless extravagance.

Now, sir, is it not time for the people to become alarmed? Is it not time for your party to be dethroned and for the party of the people to take charge of the Government, in order to save it from the maelstrom of bankruptcy and ruin? Another decade of power by the Republican party means the indissoluble union between the Government and the trusts. It means that centralized wealth will subordinate every function of the Government to the behests of avarice. This is as plainly written upon the destiny of this country, unless there be a radical change, as was the handwriting upon the wall of the Babylonian palace. Onward we are rushing to a national crisis. The same evil winds that wafted the shipwrecked republics of the past are fast swelling our sails. [Applause.]

The SPEAKER. The gentleman's time has expired.

Mr. LONGWORTH. Mr. Speaker, I ask the gentleman from Missouri to consume some more of his time. How much more time is there remaining, I would like to ask?

The SPEAKER pro tempore. The gentleman from Missouri has fifty minutes and the gentleman from Ohio has twenty-seven minutes.

Mr. LONGWORTH. I ask the gentleman from Missouri to consume some of his time, as he has a large amount remaining.

Mr. CLARK of Missouri. I ask leave for everybody in the House to extend their remarks for ten days upon this subject.

The SPEAKER pro tempore. Is there objection to the request? Does the gentleman mean ten legislative days or ten calendar days?

Mr. CLARK of Missouri. Ten calendar days, and that will get through it quicker.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

Mr. OLMSTED. I would like the request to be made so that I may have permission to print remarks in the RECORD not directly bearing on this bill.

Mr. MICHAEL E. DRISCOLL. I make the same request.

The SPEAKER pro tempore. The request of the gentleman from Missouri is that the time for extension shall be ten calendar days, the remarks to be confined to the subject of the resolution before the House.

Mr. OLMSTED. Has the consent already been given?

The SPEAKER pro tempore. The Chair is not informed. Is there objection to the request of the gentleman from Missouri for general leave to print for ten calendar days on this subject?

Mr. OLMSTED. I understand, so far as I am concerned, I need not be confined to this subject.

The SPEAKER pro tempore. Is there objection? [After a pause.] The Chair hears none, and it so ordered.

Mr. CLARK of Missouri. I yield five minutes to the gentleman from New York [Mr. SULZER].

Mr. LIVINGSTON. Mr. Speaker, before the gentleman begins, I ask unanimous consent that the gentleman from Pennsylvania [Mr. OLMSTED] be permitted to print such remarks in the RECORD as he choose for ten days, and the gentleman from New York [Mr. MICHAEL E. DRISCOLL] have the same permission.

Mr. CLARK of Missouri. Why, certainly; I thought that was included.

Mr. LIVINGSTON. No; it was not included.

The SPEAKER pro tempore. Is there objection? [After a pause.] The Chair hears none.

Mr. SULZER. Mr. Speaker, I am now, always have been, and always will be in favor of an income tax, because, in my opinion, an income tax is the fairest, the most just, the most honest, the most democratic, and the most equitable tax ever devised by the genius of statesmanship. Ever since I came to Congress the record will show that I have been the constant advocate of an income tax along constitutional lines. And so to-day I reiterate that through it only, and by its agency alone, will it ever be possible for the Government to be able to make idle wealth pay its just share of the ever-increasing burdens of taxation.

At the present time nearly all the taxes raised for the support of the Government are levied on consumption—on what the people need to eat and to wear and to live; on the necessaries of life; and the consequence is that the poor man, indirectly, but surely in the end, pays practically as much to support the Government as the rich man—regardless of the difference of incomes. This system of tariff tax on consumption, by which the consumers are saddled with all the burdens of Government, is an unjust system of taxation, and the only way to remedy the injustice and destroy the inequality is by a graduated income tax that will make idle wealth as well as honest toil pay its just share of the taxes needed to administer the National Government. Hence I shall vote for the pending resolution or

any proposition that, in my judgment, will make an income tax in this country possible and constitutional, however remote that possibility may be.

Let me say, gentlemen, that every great thinker, every honest jurist, and every great writer on political economy, from the days of Aristotle down to the present time, has advocated and justified the imposition of an income tax for the support of government as the most honest and the most expeditious and the most equitable principle of taxation that can be devised. It must come in this country. It should have been adopted long ago. Almost every great government on earth secures a large part of its revenue from an income tax, and we must do the same. We are far behind the governments of Europe in this respect—far behind enlightened public opinion.

Sir, let me say, however, that I am not deceived by the unanimity in which this resolution is now being rushed through the Congress by the Republicans, its eleventh-hour friends. I can see through their scheme. I know they never expect to see this resolution become a part of the Constitution. It is offered now to placate the people. The ulterior purpose of many of these Republicans is to prevent this resolution from ever being ratified by three-fourths of the legislatures of the States, necessary for its final adoption, and thus nullify it most effectually. Therefore, so far as I am personally concerned, I am not going into ecstacies on account of the practically unanimous passage of this joint resolution through Congress. I have been here long enough to know, and I am wise enough to believe, that its passage now is only a sop to the people by the Republicans, and that their ulterior purpose is to defeat it in the Republican state legislatures.

I am not going to give the Republicans credit for good faith in passing this resolution until I see how their representatives vote on it in the legislatures of Republican States. Mark what I say now. When this resolution passes, the wealth and the interests and the Republican leaders of the country opposed to an income tax will soon get together and urge its rejection by the States. If these obnoxious interests to the welfare of the people can get 12 state legislatures to prevent its ratification, the resolution will fail to secure the necessary approval of three-fourths of the States of the Union and will never be adopted as part of the Constitution. It will not be required even to defeat it in the legislatures of 12 States. All that will be necessary to be done is to prevent its being acted upon by the senates of the 12 States. Let us wait and see if my prediction comes true.

Mr. Speaker, I had indulged the hope that the Members of this Congress would meet the expectations of the people—revise the tariff downward—take advantage of this splendid opportunity and write into the pending tariff legislation a graduated income-tax provision that would be fair and just to all the people and absolutely constitutional; that would make wealth as well as toil, plutocracy as well as poverty, pay its just share of the burdens of Government. There is no doubt it could be done if the Republicans in Congress were true to their promises to the people. In my opinion the Republicans in this Congress have been recreant to their duty and faithless to their pledges in failing to write into the pending tariff legislation a constitutional provision for a graduated income tax, The people of the land witness here to-day, in the enactment of the iniquitous Aldrich tariff bill, the most shameless betrayal of their rights, the most shameful repudiation of Republican promises that has ever been exhibited in all the annals of our political history.

The passing of the outrageous Aldrich tariff bill, an oppressive tax measure that will fasten on the backs of the consumers of the country for years to come unspeakable burdens beyond the calculation of the finite mind, is the legislative tax iniquity of the century.

Sir, the passage of this resolution is, as I say, only a subterfuge—a mere hope to be speedily dashed to the ground. The Republicans are only pretending to give the people the future possibility of an income tax. They know the people are in favor of a graduated income tax; they know the people now demand it; and hence they hold out this mere pretense while they place upon the statute books the highest protective tariff-tax law in the history of the land to burden them more than they have ever been burdened before; and the Aldrich tariff bill as it will finally go upon the statute books—mark what I say—will be the highest protective-tax measure in the interests of the beneficiaries of protection that has ever been enacted in this country or any other civilized country in all the history of the world. [Loud applause on the Democratic side.]

The SPEAKER. The time of the gentleman from New York has expired.

Mr. SULZER. Well, Mr. Speaker, that is about all I set out to say. Of course I shall vote for this resolution. It will pass Congress by the requisite two-thirds vote. It then goes to the legislatures of the States. Three-fourths of the state legislatures must ratify it. Let the people of the country see to it and instruct their state representatives to vote for it. The issue is now with them. I will do my part in Congress and out of Congress to make this resolution for a constitutional income tax a part of the organic law of the land.

Mr. CLARK of Missouri. I yield two minutes to the gentleman from Colorado [Mr. MARTIN].

Mr. MARTIN of Colorado. Mr. Speaker, I ask recognition for the purpose of obtaining leave to print in the RECORD a letter to me from a former brilliant Member of Congress from my State, Hon. Lafe Pence, of Colorado, briefly and concisely setting forth his views upon the pending income-tax amendment.

The SPEAKER pro tempore. The gentleman already has that leave.

Mr. MARTIN of Colorado. I yield back the balance of my time.

The letter referred to is a follows:

THE NEW DENISON HOTEL COMPANY,
Indianapolis, June 29, 1909.

Hon. JOHN A. MARTIN,
House of Representatives, Washington, D. C.

MY DEAR MARTIN: "God moves in a mysterious way, His wonders to perform."

The most important national campaign in fifty years will be on us in 1910. The fight for the income tax will be carried into every one of the 46 States for the election of state legislatures. It will continue until the fight is won; no man can tell how many years that will be.

When the Democratic party took up the fight for the income tax its sincerity was doubted. When such Democrats in Congress as Bryan, Hall, McMillin, CHAMP CLARK, Crisp, Swanson, and others succeeded in having the Democratic party in Virginia declare for a graduated income tax and avowed their intention of having it carried into national campaigns, their sincerity and ability were doubted. I was one of the doubters. That was in 1893. They proved their good faith and ability, and from that time on their movements were rapid and continuous. In 1894 they incorporated the income tax in the Democratic tariff bill. It was thrown out by the court, and in 1896 the Democratic party declared in favor of the tax, and since that time the enactment of such a tax as a part of the permanent fiscal system of the Federal Government has been a party doctrine.

For sixteen years has the party been occupied in its campaigns of education upon this question. Other issues have come and gone; this has remained. So thorough and complete has been the work that, although our ticket failed of election in 1908, the successful Republican candidate, in less than four months after his inauguration, declared that the income tax should be adopted and expressed his belief that a majority of the people so think; and this in the face of the facts that in 1894—in the Fifty-third Congress—every Republican in House and Senate opposed the law; that the entire Republican press of the country has consistently and persistently opposed the law; that no Republican candidate or convention has at any time favored the law; that the entire leadership of the Republican party everywhere has objected to the law; not because it was unfair or unjust, but because the revenues thereby created might enable the Government to get along without high protective duties.

The last-mentioned Republican objection is being met by Senator BORAH in his proposition to devote the revenues so realized from an income tax to the construction of a larger navy, and I see by the papers that ex-Senator Chandler, in New Hampshire, is rallying his party to the support of that idea. The chief danger from BORAH is that he is not only preeminently strong and able, but he is thoroughly sincere, and as the country knows him better it will appreciate that fact better.

As politicians, the Republican managers are the wonders of the world. In campaign times they put a blanket over ALDRICH, PENROSE, SMOOT, and some others and put forth such men as BORAH, DOLLIVER, CUMMINS, LA FOLLETTE, and announce to the public, "These are our apostles," and the people believe it. Then comes the inauguration and the special session, *and the blanket is lifted* and the "true apostles" come forward into daylight and take full and complete charge. Suppose their plan was reversed, how many Western States would the Republicans carry?

The Taft proposition for the income tax has less merit than BORAH'S. Just before the President's late special message the papers informed us that it was due and expected, and the President wanted the tax, not as a part of the regular policy of the Government, but for use in times of war. His message asked for it, not as a part of the regular governmental system, but as a thing that will be handy for emergencies. They all recognize that we are just getting over "a prolonged Roosevelt spree," and we have got the bills to pay; but they stop at that, and propose that when the Nation gets sober it shall drop the tax, or use it only for battle ships, which we may or may not want, or to pay for war or wars, which we hope to God we will never have.

Now, right now, John, is the time for such a man as you, assisted by CHAMP CLARK and all the party leaders, to lead the Democratic party to the very highest and best plane for the coming contest. Make it clear that we are and have been for the law as a *substantial, regular,* and *permanent* part of our fiscal system; and make it clear that if special purposes are to be accomplished, *there is one* vastly more important than the construction of battle ships or the preparation for improbable wars, one that affects the daily lives of millions of our people through every year and every month and every week. In my judgment, it is going to be a long fight and a hard one. There are 46 States; we must secure favorable action by legislators of 35 of them. We had just as well abandon the hope of having New Mexico and Arizona in our column, because the Aldrich contingent *will not let those two States be added, pending this contest.* I don't think for a moment that the President is acting in bad faith, but I have no doubt that Mr. ALDRICH and his associates have in their memorandum books now the names of the dozen States whose legislators they expect to control to defeat the constitutional amendment.

Now, John, we are going to need every vote that it is possible to get in every State. The fight must be won now or never. Let us win it as a Democratic fight, if we can, and let us deserve to so win it; but, above all things, *let us win it.*

After long consideration and many months of deliberation, I say to you bluntly, that in my judgment the only way the fight can be won is for us to make some such declaration as the following, to wit:

We favor such constitutional amendments and legislation as will secure a federal tax upon the incomes of individuals and corporations, and candidly avow that one of the chief reasons is to enable the Federal government to abandon all whisky, wine, and beer taxes, and thus leave the sovereign States free and untrammeled in their control of the liquor traffic.

Such a declaration will bring to the support of the measure tens of thousands of votes which it might not otherwise secure. It will put us on a plane which will entitle us to their support. What is more important, the declaration is just, fair, wise, candid, and right.

Do you say to me that it is un-Democratic? I answer that you and others representing us there can make it Democratic until the conventions meet next year, just as Bryan, CLARK, and other Democrats in Congress made the income tax Democratic in 1894, two years prior to the national convention of 1896. And I answer further, it is now Democratic. This question can not be longer handled with gloves; it has been dodged and avoided too long already.

You may not have and would not assume the authority, probably, to commit the Democratic party on the dry or on the wet side of the liquor question, but nothing can be more Democratic, John, than to declare that Uncle Sam should take his hands off and leave the sovereign States undisturbed in settling the question *as they please.* All old notions about our party and sumptuary legislation have gone to the discard since the solid Democratic Southern States have set a new example during the last three years. You can see the same thing being repeated right here in Indiana, and it is not strange that such an example, set by the solid South, should be first copied in Indiana north of the Mason and Dixon line. The best civilization we have is in the South. The worship of the dollar has not driven out the old religions down there. They still think more of their men than they do of dollars, and more of their women than they do of men, and the same civilization more completely dominates the people of Indiana than those of any other Northern State.

You will find that such a resolution as I propose *will be adopted by somebody;* the times are ripe for it. Do not forget that the Prohibition party, in its national platform last year, declared *for an income tax.* Their cry has long been for a "stainless flag." Such a platform would give them a flag-platform—a word for each star and each stripe. It is worth serious thought, John, that the party with such a shibboleth as "A just tax and a stainless flag" will have high claims, indeed, upon the patriotic voter. It would be a pity, indeed, for any party—except the Democratic party—to lay claim upon a flag platform or a flag campaign.

There are 46 stars in the flag standing for the 46 States; 13 of them for original States, 2 for Vermont and Maine, and 5 of them representing the States created from the Northwest Territory; that makes 20. The other 26 stars, John, stand for States, every single acre of which was acquired to the Republic by *Democratic Presidents as a Democratic policy;* there is not a Federalist acre or a Whig acre or a Republican acre represented on that flag. It is our flag, and any flag campaign should be our campaign.

However, the important thing *is to win the law*—for the sake of ourselves, our children, and our children's children—and we need and must have every vote that we can get in every State. You know how much I have this at heart and how many years I have waited to see this contest begun. Raise our banner high, John, and plant our feet firmly upon the highest possible plane; then a patriotic people and their righteous God will not let us fail.

Very truly, your friend, LAFE PENCE.

Mr. CLARK of Missouri. Mr. Speaker, how much time do I get back?

The SPEAKER pro tempore. A minute and a half.

Mr. CLARK of Missouri. I yield five minutes to the gentleman from New York [Mr. GOLDFOGLE].

[Mr. GOLDFOGLE addressed the House. See Appendix.]

Mr. CLARK of Missouri. I now yield to the gentleman from Missouri, Judge DE ARMOND.

Mr. DE ARMOND. Mr. Speaker, I had the satisfaction of voting for an income-tax provision in the Wilson tariff bill, passed in 1894, and have since improved every opportunity to vote that way. I have long been in favor of that kind of tax legislation. Nothing that has transpired lately or remotely has had any effect toward changing my judgment of the matter. I have long been of the belief that, as the Constitution now stands, there is power and authority in Congress to levy a constitutional income tax. I am confident that the power should be exercised now.

It seems to me that if there were a real desire to have such a tax the natural course would be to pass a law providing for it. It seems strange that the representatives of the people—more than 390 in this body and 90 in the other—should be halted year after year in any purpose that they really have because fourteen or fifteen years ago, by a decision of a divided court, standing five to four, an income-tax provision at that time in the law was declared to be void on account of unconstitutionality. If we will recall what happened at that time, we may recollect that when the question was first before the court there were eight justices present, and four believed the act to be constitutional and four believed it to be unconstitutional.

Later, with all the justices present, the full bench of nine, the matter came up again. It would naturally be supposed that the justice who was absent when the question was first passed upon, and present when it was passed upon later, would really cast the deciding vote. He voted in favor of sustaining the tax, but the tax was overthrown by the vote of one of those who had in the first instance voted to sustain it. He had changed his mind or his purpose—how that was brought about we need not now stop to inquire—so as to declare unconstitutional by a majority of one that which before he had by his vote and decision declared to be constitutional. Thank the Lord, that man is not now a member of the court.

Strange it is, with such a law disposed of in such a way, if we really desire an income tax, that we dally with the question year after year, and give as an excuse for not passing an income-tax law that the Supreme Court, in the manner that I have suggested and stated, once, years ago, declared such a law to be unconstitutional.

My judgment is that it is the duty of the House and the Senate to pass such measures as the Members believe to be constitutional, just, and proper, and leave to the Supreme Court the responsibility of determining the question of constitutionality when presented. Surely it can not be the duty of Congress to refrain forever or indefinitely from putting up to the Supreme Court the question of the soundness of a 5 to 4 decision.

I will vote for the passage of this resolution to submit this constitutional amendment, but not in the ardent hope that anything effective will come of it, because I am right well satisfied that years and years will pass before this proposed amendment will go into the Constitution, if it ever goes into it. Do you suppose that over in the Senate of the United States if there was a belief or a fear that this income-tax amendment would go into the Constitution, the resolution to submit could go through by unanimous vote? You may, but I do not believe it. The expectation is to delude the American people by the submission of the amendment and then deprive them, and deprive them effectually, if possible, of the promised fruits by a failure to ratify it.

The State that does not vote for its ratification might as well vote against it. It is not necessary to vote against it; the amendment does not go into the Constitution until three-fourths of the States have ratified it. Those States that vote against it no more effectually decide against it than those that do not vote at all.

I have long believed that the only reasonable hope for any material amendment of the Constitution of the United States must rest upon a convention convened to submit amendments. I hope the time may come, and come soon, when we shall have such a convention.

Not only is it desirable to have an income-tax amendment added to the Constitution—though I believe an income-tax law should be passed now for a graduated income tax—but it is important to amend the Constitution as to several other matters. Congress can provide for a constitutional convention at the request of two-thirds of the States, and such a convention could consider the whole subject of constitutional amendments. Then not only this question, but every question of great importance to the people going to amendment of the Constitution, could be considered by the people's representatives selected solely for that purpose, and could be voted up or voted down by the several States.

If you really desire to have this amendment adopted, the chances of its adoption would be greatly increased by incorporating in this resolution some such amendment as that suggested by the gentleman from Texas [Mr. HENRY]. If this amendment were submitted directly to conventions in the several States, the members elected strictly and solely with reference to the question submitted, there would be some prospect that the judgment of the people would prevail, and that by a direct appeal to the people and a prompt decision by them ratification of the amendment might be secured. But with all the opportunity for delay afforded by submission to state legislatures, and with all the incentives to delay, the prospect of this amendment getting into the Constitution is, I fear, dim and distant, indeed.

Some gentlemen here have expressed themselves in favor of this resolution in order that we may lay an income tax if war comes and dire necessity. It is no more just to tax in a particular way in time of war than to lay the same tax the same way in time of peace, varying the rate as the need for revenue varies. This is a question of justice and propriety.

So far as war necessity is concerned, that necessity can be met at any time, even under the decision of the Supreme Court, if an income tax will meet it. An income tax can be laid that will assuredly meet the test of the judgment of the Supreme Court, because it can be laid, though not equitably, in proportion to population, if you please, and if extreme necessity requires it and that be the only way, that way could be taken.

There is no good reason why taxation should not be according to ability to pay—according to wealth, according to income. Your tariff tax is a tax upon necessity, a tax in proportion to the amount you buy, a tax in proportion to what you must have, not a tax in proportion to what you possess. Let us tax wealth, not want—dollars, not men; and why not do it now? [Applause on the Democratic side.]

The SPEAKER. The time of the gentleman has expired.

Mr. HEFLIN. Mr. Speaker, if the Republican party is in earnest about this matter and wants to be entirely fair and honest with the American people, you will vote for an income-tax law, and then provide also for an amendment to the Constitution, which could be resorted to in the event the Supreme Court declares the new income-tax law unconstitutional.

If you should do this, there would be no longer any question as to your sincerity in the matter—your friendship for the measure.

This income-tax proposition is purely a Democratic measure, and it is the fairest and most just method of taxation ever devised by the genius of man.

I am in favor of amending the Constitution if it needs amending in order to obtain an income-tax law, but I believe that an income tax is constitutional, and that the Supreme Court, as now constituted, would declare it so.

If we had an income-tax law, it would bring millions of money into the Treasury, and those paying it would scarcely miss it, and it would lighten the burden that now rests so heavily on the great body of consumers.

The Republican party is not in favor of an income tax, and the submission of this amendment to the Constitution, instead of voting straight on the income tax, is your plan of procrastination.

The Republican party always moves against the lines of least resistance, and when that party can not defeat a measure, it makes promises and postpones action.

The gentleman from Missouri [Mr. BARTHOLDT] said that when we elected the first Democratic President after the war between the States that we talked about an income tax because, according to his statement, we thought of tearing down the custom-houses and would need revenue from that source to run the Government. I want to tell the gentleman that the custom-houses have not been destroyed, and the Republican party has been in power in every branch of the Government for more than twelve years, and your tariff tax is the highest that it has ever been, and yet you have not the revenues now with which to meet the extravagance indulged in by the Republican party. [Applause on the Democratic side.]

Mr. Speaker, we have had a panic—a Republican panic—the evil effects of which are still with us. I have heard various reasons assigned for the panic, and the gentleman from Kansas [Mr. MILLER] now tells us "that the bankers caused it." Well, Mr. Speaker, some of these bankers are among the millionaires whom we want to reach with an income-tax law, and if the gentleman wants to punish that class of citizens on whom he wishes to throw the blame for this Republican panic, let him join us in voting for an income-tax law now.

I am not going to make a lengthy speech at this time, for I discussed, at some length, the Payne bill when it was up for consideration in the House.

In passing, however, I want to give you a sample of what this Aldrich bill is going to do to the American consumer.

Here is what the editor of the Birmingham Age-Herald says, and says truly:

PRICE OF CLOTHING HEREAFTER.

To those who are compelled to buy moderate-priced clothing the Aldrich scheme of duties brings these results, namely, a suit of clothes which cost $10 last spring will cost $12.50 next spring. The cost of the $16 suit will be advanced to $18. The cost of the $18 suit will be advanced to $22. The cost of the $20 suit will be advanced to $25.

Does this look like revision downward?

And now, Mr. Speaker, here is a notice sent out by a wholesale sugar dealer, who is a friend to the consumer.

I am indebted to the Barfield-Green Mercantile Company, of Lineville, Ala., in my district, for sending me this notice:

NOTICE.

With no duty on sugar, sugar would be 2 cents per pound cheaper. Write your Senator and Congressman that you favor "free sugar."

The Aldrich bill strikes hard the necessities of life all along the line, and if gentlemen here think that the people are ignorant of what you are doing you will find in the next election that you are entirely mistaken.

Mr. Speaker, the States wisely and justly provide that every taxpayer shall know the exact amount of taxes that he pays every year—taxes on money loaned or hoarded, so much on personal property and so much on real estate. The taxpayer knows, as he has a right to know, just how much taxes he is required to pay to the city, county, and state government. But, Mr. Speaker, under your mysterious tariff-tax law, you tax the citizen, and you refuse to let him know just how much he is taxed by the Federal Government. The tariff tax is hid in the price of the things that he must buy, and at the end of the year he knows that the cost of living has increased; but he does not know how much you have taxed him under the system of a high protective tariff. This is wrong, and you should amend this tariff bill now, so that it will require that on every article upon which you have laid a tariff, the amount of the tariff tax shall be stamped, so that the consumer may know as he buys the necessities of life what the tariff tax is, and at the end of the year he will know the amount of tariff tax that you have compelled him to pay.

For instance, if the tariff on a wool hat is $1.50, and the tariff on a pair of shoes is 25 or 50 cents, and on a piece of machinery $50, when the machinery cost only $100 to begin with, bear in mind, the consumer would begin to see how you hold him up with one hand and rob him with the other. If he could only realize how he is being imposed upon and robbed by the present tariff system, it would not be long until the Republican party would be driven from power in every branch of the Government; and then a just and equitable tariff law would be passed by the representatives of the Democratic party.

The man of small means, with his goods in sight, and the man who has to struggle for the necessities of life, bear the tax burdens of the Government. Those least able to pay are forced, under this Republican system of tariff taxation, to divide their earnings with the tariff barons and an extravagant Federal Government.

The man whose income amounts to several thousand dollars a year, and the man whose yearly income runs into the millions, will be reached by an income tax, and they will be forced to contribute to the support of the Government.

Of course the law should provide that a man's yearly income must be so many thousand dollars before you begin to tax it. The purpose of such a law is to tax those most able to pay taxes, and lighten the tax burden on those least able to bear it.

Let us put the greatest tax burden, in the form of an income tax, on the man who is most benefited by the tariff protection that the Government gives, for he is most able to bear it.

From the man who has much in this world's goods much should be expected and demanded in the way of taxes to pay the expenses of the government under which he lives.

Just here, Mr. Speaker, I will include in my remarks a statement from Robert Ellis Thompson, in the Irish World.

In discussing the evils of indirect taxes in England he says:

The only real corrective to this injustice has been the income tax, devised by William Pitt when England was fighting, and revived in 1842 by Peel and Gladstone as a means to save the country from annual deficits. Until within thirty years past seven-eighths of the British revenue came from indirect taxes—taxes which tend to make the rich richer and the poor poorer by an unjust distribution of the public burdens.

An income tax seeks to reach the unearned wealth of the country and to make it pay its share.

So much for that.

Now, Mr. Speaker, this Capitol is the civic temple of the people, and we are here by direction of the people to reduce the tariff tax and enact a law in the interest of all the people. This was the expressed will of the people at the polls, and you promised to carry out that will, but you have not kept faith with the American people.

The Dingley law carries the highest tariff tax of any law that was ever enacted by Congress, and you gentlemen were elected—again intrusted with power—on the distinct understanding and in the firm belief on the part of the people that you would reduce the tariff tax and lower the Dingley rates, and yet the Payne tariff bill that passed the House increased the tariff tax and carries a higher rate than the Dingley law; and now comes the Aldrich bill, which is the most obnoxious and burdensome tariff scheme that ever found sanction in either branch of the American Congress. The tariff barons are in complete control, and the American people have been deceived.

The Republican party is going to be called upon to give an account of its stewardship. At the judgment bar of the people you must account for your broken campaign promises and your violated platform pledges, and all signs indicate that you will hear the dread sentence, "Depart from power, you unfaithful servants."

Your failure to reduce the tariff tax is an admission that your party is absolutely in the hands of the favored few who profit by a high protective tariff. Your failure to revise the tariff downward, as you promised you would do, stamps you with deceit and unfaithfulness to the American people and brands your party as unworthy of their confidence any longer.

This is plain talk, Mr. Speaker, but no plainer than the facts justify. Your declarations that you would revise the tariff downward sounded from every stump in the last national campaign, and yet your promises have not been kept. Your platform pledges to revise the tariff downward were printed in all the newspapers of the country and carried by your literature into the homes of all the people, but, alas! those pledges have not been fulfilled.

I derive no pleasure, Mr. Speaker, in calling attention to this situation because it helps the Democratic party; I deplore the miserable condition that it reveals. My heart is made sad and a sense of shame and humiliation steals upon me when I see the purse-proud barons of high-tariff protection write the statute laws by which they become enormously rich and politically powerful at the expense and to the great injury of the masses of the people. [Applause on the Democratic side.]

And these men around whom the operation of your unjust tariff laws has piled millions, reveling in luxury, retire from business at will and say in their hearts, "Soul, take thine ease." But, sir, I would remind you of a struggle out yonder among the bread earners of America. This struggle is unceasing. No field is cleared in the battle for bread; no bugle sings truce to the toiling millions; and yet under this miserable Aldrich bill the industry and skill of the man who toils are taxed, but the fortunes of the idle rich escape the scrutinizing eye of the Republican party. [Applause on the Democratic side.]

The great body of consumers struggling for the "wherewith" to buy the simple necessities of life are taxed, and heavily taxed, by this Aldrich bill, not only to raise revenues to meet the extravagant expenditures of the Republican party, but taxed for the benefit of those who profit by the Republican policy of high protection—those who furnish the Republicans with campaign funds with which to corrupt the ballot and debauch American manhood. [Applause on the Democratic side.]

The simple wants of the plain people are taxed beyond all reason, while the comforts and conveniences of life are placed beyond their reach.

The man who is not willing to work, who drifts aimlessly through life, does not deserve much consideration by anybody; but, sir, the man who is willing to employ the powers that God has given him in the effort to better his condition, to gratify his legitimate wants, deserves the commendation of every honest man, and, in the name of justice, I demand for him a fair chance in the struggle for existence.

When you, by tariff taxation, lay heavy burdens upon the things that this man needs and must have to make his wife and children comfortable and happy, you are working injury to this man and his family—you are standing between them and a worthy existence, and you are committing a crime against the American home.

The great God who so bountifully blessed this old world in the things with which to feed, clothe, and shelter the people, never intended that a few men should claim all the increase from ocean, soil, and air, and the fathers never dreamed that a few millionaires in America would become the arrogant dictators or bosses of the National Government. Nor did the builders of the Republic believe that the time would come when the barons of high protection would scorn the rights and wishes of the people and tax them at every turn in their existence, in order to enrich themselves; but that time has come.

Mr. Speaker, I want some one on that side of the House to tell me the difference between the bold robber who holds you up on the highway and robs you of your money, and the government that does the bidding of a band of robbers who prescribe the conditions by which you shall come and surrender your money? I will tell you the difference: One takes his chances and runs the risk of losing his own life in his efforts to rob others, while the other gang uses governmental machinery to hold up and plunder the citizen and in the name of law commits its crime against humanity.

Their patriotism is measured by the size of the fortunes that you permit them to filch from the American consumers. The stars on the flag resemble dollar marks to them, and the stripes represent the special favors that they enjoy at the hands of a government controlled by the Republican party.

The Republican party regards the presence of a few money kings as evidence of America's prosperity; but not so. These men are the product of governmental favoritism, the creatures of unjust tariff taxation. The laws that made them millionaires have robbed millions of people of the necessities of life.

But, Mr. Speaker, in spite of subsidized newspapers, that keep the truth from the people; in spite of the disgusting aristocracy of the dollar, that controls the Government through the Republican party, we shall continue to proclaim that the comfort, the happiness, and well-being of the American citizen is the surest sign of genuine prosperity, the highest end and aim of constitutional government. [Applause on the Democratic side.]

Mr. COX of Indiana. Mr. Speaker, the Ways and Means Committee reported the tariff bill to Congress on the 18th of March, 1909, and it passed the House on the 9th day of April, 1909. The Constitution provides that "all bills for raising revenue must originate in the House," and that "Congress shall have the power to lay and collect taxes, duties, imposts, and excises, but all duties, imposts, and excises shall be uniform throughout the United States;" and it further provides that "Representatives and direct taxes shall be apportioned among the several States according to the respective numbers," and that "no capitation or other direct tax shall be laid unless in proportion to the population of the States." The constitutional power of Congress to tax the people for the support of the Government is complete and plenary, the only restraint found in it relating to the taxing power of Congress is that "Congress is forbidden to impose an export tax upon any article exported from any State."

Mr. Speaker, the two systems of raising revenue for the support of the Government in ordinary times of peace have been a duty upon foreign manufactured goods imported into this country, together with an internal-revenue tax upon liquors, cigars, tobacco, and so forth. In ordinary times of peace these two systems of raising revenue to meet the required expenditures of the Government have been found adequate, but in times of war, or even in times of peace when the appropriations of the Government have been exorbitant, the Government has resorted to other systems of taxation. It finds itself to-day compelled to resort to some other system of taxation than a tax upon imports and an internal-revenue tax for the purpose of raising money to meet its required expenditures.

Tax of any kind is always burdensome to the people, no matter in what form it may be imposed, or in what guise it may be enacted into law—no matter if it be a direct tax upon property, as most, if not all the States, have; or an indirect tax, such as a duty upon goods imported into this country; or an internal-revenue tax, it is a burden just the same. But the people, if treated fairly, with uniform taxation, readily yield this power to the Government for the protection which the Government gives in return to the people.

People heretofore have been more concerned with taxation in their respective States than they have with tax imposed by the Federal Government. With the former they come in direct contact. This tax is usually measured to them by the county treasurer or the gatherer of the tax, and is always measured in dollars and cents. In amount it is fixed, definite, and certain. Not so with any system of indirect taxation. This tax is paid by the consumer indirectly upon the amount of goods consumed by him, regardless of his ability to pay. This kind of tax is a tax upon consumption, and not upon either property or financial ability to pay the tax. Mr. Speaker, a tax upon consumption is a deceptive tax, for the reason that the consumer of the commodity is always unable to tell how much duty there is on it which has gone to the support of his Government, or how much has gone to the support and maintenance of the manufacturers and trusts; and by reason of the blindness connected with its payment the consumer has continued to pay it; but in later years the ever-continued increase of the cost of the necessaries of life has caused an outcry by a large part of the mass of the people, and this outcry upon their part forced the Republican party to declare in its platform for a revision of the tariff and later the convening of Congress, for the purpose of redeeming the anteelection pledges made by the Republican party.

When Congress entered upon this task, it was confronted with several questions. It was confronted with an enormous deficit in the Treasury, together with a demand on the part of the masses of the people, backed in their demand by the Republican party's platform and the promises of President Taft for a downward revision of the tariff, so as to relieve them of some of the burdens imposed upon them under the Dingley bill; and with a demand on the part of the high priests of protection that they be not molested in their high and lofty citadels, from which the great captains of industry for the past twelve years have continued to issue orders to the great mass of people, and to harmonize all these conflicting interests the Republican party has been laboring long and late. That it will satisfy the high priests of protection there is no doubt; that it will fail to satisfy the masses of the people there is no doubt; that it will not raise enough revenue by imposing a duty upon imports for the support of the Government there is no doubt.

Since July, 1908, there has been a constantly growing deficit in the Treasury of the United States, until to-day it reaches the enormous sum of $96,199,355.90. To frame a tariff bill giving to the trust barons all they wanted and fulfill the pledges

made to the people, and, at the same time, between these two conflicting interests to raise revenue to supply the growing deficit in the Treasury and to meet the future necessities of the Government has indeed been a herculean task for the party in power. Mr. PAYNE, in explanation of the bill, said:

Now, the question of revenues under this bill is a serious question, and yet it is not so serious as it would appear at first blush. It is true we had a big deficit on the 1st of July last for the previous year, but we had had a big depression in business; importations halted, revenues had been cut down, and when that continued during the fiscal year of 1909 down to the present time, showing a deficiency of $87,000,000, it looked like a difficult task to provide sufficient revenue for the expenditures of the Government.

The appropriations made by the second session of the Sixtieth Congress for the year ending June 30, 1910, were $1,044,401,857.12, and the estimated revenue out of which this appropriation was to be made from all sources—customs duties, internal-revenue tax, and so forth—is only $852,340,712. It is an easy matter to observe that under the ordinary system of raising money for the support of the Government, instead of the Treasury deficit being wiped out it will be largely increased by the end of the fiscal year June 30, 1910, unless some other system is devised for the purpose of raising revenue. In my judgment the time has come when one of two things must occur—either reduce public expenditures to a safe and sane basis, or devise some other means of raising the revenue for the support of the Government than the means now in force. It was apparent to the framers of the present tariff bill that it would not raise revenue to meet the expenditures of the Government, and in order to aid in supplying this deficiency the bill when it passed the House contained a provision for an inheritance tax, and from this item alone the chairman of the committee estimated that a revenue of $20,000,000 per year would be raised. And the Senate having substituted a tax upon the net incomes of corporations for an inheritance tax, and this at the instance of President Taft, again showed the doubt in the minds of the Senate and the President that the bill will not raise the required amount of revenue. Both of these steps were taken in aid of the Treasury, and to stave off the constantly growing but popular demand for an income tax.

