a law such as is proposed by this bill which would make it possible to acquire such lands by exchange would be in the public interest.

Your committee, of course, is familiar with legislation of like character which has been hitherto enacted in several instances. A measure in almost identical terms was enacted in the last Congress for the State of Montana, and may be found in volume 45, United States Statutes at Large, page 1145.

Sincerely yours,

R. W. DUNLAP, *Acting Secretary.*

The pending bill was also reported favorably and unanimously, after hearings, and also received the endorsement of the present Secretary of Agriculture, as shown by the following letter:

DEPARTMENT OF AGRICULTURE,
Washington, January 20, 1934.

Hon. RENÉ L. DEROUEN,
Chairman Committee on Public Lands,
House of Representatives.

DEAR MR. DEROUEN: Receipt is acknowledged of your letter of January 10, enclosing copy of H.R. 3206, a bill "for the exchange of lands adjacent to national forests in Colorado", and asking for a report thereon.

The proposed legislation would extend the provisions of the Forest Exchange Act of March 20, 1922 (42 Stat. 465), to lands in the State of Colorado lying within 6 miles of the boundaries of the national forests in that State. In other words, it would make it possible to exchange privately owned lands located within 6 miles of the boundaries of national forests in Colorado for publicly owned lands or timber within the national forests in that State on the basis of equal value, if the Secretary of Agriculture should find that such privately owned lands were chiefly valuable for forestry purposes.

Your committee, of course, appreciates that when the national forests in Colorado were created, it was the policy of the Government to not include, insofar as possible, privately owned lands. Necessarily, large areas of timber-producing land had passed from the public domain into private ownership before the national forests were created. In most instances the commercial timber has now been removed from these privately owned lands. The lands are timber producing in character and have little value for any other purpose. If they are to produce another crop of timber, they must be managed and protected with that objective in view.

Legislation of the nature proposed by this bill was enacted for the State of Montana by the act of January 30, 1929 (45 Stat. 1145). In the judgment of this Department, permissive legislation of the character proposed would be in the public interest, since it will make it possible from time to time to acquire, by exchange on a fair basis, privately owned lands which unquestionably should be managed as forest properties as a part of the adjoining national forests. The enactment of the legislation would not add to the financial burdens of this Department.

Very sincerely yours,

H. A. WALLACE, *Secretary.*

The bill, therefore, was considered and reported favorably by the Public Lands Committee of two Congresses and by two Secretaries of Agriculture.

The following paragraph from a letter from the Forest Service to the sponsor of the pending bill sets forth the legislative precedents for the bill, showing the enactment by Congress of similar laws affecting national forests in the States of Montana, Oregon, South Dakota, and New Mexico, so there is nothing novel or experimental in the bill:

APRIL 28, 1933.

Hon. JOHN A. MARTIN,
House of Representatives.

DEAR MR. MARTIN: Receipt is acknowledged of your letter of April 26 relating to H.R. 3206, a bill for the exchange of lands adjacent to national forests in Colorado.

A law practically identical with H.R. 3206 was enacted for the State of Montana January 30, 1929, and may be found in volume 45, United States Statutes at Large, page 1145. The act of February 2, 1922 (42 Stat. 362), extended the exchange authority to any privately owned lands within 6 miles of the Deschutes National Forest in Oregon, and the act of April 23, 1928 (45 Stat. 450), extended it to any privately owned lands within 6 miles of the Crater National Forest, also in Oregon. The act of February 15, 1927 (44 Stat. 1099), extended the exchange authority to any lands within 5 miles of the Black Hills and Harney National Forests in South Dakota and Wyoming. The act of April 16, 1928 (45 Stat. 431), extended the exchange authority to extensive private land grants adjoining the Carson, Manzano, and Santa Fe National Forests in New Mexico. These laws have uniformly been found to operate to the mutual advantage of both the Government and the landowner, and no case has ever arisen giving the slightest cause for criticism. I know of no reason why such a law should not operate with equal success in Colorado.

Very sincerely yours,

E. A. SHERMAN, *Acting Forester.*

Just what this bill will effect, how it will operate, and the desirable results to be obtained, are shown by the following memorandum prepared by the Forest Service for the sponsor of the bill:

MEMORANDUM FOR MR. MARTIN

Relating to H.R. 3206, for the exchange of lands adjacent to National Forests in Colorado:

This proposed legislation will not of itself add any lands to a national forest. It will extend the Forest Exchange Act to privately owned lands lying within 6 miles of the boundaries of the National Forests in Colorado; that is, it would permit the Government to acquire by exchange privately owned forest lands for national forest land or timber in the same State on the basis of equal value, the exchanges to be approved by the Secretaries of Agriculture and Interior. It should be borne in mind that when the national forests were first established the boundary lines were so drawn as to exclude as far as possible privately owned lands. Adjacent to the national forests are privately owned lands, which at one time contained a valuable stand of timber, which timber has now to a large extent been removed. The lands are primarily valuable for the production of timber. Their management as a forest property is desirable from the public-interest standpoint. In many instances such lands can be obtained by exchange to the benefit of the Government as well as the private owner, since it works toward the consolidation of the holdings of each. Since the enactment of the Forest Exchange Act of March 20, 1922, up to December 31, 1932, 923 of these exchanges have been effected, and through them the Government has acquired 1,395,359 acres in exchange for 432,268 acres, and national-forest stumpage valued at $2,775,357. On the lands acquired there has been stumpage which has exceeded in volume that given in exchange by the Government.

Other conditions sought to be effected by the operation of this legislation may be briefly mentioned. There are large areas of naked grazing land, entirely without timber, on the mountain slopes embraced within the boundaries of national forests. These lands will never bear timber. They may be exchanged to stock owners for cut-over timberlands adjacent to the forest boundaries which have little value for grazing. A sawmill owner may have a timber tract miles removed from his mill which he may exchange to the Government for adjacent timber. In making all these exchanges, the Forest Service and the Department of Agriculture work with a view to rounding out and consolidating, as it were, the forest reserves and lands in private ownership, each in their own sphere, the cut-over lands thus acquired to be cared for and retimbered. It does not require very deep reflection to show that this exchange law fills a need. The conditions calling for it existed on the ground, and the law grew out of the conditions.

This bill has been endorsed by various local organizations in the affected areas, chambers of commerce, Izaak Walton leagues, Rotary and other clubs, boards of county commissioners. Is not some weight to be attached to the fact that not a single protest has come from the affected areas?

There is, however, a protest. It comes from the Department of the Interior. Apparently there is some rivalry between two departments of the Government, some jealousy of jurisdiction over land. One thing is obvious, and that is, the land which the Department of Agriculture trades for must be in private ownership, and the land which it trades must be under the jurisdiction of the Department of Agriculture. It is difficult to see wherein the legislation treads on the toes of the Department of the Interior, and it is still more difficult to see that its objection should have any weight. Perhaps it has.

It is the opinion of the sponsor of this bill that there should be a general bill applying to all the forest-reserve States. When the sponsor of this bill learned that similar laws affecting the forests in four States had been passed, he introduced a general bill, H.R. 5368. That bill was also reported favorably by the Public Lands Committee of the House, on which there are Members from other forest-land States, and was also endorsed by the Secretary of Agriculture. This is conservation legislation, just as much as the original Forest Reserve Act. It is merely a perfecting of the original legislation and of the Forest Exchange Act of March 20, 1922. Under the terms of that act privately owned lands within the boundaries of national forests, if found by the Secretary of Agriculture to be chiefly valuable for forestry purposes, may be exchanged for an equal value of publicly owned land, or timber, within a national forest in the same State. The pending bill, H.R. 3206, merely

extends this authority to lands within 6 miles of the existing boundaries of national forests in the State of Colorado, much of which lands, containing valuable timber, had passed into private ownership and had been cut over prior to the creation of the national forests. They may again become forests under the ministrations of the Forest Service. They are largely worthless for any other purpose. If an objector to this bill could go and look them over, he would laugh at the idea of having objected to their acquisition for forestry purposes. If such legislation could be reached for consideration under any other than a Unanimous Consent or Private Calendar, so that it could be debated on its merits, there would be no question about its passage.

THE CRIME BILLS

Mr. SUMNERS of Texas. Mr. Speaker, I ask unanimous consent to take from the Speaker's table Senate bills S. 2080, S. 2249, S. 2252, S. 2253, S. 2575, S. 2841, and S. 2845, the so-called "crime bills", with House amendments, insist on the House amendments, and agree to the conference asked by the Senate.

The Clerk read the titles of the bills.

The SPEAKER. Is there objection to the request of the gentleman from Texas? [After a pause.] The Chair hears none, and appoints the following conferees: Messrs. SUMNERS of Texas, MONTAGUE, MCKEOWN, KURTZ, and PERKINS.

PROCEDURE OF PUBLIC UTILITY COMMISSIONS

Mr. O'CONNOR. Mr. Speaker, I call up House Resolution 350.

The Clerk read the House resolution, as follows:

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of S. 752, an act to amend section 24 of the Judicial Code, as amended, with respect to the jurisdiction of the district courts of the United States over suits relating to orders of State administrative boards; that after general debate, which shall be confined to the bill and shall continue not to exceed 5 hours, to be equally divided and controlled by the Chairman and ranking minority member of the Committee on the Judiciary, the bill shall be read for amendment under the 5-minute rule. At the conclusion of the reading of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit, with or without instructions.

Mr. O'CONNOR. Mr. Speaker, may I inquire if the gentleman from Massachusetts on behalf of the minority wants the usual time?

Mr. MARTIN of Massachusetts. Mr. Speaker, I request the usual 30 minutes. I do not know that I shall use it all, but I should like to have it at this time.

Mr. O'CONNOR. Mr. Speaker, I yield 30 minutes to the gentleman from Massachusetts.

Mr. Speaker, this is the rule which provides for the consideration of the so-called "Johnson bill." The rule is an open one and provides for 5 hours of general debate.

The Johnson bill, which prevents public utilities from resorting to the Federal courts where no interstate commerce is involved, is a little unusual by reason of the fact that it was amended in the Judiciary Committee. The committee amendment is known as the "Lewis bill." The legislation is thereby left in the situation that those preferring the Johnson bill will vote down the committee amendment known as the "Lewis bill", and those preferring the Lewis bill will vote for the committee amendment.

Mr. BRITTEN. Mr. Speaker, will the gentleman yield?

Mr. O'CONNOR. I yield.

Mr. BRITTEN. The gentleman refers to LEWIS of the House, and not LEWIS of the Senate?

Mr. O'CONNOR. I refer to the distinguished gentleman from Colorado, Mr. LEWIS, our colleague.

The vote in the Judiciary Committee was particularly close, which also makes the question very interesting. The vote was 11 for the Lewis bill and 10 for the Johnson bill.

So that the House will appreciate the importance of the question I may say that it has been before Congress for many years. The question involves the resort of the utility companies to our Federal courts with the consequent delays and the expense and the alleged abuses to which such resort has given rise. The Johnson bill prevents a resort to the Federal courts unless an interstate question is involved. The Lewis bill gives the utility companies the choice between going into the State courts and the Federal courts, but denies to the utility companies the right they now have, and which it is claimed they have abused, of transferring a case from one jurisdiction to another after they have once selected their tribunal.

Mr. O'MALLEY. Mr. Speaker, will the gentleman yield?

Mr. O'CONNOR. I yield.

Mr. O'MALLEY. Have not the utility companies now the choice of going into a Federal court or a State court?

Mr. O'CONNOR. They have.

Mr. O'MALLEY. And they never choose the State courts, but always go into the Federal courts.

Mr. O'CONNOR. I do not know the facts about that, but as to New York State and New York City they have almost invariably resorted to the Federal Courts.

The legislative change sought to be accomplished by each of these bills does not embrace a new idea. I may say that nearly every member of the New York delegation, including myself, for years has attempted to correct what we claimed were the abuses of the utility companies rushing into the Federal courts and taking advantage of what we contend is a foreign jurisdiction. For instance, in New York it has often happened that the utilities commission having held hearings lasting years, and having made a ruling, and having fixed a rate, the utility company not having complied with the rate was thereupon taken into the State courts by the utilities commission; the matter has been heard at great length in the State courts, and then some dark night the utilities company would sneak up to the apartment of a Federal judge who was visiting in New York, from Texas or California, enjoying our sights and night clubs; and the utilities company would get a temporary injunction or restraining order which transferred the case to the Federal courts where it would be heard de novo with additional years and expense consumed in reaching a determination of the case.

That has been the usual situation.

Now, may I take as an example a small town, a little town up-State in New York, for instance. A water company has a dispute with its consumers over the rates to be charged for water. The water company is a New York corporation. All its business is done in New York State and in that town. All its customers live in the town. There is no interstate question involved at all. But under the pretext of a violation of the provisions of the fourteenth amendment, the due-process clause, when that utility company sees fit they will rush into a Federal court before a judge who knows nothing about the local conditions and will fight out the issue in the Federal court, when every issue involved is between the residents of that particular town and the residents of the State of New York.

The State courts are plenty good enough for the people of our State. There are a few other persons or corporations who resort to the Federal courts rather than the State courts to determine their peculiarly local or domestic problems.

I am one of those who believe, and I have so stated very often, that there is no necessity for any Federal courts except our Supreme Court. I have stated heretofore that 99 percent of the cases brought in our Federal courts are brought through deceit or trickery, either under the guise of diversity of citizenship or some other alleged Federal question, when that issue could just as well have been tried in the State court.

For instance, we had in the State of New York some years ago an admiralty court which tried all admiralty cases. There was no complaint about the conduct of that court, but the court passed out of existence because the big steamship companies and the big lawyers representing them re-

sorted to the Federal courts in every admiralty case. And so it is with practically every other case in the Federal court. They could just as well and more properly be tried in our State courts.

The Lewis bill, I may say, has another feature in it which will be called to your attention. Of course, I do not pretend to be able to analyze these bills with the same ability as the members of the Judiciary Committee or the distinguished lawyer from Colorado, but this main question has been on the lips of everybody in Congress and out for a great many years, and I am sure that every one here has taken a greater interest in this particular subject than in the ordinary legislation which comes before us.

Mr. ADAMS. Will the gentleman yield?

Mr. O'CONNOR. I yield to the gentleman from Delaware.

Mr. ADAMS. Just a few moments ago the gentleman stated something about justice being obtained in State courts. The gentleman undoubtedly recognizes cases where justice would be dealt with better in the Federal courts than in the State courts, where there is no connection whatsoever with State utilities on the part of the judiciary, counsel, directors, or the holders of stock.

Mr. O'CONNOR. I have greater faith in our State courts and the judges that preside over them than to believe, as the utility companies do today, that because they are elected by the people their reelection will cause them to cater to the clamor—you might call it—of the people who are paying these rates and who feel that they are being unjustly gouged.

Mr. CARPENTER of Nebraska. Will the gentleman yield?

Mr. O'CONNOR. I yield to the gentleman from Nebraska.

Mr. CARPENTER of Nebraska. Another thing is that the people of the State can get at the State judges, while these Federal judges cannot be removed except by death.

Mr. O'CONNOR. That does not apply in all cases, because in many States the judges are appointed for life. In those States the utility companies would have no cause for fear, and I am confident they will receive justice in the States where the judges are elected.

I believe the Johnson bill presents the proper approach to this question. [Applause.] As a lawyer, I will admit it may be drastic; but I believe that in a scandalous situation, such as we have had, with the arrogance of these utility companies, whose lobbyists right now swarm the lobbies and the galleries of this House, with their arrogance with legislatures and with this Congress, and their ceaseless propagranda, that a little spanking, as it were, such as we indulged in the other day by means of the stock exchange bill, may be the most effective way of bringing these corporations to terms with our people. Of course, they realize that something is going to happen to them; and so rather than take the whole "licking" they are now attempting to lobby through the Lewis bill as a half-way measure or the lesser of two evils, although they are still threatening and fighting to the last ditch to prevent any bill passing.

Mr. YOUNG. Will the gentleman yield?

Mr. O'CONNOR. I yield to the gentleman from Ohio.

Mr. YOUNG. Is it not a fact that the arrogance of the public-utilities lobby is matched in many respects by the arrogance of the Federal courts of this country, who are judges, lawmakers, and executioner combined in one without responsibility to anyone?

Mr. O'CONNOR. I am glad to have a distinguished Democrat join with me in protesting against even the existence of the lower Federal courts. It always surprises me when anyone from the South, for instance, asks for a new Federal district or for a new Federal judge, because I cannot appreciate how they, of all people, can make the request if they have any knowledge of the history of what these carpetbagging judges have done in that territory and what they have done to us in New York and the rest of the country.

It is almost the invariable rule that all these restraining orders and all these injunctions issued in behalf of the utility companies against the citizens of our States and cities have been issued by a visiting Federal judge spending a joyous vacation in New York and getting the extra $10 a day for the privations he suffers.

Mr. McFARLANE. Will the gentleman yield?

Mr. O'CONNOR. I yield to the gentleman from Texas.

Mr. McFARLANE. Does the gentleman believe that if we could limit the term of office of these Federal judges, requiring them to check in with the people and have the people pass on their qualifications about every 6 years, it might correct the situation?

Mr. O'CONNOR. That is only a half-way measure like the Lewis bill. Let us have no half-way doings.

Mr. SABATH. Will the gentleman yield?

Mr. O'CONNOR. I yield to the gentleman from Illinois.

Mr. SABATH. Is it not a fact that in many instances these utility corporations, when they cannot obtain all they desire from the utility commissions, jump into the Federal courts and go even as far as to demand and secure a receivership for corporations that should not be forced into receivership or bankruptcy, as has been done in several of the cities of the United States?

Mr. O'CONNOR. Yes; and then some relative of the judge is appointed receiver, as has happened so often in Chicago and for which three Federal judges are about to be impeached.

Mr. SABATH. That is what I wanted to bring out.

Mr. O'CONNOR. While I believe the Lewis bill is some improvement over the existing situation, I am primarily convinced that the way to meet this vexatious problem is to go "whole hog" and prevent these utility people from taking purely local questions into the Federal courts, and restrict them to the State courts as our other citizens are restricted.

I believe this House, after consideration of this most important measure, will pass this bill for which we have waited so many years. [Applause.]

Mr. O'MALLEY. Will the gentleman yield?

Mr. O'CONNOR. I yield.

Mr. O'MALLEY. The gentleman states he thinks the Lewis bill is an improvement over the existing situation. I wonder if he could explain just how it improves the existing situation.

Mr. O'CONNOR. Of course, the Lewis bill does this one thing. Once these companies have got into the State court, under the Lewis bill, they cannot then switch to the Federal court as they do now.

Mr. O'MALLEY. They can switch now?

Mr. O'CONNOR. Yes. Furthermore, under the Lewis bill the testimony taken before the Utilities Commission is at least prima facie evidence and the court does not have to go into the matter de novo, except for certain language of the Lewis bill which in my opinion would leave the door open for new evidence.

Mr. O'MALLEY. Of course, the gentleman realizes that under the Lewis bill if they have the option of going into the State or Federal courts, they will never go into the State courts.

Mr. O'CONNOR. I know that. They will always resort to the Federal courts.

Mr. CARPENTER of Nebraska. Will the gentleman yield?

Mr. O'CONNOR. I yield.

Mr. CARPENTER of Nebraska. Is it not true that the President of the United States favors the original Johnson bill as passed by the Senate?

Mr. O'CONNOR. I do not know that.

I believe the way to meet this most important question is for this House to pass the Johnson bill. [Applause.]

Mr. MARTIN of Massachusetts. Mr. Speaker, I yield 15 minutes to the gentleman from Michigan [Mr. MAPES].

Mr. MAPES. Mr. Speaker, I am supporting this rule. I voted for it in the Committee on Rules and I favor the passage of the Johnson bill, as distinguished from the Lewis substitute, after the rule is adopted.

This legislation, in one form or another, has been pending in Congress for a great many years. The distinguished gentleman from New Jersey [Mr. BACHARACH] introduced a bill, not in the same language, but to accomplish the same result, as far back as 1922, or 12 years ago.

The Senate bill which this rule seeks to make in order, introduced by Senator JOHNSON, of California, is sponsored by the National Association of Railroad and Utilities Commissioners. The chairman of the legislative committee of that organization is a former member of the Michigan State utility commission and a resident of the State of Michigan. That association sponsors the Johnson bill and is opposed to the Lewis substitute. That association says it is necessary to pass some such legislation as the Johnson bill to enable the State commissions, or to put it in another way, to enable the States to function properly and effectively in the control and regulation of rates within their boundaries. It, of course, only applies to intrastate rates. The scope of the bill is expressly limited to rates that do not interfere with interstate commerce.

It seems to me that there has been a great deal of false emphasis, or that the emphasis has been put in the wrong place, in the consideration of this legislation in the past few years, and one thing that has been falsely emphasized in the consideration of the matter is the question of diverse citizenship. The public-utility commissions attach little weight to the diverse-citizenship phase of the legislation. The jurisdiction of the Federal courts in rate cases is not dependent upon the diverse citizenship of the parties, but on the claim that the rates are confiscatory, and upon that ground or allegation the Federal courts have jurisdiction regardless of the citizenship of the parties. In other words, as I understand the decisions and the law, when confiscation is alleged by affidavits in Federal court it is the duty of the court to grant an interlocutory injunction.

This proposed legislation does not deprive anyone of due process of law. It does not deprive anyone of his day in court. There is no constitutional right involved. Congress has exclusive power to fix the jurisdiction of all inferior courts of the United States. Congress by law gave the lower Federal courts whatever jurisdiction they have in rate cases and it can by law take that jurisdiction away if it thinks it advisable to do so.

Mr. ELTSE of California. Will the gentleman yield at this point?

Mr. MAPES. I yield to the gentleman from California.

Mr. ELTSE of California. Something was said in my presence not long ago to the effect that if the Johnson bill were adopted, the right of appeal to the Supreme Court might be in doubt.

Mr. MAPES. There is no question as to that. I was going to bring that out later, but I will discuss it now. The Supreme Court of the United States will have the same right to review rate cases and to take into consideration the same questions after the passage of the Johnson bill as it has under existing law. The only difference will be that the appeal in all cases will be from the supreme or highest courts of the different States instead of some of them coming up through the lower Federal courts as is the case now. I do not think there is any dispute about that proposition at all.

It seems to me, too, that there has been a tendency in the consideration of this legislation to put a false emphasis upon the rights of the utilities and to ignore the rights of the States. The passage of the Johnson bill does not involve any question for or against utilities. It is simply a question as to whether or not States are going to be allowed to perform their proper functions in the supervision and fixing of rates, without interference of Federal law. It is a question as to whether or not Congress is going to continue to permit the utilities in important cases to thwart the will of the States and the State authorities.

The fixing of rates is distinctly a legislative matter, delegated by legislative bodies to commissions created for that purpose after adequate hearings have been had. It is in no sense a judicial function.

It was not so many years ago that the legislatures fixed rates themselves without delegating the power to the commissions, as, for example, the 2-cent-fare legislation on railroads. Subsequently this legislative duty was delegated to the commissions for action after full and complete hearings.

Under existing procedure, by virtue of Federal law, after full and complete hearings before a State commission, a public utility, if it is dissatisfied with the order of the commission fixing rates, has the choice of applying either to the State or to the Federal courts for an injunction to restrain the commission from putting its order into effect upon the ground that the rates would be confiscatory. If the utility chooses to bring such action in the lower Federal courts, such courts are authorized by Federal law to try the case de novo and to substitute their judgment, both on the facts and the law, for the judgment of the State commissions. This procedure not only causes great expense and delay but permits the courts to perform a legislative function instead of the commissions.

I quote from the hearings:

> The Federal Government does not subject its own regulatory agencies to the absurdity of a trial de novo for a judicial review of their own orders.

And again:

> It will thus appear that out of 47 States which have State commissions a review of a State commission order is now upon the record made before the commission in at least 43 of the States.

There is no question involved as to the superiority of Federal courts as against the State courts, or their inferiority. I have faith in both our Federal and State courts as a whole. I believe that State courts will adequately protect the rights of all litigants who come before them, and, of course, counsel for the utilities will see that their cases are properly tried. I do not join the opponents of this legislation in their criticism of the State courts in defense of their position.

Mr. ZIONCHECK. Will the gentleman yield?

Mr. MAPES. I prefer to proceed.

Mr. ZIONCHECK. I simply wanted to ask the gentleman this question: Do not the utility companies purposely go into the State courts and delay as long as possible, and then, just before the decision, go to the Federal court by way of dilatory tactics?

Mr. MAPES. That may have occurred in some instances. I do not think the State utilities commissions base their advocacy of the Johnson bill on that theory, however. They object to the procedure in the Federal courts because of the great expense involved and the delay in reaching a decision in the more important cases. Take the Illinois telephone case recently decided by the Supreme Court, for example. The case was started in 1923 and was finally passed upon by the Supreme Court on April 30, 1934. It may be that an order fixing rates made in 1923 would be entirely inapplicable in 1934 with changing economic conditions. The long delay in reaching an ultimate decision in any given case practically nullifies the work of the commission. One of the purposes of the Johnson bill is to prevent such delays.

Mr. BECK. Does the gentleman seriously contend that when the regulation of rates reaches the point of confiscation, it is not a judicial question?

Mr. MAPES. The gentleman from Pennsylvania, if he reaches any such conclusion as his question intimates from what I have said, has misinterpreted what I have been trying to say.

Mr. BECK. I just happened to come in, and I heard the last part of the gentleman's statement that it was not a judicial question but a legislative one.

Mr. MAPES. The gentleman does not dispute that?

Mr. BECK. No. But when it reaches confiscation they have their day in court.

Mr. MAPES. This bill does not take away their day in court at all. The utilities will have an opportunity to take their case into the State courts and test the question as to whether or not the rates are confiscatory after the passage of this bill, and if they are dissatisfied after the case has gone through the State courts they can appeal to the Supreme Court of the United States. This bill will only deprive the lower Federal courts of the jurisdiction they now have over rate cases.

I think that no one will seriously question the delays and the expense of prosecuting cases through the Federal courts. If he does, I think one sentence of the opinion of the Chief

Justice in the Illinois Telephone case a week ago—to which I have referred—might well be called to his attention, to wit:

Elaborate calculations which are at war with realities are of no avail.

