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INTENT SERVICE, INC.

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LEGISLATIVE HISTORY REPORT AND ANALYSIS

Re: **Public Law 71-245**
United States Senate Bill No. 4015 of 1930
As signed on May 23, 1930

Our file no.: 30073

The legislative history of the Plant Patent Act that was added by the 1930 Public Law referenced above is documented by materials♦ itemized in one declaration. The materials accompanying Exhibits B and C are itemized in this same declaration. The materials are organized as follows:

Exhibit A – United States Senate Bill No. 4015 (Townsend – 1930), Public Law 71-245
Exhibit B – 71st Congress Related Bills
Exhibit C – Selected Journal of Patent Office of Society Articles

In our research process, we reviewed the legislative history and determined which materials are relevant to the Plant Patent Act of 1930. We reviewed all versions of relevant bills, committee reports and Congressional Record debates, extracting for you that which is pertinent. We generally do not review hearings as they are usually very lengthy; instead we endeavor to provide abstracts found in the CIS/US Serial Set for this time period. (See Exhibit B, #2a and #2b) However, we were unable to locate any reference to the enacting bill in the CIS/US Serial Set. We were also only able to locate references to one of the enclosed failed related bill. (Id.) Perhaps this was because the history of this bill was apparently not very controversial.

We will provide complete copies of any other documents that are identified in these materials, or at your direction after a review of the materials we provide, obtain further documentation as needed. Occasionally this additional research may necessitate further research charges; we will discuss this with you at the time of your call requesting additional information if this is the case.

♦ For information on document numbers, research policies, request for judicial notice and more, please visit www.legintent.com and click on the links "**How to Use Our Materials**" on the Home page and "**Points and Authorities**" on the State or Federal Research menu.

PUBLIC LAW 71-245
UNITED STATES SENATE BILL NO. 4015 OF 1930
AS SIGNED ON MAY 23, 1930

The Plant Patent Act was enacted in 1930 following congressional approval of United States Senate Bill No. 4015 [hereinafter referred to as "S. 4015"]. (See Exhibit A, #1) This bill was introduced on January 6, 1930 by Senator John Townsend of Delaware.

S. 4015 was heard by both the House and Senate Committees on Patents. (See Exhibit A, #2a through #2c) After the amendments were approved by both Chambers, the bill was presented to President Herbert Hoover, who signed it into law on May 23, 1930, enacting Public Law 71-245. (See Exhibit A, #1)

After the President signed the bill into law, it was delivered to the Office of the Federal Register where the editors assigned the public law number, prepared it for publication as a slip law, and included it in the most current edition of the United States Statutes at Large.

The Senate Report accompanying S. 4015 set forth the purpose of this bill as follows:

> The purpose of the bill is to afford agriculture, so far as practicable, the same opportunity to participate in the benefits of the patent system as has been given industry, and thus assist in placing agriculture on a basis of economic quality with industry. The bill will remove the existing discrimination between plant developers and industrial inventors. To these ends the bill provides that any person who invents or discovers a new and distinct variety of plant shall be given by patent an exclusive right to propagate that plant by asexual reproduction; that is, by grafting, budding cuttings, layering, division, and the like, but not by seeds. (See Exhibit A, #5, page 1)

The materials revealed there were related competing bills also being considered. (See, for example, Exhibit A, #5, page 9) We were able to locate three competing bills, House of Representatives Bill No. 11372 ["H.R. 11372"], H.R. 9765, and S. 3530, all of 1930 and the second session of the 71st Congress. (See generally, Exhibit B, #1, #8, and #11) Understanding the legislative intent of any federal measure necessarily includes knowledge about various other federal bills competing with or preceding the bill ultimately enacted by Congress, particularly where the focus is on specific language. As you compare that enacted with the unsuccessful proposals in the failed bills, you may be able to discern useful insight as to the intended meaning. (See generally, Exhibit B)

The Senate Report accompanying S. 4015 noted the related legislation, stating, for example, as to S. 3530 the following:

> The proposed legislation was originally introduced by Senator Townsend as S. 3530 of this session. The present measure is substantially the same as the original bill except for the elimination of patents for certain newly found plants and the granting of patents irrespective of the fact that the plan may, under some conditions, reproduce itself without human aid.
> (See Exhibit A, #5, page 3)

It appears that that the most reviewed related bill was H.R. 11372, which generated a hearing. (See Exhibit B, #6) In this hearing, Representative Fred Purnell, author of H.R. 11372, noted the following background:

> . . . During the last 10 years particularly all of us have given a lot of serious thought and consideration to the proposition of putting agriculture on a complete parity, in so far as it is possible to do so, with industry and labor. This is another step, in my judgment, in the direction of giving agriculture equal opportunity with industry. The purpose of this bill, as is disclosed by the reading of it, is to amend two sections of the existing patent law so as to provide for the issuance of patents to inventors or discoverers of new plants, new developments in horticulture.
> (See Exhibit B, #6, page 2)

Let us know if you would like to determine if there were legislative measures proposed prior to the 71st Congress on this topic.

An impetus to the background driving this Plant Patent Act legislation was Luther Burbank, who had passed away before President Hoover signed this bill into law. (See Exhibit B, #6, page 3) A telegram written by his wife provided the following rationale for the proposals in these Plant Patent Act bills:

> Have just received welcome news congressional activity looking to protection of plant breeders and producers of new fruits by patent. As you probably know, this was one of Luther Burbank's most cherished hopes. He said repeatedly that until the Government made some such provision for insuring experimenter or breeder reasonable protection, the incentive to creative work with plants was slight, and independent plant breeding would be held back to the great detriment of horticulture. . . .
> (See Exhibit B, #6, page 3)

The House Report accompanying H.R. 11372 stated similarly:

> No one has advanced a just and logical reason why reward for service to the public should be extended to the inventor of a mechanical toy and denied to the genius whose patience, foresight, and effort have given a valuable new variety of fruit or other plant to mankind.
>
> This bill is intended not only to correct such discrimination, but in doing so it is hoped the genius of young agriculturists of America will be enlisted in a profitable work of invention and discovery of new plants that will revolutionize agriculture as inventions in steam, electricity, and chemistry have revolutionized those fields and advanced our civilization.
> (See Exhibit B, #5, page 2)

As reported in the Congressional Record, there were groups involved in the industry that supported this bill, such as the New York Fruit Exchange, Jackson Y Perkins Col, Produce News, Hicks Nurseries and Fruitman's Guide. (See Exhibit A, #4d, pages 7200 and 7201)

The Congressional Record also presented arguments raised by those who opposed the idea of granting patents on new kinds of plants that you may find helpful to review. (See, for example, Exhibit A, #4c, page 7017) Their issues included challenging the constitutionality and practicability of this new law. (Id.)

We enclose for background and context a few articles published around this time in the Journal of the Patent Office Society. (See generally, Exhibit C) These articles elucidate the types of creative and unusual legal challenges addressed by the courts relating to patents and objects of nature. (See, for example, Exhibit C, #1, page 401)

As introduced, S. 4015 proposed to amend former sections 4884, 4886, 4888 and 4892 of the Revised Statutes. (See Exhibit A, #2a) After its introduction, S. 4015 was amended by both Chambers before it was enacted into law. (See Exhibit A, #2b and #2c)

A full understanding of legislative intent may be dependent upon knowing about the various proposals as introduced into the bill and then as amended throughout the bill's consideration by the Senate and House Committees reviewing this measure. (See Exhibit A, #2a through #2c) This can be particularly helpful where your focus is on specific language; by contrasting that enacted with the prior proposals in the bill one can gain insight as to the intended meaning or the apparent controversy generated by the language of interest. (Id.)

Failed related bill H.R. 11372 proposed also to affect the same former Revised Statutes sections affected by S. 4015. (See Exhibit B, #1a and #1b) The other related bills, H.R. 9765 and S. 3530, proposed only to amend former section 4886 of the Revised Statutes. (See Exhibit B, #8 and #11)

The enclosed Senate and House Reports accompanying the enacting and related bills provided section-by-section analysis of each bill's provisions. (See Exhibit A, #5, pages 3, et seq.; and Exhibit B, #5, pages 4, et seq.)

Your careful review of the documents enclosed may reveal helpful discussion on the issue before you. You should also be able to draw some conclusions based upon the assumption that the language was intended to be consistent with the overall goal of the legislation. Thus, if you are unable to find specific discussion regarding your research question, the hearings noted in the CIS/Serial Set as well as the analyses contained in the Congressional Record, Committees' Reports, and Hearing enclosed herewith may provide you with an arguable assessment of the goals and purpose that could be applicable to your particular situation.

As we indicated earlier in this Report, we will provide complete copies of any documents at your direction after a review of the materials we provide, especially from the CIS/Annual. (See Exhibit B, #2a and #2b) If this additional research is lengthy, it may necessitate further research charges; we will discuss this with you at the time of your call requesting more information to be gathered if this is the case.

Any analysis provided in this report is based upon the nature and extent of your request to us, as well as a brief review of the enclosed documents. As such, it must be considered tentative in nature. A more conclusive statement of the impact of the legislative history in your case would be dependent upon a complete understanding of all of the factual issues involved and the applicable legal principles.

We appreciate the opportunity to provide this assistance and hope that these efforts will be of value to you.

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DECLARATION OF MARIA A. SANDERS

I, Maria A. Sanders, declare:

I am an attorney licensed to practice in California, State Bar No. 092900, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain all documents relevant to the amendment of the 1930 Plant Patent Act by United States Senate Bill No. 4015 of 1930 [hereinafter referred to as S. 4015]. S. 4015 was enacted by Congress as Public Law 71-245, on May 23, 1930.

The following list identifies all documents obtained by the staff of Legislative Intent Service, Inc. on S. 4015 of 1930 as it relates to Plant Patent Act. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service, Inc. and all copies forwarded with this Declaration are true and correct copies of the originals located by Legislative Intent Service, Inc.

EXHIBIT A - PUBLIC LAW 71-245, S. 4015 (TOWNSEND – 1930):

1. Public Law 71-245, May 23, 1930;
2. All available versions of S. 4015 (Townsend- 1930);
3. Excerpt regarding S. 4015 from the Congressional Record *Index*, 71st Congress, Second Session, Vol. LXXII, Part 12;
4. Excerpt regarding S. 4015 from the Congressional Record *of Proceedings and Debates*, 71st Congress, as follows:
   a. Senate Debate, March 24, 1930, Vol. LXXII, Part 6;
   b. Senate Debate, April 3, 1930, Vol. LXXII, Part 6;
   c. Senate Debate, April 14, 1930, Vol. LXXII, Part 7;
   d. Senate Debate, April 17, 1930, Vol. LXXII, Part 7;
   e. Senate Debate, May 12, 1930, Vol. LXXII, Part 8;
   f. Senate Debate, May 13, 1930, Vol. LXXII, Part 8;
   g. Senate Debate, May 16, 1930, Vol. LXXII, Part 8;
   h. House Debate, May 16, 1930, Vol. LXXII, Part 8;
   i. Senate Debate, May 26, 1930, Vol. LXXII, Part 9;

5. Senate Report No. 71-315, entitled "Plant Patents" prepared by the Senate Committee on Patents, to accompany S. 4015, dated April 2, 1930;
6. Excerpt regarding Senator John G. Townsend from the Biographical Directory of the United States Congress, available online at: http://bioguide.congress.gov.

EXHIBIT B – 71ST CONGRESS BILLS RELATED TO S. 4015 of 1930:

1. All available versions of House of Representatives Bill No. 11372 ["H.R. 11372"] (Purnell – 1930);
2. Excerpt regarding H.R. 11372 from the CIS/US Congressional Committee Hearings Index;
3. Excerpt regarding H.R. 11372 from the Congressional Record *Index*, 71st Congress, Second Session, Vol. LXXII, Part 12;
4. Excerpt regarding H.R. 11372 from the Congressional Record *of Proceedings and Debates*, 71st Congress, as follows:
   a. House Debate, April 3, 1930, Vol. LXXII, Part 6;
   b. Senate Debate, April 10, 1930, Vol. LXXII, Part 7;
   c. House Debate, May 5, 1930, Vol. LXXII, Part 8;
5. House Report No. 71-1129, entitled "Plant Patents," prepared by the House Committee on Patents, to accompany H.R. 11372, dated April 10, 1930;
6. Hearing before the House Committee on Patents on H.R. 11372, "A Bill to Provide for Plant Patents," dated April 9, 1930;
7. Excerpt regarding Representative Fred Purnell from the Biographical Directory of the United States Congress, available online at: http://bioguide.congress.gov;
8. All available versions of H.R. 9765 (Purnell – 1930);
9. Excerpt regarding H.R. 9765 from the Congressional Record *Index*, 71st Congress, Second Session, Vol. LXXII, Part 12;
10. Excerpt regarding H.R. 9765 from the Congressional Record *of Proceedings and Debates*, 71st Congress, House Debate, February 11, 1930, Vol. LXXII, Part 4;
11. All available versions of S. 3530 (Townsend – 1930);
12. Excerpt regarding S. 3530 from the Congressional Record *Index*, 71st Congress, Second Session, Vol. LXXII, Part 12;
10. Excerpt regarding S. 3530 from the Congressional Record *of Proceedings and Debates*, 71st Congress, Senate Debate, February 11, 1930, Vol. LXXII, Part 4.

EXHIBIT C – SELECTED JOURNAL OF PATENT OFFICE SOCIETY ARTICLES, RELATED TO the Plant Patent Act of 1930:

1. Article entitled "The First Plant Patent," by Robert C. Cook, published in the JOURNAL OF THE PATENT OFFICE SOCIETY, Vol. 14, No. 5 (May, 1932);
2. Article entitled "Plant Patent Queries," by Robert Starr Allyn, published in the JOURNAL OF THE PATENT OFFICE SOCIETY, Vol. 15, No. 3 (March, 1933);
3. Article entitled "Plant Patents," by Harry C. Robb, published in the JOURNAL OF THE PATENT OFFICE SOCIETY, Vol. 15, No. 10 (October, 1933);
4. Article entitled "More About Plant Patents," by Robert Starr Allyn, published in the JOURNAL OF THE PATENT OFFICE SOCIETY, Vol. 15, No. 12 (December, 1933).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 6th day of April, 2011 at Woodland, California.



MARIA A. SANDERS

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May 23, 1930.
[S. 4015.]
[Public, No. 245.]

Patents.

CHAP. 312.—An Act To provide for plant patents.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 4884 and 4886 of the Revised Statutes, as amended (U. S. C., title 35, secs. 40 and 31), are amended to read as follows:

Title of invention and term of grants to be given.
R. S., sec. 4884, p. 945, amended.
U. S. C., p. 1168.
Plant reproduction added.

"SEC. 4884. Every patent shall contain a short title or description of the invention or discovery, correctly indicating its nature and design, and a grant to the patentee, his heirs or assigns, for the term of seventeen years, of the exclusive right to make, use, and vend the invention or discovery (including in the case of a plant patent the exclusive right to asexually reproduce the plant) throughout the United States and the Territories thereof, referring to the specification for the particulars thereof. A copy of the specification and drawings shall be annexed to the patent and be a part thereof.

Inventions patentable, including plant reproduction.
Vol. 29, p. 692.
R. S., sec. 4886, p. 946, amended.
U. S. C., p. 1167.

"SEC. 4886. Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvements thereof, or who has invented or discovered and asexually reproduced any distinct and new variety of plant, other than a tuber-propagated plant, not known or used by others in this country, before his invention or discovery thereof, and not patented or described in any printed publication in this or any foreign country, before his invention or discovery thereof, or more than two years prior to his application, and not in public use or on sale in this country for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law, and other due proceeding had, obtain a patent therefor."

Specific requirements of application.
Vol. 38, p. 959, amended.
R. S., sec. 4888, p. 946.
U. S. C., p. 1167.

SEC. 2. Section 4888 of the Revised Statutes, as amended (U. S. C., title 35, sec. 33), is amended by adding at the end thereof the following sentence: "No plant patent shall be declared invalid on the ground of noncompliance with this section if the description is made as complete as is reasonably possible."

SEC. 3. The first sentence of section 4892 of the Revised Statutes, as amended (U. S. C., title 35, sec. 35), is amended to read as follows:

Oath required of applicant.
R. S., sec. 4892, p. 947, amended.
U. S. C., p. 1167.
Vol. 32, p. 1226.

"SEC. 4892. The applicant shall make oath that he does verily believe himself to be the original and first inventor or discoverer of the art, machine, manufacture, composition, or improvement, or of the variety of plant, for which he solicits a patent; that he does not know and does not believe that the same was ever before known or used; and shall state of what country he is a citizen."

Information to be furnished Commissioner of Patents.

SEC. 4. The President may by Executive order direct the Secretary of Agriculture (1) to furnish the Commissioner of Patents such available information of the Department of Agriculture, or (2) to conduct through the appropriate bureau or division of the department such research upon special problems, or (3) to detail to the Commissioner of Patents such officers and employees of the department, as the commissioner may request for the purposes of carrying this Act into effect.

Plant varieties introduced hitherto not subject to patent.

SEC. 5. Notwithstanding the foregoing provisions of this Act, no variety of plant which has been introduced to the public prior to the approval of this Act shall be subject to patent.

Invalidity of any provision, etc., not to affect remainder of Act.

SEC. 6. If any provision of this Act is declared unconstitutional or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and the application thereof to other persons or circumstances shall not be affected thereby.

Approved, May 23, 1930.

71ST CONGRESS
2D SESSION

S. 4015

IN THE SENATE OF THE UNITED STATES

JANUARY 6 (calendar day, MARCH 24), 1930

Mr. TOWNSEND introduced the following bill; which was read twice and referred to the Committee on Patents

A BILL

To provide for plant patents.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 4884 and 4886 of the Revised Statutes, as amended (U. S. C., title 35, secs. 40 and 31), are amended to read as follows:

"SEC. 4884. Every patent shall contain a short title or description of the invention or discovery, correctly indicating its nature and design, and a grant to the patentee, his heirs or assigns, for the term of seventeen years, of the exclusive right to make, use, and vend (including in the case of a plant patent the exclusive right to asexually reproduce the

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plant) the invention or discovery throughout the United States and the Territories thereof, referring to the specification for the particulars thereof. A copy of the specification and drawings shall be annexed to the patent and be a part thereof.

"SEC. 4886. Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvements thereof, or who has invented or discovered and asexually reproduced (1) any distinct and new variety of plant or (2) any distinct and newly found variety of plant, other than a tuber-propagated plant, not known or used by others in this country, before his invention or discovery thereof, and not patented or described in any printed publication in this or any foreign country, before his invention or discovery thereof, or more than two years prior to his application, and not in public use or on sale in this country for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law, and other due proceeding had, obtained a patent therefor."

SEC. 2. Section 4888 of the Revised Statutes, as amended (U. S. C., title 35, sec. 33), is amended by adding at the end thereof the following sentence: "No plant patent shall be declared invalid on the ground of noncompliance with

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this section if the description is made as complete as is reasonably possible."

SEC. 3. The first sentence of section 4892 of the Revised Statutes, as amended (U. S. C., title 35, sec. 35), is amended to read as follows:

"SEC. 4892. The applicant shall make oath that he does verily believe himself to be the original and first inventor or discoverer of the art, machine, manufacture, composition, or improvement, or of the variety of plant, for which he solicits a patent; that he does not know and does not believe that the same was ever before known or used; and shall state of what country he is a citizen."

SEC. 4. The President may by Executive order direct the Secretary of Agriculture (1) to furnish the Commissioner of Patents such available information of the Department of Agriculture, or (2) to conduct through the appropriate bureau or division of the department such research upon special problems, or (3) to detail to the Commissioner of Patents such officers and employees of the department, as the commissioner may request for the purposes of carrying this Act into effect.

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71st

Mr.

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1 2 3 4 5 6 7 8 9 10 11 12

A BILL

To provide for plant patents.

By Mr. TOWNSEND

JANUARY 6 (calendar day, MARCH 24), 1930
Read twice and referred to the Committee on Patents

Calendar No. 307

71ST CONGRESS
2D SESSION

S. 4015

[Report No. 315]

IN THE SENATE OF THE UNITED STATES

JANUARY 6 (calendar day, MARCH 24), 1930

Mr. TOWNSEND introduced the following bill; which was read twice and referred to the Committee on Patents

APRIL 2 (calendar day, APRIL 3), 1930

Reported by Mr. GOLDSBOROUGH, with amendments

[Omit the part struck through and insert the part printed in italic]

A BILL

To provide for plant patents.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 4884 and 4886 of the Revised Statutes, as amended (U. S. C., title 35, secs. 40 and 31), are amended to read as follows:

"SEC. 4884. Every patent shall contain a short title or description of the invention or discovery, correctly indicating its nature and design, and a grant to the patentee, his heirs or assigns, for the term of seventeen years, of the exclusive right to make, use, and vend *the invention or discovery* (including in the case of a plant patent the exclusive right to asexually reproduce the plant) ~~the~~

A BILL
LEGISLATIVE INTENT SERVICE (800) 666-1917

~~invention~~ ~~or~~ ~~discovery~~ throughout the United States and the Territories thereof, referring to the specification for the particulars thereof. A copy of the specification and drawings shall be annexed to the patent and be a part thereof.

"SEC. 4886. Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvements thereof, or who has invented or discovered and asexually reproduced ~~(1)~~ any distinct and new variety of plant ~~or~~ ~~(2)~~ ~~any~~ ~~distinct~~ ~~and~~ ~~newly~~ ~~found~~ ~~variety~~ ~~of~~ ~~plant~~, other than a tuber-propagated plant, not known or used by others in this country, before his invention or discovery thereof, and not patented or described in any printed publication in this or any foreign country, before his invention or discovery thereof, or more than two years prior to his application, and not in public use or on sale in this country for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law, and other due proceeding had, ~~obtained~~ *obtain* a patent therefor."

SEC. 2. Section 4888 of the Revised Statutes, as amended (U. S. C., title 35, sec. 33), is amended by adding at the end thereof the following sentence: "No plant patent shall be declared invalid on the ground of noncompliance with

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this section if the description is made as complete as is reasonably possible."

SEC. 3. The first sentence of section 4892 of the Revised Statutes, as amended (U. S. C., title 35, sec. 35), is amended to read as follows:

"SEC. 4892. The applicant shall make oath that he does verily believe himself to be the original and first inventor or discoverer of the art, machine, manufacture, composition, or improvement, or of the variety of plant, for which he solicits a patent; that he does not know and does not believe that the same was ever before known or used; and shall state of what country he is a citizen."

SEC. 4. The President may by Executive order direct the Secretary of Agriculture (1) to furnish the Commissioner of Patents such available information of the Department of Agriculture, or (2) to conduct through the appropriate bureau or division of the department such research upon special problems, or (3) to detail to the Commissioner of Patents such officers and employees of the department, as the commissioner may request for the purposes of carrying this Act into effect.

SEC. 5. If any provision of this Act is declared unconstitutional or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and the application thereof to other persons or circumstances shall not be affected thereby.

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CALENDAR NO. [illegible]

71st CONGRESS } S. 4015
2d Session }

[Report No. 315]

A BILL

To provide for plant patents.

By Mr. Townsend

January 6 (calendar day, March 24), 1930
Read twice and referred to the Committee on Patents

April 2 (calendar day, April 3), 1930
Reported with amendments

71ST CONGRESS
2D SESSION

S. 4015

IN THE SENATE OF THE UNITED STATES

APRIL 8 (calendar day, APRIL 10), 1930

Referred to the Committee on Patents and ordered to be printed

AMENDMENTS

Intended to be proposed by Mr. MCKELLAR to the bill (S. 4015) to provide for plant patents, viz: On page 3, after line 21, insert the following:

SEC. 5. Notwithstanding the foregoing provisions of this Act, no variety of plant which has been introduced to the public prior to the approval of this Act shall be subject to patent.

On page 3, line 22, strike out "SEC. 5" and insert in lieu thereof "SEC. 6".

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2D SESSION } S. 4015

AMENDMENTS

Intended to be proposed by Mr. McKELLAR to the bill (S. 4015) to provide for plant patents.

APRIL 8 (calendar day, APRIL 10), 1930
Referred to the Committee on Patents and ordered to be printed

X re S. 4015

Congressional Record

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OF THE

SECOND SESSION OF THE SEVENTY-FIRST CONGRESS

OF

THE UNITED STATES
OF AMERICA

VOLUME LXXII—PART 12

DECEMBER 2, 1929, TO JULY 3, 1930

(Pages 1 to 666)

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S. 3972—For the relief of certain Indians whose financial resources are insufficient for their adequate support.
Mr. McMaster; Committee on Indian Affairs, 5666.

S. 3973—Granting an increase of pension to Maggie M. Phillips.
Mr. Goff; Committee on Pensions, 5666.—See bill H. R. 11588, 8588.

S. 3974—Granting a pension to Retta J. Smith.
Mr. Swanson; Committee on Pensions, 5666.

S. 3975—For the relief of Capt. George R. Armstrong, United States Army, retired.
Mr. Robsion of Kentucky; Committee on Military Affairs, 5666.

S. 3976—Granting a pension to Mary Johnson.
Mr. Robsion of Kentucky; Committee on Pensions, 5666.—See bill H. R. 12302, 9860.

S. 3977—Granting a pension to Elizabeth Ware.
Mr. Robsion of Kentucky; Committee on Pensions, 5666.

S. 3978—Granting an increase of pension to William G. Patton.
Mr. Robsion of Kentucky; Committee on Pensions, 5666.

S. 3979—Granting a pension to Jursha A. Allen
Mr. Hayden; Committee on Pensions, 5666.—See bill H. R. 12205, 9356.

S. 3980—Granting a pension to Lorenzo D. Walters.
Mr. Hayden; Committee on Pensions, 5666.—See bill H. R. 12205, 9356.

S. 3981—Authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes.
Mr. Schall; Committee on Commerce, 5666.

S. 3982—To adjust the pay of certain persons with prior service in the National Guard or Organized Militia who entered the service between August 5, 1917, and July 8, 1918, inclusive, other than through the draft
Mr. Black; Committee on Military Affairs, 5666.

S. 3983—For the relief of Ira L. Reeves.
Mr. Greene; Committee on Military Affairs, 5785.

S. 3984—To provide for the air marking of certain Government buildings.
Mr. Bingham; Committee on Commerce, 5785.

S. 3985—Granting an increase of pension to Frank Brown.
Mr. Blaine; Committee on Pensions, 5785.—See bill H. R 12205, 9356.

S. 3986—Granting back compensation to Anna M. Frederick.
Mr. Robinson of Indiana; Committee on Finance, 5785.

S. 3987—Granting a pension to Look-at-the-Road.
Mr. Norbeck; Committee on Pensions, 5785.

S. 3988—Granting an increase of pension to Miranda J. Pickle.
Mr Shortridge; Committee on Pensions, 5785.—See bill H. R. 11588, 8588.

S. 3989—For the relief of Thomas F. McVeigh.
Mr. Shortridge; Committee on Military Affairs, 5785.

S. 3990—To extend the benefits of the United States employees' compensation act of September 7, 1916, to Ira L. Elliott, a former employee of the Panama Canal, Canal Zone.
Mr. Simmons; Committee on Claims, 5785.

S. 3991—For the relief of the heirs of S. Rowland Smith.
Mr. Harris; Committee on Claims, 5785.

S. 3992—To establish a revolving fund to be used for the employment of Indians on the various Indian reservations.
Mr. McMaster; Committee on Indian Affairs, 5785.

S. 3993—For the relief of Ietta G. Moseley.
Mr. Trammell; Committee on Claims, 5785.

S. 3994—Authorizing the purchase and maintenance of passenger-carrying automobiles for use at post offices having gross receipts of $1,000,000 or more.
Mr. Moses; Committee on Post Offices and Post Roads, 5895.

S. 3995—Granting a pension to Nancy Beth.
Mr. Capper; Committee on Pensions, 5895.—See bill H. R. 11588, 8588.

S. 3996—Granting an increase of retired pay to William Humphrey Biddle.
Mr. Allen; Committee on Military Affairs, 5895.

S. 3997—To establish the fee to be charged by clerks of certain United States courts for copies of the opinions of said courts.
Mr. Norris; Committee on the Judiciary, 5895.

S. 3998—To provide for the acquisition of a site and the construction thereon of a Federal building at Ogden, Utah.
Mr. King; Committee on Public Buildings and Grounds, 5895.

S. 3999—For the relief of Mrs. Sims M. Hawley.
Mr. King; Committee on Claims, 5895.

S. 4000—Granting a pension to Elizabeth King.
Mr. Robsion of Kentucky; Committee on Pensions, 5895.—See bill H. R. 12205, 9356.

S. 4001—Granting a pension to Christopher Lewis.
Mr. Robsion of Kentucky; Committee on Pensions, 5895.—See bill H. R. 12302, 9860.

S. 4002—Providing for the construction of roads on the Rocky Boy Indian Reservation in the State of Montana.
Mr. Wheeler; Committee on Indian Affairs, 5895.—Reported back (S. Rept. 635), 8572.—Passed Senate, 9346.—Referred to House Committee on Indian Affairs, 9621.

S. 4003—To transfer Willacy County, in the State of Texas, from the Corpus Christi division of the southern district of Texas to the Brownsville division of such district.
Mr. Sheppard; Committee on the Judiciary, 5895.

S. 4004—Authorizing the President to reappoint Gilbert E. Bixby, formerly a captain of Cavalry, United States Army, a captain of Cavalry, United States Army.
Mr. Sheppard; Committee on Military Affairs, 5895.

S. 4005—To amend the interstate commerce act, as amended.
Mr. Howell; Committee on Interstate Commerce, 5895.

S. 4006—Authorizing appropriations to be expended under the provisions of sections 4 to 14 of the act of March 1, 1911, entitled "An act to enable any State to cooperate with any other State or States, or with the United States, for the protection of the watersheds of navigable streams, and to appoint a commission for the acquisition of lands for the purpose of conserving the navigability of navigable rivers," as amended.
Mr. McNary; Committee on Agriculture and Forestry, 5963.

S. 4007—Granting an increase of compensation to Tryphosa E. Abrams.
Mr. McNary; Committee on Finance, 5963.

S. 4008—For the relief of James Robertson.
Mr. McNary; Committee on Military Affairs, 5963.

S. 4009—Granting the consent of Congress to the State of New York to construct, maintain, and operate a free highway bridge across the Hudson River at or near Stillwater, N. Y.
Mr. Copeland; Committee on Commerce, 5963.—Reported with amendments (S. Rept. 490), 7309.—Indefinitely postponed, 8510.

S. 4010—To amend section 6 of the interstate commerce act.
Mr. Couzens; Committee on Interstate Commerce, 5963.

S. 4011—Granting an increase of pension to Martha E. Crawford.
Mr. Norbeck; Committee on Pensions, 5963.—See bill H. R. 11588, 8588.

S. 4012—To amend the act entitled "An act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes," approved July 11, 1916, as amended and supplemented, and for other purposes.
Mr. Moses; Committee on Post Offices and Post Roads, 5963.

S. 4013—Granting a pension to Eugene Meyer.
Mr. Walsh of Montana; Committee on Pensions, 5963.

S. 4014—Granting an increase of pension to Mary Ida Jordan.
Mr. Metcalf; Committee on Pensions, 5963.—See bill H. R. 11588, 8588.

S. 4015—To provide for plant patents.
Mr. Townsend; Committee on Patents, 5963.—Reported with amendments (S. Rept. 315), 6421.—Debated, 7017, 7200.—Amended and passed Senate, 8750.—Taken from Speaker's table and passed House (H. R. 11372), 8866.—Examined and signed, 9049, 9108.—Presented to the President, 9032.—Approved [Public, No. 245], 9531.

S. 4016—For the relief of the Creek Nation of Indians of Oklahoma, and for other purposes.
Mr. Pine; Committee on Indian Affairs, 6054.

S. 4017—To amend the act of May 29, 1928, pertaining to certain War Department contracts by repealing the expiration date of that act.
Mr. Greene; Committee on Military Affairs, 6054.—Reported back (S. Rept. 486), 7309.—Debated, 8503.—Passed Senate, 8755.—Referred to House Committee on Military Affairs, 9108.—Reported back (H. Rept. 1674), 9771.—Debated, amended, and passed House, 10132.—Senate disagrees to House amendment and asks conference, 10251.—Conferees appointed, 10259, 10575.—House insists upon its amendment and agrees to conference, 10575.—Conference report submitted in House (H. Rept. 1899), 10691.—Agreed to, 11205.—Conference report submitted in Senate and agreed to, 11179.—Examined and signed, 11269, 11383.—Presented to the President, 11289.—Approved [Public, No. 410], 11502.

S. 4018—For the relief of the Lebanon Equity Exchange, of Lebanon, Nebr.
Mr. Norris; Committee on Claims, 6054—Reported with amendment, (S. Rept. 1148), 12189.

S. 4019—Granting compensation to Earl D. Cranor.
Mr. Robinson of Indiana; Committee on Finance, 6054.

S. 4020—Granting a pension to Christopher Lewis.
Mr. Robsion of Kentucky; Committee on Pensions, 6054.

S. 4021—Granting a pension to Stephen Curran.
Mr. Capper; Committee on Pensions, 6054.—See bill H. R. 12205, 9356.

S. 4022—To regulate the erection, hanging, placing, painting, display, and maintenance of outdoor signs and other forms of exterior advertising within the District of Columbia.
Mr. Capper; Committee on the District of Columbia, 6054.—Reported back (S. Rept. 403), 6999.—Passed Senate, 7203.—Referred to the House Committee on the District of Columbia, 7383.

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OF THE

SECOND SESSION OF THE SEVENTY-FIRST CONGRESS

OF

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Lucius Hoge, jr., Clarksburg.
Omar G. Robinson, Summersville.
John W. Mitchell, Wayne.

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Leo O. Dietrich, Cassville.
Henry W. Lemmens, Cedar Grove.
William T. Hoyt, Rosendale.
Guilford K. Berge, Valders.

WYOMING

Margaret S. Flatter, Diamondville.
Charles M. Hett, Thermopolis.

SENATE

MONDAY, *March 24, 1930*

(Legislative day of Monday, January 6, 1930)

The Senate met at 11 o'clock a. m., on the expiration of the recess.

Mr. McNARY. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

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

Allen	Glass	McCulloch	Smith
Ashurst	Glenn	McKellar	Smoot
Barkley	Goff	McMaster	Steck
Bingham	Goldsborough	McNary	Steiwer
Black	Gould	Metcalf	Stephens
Blaine	Greene	Moses	Sullivan
Blease	Hale	Norris	Swanson
Borah	Harris	Nye	Thomas, Idaho
Bratton	Harrison	Oddie	Thomas, Okla.
Brookhart	Hatfield	Overman	Townsend
Broussard	Hawes	Patterson	Trammell
Capper	Hayden	Phipps	Tydings
Caraway	Hebert	Pine	Vandenberg
Connally	Heflin	Pittman	Wagner
Copeland	Howell	Ransdell	Walcott
Couzens	Johnson	Robinson, Ind.	Walsh, Mass.
Dale	Jones	Robsion, Ky.	Walsh, Mont.
Dill	Kean	Schall	Waterman
Fess	Kendrick	Sheppard	Watson
Frazier	Keyes	Shortridge	Wheeler
George	La Follette	Simmons	

Mr. SHEPPARD. The junior Senator from Utah [Mr. KING] is necessarily detained from the Senate by illness. I will let this announcement stand for the day.

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dent of the Washington Air Terminal, Mr. Albert G. Oberg, read at the desk.

The VICE PRESIDENT. Without objection, the clerk will read, as requested.

The Chief Clerk read the letter, as follows:

WASHINGTON AIR TERMINALS,
Washington, D. C., March 21, 1930.

Hon. HIRAM BINGHAM,
United States Senate, Washington, D. C.

MY DEAR SENATOR: We understand that Senate bill 3901, for the acquisition of a commercial air port, has been referred to the Committee on the District of Columbia.

As we stated to the joint commission of the Senate and House some weeks ago, we would like the Congress, and every committee thereof, to feel that the books and records of this corporation in connection with the acquisition and development of the Washington airport are at all times accessible to them.

In connection with the written proposal heretofore made to Congress, the directors and officers of the company will at any time be glad to furnish you or the commission or any committee with such additional information in connection with the foregoing which you or they may desire.

Very truly yours,

ALBERT G. OBERG,
Vice President.

Mr. BINGHAM. I ask that the letter be referred to the Committee on the District of Columbia.

The VICE PRESIDENT. Without objection, it is so referred.

REPORT OF POSTAL NOMINATIONS

Mr. PHIPPS, as in open executive session, from the Committee on Post Offices and Post Roads, reported sundry post-office nominations, which were placed on the Executive Calendar.

REPORT OF THE COMMITTEE ON POST OFFICES AND POST ROADS

Mr. MOSES, from the Committee on Post Offices and Post Roads, to which was referred the bill (S. 1101) to authorize the Postmaster General to investigate the conditions of the lease of the post-office garage in Boston, Mass., and to readjust the terms thereof, reported it without amendment and submitted a report (No. 286) thereon.

BILLS INTRODUCED

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. McNARY:

A bill (S. 4006) authorizing appropriations to be expended under the provisions of sections 4 to 14 of the act of March 1, 1911, entitled "An act to enable any State to cooperate with any other State or States, or with the United States, for the protection of the watersheds of navigable streams, and to appoint a commission for the acquisition of lands for the purpose of conserving the navigability of navigable rivers," as amended; to the Committee on Agriculture and Forestry.

A bill (S. 4007) granting an increase of compensation to Tryphosa E. Abrams; to the Committee on Finance.

A bill (S. 4008) for the relief of James Robertson; to the Committee on Military Affairs.

By Mr. COPELAND:

A bill (S. 4009) granting the consent of Congress to the State of New York to construct, maintain, and operate a free highway bridge across the Hudson River at or near Stillwater, N. Y.; to the Committee on Commerce.

By Mr. COUZENS:

A bill (S. 4010) to amend section 6 of the interstate commerce act; to the Committee on Interstate Commerce.

By Mr. NORBECK:

A bill (S. 4011) granting an increase of pension to Martha E. Crawford (with accompanying papers); to the Committee on Pensions.

By Mr. MOSES:

A bill (S. 4012) to amend the act entitled "An act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes," approved July 11, 1916, as amended and supplemented, and for other purposes; to the Committee on Post Offices and Post Roads.

By Mr. WALSH of Montana:

A bill (S. 4013) granting a pension to Eugene Meyer (with accompanying papers); to the Committee on Pensions.