In my judgment, the expenditures could be materially reduced; and while we are promised a reduction of $10,000,000 in the navy and $20,000,000 in the army for next year, will we get it? It is a fact that no one of the departments of the Government willingly yields any of its power, and its main power has consisted in seeing how much of the people's money it could appropriate and expend every year. With the navy appropriations leaping from the small sum of $33,034,234.19 in 1898 to $137,000,000 in 1909, and with the appropriations for the army growing from $23,129,334.30 in 1898 to $110,000,000 in 1909, and with the appropriations in all other departments of the Government keeping pace with these two, can we cajole ourselves into believing that of a sudden we will about face, retrench, and reform by having a marked reduction of public expenditures in the Government? Let us hope so; but, for one, I fear we will not have it. So long as we hold the Philippine Islands, together with our other colonial possessions, and maintain a suzerainty over Cuba, and remit to China $12,000,000 as our part of the indemnity growing out of the Boxer uprising, I see but little hope for permanent retrenchment in the public expenditures of the people's money. Since it is evident that the Government is in need of revenue, and equally evident that our system of raising revenue is totally inadequate to meet the demands of the Government, and since some other system of raising revenue must be devised, the question is: What shall it be? Evidently not an inheritance tax, because the Senate and the President both have turned their backs upon this righteous measure, although President Taft at one time was heartily in favor of it. Evidently not an income tax, although on the 19th day of August, 1907, at Columbus, Ohio, the President, while making a speech, said:

In times of great national need, however, an income tax would be of great assistance in furnishing means to carry on the Government, and it is not free from doubt how the Supreme Court, with changed membership, would view a new income-tax law under such conditions. The court was nearly evenly divided in the last case, and during the civil war great sums were collected by an income tax without judicial interference and, it was then supposed, within the federal power. Whenever the government revenues need an increase or readjustment, I should strongly favor a graduated inheritance tax, and, if necessary for the revenue, a change in the Constitution authorizing a federal income tax, with all the incidental influence of both measures to lessen the motive for accumulation.

But, Mr. Speaker, this is not all. On the 28th of July, 1908, after Mr. Taft was nominated for the Presidency, in his speech of acceptance, at Cincinnati, on this subject he said:

The Democratic platform demands two constitutional amendments, one providing for an income tax and the other for the election of Senators by the people. In my judgment, an amendment to the Constitution for an income tax is not necessary. I believe that an income tax, when the protective system of customs and the internal revenue shall not furnish income enough for governmental needs, can and should be devised which, under the decision of the Supreme Court, will conform to the Constitution.

Mr. Speaker, when it was an assured fact that the Bailey-Cummins income-tax amendment would pass the Senate and with the equally assured fact that it would pass the House, Mr. Taft suddenly sent to Congress a message asking that a tax of 2 per cent be imposed upon the net incomes of corporations. Mr. Speaker, while I will support this measure, I must confess that I do not do it with the alacrity and force with which I would have gladly supported an income tax. Taxation, at its minimum, is always a burden upon any people, but I believe this burden should be uniformly distributed throughout the country, resting upon the shoulders of all, without discrimination against some and in favor of others, and this is exactly what will be the result of a tax upon the net incomes of all corporations. It will impose a tax upon a corporation and at the same time exempt the individual or the copartnership engaged in the same business along by the side of the corporation. This in itself is unfair, but nearly all the large corporations—the trusts, the railroads, and the express companies—are bonded for a large part of their wealth. The railroads alone, being bonded for upward of $6,000,000,000, and the trusts for at least an equal sum, these sums representing one-ninth of the total wealth of the country, under this system of taxation all this immense wealth will escape the burden, although these bonds are gold-bearing interest bonds, drawing from 4 to 6 per cent, payable from 1913 down to the end of the present century.

But, Mr. Speaker, this is not all. There are thousands of little corporations scattered over the country having no bonded debt at all, their property being represented by the stock of the corporation, and this class of corporations will have to pay full tax upon their net incomes, having no bonded debt to reduce their net earnings.

But this is not all. No one for a moment doubts but what the tax will in the end be largely shifted from the shoulders of the corporations to the shoulders of the consumers. The railroads and the express companies will raise their charges, so that in the end people using these public corporations will pay the tax. Likewise the same will be true as to the products of all the great trusts of the country. The price of manufactured goods will be increased to the amount of the tax, and the consumer in the end will pay the bill.

But, Mr. Speaker, this is true of any tax the burden of which can be shifted from one to the other. In the last analysis of this kind of tax the consumer or the user of the article must ultimately pay it. It is true of a tax raised by means of a duty upon imports, where the burden of the tax is shifted directly from the shoulder of the importer of the goods to the purchaser of the same, by having the cost of the duty added to the cost of the articles paid by the purchaser in the end. But, Mr. Speaker, for more than one hundred and seventeen years we have been accustomed to raising revenue in this country by means of a duty imposed upon imported goods until it has become a part of the traditions of our people, so that in this day it will be difficult to completely turn them from this old-time idea of raising revenue. But, sir, in my judgment, there is a much easier way of raising revenue than by imposing a tax upon net incomes of corporations or by imposing such enormous revenue duties upon imports. This system will not be found in a tax upon the net incomes of corporations; it can be partially found in an inheritance tax, and can be completely found in a graduated income tax. Mr. Speaker, here man and corporation will both stand upon an equality; here man and corporation will pay upon his income, whether derived by his own individual exertion or aided by the passage of class legislation.

Whenever man alone or a combination of men take advantage of the laws of nature or the laws of man, and out of this advantage create wealth beyond the dreams of avarice, in my opinion this wealth should be subjected to taxation. But, say its enemies, it is an inquisitorial tax; it opens the door and pries into the private affairs of life. So does any other tax. It is no more inquisitorial, makes no more inquiries into life, than does the direct property tax in the States upon real and personal property. What is the tax in the States both upon real and personal property but an inquisitorial tax? When the township or county assessor takes an inventory of the people's property he compels them, unless they commit perjury, to disclose all the property they have subject to taxation. But, again, they say that this is a tax upon thrift. So be it. And so is all direct taxation in the States a tax upon thrift; no more, no less. The

man in the States who is industrious and thrifty in the accumulation of property must and does pay more tax than his neighbor who is less thrifty and less industrious; yet this system of taxation has worked admirably from the foundation of the Government down to the present time. On kindred principles would not an income tax for the Government work the same?

Senator John Sherman, of Ohio, on the 22d day of June, 1870, while in the Senate, speaking against the repeal of the then income-tax law, said, in part:

They have declared it to be invidious. Well, sir, all taxes are invidious. They say it is inquisitorial. Take the ordinary taxes levied in the State of Ohio, and in all the States in this country, by the Statutes at Large. Do they not require the assessor to go around and ascertain the personal property of every citizen? Is that not inquisitorial? * * * Every tax is inquisitorial, and the least inquisitorial of all is the income tax. * * *

You go to the homestead of a widow who has nothing but a roof to cover her head, and you levy your tax upon the entire value of the homestead and make her pay it, although she may have to sell the last shoat, the last chicken, the last egg to pay it. So, also, you levy on the property of the rich. Is not that an unjust tax? Certainly it is; and you can not levy tax so as to make them just in all respects. * * *

The income tax is simply an assessment upon a man according to his ability to pay—according to his annual gains. What tax could be more just in theory?

When you come down to the solid basis of evenhanded justice, you will find that writers on political economy, as well as our own sentiments of what is just and right, teach us that a man ought to pay taxes according to his income and in no other way. Property is not the proper test of taxes, because, as I said before, the property of the poor may be levied upon to make up the deficiencies in the property of the rich; unproductive property that yields no rent and no income may be compelled to pay the same rate of taxation as property which yields an annual rental of from 10 to 15 per cent. * * *

* * * If you now repeal the tax on incomes, you have to continue the taxes on the consumption of the poor. You have now the choice between levying a little bit of a tax on property, which, after all, will only yield us about 6 per cent of our annual income, and piling the whole of this taxation, with its accumulation of the past, upon consumption, and not upon property.

Senator Morton, of Indiana, in the second session of the Forty-first Congress, speaking against the repeal of the income tax, said:

Then there is the argument of demoralization. These people who have to pay income tax insist that they will be demoralized; they do not want to be demoralized, but they know they will be! Therefore we must exempt them for fear they will be demoralized!

All this argument about demoralization, therefore, is just as applicable to the state taxes as to federal-income tax; and if it is a good argument for abolishing one it is a good argument for abolishing the other. I have no respect for that argument, not a bit; I have heard it urged for years now against the income tax, but a moment's examination will satisfy anybody that if it is a good argument at all it is good against any tax except a mere tax on real estate, which is visible to the assessor, and which he assesses without consulting the owner.

What honest objection is there to letting his neighbors know his real condition? If he conceals his real condition, it is ipso facto a fraud for some purpose, though not one of those frauds of which the law can take cognizance. He may hold out the impression that he is doing well when he is not, and get a false credit. Does the law, or do morals require that he shall have the right to do that? Certainly not. No honest man, then, need be afraid of the inquisitorial feature. * * *

* * * The income tax is, of all others, the most just and equitable, because it is the truest measure that has yet been found of the productive property of the country. * * *

But, sir, when you tax a man on his income, it is because his property is productive. He pays out of his abundance because he has got the abundance. If to pay his income tax is a misfortune, it is because he has the misfortune to have the income upon which it is paid. * * *

In the Dingley bill there were upward of 4,000 different articles upon the dutiable list, with an average ad valorem rate of about 45 per cent, which means that to the cost of every $100 worth of goods bought and consumed in this country $45 in the way of duty would be added. Under the Payne bill there will be as many goods upon the dutiable list as there were under the Dingley bill, with an average ad valorem rate equal to, if not greater, than the rate in the Dingley bill. In the desperate attempt to raise money by this system the people are to-day groaning under a system of high taxation upon the necessaries of life and are casting about to find some relief against these unequal burdens. How can they do it? My answer is, By the adoption of an income tax. Who has stood for an income tax in the past? Such master minds as Senators Sherman and Morton, from whom I have so liberally quoted. And, later, no less a personage than President Roosevelt in many public speeches and writings has stood for an income tax. In his annual message to the second session of the Fifty-ninth Congress he said, in speaking of this subject:

The National Government has long derived its chief revenue from a tariff on imports and from an internal or excise tax. In addition to these there is every reason why, when our next system of taxation is revised, the National Government should impose a graduated inheritance tax and, if possible, a graduated income tax. The man of great wealth owes a peculiar obligation to the state, because he derives special advantages from the mere existence of government. Not only should he recognize this obligation in the way he leads his daily life and in the way he earns and spends his money, but it should also be recognized by the way in which he pays for the protection the state gives him. * * * Whenever we as a people undertake to remodel our taxation system along the lines suggested, we must make it clear beyond peradventure that our aim is to distribute the burden of supporting the Government more equitably than at present; that we intend to treat rich man and poor man on a basis of absolute equality; and that we regard it as equally fatal to true democracy to do or permit injustice to one as to do or permit injustice to the other. * * * In its incidents and apart from the main purpose of raising revenue, an income tax stands on an entirely different footing from an inheritance tax, because it involves no question of perpetuation of fortunes swollen to an unhealthy size. The question is, in its essence, a question of the proper adjustment of burdens to benefits. As the law now stands it is undoubtedly difficult to devise a national income tax which shall be constitutional, but whether it is absolutely possible is another question, and if possible it is most certainly desirable.

The Democratic party in 1894 passed an income-tax law, which was held by a bare majority of one in 1895 to be unconstitutional. From that time down to the present the Democratic party has never faltered in its demand for an income tax. And no man in the United States has done as much to mold sentiment in favor of this tax as W. J. Bryan. The people are aroused to-day along this line as never before. Under a graduated income tax enough revenue could be raised to practically support the Government without oppressing anyone. For more than one hundred years England has had an income tax in some form or other. For this year the British Government will collect $165,103,000 revenue by means of an income tax, and yet she has a population of only 44,500,000, and this tax it derives upon a total assessment amounting to $476,404,000, divided as follows: An income tax on 58,049 firms; an income tax on 33,508 public companies; an income tax on 10,639 local authorities. And out of all her total assessments for income-tax purposes there were only 20 individuals and 92 firms whose incomes were over $250,000 per year. Under her graduated system of income tax all incomes over and above $800 per year are assessed, the per cent of assessment increasing as the incomes of corporations or individuals continue to increase. In wealth the United States outstrips every nation upon the earth. Our population in continental United States in round numbers is to-day 90,000,000, more than twice that of Great Britain. Our total value of property to-day is upward of one hundred and ten billions—more than twice that of Great Britain, two and one-half times that of France, and about two and three-fourths that of Germany. With the Bailey-Cummins amendment exempting all yearly incomes below $5,000, in my judgment, we would raise twice the amount of revenue that England raises because of our superior wealth and population. The Washington Post recently published a list of a few of the larger corporations which would be taxed upon their net incomes, showing the amount of revenue the Government would receive by imposing a 2 per cent tax upon the net incomes of these corporations, which is as follows:

CORPORATIONS.	1907.	1908.
Adams Express Company	----------	$20,000
Allis-Chalmers Company	$25,000	50,000
American Agricultural Chemical Company	43,000	43,000
Amalgamated Copper Company	280,000	133,000
American Beet Sugar Company	10,000	20,000
American Can Company	53,000	54,000
American Car and Foundry Company	162,000	164,000
American Cigar Company	37,000	----------
American Cotton Oil Company	52,000	30,000
American Hide and Leather Company	5,400	260
American Locomotive Company	135,000	99,000
American Shipbuilding Company	32,000	26,000
American Smelting and Refining Company	230,000	152,000
American Sugar Refining Company	165,000	125,000
American Telegraph and Telephone Company	650,000	710,000
American Tobacco Company	540,000	574,000
American Woolen Company	68,000	25,000
Anaconda Copper Company	184,000	74,000
Batopilas Mining Company	2,900	2,900
Brooklyn Union Gas Company	48,000	54,000
Butte Coalition Mining Company	1,400	28,000
Cambria Steel Company	91,000	30,000
Calumet and Arizona Mining Company	70,000	22,000
Central Leather Company	46,000	54,000
Chicago Telephone Company	35,000	40,000
Colorado Fuel and Iron Company	59,000	57,000
Consolidated Gas Company	32,000	----------
Consolidation Coal Company	33,000	19,000
Crucible Steel Company	53,000	----------
Corn Products Refining Company	40,000	49,000
Diamond Match Company	32,000	32,000
Distillers' Security Corporation	70,000	26,000
Dominion Coal Company	42,000	53,000
Du Pont Powder Company	78,000	98,000
Federal Mining and Smelting Company	50,000	21,000

	1907.	1908.
CORPORATIONS—continued.		
General Electric Company	$226,000	$213,000
General Asphalt Company	17,000	34,000
General Chemical Company	21,000	20,000
International Harvester Company	160,000	177,000
International Paper Company	32,000	32,000
International Mercantile Marine Company	140,000	----------
Lehigh Coal and Navigation Company	47,000	45,000
Massachusetts Gas Company	32,000	35,000
Mexican Telegraph Company	17,500	12,000
National Biscuit Company	79,000	82,000
National Carbon Company	19,000	16,000
National Lead Company	79,000	79,000
North American Company	28,000	29,000
Pacific Mail Steamship Company	11,000	620
Pressed Steel Car Company	50,000	3,000
People's Gaslight and Coke Company	103,000	110,000
Pittsburg Coal Company	80,000	80,000
Philadelphia Electric Company	18,000	19,000
Pittsburg Brewing Company	44,000	25,000
Pittsburg Plate Glass Company	44,000	26,000
Pullman Company	230,000	195,000
Quaker Oats Company	24,000	19,000
Railway Steel Spring Company	46,000	20,000
Republic Iron and Steel Company	132,000	80,000
Sloss-Sheffield Steel and Iron Company	33,000	23,000
Union Bag and Paper Company	14,000	18,000
United States Rubber Company	90,000	71,000
United States Steel Corporation	1,000,000	920,000
Virginia-Carolina Chemical Company	80,000	70,000
Western Union Telegraph Company	98,000	32,000
Wolverine Copper Company	26,000	11,000
RAILROADS.		
Atchison, Topeka and Santa Fe	420,000	270,000
Atlantic Coast Line	62,000	55,000
Big Four	39,000	14,000
Boston and Maine	52,000	----------
Brooklyn Rapid Transit	40,000	25,000
Baltimore and Ohio	349,000	202,000
Central Railroad of New Jersey	115,000	96,000
Chesapeake and Ohio	68,000	55,000
Chicago and Alton	36,000	26,000
Chicago and Northwestern	315,000	272,000
Chicago, Burlington and Quincy	176,000	176,000
Chicago, Milwaukee and St. Paul	268,000	247,000
Colorado and Southern	42,000	43,000
Delaware and Hudson	128,000	105,000
Delaware, Lackawanna and Western	200,000	213,000
Denver and Rio Grande	50,000	63,000
Detroit United Railways	22,000	20,000
Erie	83,000	44,000
Great Northern	350,000	300,000
Hocking Valley	36,000	27,000
Illinois Central	233,000	160,000
Iowa Central	9,000	4,000
Kansas City Railway and Light	18,000	17,000
Kansas City Southern	49,000	32,000
Lehigh Valley	132,000	120,000
Louisville and Nashville	129,000	56,000
Missouri, Kansas and Texas	74,000	16,000
Missouri Pacific	133,000	60,000
Montreal Street Railway	20,000	22,000
New York, New Hampshire and Hartford	178,000	105,000
New York, Ontario and Western	33,000	30,000
New York Central	220,000	180,000
Nickel Plate	26,000	20,000
Norfolk and Western	140,000	115,000
Northern Pacific	468,000	400,000
Pittsburg, Cincinnati, Chicago and St. Louis	75,000	59,000
Pennsylvania	600,000	490,000
Rock Island	175,000	94,000
Reading	165,000	168,000
Southern Railway	46,000	8,000
Southern Pacific	540,000	385,000
St. Louis and San Francisco	95,000	10,000
Texas and Pacific	56,000	23,000
Twin City Rapid Transit	37,000	37,000
Union Pacific	723,000	715,000

It will be observed that from these items alone an enormous amount of revenue will be raised under the corporation tax. An amount two or three times as large would be raised under a graduated income tax.

It is not my intention to belittle wealth, but, on the other hand, I believe it should be the duty of all to uphold it where it is honestly procured. The idea that men like Carnegie, now the holder of more than $300,000,000 worth of the bonds of the United States steel trust, escape federal taxation is indeed absurd. A few days ago the public was treated to a spectacle in New York, in what was known as the famous "Gould divorce case," where Mr. George Gould testified that the annual share of his brother Howard in their father's estate was approximately $800,000; and then, to realize that all of these enormous fortunes are escaping their just and proportionate share of taxation while the people themselves are staggering under our present system of indirect taxation, it is no wonder to me they cry out for relief. If it be the determination of the so-called "business interests" in this country to maintain an enormous navy at a cost of hundreds of millions of dollars annually, as well as an army, to protect and defend their various business interests, I insist that this part of the wealth of the country ought to stand its proportionate share of taxation, and I know of no way to compel them to do it as justly and equitably as an income tax. [Loud applause.]

Mr. SHARP. Mr. Speaker, it is with some reluctance that I shall cast my vote for this measure. Though I have always been, and am now, in favor of a graduated income tax—for it is good Democratic as well as sound economic doctrine—yet the circumstances under which this resolution comes to the House smacks so much of subterfuge and disingenuous motives that a vote for it seemingly indorses the ruse. Acceptable as such a method of taxation is conceded to be, I believe, by a large majority of the Members in this House, yet it is difficult to dissociate from its merits the fact that had those Senators by whose vote this resolution comes to the House been sincerely in favor of such a tax we would be to-day voting for its incorporation in the Payne tariff bill, instead of sending it out in the form of a constitutional amendment upon its hazardous journey of successfully running the gantlet of three-fourths of the state legislatures of the Union. Indeed, the situation confronting us is a most unusual one.

Since Congress was convened in special session last March to consider tariff legislation the changes in the various plans for raising the revenue have been kaleidoscopic and at times most mystifying. When the bill left this House, it had appended to it a provision for the inheritance tax. Soon after its admission to the Senate the expert tariff surgeons of that august body removed this appendix, only to have another complication to deal with in the form of a corporation tax. The already troubled situation over in that body was not made more pleasing by a vigorous presentation of an income-tax provision, most ably and persistently advocated for many days by the so-called "progressive" wing of the dominant party, backed by the almost-solid Democracy. To appease this sentiment and at the same time prevent a revolt threatening the very passage of the bill itself, the resolution which we now have before us, providing for a constitutional amendment, was finally passed by the Senate, in return for which the proposition to tax corporate earnings was to have easy sailing.

And now comes the harrowing rumor that possibly this corporation tax, the panacea for preventing vanishing revenues, may be rejected by the conferees—a thing to be devoutly wished for by a very large element of both political parties. Surely, if future events justify this rumor, "for ways that are dark and tricks that are vain" the Senate tariff jugglers have more than outdone the "heathen Chinee."

I am aware that the national platform of the Democratic party has declared in favor of submitting an income-tax constitutional amendment and that one law of Congress imposing such a tax has been declared unconstitutional by our highest court in a close decision; but by no less an authority than the President himself, at one time looked upon as the best-qualified man in the country for the position of Chief Justice of that court, has it been declared that, in his opinion, a law providing for an income tax might now be so framed as to be declared constitutional. More than this, in his speeches at different times, the President has declared in favor of the wisdom and justice of an income tax in one form or another. The same sentiment was expressed by ex-President Roosevelt in his message of December, 1906.

Opponents of the measure seem to forget that such an income-tax law was in existence in the United States during the war and for a short time thereafter; that many millions of dollars were collected under it, and that its constitutionality was never questioned, or at least there was no judicial interference with its operation. The imposition of an income tax for providing revenues for the Government is not an experiment among nations, for, aside from our own experience during the rebellion, it has been tried for more than one hundred years in Great Britain, and to-day in that country it yields more revenue than any other one form of taxation. For the fiscal year ending March 31, 1909, the revenue from the income tax in Great Britain and Ireland, with a population of about half that of the United States, amounted to $165,103,000, derived from net incomes of approximately $3,200,000,000.

The very recent report of Special Agent Charles M. Pepper to the Department of Commerce and Labor gives some interesting and instructive information concerning the income-tax law of Great Britain. For the purpose of showing how the incomes are there graded for taxation, let me quote from that report as

Up to date these leaders refuse to amend the tariff bill by adding an income-tax provision on the theory that it would be unconstitutional. Some of the best lawyers in and out of Congress agree that such an amendment would be constitutional, and so strong has grown the demand for this legislation that such an amendment would have been added in the Senate had not those opposed to the measure proposed a substitute in the nature of a corporation tax. The President strengthened the forces of those wishing to defeat the income tax by sending a message advocating and advising a corporation tax, which is a step toward our general income tax. Many who were opposed to both chose the latter as at least the safest course to beat the income tax.

At Columbus, Ohio, on August 19, 1907, Mr. Taft in an address said:

A graduated income tax would also have a tendency to reduce the motive for the accumulations of enormous wealth, but the Supreme Court has held an income tax not to be a valid exercise of power by the Federal Government. The objection to it from a practical standpoint is its inquisitorial character and the premium it puts on perjury. In times of great national need, however, an income tax would be of great assistance in furnishing means to carry on the Government, and it is not free from doubt how the Supreme Court, with changed membership, would view a new income-tax law under such conditions. The court was nearly evenly divided in the last case, and during the civil war great sums were collected by an income tax without judicial interference and, as it was then supposed, within the federal power.

When accepting the nomination of the Republican party as its candidate for President, July 28, 1908, less than one year ago, he said:

The Democratic platform demands two constitutional amendments, one providing for an income tax and the other for the election of Senators by the people. In my judgment an amendment to the Constitution for an income tax is not necessary.

At that time, and prior to the election, Mr. Taft did not think that an amendment to the Constitution for an income tax was necessary, and that "an income tax can and should be devised which under the decisions of the Supreme Court will conform to the Constitution."

The Democrats will give this resolution their united support, but they think now, like Mr. Taft expressed himself less than a year ago, that an income tax can be devised without waiting for the tedious and uncertain result of submitting this amendment to the separate States, when a mere refusal to act by 12 States will result in its defeat.

The tariff-tax system has gradually turned over the earnings of the masses to the comparatively few favored individuals who are specially benefited by this system of taxation. This favored class would be compelled to contribute their share to the support of the Government by an income tax. The tariff tax is levied entirely upon consumption. The laboring man must expend his income for food, fuel, clothing, and tools of industry, and these taxes are heavier upon the necessities. The incomes of the rich escape federal taxation. Governments are constituted for the purpose of securing to mankind personal liberty, security, and the rights of private property. The Government protects the property of the rich and poor alike, and the former should pay their share toward supporting the General Government. In 1872 Senator Sherman said in the Senate:

A few years of further experience will convince the whole body of our people that a system of national taxes which rests the whole burden of taxation on consumption and not one cent on property or income is intrinsically unjust. While the expense of the National Government is largely caused by the protection afforded to property it is but right to require property to contribute to the payment of those expenses. It will not do to say that each person consumes in proportion to his means. This is not true. Everyone must see that the consumption of the rich does not bear the same relation to the consumption of the poor as the income of the one compares to the wages of the other. As wealth accumulates this injustice in the fundamental basis of our system will be felt and forced upon the attention of Congress.

The income tax is a measure of justice. The people will pay in proportion to their financial ability to pay. It will tax wealth in proportion to its abundance rather than poverty according to its necessities. Federal taxation is not levied upon the wealth of the country. It is imposed by way of taxes, internal-revenue duties levied upon liquors and tobacco used, and the import duties levied upon the clothing used and articles necessary for their comfort. The millionaires pay only on what they eat, drink, wear, and on what they use, and this is true of the poorer citizens likewise.

The wealthy man makes no other contribution to the support of the Government; nothing for the army which protects his wealth; nothing for the judiciary which settles his property rights; nothing to the support of the administrative department of the Government which executes the law that insures the safety of his property. They pay upon the necessities of life as the poor man does, and contribute more only as their necessities are larger. The Payne-Aldrich bill carefully forces from the latter a smaller contribution upon the articles which he uses than the articles used by his poorer neighbor.

It is not even suggested that wealth should pay all the taxes, but it is both reasonable and just that it should bear a portion, at least, of the public burden. It has ever been the pride of the Democratic party that it was the poor man's party and has ever fought for his rights. Our party has ever contended that the burdens of the Government should be at least partially shifted from the backs of the poor to those who can bear it; to divide these burdens between wealth and consumption; to divide them between the man who has nothing but his labor and the man who has incomes many times greater, derived from fortunes made by others; to compel the men who are wealthy by reason of tariff legislation to divide the burdens of the Government with the people whose earnings are compelled to flow by legislation to increase the wealth of the favored beneficiaries.

Our party would protect the poor and rich alike. We make no fight upon wealth. It should be protected to the same extent as the property of the poor. It will protect and guard the property of all, but it would never neglect the rights of the poor to satisfy the avarice of wealth, but would force all alike to contribute to the support of the Government that both may enjoy its blessings, and both should help carry its burdens. "Equal and exact justice to all."

The position of the Democratic party is that Government has not the right to levy taxes of any kind except for the support of the Government honestly and economically administered. That not a cent should be taken from the people but enough to pay the expenses of the Government, and especially should the burdens of taxation be not placed upon the many for the especial benefit of a favored few. Under the pernicious system of taxation provided in our Republican tariff laws, the wealth of the country has gradually accumulated in the hands of the favored few.

This system has made millionaires from money drawn from all of the people. After the civil war the Republican party readjusted the system of taxation and relieved the rich by repealing the tax upon incomes and instead increased the taxes upon the poor. For every dollar that goes into the Treasury from the customs duties $20 go into the hands of the beneficiaries of the law. The proposed Payne-Aldrich bill will not lessen those unjust and forced contributions, but will only increase the amount taken from the people.

Cooley in his work on taxation says:

Taking everything together, nothing can be more just as a principle of taxation than that every man should bear his share of the burdens of government in proportion to his wealth.

We had an income tax during the war, and its first collection was in 1863, when the amount collected reached two and three-fourths millions of dollars. That law provided for a tax of 3 per cent on all incomes over $600 and not more than $10,000, and 5 per cent on incomes above that amount. The law was amended several times during the war, and the largest amount collected in any one year was in 1867, when the amount was $66,017,429.34. The total amount collected from the income tax was $346,967,388.12. The law was finally repealed, and its repeal was the result of a united effort made by those who wanted high tariff rates and the main dependence of the Government to be upon its customs duties.

The Republican party had not then become the representative of organized wealth, and it had not yet become the servant of tariff beneficiaries. In 1894 the income tax was again ingrafted upon our statutes by a Democratic Congress, but it failed to receive the support of the Republican party, and was denounced as populistic and socialistic.

The CONGRESSIONAL RECORD for June 28, 1894 (vol. 26, pt. 7, p. 6934), shows that every Republican Member of the present Senate who was in the Senate in 1894 voted to strike from the tariff bill the sections providing for an income tax. These Senators were ALDRICH, CULLOM, FRYE, GALLINGER, HALE, and PERKINS.

In the House were a large number of Members who are still serving here, and while the income-tax provision was not voted on as a separate proposition apart from the internal-revenue feature of the bill, yet none of the Republican Members now here recorded their votes in its favor.

No Republican national platform ever declared for an income tax; no voice of approval or sympathy was ever uttered in their conventions. The proposition was denounced by every Republican speaker in the campaign of 1896. The Democratic party has consistently and uniformly advocated the enactment of an income tax. President Roosevelt, in a message to Congress December 3, 1906, said:

PRESIDENT ROOSEVELT'S MESSAGE OF DECEMBER, 1906.

* * * In addition to these there is every reason why, when next our system of taxation is revised, the National Government should

final passage for the reason that it was a revision upward instead of downward and was a violation of the pledge made to the people.

The bill then went to the Senate; and that body has made it so much worse than the House bill that the people who denounced, rightfully and vigorously, the House bill would now be glad to see Congress adjourn and let the Dingley rates stand, vicious as they are. The Dingley bill was bad, the Payne bill was worse, and the Aldrich bill is infinitely worse than either of them, and has justly aroused the indignation of the people, who were promised and expected relief from excessive taxation through a reduction of the schedules below the present rates.

Mr. Speaker, I heartily commend both Democrats and Republicans in the Senate who made a terrific fight for an honest revision, and I earnestly denounce both Republicans and Democrats who joined with Senator ALDRICH in the passage of a bill which is the most wicked of any tariff bill ever passed by an American Congress. I am exceedingly glad of the fact that only one Democratic Senator voted for the bill, and am also pleased to note that Senator BEVERIDGE was one of ten Republican Senators who voted against it, and assigned as a reason that it was a violation of a party pledge and an injustice to the American people. I was also pleased with the active interest taken by Senator SHIVELY toward the reduction of duties all along the line.

The action of the Senate in dealing with the tariff emphasizes the fact that we have too many millionaires in that body and that a few high-price funerals would be a good thing for the country. As I am informed, there are now in the United States Senate 38 millionaires representing over $140,000,000. What can the people expect at their hands but legislation designed to aid the special-privileged class. I surely hope, Mr. Speaker, that the day will soon come when Senators will be elected by a popular vote of the people, and that the United States Senate will no longer be the dumping ground for millionaires, who have nothing in common with the plain people. The past twenty-five years has witnessed the enormous increase of individual and corporate fortunes in this country until the millionaire is no longer a rarity. This fact has served to develop the insolence and arrogance of wealth until intellectual endowments are dwarfed in its sordid presence and moral character lies prostrate in its ruthless path.

The power to rule men by intellectual and moral force, the test of statesmanship of a former day, is fast passing away, while wealth, the uncrowned king, oftentimes lacking both and coveting neither, arrogantly seeks to rule in a domain where it is only fitted to serve. Its altar has been erected in every community and its votaries are found in every household. Patriotism has given place to material expediency, and the love of country is supplanted by the love of money. An aptness for percentages and the successful manipulation of railroads and stock boards are often regarded as the most essential of senatorial equipments.

Mr. Speaker, there is another element more dangerous to the liberties of the people than that of individual wealth in its influence on the election of Senators. The wonderful growth of our country has been greatly accelerated by the combinations of wealth in corporate forms. These in their proper spheres are to be encouraged rather than condemned; but when they leave their legitimate fields of operation and seek to control, against the interests of the people, the legislation of the country, whether they be railroads, corporations, or trusts, or combines, they will meet with the indignant protests of all true friends of the people.

The number of employees in their control, the concentration of great wealth in their treasuries render their advances most enticing and their approaches most insinuating. Their interests are guarded by the ablest men of each community, and, if public rumor be true, they can lay their hands on representatives of the people in many of the legislatures and claim them as their own.

If the people dare to seek relief from their exactions, they are met by the agents of the corporations, who attempt to thwart them at every step. All that shrewdness, audacity, and money can suggest is readily at their command. The legislature is invaded, and the rights of the people give place to the exactions of corporate power; while he who can serve the corporations by his control of a legislature, by intrigue, artifice, or persuasion, against the demands of the people, is regarded in modern days as fully equipped for service in the United States Senate, where in that larger field his powers can be utilized for the benefit of the corporations he serves.

The standard for the exalted position of United States Senator is thus debased by corporate influence. The wire-puller and the intriguer are often preferred to the statesman and the patriot, and the proud title of United States Senator has lost much of its power in the suspicions which lurk in the public mind as to the mode, conditions, and requirements of their selection.

Mr. Speaker, I hope the day will soon come when the United States Senate will be composed entirely of men who represent more loyalty and less wealth, more patriotism and less plutocracy; men who love their country more than their money. When that body is so made up, such tariff bills as the one we are now considering will never emanate from that end of the Capitol.

Mr. Speaker, the bill as it comes to us from the Senate will bear heavily on practically all the people, and especially those who work for wages. Senator LA FOLLETTE has shown that on clothing alone the people will be robbed of $120,000,000 annually, and this is but one of a thousand items where similar extortions will be practiced. This bill will materially increase the cost of living all along the line, and those who are now struggling to make both ends meet will find their task still harder. Practically all the necessities of life are heavily taxed under this bill, and the burdens are heaviest on the cheaper class of goods consumed by the poorer people.

The cotton manufacturers are given a prohibitive duty and have an absolute monopoly on their finished product. On $6.25 worth of cotton cloth, such as is used by the plain people, there is a tax of $1.57; under the Dingley law 100 yards of unbleached sheeting was taxed $4, while under this bill it is taxed $6.06, and the same is true all through the cotton schedule. Three dollars' worth of ordinary cotton stockings is taxed $1.65. While the cotton schedule is bad, the woolen schedule is worse. On a woolen suit of clothes costing $15, there is a tax of $6.80; 25 yards of worsted, valued at $60, are taxed $7.10; 25 yards of cheap flannel, valued at $8.75, are taxed $5.25; $7.50 worth of cheap woolen hats are taxed $4.76, and so it goes all through the woolen schedule. These are only a few of the 4,000 items of the bill, but they show the extent Senator ALDRICH and his followers are willing to go for the benefit of the highly protected industries of the New England States. It is estimated by those who are in a position to know, that the duties carried in this bill will yield annually to the woolen manufacturers over $100,000,000 in excess of what would be a fair profit; that the cotton schedules will enable the cotton manufacturers to charge $90,000,000 each year for their products more than would be a reasonable profit; and that the manufacturers of hosiery and gloves will be able to charge as long as they can hold their breath without danger of foreign competition.

Mr. Speaker, you have sent this bill to conference without giving us an opportunity of voting against the Senate amendments, and what may we expect from the conference. Even if that committee had not been packed with "stand-pat" Members of both the House and the Senate, the best we could expect would be a compromise between the Payne bill, which is a higher bill than the Dingley bill, and the Aldrich bill, which is 20 per cent higher than the Payne bill. To be sure, however, that but few of the 847 Senate amendments may get away, the Speaker has appointed on the conference committee only those on the Republican side who at all times have stood for the highest duties and who are in hearty sympathy with the Aldrich bill.

Instead of selecting the House conferees in the order of their seniority, as was done in the Senate, the Speaker ignored Representatives HILL, of Connecticut, and NEEDHAM, of California, who have stood for some reductions, and appointed Representatives CALDERHEAD, of Kansas, and FORDNEY, of Michigan, who are "standpatters" of the most pronounced type. Therefore it is safe to say that the bill as finally reported will be substantially the Aldrich bill, and the name of the Hon. SERENO E. PAYNE will forever be forgotten so far as tariff legislation is concerned. When the bill is finally acted upon, I shall vote against it, to the end that I may not be held responsible for such vicious legislation imposed upon an outraged public.

Mr. Speaker, I shall watch with much anxiety the action of the President, who assured the country that the tariff should be revised downward. While I am exceedingly anxious to get away, yet if the President will veto this outrageous measure, I will gladly remain indefinitely and stand loyally by him until his pledge is fully and completely kept. If this bill becomes a law, the sugar trust will continue to rob the American people of $55,000,000 annually, and the woolen manufacturers will continue to exact from the consumers over $100,000,000 each year in excess of what is a fair profit; the United States Steel Company will continue to exploit the people of millions annually, while the 400 trusts set out in Moody's Manual will build up colossal fortunes wrung from the pockets of the working people.