I ought to say, in fairness to the Lewis substitute, that that is an improvement over existing law, but the public-utilities commissioners of the States oppose it and are in favor of the passage of the Johnson bill as it came over from the Senate. They do not want any half-way measure, and it seems to me that their position in that respect is perfectly sound. They ought to be given the assistance which this legislation will give them to make their work effective.

Mr. O'CONNOR. Mr. Speaker, I yield 5 minutes to the gentleman from Alabama [Mr. BANKHEAD].

Mr. BANKHEAD. Mr. Speaker, there is one phase of this matter that has been called to my attention which I think at this stage of the proceedings, before we vote on the adoption of the resolution, should be called to the attention particularly of members of the Committee on the Judiciary. A rather unusual situation was presented before our committee on the application for a rule for the consideration of this bill, in that the Lewis substitute was favored by a majority of the committee, by a very small majority, and we had to prepare a rule which we thought would give to the House a fair opportunity to consider upon their merits both the original Johnson bill and the Lewis substitute, which was the majority report of the Committee on the Judiciary. With that understanding, and in order that there might be a very full and fair and free discussion of the merits of these two propositions, both of which have strong support among the Membership of the House, the committee decided to grant 5 hours of general debate upon the bill on the merits of these two respective contentions. Since we came into the House this morning I have heard it intimated that when we get into the Committee of the Whole, after exhausting the 5 hours of general debate on the merits of the proposition, it was possible that a point of order might be raised against the Lewis substitute upon the ground that it is not germane to the original Johnson bill. It will be recalled that the Committee on the Judiciary struck out all of the provisions of the Johnson bill after the enacting clause and substituted the Lewis substitute as an amendment. It seems to me, in all candor and as a matter of absolute good faith and fair dealing, that the original intention of giving both sides of this controversy a fair opportunity to have their views presented and a fair opportunity for a vote on the merits of the different propositions should be carried into effect, and the members of the Committee on the Judiciary ought to be willing that this rule be amended so that it would waive points of order against the substitute. I trust the chairman of the committee, who is really in the minority on this question, will agree to that proposition.

Mr. MARTIN of Massachusetts. Mr. Speaker, will the gentleman yield?

Mr. BANKHEAD. Yes.

Mr. MARTIN of Massachusetts. And it is fair to assume that the Committee on Rules probably would not have given the rule to a minority of the committee. Is not that the fact?

Mr. BANKHEAD. As I said, it was a very unusual proposition that was submitted to us and I would say to the gentleman that both sides were anxious to have this matter tried out on the floor of the House.

Mr. MARTIN of Massachusetts. The gentleman never knew of a rule being granted to the minority of any House committee, did he?

Mr. BANKHEAD. That is true.

Mr. SUMNERS of Texas. Will the gentleman yield?

Mr. BANKHEAD. I yield.

Mr. SUMNERS of Texas. The gentleman from Alabama [Mr. BANKHEAD] is correct in the statement that both the minority and majority desired to have a rule, an open rule, which would test the judgment of the House on this measure. Insofar as the chairman is concerned, and I trust insofar as we are all concerned, while the question of the making of a point of order, or whether or not a point of order would be made, has been informally discussed among some members of the committee, I know of no determination to make the point of order, and the chairman is very much in hopes that nobody will make the point, and that the House will have an opportunity to express its judgment with regard to these two propositions.

Mr. BANKHEAD. With that assurance, which is characteristic of the gentleman from Texas always, I assume there will be no objection to amending the resolution before it is adopted, waiving points of order against the rule.

That is all I have to say, Mr. Speaker. The gentleman from New York [Mr. O'CONNOR], in charge of the rule before moving the previous question, will offer that amendment.

The SPEAKER. The time of the gentleman from Alabama [Mr. BANKHEAD] has expired.

Mr. O'CONNOR. Mr. Speaker, I offer an amendment to the resolution.

The Clerk read as follows:

Amendment offered by Mr. O'CONNOR: Page 1, line 7, after the word "boards", insert "and all points of order against said bill and committee amendments are hereby waived."

The amendment was agreed to.

Mr. O'CONNOR. Mr. Speaker, I move the previous question on the adoption of the resolution.

The previous question was ordered.

The resolution was agreed to.

Mr. SUMNERS of Texas. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (S. 752) to amend section 24 of the Judicial Code, as amended, with respect to the jurisdiction of the district courts of the United States over suits relating to orders of State administrative boards.

The motion was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the bill S. 752, with Mr. HANCOCK of North Carolina in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Without objection, the first reading of the bill will be dispensed with.

There was no objection.

The CHAIRMAN. Under the special rule the gentleman from Texas [Mr. SUMNERS] is recognized for 2½ hours.

Mr. SUMNERS of Texas. Mr. Chairman, under the arrangement effected between the gentleman from Colorado [Mr. LEWIS], whose amendment prevailed in the committee, and the chairman of the committee, the gentleman from Colorado [Mr. LEWIS], is to control one half of the 2½ hours which under the rule are allotted to the chairman of the committee.

I presume at this time it will be in order for me to yield to the gentleman from Colorado [Mr. LEWIS] 1 hour and 15 minutes.

Mr. KURTZ. Mr. Chairman, as I understand it, one half of the time is to be given to the proponents of the Lewis bill and the other half to the opponents of it and those in favor of the Johnson bill. I therefore yield one half of the 2½ hours allotted to me to the gentleman from Kansas [Mr. GUYER]. Mr. GUYER is for the Johnson bill and against the Lewis bill.

Mr. SUMNERS of Texas. Mr. Chairman, I yield 1 hour and 15 minutes to the gentleman from Colorado [Mr. LEWIS].

Mr. LEWIS of Colorado. Mr. Chairman, I wish first to make a rather detailed statement concerning this bill. May I ask, please, that Members do not request me to yield until I complete my statement, which will probably answer some of the questions which at the outset may be asked?

At the outset I wish to say that our very good friend, Mr. EMANUEL CELLER, of New York, was to have opened the statement on behalf of the committee, as the ranking member of those who joined in the majority report. Unfortunately the gentleman from New York [Mr. CELLER] has been ill, as you know from the several permissions given for his absence,

and he is now recuperating in a hospital. He telegraphed me as follows:

HOT SPRINGS, VA., *May 7, 1934.*

Congressman LAWRENCE LEWIS,
House Office Building, Washington, D.C.:

Gladly give you permission to use my name in any way to support your bill in opposition to Johnson bill. Regret illness precludes my active help.

Congressman E. CELLER.

Mr. Chairman, this is an important matter of governmental policy, as has been indicated not only by my friend, the gentleman from New York [Mr. O'CONNOR], but also by my friend, the gentleman from Michigan [Mr. MAPES]. It is not a partisan question at all. It is a question of how we look at a high and important problem of government. The statements made by the gentleman from New York and the gentleman from Michigan are, of course, accurate as to the differences between the provisions of these two bills.

The Committee on the Judiciary devoted 3 full days, February 27 and 28 and March 1, 1934, to the hearings on this question. Many witnesses were heard, their statements taken under oath, and numerous briefs filed. All this matter is included in the printed transcript of the hearings. Thereafter the committee had extended conferences in executive sessions. I am sure all members of the committee have no other motive than to do what is best for the country.

It is with that thought that these extended hearings and discussions were had. It was with that thought that this substitute was offered to the so-called "Johnson bill." My friends who have preceded me have made it unnecessary to enter into an elaborate statement of the abuses which were developed in the hearings, which were shown to exist in the present Federal procedure in rate cases.

The statement by the majority of the committee summarizes the situation.

STATEMENT ACCOMPANYING MAJORITY REPORT

The Johnson bill (S. 752) seeks to withdraw completely from the district courts of the United States all jurisdiction in suits relating to orders of State administrative boards or commissions affecting rates chargeable by public utilities. The majority of the Committee on the Judiciary believe the bill presented corrects all present evils without wholly divesting the Federal district courts of all jurisdiction in rate cases.

Hearings were conducted by the committee throughout 3 days. The evidence at these hearings tended to establish that, under the present procedure in the Federal courts, grave abuses have arisen in some cases where utility corporations have sought injunctive relief from orders by State boards or commissions fixing rates. Out of the total number of rate cases considered, the percentage of those taken to Federal courts is extremely small but the abuses which have arisen in some of these cases appear sufficiently serious to require immediate correction. These abuses are chargeable not to any fault of Federal courts or Federal judges but to defects in the Federal Judicial Code. The responsibility and remedy is in the Congress.

The abuses complained of are as follows:

First. Under the present practice, after a full hearing on rates has been had before the State administrative board or commission, the utility may and sometimes has applied to the United States district court for an injunction, alleging that rates fixed by the State board or commission are confiscatory, that is to say that such rates deprive the utility of its property without due process of law in violation of the guarantees of the fourteenth amendment to the Constitution of the United States. In the Federal Judicial Code, as it now stands, there is no express provision under which, except by consent of all parties, the United States court can consider the transcript of the proceedings before the State board or commission. Consequently, under the present practice, the evidence taken before the board or commission is generally disregarded and it is necessary to take all the evidence over again at very great expense in time and money.

Citizens complaining of rates alleged to be excessive have sometimes been unable, because of limited funds, properly to present their case a second time in the United States court after having already presented it once fully before the board or commission, with the result, so it is claimed, that efforts to secure relief from extortionate rates have had to be abandoned. The mere threat by the utility company that it would seek an injunction in a United States court, involving the prospect of great additional expense and delay, has sometimes been sufficient to force a compromise unfavorable to the public interest. Even if ratepayers or public regulatory bodies were supplied with sufficient funds to carry on expensive litigation, the procedure of adducing the same evidence twice—once before the board or commission and again before the United States court—is wasteful of time as well as of money. Justice delayed is justice denied.

Second. Under the laws of every State provision is made for some sort of a review of the orders of the State regulatory board or commission in the courts of the State. In some few cases it appears that, after the hearing before the board or commission, the utility company instituted proceedings in the State courts and, after these had been carried to a point short of final judgment, the utility dismissed these proceedings in the courts of the State, and sought and secured an injunction in the District Court of the United States. Clearly any such procedure tends to defeat the ends of justice by increasing expense and delay. Furthermore, a litigant should be bound by its election of the forum in which it shall proceed. It should not be permitted to speculate upon what may appear to be the favorable or unfavorable attitude of a tribunal. If it starts in a State court, it should be required to pursue its remedy to the highest court of the State, reserving always its right of appeal to the Supreme Court of the United States.

Other defects in the present Federal procedure were pointed out, but they are technical, minor in character, and can easily be corrected, and have been so corrected in the bill presented herewith. The serious defects in the present procedure are the two above explained, viz, (1) that the evidence taken before the State board or commission is not used in the United States court, and (2) that the utility company is not bound by its election of forums if it starts proceedings in the courts of the State but may later go into a District Court of the United States.

In the Johnson bill the remedy for these abuses is sought by abolishing altogether the jurisdiction of the District Courts of the United States in rate cases, reserving to the utility company only an appeal to the Supreme Court of the United States.

A majority of the Committee on the Judiciary are of the opinion that such drastic action as withdrawing altogether from the District Courts of the United States all jurisdiction in rate cases is both unnecessary and unwise.

The majority regards such action unnecessary because, as is demonstrated herein below, every abuse in the present procedure can be corrected and every injustice obviated by amending the Judicial Code as provided in the proposed substitute for the Johnson bill.

The majority regards it unwise because—

(1) It is discriminatory, in that it would single out one class of litigants (viz, public utilities) and deny to them the right, which all other classes of litigants would continue to enjoy, to resort to the United States courts in controversies which arise "under the Constitution or laws of the United States" (par. 1, sec. 24, Judicial Code).

(2) It is a step toward abolition of the District Courts of the United States.

(3) Although the right of ultimate appeal to the Supreme Court of the United States is retained in the Johnson bill, it would deny to a public utility any effective review of the facts by a United States court in that the Supreme Court is not equipped to examine the facts—and the facts are of the essence of a rate case. As was said by Mr. Justice Holmes in *Prentis* v. *Atlantic Coast Line* (211 U.S. 210, 228), a case involving rates of a railroad:

"If the railroads were required to take no active steps until they could bring a writ of error from this court to the Supreme Court of Appeals after a final judgment, they would come here with the facts already found against them. But the determination as to their rights turns almost wholly upon the facts to be found. Whether their property was taken unconstitutionally depends upon the valuation of the property, the income to be derived from the proposed rate, and the proportion between the two—pure matters of fact. When those are settled, the law is tolerably plain. All their constitutional rights, we repeat, depend upon what the facts are found to be."

(4) Controversies affecting rates chargeable by a public utility are, from their very nature, such as are liable to be affected by local prejudice. They are precisely the kind of controversies for the adjudication of which the First Congress created, under the mandate of the Constitution, the District Courts of the United States.

(5) In every rate case there are two groups of citizens, the ratepayers and the owners of the securities of the utility corporation. On the one hand the ratepayers constitute a compact local group. They should be guaranteed prompt relief from excessive rates. On the other hand, the owners of the securities of a utility are frequently scattered throughout the Nation. They are entitled under the spirit, if not the letter, of the Constitution of the United States, to a fair and impartial trial on the facts as well as on the law before a tribunal free from local bias.

Accordingly, the majority of the committee is reporting, as a substitute for the Johnson bill (S. 752), a new bill which amends the Judicial Code by adding a new section designated as section 266 A, the effect of which is as follows:

After the hearing before the State administrative board or commission, if the utility asserts that the rates fixed are confiscatory, the utility may seek its judicial review either in the State court or in the District Court of the United States, but if it elects to go into the State court, it may not thereafter seek a remedy by injunction in the Federal court, but it must pursue its remedy in the courts of the State, reserving only its right of an ultimate appeal to the Supreme Court of the United States.

The bill provides that the District Court of the United States—"shall not have jurisdiction if the complainant (or, in case the complainant is a partnership, association, or corporation, if the complainant or a member or stockholder of the complainant) has theretofore commenced suit in a State court having jurisdiction thereof to contest the validity of such order on any ground whatsoever."

If the utility elects to seek in the District Court of the United States a review of the order of the State board or commission, the hearing and determination in the United States court shall be on—

"a transcript of the record of the proceedings, including evidence taken, before the board or commission with respect to such order, prepared at the expense of the complainant and certified to the court by the board or commission in accordance with the law or practice of the State, except that upon application of any party, the court may take additional evidence if material and competent and the court is satisfied that such party was by the board or commission denied an opportunity to adduce it, and in case no record was kept or the board or commission fails or refuses to certify such record, the court may take such evidence as it deems necessary."

Provisions in the present law (*sec. 266 of* Judicial Code) are retained providing for the hearing of such cases by a "three-judge court", of which at least one of the judges must be a Justice of the Supreme Court of the United States or a judge of the circuit court of appeals; for notice of hearing; for temporary restraining orders; for precedence and expedition of hearings, whether an interlocutory or merely a permanent injunction is sought; for the right of direct appeal to the Supreme Court of the United States; and for a stay of proceedings in the United States court, if before the final hearing of the application for an injunction, a suit shall have been brought in a court of the State to enforce such order, accompanied by a stay in such State court of proceedings under such order pending the final determination of such suit in the courts of the State.

For purposes of convenient reference, section 24 of the Judicial Code, which the Johnson bill seeks to amend, and section 266 of the Judicial Code, as it now reads, are set forth hereinbelow.

Judicial Code, section 24: The district courts shall have original jurisdiction as follows:

(1) Of all suits of a civil nature, at common law or in equity, brought by the United States, or by any officer thereof authorized by law to sue, or between citizens of the same State claiming lands under grants from different States; or, where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000, and (a) arises under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or (b) is between citizens of different States, or (c) is between citizens of a State and foreign States, citizens, or subjects. No district court shall have cognizance of any suit (except upon foreign bills of exchange) to recover upon any promissory note or other chose in action in favor of any assignee, or of any subsequent holder if such instrument be payable to bearer and be not made by any corporation, unless such suit might have been prosecuted in such court to recover upon said note or other chose in action if no assignment had been made. The foregoing provision as to the sum or value of the matter in controversy shall not be construed to apply to any of the cases mentioned in the succeeding paragraphs of this section.

Judicial Code, section 266, amended: No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such State, shall be issued or granted by any justice of the Supreme Court, or by any District Court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the United States, or to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application. Whenever such application as aforesaid is presented to a Justice of the Supreme Court, or to a judge, he shall immediately call to his assistance to hear and determine the application two other judges: *Provided, however,* That one of such three judges shall be a Justice of the Supreme Court or a circuit judge. Said application shall not be heard or determined before at least 5 days' notice of the hearing has been given to the Governor and to the attorney general of the State, and to such other persons as may be defendants in the suit: *Provided,* That if of opinion that irreparable loss or damage would result to the complainant unless a temporary restraining order is granted, any Justice of the Supreme Court, or any circuit or district judge, may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall remain in force only until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case. It is further provided that if before the final hearing of such application a suit shall have been brought in a court of the State having jurisdiction thereof under the laws of such State, to enforce such statute or order, accompanied by a stay in such State court of proceedings under such statute or order pending the determination of such suit by such State court, all proceedings in any court of the United States to restrain the execution of such statute or order shall be stayed pending the final determination of such suit in the courts of the State. Such stay may be vacated upon proof made after hearing, and notice of 10 days served upon the attorney general of the State, that the suit in the State courts is not being prosecuted with diligence and good faith. The requirement respecting the presence of three judges shall also apply to the final hearing in such suit in the district court; and a direct appeal to the Supreme Court may be taken from a final decree granting or denying a permanent injunction in such suit.

I have never been in a rate case. I never represented a utility in my life, not because I have not had the opportunity but because I did not like some of the methods used by some utilities. We want to be fair here, Mr. Chairman, and we want to look at the best interests of the country. We do not wish to impair the integrity or the symmetry of our Federal judicial system simply to get at evils or abuses which have arisen in some cases. It is not necessary to burn down a barn in order to kill the rats.

The statistics showed that abuses existed in only a very small percentage of the total number of cases which have gone through the courts. But I maintain, Mr. Chairman, that the old Latin expression usually translated as "The exception proves the rule" should be translated more accurately, "The exception tests the rule." The point is that these exceptional cases test the present procedure. Is the present procedure adequate? Is it fair? It is only the exceptional case which enables us to find out.

So I say it makes no difference that there are only a few of these cases; the point is that the present procedure is abused. The abuse must stop. The Judiciary Committee is unanimous on this point. Both those who favor the Johnson bill and those who favor the committee substitute—which my friends, to flatter me, have called by my name—both groups are agreed that these abuses must and will be corrected.

What are these abuses? Very briefly I shall outline them. A proceeding is brought before a utilities commission and extended hearings are had at great expense both to the utility involved and to the public. These hearings may extend over months and may cost thousands or even tens of thousands, perhaps even hundreds of thousands, of dollars. After the hearings are concluded an order is entered by the commission. Then in these probably exceptional cases the utility, according to the evidence before the committee, has sometimes adopted one of two courses—it has gone into the State or into the United States court. In some cases the utility has gone first into the State courts, and when the case has proceeded some distance short of final judgment the utility has dismissed the case in the State court and gone into the Federal court. While this cannot be done in my State, I understand it can be done in some States. You cannot dismiss without prejudice in my State. But it was stated before the committee that in those States where a litigant can dismiss a case without prejudice the utilities sometimes have gone into the Federal court and built up an entirely new record beside, and in addition to, that which was built up before the State commission and after protracted proceedings in the State court. No provision is made in the Federal Judicial Code for the utilization of the evidence compiled at great expense for the hearing before the commission. So it cannot be used except by consent of all parties in the United States court. This is not the fault of the Federal courts or the Federal judges. It is the fault of the Congress. Of course, this is an absurdity; it is a waste of time and money; and it impedes the ends of justice. As my own personal friend Senator JOHNSON said, "Justice delayed is justice denied."

The two evils are then: First, permitting the utility to speculate upon what may appear to be the favorable or unfavorable attitude of a State court and of a Federal court and of not requiring it to be bound by its election of tribunals. Second, in not requiring the trial in the United States to be upon the evidence adduced before the State adminis-

trative board or commission. Both these evils arise from defects in the Federal procedure.

What does this substitute bill do? It puts a stop to both these evils. All the witnesses before the committee, every last one, said these were the two evils to which they objected.

This substitute bill was adopted in the Judiciary Committee by the very narrow margin of 1 vote. It provides that the utility may go into either the Federal court or the State court but, having made its election, must stand by it. If it goes into the State court it cannot dismiss and go over into the Federal court. On the other hand, if it goes into the Federal court the trial of the case in the Federal court must be on the record taken before the utility commission. In other words, the bill reported by the majority of the committee does away with the two evils which are referred to in the hearings as "the two bites at a cherry", and "throwing the record taken before the utility commission into the waste basket." Both these things are out of the way.

One objection has been made which will be considered when we read the bill under the 5-minute rule. The objection is directed at certain language in the committee bill. The committee bill is not long; I shall read it.

That the Judicial Code, as amended, is amended by adding after section 266 thereof a new section to read as follows:

"SEC. 266A. In the case of any suit brought in a United States district court to enjoin, suspend, or restrain the enforcement, operation, or execution of any order of an administrative board or commission of any State or any political subdivision thereof."

I call attention to the fact that this bill includes a board or commission not only of a State but such board of "any political subdivision of a State." In this respect I feel it is better than the Johnson bill.

Mr. KENNEY. Mr. Chairman, will the gentleman yield for a question?

Mr. LEWIS of Colorado. I yield.

Mr. KENNEY. Does the Lewis bill prohibit Federal courts from taking jurisdiction in suits brought to restrain the assessment and collection of State taxes?

Mr. LEWIS of Colorado. It does not; neither does the Johnson bill. I am coming to that a little later.

"or to enjoin, suspend, or restrain any action in compliance with such order, where (1) such order affects rates chargeable by a public utility, does not interfere with interstate commerce, and was made after reasonable notice and hearing, and (2) jurisdiction of such suit is based solely upon the ground of diversity of citizenship, or of the repugnance of such order, or of the law or ordinance under which such order was made, to the Constitution of the United States, or solely upon any combination of such grounds—

"(a) The provisions of section 266, as amended, which relate to hearings and determinations by three judges, to the right of direct appeal to the Supreme Court of the United States, to a stay of proceedings, and to precedence and expedition of hearings, shall apply, whether or not an interlocutory injunction is sought in such suit; and, when an interlocutory injunction is sought, the provisions of such section relating to notice of hearing and to temporary restraining orders shall apply;

"(b) The hearings and determinations shall be on a transcript of the record of the proceedings, including evidence taken, before such administrative board or commission with respect to such order, prepared at the expense of the complainant, and certified to the court by the board or commission in accordance with the law or practice of the State, except that (1) upon application of any party the court may take additional evidence if it is material and competent and the court is satisfied that such party was by the board or commission denied an opportunity to adduce it."

I take it that is the general law anyway, that if a litigant is denied the opportunity of adducing evidence he can always put it in on a review.

"(2) In case no record was kept or the board or commission fails or refuses to certify such record, the court may take such evidence as it deems necessary;

"(c) The court shall not have jurisdiction if the complainant (or, in case the complainant is a partnership, association, or corporation, if the complainant or a member or stockholder of the complainant) has theretofore commenced suit in a State court having jurisdiction thereof to contest the validity of such order on any ground whatsoever."

Then follows section 2. This is the saving clause which is contained in the Johnson Act to the effect that it does not apply to pending litigation.

I think it is generally conceded that all of the evils of which any of these witnesses complained have been cured in this bill. Certainly such was the intention of the majority of the committee.

Mr. TARVER. Will the gentleman yield for a question?

Mr. LEWIS of Colorado. I yield to my esteemed colleague on the committee, the gentleman from Georgia.

Mr. TARVER. The gentleman feels that his bill removes the evils complained of by President Roosevelt when he was Governor of New York, when he said in a message to the legislature of that State:

The special master becomes the rate maker; the public-service commission becomes a mere legal fantasy. This power of the Federal court must be abrogated.

Does the gentleman's bill comply with the President's views on that point?

Mr. LEWIS of Colorado. I think it does.

Mr. TARVER. Does the gentleman think it abrogates the power of the Federal court when it retains its powers under this bill?

Mr. LEWIS of Colorado. I insist this meets all of the complaints made at the hearings.

I may say that this bill was drawn by the legislative counsel of the House of Representatives. They worked on it for about a week, and I urged upon them the necessity of making this airtight in order to meet all of the evils that have been complained of and which were spoken of in the hearings. They have produced, I believe, a good bill. I suppose no bill is perfect, but I believe this bill cures all of the evils which were complained of by the various witnesses and commissions appearing before the committee. If I had the time I could go into the testimony and show that all of those complaints have been met.

What is the difference between this bill and the Johnson bill? I think it has been very clearly stated by the gentleman from New York [Mr. O'CONNOR] and by the gentleman from Michigan [Mr. MAPES]. The Johnson bill absolutely abolishes the jurisdiction of the United States courts in rate cases, and in rate cases only. That answers one of the questions that was asked me awhile ago. Neither bill abolishes the jurisdiction of the Federal courts to restrain any other order by any administrative board other than one fixing rates for a public utility.

At this point I may well pause to indicate that the jurisdiction in these cases, as was pointed out by the gentleman from Michigan [Mr. MAPES], is not dependent upon diversity of citizenship. It is dependent upon an alleged violation of the Federal Constitution. In other words, the utility comes in and says that the rates which the commission has put into effect or is about to put into effect yield such a small amount that they are confiscatory—that they deprive the utility of its property without due process of law. That contention and not the diversity clause is the basis of jurisdiction.

Some of the advocates of the Johnson bill have stated that utility companies have a special advantage over all other litigants, that they can go in and claim that their property is being confiscated by the rates fixed by the commission, that they can get an injunction under such circumstances and that this is a right enjoyed by no other litigant. Mr. Chairman, that, of course, is absolutely incorrect. I shall place in the RECORD at this point just a few of some 50 or 60 cases which I examined hurriedly yesterday afternoon in which various litigants, not nonresidents, but residents of a State, have gone into the Federal court—and in one or two cases where they have been nonresidents—and have asserted that a certain order entered by the administrative board of a State deprived them of their property without due process, or that it violated some other provision of our Federal Constitution, and hence was void. The Federal court upheld the contention. These cases went to the Supreme Court of the United States, and, of course, were affirmed.