By Mr. METCALF:

A bill (S. 4014) granting an increase of pension to Mary Ida Jordan (with accompanying papers); to the Committee on Pensions.

By Mr. TOWNSEND:

A bill (S. 4015) to provide for plant patents; to the Committee on Patents.

TRIAL OF EDWARD L. DOHENY

Mr. HEFLIN. Mr. President, the Washington Star of yesterday contained an editorial on the Doheny trial. Among other things it said:

> The jury which rendered yesterday's verdict evidently believed that the defendant Doheny gave money to Fall as an act of friendliness and generosity without thought of influencing his official action.

Mr. President, I think somebody ought to say something about this farcical performance which acquitted Doheny. The jurors who perpetrated this outrage upon the country ought to be listed and an order set against them which would prevent them from ever sitting in a jury trial again. If a poor unfortunate hungry man steals a loaf of bread he is put in jail and, perhaps, sent to the penitentiary. If a poor woman in distress goes out seeking work to enable her to feed her starving children and steals food for them, she is locked up, perhaps sent to the penitentiary. But a millionaire who has corrupted the high officials of the Government and who has pillaged and plundered the property of the Government through that instrumentality can come to Washington and, by the corrupt use of his money, procure freedom at the hands of a jury.

The former trial of Doheny for conspiracy to rob the Government, in which the jurors sang "Bye, Bye, Blackbird," is still a stench in the nostrils of decency, and still a scandal at the Capital. It was commonly talked that some of the jurors in that case had automobiles shortly after the trial which they never had before, that they had bank accounts which they never had before. Shame on such a jury. God speed the time when we will have one standard of justice for rich and poor alike, when those intrusted with law enforcement will see to it that the rich man who violates the law is punished just like the poor man. There should be no distinction. They ought to be treated alike. The verdict rendered in the Doheny case is not only outrageous, it is a rank travesty on justice.

ADDRESS ON LIFE OF FORMER CHIEF JUSTICE JOHN MARSHALL

Mr. GEORGE. Mr. President, I ask permission to have inserted in the CONGRESSIONAL RECORD an able address delivered by Samuel B. Adams, of Savannah, Ga., former associate justice of the supreme court of the State, former president of the bar association of the State, and long recognized as a lawyer of distinguished ability and character. The address relates to the life of Chief Justice John Marshall, with particular reference to certain of the important decisions rendered by him.

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

In order that it may appear that I am not entirely heterodox in my estimate of John Marshall, I wish to say, in limine, that I share the general, if not universal, opinion that he was a great lawyer and a great judge; that in times of war he was patriotic and devoted; that, take him all in all, he was an illustrious citizen; and that in his domestic and private life he was exemplary.

In his moral fiber I can not rank him with his fellow Virginian, Robert Edward Lee, or with other Americans whom I might mention. He did not always stand the test in a crisis, and we can not conceive of any crisis which would have been too exacting upon a man like Lee.

Noticing briefly the salient points of his life—John Marshall was born in Virginia on the 24th day of September, 1755, saw active military service as lieutenant and captain during the War of the Revolution, was admitted to the bar in 1781, saw considerable service in the Legislature of Virginia, was a delegate to the convention of his State called to ratify the proposed Federal Constitution, for the ratification of which he, Madison, and Washington were largely responsible.

In 1798 he declined to accept a seat upon the bench of the Supreme Court of the United States as a successor to James Wilson, but during the same year, at the solicitation of Washington, ran for the United States Congress and was elected.

He held the office of Secretary of State under President Adams for a short time.

On the 31st day of January, 1801, he was commissioned Chief Justice of the Supreme Court of the United States, and held this high office continuously for 34 years. He was the fourth to hold this office. He presided for the first time as Chief Justice on the day that the court first sat at Washington.

He had much to do with shaping (by judge-made law) the Constitution, and, therefore, with the history and the destiny of his country. He was not always regardful of the ancient and fundamental maxim of the law—"Judicis est jus dicere not jus dare."

A Federalist, as he was, strongly impressed with the conviction that it was necessary to strengthen the National Government and restrain the powers of the States, his wish at times may unwittingly have been father to the thought that found its way into his judicial utterances.

Before going upon the Supreme Court bench and when advocating in the convention of Virginia the ratification of the Federal Constitu-

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6249. By Mr. FRANK M. RAMEY: Petition of Earl Boston and 33 other citizens of Macoupin County, Ill., urging support of Senate bill 476 and House bill 2562, providing for increased rates of pension to the men who served in the armed forces of the United States during the Spanish War period; to the Committee on Pensions.

6250. By Mr. ROWBOTTOM: Petition of James E. Jones and others of Mount Vernon, Ind., that Congress enact into law the proposed Stalker amendment to the United States Constitution; to the Committee on the Census.

6251. By Mr. SELVIG: Petition of Mrs. H. B. Lane, president Ninth District Legion Auxiliary, Red Lake Falls, Minn., urging the enactment of the Johnson bill; to the Committee on World War Veterans' Legislation.

6252. By Mr. UNDERHILL: Petition of the common council of the city of Malden, Mass., in commemoration of the death of Gen. Casimir Pulaski; to the Committee on the Judiciary.

6253. By Mr. VINCENT of Michigan: Petition of residents of Merrill, Mich., urging more liberal pension legislation for veterans of the Spanish-American War; to the Committee on Pensions.

SENATE

THURSDAY, *April 3, 1930*

(Legislative day of Wednesday, April 2, 1930)

The Senate met at 12 o'clock meridian, on the expiration of the recess.

The VICE PRESIDENT. The Senate resumes the consideration of the unfinished business, and the Senator from Nebraska is entitled to the floor.

DEFICIENCY APPROPRIATIONS FOR DEPARTMENT OF JUSTICE

Mr. JONES. Mr. President, I would like, if possible, to have the Senator from Nebraska yield to me, that I may submit a report and ask for the immediate consideration of a joint resolution. I think it will take but a minute or two. It is a very urgent deficiency appropriation carried in a joint resolution which has passed the House. The Committee on Appropriations had a meeting with reference to it this morning, and I should like to report it unanimously if the Senator will yield for that purpose.

Mr. NORRIS. Mr. President, I can not very well refuse to yield for that purpose, and yet at the same time I have been importuned by seven or eight different Senators with reference to bills which they would like to call up this morning and dispose of. They all say the measures will not lead to debate. However, if I begin yielding for that purpose, it means that I am not going to get started to-day with the unfinished business. We took a recess last night with the express understanding that we would proceed immediately this morning with the consideration of the unfinished business. I think there might be an exception made in a case of a deficiency appropriation, but I hope it will not be used as a precedent for the submission of similar requests.

The VICE PRESIDENT. Does the Senator from Nebraska yield for the purpose indicated?

Mr. BORAH. Mr. President, before consent is granted I would like to know what the measure is?

Mr. JONES. It is a joint resolution appropriating $425,000 for the expenses of United States marshals and their deputies in transporting prisoners, and so on; also mileage and per diem of jurors, and for witnesses in connection with activities of the Department of Justice in the enforcement of law.

Mr. NORRIS. First, Mr. President, I ask unanimous consent that the unfinished business be temporarily laid aside for the purpose of proceeding to the consideration of the joint resolution about to be reported by the Senator from Washington.

The VICE PRESIDENT. Is there objection? The Chair hears none, and it is so ordered.

Mr. JONES. Mr. President, from the Committee on Appropriations I report back favorably, without amendment, the joint resolution (H. J. Res. 283) making additional appropriations for certain expenses under the Department of Justice for the remainder of the fiscal year 1930, and I ask unanimous consent for its immediate consideration.

The VICE PRESIDENT. Is there objection to the request of the Senator from Washington?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the joint resolution, which was read, as follows:

Resolved, etc., That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the purposes herein set forth under the Department of Justice for the remainder of the fiscal year ending June 30, 1930, namely:

For salaries, fees, and expenses of United States marshals and their deputies, including the same objects specified under this head in the act making appropriations for the Department of Justice for the fiscal year 1930, $425,000.

For mileage and per diems of jurors; for mileage and per diems of witnesses and for per diems in lieu of subsistence; including the same objects specified under this head in the act making appropriations for the Department of Justice for the fiscal year 1930, $640,000.

For the support of United States prisoners, including the same objects specified under this head in the act making appropriations for the Department of Justice for the fiscal year 1930, $1,600,000.

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

CALL OF THE ROLL

Mr. FESS. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

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

Ashurst	Gillett	McKellar	Stetwer
Baird	Glenn	McNary	Stephens
Barkley	Goff	Metcalf	Sullivan
Bingham	Goldsborough	Moses	Swanson
Black	Gould	Norbeck	Thomas, Idaho
Blease	Hale	Norris	Thomas, Okla.
Borah	Harris	Oddie	Townsend
Bratton	Harrison	Overman	Tydings
Brookhart	Hatfield	Phipps	Vandenberg
Capper	Hayden	Pine	Wagner
Caraway	Hebert	Robinson, Ind.	Walcott
Connally	Heflin	Schall	Walsh, Mass.
Copeland	Howell	Sheppard	Walsh, Mont.
Couzens	Johnson	Shipstead	Watson
Dale	Jones	Shortridge	Wheeler
Dill	Kean	Simmons	
Fess	Kendrick	Smoot	
George	McCulloch	Steck	

Mr. NORRIS. I desire to announce that the senior Senator from Wisconsin [Mr. LA FOLLETTE] and the junior Senator from Wisconsin [Mr. BLAINE] are necessarily absent from the city.

The senior Senator from North Dakota [Mr. NYE] is detained from the Chamber on account of illness in his family.

Mr. SHEPPARD. I wish to announce that the Senator from Missouri [Mr. HAWES], the Senator from Florida [Mr. FLETCHER], the Senator from Utah [Mr. KING], and the Senator from South Carolina [Mr. SMITH] are all detained from the Senate by illness.

I also wish to announce that the junior Senator from Tennessee [Mr. BROCK] is absent because of illness in his family.

I also desire to announce that the Senator from Arkansas [Mr. ROBINSON] and the Senator from Pennsylvania [Mr. REED] are in London attending the naval conference.

Mr. NORBECK. I wish to announce that my colleague [Mr. MCMASTER] is unavoidably absent from the city, and that he will necessarily be absent for some time. I ask that this announcement may stand for the day.

The VICE PRESIDENT. Sixty-nine Senators have answered to their names. A quorum is present.

CANCELLATION OF FEDERAL RESERVE BANK STOCK

Mr. WALCOTT. Mr. President, I desire to enter a motion to reconsider the vote by which the Senate passed the bill (S. 2666) to amend sections 6 and 9 of the Federal reserve act, and for other purposes, in order to facilitate the cancellation of Federal reserve bank stock in certain cases where member banks have ceased to function. The bill was passed by the Senate on day before yesterday. I make the motion for the reason that the bill (H. R. 6604) to amend sections 6 and 9 of the Federal reserve act, and for other purposes, which is almost identical, has passed the House and is now before the Senate Committee on Banking and Currency, and has been unanimously approved by that committee. The only change in the House bill is a matter of striking out six or eight words in the title.

Mr. NORRIS. Of course, the Senator has a right to enter his motion to reconsider, but I hope he does not desire to ask for action upon it at this time?

Mr. WALCOTT. I am entirely satisfied merely to enter the motion to reconsider.

The VICE PRESIDENT. The motion to reconsider will be entered.

MUSCLE SHOALS

The Senate, as in Committee of the Whole, resumed the consideration of the joint resolution (S. J. Res. 49) to provide for the national defense by the creation of a corporation for the operation of the Government properties at and near Muscle Shoals in the State of Alabama, and for other purposes.

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highway bridge across the West Branch of the Delaware River at or near Beerston, N. Y.; and

H. J. Res. 283. Joint resolution making additional appropriations for certain expenses under the Department of Justice for the remainder of the fiscal year 1930.

ANNIVERSARY OF CHARLESTON AND THE FOUNDING OF THE PROVINCE OF CAROLINA

The VICE PRESIDENT. Under authority of House Concurrent Resolution 27, the Chair appoints the Senator from Nevada [Mr. ODDIE], the Senator from Connecticut [Mr. WALCOTT], and the Senator from South Carolina [Mr. BLEASE] as the members, on the part of the Senate, of the committee to represent Congress at the celebration to be held in Charleston, S. C., April 10 to 13, 1930.

IMPORTATIONS OF OIL AND GASOLINE (S. DOC. NO. 125)

The VICE PRESIDENT laid before the Senate a communication from the Secretary of the Treasury, transmitting, in response to Senate Resolution 229 (submitted by Mr. THOMAS of Oklahoma and agreed to March 8, 1930), information relative to the importations of oil and gasoline into the United States, which, with the accompanying data, was ordered to lie on the table and to be printed.

INTERNATIONAL PARLIAMENTARY CONFERENCE OF COMMERCE (S. DOC. NO. 124)

The VICE PRESIDENT laid before the Senate a communication from the Acting Secretary of State, transmitting copy of a letter from secretary general of the International Parliamentary Conference of Commerce, extending an invitation to the Congress to be represented at the sixteenth plenary assembly of the conference to be held at Madrid beginning the 6th of October, 1930, and stating that the department would be pleased to receive an indication of the views of the Senate with regard to the invitation in order that an appropriate reply may be made to the secretary general of the conference, which, with the accompanying correspondence, was referred to the Committee on Foreign Relations, and ordered to be printed.

PETITIONS

Mr. WALSH of Massachusetts presented petitions numerously signed by sundry citizens of the State of Massachusetts, praying for the passage of legislation granting increased pensions to veterans of the war with Spain, which were ordered to lie on the table.

He also presented the petition of the Panama Metal Trades Council, Balboa Heights, Canal Zone, signed by its secretary, John H. Sealey, praying for the passage of legislation granting increased pensions to veterans of the war with Spain, which was ordered to lie on the table.

ENROLLED BILL PRESENTED

Mr. GREENE, from the Committee on Enrolled Bills, reported that on April 2, 1930, that committee presented to the President of the United States the enrolled bill (S. 3168) to amend the act entitled "An act to authorize and direct the survey, construction, and maintenance of a memorial highway to connect Mount Vernon, in the State of Virginia, with the Arlington Memorial Bridge across the Potomac River at Washington," by adding thereto two new sections, to be numbered sections 8 and 9.

REPORT OF POSTAL NOMINATIONS

As in open executive session,

Mr. PHIPPS, from the Committee on Post Offices and Post Roads, reported sundry post-office nominations, which were placed on the Executive Calendar.

BILLS INTRODUCED

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. THOMAS of Oklahoma:

A bill (S. 4070) for the relief of Patrick J. Mulkaren; to the Committee on Claims.

A bill (S. 4071) granting an increase of pension to Hettie A. Kyker (with accompanying papers); to the Committee on Pensions.

By Mr. CAPPER:

A bill (S. 4072) to provide for special assessments for the paving of roadways, laying curbs and gutters in the District of Columbia; to the Committee on the District of Columbia.

By Mr. SIMMONS:

A bill (S. 4073) granting an increase of pension to Anna Lola Hendershott (with accompanying papers); to the Committee on Pensions.

By Mr. CONNALLY:

A bill (S. 4074) for the relief of Mary Elizabeth Fox; and

A bill (S. 4075) for the relief of the heirs of C. K. Bowen, deceased; to the Committee on Claims.

By Mr. COPELAND:

A bill (S. 4076) for the relief of the owner of the barge *Mary M*; and

A bill (S. 4077) for the relief of the Union Ferry Co., owners of the ferryboat *Montauk*; to the Committee on Claims.

By Mr. GOULD:

A bill (S. 4078) granting a pension to Caroline Hoyt (with accompanying papers); to the Committee on Pensions.

REPORTS OF COMMITTEES

Mr. HEBERT, from the Committee on Patents, to which was referred the bill (H. R. 10076) to amend sections 476, 482, and 4934 of the Revised Statutes, sections 1 and 14 of the trade-mark act of February 20, 1905, as amended, and section 1 (b) of the trade-mark act of March 19, 1920, and for other purposes, reported it without amendment and submitted a report (No. 312) thereon.

Mr. CAPPER, from the Committee on the District of Columbia, to which was referred the bill (S. 3895) to authorize the Commissioners of the District of Columbia to widen Wisconsin Avenue abutting squares 1299, 1300, and 1935, reported it without amendment and submitted a report (No. 313) thereon.

Mr. BINGHAM, from the Committee on Territories and Insular Affairs, submitted a report (No. 314) to accompany the bill (H. R. 8559) to authorize the incorporated town of Cordova, Alaska, to issue bonds for the construction of a trunk sewer system and a bulkhead or retaining wall, and for other purposes, heretofore reported by him from that committee without amendment.

Mr. GOLDSBOROUGH, from the Committee on Patents, to which was referred the bill (S. 4015) to provide for plant patents, reported it with amendments and submitted a report (No. 315) thereon.

He also, from the Committee on Banking and Currency, to which were referred the following bills, reported them each without amendment and submitted reports thereon:

A bill (H. R. 8877) to amend section 9 of the Federal reserve act, as amended (Rept. No. 316); and

A bill (S. 485) to amend section 9 of the Federal reserve act and section 5240 of the Revised Statutes of the United States, and for other purposes (Rept. No. 317).

Mr. ODDIE, from the Committee on Naval Affairs, to which was referred the joint resolution (S. J. Res. 24) for the payment of certain employees of the United States Government in the District of Columbia and employees of the District of Columbia for March 4, 1929, reported it without amendment and submitted a report (No. 318) thereon.

Mr. SWANSON, from the Committee on Naval Affairs, to which was referred the bill (S. 1638) for the relief of William Tell Oppenheimer, jr., reported it with amendments and submitted a report (No. 319) thereon.

Mr. COPELAND, from the Committee on Immigration, to which was referred the bill (S. 1455) to amend the immigration act of 1924 in respect of quota preferences, reported it with amendments and submitted a report (No. 322) thereon.

Mr. MOSES, from the Committee on Rules, to which was referred the resolution (S. Res. 227) to amend the Senate rules so as to abolish proceedings in Committee of the Whole on bills, joint resolutions, and treaties, reported it with amendments.

Mr. JOHNSON, from the Committee on Commerce, to which was referred the bill (H. R. 9592) to amend section 407 of the merchant marine act, 1928, reported it with an amendment.

RELIEF OF UNEMPLOYMENT

Mr. JOHNSON. From the Committee on Commerce I report back favorably, with certain formal amendments, the bill (S. 3059) to provide for the advance planning and regulated construction of certain public works, for the stabilization of industry, and for the prevention of unemployment during periods of business depression, and I submit a report (No. 320) thereon.

The PRESIDING OFFICER (Mr. HATFIELD in the chair). The bill will be placed on the calendar.

Mr. JOHNSON. From the same committee I also report back favorably, with certain formal amendments, the bill (S. 3061) to amend section 4 of the act entitled "An act to create a Department of Labor," approved March 4, 1913, and I submit a report (No. 321) thereon.

The PRESIDING OFFICER. The bill will be placed on the calendar.

Mr. WAGNER. Mr. President, the senior Senator from California has just made a report on behalf of the Committee on Commerce of some legislation introduced by me dealing with the subject of unemployment. So far as I know, everybody agrees that that is a subject which ought to be dealt with, and as far as I know, there is no opposition to the proposed legislation.

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X re S. 4015

Congressional Record

PROCEEDINGS AND DEBATES

OF THE

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OF

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of men who served in the armed forces of the United States during the Spanish War period; to the Committee on Pensions.

6737. By Mr. PITTENGER: Petition of Board of County Commissioners of St. Louis County, Minn., protesting against proposed merger of Great Northern and Northern Pacific Railway Cos.; to the Committee on Interstate and Foreign Commerce.

6738. By Mr. ROBINSON: Petition of Mrs. John Ulm, of Dubuque, Iowa, and many other citizens in favor of House bill 2562, providing an increased rate of pension for Spanish-American War veterans; to the Committee on Pensions.

6739. By Mrs. ROGERS: Petition of John H. Donahue and other members of the National Soldiers' Home at Togus, Me., petitioning Congress for a pension for the veterans of the World War; to the Committee on Pensions.

6740. By Mr. THATCHER: Petition signed by Eugene M. Carter and other residents of Jefferson County, Ky., supporting Spanish War veterans' legislation; to the Committee on Pensions.

6741. By Mr. WALKER: Petition signed by Mrs. L. L. Bryant and Mrs. W. B. Poor, of the Danville Union of the Woman's Christian Temperance Union, asking for Federal supervision of motion pictures requiring higher standards before production which are to be used interstate and internationally; to the Committee on Interstate and Foreign Commerce.

SENATE

MONDAY, *April 14, 1930*

The Chaplain, Rev. ZeBarney T. Phillips, D. D., offered the following prayer:

O God, who transcendest all our thoughts of Thee, yet comest to us in the things that are seen, enable us to realize the presence of eternity, that we may wisely employ our time; the nearness of Thy judgment, lest we forget what manner of men we are; the long-suffering of Thy love, lest at thought of Thee we grow afraid. Bring us from our diverse views into the realm of the common truth, from the cares of our self-love to the ardors of self-abnegation, that united to Thee in the fundamental law of duty Thy presence may surround our ignorance, Thy holiness our sin, Thy peace the disquiet of our souls.

Grant this, we beseech Thee, for the sake of Thy Son, who took upon Him our flesh and suffered death upon the cross that all mankind should follow the example of His great humility, Jesus Christ our Lord. Amen.

THE JOURNAL

The Chief Clerk proceeded to read the Journal of the proceedings of the legislative day of Tuesday, April 8, 1930, when, on request of Mr. FESS and by unanimous consent, the further reading was dispensed with and the Journal was approved.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Haltigan, one of its clerks, announced that the House had passed the following bills of the Senate:

S. 3618. An act granting the consent of Congress to rebuild, reconstruct, maintain, and operate the existing railroad bridge across the Cumberland River near the town of Burnside, in the State of Kentucky;

S. 3715. An act authorizing the State Highway Board of Georgia, in cooperation with the State Highway Department of South Carolina, the city of Augusta, and Richmond County, Ga., to construct, maintain, and operate a free highway bridge across the Savannah River at or near Fifth Street, Augusta, Ga.;

S. 3745. An act to extend the times for commencing and completing the construction of a bridge across the Cumberland River at or near Smithland, Ky.;

S. 3747. An act to extend the times for commencing and completing the construction of a bridge across the Tennessee River at or near the mouth of Clarks River;

S. 3820. An act to extend the times for commencing and completing the construction of certain bridges in the State of Tennessee; and

S. 4027. An act to legalize a bridge across the American Channel of the Detroit River leading from the mainland to Grosse Isle, Mich., about 16 miles below the city of Detroit, Mich.

The message also announced that the House had passed the following bills and joint resolutions, in which it requested the concurrence of the Senate:

H. R. 1186. An act to amend section 5 of the act of June 27, 1906, conferring authority upon the Secretary of the Interior to fix the size of farm units on desert-land entries when included within national reclamation projects;

H. R. 1601. An act to authorize the Department of Agriculture to issue two duplicate checks in favor of Utah State treasurer where the originals have been lost;

H. R. 3246. An act to authorize the sale of the Government property acquired for a post-office site in Akron, Ohio;

H. R. 4189. An act to add certain lands to the Boise National Forest;

H. R. 6343. An act to provide for the extension of the boundary limits of the proposed Great Smoky Mountains National Park, the establishment of which is authorized by the act approved May 22, 1926 (44 Stats. p. 616);

H. R. 9761. An act to authorize the issuance of patents in fee for Indian homesteads on the Crow Reservation, the Blackfeet Reservation, and the Fort Belknap Reservation, in the State of Montana, upon written application therefor;

H. R. 9895. An act to establish the Carlsbad Caverns National Park in the State of New Mexico, and for other purposes;

H. R. 9934. An act providing for the sale of timberland in four townships in the State of Minnesota;

H. R. 10017. An act to provide for a survey of the Mouse River, N. Dak., with a view to the prevention and control of its floods;

H. R. 10173. An act to authorize the Secretary of Agriculture to conduct investigations of cotton ginning;

H. R. 10248. An act to extend the times for commencing and completing the construction of a bridge across the Ohio River at or near Moundsville, W. Va.;

H. R. 10340. An act granting the consent of Congress to the Arkansas State Highway Commission to construct, maintain, and operate a free highway bridge across the White River at or near Calico Rock, Ark.;

H. R. 10416. An act to provide better facilities for the enforcement of the customs and immigration laws;

H. R. 10461. An act authorizing Royce Kershaw, his heirs, legal representatives, and assigns, to construct, maintain, and operate a bridge across the Coosa River at or near Gliberts Ferry, about 8 miles southwest of Gadsden, in Etowah County, Ala.;

H. R. 10474. An act granting the consent of Congress to the Arkansas State Highway Commission to construct, maintain, and operate a free highway bridge across the White River at or near Sylamore, Ark.;

H. R. 10627. An act to amend the act of February 14, 1920, authorizing and directing the collection of fees for work done for the benefit of Indians;

H. R. 10651. An act to extend the times for commencing and completing the construction of a bridge across the Ohio River at or near Wellsburg, W. Va.;

H. R. 10674. An act authorizing the payment of six months' death gratuity to beneficiaries of transferred members of the Fleet Naval Reserve and Fleet Marine Corps Reserve who die while on active duty;

H. J. Res. 181. Joint resolution to amend a joint resolution entitled "Joint resolution giving to discharged soldiers, sailors, and marines a preferred right of homestead entry," approved February 14, 1920, as amended January 21, 1922, and as extended December 28, 1922;

H. J. Res. 188. Joint resolution authorizing the use of tribal funds belonging to the Yankton Sioux Tribe of Indians in South Dakota to pay expenses and compensation of the members of the tribal business committee for services in connection with their pipestone claim; and

H. J. Res. 244. Joint resolution authorizing the President to invite the States of the Union and foreign countries to participate in the International Petroleum Exposition at Tulsa, Okla., to be held October 4 to October 11, 1930, inclusive.

ENROLLED BILLS SIGNED

The message further announced that the Speaker of the House had affixed his signature to the following enrolled bills, and they were signed by the Vice President:

S. 2719. An act granting the consent of Congress to the superintendent of public works of the State of New York to construct, maintain, and operate a free highway bridge across the Hudson River at the southerly extremity of the city of Troy;

S. 3618. An act granting the consent of Congress to rebuild, reconstruct, maintain, and operate the existing railroad bridge across the Cumberland River near the town of Burnside, in the State of Kentucky;

S. 3745. An act to extend the times for commencing and completing the construction of a bridge across the Cumberland River at or near Smithland, Ky.;

S. 3820. An act to extend the times for commencing and completing the construction of certain bridges in the State of Tennessee; and

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"PAR. 65. That all such proceedings shall have precedence over any civil cause of a different nature pending in such court, and the Supreme Court of the District of Columbia shall always be deemed open for the trial thereof and the same shall be tried and determined in the same manner as other actions and proceedings in equity in such courts, except as herein provided. The judgment and decree of the court shall be final, except that an appeal therefrom may be taken to the Court of Appeals of the District of Columbia, and the judgment and decree on such appeal shall be subject to review by the Supreme Court of the United States upon certiorari as provided in section 240 of the Judicial Code.

"The commission may suspend the decision or order appealed from for such period as it may deem fair and reasonable under the circumstances, but no appeal, unless the court or the commission shall so order, shall operate to stay any order or decision of the commission. Neither the commission nor any of its members, officers, agents, or employees shall be taxed with any costs, or be required to give any supersedeas, bond, or security for costs or damages on any appeal, or be liable to suit for any judgment or decree for damage, loss, or injury claimed to have been sustained by any public utility or any person or corporation affected by an order or decision of the commission, or required in any case to make any deposit for costs, or to pay for any service to the clerk of any court, or to the marshal of the United States.

"PAR. 66. That the method of review of the orders and decisions of the commission provided in paragraphs 64 and 65 shall be exclusive; and, upon such review, such court shall have the power to affirm, or, if the decision or order of the commission is not in accordance with law, to modify or to reverse such order or decision in the manner following:

"(1) If, upon the trial of such action or proceeding, evidence shall be introduced which is found by the court to be different from that offered upon the hearing before the commission, or additional thereto, the court, before proceeding to render judgment unless the parties to such action or proceeding stipulate in writing to the contrary, shall transmit a copy of such evidence to the commission and shall stay further proceedings in said action for 15 days from the date of such transmission.

"(2) Upon the receipt of such evidence the commission shall consider the same and may modify or reverse its order or decision relating to such rate, toll, charge, schedule, joint rate, regulation, requirement, act, service, or other thing complained of (not including a valuation) in said action or proceeding, and shall report its action thereon to said court within 10 days from the receipt of such evidence.

"PAR. 67. If the commission shall reverse its order or decision complained of, the action or proceeding shall be dismissed; if it shall modify the same, such modified order or decision shall take the place of the original order or decision complained of, and judgment shall be rendered thereon as though made by the commission in the first instance. If the original order or decision shall not be reversed or modified by the commission judgment shall be rendered upon such original order.

"PAR. 68. That every action or proceeding to modify or reverse an order or decision of the commission shall be commenced within 60 days after the entry of such order or decision."

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

DISTRICT OF COLUMBIA AIRPORT

The bill (S. 3001) to establish a commercial airport for the District of Columbia was announced as next in order.

Mr. VANDENBERG. Mr. President, this bill is on the suggested order of unfinished business for special consideration.

The PRESIDING OFFICER. The bill will be passed over.

LOANS TO BANK EXAMINERS

The bill (S. 3541) to amend section 22 of the Federal reserve act, as amended, was considered as in Committee of the Whole and was read, as follows:

Be it enacted, etc., That subsection (a) of section 22 of the Federal reserve act (U. S. C., title 12, sec. 593), as amended, be amended and reenacted to read as follows:

"SEC. 22. (a) No member bank and no officer, director, or employee thereof shall hereafter make any loan or grant any gratuity to any bank examiner or assistant examiner who examines such bank. Any bank officer, director, or employee violating this provision shall be deemed guilty of a misdemeanor and shall be imprisoned not exceeding one year, or fined not more than $5,000, or both, and may be fined a further sum equal to the money so loaned or gratuity given.

"Any examiner or assistant examiner who shall accept a loan or gratuity from any bank examined by him, or from an officer, director, or employee thereof, or who shall steal, or unlawfully take, or unlawfully conceal any money, note, draft, bond, or security or any other property of value in the possession of any member bank or from any safe-deposit box in or adjacent to the premises of such bank, shall be deemed guilty of a misdemeanor and shall, upon conviction thereof in any district court of the United States, be imprisoned for not exceeding one year, or fined not more than $5,000, or both, and may be fined a further sum equal to the money so loaned, gratuity given, or property stolen, and shall forever thereafter be disqualified from holding office as a national-bank examiner.

"The provisions of this subsection shall apply to all public examiners and assistant examiners who examine member banks of the Federal reserve system, whether appointed by the Comptroller of the Currency, by the Federal Reserve Board, by a Federal reserve agent, or by a Federal reserve bank, or appointed or elected under the laws of any State; but shall not apply to private examiners or assistant examiners employed only by a clearing house association or by the directors of a bank."

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

PATENTS FOR DISCOVERIES IN PLANTS

The bill (S. 4015) to provide for plant patents was announced as next in order.

Mr. DILL. Mr. President, the Senator from Tennessee [Mr. MCKELLAR] had an amendment to offer to this bill. I do not know whether it is pending or not.

Mr. TOWNSEND. I have consented to the amendment of the Senator from Tennessee.

Mr. DILL. Has the amendment been offered?

Mr. TOWNSEND. The amendment was offered by the Senator from Tennessee.

Mr. DILL. Has it been adopted?

Mr. TOWNSEND. It is on the table. There is no objection on my part to the amendment.

Mr. DILL. Mr. President, I want to say just a few words about this bill.

The bill proposes to extend the right to secure a patent to those who invent or develop new plants by what we would call grafting. They use a different term. They call it "asexual reproduction." I have been in very great doubt as to the wisdom of this legislation. The experience we have had with the monopolization of patents, on the granting of patents for inventions, raises grave doubt as to the wisdom of granting patents on new kinds of plants of a food-producing nature. On the other hand, the nurserymen and the various people engaged in the development of plant and food products are very anxious to have this bill passed.

I have some doubt about the constitutionality of patenting a new form of plant somebody may develop through the processes of nature, but I rather think I ought to resolve the doubts in favor of those who want the law. It may go to the courts if anyone desires to take it there.

Whether it will be possible for those who get patents on new plants and new food products produced by nature to monopolize them by agreements, as has been done as to some of the mechanical inventions, of course, I can not foresee.

Mr. CARAWAY. What is the thing they are going to patent?

Mr. DILL. This is simply an amendment to the patent laws, and the Senator will find by reading the bill that it provides for the securing of patents on new plants that are asexually reproduced, according to the language.

Mr. CARAWAY. I am curious to know. One is evolved gradually from the other?

Mr. DILL. Yes.

Mr. CARAWAY. At what stage do they fix their absolute right so that nobody else can further produce or benefit?

Mr. DILL. That would be decided by the Patent Office, I suppose, when the Patent Office determined that they had produced a plant sufficiently different. I have very grave doubts about the constitutionality of the provision.

Mr. CARAWAY. The practicability of it is questionable. When are we going to lay our hand on nature and say, "You can go only this way and that way?" How are we going to control it? Are we going to say to everybody, "You can not take this plant and further improve on it"?

Mr. DILL. How can we say, "For 17 years this plant is a product under control of the patentee"?

Mr. CARAWAY. Nobody may further improve it or touch it?

Mr. DILL. I will not say they could not improve it. They could not produce it without the consent of the man who developed it.

Mr. BLACK. Mr. President, I object to the present consideration of the bill until I can have time to consider it.

Mr. DILL. May I say that my reason for speaking was simply that the Senate might understand the remarkable kind of legislation it is. I do not want alone to take the responsibility of stopping the passage of the bill, for it may be that my

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doubts are not justified; but I have felt that it is such a departure from anything we have ever done in the Senate that Senators ought to realize what kind of legislation it is.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

Mr. BLACK. I object.

Mr. McKELLAR. Mr. President, before the Senator's objection is made I would like to offer an amendment and explain it while we have a good attendance of Senators. On page 3, after line 21, I desire to offer as an amendment to add a new section, as follows:

SEC. 5. Notwithstanding the foregoing provisions of this act, no variety of plant which has been introduced to the public prior to the approval of this act shall be subject to patent.

It occurred to me from reading the bill that fruits or plants which had already been evolved and introduced to the public and were now on the market might be attempted to be covered by the patents, that some one might attempt to apply a patent to such a plant or fruit. I offer the amendment, and if the Senator from Alabama has no objection I should like to have the amendment considered and agreed to.

Mr. BLACK. I have no objection to the amendment, but I do object to the present consideration of the bill.

The PRESIDING OFFICER. Without objection the amendment is agreed to, and on objection of the Senator from Alabama the bill as amended will be passed over.

Mr. TOWNSEND. Mr. President, may I ask the Senator from Alabama [Mr. BLACK] if he will not withdraw his objection? The bill has been approved by practically all of the national agricultural and horticultural organizations representing the interests of millions of citizens. The widest publicity has been given to the bill through the press and otherwise. There has been but one objection to the bill, and that was voiced by a man from Tennessee. His objection is covered by the amendment just offered by the Senator from Tennessee and agreed to. This is a very important bill for agriculture and horticulture, and I sincerely hope the Senator from Alabama will permit it to pass.

Mr. COPELAND. Mr. President, may I say to my friend from Delaware that I too wish to look into the bill? I have no disposition at this moment to interfere with its passage in due time, but I have had protests from people in my State about the bill and I wish to study them before I consent to the passage of the bill.

The PRESIDING OFFICER. The bill will be passed over, and the clerk will state the next bill on the calendar.

AMENDMENT OF SECTION 9 OF FEDERAL RESERVE ACT

The bill (H. R. 8877) to amend section 9 of the Federal reserve act, as amended, was considered as in Committee of the Whole and was read, as follows:

Be it enacted, etc., That the ninth paragraph of section 9 of the Federal reserve act (U. S. C., title 12, sec. 328), as amended, be further amended by inserting therein, immediately before the proviso now contained therein, the following: "*Provided*, That the Federal Reserve Board, in its discretion and subject to such conditions as it may prescribe, may waive such six months' notice in individual cases and may permit any such State bank or trust company to withdraw from membership in a Federal reserve bank prior to the expiration of six months from the date of the written notice of its intention to withdraw."

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

EXPENSES OF BANK EXAMINATIONS

The bill (S. 485) to amend section 9 of the Federal reserve act and section 5240 of the Revised Statutes of the United States, and for other purposes, was considered as in Committee of the Whole and was read, as follows:

Be it enacted, etc., That the seventh paragraph of section 9 of the Federal reserve act, as amended (U. S. C., title 12, sec. 326), is further amended by striking out the last sentence thereof and inserting the following:

"The expenses of all examinations, other than those made by State authorities, may, in the discretion of the Federal Reserve Board, be assessed against the banks examined and, when so assessed, shall be paid by the banks examined. Copies of the reports of such examinations may, in the discretion of the Federal Reserve Board, be furnished to the State authorities having supervision of such banks, to officers, directors, or receivers of such banks, and to any other proper persons."

SEC. 2. That section 5240, United States Revised Statutes, as amended by section 21 of the Federal reserve act, is further amended in the third paragraph thereof (U. S. C., title 12, sec. 483) by striking out the second sentence of such paragraph and inserting in lieu thereof the following:

"The expense of such examinations may, in the discretion of th Federal Reserve Board, be assessed against the banks examined, an when so assessed, shall be paid by the banks examined."

The bill was reported to the Senate without amendment ordered to be engrossed for a third reading, read the third time, and passed.

BILLS AND RESOLUTION PASSED OVER

The bill (S. 3059) to provide for the advance planning and regulated construction of certain public works, for the stabiliza tion of industry, and for the prevention of unemployment dur ing periods of business depression; and the bill (S. 3061) t amend section 4 of the act entitled "An act to create a Depart ment of Labor," approved March 4, 1913, were announced a next in order.

The PRESIDING OFFICER. The two bills just announced having been made a special order for April 15, they will b passed over.

The resolution (S. Res. 227) to amend the Senate rules s as to abolish proceedings in Committee of the Whole on bills joint resolutions, and treaties was announced as next in order

Mr. DILL. That likewise is a special order.

The PRESIDING OFFICER. The resolution will be passed over.