Mr. Speaker, on behalf of the laborer, who with his dinner bucket in his hand finds his way to his daily work, who will be

compelled to pay more for the necessities of life, and who already has a hard time to feed and clothe his family, I protest against the passage of this bill. On behalf of 9,000,000 poor working girls, who will be compelled to pay more for their dresses, more for their hosiery and gloves, more for everything they wear, I earnestly protest against the passage of this unjust measure. In the name of the farmers, who will be compelled to sell on a free-trade market and buy on a protected market, and in the name of the retail merchants all over the country, who will be compelled to pay more for what they buy and charge more for what they sell, which will involve them in much embarrassment with their patrons, I now protest against the passage of this iniquitous measure and confidently hope the President will keep his plighted faith with the people and veto the bill.

The action of Congress, Mr. Speaker, is a keen disappointment to the American people, and especially to the toiling millions who were expecting at least partial relief from the burdens of excessive taxation.

Mr. CLINE. Mr. Speaker, I shall vote for the submission of the income-tax amendment to the Federal Constitution because I have always believed it to be one of the most equitable and just systems of taxation. In doing so, however, I incorporate with my vote my understanding of the present conditions surrounding the disposal of this measure. I very much believe the leaders of the Republican party in Congress are not sincere, and do not really want to amend the Constitution so that an income tax can be laid without doubt of its constitutionality.

Some of the most influential men in Congress, now asking that the proposed amendment be submitted, are known to be unalterably opposed to the imposition of an income tax. In my opinion the reason for the enthusiastic support this measure is receiving from leading Republicans, both in the Senate and the House, is to commit the country and Congress to the theory that Congress can not now pass a valid income-tax law which the Supreme Court would uphold as constitutional, if required to pass upon it, and that therefore the amendment is necessary. That assumption would put the entire matter in abeyance for at least three or four years. Then, too, a submission of such an amendment would require three-fourths of the States to ratify it before it could become effective, and if the enemies of the income tax could defeat its ratification in 12 States the entire question would be forever put at rest.

Congress has been in session now four months devising measures to produce revenue to meet the ordinary expenses of the Government and at the same time protect the interests that have found especial favor at the hands of the Republican party and meet the deficit of nearly $100,000,000. During all this time no man has risen in his place and denounced the income tax as an inequitable and unjust measure. No objection has been made to it, except that it was inquisitorial in character and should be applied only in times of great national stress. No man has dared to oppose it because it asks great masses of wealth, in most instances wrung from the people under an iniquitous high-tariff policy that no one subscribed to except the parties who are especially benefited by that policy, to pay their fair share of taxes.

I believe in an income tax because it taxes what a man really has. It taxes wealth, not want; accumulated possessions, instead of consumption. It responds to the ideal Democratic doctrine of taxation, viz, that taxes ought to be laid proportionately upon those who are best able to bear them. All taxes are burdensome, and when they are assessed so as to reach those who are best able to bear them they are then correctly apportioned. The very fact that both the House and the Senate added a new source of revenue to their respective measures is a confession that the general tariff bill finally framed would not produce sufficient revenue.

The doctrine that Congress had the power under the Constitution to lay an income tax was the theory and in part the practice of this Government for nearly one hundred years. There had been full acquiescence in the constitutional power of Congress to enact such legislation. The act of 1861 taxed incomes "derived from any kind of property or from any profession," and that act was amended in 1864 and at various intervals after till 1870. Its constitutionality was not questioned and it was a fruitful source of revenue. The decree of the Supreme Court of the United States declaring the income-tax law of 1894 unconstitutional surprised and shocked not only the legal fraternity of the land, but the great masses of the people, who had so long believed and acted upon the belief that the law was secure in its constitutional guaranty. That general opinion, with all due respect to the court, is still generally adhered to.

Public thought has naturally turned toward the theory of taxing incomes because of the magnitude of industrial and corporate fortunes that have escaped their share of the burdens. The ratio of investments in real and personal property has materially changed in two decades, the personal holdings being vastly greater than twenty years ago. The public mind, viewing with alarm the increasing power of these vast combinations of wealth and their threatened menace to our full and free enjoyment of our institutions, looked about not only for a remedy to prevent the possible evil influence, but to check the growth of these accumulations, and at the same time reach them for a fair share of the taxes they should justly contribute to their own support and that of the General Government.

I was in full accord with our President when he questioned the necessity of a constitutional amendment, as declared in the Democratic platform adopted at Denver. The President, in his acceptance of the nomination for the Presidency by the Republican party on July 28, 1908, said:

> The Democratic platform demands two constitutional amendments, one providing for an income tax and the other for the election of the United States Senators by the people. In my judgment, the amendment to the Constitution for an income tax is not necessary.

This was not a conclusion hastily arrived at by the President; he had a year before spoken on this subject. On August 19, 1907, in an address delivered at Columbus, Ohio, he said:

> *A graduated income tax would have the tendency to reduce the motive* for the accumulation of enormous wealth, but the Supreme Court has held an income tax not to be a valid exercise of power by the Federal Government. The objection to it from a practical standpoint is its *inquisitorial character and the premium it puts on perjury. In times* of great national need, however, an income tax would be of great assistance in furnishing revenue to carry on the Government, and it is not free from doubt how the Supreme Court, with changed membership, would view a *new income-tax law under such conditions. The court* was nearly evenly divided in the last case, and during the civil war great sums were collected by an income tax without judicial interference and, as it was supposed, under the federal power.

The income-tax law of 1894 was declared unconstitutional by a bare majority of the court, and in the decree all four of the judges dissenting filed opinions. The President, knowing the very narrow margin under which this opinion obtained, the circumstances under which it was rendered, the opinion of eminent judges that the decision was unsound, the changed personnel of the court, believed the question ought again to be submitted for review. So strong was he of the validity of an income-tax law, properly drawn, that he did not hesitate to say that the question should be again presented. Courts in all the States have reversed their opinions on important and momentous questions, and that without any reflection upon themselves. In view of the great difficulty involved in amending the Constitution, and justly so, too, would it not have been wise to have passed an income-tax law and asked the Supreme Court to again pass upon the question? If the court should deny to the federal power the authority, there would still be left to us the course we are now pursuing.

But, Mr. Speaker, the President did not insist upon an income-tax measure when he convened Congress in this extraordinary session. When the Ways and Means Committee submitted what was known as the "Payne bill," it included an inheritance tax, which it was said was included at the special instance and request of the President. The bill passed this body with that provision. After the bill was taken up in the Senate, the President of the United States sent a special message to Congress, suggesting the adoption of what is known as the "corporation tax," assessing all corporations 2 per cent on the net income of the corporation in excess of $5,000. The Senate eliminated the inheritance tax and substituted the corporation tax. It is a matter of general knowledge that the leading members of the Finance Committee in the Senate are open and avowed enemies of the income tax, and that the acceptance of the corporation-tax feature for the inheritance tax as incorporated in the House bill was for the sole and only purpose of defeating the income tax. It was also reported in the press and among the Members of both Houses, and there has been no denial of the fact, that personally there was as much objection on the part of leading members of the Finance Committee to the corporation tax as there was to the income tax. Yet the upper House of Congress proposes to submit a constitutional amendment to the people in order to give Congress the authority to do what leading Senators declare they are opposed to.

Can there be much speculation as to the purpose of submitting the proposed amendment? Not only can the 6 New England States that have grown "rich beyond the dream of avarice," contributed by the great Central West, with 6 other States that have enjoyed a partnership in the plunder, defeat the proposed amendment, but even though the full number of 12 States di-

That is what the majority is playing for, and this will continue until the masses instead of classes control the Government.

But while President Taft has advocated my proposal taxing the corporation dividends, the Senate managed to somewhere or other drop the inheritance-tax clause which the House bill contained, really the only redeeming feature of our bill. If these gentlemen at the other end of the Capitol really believe that the people will forget about the inheritance tax they are doomed to disappointment. I can assure them that the masses are only beginning to become class conscious. They are at last following the footsteps of the class-conscious rich, who heretofore have ruled the Nation and exploited the masses. That tax clause was omitted so that the rich people in the few New England Republican States will not be obliged to pay their fair proportion of their taxes, something which they are not doing at present, notwithstanding that they are the greatest beneficiaries under the present protective system.

I repeat, Mr. Speaker, that the income as well as the inheritance tax is a just tax. It is a tax upon property and wealth, and not upon the man Why should we tax, as we are now doing, every man, woman, and child equally, irrespective of the protection they require; whether their earnings are a dollar a day or a dollar a minute; whether they earn $900 a year or manage to squeeze from the proceeds of special legislation hundreds of thousands, yea, millions, of dollars a year? The cotton mills of the East require battle ships of the *Dreadnought* class to keep open the door of cotton consuming China. The bankers of Wall street are ready to force a fight in the far East to secure a share in the swag of Chinese railroad exploitation, while the masses are required to pay the bills of these vast armaments from their petty needs, ground from them by indirect taxation, and yet the accumulated wealth for whom all this military and naval expenditure is made refuse to pay their share of the country's expenses. Why should the masses be taxed by indirection more in proportion to their income under the present system of exploitation, which barely lets them eke out their existence, and go on enriching by their labor, than those who have more than they can ever use or want? I say to you, Mr. Speaker, that we should tax the property and the accumulated wealth of the country, and not throw its burdens on those yet unborn.

Right here, permit me to read what former President Roosevelt said on the inheritance tax. I quote from a recent article of his entitled "Give me neither poverty nor riches." Listen! This indicates that the ex-President and the present President agree with a proposition advocated by my party and championed by myself for a great many years:

The movement which has become so strong during the past few years to secure on behalf of the Nation both an adequate supervision of and an effective taxation of vast fortunes, so far as their business use is concerned, is a healthy movement. It aims to replace sullen discontent, restless pessimism, and evil preparation for revolution by an aggressive, healthy determination to get to the bottom of our troubles and remedy them.

The multimillionaire is not per se a healthy development in this country. If his fortune rests on a basis of wrongdoing, he is a far more dangerous criminal than any of the ordinary types of criminals can possibly be. If his fortune is the result of great services rendered, well and good; he deserves respect and reward for such service, although we must remember to pay our homage to the service itself, and not to the fortune, which is the mere reward of the service; but when his fortune is passed on to some one else, who has not rendered the service, then the Nation should impose a heavily graded progressive inheritance tax, a singularly wise and unobjectionable kind of tax. It would be a particularly good thing if the tax bore heaviest on absentees.

And now I shall insert parts of what Hon. W. J. Bryan said on the floor of this very House, when speaking to the income-tax amendment of the Wilson bill, fifteen years ago:

Extracts from a speech delivered by Hon. William J. Bryan on the income tax in the House of Representatives, January 30, 1894. Mr. Bryan said:

Mr. CHAIRMAN: What is this bill which has brought forth the vehement attack to which we have just listened? It is a bill reported by the Committee on Ways and Means, as the complement of the tariff bill. It, together with the tariff measure already considered, provides the necessary revenue for the support of the Government. * * *

I need not give all the reasons which led the committee to recommend this tax, but will suggest two of the most important. The stockholder in a corporation limits his liability. When the statute creating the corporation is fully complied with the individual stockholder is secure, except to the extent fixed by the statute, whereas the entire property of the individual is ordinarily liable for his debts. Another reason is that corporations enjoy certain privileges and franchises. Some are given the right of eminent domain, while others, such as street car companies, are given the right to use the streets of the city—a franchise which increases in value with each passing year. Corporations occupy the time and attention of our federal courts and enjoy the protection of the Federal Government, and as they do not ordinarily pay taxes the committee felt justified in proposing a light tax upon them.

Some gentlemen have accused the committee of showing hostility to corporations. But, Mr. Chairman, we are not hostile to corporations; we simply believe that these creatures of the law, these fictitious persons, have no higher or dearer rights than the persons of flesh and blood whom God created and placed upon His footstool. * * * In England the rate for 1892 was a litle more than 2 per cent, the amount exempt $750, with an additional deduction of $600 on incomes of less than $2,000. The tax has been in force there in various forms for more than fifty years.

In Prussia the income tax has been in operation for about twenty years; incomes under 900 marks are exempt, and the tax ranges from less than 1 per cent to about 4 per cent, according to the size of the income.

Austria has tried the income tax for thirty years, the exemption being about $113, and the rate ranging from 8 per cent up to 20 per cent.

A large sum is collected from an income tax in Italy; only incomes under $77.20 are exempt, and the rate runs up as high as 13 per cent on some incomes.

In the Netherlands the income tax has been in operation since 1823. At present incomes under $260 are exempt, and the rate ranges from 2 per cent to 3½ per cent, the latter rate being paid upon incomes in excess of $3,280.

In Zurich, Switzerland, the income tax has been in operation for more than half a century. Incomes under $100 are exempt, and the rate ranges from about 1 per cent to almost 8 per cent, according to the size of the income.

It will be thus seen that the income tax is no new device, and it will also be noticed that the committee has proposed a tax lighter in rate and more liberal in exemption than that imposed in any of the countries named.

If I were consulting my own preference, I would rather have a graduated tax, and I believe that such a tax could be defended not only upon principle, but upon grounds of public policy as well; but I gladly accept this bill as offering a more equitable plan for making up the deficit in our revenues than any other which has been proposed.

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But gentlemen have denounced the income tax as class legislation, because it will affect more people in one section of the country than in another. Because the wealth of the country is to a large extent centered in certain cities and States does not make a bill sectional which imposes a tax in proportion to wealth. If New York and Massachusetts pay more tax under this law than other States, it will be because they have more taxable incomes within their borders. And why should not those sections pay most which enjoy most?

* * * * * * *

It is hardly necessary to read authorities to the House. There is no more just tax upon the statute books than the income tax, nor can any tax be proposed which is more equitable; and the principle is sustained by the most distinguished writers on political economy. Adam Smith says:

"The subjects of every state ought to contribute to the support of the government as nearly as possible in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the state. In the observation or neglect of this maxim consists what is called the equality or inequality of taxation."

The income tax is the only one which really fulfills this requirement. But it is said that we single out some person with a large income and make him pay more than his share. And let me call attention here to a fatal mistake made by the distinguished gentleman from New York, Mr. Cockran. You who listened to his speech would have thought that the income tax was the only federal tax proposed; you would have supposed that it was the object of this bill to collect the entire revenue from an income tax. The gentleman forgets that the pending tariff bill will collect upon imports more than $120,000,000—nearly ten times as much as we propose to collect from the individual income tax. Everybody knows that a tax upon consumption is an unequal tax, and that the poor man, by means of it, pays far out of proportion to the income which he enjoys.

I read the other day in the New York World—and I gladly join in ascribing praise to that great daily for its courageous fight upon this subject in behalf of the common people—a description of the home of the richest woman in the United States. She owns property estimated at $60,000,000 and enjoys an income which can scarcely be less than $3,000,000, yet she lives at a cheap boarding house and only spends a few hundred dollars a year. That woman, under your indirect system of taxation, does not pay as much toward the support of the Federal Government as a laboring man whose income of $500 is spent upon his family.

Why, sir, the gentleman from New York, Mr. Cockran, said that the poor are opposed to this tax because they do not want to be deprived of participation in it, and that taxation instead of being a sign of servitude is a badge of freedom. If taxation is a badge of freedom, let me assure my friend that the poor people of this country are covered all over with the insignia of freemen.

Notwithstanding the exemption proposed by this bill, the people whose incomes are less than $4,000 will still contribute far more than their just share to the support of the Govrenment. The gentleman says that he opposes this tax in the interest of the poor. Oh, sirs, is it not enough to betray the cause of the poor—must it be done with a kiss?

Would it not be fairer for the gentleman to fling his burnished lance full in the face of the toiler, and not plead for the great fortunes of this country under cover of the poor man's name? The gentleman also tells us that the rich will welcome this tax as a means of securing greater power. Let me call your attention to the resolution passed by the New York Chamber of Commerce. I wonder how many poor men have membership in that body. Here are the resolutions passed at a special meeting called for the purpose. The newspaper account says:

"Resolutions were adopted declaring 'the proposal to impose an income tax is unwise, unpolitic, and unjust for the following reasons:

"First. Experience during our late war demonstrated that an income tax was inquisitorial and odious to our people, and only tolerated as a war measure, and was abrogated by universal consent as soon as the condition of the country permitted.

"Second. Experience has also shown that it is expensive to put in operation; that it can not be fairly collected, and is an unjust distribution of the burdens of taxation and promotes evasions of the law.

"Third. The proposal to exempt incomes under $4,000 is purely class legislation, which is socialistic and vicious in its tendency, and contrary to the traditions and principles of republican government."

Still another resolution was adopted declaring "that in addition to an internal-revenue tax the necessary expenses of the Government should be collected through the custom-house, and that the Senators and Representatives in Congress from the State of New York be requested to strenuously oppose all attempts to reimpose an income tax upon the people of this country."

They say that the income tax was "only tolerated as a war measure, and was abrogated by universal consent as soon as the condition of the country permitted." Abrogated by universal consent! What refreshing ignorance from such an intelligent source. If their knowledge of other facts recited in those resolutions is as accurate as that statement, how much weight their resolutions ought to have. Why, sir, there never has been a day since the war when a majority of the people of the United States opposed an income tax. It was only repealed by one vote in the Senate, and when under consideration was

It is desirable not only in the view of the President, but I think all of us will agree to that, that the machinery of this new proposition should be put in force with as little friction as possible. The President will be obliged to send abroad the most careful and trained executive and diplomatic talent that he can invoke, not simply men in the department, but the best of men outside.

In passing I wish to say that the President does not propose under this provision to create a board that shall be permanent and stationary; but he is to use it under the provisions as finally incorporated in the tariff act in making a way, and making an easy way, for the installation, I may say, and operation of the maximum and minimum law.

Mr. LA FOLLETTE. It was upon that point that I wanted to be informed.

Mr. HALE. I am glad that the Senator asked the question.

Mr. LA FOLLETTE. Is the expenditure to be limited, as the Senator from Maine understands, entirely to the administration of these maximum and minimum features of the tariff act?

Mr. HALE. It is so in terms provided by the amendment. If the Senator has looked at the clause in the tariff bill, he will see that in that it is limited to that particular part.

Mr. LA FOLLETTE. The amount which the amendment proposes is $100,000 for all purposes, I understand.

Mr. HALE. Yes; for all purposes. It is the best we could do. It will not do to leave the President without being properly armed. I went over the whole ground as to the amount, and I am satisfied that the next year he will need it all. As we get the minimum established and working right, it will be a great service and will help, and the amount of the appropriation is small compared with the benefits we hope to be derived from it.

Mr. LODGE. Mr. President, I should like to ask the Senator from Maine one question. Is it not true that under the operations of the tariff act the minimum and maximum feature which carries the general tariff must be dealt with before the 31st of March next?

Mr. HALE. The provision of the bill is that the operation of the maximum and minimum is deferred until that time, and I will not say all negotiations, but negotiations in the main, have got to be between now and that date.

Mr. LODGE. The President ought to have the information he requires as to other tariffs at once.

Mr. HALE. The sooner the better.

Mr. LA FOLLETTE. It is not intended, then, if I may inquire further, that any part of this money shall be expended by the President in securing information relative to the difference in the cost of production between this and competing countries, with a view of transmitting that information to Congress for its consideration. Is that true?

Mr. HALE. That part of the appropriation was stricken out in conference.

Mr. SMITH of Michigan. Mr. President, I should like to ask the Senator from Maine a question. I notice that on pages 2 and 3 there is an appropriation of $100,000 that is placed in the hands of the Secretary of State, to be used in investigations in our foreign commerce and otherwise as he may see fit, and that the amendment proposed now is along the same line, intended to give the President very large discretion in making such inquiries which he may deem necessary under the operations of the new tariff law.

Mr. HALE. The amendment that I offer is limited to information and negotiations upon maximum and minimum rates. The State Department appropriation is not in any way limited in that way and deals with the whole general subject of our foreign relations.

Mr. SMITH of Michigan. I simply want to ask the Senator from Maine whether such service as is contemplated by these two amendments would necessarily come under the civil-service law?

Mr. HALE. Undoubtedly not.

Mr. SMITH of Michigan. I am very thankful for that. Neither the Secretary of State nor the President should be circumscribed in the choice of assistants for this work. The work will involve expert knowledge, and men of professional and business experience should be chosen. In my opinion this could not be accomplished through the Civil Service Commission. Few appointees would take such places for the remuneration alone, while the honor of such a designation at the hands of the President or Secretary of State might be very tempting.

The VICE-PRESIDENT. The question is on agreeing to the amendment offered by the Senator from Maine on behalf of the committee.

The amendment was agreed to.

Mr. HALE. I offer the following amendment.

The SECRETARY. On page 5, after line 23, insert:

Expenses of collecting the corporation tax: The Secretary of the Treasury is hereby authorized to use during the fiscal year 1910, from the appropriation of $200,000 for the "Withdrawal of denatured alcohol," made by the legislative act for the fiscal year 1910, and from the appropriation of $150,000 for "Punishment of violations of internal-revenue laws," made by the sundry civil act for 1910, the sum of $100,000 to provide for the expenses of the Internal-Revenue Bureau, to be incurred in collecting the corporation tax authorized by the act "to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August —, 1909.

The VICE-PRESIDENT. The question is on agreeing to the amendment.

Mr. SHIVELY. What is the amount?

Mr. HALE. It is not an appropriation of money. It only authorizes funds from appropriations already made to carry out the corporation tax.

Mr. SHIVELY. It authorizes the divergence of a part of an existing fund?

Mr. HALE. Yes; of an existing fund; no additions.

Mr. BURKETT. I should like to ask as to the nature of that fund. I did not understand it.

Mr. KEAN. It is the denatured-alcohol fund.

Mr. BURKETT. What is that fund?

Mr. HALE. It is a fund that was given when the denatured-alcohol bill was passed to the internal revenue to carry out the provisions of the act.

Mr. BURKETT. Very well.

Mr. SCOTT. I am very glad the Senator from Maine has found a place to use that money. I think if there ever was a fund that was wasted, that fund was simply wasted and thrown away.

Mr. HALE. They did not waste all of it.

The VICE-PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from Maine.

The amendment was agreed to.

Mr. HALE. I offer the following amendment.

The SECRETARY. On page 13, after line 9, it is proposed to insert:

For repairs and improvements to the Senate kitchens and restaurants, and for special personal services connected therewith, under the supervision of the Committee on Rules, United States Senate, to be expended by the Superintendent of the Capitol Building and Grounds, fiscal year 1910, $9,540.

The amendment was agreed to.

Mr. HALE. I offer the following amendment, simply to restore a government bridge.

The SECRETARY. On page 16, after line 2, it is proposed to insert:

The Secretary of the Interior is authorized to cause the construction of a bridge across the Duchesne River at or near Myton, Utah, and the sum of $25,000, or so much thereof as may be necessary, is hereby appropriated to pay the cost of construction.

The amendment was agreed to.

Mr. HALE. I offer the following amendment.

The SECRETARY. On page 20, after line 12, it is proposed to insert:

CENSUS OFFICE.

The Director of the Census may fix the compensation of not to exceed 20 of the special agents provided for in section 18 of an act to provide for the Thirteenth and subsequent decennial censuses, approved July 2, 1909, at an amount not to exceed $10 per day: *Provided*, That such special agents shall be persons of known and tried experience in statistical work.

Mr. SHIVELY. I should like to have that amendment explained. I am inclined to raise the point of order that it is new legislation.

Mr. KEAN. The same provision has been made with reference to nearly every census.

Mr. LA FOLLETTE rose.

Mr. HALE. The chairman of the Committee on the Census will explain it.

Mr. LA FOLLETTE. Mr. President, the Director of the Census has asked to have this amendment incorporated in the bill. The value of the census depends very largely upon the thoroughness with which the plans are made and an interpretation of the data to be collected by the organized force.

The census with respect to manufactures alone especially requires a large amount of expert statistical direction. There are a chief of division and two or three assistants in that division; but it is impossible for them, with the administrative work which they have in hand, to make the plans for the detailed statistical and economic work that will be carried on in order that the census with respect to manufactures shall have any real value at all.

In the present condition of things it is almost impossible to secure the kind of talent necessary at the amount fixed by law, $6 per day, which was the same amount fixed ten years ago. It is the purpose of the director to draw largely, for brief service,

course which in my judgment will not in the end delay its adoption, and when once so adopted it will be permanent and beyond the danger of defeat in the courts.

The income tax has been discussed in this Chamber from the standpoint of its constitutionality and of its economic advisability. Both phases of the problem have been ably handled. It is not my purpose to discuss the constitutionality of an income tax, except to say that, while the last decision of the Supreme Court may have been right or wrong, it remains the law of the land until it has been reversed.

The last decision was a departure from the accepted practice and understanding of the Constitution which had stood for many years. It is also true that a very large number of the American people have never accepted that decision as final. Those who believe in an income tax have been further encouraged by the hope expressed by the President that an income-tax law could be framed which would stand the judgment of the courts. The offering of a constitutional amendment to be presented to the several state legislatures will, if adopted by a sufficient number to write it into our fundamental law, avoid all possible embarrassment to the court by a new submission of the legality of an income tax, and realizing that it is not such an easy matter, as some Senators seem to think it is, to amend our Constitution, I, however, gladly supported the resolution and look hopefully for the adoption of the amendment.

I am willing at this time to accept the assurance of the chairman of the Finance Committee that this bill will raise sufficient revenue to support the Government, although I may be permitted to have my own opinion on that subject. Neither do I share that confidence he seems to feel that we can succeed in materially reducing our national expenditures. We are naturally an extravagant nation. Considerations of national defense require that we shall maintain our army at its present standard and that we shall continue to increase our naval force.

There is a steadily growing demand which can never long be resisted for increased expenditures in all departments. The demand for the improvement of our natural waterways is supported by a steadily increasing pressure, and other public improvements call for a constantly growing expenditure.

Another reason why I have not favored an income tax at present is because I desired to let time determine what revenue would be produced by the pending bill. If it yields sufficient revenue to meet the expenses of government, I, for one, would not feel justified in voting to place a tax upon incomes.

We are engaged in framing a tariff measure which will, if it meets expectations, provide necessary revenue, and will also encourage the industries of the United States. Until it becomes plain that this measure will not provide sufficient revenue to maintain the Government, in connection with revenues derived from other sources now at our command, I can not bring myself to vote for an income tax.

On the other hand, Mr. President, if a tax of some kind is found necessary, then I favor an income tax in preference to a tax upon inheritances, for the reason that over 30 States have adopted some form of an inheritance tax for the purpose of raising revenues, and while this source of revenue is open to the Federal Government, except for great needs, I believe it would be unfair to enter a field which is already so largely occupied by the state governments. It would tend to derange the finances of many American Commonwealths, and is now unnecessary. Only three or four States lay a tax upon incomes, and that field is therefore practically unoccupied.

A fair and just income tax would transfer from the shoulders of those least able to bear it to the shoulders of the well-to-do and the rich, who can better bear it, the burden of raising annually many million dollars. An income tax has long been a well-established mode of raising revenue in most of the leading nations of the world, and is universally accepted as one of the most just and equitable methods of taxation. Writers on economic subjects and all authorities on taxation agree that a man should be taxed according to his ability to pay. Adam Smith says:

> The subjects of every State ought to contribute toward the support of the government as nearly as possible in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the State. In the observation or neglect of this maxim consists what is called the "equality or inequality of taxation."

M. Thiers, the great French statesman, says, a tax paid by a citizen to his government is like a premium paid by the insured to the insurance company, and should be in proportion to the amount of property insured in one case and in the other to the amount of property protected and defended by the government.

Thorold Rogers, the English economist, says:

> Taxation in proportion to benefits received is sufficiently near the truth for the practical operations of government.

Sismondi declares:

> Every tax should fall on revenue, not on capital, and taxation should never touch what is necessary for the existence of the contributor.

John Stuart Mill said:

> Equality of taxation as a maxim of politics means equality of sacrifice.

C. F. Bastable, of Dublin, in his Public Finance, says:

> It is apparent that the rule of equality of sacrifice is but another mode of stating the rule of equality as to ability. Equal ability implies equal capacity for bearing sacrifice. An equal charge will impose equal sacrifice upon persons of equal "faculty," and where abilities are unequal a corresponding inequality in the amount of taxation will realize the aim of equality of sacrifice.

Robert Ellis Thompson in his work on "Political economy," says:

> The most modern and theoretically the fairest form of taxation is the income tax. It seems to make every one contribute to the wants of the State in proportion to the revenue he enjoys under its protection. While falling equally on all, it occasions no change in the distribution of capital or in the material direction of industry and has no influence on prices. No other is so cheaply assessed or collected. No other brings home to the people so forcibly the fact that it is to their interest to insist upon a wise economy of the national revenue.

John Sherman, in 1871, after the country had had several years' experience with an income tax and had seen its advantages and disadvantages, its defects and its merits, said:

> They have declared it to be invidious. Well, sir, all taxes are invidious. They say it is inquisitorial. Well, sir, there never was a tax in the world that was not inquisitorial; the least inquisitorial of all is the income tax. * * * There never was so just a tax levied as the income tax. There is no objection that can be urged against the income tax that I can not point to in every tax. * * * Writers on political economy, as well as our own sentiments of what is just and right, teach us that a man ought to pay taxes according to his income. * * * The income tax is the cheapest tax levied except one.

On another occasion Mr. Sherman said:

> But years of further experience will convince the whole body of our people that a system of national taxes which rests the whole burden of taxation upon consumption and not one cent upon property or income is intrinsically unjust.

While the expenses of national government are largely caused by the protection of property, it is but right to require property to contribute to their payment. It will not do to say that each person consumes in proportion to his means. That is not true. Everyone can see that the consumption of the rich does not bear the same relation to the consumption of the poor that the income of the one does to the wages of the other.

An income tax is a tax upon a man's ability to pay, and not upon consumption. It is fair, because it is based upon property and income. There is no tax which will be felt so little by those called upon to pay it, or cause as little distress.

A man whose facilities for making money are based upon the law and order guaranteed by a government can not question the right of that government to inquire into his income.

In his speech of acceptance Judge Taft said:

> In my judgment an amendment to the Constitution for an income tax is not necessary. I believe that an income tax, when the protective system of customs and the internal-revenue tax shall not furnish income enough for governmental needs, can and should be devised which, under the decisions of the Supreme Court, will conform to the Constitution.

On that declaration I am willing to take my stand.

Property and wealth should bear a fair share of taxation. There is a growing conviction that these elements do not pay their fair share of the burdens of government.

It should be an accepted axiom of legislation that the heaviest burdens of taxation should be imposed upon those best able to carry them. It is for this reason we lay a heavy tax upon liquors and upon tobacco. They are not necessities, and those who use them can well afford to make a small return to the Government for the privilege of their use.

Experience and inquiry prove that the man with a moderate-priced home pays more in proportion than the man who owns a palatial mansion, and that he pays more nearly in proportion to their actual value on his household furnishings.

It has long been considered an axiom of political economy that an income tax is the fairest way of correcting the inherent inequalities of taxation and of equalizing its burdens between the rich and those in moderate circumstances.

The income tax is an expression of the idea that something is needed to round out the present system of taxation by securing greater justice in the levying of the burden as between the rich and the great middle class. The history of our American tax systems shows early attempts to levy taxes according to the ability to pay. That principle was read into the statute law of the Massachusetts Bay colony as early as 1846, when it was provided that—

> All persons as by the advantage of their arts and trades are more enabled to help bear the public charge * * * are to be rated for returns and gains proportionable unto other men for the produce of their estates.

In other words, individuals were to be rated according to "goods, faculties, and personal abilities." The present income

tax of Massachusetts is the direct outgrowth of that original effort to tax product and income. In 1706 the tax was imposed on incomes "by any trade or faculty." In 1738 there was added the words "business or income," and the act of 1777, which is practically the law to-day, included "incomes from any profession, faculty, handicraft, trade, or employment." England levied an income tax in 1799 which did not continue long, but was restored in 1842 when England abolished her protective tariff and found it necessary to seek some other source of revenue. The English income tax yielded a revenue of about seventy millions; Italy's income tax, enacted in 1864, yielded about fifty millions; in France the income tax of 1871, taxing only incomes from corporations and associations, yielded about seventy-five million francs. Many of the German States have adopted this system. It is in vogue in Holland. It is in use in Switzerland, where it is firmly intrenched. North Carolina adopted an income tax in 1849, because, as the preamble of the act says:

There are many wealthy citizens of this State who derive very considerable revenues from * * * interest, dividends, and profits who do not contribute a due proportion to the public exigencies.

For the same reason Alabama in 1843 and Virginia in 1849 adopted an income tax. Alabama abolished her income tax in 1884. The law still exists in Massachusetts, Virginia, and North Carolina, and if the law in those States is not administered with as high a degree of success as is desirable, it can at least be said that it is enforced as successfully as is the general tax on personal property. In every nation where this form of taxation is levied it is believed to be a long step toward the equalization of the burdens of taxation. Taxation should be according to the ability or faculty to pay rather than upon expenditures or on property alone. In foreign countries the heaviest burden of taxation rests upon the poor.

In the United States the great burden rests upon the middle class, the small farm owners and small home owners. These can not escape the burden of taxation; neither can the visible personal property of the farmer and the merchant escape. It was because the income tax of 1863–1873 reached so many of the mercantile and capitalistic classes, who both previously and since escaped fair taxation, that it was abolished. The same objections raised against an income tax in this country have been raised time and time again against a similar law in Great Britain, and the tax there has proved a success and is believed to be administered with fair success, forming a permanent part of English revenue. The democratic trend toward equalization in taxes can not be longer halted. The demand in this country, like the demand abroad, for an income tax will continue until some such law is enacted. There is no feature of the Government which causes so much unrest and dissatisfaction as the system of taxation. It is a problem which vexes every State and every municipality. These bodies must settle such questions for themselves, but so far as the National Government is concerned, an adequate and well-rounded scheme is practically impossible without the addition of an income tax.

The income tax here was the outgrowth of the faculty tax imposed at one time or another for longer or shorter periods by most of the American colonies in practically all systems of taxation. Taxes were first levied upon land. Taxes were next levied upon visible and tangible personalty. It was found in time that these two sources of revenue did not furnish an adequate measure of taxable capacity; hence followed attempts to perfect the system by levying a faculty tax upon persons that derived revenue from land or personalty. This faculty tax was not an income tax. It was originally levied upon product, and was arbitrarily levied upon assumed earnings, with little relation to actual income, and was therefore unequal and soon fell into disuse. The first income tax, in the modern sense, was levied in England in 1799, and did not spread to other countries until some time later.

The Supreme Court of the United States sustained the constitutionality of the war tax in 1898 imposing a graduated tax upon inheritances. Mr. Justice White in his opinion said:

The review which we have made exhibits the fact that taxes are imposed with reference to the ability of the person on whom the burden is placed to bear the same have been levied since the foundation of government. The grave consequences which it is asserted will arise in the future if the right to lay a progressive tax be recognized involves in its ultimate aspect the assertion that free and representative government is a failure.

The proposition to lay a graduated tax upon "surplus wealth" is neither radical nor revolutionary. Great Britain has laid a graduated tax upon inheritances the past fifteen years, and that tax is as firmly fixed as any revenue-producing feature of the English tax system.

John Stuart Mill says:

The equality of taxation means the apportioning of each person toward the expenses of government, so that he shall feel neither more nor less inconvenienced from his share of the payment than every other person experiences from his.

It is impossible to fully attain this standard. Complete ideal standards can not be reached in any human system of taxation, but the best system of taxation must at least make an attempt to approach equality of sacrifice in the imposition of taxes. It is the part of political wisdom to hasten the day when there will be greater uniformity of taxation between those who have more than they absolutely need and those who do not have as much as they need.

Uniformity of taxation as required by the Constitution does not mean absolute equality, for that is impossible. It simply means that all persons of the same class shall be treated alike. It is perfectly proper for a State to exempt from taxation certain classes of property or property up to a certain value. Such distinctions have been generally upheld. Some of the States lay progressive taxes on corporations according to their capitalization, and these laws have been upheld. The uniform tendency of court decisions is to permit reasonable exemptions from taxation, and there can be no question at all in my mind that a reasonable line of demarcation can be drawn between incomes which may properly be taxed and those which may properly be left untaxed.

All taxes have at times been condemned as confiscatory on the one hand and as socialistic on the other. The most democratic foreign countries, like Switzerland, Australia, and Great Britain, have adopted the income tax as a permanent form of raising revenue. From a careful investigation of the subject I feel warranted in saying that the income tax levied from 1863 to 1873 was collected more generally and with less evasion than the general property tax commonly in vogue in the various States of the Union. To my mind it is the only way to reach a large class of citizens who pay comparatively little tax, at least when compared with their ability to pay. It is clear that the burden of national taxes lies most heavily upon the less well to do, because it lies upon consumption, which in the case of the overwhelming majority of citizens absorbs practically all of their income, and is therefore proportionately much larger than in the case of those enjoying large incomes. Under the present system of taxation, the investor in securities, the well-to-do professional class and the man of large business affairs do not pay their proportionate share of taxes. No system of taxation is administered perfectly, but an income tax will be a move in the right direction and will be an attempt at least to equalize the burdens of taxation, which now admittedly rest most heavily upon those least able to bear them.