In the following cases litigants not public utilities secured injunctions in the District Courts of the United States against orders of State administrative commissions on the ground

that the orders were in violation of the Constitution of the United States. These injunctions were sustained by the Supreme Court of the United States in the cases cited:

Childers v. *Beaver* (1925) (270 U.S. 555). (Oklahoma: To restrain State auditor and attorney general from collection of an inheritance tax against the estate of an Indian.)

Sterling v. *Constantin* (1932) (287 U.S. 378). (Texas: Orders of railroad commission, Governor, and military officials limiting production of oil; fourteenth amendment.)

Fidelity & Deposit Co. v. *Tafoya* (1926) (270 U.S. 426). (New Mexico: To restrain the State corporation commission from suspending plaintiff's right to do business in the State; nonresident relying on fourteenth amendment.)

In the following cases, litigants who were not public utilities secured in the District Courts of the United States injunctions against State officials from enforcing State statutes for the reason that said statutes were in violation of the Constitution of the United States.

These injunctions were sustained by the United States Supreme Court in the cases cited.

Adams v. *Tanner* (1916) (244 U.S. 590). Employment agency law, State of Washington. Attorney general and prosecuting attorney enjoined. Fourteenth amendment.

Air-Way Electric Appliance Corporation v. *Day* (1924) (266 U.S. 71). Tax statute of Ohio. Delaware corporation in Ohio. Tax statute violated commerce clause and fourteenth amendment.

Askren v. *Continental Oil Co.* (1920) (252 U.S. 444). Tax statute of New Mexico. Enjoined because burden on interstate commerce.

Shafer v. *Farmers Grain Co.* (1925) (268 U.S. 189). North Dakota grain grading act. Burden on interstate commerce.

Pierce v. *Society of Sisters* (1925) (268 U.S. 510). Oregon compulsory education act. Fourteenth amendment.

Phipps v. *Cleveland Refining Co.* (1923) (261 U.S. 449). Ohio tax law. Burden on interstate commerce.

Truax v. *Raich* (1915) (239 U.S. 33). Arizona; employment of aliens. Injunction, fourteenth amendment.

Tyson & Bro. v. *Banton* (1927) (273 U.S. 418). New York; resale price of theater tickets. Injunction, fourteenth amendment.

Weaver v. *Palmer Bros. Co.* (1926) (270 U.S. 402). Pennsylvania; forbidding use of shoddy in bedding. Fourteenth amendment.

Looney v. *Crane Co.* (1917) (245 U.S. 178). Texas; tax on foreign corporations. Foreign corporation, fourteenth amendment, and burden on interstate commerce.

Connally v. *General Construction Co.* (1926) (269 U.S. 385). Oklahoma minimum wage law. Fourteenth amendment.

Bowman v. *Continental Oil Co.* (1921) (256 U.S. 642). New Mexico gasoline tax. Burden on interstate commerce.

The point I wish to make is that this is not a special privilege accorded to utility companies. It is a right of any citizen or person in a State to assert that a public official of a State has violated, by his action or threatened action, a right guaranteed to such citizen or person under the Constitution of the United States. The courts have repeatedly enjoined the enforcement of a statute for this very reason, not dependent upon diversity of citizenship, but upon violation of the constitutional rights of a person, natural or corporate. So that instead of taking the utilities out of a supposedly favored class you will, if you pass the Johnson bill, put them in a special proscribed class by themselves. If you pass the Johnson bill you will deny to public utilities in rate cases access to the Federal courts, which will remain open to every other class of citizens to assert that some administrative act of a public official, or some act by the legislature of a State has violated, or is threatening to violate the constitutional rights of such individual.

Something has been said about an ultimate appeal to the Supreme Court of the United States. Of course, the gentleman from Michigan [Mr. MAPES] is correct—the Johnson bill does not deprive the utility of that right of review. But, as pointed out by Justice Oliver Wendell Holmes, in the extract printed in the statement by the majority of the committee and already quoted, such right of appeal is of doubtful value in a rate case where the facts are of the essence—and the Supreme Court of the United States is not equipped to examine the facts.

In this substitute bill, the right of appeal direct to the United States Supreme Court from orders granting or denying an interlocutory injunction is retained. It is already granted by section 266 of the Judicial Code.

What does this discussion all simmer down to? It simmers down to what the gentleman from New York [Mr. O'CONNOR] said: Do you want to retain the Federal courts other than the Supreme Court, or do you not? The gentleman from New York was most candid, as he always is, when he said he would like to abolish all the Federal courts except the United States Supreme Court. I would not. I believe there are a majority of the Members in the House and an overwhelming majority of the people of this country, if I may hazard the statement, who do not want to abolish the inferior Federal courts. In spite of their mistakes they have been, in many, many cases throughout the 145 years since their establishment the bulwark of our liberties.

I believe we should not do away with what the First Congress established under the mandate of the Constitution. To pass the Johnson bill would, in my opinion, be the first step toward the abolition of the inferior Federal courts.

I personally have tried cases in the State courts in California, in New York, in my own State, and in between, and I have never had the slightest cause for complaint in the State courts in any State where I have appeared. All the judges in my State are my personal friends, and I have the utmost respect for their ability, their honesty, their courage, and their integrity. But I have never tried a rate case.

[Here the gavel fell.]

Mr. LEWIS of Colorado. Mr. Chairman, I yield myself 3 additional minutes.

Mr. CLAIBORNE. Will the gentleman yield?

Mr. LEWIS of Colorado. I yield.

Mr. CLAIBORNE. May I assume that the Johnson bill takes away from a litigant, by an act of Congress, a constitutional right?

Mr. COX. It is not a constitutional right.

Mr. CLAIBORNE. Just a minute; I am asking the gentleman from Colorado.

Mr. LEWIS of Colorado. It attempts to deprive utilities of their present right to go into the Federal court to review rate cases.

Mr. REED of New York and Mr. DUNN rose.

Mr. LEWIS of Colorado. I yield first to the gentleman from New York.

Mr. REED of New York. Which of these two drafts has the approval of the American Bar Association, if either of them has such approval?

Mr. LEWIS of Colorado. Mr. Earle W. Evans, president of the American Bar Association, has telegraphed me, and I have here a sheaf of telegrams and letters from various bar associations and lawyers, approving the committee substitute and disapproving the Johnson bill.

[Here the gavel fell.]

Mr. SUMNERS of Texas. Mr. Chairman, I yield 10 minutes to the gentleman from Arkansas [Mr. MILLER].

Mr. MILLER. Mr. Chairman, I have listened with a great deal of interest to the argument made by my distinguished friend, the gentleman from Colorado [Mr. LEWIS]. The gentleman is very studious and is a man who is motivated by a desire to do what he thinks is for the best interest of this country. The two questions that are presented by the original Johnson bill and the substitute that was reported by a majority of the committee, are not questions that are new in this body at all.

The first bill that was passed by this body affecting the jurisdiction of the Federal courts, after the passage of the act of 1875, was passed in 1880. This House, on three different occasions, has passed a bill under which it completely divested the Federal court of jurisdiction on the ground of diversity of citizenship. That great Texan, Culbertson, was the first man who started the agitation in the House. Since then the question has been before the House repeatedly in various forms. It now comes before the House in the form of the Johnson bill, which simply provides that the Federal courts shall not have jurisdiction to enjoin, suspend, or restrain the enforcement of any order of an administrative board or commission of a State, or to enjoin, suspend, or restrain any action in compliance with such order, where the jurisdiction is based solely upon the ground of diversity of citizenship, or where jurisdiction is claimed on an alleged repugnance of such order of such board to the Constitution of the United States, and where such order affects the rates chargeable by public utility, does not interfere with interstate commerce, and has been

made after reasonable notice and hearing, and where a plain, speedy, and efficient remedy is provided by the laws of the State.

It has been argued by the distinguished gentleman from Colorado [Mr. LEWIS], and may be argued by others that we can go too far and have an unconstitutional act. The inference being that the Johnson bill is unconstitutional.

That is the first such contention I have heard. I do not think anybody can successfully contend that the Johnson bill is unconstitutional. Mind you, the jurisdiction that is conferred on the inferior Federal courts in this country is statutory and not constitutional. There is only one constitutional court, and that is the Supreme Court.

The Congress is at liberty to add to or take from the jurisdiction of the lower Federal courts in this country at any time.

This question has been settled by the decision in *Fishbeck* v. *Western Union Telegraph Co.* (161 U.S., p. 96). That ought to and does dispose of the contention as to the constitutionality of this provision.

The next proposition they argue is this: That we do not want to destroy the symmetry of our judicial system. The symmetry has already been destroyed by judicial interpretation and by judicial legislation until we have today the public utilities of this country enjoying rights that are not enjoyed by the average ordinary citizen. It will be argued to you that this trouble can be remedied by the passage in the various States of laws requiring the corporation to be recreated in the States where it does business. That is not an answer to the proposition at all, because the business engaged in by utilities is that of a public nature. It is not like a private business. It is a public business, and a business in which the public is interested. It is nothing more than right that when they engage in business in any State they should come into the State under the same rules and with the same restrictions that any other citizen of the State enjoys, no more and no less.

It would be argued to you, and very logically so, that the provision of the Johnson bill for an appeal from the judgment of the highest court in the State is an illusion; that the appeal is not effective, because the United States Supreme Court cannot or will not examine into the facts. Such an argument is not sound and is not supported by the law.

I want to call your attention to the words of Chief Justice Taft in answering that very question in the case of *Truax* v. *Corrigan* (157 U.S. 312, 324). He said:

> In cases brought to this Court from State courts for review on the ground that a Federal right set up in the State court has been wrongly denied, and in which the State court has put the decision on a finding that the asserted Federal right has no basis in point of fact, or has been waived or lost, this Court, as an incident of its power to determine whether a Federal right has been wrongly denied, may go behind the finding to see whether it is without substantial support. If the rule were otherwise, it almost always would be within the power of a State court practically to prevent a review here (citing many cases).

That was an appeal from the Supreme Court of Arizona. In other words, the argument will be made that if you destroy the jurisdiction of the Federal court the utility companies will appeal from the highest court of the State upon a finding of fact that is adverse to them, and the Supreme Court will adopt that finding of fact and will not go behind it.

The Chief Justice further said in the same case:

> Another class of cases in which this Court will review the findings of the court as to the facts is when the conclusion of law and findings of fact are so intermingled as to make it necessary, in order to pass upon the question, to analyze the facts.

So you are not depriving any litigant of a single constitutional right that he has to have his case passed upon by the Supreme Court of the United States when any constitutional question is involved, and the Court may and will in a proper case examine the facts.

Mr. DONDERO. Mr. Chairman, will the gentleman yield?

Mr. MILLER. Yes.

Mr. DONDERO. Suppose the case going to the Supreme Court does not involve a question of diversity of citizenship, or a point in which the Supreme Court of the United States has jurisdiction, can it be raised after it passes the court of last resort in a State where the suit was first brought?

Mr. MILLER. No; it would have to be raised in the lower court, of course, but if there was no constitutional question involved such as the allegation of confiscation of property, or that the rates were confiscatory, which is always the contention of the utility company, or if some other alleged right guaranteed by the Constitution was not involved, of course the Supreme Court properly would not have jurisdiction.

Another proposition that the learned gentleman from Colorado advocated was that the substitute cures the objections made to the present law and procedure. I call your attention to the substitute and say this with all due deference to the advocates of it. It is nothing more than a snare and a delusion. I wish gentlemen would refer to provision (b) of the substitute. It provides that the—

> Hearings and determinations shall be on a transcript of the record of the proceedings, including evidence taken, before such administrative board or commission with respect to such order, prepared at the expense of the complainant—

And so forth. That is the provision which they contend cures the admitted injustices in the present law.

I call attention to the hearings on page 28, in which the attention of Mr. Reis was called to that specific question. He said that that would go a long way, provided the law was that the records made before the commission constituted prima facie evidence. This substitute means nothing. The court is at liberty to pay whatever attention he may desire to the transcript made before the commission, and there is no provision in the law to prevent the taking of additional testimony. In fact it provides for the taking of additional testimony. There you are confronted with a mute, silent record as against an array of witnesses which may be introduced by the utility company in the court. It will amount to nothing in the practical application of the law and we should not be misled.

Another thing my friend said is that he did not want us to get away from the original act of Congress. I do not, either. I would like to have you go back to the original Judiciary Act of 1789, which was Senate bill no. 1, and was passed September 4, 1789. In reading the history of that act you will find that no thought ever entered the minds of the Congress at that time that the Federal courts would be obtaining jurisdiction——

The CHAIRMAN. The time of the gentleman from Arkansas has expired.

Mr. SUMNERS of Texas. Mr. Chairman, I yield 5 additional minutes to the gentleman from Arkansas.

Mr. MILLER. There was no thought in the minds of the framers of the original judiciary act that a corporation domiciled and chartered in one State would be able to go into another State and remove a cause to the Federal court under that act. In fact Mr. Justice Iredale in 1797 rendered an opinion on that very point, and the history of the act shows conclusively that it was not the intention that diversity of citizenship should be created by a fiction. Two States—New York and Maryland—proposed amendments to specifically prevent just such a thing happening. The debates on the bill show conclusively that it was never the intention under the original judiciary act to have any such thing happen.

It was the thought of the framers of the original Judiciary Act that the Federal courts would administer the State law and the State law only; and to make it perfectly certain that the Federal courts were simply to administer State law, section 34 was put into the act, and that remained the law until 1842, when Justice Story rendered that famous decision of his and construed the word "law" not to include the common law of a State. Then it was that a distinct Federal system of laws began to grow up, and we have now a distinct and separate set of laws which are administered largely through the Federal courts, which govern in the case of corporations, whereas the State laws govern the average citizen. Instead of discrimination being against the corporation, the public utilities, the discrimination is decidedly in their favor. Time will not permit me

to quote from the history of that act and the history of the development of the judicial decisions of this country, but let me give you one quotation from the article of Hon. Charles Warren in the Harvard Law Review of November 1923. He said:

That Judge Story's views as to the imperative Federal jurisdiction of the inferior Federal courts did not prevail was extremely fortunate for the United States. Conditions did not require in 1789, nor do they at present require, the vesting in the Federal courts of the full scope of jurisdiction authorized by the Constitution. In fact, it would probably now be better that the present broad jurisdiction granted by the act of 1875 should be abrogated, and that the State courts should be left to a greater extent with jurisdiction, in the first instance, of cases arising under the Constitution and laws of the United States, Federal rights being amply safeguarded by right of appeal to the United States Supreme Court.

That is exactly what this original bill does.

Mr. SUMNERS of Texas. Mr. Chairman, I yield 5 minutes to the gentleman from Wisconsin [Mr. HUGHES].

Mr. HUGHES. Mr. Chairman, it is an accepted practice and we are in full accord with the principle that each sovereign State has a responsibility of regulating the utilities that operate within its borders. Over a long period of years the State of Wisconsin, which I represent, has functioned to these controls through a commission established by the laws of the State. Under these laws the utilities of Wisconsin have received fair and just consideration and treatment. We grant such utilities a certificate of convenience and necessity which is referred to in our State as an indeterminate permit, what is in effect a permanent franchise, without competition, thus creating in their behalf practically a monopoly. Under these laws the utilities have prospered; they have received adequate protection and just regulation. The truth of this is registered in their growth and development, their returns and their earnings; and the value of their stocks and bonds will reflect that condition. The only exception to this rule applies to such companies as have been swindled by holding organizations, stock jobbers, and promoters. Our utilities in the main are satisfied and approve of our regulation. In view of this fair and just treatment, and the prosperity that attends their service, we feel, in Wisconsin, that our utilities should submit to this regulation and not seek to handicap the efficiency of our commission by delay, obstruction, and defeat. For a number of years our commission has been so handicapped by appeals made by the regulated utilities to the Federal courts. These appeals have been frequent and are so extended and exercised as to cripple, and in many cases to paralyze, the functions of the public-service commission. Temporary restraining orders and temporary injunctions obtained in the lower Federal courts to restrain the enforcement of State commission rate orders have contributed to this condition and defeated the purpose of our commission. It is vitally important, I believe, that a State in its governmental proceedings, in these controls, be free from interference from the Federal Government upon the grounds of violation of the provisions of the Federal Constitution until the final action of the State, through its highest judicial tribunal, demonstrates an appeal to Federal power for the protection of a constitutional right is necessary.

The Johnson bill is a measure planned and designed to serve with justice and to expedite action in these matters of utility control—to eliminate long delay and postponement, and the waste and expense and the obstruction it develops. Legislation of this nature is important and vital in the affairs of the State and the Nation.

Forty-five of the forty-eight State utility commissions have very definitely approved the Johnson bill.

In frequent conferences held by this group, where practically every State in the Union was represented, where open discussion and debate was encouraged, the need and necessity of this legislation was urged and recommended. The Johnson bill as submitted meets the demands and requirements and will correct and eliminate the abuses that delay, handicapy, obstruct, and frequently defeat the efforts and the purpose of these important commissions.

The State utility commissions have been created to serve the best interests of the citizens of our States and to act in justice and equity to all concerned. Men qualified by character and ability, knowledge and experience, serve as members of these boards. It is their duty and responsibility to serve with integrity, intelligence, and efficiency, and as citizens we hold them to that obligation.

In view of these facts, I hold to the opinion that it falls upon us as Members of Congress to extend to them the necessary legislation for prompt and effective administration. [Applause.]

Mr. KURTZ. Mr. Chairman, I yield 30 minutes to the gentleman from Pennsylvania [Mr. BECK].

Mr. BECK. Mr. Chairman and my colleague, "come, let us reason together." Fortunately we can do so because this is not a party question. Of the 11 members of the Judiciary Committee who, after listening with great interest and patience to the testimony of witnesses for and against the Johnson bill, reported the Lewis substitute, a majority were Democrats. Both in respect to this measure and in respect to any measure that has come before the Judiciary Committee since I have been a member, there has generally been no politics. Ordinarily we delight to follow our distinguished chairman, for whom we have not only great admiration, but a real feeling of affection. In this matter, deeply as he was interested in it, he obliged me by adjourning the hearings for some time so that I, an opponent of the Johnson measure, could be present. I want to take this occasion to recognize his great courtesy to me, which he would freely extend to any member of the committee, whether he were a Republican or a Democrat.

Therefore, without any consideration of party politics, we can reason this thing out calmly.

The House has before it two proposals.

One is a constructive proposal, of which it can be said in entire good faith that it meets every criticism and remedies every evil that was developed in the hearings before the committee.

The other is a destructive proposal, which seeks to tear up by the roots the sturdy oak of the Federal judiciary, under which any American citizen, rich or poor, high or low, can be protected in his right under the Constitution of the United States to a fair return on his investments in utility securities. The destructive proposal has added significance because it is apparent from the passionate quality of some of the speeches that have been made not only here but in previous discussions of this question, that this is the entering wedge to the destruction of the power of the United States courts.

I hear it assumed in the debate, and I think it was in the able address of the gentleman from Arkansas, that the Supreme Court of the United States stands like a Gibraltar, against which no possible legislative waves of destruction could prevail; but that is a great mistake. While the Supreme Court is authorized and created by the Constitution, it is only a little less subject to the will of Congress than the inferior courts, because the Congress could pass a law tomorrow that the Supreme Court could meet only once in 10 years. What would then become of the administration of justice? Congress could pass a law that no one should have any right of appeal in the Supreme Court of the United States unless the subject matter of the controversy exceeded $10,000,000. There would then result the exclusion of nearly all litigation. The Congress could refuse appropriations to the Court. The common notion that the Supreme Court of the United States has a peculiar position of power and independence that the Congress could not threaten is a mistake. It shares with the inferior courts of the country the possibility of destructive legislation by Congress.

In considering this question of whether inferior Federal courts should be destroyed, let me first suggest to you what those courts are. A reference has been made in the course of the debates to a "foreign jurisdiction", meaning the Federal courts. Federal courts are American courts. Who created them? The American people. How did the American people create them? It created them through Congress. Why were they created? To effectuate the purposes of the Constitution. What was the mandate of the Congress when it created the inferior courts of the United States and

even determined the limits and boundaries of the Supreme Court of the United States itself? What was the mandate?

The men who framed the Constitution said, and they wrote it into the Constitution, that in respect to any assertion of a right under the Constitution there ought to be an independent tribunal, so that these rights under the Constitution could be determined by an impartial court of the Federal Government. You may quarrel with that. You may say the local courts would have answered every purpose. They would not at the time the Constitution was adopted. That is perfectly clear, because of the intense jealousy and fear of a central government that then prevailed.

At all events, the Constitution vested the judicial power in the Supreme Court and such inferior courts as the Congress from time to time might ordain and establish. In my judgment, that imposed a political mandate of a moral nature upon the Congress to create those inferior courts to make possible a judicial ascertainment in national tribunals of rights existing by virtue of the Constitution of the United States.

I agree with the gentleman from Arkansas [Mr. MILLER], who made, if he will allow me to say so, an able argument. I agree with him that no juridical question is involved if the Congress does not carry out this moral mandate. The Congress can destroy every inferior Federal court. It can "crib, cabin, and confine" the Supreme Court itself until, like Prometheus, it would be chained upon the top of another Mount Ida, and be largely impotent to carry out the great functions entrusted to it by the Constitution.

No court could say it nay. Congress could refuse to pass any appropriation bill whatever for the executive branch of the Government, and thereupon the wheels of our Government would come to a stop; that would be the end of government, but no court could say Congress nay. Therefore, as I have taken occasion in previous debates to emphasize to my indulgent colleagues of the House, there is a difference between a thing being politically anticonstitutional and one juridically unconstitutional. It is juridically unconstitutional when a court can say of a given act of Congress, "We will disregard it because it is null and void", but a thing can be politically anticonstitutional when a branch of the Government fails to carry out any mandate of the Constitution.

As a mere matter of moral obligation, I therefore contend that we have no right to take from utility corporations the right to assert a constitutional right in an appropriate court. If we refuse to do so, as we have in respect to any subject matter of controversy that is less than $3,000, then the action of Congress is final; and, in the sense that the gentleman from Arkansas meant it, no constitutional question can arise.

This being so, let us come down to the heart of the problem; and I venture to say I surprise the Members of the House by stating a fact which has not yet been emphasized. If it was emphasized I did not hear it. In my humble judgment it is a complete answer to the rather impassioned speech made by the gentleman from New York [Mr. O'CONNOR] in opening this debate when he said that he favored the abolition of the inferior Federal courts altogether.

I ask you to remember this if you forget everything else I say, and I do not doubt you will forget my words because everything in this House in the way of debate is as evanescent as a child's footprints upon the sands of the sea.

No utility corporation can go into the Federal court to assert its constitutional rights except by the permission and sufferance of the State authorities. This sounds like a very sweeping statement. I am talking now of existing law, not of the Johnson bill. I am referring to section 266. Why? Because section 266, which this Congress passed about the year 1916, I think, says that if the State authorities do not wish a utility corporation to go into the Federal courts all they have to do is to proceed in their own courts and grant a stay until their own courts have passed upon it. All the public-utilities commission or the Attorney General, or the appropriate officer of the States has to do is to go into the State court and mandamus the utility corporation to obey the utility commission. All that is asked of them is that they must grant a stay. When this fact was brought out it was said: "Why should they grant a stay?" I will tell you why, and it ought to appeal to the Members of this House, two thirds of whom are members of the bar.

What is a public-utility commission? It is a body of men, either elected or appointed. They are sometimes members of the bar and sometimes not members of the bar; they are sometimes politically ambitious and sometimes they are not. Sometimes they have been elected with a distinct pledge that they would reduce rates. At other times they are elected upon the ticket of a party which has pledged an immediate reduction of rates. These officials are not a court of record; they are not a judicial body. When you come before a State public-utility commission you have not had your day in court; you have simply appeared before some bureaucrats, very necessary bureaucrats, but they are bureaucrats. Very well; you appear before them, and they grant a hearing. They hear what they care to hear. I am reminded by these bureaucrats of the familiar lines of Shakespeare:

> But man, proud man,
> Drest in a little brief authority,
> Most ignorant of what he's most assured,
> His glassy essence, like an angry ape,
> Plays such fantastic tricks before high heaven
> As make the angels weep.

Why, gentlemen, I can not understand what has come over the character of our people that there is not a revolt against this ever-rising tide of bureaucracy. I am not referring now to the past 12 months but also to the past 25 years—this rising tide of allowing a few officials, appointed or otherwise, to determine the most sacred rights, to be prosecuting attorney, when they institute the inquiry, to be jury to determine the facts, to be judge to pass upon them, and then finally to be the public executioner, unless a court will stay their hands. Therefore, when that kind of a body, not a court, says to a public-utility corporation. "Your rates must come down", it may or may not involve confiscation. We must all admit the possibility of confiscation.

Why, then, should they not grant a stay until their own courts could pass upon it? and when their own courts have passed upon it, that is the end of the controversy with the exception of an appeal by the utility corporation to the Supreme Court.

So you see the proponents of the Johnson bill—and I do not mean the minority of the Judiciary Committee; I am referring to those who brought it into the Judiciary Committee; I am referring to the distinguished Senator, who gave his name to the bill, who appeared before us as a witness and as to whose testimony I am free to comment. His manner seemed to imply: "Sign on the dotted line and do not delay it."

I respect the Judiciary Committee in its control of this matter. Without respect to any demand from any source that we should pass this and pass it quickly without omitting the crossing of a "t" or the dotting of an "i", our committee gave a most patient examination to all that could be said. We divided as reasonable men might, almost evenly, and you have the choice of remedy.

I said a moment ago, and I have diverged for the moment, that these Federal courts were called a "foreign jurisdiction." As I said, they were created by the American people under at least a moral mandate of the Constitution, and now I pause to ask: What kind of judges have the Federal courts had that the finger of scorn should be now pointed at them? What kind of judges are they?

Who appoints them?