The bill (S. 1455) to amend the immigration act of 1924 i respect of quota preferences was announced as next in order.

Mr. NORBECK. Mr. President, I would like to have an explanation of the bill.

The PRESIDING OFFICER. The author of the bill [Mr METCALF] is not present.

Mr. NORBECK. Let it go over, then.

Mr. COPELAND. Mr. President, I was asked to report th bill. It provides that a very limited number of persons wh have peculiar executive, administrative, or supervisory ability in connection with any industry—the propagation of plants, fo instance, since we were just discussing such a bill—or som technical industry or some other industry which has been devel oped abroad, which has not been developed here, might, unde certain conditions, be permitted to come here for the purpos of establishing that given industry in the United States. Th bill is hedged about with the greatest care.

The committee and the Department of Labor had half a dozen hearings on the matter. It is made very clear that no more than two persons, exclusive of their wives, dependents and children in each instance, may come in, and that unde no circumstances should anybody come in under the bill if per sons of like training or with equal knowledge could be found in the United States.

It was thought by the committee and by the Department o Labor that various industries in America which are now in thei infancy, or which perhaps have not been developed here at all might be established or aided by bringing such talent fro abroad. It was with that thought in mind that the bill was pre pared, worked over repeatedly, and finally there came forth bill which received the unanimous consideration of the Com mittee on Immigration. For my part, I feel that it ought t pass.

Mr. NORBECK. The explanation is interesting, and I d not know that I would care to object to the passage of the bill It seems to have merit. Can we not pass it over for the tim being, as another immigration measure, now the unfinishe business, will be debated for another day or two, and we shal be in a better position to take up this bill at a later time.

Mr. COPELAND. If the Senator feels that way, of course, can not insist.

The PRESIDING OFFICER. On request of the Senator fro South Dakota, the bill will be passed over.

RELIEF OF MEMBERS OF NAVAL RESERVE FORCE

The bill (S. 548) for the relief of retired and transferre members of the Naval Reserve Force, Naval Reserve, an Marine Corps Reserve was considered as in Committee of th Whole and was read, as follows:

Be it enacted, etc., That the assignments of provisional rank grades, or ratings heretofore made to members of the Naval Reserv Force or Marine Corps Reserve, including the assignments of highe provisional ranks, grades, or ratings than those first assigned, ar hereby validated and shall be conclusive for all purposes from the date of such assignments. The transfers to the retired list of all member of the Naval Reserve Force or Marine Corps Reserve heretofore mad in the provisional ranks or grades held at the date of their retiremen are hereby validated and shall be conclusive for all purposes.

SEC. 2. All transfers of enlisted men of the Navy or Marine Corps t the Fleet Naval Reserve or Fleet Marine Corps Reserve created by th acts of August 29, 1916, and February 28, 1925, and all transfers

X re S. 4015

Congressional Record

PROCEEDINGS AND DEBATES

OF THE

SECOND SESSION OF THE SEVENTY-FIRST CONGRESS

OF

THE UNITED STATES
OF AMERICA

VOLUME LXXII—PART 7

APRIL 10, 1930, TO APRIL 28, 1930

(Pages 6819 to 7928)



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6802. By Mr. WOLVERTON of West Virginia: Petition of Chamber of Commerce of Huntington, W. Va., recommending favorable action of Congress on providing adequate and just compensation to the personnel of the Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service; to the Committee on Military Affairs.

SENATE

THURSDAY, *April 17, 1930*

The Chaplain, Rev. ZeBarney T. Phillips, D. D., offered the following prayer:

Almighty God, source of our being, goal of our desires, and guide of these our pilgrim days, be with us now as we turn aside from the ceaseless fret of life that we may contemplate its meaning. In the fullness of the times Thou didst gather Thy light into life, that even simple folk might see Thy glory in the face of Jesus Christ.

Grant, therefore, to each one of us that, from His gracious words, the deep compassion of His heart, His friendship for the fallen, the tender grace of His forgiveness, the crown of thorns, the cruel cross, the open shame, we may learn the meaning of Thy love and be persuaded that neither death, nor life, nor angels, nor principalities, nor powers, nor things present, nor things to come, nor height, nor depth, nor any other creature, shall be able to separate us from the love of God, which is in Christ Jesus our Lord. Amen.

THE JOURNAL

The Chief Clerk proceeded to read the Journal of the proceedings of the legislative day of Monday, April 14, 1930, when, on request of Mr. FESS and by unanimous consent, the further reading was dispensed with and the Journal was approved.

SENATORIAL EXPENSES IN 1930 CAMPAIGN

The VICE PRESIDENT. The Chair makes the following announcement:

The Chair appoints the Senator from Vermont [Mr. DALE] to succeed the Senator from Connecticut [Mr. BINGHAM] on the special committee to investigate expenditures of candidates for the United States Senate in the campaign of 1930.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Chaffee, one of its clerks, announced that the House had passed the bill (S. 2757) to authorize the United States Shipping Board to sell certain property of the United States situated in the city of Hoboken, N. J., with amendments, in which it requested the concurrence of the Senate.

The message also announced that the House had passed a bill (H. R. 7405) to provide for a 5-year construction and maintenance program for the United States Bureau of Fisheries, in which it requested the concurrence of the Senate.

AIRPLANE ACCIDENT AT MENEFEE FIELD, NEW ORLEANS, LA. (S. DOC. NO. 129)

The VICE PRESIDENT laid before the Senate a communication from the Acting Secretary of Commerce, submitting, in response to Senate Resolution 201, data in relation to the airplane accident of August 23, 1929, wherein one Elliot D. Coleman, jr., a Transoceanic Air Travel Flying School student at Menefee Field, New Orleans, La., was killed when his plane and the plane of another pilot collided, which was referred to the Committee on Commerce and ordered to be printed.

PETITION

The VICE PRESIDENT laid before the Senate the petition of Frederick Reis, of Compton, Calif., praying that the Government render him financial assistance in the matter of completing his invention, being an invention in the nature of a combination airplane and Zeppelin in a monoplane type, which, with the accompanying paper and diagram, was referred to the Committee on Commerce.

REPORTS OF COMMITTEES

Mr. JOHNSON, from the Committee on Commerce, to which was referred the bill (S. 3466) for the relief of the Searcy Water Co., reported it with amendments and submitted a report (No. 446) thereon.

Mr. FRAZIER, from the Committee on Indian Affairs, to which were referred the following bill and joint resolution, reported them each without amendment and submitted reports thereon:

A bill (H. R. 5283) to declare valid the title to certain Indian lands (Rept. No. 447); and

A joint resolution (H. J. Res. 188) authorizing the use of tribal funds belonging to the Yankton Sioux Tribe of Indians in South Dakota to pay expenses and compensation of the members of the tribal business committee for services in connection with their pipestone claim (Rept. No. 448).

Mr. LA FOLLETTE, from the Committee on Indian Affairs, to which was referred the bill (S. 3581) authorizing the Secretary of the Interior to arrange with States for the education, medical attention, and relief of distress of Indians, and for other purposes, reported it without amendment and submitted a report (No. 449) thereon.

Mr. THOMAS of Oklahoma, from the Committee on Indian Affairs, to which was referred the bill (S. 3553) for the relief of R. A. Ogee, sr., reported it with amendments and submitted a report (No. 450) thereon.

Mr. PINE, from the Committee on Indian Affairs, to which was referred the bill (S. 4140) providing for the sale of the remainder of the coal and asphalt deposits in the segregated mineral land in the Choctaw and Chickasaw Nations, Oklahoma, and for other purposes, reported it without amendment and submitted a report (No. 455) thereon.

Mr. DALE, from the Committee on Commerce, to which were referred the following bills, reported them each without amendments and submitted reports thereon:

A bill (H. R. 10340) granting the consent of Congress to the Arkansas State Highway Commission to construct, maintain, and operate a free highway bridge across the White River at or near Calico Rock, Ark. (Rept. No. 451); and

A bill (H. R. 10474) granting the consent of Congress to the Arkansas State Highway Commission to construct, maintain, and operate a free highway bridge across the White River at or near Sylamore, Ark. (Rept. No. 452).

Mr. TOWNSEND, from the Committee on Claims, to which was referred the bill (S. 3407) for the relief of Judson Stokes, reported it with amendments and submitted a report (No. 454) thereon.

Mr. WATERMAN, from the Committee on Claims, to which was referred the bill (H. R. 3527) to authorize credit in the disbursing accounts of certain officers of the Army of the United States for the settlement of individual claims approved by the War Department, reported it without amendment and submitted a report (No. 456) thereon.

Mr. CAPPER, from the Committee on the District of Columbia, to which was referred the bill (H. R. 26) for the acquisition, establishment, and development of the George Washington Memorial Parkway along the Potomac from Mount Vernon and Fort Washington to the Great Falls, and to provide for the acquisition of lands in the District of Columbia and the States of Maryland and Virginia requisite to the comprehensive park, parkway, and playground system of the National Capital, reported it with an amendment and submitted a report (No. 458) thereon.

Mr. GOLDSBOROUGH, from the Committee on Naval Affairs, to which was referred the bill (S. 1721) directing the retirement of acting assistant surgeons of the United States Navy at the age of 64 years, reported it without amendment and submitted a report (No. 457) thereon.

Mr. HALE, from the Committee on Naval Affairs, to which were referred the following bills, reported them severally without amendment and submitted reports thereon:

A bill (S. 1683) for the relief of John Heffron (Rept. No. 453);

A bill (H. R. 5726) authorizing the Secretary of the Navy, in his discretion, to deliver to the custody of the city of Salem, Mass., and to the Salem Marine Society, of Salem, Mass., the silver service set and bronze clock, respectively, which have been in use on the cruiser *Salem* (Rept. No. 459);

A bill (H. R. 6645) authorizing the Secretary of the Navy, in his discretion, to deliver to the president of the Lions Club, of Shelbyville, Tenn., a bell of any naval vessel that is now, or may be, in his custody; and to the president of the Rotary Club, of Shelbyville, Tenn., a steering wheel of any naval vessel that is now, or may be, in his custody (Rept. No. 460);

A bill (H. R. 8973) authorizing the Secretary of the Navy, in his discretion, to deliver to the custody of the Charleston Museum, of Charleston, S. C., the ship's bell, plaque, war record, and silver service of the cruiser *Charleston* that is now, or may be, in his custody (Rept. No. 461); and

A bill (H. R. 10674) authorizing payment of six months' death gratuity to beneficiaries of transferred members of the Fleet Naval Reserve and Fleet Marine Corps Reserve who die while on active duty (Rept. No. 462).

INVESTIGATION OF SALES OF UNITED STATES SHIPS

Mr. JOHNSON, from the Committee on Commerce, to which was referred the resolution (S. Res. 129) for the appointment of a special committee to investigate the sales of ships by the United States Shipping Board and Merchant Fleet Corporation, reported it with an amendment.

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Mr. HEFLIN. It appears that we are going to pay a very magnificent price for the land over there which does not belong to the Government.

Mr. BINGHAM. Mr. President, I will say to the Senator that the commission did not act upon this until the representatives of the owners of the two airports now in operation there came before us and assured us of their willingness to submit their books to the audit of officials of the government of the District of Columbia, or of the Park and Planning Commission, and to give us the land for what it had cost them, with improvements, plus 10 per cent; so that there will be no extravagant gain on anybody's part in connection with it.

Mr. HEFLIN. If the Government is not going to use this airport, if the Army and the Navy are not going to use it, who is going to use it?

Mr. BINGHAM. It is to be used just as any municipal airport is used, by visitors coming to the city, and by the business men of the city. There are at the present time in construction or finished in the United States over 3,000 municipal airports, in addition to and quite apart from any Army and Navy airports or air fields.

Mr. McKELLAR. Mr. President, will the Senator yield?

Mr. BINGHAM. I said a few moments ago that the two fields there now were used by over 75,000 persons last year in merely taking flying trips over Washington.

Mr. McKELLAR. What proportion of the expenses is to be borne by the city of Washington?

Mr. BINGHAM. According to the provisions of the bill, the District will bear the total expense of the purchase of the land and the construction of the buildings, to be paid in 10 annual installments following the expenditure of the money, which will be loaned to them by the Federal Government without interest, the Federal Government contributing the part of the land which it now owns.

Mr. McKELLAR. Is that provided for in the bill? I have not had time to look it over.

Mr. BINGHAM. Yes; it is provided for in the bill.

Mr. McKELLAR. I wish the Senator would let the bill go over and let us examine it.

Mr. BINGHAM. It has been on the calendar for some time. The joint commission gave it very careful consideration and study over a period of a great many months. There is need for present consideration of the bill, because if the Senate or the Congress is not going to take this action it will make a considerable difference in the plans for the Memorial Bridge and the Memorial Highway. If we are going to do it, these plans ought to be altered accordingly. In view of the importance of the two memorial projects there is need for promptness in putting the matter through.

Mr. McKELLAR. Does the bill have the unanimous report of the committee?

Mr. BINGHAM. The bill was unanimously reported by the joint commission composed of five Senators and five Representatives.

Mr. McKELLAR. What about the Committee on the District of Columbia? Is it a unanimous report from that committee?

Mr. BINGHAM. I understand so.

The VICE PRESIDENT. The Senator's time has expired under the rule.

Mr. VANDENBERG. Mr. President, I think the question of the Senator from Tennessee goes to a very important phase of the matter. First, the Airport Commission, which consisted of five Senators and five Representatives, the five Senators being the Senator from Washington [Mr. JONES], the Senator from Connecticut [Mr. BINGHAM], the Senator from Michigan, myself, the Senator from Alabama [Mr. BLACK], and the Senator from Maryland [Mr. TYDINGS], joining with five Congressmen, put in a year's study of the problem and came to the unanimous conclusion, after a survey of every possible, conceivable suggestion for a municipal airport in the city of Washington, that this is the best and most economical plan for the purpose of producing an A–1 airport with the least possible delay. The report of the commission was submitted to the Committee on the District of Columbia and that committee unanimously reported it to the Senate. Really I know of no piece of legislation which has had a more varied, a more general, a more conscientious, and a more complete survey than this particular piece of legislation.

Mr. McKELLAR. Under the facts stated by the Senator from Michigan I shall not interpose an objection.

The VICE PRESIDENT. If there is no further amendment to the bill as in Committee of the Whole, it will be reported to the Senate.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

PATENTS FOR DISCOVERIES IN PLANTS

The bill (S. 4015) to provide for plant patents was announced as next in order.

Mr. BLACK. Over.

Mr. COPELAND. Mr. President, will the Senator withhold his objection for a moment?

Mr. BLACK. Very well.

Mr. COPELAND. The other day when the bill was called I joined in interposing an objection. Since then I have made a study of the bill and also of correspondence which I have had regarding it, somewhat voluminous in character. If my opinion is worth anything, I would like to say to the Senator from Alabama that I have come to the belief that this is a very worthy measure.

For instance, the Stark Delicious apple, to my mind, is one of the most delicious apples I have ever tasted. It is well named. It required years of effort in Missouri before the apple was developed. They now sell it under a bond that no one who has the trees may sell or give away any of the grafts. I have 100 of them on my farm. I think it is such a remarkable product that I feel extremely thankful that somebody had the energy to work out the development of the plant.

Undoubtedly a similar thing has happened many times. It happened in the experience of Mr. Burbank, of California. It does give incentive to horticulturists and those developing plant culture to find ways of developing fine fruits. For my part, I am very happy to join in support of the bill.

Mr. McKELLAR. Mr. President, will the Senator yield?

The VICE PRESIDENT. Does the Senator from New York yield to the Senator from Tennessee?

Mr. COPELAND. I yield.

Mr. McKELLAR. I will say that I have some misgivings about the bill, and especially about the provision of the bill allowing the regular patentee to go back for two years.

Mr. JOHNSON. Regular order!

The VICE PRESIDENT. The regular order is demanded, and the bill will go over.

Mr. COPELAND subsequently said: Mr. President, I ask unanimous consent to have printed in the RECORD, in connection with the debate this morning on plant patents, some telegrams which bear on the importance of the measure.

The VICE PRESIDENT. Without objection, it is so ordered.

The telegrams referred to are as follows:

NEW YORK, N. Y., *April 16, 1930.*

Senator ROYAL S. COPELAND,
United States Senate, Washington, D. C.:

We feel that patent plant bill very important to horticultural industry. The industry has long needed this very proper protection. We also feel that it would provide a great stimulus to American industry. We earnestly request your support.

STUMPP & WALTER CO.

WESTBURY, LONG ISLAND, N. Y., *April 16, 1930.*

United States Senator ROYAL S. COPELAND:

The Townsend-Purnell plant patent bill is of great importance to everyone interested in horticulture. It will provide protection and an incentive for those who produce worth-while plants. We hope you will give it your support.

HICKS NURSERIES.

NEW YORK, N. Y., *April 16, 1930.*

Senator ROYAL S. COPELAND,
United States Senate Chamber:

The entire agricultural and fruit interests in New York State are vitally interested in the Townsend plant bill which gives encouragement and protection in new developments of new fruits and plants. Every botanist in America will have an added reason for developing the wonderful products of field and orchard under the protection of this bill. Your support will be greatly appreciated.

FRUITMAN'S GUIDE.
J. P. STEWART, *Editor.*

BROOKLYN, N. Y., *April 16, 1930.*

Senator ROYAL S. COPELAND,
Washington, D. C.:

Townsend bill on plants is of deep interest to the fruit industry of this State, and will help agriculture and is a splendid opportunity to improve the farmers' position and will increase employment on the farm.

JOSEPH SICKER,
Chairman of the International Appleship Association.

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ROCHESTER, N. Y., *April 16, 1930.*

Hon. ROYAL S. COPELAND,
United States Senate:

We believe that the Townsend-Purnell plant patent bill will benefit the nursery and other agricultural interests, and think this the general sentiment among nurserymen. The bill provides encouragement for their financial returns from research and production of new and valuable varieties of plants. We ask your support.

CHASE BROSE CO.

NEW YORK, N. Y., *April 16, 1930.*

Hon. ROYAL S. COPELAND,
United States Senate:

In view of the fact that the Townsend plant Patent Office bill now pending is of great importance to the agricultural and fruit interests and gives encouragement and protection to breeders of new improved plants in the same manner as the patent system protects mechanical inventors, we respectfully request your support for this bill, as it will provide an opportunity for the development of better varieties, which will mean much to the prosperity of agriculture of our State.

NEW YORK FRUIT EXCHANGE.

NEWARK, N. J., *April 16, 1930.*

Senator ROYAL S. COPELAND,
Senate Chamber:

Proposed Townsend-Purnell plant patent legislation very important to agricultural and horticultural interests of our country. Would lend far-reaching encouragement to agriculture and benefit general public, providing wonderful stimulus to American horticulture. Your support is urgently requested.

JACKSON & PERKINS CO., *Nurserymen.*

NEW YORK, N. Y., *April 16, 1930.*

Senator ROYAL S. COPELAND:

We understand that the Townsend plant bill is now before Senate, and in view of the fact that this bill is of vital interest to the agricultural industry in this State as well as the fruit and vegetable industry, the passing of this bill will make it an object on the part of the horticulturists to create new wonderful products and permit them to get the benefit of their labor the agricultural and fruit interests strongly ask that you support this bill.

PRODUCE NEWS,
H. R. PRESTON, *Editor.*

BILLS AND RESOLUTION PASSED OVER

The bill (S. 3059) to provide for the advance planning and regulated construction of certain public works, for the stabilization of industry, and for the prevention of unemployment during periods of business depression, and the bill (S. 3061) to amend section 4 of the act entitled "An act to create a Department of Labor," approved March 4, 1913, were announced as next in order.

The VICE PRESIDENT. Those bills, being a special order, will be passed over.

The resolution (S. Res. 227) to amend the Senate rules so as to abolish proceedings in Committee of the Whole on bills, joint resolutions, and treaties was announced as next in order.

Mr. JOHNSON. Over.

The VICE PRESIDENT. The resolution will be passed over.

QUOTA PREFERENCES IN IMMIGRATION

The bill (S. 1455) to amend the immigration act of 1924 in respect of quota preferences was announced as next in order.

Mr. TRAMMELL. Over.

Mr. COPELAND. Mr. President, will the Senator withhold the objection for a moment?

Mr. TRAMMELL. Very well.

Mr. COPELAND. This bill was given long and very serious attention and there were several hearings before the Committee on Immigration. Representatives of the department appeared and various amendments were suggested. The bill came forth as a result of those deliberations. It means that within the quota of any country two persons may be brought in or be given preference for admission to the United States for permanent residence here. They must be persons who have peculiar training in executive, administrative, or supervisory work. An example which was used several times before the committee is the rayon industry, which was developed abroad, and it was necessary, in order that it might be brought here and given effective activity in our country, to bring some experts from abroad. Sometimes they have been brought in by subterfuge or otherwise.

The bill permits only two and within the quota. It does not increase the quota. It means simply that of the number permitted under the quota two persons who have peculiar qualities making them valuable to the development of industry in the United States may be brought in after the Secretary of Labor has thoroughly investigated to find whether there are persons in our own country who have those qualifications.

Mr. TRAMMELL. I did not quite understand the bill. I appreciate the statement of the Senator and withdraw my objection.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill, which had been reported from the Committee on Immigration with amendments, on page 2, line 5, to strike out "being trained and skilled in a particular art, craft, technique, business, or science, or in agriculture"; in line 7, after the words "engage in," to insert the words "executive, administrative, or supervisory"; in line 8, to strike out the words "so trained and skilled"; in line 15, to strike out the words "claiming to be so trained and skilled"; in line 19, to strike out the words "so trained and skilled" and insert "in executive, administrative, or supervisory work"; in line 23, after the words "United States," to insert "and such preference shall not be given to more than two such persons exclusive of their wives and dependent minor children in each instance"; on page 3, lines 5, 6, and 7, to strike out "Such determination by the Secretary of Labor shall constitute an exemption of the alien from the contract labor provisions of the immigration laws" and to insert in lieu thereof "The provisions of this act shall not be construed to modify, in any manner, the provisions of existing law relating to the importation into the United States of alien contract laborers," so as to make the bill read:

Be it enacted, etc., That paragraph (1) of subdivision (a) of section 6 of the immigration act of 1924, as amended, is amended to read as follows:

"(1) Fifty per cent of the quota of each nationality for such year shall be made available in such year for the issuance of immigration visas to the following classes of immigrants, without priority of preference as between such classes: (A) Quota immigrants who are the fathers or the mothers, or the husbands by marriage occurring after May 31, 1928, of citizens of the United States who are 21 years of age or over; (B) in the case of any nationality the quota of which is 300 or more, quota immigrants who are needed by bona fide employers to engage in executive, administrative, or supervisory work to perform which persons can not be found unemployed in the United States, or who are needed to engage in such work independently or as an employer in the United States, and the wives, and the dependent children under the age of 21 years, of such immigrants if accompanying or following to join them. Preference under clause (B) of this paragraph shall not be given to any alien unless the Secretary of Labor, upon application of any person interested and after full hearing and investigation of the facts in the case, determines that a bona fide employer needs persons in executive, administrative, or supervisory work and that such persons can not be found unemployed in the United States, or that it is desirable that such alien be admitted to work independently or as an employer in the United States, and such preference shall not be given to more than two such persons exclusive of their wives and dependent minor children in each instance. The Secretary of Labor shall inform the Secretary of State of such determination, and the Secretary of State shall then authorize the consular officer with whom the application for the immigration visa has been filed to grant the preference. The provisions of this act shall not be construed to modify, in any manner, the provisions of existing law relating to the importation into the United States of alien contract laborers."

SEC. 2. Section 1 of this act shall take effect July 1, 1929, except that the determinations thereunder by the Secretary of Labor may be made at any time after the enactment of this act.

The amendments were agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

BILLS PASSED OVER

The bill (S. 255) for the promotion of the health and welfare of mothers and infants, and for other purposes, was announced as next in order.

Mr. McNARY. Mr. President, at the request of the Senator from Colorado [Mr. PHIPPS], who is absent from the Chamber, I shall object to the present consideration of the bill.

The VICE PRESIDENT. The bill will be passed over.

The bill (S. 3060) to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system, and for other purposes, was announced as next in order.

Mr. McNARY. At the request of the Senator from Connecticut [Mr. BINGHAM], who is detained from the Chamber, I ask that the bill may be passed over.

The VICE PRESIDENT. The bill will be passed over.

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X re S. 4015

Congressional Record

PROCEEDINGS AND DEBATES

OF THE

SECOND SESSION OF THE SEVENTY-FIRST CONGRESS

OF

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OF AMERICA

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(Pages 7929 to 9112)



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ment and the District of Columbia; with amendment (Rept. No. 1411). Referred to the Committee of the Whole House on the state of the Union.

Mr. JOHNSON of Indiana: Committee on Interstate and Foreign Commerce. S. 1268. An act authorizing the States of Illinois and Indiana to construct, maintain, and operate a free highway bridge across the Wabash River, at or near Vincennes, Ind.; with amendment (Rept. No. 1413). Referred to the House Calendar.

Mr. BECK: Committee on Interstate and Foreign Commerce. S. 3421. An act to authorize the Tidewater Toll Properties (Inc.), its legal representatives and assigns, to construct, maintain, and operate a bridge across the Choptank River at a point at or near Cambridge, Md.; without amendment (Rept. No. 1414). Referred to the House Calendar.

Mr. BECK: Committee on Interstate and Foreign Commerce. S. 3422. An act to authorize the Tidewater Toll Properties (Inc.), its legal representatives and assigns, to construct, maintain, and operate a bridge across the Patuxent River, south of Burch, Calvert County, Md.; without amendment (Rept. No. 1415). Referred to the House Calendar.

Mr. HUDDLESTON: Committee on Interstate and Foreign Commerce. S. 4182. An act granting the consent of Congress to the county of Georgetown, S. C., to construct, maintain, and operate a bridge across the Peedee River and a bridge across the Waccamaw River, both at or near Georgetown, S. C.; with amendment (Rept. No. 1416). Referred to the House Calendar.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS

Under clause 2 of Rule XIII,

Mr. McLEOD: Committee on the District of Columbia. H. R. 1518. A bill for the relief of J. W. Anderson; without amendment (Rept. No. 1407). Referred to the Committee of the Whole House.

Mr. JOHNSTON of Missouri: Committee on Claims. H. R. 7534. A bill for the relief of the Brookhill Corporation; without amendment (Rept. No. 1408). Referred to the Committee of the Whole House.

Mr. SMITH of Idaho: Committee on Irrigation and Reclamation. H. R. 8103. A bill for the relief of the American Falls Realty & Water Works Co. (Ltd.), of Power County, Idaho; without amendment (Rept. No. 1409). Referred to the Committee of the Whole House.

Mr. IRWIN: Committee on Claims. H. R. 10542. A bill for the relief of John A. Arnold; with amendment (Rept. No. 1410). Referred to the Committee of the Whole House.

Mr. HOPKINS: Committee on War Claims. H. R. 9471. A bill for the relief of Florence M. Humphries; with amendment (Rept. No. 1412). Referred to the Committee of the Whole House.

PUBLIC BILLS AND RESOLUTIONS

Under clause 3 of Rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ARENTZ: A bill (H. R. 12282) to place an embargo on silver; to the Committee on Ways and Means.

By Mr. BRITTEN: A bill (H. R. 12283) to authorize the construction of certain naval vessels required under the London Naval Conference, and for other purposes; to the Committee on Naval Affairs.

By Mr. CROSSER: A bill (H. R. 12284) to provide for the construction of vessels for the Coast Guard for rescue and assistance work on Lake Erie; to the Committee on Interstate and Foreign Commerce.

By Mr. SPROUL of Illinois: A bill (H. R. 12285) to authorize the Postmaster General to purchase motor-truck parts from the truck manufacturer; to the Committee on the Post Office and Post Roads.

By Mr. THATCHER: A bill (H. R. 12286) to repeal the act entitled "An act authorizing the Secretary of the Interior to sell and patent certain lands in Louisiana and Mississippi," approved April 11, 1928; to the Committee on the Public Lands.

Also, a bill (H. R. 12287) authorizing the Commonwealth of Kentucky, by and through the State Highway Commission of Kentucky, or the successors of said commission, to acquire, construct, maintain, and operate bridges within Kentucky and/or across boundary-line streams of Kentucky; to the Committee on Interstate and Foreign Commerce.

By Mr. LEAVITT: A bill (H. R. 12288) to amend the act entitled "An act to permit taxation of lands of homestead and desert-land entrymen under the reclamation act," approved April 21, 1928; to the Committee on Irrigation and Reclamation.

By Mr. REID of Illinois: Joint resolution (H. J. Res. 334) to amend the radio act of 1927 by providing for 3 Government broadcasting frequencies, 1 for the Department of Agriculture, 1 for the Department of the Interior, and 1 for the Department of Labor; to the Committee on the Merchant Marine and Fisheries.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of Rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. BOYLAN: A bill (H. R. 12289) for the relief of Capt. Christian Damson; to the Committee on Claims.

By Mr. CRAIL: A bill (H. R. 12290) granting a pension to Charles H. Ingersoll; to the Committee on Pensions.

By Mr. DOMINICK: A bill (H. R. 12291) granting a pension to John E. Winn; to the Committee on Pensions.

Also, a bill (H. R. 12292) granting a pension to Will Ralph Johnson; to the Committee on Pensions.

By Mr. HANCOCK: A bill (H. R. 12293) granting an increase of pension to Lucy E. Bryant; to the Committee on Invalid Pensions.

By Mr. HESS: A bill (H. R. 12294) granting an increase of pension to Barbara Ann Felix; to the Committee on Invalid Pensions.

By Mr. HOPKINS: A bill (H. R. 12295) granting an increase of pension to Celina E. Hutton; to the Committee on Invalid Pensions.

By Mr. KENDALL of Pennsylvania: A bill (H. R. 12296) granting an increase of pension to Elizabeth A. Glisan; to the Committee on Invalid Pensions.

By Mr. LANKFORD of Georgia: A bill (H. R. 12297) granting a pension to Grover C. Fennell; to the Committee on Pensions.

By Mr. SLOAN: A bill (H. R. 12298) for the relief of George P. Sterling; to the Committee on Military Affairs.

By Mr. TABER: A bill (H. R. 12299) granting a pension to Etta A. Vinn Combes; to the Committee on Invalid Pensions.

By Mr. TINKHAM: A bill (H. R. 12300) for the relief of Edward S. Ryan; to the Committee on Military Affairs.

Also, a bill (H. R. 12301) for the relief of John S. Dodge; to the Committee on Military Affairs.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

7240. By Mr. GARBER of Oklahoma: Petition of National Retail Dry Goods Association, New York, transmitting proposed amendments to House bill 11852, and urging that they be adopted; to the Committee on Patents.

7241. Also, petition of National Alliance of Postal Employees, Pittsburgh, Pa.; to the Committee on the Post Office and Post Roads.

7242. Also, petition of city carriers of Stillwater, Okla., urging support of House bill 6603; to the Committee on the Post Office and Post Roads.

7243. By Mr. THOMPSON: Petition of citizens of Fulton County, Ohio, urging early favorable action on House bill 229, to grant an allowance on personally owned post-office equipment; to the Committee on the Post Office and Post Roads.

7244. By Mr. STONE: Petition signed by L. E. Gray, secretary Postal Clerks, and seven other clerks of Stillwater, Okla., providing for shorter hours for all postal employees; to the Committee on the Post Office and Post Roads.

SENATE

MONDAY, *May 12, 1930*

The Chaplain, Rev. ZeBarney T. Phillips, D. D., offered the following prayer:

Almighty God, who through the mystery of instinct dost lead all living things along their way, grant that we may hear Thy voice, which calls us to be true and steadfast, and so—unafraid.

Take of Thine own spirit and lay it upon us—the spirit of fatherly care for all Thy children, the spirit of the Saviour's love for the erring and the lost, the spirit of the Comforter's tenderness for every sad and lonely soul.

Fill our cup each morning with the water of life, that we may give to him that is athirst; put into our hearts such living words from Thee that nothing we may say shall fall to the ground, returning to Thee void. Help us to make the welfare of all the supreme law of our land, that our commonwealth may rest secure upon the love of all its citizens, that the blessing of the Nation may fall upon our service and rise triumphant unto Thee. Through Jesus Christ our Lord. Amen.

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investigate immediately the working conditions of employees in the textile industry of the States of North Carolina, South Carolina, and Tennessee was announced as next in order.

Mr. OVERMAN. Over.

The VICE PRESIDENT. The resolution will be passed over.

BILL PASSED OVER

The bill (S. 153) granting consent to the city and county of San Francisco to construct, maintain, and operate a bridge across the Bay of San Francisco from Rincon Hill to a point near the South Mole of San Antonio Estuary, in the county of Alameda, in said State, was announced as next in order.

Mr. JOHNSON. I ask that that go over.

The VICE PRESIDENT. The bill will be passed over.

INVESTIGATION OF AIRPLANE ACCIDENTS

The resolution (S. Res. 119) authorizing and directing the Committee on Interstate Commerce to investigate the wreck of the airplane *City of San Francisco* and certain matters pertaining to interstate air commerce was announced as next in order.

Mr. JONES. Mr. President, in view of the remoteness of the circumstance, I shall ask that the resolution go over, unless the Senator from New Mexico desires to make a statement about it.

Mr. BRATTON. Mr. President, to this measure, and also to Order of Business No. 151 on the calendar, being Senate Resolution 206, the Senator from Connecticut [Mr. BINGHAM] is opposed. He has agreed that at the first call of the calendar following to-morrow Order of Business No. 151 may be taken up. So, with that understanding, I am willing that both measures should be passed over to-day.

The VICE PRESIDENT. The resolution will be passed over.

BUSINESS PASSED OVER

The joint resolution (S. J. Res. 20) to promote peace and to equalize the burdens and to minimize the profits of war was announced as next in order.

Mr. DILL. I ask that the joint resolution be passed over.

The VICE PRESIDENT. The joint resolution will be passed over.

The bill (S. 477) to revise and equalize the rate of pension to certain soldiers, sailors, and marines of the Civil War, to certain widows, former widows of such soldiers, sailors, and marines, and granting pensions and increase of pensions in certain cases was announced as next in order.

Mr. McNARY. Mr. President, I am advised by the Senator from Indiana [Mr. ROBINSON] that the Senator from South Dakota [Mr. NORBECK] would prefer that this bill go over. So I make that request.

The VICE PRESIDENT. The bill will be passed over.

The resolution (S. Res. 206) requesting the Secretary of Commerce to furnish the Senate certain information respecting aircraft accidents since May 20, 1926, was announced as next in order.

Mr. BRATTON. Mr. President, with the statement previously made, I ask that that resolution go over.

The VICE PRESIDENT. The resolution will be passed over.

The bill (H. R. 6) to amend the definition of oleomargarine contained in the act entitled "An act defining butter, also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of oleomargarine," approved August 2, 1886, as amended, was announced as next in order.

Mr. METCALF. Let that go over.

The VICE PRESIDENT. The bill will be passed over.

SALARIES IN POLICE AND FIRE DEPARTMENTS OF DISTRICT

The bill (S. 2370) to fix the salaries of officers and members of the Metropolitan police force and the fire department of the District of Columbia was announced as next in order, and the Senate, as in Committee of the Whole, proceeded to its consideration.

The VICE PRESIDENT. There are pending amendments offered by the Senator from Colorado [Mr. PHIPPS], which will be stated.

The CHIEF CLERK. On page 1, line 5, after the word "superintendent," it is proposed to strike out "$8,500" and insert "$8,000," and at the beginning of line 6, to strike out "$5,500" and insert "$5,000."

The VICE PRESIDENT. Without objection, the amendment is agreed to.

Mr. McNARY. Mr. President, this morning the Senator from California [Mr. SHORTRIDGE] told me he wanted to oppose the amendments proposed by the Senator from Colorado. He is presently absent from the Chamber. So I make the request that this bill go over until the Senator from California shall return to the Chamber.

Mr. PHIPPS. Mr. President, I have no objection to the bill going over, though I had hoped it might be considered; but, in view of the absence of the Senator, I had intended when we reached an amendment to be offered to insert a new section to be known as section 6 to ask that the bill be not considered further. However, it may as well go over now.

Mr. McNARY. Let it go over for the present.

Mr. WALSH of Massachusetts. Mr. President, I hope the Senator will not ask that the bill go over. It has been pending a long time. A number of men are interested in it. I understand the amendment of the Senator from Colorado merely proposes to cut down the salary of some of the higher officials.

Mr. PHIPPS. That is correct.

Mr. WALSH of Massachusetts. I do not think the hundreds of other men in the police and fire departments should be punished by having the bill delayed because of the absence of a Senator who wants to be heard on the question of reducing two of the salaries.

Mr. ROBSION of Kentucky. The Senator from Kentucky is here and ready to be heard.

Mr. WALSH of Massachusetts. Very well.

Mr. PHIPPS. Mr. President, I will say, for the information of the Senator from Massachusetts, that the Senator from California objected to the feature which would limit the amount of pensions that can be paid to those already receiving pensions to the same rate that they are now getting; that is, those pensioners now on the list would not benefit by this increase of salaries to the remaining officials as they otherwise would if an amendment intended to be proposed were adopted.

Mr. WALSH of Massachusetts. I am rather disposed to favor the Senator's amendment.

Mr. PHIPPS. I thank the Senator.

The PRESIDING OFFICER (Mr. JONES in the chair). Without objection, the vote whereby the amendment of the Senator from Colorado was agreed to will be reconsidered, and the bill will be passed over.

Mr. McNARY. Mr. President, I understand the objection is to last just so long as the absence of the Senator from California continues. I have sent for him, and he will be in the Chamber in a few moments.

The PRESIDING OFFICER. Then the bill will be passed over temporarily.

Mr. ROBSION of Kentucky. That is what I was going to ask, because we should like to have some action on this measure.

Mr. McNARY. I shall ask that the bill be taken up as soon as the Senator from California returns.

Mr. COPELAND. I understand, Mr. President, that no amendments have been adopted, and the bill will be before us as soon as the Senator from California comes in?

The PRESIDING OFFICER. That is correct. The bill will be passed over temporarily.

PLANT PATENTS

The Senate, as in Committee of the Whole, proceeded to consider the bill (S. 4015) to provide for plant patents.

Mr. ROBINSON of Arkansas. Mr. President, I think the Senator sponsoring the bill should explain its provisions and purposes. It seems to propose an important change in the present law.