The power of taxation is absolutely necessary for national existence. Every limitation on that power is a limitation upon the right of the Government to exist. The federation of the thirteen colonies was doomed to die because of its inability to collect taxes. It is unreasonable to suppose that the framers of the Constitution meant to impose a limitation upon the power of taxation such as has been written into that instrument by the Supreme Court. The Constitution gives Congress unlimited power to levy taxes. A way to tax incomes can and must in time be found. A tax on incomes in proportion to the population of the States would be grossly inequitable and is impossible.

No one can fairly deny that the ideal system will levy taxes not on what a man consumes, but on what he acquires or receives over and above reasonable annual expenditures. It will not be absolutely impossible to draw a fairly just line of division between incomes which should not be taxed and those which can properly be subjected to such a burden.

We should not tax a man on what he needs for maintenance of his family in decency and comfort, according to his station in life, with a fair allowance for the liberal education of his children. When his income exceeds that figure it is not socialistic to ask him to contribute direct to the support of the government under which he is able to enjoy such comfortable conditions.

The largest expenditures of government are for the protection of life and property. It has been estimated that 9 per cent of the families of the United States own 71 per cent of the wealth of the country. An income tax is the only tax which will equalize the burden of taxation between this 9 per cent and the remaining 91 per cent. It does not tax consumption but the balance of income left over and above what is required for necessary consumption and which can be used for luxuries.

Little sympathy can be awakened for that class of American citizens of whom we heard considerable in the panic of 1907, known as "the poor rich," those whose incomes in the period of depression through which we have lately passed have shrunk from, say, $250,000 to $25,000 a year. One can easily imagine the distress which might follow such a contraction of income, with the necessity for economizing in the number of establishments maintained, in steam yachts, season boxes at the grand opera, and high-priced automobiles, but such a condition will never excite much sympathy in the breasts of those who have never been able to afford such luxuries.

The CHAIRMAN. The gentleman from Tennessee [Mr. HULL] offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amend, page 135, lines 1 and 2, by striking out the words "shall not be included as income" and inserting in lieu thereof the words "or payments paid by or credited to the insured, on life insurance, endowment, or annuity contracts, upon the return thereof to the insured at the maturity of the term mentioned in the contract, shall not be included as income."

The CHAIRMAN. The question is on agreeing to the amendment.

The question was taken, and the amendment was agreed to.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

That in computing net income there shall be allowed as deductions the necessary expenses actually incurred in carrying on any business, not including personal, living, or family expenses; all interest accrued and payable within the year by a taxable person on indebtedness; all National, State, county, school, and municipal taxes accrued within the year, not including those assessed against local benefits or taxes levied hereunder; losses actually sustained during the year, incurred in trade or arising from fires, storms, or shipwreck, and not compensated for by insurance or otherwise; debts actually ascertained to be worthless and charged off during the year; also a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business, but no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made; no deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate; the amount of income received or payable from any source at which the tax upon such income, which is or will become due, under the provisions of this section, has been withheld for payment at the source in the manner hereinafter provided, shall be deducted; but in all cases where the tax upon the annual gains, profits, and incomes of a person is required to be withheld and paid at the source as hereinafter provided, if such annual income except that derived from interest on corporate or United States indebtedness does not exceed the rate of $4,000 per annum, or if the same is uncertain, indefinite, or irregular in the amount or time during which it shall have accrued, and is not fixed or determinable, the same shall be included in estimating net annual income to be embraced in a personal return; also the amount received as dividends upon the stock, or from the net earnings of any corporation, joint-stock company, association, or insurance company which is taxable upon its net income as hereinafter provided shall be deducted. The net income from property owned and business carried on in the United States by persons residing elsewhere shall be computed upon the basis prescribed in this paragraph and that part of paragraph G of this section relating to the computation of the net income of corporations, joint-stock and insurance companies, organized, created, or existing under the laws of foreign countries, in so far as applicable.

Mr. HULL. Mr. Chairman, I offer another amendment.

The CHAIRMAN. The Clerk will report the amendment offered by the gentleman from Tennessee [Mr. HULL].

The Clerk read as follows:

Amend, page 135, line 3, by inserting after the word "income" the words "for the purposes of the normal tax."

The CHAIRMAN. The question is on agreeing to the amendment.

The question was taken, and the amendment was agreed to.

Mr. HULL. Mr. Chairman, I desire to offer an additional amendment.

The CHAIRMAN. The Clerk will report the amendment offered by the gentleman from Tennessee [Mr. HULL].

The Clerk read as follows:

Amend, page 135, line 10, by striking out the words "or taxes levied hereunder."

The CHAIRMAN. The question is on agreeing to the amendment offered by the gentleman from Tennessee [Mr. HULL].

The question was taken, and the amendment was agreed to.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

C. That in computing net income under this section there shall be excluded the interest upon the obligations of a State or any political subdivision thereof, and upon the obligations of the United States the principal and interest of which are now exempt by law from Federal taxation; also the compensation of the present President of the United States during the term for which he has been elected, and of the judges of the supreme and inferior courts of the United States now in office, and the compensation of all officers and employees of a State or any political subdivision thereof.

Mr. HULL. Mr. Chairman, I desire to offer an amendment.

The CHAIRMAN. The Clerk will report the amendment offered by the gentleman from Tennessee [Mr. HULL].

The Clerk read as follows:

Amend, page 136, line 25, by inserting after the words "United States" the words "or its possessions."

The CHAIRMAN. The question is on the adoption of the amendment.

The question was taken, and the amendment was agreed to.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

D. That there shall be deducted from the amount of the net income of each of such persons, ascertained as provided herein, the sum of $4,000: *Provided*, That only one deduction of $4,000 shall be made from the aggregate income of all the members of any family composed of one or both parents and one or more minor children, or husband and wife, but if the wife is living permanently apart from her husband she may be taxed independently; but guardians shall be allowed to make deduction in favor of each and every ward, except that in case where two or more wards are comprised in one family and have joint property interests the aggregate deduction in their favor shall not exceed $4,000, and said tax shall be computed upon the remainder of said net income of such person for the year ending December 31, 1913, and for each calendar year thereafter; and on or before the 1st day of March, 1914, and the 1st day of March in each year thereafter, a true and accurate return, under oath or affirmation, shall be made by each person of lawful age, except as hereinafter provided, subject to the tax imposed by this section, and having a net income of $3,500 for the taxable year, to the collector of internal revenue for the district in which such person resides or has his principal place of business, or, in the case of a person residing in a foreign country, in the place where his principal business is carried on within the United States, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, setting forth specifically the gross amount of income from all separate sources and from the total thereof, deducting the aggregate items or expenses and allowance herein authorized; guardians, trustees, executors, administrators, agents, receivers, conservators, and all persons, corporations, or associations acting in any fiduciary capacity, shall make and render a return of the net income of the person for whom they act, subject to this tax, coming into their custody or control and management, and be subject to all the provisions of this section which apply to individuals; and also all persons, firms, companies, copartnerships, corporations, joint-stock companies or associations, and insurance companies, except as hereinafter provided, in whatever capacity acting, having the control, receipt, disposal, or payment of fixed or determinable annual gains, profits, and income of another person subject to tax, shall in behalf of such person make and render a return, as aforesaid, but separate and distinct, of the portion of the income of each person from which the normal tax has been thus withheld, and containing also the name and address of such person: *Provided*, That in either case above mentioned no return of income not exceeding $3,500 shall be required: *Provided further*, That persons liable only for the normal income tax, on their own account or in behalf of another, shall not be required to make return of the income derived from dividends on the capital stock or from the net earnings of corporations, joint-stock companies or associations, and insurance companies taxable upon their net income as hereinafter provided; and the collector or deputy collector shall require every list to be verified by the oath or affirmation of the party rendering it, and may increase the amount of any list or return if he has reason to believe that the same is understated: *Provided*, That no such increase shall be made except after due notice to such party and upon proof of the amount understated; or if the list or return of any person shall have been increased by the collector, such person may be permitted to prove the amount liable to be assessed; but such proof shall not be considered as conclusive of the facts, and no deductions claimed in such cases shall be made or allowed until approved by the collector. If dissatisfied with the decision of the collector, such person may submit the case, with all the papers, to the Commissioner of Internal Revenue for his decision, and may furnish sworn testimony of witnesses to prove any relevant facts.

Mr. HULL. Mr. Chairman, I desire to offer the following amendment.

The CHAIRMAN. The gentleman from Tennessee offers an amendment which the Clerk will report.

The Clerk read as follows:

Amend, page 138, line 3, by adding, after the figures "$3,500," the words "or over."

The amendment was agreed to.

Mr. HULL. Mr. Chairman, I desire to offer the following amendment.

The CHAIRMAN. The gentleman from Tennessee offers another amendment, which the Clerk will report.

The Clerk read as follows:

Amend, page 139, line 6, by adding, after the word "person," the words "or stating that the name and address, or the address, as the case may be, are unknown."

The amendment was agreed to.

The Clerk read as follows:

E. That all assessments shall be made and all persons shall be notified of the amount for which they are respectively liable on or before the 1st day of June of each successive year, and said assessments shall be paid on or before the 30th day of June, except in cases of refusal or neglect to make such return and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as above provided for, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such person or persons immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the 30th day of June in any year, and for 10 days after notice and demand thereof by the collector, there shall be added the sum of 5 per cent on the amount of tax unpaid, and interest at the rate of 1 per cent per month upon said tax from the time the same became due, except from the estates of insane, deceased, or insolvent persons.

All persons, firms, copartnerships, companies, corporations, joint-stock companies or associations, and insurance companies, in whatever capacity acting, including lessees or mortgagers of real or personal property, trustees acting in any trust capacity, executors, administrators, agents, receivers, conservators, employers, and all officers and employees of the United States having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual gains, profits, and income of another person, exceeding $4,000 for any taxable year, other than dividends on capital stock, or from the net earnings of corporations and joint-stock companies or associations subject to like tax, who are required to make and render a return in behalf of another, as provided herein, to the collector of his, her, or its district, are hereby authorized and required to deduct and withhold from such annual gains, profits, and income such sum as will be sufficient to pay the normal tax imposed thereon by this section, and shall pay to the officer of the United States Government authorized to receive the same; and they are each hereby made personally liable for such tax. In all cases where the

income tax of a person is withheld and deducted and paid or to be paid at the source, as aforesaid, such person shall not receive the benefit of the exemption of $4,000 allowed herein unless he shall, not less than 30 days prior to the day on which the return of his income is due, file with the person who is required to withhold and pay tax for him an affidavit claiming the benefit of such exemption; nor shall any person under the foregoing conditions be allowed the benefit of any deduction provided for in subsection B of this section unless he shall, not less than 30 days prior to the day on which the return of his income is due, file with the person who is required to withhold and pay tax for him a true and correct return of his annual gains, profits, and income from all other sources, and also the deductions asked for, and the showing thus made shall then become a part of the return to be made in his behalf by the person required to withhold and pay the tax, or such person may likewise make application for deductions to the collector of the district in which return is made or to be made for him: *Provided*, That the amount of the normal tax herein imposed shall be deducted and withheld from fixed and determinable annual gains, profits, and income derived from interest upon bonds, mortgages, or other indebtedness of corporations, joint-stock companies or associations, insurance companies, and also of the United States Government not now exempt from taxation, whether payable annually or at shorter or longer periods, although such interest does not amount to $4,000, in the same manner and subject to the same provisions of this section requiring the tax to be withheld at the source and deducted from annual income; and likewise the amount of such tax shall be deducted and withheld from coupons, checks, or bills of exchange for or in payment of interest upon bonds of foreign countries and upon foreign mortgages or like obligations (not payable in the United States), and also from coupons, checks, or bills of exchange for or in payment of any dividends upon the stock or interest upon the obligations of foreign corporations, associations, and insurance companies engaged in business in foreign countries; and the tax in each case shall be withheld and deducted for and in behalf of any person, firm, corporation, or association subject to the tax herein imposed, although such interest, dividends, or other compensation does not exceed $4,000, by any banker or person who shall sell or otherwise realize coupons, checks, or bills of exchange drawn or made in payment of any such interest or dividends (not payable in the United States), and any person who shall obtain payment (not in the United States), in behalf of another of such dividends and interest by means of coupons, checks, or bills of exchange, and also any dealer in such coupons who shall purchase the same for any such dividends or interest (not payable in the United States), otherwise than from a banker or another dealer in such coupons; but in each case the benefit of the exemption and the deduction allowable under this section may be had by complying with the foregoing provisions of this paragraph.

Nothing in this section shall be construed to release a taxable person from liability for income tax.

The tax herein imposed upon annual gains, profits, and income not falling under the foregoing and not returned and paid by virtue of the foregoing shall be assessed by personal return. Any person for whom return has been made and the tax paid, or to be paid as aforesaid, shall not be required to make a return unless such person has other net income, but only one deduction of $4,000 shall be made in the case of any such person.

Mr. HULL. I desire to offer the following amendment.

The CHAIRMAN. The gentleman from Tennessee offers an amendment which the Clerk will report.

The Clerk read as follows:

Amend, page 141, line 25, by adding, after the word "herein," the words "except by an application for refund of the tax."

The amendment was agreed to.

Mr. HULL. Mr. Chairman, I desire to offer the following amendment.

The CHAIRMAN. The gentleman from Tennessee offers an amendment which the Clerk will report.

The Clerk read as follows:

Amend, page 142, line 8, by adding, before the word "file," the word "either."

The amendment was agreed to.

Mr. HULL. I desire to offer the following amendment.

The CHAIRMAN. The gentleman from Tennessee offers an amendment which the Clerk will report.

The Clerk read as follows:

Amend, page 142, line 18, by adding, after the word "herein," the word "before."

The amendment was agreed to.

Mr. HULL. I desire to offer the following amendment.

The CHAIRMAN. The gentleman from Tennessee offers an amendment which the Clerk will report.

The Clerk read as follows:

Amend, page 142, line 25, by striking out, after the figures "$4,000," the words "in the same manner and."

The amendment was agreed to.

Mr. HULL. I desire to offer another amendment.

The CHAIRMAN. The gentleman from Tennessee offers an amendment which the Clerk will report.

The Clerk read as follows:

On page 143, line 1, amend by striking out, after the word "the," the word "same."

The amendment was agreed to.

Mr. HULL. Mr. Chairman, I offer the following amendment.

The CHAIRMAN. The gentleman from Tennessee offers an amendment which the Clerk will report.

The Clerk read as follows:

Amend, page 143, lines 13 and 14, by striking out the words "firm, corporation, or association."

The amendment was agreed to.

Mr. HULL. Mr. Chairman, I desire to offer the following amendment.

The CHAIRMAN. The gentleman from Tennessee offers an amendment which the Clerk will report.

The Clerk read as follows:

Amend, page 143, line 14, by adding, after the word "herein," the word "before."

The amendment was agreed to.

The Clerk read as follows:

G. That the normal tax hereinbefore imposed upon individuals likewise shall be levied, assessed, and paid annually upon the entire net income arising or accruing from all sources during the preceding calendar year to every corporation, joint-stock company or association, and every insurance company, organized in the United States, no matter how created or organized, but not including partnerships; but if organized, authorized, or existing under the laws of any foreign country, upon the amount of net income arising or accruing by it from business transacted and capital invested within the United States during such year: *Provided, however*, That nothing in this section shall apply to labor, agricultural, or horticultural organizations, or to mutual savings banks not having a capital stock represented by shares, or to fraternal beneficiary societies, orders, or associations operating under the lodge system, and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations and dependents of such members, nor to domestic building and loan associations, organized and operated exclusively for the mutual benefit of their members, nor to any corporation or association organized and operated exclusively for religious, charitable, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual.

Second. Such net income shall be ascertained by deducting from the gross amount of the income of such corporation, joint-stock company or association, or insurance company, received within the year from all sources, (first) all the ordinary and necessary expenses paid within the year out of income in the maintenance and operation of its business and properties, including rentals or other payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation by use, wear and tear of property, if any; and in the case of mines an allowance for depletion of ores and all other natural deposits on the basis of their actual original cost in cash or the equivalent of cash; and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends or return of premium payments paid within the year on policy and annuity contracts: *Provided further*, That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policy holders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses; (third) interest accrued and paid within the year on its indebtedness to an amount of such indebtedness not exceeding its paid-up capital stock outstanding at the close of the year, or if no capital stock, the capital employed in the business at the close of the year: *Provided*, That in the case of bonds or other indebtedness which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed shall be allowed; and in the case of a bank, banking association, or trust company, interest paid within the year on deposits; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory, or Government of any foreign country, as a condition to carry on business therein, not including the tax imposed by this section: *Provided*, That in the case of a corporation, joint-stock company or association, or insurance company, organized, authorized, or existing under the laws of any foreign country, such net income shall be ascertained by deducting from the gross amount of its income received within the year from business transacted and capital invested within the United States, (first) all the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States, including rentals or other payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year in business conducted by it within the United States and not compensated by insurance or otherwise, including a reasonable allowance for depreciation by use, wear and tear of property, if any, and in the case of mines an allowance for depletion of ores and all other natural deposits on the basis of their actual original cost in cash or the equivalent of cash; and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends or return of premium payments paid within the year on policy and annuity contracts: *Provided further*, That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses; (third) interest accrued and paid within the year on its indebtedness to an amount of such indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, or if no capital stock, the capital employed in the business at the close of the year which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States: *Provided*, That in the case of bonds or other indebtedness which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed shall be allowed; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof as a condition to carry on business therein, not including the tax imposed by this section. In the case of assessment insurance companies the actual deposit of sums with State or Territorial officers, pursuant to law, as additions to guarantee or reserve funds shall be treated as being payments required by law to reserve funds.

for themselves a reduction in the tariff. They control, many of them, through international combinations. It is the small producer who will be first to suffer. I do not think that all of us realize at all times how vast the force of wealth now is in the hands of the larger factors in industry. The gentleman from Georgia [Mr. CRISP] gave here the other night a list of men and estates in this country, and he pointed out in a table that there were 29 individuals and estates in America who have among them the vast sum of $3,000,000,000, and he gave figures to show that these men and these estates, less than 30, had an income of something like $170,000,000 a year. Now this income tax, which I favor and which I had hoped would be brought in for a separate vote, proposes to reach some of these larger incomes. I do not believe that it reaches the larger incomes with as heavy a per cent of tax as it should reach them, and for that reason I have offered this amendment, increasing the amount of the tax on incomes above $100,000 from 3 per cent to 6 per cent. [Applause.]

The CHAIRMAN. The time of the gentleman has expired.

Mr. TAVENNER. Mr. Chairman, when I went before the voters in the campaign last fall I made the declaration, repeating it over and over, that should I be elected I would make a conscientious endeavor to learn how the people of my district would desire me to vote on important legislation affecting their interest, which might come up in this body, and would then vote that way.

I made that declaration in every good faith. I desire no greater tribute when I shall conclude my service in this House than that the people of my district may say of me, "He made a practice of ascertaining how the people of this district desired him to vote on even the simplest piece of legislation, and then voted that way."

In line with the preelection understanding between the voters and myself it is my intention to cast my vote as the Representative of the fourteenth Illinois district for the income-tax provision of the pending bill.

I believe in all sincerity, Mr. Chairman, that in so doing I am carrying out the desire not only of the Democrats of my district, but of 90 per cent of the rank and file of Republicans, Progressives, Socialists, and Prohibitionists.

I have made as extended inquiries as anyone could make, and I believe that 90 per cent of the people of the whole United States, regardless of their politics, race, religion, color, or creed are heartily in favor of an income tax which proposes a tax on wealth in lieu of the present system, which provides for the raising of revenue by taxing exclusively the clothes on a man's back, and the other things that people must wear, eat, and use in order to live.

Not only the poor man, from whose bending back some of the burden of taxation is to be lifted by means of this bill, favors the measure. I am in a position to say that many fair-minded men of wealth residing in my own district, men who will be required to pay a considerable tax on their incomes by virtue of the income-tax provision of this bill, have written me in most favorable tone of the measure, declaring that the proposition that a man should be taxed according to his ability to pay and according to the benefits and privileges he receives under the Government is fair and just.

I am not prejudiced against wealth. Any man who has honestly acquired wealth shows but an evidence of his industry, intelligence, and skill, and deserves the respect of all. But I do contend that men possessing wealth should pay, and are able to pay, more taxes than their less fortunate brothers who own only the clothes upon their backs, and possibly their household furniture, and whose weekly wage is scarcely enough to enable them to provide for their families from week to week, let alone to lay anything by for a rainy day.

Mr. Chairman, the income tax is part of the Democratic plan to reduce the ever-increasing cost of living in this country. It means the carrying out of the program promised in the preelection campaign last fall, namely, to take some of the tax off the necessaries of life, such as sugar, woolens, cottons, beef, and lumber, and to make up for the loss of revenue thus sustained by the Government by placing a tax upon incomes. It is estimated the income tax will raise approximately $100,000,000, and that this amount of taxation will be taken off of the vital necessaries of life.

But, Mr. Chairman, to tax wealth and incomes, according to the standpatters and protectionists, is class legislation. The fact is, however, that the present system of taxing the necessaries of life while permitting wealth to go untaxed is class legislation of the grossest sort. Is it not passing strange that those who complain of an income tax as class legislation were never heard to complain of the existing class legislation which taxes the hats, coats, and shirts of the masses almost 71 per cent, while not requiring men like Rockefeller, Carnegie, and other millionaires to pay a single penny of taxation on their swollen personal fortunes to the National Government?

The masses of the people produce the wealth, and by legislative advantage a few get possession of it, and now these few object to the transfer to wealth of even a portion of the taxation being exacted from the masses on such articles as woolens, cottons, sugar, beef, and lumber.

The income tax is a recognition of the demand of the masses for a square deal in taxation, which they are not now receiving in either State or Federal taxation. Under the fiscal systems in vogue in most of the States the wealthy and powerful classes find ways to evade taxation, and are constantly succeeding, in one way or another, in shifting the chief weight of taxation from those most able to bear it to the shoulders of those weaker, poorer, and less able to protect themselves. The report of the New York special tax commission reported the conclusion that the richer a person grows the less he pays in relation to his property or income, and that personal property largely escapes taxation for either local or State purposes. The State tax commission of Massachusetts estimates the value of personal property in that State properly subject to taxation at over $5,600,000,000, of which less than one-fifth is taxed. The mayor of Philadelphia recently stated in the press that the undervaluation of property in that city is more than three hundred millions. Such conditions seem to be the rule in nearly every locality and in every State.

The small property owner can not hide his property nor shift his tax burdens, as can the rich and powerful, but must bear the crushing weight of not only that portion of taxes that is rightfully his but also much of the burden that should be carried by the rich.

So much for the chances of the small taxpayer in matters of State and local taxation. But the worst is yet to come. What about Federal taxation? In the raising of revenue to run the National Government, wealth is not asked to contribute anything whatever. Practically the entire expenses of the Government are met with funds raised by taxing the things the people eat, wear, and use.

One afternoon, several years ago, I sat in the office of United States Senator MOSES E. CLAPP, of Minnesota, interviewing him on the subject of taxation, for a newspaper article. He had told me that in State taxation the poor man, and the man of moderate means, was everywhere paying taxes for the rich.

"What about our national fiscal system?" I asked.

He replied by turning in his chair and pointing out of the window to the marble wall of the capitol across the courtyard.

"Do you see that wall yonder?" he asked. "Which stone is bearing the greater weight, the one at the bottom or the one at the top?" "Well," he continued, "that is the way it is under our present fiscal system. Those at the bottom are standing the burden of the weight of taxation. What we need in this country is an income tax."

Under the present fiscal system a millionaire pays no more tax toward running the National Government than the poor man with a large family. This seems almost unbelievable, but it is true and will not be denied here or elsewhere.

Why, then, it may be asked, have the people been willing to wait so long for an income tax? This is a question I can not answer. My own explanation of the tardiness of an income tax upon the statutes would be that it is because the average man of this Nation has not been aware until recently of the true state of affairs. The majority of persons have been under the erroneous impression that some portion of the taxes they have been paying to the local tax collector each year have gone to defray the expenses of the National Government, to help maintain the Army and Navy, pay the great army of Uncle Sam's employees, and maintain the various departments of the Government.

The money paid to local tax collectors, however, goes exclusively for the maintenance of the township, city, county, or State in which it is paid, and not a single penny of this money comes to the National Government.

Where, then, does the $1,000,000,000 which is necessary to meet the annual expenses of the General Government come from? It is not picked up out of the streets. No; it comes from the pockets of the masses of the people and is taken from them when they do not know it. That is, the people pay their national tax in the form of artificial prices for the things they eat, wear, and use. In other words, the Government raises $312,000,000 annually through a tariff tax, which is laid on nearly every article of common use.

With the exception of the amount raised through the recently passed corporation tax, the balance of the $1,000,000,000 expended annually by the Government comes from an internal-

Mr. BRANDEGEE. Mr. President, I have made no remarks upon these various amendments to change the provisions of the income tax as found in the bill. I desire to state very briefly the reason why I have voted against most of the amendments, and I shall probably continue to do so. This is a bill entitled "An act to reduce tariff duties and to provide revenue for the Government." These amendments have had no such proper consideration, in my opinion, as would justify me in voting for any one of them. It may be that one or another of them would provide a more equitable or more satisfactory system of taxing the incomes of both corporations and individuals, but I do not think in the passage of a tariff bill we should attempt to utilize it as a vehicle to float through any propositions to tax corporations out of existence or to penalize the rich or to reduce swollen fortunes or to accomplish any other collateral purpose, no matter how desirable.

I am perfectly satisfied that if it shall be the settled conviction of the majority of the people of the country that the tax as provided by the committee should be changed, there is sufficient time in the future to overhaul entirely the proposed income tax in the light of the way the present provisions may operate and with much better satisfaction both to us and to the country.

The amendment just offered, which proposed to tax incomes over a million dollars 20 per cent, I could not possibly vote for. I have heard of collecting tithes, but I have never heard of collecting fifths of the incomes of people. Without going into or criticizing the details of the various amendments I simply think it is better to try the plan as proposed by the committee in its general features, and then having established the principle of an income tax, go about amending it as the necessity of the occasion in the future may warrant.

Mr. CRAWFORD. Mr. President, yesterday evening before the Senate adjourned I offered an amendment the purpose of which was to distinguish between what in England are called earned incomes and unearned incomes. That amendment was not acted upon. I am not going to press it at this time, but in connection with it I want to call attention to the report made in the English Parliament in 1907 after a very thorough investigation of the whole subject.

England has had an income tax, as I understand it, for three-quarters of a century, and from time to time, as the system has been evolved, they have improved it, enlarged it, and extended it. Within the last two or three years, under the ministry in which Lloyd George has been so active, they have thoroughly overhauled it and extended its provisions in many ways. In this report in 1907, which was an exhaustive one, after a thorough investigation, they find that this distinction should be made:

Differentiation between earned and unearned income.

They find that it is practicable to observe that differentiation in the income-tax system. I want to put into the RECORD what Mr. Asquith said in commenting upon it, because it is so well said and is so brief and simple, and it relates to a matter of the utmost importance here. In discussing it he gives this example. He says:

Comparing two individuals, one "who derives, we will say, £1,000 a year from a perfectly safe investment in the funds perhaps accumulated and left to him by his father, and, on the other hand, a man making the same nominal sum by personal labor in the pursuit of some arduous and perhaps precarious profession, or some form of business," to say that those two people are, from the point of view of the state, to be taxed in the same way is, to my mind, flying in the face of justice and common sense."

I believe that that simple statement finds a response in the judgment of every man. Why not in this bill and in establishing this system here start right upon that question? Here is the question of making property, capital, and investment contribute its share of taxes; on the other hand, here is the question of how far shall we go in putting a tax upon energy, industry, and service given to society by men who are engaged in practicing professions or in following other useful vocations in life. We are putting them all together, and making one levy, one rate, upon them all; in other words, we are putting a tax upon personal service rendered to the home, the family, and the community and which earns an annual income. The income may be precarious and vary from one year to another and end when the life of the person ends who is earning it. We are putting that class of incomes in the same class with rents from great structures, inherited, perhaps, by some child of fortune, that are a lifeless species of property. England differentiates between these classes of income. Why should not we?

Mr. GALLINGER. Mr. President——

The PRESIDING OFFICER (Mr. LEA in the chair). Does the Senator from South Dakota yield to the Senator from New Hampshire?

Mr. CRAWFORD. I do.

Mr. GALLINGER. This is an interesting phase of the discussion, Mr. President, and I desire to ask the Senator from South Dakota how it would work. Supposing a man were in receipt of $3,000 from investments which his father had made possible and he likewise was in receipt of $3,000 from the practice of his profession, would there be a differentiation in that?

Mr. CRAWFORD. Oh, certainly. The distinction is made between the earnings from a man's professional services and the earnings from his investments. They have all that worked out in England.

Mr. GALLINGER. Would he be exempt on the $3,000 which he earns from professional services under those circumstances?

Mr. CRAWFORD. I am not saying that. I think the fault in the amendment which I offered yesterday was that it went too far in making exemptions. In England they are not exempt above a certain rate, but they discriminate in their favor. So, if the Senator will permit me, I shall offer a resolution which I ask to have read and ask to have it considered in connection with my amendment, which I admit is faulty in that respect. I should like to have the Senate consider both the amendment and the resolution together and take such action as it may think best.

The PRESIDING OFFICER. The Secretary will read the resolution proposed by the Senator from South Dakota.

The resolution (S. Res. 177) was read, as follows:

Resolved, That the Committee on Finance be directed to investigate and ascertain the difference in character between income immediately and directly derived by an individual from the carrying on or exercise by him of his profession, trade, and vocation, and income derived from property or investment of capital, and to report an amendment which will make a just discrimination in the rate of levy in favor of incomes immediately and directly derived from the exercise of a profession, trade, or calling, as compared with income derived from property and capital investment.

Mr. CRAWFORD. Mr. President, of course I am not dogmatic enough to undertake here to say what this difference should be and what this rate should be; but I am offering this resolution so that it may come before the Senate for the purpose of having this question, which I think has fundamental justice at the bottom of it, receive the consideration that I think it should receive here and have the investigation to which I think it is entitled. Therefore I submit the resolution.

The PRESIDING OFFICER. The resolution will be printed and lie on the table.

Mr. WILLIAMS. Mr. President, do I understand that the resolution is to lie on the table?

The PRESIDING OFFICER. The Chair understood that that was the request of the Senator from South Dakota.

Mr. CRAWFORD. No; I did not ask to have the resolution lie on the table; I asked to have it take the usual course. I presume, if objection is made to it, it will have to be printed and go over.

The PRESIDING OFFICER. Does the Senator from South Dakota make a request for unanimous consent for the present consideration of the resolution?

Mr. CRAWFORD. Yes; I ask unanimous consent for the present consideration of the resolution.

The PRESIDING OFFICER. The Senator from South Dakota asks unanimous consent for the present consideration of the resolution which has just been read. Is there objection?

Mr. WILLIAMS. Yes; I object, Mr. President.

The PRESIDING OFFICER. The Senator from Mississippi objects, and the resolution will be printed and go over.

Mr. WILLIAMS. Mr. President, I want to say a few words in this connection, so as to explain why I have objected. In the first place, I do not see any necessity of any investigation to determine an abstract question, which every man can determine for himself, as to whether this distinction ought or ought not to be made. So far as I am personally concerned, I am opposed to it. Of course, it would be a very nice thing for the Members of the two Houses of Congress to make that distinction, as about nine-tenths of them are lawyers and get their incomes from their profession, but I do not see why a man who is in a profession should have his income exempt any more than a man who is carrying on a farm or a factory.

The other day some one said something about some surgeons who made an immense amount of money each year by their great skill and genius, who lived like princes and saved nothing.

Mr. CRAWFORD. Mr. President, will the Senator permit me to interrupt him?

The PRESIDING OFFICER. Does the Senator from Mississippi yield to the Senator from South Dakota?

Mr. WILLIAMS. Yes.

Mr. CRAWFORD. The Senator is assuming that the amendment makes a difference between professional men and men fol-

lowing a trade or men cultivating farms. It makes none whatever. It includes professions, trades, and vocations—all three.

Mr. WILLIAMS. Then, whom would you leave to be taxed?

Mr. CRAWFORD. Property, capital, investments; and not human exertion and human energy and human service. I do not say they should be exempt. I have said that my amendment went too far in that respect, and I say that there should be a differentiation in favor of energy and service of the man who is doing something and where the earning depends entirely upon his personal exertions—that there should be a differentiation in favor of that source of income as against the income derived from capital and property.

Mr. WILLIAMS. The Senator the other day referred, as an illustration, to some brilliant surgeon or some one who made an immense income every year, but lived like a prince and had nothing left. There might be another surgeon who made the same amount of income who would have better sense and instead of living like a prince might invest some of the income in land or in city property or in bonds or in stocks. So the effect of it would be to tax a man who was thrifty, industrious, frugal, and saving and exempt the fellow who spent all his income and never invested anything. I do not see for the life of me why any man who earns $50,000 a year or $20,000 or $10,000 as a great surgeon or as a great lawyer should not thank God for the possession of that much and be willing to contribute of that a small amount for the support of the Government. You are taxing men in proportion to their ability to pay, not in proportion to their ability to save or to invest.

Mr. CRAWFORD. Mr. President, that is simply wiping out the discrimination—and it is one of the subjects of actual, active, growing interest in this country—between the burden that should be imposed upon property, upon capital, and that which should be imposed upon the character of service that is so closely linked with humanity that you can not separate it. You can not judge a thing by stating an extreme case. After three-fourths of a century and at a time when the most popular ministry that was ever in control of the Government of England, the one which has reached out and reached into the hearts of the masses to a greater extent than ever before, led by Lloyd George, makes this discrimination; the Senator from Mississippi thinks it is wrong in principle. I believe it is right.

Mr. WILLIAMS. Money is as much property as is anything else, and when a man earns $20,000 in money during a year he has got that much property.

Mr. BRANDEGEE. Mr. President, I realize that, as the Senator from South Dakota [Mr. CRAWFORD] has stated, the amendment which the Senator submitted yesterday is not strictly the pending amendment, I assume, for action at the present time.

Mr. CRAWFORD. No. My statement was that I had offered a resolution. I do not know whether the Senator was here at the time, but the resolution has been read and laid over.

Mr. BRANDEGEE. I was here.

Mr. CRAWFORD. The two are simply related to this subject, and so I thought it would not be improper for the Senate to say whether they should not direct the Committee on Finance to consider the questions there suggested and report to the Senate whether such a discrimination in favor of vocational income as against property income should not be observed in this bill.

I realize that the amendment which I hastily drew yesterday, where the exemption was made broader than it ought to be, is imperfect; I was conscious of the fact that it was imperfect at the time, but it was introduced to get the subject before the Senate. Now, as it is made a little more appropriate for general consideration by the resolution which I have introduced, I prefer to have the two considered together.

Mr. BRANDEGEE. I do not at all, as I think, misunderstand the situation. I understand it exactly as the Senator from South Dakota has stated it. In conversation with the Senator yesterday afternoon I stated that I thought the amendment was not as carefully drawn as the Senator himself would like to have it, and he said that it was hastily prepared and simply designed to bring the general subject matter to the attention of the Senate, which has been accomplished.

Now, I will read the amendment in order that there may be in the RECORD, in connection with the remarks upon this subject, the text of the matter we are discussing. The Senator's amendment reads:

Provided further, That in computing net income under subdivision 1 of paragraph A of this section there shall also be deducted the amount, if any, which is claimed and proved by any individual to have been immediately and directly derived from the personal exercise by him of a profession, trade, or vocation.

I think there is a good deal to be said in favor of the contention of the Senator—which is also sustained by the works of British origin upon the subject to which he has referred—that a great income or any income derived entirely from the efforts of those who have gone before—which cost the present beneficiary no effort or labor of any kind—should bear a larger proportion of the burden of taxation than the income derived from the personal effort of the beneficiary in possession of the income.

The amendment of the Senator, of course, as I think he will recognize, and as I am firmly convinced, would, if passed as drawn, exempt absolutely all income derived from the effort of anybody. I mean to put it just that broad, because the amendment provides that there shall be deducted from the amount anything which is proved by the individual "to have been immediately and directly derived from the personal exercise by him of a profession, trade, or vocation."

Mr. WILLIAMS. Mr. President, will the Senator pardon a question?

The PRESIDING OFFICER. Does the Senator from Connecticut yield to the Senator from Mississippi?

Mr. BRANDEGEE. Certainly.

Mr. WILLIAMS. A thought occurs to me which makes me ask the question. Take my salary as a Senator, or the salary of the Senator from Connecticut. Would or would not that fall within this description? Would that be derived from a profession, or trade, or vocation, or would it be connected with what the Senator calls "dead property," or where would it come in?

Mr. BRANDEGEE. I think there is a twilight zone about such a question. It would depend, perhaps, upon whether the Senator would consider himself to be a professional politician or a statesman; I do not know.