The President of the United States as the representative of all the American people. Does he appoint them alone? No; he appoints them by and with the advice and consent of the Senate, and when so selected they are upon the whole so fine a body of men that if there be one favorable comparison with the judiciary of England, which in many ways is one of the noblest body of public magistrates in the world, it is our Federal judiciary.

I know something about them. Last April it was 50 years since I was called to the historic bar of Philadelphia. If I had been simply a practitioner at that bar my knowledge might be no more than that of the immediate locality of Philadelphia. It was my rare good fortune to become Assistant Attorney General under President McKinley and the first President Roosevelt, later to become Solicitor General under Presidents Harding and Coolidge, and as a practicing lawyer in New York for 17 years my practice was almost entirely in the Federal courts. This experience has taken me from one end of the country to the other, and may I say to you that with very few exceptions my fellow lawyers of all localities have only had for the Federal courts great respect.

In the 145 years which have passed since the Federal Judiciary Act was passed, I am told that only three Federal judges have ever been impeached. One judge of the United States Supreme Court was impeached, not on account of any charge involving his integrity but because he was regarded as unduly partisan. I refer to Justice Chase. But the Federal judges, certainly until recent years, have been without a stain, and their reputation is one in which Americans can take great pride. The Judiciary Act of 1789 was the first and in some respects, when you measure its tremendous influence, the greatest constructive piece of work of the first Congress.

I have in my home library, and I wish sometime that you were not so numerous that I could invite you all to it, a collection of autographed letters of signers of the Constitution of the United States, and also of great men like Clay, Calhoun, Andrew Jackson, Daniel Webster, and others who were concerned with the development of the Constitution. There must be 60 letters in all. Among the most valued of those letters is a four-page letter of James Madison, then the leader of this House, who had the responsibility of passing the Judiciary Act of 1789 through this Chamber, whereby the Federal courts obtained the power to vindicate the constitutional rights of the American, no matter whence he came. It is my impression that he himself did not draft it. I think it was drafted by Ellsworth, although I may be mistaken about that. At all events, that was a great constructive piece of legislation which has worked well for nearly a century and a half.

It is said, and said with a certain amount of force, that while the Judiciary Act of 1789, though somewhat amended, is in substance not yet repealed, it never contemplated the power of the Federal courts to assert a constitutional right in respect to the action of a State in regulating rates of securities. That is a half truth. Of course they contemplated in that act, because they were carrying out the Constitution, that any American citizen that asserted a right under the Constitution of the United States should have an independent Federal tribunal to determine that right. Therefore, that was inclusive of any classes of cases that might arise in the future. I recognize that corporations were few and far between in 1789.

I think the gentleman from Arkansas was correct in complaining in respect to corporations of the diversity of citizenship feature of the act of 1789, because a corporation has only a fictitious citizenship. If this bill were limited to the remedy that no corporation could invoke the power of a Federal court on the ground of diversity on the theory that it was a citizen of the State of its incorporation, I am disposed to think I would vote for that bill and remove the mere fiction that because a group of men go down to Delaware and put a dollar in a slot and draw out a charter, that, therefore, they are citizens of Delaware. It is an absurd fiction. I have no sympathy with it.

But these utility cases do not turn upon diversity of citizenship. They turn upon confiscation and confiscation alone. Federal courts do not fix rates. They cannot fix rates. All they can do is to say that the rate which the State establishes under the testimony, in their judgment, is a confiscation of earning power and, therefore, a violation of the fourteenth amendment.

What was the fourteenth amendment? What was the expression "due process of law"? It was our modern paraphrase of the term in Magna Carta "by the law of the land." And what did it mean? It meant there were some rights of property which could not be taken even by a State authority where they violated fundamental rights and took from the mouth of labor, whether it were the labor of the hand or the labor of the brain, to use Jefferson's phrase "the bread it has earned."

I said a great deal as to why I am opposed to the Johnson bill. Let us address ourselves a moment to the Lewis bill. If we have the Lewis bill, what will we have? If it proves by the test of experience not to have met any reasonable evil, then Congress can legislate again if necessary. Under existing law no utility corporation can get into a Federal court if the State will only be decent enough, when its little commission of bureaucrats have lowered the rates, to proceed in their own courts and grant a stay until a court of justice of the State has passed upon the matter. You have this by existing law, but it had one defect that, if there were any recourse to the Federal courts, if the State courts will not grant the stay, then all the testimony was taken a second time. This meant delay and expense.

A majority of our committee has met this situation in this way: We have said that the testimony taken before the utility commission shall be the basis of the decision of the Federal court if, under the circumstances, recourse is had to the Federal court.

We have said more. We did appreciate, as my brother from Colorado [Mr. LEWIS] so well said, that it is an unfair thing for a utility corporation to go, first, into a State court and then, when it sees it is going to have an adverse decision, resort to a Federal court. So our Lewis amendment provides that, once they have made their election, they are precluded. If they go into the State court, they can never thereafter go into the Federal court.

Mr. FORD. Did the gentleman write the amendment?

Mr. BECK. No; I did not.

Mr. FORD. The gentleman said "our amendment."

Mr. BECK. I meant we of the majority. I did, however, write one amendment to which reference may be made in my absence and to which I am going to refer for a moment. I did add this, or at least I offered it to my colleagues of the majority of the committee, and they accepted it. While the testimony before the utility commission should be the testimony before the Federal court and no more, yet there was one exception, that if the utility company had offered before the utility commission testimony that was competent and relevant and the utility commission refused to take the testimony, then and then only should the Federal court hear what the State utility commission ought to have heard.

This seems to me just common fairness; and if it be not common fairness, if that were the sole obstacle to the Lewis bill, I would rather it be dropped, and then the bill would provide that the Federal court can only take the testimony before the State utility commission and pass upon that and nothing else.

If this is not cutting Federal jurisdiction to the very bone, then I do not understand the meaning of the expression.

Mr. SIROVICH. Mr. Chairman, will the gentleman yield?

Mr. BECK. Certainly.

Mr. SIROVICH. Why does the gentleman make his amendment apply only to the utilities themselves? Why not give the State the same privilege?

Mr. BECK. The State has that privilege. The language is, as I recall it, "upon the application of any party." Of course, I was speaking of it in that way, because the utility company would be the one that would probably appeal.

Mr. COLE. Will the gentleman yield?

Mr. BECK. I yield.

Mr. COLE. In case additional testimony is taken of the character the gentleman has discussed, is that to be referred in any way to the commission in fairness to the commission?

Mr. BECK. I think it ought to be.

Mr. COLE. But not under this amendment.

Mr. BECK. If the Lewis amendment is adopted and anyone proposes an amendment that before the Federal court passes on the matter they should refer back any new testimony to the utility commission, I think that would be manifestly fair. I am sorry it did not occur to us.

Mr. TERRELL of Texas. Will the gentleman yield for one or two questions?

Mr. BECK. Certainly.

[Here the gavel fell.]

Mr. KURTZ. Mr. Chairman, I yield the gentleman from Pennsylvania 10 additional minutes.

Mr. TERRELL of Texas. When the rates are made by a State commission affecting intrastate shipments, upon what ground does the Federal court get jurisdiction?

Mr. BECK. Under the fourteenth amendment.

Mr. TERRELL of Texas. Yes; if they get jurisdiction under the fourteenth amendment, why can they not wait until the supreme court of the State passes on it and then go to the Supreme Court of the United States?

Mr. BECK. That is precisely what I have said the State courts or the State authorities can do. If they will simply stay the imposition of the rates until their own courts have passed upon the matter, the Federal courts cannot act.

Mr. PIERCE. Is it not true that they get around that provision?

Mr. BECK. I do not know how they get around it.

Mr. PIERCE. They certainly get around it in Oregon.

Mr. BECK. I do not know how.

Mr. PIERCE. I do not know the way they do it, but they get around it and throw the matter squarely into the Federal court.

Mr. BECK. The fact is the State authorities have not taken advantage of section 266.

Mr. PIERCE. Does the gentleman know of any place where that right has been exercised, and where Federal action has been stayed in that way?

Mr. BECK. Oh, yes; in Wisconsin and, I think, in other cases. I have not been, in 20 years, in a utility case nor in 20 years have I represented a utility corporation. I am not an expert, and cannot answer the question with knowledge.

Mr. PIERCE. I know we tried to exercise that right in the Northwest and we failed.

Mr. BECK. The language is so explicit that he who runs may read it. The Federal court has no discretion. They are bound to stop the moment the State court will stay the order until they can pass upon it.

Mr. SIROVICH. If the gentleman will permit, according to the Lewis amendment every public utility that is doing an intrastate business would have an opportunity either to go to the State supreme court or to the Federal courts. Is that right?

Mr. BECK. They have to make their election.

Mr. SIROVICH. And once they make the choice they have got to stick to it.

Mr. BECK. Yes.

Mr. SIROVICH. Is it not a violation of States rights to give an intrastate public-utility corporation the right to go into the Federal court instead of the State court?

Mr. BECK. No; because it proceeds upon the theory of the fourteenth amendment.

Mr. SIROVICH. Suppose the fourteenth amendment is not involved?

Mr. BECK. If the fourteenth amendment is not involved and there is no diversity of citizenship, there is no Federal jurisdiction.

Do not believe that the fact that there is an appeal from the highest court of the State to the Supreme Court of the United States, that this is any adequate protection, because it is not.

The Supreme Court of the United States generally accepts the facts found by the State court or the State utility boards, and does so because as a practical matter it cannot go into the facts effectively.

As proof of that, you gentlemen know, as I do, that the Justice of the Supreme Court of our day and generation who, with the possible exception of Justice Brandeis, has the reputation of being the most advanced "liberal" was our venerable Justice Oliver Wendell Holmes, "nomen praeclarum et venerabile." In the *Atlantic Coast Line case* (211 U.S., 210), in a case involving rates of a railroad, Justice Holmes said for the Supreme Court:

> If the railroads were required to take no active steps until they could bring a writ of error from this court to the Supreme Court of Appeals after a final judgment, they would come here with the facts already found against them. But the determination as to their rights turns almost wholly upon the facts to be found. Whether their property was taken unconstitutionally depends upon the valuation of the property, the income to be derived from the proposed rate, and the proportion between the two—pure matters of fact. When those are settled, the law is tolerably plain. All their constitutional rights, we repeat, depend upon what the facts are found to be.

When you take the responsibility of destroying the inferior Federal courts you destroy them in a class of cases where their protection is most needed.

One of the profoundest students of government was Sir Henry Maine, and, referring to the beneficent prospects of America, he said:

> All this beneficent prosperity reposes on the sacredness of contract and the stability of private property, the first the employment and the last the reward of success in the universal competition.

He adds that this has been the—

> Bulwark of American individualism against democratic impatience and socialist fantasy.

So much for his estimate as to the beneficence of our Constitution.

Mr. DUNN. Mr. Chairman, will the gentleman yield?

Mr. BECK. Yes.

Mr. DUNN. I appreciate what the gentleman has said and his explanation of the law and the Constitution, but what I am interested in is the people of the United States. In the gentleman's opinion, which of the two bills is going to benefit the people of the United States?

Mr. BECK. I would say without hesitation the Lewis bill; first, because it corrects every evil, and if there be any remaining evil, the powers of the Congress are not exhausted; and, in the second place, it does not drive the entering wedge into the destruction of the courts of the United States, and that is what is back of this proposal on the part of many people.

I quote now what is very familiar to many of us, but never did the significance of what I am about to read come to many thoughtful Americans as it has since 1928.

Macaulay, in his famous letter to the biographer of Thomas Jefferson, after predicting that when our country had exhausted its resources of arable lands that then the real test of our institutions would come, said:

> On one side is a statesman teaching patience, respect for vested rights, strict observance of public faith. On the other is a demagogue ranting about the tyranny of capitalists and usurists * * * I seriously apprehend that you will in some such season of adversity as I have described, do things that will prevent prosperity from returning; that you will act like people who in a year of scarcity devour all the seed corn, and thus make the next year, not of scarcity but of absolute famine. There will be, I fear, spoliation. The spoliation will increase distress. The distress will increase fresh spoliation. There is nothing to stop you. Your Constitution is all sail and no anchor. As I have said before, when a society has entered on this downward progress either civilization or liberty must perish.

That was said by a great Whig statesman, and one of the most brilliant students of history, and it was in reference to our country.

I say to you in all solemnity, my colleagues of the House, this is but a skirmish. No one can mistake what the Johnson proposal means.

Adopt the Lewis amendment, and you have not affronted the Federal courts, you have not put an unjustified stigma upon them, you have not torn up their power by the roots.

Pass the Johnson bill, and it may be the beginning of the end of the beneficent power of the inferior Federal courts, which has been exercised in this country for 145 years to the honor of our judiciary and the welfare of the American people. [Applause.]

Mr. GUYER. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. WELCH].

Mr. WELCH. Mr. Chairman, the statement made by the gentleman from Pennsylvania [Mr. BECK] with reference to Senator JOHNSON's statement before the Committee on the Judiciary when this bill was under consideration, no doubt, would leave a false impression with the members of the committee. Therefore I ask unanimous consent that Senator JOHNSON'S statement before the Judiciary Committee be published in the RECORD at this point.

The CHAIRMAN. Is there objection?

There was no objection.

The statement follows:

STATEMENT OF HON. HIRAM W. JOHNSON, A SENATOR FROM THE STATE OF CALIFORNIA

Senator JOHNSON. Mr. Chairman and members of the committee, this measure (S. 752) for some time has been pending, and it becomes increasingly important as the days go by.

It was presented originally at the instance of the Railroad Commission of the State of California, which is the regulatory body of our State.

It has met with the approval of the regulatory bodies of nearly all of the States of this Union that have bodies of that character. It may be that one has expressed its disapproval. But I think, of the twenty-and-odd States that today endeavor to regulate the charges of public utilities and the like, all are in agreement in very strongly presenting this bill and very earnestly asking its passage, save, possibly, two—no more than two, I know.

And so the bill comes here with the approval and endorsement and the prayer of some twenty-odd States of the Union.

The design of the measure is to limit the jurisdiction of the Federal district courts in matters pertaining to the determinations that have been rendered by public-service organizations charged with the duty, under State laws, of determining what should be the course to be pursued with public utility actions and rates. It seeks to deprive the public-utility corporation whose case has been tried before the State regulatory commission of no real right. It permits that public-utility corporation, after there has been a decision, to carry its case, if it desires, through all of the State courts and subsequently to the United States Supreme Court. It seeks only to limit the authority of the public-utility corporation to delay, hinder, and impede the States in their regulatory actions, by precluding that public-utility corporation from having more than one opportunity for the determination of the litigation respecting the action of the State's governmental body.

Today the course is not uncommon for a public utility whose rates have been fixed by a State utility regulatory body to proceed, if it desires, within the State court, obtain its injunction, try its case up to a certain point, and then, with the power that is given it under the diversity of the citizenship clause, take its case into the Federal district court as well, and there interminably delay the matter.

We seek to prevent that kind of thing—not to deny either their day in court in the first instance, or in the last instance, of the public-utility corporation.

And, taking a concrete instance so that perhaps we may better explain the purpose of this bill, it will be obvious to you, if you are familiar with what the State bodies have endeavored to do, that there ought to be a rule whereby there should be a speedy determination of what may have been done by the public regulatory body and a sudden determination by that body, with a proper review, of course, ultimately by the court; and if there is neither speedy nor a sudden determination, why, of course, there is no such thing as justice in that regard, for justice delayed is justice denied. And it is that sort of thing that we are seeking to prevent, that has occurred so often in the past.

For instance, take the case of this sort: The largest utility corporation in the State of California is what is called the "P. G. & E.", that is, the Pacific Gas & Electric Co. Recently there has been a trial before our railroad commission, a railroad commission of which Californians are very proud, and which has done a remarkably excellent work, and in its early stages a work under very great difficulty. There has been a trial there of the rates that have been fixed. The trial has lasted between 1 and 2 years, I think. Upon both sides there has been an immense amount of testimony taken before the Railroad Commission of the State of California. On the testimony taken, the expert witnesses, money has been expended to a very, very large extent, both by the State and, legitimately, by the utility.

The case finally is determined. The railroad commission decides what rates it believes to be just. Not content with the remedy that is accorded by the State court; not content with their act, its ultimate appeal to the Supreme Court of the United States, the utility goes into the Federal district court, and the three-judge district court, when its next term meets, grants an injunction against the acts of the railroad commission, appoints a master—and this is the course, in general, of this sort of procedure. That master is now about to begin to take the testimony that has been taken before the railroad commission; and there again, de novo, as the order appointing him says, upon that testimony, and perhaps other testimony that may be presented to him, finally a decision may be rendered.

It is unjust and it is unfair that that should be so; and where the remedy rests with the courts of the State, with an appeal to the United States Supreme Court, that ought to be ample for the utility corporation. There is another phase of it, and that is worse yet: Not only delay results; not only a justice denied; but the expense to which the State is put in twice presenting its expert testimony and twice engaging in the trial that is protracted and that is bitterly contested—but the State pays through its citizens both sides; because after the long contest the expenses indulged by the public-utilities corporation are charged to operating expenses, and the result is that we literally picked our pockets in order to pay the expenses of the public-utilities corporation, as well as the expenses that are rendered necessary by the action of our State. And paying both sides, we pay one legitimately, by appropriations; we pay the other illegitimately, in the increased rates of a double attempt, or a twofold attempt by the utility company to obtain a decision that will be favorable to it. All of the utility expenses are reflected ultimately in its charges to its consumers. So that we want to put an end if we can to this intolerable situation. And the only way that we have seen that it was possible to do so was in the fashion that I have indicated.

It is intolerable from the standpoint of speedy, sudden determinations. It is intolerable, because there is not any logical reason on the face of the earth why a public-utility corporation, that may be incorporated in the State of Delaware, should have two opportunities to try its case in a State where the citizen of the State has but one. It is intolerable, too, because we have no such rule relating to human beings, or the trial of a human being, even for his life. He must be content with the courts of his State, with his ultimate appeal to the United States Supreme Court.

What reason is there that a public utility that may choose to incorporate itself in a State was removed, where it has neither property nor interests, should then be permitted to go to our State court and our Federal courts—when it is never denied the right to go to the United States Supreme Court?

And thus it is that these regulatory bodies throughout the country have found that it was necessary for them to have some relief; and so it is that this bill has been presented.

Now, this bill has not been presented in a haphazard fashion, by any means. It has come to the Judiciary Committee of the Senate, considered by that committee; a subcommittee has been appointed; before the subcommittee elaborate hearings have been held, in which every interest that sought to be heard have been heard courteously and at length. It has gone back to the full Judiciary Committee of the Senate. Another subcommittee was appointed, at the instance of somebody who said he did not have the opportunity to be heard in the first instance. And again full hearings have been had.

And the hearings that were taken before the subcommittee of the Committee on the Judiciary of the Senate show exactly the position taken by various individuals and various gentlemen and various meticulous lawyers, perhaps, in endeavoring to defeat this measure—with the design—I will not say all of them had the design, but the design at times was apparent to some of us, that there should be a great delay.

And they did delay—for two different sessions—this measure, by taking it back and having hearings, and then taking it back again—until finally the Committee on the Judiciary of the Senate took the matter in hand and sent the bill upon the floor of the Senate; and upon the floor of the Senate it was overwhelmingly passed.

I ask, therefore, that this measure may be submitted at the earliest possible time; that, in one fashion or another, a determination may be had, either upon its merits or its demerits, and that it should not be permitted to rest for any great period.

The objections to the bill are—I anticipate but one or two—that a privilege has been accorded to these corporations, as their advocates say. And that privilege they do not want to relinquish. I do not blame them. It is perfectly natural that a utility corporation wants to take two bites at a cherry, where every other individual on the face of the earth is permitted but one. But I do not blame them for wanting the privilege of two opportunities to do as they please. The only thing I object to is that the rest of us, who are not connected with public-utility corporations, should want to give them two opportunities to do what no citizen is permitted ordinarily to do.

It is objected on some hands that the bill is unconstitutional. In the record of the hearings that were held before the Senate committee, the cases are cited that determine exactly what the rights of Congress are in relation to the jurisdiction that may be conferred upon the Federal courts.

The leading case is the Kline case, which is cited in the very elaborate majority views of the Senate Committee on the Judiciary in its report on this bill.

And the Kline case determines, of course—as a reading of the Constitution will demonstrate that it ought to determine—that Congress has the right, with the inferior Federal courts, to determine exactly what they shall hear and what they shall determine, and their jurisdiction generally.

The only constitutional court is the Supreme Court of the United States. The others are subject to the determination of Congress as to their jurisdiction, and the like. And I think that if an opportunity presents itself to you gentlemen, a reading of the brief that was presented by the attorneys for the Railroad Commission of the State of California will illuminate this particular subject.

That brief, too, traces the evolution of the decisions of the Supreme Court in regard to matters of this sort, and cognate matters. I deem it not only an excellent brief, but one which is quite convincing.

(The brief referred to appears in appendix I of these hearings.)

Then there are letters which I have had from the various States on the question of the agitation of this particular subject; and I have listed the States from which they were received; but I presume those can be better presented by those who will follow me today. But from New York and continuing clear to the Pacific coast, the public regulatory bodies are practically united in asking for this legislation.

Not only that, but we have as well the very highest authority with respect to this particular measure, that emanated from New York State, when the present illustrious President of the United States was Governor of that State. He then found exactly the situation which I have been inveighing against—not harshly, because there are so many things that might be said about this kind of jurisdiction that I hate to take the time of the committee to call attention to them. But the then Governor of New York State found that they are just what I found when I was Governor of the State of California, and just what every other man has found that holds a public position in a State and tries to render and perform his duty unto the people of the State, rather than unto its corporations. And the Governor of New York found that situation confronting him, and in no uncertain tones he expressed himself. It was in 1930 that he said, in a message to the legislature:

"The recent decision of the Federal Court in the Southern District of New York, permitting the New York Telephone Co. drastically to raise its telephone rates, brings to the fore in a striking way the whole question of interference by the United States court with the regulatory powers of our Public Service Commission. * * *

"It means that hearings and trials which rightfully should be held before our Public Service Commission or before State courts are, by a scratch of the pen, transferred to special master appointed by the Federal court. The State regulatory body * * * is laughed at by the utility seeking refuge with a special master, who is unequipped by experience and training, as well as by staff and assistants, to pursue that searching inquiry into the claims of the property which the consuming public is entitled to demand. The special master becomes the rate maker; the Public Service Commission becomes a mere legal fantasy. This power of the Federal court must be abrogated."

This is the language of the President when he was Governor of New York and he expresses very much better than most of us can express, exactly how the iron has entered the soul of every man who, within his State, endeavors, with that State power, to give the remedy and relief to its people from extortionate, outrageous, and shameful rates charged by a public utility. He expresses it so well that I am very glad to adopt his language; and I wish it were possible for me to express myself with equal facility on this occasion:

"This power of the Federal court must be abrogated. Only the Congress can give the remedy. Legislation has been introduced in the Congress to carry out this purpose. * * * I recommend to your honorable bodies that you memorialize the Congress to pass this legislation."

The CHAIRMAN. Senator JOHNSON, may I be excused? I would like to hear the remainder of your statement, but I have an appointment that I must keep.

Senator JOHNSON. Certainly; thank you, Mr. Chairman.

I have just one other word to say in this connection: Legislation in which I am interested, and which I endeavor to present—generally speaking, without asking the aid of anybody in its behalf—but I cannot tell you how happy I was made last week when, without solicitation or suggestion on my part, when this bill had passed the Senate and was here before you gentlemen, to have the President in his press conference, suddenly refer to it. He and I have not talked about it for a great many years—or at least, for a long period of time—but he suddenly referred to it and expressed himself as absolutely in favor of that kind of legislation last week at the press conference. The newspaper articles I have before me. You gentlemen doubtless observed them. If you did not, a mere query to any member of the press would give you the facts.

Now, just one other word: I understand the opposition to this bill, and I understand it full well. I am not critical of it, because I recognize the fact that when one has something that gives him a little the better of his fellows, he wants to hang on to it, and he will go to extremes in order to hang on to the benefits that have been accorded him, or to the privileges that he believes are his, and that are different from the privileges accorded to others. I do not criticize. I say to you, therefore, that the public-service corporations, in coming here and in endeavoring to retain the power that thus far they have had to go into two jurisdictions, or two sets of courts, will hinder, delay, impede, and prevent the public-utility regulatory bodies from giving effect to their rates, and the States from carrying out the purposes for which they, in reality, are organized—to give relief to their people; but granting that, nevertheless I recognize the power that these gentlemen have. I recognize that they come full-panoplied with the briefs that have been written by the legal departments of the various power companies, and present them elaborately. I do not want that they shall be permitted to delay action; because I had rather have action against than no action at all upon a measure of this sort.

And I do hope that it may be possible, therefore, that a measure of this sort, with the single design of enabling States to govern themselves—enabling the regulatory bodies within States to do their duty; enabling the regulatory bodies and State governments to afford relief that is necessary to consumers of that which may be handled by public-utility corporations—that the regulatory bodies may be permitted to go on their way and do their duty in their respective jurisdictions, and that the public utilities shall be deprived of no right of contest, no right of appearance, no right of going to the court, no right of going to the Supreme Court of the United States—but that they shall be compelled to take one course within the State, and then go, if they desire, to the United States Supreme Court.

And I submit the case to you upon that basis.

Mr. CONDON. May I ask a question, Mr. Chairman, of Senator JOHNSON?

The CHAIRMAN. Yes.

Mr. CONDON. Do you know, Senator JOHNSON, how the Committee on the Judiciary of the Senate voted on the bill when it reported it to the Senate?

Senator JOHNSON. Yes, sir.

Mr. CONDON. Was there a definite division of the committee?

Senator JOHNSON. Yes; there were 3 votes against.

Mr. CONDON. Of the whole membership of the Committee on the Judiciary, there were 3 votes against it?

Senator JOHNSON. Yes; and if you want to know, I shall be glad to tell you who they were.

Mr. CONDON. No.

Senator JOHNSON. There was a majority and a minority report; and both the majority and minority reports are at your disposal if you wish.

Mr. McKEOWN (acting chairman). I thank you very much, Senator.