Mr. TOWNSEND. Mr. President, the purpose of this bill is to authorize the grant of patents on new varieties of plants and thus give to agriculturists the same privileges that have been enjoyed by industrial inventors and discoverers during the last century.

It has been indorsed by American Farm Bureau Federation; by President Settle, of the Indiana Farm Bureau; by the National Grange; by the United States Department of Agriculture; by ex-Secretary of Agriculture Jardine; by Thomas A. Edison; by Commissioner of Agriculture Gilbert, of Massachusetts, and other State agriculture commissioners; by Superintendent Johnson, of the Michigan Experiment Station; Professor Talbert, of the Missouri Experiment Station; the New York Agriculture Experiment Station, and others; by the National Horticultural Council, W. C. Reed, president, of Vincennes, Ind.; by the American Forestry Association; by the American Florist Association; by the Peony and Iris Association; by the Agricultural Committees of Congress; by the editors of agricultural and horticultural papers; by members of Boyse-Thompson Institute; and by numerous orchardists, farmers, horticulturists, and others.

Mr. ROBINSON of Arkansas. Mr. President, I have no objection to the consideration of the bill.

The PRESIDING OFFICER. The amendments reported by the committee will be stated.

The CHIEF CLERK. In section 1, on page 1, line 10, after the word "bend," it is proposed to insert "the invention or discovery"; on the same page, line 12, after the word "plant," to strike out "the invention or discovery"; on page 2, line 9, after the word "reproduced," to strike out "(1)"; in the same line

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after the word "plant," to strike out "or (2) any distinct and newly found variety of plant"; and in line 19, after the word "had," to strike out "obtained" and insert "obtain," so as to make the section read:

That sections 4884 and 4886 of the Revised Statutes, as amended (U. S. C., title 35, secs. 40 and 31), are amended to read as follows:

"SEC. 4884. Every patent shall contain a short title or description of the invention or discovery, correctly indicating its nature and design, and a grant to the patentee, his heirs or assigns, for the term of 17 years, of the exclusive right to make, use, and vend the invention or discovery (including in the case of a plant patent the exclusive right to asexually reproduce the plant) throughout the United States and the Territories thereof, referring to the specification for the particulars thereof. A copy of the specification and drawings shall be annexed to the patent and be a part thereof.

"SEC. 4886. Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvements thereof, or who has invented or discovered and asexually reproduced any distinct and new variety of plant, other than a tuber-propagated plant, not known or used by others in this country, before his invention or discovery thereof, and not patented or described in any printed publication in this or any foreign country, before his invention or discovery thereof, or more than two years prior to his application, and not in public use or on sale in this country for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law, and other due proceeding had, obtain a patent therefor."

The amendment was agreed to.

The next amendment was, on page 3, after line 21, to insert a new section, as follows:

SEC. 5. If any provision of this act is declared unconstitutional or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the act and the application thereof to other persons or circumstances shall not be affected thereby.

The amendment was agreed to.

Mr. McKELLAR. Mr. President, I should like to ask the Senator from Delaware if the amendment which I offered some time ago has been adopted. I refer to the amendment proposing to insert a new section, as follows:

SEC. 5. Notwithstanding the foregoing provisions of this act, no variety of plant which has been introduced to the public prior to the approval of this act shall be subject to patent.

Mr. TOWNSEND. That has already been agreed to and is part of the bill.

The PRESIDING OFFICER. The Chair is informed that amendment has heretofore been agreed to.

Mr. McKELLAR. If it is in the bill, very well.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. COPELAND. Mr. President, I ask unanimous consent to insert in the RECORD at this point two or three letters and telegrams I have received concerning this bill.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The matter referred to is as follows:

NEWARK, N. Y., *April 16, 1930.*

Hon. ROYAL S. COPELAND,
United States Senator, Senate Chamber,
Washington, D. C.

DEAR SIR: It has come to our attention that in the Senate yesterday you questioned the advisability of favorable action on the Townsend-Purnell plant patent bill, which has been reported favorably to the Senate by the Senate Committee on Patents.

We feel this bill is of very great importance to the agricultural and horticultural interests of the United States, and inasmuch as we are wholesale nurserymen and can see the stimulus such legislation would give to agriculture and horticulture we wired you this morning per inclosed confirmation.

We hope you will give your support to this bill.

Very truly yours,

JACKSON & PERKINS CO.,
P. V. FORTMILLER, *Secretary.*

NEWARK, N. Y., *April 16, 1930.*

Senator ROYAL S. COPELAND,
Senate Chamber, Washington, D. C.:

Proposed Townsend-Purnell plant patent legislation very important to agricultural and horticultural interests of our country. Would lend far-reaching encouragement to agriculture and benefit general public, providing wonderful stimulus to American horticulture. Your support is urgently requested.

JACKSON & PERKINS CO., *Nurserymen.*

DANSVILLE, N. Y., *April 17, 1930.*

Senator ROYAL S. COPELAND,
Care Senate Chamber:

We live in a wonderful horticultural and agricultural section. Proposed Townsend-Purnell plant patent legislation would stimulate interest in both tremendously. Your constituents in this territory urgently solicit your support.

W. J. MALONEY.

NEW YORK, N. Y., *April 17, 1930.*

Senator ROYAL S. COPELAND,
United States Senate:

Our subscribers in New York State are vitally interested in Townsend bill, now pending. All agricultural and horticultural interests will be benefited by the protection offered by this bill. All fruit and vegetable men in New York State show deep interest in the passing of this bill, as it means progressive interest particularly for college men with horticultural ideas who return to the farm, and also means more employment on the farm. In behalf of my large clientele in New York State may I please ask for your kind support of this bill.

PRODUCE BULLETIN,
NAT A. TUCK, *Editor.*

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D. C., April 16, 1930.

Hon. ROYAL COPELAND,
United States Senator, Washington, D. C.

MY DEAR SENATOR COPELAND: At Newark, N. Y., in my district, is practically the largest group of nurserymen in the State. They are quite advanced in their work on different types of plants and constantly developing new species and new types of plants.

The Townsend-Purnell bill is drawn to permit one who gets up a new plant to patent it and reap the benefit of his invention just as along manufacturing lines.

My people are very much interested in the bill, and they understood you had objected to it.

If you could reconsider your objection and support this bill, I am sure they would appreciate it.

Sincerely yours,

JOHN TABER.

RESOLUTION AND BILLS PASSED OVER

The resolution (S. Res. 227) to amend the Senate rules so as to abolish proceedings in Committee of the Whole on bills, joint resolutions, and treaties, was announced as next in order.

Mr. VANDENBERG. I ask that that go over.

The PRESIDING OFFICER. The resolution will be passed over.

The bill (S. 255) for the promotion of the health and welfare of mothers and infants, and for other purposes, was announced as next in order.

Mr. WALSH of Massachusetts and Mr. BINGHAM asked that the bill go over.

The PRESIDING OFFICER. The bill will be passed over.

CLAIMS OF SISSETON AND WAHPETON BANDS OF INDIANS

The Senate, as in Committee of the Whole, proceeded to consider the bill (S. 1372) authorizing an appropriation for payment of claims of the Sisseton and Wahpeton Bands of Sioux Indians, which had been reported from the Committee on Indian Affairs with an amendment, on page 4, line 12, after the word "appropriated," to insert:

Provided, That if the Secretary of the Interior shall find that any authorized attorney or attorneys, or any authorized agent or agents, of said bands of Indians rendered any services in the case of the Sisseton and Wahpeton Bands of Sioux Indians against the United States prior to the judgment of the Court of Claims rendered therein on April 23, 1923, the Secretary of the Interior shall fix the compensation for such prior services on such quantum meruit basis as to him shall seem reasonable, the same to be paid out of the appropriation herein authorized, at the same time that he shall pay the compensation he shall find to be payable to the authorized attorney or attorneys now representing said bands of Indians. The total amount of all attorneys' or agents' fees to be paid out of this appropriation shall in no event exceed the limitation herein provided.

So as to make the bill read:

Be it enacted, etc., That an appropriation of $300,000 be, and the same is hereby, authorized to be paid, out of any money in the Treasury not otherwise appropriated, the same to be paid and disbursed to said Sisseton and Wahpeton Bands of Sioux Indians under the direction of the Secretary of the Interior with allowance for attorneys' fees in such amount as, in the discretion of the Secretary, shall to him seem just for services rendered in the prosecution of said claim, not exceeding 10 per cent of the amount hereby appropriated: *Provided*, That if the Secretary of the Interior shall find that any authorized attorney or attor-

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X re S. 4015

Congressional Record

PROCEEDINGS AND DEBATES

OF THE

SECOND SESSION OF THE SEVENTY-FIRST CONGRESS

OF

THE UNITED STATES
OF AMERICA

VOLUME LXXII—PART 8

APRIL 29, 1930, TO MAY 16, 1930

(Pages 7929 to 9112)



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By Mr. HOPKINS: A bill (H. R. 12319) granting an increase of pension to Mary J. Dawson; to the Committee on Invalid Pensions.

By Mr. IRWIN: A bill (H. R. 12320) granting a pension to Mary E. Green; to the Committee on Invalid Pensions.

By Mr. JOHNSON of Illinois: A bill (H. R. 12321) granting an increase of pension to Elizabeth E. Fouke; to the Committee on Invalid Pensions.

By Mr. KENDALL of Kentucky: A bill (H. R. 12322) granting a pension to Mattie Lowry; to the Committee on Invalid Pensions.

By Mr. KIESS: A bill (H. R. 12323) granting an increase of pension to Mary E. Grange; to the Committee on Invalid Pensions.

By Mr. KINZER: A bill (H. R. 12324) granting an increase of pension to Mary F. Wenger; to the Committee on Invalid Pensions.

Also, a bill (H. R. 12325) granting an increase of pension to Michael Quinn; to the Committee on Invalid Pensions.

Also, a bill (H. R. 12326) granting a pension to Mary Moore; to the Committee on Invalid Pensions.

By Mrs. LANGLEY: A bill (H. R. 12327) granting a pension to John Deaton; to the Committee on Invalid Pensions.

By Mr. LETTS: A bill (H. R. 12328) for the relief of Anna Gerken; to the Committee on Military Affairs.

By Mr. LOZIER: A bill (H. R. 12329) granting an increase of pension to Sallie Peters; to the Committee on Invalid Pensions.

By Mr. McSWAIN: A bill (H. R. 12330) for the relief of Willie B. Hunter; to the Committee on War Claims.

By Mr. PARKER: A bill (H. R. 12331) granting an increase in pension to William S. Loesch; to the Committee on Pensions.

Also, a bill (H. R. 12332) granting a pension to Elizabeth D. R. Prouty; to the Committee on Invalid Pensions.

By Mr. REID of Illinois: A bill (H. R. 12333) granting an increase of pension to Mary Byard; to the Committee on Pensions.

By Mr. SCHAFER of Wisconsin: A bill (H. R. 12334) granting an increase of pension to Charles Osborne; to the Committee on Pensions.

By Mr. STALKER: A bill (H. R. 12335) granting an increase of pension to Sarah A. Lane; to the Committee on Invalid Pensions.

Also, a bill (H. R. 12336) granting a pension to Albert Bradley; to the Committee on Invalid Pensions.

By Mr. TILSON: A bill (H. R. 12337) for the relief of William J. Carr; to the Committee on Claims.

By Mr. TINKHAM: A bill (H. R. 12338) to confer jurisdiction upon the Court of Claims to hear, determine, and render judgment upon the claim of Mary A. McCourt; to the Committee on Claims.

By Mr. WATSON: A bill (H. R. 12339) for the relief of Lewis E. Green; to the Committee on Claims.

By Mr. WELSH of Pennsylvania: A bill (H. R. 12340) granting a pension to Michael J. Carroll; to the Committee on Pensions.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

7245. Petition of American Legion of the District of Columbia, protesting against the location of any permanent airport in the vicinity of Arlington National Cemetery; to the Committee on Public Buildings and Grounds.

7246. By Mr. CAMPBELL of Iowa: Petition of the Ida County, Iowa, Woman's Christian Temperance Union Institute and the Milford, Iowa, Woman's Christian Temperance Union Institute, requesting Congress to enact a law for the Federal supervision of motion pictures establishing higher standards before production for films that are to be licensed for interstate and international commerce; to the Committee on Interstate and Foreign Commerce.

7247. By Mr. CAMPBELL of Pennsylvania: Petition of residents of the thirty-sixth congressional district, urging the passage of the Muscle Shoals bill at this session of Congress; to the Committee on Military Affairs.

7248. By Mr. GLOVER: Petition of Allen Hearin Post, No. 32, American Legion, Pine Bluff, Ark., urging the passage of the Rankin bill in its present form; to the Committee on World War Veterans' Legislation.

7249. By Mr. HUDSON: Petition of the National Association of Letter Carriers, Detroit Branch, Detroit, Mich., urging the immediate payment of the adjusted-compensation certificates, commonly referred to as the bonus; to the Committee on Ways and Means.

7250. Also, resolution of the board of directors of the Detroit Council of Churches commending the President of the United States upon his wisdom and courage in recommending the enactment of legislation to correct the evils now existing because of the nonenforcement of law, and urging early enactment of legislation for the correction thereof; to the Committee on the Judiciary.

7251. Also, petition of presbytery of Lansing, Mich., of the Presbyterian Church of the United States of America, urging the enactment of legislation for the Federal supervision of motion pictures, requiring higher standards for films which are to be licensed for interstate and international use; to the Committee on Interstate and Foreign Commerce.

7252. By Mr. HULL of Wisconsin: Resolution of Alaska Native Brotherhood, regarding conditions of natives of southeastern Alaska; to the Committee on the Merchant Marine and Fisheries.

7253. By Mr. LUCE: Petition of residents of Massachusetts indorsing the passage of bill to except dogs from vivisection in the District of Columbia, the Territories, and insular possessions; to the Committee on the District of Columbia.

7254. By Mr. NEWHALL: Resolution of Woman's Christian Temperance Union, Fort Thomas, Ky., signed by Kate Shaw, president, and L. M. Grimm, secretary, requesting the House of Representatives to pass legislation providing for Federal supervision of motion pictures that are to be licensed for interstate and international commerce; to the Committee on Interstate and Foreign Commerce.

7255. By Mrs. OWEN: Petition of W. H. Arnold and 84 other persons, of Orlando, Fla., and vicinity, in behalf of Senate bill 476 and House bill 2562, providing for increased rates of pension to the men who served in the armed forces of the United States during the Spanish War period; to the Committee on Pensions.

7256. By Mr. SWANSON: Petition of Council Bluffs Woman's Christian Temperance Union, favoring Federal supervision of motion pictures used in interstate and international commerce; to the Committee on Interstate and Foreign Commerce.

SENATE

TUESDAY, *May 13, 1930*

The Chaplain, Rev. ZeBarney T. Phillips, D. D., offered the following prayer:

Eternal Father, who renewest the face of the earth with Thy breath, so gentle and potent, reviving for us in the springtime the grace and beauty that had fled, make us to partake of other things than those made known to eyes of sense—messages of splendor, baffling and alluring, revealed through the soul's east window of divine surprise. Give us this day a larger charity, a deeper self-knowledge, a growing sense of moral acquisition that can only come through high endeavor for the better, purer things of life.

Pity and pardon us for what we have missed and might have attained, strengthen our weakness, arm us with trust in Thy mercy which fails not, in Thy patience which waits without weariness, that we may press forward toward the mark of our high calling which is in Christ Jesus our Lord. Amen.

THE JOURNAL

The Chief Clerk proceeded to read the Journal of yesterday's proceedings when, on request of Mr. FESS and by unanimous consent, the further reading was dispensed with and the Journal was approved.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Farrell, its enrolling clerk, announced that the House had passed the following bills of the Senate:

S. 2400. An act to regulate the height, exterior design, and construction of private and semipublic buildings in certain areas of the National Capital;

S. 3498. An act to aid the Grand Army of the Republic in its Memorial Day services, May 30, 1930;

S. 4057. An act authorizing the Secretary of the Interior to extend the time for cutting and removing timber upon certain revested and reconveyed lands in the State of Oregon; and

S. 4221. An act for the disposal of combustible refuse from places outside of the city of Washington.

The message also announced that the House had passed the following bills and joint resolution, in which it requested the concurrence of the Senate:

H. R. 3144. An act to amend section 601 of subchapter 3 of the Code of Laws for the District of Columbia;

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The Clerk read the Senate amendments, as follows:

Page 1, line 8, after "$50,000," insert "Louisiana, $50,000."

Page 7, line 1, after "cultural," insert "the encouragement of fish conservation in the waters of the Great Lakes and other waters."

The SPEAKER. Is there objection to the request of the gentleman from New Jersey [Mr. LEHLBACH]?

Mr. GARNER. Reserving the right to object, may I ask the gentleman from New Jersey——

Mr. LEHLBACH. The gentleman has consulted with the ranking member and other members of the minority, and this action is taken pursuant to the unanimous direction of the committee.

Mr. GARNER. I am obliged to the gentleman for his statement.

The SPEAKER. Is there objection?

There was no objection.

The Senate amendments were agreed to.

C. L. BEARDSLEY

Mr. IRWIN. Mr. Speaker, I ask unanimous consent, by direction of the entire committee, to take from the Speaker's table the bill (H. R. 1251) for the relief of C. L. Beardsley, with a Senate amendment, and concur in the Senate amendment.

The SPEAKER. The gentleman from Illinois [Mr. IRWIN] asks unanimous consent to take from the Speaker's table the bill H. R. 1251, with a Senate amendment, and concur in the same.

The Clerk will report the bill and the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Page 1, line 6, strike out "$325" and insert "$162.50."

The SPEAKER. Is there objection to the request of the gentleman from Illinois [Mr. IRWIN]?

Mr. GARNER. Mr. Speaker, reserving the right to object—and I do not intend to object—is this not a rather unusual request—to have a private bill taken up out of order?

The SPEAKER. It is a House bill with a Senate amendment.

Mr. GARNER. I do not object.

The SPEAKER. Is there objection?

There was no objection.

The Senate amendment was agreed to.

A. J. MORGAN

Mr. IRWIN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H. R. 668) for the relief of A. J. Morgan, with a Senate amendment, and concur in the Senate amendment.

The SPEAKER. The gentleman from Illinois [Mr. IRWIN] asks unanimous consent to take from the Speaker's table the bill H. R. 668, with a Senate amendment, and concur in the Senate amendment.

The Clerk will report the bill and the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Page 1, line 6, strike out "as compensation" and insert "in full settlement of all claims against the Government."

The SPEAKER. Is there objection to the request of the gentleman from Illinois [Mr. IRWIN]?

There was no objection.

The Senate amendment was agreed to.

PLANT PATENTS

Mr. VESTAL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (S. 4015) to provide for plant patents, which is in the exact language of a House bill reported unanimously from the Committee on Patents, and I ask unanimous consent for the present consideration of the bill. I have consulted every Member of the Committee on Patents, and I have been directed by them to call up the bill.

The SPEAKER. The gentleman from Indiana [Mr. VESTAL] asks unanimous consent for the present consideration of the bill S. 4015, which the Clerk will report.

The Clerk read the bill, as follows:

Be it enacted, etc., That sections 4884 and 4886 of the Revised Statutes, as amended (U. S. C., title 35, secs. 40 and 31), are amended to read as follows:

"SEC. 4884. Every patent shall contain a short title or description of the invention or discovery, correctly indicating its nature and design, and a grant to the patentee, his heirs or assigns, for the term of 17 years, of the exclusive right to make, use, and vend the invention or discovery (including in the case of a plant patent the exclusive right to asexually reproduce the plant) throughout the United States and the Territories thereof, referring to the specification for the particulars thereof. A copy of the specification and drawings shall be annexed to the patent and be a part thereof.

"SEC. 4886. Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvements thereof, or who has invented or discovered and asexually reproduced any distinct and new variety of plant, other than a tuber-propagated plant, not known or used by others in this country before his invention or discovery thereof, and not patented or described in any printed publication in this or any foreign country before his invention or discovery thereof, or more than two years prior to his application, and not in public use or on sale in this country for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law and other due proceeding had, obtain a patent therefor."

SEC. 2. Section 4888 of the Revised Statutes, as amended (U. S. C., title 35, sec. 33), is amended by adding at the end thereof the following sentence: "No plant patent shall be declared invalid on the ground of noncompliance with this section if the description is made as complete as is reasonably possible."

SEC. 3. The first sentence of section 4892 of the Revised Statute, as amended (U. S. C., title 35, sec. 35), is amended to read as follows:

"SEC. 4892. The applicant shall make oath that he does verily believe himself to be the original and first inventor or discoverer of the art, machine, manufacture, composition, or improvement, or of the variety of plant for which he solicits a patent; that he does not know and does not believe that the same was ever before known or used; and shall state of what country he is a citizen."

SEC. 4. The President may by Executive order direct the Secretary of Agriculture (1) to furnish the Commissioner of Patents such available information of the Department of Agriculture, or (2) to conduct through the appropriate bureau or division of the department such research upon special problems, or (3) to detail to the Commissioner of Patents such officers and employees of the department as the commissioner may request for the purposes of carrying this act into effect.

SEC. 5. Notwithstanding the foregoing provisions of this act, no variety of plant which has been introduced to the public prior to the approval of this act shall be subject to patent.

SEC. 6. If any provision of this act is declared unconstitutional or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the act and the application thereof to other persons or circumstances shall not be affected thereby.

The SPEAKER. Is there objection?

There was no objection.

The bill was ordered to be read a third time, was read the third time, and passed.

A motion to reconsider the vote by which the bill was passed was laid on the table.

A similar House bill was laid on the table.

SETTLEMENT OF WAR CLAIMS ACT OF 1928

Mr. HAWLEY. Mr. Speaker, I ask unanimous consent for the immediate consideration of the joint resolution (H. J. Res. 328), authorizing the immediate appropriation of certain amounts authorized to be appropriated by the settlement of war claims act of 1928. This is a unanimous report from the Committee on Ways and Means.

The SPEAKER. The gentleman from Oregon [Mr. HAWLEY] asks unanimous consent for the immediate consideration of a joint resolution (H. J. Res. 328), which the Clerk will report.

The Clerk read the House joint resolution, as follows:

Resolved, etc., That the sums authorized by subsection (p) of section 3 of the settlement of war claims act of 1928 to be appropriated after the date on which the awards of the war claims arbiter under section 3 of such act are certified to the Secretary of the Treasury, are hereby authorized to be appropriated at any time, but shall not be available until after such date.

The SPEAKER. Is there objection to the present consideration of the joint resolution?

Mr. GARNER. Mr. Speaker, reserving the right to object, will the gentleman from Oregon [Mr. HAWLEY] state briefly just what this joint resolution is and the reason for it, so that if any Member desires to object, he may do so? I understand it is a unanimous report from the Committee on Ways and Means, but, since it authorizes an appropriation of $50,000,000, I think the gentleman from Oregon [Mr. HAWLEY] might take a couple of minutes to tell the House what it is, so that if any Member desires to object, he may do so.

Mr. HAWLEY. Under the settlement of war claims act of 1928, a limit of $100,000,000 was placed upon the amount to be used in paying the claims of the United States nationals and German nationals and certain other claims specified in the act; $50,000,000 were appropriated at that time and the amount was divided equally between the American and German claims.

It now appears from the statement of Judge Remick, the new arbiter, that he will conclude his work in the near future, and at as early a date as possible. Under the law the appropriations for the awards can not be made until after the awards

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S. 4015

Congressional Record

PROCEEDINGS AND DEBATES

OF THE

SECOND SESSION OF THE SEVENTY-FIRST CONGRESS

OF

THE UNITED STATES OF AMERICA

VOLUME LXXII—PART 8

APRIL 29, 1930, TO MAY 16, 1930

(Pages 7929 to 9112)



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REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of Rule XIII,

Mr. PARKER: Committee on Interstate and Foreign Commerce. S. 1171. An act to establish and operate a national institute of health, to create a system of fellowships in said institute, and to authorize the Government to accept donations for use in ascertaining the cause, prevention, and cure of disease affecting human beings, and for other purposes; with amendment (Rept. No. 1461). Referred to the Committee of the Whole House on the state of the Union.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS

Under clause 2 of Rule XIII,

Mr. WURZBACH: Committee on Military Affairs. H. R. 10136. A bill for the relief of William Marks; with amendment (Rept. No. 1459). Referred to the Committee of the Whole House.

Mr. ELLIOTT: Committee on Public Buildings and Grounds. H. R. 11850. A bill to amend the act entitled "An act for the relief of contractors and subcontractors for the post offices and other buildings and work under the supervision of the Treasury Department, and for other purposes," approved August 25, 1919, as amended by act of March 6, 1920; without amendment (Rept. No. 1460). Referred to the Committee of the Whole House.

Mr. BUTLER: Committee on Claims. H. R. 675. A bill for the relief of Ada T. Finley; with amendment (Rept. No. 1462). Referred to the Committee of the Whole House.

Mr. FITZGERALD: Committee on Claims. H. R. 2059. A bill for the relief of Kate Canniff; with amendment (Rept. No. 1463). Referred to the Committee of the Whole House.

Mr. IRWIN: Committee on Claims. H. R. 4166. A bill for the relief of Steve Fekete; without amendment (Rept. No. 1464). Referred to the Committee of the Whole House.

Mr. KNUTSON: Committee on War Claims. H. R. 4167. A bill for the relief of D. B. Traxler; with amendment (Rept. No. 1465). Referred to the Committee of the Whole House.

Mr. IRWIN: Committee on Claims. H. R. 7339. A bill for the relief of H. H. Lee; without amendment (Rept. No. 1466). Referred to the Committee of the Whole House.

Mr. HOPKINS: Committee on War Claims. H. R. 9946. A bill for the relief of Annie M. Eopolucci; without amendment (Rept. No. 1467). Referred to the Committee of the Whole House.

Mr. IRWIN: Committee on Claims. H. R. 10635. A bill for the relief of the Robins Dry Dock & Repair Co.; without amendment (Rept. No. 1468). Referred to the Committee on the Whole House.

Mr. IRWIN: Committee on Claims. S. 1378. An act for the relief of Juan Anorbe, Charles C. J. Wirz, Rudolph Ponevacs, Frank Guelfi, Steadman Martin, Athanasios Metaxiotis, and Olaf Nelson; without amendment (Rept. No. 1469). Referred to the Committee of the Whole House.

CHANGE OF REFERENCE

Under clause 2 of Rule XXII, the Committee on War Claims was discharged from the consideration of the bill (H. R. 6902) for the relief of John W. Hudson, and the same was referred to the Committee on Pensions.

PUBLIC BILLS AND RESOLUTIONS

Under clause 3 of Rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. MILLIGAN: A bill (H. R. 12396) to provide for the appointment of an additional district judge for the western district of Missouri; to the Committee on the Judiciary.

By Mr. GRAHAM: A bill (H. R. 12397) to amend certain sections of the act entitled "An act to codify, revise, and amend the penal laws of the United States," approved March 4, 1909, as amended, so as to modify the penalties for offenses against the currency of foreign countries to conform to the penalties provided for offenses against the currency of the United States; to the Committee on the Judiciary.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of Rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. IRWIN: A bill (H. R. 12398) for the relief of Thomas G. Hayes; to the Committee on Claims.

Also, a bill (H. R. 12399) for the relief of Jay Street Terminal; to the Committee on Claims.

By Mr. KENDALL of Pennsylvania: A bill (H. R. 12400) granting an increase of pension to Martha B. Balsley; to the Committee on Invalid Pensions.

By Mr. VINCENT of Michigan: A bill (H. R. 12401) granting an increase of pension to Louese Pearson; to the Committee on Invalid Pensions.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

7275. Resolution of the commandery, Military Order of the Loyal Legion of the United States, New York, urging the passage of legislation to establish a national Lincoln museum and veterans' headquarters in the building known as the Ford Theater; to the Committee on the District of Columbia.

7276. By Mr. COOPER of Wisconsin: Memorial of common council of the city of Milwaukee, urging modification of the liquor laws; to the Committee on the Judiciary.

7277. Also, memorial of common council of the city of Milwaukee, urging the construction of a Gulf-to-Lakes waterway and opposing certain provisions of House bill 11781; to the Committee on Rivers and Harbors.

SENATE

FRIDAY, *May 16, 1930*

The Chaplain, Rev. ZeBarney T. Phillips, D. D., offered the following prayer:

Almighty God, whose wondrous name is love, we thank Thee for the night's mysterious gift of the timely dew of sleep and for morning fair, who, with pilgrim steps marked by the circling hours, unbars the gates of light. Call us, therefore, by that secret name which unlocks the heart as we realize Thy presence. Forgive the sins which crowd into our mind that we may see golden days fruitful of golden deeds with love and joy triumphant. Stir us with high hopes of living to be brave and noble men, dear unto Thee and worthy of the Nation's trust, that hidden powers may come to light and yield their service to Thy kingdom. Through Jesus Christ our Lord. Amen.

THE JOURNAL

The Chief Clerk proceeded to read the Journal of yesterday's proceedings, when, on request of Mr. FESS and by unanimous consent, the further reading was dispensed with and the Journal was approved.

CALL OF THE ROLL

Mr. FESS. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

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

Allen	Frazier	La Follette	Shortridge
Ashurst	George	McCulloch	Simmons
Baird	Gillett	McKellar	Smoot
Barkley	Glass	McMaster	Steck
Bingham	Glenn	McNary	Steiwer
Black	Goldsborough	Metcalf	Stephens
Blaine	Greene	Norris	Sullivan
Blease	Hale	Nye	Swanson
Borah	Harris	Oddie	Thomas, Idaho
Bratton	Harrison	Overman	Thomas, Okla.
Brock	Hastings	Patterson	Townsend
Broussard	Hatfield	Pine	Trammell
Capper	Hawes	Pittman	Tydings
Caraway	Hayden	Ransdell	Vandenberg
Connally	Hebert	Reed	Wagner
Copeland	Howell	Robinson, Ark.	Walcott
Couzens	Johnson	Robinson, Ind.	Walsh, Mass.
Dale	Jones	Robsion, Ky.	Walsh, Mont.
Deneen	Kendrick	Schall	Waterman
Dill	Keyes	Sheppard	Watson
Fess	King	Shipstead	Wheeler

Mr. McMASTER. I desire to announce that my colleague the senior Senator from South Dakota [Mr. NORBECK] is unavoidably absent. I ask that this announcement may stand for the day.

Mr. SHEPPARD. I wish to announce that the Senator from Florida [Mr. FLETCHER] and the Senator from South Carolina [Mr. SMITH] are detained from the Senate by illness.

Mr. BLACK. I desire to announce that my colleague the senior Senator from Alabama [Mr. HEFLIN] is necessarily detained in his home State on matters of public importance.

The VICE PRESIDENT. Eighty-four Senators have answered to their names. A quorum is present.

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REPUBLICAN PRIMARIES IN PENNSYLVANIA—SENATOR JOSEPH R. GRUNDY

Mr. NORRIS. Mr. President, I ask unanimous consent to insert in the RECORD a political advertisement appearing in the Philadelphia Record of May 14, 1930, in behalf of the candidacy of JOSEPH R. GRUNDY, who is seeking the nomination for United States Senator on the Republican ticket. I wish to read only one of the assertions appearing in the advertisement, which I think will be illuminating to the Senate and to the country. Among other things in the course of giving reasons why JOSEPH R. GRUNDY should receive the nomination the advertisement says:

Because within three months after his appointment to the Senate he smashed the senatorial coalition of Democrats and western Republicans and had the tariff measure made into a bill with some measure of protection.

The VICE PRESIDENT. Without objection, the advertisement will be printed in the RECORD.

The advertisement is as follows:

[From the Philadelphia Record, May 14, 1930]

JOSEPH R. GRUNDY should be retained in the United States Senate because—

Appearing before the Senate Lobby Investigating Committee he proved to the country that Pennsylvania is one of the greatest States in the Union and caused Pennsylvanians to be proud of their citizenship.

Within three months after his appointment to the Senate he smashed the senatorial coalition of Democrats and western Republicans and had the tariff measure made into a bill with some measure of protection.

The tariff still needs revision upward and he is the ablest man in Pennsylvania to do the job.

Low tariff means low wages and opens our markets to foreign products, which means loss of work and wages to our own people.

His knowledge of the economics of industry warrants his continuance in office in order that the proper duties can be obtained for Pennsylvania industries and wage earners may be put back to work—and the present standard of wages be maintained.

He knows the needs of agriculture and demands the same protection for Pennsylvania farmers as that now received by the western farmers. A square deal for the East as well as the West.

Knowing just what this country requires to create and maintain prosperity, he does not have to ask what to do and how to do it; but, being well armed with all facts, goes straight to the task and gets it done.

Pennsylvania can not be so ably represented by either of his opponents and failure to nominate him would be a calamity to the State, our farmers, our wage earners, and all other citizens of Pennsylvania.

He is fearless, possesses the sterling qualities of citizenship, and will fight to the end to see that Pennsylvania is treated fairly in all matters pertaining to the welfare of its people, irrespective of race and creed.

If Mr. Davis should be nominated and elected, Pittsburgh would have two Senators and the eastern part of Pennsylvania, with all its industries, would not be represented in the United States Senate.

Senator GRUNDY'S entire public career has been devoted to the public welfare and not to public gain.

Keeping our millions of workers employed at satisfactory wages creates the purchasing power on which the prosperity of the entire citizenship rests.

Vote for United States Senator JOSEPH R. GRUNDY Tuesday, May 20.

The foremost fighter in the United States for those principles under which Pennsylvania employs more wage earners than any other State except New York.

Republican committee for JOSEPH R. GRUNDY for United States Senator.

SHIPMENT OF CEMENT TO BRAZIL

Mr. RANSDELL presented a telegram from Scott Thompson, of the Lone Star Cement Co., of Louisiana, which was ordered to be printed in the RECORD:

[Telegram]

NEW ORLEANS, LA., *May 15, 1930.*

Hon. JOSEPH E. RANSDELL, of Louisiana,
United States Senate, Washington, D. C.:

Statement of L. P. E. Giffroy in letter to Senator BLEASE, page 8646, CONGRESSIONAL RECORD, Senate deliberations Friday, May 9, to effect New Orleans mills shipped large quantities cement to Brazil is absolutely unfounded and intentionally misleading. We have never shipped a barrel of cement to Brazil. We periodically refuse Central and South American business account unable to meet European competition.

SCOTT THOMPSON,
Lone Star Cement Co., Louisiana.

REPORTS OF COMMITTEES

Mr. STEIWER, from the Committee on the Judiciary, to which was referred the bill (H. R. 1198) to authorize the United States to be made a party defendant in any suit or action which may be commenced by the State of Oregon in the United States District Court for the District of Oregon, for the determination of the title to all or any of the lands constituting the beds of Malheur and Harney Lakes, in Harney County, Oreg., and lands riparian thereto, and to all or any of the waters of said lakes and their tributaries, together with the right to control the use thereof, authorizing all persons claiming to have an interest in said land, water, or the use thereof to be made parties or to intervene in said suit or action, and conferring jurisdiction on the United States courts over such cause, reported it without amendment and submitted a report (No. 659) thereon.

Mr. HOWELL, from the Committee on Claims, to which was referred the bill (H. R. 6414) authorizing the Court of Claims of the United States to hear and determine the claim of the city of Park Place, heretofore an independent municipality but now a part of the city of Houston, Tex., reported it with an amendment and submitted a report (No. 660) thereon.

ENROLLED BILLS AND JOINT RESOLUTION PRESENTED

Mr. GREENE, from the Committee on Enrolled Bills, reported that to-day that committee presented to the President of the United States the following enrolled bills and joint resolution:

S. 3498. An act to aid the Grand Army of the Republic in its Memorial Day services, May 30, 1930;

S. 4015. An act to provide for plant patents;

S. 4057. An act authorizing the Secretary of the Interior to extend the time for cutting and removing timber upon certain revested and reconveyed lands in the State of Oregon; and

S. J. Res. 163. Joint resolution to carry out certain obligations to certain enrolled Indians under tribal agreement.

REPORT OF POSTAL NOMINATIONS

Mr. ODDIE, as in executive session, from the Committee on Post Offices and Post Roads, reported sundry post-office nominations, which were placed on the Executive Calendar.

BILLS INTRODUCED

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. McKELLAR:

A bill (S. 4482) granting an increase of pension to Mary Frances McConnell; to the Committee on Pensions.

By Mr. HASTINGS:

A bill (S. 4483) for the relief of Robert J. King; to the Committee on Military Affairs.

By Mr. ASHURST:

A bill (S. 4484) granting a pension to John Taylor (with accompanying papers); to the Committee on Pensions.

By Mr. COUZENS:

A bill (S. 4485) for the relief of Trifune Korac; to the Committee on Claims:

By Mr. SHIPSTEAD (for Mr. BROOKHART):

A bill (S. 4486) granting an increase of pension to Alice Cornwall (with accompanying papers); to the Committee on Pensions.

By Mr. WHEELER:

A bill (S. 4487) granting a pension to John C. Taylor; to the Committee on Pensions.

By Mr. CONNALLY:

A bill (S. 4488) for the relief of the Farmers and Merchants National Bank of Gilmer, Tex.; to the Committee on Claims.

By Mr. COPELAND:

A bill (S. 4489) for the relief of the heirs of Harris Smith; to the Committee on Claims.

A bill (S. 4490) amending section 493 of the tariff act of 1922; to the Committee on Finance.

By Mr. CAPPER:

A bill (S. 4491) to provide for the revocation and suspension of operators' and chauffeurs' licenses and registration certificates; to require proof of ability to respond in damages for injuries caused by the operation of motor vehicles; to prescribe the form of and conditions in insurance policies covering the liability of motor-vehicle operators; to subject such policies to the approval of the commissioner of insurance; to constitute the director of traffic the agent of nonresident owners and operators of motor vehicles operated in the District of Columbia for the purpose of service of process; to provide for the report of accidents; to authorize the director of traffic to make rules for the administration of this statute; and to prescribe penalties for the violation of the provisions of this act, and for other purposes; to the Committee on the District of Columbia.

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The PRESIDING OFFICER. The question is on agreeing to the resolution.

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

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

The PRESIDING OFFICER. The absence of a quorum is suggested. The clerk will call the roll.