Mr. WILLIAMS. Really, I consider myself a statesman; but that is an income derived in the manner described in the amendment of the Senator from South Dakota, and it would be exempt under that very amendment.

Mr. CRAWFORD. Mr. President, will the Senator permit me?

Mr. BRANDEGEE. Certainly.

Mr. CRAWFORD. That language is identically the same as the language in the income-tax law of Great Britain, except that, based upon it, they levy a lower rate on such incomes instead of exempting them. The amendment which I drew, instead of differentiating in favor of a lower rate, I admit went too far in exempting them; but the language "claimed and proved by any individual to have been immediately and directly derived from the personal exercise by him of a profession, trade, or vocation" is literally copied from the clause in the English statute as it appears in Prof. Seligman's book.

Mr. WILLIAMS. That does not help it, so far as this question is concerned.

Mr. CRAWFORD. It helps it in this way, that it is being successfully operated in England, and Prof. Seligman says in his conclusion that after years of evolution the British system is the most perfect income-tax system in the world, and that while in Gladstone's time, a generation ago, it created hostility and bitterness, now it is accepted everywhere and will remain for all time.

Mr. WILLIAMS. Whether it is the English law and whether or not the English law is a good law is not relevant to this question. The question is whether we want to start a system of taxation in this country that will exempt the incomes of lawyers, doctors, politicians, and others—all incomes that come directly from personal services, whether for the Government or for somebody else.

Mr. CRAWFORD. I should like to ask the Senator if he seriously asserts that politicians have an income?

Mr. WILLIAMS. Well, after they get through with the year they have not much left. [Laughter.]

Mr. BRANDEGEE. No net income.

Mr. WILLIAMS. But they have at least had a salary and an opportunity to have an income.

Mr. BRANDEGEE. Mr. President, as usual, I seem to have managed by skillful interference to have projected myself in between two fires or between the upper and the nether millstones and to occupy the floor simply in the capacity of a yielder.

I do not disagree with the Senator from South Dakota at all, and, if I had been allowed to continue consecutively, I would have stated long since, I think, everything that he has stated. I understand perfectly well that the language which he uses in his amendment exempts incomes made by the exertion of personal effort, whereas the equivalent law in Great Britain simply imposes a lower rate of tax upon them.

I started to say that I had, so to speak, considerable offhand sympathy, without having had a chance to give it any mature consideration, with the idea that the two incomes were so essentially different in character, especially in consideration of the sympathy we have with people who have to strive and

work in order to live, as differentiated from those who, so to speak, are born with a gold spoon in their mouths and are simply living on the efforts of their ancestors—that I have considerable sympathy with the idea that there ought to be a difference at least in the rate of taxation. I am simply calling attention to the fact that the amendment of the Senator from South Dakota will exempt entirely from taxation every income derived from personal effort, because the expression "profession, trade, or vocation" includes every possible line of human effort. The amendment would exempt everything that was made by a stock gambler or a gambler in the wheat pit. It would exempt——

Mr. WILLIAMS. If the Senator will pardon me, there would be one thing, and one alone, that would not be exempt under it, and that would be an inheritance or a legacy. The idea of taxing inheritances and legacies has much soundness in it, as distinguished from income which one acquires by his own labor; but that is to be reached by an inheritance and legacy tax and is reached in nearly all countries in that way. That would be about all that would be exempt under that amendment, and inheritances and legacies are already quite generally taxed.

Mr. BRANDEGEE. Mr. President, what I said was that the amendment exempts absolutely everything that a man makes for himself. Of course, it would not exempt a legacy which somebody else made for him and gave to him. If a man's occupation or vocation—for vocation means nothing but a calling—if his calling or occupation were that of a financier it would exempt everything he made by underwriting and by financial operations in the course of a year that would be the product of his effort. Nothing can be imagined that a man can busy himself about with a view of profit which the amendment as drawn would not utterly exempt. I know it is the intention of the Senator from South Dakota not to seek to do that, but simply to impose a different rate of taxation.

In addition to what I have already said, it occurs to me that it is not, and probably would not be, the perfectly simple question that at first blush it may appear to be, to wit, to arrive at a proper differentiation of the various merits of the different kinds of professions, trades, and vocations, in order to ascertain at what rate they should be taxed. The country doctor works hard and makes very little compared with his efforts, and the efforts of the clergyman are more or less of a philanthropic character and he generally gets low pay. Many people would want to tax them at a lower rate than they would tax the income of the great corporation lawyer or of the financier.

So that even the products of the individual efforts of various men among themselves might, in the opinion of a legislative committee and of Congress, require various shadings of taxation. Whether there could be an agreement ultimately about a matter of that intricate character I do not know; but I am quite willing, although I do not suppose the committee would care to enter upon the investigation now—I am quite willing at the proper time to vote for the resolution requesting the committee to consider the question, and I will do so without any intention of being offensive to the committee or of asking them to consider anything out of their jurisdiction or that ought not to be considered at this time. I assume, however, that the committee would not have either the time or the inclination, perhaps, to take it up now, but simply to show the interest that I take in the subject and as an evidence of some degree of faith at least in the idea of trying to see if anything possibly could be evolved out of it, I should be happy to vote for the resolution introduced by the Senator from South Dakota.

Mr. LODGE. Mr. President, the income tax as a mode of taxation is well recognized by all economists as open to two very serious objections. One is the failure to differentiate between unearned and earned incomes. The other is the ease of evasion. It is one of the easiest taxes in the world to evade. It falls with absolute certainty very largely on trustees, who have to make returns, who in a majority of cases represent women and children, and who can not evade such a tax. The evasions of the income tax in England to-day are very large. The tax also falls with full force upon the people who are the most honest in the community, while the shifty and dishonest escape. In a word, it has all the objections that arise to any tax which in its nature is easy of evasion.

The other objection about earned and unearned incomes can be partially met, if not wholly overcome. At least it is so thought in England, and I am not sure that we may not be able to learn something from considering the systems of taxation of other countries, although my friend the Senator from Mississippi does not seem to think so. Speaking broadly, I believe it may be said that all economists recognize that a tax imposed upon the earning capacity of a community is not theoretically the best tax. It is inferior, for example, to the inheritance tax, which does not place a burden upon earning capacity and is certain of collection, owing to the fact that an inheritance has to pass through probate offices and requires the assent of the Government before it can be distributed.

A burden on the earning capacity of a community is a very serious thing. The earning capacity of a community, which is the motive power of prosperity, is something which it is desirable under every civilized government to encourage. It is not wise to throw too heavy a proportion of the burden upon the earning capacity of any community. The men who draw the load should not be overweighted or disheartened. England has finally met this difficulty in a degree at least by differentiating between the tax derived from earned income and the tax derived from unearned income; and I think this point will have to be considered by us if we have adopted the income tax, as I believe we have, for a permanent source of national revenue. I think we must try to make the burden fall more heavily upon the income which is not earned than upon that which is earned, and the income, so called, which is not earned is very large, so large that there need be no fear of an insufficient return.

Mr. WILLIAMS. Does not the Senator momentarily lose sight of the fact that property is taxed in all the States?

Mr. LODGE. I understand that.

Mr. WILLIAMS. There is another consideration, too. The very people who will evade an income tax are for the most part not those who derive an income from rents or from other property, such as bonds or stocks. Everybody knows what a dividend is, and everybody knows what a rent is; but lawyers, doctors, and other people have uncertain incomes known only to themselves, so that there is naturally in the very working of the law when men are not fairly honest—the fairly honest man is going to act the same way in both capacities—already a discrimination against the man who has the property. He has to pay State and county taxes upon his property, so that the man whose property consists in dollars which he earns in a year is the least taxed of all men.

Mr. LODGE. The Senator, of course, understands that I am not advocating the exemption of earned incomes, but only that a heavier burden should rest on the unearned than on the earned income.

Mr. President, there is another question raised by the income tax, as provided for in the bill, which is to my mind far graver than that of differentiating between the earned and the unearned income, and that is, making the exemption limit so high.

I think a high exemption is vicious in principle if it is made for any reason except that at the exemption point you go beyond the possibility of profitable collection. In theory, at least, everybody should pay his share of taxes, especially in a popular government. I know well the great objection to making a lower exemption than that established by this bill. The fatal objection is that to do so is unpopular. But I believe in the long run it will be seen that it has the best and only enduring grounds of popularity, which is justice.

Of course the men of small earnings and small incomes pay taxes to the Government of the United States in the indirect form, and one great objection to indirect taxes, so excellent economically, is that people do not realize fully that they are paying them. The tax which the man pays over the counter is the one he realizes. When he walks up to the taxgatherer in his town and finds that his rate has been raised he takes an interest in the administration of the business of the town. But as to the indirect tax, the tax that the man pays on alcoholic liquors, if he chooses to drink, or the tax that he pays on tobacco, are not only indirect but voluntary taxes, and he does not know, as a matter of fact, whether he pays them or not. He pays them, but he does not feel them. The difference, moreover, between what one man consumes and what another consumes in the way of food and drink and tobacco and raiment is not very great, for the power of consumption of the individual can not vary very largely, and he who lives and chooses most expensively pays most in taxation. But this tax which we are now imposing for the first time is a direct tax; and this country has hardly known direct taxes except in times of war.

A man who has $1,000 income per annum and pays, as proposed by the Senator from North Dakota, $1 a year as income tax to the United States Government is not, I think, bearing too heavy a burden, but he is realizing what his Government is doing, which is of enormous value and makes him thereby a better citizen. He realizes that he is responsible for the Government as never before. There has been no greater misfortune to this country than what we have seen in every great city, and that is that the men who pay no taxes spend the

revenues. The result is inevitably extravagance and corruption. Men are always ready to spend some one else's money.

Look at the history of our municipal governments. They are not a subject of pride to any American. But if every man in those communities had paid his tax, if it was only 5 cents, and if he knew that if the money was extravagantly spent it might be 10 cents, he would have had more care about spending the public money, about the men he elected, and about the administration of his local government. One great reason for the extravagance we have had in our National Government, in my judgment, arises from the fact that almost all our revenues have been raised by indirect taxation.

I want the man with $1,000 to pay his dollar or his 50 cents or his 25 cents, if you wish—I do not care how small you make it—so that he may keep his eye on the National Government in Washington. If you make the man contribute out of his pocket to the maintenance of the Government and know that he is doing so, he will take the interest he ought to take. He will watch his Representatives and Senators; he will look at the national appropriations. In my judgment it tends to good government, to greater economy in expenditures, to less waste of money, to the expenditure of money in such a way as to secure the best return. I believe, moreover, that it is in accordance with every sound historic traditional American doctrine that I have ever learned in the history of the country, and I think it is as sound a doctrine now as it ever has been, that every man should pay his share for the support of the Government which he helps to create.

I am not oblivious to the fact that many of those who can best afford to pay have escaped and are escaping their share of taxation. We know that this evil exists everywhere, from our towns to our Nation. But that does not alter the principle that every man, no matter how trifling his contribution, should pay his share of the expense of carrying on the Government that supports and protects him.

This brings me to the other important point in the consideration of the imposition of an income tax. The Senator from Mississippi [Mr. WILLIAMS] said yesterday—and I was extremely glad to hear him say it, because I think it touches a very vital question—that when taxes were imposed simply to take money from a man because he was rich, and for no other reason, the party that would do it would cease to be the Democratic Party and would become a party of communism, and perhaps something worse. It will be an evil day for us when we enter on confiscation of property under the guise of taxation. What we want to do is to raise money for the support of the Government in such a way that we shall make those pay most who can best afford to pay. I know that we are far short of that standard now. But I remember that among the many wise things Mr. Lincoln said was this: That you could find fault with any tax as to its incidence, as to those who escaped it, as to its unfairness, as to its burdensomeness, but that if we stayed talking about it until we got a perfect tax we never should raise any revenue at all.

No tax can be perfect; but it should be the effort of the Government and of the taxing power to impose the tax, if it be an income tax, so as to raise the revenue in the largest proportion from those who can bear it best. But let us beware how we enter upon taxing on the ground that we want to punish somebody because he has money. If he has earned his money improperly and unlawfully, by oppression and extortion, he is a subject for punishment under other laws. That is a question of the method of accumulation, as the Senator from Mississippi said yesterday. But to have the Government undertake, for vindictive reasons, to punish a man simply because he has succeeded and has accumulated property by thrift and intelligence and character, or has inherited it honestly under the law, is entering upon a dangerous path. It would convert this tax from the imposition of a tax to the pillage of a class. That I think is a very dangerous ground to enter upon.

Very rich men, large properties, are no new thing in the world. You have but to turn to the history of Rome at the time when it passed through the form of a republic to the form of an empire and see the enormous properties which were then held by single individuals. You can read of it in Cicero's familiar letters to Atticus, who was one of that class. There were enormous fortunes then; there have been enormous fortunes under every commercial civilization from that day to this. What distinguishes our time is the colossal size of the fortunes which have been accumulated in this country, because we have had the greatest opportunities, larger than exist anywhere else. But huge fortunes—huge beyond anything the world has ever dreamed of hitherto—have in these days been amassed everywhere. Undoubtedly they constitute, in some ways, a menace to free, orderly, constitutional government. They are often grossly abused. They arouse evil passions. Undoubtedly they are a danger. But the danger is one that is not going to be successfully met by allowing a spirit of vindictiveness to enter in, and to say broadly that a man, whether innocent or guilty, must be punished through the taxing power of the Government for merely possessing property. Make him bear his fair burden, by all means. I would put the burden especially heavily on the income that is unearned; but I would not set a class apart and say they are to be pillaged, their property is to be confiscated, in order to gain, perhaps, for myself or my party a brief and fleeting popularity. We shall thereby come too near to that which proved the downfall of the Roman Republic, when the one cry for the man who chose to raise himself above his fellows and to gain great power was to promise, "Panem et circenses." The man who would give the bread and the games was the man who attained power, and it is easy to drive men to this if they have to choose between that and ruin.

I do not want to see that class built up in this country. I do not want to see its members forced into that position by being hunted like wild beasts. I want, just so far as intelligence and ingenuity can do it, to impose this direct tax so that it will fall most heavily on those best able to bear the burden; but I want it done in order to raise revenue for the Government of the United States and for no other purpose. I do not want it done in a spirit of hatred to a man merely because he happens to have money.

I know the present tone is that any man who has money is prima facie a criminal and that any man who has been successful in any way falls under suspicion. But there has been in this country for many years, and there is to-day, in my judgment, a great deal of honest success honestly won. There have been great fortunes honestly made and wisely and benevolently distributed. I do not believe Americans of that class are all gone. I think this country is full of honest men making large incomes in business or at the bar or elsewhere, and making them honestly and fairly. I think they are entitled to the fruits of their success, and they as a rule bear the burden of their duty to the community generously and well. It will be an ill day for this country when we raise the cry that success honestly won is to be punished; that money honestly gained is the badge of criminality; and that we are to go to the people of the United States in the search for popularity, and say to them: "Follow us. We will plunder the people who have got the money. You shall spend it, and it will not cost you anything." That is a dangerous cry to raise in any country, for when you unchain that force you can not tell where it will stop, and in your eagerness to destroy property and rob men of hope and ambition you may bring your boasted civilization down in ruins about you.

This Government was founded in justice and in belief in the individual man. Of that Thomas Jefferson was the great apostle. I believe we are trenching on very dangerous ground when we assume that if a man has succeeded, if a man has accumulated wealth honestly and fairly, therefore he ought to be brought to the block and punished for the mere fact that his brains and his character and his work and his self-control have enabled him to rise.

Success used to be held out as the prize for every American boy. Now we are holding out to him the suggestion that he can not reach success without pursuing devious ways, and that if he does attain success, if he does amass a fortune, he is to be an object of suspicion to all his fellow men.

Let us impose our tax in the best and justest way we can. Let us do it in such a way as to make those pay most who can best pay. Let us do it to raise revenue. Do not let us do it in order to gratify hatred and malice and all uncharitableness.

Mr. BORAH. Mr. President, in my judgment if anyone should undertake to organize a movement in this country for the purpose of attacking a man simply because he was successful, or discriminating against a man or men because they were successful or because they were the possessors of wealth, he would find himself in a very short time the most unpopular man in America.

I do not know, from my limited reading, of a country in the world where there is so little feeling against a man simply because he possesses wealth as in this country. I do not know of any country where the people are so tolerant of success, and are always so willing and anxious to congratulate a neighbor or a friend upon his success, as here in this country.

I do not believe it is popular in this country to take the opposite view, and to assail wealth because of its existence, or to assail a man because he has been successful in gathering wealth. I think the Senator from Massachusetts has pictured a condition which does not exist in this country at all. He has painted in lurid and fretful outlines a scene wholly un-

known to American life. I do not believe there is any feeling upon the part of the people which would encourage men to gather about one who is following the course he has indicated men might be following now for the purpose of securing popularity. But every time there is an effort upon the part of anyone to bring the men of means and of great wealth within the rule that obtains with reference to all other men, the cry of the demagogue is raised, and the men who undertake to do it are immediately assailed as appealing to popular prejudice. It is an old cry. Unable to meet the arguments of justice, unable to confute the logic of equity, they draw their phylacteries about them and proudly withdraw from the demagogue and the shouting populace.

The effort to bring into subjection and under the rule and control of the law those who have obtained such power and such influence as, in many instances, to enable them to ignore it, immediately leads many people to suppose that it is being done solely for the purpose of popularity rather than for the purpose of enforcing the law as to all men, rich or poor, great or small. I do not know of anyone who has ever advocated an income tax or an exemption upon the theory of punishment, or upon the theory that some should pay taxes and others should not. The men who have given their lives to the study of this question, who do not deal with the populace, who do not deal with popular prejudice, who ask no favors at their hands, who seek no votes from them, will be found to sustain the position of those who advocate a reasonable exemption in an income-tax law.

I challenge the Senator from Massachusetts and those who view the matter as he does to point me to a single great publicist or writer upon this question who does not bear out the statement I have made.

The income tax had its impetus not with men seeking popular favor but in a thorough, conscientious, persistent investigation upon the part of those who have gone to the sources of information and have studied the statistics which are available from almost all the countries of the world. I could quote many, but I am going to quote a short paragraph from one who occupies a most eminent position in one of the great universities of this country, and who, I presume, cares as little about popular favor as any man who could possibly be called into this discussion.

He says:

> Under existing conditions in the United States the burdens of taxation, taking them all in all, are becoming unequally distributed, and the wealthier classes are bearing a gradually smaller share of the public burden. Something is needed to restore the equilibrium; and that something can scarcely take any form except that of an income tax.

In the State which the Senator who has just spoken has the honor to so ably represent it was discovered a few years ago that the assessed valuation of all the real estate amounted to $2,000,000,000, while the valuation of all the personal property in the State, according to the assessment, amounted to only $500,000,000. In other words, as I stated yesterday, this class of property escapes taxation in spite of all the ingenuity of man to bring it within the law, and an honest effort to make it bear its proportion of the burden is not to be whistled down the wind by the assertion that those who advocate it are appealing to popular prejudice. I seek to punish no man because of his wealth. I honor the man whose genius, coupled with honesty, gathers well of this world's goods. But I would count myself recreant to the public service if I did not seek to so shape the laws of my country as to mete out to him the same obligations as rest upon the unsuccessful or the penniless. It is not demagoguery; it is the fundamental but forgotten principle upon which this Government was established.

Two or three very large estates have been probated within the last three months in a single city of the United States, one of which was probated for $87,000,000 and the other two for $100,000,000 each. What percentage of their income or what rate of tax did they pay to the National Government? Every man should pay a tax to his government. Of course he should. To state that is to state a rule as fundamental as the Ten Commandments. But does not every man in this country pay a tax? Does anybody escape it?

The only logic of the Senator's argument is finally to accept direct taxation, exclusively and alone, as a means of raising taxes. When we shall adopt a system of direct taxation, exclusively and alone, I will join the Senator from Massachusetts in putting the exemptions down to a very low figure. But I insist now, as I have insisted before, that so long as we raise seven-eighths of our revenue by another method and only one-eighth by direct taxation, it can not be said that any man is escaping taxation. Neither can it be said that in giving a reasonable exemption we are exempting a class, for that class supposed to be exempted have already paid more than their proportion.

The Senator cited the case of city governments as extravagant. Do they have a system of indirect taxes to any extent? Who operates and runs, and who is responsible for, these extravagant city governments? Take the city government of New York. Notwithstanding its great extravagance, as exhibited by the figures which I read in the New York Sun a few days ago, does anybody suppose that the men who are really managing the business affairs of New York are the poor people upon the streets, to whom the Senator refers as the authors of extravagance? Certainly not. The men who are operating and managing the business affairs of the city of New York are, in a large measure, of the same class of men for whose protection the Senator pathetically pleads.

There is sufficient incentive to economy upon the part of the man of ordinary means in this country by reason of the taxes he already pays. Where does the demand for increased expenditures come from? Has any Senator undertaken to satisfy himself from whence arise these demands for increased expenditures? Do they come from the man upon the street or upon the farm or in the shop or the man of limited means? When there is a cry to raise salaries or to build embassies or to increase expenditures in one way or another, from whence comes the support? The great support comes, nine times out of ten, from those whose properties are paying practically no tax at all to the National Government. There is little disposition to extravagance upon the part of the masses. They are not asking for such expenditures, nor have they shown any disposition to increase expenditures and put the burden of the increase upon the wealth of the country. I have seen no disposition of men of small means to vote taxes. I have always noticed that in matters of local expenditure, in matters of new taxes, in matters of creating new offices, that the general voter is very slow. Extravagant demands have come from those who feel that however great the burden they will pay no more out of their abundance than their neighbor pays out of his less fortunate allowance.

It is not necessary, Mr. President, to add something more to the burden of the man in the field or shop in order to interest him in the question of economy. The effort of those who have been here advocating the proposition of a reasonable exemption and a reasonable graduation is based not upon the design to punish, but is based upon the principle which is the foundation of all just taxation, that men shall pay in proportion to their ability to pay.

Will the Senator from Massachusetts or anyone else undertake to demonstrate to me that the wealth of this country is paying as much tax to the support of the National Government in proportion to its property and its income as the one who it is said we are appealing to for popular favor? Will they take the statistics of the past which may be gathered and undertake to show that he is not now meeting more than his proportion of heavy burden? Until they do that their mouths are closed and they are estopped from challenging the good faith of those who advocate a reasonable exemption in this kind of taxation. After a man pays the tax which he must pay on consumption, then give him a chance to clothe and educate his family and meet the obligations of citizenship and preparation of those dependent upon him for citizenship before you add any additional tax. That is the basis of this exemption, and it is fair and just to all and toward all.

Mr. WILLIAMS. Mr. President, I want to express the hope that we may now go on with the bill. This is a purely academical discussion which has been taking place between the Senator from Massachusetts and the Senator from Idaho, and is especially academical at this time. There may be great merit in the argument of the Senator from Massachusetts some of these days, but not now. The reason why there is not great merit in it now is because while it taxes these people with indirect taxes of various sorts these things should be left for some day, when the good day comes—the golden day—when there will be no taxes upon consumption at all except upon whisky and tobacco and wine and beer and things that are considered harmful, and no import duties at all except countervailing duties to offset them, and when everybody will pay in proportion to his income. It might then be well to reduce the exemption or to do away with it, so that a man with $5,000 would pay his $50, or whatever it was, and the man with $500 would pay his $5, and the man with $50 would pay his 5 cents, and the man who got but 5 cents would pay his 1 cent, and call it the people's pence, like Peter's pence, and let everybody pay his share.

But it is absolutely academical at this moment. It is not doing any good to carrying on the legislation of the Senate, and it can not be even intelligently discussed until we get into an entirely changed condition of things. So I ask that we may go on with the bill.

Mr. WARREN. Mr. President, I wish to ask a question, not of an academical nature at all. And if the Senator is not too much in haste I want to say, before I ask the question, that I am one of those who voted for a constitutional amendment to enable the Government, without fear of former constitutional limitations, to provide for an income tax. I was one of those who then believed and I am one of those who now believe that an income tax should be altogether, or, if not altogether, pretty much retained as a reserve resource. I am one of those who believe that customs duties and the internal-revenue taxes ought to support the ordinary expenses of the Government. I think they should be so levied as to harm nobody and to protect and encourage industrial pursuits, in order to enrich and not impoverish the people; and the matter of an income tax could be lying back in reserve, with the necessary machinery ready, if you please, so that in time of war or great stress we could immediately, as the Senator from Mississippi has said, enlarge and provide the necessary additional revenue.

But there are some questions which arise in my mind; it may be because I have not yet sufficient grasp of the bill. I recall with regret that one of the matters which has been before this body and before the other body ever since I can remember, and then some, is the election of Senators by the people. Finally, after years and years of struggle and debate and profound consideration, we legislated, and almost within the twinkling of an eye we are in the midst of trouble in the matter of knowing how to apply that measure to existing circumstances or knowing exactly what the law means. There is an eminent man rapping at the door here for a seat in the Senate; he is worthy in every way; and the live question is, Under what circumstances and under what interpretation of the law can we permit him to take his seat? With that election-of-Senators law which we have just enacted with so much care and which caused us to listen hours and hours to constitutional speeches upon the matter, we are hung up in the air by a seemingly simple matter following a happening that may occur again at any moment in the death of a Senator and the filling of a vacancy.

Now, we may meet some very awkward situations in doing real business under this proposed income-tax tariff law unless we most carefully perfect the measure before its passage. The other day I happened to be doing some business with the president of a trust company. My connection with that company had been where they had acted as trustee for bondholders of certain small corporations which others, with me, had bonded, and while it did not come up in the nature of a complaint the president nonchalantly asserted that unless the pending bill is changed in some manner he feared it would be very awkward in its application to trust companies and to those who have the distribution of money collected for the coupons on bonds, and so forth. For instance, as he said, his company collected or paid a great many coupons on bonded companies.

Mr. WILLIAMS. Bonds payable to bearer?

Mr. WARREN. Sometimes they are registered and sometimes they are payable to bearer. They are issued or indorsed both ways, as the Senator knows. A man up in Washington or Oregon sends down the coupons here, and, as we understand the law, we shall be compelled to enter upon our books collections as an account, with names of all collections and payments, and if we do that it means 30 or 40 or more extra clerks; we must then notify the parties in interest that the money is there. Then we shall have to have proof from him that it is duly accounted for in the way of an income tax, or else we shall have to subtract and pay here and enter up accordingly on our books.

Have the Senator and those who work with him thoroughly canvassed that situation? They did very much for it. I do not say they have not, but I want to know whether they have.

Mr. WILLIAMS. I think we have.

Mr. WARREN. I want to say to the Senator that it seems to me the way to correctly figure out a bill is just along a proposition of that kind of how it will apply absolutely in actual business. All of us remember the old farmer saying that "the proof of the pudding is in chewing the string."

The Senator can see what an awkward situation there might be if somebody sends down a little package of coupons to be collected and intended to be applied to paying an obligation of his own, and he had to be hung up until he could go before some United States officer and make proper affidavit and have proper papers executed and sent down here at an expense perhaps that would eat up a large portion of that income.

Mr. GALLINGER. I will ask the Senator if coupons of that nature are not usually sent through the banks?

Mr. WARREN. They are often, but in that case I can hardly see how it makes any difference. Somebody must be responsible to the Government. It may be the trust company in New York, it may be in Chicago, or it may be nearer home. I am only raising this inquiry for the purpose of ascertaining whether that side of the equation has been fully considered. If not, I hope it may be.

Mr. WILLIAMS. In answer I will say to the Senator it gave us a great deal of trouble and it gave those in the House a great deal of trouble. We were faced with the question of being certain that they got the revenue, and we were also faced with the question of deducting at the source, which is the cause of all the trouble, of course. We adopted that system because we discovered that in Great Britain and elsewhere without raising the rate it increased the revenue very much, and also there were less evasions under it. We adopted generally the principle of deducting at the source.

Mr. WARREN. The Senator will see that if it should be necessary for the banks and the trust companies to carry a line of accounts open, purposely for this, and employ more help for doing this business, it would be a larger thing than a great inconvenience to the owners of such securities, because the collecting agents would seek compensation for extra services.

Mr. WILLIAMS. That is very true; it will increase the amount of bookkeeping by paying at the source. It is unfortunate, but it can not be avoided.

Mr. WARREN. Can the Senator avoid all the delay?

Mr. WILLIAMS. The tax is paid at the source. Then if the taxpayer is not subject to the tax he makes a statement to that effect before the tax is actually paid if he chooses, or the company could make it for him, or if it is paid before any statement is made, then he becomes entitled to a refund of it upon a proper showing in another clause of the bill. Of course, you can not have an income-tax law upon the principle of deduction at the source without throwing some extra burdens upon the people who pay the tax and have the people make a statement to the other people as to what they have done. To that extent the complaint is just, but it is unavoidable.

Mr. WARREN. I think I see in this explanation of the Senator a good deal of delay and a good deal of expense. Is the Senator quite sure that the subcommittee has exhausted all its resources in reducing that to a plainer mode of handling?

Mr. WILLIAMS. Yes.

Mr. WARREN. Because if everyone must wait until the proper proof is presented and all these records are to be made, I can see that on a 4 per cent bond or a 3½ or 5 per cent bond a very large percentage is going to come out of the income, and it goes not into the Government's hands, but into expenses.

Mr. WILLIAMS. I was trying to find the provision here. I can not lay my hand upon it right now, but when we do get to it I will explain it fully to the Senator. I should like to read it now.

Mr. WARREN. I hope the Senator may, before the bill passes, give it further consideration.

Mr. WILLIAMS. That matter has had our full consideration. We had hearings upon it which lasted quite awhile. It gave me personally a good deal of trouble and embarrassment, and it did to the committee.

Mr. SHERMAN. Mr. President, I appreciate the difficulty in which the Senator from Mississippi finds himself in framing what would be entirely satisfactory to those interested in the trustees, and I think he is entirely correct in saying that in many of these things a workable or more perfected form of the law will not be had until we have tried it a while. I am not disposed to be at all critical in the matter.

Mr. WILLIAMS. Just one word. The Senator from Wyoming will find what I was referring to is in paragraph D of this section.

Mr. WARREN. I understand.

Mr. WILLIAMS. It begins on page 172, at line 17. I think if the Senator will read that entire paragraph he will find the matter about as well taken care of as is possible with the limited ability of anybody to entirely avoid the absolute impossibility of throwing some extra labor upon those who must make the statements in order to pay at the source.

Mr. WARREN. I notice with pleasure this change from the original bill, but I hope the Senator will again still further elucidate it.

Mr. SHERMAN. Mr. President, the discussion originally began on the amendment offered by the Senator from South Dakota [Mr. CRAWFORD], as I remember. I wish to recur to that for a brief moment. The criticism in the application of the principle embodied in that amendment is that it taxes the thrifty and exempts the prodigal. The same criticism I am aware, and I know it is one of the difficulties, would apply to the savings of any active person. If the savings be out of property income there would be at the end of the year a surplus derived from that income, and that in turn invested would become principal; the principal would produce in turn income, and so on, indefinitely. The earnings of any person from any occupation or

profession would, if not spent in like manner, become principal. If by professional effort any person should earn a given sum annually and he spends half of it, he saves the other half. The half so saved in turn becomes principal. That principal is property. The savings from the income by professional effort or by any form of skilled labor or unskilled by hand becomes property. At the end of any given period that saving is a principal, and any income derived from it is an income from property, not an income from the earning capacity or the personal ability of the taxpayer in question. So, in every instance it comes finally to the same result. I can see no criticism in the application of the principle embodied in this amendment because of that reason.

I believe in the classification that we have to make it is a just classification to distinguish between those who have incomes from fixed investments of property and those who have incomes from earning capacity. That is the point involved in the amendment offered by the Senator from South Dakota. That distinguishing difference consists in the source of the income. The one is a stable, fixed investment in the form of property, either in the form of credits or in the form of tangible property, either merchandise or realty, or any of the different forms that personalty assumes. Those investments that produce an income from a property source I think are properly to be distinguished from those arising from the earning capacity of the individual. A public officer, an employee, one who earns by professional ability, an architect, a musician, a lawyer, a doctor of divinity, a doctor of medicine, all are earning because of their personal ability.

I think the distinguishing line is as indicated in the amendment. When there is a perfect Government tax rate it will be very low or reduced to a point where none of us will complain. Every taxpayer is an involuntary victim of the necessities of government. That will continue until the time when government has become so perfected that a large portion of our expenses will be rendered unnecessary. That is a good way off. We will have to perfect human nature, and that is so far away that it is purely an academic question.

Here are the percentages on the estimates made by the report of the Senate Committee on Finance. If postal receipts be excluded, it is some $716,000,000 at present on the estimate and on the actual collection of revenue. The greater part of the Government income is from internal revenue and is in the nature of a direct tax, because it operates directly to increase the cost of the commodity. The internal revenue on this estimate will be 41 per cent of the total income for the fiscal year ending the 30th day of June, 1914. Our customs duties will be 37 per cent, our income-tax revenue will be not quite 10 per cent. The corporation tax will be 5 per cent. Our income from the sales of public lands and from miscellaneous sources of all kinds constitute the other 7 per cent, making a total of 100 per cent, aggregating about $716,000,000. The rest of the $996,810,000 of the governmental income of the next fiscal year consists of $280,000,000 estimated postal receipts.

So under this proposed plan of taxation there are now on the estimate barely 10 per cent to be raised by an income tax. That is a very small part. I think you might justly increase within certain limits of the classification the taxes to be levied, and you might decrease appropriately the income derived entirely from the earning capacity or, in other words, the personal efforts of the ability and industry of those who earn the income.

Mr. WILLIAMS. Now, Mr. President, let us go on with the bill.

The PRESIDING OFFICER. The reading will proceed.

The SECRETARY. The bill has been read down to the middle of line 13, on page 167, where the committee proposes the following amendment. On page 167, line 13, before the word "bequest," to insert the word "gift," so as to read:

B. That, subject only to such exemptions and deductions as are hereinafter allowed, the net income of a taxable person shall include gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, or sales or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from interest, rent, dividends, securities, or the transaction of any lawful business carried on for gain or profit, or gains or profits and income derived from any source whatever, including the income from but not the value of property acquired by gift, bequest, devise, or descent.

The amendment was agreed to.

The next amendment was, on page 167, line 18, after the word "contract," to insert "or upon surrender of the contract," so as to make the proviso read:

Provided, That the proceeds of life insurance policies paid upon the death of the person insured or payments made by or credited to the insured, on life insurance, endowment, or annuity contracts, upon the return thereof to the insured at the maturity of the term mentioned in the contract, or upon surrender of the contract, shall not be included as income.

Mr. CUMMINS. Mr. President, before we go further with the bill I want to make a suggestion to the Senator from Mississippi [Mr. WILLIAMS]. I make it through the medium of an amendment, which I now propose.

I move that all that part of paragraph marked "B," under subdivision 2, on page 167, down to and including the word "descent," in line 13, be stricken out.

I want the Senator from Mississippi, the committee, and, indeed, all the Senators on the other side of the Chamber to understand that I offer this amendment in a friendly spirit. I am quite as much in favor of the income tax as any of them can possibly be.

It ought not to be forgotten, however—and I am now speaking to the lawyers on the other side; I want to make a lawyer's argument and not to raise at this moment any question of policy—that the authority of the Congress of the United States with regard to this subject is not unlimited. Our power is not like the power which Great Britain exercises over the subject. It is not like the power which the several States exercise over the subject. It is a power granted in article 16 of the Constitution, and I will read it:

Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

Our authority is to levy a tax upon incomes. I take it that every lawyer will agree with me in the conclusion that we can not levy under this amendment a tax upon anything but an income. I assume that every lawyer will agree with me that we can not legislatively interpret the meaning of the word "income." That is purely a judicial matter. We can not enlarge the meaning of the word "income." We need not levy our tax upon the entire income. We may levy it upon part of an income, but we can not levy it upon anything but an income; and what is an income must be determined by the courts of the country when the question is submitted to them.

I think there can be no controversy with regard to those propositions. I am very anxious that when this bill shall have passed it may be effective, that its operation may not be suspended or delayed through a resort to legal tribunals.

Mr. FLETCHER. Mr. President——

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

Mr. CUMMINS. I yield to the Senator.

Mr. FLETCHER. I should like to inquire whether the Senator means to state that Congress can not by statute define what shall be regarded as an income tax?

Mr. CUMMINS. I do not think so, Mr. President. The word "income" had a well-defined meaning before the amendment of the Constitution was adopted. It has been defined in all the courts of this country. When the people of the country granted to Congress the right to levy a tax on incomes, that right was granted with reference to the legal meaning and interpretation of the word "income" as it was then or as it might thereafter be defined or understood in legal procedure. If we could call anything income that we pleased, we could obliterate all the distinction between income and principal. Whenever this law comes to be tested in the courts of the country, it will be found that the courts will undertake to declare whether the thing upon which we levy the tax is income or whether it is something else, and therefore we ought to be in the highest degree careful in endeavoring to interpret the Constitution through a statutory enactment.

Now, let us see. Subdivision 1 says:

That there shall be levied, assessed, collected, and paid annually upon the entire net income—

And so forth.