Senator JOHNSON. I thank you for your courtesy, Mr. Chairman and gentlemen. I appreciate the opportunity to be before you here. It is not often my privilege to come before a committee of the House in this fashion, and I assure you that I welcome the opportunity and I thank you for giving it to me.

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

Senator JOHNSON. Certainly.

Mr. LEWIS. How many cases of this sort have there been in recent years?

Senator JOHNSON. Well, there were some statistics given by the power companies that would indicate that the number of them has not been very large. But the quality of them was important—just like the New York Telephone case and like the P.G.E. case in California. They are the big cases that take in the great mass of subscribers, and that is the thing that is important, the particular kind of case and the number of people they affect; that is much more important than the number of cases which have been brought.

Mr. LEWIS. Will those statistics be placed in the record?

Senator JOHNSON. Well, I think there are about 11,453 power representatives here against this bill; and I have no doubt that some of them will present the statistics. If that is not done, I shall be very glad to furnish you the testimony that was taken before the subcommittee of the Senate Committee on the Judiciary, wherein those statistics were given.

Mr. GUYER. Mr. Chairman, I yield 10 minutes to the gentleman from Kansas [Mr. McGUGIN].

Mr. McGUGIN. Mr. Chairman, most assuredly it is embarrassing for one of my limitations to follow the distinguished gentleman from Pennsylvania [Mr. BECK] and discuss any matter on constitutional grounds. I listened with great interest to the remarks of this distinguished lawyer. It is beyond me to understand wherein the passage of the Johnson bill does violence to the Constitution. The Johnson bill leaves with the utility every right that such an institution had the day the Constitution was written. The Constitution as such creates only one Federal court and that is the Supreme Court. Section 1 of article III reads:

> The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.

The day that the First Congress convened, a utility, if one had existed then, would have enjoyed the same identical rights that it will enjoy after the Johnson bill is enacted, namely, it could seek its redress in the State courts, and if, indeed, the State courts had not extended to it every constitutional right, it could appeal from the State supreme court to the Supreme Court of the United States.

If the utilities have any particular vested right in the inferior Federal courts, to wit, the district courts and the circuit courts, it is a right which has been given to them by the mandate of Congress, not by the Constitution.

Mr. BECK. Will the gentleman yield?

Mr. McGUGIN. I yield.

Mr. BECK. The gentleman did not understand that I said anything contrary, did he? I agree with the gentleman that the Congress had complete power.

Mr. McGUGIN. Yes; but I do not see wherein we are taking any constitutional privilege away from those companies. The question resolves itself down to this: Which court is going to protect these companies in the first instance, the State court or the Federal court? Both courts are bound by the Constitution of the United States to respect every constitutional right of the utilities. The obligation is just as great upon a State court, be it a trial court or the State supreme court, to respect the constitutional rights of the utilities as is the obligation upon the Federal courts. Article VI:

> This Constitution and the laws of the United States which shall be made in pursuance thereof and all treaties made or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.

To follow to its logical conclusion the position of the gentleman from Pennsylvania, namely, that if we pass the Johnson bill, property rights of these utilities will be destroyed, we must take the position that we do not believe that the State courts will meet their binding constitutional obligations to respect the constitutional rights of these companies. We have not taken a single right away from those companies by the enactment of the Johnson bill. We have simply transferred jurisdiction to the State courts from the local Federal courts. The same constitutional obligation is upon both courts to protect the rights of these companies. My distinguished friend the gentleman from Pennsylvania quotes Lord Macauley's prophecy of the ultimate downfall of our Republic. For us to assume that this bill fulfills the prophecy of Lord Macauley, that in some day of depression the American Congress will surrender the rights of property, then it must follow that we believe that State courts will betray their duty and have no regard for property rights. The enactment of this bill cannot mark the beginning of the downfall of the Republic unless indeed we must take the position that State courts are absolutely not dependable. If the passage of the Johnson bill is an expression of lack of confidence on the part of the Federal courts by the Congress, then I say to you that the defeat of the Johnson bill marks lack of confidence on the part of Congress in the State courts of this country. For my part, I am yet a believer in the sovereignty of the State, not that that sovereignty means the right to secede, but that that sovereignty means the right of a State to be the master of its own household.

There is not a utility doing business in a single State of this Union except that it went into that State of its own free will and accord. If that utility cannot trust the laws of that State and the courts of that State, then it should not have gone into that State and entered into business. In actual practice this is what has happened: The utilities have gone into the various States and set up business; but from the very beginning, in most instances, they did not have enough respect for that State to take out a corporation charter in that State. They went into the State with their fingers crossed, and did as the gentleman said—went down to Delaware or some other State and obtained a corporation charter, and did it for the avowed purpose of ignoring and escaping the jurisdiction of the courts of the State in which they chose to do business.

In other words, they go into the States to enjoy all the blessings, but wanting at all times to be in the position of saying, "No; we are not responsible to you."

Another thing, the Johnson bill simply provides that after the State utilities commissions have established their rates, judicial appeals must first be taken to the courts of the State. Then, upon final decision by the supreme court of the State, if they have been denied their constitutional rights, they have their right to appeal to the only Federal Court created by the Constitution, to wit, the Supreme Court of the United States.

This Congress has an equal right to limit the jurisdiction of these inferior courts that some other Congress had to create them in the first instance.

The CHAIRMAN. The time of the gentleman from Kansas [Mr. McGUGIN] has expired.

Mr. GUYER. Mr. Chairman, I yield 5 additional minutes to the gentleman from Kansas.

Mr. McGUGIN. In actual practice, when the Johnson bill is enacted into law, not a single constitutional right or privilege will be taken away from a single utility. What will be taken away from the utilities is a sort of special privilege which they gain for themselves by an abuse of their opportunity to invoke the jurisdiction of local Federal courts. Invoking that jurisdiction, not so much for the purpose of obtaining justice or redressing a wrong but for the primary purpose of gaining delay, which is in no sense justice in and of itself.

Speaking of our Federal judiciary, when the Johnson bill is enacted it will go a long way toward restoring the utmost respect for the Federal courts.

Mr. DUNN. Will the gentleman yield?

Mr. McGUGIN. No; I cannot yield because my time is very limited. I am sorry. At least, the utilities will cease to be so much interested in the appointment of local Federal judges. If local Federal courts have lost public confidence, I say to you there has not been one single thing more responsible for it than the undue activity of the utilities when it came to appointing Federal judges. The people firmly believe that their activity was not based primarily upon obtaining competent men to be Federal judges, but primarily upon picking men whose viewpoint would at least be friendly.

That is a cold fact, not a radical statement, just the truth. Everyone knows if there is anything wrong with the Johnson bill no one is to blame save the utilities themselves. They have brought this upon themselves by abusing their opportunity to invoke the jurisdiction of the Federal courts, invoking that jurisdiction not for the primary purpose of redressing a wrong or obtaining justice but primarily for the purpose of obtaining delay. They have brought it upon themselves for the further reason that they have made themselves obnoxious in the matter of the appointment of local Federal judges. If the Federal judiciary is in any disrepute, it is largely because the people believe that the utilities have unduly used the local Federal courts as a means to an end which they did not deserve.

I am going to support the Johnson amendment not alone because I believe it is right, but I am going to support it for another reason: I believe it is beneath the dignity of a sovereign State that its courts and its executive branch may be set aside and ignored by any power less than the Supreme Court of the United States, a power created by the Constitution itself. If a sovereign State's executive and judiciary are to be ignored and overridden by injunction and other orders from inferior Federal courts, then the sovereignty of the States is a myth.

It is singular that Congress should here today be called upon to take so much interest in protecting the jurisdiction of the Federal courts. Let me tell you when Congress would better be thinking about the jurisdiction it is taking away from Federal courts; not today when we are merely leaving specific jurisdiction in the State courts which are under the same constitutional obligations as the Federal courts; but rather when we sit here day by day establishing governmental bureaus which take unto themselves jurisdiction which should be retained by the courts.

[Here the gavel fell.]

Mr. GUYER. Mr. Chairman, I yield 2 additional minutes to the gentleman from Kansas.

Mr. McGUGIN. It is bureaucracy which is destroying the jurisdiction of the Federal courts. The time for Congress to think of the dignity of the Federal courts is when Congress sits here day by day and establishes governmental bureaus which in the end become tyrannical and destroy the liberties of our citizens. I would be opposed to this

bill if it took from the judiciary the liberties of the American citizen and heaped those liberties into the lap of a bureaucracy; but that is not this bill. This bill declares only that the judiciary which will have jurisdiction in a given matter is the State judiciary, where American citizens will certainly have their day in court.

As for my own part, I am not afraid to trust the State judiciary. Maybe some local judge will be reelection minded, but, if so, he only befouls his own decision. There is, however, a State supreme court which will pass upon his decision; and it is beyond my belief that the supreme court of any State in the Union is deliberately going to sustain a political finding of a State utilities commission which political finding actually confiscates the property of any utility doing business in that State. If that should happen, the utility may still have its appeal to the Supreme Court of the United States. [Applause.]

[Here the gavel fell.]

Mr. SUMNERS of Texas. Mr. Chairman, I yield 10 minutes to the gentleman from Georgia [Mr. TARVER].

Mr. GUYER. Mr. Chairman, I yield 10 minutes to the gentleman from Georgia [Mr. TARVER].

Mr. TARVER. Mr. Chairman, if the House desires to pass any legislation of this type, it had better pass the Johnson bill without amendment of any kind or character. The adoption of any sort of amendment, in my judgment, will jeopardize the enactment of legislation dealing with this subject. I make this statement advisedly. I make it from an observation of the history and course of this proposed legislation.

The influences behind the opposition to this bill—and in making this statement I exclude my colleagues who oppose its passage—are of the most powerful character. They do not work in the open, and they have at their command some of the shrewdest and most capable men in this country. As an evidence of this fact they have not only prevented the consideration of legislation of this kind during the several preceding Congresses during which it has been pending, but during the present session of Congress with a President who is earnestly in favor of the passage of the bill, with all of the public-utility commissions of the country except one or two endorsing it, with a tremendous public sentiment behind it and with, as I earnestly believe, the approval of a majority of the Membership of this House behind it, they have been able to postpone its consideration in the committee and in the House and to dilly-dally with it and finally to substitute an amendment which destroys the purposes of the original bill. The adoption by this body of any sort of an amendment to the Senate measure would simply play into the hands of the utilities and allow further opportunity for delay.

This bill passed the Senate on the 14th day of February. It has been pending before the Judiciary Committee for almost 3 months; and despite the fact that the chairman of the committee was earnestly in favor of its consideration and its being reported out, we have had to delay for this long period of time before having an opportunity in the closing days of the session to present it for the consideration of the House.

The Johnson bill contains but one substantive proposition, and that is to divest the district courts of the United States of jurisdiction in public-utility rate cases of an intrastate character where—and I call attention particularly to these features of the bill—a fair hearing after notice has been had before the State public utility commission and where an adequate remedy for any wrong is provided in the courts of law and equity of that State. Now, it ought not to take any committee 3 months to pass upon this proposition. Were I to undertake to detail some of the apparently innocent causes that brought about this long and inexcusable delay, such detail would make quite an interesting story in itself. Why, Mr. Chairman, some of the men who have been supporting this Lewis substitute, who have been urging it as a remedy for the evils which they recognize exist, after its adoption was secured in committee appeared before the Rules Committee of this House and urged that no rule be granted even for its consideration, although they had previously given it their approval. Forces of the opposition, again excluding my colleagues, do not want anything except delay, delay which means death, death to this legislation or to any other legislation which really corrects the evils complained of.

I think there is something innate in human nature that recognizes the justice of the proposition that a public-utility corporation created by a State, owing its very life to the exercise of the powers of that State, owing its franchises to State power or the power of some subdivision of a State, should be willing to submit its rights to adjudication by the courts of that State.

Its incorporators had no reason to apprehend injustices from the courts of the State. They had no reason to apprehend the oppressive use of power by the officials of the State. If they had, they would not have invested their money within the borders of that State.

Mr. Chairman, they do not fear injustice from the State courts. In the hearings before the committee those opposing the passage of the original Johnson bill were repeatedly challenged to point out one single instance where an injustice had come to a public utility corporation through the action of a State court, and they were unable to do so. On the other hand, numerous instances were pointed out where long delays of 10 years or more and large losses in money had been incurred by the patrons of these public utilities, and many other injustices had resulted from the exercise of Federal court jurisdiction. There was absolutely nothing proven in this record, and I challenge those who are supporting the Lewis substitute to find anything to the contrary of the statement, showing that any injustice has resulted in public-utility cases in which resort was had to State tribunals. Numerous instances were disclosed by the record where severe and tremendous injustices resulted because of resort to Federal tribunals. Is it not perfectly evident that the desire of these public-utility corporations to continue to go to the Federal courts is a desire not to seek justice, but to have injustice done?

It developed in the hearings before the committee that the case known as the "New York Telephone case" had remained pending for some 10 or 12 years. The amount collected by the telephone company over and above what was allowed by the public service commission was deposited in the chancery of the court. After the telephone company finally lost the case they were directed to refund the money to the patrons, but they were not able to refund $600,000 because in this long interval of time a sufficient number of patrons to be entitled to that sum of money had moved away, had died, or had become otherwise inaccessible, and, so far as the record discloses, the $600,000 was converted into the treasury of the telephone company, money to which it was not entitled, but which it was enabled to secure through this Federal court procedure.

Mr. LEWIS of Colorado. Will the gentleman yield?

Mr. TARVER. I would prefer to finish my statement first.

On the 30th of April of this year the Supreme Court, after 11 years' delay, reversed the case of Lindheimer and others against Illinois Bell Telephone Co., a case that has been pending since 1923. In that case, according to newspaper accounts, $20,000,000 has accumulated in the chancery of the court. This $20,000,000 was collected in excess of the rates allowed by the Public Service Commission of the State of Illinois, an amount which, according to the decision of the Supreme Court of the United States, they were not entitled to collect and which must now be refunded to the patrons who were required illegally to pay it in, and in the distribution of this sum it is fair to conclude that perhaps a million dollars or more, judging by the precedent established in the New York Telephone case, will remain in the coffers of the Illinois Bell Telephone Co. and will never reach the people to whom it belongs.

I have not any prejudice against public-service corporations. I know that they are owned by citizens who are just as much entitled to have their legal rights respected as are

citizens who do not own stock in such corporations. I would stand here just as strongly as any man in this House against any measure which would deprive them of their proper protection by law, but I insist that they are not entitled to rights and privileges which are not accorded to ordinary citizens of our country.

It is useless to paw over the ashes of the Constitutional Convention and try to find some shred of debate or expression upon which to hang the contention that the makers of the Constitution intended to have Federal courts established with jurisdiction of this character. There is but one Court whose establishment was mandatory under the Constitution—the Supreme Court. Congress, having created the district courts, unquestionably has power to fix their jurisdiction. Those statements require no debate. The amendment of the Constitution under which Federal district courts assume jurisdiction in most rate cases was not adopted for three quarters of a century after the Constitutional Convention. I am referring to the "due process of law" clause in the fourteenth amendment, a limitation of the power of the States and not to the limitation upon Federal power in similar language contained in the fifth amendment.

What is "due process of law"? Many definitions have been given for it. "Law in its regular course of administration through courts of justice", says Story. I prefer that given in the decision in *Hurtado* v. *California* (110 U.S. 516):

> Any legal proceeding enforced by public authority, whether sanctioned by age or custom, or newly devised in the discretion of the legislative power, in furtherance of the general public good, which regards and preserves these principles of liberty and justice.

Talk about due process of law. When a public-service commission hears a case after notice and renders a fair decision, is that not due process of law? It is to the citizen. He has to abide by it. Why should not the power company and the gas company or the telephone company abide by the same decision? If an injustice is done, if property is sought to be confiscated by the rate which is being promulgated, they have a right to resort to the tribunals of the State, and from there appeal to the Supreme Court of the United States. Can there be confiscation of property under a procedure of that sort?

Let me call your attention to the fact that this clause in the fourteenth amendment, upon which the public utility corporations rely in going into the Federal courts, covers life and liberty as well as property, and yet whoever heard of a Federal court undertaking to interfere in the administration of State criminal court affairs, even to save the life or the liberty of a citizen where the State courts were proceeding according to law?

Is it right to accord to these public utility corporations in the protection of property under the fourteenth amendment, the due-process clause, rights, and privileges which are not accorded to the ordinary citizen when he may undertake to resort to them for the protection of his life or his liberty?

Some reference was made by the gentleman from Colorado [Mr. LEWIS] in the course of his speech to certain occurrences in the State of Georgia. I want to briefly refer to the matter. I do not know what the facts of the various rate cases pending at this time in the State of Georgia are, but I do know that the public-service corporations who claim to have been ill-treated could have received justice had they resorted to the tribunals of our State. I know that among the public-service corporations which have appealed to the Federal courts are 10 independent telephone companies, 1 in my own town of 10,000 people. The owners of that company are my neighbors. They are good people. Everyone in our section of the country likes them. There was no need to appeal to the Federal courts in order to secure justice, but they did appeal to the three-judge Federal court.

A hearing was set down at New Orleans, seven or eight hundred miles away. Of course, there was no one in my town who was sufficiently interested in the matter to pay the expenses of a trip to New Orleans, not to speak of paying attorney fees and otherwise undertaking to resist their action, and in times like these it is very difficult for private citizens to raise by private contribution sufficient money for purposes of that kind, and no public money was available, and the the result was that the case before the three-judge court went practically by default. May I ask whether or not it would have been a hardship in that case to have required these people, good citizens, well liked by everybody in my county and in my section of the State, to submit their case to our own State tribunal?

They say that the Governor of Georgia ran for office upon a certain platform having to do with utility rates. The exact facts of the matter were not correctly quoted by the gentleman from Colorado [Mr. LEWIS]. It is true that he suspended the public-service commission of my State and appointed a new commission. He had the right under the laws of Georgia to suspend the public-service commission. His action in so doing is to be reviewed by the next legislature that meets in that State and to be reviewed also by the people of that State, because he is a candidate for reelection in the election which is pending at this time. If he has done any injustice to any public-service corporation of the State, if he has done an injustice to any public official of the State, you may rest assured that the people of Georgia will correct that injustice. The State courts of Georgia will also, if appealed to, correct any injustice which may have been done to any public-service corporation of that State.

What we are objecting to, Mr. Chairman, and what I feel we are justified in objecting to, is having the Federal courts of this country pass upon either political or judicial questions properly within State court jurisdiction, for the people of the State of Georgia, for example, who are perfectly competent to pass upon their own political questions and whose courts are perfectly competent, as they have one of the finest arrays of judges in the whole country, to pass upon the rights of their citizens in a judicial way.

Now, let me call attention, in conclusion, again to the statement of President Roosevelt, made when he was Governor of the State of New York, in a message to the legislature of that State, and I ask unanimous consent to insert his entire remarks, which are only some 10 or 12 lines in length, in the course of my speech.

The CHAIRMAN (Mr. PEYSER in the chair). Is there objection to the request of the gentleman from Georgia?

There was no objection.

Mr. TARVER. I call your attention to this. He says:

> The recent decision of the Federal court in the southern district of New York, permitting the New York Telephone Co. drastically to raise its telephone rates, brings to the fore in a striking way the whole question of interference by the United States court with the regulatory powers of our public-service commission. * * *
>
> It means that hearings and trials which rightfully should be held before our public-service commission or before State courts are, by a scratch of the pen, transferred to a special master appointed by the Federal court. The State regulatory body * * * is laughed at by the utility seeking refuge with a special master, who is unequipped by experience and training, as well as by staff and assistants, to pursue that searching inquiry into the claims of the company which the consuming public is entitled to demand. The special master becomes the ratemaker; the public-service commission becomes a mere legal fantasy. This power of the Federal court must be abrogated.

Now, if you are in agreement with the views of the President of the United States as expressed in this message, you are bound to conclude that the innocuous provisions of the Lewis substitute would simply defeat the purposes of this legislation. It would not abrogate the powers of the Federal courts. It would simply regulate procedure in the Federal courts and the right to resort to the Federal courts and to use them as instruments of delay over long periods of years, as has been done in so many instances heretofore, would still remain.

I now yield to my friend from Colorado, who indicated a few minutes ago he wished to interrogate me.

Mr. LEWIS of Colorado. Perhaps I misunderstood my colleague, but he certainly knows, does he not, that the chairman of the committee, Mr. SUMNERS of Texas, and I appeared before the Rules Committee and urged the committee to grant the rule on this matter?

Mr. TARVER. The gentleman certainly did and Mr. SUMNERS of Texas did, and the gentleman from Pennsylvania [Mr. BECK], who made such an able argument a few minutes ago in favor of the gentleman's substitute, also appeared before the Rules Committee and urged the committee not to grant a rule for the consideration of this legislation. That is true, is it not, may I ask my colleague?

Mr. LEWIS of Colorado. I do not know as to the second statement, but I know as to my own position.

Mr. TARVER. Does the gentleman not know that the gentleman from Pennsylvania [Mr. BECK] appeared before the Rules Committee in opposition to the granting of this rule?

Mr. LEWIS of Colorado. I do not so understand. I did not hear the remarks of the gentleman from Pennsylvania.

Mr. TARVER. The gentleman from Pennsylvania made that statement to the Chairman of the Rules Committee in the presence both of the gentleman and myself and I thought he had heard the remark.

Mr. LEWIS of Colorado. No.

Mr. TARVER. And the gentleman also made a speech before the committee, which I heard, and I was under the impression the gentleman heard, in which he urged the committee, on account of what he referred to as the economic conditions at this particular time, not to grant any rule for the consideration of the bill at all.

Mr. LEWIS of Colorado. I desire to ask the gentleman if I did not insist upon this rule being granted.

Mr. TARVER. I have already stated that the gentleman did so insist, but I am surprised that the gentleman did not hear the equally earnest insistence of the gentleman from Pennsylvania that the rule should not be granted.

Mr. LEWIS of Colorado. I did not.

[Here the gavel fell.]

Mr. SUMNERS of Texas. Mr. Chairman, I yield to the gentleman from Missouri [Mr. COCHRAN].

Mr. COCHRAN of Missouri. Mr. Chairman, I am not one who is willing to concede that the courts of my State are not so constituted that they are unable to handle State affairs without interference from the Federal courts. If a foreign corporation desires to enter my State it should be willing to abide by the laws of my State and bow to the decisions of its regulatory commissions and its courts. So far as I am aware, no influence was brought to bear that resulted in foreign corporations setting up public utilities in Missouri. They came of their own accord. The experience of the present Chief Executive of the Nation when Governor of New York cited in the committee report is in itself sufficient to warrant us to vote down the proposed substitute and enact the Johnson bill. Permit me to quote his special message to the New York Legislature in January 1930. It follows:

> The recent decision of the Federal court in the southern district of New York, permitting the New York Telephone Co. drastically to raise its telephone rates, brings to the fore in a striking way the whole question of interference by the United States courts with the regulatory powers of our public-service commission. * * *
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> It means that hearings and trials which rightfully should be held before our public-service commission or before State courts are, by a scratch of the pen, transferred to a special master appointed by the Federal court. The State regulatory body * * * is laughed at by the utility seeking refuge with a special master, who is unequipped by experience and training, as well as by staff and assistants, to pursue that searching inquiry into the claims of the company which the consuming public is entitled to demand. The special master becomes the rate maker; the public-service commission becomes a mere legal fantasy.
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> This power of the Federal court must be abrogated. Only the Congress can give the remedy. Legislation has been introduced in the Congress to carry out this purpose. * * * I recommend to your honorable bodies that you memorialize the Congress to pass this legislation.

The Johnson bill is the legislation he referred to.

The regulatory powers of a State public-service commission will not be subject to the jurisdiction of the district Federal court if we enact the Johnson bill. In doing so we are not denying the utilities any of their constitutional rights, because if a proper showing can be made, say if the rate in question was a violation of the provision in the Constitution against the confiscation of property without due process of law, then an appeal to the United States Supreme Court would be in order. Can you conceive of anything more fair? Can anyone deny that this avenue is open to the corporations?

State rights have been preached in this hall since the first day that the Congress assembled. Where is the advocate of State rights who is willing now to vote for a measure which in effect says your State courts will not decide the issue—it will be left to the Federal court?

Your legislature has created your public-utilities commission, due to the demand of the citizens of the State. The officials are answerable to the people of the State. After thorough investigation the commission renders its decision. If you pass the Senate bill you say to the commission, The courts of your State will hear the complaint, and then if the corporation is not satisfied you can appeal to the highest court in the land. I submit nothing could be more fair.

I say to the foreign corporation that if you do not propose to be satisfied with the acts of the utilities commission of a State you should not enter, or, if doing business in the State, you should get out.

The inspired propaganda in opposition to the Senate bill has reached my office. Some very good friends of mine have petitioned me to support the Lewis substitute, but I cannot follow their suggestion and at the same time properly protect the interests of the people I represent. Of course the propaganda is one-sided. The masses of the people whose interest we should protect probably have never heard of the bill now before us. So long as we do nothing that can be classed as unfair to foreign corporations in denying them the right to take their cases to Federal courts there should be no complaint.

The report carries a table showing the civil cases filed in Federal courts during the calendar year 1929. Take the Federal district in which I reside, the eastern district of Missouri. During that period 446 cases were filed, and the diversity-of-citizenship clause accounts for 243. In other words, if the Senate bill now before us was a law in 1929, 243 of the cases would have been tried in the State courts rather than in the Federal courts. Consider, if you please, the amount that this law cost the people of my community. It costs much more to enter the Federal courts than the State courts.

The Senate bill seeks to take from the corporations a special privilege they now enjoy. It denies the right of a corporation, incorporated in a foreign State, to come into my State and do business and then say, although I insist upon the right to do business in your State, I refuse to submit to the courts of your State or accept the decisions of your regulatory commissions.

Fear not about the constitutionality of the pending bill. If it were not constitutional the large corporations would not be opposing it. That is sufficient to settle the question of constitutionality so far as I am concerned.

Pass the Senate bill and you will place human rights above property rights. The House substitute would place property rights above human rights.

Mr. SUMNERS of Texas. Mr. Chairman, I yield 10 minutes to the gentleman from Washington [Mr. LLOYD].