The legislative clerk called the roll twice, and the following Senators answered to their names:

Allen	Glass	McCulloch	Shipstead
Bingham	Glenn	McKellar	Shortridge
Black	Goldsborough	McMaster	Simmons
Blaine	Greene	McNary	Steck
Blease	Hale	Metcalf	Steiwer
Borah	Harris	Norris	Stephens
Bratton	Hastings	Nye	Swanson
Brock	Hatfield	Overman	Thomas, Idaho
Capper	Hawes	Patterson	Thomas, Okla.
Caraway	Hayden	Pittman	Tydings
Connally	Hebert	Ransdell	Vandenberg
Couzens	Howell	Reed	Walcott
Dill	Jones	Robinson, Ark.	Walsh, Mass.
Fess	Kendrick	Robinson, Ind.	Walsh, Mont.
Frazier	Keyes	Robsion, Ky.	Waterman
George	King	Schall	Watson
Gillett	La Follette	Sheppard	

The VICE PRESIDENT. Sixty-seven Senators have answered to their names. A quorum is present. The question is on agreeing to the resolution.

Mr. BRATTON. I call for the yeas and nays.

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

Mr. BRATTON (when his name was called). I have a pair with the Senator from Maine [Mr. GOULD], which I transfer to my colleague [Mr. CUTTING], and will vote. I vote "yea."

Mr. GEORGE (when his name was called). I have a pair with the senior Senator from Colorado [Mr. PHIPPS]. I transfer that pair to the senior Senator from Alabama [Mr. HEFLIN] and will vote. I vote "yea."

Mr. FESS (when Mr. MOSES' name was called). I desire to announce that the senior Senator from New Hampshire [Mr. MOSES] is paired with the junior Senator from Utah [Mr. KING].

Mr. PATTERSON (when his name was called). I have a general pair with the junior Senator from New York [Mr. WAGNER]. I understand that he would vote the same way that I shall vote. Therefore I feel at liberty to vote. I vote "yea."

Mr. WATSON (when his name was called). I transfer my pair with the Senator from South Carolina [Mr. SMITH] to the Senator from New Jersey [Mr. KEAN] and will vote. I vote "nay."

The roll call was concluded.

Mr. BLEASE. I transfer my pair with the Senator from West Virginia [Mr. GOFF] to the Senator from Kentucky [Mr. BARKLEY] and will vote. I vote "yea."

Mr. McKELLAR (after having voted in the affirmative). Has the junior Senator from Delaware [Mr. TOWNSEND] voted?

The VICE PRESIDENT. That Senator has not voted.

Mr. McKELLAR. I have a pair with that Senator. I transfer that pair to the senior Senator from Arizona [Mr. ASHURST] and will allow my vote to stand.

Mr. REED (after having voted in the negative). In order that I may be free to move a reconsideration, I change my vote from "nay" to "yea."

Mr. FESS. I desire to announce the following general pairs:

The Senator from Pennsylvania [Mr. GRUNDY] with the Senator from Florida [Mr. FLETCHER];

The Senator from New Hampshire [Mr. MOSES] with the Senator from Utah [Mr. KING];

The Senator from Oregon [Mr. McNARY] with the Senator from Mississippi [Mr. HARRISON];

The Senator from Vermont [Mr. DALE] with the Senator from New York [Mr. COPELAND];

The Senator from Wyoming [Mr. SULLIVAN] with the Senator from Florida [Mr. TRAMMELL];

The Senator from New Jersey [Mr. BAIRD] with the Senator from Montana [Mr. WHEELER]; and

The Senator from Illinois [Mr. DENEEN] with the Senator from Louisiana [Mr. BROUSSARD].

Mr. SHEPPARD. I desire to announce that the Senator from Florida [Mr. TRAMMELL], the Senator from Montana [Mr. WHEELER], the Senator from Arizona [Mr. ASHURST], and the Senator from Utah [Mr. KING] are detained on official business.

The result was announced—yeas 42, nays 23, as follows:

YEAS—42

Black	Caraway	Glenn	La Follette
Blaine	Connally	Harris	McKellar
Blease	Couzens	Hawes	McMaster
Borah	Dill	Hayden	Norris
Bratton	Frazier	Howell	Nye
Brock	George	Jones	Overman
Capper	Glass	Kendrick	Patterson
Pittman	Schall	Steiwer	Walsh, Mass.
Ransdell	Sheppard	Stephens	Walsh, Mont.
Reed	Shipstead	Swanson	
Robinson, Ark.	Simmons	Thomas, Okla.	

NAYS—23

Allen	Hale	Metcalf	Tydings
Bingham	Hastings	Robinson, Ind.	Vandenberg
Fess	Hatfield	Robsion, Ky.	Walcott
Gillett	Hebert	Shortridge	Waterman
Goldsborough	Keyes	Steck	Watson
Greene	McCulloch	Thomas, Idaho	

NOT VOTING—31

Ashurst	Deneen	Kean	Smith
Baird	Fletcher	King	Smoot
Barkley	Goff	McNary	Sullivan
Brookhart	Gould	Moses	Townsend
Broussard	Grundy	Norbeck	Trammell
Copeland	Harrison	Oddie	Wagner
Cutting	Heflin	Phipps	Wheeler
Dale	Johnson	Pine	

So the resolution was agreed to.

EXECUTIVE MESSAGES

Sundry messages in writing were communicated to the Senate from the President of the United States by Mr. Latta, one of his secretaries.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Farrell, its enrolling clerk, returned to the Senate, in compliance with its request, the following bills:

S. 476. An act granting pensions and increase of pensions to certain soldiers, sailors, and nurses of the war with Spain, the Philippine insurrection, or the China relief expedition, and for other purposes; and

H. R. 8296. An act to amend the act of May 25, 1926, entitled "An act to adjust water-right charges, to grant certain other relief on the Federal irrigation projects, and for other purposes."

The message also announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 9323) granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy, etc., and certain soldiers and sailors of wars other than the Civil War, and to widows of such soldiers and sailors.

The message further announced that the House insisted upon its amendment to the bill (S. 108) to suppress unfair and fraudulent practices in the marketing of perishable agricultural commodities in interstate and foreign commerce, disagreed to by the Senate; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. HAUGEN, Mr. PURNELL, and Mr. KINCHELOE were appointed managers on the part of the House at the conference.

The message also announced that the House had passed a bill (H. R. 2152) to promote the agriculture of the United States by expanding in the foreign field the service now rendered by the United States Department of Agriculture in acquiring and diffusing useful information regarding agriculture, and for other purposes, in which it requested the concurrence of the Senate.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

The message further announced that the Speaker had affixed his signature to the following enrolled bills and joint resolution, and they were signed by the Vice President:

S. 3498. An act to aid the Grand Army of the Republic in its Memorial Day services, May 30, 1930;

S. 4015. An act to provide for plant patents;

S. 4057. An act authorizing the Secretary of the Interior to extend the time for cutting and removing timber upon certain revested and reconveyed lands in the State of Oregon;

H. R. 668. An act for the relief of A. J. Morgan;

H. R. 1251. An act for the relief of C. L. Beardsley;

H. R. 7405. An act to provide for a 5-year construction and maintenance program for the United States Bureau of Fisheries;

H. R. 7768. An act to provide for the sale of the old post-office and courthouse building and site at Syracuse, N. Y.;

H. R. 10171. An act providing for the erection at Clinton, Sampson County, N. C., of a monument in commemoration of William Rufus King, former Vice President of the United States; and

S. J. Res. 163. Joint resolution to carry out certain obligations to certain enrolled Indians under tribal agreement.

WHITE RIVER BRIDGE, ARKANSAS

Mr. CARAWAY. I ask unanimous consent for the consideration of the bill (H. R. 10340) granting the consent of Congress to the Arkansas State Highway Commission to construct, maintain, and operate a free highway bridge across the White River

X re S. 4015

Congressional Record

PROCEEDINGS AND DEBATES

OF THE

SECOND SESSION OF THE SEVENTY-FIRST CONGRESS

OF

THE UNITED STATES
OF AMERICA

VOLUME LXXII—PART 8

APRIL 29, 1930, TO MAY 16, 1930

(Pages 7929 to 9112)



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Joe McA. Whitaker.
Oliver E. White.
Edson H. Whitehurst.
James D. Whitfield, jr.
William W. Wilbourne.
Macpherson B. Williams.
Francis E. Wilson.
Frank I. Winant, jr.
Walter C. Wingard, jr.
Thomas L. Wogan.
Royal A. Wolverton.
William T. Woodard.
James A. Woodruff, jr.
Thomas K. Wright.
Henry S. Wygant, jr.
William N. Wylie.
Joseph B. H. Young.

To be assistant paymasters

Aubrey J. Bourgeois.
Laurence Cardwell.
Edward P. Dorner.
Walter F. Prien.

MARINE CORPS

Andrew B. Drum to be lieutenant colonel.
William J. Mosher to be captain.

To be first lieutenants

Walter I. Jordan.
Arthur W. Ellis.
Edwin C. Ferguson.

To be second lieutenants

Paul Moret.
Thomas B. Hughes.
William B. McKean.
Glen G. Herndon.
Fred D. Beans.
Francis H. Williams.
Harold W. Bauer.
James T. Wilbur.
Ernest W. Fry, jr.
William B. Steiner.
Frank G. Wagner, jr.
Wallace M. Greene.
Alvin W. Neal.
Frank M. Reinecke.
Stewart Boyle.
Paul W. Russell.
Ronald D. Salmon.
John M. Davis.
Russell Lloyd.
Edward A. Montgomery.
Edgar O. Price.
Lawrence C. Brunton.
Samuel S. Yeaton.
Donald McP. Weller.
Walfried H. Fromhold.

POSTMASTERS

ALABAMA

Alida J. Cox, Spring Hill.

ARKANSAS

Abe L. Eustice, Clarksville.
George E. Owen, Conway.
Hubert C. Hallowell, Pocahontas.

FLORIDA

Daniel H. Bishop, Mount Dora.

HAWAII

Harry E. Apo, Kaunakakai.

IDAHO

Earl H. Barnes, Pierce.
Hazel L. French, Roberts.

IOWA

Gus J. Walters, Alta Vista.
Gust A. Hall, Colo.
Samuel J. Stites, Crawfordsville.
Robert B. Light, Deep River.
George A. Redenbaugh, Tabor.
Walter H. Vance, Winterset.

KENTUCKY

Marvin W. Barnes, Elizabethtown.

MARYLAND

Robert H. Lancaster, Frostburg.
Raymond R. Russell, Reisterstown.

MASSACHUSETTS

Dana O. Merrill, East Pepperell.
Charles W. Hardie, Harwich Port.
Emma E. Murphy, Minot.
Benjamin R. Gifford, Woods Hole.

MISSISSIPPI

Ruby W. Bacon, Schlater.

NEBRASKA

Cecil E. Mills, Long Pine.

NEW MEXICO

Lydia C. Harris, Mesilla Park.
Roy H. Smith, Tucumcari.

NEW YORK

John C. Tharp, Campbell.
Susan G. Patterson, Delmar.
Grace O. Meloy, East Durham.
Clarence A. E. Churchill, Ellicottville.
Leon F. Hawley, Holley.
Robert Mann, Jeffersonville.
Ella L. Winch, Lakewood.
Warren S. Hutchison, Lyndonville.
John C. Dickey, Mount Morris.
Frederick Harrigan, Roosevelt.
Earl S. St. John, Walton.
John C. Shanks, Waterloo.
Susie E. Garrison, Wingdale.

NORTH DAKOTA

Chester R. Hodge, Jamestown.

OHIO

Faye W. Helmick, Baltimore.
Glenn L. Shaffer, Bellville.
Charles A. Ridgley, Chesterhill.
Preston J. Knight, Ellet.
James M. Light, Greenville.
Marold J. Taylor, Marengo.
Jesse A. Keller, Pleasantville.
Julius R. Bruns, St. Henry.
Harry B. Carver, Troy.
Millard H. Bell, West Mansfield.
Frank L. Currey, Yellow Springs.

OKLAHOMA

John E. T. Clark, Coalgate.
Levi R. Gray, Dover.
Joseph G. Chappelear, Gotebo.
Alice B. Spears, Hulbert.

PENNSYLVANIA

Helen H. Rodgers, Fredericktown.
George H. Mull, Knox.
Theodore E. Sweeney, Sewickley.

TENNESSEE

Grant L. Landiss, Cumberland City.
Thomas D. Walker, Kerrville.
Tim F. Stephens, Livingston.

TEXAS

James I. Carter, Arlington.
Cyrus W. Odom, jr., Blackwell.
Lee K. McKewen, Huntington.
Daisy M. Singleton, Marble Falls.
Robert J. Sisson, Palacios.
Thomas F. Lindley, Seminole.
Adolph P. Stautzenberger, Seguin.
Clinton J. Farrell, Vernon.

WASHINGTON

Herbert K. Rowland, Zillah.

WEST VIRGINIA

Thomas S. Riggs, Moundsville.
Fanny Murray, Sandyville.
James W. White, Webster Springs.

WYOMING

Ivor Christensen, Hanna.

HOUSE OF REPRESENTATIVES

FRIDAY, *May 16, 1930*

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

How manifest are Thy mercies, O God, and nothing shall be able to separate us from Thy providence. To us Thou art a perennial spring by the traveler's way, a guiding star in the night of uncertainty and darkness, and a refuge unmoved and unmovable forever. We have learned that it is not in vain to call upon Thee in the emergencies of human experience. May this divine word possess our hearts, "Thy will be done." Whatever may come of care and burden and trial, sanctify them in strength, patience, humility, trust, and victory. O let there come honor and peace to everyone that worketh good. In the name of our Savior. Amen.

The Journal of the proceedings of yesterday was read and approved.

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against it. Do not the police and firemen protect the property of the citizen by day and by night year in and year out? Are not the police and fire department after all the local military establishment that guards the citizen and protects him in all of his rights. Mr. Speaker, while there are many piously inclined souls who believe that we could do without an Army or a Navy, I do not believe that anyone has yet reached the point where he is ready to suggest that we should be without a police and fire establishment in our hamlets, towns, and cities.

Of course, the Members of this Congress know from my many speeches that I am for ample preparedness and that I want your country's and my country's honor and her institutions guarded and protected by a Navy and Army that can meet any invader from across either one of the two great oceans. Semper paratus—all prepared—has been the song that I have sung early and late. I want our country to be so loved by all of her children, young and old, that when the bugle is blown again on some tremendous day that America, men and women, boys and girls, will stand out with one voice, as it were, and answer with the thrilling note of patriotism, "I am here." And keep in mind, my fellow Members of the House, the police and fire establishment of every city in the Union is really a part of the Military and Naval Establishments of the Nation, for they are for the protection locally of those American rights and property interests without which our country would not be. It might not be amiss for me to say here that one of the outstanding incidents of the World War was the noble manner in which the police and fire departments of Antwerp discharged their duty while it was under German bombardment, from which great fires spread, and when all of the other population had withdrawn from the apparently doomed city. They have done noble work in every city of the Union. They do not boast of their accomplishments. They let the records speak for them in the departments in which they serve. They are honorable men and will compare favorably with the members of every profession and vocation that makes up our life in America to-day.

But one outstanding fact in the history of the two great departments which protect our property and lives is that they are made up of men that are courageous and who are willing to pay the price of doing their duty with their lives whenever that price is exacted by the service whose uniforms they wear.

As Big Bill Devery said years ago, when he was chief of police of New York, and a member of the force did not assume the risk of stopping a notoriously bad man who was shooting his way down one of the streets of New York, "Get off this force. Nobody that wants to live forever can remain and be one of us." Anyone that wants to be a member of the police force or the fire department has to be of that courageous make-up which prompts him to instantly meet any danger and yield his life as a holocaust as it were to the needs of the city he serves. Such a police force, Mr. Speaker, and such a fire department is the boast of the city of New Orleans. Many of them have had their lives snapped asunder because of the faithful manner in which they met every emergency and answered danger's call. Many have made that sacrifice with bold, brave hearts and will continue to offer their lives when the necessity demands and requires such a sacrifice. Much the same can be said, I think, of every police and fire force in America. The Washington policemen and firemen are entitled to a just and a living wage. They should be given it not only in recognition of their services, but because it will establish that governmental attitude toward them which will have a beneficial and inspiring influence upon the States and cities that are unquestionably influenced by such Federal legislation.

Let us pass this bill, Mr. Speaker. It is far more important than it looks. It has far-reaching implications. Thousands of policemen and firemen all over the United States will be gratified at our favorable action on this bill. It will evidence to their mind that the Federal Government is glad to acknowledge the service, the courage, the heroism, and the patriotism of the gallant men who served in our police and fire departments.

LEAVE OF ABSENCE

By unanimous consent, the following leave of absence was granted:

To Mr. TAYLOR of Tennessee, on Monday and Tuesday, the 19th and 20th of May, on account of important private business.

To Mr. DRANE (at the request of Mr. DRIVER), for four days.

SENATE BILLS REFERRED

Bills of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 134. An act authorizing an appropriation for the purchase of land for the Indian colony near Ely, Nev., and for other purposes; to the Committee on Indian Affairs.

S. 465. An act to give war-time rank to retired officers and former officers of the United States Army; to the Committee on Military Affairs.

S. 1406. An act for the relief of Mary S. Howard, Gertrude M. Caton, Nellie B. Reed, Gertrude Pierce, Katie Pensel, Josephine Pryor, Mary L. McCormick, Mrs. James Blanchfield, Sadie T. Nicoll, Katie Lloyd, Mrs. Benjamin Warner, Eva K. Pensel, Margaret Y. Kirk, C. Albert George, Earl Wroldsen, Benjamin Carpenter, Nathan Benson, Paul Kirk, Townsend Walters, George Freet, James B. Jefferson, Frank Ellison, Emil Kulchycky, Harold S. Stubbs, and the Bethel Cemetery Company; to the Committee on Claims.

S. 1792. An act to provide for the appointment of an additional district judge for the southern district of California; to the Committee on the Judiciary.

S. 1849. An act for the relief of Francis B. Kennedy; to the Committee on Claims.

S. 2043. An act to promote the agriculture of the United States by expanding in the foreign field the service now rendered by the United States Department of Agriculture in acquiring and diffusing useful information regarding agriculture and for other purposes; to the Committee on Agriculture.

S. 3619. An act to reorganize the Federal Power Commission; to the Committee on Interstate and Foreign Commerce.

S. 3810. An act to provide for the commemoration of the termination of the War between the States at Appomattox Court House, Va.; to the Committee on Military Affairs.

S. 4017. An act to amend the act of May 29, 1928, pertaining to certain War Department contracts by repealing the expiration date of that act; to the Committee on Military Affairs.

S. 4028. An act to amend the Federal farm loan act as amended; to the Committee on Banking and Currency.

S. 4030. An act to provide books for the adult blind; to the Committee on the Library.

S. 4096. An act to amend section 4 of the Federal reserve act; to the Committee on Banking and Currency.

S. 4108. An act to provide for reimbursement of appropriations for expenditures made for the upkeep and maintenance of property of the United States under the control of the Secretary of War, used or occupied under license, permit, or lease; to the Committee on Military Affairs.

ENROLLED BILLS SIGNED

Mr. CAMPBELL of Pennsylvania, from the Committee on Enrolled Bills, reported that that committee had examined and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H. R. 668. An act for the relief of A. J. Morgan;

H. R. 1251. An act for the relief of C. L. Beardsley;

H. R. 7405. An act to provide for a 5-year construction and maintenance program for the United States Bureau of Fisheries;

H. R. 7768. An act to provide for the sale of the old post-office and courthouse building and site at Syracuse, N. Y.;

H. R. 9323. An act granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy, and so forth, and certain soldiers of wars other than the Civil War, and to widows of such soldiers and sailors; and

H. R. 10171. An act providing for the erection at Clinton, Sampson County, N. C., of a monument in commemoration of William Rufus King, former Vice President of the United States.

The SPEAKER announced his signature to enrolled bills and a joint resolution of the Senate of the following titles:

S. 3498. An act to aid the Grand Army of the Republic in its Memorial Day services, May 30, 1930;

S. 4015. An act to provide for plant patents;

S. 4057. An act authorizing the Secretary of the Interior to extend the time for cutting and removing timber upon certain revested and reconveyed lands in the State of Oregon; and

S. J. Res. 163. Joint resolution to carry out certain obligations to certain enrolled Indians under tribal agreement.

BILLS PRESENTED TO THE PRESIDENT

Mr. CAMPBELL of Pennsylvania, from the Committee on Enrolled Bills, reported that that committee did on this day present to the President, for his approval, bills of the House of the following titles:

X re S. 4015

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Mr. IRWIN: Committee on Claims. H. R. 7872. A bill for the relief of Lucien M. Grant; without amendment (Rept. No. 1620). Referred to the Committee of the Whole House.

Mr. IRWIN: Committee on Claims. H. R. 7936. A bill for the relief of Frank Kanelakos; without amendment (Rept. No. 1621). Referred to the Committee of the Whole House.

Mr. DOXEY: Committee on Claims. H. R. 8024. A bill for the relief of the Atchison, Topeka & Santa Fe Railway Co.; with amendment (Rept. No. 1622). Referred to the Committee of the Whole House.

Mr. IRWIN: Committee on Claims. H. R. 8224. A bill to reimburse D. W. Tanner for expense of purchasing an artificial limb; without amendment (Rept. No. 1623). Referred to the Committee of the Whole House.

Mr. IRWIN: Committee on Claims. H. R. 8785. A bill for the relief of the Board of Underwriters of New York; without amendment (Rept. No. 1624). Referred to the Committee of the Whole House.

Mr. IRWIN: Committee on Claims. H. R. 8983. A bill for the relief of Charles S. Gawler; without amendment (Rept. No. 1625). Referred to the Committee of the Whole House.

Mr. IRWIN: Committee on Claims. S. 3301. An act for the relief of Hunter P. Mulford; without amendment (Rept. No. 1626). Referred to the Committee of the Whole House.

Mr. IRWIN: Committee on Claims. H. R. 5915. A bill for the relief of Barber-Hoppen Corporation; without amendment (Rept. No. 1627). Referred to the Committee of the Whole House.

Mr. McLEOD: Committee on the District of Columbia. H. R. 9792. A bill for the relief of the widows of certain members of the police and fire departments of the District of Columbia who were killed or died from injuries received in the line of duty, and for other purposes; with amendment (Rept. No. 1635). Referred to the Committee of the Whole House.

Mr. McLEOD: Committee on the District of Columbia. S. 2662. An act for the relief of Della D. Ledendecker; without amendment (Rept. No. 1636). Referred to the Committee of the Whole House.

CHANGE OF REFERENCE

Under clause 2 of Rule XXII, committees were discharged from the consideration of the following bills, which were referred as follows:

A bill (H. R. 12538) granting a pension to Maud A. Robinson; Committee on Pensions discharged, and referred to the Committee on Invalid Pensions.

A bill (H. R. 2664) for the relief of the estate of Ambrose R. Tracy and his children; Committee on the Judiciary discharged, and referred to the Committee on Claims.

PUBLIC BILLS AND RESOLUTIONS

Under clause 3 of Rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. LEHLBACH: A bill (H. R. 12599) to amend section 16 of the radio act of 1927; to the Committee on the Merchant Marine and Fisheries.

By Mr. ZIHLMAN: A bill (H. R. 12600) to regulate tolls charged for transit over highway bridges across the Potomac River between the States of Maryland and West Virginia; to the Committee on Interstate and Foreign Commerce.

By Mr. COLTON: A bill (H. R. 12601) to provide for the compromise and settlement of claims held by the United States of America arising under the provisions of section 210 of the transportation act, 1920, as amended; to the Committee on Interstate and Foreign Commerce.

By Mr. JAMES (by request of the War Department): A bill (H. R. 12602) to authorize an appropriation for construction at Carlisle Barracks, Pa.; to the Committee on Military Affairs.

By Mr. SCHAFER of Wisconsin: Resolution (H. Res. 225) to inquire into the activities of Federal officials and employees connected with the initiation and prosecution of disbarment proceedings against George F. Curtis; to the Committee on Rules.

By Mr. FITZGERALD: Joint resolution (H. J. Res. 347) to provide for the erection of a suitable memorial to the memory of Comte de Grasse; to the Committee on the Library.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of Rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. CRAIL: A bill (H. R. 12603) granting a pension to Richard H. McCarthy; to the Committee on Pensions.

By Mr. HOPKINS: A bill (H. R. 12604) granting an increase of pension to Mary A. J. Wilson; to the Committee on Invalid Pensions.

By Mr. HOUSTON of Delaware: A bill (H. R. 12605) granting an increase of pension to Sarah E. Eskridge; to the Committee on Pensions.

By Mr. JOHNSTON of Missouri: A bill (H. R. 12606) granting an increase of pension to Margaret S. Rains; to the Committee on Invalid Pensions.

By Mr. KEARNS: A bill (H. R. 12607) granting an increase of pension to Alice Kirkpatrick; to the Committee on Invalid Pensions.

By Mr. KENDALL of Pennsylvania: A bill (H. R. 12608) granting an increase of pension to Sarah E. Engle; to the Committee on Invalid Pensions.

By Mr. LEAVITT: A bill (H. R. 12609) to authorize issuance of a patent to Frieda Buer for certain lands, and for other purposes; to the Committee on the Public Lands.

By Mr. McKEOWN: A bill (H. R. 12610) to release to the city of Chandler, Okla., all right, title, and interest of the United States in the military target range of Lincoln County, Okla.; to the Committee on Military Affairs.

By Mr. WOLVERTON of West Virginia: A bill (H. R. 12611) granting an increase of pension to Rachel J. Pierce; to the Committee on Invalid Pensions.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

7370. Petition of Columbus Camp, No. 49, of the Department of Ohio, United Spanish War Veterans, indorsing Comrade Albert D. Alcorn for appointment as Commissioner of Pensions; to the Committee on Pensions.

7371. By Mr. FITZGERALD: Petition signed by 17 residents of Dayton, Ohio, asking for repeal of Volstead law; to the Committee on the Judiciary.

7372. By Mr. GARBER of Oklahoma: Petition of Chamber of Commerce, State of New York, New York Board of Trade, and Advisory Board of American Coalition, urging support and passage of bill restricting immigration from Mexico; to the Committee on Immigration and Naturalization.

7373. Also, petition of American Association for Labor Legislation, New York, N. Y., urging support and passage of Senate bills 3059, 3060, and 3061; to the Committee on Labor.

7374. Also, petition of the Namm Store, of Brooklyn, N. Y., in opposition to House bill 11; to the Committee on Ways and Means.

7375. By Mr. HUDSON: Petition of the members of the Lansing district, Women's Foreign Missionary Society, Central Methodist Episcopal Church, Lansing, Mich., urging the passage of House bill 9986, having to do with the matter of Federal supervision of the motion-picture industry; to the Committee on Interstate and Foreign Commerce.

7376. By Mr. ROBINSON: Petition signed by Ella B. Ward, president, and Mrs. W. F. Dodd, secretary, of the Woman's Christian Temperance Union of New Hartford, Iowa, urging the passage of legislation for the Federal supervision of motion pictures establishing higher standards before production for films that are to be licensed for interstate and international commerce; to the Committee on Interstate and Foreign Commerce.

7377. By Mr. SELVIG: Petition of Minnesota Council of the Steuben Society of America, urging favorable action on House Joint Resolution 213; to the Committee on the Post Office and Post Roads.

7378. By Mr. TEMPLE: Resolution adopted at an institute under the auspices of the Woman's Christian Temperance Union of Jefferson, Greene County, Pa., urging the enactment of a law for the Federal supervision of motion pictures, establishing higher standards before production for films that are to be licensed for interstate and international commerce; to the Committee on Interstate and Foreign Commerce.

SENATE

MONDAY, *May 26, 1930*

The Chaplain, Rev. ZeBarney T. Phillips, D. D., offered the following prayer:

Eternal Father, who lovest all Thy children with an everlasting love, grant us Thy choicest blessings as we gather here to dedicate anew our service to our country and our God. Give us a clear soul, an iron will, an attractive union of manliness and godliness, of shrewd sense and unworldly aims, and withal that kindliness and pity the absence of which abates the actual value of all these other gifts. Enrich our personality with hope and greatness that we may touch the simplest acts of life with

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to accept as a basis of calculation the grand total sum actually expended by and not repaid the State of California on July 1, 1889, stated in the account set forth in the report of the Secretary of War made in pursuance of resolution of the Senate of February 27, 1889, printed in Senate Executive Document No. 11, Fifty-first Congress, first session, page 27; (2) to add to such sum the interest certified by the treasurer of the State of California as actually paid by said State on the sums so advanced and expended from July 1, 1889, to December 31, 1929; (3) to deduct from the total sum so stated the amounts repaid by the United States to the State of California since July 1, 1889, and certify to the Senate the balance found due the State of California.

PROTESTS AGAINST THE TARIFF BILL

Mr. THOMAS of Oklahoma submitted the following resolution (S. Res. 278), which was read:

Whereas foreign governments have filed with the Secretary of State protests against the enactment of the pending tariff bill: Therefore be it

Resolved, That the Secretary of State be, and he is hereby, requested to transmit such protests and communications to the President of the Senate for the information of the Congress.

Mr. THOMAS of Oklahoma. The resolution simply asks the Secretary of State to send to the Senate, for the information of Congress, the protests on file in that department against the tariff bill. I ask unanimous consent for the immediate consideration of the resolution.

The VICE PRESIDENT. Is there objection?

There being no objection, the resolution was considered and agreed to.

The preamble was agreed to.

AMENDMENT OF THE RULES

Mr. VANDENBERG. Mr. President, I move to add to the Standing Rules of the Senate a rule relating to river and harbor projects, as follows:

Resolved, That the Standing Rules of the Senate be, and they are hereby, amended by adding, after Rule XX, a new rule relating to river and harbor projects, as follows:

"RULE XXI. When a rivers and harbors authorization bill is pending a point of order may be made against the authorization of any project in any form not formally recommended to the Congress in an official report of the Board of Engineers for Rivers and Harbors."

The PRESIDING OFFICER (Mr. FESS in the chair). The resolution (S. Res. 279) will be referred to the Committee on Rules.

PENSIONS AND INCREASE OF PENSIONS

The PRESIDING OFFICER laid before the Senate the action of the House of Representatives disagreeing to the amendments of the Senate to the bill (H. R. 12205) granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy, etc., and certain soldiers and sailors of wars other than the Civil War, and to widows of such soldiers and sailors, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. ROBINSON of Indiana. I move that the Senate insist on its amendments, agree to the conference asked by the House, and that the Chair appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. ROBINSON of Indiana, Mr. NORBECK, and Mr. WHEELER conferees on the part of the Senate.

EXECUTIVE MESSAGES AND APPROVALS

Messages in writing were communicated to the Senate from the President of the United States by Mr. Latta, one of his secretaries, who also announced that the President approved and signed the following acts:

On May 23, 1930:

S. 548. An act for the relief of retired and transferred members of the Naval Reserve Force, Naval Reserve, and Marine Corps Reserve;

S. 4015. An act to provide for plant patents;

S. 4119. An act to extend the provisions of section 2455 of the Revised Statutes of the United States (U. S. C., title 43, sec. 1171), as amended, to coal lands in Alabama;

S. 428. An act to authorize the transfer of the former naval radio station, Seawall, Me., as an addition to the Acadia National Park;

S. 3185. An act to authorize the Secretary of the Navy to dispose of material no longer needed by the Navy; and

S. 3585. An act to eliminate certain land from the Tusayan National Forest, Ariz., as an addition to the Western Navajo Indian Reservation.

On May 26, 1930:

S. 1171. An act to establish and operate a national institute of health, to create a system of fellowships in said institute, and to authorize the Government to accept donations for use in ascertaining the cause, prevention, and cure of disease affecting human beings, and for other purposes; and

S. 3934. An act granting certain lands to the city of Sault Ste. Marie, State of Michigan.

HOUSE BILLS REFERRED

The following bills were severally read twice by their titles and referred as indicated below:

H. R. 48. An act donating bronze trophy guns to the Cohoes Historical Society, Cohoes, N. Y.;

H. R. 2185. An act for the relief of Edwin G. Blanchard;

H. R. 3935. An act for the relief of Eugenia A. Helston;

H. R. 4050. An act donating trophy gun to F. D. Hubbel Relief Corps, No. 103, of Hillsboro, Ill.;

H. R. 5213. An act for the relief of Grant R. Kelsey, alias Vincent J. Moran;

H. R. 6348. An act donating trophy guns to Varina Davis Chapter, No. 1980, United Daughters of the Confederacy, Macclenny, Fla.;

H. R. 7484. An act for the relief of Edward R. Egan;

H. R. 9425. An act to authorize the Secretary of War to donate a bronze cannon to the city of Martins Ferry, Ohio;

H. R. 10310. An act for the relief of Samuel Pelfrey; and

H. R. 10737. An act for the relief of G. W. Gilkison; to the Committee on Military Affairs.

H. R. 320. An act for the relief of Haskins & Sells;

H. R. 328. An act for the relief of Parke, Davis & Co.;

H. R. 329. An act for the relief of Joseph A. McEvoy;

H. R. 478. An act for the relief of Marijune Cron;

H. R. 523. An act for the relief of Benjamin C. Lewis and Bessie Lewis, his wife;

H. R. 573. An act for the relief of Barzilla William Bramble;

H. R. 593. An act for the relief of First Lieut. John R. Bailey;

H. R. 650. An act for the payment of damages to certain citizens of California and other owners of property damaged by the flood caused by reason of artificial obstructions to the natural flow of water being placed in the Picacho and No-name Washes by an agency of the United States;

H. R. 655. An act for the relief of Guy E. Tuttle;

H. R. 669. An act for the relief of Seth J. Harris;

H. R. 692. An act for the relief of Ella E. Horner;

H. R. 794. An act for the relief of C. B. Smith;

H. R. 885. An act for the relief of George F. Newhart, Clyde Hahn, and David McCormick;

H. R. 887. An act for the relief of Mary R. Long;

H. R. 913. An act for the relief of Belle Clopton;

H. R. 917. An act for the relief of John Panza and Rose Panza;

H. R. 919. An act for the relief of the father of Catharine Kearney;

H. R. 936. An act for the relief of Glen D. Tolman;

H. R. 939. An act for the relief of Mary J. Dee;

H. R. 1029. An act for the relief of Arthur D. Story, assignee of Jacob Story, and Harris H. Gilman, receiver for the Murray & Thregurtha plant of the National Motors Corporation;

H. R. 1057. An act for the relief of John W. Adair;

H. R. 1063. An act for the relief of Alice Hipkins;

H. R. 1076. An act for the relief of Jacob S. Steloff;

H. R. 1499. An act for the relief of C. O. Crosby;

H. R. 1546. An act for the relief of Thomas Seltzer;

H. R. 1696. An act for the relief of Lieut. Timothy J. Mulcahy, Supply Corps, United States Navy;

H. R. 1724. An act for the relief of Margaret Lemley;

H. R. 1759. An act for the relief of Laura A. DePodesta;

H. R. 1825. An act for the relief of David McD. Shearer;

H. R. 1888. An act for the relief of Rose Lea Comstock;

H. R. 1944. An act for the relief of Bruce Bros. Grain Co.;

H. R. 1964. An act for the relief of S. A. Jones;

H. R. 2175. An act for the relief of the Great Western Coal Mines Co.;

H. R. 2222. An act for the relief of Laurin Gosney;

H. R. 2458. An act for the relief of Darold Brundige;

H. R. 2645. An act for the relief of Homer Elmer Cox;

H. R. 2776. An act for the relief of Dr. Charles F. Dewitz;

H. R. 2810. An act for the relief of Katherine Anderson;

H. R. 2849. An act for the relief of the Lowell Oakland Co.;

H. R. 2876. An act for the relief of J. C. Peixotto;

H. R. 3072. An act for the relief of Peterson-Colwell (Inc.);

H. R. 3422. An act for the relief of Gustav J. Braun;

H. R. 3430. An act for the relief of Anthony Marcum;

H. R. 3764. An act for the relief of Ruban W. Riley;

H. R. 4469. An act for the relief of Second Lieut. Burgo D. Gill;

H. R. 5962. An act for the relief of R. E. Marshall;

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Calendar No. 307

71ST CONGRESS, 2d Session } SENATE { REPORT No. 315

PLANT PATENTS

APRIL 2 (calendar day, APRIL 3), 1930.—Ordered to be printed

Mr. GOLDSBOROUGH, from the Committee on Patents, submitted the following

REPORT

[To accompany S. 4015]

The Committee on Patents, to whom was referred the bill (S. 4015) to provide for plant patents, have considered the same and report thereon with amendments, and, as so amended, recommend that the bill do pass.

All of the committee amendments except two are clerical in character. As to the two amendments, one adds to the bill the usual separability clause and the other eliminates from the scope of the bill patents for varities of plants which exist in an uncultivated or wild state, but are newly found by plant explorers or others.

I. PURPOSES OF THE BILL

The purpose of the bill is to afford agriculture, so far as practicable, the same opportunity to participate in the benefits of the patent system as has been given industry, and thus assist in placing agriculture on a basis of economic equality with industry. The bill will remove the existing discrimination between plant developers and industrial inventors. To these ends the bill provides that any person who invents or discovers a new and distinct variety of plant shall be given by patent an exclusive right to propagate that plant by asexual reproduction; that is, by grafting, budding, cuttings, layering, division, and the like, but not by seeds.

STIMULATION OF PLANT BREEDING

To-day the plant breeder has no adequate financial incentive to enter upon his work. A new variety once it has left the hands of the breeder may be reproduced in unlimited quantity by all. The originator's only hope of financial reimbursement is through high

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prices for the comparatively few reproductions that he may dispose of during the first two or three years. After that time, depending upon the speed with which the plant may be asexually reproduced, the breeder loses all control of his discovery. Under the bill the originator will have control of his discovery during a period of 17 years, the same term as under industrial patents. If the new variety is successful, the breeder or discoverer can expect an adequate financial reward. To-day plant breeding and research is dependent, in large part, upon Government funds to Government experiment stations, or the limited endeavors of the amateur breeder. It is hoped that the bill will afford a sound basis for investing capital in plant breeding and consequently stimulate plant development through private funds.

In addition, the breeder to-day must make excessive charges for specimens of the new variety disposed of by him at the start in order to avail himself of his only opportunity for financial reimbursement. Under the bill the breeder may give the public immediate advantage of the new varieties at a low price with the knowledge that the success of the variety will enable him to recompense himself through wide public distribution by him during the life of the patent. The farmers and general public that buy plants will be able promptly to obtain new improved plants at a more moderate cost.