That is a declaration which is fair, which is constitutional, which is complete. If we wanted to do it, we could levy a tax upon the gross income. The bill chooses to levy the tax upon the net income; and that is entirely within our power, because, as I said before, we can diminish the operation of the Constitution; that is to say, we need not levy the tax upon the entire income; but we can not enlarge the operation of the Constitution and levy a tax upon anything but income. Therefore, it seems to me that the bill ought to continue throughout its length in the language with which it begins, namely, that we levy a tax upon the entire net income of the citizens of the United States who fall within the provisions of the bill.

With these observations in view, I want to read that part of the bill which my amendment seeks to eliminate, on page 167. It is as follows:

B. That, subject only to such exemptions and deductions as are hereinafter allowed, the net income of a taxable person shall include gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, or sales or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from

interest, rent, dividends, securities, or the transaction of any lawful business carried on for gain or profit, or gains or profits and income derived from any source whatever, including the income from but not the value of property acquired by gift, bequest, devise, or descent.

Mr. WILLIAMS. Mr. President, I want to offer an amendment at that point to cure a defect. After the word "sales," in line 6, there ought to be a comma.

Mr. CUMMINS. I do not, of course, found my amendment upon any omission of that kind.

Mr. WILLIAMS. I merely want first to perfect the language, if there is no objection.

Mr. BRANDEGEE. Right at that point—if the Senator from Iowa will pardon me—if the Senator from Mississippi inserts a comma after the word "sales," he does not intend——

Mr. WILLIAMS. It reads, "businesses, trade, commerce, or sales"——

Mr. BRANDEGEE. It reads "sales or dealings in property."

Mr. WILLIAMS. It refers to profits derived from any sort of sales—profits derived from "sales or dealings in property."

Mr. BRANDEGEE. Why have the words "in property" after "dealings" and not after "sales"?

Mr. CUMMINS. Mr. President, I hope the amendment suggested by the Senator from Mississippi will be allowed without any controversy, because my amendment is not involved nor does it concern that correction.

The VICE PRESIDENT. By unanimous consent, then, the amendment proposed by the Senator from Mississippi will be agreed to.

Mr. CUMMINS. It will be observed that here is an attempt, Mr. President, to define the meaning of the word "income," to describe its scope, to determine its effect. I reiterate that the attempt will be ineffective and may be exceedingly dangerous.

Great Britain might employ such words as these in modification or explanation or enlargement of the word "income," because Great Britain has no constitutional restriction upon her Parliament. A State might use these words with perfect propriety, because a State has a right to include whatever she likes within the meaning of the word "income"; but the Congress has no right to employ them, because the Congress can not affect the meaning of the word "income" by any legislation whatsoever. The people have granted us the power to levy a tax on incomes, and it will always be a judicial question as to whether a particular thing is income or whether it is principal.

Mr. LEWIS. Mr. President, knowing the Senator from Iowa to be an excellent lawyer, will he give me his views on this point: Does the Senator contend that the word "income," therefore, as stated in the Constitution, must be construed to mean what it meant and was understood to mean at the date of its adoption as part of the Constitution?

Mr. CUMMINS. I do not so say. What I have said is, however, that it is not for Congress to interpret what it means; it is for the courts of the country to say, either at this time or at any other time, what it means. If it were within the power of Congress to enlarge the meaning of the word "income," it could, as I suggested a moment ago, obliterate all difference between income and principal, and obviously the people of this country did not intend to give to Congress the power to levy a direct tax upon all the property of this country without apportionment.

Mr. LEWIS. Then, assuming that the matter would have to be determined finally by the court, which concession we all must make, would the Senator's legal mind revert to the theory that the court, then, would have a right to define the word "income" to mean whatever was understood judicially by "income" at the date of the adoption of this act?

Mr. CUMMINS. I do not accept that at all, because it is entirely beyond the domain of Congress. In 1789, I believe, the people of this country gave Congress the power to regulate commerce among the States. It is not within the power of Congress to say what commerce is. "Commerce" may mean a very different thing now as compared with what it meant in 1789; it has broadened with the times; the instrumentalities have changed with the course of years; but Congress can not make a thing commerce. The court must declare whether a particular regulation is a regulation of commerce, and in so declaring it defines for the time being what commerce is.

Why, Mr. President, should Congress attempt to do more than is declared in the first section of the proposed bill? It is right; it is comprehensible; it embraces everything—no, I will withdraw that; it does not embrace the full power of Congress, because Congress can levy a tax upon gross incomes if it likes; it may diminish the extent of its taxing power or not exercise it all; it may exclude certain things from the taxing power that it might include; but it can not change the character of the taxation; and when it is declared in the first lines of this bill that a tax is levied upon the entire net income of all the citizens of this country, we have exercised all the power we have. If we desire to limit ourselves to net income, we can not define "net income"; we can not say what shall be included in income and what shall not be included in income. We are only preparing ourselves for delay, for disappointment, and possible defeat if we endeavor to interpret the meaning of the word "income."

Mr. SHIVELY. Mr. President——

The PRESIDING OFFICER (Mr. CHILTON in the chair). Does the Senator from Iowa yield to the Senator from Indiana?

Mr. CUMMINS. I do.

Mr. SHIVELY. I can readily agree with the Senator that the courts will finally give a definition of "income"; but that does not prevent Congress from limiting the application of the word in legislation.

Mr. CUMMINS. Not at all. I have so said.

Mr. SHIVELY. If the Senator will observe the words "except as hereinafter provided" in the first subdivision of this section——

Mr. CUMMINS. I have not sought to strike out any part of the limitations save the gift, devise, bequest, or descent, and I do not think there is any man in America, were it not for what precedes those words, who would contend or could contend that a gift or devise or bequest of property or property coming to one by descent is income. I never heard of it being so construed, and it is not possible that it could be so construed. It would not have been put in there were it not for the attempted enlargement of the word "income" contained in the previous part of the paragraph.

Mr. WILLIAMS. How does the Senator think that is an attempt to enlarge it? Tell us specifically to what words the Senator refers.

Mr. CUMMINS. Mr. President, if it has not that effect, or attempted effect, it can have none. It is certainly not an attempt to limit or to restrict the meaning of the word "income"; and if it has not the effect or if it is not thought or if it was not in the mind of the person who drew it to enlarge the meaning of the word "income," then the draftsman of the bill has offended against the first principles of legislation by incorporating language that is absolutely meaningless.

Mr. WILLIAMS. Now, if the Senator will pardon me a moment——

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

Mr. CUMMINS. I do.

Mr. WILLIAMS. It was not the intent there to enlarge or to stretch the meaning of the words "net income," which is the income referred to here, and not gross income at all.

Mr. CUMMINS. I have not said it was gross income.

Mr. WILLIAMS. The Congress in undertaking to specify what it proposes to tax does undertake neither to enlarge nor to restrict the meaning of the words "net income," but to define their meaning for the purposes of this bill, for the purposes of this taxation. It may be that a court might come to the conclusion that Congress had wrongfully defined the term. If so, the court will correct the definition, and if the court corrects the definition, then this bill will be to that extent altered or changed; but the contention is that this is a correct definition of the articles which, under a bill seeking to tax net incomes, will be taxed. The question I asked the Senator was in what respect he thinks that this definition enlarges the meaning of the words "net income" or restricts them, either?

Mr. CUMMINS. Mr. President, as I remarked before, if these words qualifying, modifying, and explanatory are not intended either to enlarge or to restrict, they are entirely useless. I think, however, with deference——

Mr. WILLIAMS. Does the Senator think it is useless in a tax bill to try to define the thing you propose to tax?

Mr. CUMMINS. Mr. President, I do think in this instance that it is worse than useless; I think it is dangerous, and I will proceed to show why.

Mr. SIMMONS. Mr. President——

The VICE PRESIDENT. Does the Senator from Iowa yield to the Senator from North Carolina?

Mr. CUMMINS. I do.

Mr. SIMMONS. I readily agree with the Senator in his contention that we have no authority to tax anything except income, and I readily agree with him that, in the last analysis, the court must decide what is income and what is not income; but before the court can get jurisdiction of that question, there must be a levy; there must be an assessment; there must be an attempt to collect. I can see no other way in which the court could possibly acquire jurisdiction. So that before the matter can ever reach the court there must be some one who will decide the question of what is "income."

Mr. WILLIAMS. And describe the property to be levied upon.

Mr. SIMMONS. And, as the Senator from Mississippi very properly says, describe the property to be levied upon. The Senator from Iowa says, as I understand him, that it is not competent for the Congress to define what is income and what is not income. Then, the only conclusion from the Senator's argument is that we ought simply to levy a tax against incomes and stop. Suppose we should do that, who then can decide the question of what is income and what is not income, seeing that that question must be decided before the court can acquire the jurisdiction to determine the question of whether or not the thing taxed is income?

Are we to leave it to the officers of the taxing branch of the Government to determine what is income? Are we ourselves to hold that we have not the authority to define the word, but that the officer of the law has the authority to define and determine it? It seems to me that is what the Senator's argument would lead to. I may be mistaken about that; he may have some way in his mind by which we could reach a determination of what is income otherwise than through the definition of Congress or through the decision of the officer of the law, but I can not myself see how we would select the things upon which this tax is to operate except through a definition of the word "income" by Congress, or a definition of the meaning of that word by some subordinate officer of the law.

Mr. CUMMINS. Mr. President, the difficulty with the Senator from North Carolina is that he does not distinguish between a requirement in the law for a return to an administrative officer of the various matters included within this paragraph and a declaration that the income shall include these things.

Mr. SIMMONS. Yes; I do. The Senator is mistaken.

Mr. CUMMINS. Mr. President, there is a very great difference. I agree with the Senator from North Carolina that it is quite within the province of Congress to require the citizen to make a return, including his gains and profits and income from his sales and dealings of all kinds. That is entirely within our power; but it is not within our power to declare that these things shall be included in the income.

Mr. SIMMONS. The Senator is mistaken when he says I have not considered that. I have considered that as the third alternative. If Congress has not the power to decide, if the officers of the law charged with the enforcement of the law have not the power to determine, then the only other person who could have the power is the man who is to pay the tax. Would not the Senator's position, therefore, force him into the attitude of maintaining that the proper person, in the first instance, to determine what is income and what is not income is the man who pays the tax, and, next, the court?

Mr. CUMMINS. I do not think so, Mr. President, nor do I think my suggestion leads to that result. I have no doubt about the power of Congress in requiring those who are to make return to include their gains and profits and their dealings of all kinds, and from that return I have no doubt that it is within our power to give to the taxing officer the right to discover the amount of the net income, and, if his judgment be wrong, the taxpayer can question it, and finally the court must determine it. That is not what is sought to be done in this paragraph. We are attempting to define what "net income" is and of what it is composed, and what we may lawfully tax. But I want to read now what this means——

Mr. SIMMONS. Before the Senator leaves that point, does not the Senator think that it would be a great deal better for us, in the first instance, to indicate as best we can what the legislative judgment is as to what constitutes "income" and require the taxpayer to account for his income upon all of those particular things? If we make a mistake and include in our designation of what is "income" something which is not income, but is property, then, of course, the court would come in and settle that controversy. Does not the Senator think that is better than to leave it to the taxpayer to determine in the first instance what is "income," and then leave it to the officer to correct him if he should make an error, and bring it into court in that way?

Mr. CUMMINS. Mr. President, I do not think it is better. There is just this difference between the two courses: The course suggested by the Senator from North Carolina will end, if Congress makes a mistake, in the declaration that the law is unconstitutional and of no effect.

Mr. SIMMONS. Why, Mr. President——

Mr. CUMMINS. Just a moment. The other course will end in a correction of the report of the individual taxpayer, and the law will continue to be enforced according to the Constitution.

Mr. STERLING. Mr. President——

The VICE PRESIDENT. Does the Senator from Iowa yield to the Senator from North Dakota?

Mr. CUMMINS. I do.

Mr. STERLING. I should like to ask the Senator from Iowa if the courts, in construing the word "income," would not take into consideration the usual and ordinary signification of that word?

Mr. CUMMINS. I have no doubt of that, Mr. President.

Mr. STERLING. And the court would have recourse to a standard dictionary, would it not, in construing that word?

Mr. CUMMINS. Unquestionably; and not only so, but to the common acceptation of the word and to the judicial opinions, of which there have been very many, in which the word has been considered.

Mr. STERLING. If in the definition of the word "income" as given in a standard dictionary the words "gains and profits" are also given as synonymous with the term "income" would there be anything wrong in the use of those words in the section to which the Senator refers?

Mr. CUMMINS. I do not think there would be, although they would be wholly unnecessary. But, of course, the point I make has no reference to the use of the words "gains and profits."

Mr. CHILTON. Mr. President, will the Senator allow me?

The VICE PRESIDENT. Does the Senator from Iowa yield to the Senator from West Virginia?

Mr. CUMMINS. I do.

Mr. CHILTON. I agree with the Senator that the Congress can not add to nor take from the word "income"; but it seems to me the Senator has done injustice to the very language of the bill.

Mr. CUMMINS. I have not pointed out my objection to the clause I am seeking to strike out, for I have not been permitted to advance that far.

Mr. CHILTON. Well, so far as the Senator has gone. Let me offer this suggestion: On page 167, beginning in line 3, it is provided that the "income derived from salaries, wages," and so forth, shall be included. It has to be income before it can be taxed, no matter how it is derived. We could say that only income from salaries or income from property or income from interest should be taxed. We have simply mentioned certain things; but they must be income before they can be taxed. We use the very language of the Constitution.

Mr. CUMMINS. Of course, if that be true, Mr. President, then it is simply saying in another way that these words are entirely meaningless and useless; and I have never favored the introduction of words that can have no other effect than to confuse, even though they have no material bearing. The Senator from West Virginia [Mr. CHILTON], however, is not, as I view it, quite accurate when he says that "income" as used in this paragraph necessarily means such income as gains and profits, in view of what is subsequently found in the paragraph.

Now, allow me to read a little further:

> Or from professions, vocations, businesses, trade, commerce, or sales or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property.

I was led to offer this amendment largely on account of a colloquy I had with the Senator from Mississippi [Mr. WILLIAMS] the other day, who seems to have become indifferent and who does not regard the matter as worthy of his attention or presence. I recall, however, the Senate to the colloquy that I mentioned a moment ago. I asked this question:

> The Senator from Mississippi must certainly understand what I am trying to say. If applied to a general business, in which purchases and sales take place and gains and profits are reckoned, I can very well understand that the Senator from Mississippi is right, under the language of this bill. But suppose 10 years ago I had bought a horse for $900, and this year I had sold him for $1,000, what would I do in the way of making a return?
>
> Mr. WILLIAMS. I will tell the Senator precisely what he would do.
>
> Mr. CUMMINS. I mean, what would other men do?
>
> Mr. WILLIAMS. I know; but what I mean is precisely what the Senator would do, or precisely what he ought to do. He bought the horse 10 years ago and sold him this year for a thousand dollars. That thousand dollars is a part of the Senator's receipts for this year, and being a part of his receipts, that much will go in as part of his receipts, and from it would be deducted his disbursements and his exemptions and various other things.
>
> Mr. CUMMINS. Would the price I paid for the horse originally be deducted?
>
> Mr. WILLIAMS. No; because it was not a part of the transactions in that year; but if the Senator turned around and bought another horse that year, it would be deducted.
>
> Mr. CUMMINS. Mr. President, the answer of the Senator from Mississippi has disclosed very clearly the weakness that I have been attempting to point out.

I am not sure, Mr. President, and I do not assert, that these modifying, qualifying, and explaining phrases will render the effort of Congress unavailing. I do not assert that they must necessarily be construed as unconstitutional. I do assert, however, that we are putting the law in a jeopardy which may easily be avoided. If the answer made by the Senator from

Mississippi to the question I propounded day before yesterday is correct, then the law is unconstitutional.

Then there is an effort here to convert what is obviously principal into income, and it was because the distinguished Senator from Mississippi held that view of the paragraph that I introduced the amendment that is now pending.

I do not intend to continue the argument further. I will only say that I believe the words that are used here can perform no useful function. I believe that in describing what is to be taxed the words "net income" are as comprehensive and as complete as any words that can be found in the English language, and therefore that we ought not to imperil or hazard the bill by attempting to emphasize them or to explain them or to enlarge them.

If the Senate will return to the paragraph immediately before this—and it is typical of two other provisions in the bill, I think—it will be seen that there is an effort to declare that undivided profits in a corporation shall be reckoned as income of the shareholders. In my opinion that can not be accomplished in any such way. The undivided profits are not the property of the shareholder, from a legal standpoint. Although he may be in part the equitable owner of all the property of the corporation, he is no more the equitable owner of the undivided profits than he is the equitable owner of a share in all the property of the corporation. I agree that there ought to be some way of reaching these undivided profits; but just so surely as you attempt here to broaden the meaning of the word "income" so as to make it include property that belongs to a corporation which it might distribute to its shareholders, but which it has not distributed, you will imperil the bill and meet disaster when you come to enforce it.

I pass now from the legal question to another subject that is closely associated with it, and I reach a question of policy. I come to the part of the committee amendment on page 169. I grant that here we are within the field of complete authority, so far as Congress is concerned. Congress can deduct from an income, in order to reach a taxable part of the income, anything it pleases. It can deduct a quarter of it, or it can deduct a half of it, or it can deduct all of it. This, therefore, does not relate to the constitutional authority of Congress.

I read from the committee amendment:

That in computing net income for the purpose of the normal tax there shall be allowed as deductions: First, the necessary expenses actually paid in carrying on any business, not including personal, living, or family expenses.

I have no objection to that, although I think there will be vast difference of opinion in regard to the construction or meaning of the word "personal."

Second, all interest paid within the year by a taxable person on indebtedness.

I have objection to that. This whole paragraph is framed upon the idea that the capital of the individual must be protected intact, must be preserved; that he can use any part of the income he likes for the repair of the capital with which he entered the year and have it deducted from the income. The principle is wrong. It ought not to be in any income-tax law. It is not a part of the purpose of an income-tax law to guarantee that the capital shall be maintained. If the capital is lost, there will be a diminished income the following year upon which to levy the tax; but the taxable income should not be depleted by withdrawing from it a sum sufficient to maintain the capital, unless the income arose out of a business in which the capital was employed.

Third, all national, State, county, school, and municipal taxes paid within the year, not including those assessed against local benefits.

There can be no objection at all to that deduction.

Fourth, losses actually sustained during the year, incurred in trade or arising from fires, storms, or shipwreck, and not compensated for by insurance or otherwise.

This deduction is partly right and partly wrong—partly so wrong that it is utterly indefensible.

Suppose I earned $20,000 a year in the practice of my profession, and during the same year I speculated upon the Board of Trade in Chicago and lost $20,000, I would not taxable at all under this provision.

Mr. WILLIAMS. How does the Senator arrive at that conclusion?

Mr. CUMMINS. Simply because I have lost $20,000 in trade, and it would not be compensated for by insurance.

Mr. WILLIAMS. Does the Senator call speculation in futures trade?

Mr. CUMMINS. Certainly it is trade. Why, the very organization through which it is carried on is called a board of trade. It is trade in the most literal sense of the word.

Mr. WILLIAMS. It is no more trade than betting on a horse race.

Mr. CUMMINS. I say it is trade. The Senator from Mississippi says it is not. But suppose I had bought 10,000 bushels of oats from a farmer and had lost $5,000 on it. That would be trade, would it not? I was not including the speculating or the gambling idea in the suggestion I made a moment ago. But it is trade as pure and simple as any other form of business; and yet because I had lost a part of my capital in doing a business that was entirely disconnected with the profession out of which I earned my income, I could use a part of my income to repair my capital and deduct it in my return.

There is no equity in it. There is no reason in it. There is no principle in it. As it seems to me, we ought to confine losses in business or in trade to the losses in the business or the trade out of which the profit or the income is made; and we ought not to permit an income derived from one source to be used for the purpose of paying either debts or losses incurred in some entirely distinct business or trade.

Mr. BRANDEGEE. Mr. President——

The VICE PRESIDENT. Does the Senator from Iowa yield to the Senator from Connecticut?

Mr. CUMMINS. I do.

Mr. BRANDEGEE. I wish to ask the Senator whether, in his opinion, the profits of speculation would be a part of the income which should be taxed?

Mr. CUMMINS. Undoubtedly; unquestionably.

Mr. BRANDEGEE. Then why should not the losses incurred be deducted?

Mr. CUMMINS. There is no more doubt about it than that two and two make four. I assume that the Senator from Mississippi was not serious in the comment he made.

Mr. BRANDEGEE. My inquiry is, If the profits made from the speculation which the Senator from Mississippi thinks would not be trade would be a legitimate object of taxation as income, why would not the losses incurred in the same speculation be a legitimate deduction from income?

Mr. CUMMINS. They should be if the business, being reckoned up at the end of the year, shows a profit. Then it becomes a part of the income and should be taxed. If it shows a loss, there would be no income arising from it, and it should not be taxed. But it is proposed here that if one is engaged in that sporadic business in which so many Americans are engaged, and in which so large a part of our incomes are dissipated, he can take the profit or the income he has from some other vocation or profession or trade and use that profit or income to make good his losses in the speculation or trade to which we have referred.

Mr. GALLINGER. Mr. President, if the Senator will permit me, departing from the argument as to the purchase of stocks in the market, how would it be if a man legitimately bought, say, railroad stocks? As an illustration, not long ago the stock of the Boston & Maine Railroad Co. was selling at over 200 a share. To-day it is selling at 63. Suppose a man bought a thousand shares of it at the former price, would the loss he sustained be a proper deduction?

Mr. CUMMINS. Undoubtedly, if it could be called "in trade." The general purpose of this paragraph is to insure the capital of the person, so that at the end of the year the capital will be as great as it was at the beginning of the year. There are exceptions to that here; but that is the general idea of the paragraph, and it is a false idea in the preparation of an income-tax law.

Mr. SHIVELY. If his losses were actually greater than his gains, there would be no net income.

Mr. CUMMINS. Yes; that is true. That is, if a man had $100,000 of property at the beginning of the year and it was destroyed in some fashion or other, or if he embarked it in a venture of any kind and lost that property, even though he had an income of $100,000 from some other source, he could take the income from the other source and repair his losses of capital and have no income. That is the purpose of the paragraph. If you think that is right, you have expressed it very well.

Mr. SHIVELY. Let us take the illustration the Senator has just used. Suppose he has $100,000, half of which is embarked in buying and selling grain and the other half in buying and selling live stock. Suppose in the grain business he loses $5,000 during the year and in the live-stock business he gains $5,000 during the year. Would the Senator say there was any net income?

Mr. CUMMINS. I think there would not be.

Mr. SHIVELY. Then I do not understand the objection of the Senator to this particular clause of the bill.

Mr. CUMMINS. The objection is this: In the case just put by the Senator from Indiana, here is a business in which a man is engaged. At the end of the year it is to be ascertained

whether there is any net profit growing out of the business. Of course all the losses are considered, all the gains are considered, and the result determines whether there is any income from the business. But I put the case again: Suppose I am not in business at all, but I have $100,000 a year coming to me from the rent of property. I take $100,000 and invest it in a mine in Utah, and during the year I reach the conclusion that the mine is not worth anything. I deduct that $100,000 from the $100,000 of rent I have received, and the result is that I am a man without an income. If that is the real purpose of the framers of the bill it is exceedingly well phrased.

Mr. SHIVELY. You would be without a net income for that year, of course.

Mr. CUMMINS. I did not suppose it was intended to do anything of the kind. In the case I have just put I did not suppose it was intended to guarantee a man's capital and to repair all the losses he might sustain in any venture into which he might enter. I do not believe that is a fair foundation for an income-tax law.

Mr. SHIVELY. But, Mr. President——

Mr. CUMMINS. If the Senator will permit me to proceed just a little bit further, he will see the full scope of my views.

Mr. SHIVELY. Very well.

Mr. CUMMINS. We then come to debts:

Fifth, debts due to the taxpayer actually ascertained to be worthless and charged off within the year.

Suppose 10 years ago a man had given me his note for $100,000. I had thought it to be good. I had carried it as a part of my principal, a part of my property. This year I have an income of $100,000 arising from the practice of the law or from rents or anything else. I discover this year that the man who made that note, who has had nothing to do with my income, who has not contributed in any way toward it, who is not in any way interested in the business out of which my income arises, has become bankrupt and that he never will pay the note. I am permitted by this bill to deduct $100,000 from my income, and again I am a man without an income, although I had just as much income as though the man had remained solvent. I have simply lost a part of my capital or property, and it is proposed here to repair that loss by deducting its amount from my income. I do not mean now, of course, that it is repaired in the sense of being made good, but it is repaired to the extent of not making me pay a tax upon the income.

Mr. WILLIAMS. Will the Senator permit me to make a suggestion?

Mr. CUMMINS. Certainly.

Mr. WILLIAMS. A part of the Senator's confusion of thought grows out of the fact that he forgets that in all bookkeeping there is a debit side and a credit side. A man would have counted among his credits this note that he thought was good, and that would go in as a part of his gross income. Now, mind you, I say "gross income." Then he ascertains that it is worthless, and this provision permits him to charge it off and deduct it; that is all.

It is just like the Senator's horse illustration the other day, which proceeded upon the idea that a man did not keep any books, and that, when he got a thousand dollars for a horse, in rendering his return for the receipts of $1,000 he did not also debit himself with the fact that he had lost the horse. It was the profit involved in the horse trade that was taxable, not the total receipts for the horse.

Here you are making a serious argument that we should not permit a man to strike off a worthless note after he has made return of all his bills payable as a part of his income, or the things that constitute a part of his income. You are really altogether losing sight of the fact that there is another side to the ledger.

Mr. CUMMINS. No, Mr. President; I am not. I am not in the least confused about bookkeeping.

Mr. WILLIAMS. Any man would have a right to strike off that note if he had put it on the other side of the ledger.

Mr. CUMMINS. Of course profits do not consist in the difference between the amount of assets and the amount of liabilities. A man might have $100,000 of assets and but $10,000 of liabilities, and not have any income at all. The Senator from Mississippi apparently forgets the way in which people arrive at their profits or their losses.

Mr. GALLINGER. Mr. President, I had supposed, from a casual reading of the bill, that the loss had to be sustained during the year; but I infer from what the Senator says that it may date back.

Mr. CUMMINS. Oh, it may date back indefinitely.

Mr. GALLINGER. As an illustration, a man abandons his profession, as I abandoned mine, and turned over my books to a collector, and he reports to me during the next year that he finds $6,000 uncollectible. Would that enable me to come here and say that I had sustained that loss under the terms of the bill?

Mr. CUMMINS. Certainly.

Mr. GALLINGER. I think that is extraordinary.

Mr. CUMMINS. The difficulty is, if I may again remind the Senator from Mississippi about bookkeeping, that this provision has in view men who are carrying on a business such as merchandising or banking or manufacturing. Those are the conditions which are really covered, and accurately covered. I have not a word of objection to the bill as it relates to such enterprises. But when you come to apply the bill to nine men out of ten who will be called upon to pay a tax under it, it is not accurately adjusted to their affairs, nor is it expressed so as to do justice to their affairs. When you come to profits and losses and incomes, you can not group all the individuals of this country under one rule. You must make some allowance for the differences which exist in the way in which they earn their incomes and in the way in which they expend their incomes.

I proceed one step further:

Sixth. A reasonable allowance for the exhaustion, wear, and tear of property arising out of its use or employment in the business.

That is another effort, of course, to maintain the capital intact; but see what endless difficulty you will confront in its administration. A farmer in my own State, we will say, has an income of more than $3,000. In making up his account he must determine, if he can, to what degree the soil which he is cultivating has been exhausted, and somebody will have to make him an allowance for the depreciation caused by the exhaustion of the soil. That is true with regard to every kind of property. While there is a certain justice in doing that and it will be done among concerns which do keep an account of depreciation, and which do charge up every year a fair percentage of depreciation, and in that way reach the amount of their profits, so that they will have no difficulty about it, the ordinary man will find it impossible to apply this clause to his affairs. There ought to be a better considered provision to take care of the great multitude of the people, nine-tenths of the people who must pay and will pay the tax under this bill when it becomes a law.

Of course, as to mines a maximum of depreciation has been fixed. I have no objection at all to that. But I could stand here and mention a hundred instances of depreciation which it will be utterly impossible to ascertain or apply under this provision.

I say this without the least feeling against the provision. I would vote for it just as it is if I had to, and it were separated from the rest of the bill, so strongly am I in favor of levying duties upon incomes. But when we are beginning this system it seems to me we ought to begin it in the best possible way.

I shall have something more to say at a later time with regard to the latter part of this paragraph when we come to consider the payment of the tax at its source. I am in favor of that principle; but there are a great many things here that it seems to me will make the bill utterly unworkable, and instead of simplifying the collection of the tax they will complicate it, and possibly entirely defeat it.

There is one thing in regard to this provision that I might as well say while I am on my feet, and it constitutes the real fundamental defect in the bill, so far as principle is concerned. I will point it out now, and at a later time I will point it out again. The bill provides, substantially, that those who have incomes of less than $3,000 shall not pay a tax. I am satisfied at the present time with that limit, and I would not vote to reduce it at this time. But there is incorporated here a provision for taxing the earnings of corporations. I have no objection to that, but the men and women in this country who have an income of less than $3,000 a year and who derive all of it or a part of it from the dividends of corporations which are taxed are compelled to pay the income tax exactly as though they had an income of more than $3,000 a year. It is unjust, it is unequal, and it ought in some way to be remedied. We have assumed here that a man might well take his first $3,000 and use it for the general purposes of life, for the training and education both of himself and family; but with respect to every one of them who derive a part of their income or all of it from the dividends of corporations they are compelled to pay this tax, are they not?

Mr. WILLIAMS. How are they compelled to pay it?

Mr. CUMMINS. They are compelled to pay it because the corporation pays the tax on the entire income of the corporation, and that reduces the dividends paid to these people by just the amount paid in the way of the income tax.

Mr. WILLIAMS. Mr. President, the Senator's answer to my question has disclosed what I wanted to bring out. In other words, instead of meaning that the bill taxes those people, he means that the corporations are able to shift their tax.

Mr. CUMMINS. So they are.

Mr. WILLIAMS. I should like to know if there is a tax in the world, except a poll tax, that can not be shifted.

Mr. CUMMINS. The Senator from Mississippi has misunderstood me. Of course, the corporation very often passes on its entire tax. That unfortunately is true. I do not know of any way in which to prevent it. I am not complaining at this moment of the tax that is passed on. I am complaining of this. As an illustration, suppose I stand with an income of less than $3,000. It is the policy of this bill that my income shall not be diminished by a tax levied by the General Government. If I have that income as an employee of the corporation, it goes free. It is not affected by any tax levied upon the property of the corporation. I get my pay and I am permitted to spend it in the way that seems to me wise. Now, suppose that I have an income of $2,900 from the same corporation, derived as dividends on stocks that I hold in the corporation, the 1 per cent is taken from that dividend and I receive just 1 per cent less than I would have received if the tax had not been levied.

Mr. WILLIAMS. It is taken from the dividends by whom?

Mr. CUMMINS. It is taken from the dividends necessarily by the corporation. It is first taken from the corporation by the Government. Here is $100,000——

Mr. WILLIAMS. That is just what I said a moment ago. The corporation shifts the tax.

Mr. CUMMINS. No; here is $100.000 which the corporation has earned and is applicable to the payment of dividends. We will suppose that it is the entire net income of the corporation. It is to be distributed among its stockholders, but before it is distributed 1 per cent is deducted and paid to the Government of the United States, and therefore 1 per cent less than would have been paid to me is paid to me. It is all that I am entitled to.

Now, I make no objection to the payment on the part of the corporation, but I do say we ought to provide some way in which the man who has an income of less than $3,000 should not bear that tax.

Mr. WILLIAMS. How can you do that?

Mr. CUMMINS. There are two or three ways in which it can be done. It can be done either through segregation by the corporation under proper provisions, or it can be done by adding to the bill a paragraph that, in the case of every man whose income is derived in whole or in part from the dividends of a taxed corporation and is less than $3,000, upon application to the Government the Government will reimburse him for the deduction that has been made from his part of the earnings of the corporation. It can be done in either of those ways, and will be if justice prevails.

But I had not intended to enter upon that subject. I have it very much at heart, and when we reach that part of the bill I intend, if I can, to offer an amendment that will set forth my views with regard to that particular matter.

Mr. SUTHERLAND. Before the Senator leaves the matter of a corporation tax, I wish to say that I think perhaps most of the States in the Union in one form or another impose a tax upon corporations as such. It is not always measured by the income. Sometimes it is measured by the amount of the capital stock. It is measured in various ways; but it is a special tax upon the corporation, because it is recognized that the right to do business in corporate form is a very valuable right and that it is more beneficial to the stockholder in the great majority of cases to have an investment in corporate form than it is to have it in some individual form.

Now, I ask the Senator whether or not a tax of this kind, although it is imposed by the General Government, can not be justified upon the same theory that it is a tax upon the franchise of the corporation, upon the right of the stockholders to do business in a corporate form, which is a valuable right.

Mr. CUMMINS. I am not complaining of the tax upon the corporation; I have always thought there was a better way of reaching that result; but I am not concerning myself about it now. I want to remind the Senator from Utah that we establish a policy here that the men who get less than $3,000 ought not to pay any part of this income tax either nominally or actually. That proceeds upon the theory that they can make better use of their incomes than to pay the expenses of the Government of the United States. Now, it does not make any difference whether the incomes are derived from the stocks of corporations or whether they are derived from salaries from corporations, the men who get the money need the money just the same.

Mr. SUTHERLAND. Mr. President, there is this difference: The man who derives an income from an investment in a corporation gets it with less effort than he does if he has to work for it. He has the advantage of having his money in a corporation which has certainly very valuable rights. For example, he has one of the most valuable rights, namely, that he can not be sued beyond the extent of his investment in the corporation. He can not be held responsible for the debts of the corporation as he could be if it were a partnership or in some other form of association.

Mr. CUMMINS. I think that consideration does not enter the question I am discussing at all. Suppose one man gets $2,850, we will say, as dividends from a corporation. Another man gets $2,900 as rents from real estate. Out of the former there has been taken 1 per cent. Out of the latter there is taken nothing. I assume that the labor of receiving it is not much greater in one case than in the other. It matters not that the corporation may have a valuable franchise; however valuable it was, its dividends did not result in giving this particular man more than $3,000, and therefore he ought to be able to hold his place among the untaxed.

I have consumed much more time than I intended, Mr. President, and I apologize for it. I rose simply to suggest the desirability of removing from this paragraph some dangers which I think are in it and the removal of which would not weaken it in the slightest degree, but rather fortify it against assaults that may hereafter be made upon it.

Mr. SUTHERLAND. Before the Senator takes his seat, he referred to another paragraph, and if I understand it I entirely agree with the Senator's position. It is the clause on page 169:

Second, all interest paid within the year by a taxable person on indebtedness.

If I understand that, it would result in this sort of a situation: Here is one man, for example, who has purchased a home. He has given a mortgage upon it for its price or a large part of it, and is paying, let us say, $1,000 in interest. Under this bill that would be deducted from his net income. But if his neighbor has rented a house, and instead of virtually paying what the first-named man does in the form of interest he pays directly $1,000 rent. He gets no deduction whatever, and yet the situation of the two is to all intents and purposes precisely the same. One has made a purchase and is paying interest which virtually amounts to rent. The other has not made a purchase, but pays the rent direct. One gets the exemption and the other does not.

Mr. CUMMINS. I think the conclusion of the Senator from Utah is correct. It is simply another illustration of the fact that the bill was composed to meet the conditions of organized business, such as merchants and manufacturers, and is not well fitted to meet the situation as it actually exists.

I do not intend to call for the yeas and nays upon my amendment. I know how futile it would be, and I have no desire to inconvenience the Senate. I offered it because I wanted to make my own position in the matter entirely clear.

Mr. WILLIAMS. Mr. President, I will ask for a vote.

The VICE PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from Iowa [Mr. CUMMINS].

The amendment was rejected.

The VICE PRESIDENT. The question is on agreeing to the amendment of the committee, on page 167, lines 18 and 19, inserting the words "or upon surrender of the contract."

The amendment was agreed to.

The next amendment of the committee was, on page 167, after line 19, to strike out the following:

That in computing net income for the purpose of the normal tax there shall be allowed as deductions the necessary expenses actually incurred in carrying on any business, not including personal, living, or family expenses; all interest accrued and payable within the year by a taxable person on indebtedness; all National, State, county, school, and municipal taxes accrued within the year, not including those assessed against local benefits; losses actually sustained during the year, incurred in trade or arising from fires, storms, or shipwreck, and not compensated for by insurance or otherwise; debts actually ascertained to be worthless and charged off during the year; also a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business, but no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made; no deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate; the amount of income received or payable from any source at which the tax upon such income, which is or will become due, under the provisions of this section, has been withheld for payment at the source in the manner hereinafter provided, shall be deducted; but in all cases where the tax upon the annual gains, profits, and incomes of a person is required to be withheld and paid at the source as hereinafter provided, if such annual income, except that derived from interest on corporate or United States indebtedness, does not exceed the rate of $4,000 per annum, or if the same is uncertain, indefinite, or irregular in the amount or time

during which it shall have accrued, and is not fixed or determinable, the same shall be included in estimating net annual income to be embraced in a personal return; also the amount received as dividends upon the stock, or from the net earnings of any corporation, joint-stock company, association, or insurance company which is taxable upon its net income as hereinafter provided shall be deducted.