Mr. LLOYD. Mr. Chairman and gentlemen of the Committee, I am going to address myself to the practical effects of the substitute bill as I view it. I do not want to seem to treat a serious subject lightly, but to my mind the arguments that have been addressed to the Committee by some of the proponents of this committee amendment strike me as almost humorous. I was entertained by the charm of manner of the gentleman from Pennsylvania [Mr. BECK], and yet those of us on the committee know it to be a fact that the gentleman has never been in favor of this amendment.

I have long admired his learning and his political sagacity, but I cannot always agree with his political philosophy.

As a matter of fact, this particular amendment was conceived in the fertile brain of the gentleman from Pennsyl-

vania. He suggested the able member of the committee who should write the substitute amendment.

For the purpose of having the amendment enacted into law? Oh, not at all, but for the purpose of defeating the Johnson bill.

Let it be understood that what I am about to say is half facetious and half serious, and let it be understood, too, that I entertain for the gentleman from Colorado the highest respect, and I know that his sincerity and good faith are not open to question or criticism. He is honest and sincere in the position he has taken, but I do believe that his judgment as to the practical effect of this amendment is ill-considered. Proceeding again facetiously, permit me to suggest that we have a strange child among us in the form of this substitute amendment. The gentleman from Colorado stands in loco parentis, and is going to have to legally support the child. Proper filiation proceedings, I am sure, would safeguard the rights which justly belong to the gentleman from Pennsylvania. [Laughter.]

I think I do not go too far afield when I suggest that this brain child is sired by reaction and damned by everybody. [Laughter.]

What is the real purpose of it? Let us go back a moment in the history of this legislation. The Seventy-second Congress held hearings before the Senate committee for 3 or 4 days. Everybody was heard who wanted to be heard; everybody had an opportunity to address his arguments to that committee. After they were concluded the subcommittee made its report to the full committee. Then the opponents of the bill came in and said that they wanted a further hearing. So the matter was again recommitted to the subcommittee. The same gentlemen came in, made the same arguments, and were heard for 3 or 4 days again. Then the subcommittee reported to the full committee and the full committee reported out the legislation.

But here is the joke of it. The Seventy-second Congress was by this time drawing to a close, and it was too late to get the legislation through. The same situation prevails here today. Generally speaking, nobody wants the Lewis amendment. The gentleman from Pennsylvania, according to his own words, is not going to be here to vote for it. He appeared before the Rules Committee and objected to its being heard on the floor. The Lewis substitute is desired for the purpose of killing the Johnson bill.

The opponents of any legislation of this character know and I know and you know that the Senate is not going to be satisfied with this Lewis substitute, and is not going to accept it. As a matter of fact, I may say in passing, that the Lewis substitute was never seriously considered by the committee. It was never read in committee, it was never discussed in committee, it was never open for amendment in committee. It is simply an attempt to defeat the Johnson bill. Here is what they expect to happen—here is what will happen if you adopt this substitute: It will go over to the Senate, the Senate will refuse to concur, and the result will be that no legislation will pass, and that is exactly what they want and what they expect.

Mr. KURTZ. Mr. Chairman, will the gentleman yield?

Mr. LLOYD. Yes.

Mr. KURTZ. To ask the gentleman whether or not I appeared before the Committee on Rules?

Mr. LLOYD. I understand not. There is only one question here and it is well defined and clear. Either you will pass this Johnson bill as written, or you will not pass any legislation at all. The only thing that I am concerned in, and the big question before you is, whether or not the sovereign States of this country shall be accorded the opportunity and the right, free and untrammeled from the interference of a foreign jurisdiction and foreign power, to deal with their citizens and the property of their citizens as they do in other cases. If you believe there are abuses that demand correction at the hands of this Congress, let me urge upon you that you vote down this amendment and pass the Johnson bill. [Applause.]

Mr. SUMNERS of Texas. Mr. Chairman, I yield 5 minutes to the gentleman from California [Mr. FORD].

Mr. FORD. Mr. Chairman, I am not a lawyer and, therefore, not competent to discuss the strictly technical side of this question. There are, however, practical implications flowing from the existing situation, which the Johnson bill, which I am in favor of, will correct. These implications appeal to me as being worthy of very careful consideration. They should, I believe, command the vote of every Member of this House who believes that the people of a State, when they grant to a corporation a franchise to do business within that State, should have the right to govern the actions of that corporation within its borders. We have heard a great deal here about confiscation by reason of lowered rates. The confiscation they talk about is based on a fiction. Let that sink in. These corporations go before a State commission and make a showing on their capital structure which has been watered from 3 to 10 times, and ask that commission to order the people of that State to pay rates that would warrant dividends on stocks of various classes that have no basic value at all. They go before the commission with a battery of high-priced lawyers and rate experts, and they undertake to justify these rates by presenting a mass of highly technical engineering and other facts. And after they have built up a record that would almost break the ordinary city treasury to have it printed, they let the case drag along until it begins to look bad, then stop and jump into the Federal courts. That record is dead, and they build up another one, and the result is that the ordinary community has not the financial capacity to follow those fellows through all of the courts and ultimately get justice for their people. Where it is a small city case the people are helpless. We will take the case in Illinois that was closed the other day. That case has been in court 11 years. The newspapers pointed out that $20,000,000 was going to be given back to the people.

The gentleman who spoke before me referred to the fact that at least a million of it would not reach the people entitled to it. Mr. Chairman, if the people of Chicago, Ill., get $6,000,000 out of that $20,000,000, they will get a lot, because people move in and move out and move away. In California we had a similar thing, and I venture to say that not over 50 percent of the amount granted got back to the people to whom it belonged. That has been their play—delay. What has that delay meant? It has meant injustice for every man and woman in the State who paid their rates and who depended on their State authorities to check the highway robbery being practiced on them, and then when they got a decision from their State body these fellows slid out from under and went to a Federal court. And for the purposes of the people of the State, their case did go to a foreign jurisdiction. And I say it is the duty of this Congress to say to every public utility, "When you go into a State and collect money and operate under a franchise from that State, it is your duty to be governed by the laws of that State." That is the question that we are discussing here, not some film of technicality which talks about the various amendments to the Constitution and the due-process clause and all the honeyed and stately phrases of the law on the floor of this House. Confiscation as they claim it is nothing but a fiction, based on watered stock and pyramided holding companies of the character that we hear so much about, and which have been so thoroughly exposed in the Insull and other cases. I yield back the remainder of my time.

Mr. SUMNERS of Texas. I yield to the gentleman from Nebraska [Mr. CARPENTER] such time as he desires.

Mr. CARPENTER of Nebraska. Mr. Chairman, I wish to have the privilege of making a statement in favor of the original Senate bill (S. 752), introduced in the Senate by Senator JOHNSON, of California, and passed by that body on February 6, 1934, and which is now about to be considered by the House of Representatives. The question is whether or not the House will accept the original bill introduced in the Senate, or the bill as it was amended in the House Judiciary Committee. To me, this is the real test of the true friends of honest utility regulation. A vote in favor of the amended Senate bill is a vote in favor of the continuation of the prolonged advantage that the public-utility companies have had

in the past. Such companies have successfully defeated the efforts of consumers, State utility commissions, and municipalities in their fight for reasonable rates. A vote in favor of the original Senate bill is a vote to expedite the course of justice and fair dealing and the securing of reasonable rates.

In order to be entirely specific, I am herewith stating the original Senate bill, which I favor:

Be it enacted, etc., That the first paragraph of section 24 of the Judicial Code, as amended, is amended by adding at the end thereof the following: "Notwithstanding the foregoing provisions of this paragraph, no district court shall have jurisdiction of any suit to enjoin, suspend, or restrain the enforcement, operation, or execution of any order of an administrative board or commission of a State, or to enjoin, suspend, or restrain any action in compliance with any such order, where jurisdiction is based solely upon the ground of diversity of citizenship, or the repugnance of such order to the Constitution of the United States, where such order (1) affects rates chargeable by a public utility, (2) does not interfere with interstate commerce, and (3) has been made after reasonable notice and hearing, and where a plain, speedy, and efficient remedy may be had at law or in equity in the courts of such State."

SEC. 2. The provisions of this act shall not affect suits commenced in the district courts, either originally or by removal, prior to its passage; and all such suits shall be continued, proceedings therein had, appeals therein taken, and judgments therein rendered in the same manner and with the same effect as if this act had not been passed.

In order to show the attitude of the administration and of the President of the United States on this legislation, I am also inserting a copy of a message President Roosevelt sent to the State Legislature of New York when he was Governor of that great State:

The recent decision of the Federal Court in the Southern District of New York permitting the New York Telephone Co. drastically to raise its telephone rates brings to the fore in a striking way the whole question of interference by the United States courts with the regulatory powers of our Public Service Commission.

It means that hearings and trials which rightfully should be held before our public-service commission or before State courts are, by a scratch of the pen, transferred to a special master appointed by the Federal court. The State regulatory body * * * is laughed at by the utility seeking refuge with a special master, who is unequipped by experience and training, as well as by staff and assistants, to pursue that searching inquiry into the claims of the company which the consuming public is entitled to demand. The special master becomes the rate maker; the public-service commission becomes a mere legal fantasy.

This power of the Federal court must be abrogated.

This is the language of President Roosevelt:

Only Congress can give the remedy. Legislation has been introduced in the Congress to carry out this purpose. * * * I recommend to your honorable bodies that you memorialize the Congress to pass this legislation.

If this bill should be enacted into law, the effect of it would be to take away the jurisdiction of the United States district court to issue an injunction against putting into effect any order of a State commission having charge of public-utility matters where the jurisdiction is claimed by reason of diverse citizenship. It will take away jurisdiction from the Federal court on the ground of diverse citizenship to issue an injunction restraining the enforcement of a rate or order made by a State public-utility commission. It will also take away the jurisdiction of the Federal court to issue an injunction on other grounds if the State, where the order is made by the State commission, has provided for a remedy of appeal by which any party to the suit can pass to the supreme court of the State, and from there to the Supreme Court of the United States.

All this talk about taking away the rights of individuals disappears. There is no one, not even a widow or orphan, who will be deprived of her or its day in court if this bill passes. The savings banks of the country which have invested their property in public-utility bonds or stocks will not be deprived of the right to go into court and eventually to reach the Supreme Court of the United States.

At the present time most of the public utilities, in one way or another, are subsidiary to some corporation, sometimes in the fourth, fifth, or sixth degree, and are organized in some State where they do not do business, where they have no property, where none of their officials live. That seems clear. There is but one object: it is in order to let them come into the Federal courts instead of the State courts in case they are sued or in case they sue anybody else. In other words, the corporation is always a resident of a State other than the State in which it does business. This is a suspicious circumstance to begin with. That on the face of it does not look right.

Let me tell the House of an instance that happened, as related by Senator NORRIS. The Nebraska Power Co. supplies Omaha and several surrounding cities in Nebraska with electric lights. It is incorporated in the State of Maine. It has no property in the State of Maine. It does not do any business in the State of Maine. The people who own the company and own its stock are not citizens of the State of Maine. Why is the company incorporated in the State of Maine? To give it an advantage under our law. When it is sued in the courts of Nebraska, it can stay in the State courts, go clear through to the Supreme Court of the State of Nebraska, and if it is finally defeated in the Supreme Court of the State of Nebraska, before the edict or the order of the supreme court can be sent down to the lower court, before that court can take it up and render a judgment according to the decision of the supreme court, the company can dismiss the suit, and no final judgment has been rendered.

The next day or the same day the company can commence another suit in the Federal court, get an injunction on the allegation that the corporation is a citizen of the State of Maine, and consequently, under the laws of Congress has a right to go in the Federal court. Having lost out all the way along through the State courts, being dissatisfied, it commences at the bottom of the ladder in the Federal district court, and from there to the Supreme Court of the United States.

This is a right given to no citizen of a State. The citizen has to commence his action and maintain his rights in the courts of his State. But here is a concern doing business of, perhaps, the same nature as that of the citizen—in the same State but incorporated in the State of Maine—and it has the choice of going into either the State court or the Federal court under our law.

Is it an injustice to compel the Nebraska Power Co. to resort, if it has any difficulty, to the courts of Nebraska? They do not have to be in Nebraska. They voluntarily located there and they are doing business under a Nebraska law. Yet a Federal court is their haven of refuge—I will not say it is so considered because they get more favorable consideration there—I will say it is because they have the Federal courts to go to, and they have the opportunity to go into either one of two courts to try one for a while, and if they do not like it, to stop there and commence in the other court, an advantage that the citizen of the State does not possess.

In order to show why it is necessary for these utility companies to charge outrageous rates I am inserting the results of an investigation into the affairs and methods of the Nebraska Power Co., located in Omaha, and showing conclusively the methods of conducting their affairs and why such organizations are now doing their utmost to defeat the purposes of the legislation coming before the House.

When we get to Nebraska the first thing we run up against is the Nebraska Power Co. It is the great representative there of the Electric Bond & Share Co., of Wall Street, New York. The Nebraska Power Co. was developed from the systems of the Omaha Electric Light & Power Co. and the Citizens' Gas & Electric Co., of Council Bluffs, which was a subsidiary of the Omaha company. The Council Bluffs company, now a subsidiary of the Nebraska Power Co., is known today as the Citizens' Power & Light Co. The Omaha and Council Bluffs companies together serve a population of about 214,000 in Omaha and 42,000 in Council Bluffs, and operate also in about 40 towns and rural territories within a radius of 50 miles of Omaha and within a radius of 25 miles of Council Bluffs in Iowa.

As a foundation for the financial manipulation which took place in the transfer of 1917 and since there are the extraordinary growth and the ample and sustained earning power of these Omaha and Council Bluffs utilities. The Nebraska

Power Co. itself has acknowledged that its steady growth and financial success has been due in a considerable part to the foodstuffs industries in and about Omaha, which show a steady growth without violent fluctuations in periods of inflation or deflation. This is shown from a transcript of the Federal Trade Commission hearings, March 9, 1932, at page 19578.

In the 1917 transfer the value of the properties was written up overnight by more than 100 percent. To get the full significance of this write-up it is necessary to go back some years into the early history of the Omaha utilities. Now, overnight—and this is from the investigation of the Federal Trade Commission—the capitalization had pumped into it 100 percent of water and the next morning that was gold. When we go back we find that the writing up of the assets and the issuing of watered stock began very early, so that the inflated financial structure of 1917 was reared not upon a solid foundation of property or value but in large part upon water that had been pumped earlier into the old companies, as well as the new companies, which the Omaha council has imputed is "a most profligate issuing of stocks and bonds that represented no investment whatever."

Here is a sketch of what happened. The original electric plant was built in Omaha in 1885. It changed hands in 1889 and again in 1903. When the second transfer took place in 1903 an inventory was prepared indicating that the utility company itself valued its properties at that time at $794,000. Yet these properties changed hands with a capitalization of $1,201,000, as they passed out of the control of the old owners, and with a capitalization of $3,831,000 as they came into the control of the new owners. Just get that picture. In the first place, they themselves admitted that the total valuation was only $794,000 when the original company sold it, but they sold it at a value of $1,201,000—quite a profit that was for one day—they sold it to another corporation, and the next day on the books of the new company the valuation was $3,831,000, showing that overnight two transactions of converting water into gold had taken place.

It was the conviction of Omaha's mayor and city council, expressed in a rate decision years later, that even the $1,201,000 exceeded the value of the property; and these officials found that when the capitalization was boosted to $3,831,000, or more than 200 percent, in 1903, not a stick nor a stone of property was added; not a single thing of value was added except 200 percent of water. The additional securities were water. A utility baron of that city took them for his own when he acquired the control of an old company and transferred its properties to a new one headed by himself. His little deal was exceedingly profitable, for in later years, between 1903 and 1917, the new company's common stock, all "water", paid dividends as high as $600,000 a year—$600,000 annually for nothing. In those days even utility barons rated that as a pretty fair profit (Ex. 5038, app. 10, sheet 5, of the Federal Trade Commission).

At the same time that the fixed capital was written up and the watered stock was issued, apparently, the public-utility franchise which one of the old companies had obtained from the city of Omaha was put on the book as an asset having a value of $2,055,000, or more than three times the value of the company's tangible property as shown by its inventory, as shown by its own books. The franchise was greater in value than all the property they owned, as shown by their books; a franchise that, of course, did not cost a cent, a franchise that, as a matter of truth and honesty, belonged to the people of Omaha and not to the corporation.

The franchise was being carried on the books at this value when the Omaha system next changed hands in 1917.

When this transfer in 1917 took place the Omaha utility purported to have assets of $6,432,000, but, with the franchise value eliminated, the amount of the assets was only $4,377,000. It is by no means certain that they were worth even that much, because, as we have seen, the Omaha City Council believed that even before the franchise value was assigned in 1903 the utility's assets were overvalued, and the old inventory bears this out. But the power barons who took hold in 1917 were not concerned with pools of "water" behind; their eyes were glued upon the rivers of "water" and the floods of profits ahead. They hurdled clear over the $4,377,000 assets value without the franchise, and the $6,432,000 assets value with the franchise, and set up a new value of $13,500,000.

That is "going some." The mighty Electric Bond & Share Co. controlled by J. P. Morgan & Co. had taken charge. The whole of the transfer deal of 1917 was engineered by this company, which controls one of the greatest of all the power systems in the country, and has been in the forefront of every conflict between the Government and the power industry for years past.

The Electric Bond & Share Co. wished to obtain control of the power system centering around Omaha and to make this system a part of its own much greater system. This it accomplished, first, by buying up the common and preferred stocks of the Omaha Electric Light & Power Co. For those securities it paid, in one form or another, a total of $4,633,000. Then it took these same securities and sold them to one of its own subholding companies, the American Power & Light Co., for $5,865,000, netting a profit in cash and stock of $1,232,000. There was not any property added, it was the same property; they merely sold it to themselves and increased its value.

This sale need not be regarded very seriously as the American Power & Light Co. is, in fact, a sort of "paper" company, which is virtually identical with the Electric Bond & Share Co. itself; that is to say, it is staffed and officered by Electric Bond & Share Co., much of its controlling stock is held by Electric Bond & Share, and there are various other devices which make the union extraordinarily close. The American Power & Light Co., at any rate, paid the Electric Bond & Share for the Omaha securities by issuing demand notes and securities of its own and delivering them to the Electric Bond & Share Co. Then, being possessed of the securities of the old Omaha Co., the American Power & Light Co. turned them over to its new Nebraska Power Co. through a "dummy" and recapitalized the properties. In doing so it disregarded entirely the $4,377,000 which, be it remembered, was the amount of the assets with the franchise eliminated. It disregarded also the $4,633,000 which the Electric Bond & Share Co. had paid for the Omaha properties, the $5,865,000 which American Power & Light had paid to Electric Bond & Share for them, and the $6,432,000 purported fixed capital which appeared on the books of the old company. Instead of heeding any of these figures, it caused the new company to enter upon its books as fixed capital $13,500,000, and to issue its securities accordingly. This was accomplished merely by writing a new set of figures on the books.

The report of Examiner J. W. Adams, of the Federal Trade Commission, states explicitly that there was no change whatever in the amount or the character of the properties. All that happened was that the Omaha Electric Light & Power Co. closed its books on May 31, 1917, with a fixed capital of $6,432,000, and the Nebraska Power Co. opened its books the next day showing a fixed capital of $13,500,000. The difference, or write-up, was $7,068,000. Adding some write-up for the Council Bluffs subsidiary, there was a total write-up of $7,387,000. On the 31st day of May 1917, the corporation holding these properties in Omaha and vicinity was turned over to another corporation, and in the transaction, all of which was completed between the closing of one day's work and the opening of the next day's work, there was $7,387,000 of water pumped into the capitalization of that company, upon which the people of Omaha and vicinity will be paying revenue through all time unless some remedy in some way may be provided to rectify the condition.

The whole procedure was not only unsupported by any additions to plants or equipment, but it appears to have been entirely arbitrary. As in many other such deals, the Commission found no record of any appraisal of the properities. They did not even pretend to have an excuse; they just wrote that much water in the valuation on their books the next morning after the transfer had been made.

Against the "paper" addition to assets of $7,387,000, the promoters wrote up the company's surplus $177,000. Substantially all the rest of the increase was made on the basis for securities. Where $3,789,600 securities had been outstanding, exclusive of the big bond issues, the new company issued $10,999,500. (Transcript, Mar. 10, p. 19693.)

Substantially all these securities were delivered to the American Power & Light Co. A large portion of them was handed on by this company to the public. From $5,500,000 of the Nebraska Power Co. securities, the American Power & Light Co. realized at the time of the transfer, or thereafter more than $5,000,000. It took for itself $5,000,000 of the Nebraska Power Co.'s common stock. Since it paid for the Omaha properties, technically, the $5,865,000, and got back more than $5,000,000 of this through the sale of securities, the American Co.'s books should indicate cost to it, for the Nebraska Co.'s common stock, of about $766,000, but what the books show here is not the real truth.

The technical cost to the American Co. of the Omaha properties, $5,865,000, included the profit of $1,232,000 to the Electric Bond & Share Co., and the deal which gave rise to this profit was merely one between the left hand and the right hand.

The deal which gave rise to this profit was one merely between the right hand and the left hand. The Electric Bond & Share Co., the American Power & Light Co., and the Nebraska Power Co. were, for all practical purposes, a single entity. Their real nature is best illustrated by the fact that a law firm in Augusta, Maine, which looks after the incorporation of Electric Bond & Share enterprises and votes their stock by proxy, voted all the stock of all three companies at each stockholders' meeting.

We must remember they are incorporated over in Maine to do business in Nebraska.

When we eliminate the $1,232,000 profit to the Electric Bond & Share Co. on the sale of the Omaha properties to its own subholding company their cost was only $4,633,000. Then, since the American Power & Light Co. realized more than $5,000,000 from its security sales, it actually profited by approximately $466,000 besides retaining for itself the $5,000,000 of common stock at no cost. (Transcript, Mar. 10, p. 19702.)

The results were:

First, the expenses of the Omaha acquisition were paid.

Second, the Electric Bond & Share took a profit of $1,232,000 upon the sale of the Omaha properties to its subholding company, the American Power & Light Co.

Third, over and above these expenses and this profit there was an excess capitalization of $5,000,000 or more, which was utilized for the issuance of a huge block of common stock to the American Power & Light Co. at no cost, and in fact with a cash profit to that company on the side.

It is this huge block of common stock which has brought the greatest profit to the controlling interests, and which has chiefly served to drain off the excess earnings of the Omaha property, which means its excess collections from the consumers. This is clearly shown in the dividend records of the Nebraska Power Co. during the 12 years from 1917 to 1928.

In these 12 years there was paid in dividends a total of $7,663,000. Of this total, $4,075,000 was paid in dividends on the common stock alone, and virtually all of this common stock was held by the American Power & Light Co., which, as I have pointed out, is all but identical with the Electric Bond & Share Co. Therefore, say the Trade Commission's reports, the indications are that "practically all the $4,075,000 paid went to the American Power & Light Co." (exhibit 5038, p. 194). And remember that all these dividends were paid as a return on a supposed investment which was in reality no investment at all.

The holding company's pickings have grown richer from year to year. In 1924 these common-stock dividends amounted to only $367,000 a year; but by 1927 they had grown to $741,000, and by 1930 to $1,200,000 a year.

It may be wondered how profits so extravagant can be piled up on stock which is nothing but water. There are several very compelling reasons for this.

In the first place, there is the part played by the investor who is permitted by the promoting and controlling interests to put up all or nearly all of the money which is actually needed, either to take over properties or to expand them.

A second factor in making possible the huge profits is the phenomenal increase in the use of electricity. Between 1918 and 1930, the Nebraska Power Co.'s production increased about 325 percent. Thus, even if the cost of producing electricity had remained the same, the company could have made larger and larger profits from year to year.

But the cost, in fact, went down sharply, thus providing a third factor leading to increase of profits. In the same period, from 1918 to 1930, the average generating cost declined from approximately three quarters of a cent per kilowatt-hour to a little more than a third of a cent per kilowatt-hour (transcript, Mar. 9, p. 19617).

Other costs also declined. The total expense per kilowatt-hour for both generation and distribution, including taxes and depreciation as well as uncollected bills, dropped from 2.23 cents in 1920 to 1.24 cents in 1930.

The reason for this sharp decline in costs were several. Because of the increased production there was a more continuous utilization of equipment. The equipment itself became more efficient. Accordingly the consumption of coal per kilowatt-hour was cut in half. The price of coal declined sharply, and likewise the prices of supplies needed for the power plants. Then the new machinery proved so efficient that instead of using more labor as the production increased the company actually used less labor. During the period from 1920 to 1930 for example, when production increased 180 percent the number of employees declined 5.6 percent, or from 124 to 117.

The vast savings which were made possible by all the factors were not, of course, monopolized entirely by the power company. It was necessary to reduce rates somewhat, although some of the reductions were made by the company against its will. At any rate, when the total expense of generation and distribution was declining from 2.23 cents to 1.24 cents per kilowatt-hour between 1920 and 1930, the average selling price of current to all classes of consumers dropped from 2.90 cents to 2.27 cents.

The Trade Commission's examiners even concede that by and large the savings in production and distribution costs were passed on to the consumers, but they point out that there were further large savings in financing which were not passed on at all. These savings were made possible by the financing of new construction, made necessary by the big increase in production and sales, by means of bonds and preferred stocks which carried moderate rates of interest.

The effect of these savings, due to declining costs and financing at low rates of interest, and the failure of the company to pass on more than a limited part of these savings to the consumers is more clearly shown in an analysis the Commission has made of the distribution of the consumer's dollar. Since the reorganization of 1917, the proportion of this dollar absorbed by production and distribution expenses, by interest, and by dividends on preferred stock has shown a marked decrease. During the same time there has been a marked increase in the portion of this consumer's dollar going into common-stock dividends and surplus. The result is that whereas in 1918 common-stock dividends and surplus absorbed only 3.58 cents of each dollar, by 1930 they were absorbing 22.77 cents, or nearly a fourth of every dollar the consumer paid in.