ECONOMIC BENEFIT TO AGRICULTURE AND THE PUBLIC

The food and timber supply of the Nation for the future is dependent upon the introduction of new varieties. Many millions of Federal and private funds are annually spent in combating disease through plant quarantines, disinfection, spraying, and other methods. The phoney peach disease has threatened the important peach supply of Georgia and the welfare of one of the most important industries of that State. The chestnut blight has wiped the eastern forests clean of the valuable chestnut tree. The white pine blister rust threatens the white-pine forests. The plant pathologist has through his experiments attempted with but slight success to combat these plant diseases. But an equally valuable means of combating plant disease is the development of new disease resistant varieties by the plant breeder. The bill proposes to give the breeder the incentive to develop such varieties without the aid of Federal funds.

Similarly, the development of drought-resistant and cold-resistant varieties of plants is of great importance to agriculture. An apple with greater resistance to cold is one of the demands of the northern portion of the country. We must look to the plant breeder for an acceptable substitute for rubber. The improvement of medicinal plants is an unexplored field. The spectacular development of new classes of plants, such as the loganberry and many of Burbank's products, is only a small part of the economic benefit to the country afforded by successful plant breeding.

No one will question the fact that new varieties of food, medicinal, and other economic plants may be an important factor in maintaining public health and in promoting public safety and national defense. Thus the food supply of the Nation, both from the viewpoint of the producer and the user, is of vital importance, and insurance against failure in that supply is necessary to public safety and national prosperity. Plant breeding and discovery, while in its infancy, is fun-

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damentally connected with the Nation's food supply, and will, if encouraged and developed, be of incalculable value in maintaining public health and prosperity, and in promoting public safety and the national defense. Finally, plant patents will mean better agricultural products that will give the public more actual value for its dollar.

II. Bill Generally Advocated

The proposed legislation was originally introduced by Senator Townsend as S. 3530 of this session. The present measure is substantially the same as the original bill except for the elimination of patents for certain newly found plants and the granting of patents irrespective of the fact that the plant may, under some conditions, reproduce itself without human aid.

The proposed legislation has been generally advocated. The Secretary of Agriculture, whose letter appears in full in Appendix A to this report, states that—

> The proposed legislation would appear to be desirable and to lend far-reaching encouragement to agriculture and benefit to the general public.

Mr. Thomas A. Edison states that—

> Nothing that Congress could do to help farming would be of greater value and permanence than to give to the plant breeder the same status as the mechanical and chemical inventors now have through the patent law. There are but few plant breeders. This [the bill] will, I feel sure, give us many Burbanks.

The proposed legislation has been endorsed by former Secretary of Agriculture Jardine, the National Horticultural Council, the American Association of Nurserymen, the American Farm Bureau Federation, the National Grange, and many State commissioners of agriculture, experiment station officials, and individual growers and nurserymen.

III. Explanation of Provisions of Bill

CLASSES OF NEW VARIETIES

New and distinct varieties fall into three classes—sports, mutants, and hybrids.

In the first class of cases, the sports, the new and distinct variety results from bud variation and not seed variation. A plant or portion of a plant may suddenly assume an appearance or character distinct from that which normally characterizes the variety or species.

In the second class of cases, the mutants, the new and distinct variety results from seedling variation by self pollenization of species.

In the third class of cases, the hybrids, the new and distinct variety results from seedlings of cross pollenization of two species, two varieties, or of a species and a variety. In this case the word "hybrid" is used in its broadest sense.

All such plants must be asexually reproduced in order to have their identity preserved. This is necessary since seedlings either of chance or self-pollenization from any of these would not preserve the character of the individual.

These cultivated sports, mutants, and hybrids are all included in the bill, and probably embrace every new variety that is included. The exclusion of a wild variety, the chance find of the plant explorer,

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is in no sense a limitation on the usefulness of the bill to those who follow agriculture or horticulture as a livelihood and who are permitted under the bill to patent their discoveries.

PATENT GRANTS RIGHT OF ASEXUAL REPRODUCTION ONLY

Whether the new variety is a sport, mutant, or hybrid, the patent right granted is a right to propagate the new variety by asexual reproduction. It does not include the right to propagate by seeds. This limitation in the right granted recognizes a practical situation and greatly narrows the scope of the bill. Whether the new variety is a hybrid, mutant or sport, there is never more than one specimen of it produced except through asexual reproduction. For example, without asexual reproduction there would have been but one true McIntosh or Greening apple tree. These varieties of apple could not have been preserved had it not been through human effort in the asexual reproduction of the two original trees. They could not have been reproduced true to the type by nature through seedlings. The bill, therefore, proposes to afford through patent protection an incentive to asexually reproduce new varieties. Many varieties of apples equally as valuable as the McIntosh or Greening have undoubtedly been created and disappeared beyond human power of recovery because no attempt was made to asexually reproduce the new varieties. The present bill by its patent protection proposes to give the necessary incentive to preserve new varieties. On the other hand, it does not give any patent protection to the right of propagation of the new variety by seed, irrespective of the degree to which the seedlings come true to type.

DISTINCT VARIETIES

The bill authorizes the grant of a patent only in case the new variety is distinct. It is not necessary that the new variety be a new species, but the bill does not exclude a new and distinct species from being patented. On the other hand, in order for the new variety to be distinct it must have characteristics clearly distinguishable from those of existing varieties, and it is immaterial whether in the judgment of the Patent Office the new characteristics are inferior or superior to those of existing varieties. Experience has shown the absurdity of many views held as to the value of new varieties at the time of their creation.

The characteristics that may distinguish a new variety would include, among others, those of habit; immunity from disease; resistance to cold, drought, heat, wind, or soil conditions; color of flower, leaf, fruit, or stems; flavor; productivity, including ever-bearing qualities in case of fruits; storage qualities; perfume; form; and ease of asexual reproduction. Within any one of the above or other classes of characteristics the differences which would suffice to make the variety a distinct variety, will necessarily be differences of degree. While the degree of difference sufficient for patentability will undoubtedly be a difficult administrative question in some instances, the situation does not present greater difficulties than many that arise in the case of industrial patents.

In specifying the differences in characteristics the Patent Office will undoubtedly follow the practice among botanists in making use of verbal descriptions and photographic and other reproductions,

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taking some known plant as a basis of comparison. Modern methods of identification, together with such amplification thereof as may reasonably be expected, will render it possible and practicable to describe clearly and precisely the characteristics of a particular variety. When this can not be done by an applicant for a patent, the variety is not clearly distinguishable as a distinct variety, and no patent would issue.

Of course, allowance must be made for those minor differences in characteristics, commonly called fluctuations, which follow from variations in methods of cultivation or environment and are temporary rather than permanent characteristics of the plant.

EXCEPTION OF TUBER-PROPAGATED PLANTS

The bill excepts from the right to a patent the invention or discovery of a distinct and new variety of a tuber-propagated plant. The term "tuber" is used in its narrow horticultural sense as meaning a short, thickened portion of an underground branch. It does not cover, for instance, bulbs, corms, stolons, and rhizomes. Substantially, the only plants covered by the term "tuber-propagated" would be the Irish potato and the Jerusalem artichoke. This exception is made because this group alone, among asexually reproduced plants, is propagated by the same part of the plant that is sold as food.

THE PREREQUISITE OF ASEXUAL REPRODUCTION

It is not only necessary that the new and distinct variety of plant shall have been invented or discovered, but it is also necessary that it shall have been asexually reproduced prior to the application for patent. A plant patent covers only the exclusive right of asexual reproduction, and obviously it would be futile to grant a patent for a new and distinct variety unless the variety had been demonstrated to be susceptible of asexual reproduction. Of course, theoretically under laboratory conditions it is probable that all plants can be asexually reproduced, but it is hardly to be expected that a patent will be applied for unless at the time of application the plant can be asexually reproduced upon a commercial scale or else there is reasonable expectation that it can be so reproduced in the near future.

COOPERATION WITH DEPARTMENT OF AGRICULTURE

The bill proposes that the President may facilitate the administration of its provisions by the Patent Office through requiring the Secretary of Agriculture, to furnish the Commissioner of Patents with available information in the department, to conduct necessary research, and to detail to the Patent Office technical employees of the department. As to this feature the Secretary of Agriculture states in his letter set forth in Appendix A to this report that —

> As determination of the newness of varieties could not be made solely upon the basis of descriptive matter and drawings, it is evident that the specimens, photographs, paintings, descriptions, etc., of existing plants, already available in various forms in the Department of Agriculture and elsewhere, will be of great value, increased in due time by extension of such collections of plants and data.
>
> The effective administration of such legislation would require expert personnel, comparable in their lines, with the specialists now employed by the Patent Office. The technical personnel of the Department of Agriculture, although possibly

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inadequate to meet future demands, would be available in making such determinations as would be necessary in carrying out the purposes of such a law.

APPLICATION TO EXISTING PLANTS

In accordance with existing patent law, the bill would not permit the patenting of plants that have been in public use, either before or after the approval of the bill, for more than two years. Furthermore, it was considered unnecessary to provide specifically that the bill shall permit the patenting of plants now in process of creation, under observation, under test, or in existence but not yet given to the public, as that appears to the committee to be covered adequately by the existing provisions of section 4886 of the Revised Statutes. With reference to plants, the words "public use" in that section would apply to the period during which the new variety is asexually reproduced for sale.

IV. Legal Phases of the Bill

The committee is of the opinion after careful consideration that the amendments to the patent laws proposed by the bill fall within the legislative power of Congress under Article I, section 8, of the Constitution—

> To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

Present patent laws apply to—

> any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement thereof * * *.

It will be noted that the laws apply both to the acts of inventing and discovery and this alternative application has been true of the patent laws from their beginning. See, for instance, the patent act of 1790 (1 Stat. 109). The amendment proposed by the pending bill to care for plant patents likewise applies to "any person who has invented or discovered" the particular variety of plant.

There can be no doubt that the grant of plant patents constitutes a promotion of "the progress of science and useful arts" within the meaning of the constitutional provision. The only question is, Is the new variety a discovery and is the originator or discoverer an inventor?

There is a clear and logical distinction between the discovery of a new variety of plant and of certain inanimate things, such, for example, as a new and useful natural mineral. The mineral is created wholly by nature unassisted by man and is likely to be discovered in various parts of the country; and, being the property of all those on whose land it may be found, its free use by the respective owners should of course be permitted. On the other hand, a plant discovery resulting from cultivation is unique, isolated, and is not repeated by nature, nor can it be reproduced by nature unaided by man, and such discoveries can only be made available to the public by encouraging those who own the single specimen to reproduce it asexually and thus create an adequate supply.

It is obvious that nature originally creates plants but it can not be denied that man often controls and directs the natural processes

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and produces a desired result. In such cases the part played by nature and man can not be completely separated or weighed or credited to one or the other. Nature in such instances, unaided by man, does not reproduce the new variety true to type.

Furthermore, there is no apparent difference, for instance, between the part played by the plant originator in the development of new plants and the part played by the chemist in the development of new compositions of matter which are patentable under existing law. Obviously, these new compositions of matter do not come into being solely by act of man. The chemist who invents the composition of matter must avail himself of the physical and chemical qualities inherent in the materials used and of the natural principles applicable to matter. Whether or not he is aware of these principles does not affect the question of patentability. The inventor of the composition of matter may have definitely in mind the new product and definitely worked toward it. On the other hand, as is true of many of the most important inventions, he may accidentally discover the product, perhaps in the course of the regular routine of his work. He does not have to show, for instance, that he mixed the elements and expected them to produce the particular composition of matter. He may simply find the resulting product and have the foresight and ability to see and appreciate its possibilities and to take steps to preserve its existence.

The same considerations are true of the plant breeder. He avails himself of the natural principles of genetics and of seed and bud variations. He cultivates the plants in his own laboratory under his own eye. He may test and experiment with them on a variety of proving grounds. He may promote natural cross-pollination by growing the parent plants in juxtaposition. For instance, because of manual difficulties artificial hand pollination is impracticable in the production of seed of the genus compositae, including such species as dahlias, chrysanthemums, asters, daisies, and the like, and also in the case of many of the small fruits. In other cases hand pollination is unnecessary; natural pollination does equally well. On the other hand, if the periods of the bloom of the plants differ, hand pollination and the camel's-hair brush must be used. Again, orchids, avocados, grapes, and most orchard fruits are subjected to hand pollination. In the case of sports, the plant breeder not only cultivates the plants but may subject them to various conditions of cultivation to encourage variation, as, for example, in some recent developments, the subjection of the plants to the effects of X rays or to abnormal fertilization. Finally, the plant breeder must recognize the new and appreciate its possibilities either for public use or as a basis for further exercise of the art of selection.

Moreover, it is to be noted that the committee has, by its amendment in striking out the patenting of "newly found" varieties of plants, eliminated from the scope of the bill those wild varieties discovered by the plant explorer or other person who has in no way engaged either in plant cultivation or care and who has in no other way facilitated nature in the creation of a new and desirable variety.

But even were the plant developer's contributions in aid of nature less creative in character than those of the chemist in aiding nature to develop a composition of matter which has theretofore been nonexistent (an assumption which the committee does not believe to have

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basis in fact and which is here made solely for purposes of argument), nevertheless the protection by patents of those engaged in plant research and discovery would not be beyond the constitutional power of the Congress.

At the time of the adoption of the Constitution the term "inventor" was used in two senses. In the first place the inventor was a discoverer, one who finds or finds out. In the second place an inventor was one who created something new. All the dictionaries at the time of the framing of the Constitution recognized that "inventor" included the finder out or discoverer as well as the creator of something new. Thus Sheridan in 1790 defined "inventor" as "A finder out of something new," and "invention" as "discovery." Kersey in 1708 defined "invention" as "the act of inventing, or finding," and Martin in 1754 defined "to invent" as "to find out or discover." The word "discover" or "discovery" is given as an equivalent by Cocker in 1715 and 1724, Ash in 1775, Perry in 1795, Entick in 1786, Fenning in 1771, and Barclay in 1841. "To find" or "find out" or "finding" as a synonym of invent or inventor, was noted by Rider in 1617, Holy-oke in 1649, Coles in 1724, Johnson in 1824, Kendrick in 1773, Martin in 1754, Kersey in 1708, Sheridan in 1790, Ash in 1775, Cocker in 1715 and 1724, Entick in 1786 and 1791, Fenning in 1771, and Coxe in 1813.

The distinction between discovering or finding out on the one hand and creating or producing on the other hand, being recognized in the dictionaries current at the time of the framing of the Constitution, it is reasonable to suppose the framers of the Constitution attributed to the term "inventor" the then customary meaning. That they did not ignore the meaning of inventor as "a discoverer or finder out" is furthermore indicated by the fact that in the Constitution itself the framers referred to the productions of inventors as "discoveries."

With the development of the patent laws and modern industry the meaning of the word "inventor" as a creator of something new became the prevailing use and, while both meanings of inventor are still recognized in such modern dictionaries as Murray's New English Dictionary, Webster's New International Dictionary, and the Century Dictionary and Encyclopedia, the meaning of inventor as "a finder out or discoverer" is now considered obsolete or archaic. However, it seems to the committee that the meaning to be attached to the term "inventor" as used in the Constitution must be the meaning in general use at the time of the framing of the Constitution rather than the meaning prevailing in present-day usage.

Furthermore, there are many instances where the provisions of the Constitution have been held to embrace affairs which, while literally within the meaning of a constitutional phrase, were not conceived of by the framers at the time that the Constitution was written. For example, the power to regulate interstate commerce, which was then mainly by horse or by rowboat or sailboat, is now held by the courts to cover regulation of steam transportation, telegraphic communication, and even radio communication, matters beyond the wildest dreams of the framers of the Constitution.

An indication of the construction that the courts are likely to place on the word "inventor" in the constitutional provision can be found

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in their construction of the words "author" and "writer" in the same paragraph. The Constitution gives Congress power—

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

Under this provision the original act of May 31, 1790 (1 Stat. 124), allowed copyright of maps and charts as well as books. By successive legislation this right was extended to include photographs, statues, models, and designs. (See, for instance, 35 Stat. 1075.) It might well be doubted whether map makers, chart makers, photographers, sculptors, modelers, and designers were "authors," and whether maps, charts, photographs, statues, models, and designs were "writings," but the constitutionality of this legislation has been sustained from the beginning. Thus in Lithographic Co. *v.* Sarony (1883, 111 U. S. 53) it was contended that a photograph was not a writing nor the production of an author, but the Supreme Court sustained the statute allowing a copyright for photographs.

As to copyrights there was doubt on two words, "authors" and "writings," which certainly do not have in ordinary speech such broad meanings as Congress and the Supreme Court have given them. But the court had no difficulty in sustaining a sufficiently liberal construction. As to patents the doubt is only as to the one word, "inventors." The word "discovery" aptly describes the situation when a new and distinct variety of plant is found and "inventors" is certainly as elastic a word as "authors." It is not to be expected that the courts would place themselves in the position of impeding the progress of the science and useful art of agriculture by holding to so narrow a definition of the word "inventor" as to find that the proposed legislation was undoubtedly beyond the power of the Congress.

APPENDIX A. LETTER OF SECRETARY OF AGRICULTURE

[NOTE.—The letter of the Secretary of Agriculture is addressed to the proposed legislation as originally introduced as S. 3530 of the present session. As heretofore stated in the report, there are only minor differences between that bill and the bill as reported by the committee.]

DEPARTMENT OF AGRICULTURE,
Washington, D. C.

Hon. CHARLES W. WATERMAN,
Chairman Senate Patents Committee,
United States Senate.

MY DEAR SENATOR: Receipt of yours of the 21st instant, with inclosure of a copy of the bill S. 3530, introduced by Senator Townsend to amend section 4886 of the Revised Statutes, is acknowledged. As the result of examination of the bill by plant specialist of the department, the following comments and suggestions are submitted:

The evident purpose of the bill is to encourage the improvement of some kinds of cultivated plants, both through breeding and discovery of better varieties, by granting to the breeders or finders of new and distinct varieties of such plants the exclusive control over the reproduction of their creations and discoveries, presumably for the same period of years now covered by patents on inventions. This purpose is sought to be accomplished by bringing the reproduction of such newly bred or found plants under the patent laws which at the present time are understood to cover only inventions or discoveries in the field of inanimate nature. This it is proposed to accomplish by amending section 4886 of the Revised Statutes so as to make it possible to patent "any new and distinct variety of an asexually reproduced plant other than a tuber-propagated plant or a plant which reproduces itself without human aid." The operation of the present law is understood to rest upon the filing by the inventor of such properly authenticated verbal descrip-

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tions, designs, drawings, or other descriptive matter as will fully disclose the nature of his invention or discovery, thereby enabling one skilled in the art to which it relates to make effective practical application of the invention or discovery. Bill S. 3530 proposes in effect to authorize the patenting of certain distinguishable forms of plants which are capable of reproduction and multiplication through the operation of physiological processes with human aid.

Page 2, lines 8 to 13, which in the bill read as follows, "*Provided*, That the words 'invented' and 'discovered' as used in this section, in regard to asexually reproduced plants, shall be interpreted to include invention and discovery in the sense of finding a thing already existing and reproducing the same as well as in the sense of creating," interpreted in the light of agricultural and horticultural experience and history, would appear to make possible the patenting of the reproduction of any new and distinct variety wherever discovered, provided it meets the other specifications of the bill.

This possibility of reward would undoubtedly influence the public to be more observant of plants and thus tend to prevent the waste of many valuable new varieties which occur naturally but are now lost to mankind through neglect or lack of appreciation of their value.

As determination of the newness of varieties could not be made solely upon the basis of descriptive matter and drawings, it is evident that the specimens, photographs, paintings, descriptions, etc., of existing plants, already available in various forms in the Department of Agriculture and elsewhere, will be of great value, increased in due time by extension of such collections of plants and data.

The effective administration of such legislation would require expert personnel, comparable in their lines, with the specialists now employed by the Patent Office. The technical personnel of the Department of Agriculture, although possibly inadequate to meet future demands, would be available in making such determinations as would be necessary in carrying out the purposes of such a law.

The proposed legislation would appear to be desirable and to lend far-reaching encouragement to agriculture and benefit to the general public.

Sincerely,

ARTHUR M. HYDE, *Secretary.*

APPENDIX B. TEXT OF BILL

[NOTE.—The following sets forth the text of the bill as it would appear with the committee amendments adopted. The italics indicate the changes to be made in the existing patent laws.]

A BILL To provide for plant patents

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 4884 and 4886 of the Revised Statutes, as amended (U. S. C., title 35, secs. 40 and 31), are amended to read as follows:

"SEC. 4884. Every patent shall contain a short title or description of the invention or discovery, correctly indicating its nature and design, and a grant to the patentee, his heirs or assigns, for the term of seventeen years, of the exclusive right to make, use, and vend the invention or discovery (*including in the case of a plant patent the exclusive right to asexually reproduce the plant*) throughout the United States and the Territories thereof, referring to the specification for the particulars thereof. A copy of the specification and drawings shall be annexed to the patent and be a part thereof.

"SEC. 4886. Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvements thereof, *or who has invented or discovered and asexually reproduced any distinct and new variety of plant other than a tuber-propagated plant*, not known or used by others in this country, before his invention or discovery thereof, and not patented or described in any printed publication in this or any foreign country, before his invention or discovery thereof, or more than two years prior to his application, and not in public use or on sale in this country for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law, and other due proceeding had, obtain a patent therefor."

SEC. 2. Section 4888 of the Revised Statutes, as amended (U. S. C., title 35, sec. 33), is amended by adding at the end thereof the following sentence: "*No plant patent shall be declared invalid on the ground of noncompliance with this section if the description is made as complete as is reasonably possible.*"

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SEC. 3. The first sentence of section 4892 of the Revised Statutes, as amended (U. S. C., title 35, sec. 35), is amended to read as follows:

"SEC. 4892. The applicant shall make oath that he does verily believe himself to be the original and first inventor or discoverer of the art, machine, manufacture, composition, or improvement, *or of the variety of plant*, for which he solicits a patent; that he does not know and does not believe that the same was ever before known or used; and shall state of what country he is a citizen."

SEC. 4. The President may by Executive order direct the Secretary of Agriculture (1) to furnish the Commissioner of Patents such available information of the Department of Agriculture, or (2) to conduct through the appropriate bureau or division of the department such research upon special problems, or (3) to detail to the Commissioner of Patents such officers and employees of the department, as the commissioner may request for the purposes of carrying this Act into effect.

SEC. 5. If any provision of this Act is declared unconstitutional or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and the application thereof to other persons or circumstances shall not be affected thereby.

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Senate History Page
Copyright Information

TOWNSEND, John Gillis, Jr., (1871 - 1964)

Senate Years of Service: 1929-1941
Party: Republican



TOWNSEND, John Gillis, Jr., a Senator from Delaware; born on a farm in Worcester County, Md., near Selbyville, Del., May 31, 1871; attended the rural schools; moved to Selbyville, Sussex County, Del., in 1895 and engaged in banking; also interested in manufacturing and agricultural pursuits; member, State house of representatives 1901-1903; Governor of Delaware 1917-1921; elected as a Republican to the United States Senate in 1928; reelected in 1934 and served from March 4, 1929, to January 3, 1941; unsuccessful candidate for reelection in 1940; chairman, Committee to Audit and Control the Contingent Expenses (Seventy-second Congress); member of the Mount Rushmore National Memorial Commission 1939-1940; trustee of several colleges and universities; resumed banking, agricultural pursuits, and the raising and processing of poultry and vegetables; was a resident of Selbyville, Del.; died in Philadelphia, Pa., April 10, 1964; interment in Red Men's Cemetery, Selbyville, Del.

LEGISLATIVE INTENT SERVICE (800) 666-1917

71ST CONGRESS
2D SESSION

H. R. 11372

IN THE HOUSE OF REPRESENTATIVES

APRIL 3, 1930

Mr. PURNELL introduced the following bill; which was referred to the Committee on Patents and ordered to be printed

A BILL

To provide for plant patents.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 4884 and 4886 of the Revised Statutes, as amended (U. S. C., title 35, secs. 40 and 31), are amended to read as follows:

"SEC. 4884. Every patent shall contain a short title or description of the invention or discovery, correctly indicating its nature and design, and a grant to the patentee, his heirs or assigns, for the term of seventeen years, of the exclusive right to make, use, and vend the invention or discovery (including in the case of a plant patent

71ST CONGRESS H. R. 11371
LEGISLATIVE INTENT SERVICE (800) 666-1917

the exclusive right to asexually reproduce the plant) throughout the United States and the Territories thereof, referring to the specification for the particulars thereof. A copy of the specification and drawings shall be annexed to the patent and be a part thereof.

"SEC. 4886. Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvements thereof, or who has invented or discovered and asexually reproduced any distinct and new variety of plant, other than a tuber-propagated plant, not known or used by others in this country before his invention or discovery thereof, and not patented or described in any printed publication in this or any foreign country before his invention or discovery thereof or more than two years prior to his application, and not in public use or on sale in this country for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law, and other due proceeding had, obtain a patent therefor."

SEC. 2. Section 4888 of the Revised Statutes, as amended (U. S. C., title 35, sec. 33), is amended by adding at the end thereof the following sentence: "No plant patent shall be declared invalid on the ground of noncompliance with

LEGISLATIVE INFORMATION SERVICE (800) 666-1917

this section if the description is made as complete as is reasonably possible."

SEC. 3. The first sentence of section 4892 of the Revised Statutes, as amended (U. S. C., title 35, sec. 35), is amended to read as follows:

"SEC. 4892. The applicant shall make oath that he does verily believe himself to be the original and first inventor or discoverer of the art, machine, manufacture, composition, or improvement, or of the variety of plant, for which he solicits a patent; that he does not know and does not believe that the same was ever before known or used; and shall state of what country he is a citizen."

SEC. 4. The President may by Executive order direct the Secretary of Agriculture (1) to furnish the Commissioner of Patents such available information of the Department of Agriculture, or (2) to conduct through the appropriate bureau or division of the department such research upon special problems, or (3) to detail to the Commissioner of Patents such officers and employees of the department, as the commissioner may request for the purposes of carrying this Act into effect.

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LEGISLATIVE INTENT SERVICE (800) 666-1917

2d Session H. R. 11572

A BILL

To provide for plant patents.

By Mr. PURNELL

APRIL 3, 1930

Referred to the Committee on Patents and ordered to be printed

House Calendar No. 226

71ST CONGRESS
2D SESSION

H. R. 11372

[Report No. 1129]

IN THE HOUSE OF REPRESENTATIVES

APRIL 3, 1930

Mr. PURNELL introduced the following bill; which was referred to the Committee on Patents and ordered to be printed

APRIL 9, 1930

Referred to the House Calendar and ordered to be printed

APRIL 10, 1930

Reported with an amendment, referred to the House Calendar, and ordered to be printed

[Insert the part printed in italic]

A BILL

To provide for plant patents.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 4884 and 4886 of the Revised Statutes, as amended (U. S. C., title 35, secs. 40 and 31), are amended to read as follows:

"SEC. 4884. Every patent shall contain a short title or description of the invention or discovery, correctly indicating its nature and design, and a grant to the patentee, his heirs or assigns, for the term of seventeen years, of the exclusive right to make, use, and vend the inven-

LEGISLATIVE INTENT SERVICE (800) 666-1917

tion or discovery (including in the case of a plant patent the exclusive right to asexually reproduce the plant) throughout the United States and the Territories thereof, referring to the specification for the particulars thereof. A copy of the specification and drawings shall be annexed to the patent and be a part thereof.

"SEC. 4886. Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvements thereof, or who has invented or discovered and asexually reproduced any distinct and new variety of plant, other than a tuber-propagated plant, not known or used by others in this country before his invention or discovery thereof, and not patented or described in any printed publication in this or any foreign country before his invention or discovery thereof or more than two years prior to his application, and not in public use or on sale in this country for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law, and other due proceeding had, obtain a patent therefor."

SEC. 2. Section 4888 of the Revised Statutes, as amended (U. S. C., title 35, sec. 33), is amended by adding at the end thereof the following sentence: "No plant patent shall be declared invalid on the ground of noncompliance with

LEGISLATIVE INTENT SERVICE (800) 666-1917

this section if the description is made as complete as is reasonably possible."

SEC. 3. The first sentence of section 4892 of the Revised Statutes, as amended (U. S. C., title 35, sec. 35), is amended to read as follows:

"SEC. 4892. The applicant shall make oath that he does verily believe himself to be the original and first inventor or discoverer of the art, machine, manufacture, composition, or improvement, or of the variety of plant, for which he solicits a patent; that he does not know and does not believe that the same was ever before known or used; and shall state of what country he is a citizen."

SEC. 4. The President may by Executive order direct the Secretary of Agriculture (1) to furnish the Commissioner of Patents such available information of the Department of Agriculture, or (2) to conduct through the appropriate bureau or division of the department such research upon special problems, or (3) to detail to the Commissioner of Patents such officers and employees of the department, as the commissioner may request for the purposes of carrying this Act into effect.

SEC. 5. Notwithstanding the foregoing provisions of this Act, no variety of plant which has been introduced to the public prior to the approval of this Act shall be subject to patent.

LEGISLATIVE INTENT SERVICE (800) 666-1917

SEC. 6. If any provision of this Act is declared unconstitutional or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and the application thereof to other persons or circumstances shall not be affected thereby.

71st CONGRESS, 2d SESSION

H. R. 11372

[Report No. 1129]

A BILL

To provide for plant patents.

By Mr. PURNELL

APRIL 3, 1930
Referred to the Committee on Patents and ordered to be printed

APRIL 9, 1930
Referred to the House Calendar and ordered to be printed

APRIL 8 (calendar day, APRIL 10), 1930
Reported with an amendment, referred to the House Calendar, and ordered to be printed

LEGISLATIVE INTENT SERVICE (800) 666-1917

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69th Congress–73rd Congress, Dec. 1925–1934

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Committee: House Committee on Patents

Subject descriptors: Aircraft and aircraft industry; Inventions; Aeronautical research; Naulty, Leslie Fairfax

Bills: (71) H.R. 720; (71) H.R. 721

Witness:
Naulty, Edwin Fairfax, inventor, p. 10.

H546-6

PLANT PATENTS
Apr. 9, 1930. 71-2. ii+20 p. Y4.P27/1:P69.

Committee: House Committee on Patents

Subject descriptors: Patents; Horticulture

Bill: (71) H.R. 11372

Witnesses:
Purnell, Fred S., Rep, Ind, p. 2.
Robertson, Thomas E., Commr of Patents, p. 8.

H546-7

REPEAL OF PRICE-FIXING CLAUSE IN COPYRIGHT ACT FOR MECHANICAL REPRODUCTION
Mar. 4, 5, Apr. 2, 1930. 71-2. iv+88 p. Y4.P27/1:M46/2.

Committee: House Committee on Patents

Subject descriptors: Copyright Act; Music; Prices; Recording industry

Bill: (71) H.R. 9639

Witnesses:
Buck, Gene, pres, Amer Soc of Composers, Authors, and Publishers; exec committee member, Authors League of Amer; dir, Amer Dramatists, p. 2.
Paine, John G., chm, Music Publishers Protective Assn, p. 8.
Murphy, Edward H., representing certain music publishers, p. 14.
Burkan, Nathan, gen counsel, Amer Soc of Composers, Authors, and Publishers, p. 15.
Meixell, Harry, gen mgr, Music Industries Chamber of Commerce, p. 30.
Weil, Arthur W., representing Motion Picture Producers and Distributors of Amer, p. 38.
Beattys, George D., representing Aeolian Co, p. 44.
Webster, Bethuel M., Jr., counsel to mechanical music reproduction industry, p. 57.
Chindblom, Carl R., Rep, Ill, p. 65.
Rosenthal, J. C., representing Amer Soc of Composers, Authors, and Publishers, p. 79.
Fenning, Karl, patent atty, p. 85.

H546-8

ROADS
Feb. 18, 1930. 71-2. ii+3 p. Y4.R53/2:M86/2.

Considers legislation on Mount Vernon Memorial Highway bridge alterations and Mount Vernon restaurant concession.

Committee: House Committee on Roads

Subject descriptors: Mount Vernon Memorial Highway; Mount Vernon, Va.; Historic sites; Bridges; Food services and concessions

Bill: (71) H.R. 8810

Witness:
MacDonald, Thomas H., Chief, Bur of Public Roads, p. 2.

H546-9

ROADS
Apr. 11, 1930. 71-2. iv+11 p. Y4.R53/2:So8.

Considers legislation to authorize matching funds for South Carolina flood damaged roads and bridges restoration.

Committee: House Committee on Roads

Subject descriptors: Floods; South Carolina; Federal aid to states; Highways; Bridges

Bills: (71) H.R. 10417; (71) S. 3189

Witnesses:
Hare, Butler B., Rep, SC, p. 1.
Toms, R. E., Engr, Bur of Public Roads, p. 9.

H546-10

ROADS
Apr. 27, 1930. 71-2. ii+9 p. Y4.R53/2:G33.

Considers legislation to authorize USDA to acquire, with Kentucky, Hazard, Ky. bridge.

Committee: House Committee on Roads

Subject descriptors: Hazard, Ky.; Floods; Federal aid to states; Bridges; Department of Agriculture

Bill: (71) H.R. 10037

Witness:
Langley, Katherine, Rep, Ky, p. 1.

H546-11

ROADS
Mar. 26, 1930. 71-2. iv+55 p. Y4.R53/2:H35/16.

Considers legislation to authorize additional funds for roads and trails in national forests.

Committee: House Committee on Roads

Subject descriptors: Federal Highway Act; National forests; Highways; Federal aid to states

Bill: (71) H.R. 10379

Witnesses:
Crail, Joe, Rep, Calif, p. 2.
Hawley, Willis C., Rep, Oreg, p. 2.
Englebright, Harry L., Rep, Calif, p. 7.
Markham, W. C., representing state hwy depts of US, p. 9.
Blood, Henry H., chm, Utah State Hwy Commission; pres, Western Assn of State Hwy Officials, p. 10.
Dern, George H., Gov, Utah, p. 27.
Hill, Samuel B., Rep, Wash, p. 27.
Stuart, R. Y., Chief, Forest Service, p. 28.
Bing, A. E., mgr, research dept, Amer Automobile Assn, p. 39.
Shelton, J. E., gen mgr, Amer Automobile Assn, p. 40.
French, Burton L., Rep, Idaho, p. 41.
Summers, John W., Rep, Wash, p. 45.
MacDonald, Thomas H., Chief, Bur of Public Roads, p. 47.
Leavitt, Scott, Rep, Mont, p. 53.
Eaton, William R., Rep, Colo, p. 55.

H546-12

ROADS
Apr. 11, 1930. 71-2. iv+12 p. Y4.R53/2:G29.

Considers legislation authorizing matching funds for Georgia flood damaged roads.

Committee: House Committee on Roads

Subject descriptors: Georgia; Floods; Federal aid to states; Bridges

Bills: (71) H.R. 10382; (71) H.R. 11549

Witnesses:
Boykin, L. E., Div of Laws and Contracts, Bur of Public Roads, p. 2.
Vinson, Carl, Rep, Ga, p. 2.
Toms, R. E., Bur of Public Roads, p. 6.

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Congressional Record

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OF

THE UNITED STATES
OF AMERICA

VOLUME LXXII—PART 12

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(Pages 1 to 666)

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UNITED STATES
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Mr. Sullivan of Pennsylvania; Committee on Pensions, 6341.

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Mr. Swing; Committee on Invalid Pensions, 6341.

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Mr. Brunner; Committee on Interstate and Foreign Commerce, 6396.

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H. R. 11373—To amend the civil service retirement act of July 3, 1926, as amended, to permit continuation in the Government service in certain cases.
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OF THE

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OF

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OF AMERICA

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(Pages 5663 to 6818)



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UTAH

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John F. Justesen, Spring City.

HOUSE OF REPRESENTATIVES

THURSDAY, *April 3, 1930*

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

Gracious Lord and our God, O that the blessing of Thy love and mercy might fill us with hope and peace, that in the midst of labor and imperfection we might discern the thought of our beneficent Heavenly Father. O Lord God, stir such thoughts in us. More and more reveal unto each one of us the inner life of the soul and cause it to send forth resounding joy and thanksgiving. We need Thee; vouchsafe to-day Thy presence to everyone. May we hold fast to purity, temperance, truth, and duty. We thank Thee for the surpassing wonder of Thy compassion and for Thy care and patience from day to day. Amen.

The Journal of the proceedings of yesterday was read and approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Craven, its principal clerk, announced that the Senate had passed without amendment bills and a joint resolution of the House of the following titles:

H. R. 238. An act granting the consent of Congress to the State of North Dakota to construct, maintain, and operate a free highway bridge across the Missouri River at or near Fort Yates, N. Dak.;

H. R. 563. An act for the relief of Frank Yarlott;

H. R. 4604. An act to provide for the recording of the Indian sign language through the instrumentality of Maj. Gen. Hugh L. Scott, retired, and for other purposes;

H. R. 6337. An act granting the consent of Congress to George H. Glover to construct a private highway bridge across Flanders Bay, Hancock County, Me., from the mainland at Sorrento to Soward Island;

H. R. 6844. An act to grant the consent of Congress to the Highway Department of the State of Tennessee to construct a bridge across the Hatchie River on the Boliver-Jackson Road near the town of Bolivar, in Hardeman County, Tenn.;

H. R. 7007. An act granting the consent of Congress to the State of Massachusetts to construct, maintain, and operate a free highway bridge across the Merrimack River at or near Tyngsboro, Mass.;

H. R. 7566. An act granting the consent of Congress to the Highway Department of the State of Tennessee to construct a bridge across the Holston River on projected Tennessee Highway No. 9, in Knox County, Tenn.;

H. R. 7580. An act authorizing the county of Lee, in the State of Iowa, and Wayland Special Road District, in the county of Clark and State of Missouri, to construct, maintain, and operate a free highway bridge across the Des Moines River at or near St. Francisville, Mo.;

H. R. 7829. An act granting the consent of Congress to the Great Southern Lumber Co., of Bogalusa, La., to construct, maintain, and operate a railroad bridge across the Bogue Chitto River in or near township 3 south, range 11 east, in the parish of Washington, State of Louisiana;

H. R. 7964. An act to authorize the issuance of a fee patent for block 23 within the town of Lac du Flambeau, Wis., in favor of the local public-school authorities;

H. R. 9038. An act granting the consent of Congress to the State of New York to reconstruct, maintain, and operate a free highway bridge across the West Branch of the Delaware River at or near Beerston, N. Y.; and

H. J. Res. 283. Joint resolution making additional appropriations for certain expenses under the Department of Justice for the remainder of the fiscal year 1930.

