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

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

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

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

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

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

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

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

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

FORT ABRAHAM LINCOLN, NORTH DAKOTA.

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

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

BILLS INTRODUCED.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ENROLLED BILLS SIGNED.

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

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

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

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

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

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

TRUSTS AND COMBINATIONS.

The VICE-PRESIDENT. Is there further morning business?

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

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

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

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

The Chief Clerk read the bill.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The first section declares:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Supreme court of the State of Michigan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. CULLOM. Where was this?

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

Mr. CULLOM. Everywhere.

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

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

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

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

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

Mr. SHERMAN. They set aside the contract.

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

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

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

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

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

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

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

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

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

* * * * * * *

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

Mr. CULLOM. That is a recent decision.

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

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

Daniels, Justice, in rendering his judgment, said:

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

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

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

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

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

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

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

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

WITH A CAPITAL OF TWENTY-FIVE MILLION DOLLARS.

CHICAGO, *March* 2.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> The second section of the third article of the Constitution defines the extent of the judicial power of the United States. Jurisdiction is given to the courts of the Union in two classes of cases. In the first, their jurisdiction depends on the character of the cause, whoever may be the parties. This class comprehends "all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority." This clause extends the jurisdiction of the court to all the cases described, without making in its terms any exceptions whatever, and without any regard to the condition of the party. If there be any exception, it is to be implied against the express words of the article.
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> In the second class the jurisdiction depends entirely on the character of the parties. In this are comprehended "controversies between two or more States, between a State and citizens of another State, and between a State and foreign states, citizens, or subjects." If these be the parties, it is entirely unimportant what may be the subject of controversy. Be it what it may, these parties have a constitutional right to come into the courts of the Union.

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

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

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

> The clause giving the bank a right to sue in the circuit courts of the United States stands on the same principle with the acts authorizing officers of the United States who sue in their own names to sue in the courts of the United States.
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> If it be said that a suit brought by the bank may depend in fact altogether on questions unconnected with any law of the United States, it is equally true with respect to suits brought by the Postmaster-General.
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> * * * * * * *
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> Cases may also arise under laws of the United States by implication as well as by express enactment, so that due redress may be administered by the judicial power of the United States.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Again he says:

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

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

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

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

Mr. GEORGE. By the Committee on Finance?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. INGALLS and Mr. VEST addressed the Chair.

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

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

Mr. REAGAN. There is.

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

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

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

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

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

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

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

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

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

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

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

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