In newspaper accounts of the Trade Commission hearings there were cited rates of return on the common stock held by the holding company ranging up to 338 percent. Such a rate of return appears fantastic, but a close examination of the Commission's reports shows that even this figure is in a sense an understatement. To compute the rate of return it was necessary to credit the holding company with an

equity in the common stock; and, although the company has such an equity from the accounting standpoint, this equity results entirely from an accumulation of the company's surplus earnings. It does not represent money which the holding company itself has furnished but money which consumers have paid in and which the company has permitted to remain in the enterprise over and above the amount it has drawn out in common-stock dividends.

From 1917 to 1926 there was no equity whatever behind the common stock, according to the Commission's studies. Since then, as the accountants put it, "the entire common-stock equity has been built up from earnings carried to surplus" (transcript, Mar. 9, p. 19638).

Now, turning from the returns on the common stock to the return on the actual investment in the property, so far as this investment could be computed by the Trade Commission, we find that between 1923 and 1928 the total investment ranged from $12,500,000 to $18,500,000. In not one of these years from 1923 to 1928 was the return on investment less than 12 percent. In 1928 it rose to 13.4 percent (exhibit 5038, p. 237).

These percentages appear conservative because, while the Commission in computing investment excluded the write-up of 1917, it had no means of determining accurately the investment in early years and therefore was compelled to accept certain book figures.

The power companies gave no help in digging deeper for facts. Both at Omaha and in New York, Commission examiners were told that records of the predecessor company had been misplaced or destroyed, although the company produced them in Omaha in 1920 when they were needed to further its application for an increase in rates (transcript Mar. 10, pp. 19684–19685 and exhibit 5038, p. 172).

The probable truth is, that the figures I have given are much too conservative. The facts are that the Federal Trade Commission have never been able to get to the bottom of it. They do not know themselves, from their investigations, all of the write-ups. They cannot tell, from their investigations, how much water has been in these securities in the past.

The power companies say that the books are lost, that they are not able to find the records. They evidently have been destroyed, although when they wanted to use them for their own purposes in 1920, they found no difficulty in finding them.

Now, about the fees.

The approximately $4,000,000 which the Electric Bond & Share interests have taken out of the Nebraska Power Co. in common-stock dividends without making an investment do not represent all the profit accruing to these interests. They have profited also through fees imposed upon the local company by the Electric Bond & Share Co., and by commissions on the sale of the local company's securities. From 1918 to 1930, these fees and commissions amounted to $1,431,000. The fees were imposed for supervision of operations and of management, for financing, for construction work, and for special services. The construction fees the commission has already found to be practically clear profit.

The collecting of them is scarcely more than a racket for bringing additional profits into the holding company's treasury. As to the fees as a whole, there is less known, but the commission has established that there is a big profit in them without being able to determine its exact extent. When the Trade Commission made its first power investigation half a dozen years ago, the Electric Bond & Share Co. assured the Trade Commission that these fees were nonprofit making. The Commission has stated that this claim is false and that there is a substantial profit in fees. But when the Commission sought to examine the records which would show the extent of the profit, the Electric Bond & Share Co. refused to yield access to these records. Its attorney stated that they would not disclose matters which were "wholly private and confidential." It has tied up the Trade Commission in the courts for 3 years. The Commission is about to get a decision in this case, and probably to get the records also, if it is allowed sufficient funds to complete its investigation.

The fees paid to the Electric Bond & Share Co. by local companies are provided for in contracts which must be approved by the local companies' directors. For this and other financial reasons, and for political reasons as well, the directorships are important.

For its Nebraska Power Co. directorate, the Electric Bond & Share interests have installed not only a half dozen of their men, who quite evidently run the local company under directions from New York, but nine of the most prominent business men in Omaha. These local business men may not have much work to do, because a majority of the officers, and two out of three members of the executive committee are connected with Electric Bond & Share interests higher up. But they are securely tied to the company and, along with them, all the influence they command in Omaha and the surrounding country.

Listen to this, speaking of the Nebraska Power Co.: Each of these local men is permitted to buy 5,000 shares of Nebraska Power Co. stock at 50 cents a share. On his $2,500 investment each one of these men collects dividends amounting to from $6,000 to $6,500 a year.

That ought to keep them sweet. That ought to keep the local fellows good to the foreign companies in this great concern doing business in Omaha. That means from 240 to 260 percent on the investment. Each time one of them attends a directors' meeting he is paid $30. When he retires his stock is repurchased at a price 150 percent in excess of cost, which nets him a parting profit of $3,750.

I wonder whether the people of Omaha and Nebraska comprehend really what that all means, how a few of their prominent citizens are given directorships where they have nothing to do except to say "amen" to what the bosses in New York tell them. All the thing is for is to sweeten the corporation in the eyes of the great consuming public in Nebraska, who have to pay the bills, and the prominent men are given these important positions in order that their influence may go out over the country and the surrounding towns and keep the people quiet. Each one of them is permitted to purchase this stock at 50 cents a share, and when they retire it is repurchased at $1.50 a share. That makes a clear profit of $3,750. In the meantime, when they meet with the board of directors and are given a few high-priced cigars to smoke, and perhaps something else, they get $30. On the investment they have been permitted to make they get a rate of return of from 240 to 260 percent.

Dividends netting a return of 160 percent on the cost of the stock were paid in the years 1927 and 1928, after smaller but handsome and constantly increasing dividends had been paid to local directors in earlier years. The Commission listed as directors in 1928 Joseph Barker, Thomas B. Coleman, Harley G. Conant, Gould Dietz, A. W. Gordon, Dan A. Johnson, John W. Welch, Glen C. Wharton, and Fred E. Hovey, president of the Stockyards National Bank.

The six directors belonging more particularly to the Electric Bond & Share wing were: W. W. Head, chairman of the Nebraska Power Co. and chairman of the Omaha National Bank; James E. Davidson, president of the Nebraska Power Co.; Roy Page, then assistant general manager of the company and now its vice president and general manager; J. A. C. Kennedy, company counsel; A. S. Grenier; and C. E. Groesbeck. Grenier is an Electric Bond & Share Co. man, and Groesbeck was then an officer and director of Electric Bond & Share and American Power & Light, and is now president of the Electric Bond & Share Co.

Not all of these more active directors figured in the stock ownership plan in which the local business men were allowed participation. Two company officers, who may have been directors, held similar blocks of stock in 1929 and 1930. Four directors of the Council Bluffs subsidiary also were let in (transcript, Mar. 22, p. 20220).

Mr. Davidson has come to the Commission's attention before. Prior to scrutinizing high finance as it has been practiced in the Nebraska Power Co., the Commission learned how the power magnates doctored schoolbooks and wrote new ones of their own. This Mr. Davidson, who is president of the Nebraska Power Co., is also one of the

gentlemen who wants to alter our educational system. He says it is not fair. A few years ago, when he was president of the National Electric Light Association, he wrote a friendly little letter, telling just what he thought. It reads:

NATIONAL ELECTRIC LIGHT ASSOCIATION,
Omaha, Nebr., August 15, 1925.

MR. FRED R. JENKINS,
Chairman Educational Committee,
National Electric Light Association, Chicago, Ill.

DEAR MR. JENKINS: I have read with a great deal of interest your letter of July 1, and also those of August 11 and 12 to Mr. Aylesworth about the work of the educational committee, doing everything possible to right the unfortunate situation that now exists in having textbooks that are in the hands of pupils of the schools containing erroneous and unfair information about the economics of our business and particularly those pertaining to electric light and power companies, their financial matters, operations, and policies.

I was very much surprised when I read Mr. Gilchrist's report on this condition. I think your idea is very good of having Dean Hellman handle this matter. It is fortunate, too, that Mr. Mullaney will also help.

You have my very best wishes for a successful result in the very important work which you are undertaking.

Very truly yours,

J. E. DAVIDSON, *President.*

(P. 4, Ex. No. 2540, p. 912.)

This letter is only a part of the great propaganda that was undertaken by the Power Trust to change the textbooks in our public schools, under the guise of some other reason, to get their agents to become friendly with the Boy Scouts, to get into the schools, to have things taught in the schools that would be friendly toward the idea held by the great Power Trust.

I remember that it was shown in the investigation that they circulated in some of the schools of New England a catechism, working carefully, through various ingenious means, teaching the school children that they must look with horror upon any such thing as public ownership of a public utility like an electric-light plant; lecturers telling the children, and telling the teachers, some of whom were employed on the side at salaries paid by the power company, to put the poison of the electric-power influences into the minds of the growing children of the United States.

This letter of Mr. Davidson is simply a part of the program. He says that the textbooks in the hands of the pupils contain erroneous information. Of course, they give that as a reason. The real reason is that they want to write the textbooks for the children, as the evidence developed by the Federal Trade Commission, that if they could get their influence into the minds of the young, while they were forming their minds, while they were schoolboys and schoolgirls, they would grow up to be men and women friendly to the ideas of the Power Trust.

I remember that in that investigation something happened in regard to the secretary of a State press association who was doing a lot of work quietly for the Power Trust, sending out letters on which they paid the postage, for which they paid the expense, trying to poison the minds of the people against municipally owned electric light plants. This Davidson letter is a part of it all.

Walter W. Head financed the senatorial survey of 1930 and got a slice of the big profits of the Electric Bond & Share people provided by it for local directors during both 1929 and 1930. As a director of the Nebraska Power Co. he held 5,000 shares of the Nebraska Power Co. stock, which he had been permitted to buy for $2,500—50 cents a share. His dividend on this $2,500 investment amounted to $6,500 in 1929 and $6,000 in 1930. The official statement of this profit is given in testimony of Examiner Meleen before the Trade Commission of March 22, 1932. Here is a quotation from his testimony:

In 1929 dividends were paid of $1.30 per share, which, in the case of 5,000 shares, amounts to $6,500, a return of 260 percent. In 1930 dividends were paid of $1.20 per share, and amounted to $6,000 on 5,000 shares, or a return of 240 percent.

That is what Walter Head got, according to the transcript, March 22, pages 20215 and 20216. That is Walter Head, the Sunday-school man; Walter Head, the Boy Scout man; and through it all and in it all and with it all, a Power Trust man.

Besides the profits accumulated through dividends and through fees imposed upon the subsidiary companies for supervision, construction, and the like, the Electric Bond & Share Co. interest, profits through the commissions on sales of securities, and besides this direct profit, they control the use of large amounts of subsidiary company funds for extended periods.

We have been told that one of the great advantages of a utility company being under the wing of a giant holding company is economy in borrowing money. Let us see how it works out. Properly done, I think, that would be true; in theory, it is all right; if an honest man managed it, it would be all right; but here is the way it works out:

In the reorganization of 1917, the Nebraska Power Co. issued $1,500,000 of notes along with other securities. These notes were to run for 10 years. They bore an interest rate of 5 percent. Through them this Omaha company was obtaining the use of money at 5 percent and had the right to continue doing so for 10 years; but instead of doing so, the controlling interest caused $400,000 of these notes to be retired only 2 years after they were issued by means of refinancing. The notes contained no provision for this, but the holder of them was the controlling holding company, and this company wanted cash. The bond issue which was used for the refinancing bore interest at the rate of 5 percent like the notes, but when the bankers' discount, the commission of the Electric Bond & Share Co., and the expenses of the issue were deducted from the proceeds, the real interest rate, or what the accountants call the effective interest rate, became 6.64 percent.

They already had money at 5 percent that they had a right to keep for 10 years, but they took it out and borrowed money, nominally at the same rate, but the effect of the commission they had to pay made the new rate of interest nearly 7 percent, all of which the consumers of electricity had to pay. The profit went to the holding company. The profit went to those who controlled the Electric Bond & Share Co.

Again, 3 years later, in 1922, the remaining $1,100,000 of these notes were retired, again by refinancing. This time the refinancing was accomplished through an issue of 6-percent debentures, on which the real or effective rate of interest amounted to 7.49 percent. They owed over $1,000,000, drawing 5 percent that was not due for about 5 years. They took it up and paid it, and to do it they borrowed the money, and they paid a rate of interest of 7.49 percent to get that money to make the payment. Those are the people of efficiency. They are the people who, we are told, can run the big business of this country with great efficiency. That is efficiency for you. That is where monopoly becomes efficient. That is where the Power Trust shines—in that kind of efficiency. But the poor devil at the bottom who is paying for his electricity, the poor woman who is earning her money sewing at night by an electric lamp, is paying the bill that all these millionaires slipped down into their pockets as profit.

The additional cost represented by the higher interest rate in these two instances amounted to $33,950 a year for this one company, a total of $180,000. Thus, high rates of interest were substituted for low rates of interest in one instance 8 years before it appears to have been necessary to refinance; in another instance 5 years before it appears to have been necessary to refinance. The subsidiary in Nebraska had to assume the burden of the higher interest rates.

If this looks like holding-company exploitation, consider the next instance cited by the Trade Commission.

Some years ago the Nebraska Power Co. issued $1,100,000 of general mortgage gold bonds. Money rates were high at that time, and the bonds bore interest at the rate of 8 percent. It would seem that to pay so high a rate the Nebraska Co. must have needed money badly; but from the records and the correspondence obtained by the Federal Trade Commission investigators it appears that the Nebraska Power Co. did not even know that it was borrowing any money until it was told about it by the Electric Bond & Share Co.

On June 10, 1921, the Electric Bond & Share Co. notified the Nebraska Power Co. by a letter that the Nebraska Power Co. was floating a loan in the principal sum of $1,100,000. It was being credited on the books of the holding company with $951,500 as the estimated proceeds of the loan; and its account was being so credited as of May 1, 1921, or about 40 days before the Nebraska Power Co. heard anything about the deal.

Oh, that is efficiency! Oh, that is the way private business can operate public utilities! So efficient! It is not affected by the dead hand of Government ownership. There is no socialism in it. There is no bolshevism in it. There is no communism in it. It is all pure, private efficiency, private ability.

Here is a holding company in New York which wanted some money. How much was it? Well, let us see. I think it was something over a million dollars—$1,100,000—that they wanted; so they said, "Well, here, we will just have the Nebraska Power Co. borrow that for us. We own them. They are incorporated under the laws of Maine. We will send up there and tell the representative up there to have the Nebraska Power Co. borrow $1,100,000."

So it is done. The Nebraska Power Co., away out in Nebraska, plodding along with the farmers and the merchants, did not know anything about it. They did not know that they had borrowed $1,100,000. They had no idea about it. So from Wall Street the Electric Bond & Share Co. writes a letter and says, "Why do you not know you have borrowed some money? You have borrowed $1,100,000. You have given your notes for it, and we credit you on our books for those notes." "How much?" "Nine hundred and fifty-one thousand five hundred dollars."

So the poor Nebraska Power Co. borrowed money when it did not want it, borrowed money that it never got, borrowed money amounting to $1,100,000, and $951,500 for that work—for buying some bonds for themselves and getting the money themselves. Fine work! That is efficiency!

If a public utility owned by a little municipality should do such a thing as that, what would happen? Why, we would charter a vessel at once, and put the perpetrators on it and send them over to Russia without opportunity to say good-bye to their wives. We would not stand for such an unpatriotic thing. But these men, these Sunday-school superintendents, these Boy Scout leaders, will borrow money, and they will saddle the burden upon the poor, downtrodden people who are paying all the money and all the expense of this outrageous and inhuman and unjustifiable conduct of millionaire monopolists.

Well, the Nebraska Power Co. found out that they had borrowed this money and they found out how much credit they were getting down in New York and Wall Street. They were notified in June that they had borrowed some money and that the Electric Bond Share Co. had sold the bonds for them, and they had it, and they had given the Nebraska Power Co. credit for $951,500 as of May 1. That was kind. That not only showed great ability, but it showed great honesty and kindness and consideration for the poor devil at the other end of the line who has to pay the bill.

To their account was so credited as of May 1, 1921, or about 40 days before the Nebraska Power Co. heard anything about the deal. Meanwhile the American Power & Light Co., the subholding company for Electric Bond & Share, had issued and sold, partly on the security of these bonds, the Nebraska Power Co. bonds which were authorized by the Nebraska Power Co. directors.

On the $1,100,000 bond issue by the Nebraska Power Co. there was a discount of 13½ points, or $143,500 charged by the American Power & Light Co. There was an expense of $650, and a year and a half later the bonds were retired.

Think of it! They were borrowing money when they did not need it, did not want it, and, in fact, did not know it, and they paid this enormous rate of interest for it, and they kept the money only 18 months. So, for the use for 18 months of $951,500 which they apparently did not need, the Nebraska Power Co. paid a discount and expense of $149,150, plus interest of $132,000 on the principal amount of $1,100,000, or a total of $281,150. This was equal, the Trade Commission accountants report, to an interest rate of 19.71 percent a year.

That is what these great financiers paid. They borrowed money when they did not know they got it; but they did borrow it, and they had to pay at the end of the transaction an interest rate of 19.71 percent. That is what these poor Nebraska fellows were paying. That is what these fellows over in Council Bluffs, Iowa, were paying. That is what the washerwoman had to pay in order to feather the nest of this great trust in Wall Street. If anybody wants to look that up, it is exhibit 5038, page 82. Even the poor farmer can borrow to better advantage than that.

Since the proceeds of the loan were merely applied against the indebtedness of the Omaha company to the holding company, and the average rate previously charged on this indebtedness was only 7⅛ percent, the additional interest cost was $119,000 a year, or a total of $179,000. All of this added cost went to the holding company.

Again, in 1924, the Nebraska Power Co. floated securities to the amount of $1,000,000. For these securities it received in net proceeds $902,000; and the great bulk of this, $825,000, was merely left with the Electric Bond & Share Co. to lend out in the call-loan market. Some of it was not drawn upon by the Nebraska Power Co. for 5 months.

Think of that! This holding company had the Nebraska Power Co. borrow some more money, a million dollars this time, and leave it with them, and they loaned it out on call—gambled with it, in other words. But the poor fellows who had to pay it and who owed it all, after all, were the little home owners, the laboring men and women of Omaha and surrounding towns.

The Nebraska Power Co. sells electricity to its Council Bluffs subsidiary. The price this Council Bluffs subsidiary pays to the Nebraska Power Co. becomes the basic cost for the fixing of rates in Iowa. On these sales the Nebraska Power Co. takes an estimated profit of 0.04 cent up to 0.63 cent per kilowatt-hour. Chief Counsel Healy intimated that this practice of exacting a profit on sales from the right hand to the left hand might be reached under the Supreme Court decision of February 29, 1932, in the case of the Western Distributing Co. against the Public Utilities Commission of Kansas. This decision appears to have broadened greatly the authority of State utility commissions to regulate charges between affiliated corporations.

The effect of the sales to the subsidiary is to permit the Nebraska Power Co. to collect two profits on this subsidiary's operations. It profits on the direct sales of energy and also on the dividends upon the subsidiary's common stock, which is held by the Nebraska Power Co. The dividends amount to slightly less than $60,000 a year. Ultimately the profits, whichever way they may be made, redound to the benefit of the Electric Bond & Share or American Power & Light interests holding the common stock of the Nebraska Power Co.

Even after a reduction of domestic rates forced by the Omaha City Council in 1921 and a voluntary reduction of domestic rates in 1929–30, the average Omaha consumer is paying 5.5 cents per kilowatt-hour for his electricity, according to the commission's examiners. The consumer in the small town pays 7.8 cents per kilowatt-hour, and the farmer pays an average of 12.8 cents (transcript, Mar. 9, p. 19661). That rate reductions have been inadequate is evidenced by this testimony of Examiner J. W. Adams:

> Obviously the company's problem is, as stated by its manager, that of getting its rates down as a means of increasing consumption. Such action, however, would have to be carried somewhat further than it has in the past in the direction of rate reductions part of large profits that hitherto have been retained for the common-stock equity (transcript, Mar. 9, p. 19637).

Adams sums up the situation when he says:

> From this showing it appears that in making voluntary reductions in residential rates in Omaha in 1929 the company by no means endangered its ability to pay dividends on the common stock owned largely by its parent company, the American Power & Light Co. The fact is that in every year since the properties were taken over the Nebraska Power Co., after paying all expenses, taxes, interest, and dividends on preferred stock, has realized sub-

stantial profits for its common stock, the bulk of which, as shown by the accountant's report, was actually held by the American Power & Light Co. for 9 years at no cost to itself (transcript, Mar. 9, p. 19629).

The company actually waged a prolonged fight for higher rates when its earnings fell off just after the war, although the Omaha City Council pointed out that the only result would be to make this watered common stock more profitable (exhibit 5038, appendix 10, sheet 9).

Its application for the rate increase was denied. The company spent $95,000 on rate investigation and valuation, however, and charged it up to operating expenses (exhibit 5038, pp. 169-170).

As I said a while ago, the poor consumer pays it all. It is nothing to the power company how much it pays for a contest over rates; they do not care, they are just collectors, that is all; and they charge a mighty big profit and commission for collecting. The poor consumer bears the entire burden.

Now see what happens to this municipal competition which is about the only means of regulating the charges and practices of the private companies. Speaking now of Nebraska and the Nebraska Power Co. and its activities, municipal ownership centers in the two communities of Fremont and Blair. Blair is an oasis of public ownership in Washington County. Nearly all the rest of that county pays tribute to the Nebraska Power Co. Fremont is in somewhat the same position in Dodge County. Blair only distributes its energy, first buying it at wholesale from the Iowa-Nebraska Light & Power Co. Fremont has its own generating plant, serving the city itself and a small rural territory. These towns are 40 or 50 miles from Omaha.

The Iowa-Nebraska Light & Power Co., which sells at wholesale to the city of Blair, serves the territory adjoining that of the Nebraska Power Co. and its Council Bluffs subsidiary. It pretty well surrounds not only the territory of the Nebraska Power Co. but the municipal plants of Fremont and Blair and certain other municipal systems. This Iowa-Nebraska Light & Power Co. is not under Electric Bond & Share, as the Nebraska Power Co. is. It is part of the United Light & Power Co. system, otherwise called the "Eaton-Schaddelee group." But its lines interconnect with those of the Nebraska Power Co. and the Nebraska Power Co. subsidiary in Council Bluffs. It buys energy from the Nebraska Power Co., and, more important, it has a "gentleman's agreement" with the Nebraska Power Co. for division of territory. Between the territorial limits of the two companies there is a neutral zone about 2 miles wide into which either company may extend its lines and sell electricity. When a municipal plant can be persuaded to sell out or an opportunity is offered to land a new customer in this neutral zone, representatives of the two companies get together and decide which shall have the business.

Against this background of common interest, the Nebraska Power Co. has expanded to the west and northwest in the Platte River Valley in the last few years by purchasing many small private and municipal distributing systems. Several of these systems formerly were served by the Fremont municipal plant, which sold them energy at wholesale.

The result of this expansion by the Nebraska Power Co. is that the Fremont municipal plant is entirely surrounded by Nebraska Power Co. lines. It has lost most of its outside market. But it has continued to operate, and, under the law adopted by initiative in 1930, giving municipalities the right to own power lines beyond their municipal boundaries, it is extending its lines into rural territory (transcript, Mar. 9, p. 19573).

In its determination to expand and to put the municipal plants out of business, the Nebraska Power Co. has paid extravagant prices for these municipal plants. To get what idea it could of values, the Trade Commission examiners scrutinized exhibits prepared by the Nebraska Power Co. itself in connection with litigation in Nebraska. They found that, even accepting the company's figures, it had paid for seven plants over 30 percent more than the estimated cost to reproduce them, without any allowance whatever for depreciation or for obsolete equipment.

It took a good while to introduce it, to show what I was going to show, but here we have it. This great representative of the great Power Trust sees, 40 or 50 miles from Omaha, a city owning its own electric-light plant, paid for by its own citizens, giving an illustration, as a matter of fact, of cheap electricity to its citizens. It has expanded and extended its lines. It is serving seven or eight towns in the vicinity, where the people buy current at the Fremont plant and distribute it themselves.

What happens? The Nebraska Power Co. creeps out and surrounds that city with its wires, its network, and it goes to this municipality and to that municipality to buy their distributing systems. What do they do? The Federal Trade Commission finds that they paid for those seven plants 30 percent more than it would cost to build them now, without making any allowance for depreciation or wear and tear. Probably it would be fair to say that they paid 50 percent more than the plants were worth.

This is poor business. Everybody knows that when that kind of a thing happens somebody must bear the loss. Like others of the extravagances and the bad financing of the Power Trust, it is the poor devil down in the humble home who has to bear the loss.

For the seven plants the company showed a reproduction cost new of $103,783, compared with the purchase price of $134,955. For the Cedar Bluffs group of plants there was shown a reproduction cost new of $24,134, against a purchase price of $35,000. For the Arlington municipal plant there was shown a reproduction cost new of $27,285, compared with the purchase price of $34,000.

The examiners point out that, as none of these plants were new and there was no allowance for depreciation, the premiums the power company paid to get them out of the way were actually "considerably greater" than these figures show.

Roy Page, vice president and general manager of the Nebraska Power Co., admitted that the physical value was only a small part of the basis used for determining prices (transcript, Mar. 9, p. 19578). A company official testified in the Nebraska litigation that as to certain properties no estimates of value whatever had been made prior to the purchases.

It seems clear that what the company was buying was: First, complete monopoly; second, freedom from regulation which operation of the municipal plants imposes; and, third, opportunity for unhampered profiteering.

Pointing out that the prices for municipal plants have been large and arbitrarily fixed, and that regulation is very limited, with the company admittedly fixing its own rates in the smaller towns, Examiner Adams declared that—

> It is reasonable to assume that full prices paid for properties have been considered in any valuation of properties used by the company in determining what its small-town rates shall be. (Transcript, Mar. 9, pp. 19581 and 19582.)

This, of course, is only a sample. What the Nebraska Power Co. is doing in Nebraska is being done by the subsidiaries of the Power Trust all over the land. I have been giving concrete instances, but they are only examples. They are no worse than is going on everywhere. I could go over the sunny South in the same way and tell of one case, for example, where the Power Trust went to a municipality that owned its own system and offered to pay a price for it. The price was more than it would have cost to rebuild the plant. The voters voted on the proposal and turned it down. Hardly had the result of the election been announced than the Power Trust came forward with another proposal and a higher offer, and another election was called. The offer was turned down again. Then, within a reasonable time after that happened, they came forward with a third offer, in which they offered really three or four times more than the plant was worth; and the people voted to sell it. Every time they made a higher offer they got a few more votes, and they kept on until they got their offer so high that the people felt they could not refuse to sell.