The message also announced that the Senate had passed, with an amendment, in which the concurrence of the House is requested, a bill of the House of the following title:

H. R. 6153. An act authorizing the President to appoint a commission to study and report on the conservation and administration of the public domain.

The message also announced that the Senate had passed bills of the following titles, in which the concurrence of the House is requested:

S. 962. An act to amend and reenact subdivision (a) of section 209 of the transportation act, 1920;

S. 1469. An act to quitclaim certain lands in Santa Fe County, N. Mex.;

S. 2245. An act for the relief of A. H. Cousins;

S. 2864. An act for the relief of certain lessees of public lands in the State of Wyoming under the act of February 25, 1920, as amended; and

S. 3231. An act to compensate Harriet C. Holaday.

The message also announced that the Senate insists upon its amendments to the bill (H. R. 2667) entitled "An act to provide revenue, to regulate commerce with foreign countries, to encourage the industries of the United States, to protect American labor, and for other purposes," disagreed to by the House; agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. SMOOT, Mr. WATSON, Mr. SHORTRIDGE, Mr. SIMMONS, and Mr. HARRISON to be the conferees on the part of the Senate.

PERMISSION TO ADDRESS THE HOUSE

Mr. CRAMTON. Mr. Speaker, I ask unanimous consent that at the completion of the address to-day by the gentleman from Texas [Mr. PATMAN] I be permitted to address the House for five minutes.

The SPEAKER. In view of the fact that by special order of the House Calendar Wednesday business is made in order to-day, it is the view of the Chair that the order affecting Mr. PATMAN is automatically canceled.

Mr. CRAMTON. Then I make this request, that at the completion of the business brought to the House to-day by the Committee on Interstate and Foreign Commerce, I be permitted to address the House for five minutes. I make that request, because I am informed that the business of the committee will not take a full day.

The SPEAKER. The gentleman from Michigan asks unanimous consent that at the completion of the business called up to-day by the Committee on Interstate and Foreign Commerce, he be permitted to address the House for five minutes. Is there objection?

There was no objection.

Mr. PATMAN. Mr. Speaker, I make a similar request, after the gentleman from Michigan has concluded his address, for 30 minutes.

The SPEAKER. The gentleman from Texas asks unanimous consent that at the completion of the address of the gentleman from Michigan [Mr. CRAMTON] he be permitted to address the House for 30 minutes. Is there objection?

There was no objection.

Mr. LINTHICUM. And, Mr. Speaker, if there be sufficient time left, I ask unanimous consent to be permitted to address the House for 10 minutes.

The SPEAKER. The gentleman from Maryland asks unanimous consent that after the completion of the address of the gentleman from Texas he be permitted to address the House for 10 minutes. Is there objection?

There was no objection.

CALENDAR WEDNESDAY BUSINESS

The SPEAKER. This being the day on which, by the order of the House, Calendar Wednesday business is in order, the Clerk will call the committees.

The Clerk called the Committee on Interstate and Foreign Commerce.

ALLOWANCES FOR OFFICERS IN THE FOREIGN COMMERCE SERVICE

Mr. PARKER. Mr. Speaker, I call up the bill (H. R. 10653) to amend an act entitled "An act to establish in the Bureau of Foreign and Domestic Commerce of the Department of Commerce, a foreign commerce service of the United States, and for other purposes," approved March 3, 1927, which I send to the desk.

The SPEAKER. The gentleman from New York calls up the bill H. R. 10653. This bill is on the Union Calendar. The House will automatically resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the bill, and the gentleman from Michigan [Mr. HOOPER] will kindly take the chair.

Accordingly the House resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the bill H. R. 10653, with Mr. HOOPER in the chair.

The Clerk read the title of the bill.

Mr. GARNER. Mr. Chairman, I take it that this bill has the unanimous report of the gentleman's committee?

Mr. PARKER. My impression is that it has.

Mr. GARNER. I do not want to make a point of no quorum or anything of that kind, but I would like to have some time before general debate is closed on the bill. The gentleman from

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ADJOURNMENT

Mr. PARKER. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 4 o'clock and 28 minutes p. m.) the House adjourned until to-morrow, Friday, April 4, 1930, at 12 o'clock noon.

COMMITTEE HEARINGS

Mr. TILSON submitted the following tentative list of committee hearings scheduled for Friday, April 4, 1930, as reported to the floor leader by clerks of the several committees:

COMMITTEE ON APPROPRIATIONS

(10.30 a. m.)

Legislative appropriation bill.

COMMITTEE ON THE POST OFFICE AND POST ROADS—SUBCOMMITTEE NO. 9

(10 a. m.)

To increase the balance to the credit of any one person in a postal-savings depository from $2,500 to $5,000 (H. R. 7407).

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE—SUBCOMMITTEE ON LIGHTHOUSES

(10.30 a. m.)

To consider proposed legislation concerning lighthouses.

COMMITTEE ON WORLD WAR VETERANS' LEGISLATION—SUBCOMMITTEE ON HOSPITALS

(10.30 a. m.)

To consider proposals for the establishment of veterans' hospitals in Virginia and West Virginia.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of Rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

388. A letter from the Secretary of War, transmitting a draft of a bill to authorize the sale of a certain tract of land located at Battery Cove, near the city of Alexandria, Va.; to the Committee on Military Affairs.

389. A letter from the Secretary of War, transmitting a draft of a bill to amend the act approved February 25, 1929, entitled "An act to authorize appropriations for construction at military posts"; to the Committee on Military Affairs.

390. A letter from the Acting Secretary of State, transmitting a copy of a letter from the secretary general of the International Parliamentary Conference of Commerce, extending an invitation to the Congress to be represented at the sixteenth plenary assembly of the conference, to be held at Madrid beginning the 6th of October, 1930; to the Committee on Foreign Affairs.

391. A letter from the Secretary of War, transmitting report from the Chief of Engineers on preliminary examination and survey of Bradfords Bay, Accomac County, Va.; to the Committee on Rivers and Harbors.

392. A letter from the Secretary of War, transmitting report from the Chief of Engineers on preliminary examination of Colorado River, Tex., with a view to the control of its floods; to the Committee on Flood Control and ordered to be printed with illustrations.

393. A letter from the Secretary of War, transmitting report of the Chief of Engineers on preliminary examination of James River, Va., with a view to the control of the floods; to the Committee on Flood Control.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of Rule XIII,

Mr. McLEOD: Committee on the District of Columbia. H. R. 10554. A bill to establish a national Lincoln museum and veterans' headquarters in the building known as Ford's Theater; without amendment (Rept. No. 1056). Referred to the Committee of the Whole House on the state of the Union.

Mr. ELLIOTT: Committee on Public Buildings and Grounds. H. R. 11004. A bill to authorize the extension of the natural history building of the United States National Museum; without amendment (Rept. No. 1057). Referred to the Committee of the Whole House on the state of the Union.

Mrs. KAHN: Committee on Military Affairs. H. R. 2755. A bill to increase the efficiency of the Veterinary Corps of the Regular Army; without amendment (Rept. No. 1061). Referred to the Committee of the Whole House on the state of the Union.

Mr. HOOPER: Committee on the Library. H. R. 9412. A bill to provide for a memorial to Theodore Roosevelt for his leadership in the cause of forest conservation; with amendment (Rept. No. 1064). Referred to the Committee of the Whole House on the state of the Union.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS

Under clause 2 of Rule XIII,

Mr. SPEAKS: Committee on Military Affairs. H. R. 474. A bill for the relief of Samuel B. Faulkner; with amendment (Rept. No. 1058). Referred to the Committee of the Whole House.

Mr. WAINWRIGHT: Committee on Military Affairs. H. R. 849. A bill for the relief of Edward H. Cotcher; without amendment (Rept. No. 1059). Referred to the Committee of the Whole House.

Mr. SPEAKS: Committee on Military Affairs. H. R. 8723. A bill for the relief of Rachel Levy; without amendment (Rept. No. 1060). Referred to the Committee of the Whole House.

Mr. SINCLAIR: Committee on War Claims. H. R. 5982. A bill for the relief of Guy Goodin; without amendment (Rept No. 1063). Referred to the Committee of the Whole House.

ADVERSE REPORTS

Under clause 2 of Rule XIII,

Mr. SINCLAIR: Committee on War Claims. H. R. 5194. A bill for the relief of Ephraim A. Schwarzenberg (Rept. No. 1062). Laid on the table.

CHANGE OF REFERENCE

Under clause 2 of Rule XXII, committees were discharged from the consideration of the following bills, which were referred as follows:

A bill (H. R. 7547) for the relief of Mrs. J. H. Greene, Anna Harvey, and Mrs. S. E. Elmore; Committee on Claims discharged, and referred to the Committee on War Claims.

A bill (H. R. 9254) granting a pension to Sarah A. Linnehan; Committee on Pensions discharged, and referred to the Committee on Invalid Pensions.

PUBLIC BILLS AND RESOLUTIONS

Under clause 3 of Rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. PARKER: A bill (H. R. 11363) amending section 17 of the interstate commerce act; to the Committee on Interstate and Foreign Commerce.

Also, a bill (H. R. 11364) to amend paragraph (4) of section 15 of the interstate commerce act as amended; to the Committee on Interstate and Foreign Commerce.

By Mrs. RUTH PRATT: A bill (H. R. 11365) to provide books for the adult blind; to the Committee on the Library.

By Mr. ROMJUE: A bill (H. R. 11366) to provide for the establishment of a school for the training of policemen and policewomen within the District of Columbia; to the Committee on the District of Columbia.

By Mr. HARE: A bill (H. R. 11367) to provide for certain public works at Parris Island, S. C.; to the Committee on Naval Affairs.

By Mr. MAAS: A bill (H. R. 11368) to fix the annual compensation of the secretary of the Territory of Alaska; to the Committee on the Territories.

By Mr. GLOVER: A bill (H. R. 11369) to amend the agricultural act approved June 15, 1929; to the Committee on Agriculture.

By Mr. LEAVITT (by departmental request): A bill (H. R. 11370) to authorize the use of a right of way by the United States Indian Service through the Casa Grande Ruins National Monument in connection with the San Carlos irrigation project; to the Committee on Indian Affairs.

By Mr. EATON of New Jersey: A bill (H. R. 11371) to provide living quarters, including heat, fuel, and light, for civilian officers and employees of the Government stationed in foreign countries; to the Committee on Foreign Affairs.

By Mr. PURNELL: A bill (H. R. 11372) to provide for plant patents; to the Committee on Patents.

By Mr. BOYLAN: A bill (H. R. 11373) to amend the civil service retirement act of July 3, 1926, as amended, to permit continuation in the Government service in certain cases; to the Committee on the Civil Service.

By Mr. ZIHLMAN: A bill (H. R. 11374) to provide for special assessments for the paving of roadways, laying curbs, and gutters; to the Committee on the District of Columbia.

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X re HR 11372

Congressional Record

PROCEEDINGS AND DEBATES

OF THE

SECOND SESSION OF THE SEVENTY-FIRST CONGRESS

OF

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Congressional Record

PROCEEDINGS AND DEBATES OF THE SEVENTY-FIRST CONGRESS SECOND SESSION

SENATE

THURSDAY, *April 10, 1930*

(Legislative day of Tuesday, April 8, 1930)

The Senate met at 12 o'clock meridian, on the expiration of the recess.

The VICE PRESIDENT. The Senate will receive a message from the House of Representatives.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Chaffee, one of its clerks announced that the House has passed a bill (H. R. 8299) authorizing the establishment of a national hydraulic laboratory in the Bureau of Standards of the Department of Commerce and the construction of a building therefor, in which it requested the concurrence of the Senate.

Mr. NORRIS. Mr. President, I desire to ask a question about the House bill which has just been brought to the Senate. Is the Chair about to refer it to some committee?

The VICE PRESIDENT. The bill will be referred to the appropriate committee in due course.

Mr. NORRIS. Before the Chair takes any action to refer the bill I would like to suggest that under a recent precedent established by the Speaker of the House of Representatives the Chair ought to retain the bill on his desk for 10 months before he refers it.

CALL OF THE ROLL

Mr. FESS. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

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

Allen	Glass	McCulloch	Steck
Ashurst	Glenn	McKellar	Steiwer
Baird	Goff	McNary	Stephens
Black	Goldsborough	Norbeck	Sullivan
Blaine	Gould	Norris	Swanson
Borah	Greene	Nye	Thomas, Idaho
Brookhart	Hale	Overman	Thomas, Okla.
Broussard	Harris	Phipps	Townsend
Capper	Harrison	Pine	Trammell
Caraway	Hatfield	Pittman	Tydings
Connally	Hayden	Ransdell	Vandenberg
Copeland	Hebert	Robinson, Ind.	Wagner
Couzens	Heflin	Robsion, Ky.	Walsh, Mass.
Dill	Howell	Sheppard	Walsh, Mont.
Fess	Johnson	Shipstead	Watson
Frazier	Jones	Shortridge	Wheeler
George	Kean	Simmons	
Gillett	Kendrick	Smoot	

Mr. TOWNSEND. I desire to announce that my colleague the senior Senator from Delaware [Mr. HASTINGS] is unavoidably absent. I will let this announcement stand for the day.

Mr. FESS. I wish to announce that the Senator from North Dakota [Mr. FRAZIER], the Senator from Oklahoma [Mr. PINE], and the Senator from Montana [Mr. WHEELER] are detained in the Committee on Indian Affairs.

I also wish to announce that the Senator from Nevada [Mr. ODDIE] and the Senator from Connecticut [Mr. WALCOTT] are absent on official business.

Mr. BLAINE. I desire to announce that my colleague [Mr. LA FOLLETTE] is unavoidably absent. I ask that this announcement may stand for the day.

Mr. SHIPSTEAD. I wish to announce that my colleague the junior Senator from Minnesota [Mr. SCHALL] is unavoidably absent. I will let this announcement stand for the day.

Mr. SHEPPARD. I wish to announce that the Senator from Missouri [Mr. HAWES], the Senator from Florida [Mr. FLETCHER], the Senator from Utah [Mr. KING], and the Senator from South Carolina [Mr. SMITH] are all detained from the Senate by illness.

I also wish to announce that the junior Senator from Tennessee [Mr. BROCK] and the junior Senator from South Carolina [Mr. BLEASE] are absent because of illness in their families.

I further desire to announce that the Senator from Arkansas [Mr. ROBINSON] and the Senator from Pennsylvania [Mr. REED] are in London attending the naval conference.

Mr. NORBECK. I wish to announce that my colleague [Mr. MCMASTER] is unavoidably absent from the city. I ask that this announcement may stand for the day.

The VICE PRESIDENT. Seventy Senators have answered to their names. A quorum is present.

UNEMPLOYMENT

Mr. WAGNER. Mr. President, last week the Senate made a special order of two bills which I had introduced dealing with the subject of unemployment. A third companion bill was reported by the Committee on Commerce this morning. I ask unanimous consent that that be included in the special order for April 15.

Mr. FESS. Mr. President, will the Senator please omit that request at this time? I have a communication from some friends calling my attention to the third bill of the Senator, and I desire to make an examination of the papers. I have just sent for the communication.

The VICE PRESIDENT. There is objection.

Mr. WAGNER. I know the nature of the opposition.

Mr. FESS. I do not know what it is.

Mr. WAGNER. Would there be any objection——

Mr. FESS. The communication is on my desk in my office. I have sent for it, and I will have it here in just a few minutes. Then the Senator may renew the request afterwards.

The VICE PRESIDENT. There is objection.

PHILIPPINE INDEPENDENCE

Mr. DILL obtained the floor.

Mr. BORAH. Mr. President——

The VICE PRESIDENT. Does the Senator from Washington yield to the Senator from Idaho?

Mr. DILL. For what purpose?

Mr. BORAH. I desire to ask a question.

Mr. DILL. I yield for that purpose.

Mr. BORAH. I wish to ask the Senator from Michigan [Mr. VANDENBERG], as the chairman of the Committee on Territories and Insular Affairs [Mr. BINGHAM] is not present, what is the status of the Philippine independence legislation?

Mr. VANDENBERG. Mr. President, as I understand the situation, the Committee on Territories and Insular Affairs voted to await the return of the Secretary of State from London before making a final report. The committee has completed its hearings in all respects except as to the departments of the Government. I was not present at the meeting at which this particular action was taken, but it is my understanding that the committee voted to withhold a final report until the Secretary of State could be heard.

Mr. BORAH. Of course, that means we are not going to have any legislation at this session.

Mr. VANDENBERG. If that is what it means I regret it just as much as the Senator from Idaho, because I am very keenly anxious that something should be done.

Mr. BORAH. We had a practical agreement here weeks and weeks ago that the matter should be brought out in time for disposition at this session. It occurs to me that some one has been engineering against a compliance with that agreement.

Mr. VANDENBERG. I trust the Senator is not suspecting me of that interest, because I am the author of one of the bills which I am very eager to have reported out.

Mr. BORAH. I am not implying that the Senator is involved in it, but the chairman of the committee is not here, and I leave in the RECORD what I have said.

Mr. WALSH of Montana. Mr. President——

The VICE PRESIDENT. The Senator from Washington [Mr. DILL] has the floor. Does he yield to the Senator from Montana?

Mr. DILL. I yield.

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REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of Rule XIII,

Mr. PURNELL: Committee on Rules. H. Res. 205. A resolution providing for the consideration of H. R. 10381, a bill to amend the World War veterans' act, 1924, as amended; without amendment (Rept. No. 1117). Referred to the House Calendar.

Mr. STEVENSON: Committee on Printing. H. Con. Res. 29. A concurrent resolution to print 3,000 additional copies of House Document No. 328, Seventieth Congress, first session, entitled "Historical Statements Concerning the Battle of King's Mountain and the Battle of the Cowpens in South Carolina," with illustrations (Rept. No. 1118). Ordered to be printed.

Mr. McKEOWN: Committee on the Judiciary. H. R. 6347. A bill to amend the act establishing the western judicial district of Oklahoma; with amendment (Rept. No. 1121). Referred to the House Calendar.

Mr. HOGG: Committee on the Post Office and Post Roads. H. R. 8806. A bill to authorize the Postmaster General to impose fines on steamship and aircraft carriers transporting the mails beyond the borders of the United States for unreasonable and unnecessary delays and for other delinquencies; with amendment (Rept. No. 1122). Referred to the House Calendar.

Mr. PARKER: Committee on Interstate and Foreign Commerce. S. 2719. An act granting the consent of Congress to the superintendent of public works of the State of New York to construct, maintain, and operate a free highway bridge across the Hudson River at the southerly extremity of the city of Troy; without amendment (Rept. No. 1123). Referred to the House Calendar.

Mr. MAPES: Committee on Interstate and Foreign Commerce. S. 4027. An act to legalize a bridge across the American Channel of the Detroit River leading from the mainland to Grosse Isle, Mich., and about 16 miles below the city of Detroit, Mich.; without amendment (Rept. No. 1124). Referred to the House Calendar.

Mr. HOOPER: Committee on the Library. H. R. 5271. A bill authorizing the Secretary of the Interior to acquire land and erect a monument at the site near Crookston, in Polk County, Minn., to commemorate the signing of a treaty on October 2, 1863, between the United States of America and the Chippewa Indians; without amendment (Rept. No. 1126). Referred to the Committee of the Whole House on the state of the Union.

Mr. HAUGEN: Committee on Agriculture. H. R. 11514. A bill to define preserves, jam, jelly, and apple butter, to provide standards therefor, and to amend the food and drugs act of June 30, 1906, as amended; without amendment (Rept. No. 1127). Referred to the House Calendar.

Mr. RANSLEY: Committee on Military Affairs. H. R. 9843. A bill to enable the Secretary of War to accomplish the construction of approaches and surroundings, together with the necessary adjacent roadways, to the Tomb of the Unknown Soldier in the Arlington National Cemetery, Va.; without amendment (Rept. No. 1128). Referred to the House Calendar.

Mr. VESTAL: Committee on Patents. H. R. 11372. A bill to provide for plant patents; with amendment (Rept. No. 1129). Referred to the House Calendar.

Mr. REECE: Committee on Military Affairs. S. 3498. An act to aid the Grand Army of the Republic in its Memorial Day services May 30, 1930; without amendment (Rept. No. 1131). Referred to the Committee of the Whole House on the state of the Union.

Mr. BOWMAN: Committee on the District of Columbia. S. 3425. An act to amend the act of Congress approved March 1, 1929, entitled "An act to provide for the construction of a children's tuberculosis sanatorium"; with amendment (Rept. No. 1132). Referred to the Committee of the Whole House on the state of the Union.

Mr. CARTWRIGHT: Committee on Indian Affairs. H. R. 9939. A bill authorizing the Secretary of the Interior to lease any or all of the remaining tribal lands of the Choctaw and Chickasaw Nations for oil and gas purposes, and for other purposes; with amendment (Rept. No. 1133). Referred to the House Calendar.

Mr. LUCE: Committee on the Library. H. R. 11433. A bill to amend the act entitled "An act to provide for the acquisition of certain property in the District of Columbia for the Library of Congress, and for other purposes," approved May 21, 1928, relating to the condemnation of land; without amendment (Rept. No. 1134). Referred to the House Calendar.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS

Under clause 2 of Rule XIII,

Mrs. LANGLEY: Committee on Claims. H. R. 1712. A bill for the relief of the heirs of Jacob Gussin; with amendment (Rept. No. 1119). Referred to the Committee of the Whole House.

Mr. DOXEY: Committee on Claims. H. R. 2170. A bill for the relief of Clyde Cornish; with amendment (Rept. No. 1120). Referred to the Committee of the Whole House.

Mr. COCHRAN of Pennsylvania: Committee on Military Affairs. H. R. 4595. A bill for the relief of Maurice J. O'Leary; without amendment (Rept. No. 1125). Referred to the Committee of the Whole House.

Mr. WURZBACH: Committee on Military Affairs. H. R. 6264. A bill to authorize the Secretary of War to donate a bronze cannon to the town of Avon, Mass.; without amendment (Rept. No. 1130). Referred to the Committee of the Whole House.

CHANGE OF REFERENCE

Under clause 2 of Rule XXII, the Committee on Ways and Means was discharged from the consideration of the bill (H. R. 11256) for the relief of Shrader Drug Co., and the same was referred to the Committee on Claims.

PUBLIC BILLS AND RESOLUTIONS

Under clause 3 of Rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. CLANCY: A bill (H. R. 11545) to provide for the immediate payment to veterans of the face value of their adjusted service certificates; to the Committee on Ways and Means.

By Mr. PATTERSON: A bill (H. R. 11546) authorizing the construction of public buildings at West Point, Ga., and Lanett, Ala.; to the Committee on Public Buildings and Grounds.

By Mr. WARREN: A bill (H. R. 11547) to provide for the erection of a marker or tablet to the memory of Joseph Hewes, signer of the Declaration of Independence, member of the Continental Congress, and patriot of the Revolution, at Edenton, N. C.; to the Committee on the Library.

By Mr. WILSON: A bill (H. R. 11548) to amend the act entitled "An act for the control of floods on the Mississippi River and its tributaries, and for other purposes," approved May 15, 1928; to the Committee on Flood Control.

By Mr. BRAND of Georgia: A bill (H. R. 11549) for the relief of the State of Georgia for damage to and destruction of roads and bridges by floods; to the Committee on Roads.

By Mr. CARTER of Wyoming: A bill (H. R. 11550) to add certain lands to the Ashley National Forest in the State of Wyoming; to the Committee on the Public Lands.

By Mr. MILLIGAN: A bill (H. R. 11551) granting pensions to certain soldiers, sailors, and marines of the World War, to certain widows, minor children, and helpless children of such soldiers, sailors, and marines, and for other purposes; to the Committee on Pensions.

By Mr. LUDLOW: Joint resolution (H. J. Res. 298) creating a commission on centralization; to the Committee on Rules.

By Mr. MAAS: Joint resolution (H. J. Res. 299) to provide an annual appropriation to meet the quota of the United States toward the expenses of the International Technical Committee of Aerial Legal Experts; to the Committee on Foreign Affairs.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of Rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. ABERNETHY: A bill (H. R. 11552) granting a pension to Ada Vermont Lincoln; to the Committee on Pensions.

By Mr. ALLGOOD: A bill (H. R. 11553) granting a pension to Nancy A. Watson; to the Committee on Invalid Pensions.

By Mr. BUCKBEE: A bill (H. R. 11554) granting an increase of pension to Matilda A. E. Wilson; to the Committee on Invalid Pensions.

By Mr. GAMBRILL: A bill (H. R. 11555) granting a pension to Rachel E. Stewart; to the Committee on Pensions.

By Mr. CORNING: A bill (H. R. 11556) granting an increase of pension to Almira E. Van Benscoten; to the Committee on Invalid Pensions.

By Mr. COYLE: A bill (H. R. 11557) granting an increase of pension to Emma Lewis; to the Committee on Invalid Pensions.

By Mr. COLE: A bill (H. R. 11558) providing for the disposition of orders, medals, decorations, diplomas, certificates, and gifts now deposited in the Department of State, tendered by foreign governments to certain retired, resigned, or deceased officers of the United States; to the Committee on Foreign Affairs.

By Mr. CHALMERS: A bill (H. R. 11559) for the refund of $455.10 to be paid to Ida L. Randels, guardian of Meredith L. Randels, for premiums paid on a converted insurance policy; to the Committee on Claims.

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Congressional Record

PROCEEDINGS AND DEBATES

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HOUSE OF REPRESENTATIVES

MONDAY, *May 5, 1930*

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

Blessed Father of us all, we thank Thee for the open door of this new week. How wonderful the knowledge that Thou hast never left nor forsaken Thy children. In light and in darkness, in pleasure and in pain Thou art there. May we approach our duties with that understanding that is wrought in wisdom and knowledge. If in our lives there is hate or any lack of consideration for others, O may they be dismissed as the things of the night. Bring us all to the high level of our truest and best manhood. In this Chamber, whose walls resound so much with the history of the Republic, may we be in deed and in truth Thy servants ministering in sacred things. Through Christ our Savior. Amen.

The Journal of the proceedings of Saturday, May 3, 1930, was read and approved.

PERMISSION FOR A COMMITTEE TO SIT DURING THE SESSIONS OF THE HOUSE

Mr. COLTON. Mr. Speaker, I ask unanimous consent that to-morrow afternoon the Committee on the Public Lands may sit during the session of the House.

The SPEAKER. The gentleman from Utah asks unanimous consent that to-morrow afternoon the Committee on the Public Lands may sit during the session of the House. Is there objection?

Mr. COLTON. I have conferred with the ranking Democratic member of the committee, and it is agreeable to him.

The SPEAKER. Is there objection?

There was no objection.

REREFERENCE OF A RESOLUTION

Mr. COLTON. Mr. Speaker, I ask unanimous consent that Senate Joint Resolution 56, which was referred to the Committee on the Public Lands, be rereferred to the Committee on Claims. I have conferred with the chairman of that committee, and it is agreeable to him.

The SPEAKER. The gentleman from Utah asks unanimous consent that Senate Joint Resolution No. 56 be rereferred from the Committee on Public Lands to the Committee on Claims. Is there objection?

There was no objection.

REREFERENCE OF A BILL

Mr. FINLEY. Mr. Speaker, I ask unanimous consent that H. R. 11231, which was referred to the Committee on Rivers and Harbors, be transferred to and considered by the Committee on Flood Control. I have ascertained that is agreeable to the chairmen of both committees and to the ranking Democratic members of both committees.

The SPEAKER. The gentleman from Kentucky asks unanimous consent that House bill 11231, which was referred to the Committee on Rivers and Harbors, be rereferred to the Committee on Flood Control. Is there objection?

Mr. RANKIN. Mr. Speaker, reserving the right to object, did the gentleman say he had consulted the ranking minority members?

Mr. FINLEY. Yes; on both committees.

Mr. EDWARDS. Who was consulted on the Democratic side?

Mr. FINLEY. Both of the ranking members, the gentleman from Louisiana [Mr. WILSON] and the gentleman from Texas [Mr. MANSFIELD].

The SPEAKER. Is there objection?

There was no objection.

INTERNATIONAL FINANCE

Mr. McFADDEN. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD by printing an address delivered by myself in Philadelphia last Friday.

The SPEAKER. The gentleman from Pennsylvania asks unanimous consent to extend his remarks in the RECORD by printing an address delivered by himself in Philadelphia last Friday. Is there objection?

There was no objection.

Mr. McFADDEN. Mr. Speaker, under leave to extend my remarks in the RECORD, I present an address delivered by me at the thirty-fourth annual meeting of the American Academy of Political and Social Science, Bellevue Stratford Hotel, Philadelphia, Pa., May 2, 1930, as follows:

Nations evolved from fragments of emotional political organisms, such as the people of the United States, are bound by the principles and nature of their organic being. Subject to inherited characteristics they respond usually to the explosive forces of their racial origins. Thus, the phenomena of the domestic yearning for recognition of our make-believe devotion to European aspirations for reciprocal attentions is explained. It is the mutual attraction of mutually dissatisfied egoists mutually engaged in discovering resemblances that maintain perfect harmony when kept apart.

This clan instinct, so apparent, that seems like the love of angels in a Wagnerian opera, and which repels by the same energies which attracts, is the harmonizing discord that draws deaf Americans toward their European origins while impelling the full-orbed and self-sustaining individualists to remain apart. The family tie that binds the strongest parts is, consequently, but a mutual disposition among all parts to sympathize with the imperfections of the rest. We see Europe precisely as Europe sees us. The blind neither see nor are seen. Their emotional hysteria only is heard.

This explains why the diseased of Europe are prone to believe that our local diseases are men and women of real flesh and blood. They mistake the delusions which afflict the weak; and, blind to the deformities of our insane, imagine the United States as a paradise for propagandists and quacks.

Knowing the United States to be a mosaic formed from each sadistic fragment of the 33 feudal units which broke up into mutually hating states during the religious saturnalia known as the Thirty Years' War, knowing that the most poisonous of these religious warriors fled in droves from neighbors they despised to North America during this religious hurricane from 1618 to 1648, knowing that the fanaticism and self-interest promoted by these emotional volcanoes, which emitted such petty sizzling, and explosive nationalities as cooled down into organized hostilities would follow the migration hither, each puny despot who sprouted from the treaty of Westphalia kept his eye on his departing subjects with feelings akin to those of the rival Carthaginians who hoped their colonists would perish if their expeditions proved unprofitable to the oligarchy which exiled them. It was a splendid bond of mutual forbearance that thus united us to the "mother country" of our sadistic origins!

Yet so self-approving grew this maternal hope for our well-being that it exploded into epic majesty when Pitt had himself carried into the House of Commons to denounce with his last breath the impudence of Lord North for presuming to recognize the United Colonies as a free and independent Republic. Beaten, yet remembering the religious fervor which animated Tory loyalists amongst us—whose descendants would in time repatriate America—the dying statesman gave utterance to this recipe for our recapture:

"Be to their faults a little blind,
Be to their virtues very kind,
But clamp your padlock on their mind,
And thus you will subdue them."

How well this worked during the World War is too well known to require extended amplification. We became volcanic. So sure of our return to the "mother country" were British statesmen that their Premier wrote Lord Reading, at Washington, that "Colonel House can better be spared in Washington than in London," when Britain was planning to fill up its decimated ranks with our young American soldiers in order to avoid drafting Englishmen for such defensive purposes! He depended on Colonel House, the personal adviser of our President, to help him transform this free Republic into a source of cannon fodder for "the mother country!" So perfectly repatriated did he esteem this eminent American citizen that he could not think of him otherwise than as a useful subject who could no longer be "spared" from the ranks of other Americans in London who had grown "more royal than the King," who was fighting to make the whole world "safe for democracy!"

After the United States had involved itself in a debt of over $50,000,000,000 in saving England from the fate of Carthage, and before Woodrow Wilson had recovered from the surprise element in the treaty of Versailles, we find Lloyd George writing to our President to cancel Great Britain's debt to the people of the United States, in which letter he threatened, if we failed to do so, that—

"It would not fail to estrange and eventually embitter the relations between the American and British peoples, with calamitous results to the future of the world. * * * I would like to make it plain that * * * Great Britain * * * can not bind itself by any arrangement which would prejudice the working of any interallied arrangement which may be reached in the future."

He doubtless had in mind the naval victory Britain would gain at the Washington disarmament conference and the interallied financial victory to be achieved in the Bank for International Settlements which he would not "prejudice" in its war upon our financial resources after the debt was canceled!

To sober and enlightened minds it would seem that such a threat by any nation, or by the whole body of our European debtors, would inflame the patriotism and inspire the dignity of American bankers to resent such an abuse of our philanthropy and patience. For it is as plain as language can make it that the United States is threatened

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receive the highest pay of his rank, and in case of the death, resignation, absence, or sickness of the Chief of Naval Operations, shall, until otherwise directed by the President, as provided by section 179 of the Revised Statutes, perform the duties of such chief until his successor is appointed or such absence or sickness shall cease.

With a committee amendment as follows:

On page 1, line 4, after the word "assistant" insert the words "to the."

The SPEAKER pro tempore. The question is on agreeing to the committee amendment.

The committee amendment was agreed to.

The bill as amended was ordered to be engrossed and read a third time, was read the third time, and passed.

A motion to reconsider the last vote was laid on the table.

Amend the title so as to read: "A bill to provide for an assistant to the Chief of Naval Operations."

The SPEAKER pro tempore. The Clerk will report the next bill.

PRESERVES, JAM, JELLY, AND APPLE BUTTER

The next business on the Consent Calendar was the bill (H. R. 11514) to define preserves, jam, jelly, and apple butter, to provide standards therefor, and to amend the food and drugs act of June 30, 1906, as amended.

The title of the bill was read.

The SPEAKER pro tempore. Is there objection to the present consideration of the bill?

Mr. LEA. Reserving the right to object, Mr. Speaker, I would like to ask the gentleman from Iowa [Mr. HAUGEN] if he would be willing to accept an amendment which would extend the time when this bill would go into effect?

Mr. STAFFORD. Let me say to my friend, if the gentleman from Iowa will permit, that the Committee on Agriculture is going to have the call on Wednesdays for the next two weeks. This is an important bill. I think the bill should be passed over without prejudice. It will have consideration on Calendar Wednesday. I ask unanimous consent that it be passed over without prejudice.

The SPEAKER pro tempore. Is there objection?

There was no objection.

The SPEAKER pro tempore. The Clerk will report the next bill.

WESTERN JUDICIAL DISTRICT OF OKLAHOMA

The next business on the Consent Calendar was the bill (H. R. 6347) to amend the act establishing the western judicial district of Oklahoma.

The title of the bill was read.

The SPEAKER pro tempore. Is there objection to the present consideration of the bill?

There was no objection.

The SPEAKER pro tempore. The Clerk will report the bill.

Mr. McKEOWN. Mr. Speaker, that is a recitation of the entire Judicial Code. I ask unanimous consent that the reading be dispensed with.

The SPEAKER pro tempore. Without objection, it is so ordered. The Clerk will report the committee amendment.

There was no objection.

The Clerk read as follows:

Committee amendment: Strike out all after the enacting clause and insert the following:

"That section 101 of the Judicial Code, as amended (U. S. C., Supp. III, title 28, sec. 182), be, and the same is hereby amended to read as follows:

"'SEC. 101. The State of Oklahoma is divided into three judicial districts, to be known as the northern, the eastern, and the western districts of Oklahoma. The territory embraced on January 1, 1925, in the counties of Craig, Creek, Delaware, Mayes, Nowata, Osage, Ottawa, Pawnee, Rogers, Tulsa, and Washington, as they existed on said date, shall constitute the northern district of Oklahoma. Terms of the United States District Court for the Northern District of Oklahoma shall be held at Tulsa on the first Monday in January, at Vinita on the first Monday in March, at Pawhuska on the first Monday in May, at Miami on the first Monday in November, and at Bartlesville on the first Monday in June in each year: *Provided*, That suitable rooms and accommodations for holding court at Pawhuska, Miami, and Bartlesville are furnished free of expense to the United States.

"'The eastern district of Oklahoma shall include the territory embraced on the 1st day of January, 1925, in the counties of Adair, Atoka, Bryan, Cherokee, Choctaw, Coal, Carter, Garvin, Grady, Haskell, Hughes, Johnston, Jefferson, Latimer, Le Flore, Love, McClain, Muskogee, McIntosh, McCurtain, Murray, Marshall, Okfuskee, Okmulgee, Pittsburg, Pushmataha, Pontotoc, Seminole, Stephens, Sequoyah, and Wagoner. Terms of the district court of the eastern district shall be held at Muskogee on the first Monday in January, at Ada on the first Monday in March, at Okmulgee on the first Monday in April, at Hugo on the first Monday in May, at South McAlster on the first Monday in June, at Ardmore on the first Monday in October, at Chickasha on the first Monday in November, at Poteau on the first Monday in December in each year, and annually at Pauls Valley and Durant at such times as may be fixed by the judge of the eastern district: *Provided*, That suitable rooms and accommodations for holding said court at Hugo, Poteau, Ada, Okmulgee, Pauls Valley, and Durant are furnished free of expense to the United States.

"'The western district of Oklahoma shall include the territory embraced on the 1st day of January, 1925, in the counties of Alfalfa, Beaver, Beckham, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major, Noble, Oklahoma, Payne, Pottawatomie, Roger Mills, Texas, Tillman, Washita, Woods, and Woodward. The terms of the district court for the western district shall be held at Oklahoma City on the first Monday in January, at Enid on the first Monday in March, at Guthrie on the first Monday in May, at Mangum on the first Monday in September, at Lawton on the first Monday in October, at Woodward on the first Monday in November, and at Ponca City on the first Monday in December or at such time as the district judge of such district may deem advisable: *Provided*, That suitable rooms and accommodations for holding court at Ponca City and Mangum are furnished free of expense to the United States: *And provided further*, That the district judge of said district, or in his absence, a district judge or a circuit judge assigned to hold court in said district, may postpone or adjourn to a day certain any of said terms by order made in chambers at any other place designated as aforesaid for holding court in said district.

"'The clerk of the district court for the northern district shall keep his office at Tulsa; the clerk of the district court for the eastern district shall keep his office at Muskogee and shall maintain an office in charge of a deputy at Ardmore; the clerk for the western district shall keep his office at Oklahoma City and shall maintain an office in charge of a deputy at Guthrie.'"

The SPEAKER pro tempore. The question is on agreeing to the committee amendment.

The committee amendment was agreed to.