And in lieu thereof to insert:

That in computing net income for the purpose of the normal tax there shall be allowed as deductions: First, the necessary expenses actually paid in carrying on any business, not including personal, living, or family expenses; second, all interest paid within the year by a taxable person on indebtedness; third, all national, State, county, school, and municipal taxes paid within the year, not including those assessed against local benefits; fourth, losses actually sustained during the year, incurred in trade or arising from fires, storms, or shipwreck, and not compensated for by insurance or otherwise; fifth, debts due to the taxpayer actually ascertained to be worthless and charged off within the year; sixth, a reasonable allowance for the exhaustion, wear, and tear of property arising out of its use or employment in the business, not to exceed, in the case of mines, 5 per cent of the gross value at the mine of the output for the year for which the computation is made: *Provided*, That no deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments made to increase the value of any property or estate; seventh, the amount received as dividends upon the stock or from the net earnings of any corporation, joint-stock company, association, or insurance company which is taxable upon its net income as hereinafter provided; eighth, the amount of income, the tax upon which has been paid or withheld from payment at the source, under the provisions of this section: *Provided*, That whenever the tax upon the income of a person is required to be withheld and paid at the source as hereinafter required, if such annual income does not exceed the sum of $3,000 or is not fixed or certain or is indefinite or irregular as to amount or time of accrual, the same shall not be deducted in the personal return of such person.

Mr. STERLING. Mr. President, I do not rise to propose any amendment, but simply to make a suggestion called out by a statement made by the Senator from Iowa [Mr. CUMMINS]. It is in regard to the exemptions on account of losses incurred in trade, and so forth. The question was raised as to whether it would include losses in speculation on a board of trade. I am inclined to think that under the definition of "trade" it would include losses thus sustained, and the question is whether we want to exempt losses thus incurred.

I call the attention of the Senator from Mississippi simply to the definition of the word "trade," so that he will see how the proposition stands:

Trade comprehends every species of exchange or dealing, either in the produce of land, in manufactures, in bills, or in money; but it is chiefly used to denote the barter or purchase and sale of goods, wares, and merchandise, either by wholesale or retail.

And so forth.

It seems to me that under this very broad and comprehensive definition it might include trade on a board of trade and the exemption would pertain to a loss sustained on a board of trade.

If the language could be qualified by some such expression as "losses incurred in legitimate and ordinary trade pursued by the party," or equivalent words, it seems to me that it would be better than the broad expression used.

Mr. WILLIAMS. Mr. President, all net income comes from a comparison of receipts and losses. There can be no other way of arriving at a net income except by comparing gains and losses. If a man lost a certain amount of money during the year, no matter how he lost it, he ought not to be compelled to put it in as a part of what he still has. If two men bet upon a horse race, so far as that is concerned, during the year and one of them lost $100 and the other gained $100, the man who has the hundred dollars would have to take heed of it in computing his net income, and the man who lost it would take heed of the loss in computing his net income. So far as I can see, you can not arrive at net income except by taking what comes in and what goes out.

Mr. STERLING. But, if the Senator will permit me——

Mr. WILLIAMS. Allow me to add just this: I think this language would have been more easily understood if, instead of using the word "deductions" here, we had used what it really means, namely, that in computing net income for the purpose of the normal taxpayer he shall be allowed to return such and such things. I think that is where the confusion comes in, if I understand at what the Senator is aiming.

Mr. STERLING. This is the way in which it occurred to me: Here is a man who, under the protection of the Government, has an enormous income for which he would be taxable under this proposed law, but he squanders all that income or more in speculation, in illegitimate trade on the board of trade. The question in my mind is whether he ought to have the privilege of deducting from his income the losses thus sustained.

Mr. WILLIAMS. Mr. President, a squandered income is no income. If it was squandered during the year of the computation, it does not make any difference how the man lost it. Take this sort of a case, for example: The Senator from South Dakota and the senior Senator from Iowa seem to be worried a good deal about the losses of a man in something else. The Senator from South Dakota seems to have the idea in his mind that if a man was both a farmer and a lawyer he ought to keep two separate income accounts, and that what he lost as a farmer ought not to be charged up against what he gained as a lawyer, or vice versa, as well as I could understand him; and he seems to be very much worried about a part of a man's capital, if it were lost, being permitted to be charged off.

Now, take this sort of a case: I am practicing law, let us say, and I get $10,000 during the year from that practice, and during the same year I lose $5,000 in my agricultural pursuits. My net income, therefore, so far as that is concerned, is $5,000. Suppose that my house, which is worth $5,000, burned down; suppose the house burned by no fault of mine; that I had no insurance upon it; and I take my $5,000 and pay it out during that identical year to build a new house. If all three of these things happen in the same year, I have no net income at all; nor ought I to be charged with any.

Mr. STERLING. Mr. President, I grant that in the case supposed by the Senator from Mississippi he should not be charged with any net income, because his losses were sustained in a legitimate business—in a commendable business. But in the other case the loss has not been sustained in that kind of business at all; but, whether a man having earned $10,000 as a lawyer or as a physician, should be allowed to offset against or deduct from that income of $10,000 that which he has lost in speculation on a board of trade, is the question.

Mr. WILLIAMS. Mr. President, the object of this bill is to tax a man's net income; that is to say, what he has at the end of the year after deducting from his receipts his expenditures or losses. It is not to reform men's moral characters; that is not the object of the bill at all. The tax is not levied for the purpose of restraining people from betting on horse races or upon "futures," but the tax is framed for the purpose of making a man pay upon his net income, his actual profit during the year. The law does not care where he got it from, so far as the tax is concerned, although the law may very properly care in another way.

Mr. STERLING. If the Senator will permit me, suppose a man has made $10,000 legitimately in a legitimate business or profession; the inspector or collector knows that; and a tax is levied because of that income, or it is attempted to be levied, and the man says, "I lost $10,000 in a poker game," what then?

Mr. WILLIAMS. Suppose, in other words, that at the time the computation of his tax takes place he has not a red cent of profit or income during that year, no matter how it occurred?

Mr. SMOOT. Some one must have won what the other man lost in the poker game.

Mr. WILLIAMS. By the way, it is suggested to me that one man has gained what the other has lost, and that the winner might be taxed on his winnings, so the Government would not lose anything.

Mr. WEEKS. Mr. President, I should like to ask the Senator from Mississippi to give me his opinion on a case which I will put to him. Suppose a man has a hundred thousand dollars in stocks, which are worth par; that they are selling at that price; and a dividend of 5 per cent is paid on them; in other words, he gets $5,000 income from his investment, he earns $5,000 from his personal efforts during the year, and his income is $10,000 for that year; then suppose his stocks depreciate in value $10,000, has he any net income for that year?

Mr. WILLIAMS. I never thought about that, but I do not think that cuts any figure because the depreciation in the value of the stock is not like a depreciation by reason of the wear and tear arising out of the use of property. A man's income would still remain an income regardless of the value of his property. My plantation this year might yield me, say, $3,000, and next year the same plantation might yield me $4,000 or $2,000; my income would be measured by what the plantation yielded me and not by the value of the plantation. Meanwhile the property might go up in value or it might go down in value. That would have nothing to do with the income, nor would the value of your stock in the market have anything to do with the dividends which you receive upon your stock.

While I am talking upon that subject, there is another point that occurs to me, and that is what the Senator from Iowa [Mr. CUMMINS] went over a few moments ago. If the Senator from Iowa can invent any way under the sun of preventing the shifting of taxation, he is the wisest man who has lived since Solon died. The Senator seems to think that you ought to give a bounty to people who have less than $3,000, provided their income comes in the shape of dividends in corporations, because when the corporation was taxed the corporation reduced the dividends. It may be that the corporation did, and it may be that it did not, but I am going to suppose first that it did. Suppose it did shift the tax in that way, do you imagine that the man

who works for a salary for that corporation will not have a part of it shifted on him, too, in the way of not raising his wages as much as they otherwise would have been raised? Do you suppose that the merchant or the lawyer who pays the income tax is not going to make it up somehow in the price of his goods or in the price of his services, if he can do it, if the demand and supply of the market for the goods or for his peculiar sort of ability enable him to do it? And absolutely it is proposed to give the man with less than $3,000 a bounty because a corporation has shifted its tax to him.

Mr. WEEKS. Now, I want to submit an additional inquiry to the Senator from Mississippi, relating to the case which I have already submitted to him, and that is: Suppose at the time those stocks were selling at 10 per cent below what they were selling for the previous year, I sold them for $10,000 less than they were priced at the year before, is that to be deducted from my income?

Mr. WILLIAMS. I think not. That is a mere change of capital and principal from stocks into money.

Mr. WEEKS. It seems to me that it would be deducted.

Mr. WILLIAMS. Do you mean that in casting up your accounts and arriving at your gross income, you do not count that? Of course, you would count it as you would count any money that you got from any source, but you would charge against it also what was regarded as the value of the stock.

Mr. WEEKS. It seems to me, Mr. President, that it would be a shrinkage of my principal; and, under the reading of this bill, I am not sure but what that loss of principal could be deducted against my income, so that there would be no taxes.

Mr. WILLIAMS. Under what clause of the bill? What provision of it do you mean? Does the Senator refer to the depreciation clause?

Mr. WEEKS. Yes.

Mr. WILLIAMS. Oh, no. It says:

Sixth, a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business.

That could not possibly refer to stocks.

Mr. CUMMINS. Mr. President, in response to the suggestion just made by the Senator from Mississippi, let us see how we stand. He says that a man at the end of the year sits down to make up an account to see whether or not he has any net income. If he is a merchant, he takes an inventory of his goods; if they are worth less than they were the year before, they are marked down, and the market value of that property is entered upon the books in order to show whether or not he has made a profit during the year. According to the Senator from Mississippi, the same thing would happen with a lawyer. He sits down at the end of the year and puts on one side of the account all he has taken in, all his profits, and he puts on the other side all his losses. If his losses are to be reckoned in the same way that the merchant's losses are reckoned, then, of course, the depreciation of all the property that he may own, if there be a depreciation, must also be entered upon the books.

That shows, Mr. President, that, while the Senator from Mississippi is right with regard to ascertaining the profits and net income of business, he is not right, and the bill does not adjust itself to the ascertainment of net income of individuals who are not in what is ordinarily known as business.

Mr. WILLIAMS. What is the Senator complaining of—that they can not charge off anything to depreciation account, while the merchant can?

Mr. CUMMINS. I do not think they ought to be permitted to charge off depreciation of their property.

Mr. WILLIAMS. Well, that is a different proposition. I supposed that probably the Senator thought the lawyer also ought to be allowed to do it, and that we also should be allowed to charge the depreciation in our mental faculties, which would be pretty hard to estimate. [Laughter.]

Mr. CUMMINS. I am not. I am speaking against the principle.

Mr. WILLIAMS. I do not know but that the Senator is right about the general idea that no depreciation ought to be allowed to be deducted. There may be something in that suggestion, but it has been almost the uniform policy of all income-tax laws to permit it.

Mr. CUMMINS. I simply want to record my protest against that principle.

Mr. STERLING. I offer the amendment which I send to the desk.

The VICE PRESIDENT. The amendment will be stated.

The SECRETARY. On page 160, line 15, it is proposed to strike out the words "in trade" and insert "by the taxpayer in the pursuit of any ordinary and legitimate trade or business."

Mr. STERLING. If the amendment were adopted, the provision would read:

Losses incurred by the taxpayer in the pursuit of any ordinary and legitimate trade or business.

Mr. WILLIAMS. In other words, you are going to count the man as having money which he has not got, because he has lost it in a way that you do not approve of.

Mr. STERLING. And I think rightly so.

Mr. SMOOT. Mr. President, I should like to ask the Senator what becomes of the man who is a broker and whose whole business is dealing upon the stock exchange? Does the Senator think that he ought to be taxed upon his income; and, if so, should not that man be allowed to deduct whatever loss he may incur in that particular line of business?

Mr. STERLING. I think so, because I think the business of the broker, as a general proposition, is a legitimate business; but the amendment would exclude losses sustained in stock and grain gambling; that is the idea.

Mr. SMOOT. The Senator differentiates, then, between the broker who does nothing else but follow that business and the man who does it "on the side"?

Mr. STERLING. Oh, no. A man may occasionally engage in the brokerage business, and, taking a particular deal, it may be perfectly honest and legitimate; or he may be a regular broker engaged continuously in a business which is legitimate. My only object in suggesting this amendment is to prevent, if it can be done, what might be termed the setting off of a loss in a strictly gambling operation.

Mr. McCUMBER. Let me ask the Senator a question right there. If the successful party in the gambling operation—and I always supposed that what one man loses the other man gains in a straight gambling contract—makes $10,000, would not the Senator charge it up to him as taxable income?

Mr. STERLING. I do not know but that I would; and I do not think there would be any injustice or wrong in doing so.

Mr. McCUMBER. Very well. Then, if the Senator taxes him once upon that, why should he seek to tax that same $10,000 twice, both to the man who lost it and to the man who gained it?

Mr. STERLING. The same supposition might be made in other cases, so far as that is concerned. You do not always avoid double taxation.

The VICE PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from South Dakota [Mr. STERLING].

The amendment was rejected.

The VICE PRESIDENT. The question recurs on the amendment reported by the committee.

The amendment was agreed to.

The reading of the bill was resumed.

The next amendment of the Committee on Finance was, in section 2, page 170, at the beginning of line 22, to strike out the letter "C."; in line 25, after the word "possessions," to strike out "the principal and interest of which are now exempt by law from Federal taxation," so as to read:

That in computing net income under this section there shall be excluded the interest upon the obligations of a State or any political subdivision thereof, and upon the obligations of the United States or its possessions; also the compensation of the present President of the United States during the term for which he has been elected, and of the judges of the supreme and inferior courts of the United States now in office, and the compensation of all officers and employees of a State or any political subdivision thereof.

The amendment was agreed to.

The next amendment was, in section 2, page 171, after line 6, to strike out:

D. That there shall be deducted from the amount of the net income of each of such persons, ascertained as provided herein, the sum of $4,000: *Provided*, That only one deduction of $4,000 shall be made from the aggregate income of all the members of any family composed of one or both parents and one or more minor children, or husband and wife, but if the wife is living permanently apart from her husband she may be taxed independently; but guardians shall be allowed to make deduction in favor of each and every ward, except that in case where two or more wards are comprised in one family and have joint property interests the aggregate deduction in their favor shall not exceed $4,000; and

And insert:

C. That there shall be deducted from the amount of the net income of each of said persons, ascertained as provided herein, the sum of $3,000, plus $1,000 additional if the person making the return be a married man with a wife, living with him and being herself not taxable under the income-tax law, or plus the sum of $1,000 additional if the person making the return be a married woman with a husband living with her and being himself not taxable under the income-tax law; but in no event shall this additional exemption of $1,000 be deducted by both a husband and a wife. If the person making the return shall be a married man or a married woman there shall be an additional exemption of $500 for each minor child living with and dependent upon the taxable parent, but the total exemption on account of children shall not exceed $1,000: *Provided*, That the additional exemption or exemptions for children shall operate only in the case of

one parent in the same family, and that the total exemption on account of children shall apply to a widow or a widower with a minor or dependent child or children: *Provided further*, That where both parents are taxable under this act because of having more than $3,000 of net income each the exemption on account of the children hereinbefore provided for shall not apply to either.

Mr. BRISTOW. I call attention to the words beginning in line 25, on page 171, reading:

Plus the sum of $1,000 additional if the person making the return be a married woman with a husband living with her and being himself not taxable under the income-tax law.

Does that presume that a married woman with an income has a husband whom she has to support and therefore there ought to be an exemption because of that burden upon her?

Mr. WILLIAMS. It presumes that where she has the money she ought to pay the tax. The object of it, Mr. President—not to follow up the form of the Senator's question, which would lead me into digressions—was simply this: The House framed its bill upon the theory that $4,000 was a reasonable amount, in its opinion, for an American family to live upon, with a proper standard of living, and that a sum below that ought not to be taxed. When it came to us in that shape we concluded that that was true if you were going to take the family as a basis. The House bill provided that the husband and wife should be taxed as one. We provide that the man and woman shall be taxed just as if they were two men or two women. Then we give this $1,000 additional to make the family exemption $4,000; but if both husband and wife are taxable, each has an exemption of $3,000 already, and therefore we do not give two taxable persons, being man and wife, in one household the $1,000 additional exemption. They have $6,000, to wit, $3,000 apiece. That is the reason that was put there.

Mr. BRISTOW. I do not think the Senator fully understood just what my objection was.

Mr. WILLIAMS. Possibly not.

Mr. BRISTOW. I believe that if the man has a wife to support the exemption on the married man should be a thousand dollars more than on the unmarried man, but I do not believe the woman ought to have an exemption of a thousand dollars more because she happens to have a husband. I think the husband ought to be able to take care of himself.

Mr. WILLIAMS. I think she needs it a lot more than he does.

Mr. BRISTOW. It seems to me the Senator is encouraging indigent husbands.

Mr. WILLIAMS. No; no more than I am encouraging indigent wives.

Mr. BRISTOW. I do not agree with the proposition announced by the Senator.

Mr. WILLIAMS. My object is to give the family $4,000 in any event where a man and wife are living together as man and wife, but I did not want to give them $7,000. If both of them are taxable persons and each one had a right to an exemption of $3,000, if I had given the additional $1,000 that family would have gotten $7,000 of exemption. In other words, in addition to $3,000 to each as a person, they would have received $1,000 as a family.

Mr. BRISTOW. My view of the matter, I take it, is different from the Senator's view. Where the husband has an income of $4,000 I think no attention should be paid to the income of the wife, I do not care what it is; and if her income is $3,000 I do not believe she ought to have an additional $1,000 exempted because she happens to have a husband. I am opposed to permitting the wife to deduct the extra thousand dollars because of the presumption that she has to support her husband.

Mr. WILLIAMS. We did not put it upon the ground that the presumption was that she had to support her husband, nor did we put the additional exemption of a thousand dollars in the husband's case on the ground that he had to support his wife. We put it upon the ground that a family in any event, if either of them is taxable, ought to have an exemption a thousand dollars greater than a single person not in a family. In other words, we have tried to make the family the basis of the tax.

Mr. BRISTOW. Mr. President, in order to express my views I move to strike out of the amendment on page 171 all of line 25 after the word "law" and the comma, down to and including the word "wife," in line 4, page 172. That will strike out the part of the amendment which permits the wife to deduct from her net income a thousand dollars because she happens to have a husband.

The VICE PRESIDENT. The question is upon agreeing to the amendment proposed by the Senator from Kansas to the amendment of the committee.

The amendment to the amendment was rejected.

Mr. NORRIS. Mr. President, I move to strike out, on page 172, the last two words of line 7 and all of line 8, being the following words:

But the total exemption on account of children shall not exceed $1,000.

I should like to inquire of the Senator from Mississippi why, in the opinion of the committee, the exemption of $500 for each minor child supported by the head of the family, who has the income, should be limited to two? What is the theory of the committee—that the man with two children should be entitled to $500 exemption for each one of them, and the man with three children should not be entitled to any more of an exemption?

Mr. WILLIAMS. Of course when you take an arbitrary line to stop or start with, in the case of anything, it is utterly impossible to give a logical reason for it, except that we wanted to limit somewhere the amount of exemptions to which the family would have a right; and it was thought that a thousand dollars was enough, in addition to the $4,000, to constitute the exemption on account of children. In other words, if a man had $3,000 a year that was exempt, and then had another thousand dollars on account of the fact that he was married, making $4,000, and then had another thousand on account of the fact that he had children, that would be $5,000, which was as much as we cared to have exempted from taxation to any one family.

It is possible under this bill that a family might have $6,000 exempt; but, if so, it would be because the husband was a taxable person with an income of over $3,000, and the wife was a taxable person with an income of over $3,000.

I will say to the Senator in all frankness that as far as I am personally concerned I should not object if the exemption from taxation were $500 for each child, with a limitation larger than this, but there must be a limitation somewhere. Surely, if a man happened to have 10 children, you would not want to give him an exemption from taxation of $5,000 on account of the children; because the Senator knows, as I do, that the expense of taking care of a family does not grow in arithmetical proportion with the increase in the number of children. It is not much more expensive to take care of three or four children in a family than to take care of two, because the maintenance of the husband and the wife and the household expenses and a great many other charges are in common in both cases. But we thought we ought to fix a limit somewhere; and the committee, as well as the Democratic Party in conference assembled, concluded that a thousand dollars was a sufficient amount to allow for exemptions on account of children.

Of course I could not give any logical reason why you should stop at two any more than at three, or at three any more than at four; but the business reason which we had in mind was about what I have stated.

Mr. NORRIS. Mr. President, I am very much obliged to the Senator from Mississippi for his very candid explanation. I believe the Senate committee has improved upon the House bill in this particular respect, at least. It appeals to me that the man who is married and has a wife ought to have a greater exemption than the unmarried man. It appeals to me that the man who is raising children ought to have more of an exemption than the married man who is not raising children. So in this particular part of the bill the theory upon which the committee acted has always appealed to me, with the one exception of this limitation.

The Senator knows, and it is common knowledge, that the ordinary family of the ordinary person has, and ought to have, more than two children. There ought to be encouragement given for larger families than two children, at least. If $4,000 is a sufficient exemption for an entire family, the Senator could meet the difficulty by making the amount of exemption for each child a less amount than $500.

It seems to me there ought to be no limitation, however. It is not very much of a concession if you concede that much to the men and the women who are raising families and perpetuating the race and continuing the stability of the country. If there is to be an exemption, it seems to me that the man who is raising four or five children is more entitled to it than the man who is raising only two.

I do not believe the Senator's argument is well founded as far as this particular limitation is concerned. As far as I am concerned, I should like to take off the limitation entirely. But if you do not feel like taking it off entirely, as my amendment would, at least extend it to the ordinary-sized family that we would like to see and do see exist in the ordinary run of life.

Mr. OLIVER. Mr. President——

The VICE PRESIDENT. Does the Senator from Nebraska yield to the Senator from Pennsylvania?

Mr. NORRIS. I yield to the Senator.

Mr. OLIVER. I will add to what the Senator says that this concession amounts to only $5 a year for each child, and I do not think $5 is too much bounty or premium to offer for each additional child. In fact, I think it would be good policy for the Government to offer more than that to encourage the propagation of liberal-sized families throughout the land.

Mr. NORRIS. I believe that is right.

Mr. WILLIAMS. In other words, stop race suicide; but let us do it in a separate bill.

Mr. NORRIS. The Senator knows that particularly on that subject it would be difficult to get a bill this far along in the parliamentary situation.

Mr. WILLIAMS. Yes.

Mr. NORRIS. The opportunity is here, now. If it is right to do it, let us do it. Here is the place, and this is the time.

Mr. WILLIAMS. Seriously, Mr. President, and laying aside——

Mr. NORRIS. I want to say to the Senator that in offering this amendment I am serious.

Mr. WILLIAMS. Oh, I know the Senator is; but I meant "being serious."

Mr. NORRIS. I am serious, and I think the Senator ought to be.

Mr. WILLIAMS. When I say "seriously," I mean that I intend to be serious, not that the Senator does. He is always serious. But, seriously, this exemption was not put here for the purpose of encouraging families to have children. It was put here because we thought a man with two children to take care of ought not to be taxed at the same rate as a man without children.

Mr. NORRIS. Then why tax the man with three children the same rate as the man with two?

Mr. WILLIAMS. We were trying to adapt the tax to the ability of the taxpayer, and not using it as a means to encourage large families, nor do I think this would be precisely the right bill in which to include any provision for that purpose. It may be that the Senator is right, and that the exemption ought to extend to three children or to four. Certain it is that families with only two children can not increase the population of any country, nor add strength to the State of which they are citizens. But we have it this way, and we have stopped at $1,000; and I think everybody will admit that whether a man has two children or three or four this exemption helps him by keeping him to this extent from being taxed under the bill.

Mr. NORRIS. Mr. President, I look at the matter on this theory: I am not advocating giving a premium for families of any particular size. I do not want to apply any other rule of that kind. I simply think the man with three children can not afford to pay the tax as well as the man with two. You have made an exemption for children because it is harder for a man with a family of children to support to pay the tax than it is for the other man. Every time you tax him, and curtail his ability to support his family, he does just that much less, and must do just that much less, for the family. In the case of the family of more than two children, you are depriving them of some of the luxuries and some of the necessaries of life which you are not taking away from the others.

I congratulate you on extending liberal exemptions to the family of two children; but for the same reason that you did that you ought to make the same exemption for the man who has three or four children. Certainly there is no justice, it seems to me, in stopping where the committee did.

Mr. WILLIAMS. We had to stop somewhere. I know one man who has 17 children.

Mr. NORRIS. I think we ought to let nature take its course, and not make an arbitrary stop. I ask for the yeas and nays on my amendment.

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

Mr. CHILTON (when his name was called). I announce my pair as on the former votes, and withhold my vote.

Mr. BRYAN (when Mr. FLETCHER's name was called). My colleague [Mr. FLETCHER] is absent on public business. He is paired with the junior Senator from Wyoming [Mr. WARREN].

Mr. LEWIS (when his name was called). I am paired with the junior Senator from North Dakota [Mr. GRONNA], and therefore withhold my vote.

Mr. REED (when his name was called). I am paired with the Senator from Michigan [Mr. SMITH]. I transfer that pair to the Senator from Oklahoma [Mr. GORE] and vote "nay."

Mr. THOMAS (when his name was called). I transfer my pair with the senior Senator from Ohio [Mr. BURTON] to the junior Senator from Nevada [Mr. PITTMAN] and vote "nay."

Mr. WARREN (when his name was called). I am paired with the senior Senator from Florida [Mr. FLETCHER]. I therefore withhold my vote.

The roll call was concluded.

Mr. LEA. I am paired with the Senator from Rhode Island [Mr. LIPPITT]. I transfer that pair to the junior Senator from Mississippi [Mr. VARDAMAN] and vote. I vote "nay."

Mr. KERN. I am paired with the Senator from Kentucky [Mr. BRADLEY] and withhold my vote.

Mr. CLARKE of Arkansas. I ask if the junior Senator from Utah [Mr. SUTHERLAND] has voted?

The VICE PRESIDENT. He has not.

Mr. CLARKE of Arkansas. I withhold my vote.

Mr. STONE. I have a pair with the Senator from Wyoming [Mr. CLARK], and will have to withhold my vote.

Mr. CHILTON. I transfer my pair to the junior Senator from Tennessee [Mr. SHIELDS] and vote "nay."

Mr. GALLINGER. I have a general pair with the junior Senator from New York [Mr. O'GORMAN], which I transfer to the junior Senator from Maine [Mr. BURLEIGH]. I vote "yea."

Mr. WARREN. I announced a pair with the senior Senator from Florida [Mr. FLETCHER]. I transfer that pair to the senior Senator from Connecticut [Mr. BRANDEGEE], so that the senior Senator from Florida will stand paired with the senior Senator from Connecticut. I vote "yea."

Mr. DILLINGHAM. I am paired with the Senator from Maryland [Mr. SMITH] on this and all other questions which arise on the bill. I make this announcement for the day. For that reason I withhold my vote.

Mr. LA FOLLETTE. I wish to announce that the junior Senator from Minnesota [Mr. CLAPP] is unavoidably absent from the Chamber this afternoon. If he were present, he would vote "yea."

The result was announced—yeas 27, nays 34, as follows:

YEAS—27.

Borah	Fall	Nelson	Sherman
Brady	Gallinger	Norris	Smoot
Bristow	Jones	Oliver	Sterling
Catron	Kenyon	Page	Townsend
Colt	La Follette	Penrose	Warren
Crawford	Lodge	Perkins	Weeks
Cummins	McLean	Poindexter	

NAYS—34.

Ashurst	Johnson	Ransdell	Smith, Ga.
Bacon	Lane	Reed	Smith, S. C.
Bankhead	Lea	Robinson	Swanson
Bryan	Martin, Va.	Saulsbury	Thomas
Chamberlain	Martine, N. J.	Shafroth	Thompson
Chilton	Myers	Sheppard	Walsh
Hollis	Overman	Shively	Williams
Hughes	Owen	Simmons	
James	Pomerene	Smith, Ariz.	

NOT VOTING—34.

Bradley	du Pont	Lippitt	Stephenson
Brandegee	Fletcher	McCumber	Stone
Burleigh	Goff	Newlands	Sutherland
Burton	Gore	O'Gorman	Thornton
Clapp	Gronna	Pittman	Tillman
Clark, Wyo.	Hitchcock	Root	Vardaman
Clarke, Ark.	Jackson	Shields	Works.
Culberson	Kern	Smith, Md.	
Dillingham	Lewis	Smith, Mich.	

So Mr. NORRIS's amendment to the amendment of the committee was rejected.

Mr. LODGE. I suggest, in line 6, on page 172, to strike out the word "minor." I think it is a hasty conclusion to infer that a minor child is a greater burden or expense upon the parents than a child that is not a minor. I think that is an erroneous deduction.

Mr. WILLIAMS. It is based upon the theory that the law compels the parent to take care of the minor child, and I think the law in taxing the parent ought to have some regard to that obligation.

Mr. LODGE. But, in line 7, it reads "living with and dependent upon." If the child is living with and dependent upon——

Mr. WILLIAMS. There was an amendment to be made. I think that is a misprint. It ought to read "each minor child of the taxable parent." The language "living with and dependent upon" was, I think, stricken out, but we will examine into it and we can take it up again. If I am right about it, I think that the language "living with and dependent upon" was stricken out, and it was left to read "each minor child of the taxable parent."

Mr. LODGE. The language is "child living with and dependent upon," and even if it were not a minor child of course the child is a charge upon the parent.

Mr. WILLIAMS. I will tell the Senator how it happened. It was at one time proposed to say "each child under 18," and then it was suggested there might be daughters over 18 still

dependent upon the family. So that language was put in. They were called minor children, and necessarily under 21 years. The legal obligation stops at 21 and of course the exemption ought to stop at that age.

Mr. GALLINGER. In lines 12 and 13 the words "living with and dependent upon" are dropped out.

Mr. WILLIAMS. I will take the matter up, and if I find out that I am wrong about it I will bring it up again.

Mr. LODGE. If I may make a suggestion to the Senator, I think the words "living with and dependent upon" are a better definition than the word "minor," because we know in many cases there are children of delicate health or perhaps crippled who are dependent upon the parents and live with them long after they are 21.

Mr. WILLIAMS. Yes; that is true; but the legal obligation to support them ceases at 21——

Mr. LODGE. The legal obligation ceases.

Mr. WILLIAMS. And of course the principle lying under exemption ceases. The language "living with" ought to be stricken out, anyhow. It might happen, for example, that a child, for many reasons conceivable, might be living with a grandparent or living with an uncle or somebody else. My impression is that we struck out the words "living with and dependent upon" and just left it to read "minor child."

Mr. OLIVER. Mr. President, I notice in lines 12 and 13 it reads "that the total exemption on account of children shall apply to a widow or a widower with a minor or dependent child or children." Therefore, it seems from the language employed that if a married couple have children they must be minors, but in the case of a widow or widower the limitation of age is entirely stricken off.

Mr. WILLIAMS. The Senator's suggestion would be perfectly just if it were not the fault of the printer. Instead of "or" it ought to read "and." I was expecting when we got to it to make that change, so as to read "with a minor and dependent child or children."

Mr. OLIVER. It is fortunate that there is a printer.

Mr. WILLIAMS. I will make it now. In line 12 the word "or" ought to be "and." I move that amendment to the amendment.

The VICE PRESIDENT. The question is on agreeing to the amendment to the amendment of the committee.

Mr. JONES. I understood the Senator to say that the question was to be considered whether it should be limited to minor children of a certain age, under 18 or 16.

Mr. WILLIAMS. There was a proposition at one time to limit it to 18, upon the ground that a boy of 18 ought to be out making his living. Then it was suggested it might not be a boy; it might be a girl. So, finally, it was put that way.

Mr. JONES. It occurred to me that some limitation of that kind ought to be made. There are many families where there may be a couple of boys 18, 19, or 20 years of age who make a living for themselves, and I suppose generally they do. Yet here the parents get an exemption on that account. Then, on the other hand, there is a family of four or five children under 7 or 8 years of age, who make nothing for their support, and the parents get no greater exemption for those than the family does for the grown-up boys who are barely under 21.

Mr. WILLIAMS. Anybody seeking faults with a tax bill can always find them.

Mr. JONES. It seemed to me that it would be a much more equitable arrangement to specify minor children under a certain age. In the pension laws we recognize a limitation on minor children.

Mr. GALLINGER. Mr. President, I rose to suggest to the Senator that we probably have passed hundreds, certainly scores, of private pension bills giving a pension to deformed children and children sick from birth, regardless of their age.

Mr. JONES. Yes; that is true, but——

Mr. GALLINGER. We have passed hundreds of them, and it seems to me that if this was made to read "dependent children," without any reference to age, it would be better.

Mr. JONES. I merely make that suggestion. I do not think I shall offer any amendment, but it seems to me that that change should be made.

Mr. WILLIAMS. I thought if it read "dependent children" a great many children might be crowded in, and we had to fix some way to meet the conditions.

Mr. JONES. Why not provide that there shall be so much exemption for each child under 16 years of age, like we allow a widow in a pension case?

Mr. WILLIAMS. That would not be just to the girls in the family. Frequently there are unmarried girls who can not support themselves. The exemption ought to apply to them until they are 21. In other words, it ought to apply until the legal obligation of the parent to support ceases. If the Senator wants to find a logical point, the logical point is that the exemption shall cease where the legal obligation to support ceases.

Mr. JONES. Of course the exemption covers children who are capable to care for themselves; it becomes more than a matter of relief to the parent; it becomes a matter of favor.

Mr. WILLIAMS. It is a relief for the parents because of the legal obligation.

The VICE PRESIDENT. The Chair understands that the amendment proposed by the Senator from Mississippi is to change the final word "or," in line 12, to the word "and," so as to read:

Shall apply to a widow or a widower with a minor and dependent child or children.

Mr. WILLIAMS. Yes.

The amendment to the amendment was agreed to.

Mr. GALLINGER. Does the Senator propose to strike out the words "living with and," at the beginning of line 7?

Mr. WILLIAMS. No; I ask to take that back and see what we have done. My impression is that it was stricken out.

Mr. GALLINGER. Very well.

Mr. SIMMONS. The committee will examine it.

Mr. WILLIAMS. I do not mean to recommit it, but I wanted merely to assure the Senate that I would look into that matter.

Mr. JONES. I wish to ask the Senator another question. The amendment now reads "with a minor and dependent child or children." Does that mean that there may be an exemption on account of one child as a minor and another child over age but dependent?

Mr. WILLIAMS. No; it is minor or dependent child or minor and dependent children.

Mr. JONES. What is the significance of the word "dependent" there? I understood the Senator to say a moment ago that if the child was a minor of course the parent had a legal obligation to support it.

Mr. WILLIAMS. If the Senator will notice above, in line 7, he will see the language "living with and dependent upon." If the Senator had done me the honor to have listened to me, he would have heard me say that I thought in caucus or in committee, one or the other, we had stricken out that language. If it was stricken out in the one place, it was stricken out in both. My recollection is that it was stricken out, but if it is to be left in one place of course it is to be left in the other.

Mr. JONES. I heard the Senator make that remark, but do I understand now it is to be left in, or is the Senator——

Mr. WILLIAMS. I will examine it and find out whether it is to be left in and what we did with it.

Mr. JONES. Is it not the Senator's idea that the word "dependent" was left out?

Mr. WILLIAMS. That is my recollection.

Mr. JONES. Then the Senator will bring the matter to the attention of the Senate again?

Mr. WILLIAMS. I will, provided it was left out.

Mr. JONES. But if it is to be left in, the Senator will let it go without any suggestion.

Mr. WILLIAMS. Yes.

Mr. JONES. I should like to have the Senator bring it to the attention of the Senate if he concludes that it is properly left in, because I think it ought to be left out or else we ought to understand whether the word "dependent" means something more than mere minority.

Mr. WILLIAMS. The Senator a moment ago was talking about the wrong of the exemption on account of 16 or 17 or 18 year old children who are not dependent.

Mr. JONES. Certainly.

Mr. WILLIAMS. And now, if I understand him, he is objecting to keeping the word "dependent" in the bill.

Mr. JONES. No; I want to know whether it means something or not when it is left in the bill, and I want to know if we leave it in whether it means that if the parents have one minor child and then another child who is not a minor, but is dependent on them, they get an exemption for both.

Mr. WILLIAMS. Undoubtedly it means that in order to have the exemption the child must be a minor and dependent. It is left in the bill and it says so.