What does it mean? It means monopoly. It means they do not want a municipally owned plant that will stand out as a yardstick. They will do whatever necessary to accomplish their end. It is the plant they want. They want to prevent such a municipally owned plant from showing to the people what can be done by a municipally owned and properly operated plant. They are afraid of the new yardstick. They have a monopoly and are willing to spend mil-

lions to keep it, but the money they spend is not theirs. It is collected in pennies from God's poor. The attached letter from the National Electric Light Association shows the continued activity of the Power Trust in the Nebraska Legislature. They never sleep.

MIDDLE-WEST DIVISION THE NATIONAL ELECTRIC LIGHT ASSOCIATION,
Lincoln, Nebr., May 11, 1929.

MR. GEORGE F. OXLEY,
National Electric Light Association,
420 Lexington Avenue, New York City.

DEAR MR. OXLEY: For your information, Nebraska Legislature has adjourned. From out of a mass of approximately 25 bills aimed at the light and power industry, only 1 was enacted into law.

This bill authorizes cities of more than 5,000 population to use city finances either secured from bond issues or taxation or from earnings of municipally owned electric plants, to extend lines into adjacent country to provide service for rural customers. The limit of extension is 15 miles. Originally, this bill provided a maximum of 25 miles and provided also that cost of construction might be a pledge against future earnings of the city plant.

Among the bills which were menacing, but which did not make the grade, were those designed to make it impossible for a municipality to sell its electrical system if publicly owned; requiring a 60-percent vote of all eligible electors for renewal of franchises as well as granting of new ones and authorizing municipalities to purchase equipment for municipal plant in lieu of the privately owned plant without presenting the matter to the electors. This legislative program had the endorsement of the Nebraska League of Municipalities, and to all appearances it was their program. As a matter of fact, the entire campaign was engineered by oil-engine companies.

Yours truly,

THORNE BROWNE, *Director.*

Let anyone say he is in favor of municipal ownership and he is a marked man so far as the Power Trust is concerned, and it does not make any difference whether he is a candidate for President of the United States or whether he is a candidate for the office of assessor in a country precinct. They are the kind the Power Trust wants to defeat. Whenever anyone says or does anything officially or privately that conflicts with their interests and their wishes, he is a marked man, and he must get on his knees and beg for forgiveness and show by his action that he is willing to be their slave before they will look upon him with favor. But insofar as I am concerned, they can go to hell. I believe in municipal ownership of power, and I am proud to express myself publicly to that effect.

Although I have consumed a good deal of time, nevertheless I have only given a glimpse at certain spots in the United States, just a glimpse. I could cover the whole country and disclose the same thing practically everywhere. Remember, too, as I said in the beginning, that this investigation is only partially finished. God only knows what the future has in store; but if the American people are to be trampled down into the earth by this greatest human monopoly that was ever put together in the history of civilization, I am not willing to say what the result may be. This great trust marches on and on, making its huge profit on a necessity of human life.

The people of the United States, it seems to me, will realize that this great octopus—this greedy monopoly, living on the pennies which are contributed by God's poor, stealing out of the school children's hands the pennies given to them by their parents, going into every home, into every little town, and taking their toll from the toil and sweat of millions of our people in order that they may debauch the very people they rob—presents a picture that ought to cause every man to raise his voice in condemnation of such an unholy, such a wicked, such an indefensible thing.

I am also inserting a news item appearing in a Washington newspaper showing the results of the more recent findings of the Federal Power Commission up to date. You will notice that the Electric Bond & Share Co. has been investigated, and this is the holding company with which the Nebraska Power Co. is affiliated:

New and sensational discoveries by the Federal Trade Commission probably will delay its recommendations for stringent utilities regulation until the next session of Congress, it was learned today.

The Commission's inquiry has been under way since 1928. It was expected to complete its findings and recommend legislation June 30, 1934. New discoveries as the investigation entered its final phases will delay the report, it was believed.

Survey of the Commission's findings over a period of 6 years indicated that strict regulation will be proposed.

The Federal Power Commission, which has been ordered to investigate electric rates of private and commercial concerns, will add its data to the Trade Commission's findings.

"Most recent disclosures in the Power Trust situation were of correspondence purporting to show State Senator Warren T. Thayer, Republican, Chateaugay, N.Y., accepted 'expense money' for political work from the Associated Gas & Electric Co. A New York Legislature investigation has resulted."

Other Associated system activities charged were payments to a Paris, Tenn., city attorney by a company affiliated with the Associated system and indications of activities in municipal elections.

Revelations of the inquiry thus far have been:

"1. Discovery of about $1,250,000,000 in stock in 'write-ups' by utilities, most of which the public absorbed in security issues, now deflated.

"2. Payments of large fees to lecturers, writers, newspapers, and colleges for propaganda and publicity.

"3. Utility opposition to municipal and public power ownership through propaganda, including attacks on the Tennessee Valley Authority and Muscle Shoals projects.

"4. Excessive 'fees' to company officials.

"5. Heavy stock-market transactions to support securities artificially.

"6. Payments of special management service fees.

"7. Concentration of private-utility control in the hands of a relatively few individuals tending toward violation of antitrust laws.

"8. Pyramiding of holding companies and flooding of the market with new security issues."

One Trade Commission authority said, "There is no doubt the utilities situation needs Federal legislation. Disclosure of their methods in securities transactions was directly responsible for the 1933 Securities Act."

He added that while many companies voluntarily discontinued using the "special-fee" system, others are still using it through special "expense" accounts, which are charged to holding companies.

The Commission is speeding its inquiry, seven hearings being scheduled within the next 2 weeks. Two of them, it was said, are "especially" significant.

"One Tuesday will see the examination of Harley L. Clark, Chicago magnate, in connection with affairs of the Utility Light & Power Corporation. The other, scheduled for Wednesday, promises to reveal more correspondence taken from the files of the J. G. White Management Corporation, New York, affiliated with Associated, and said to bear on the New York power situation."

The saga of the Trade Commission's findings for the Senate will be written into more than 50 volumes comprising 25,000 pages.

Eleven large holding companies, embracing Insull, Hopson, Morgan, and Doherty interests, have been examined thus far, including their hundreds of subsidiaries.

Trade Commission experts estimate these companies supply 45 percent of the country's total electrical output and approximately 80 percent of that sold by privately owned companies in interstate commerce.

The principal companies investigated are Electric Bond & Share Co., Cities Service Co., Central Public Service Corporation, Associated Gas & Electric Co., Columbia Gas & Electric Co., Middle West Utilities Co., Niagara Hudson Power Corporation, North American Light & Power Corporation, United Gas Improvement Co., Utilities Power & Light Corporation, and the United Corporation group.

The Trade Commission was compelled once to enter court proceedings to obtain records. That was in the Electric Bond & Share case when a decision was handed down in 1932 in the United States District Court for the Southern District of New York upholding the Commission's authority.

This bill is of importance to my State due to the fact that we have at the present time two great power projects under construction and several more, such as the Tri County and Loup projects, under consideration. I trust these will ultimately be approved. I believe it will be necessary, in view of this vast new development, to find some other method of distribution than through privately owned utility companies, who through their past operation and manipulations have demonstrated beyond a question of doubt their inability to properly and fairly distribute the natural resources of the State of Nebraska.

As you no doubt know, I have become a candidate for the Governorship of Nebraska. If I am elected, the people of Nebraska can be assured of a Governor who is in entire sympathy with fair rates. If the private-utility companies will not make fair and reasonable rates available, then I believe that municipal ownership of these utilities should follow, and I would do my utmost to see that State legislation is passed which will provide fair and reasonable rates to those communities who desire to take advantage of it. I

believe that such legislation should be clearly and plainly written and that no purposeful ambiguity should be used to obscure the purpose of the bill. The passage of the Johnson Senate bill will simplify and expedite procedure and should be passed in its original form.

Mr. SUMNERS of Texas. Mr. Chairman, I yield 10 minutes to the gentleman from Oklahoma [Mr. McKEOWN].

Mr. McKEOWN. Mr. Chairman, the situation that confronts the House on this matter is a simple one. The Johnson bill simply limits a utility corporation to going through the State commission, and then to the courts of the State, and from there to the Supreme Court of the United States. It is admitted that there is always great delay caused by giving the utilities a favored place in the law. They have a privilege which you do not have. If you are sued in your State, you must go before the courts of your State. The Federal courts are sought not so much because of the diversity of citizenship but on the grounds of confiscation. They can choose either of two jurisdictions. They have adverse citizenship. They can go into a State court and waive the adverse citizenship, or they can go into the Federal court. No citizen of a State has that right. You must take one court; that is your State court. A nonresident, with the jurisdictional amount of his claim—that is, over $3,000—can go into the State court or he can go into the Federal court. Of course he goes to the court which he thinks is most advantageous to him, just as you would do if you had that privilege.

Most of the utility companies get themselves into the Federal courts on the fourteenth amendment to the Constitution. The fourteenth amendment to the Constitution was intended to protect the slaves and their rights in the Southern States, but by court decisions and court-made law it has become a haven of refuge for the large corporations which are incorporated in one State and doing business in another, or any concern that wants to exercise its constitutional privilege.

Have you ever stopped to think that the fourteenth amendment was not supposed to apply to or deal with property at all? It was supposed to deal with the personal rights of the slaves after the Civil War and to protect their rights down in the Southern States. Then by the construction of these sacred courts which the gentleman from Pennsylvania [Mr. BECK] speaks about and which we should not reflect upon, property was given rights which are now recognized in this country.

Now, what is the present procedure? A regulatory commission in your State decides to lower a rate that is being charged by some utility. What takes place? The utility can go into court and have it heard; and if they do not win there, they will take you into the Federal court and they will worry you around there. If they think it is advantageous, they will proceed on to the supreme court of that State; they will often let it go until the supreme court of that State says it shall be lowered. Then they will take you into the Federal court and do it all over again. You have to put in new evidence, because it is a trial de novo. What do our friends want to do? They say, "Let it go into the Federal court and take the record that was made in the State commission." Will there be delay? Delay denies justice; and when a rate is entered at one time by a commission, it may be a different situation when the time comes around to get the final decree. The economic situation may be entirely different, and one rate may be fair at the time the commission fixed the rate, but by the time it is brought to a conclusion it may be an entirely unfair rate. It may not be enough or it may be too much.

Now, they have three Federal judges. Where did that come from? It is just another bit of sop that the Congress has given to the people for all these years. This has been under consideration for many years, and we have always dodged it by trying to give them something else instead of what they needed. They gave them three judges to pass on it. We gave them the proposition in section 266 of the act, whereby all the State commission has to do, if it wants to keep its case out of the Federal courts, is go into a proper State court and ask an injunction against its own order. Here is a commission set up to do business, and it makes a ruling that there shall be a lowering of some certain rate. Then you ask the regulatory body to go into a State court and stop their own judgment and stop the rate which they have fixed, in order to stay out of the Federal court, and our opponents say that is a fine remedy. That is just another sop Congress gave the people instead of giving them a fair, square forum in which to try the cases where the interests of the people are gravely involved.

No sound lawyer in this country will tell you that they cannot appeal to the Supreme Court of the United States. The Supreme Court of the United States is a fair and impartial court, the highest court among men. It will prevent any prejudicial action on the part of the State courts. My thought is this: That when you give the right of appeal to the Supreme Court, in view of the amount of labor required of the Supreme Court of the United States, Congress ought to furnish the Supreme Court of the United States with some masters to sit and read these utility-company records and see whether or not there has been a fair finding of facts or sufficient evidence heard in the lower courts. I am the last man who would want to take away from any man, whether it is a corporate organization or an individual, any property or do anything which might create an injustice. I am the last man to do that. I say to you I have no time for political pirates who want to soak somebody simply because it is a corporate organization. I believe in fair dealings between corporations and individuals, and corporations should not have a privilege denied the rest of the citizens of this country. That is all there is to this case.

We hear talk about the terrible crime it would be to take this away from the jurisdiction of the Federal courts. Well, gentlemen, it is true, if you turn back the pages of our judicial history in this country, you can read with admiration the great and fine characters who have been upon our benches.

But without casting any aspersions upon the splendid Federal bench of this country, I am telling you here and now that if you examine the records of a lot of these utility-rate cases, you will not have a different idea of the "terrible crime" that is being committed by some occupants of the bench. It has been my experience in life that a man with fixed ideas before his elevation to the bench will still be under the fixed opinions after his elevation to the bench. It must be remembered that all men are human.

[Here the gavel fell.]

Mr. SUMNERS of Texas. Mr. Speaker, I yield 5 minutes to the gentleman from Oregon [Mr. MARTIN].

Mr. MARTIN of Oregon. Mr. Chairman, I suppose that as a layman amongst this galaxy of lawyers, I should not "butt" in. I have, however, a few facts I wish to recite in expressing the hope that my good friend, a friend whom I admire very much, the gentleman from Colorado [Mr. LEWIS], will not prevail in this matter, but that the House will pass the Johnson bill.

In the Seventy-second Congress it was brought to my attention that all the utility commissions of the country with the exception of the utility commissions in one or two States were protesting at the way their rate decisions were being handled in the courts. The miscarriage of justice in those cases was notorious. The companies were playing a game of fast and loose with both the State and the United States courts. When this was brought to my attention, I introduced in the House the bill H.R. 73, a companion bill to that of Senator JOHNSON.

Evidently these bills were brought to the attention of the present President of the United States, then Governor of New York, for in a message to the Legislature of the State of New York he made this statement:

> This power of the Federal court must be abrogated. Only the Congress can give the remedy. Legislation has been introduced in the Congress to carry out this purpose. * * * I recommend to your honorable bodies that you memorialize the Congress to pass this legislation.

Having introduced these bills in 1931, the Senator got the drop on me in getting his bill through the Senate in the present session before I got mine through the House. You

know they pass bills more quickly there in spite sometimes of long arguments with reference to them. After the Senator's bill was passed, he wrote me the following letter:

MARCH 16, 1934.

MY DEAR CONGRESSMAN MARTIN: A long time ago you and I had some little talk about the bill now pending to require public utilities after trial and decisions by State regulatory bodies, to pursue the usual course in contests of such decisions. After a long time and a rather weary fight I got the bill through the Senate. It is now before the Judiciary Committee of the House. Of course, all the power companies have had their representatives here fighting the measure, which is so thoroughly just. It seems to me it is so eminently fair that the bitter and prolonged contest of these power companies is wholly unjustified.

I thought that at one time you introduced a bill in the House. If you hold the same view that I have in respect to the measure, would it be possible to express that view to the members of the Judiciary Committee and aid in getting the measure upon the floor? What the power people want, of course, is delay, and every conceivable excuse will be made to keep the bill in committee as long as possible in the hope that this session may end without action. Pardon me for troubling you with this matter, but I have assumed that we are of the like opinion regarding it.

Indeed we are; and I am glad that at last we have come to the day of judgment on this measure in the House of Representatives. I will not repeat the many arguments that have been made on the floor with reference to this bill. It is a notorious fact known to everybody how these companies have abused this privilege of two courts, and I think it is high time we passed this law and put an end to the abuse. [Applause.]

[Here the gavel fell.]

Mr. SUMNERS of Texas. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. HANCOCK of North Carolina, Chairman of the Committee of the Whole House on the state of the Union, reported that that Committee, having had under consideration the bill (S. 752) to amend section 24 of the Judicial Code, as amended, with respect to the jurisdiction of the district courts of the United States over suits relating to orders of State administrative boards, had come to no resolution thereon.

REPEAL OF CERTAIN LAWS AFFECTING INDIANS

Mr. HOWARD. Mr. Speaker, I ask unanimous consent that the proceedings of yesterday whereby the House passed the bill (S. 2671) repealing certain sections of the Revised Code of Laws of the United States relating to the Indians, be vacated and that the Senate be requested to return to the House the bill and the message relating thereto.

The SPEAKER. Is there objection to the request of the gentleman from Nebraska?

There was no objection.

BANKRUPTCY LAWS

Mr. SUMNERS of Texas. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5884) to amend an act entitled "An act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, and acts amendatory thereof and supplementary thereto, with Senate amendments, disagree to the Senate amendments, and agree to the conference asked by the Senate.

The SPEAKER. Is there objection to the request of the gentleman from Texas? [After a pause.] The Chair hears none, and appoints the following conferees: Messrs. SUMNERS of Texas, MONTAGUE, MCKEOWN, KURTZ, and PERKINS.

PERMISSION TO ADDRESS THE HOUSE

Mr. ARENS. Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

The SPEAKER. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. ARENS. Mr. Speaker, there will be up tomorrow or next day under suspension of the rules the Kopplemann resolution. I asked for time on this resolution; but in view of the fact there will be but 20 minutes to a side, I was informed that under no possible condition could more than 5 minutes be granted to any one Member.

I have some facts I should like to get before the Members to the effect that considerable money is spent for propaganda for dairy legislation and is not spent for the benefit of the farmer, and, therefore, I believe the Kopplemann resolution should be passed to find out by whom and in whose interest it is spent. It would, however, take me more than the entire time which will be allotted for the discussion of the bill under suspension of the rules to properly present this matter to the House. In order that the Members may have this information and read it in the RECORD in the morning, I ask unanimous consent to extend my remarks in the RECORD.

Mr. O'CONNOR. Mr. Speaker, reserving the right to object, I think the gentleman is a little confused about the Kopplemann resolution. It was expected that it would be taken up yesterday under suspension. Of course, it cannot be taken up under suspension for 2 weeks, but some of those interested in the resolution may ask for a rule to bring the matter before the House in which event the gentleman could get his time then.

Mr. ARENS. In the meantime it would do no harm for the Members to have this information.

Mr. O'CONNOR. It would be very valuable. I, too, am interested in the dairy industry.

Mr. ARENS. Mr. Speaker, I ask unanimous consent to revise and extend my remarks in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

THE KOPPLEMANN RESOLUTION

Mr. ARENS. Mr. Speaker, ladies, and gentlemen, the Kopplemann resolution instructing the Federal Trade Commission to investigate the whole dairy industry should pass without a dissenting vote. There is evidence everywhere that either the A.A.A. has not yet developed a plan that looks workable or is agreeable to the dairy industry or the plan that they did develop and did present to the dairy farmers of the United States was defeated because it was misunderstood, misrepresented, and the farmers were organized against it before it ever was presented, by forces that are not the friends of the farmers. There is chaos in the dairy industry, and if something tangible is not developed it is apt to defeat or at least retard the whole recovery program. One fourth of all income on the farms in the United States is from the dairy industry. There are temporary relief measures available which should be used at once. To establish a permanent policy for the dairy industry we should have a thorough investigation by the Federal Trade Commission in order that we have the facts before Congress next winter to enable them to pass permanent beneficial legislation.

A large and expensive campaign of propaganda has been conducted here in Washington, first to defeat the production-control measure of the A.A.A. and now to pass a bill through Congress in which milk distributors must be more interested than the farmer, H.R. 8988. I shall not oppose this bill but point out later on in this talk where I think it must be corrected, and I am suspicious about the doctor attending its birth and about preparations before its birth. Before its arrival there were held several mass meetings at which the principal purpose was to discredit the administration and its program. Then there appeared a half dozen or more separate pamphlets. These circulars have come to Members of this House and Senate. They attacked the Secretary of Agriculture. The Secretary and his assistants of the Agricultural Adjustment Administration have been called communists and worse, because they have refused since last January to fix retail prices for milk distributors. The Department refused because they discovered that fixing retail prices meant fixing profits for dealers, when the dealers' profits already in many cases were too large.

This Washington lobby which conducts these attacks and supports H.R. 8988 is called the "Cooperative Dairy Defense Committee" and the "California State-wide Committee for the Fluid Milk Industry." These committees ap-

parently are one and the same person, Roy M. Pike, who manages a corporation farm in California and maintains lobby headquarters in the Washington Hotel here, and he is the head of both committies. The committee purports to be a farmers' organization. If it was a real farmers' lobby, I would have no fault to find. The farmers need more people to speak for them in Washington.

Propaganda costs a lot of money. Maybe the dairy farmers have been making so much lately that they can afford to waste their surplus paying for pamphlets demanding guaranteed prices and profits for milk dealers. I have not had the occasion to hear of any dairy farmers who want to spend their money that way.

Either the farmers are putting up all the money, or else part of it or all is coming from some distributors or processors. I could not blame the distributors if they contribute. There is not any law against it. It would perhaps be a good investment for them. It would yield good returns if the milk prices are fixed under this bill.

I have been told by people in whom I have absolute confidence that Mr. J. L. Kraft, president of the Kraft-Phoenix Cheese Co., gave Roy M. Pike $5,000. Dairymen understand that this was a contribution for the defense committee campaign to help beat production control and put over the Pike bill, H.R. 8988. Mr. Kraft is a director of the National Dairy Products Corporation. This organization sells 80 percent of the milk here in Washington. Of course, the milk distributor would be interested, not in the farmers' prices but in buying large quantities of milk cheap from the farmers. He would want volume at a low price. He would not want production control which would raise farm prices. As a director of the National Dairy Products Corporation and executive of its subsidiary, Mr. Kraft received $56,250 last year, so he would be able to afford a few thousand dollars contribution to a fake farm leader if he happened to feel like making such an investment and if the fake farm leader happened to be willing.

This so-called "dairy defense committee" put on a well-organized and apparently well-financed Nation-wide campaign against production control. In the face of such opposition, the Agricultural Adjustment Administration plan of production control did not have a chance.

Why should distributors be opposed to production control, and why should they contribute to its defeat? This can be easily explained. If production of milk is below the demand for consumption, those that have the milk, the milk cooperatives, will fix the price. It will be high. The distributors will not be able to sell above a certain price that the public will pay, and, therefore, the profit of the distributor is smaller and no bonus for the officers. If production is about even with consumption, farm organizations have about as much voice in price fixing as has the buyer for the distributor, and everybody is apt to get a square deal. But if there is a surplus of milk produced by the farmers, they themselves will chisel in on their neighbors and on their organizations, and the result is that the distributor can buy at any price and he will fix the price. This has happened the last 2 years, and the result is that the farmers went broke, and the distributor made 25 percent dividends on watered stock and all, and paid himself enormous salaries.

The Pike committee circulated its pamphlets. They contained venomous accusations, attacking the Adjustment Administration and the Secretary of Agriculture on every possible pretext. They drummed up opposition in the regional meetings called for the farmers. They had the regional meetings stacked against the administration program. Roy Pike and his colleagues helped bring about the defeat of production control. They blocked the chance of the dairy farmer's getting better prices, nearer cost of production. They sought by every means of vilification to discredit everybody and every plan which offered real help for the dairy farmer. Instead of help for the farmer, the Pike committee demanded a plan which would help the dealers.

Having defeated production control, which offered benefit payments to farmers, Pike brings in a bill to fix prices for milk distributors.

Now I want to state a fair proposition. The dairy farmers are entitled to know who is who among the dairy leaders. If the so-called "Dairy Cooperative Defense Committee" represents manufacturers and distributors, or gets its financial support from them, why does it not say so? Why does it not wear a silk hat and spats, instead of a straw hat and boots? These spokesmen should speak as what they are, and not pose as spokesmen for farmers. Mr. Pike was asked by newspapermen how his propaganda was being financed. He fumbled around with evasive answers.

Congress and the farmers are entitled to know the facts about Mr. Pike and the real forces back of him and this bill to compel the Adjustment Administration to fix retail prices of milk. I am a dairy farmer, and I want to know the facts. So do the rest of the dairy farmers, and so does Congress.

Let us find out by this investigation whether the big centralizers, distributors, and processors of dairy products are the real forces of so-called "Dairy Defense Committee", or just a mask for a false farm leadership.

Many eastern milk producers are opposed to production control. At a meeting here in Washington to which all dairy cooperatives were invited, a lot of resolutions were adopted. One of them asked for the resignation of Mr. Wallace. Another one opposed the processing tax and the administration plan of production control.

Another one favored new legislation for the milk producers, and another favored the Brandt plan for solving the farm question.

The milk prducers who called this meeting were not interested in the Brandt plan, but, by endorsing this plan, they felt they would succeed in obtaining the support of Mr. Brandt and with him other representatives of the cheese- and butter-producing States.

The Brandt plan is a modified McNary-Haugen bill. The complete group that adopted the above resolutions were opposed to the McNary-Haugen bill, and their opposition was given as one reason for the veto by the President. They are still opposed to it, but they swallowed the Brandt plan in order that they might gain his support for their own demands. Through vicious propaganda they succeeded in having the administration and its allotment plan condemned in the whole dairy section and the Brandt plan adopted before either plan was presented. Meetings were stacked against the administration. It appears that representatives of the Northwest butter and cheese sections were intended to be used to pull chestnuts out of the fire for other sections, and they soon discovered it. Names of the representatives of the butter sections were withdrawn from the pamphlets of the dairy defense committee.

The bill before Congress, presented by the defense committee, provides designation of the area that milk can be shipped into the market to be served, a license or permit to be required of the farmer, fixing a minimum price for milk to the producer, and a price for the consumer. New permits cannot be granted if sufficient milk is in the specified area. The bill does not provide how the price is to be arrived at. The price fixed should give the farmer cost of production; add to that the cost of distribution and fix the resulting amount as the price charged to the consumer.

The A.A.A. should be empowered to figure cost of production, cost of distribution, the interest on investment, and fair salaries to be paid officers of milk distributors. If all thsse items and the price fixed are not reasonable, the Government of all the people would soon be in trouble. The bill contains none of these essential provisions. In my home, near the Twin Cities, the fluid-milk area covers a region reaching about 30 miles all around the Twin Cities. This area now produces double the milk needed for fluid milk in the Twin Cities.

Do people in Minnesota approve that people in this area are given an exclusive license to deliver milk in the Twin Cities at a price fixed by the Government, without the Government's giving any consideration to the farmer living 35 miles out from the Twin Cities or without this same Government's fixing a fair price for him? With the Government's fixing a fair price for fluid milk in the respective