Mr. JONES. I do not think that is what it means. I do not agree with that construction. I think if the Senator leaves the words "minor" and "dependent" in, it would be construed to mean one minor child and one child that was dependent because he was——

Mr. WILLIAMS. It could not possibly be so construed, because that is not the language.

Mr. JONES. Does the Senator mean that the minor child must be disabled in order to enable the parent to secure an exemption?

Mr. WILLIAMS. No; I do not.

Mr. JONES. Then, what does the word "dependent" mean?

Mr. WILLIAMS. It means dependent for support upon the taxpayer.

Mr. JONES. Does that mean actually dependent?

Mr. WILLIAMS. In other words, where the child or children are not making their own living.

Mr. JONES. But suppose a 20-year-old boy is making his living but is living with his parents?

Mr. WILLIAMS. Then, if this language means anything at all, there will be no exemptions on his account.

Mr. JONES. That is what I want to get at. In other words, the word "minority" does not procure the exemption, and the parent, in order to get the exemption for a minor child, must show that that child is actually dependent on him and is not making a living for himself? If that is what it means, that is what I wanted to understand.

Mr. WILLIAMS. That is what it says. It says minor and dependent child.

Mr. JONES. Yes. I had understood, however, that it was the Senator's contention that the fact of minority was the basis for the exemption. If the other contention is the understanding of the Senator, that is what I wanted to know.

Mr. SHIVELY. The Senator from Washington can easily conceive of a case where there may be a minor child with an absolutely independent fortune, in which event the parent would not have the benefit of the exemption.

Mr. JONES. What I wanted to understand clearly was whether or not that was the intention of the language here.

The VICE PRESIDENT. The question is on agreeing to the amendment reported by the committee, beginning in line 20, on page 171.

The amendment was agreed to.

The reading of the bill was resumed.

The next amendment of the Committee on Finance was, on page 172, line 17, before the word "said," to insert "D. The"; in line 18, after the words "income of," to strike out "such" and insert "each"; in the same line, after the word "person," to strike out "for the year ending December 31, 1913, and for each calendar year thereafter; and on," and in lieu thereof to insert "subject thereto, accruing during each preceding calendar year ending December 31: *Provided, however,* That for the year ending December 31, 1913, said tax shall be computed on the net income accruing from March 1 to December 31, 1913, both dates inclusive, after deducting five-sixths only of the specific exemptions and deductions herein provided for. On"; on page 173, line 9, after the word "having," to strike out "a net" and insert "an"; and in the same line, after the words "income of," to strike out "$3,500" and insert "$3,000"; on page 174, line 2, after the word "individuals," to insert "*Provided,* That a return made by one of two or more joint guardians, trustees, executors, administrators, agents, receivers, and conservators, or other persons acting in a fiduciary capacity, filed in the district where such person resides, or in the district where the will or other instrument under which he acts is recorded, under such regulations as the Secretary of the Treasury may prescribe, shall be a sufficient compliance with the requirements of this paragraph"; in line 15, after the word "annual," to insert "or periodical"; and in line 17, after the word "person," to insert "deduct and withhold from the payment an amount equivalent to the normal income tax upon the same and," so as to read:

D. The said tax shall be computed upon the remainder of said net income of each person subject thereto, accruing during each preceding calendar year ending December 31: *Provided, however,* That for the year ending December 31, 1913, said tax shall be computed on the net income accruing from March 1 to December 31, 1913, both dates inclusive, after deducting five-sixths only of the specific exemptions and deductions herein provided for. On or before the 1st day of March, 1914, and the 1st day of March in each year thereafter, a true and accurate return, under oath or affirmation, shall be made by each person of lawful age, except as hereinafter provided, subject to the tax imposed by this section, and having an income of $3,000 or over for the taxable year, to the collector of internal revenue for the district in which such person resides or has his principal place of business, or, in the case of a person residing in a foreign country, in the place where his principal business is carried on within the United States, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, setting forth specifically the gross amount of income from all separate sources and from the total thereof, deducting the aggregate items or expenses and allowance herein authorized; guardians, trustees, executors, administrators, agents, receivers, conservators, and all persons, corporations, or associations acting in any fiduciary capacity, shall make and render a return of the net income of the person for whom they act, subject to this tax, coming into their custody or control and management, and be subject to all the provisions of this section which apply to individuals: *Provided,* That a return made by one of two or more joint guardians, trustees, executors, administrators, agents, receivers, and conservators, or other persons acting in a fiduciary capacity, filed in the district where such person resides, or in the district where the will or other instrument under which he acts is recorded, under such regulations as the Secretary of the Treasury may prescribe, shall be a sufficient compliance with the requirements of this paragraph; and also all persons, firms, companies, copartnerships, corporations, joint-stock companies or associations, and insurance companies, except as hereinafter provided, in whatever capacity acting, having the control, receipt, disposal, or payment of fixed or determinable annual or periodical gains, profits, and income of another person, subject to tax, shall in behalf of such person deduct and withhold from the payment an amount equivalent to the normal income tax upon the same and make and render a return, as aforesaid, but separate and distinct, of the portion of the income of each person from which the normal tax has been thus withheld, and containing also the name and address of such person or stating that the name and address or the address, as the case may be, are unknown.

The amendment was agreed to.

Mr. WILLIAMS. Mr. President, I want to offer an amendment at this point to cure an oversight in the bill. After the colon following the word "unknown," on page 174, line 24, I move to insert the following language:

Provided, That the provision requiring the normal tax of individuals to be withheld at the source of the income shall not be construed to require any of such tax to be withheld prior to the date of the passage of this act.

Then, Mr. President, following that amendment, the proviso in line 24 should read "*Provided further.*"

Mr. BORAH. Mr. President, as I understand, the Senator from Mississippi a day or two ago asked that a provision of the bill back on page 166 should be recommitted to the committee for further consideration.

Mr. WILLIAMS. Yes.

Mr. BORAH. I should like to have that portion of the bill which deals with the subject of relieving corporations from withholding the money due upon bonds to go with that provision, because they will both have to be considered together in a large measure, as I understand.

Mr. WILLIAMS. I do not see why they should both go together. Does the Senator mean the amendment which I have just offered?

Mr. BORAH. No; not this particular matter; but you have a provision in the bill relieving the payment at the source with reference to bonds, have you not?

Mr. WILLIAMS. Is the Senator referring to the provision in lines 6 and 7 on page 170?

Mr. BORAH. No; I am not referring to that. I will call the Senator's attention to the express provision when we reach it.

Mr. WILLIAMS. Very well; that will probably be better, if we have not reached it.

Mr. BORAH. I expected to leave the Chamber, but I will remain here until it is reached.

The VICE PRESIDENT. The question is on the amendment proposed by the Senator from Mississippi [Mr. WILLIAMS].

The amendment was agreed to.

The reading of the bill was resumed.

The next amendment of the Committee on Finance, was, in section 2, paragraph D, page 174, line 25, after the word "exceeding," to strike out "$3,500" and insert "$3,000"; on page 175, line 1, after the word "required," to insert "*Provided further,* That any persons carrying on business in partnership shall be liable for income tax only in their individual capacity, and the share of the profits of a partnership to which any taxable partner would be entitled if the same were divided, whether divided or otherwise, shall be returned for taxation and the tax paid, under the provisions of this section, and any such firm, when requested by the Commissioner of Internal Revenue, or any district collector, shall forward to him a correct statement of such profits and the names of the individuals who would be entitled to the same, if distributed"; in line 12, after the word "persons," to strike out "liable only" and insert "liable"; in line 13, after the word "tax," to insert "only"; in line 18, after the word "provided," to strike out the semicolon and the words "and the" and insert a period; in the same line, after the word "provided," to insert "Any person for whom return has been made and the tax paid, or to be paid as aforesaid, shall not be required to make a return unless such person has other net income, but only one deduction of $3,000 shall be made in the case of any such person. The"; after the word "it," at the end of line 24, to strike out "and may increase the amount of any list or return if he has reason to believe that the same is understated: *Provided,* That no such increase shall be made except after due notice to such party and upon proof of the amount understated; or if the list or return of any person shall have been increased by the collector, such person may be permitted to prove the amount liable to be assessed; but such proof shall not be considered as conclusive of the facts, and no deductions claimed in such cases shall be made or allowed until approved by the collector" and insert "If the collector or deputy collector have reason to believe that the amount of any income returned is understated, he shall give due notice to the person making the return to show cause why the amount of the

return should not be increased, and upon proof of the amount understated may increase the same accordingly," so as to read:

Provided, That in either case above mentioned no return of income not exceeding $3,000 shall be required: *Provided further*, That any persons carrying on business in partnership shall be liable for income tax only in their individual capacity, and the share of the profits of a partnership to which any taxable partner would be entitled if the same were divided, whether divided or otherwise, shall be returned for taxation and the tax paid, under the provisions of this section, and any such firm, when requested by the Commissioner of Internal Revenue, or any district collector, shall forward to him a correct statement of such profits and the names of the individuals who would be entitled to the same, if distributed: *Provided further*, That persons liable for the normal income tax only, on their own account or in behalf of another, shall not be required to make return of the income derived from dividends on the capital stock or from the net earnings of corporations, joint-stock companies or associations, and insurance companies taxable upon their net income as hereinafter provided. Any person for whom return has been made and the tax paid, or to be paid as aforesaid, shall not be required to make a return unless such person has other net income, but only one deduction of $3,000 shall be made in the case of any such person. The collector or deputy collector shall require every list to be verified by the oath or affirmation of the party rendering it. If the collector or deputy collector have reason to believe that the amount of any income returned is understated, he shall give due notice to the person making the return to show cause why the amount of the return should not be increased, and upon proof of the amount understated may increase the same accordingly. If dissatisfied with the decision of the collector, such person may submit the case, with all the papers, to the Commissioner of Internal Revenue for his decision, and may furnish sworn testimony of witnesses to prove any relevant facts.

The amendment was agreed to.

The next amendment was, in section 2, paragraph E, page 176, line 20, after the word "made," to insert "by the Commissioner of Internal Revenue"; on page 177, line 5, before the word "provided," to strike out "above"; in the same line, after the word "for," to insert "in this section or by existing law," so as to read:

E. That all assessments shall be made by the Commissioner of Internal Revenue and all persons shall be notified of the amount for which they are respectively liable on or before the 1st day of June of each successive year, and said assessments shall be paid on or before the 30th day of June, except in cases of refusal or neglect to make such return and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as provided for in this section or by existing law, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such person or persons immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the 30th day of June in any year, and for 10 days after notice and demand thereof by the collector, there shall be added the sum of 5 per cent on the amount of tax unpaid, and interest at the rate of 1 per cent per month upon said tax from the time the same became due, except from the estates of insane, deceased, or insolvent persons.

The amendment was agreed to.

The next amendment was, in section 2, paragraph E, page 177, line 19, after the word "including," to strike out "lessees or"; and on page 178, line 2, after the word "exceeding," to strike out "$4,000" and insert "$3,000," so as to read:

All persons, firms, copartnerships, companies, corporations, joint-stock companies or associations, and insurance companies, in whatever capacity acting, including mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, agents, receivers, conservators, employers, and all officers and employees of the United States having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual gains, profits, and income of another person, exceeding $3,000 for any taxable year, other than dividends on capital stock, or from the net earnings of corporations and joint-stock companies or associations subject to like tax, who are required to make and render a return in behalf of another, as provided herein, to the collector of his, her, or its district, are hereby authorized and required to deduct and withhold from such annual gains, profits, and income such sum as will be sufficient to pay the normal tax imposed thereon by this section, and shall pay to the officer of the United States Government authorized to receive the same; and they are each hereby made personally liable for such tax.

The amendment was agreed to.

The next amendment was, in section 2, paragraph E, page 178, line 13, after the word "tax," to strike out:

In all cases where the income tax of a person is withheld and deducted and paid or to be paid at the source, as aforesaid, such person shall not receive the benefit of the exemption of $4,000 allowed herein except by an application for refund of the tax unless he shall, not less than 30 days prior to the day on which the return of his income is due, file with the person who is required to withhold and pay tax for him, an affidavit claiming the benefit of such exemption; nor shall any person under the foregoing conditions be allowed the benefit of any deduction provided for in subsection B of this section unless he shall, not less than 30 days prior to the day on which the return of his income is due, file either with the person who is required to withhold and pay tax for him a true and correct return of his annual gains, profits, and income from all other sources, and also the deductions asked for, and the showing thus made shall then become a part of the return to be made in his behalf by the person required to withhold and pay the tax, or such person may likewise make application for deductions to the collector of the district in which return is made or to be made for him.

And insert:

Provided, That landlords are to make their own returns and tenants are exempt from the provisions of the foregoing requirement except when, in the case of individuals, trustees, and other noncorporate owners, the terms of the lease require the tenant to pay State and municipal taxes and assessments against the property, the cost of maintenance, repairs, and insurance, in which case tenants are authorized and required to deduct the tax out of the gross rental in the manner above prescribed. Where the owner is a corporation the tenant shall not be required in any case to deduct the tax upon the gross rental, the corporation itself being required to make the return and the statement of the deduction.

If the person receiving such payment of more than $3,000 per annum is also entitled to deductions under the second paragraph of subsection B which reduce his aggregate income so as to entitle him to exemption from the normal income tax, or reduction of the amount subject to the tax, he may receive the benefit of such exemption, or reduction, either by filing with the person required to withhold the tax and pay it to the Government, not less than 30 days prior to the day on which the return of his income is due, an affidavit claiming the benefit of such exemption, and a true and correct statement of his annual income from all other sources, and of the deductions claimed, which affidavit and statement shall become a part of the return to be made in his behalf by the person required to withhold and pay the tax, or by making the application for the exemption to the collector of the district in which return is made or to be made for him, and proving to the satisfaction of the collector that he is entitled to the same.

The amendment was agreed to.

Mr. BORAH. Mr. President, the next paragraph is the one to which I referred, which I should like to have passed over until the committee reports upon the paragraph on page 166.

Mr. WILLIAMS. Let the Secretary read it.

The Secretary read as follows:

Where under the terms of a contract entered into before this act takes effect the payment to which the taxable person is entitled is required to be made without any deduction by reason of any tax imposed, the obligor shall not be compelled to make such deduction or withhold the income tax, but shall give notice to the collector of the payment made, or to be made, as part of the return which he is required to make, and the said sum shall in that case, for the purposes of this act, be computed as a part of the income of the taxable person. If the obligor fails to give such notice he shall be personally liable for the income tax if the same is not paid by the taxable person. No such contract entered into after this act takes effect shall be valid in regard to any Federal income tax imposed upon a person liable to such payment: *Provided further*, That if such person is a minor or an insane person, or is absent from the United States, or is unable owing to serious illness to make the return and application above provided for, the return and application may be made for him or her by the person required to withhold and pay the tax, he making oath under the penalties of this act that he has sufficient knowledge of the affairs and property of his beneficiary to enable him to make a full and complete return for him or her, and that the return and application made by him are full and complete.

Mr. WILLIAMS. I should like to hear what it is that the Senator has in mind.

Mr. BORAH. What I said was that I should like to have that part passed over until the committee reports upon the provision upon page 166.

Mr. WILLIAMS. Why should this go with that?

Mr. BORAH. Of course, the latter part of this has nothing to do with that; but there is one view of the matter on page 166 which I think might have a good deal to do with it. I do not know what the report of the committee will be upon it.

Mr. WILLIAMS. I do not see that one of these things is connected with the other. The clause to which the Senator refers is one intended to meet the case of contracts where the corporation undertakes to pay the tax, like the Steel Trust, for example, the Carnegie stock, and all that. This substantially leaves the question to be determinable at law. It exempts the corporation from being compelled to make the deduction, but makes it give notice to the collector of the tax. In that case the collector will compute the interest as a part of the income of the taxable person. But it is followed by this:

If the obligor fails to give such notice, he shall be personally liable for the income tax if the same is not paid by the taxable person.

If a corporation having that sort of a contract wants to keep its contract, all it has to do is to fail to give the notice and go ahead and pay the tax; and if there is going to be a lawsuit about it, the United States Government wants the taxable person—in the illustration I have given, Mr. Carnegie—to pay his tax.

The VICE PRESIDENT. The question is on agreeing to the amendment of the committee.

Mr. WILLIAMS. I will say that I do not think the two things are indissolubly tied to one another. If the Senator desires it to go over for some reason, of course I am perfectly willing that it shall go over; but I am not willing that it shall be recommitted.

Mr. BORAH. I am not asking that it shall be recommitted.

Mr. WILLIAMS. Very well; then the Senator simply wants it to go over. In that event it will be passed over; certainly. I owe an apology to the Senator. I misunderstood what he wanted.

The VICE PRESIDENT. Let the Chair understand the matter. Does the amendment go over before it is agreed to, or after?

Mr. BORAH. Before it is agreed to.

Mr. WILLIAMS. Yes; before it is agreed to.

Mr. SIMMONS. Why may not the amendment be agreed to now, with the understanding that it may be called up again if the Senator desires?

Mr. BORAH. I have no objection to that. I simply made the suggestion which is usually made here. I have no objection if it is to be reconsidered if we desire to reconsider it. Then let it be adopted.

The amendment was agreed to.

The VICE PRESIDENT. The Secretary will make a note that the amendment may be reconsidered if desirable.

The reading of the bill was resumed.

The next amendment of the Committee on Finance was, on page 181, line 16, after the word "bonds," to strike out the comma and insert the word "and"; in the same line, after the word "mortgages," to insert "or deeds of trust"; in line 17, after the word "other," to strike out "indebtedness" and insert "obligations," so as to read:

Provided further, That the amount of the normal tax hereinbefore imposed shall be deducted and withheld from fixed and determinable annual gains, profits, and income derived from interest upon bonds and mortgages, or deeds of trust, or other obligations of corporations.

Mr. GALLINGER. I will call the Senator's attention to the fact that after the word "associations," in line 18, page 181, the word "and" should be inserted. It becomes necessary from the fact that the language on the next line has been stricken out.

Mr. WILLIAMS. The Senator is right about that. That was brought about by striking out the subsequent language.

The VICE PRESIDENT. The amendment will be stated.

The SECRETARY. On line 18, page 181, before the words "insurance companies," it is proposed to insert the word "and."

The amendment was agreed to.

The next amendment of the Committee on Finance was, on page 181, line 19, after the words "insurance companies," to strike out "and also of the United States Government not now exempt from taxation"; in line 22, before the word "subject," to strike out "$4,000" and insert "$3,000"; in line 24, after the word "income," to insert "and paid to the Government"; and on page 182, line 13, after the word "exceed," to strike out "$4,000" and insert "$3,000," so as to read:

Joint-stock companies or associations and insurance companies, whether payable annually or at shorter or longer periods, although such interest does not amount to $3,000, subject to the provisions of this section requiring the tax to be withheld at the source and deducted from annual income and paid to the Government; and likewise the amount of such tax shall be deducted and withheld from coupons, checks, or bills of exchange for or in payment of interest upon bonds of foreign countries and upon foreign mortgages or like obligations (not payable in the United States), and also from coupons, checks, or bills of exchange for or in payment of any dividends upon the stock or interest upon the obligations of foreign corporations, associations, and insurance companies engaged in business in foreign countries; and the tax in each case shall be withheld and deducted for and in behalf of any person subject to the tax hereinbefore imposed, although such interest, dividends, or other compensation does not exceed $3,000.

The amendment was agreed to.

The next amendment was, at the top of page 183, to insert:

All persons, firms, or corporations undertaking as a matter of business or for profit the collection of foreign payments by means of coupons, checks, or bills of exchange shall obtain a license from the Commissioner of Internal Revenue, and shall be subject to such regulations enabling the Government to ascertain and verify the due withholding and payment of the income tax required to be withheld and paid as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and any person who shall undertake to collect such payments as aforesaid without having obtained a license therefor, or without complying with such regulations, shall be deemed guilty of a misdemeanor and for each offense be fined in a sum not exceeding $5,000, or imprisoned for a term not exceeding one year, or both, in the discretion of the court.

The amendment was agreed to.

The reading of the bill was resumed.

The next amendment was, on page 183, line 21, after the word "return," to strike out "any person for whom return has been made and the tax paid, or to be paid as aforesaid, shall not be required to make a return unless such person has other net income, but only one deduction of $4,000 shall be made in the case of any such person" and insert "under rules and regulations prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury."

Mr. WILLIAMS. Mr. President, that ought to be "to be prescribed." I move to amend the amendment by inserting the words "to be."

The VICE PRESIDENT. The amendment to the amendment will be stated.

The SECRETARY. On page 183, line 25, before the word "prescribed," it is proposed to insert "to be."

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

The next amendment was, on page 184, after line 3, to insert:

The provisions of this section relating to the deduction and payment of the tax at the source of income shall only apply to the normal tax hereinbefore imposed upon individuals.

The amendment was agreed to.

The next amendment was, in paragraph F, page 184, line 12, after the word "penalty," to strike out "not exceeding $500" and insert "of not less than $20 nor more than $1,000"; in line 13, after the word "person," to insert "or any officer of any corporation"; and in line 18, after the word "exceeding," to strike out "$1,000" and insert "$2,000," so as to make the paragraph read:

F. That if any person, corporation, joint-stock company, association, or insurance company liable to make the return or pay the tax aforesaid shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, such person shall be liable to a penalty of not less than $20 nor more than $1,000. Any person or any officer of any corporation required by law to make, render, sign, or verify any return who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by this section to be made shall be guilty of a misdemeanor, and shall be fined not exceeding $2,000 or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

The amendment was agreed to.

The next amendment was, in paragraph G, page 185, line 2, after the word "organized," to strike out "but"; in line 4, before the word "upon," to insert "then"; in line 4, after the word "income," to strike out "arising or"; and in line 5, after the word "accruing," to strike out "by it," so as to read:

G. (*a*) That the normal tax hereinbefore imposed upon individuals likewise shall be levied, assessed, and paid annually upon the entire net income arising or accruing from all sources during the preceding calendar year to every corporation, joint-stock company or association, and every insurance company, organized in the United States, no matter how created or organized, not including partnerships; but if organized, authorized, or existing under the laws of any foreign country, then upon the amount of net income accruing from business transacted and capital invested within the United States during such year.

The amendment was agreed to.

The reading of the bill was resumed, and the Secretary read to line 11, page 185, as follows:

Provided, however, That nothing in this section shall apply to labor, agricultural, or horticultural organizations, or to mutual savings banks not having a capital stock represented by shares, or to fraternal beneficiary societies, orders, or associations operating under the lodge system.

Mr. WILLIAMS. Mr. President, on line 11, page 185, after the word "system," there ought to be an amendment made to carry out the purpose of the bill. It says:

Fraternal beneficiary societies, orders, or associations operating under the lodge system.

It appears from some information I have recently received that the insurance branch of the Masonic fraternity does not operate under the lodge system, although, of course, the fraternity itself does. I ask that this part of the proviso may be held open for the purpose of an amendment. I have not yet had a chance to consult the committee about it.

The VICE PRESIDENT. The proviso, beginning on line 7, page 185, and going down to line 11, will be passed over.

The reading of the bill was resumed.

The next amendment was, on page 185, line 19, after the word "charitable," to insert "scientific"; and in line 21, after the word "individual," to insert "nor to business leagues, nor to chambers of commerce or boards of trade, not organized for profit or no part of the net income of which inures to the benefit of the private stockholder or individual; nor to any civic league or organization not organized for profit, but operated exclusively for the promotion of social welfare," so as to read:

And providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations and dependents of such members, nor to domestic building and loan associations, nor to cemetery companies, organized and operated exclusively for the mutual benefit of their members, nor to any corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual, nor to business leagues, nor to chambers of commerce or boards of trade, not organized for profit or no part of the net income of which inures to the benefit of the private stockholder or individual; nor to any civic league or organization not organized for profit, but operated exclusively for the promotion of social welfare.

The amendment was agreed to.

Mr. HITCHCOCK. Mr. President, I have an amendment which I should like to offer and have read at this point.

The VICE PRESIDENT. The amendment will be stated.

The SECRETARY. After the first paragraph in section G, page 186, it is proposed to insert the following proviso, to come in after the word "welfare" in line 2:

Provided, That whenever a corporation, joint-stock company, or association shall produce or sell annually one-quarter or more of the entire amount of any line of production in the United States open to general manufacture or production the rate of tax to be levied, assessed,

and paid per annum upon the entire net income of such corporation, joint-stock company, or association arising or accruing from all sources shall be as follows:

A. If its production or sale be one-quarter and less than one-third of the total amount of any line of production, its annual tax shall be five times the normal tax hereinbefore imposed, to wit, 5 per cent.

B. If its production or sale be one-third and less than one-half of the total amount of any line of production, its annual tax shall be ten times the normal tax hereinbefore imposed, to wit, 10 per cent.

C. If its production or sale be one-half or more of the total amount of any line of production for the whole country, its annual tax shall be twenty times the normal tax hereinbefore imposed, to wit, 20 per cent on its entire net income accruing from all sources. The words "line of production" above used shall be construed to mean any particular article or any particular commodity, or to mean any class of articles or commodities ordinarily manufactured in conjunction with each other from the same or similar materials; but no line of production shall subject a corporation to any additional tax imposed by this paragraph unless said line of production amounts to at least $10,000,000 a year, nor shall this additional tax provided for in this paragraph apply to corporations, joint-stock companies, or associations employing less than $50,000,000 capital represented by stock or bonds, or both. In the levying and collection of the tax authorized in this paragraph the findings of the Secretary of Commerce as to the annual production and sale by corporations, joint-stock companies, or associations shall be taken as prima facie evidence; and whenever those findings show that a corporation, joint-stock company, or association controls one or more other corporations, joint-stock companies, or associations, directly or indirectly, the same line of production of the subsidiary concern shall be added to that of the controlling concern; and whenever it appears that two or more corporations, joint-stock companies, or associations have stockholders in common to the extent of 50 per cent in either, each shall pay the rate of tax that would be levied if the two concerns were united and their product combined.

Mr. WILLIAMS. If the Senator from Nebraska wants to be heard upon this amendment, as I apprehend is the case——

Mr. HITCHCOCK. Yes, sir; it is.

Mr. WILLIAMS. It is 6 o'clock now, and I will yield for a motion to go into executive session.

EXECUTIVE SESSION.

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

The motion was agreed to, and the Senate proceeded to the consideration of executive business. After 8 minutes spent in executive session the doors were reopened, and (at 6 o'clock and 10 minutes p. m.) the Senate adjourned until to-morrow, Friday, August 29, 1913, at 11 o'clock a. m.

NOMINATIONS.

Executive nominations received by the Senate August 28, 1913.

AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY.

Henry Morgenthau, of New York, to be ambassador extraordinary and plenipotentiary of the United States of America to Turkey, vice William Woodville Rockhill, resigned.

COLLECTORS OF CUSTOMS.

Zach L. Cobb, of Texas, to be collector of customs for the district of El Paso, in the State of Texas, in place of Alfred L. Sharpe, resigned.

Frank Rabb, of Texas, to be collector of customs for the district of Laredo, in the State of Texas, in place of James J. Haynes, resigned.

AGENT AND CONSUL GENERAL.

Olney Arnold, of Rhode Island, to be agent and consul general of the United States of America at Cairo, Egypt, vice Peter Augustus Jay.

MINISTER RESIDENT AND CONSUL GENERAL.

George W. Buckner, of Indiana, to be minister resident and consul general of the United States of America to Liberia, vice Fred R. Moore, resigned.

CONFIRMATIONS.

Executive nominations confirmed by the Senate August 28, 1913.

PROMOTIONS AND APPOINTMENTS IN THE NAVY.

Lieut. George B. Landenberger to be a lieutenant commander.

Lieut. (Junior Grade) Herndon B. Kelly to be a lieutenant.

Theodore W. Johnson to be a professor of mathematics.

Carlos V. Cusachs to be a professor of mathematics.

Arthur E. Younie to be an assistant surgeon in the Medical Reserve Corps.

Walter C. Espach to be an assistant surgeon in the Medical Reserve Corps.

John F. X. Jones to be an assistant surgeon in the Medical Reserve Corps.

POSTMASTERS.

IOWA.

E. R. Ashley, Laporte City.
Henry F. Eppers, Montrose.
Anton Huebsch, McGregor.
Ben Jensen, Onawa.

NORTH DAKOTA.

Frank Lish, Dickinson.
V. F. Nelson, Cooperstown.

OHIO.

E. E. France, Kent.
James P. Stewart, Niles.

TEXAS.

Lon Davis, Sealy.
W. T. Hall, La Porte.

WEST VIRGINIA.

J. L. Butcher, Holden.

SENATE.

FRIDAY, *August 29, 1913.*

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

Prayer by the Chaplain, Rev. Forrest J. Prettyman, D. D.

The Secretary proceeded to read the Journal of yesterday's proceedings, when, on request of Mr. SIMMONS and by unanimous consent, the further reading was dispensed with and the Journal was approved.

GOODS IN BOND.

The VICE PRESIDENT. The Chair lays before the Senate a communication, which will be read.

The Secretary read as follows:

TREASURY DEPARTMENT,
Washington, August 27, 1913.

The PRESIDENT OF THE UNITED STATES SENATE.

SIR: I have the honor to acknowledge receipt of a copy of a Senate resolution under date of the 21st instant, requesting, for the use of the Senate, certain information relative to goods held without the payment of duty in warehouse now and at the same time in the year 1912.

In reply I have to advise you that similar information with respect to goods in warehouse August 1, 1912, and August 1, 1913, was forwarded to you under date of August 21, 1913, in compliance with a resolution of the Senate of August 1, 1913.

The figures, if compiled on goods in warehouse August 21, would probably differ but little from those furnished you computed on goods in warehouse under date of August 1, and it would take some time to compile them. In view of the matter, I have to request to be informed whether data similar to that given in my letter of August 21, as of August 1, is desired brought down to August 21.

Respectfully,

W. J. MCADOO, *Secretary.*

The VICE PRESIDENT. The communication will lie on the table.

ENROLLED BILL SIGNED.

A message from the House of Representatives, by D. K. Hempstead, its enrolling clerk, announced that the Speaker of the House had signed the enrolled bill (S. 1620) to provide for representation of the United States in the Fourteenth International Congress on Alcoholism, and for other purposes, and it was thereupon signed by the Vice President.

CALLING OF THE ROLL.

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

The VICE PRESIDENT. The Secretary will call the roll.

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

Ashurst	Fletcher	Norris	Smith, Md.
Bacon	Gallinger	Oliver	Smith, S. C.
Bankhead	Hitchcock	Page	Smoot
Borah	Hollis	Penrose	Sterling
Bradley	Hughes	Perkins	Stone
Brady	James	Pittman	Sutherland
Brandegee	Johnson	Pomerene	Swanson
Bristow	Jones	Robinson	Thomas
Bryan	Kenyon	Root	Thompson
Chamberlain	Kern	Saulsbury	Townsend
Chilton	La Follette	Shafroth	Vardaman
Clapp	Lane	Sheppard	Walsh
Clark, Wyo.	Lea	Sherman	Warren
Colt	Lodge	Shields	Weeks
Crawford	McCumber	Shively	Williams
Cummins	McLean	Simmons	Works
Dillingham	Martin, Va.	Smith, Ariz.	
Fall	Martine, N. J.	Smith, Ga.	

Mr. McCUMBER. I again announce the necessary absence of my colleague [Mr. GRONNA].

Mr. TOWNSEND. The senior Senator from Michigan [Mr. SMITH] is absent from the city on important business. He is

61st Congress, 1st Session. SENATE. Document No. 98.

TAX ON NET INCOME OF CORPORATIONS.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

RECOMMENDING

AN AMENDMENT TO THE TARIFF BILL IMPOSING UPON ALL CORPORATIONS AND JOINT STOCK COMPANIES FOR PROFIT, EXCEPT NATIONAL BANKS (OTHERWISE TAXED), SAVINGS BANKS, AND BUILDING AND LOAN ASSOCIATIONS, AN EXCISE TAX MEASURED BY 2 PER CENT ON THE NET INCOME OF SUCH CORPORATIONS; ALSO PROVIDING FOR A CONSTITUTIONAL AMENDMENT GIVING POWER TO IMPOSE TAXES ON INCOMES.

JUNE 16, 1909.—Read; referred to the Committee on Finance and ordered to be printed.

To the Senate and House of Representatives:

It is the constitutional duty of the President from time to time to recommend to the consideration of Congress such measures as he shall judge necessary and expedient. In my inaugural address, immediately preceding this present extraordinary session of Congress, I invited attention to the necessity for a revision of the tariff at this session, and stated the principles upon which I thought the revision should be effected. I referred to the then rapidly increasing deficit, and pointed out the obligation on the part of the framers of the tariff bill to arrange the duty so as to secure an adequate income, and suggested that if it was not possible to do so by import duties, new kinds of taxation must be adopted, and among them I recommended a graduated inheritance tax as correct in principle and as certain and easy of collection. The House of Representatives has adopted the suggestion and has provided in the bill it passed for the collection of such a tax. In the Senate the action of its Finance Committee and the course of the debate indicate that it may not agree to this provision, and it is now proposed to make up the deficit by the imposition of a general income tax, in form and substance of almost exactly the same character as that which in the case of Pollock *v.* Farmers' Loan and Trust Company (157 U. S., 429) was held by the Supreme

Court to be a direct tax, and therefore not within the power of the Federal Government to impose unless apportioned among the several States according to population. This new proposal, which I did not discuss in my inaugural address or in my message at the opening of the present session, makes it appropriate for me to submit to the Congress certain additional recommendations.

The decision of the Supreme Court in the income-tax cases deprived the National Government of a power which, by reason of previous decisions of the court, it was generally supposed that Government had. It is undoubtedly a power the National Government ought to have. It might be indispensable to the nation's life in great crises. Although I have not considered a constitutional amendment as necessary to the exercise of certain phases of this power, a mature consideration has satisfied me that an amendment is the only proper course for its establishment to its full extent. I therefore recommend to the Congress that both Houses, by a two-thirds vote, shall propose an amendment to the Constitution conferring the power to levy an income tax upon the National Government without apportionment among the States in proportion to population.

This course is much to be preferred to the one proposed of reenacting a law once judicially declared to be unconstitutional. For the Congress to assume that the court will reverse itself, and to enact legislation on such an assumption, will not strengthen popular confidence in the stability of judicial construction of the Constitution. It is much wiser policy to accept the decision and remedy the defect by amendment in due and regular course.

Again, it is clear that by the enactment of the proposed law, the Congress will not be bringing money into the Treasury to meet the present deficiency, but by putting on the statute book a law already there and never repealed, will simply be suggesting to the executive officers of the Government their possible duty to invoke litigation. If the court should maintain its former view, no tax would be collected at all. If it should ultimately reverse itself, still no taxes would have been collected until after protracted delay.

It is said the difficulty and delay in securing the approval of three-fourths of the States will destroy all chance of adopting the amendment. Of course, no one can speak with certainty upon this point, but I have become convinced that a great majority of the people of this country are in favor of vesting the National Government with power to levy an income tax, and that they will secure the adoption of the amendment in the States, if proposed to them.

Second, the decision in the Pollock case left power in the National Government to levy an excise tax which accomplishes the same purpose as a corporation income tax, and is free from certain objections urged to the proposed income-tax measure.

I therefore recommend an amendment to the tariff bill imposing upon all corporations and joint stock companies for profit, except national banks (otherwise taxed), savings banks, and building and loan associations, an excise tax measured by 2 per cent on the net income of such corporations. This is an excise tax upon the privilege of doing business as an artificial entity and of freedom from a general partnership liability enjoyed by those who own the stock.

I am informed that a 2 per cent tax of this character would bring into the Treasury of the United States not less than $25,000,000.

The decision of the Supreme Court in the case of Spreckels Sugar Refining Company against McClain (192 U. S., 397) seems clearly to establish the principle that such a tax as this is an excise tax upon privilege and not a direct tax on property, and is within the federal power without apportionment according to population. The tax on net income is preferable to one proportionate to a percentage of the gross receipts, because it is a tax upon success and not failure. It imposes a burden at the source of the income at a time when the corporation is well able to pay and when collection is easy.

Another merit of this tax is the federal supervision which must be exercised in order to make the law effective over the annual accounts and business transactions of all corporations. While the faculty of assuming a corporate form has been of the utmost utility in the business world, it is also true that substantially all of the abuses and all of the evils which have aroused the public to the necessity of reform were made possible by the use of this very faculty. If now, by a perfectly legitimate and effective system of taxation, we are incidentally able to possess the Government and the stockholders and the public of the knowledge of the real business transactions and the gains and profits of every corporation in the country, we have made a long step toward that supervisory control of corporations which may prevent a further abuse of power.

I recommend, then, first, the adoption of a joint resolution by two-thirds of both Houses proposing to the States an amendment to the Constitution granting to the Federal Government the right to levy and collect an income tax without apportionment among the States according to population, and, second, the enactment, as part of the pending revenue measure, either as a substitute for, or in addition to, the inheritance tax, of an excise tax upon all corporations, measured by 2 per cent of their net income.

WM. H. TAFT.

THE WHITE HOUSE, *June 16, 1909.*

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