The bill as amended was ordered to be engrossed and read a third time, was read the third time, and passed.

A motion to reconsider the last vote was laid on the table.

Amend the title so as to read: "A bill to amend section 101 of the Judicial Code, as amended (U. S. C., Supp. III, title 28, sec. 182)."

PLANT PATENTS

The next business on the Consent Calendar was the bill (H. R. 11372) to provide for plant patents.

The title of the bill was read.

The SPEAKER pro tempore. Is there objection to the present consideration of the bill?

Mr. LAGUARDIA. Reserving the right to object, Mr. Speaker, this is a little fast.

Mr. STAFFORD. This is establishing a precedent to provide for a patent to those who develop a rare species of cattle or chickens.

Mr. LAGUARDIA. It does not provide a patent or copyright for anyone who devises a real farm-relief plan?

Mr. PURNELL. I never know when the gentleman from New York [Mr. LAGUARDIA] is serious and when he is not. Does the gentleman from New York believe that agriculture should not enjoy the same privileges, under the patent system, as industry?

Mr. LAGUARDIA. I do not see how you could possibly protect their rights. I am serious in this.

Mr. PURNELL. Well, I never know when the gentleman is serious.

Mr. LAGUARDIA. The gentleman will concede that this is rather novel, will he not?

Mr. PURNELL. I would not say it is novel. I would say it is extremely important in the general program that has been under way for a number of years, to give to agriculture the same rights that industry enjoys. Why should a man who invents a mouse trap or a jazz song have protection and enjoy the privileges that the patent system gives him, and a man like Luther Burbank, who spent his life developing new plants, get nothing?

Mr. LAGUARDIA. Luther Burbank did very well without protection. I have read the report. The gentleman does not suppose that I would stand here and talk about a bill without reading the report?

Mr. PURNELL. No; but will the gentleman allow me to take the time to read two telegrams?

Mr. LAGUARDIA. Yes; and the gentleman might read the quotation from Luther Burbank.

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Mr. PURNELL. That is what I am going to read for the benefit of the House, because everybody here does not always have ample opportunity to read reports on bills. If the gentleman is going to object, I shall, of course, not press it seriously, but this will give the Members of the House some information on the matter.

Mr. LAGUARDIA. I think we should study this a great deal.

Mr. PURNELL. It is important. I agree with the gentleman. I want to read this telegram from Thomas Edison.

Mr. LAGUARDIA. It is in the report.

Mr. PURNELL. I know it is.

Nothing that Congress could do to help farming would be of greater value and permanence than to give to the plant breeder the same status as the mechanical and chemical inventors now have through the patent law. There are but few plant breeders. This [the bill] will, I feel sure, give us many Burbanks.

This is signed by Thomas A. Edison.

This telegram came a few days ago, unsolicited, from the widow of Luther Burbank, and it is very significant.

Have just received welcome news congressional activity looking to protection of plant breeders and producers of new fruits by patent. As you probably know, this was one of Luther Burbank's most cherished hopes. He said repeatedly that until Government made some such provision for insuring experimenter or breeder reasonable protection the incentive to creative work with plants was slight and independent plant breeding would be held back to the great detriment of horticulture. In one manuscript he writes, "I have been for years in correspondence with leading breeders, nurserymen, and Federal officials, and I despair of anything being done at present to secure to the plant breeder any adequate returns for his enormous outlays of time, energy, and money. A man can patent a mousetrap or copyright a nasty song, but if he gives to the world a new fruit that will add millions to the value of earth's annual harvests he will be fortunate if he is rewarded by so much as having his name connected with the result. Though the surface of plant experimentation has thus far been only scratched and there is so much immeasurably important work waiting to be done in this line I would hesitate to advise a young man, no matter how gifted or devoted, to adopt plant breeding as a life work until America takes some action to protect his unquestioned rights to some benefit from his achievements." If you think this statement useful in awakening interest or precipitating action, I am sure Mr. Burbank would have been glad to think that it would be so employed.

I agree with the gentleman that this is a matter of extreme importance. It has the indorsement of the Commissioner of Patents, the Secretary of Agriculture, the ex-Secretary of Agriculture, all of the national farm organizations, the secretary of the American Society for the Advancement of Science, and many others.

I do not mean that these are mere formal indorsements; they are couched in terms that indicate that those who have indorsed it understand the purposes of this bill.

Mr. SCHAFER of Wisconsin. Does it have the approval of the Director of the Budget?

Mr. PURNELL. I will say to the gentleman from Wisconsin [Mr. SCHAFER] that it does not cost anything, and I will also say to my friend from Wisconsin that it does not have anything to do with prohibition. [Laughter.]

Mr. LAGUARDIA. I want to say to my colleague from Indiana [Mr. PURNELL] that I think this should be studied by the Members themselves. The committee, of course, has given it a great deal of thought. I will say that yesterday I spent a great deal of time studying it. I can observe new ideas pretty quick, but the difficulties in carrying out the provisions of this bill appeared to me immediately.

For instance, suppose a plant is patented, or a tree is patented, certainly all that is required to reproduce that plant or that tree is the seed.

Mr. PURNELL. Seeds are not covered in this bill.

Mr. LAGUARDIA. That is just the point. Now, suppose one acquires the seed to reproduce that plant, would he be guilty of infringement of a patent? I think he would be under this law.

Mr. PURNELL. Of course, the gentleman is entering a realm that few are competent to discuss, but the Commissioner of Patents has given this very, very careful study.

Mr. JENKINS. Will the gentleman yield?

Mr. PURNELL. I yield.

Mr. JENKINS. Where in the report is that referred to?

Mr. PURNELL. It was his opinion, as stated before the Patents Committee before the matter was reported by the committee, that such objections and misgivings as the gentleman from New York [Mr. LAGUARDIA] may have can be taken care of. There is no reason why they should not be. The principle is sound. We have given certain rights and privileges to industry that insure protection during a period of 17 years under our existing patent laws.

Mr. LAGUARDIA. I do not believe that this bill should be arbitrarily brushed aside by objection. I am not in that frame of mind at all, but it is so far-reaching and so novel that I think we ought to study it.

Mr. CANNON. Will the gentleman yield?

Mr. PURNELL. I yield.

Mr. CANNON. I am certain the gentleman from New York [Mr. LAGUARDIA] will concede that there is no man who is a greater benefactor to the human race than the man who produces a new vegetable or a new fruit.

Mr. LAGUARDIA. I will go further and state that I consider Luther Burbank the outstanding American of his time.

Mr. CANNON. Then, does not the gentleman think that such a man is entitled to some reward; that he should be as generously compensated as the man who produces a new drug or devises a new machine or writes a new book?

Mr. LAGUARDIA. No; but I do not believe it is possible to protect him by patent rights.

Mr. CANNON. That question is answered conclusively by the Patent Office. The report of the office approves the bill and considers it eminently practical. The law can be applied as effectively to the creation of fruits and flowers and vegetables as to the production of automobiles or airplanes or any other mechanical device.

Mr. LAGUARDIA. I ask the gentleman to consider this suggestion: A man patents a new plant or tree and then the seeds get out into the market. The seeds are patentable in some way, and farmers plant those seeds. Then they are subject to all the penalties imposed by the patent law and they may be enjoined from harvesting their crops.

Mr. CANNON. The bill does not include seeds. Seeds have been exempted, for the reason that seeds resulting from hybridizing or crossbreeding usually produce plants varying in many respects from the parent plants. When you plant the seed of an experimental plant it does not always reproduce the hybrid from which it comes. The bill applies to asexual plants and not those propagated by seed. The gentleman's hypothetical case is not applicable.

Mr. STAFFORD. Would the gentleman object to having his bill passed over for two weeks?

Mr. PURNELL. I would rather have it passed, of course.

Mr. STAFFORD. This is a most important measure, and I wish to give serious thought to it during the next two weeks.

Mr. JENKINS. Will the gentleman yield?

Mr. PURNELL. Yes.

Mr. JENKINS. I asked a question which would indicate there was some question as to whether the report carried any intimation as to what the Commissioner of Patents says. For fear the gentleman has missed that, I would like to state that the report says:

The proposed legislation has been indorsed by former Secretary of Agriculture Jardine, the National Horticultural Council, the American Association of Nurserymen, the American Farm Bureau Federation, the National Grange, and many State commissioners of agriculture, experiment-station officials, and individual growers and nurserymen. The Commissioner of Patents approves the bill as amended by the committee.

Mr. PURNELL. That is correct.

Mr. STAFFORD. Mr. Speaker, I ask unanimous consent that this bill may be passed over without prejudice.

The SPEAKER pro tempore. The gentleman from Wisconsin asks unanimous consent that this bill may be passed over without prejudice. Is there objection?

There was no objection.

CONFERENCE REPORT—CONSTRUCTION OF CERTAIN PUBLIC WORKS BY THE SECRETARY OF THE NAVY

Mr. WOODRUFF, from the Committee on Naval Affairs, presented for printing the conference report on the bill (S. 549) to authorize the Secretary of the Navy to proceed with the construction of certain public works, and for other purposes.

LEASING OF TRIBAL LANDS OF THE CHOCTAW AND CHICKASAW NATIONS FOR OIL AND GAS PURPOSES

The next business on the Consent Calendar was the bill (H. R. 9939) authorizing the Secretary of the Interior to lease any or all of the remaining tribal lands of the Choctaw and Chickasaw Nations for oil and gas purposes, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the present consideration of the bill?

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71ST CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 1129

PLANT PATENTS

APRIL 10, 1930.—Referred to the House Calendar and ordered to be printed

Mr. VESTAL, from the Committee on Patents, submitted the following

REPORT

[To accompany H. R. 11372]

The Committee on Patents, to whom was referred the bill (H. R. 11372) to provide for plant patents, have considered the same and report thereon with amendments, and, as so amended, recommend that the bill do pass.

As to the two committee amendments, one adds to the bill the usual separability clause and the other eliminates from the scope of the bill patents for varieties of plants which were introduced to the public prior to the approval of the Act.

I. PURPOSES OF THE BILL

The purpose of the bill is to afford agriculture, so far as practicable, the same opportunity to participate in the benefits of the patent system as has been given industry, and thus assist in placing agriculture on a basis of economic equality with industry. The bill will remove the existing discrimination between plant developers and industrial inventors. To these ends the bill provides that any person who invents or discovers a new and distinct variety of plant shall be given by patent an exclusive right to propagate that plant by asexual reproduction; that is, by grafting, budding, cuttings, layering, division, and the like, but not by seeds. The bill does not provide for patents upon varieties of plants newly found by plant explorers or others, growing in an uncultivated or wild state.

STIMULATION OF PLANT BREEDING

To-day the plant breeder has no adequate financial incentive to enter upon his work. A new variety once it has left the hands of the breeder may be reproduced in unlimited quantity by all. The originator's only hope of financial reimbursement is through high prices for the comparatively few reproductions that he may dispose

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of during the first two or three years. After that time, depending upon the speed with which the plant may be asexually reproduced, the breeder loses all control of his discovery. Under the bill the originator will have control of his discovery during a period of 17 years, the same term as under industrial patents. If the new variety is successful, the breeder or discoverer can expect an adequate financial reward. To-day plant breeding and research is dependent, in large part, upon Government funds to Government experiment stations, or the limited endeavors of the amateur breeder. It is hoped that the bill will afford a sound basis for investing capital in plant breeding and consequently stimulate plant development through private funds.

In addition, the breeder to-day must make excessive charges for specimens of the new variety disposed of by him at the start in order to avail himself of his only opportunity for financial reimbursement. Under the bill the breeder may give the public immediate advantage of the new varieties at a low price with the knowledge that the success of the variety will enable him to recompense himself through wide public distribution by him during the life of the patent. The farmers and general public that buy plants will be able promptly to obtain new improved plants at a more moderate cost.

No one has advanced a just and logical reason why reward for service to the public should be extended to the inventor of a mechanical toy and denied to the genius whose patience, foresight, and effort have given a valuable new variety of fruit or other plant to mankind.

This bill is intended not only to correct such discrimination, but in doing so it is hoped the genius of young agriculturists of America will be enlisted in a profitable work of invention and discovery of new plants that will revolutionize agriculture as inventions in steam, electricity, and chemistry have revolutionized those fields and advanced our civilization.

On this point the late Luther Burbank has said:

> I have been for years in correspondence with leading breeders, nurserymen, and Federal officials and I despair of anything being done at present to secure to the plant breeder any adequate returns for his enormous outlays of energy and money. A man can patent a mousetrap or copyright a nasty song, but if he gives to the world a new fruit that will add millions to the value of earth's annual harvests he will be fortunate if he is rewarded by so much as having his name connected with the result. Though the surface of plant experimentation has thus far been only scratched and there is so much immeasurably important work waiting to be done in this line I would hesitate to advise a young man, no matter how gifted or devoted, to adopt plant breeding as a life work until America takes some action to protect his unquestioned rights to some benefit from his achievements.

The only possible objection to such a measure as the present bill might come from a few propagators who would wish to continue their custom of unfairly appropriating the life work of the plant developers who have contributed their time and funds but have been helpless against this form of piracy under existing laws. The history of the men who have originated, developed, and introduced new plants of inestimable value to humanity and have died in poverty, amply demonstrates that this practice should be outlawed.

The committee fully concurs in the statements of leaders of agriculture who have expressed the opinion that this is one of the most constructive measures ever proposed for the permanent benefit of agriculture.

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ECONOMIC BENEFIT TO AGRICULTURE AND THE PUBLIC

The food and timber supply of the Nation for the future is dependent upon the introduction of new varieties. Many millions of Federal and private funds are annually spent in combating disease through plant quarantines, disinfection, spraying, and other methods. The phony peach disease has threatened the important peach supply of Georgia and the welfare of one of the most important industries of that State. The chestnut blight has wiped the eastern forests clean of the valuable chestnut tree. The white-pine blister rust threatens the white-pine forests. The plant pathologist has through his experiments attempted with but slight success to combat these plant diseases. But an equally valuable means of combating plant disease is the development of new disease-resistant varieties by the plant breeder. The bill proposes to give the breeder the incentive to develop such varieties without the aid of Federal funds.

Similarly, the development of drought-resistant and cold-resistant varieties of plants is of great importance to agriculture. An apple with greater resistance to cold is one of the demands of the northern portion of the country. We must look to the plant breeder for an acceptable substitute for rubber. The improvement of medicinal plants is an unexplored field. The spectacular development of new classes of plants, such as the loganberry and many of Burbank's products, is only a small part of the economic benefit to the country afforded by successful plant breeding.

No one will question the fact that new varieties of food, medicinal, and other economic plants may be an important factor in maintaining public health and in promoting public safety and national defense. Thus the food supply of the Nation, both from the viewpoint of the producer and the user, is of vital importance, and insurance against failure in that supply is necessary to public safety and national prosperity. Plant breeding and discovery, while in its infancy, is fundamentally connected with the Nation's food supply, and will, if encouraged and developed, be of incalculable value in maintaining public health and prosperity, and in promoting public safety and the national defense. Finally, plant patents will mean better agricultural products that will give the public more actual value for its dollar.

II. Bill Generally Advocated

The proposed legislation has been generally advocated. The Secretary of Agriculture, whose letter appears in full in Appendix A to this report, states that—

> The proposed legislation would appear to be desirable and to lend far-reaching encouragement to agriculture and benefit to the general public.

Mr. Thomas A. Edison states that—

> Nothing that Congress could do to help farming would be of greater value and permanence than to give to the plant breeder the same status as the mechanical and chemical inventors now have through the patent law. There are but few plant breeders. This [the bill] will, I feel sure, give us many Burbanks.

Mrs. Luther Burbank has telegraphed as follows:

> Informed that Congress is considering bill to protect through patent machinery the rights of plant breeders and experimenters to a share in the commercial returns of their discoveries in fruits and flowers. I hasten to acquaint you

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with Luther Burbank's very strong feeling in this connection. He said repeatedly that until Government made some such provision the incentive to creative work with plants was slight and independent research and breeding would be discouraged to the great detriment of horticulture. Mr. Burbank would have been unable to do what he did with plants had it not been for royalties from his writings and from other by-product lines of activity, but it must be remembered that most plant breeders and experimenters do not reach posts where any such revenues are available to them until too late in their lives to help them in financing their extremely expensive work. If Mr. Burbank were living I know he would be in forefront of the campaign to secure protection for other devoted men giving their lives to this service to mankind.

The proposed legislation has been indorsed by former Secretary of Agriculture Jardine, the National Horticultural Council, the American Association of Nurserymen, the American Farm Bureau Federation, the National Grange, and many State commissioners of agriculture, experiment station officials, and individual growers and nurserymen. The Commissioner of Patents approves the bill as amended by the committee.

III. Explanation of Provisions of Bill

CLASSES OF NEW VARIETIES

New and distinct varieties fall into three classes—sports, mutants, and hybrids.

In the first class of cases, the sports, the new and distinct variety results from bud variation and not seed variation. A plant or portion of a plant may suddenly assume an appearance or character distinct from that which normally characterizes the variety or species.

In the second class of cases, the mutants, the new and distinct variety results from seedling variation by self pollenization of species.

In the third class of cases, the hybrids, the new and distinct variety results from seedlings of cross pollenization of two species, two varieties, or of a species and a variety. In this case the word "hybrid" is used in its broadest sense.

All such plants must be asexually reproduced in order to have their identity preserved. This is necessary since seedlings either of chance or self-pollenization from any of these would not preserve the character of the individual.

These cultivated sports, mutants, and hybrids are all included in the bill, and probably embrace every new variety that is included. The exclusion of a wild variety, the chance find of the plant explorer, is in no sense a limitation on the usefulness of the bill to those who follow agriculture or horticulture as a livelihood and who are permitted under the bill to patent their discoveries.

PATENT GRANTS RIGHT OF ASEXUAL REPRODUCTION ONLY

Whether the new variety is a sport, mutant, or hybrid, the patent right granted is a right to propagate the new variety by asexual reproduction. It does not include the right to propagate by seeds. This limitation in the right granted recognizes a practical situation and greatly narrows the scope of the bill. Whether the new variety is a hybrid, mutant or sport, there is never more than one specimen of it produced except through asexual reproduction. For example, without asexual reproduction there would have been but one true McIntosh or Greening apple tree.

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These varieties of apples could not have been preserved had it not been through human effort in the asexual reproduction of the two original trees. They could not have been reproduced true to the type by nature through seedlings. The bill, therefore, proposes to afford through patent protection an incentive to asexually reproduce new varieties. Many varieties of apples equally as valuable as the McIntosh or Greening have undoubtedly been created and disappeared beyond human power of recovery because no attempt was made to asexually reproduce the new varieties. The present bill by its patent protection proposes to give the necessary incentive to preserve new varieties. On the other hand, it does not give any patent protection to the right of progagation of the new variety by seed, irrespective of the degree to which the seedlings come true to type.

DISTINCT VARIETIES

On the other hand, in order for the new variety to be distinct it must have characteristics clearly distinguishable from those of existing varieties, and it is immaterial whether in the judgment of the Patent Office the new characteristics are inferior or superior to those of existing varieties. Experience has shown the absurdity of many views held as to the value of new varieties at the time of their creation.

The bill authorizes the grant of a patent only in case the new variety is distinct. In order for a variety of plant to be distinct it is not necessary that it be a variety of a new species. A variety of plant may be patented if it is a new and distinct variety either of an existing or of a new species, or if it is an entirely new species of plant.

The characteristics that may distinguish a new variety would include, among others, those of habit; immunity from disease; resistance to cold, drought, heat, wind, or soil conditions; color of flower, leaf, fruit, or stems; flavor; productivity, including ever-bearing qualities in case of fruits; storage qualities; perfume; form; and ease of asexual reproduction. Within any one of the above or other classes of characteristics the differences which would suffice to make the variety a distinct variety, will necessarily be differences of degree. While the degree of difference sufficient for patentability will undoubtedly be a difficult administrative question in some instances, the situation does not present greater difficulties than many that arise in the case of industrial patents.

In specifying the differences in characteristics the Patent Office will undoubtedly follow the practice among botanists in making use of verbal descriptions and photographic and other reproductions, taking some known plant as a basis of comparison. Modern methods of identification, together with such amplification thereof as may reasonably be expected, will render it possible and practicable to describe clearly and precisely the characteristics of a particular variety. When this can not be done by an applicant for a patent, the variety is not clearly distinguishable as a distinct variety, and no patent would issue.

Of course, allowance must be made for those minor differences in characteristics, commonly called fluctuations, which follow from variations in methods of cultivation or environment and are temporary rather than permanent characteristics of the plant.

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EXCEPTION OF TUBER-PROPAGATED PLANTS

The bill excepts from the right to a patent the invention or discovery of a distinct and new variety of a tuber-propagated plant. The term "tuber" is used in its narrow horticultural sense as meaning a short, thickened portion of an underground branch. It does not cover, for instance, bulbs, corms, stolons, and rhizomes. Substantially, the only plants covered by the term "tuber-propagated" would be the Irish potato and the Jerusalem artichoke. This exception is made because this group alone, among asexually reproduced plants, is propagated by the same part of the plant that is sold as food.

THE PREREQUISITE OF ASEXUAL REPRODUCTION

It is not only necessary that the new and distinct variety of plant shall have been invented or discovered, but it is also necessary that it shall have been asexually reproduced prior to the application for patent. A plant patent covers only the exclusive right of asexual reproduction, and obviously it would be futile to grant a patent for a new and distinct variety unless the variety had been demonstrated to be susceptible of asexual reproduction. Of course, theoretically under laboratory conditions it is probable that all plants can be asexually reproduced, but it is hardly to be expected that a patent will be applied for unless at the time of application the plant can be asexually reproduced upon a commercial scale or else there is reasonable expectation that it can be so reproduced in the near future.

COOPERATION WITH DEPARTMENT OF AGRICULTURE

The bill proposes that the President may facilitate the administration of its provisions by the Patent Office through requiring the Secretary of Agriculture, to furnish the Commissioner of Patents with available information in the department, to conduct necessary research, and to detail to the Patent Office technical employees of the department. As to this feature the Secretary of Agriculture states in his letter set forth in Appendix A to this report that—

> As determinations of the newness of varieties could not be made solely upon the basis of descriptive matter and drawings, it is evident that the specimens, photographs, paintings, descriptions, etc., of existing plants, already available in various forms in the Department of Agriculture and elsewhere, will be of great value, increased in due time by extension of such collections of plants and data.
>
> The effective administration of such legislation would require expert personnel, comparable in their lines, with the specialists now employed by the Patent Office. The technical personnel of the Department of Agriculture, although possibly inadequate to meet future demands, would be available in making such determinations as would be necessary in carrying out the purposes of such a law.

APPLICATION TO EXISTING PLANTS

The bill does not permit the patenting of plants that have been in public use or on sale for more than two years prior to application for patent, or (under the committee amendment) that have been offered generally for sale, prior to the approval of the Act. Furthermore, it was considered unnecessary to provide specifically that the bill shall permit the patenting of plants now in process of creation, under observation, under test, or in existence but not yet given to the public,

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as that appears to the committee to be covered adequately by the existing provisions of section 4886 of the Revised Statutes. With reference to plants, the words "in public use or on sale" would apply to the period during which the new variety is asexually reproduced for sale.

IV. Legal Phases of the Bill

The committee is of the opinion after careful consideration that the amendments to the patent laws proposed by the bill fall within the legislative power of Congress under Article I, section 8, of the Constitution—

> To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

Present patent laws apply to—

> any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement thereof * * *.

It will be noted that the laws apply both to the acts of inventing and discovery and this alternative application has been true of the patent laws from their beginning. See, for instance, the patent Act of 1790 (1 Stat. 109). The amendment proposed by the pending bill to care for plant patents likewise applies to "any person who has invented or discovered" the particular variety of plant.

There can be no doubt that the grant of plant patents constitutes a promotion of "the progress of science and useful arts" within the meaning of the constitutional provision. The only question is, Is the new variety a discovery and is the originator or discoverer an inventor?

There is a clear and logical distinction between the discovery of a new variety of plant and of certain inanimate things, such, for example, as a new and useful natural mineral. The mineral is created wholly by nature unassisted by man and is likely to be discovered in various parts of the country; and, being the property of all those on whose land it may be found, its free use by the respective owners should of course be permitted. On the other hand, a plant discovery resulting from cultivation is unique, isolated, and is not repeated by nature, nor can it be reproduced by nature unaided by man, and such discoveries can only be made available to the public by encouraging those who own the single specimen to reproduce it asexually and thus create an adequate supply.

It is obvious that nature originally creates plants but it can not be denied that man often controls and directs the natural processes and produces a desired result. In such cases the part played by nature and man can not be completely separated or weighed or credited to one or the other. Nature in such instances, unaided by man, does not reproduce the new variety true to type.

Furthermore, there is no apparent difference, for instance, between the part played by the plant originator in the development of new plants and the part played by the chemist in the development of new compositions of matter which are patentable under existing law. Obviously, these new compositions of matter do not come into being solely by act of man. The chemist who invents the composition of matter must avail himself of the physical and chemical qualities inherent in the materials used and of the natural principles

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applicable to matter. Whether or not he is aware of these principles does not affect the question of patentability. The inventor of the composition of matter may have definitely in mind the new product and definitely worked toward it. On the other hand, as is true of many of the most important inventions, he may accidentally discover the product, perhaps in the course of the regular routine of his work. He does not have to show, for instance, that he mixed the elements and expected them to produce the particular composition of matter. He may simply find the resulting product and have the foresight and ability to see and appreciate its possibilities and to take steps to preserve its existence.

The same considerations are true of the plant breeder. He avails himself of the natural principles of genetics and of seed and bud variations. He cultivates the plants in his own laboratory under his own eye. He may test and experiment with them on a variety of proving grounds. He may promote natural cross-pollination by growing the parent plants in juxtaposition. For instance, because of manual difficulties artificial hand pollination is impracticable in the production of seed of the genus compositae, including such species as dahlias, chrysanthemums, asters, daisies, and the like, and also in the case of many of the small fruits. In other cases hand pollination is unnecessary; natural pollination does equally well. On the other hand, if the periods of the bloom of the two parent plants differ, hand pollination and the camel's-hair brush must be used. Again, orchids, avocados, grapes, and most orchard fruits are subjected to hand pollination. In the case of sports, the plant breeder not only cultivates the plants but may subject them to various conditions of cultivation to encourage variation, as, for example, in some recent developments, the subjection of the plants to the effects of X rays or to abnormal fertilization. Finally, the plant originator must recognize the new and appreciate its possibilities either for public use or as a basis for further exercise of the art of selection. Moreover, it is to be noted that those wild varieties discovered by the plant explorer or other person who has in no way engaged either in plant cultivation or care and who has in no other way facilitated nature in the creation of a new and desirable variety are not within the scope of the bill.

But even were the plant developer's contributions in aid of nature less creative in character than those of the chemist in aiding nature to develop a composition of matter which has theretofore been nonexistent (an assumption which the committee does not believe to have basis in fact and which is here made solely for purposes of argument), nevertheless the protection by patents of those engaged in plant research and discovery would not be beyond the constitutional power of the Congress.

At the time of the adoption of the Constitution the term "inventor" was used in two senses. In the first place the inventor was a discoverer, one who finds or finds out. In the second place an inventor was one who created something new. All the dictionaries at the time of the framing of the Constitution recognized that "inventor" included the finder out or discoverer as well as the creator of something new. Thus Sheridan in 1790 defined "inventor" as "A finder out of something new," and "invention" as "discovery." Kersey in 1708 defined "invention" as "the act of inventing, or finding," and Martin in 1754 defined "to invent" as "to find out or discover."

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The word "discover" or "discovery" is given as an equivalent by Cocker in 1715 and 1724, Ash in 1775, Perry in 1795, Entick in 1786, Fenning in 1771, and Barclay in 1841. "To find" or "find out" or "finding" as a synonym of invent or inventor, was noted by Rider in 1617, Holy-oke in 1649, Coles in 1724, Johnson in 1824, Kendrick in 1773, Martin in 1754, Kersey in 1708, Sheridan in 1790, Ash in 1775, Cocker in 1715 and 1724, Entick in 1786 and 1791, Fenning in 1771, and Coxe in 1813.

The distinction between discovering or finding out on the one hand and creating or producing on the other hand, being recognized in the dictionaries current at the time of the framing of the Constitution, it is reasonable to suppose the framers of the Constitution attributed to the term "inventor" the then customary meaning. That they did not ignore the meaning of inventor as "a discoverer or finder out" is furthermore indicated by the fact that in the Constitution itself the framers referred to the productions of inventors as "discoveries."

With the development of the patent laws and modern industry the meaning of the word "inventor" as a creator of something new became the prevailing use and, while both meanings of inventor are still recognized in such modern dictionaries as Murray's New English Dictionary, Webster's New International Dictionary, and the Century Dictionary and Encyclopedia, the meaning of inventor as "a finder out or discoverer" is now considered obsolete or archaic. However, it seems to the committee that the meaning to be attached to the term "inventor" as used in the Constitution must be the meaning in general use at the time of the framing of the Constitution rather than the meaning prevailing in present-day usage.

Furthermore, there are many instances where the provisions of the Constitution have been held to embrace affairs which, while literally within the meaning of a constitutional phrase, were not conceived of by the framers at the time that the Constitution was written. For example, the power to regulate interstate commerce, which was then mainly by horse or by rowboat or sailboat, is now held by the courts to cover regulation of steam transportation, telegraphic communication, and even radio communication, matters beyond the wildest dreams of the framers of the Constitution.

An indication of the construction that the courts are likely to place on the word "inventor" in the constitutional provision can be found in their construction of the words "author" and "writer" in the same paragraph. The Constitution gives Congress power—

> To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

Under this provision the original Act of May 31, 1790 (1 Stat. 124), allowed copyright of maps and charts as well as books. By successive legislation this right was extended to include photographs, statues, models, and designs. (See, for instance, 35 Stat. 1075.) It might well be doubted whether map makers, chart makers, photographers, sculptors, modelers, and designers were "authors," and whether maps, charts, photographs, statues, models, and designs were "writings," but the constitutionality of this legislation has been sustained from the beginning. Thus in Lithographic Co. *v.* Sarony (1883, 111 U. S. 53) it was contended that a photograph was not a

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writing nor the production of an author, but the Supreme Court sustained the statute allowing a copyright for photographs.

As to copyrights there was doubt on two words, "authors" and "writings," which certainly do not have in ordinary speech such broad meanings as Congress and the Supreme Court have given them. But the court had no difficulty in sustaining a sufficiently liberal construction. As to patents the doubt is only as to the one word, "inventors." The word "discovery" aptly describes the situation when a new and distinct variety of plant is found and "inventors" is certainly as elastic a word as "authors." It is not to be expected that the courts would place themselves in the position of impeding the progress of the science and useful art of agriculture by holding to so narrow a definition of the word "inventor" as to find that the proposed legislation was undoubtedly beyond the power of the Congress.

APPENDIX A. LETTER OF SECRETARY OF AGRICULTURE

[NOTE.—The letter of the Secretary of Agriculture is addressed to the proposed legislation as originally introduced as H. R. 9765 of the present session. There are, however, only minor differences between that bill and the bill reported by the committee.]

DEPARTMENT OF AGRICULTURE,
Washington, D. C., March 17, 1930.

Hon. A. H. VESTAL,
House of Representatives, Washington, D. C.

DEAR MR. VESTAL: I acknowledge your letter of March 12, asking for our opinion regarding H. R. 9765, to amend section 4886, of the Revised Statutes, introduced by Congressman Purnell.

The evident purpose of this bill is to encourage the improvement of some kinds of cultivated plants, both through breeding and discovery of better varieties, by granting to the breeders or finders of new and distinct varieties of such plants the exclusive control over the reproduction of their creations and discoveries, presumably for the same period of years now covered by patents on inventions. This purpose is sought to be accomplished by bringing the reproduction of such newly bred or found plants under the patent laws which at the present time are understood to cover only inventions or discoveries in the field of inanimate nature. This it is proposed to accomplish by amending section 4886 of the Revised Statutes so as to make it possible to patent "any new and distinct variety of an asexually reproduced plant other than a tuber-propagated plant or a plant which reproduces itself without human aid." The operation of the present law is understood to rest upon the filing by the inventor of such properly authenticated verbal descriptions, designs, drawings, or other descriptive matter as will fully disclose the nature of his invention or discovery, thereby enabling one skilled in the art to which it relates to make effective practical application of the invention or discovery.

Bill H. R. 9765 proposes in effect to authorize the patenting of certain distinguishable forms of plants which are capable of reproduction and multiplication through the operation of physiological processes with human aid.

Page 2, lines 8 to 13, which in the bill read as follows, "*Provided*, That the words 'invented' and 'discovered' as used in this section, in regard to asexually reproduced plants, shall be interpreted to include invention and discovery in the sense of finding a thing already existing and reproducing the same as well as in the sense of creating," interpreted in the light of agricultural and horticultural experience and history, would appear to make possible the patenting of the reproduction of any new and distinct variety wherever discovered, provided it meets the other specifications of the bill.

This possibility of reward would undoubtedly influence the public to be more observant of plants and thus tend to prevent the waste of many valuable new varieties which occur naturally but are now lost to mankind through neglect or lack of appreciation of their value.

As determinations of the newness of varieties could not be made solely upon the basis of descriptive matter and drawings, it is evident that the specimens, photographs, paintings, descriptions, etc., of existing plants, already available in various forms in the Department of Agriculture and elsewhere, will be of great value, increased in due time by extension of such collections of plants and data.

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The effective administration of such legislation would require expert personnel, comparable in their lines with the specialists now employed by the Patent Office. The technical personnel of the Department of Agriculture, although possibly inadequate to meet future demands, would be available in making such determinations as would be necessary in carrying out the purposes of such a law.

The proposed legislation would appear to be desirable and to lend far-reaching encouragement to agriculture and benefit to the general public.

Yours very truly,

ARTHUR M. HYDE, *Secretary.*

APPENDIX B. TEXT OF BILL

[NOTE.—The following sets forth the text of the bill as it would appear with the committee amendments adopted. The italics indicate the changes to be made in the existing patent laws.]

A BILL To provide for plant patents

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 4884 and 4886 of the Revised Statutes, as amended (U. S. C., title 35, secs. 40 and 31), are amended to read as follows:

"SEC. 4884. Every patent shall contain a short title or description of the invention or discovery, correctly indicating its nature and design, and a grant to the patentee, his heirs or assigns, for the term of seventeen years, of the exclusive right to make, use, and vend the invention or discovery (*including in the case of a plant patent the exclusive right to asexually reproduce the plant*) throughout the United States and the Territories thereof, referring to the specification for the particulars thereof. A copy of the specification and drawings shall be annexed to the patent and be a part thereof.

"SEC. 4886. Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvements thereof, *or who has invented or discovered and asexually reproduced any distinct and new variety of plant other than a tuber-propagated plant,* not known or used by others in this country, before his invention or discovery thereof, and not patented or described in any printed publication in this or any foreign country, before his invention or discovery thereof, or more than two years prior to his application, and not in public use or on sale in this country for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law, and other due proceeding had, obtain a patent therefor."

SEC. 2. Section 4888 of the Revised Statutes, as amended (U. S. C., title 35, sec. 33), is amended by adding at the end thereof the following sentence: "*No plant patent shall be declared invalid on the ground of noncompliance with this section if the description is made as complete as is reasonably possible.*"

SEC. 3. The first sentence of section 4892 of the Revised Statutes, as amended (U. S. C., title 35, sec. 35), is amended to read as follows:

"SEC. 4892. The applicant shall make oath that he does verily believe himself to be the original and first inventor or discoverer of the art, machine, manufacture, composition, or improvement, *or of the variety of plant,* for which he solicits a patent; that he does not know and does not believe that the same was ever before known or used; and shall state of what country he is a citizen."

SEC. 4. The President may by Executive order direct the Secretary of Agriculture (1) to furnish the Commissioner of Patents such available information of the Department of Agriculture, or (2) to conduct through the appropriate bureau or division of the department such research upon special problems, or (3) to detail to the Commissioner of Patents such officers and employees of the department, as the commissioner may request for the purposes of carrying this Act into effect.

SEC. 5. Notwithstanding the foregoing provisions of this Act, no variety of plant which has been introduced to the public prior to the approval of this Act shall be subject to patent.

SEC. 6. If any provision of this Act is declared unconstitutional or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and the application thereof to other persons or circumstances shall not be affected thereby.

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PLANT PATENTS

HEARINGS

BEFORE THE

COMMITTEE ON PATENTS
HOUSE OF REPRESENTATIVES

SEVENTY-FIRST CONGRESS

SECOND SESSION

ON

H. R. 11372

A BILL TO PROVIDE FOR PLANT PATENTS

APRIL 9, 1930



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UNITED STATES
GOVERNMENT PRINTING OFFICE
107742 WASHINGTON : 1930

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PLANT PATENTS

WEDNESDAY, APRIL 9, 1930

HOUSE OF REPRESENTATIVES,
COMMITTEE ON PATENTS,
Washington, D. C.

The committee met at 10.30 o'clock a. m., Hon. Albert H. Vestal (chairman) presiding.

The CHAIRMAN. The committee will come to order. We have met to consider H. R. 11372, a bill to provide for plant patents, and at this point the bill will be placed in the record.

Congressman Purnell, the author of the bill, is present, and we will be glad to have a short statement from him.

The bill under consideration follows:

[H. R. 11372, Seventy-first Congress, second session]

A BILL To provide for plant patents

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 4884 and 4886 of the Revised Statutes, as amended (U. S. C., title 35, secs. 40 and 31), are amended to read as follows:

"SEC. 4884. Every patent shall contain a short title or description of the invention or discovery, correctly indicating its nature and design, and a grant to the patentee, his heirs or assigns, for the term of seventeen years, of the exclusive right to make, use, and vend the invention or discovery (including in the case of a plant patent the exclusive right to asexually reproduce the plant) throughout the United States and the Territories thereof, referring to the specification for the particulars thereof. A copy of the specification and drawings shall be annexed to the patent and be a part thereof.

"SEC. 4886. Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvements thereof, or who has invented or discovered and asexually reproduced any distinct and new variety of plant, other than a tuber-propagated plant, not known or used by others in this country before his invention or discovery thereof, and not patented or described in any printed publication in this or any foreign country before his invention or discovery thereof for more than two years prior to his application, and not in public use or on sale in this country for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law, and other due proceeding had, obtain a patent therefor."

SEC. 2. Section 4888 of the Revised Statutes, as amended (U. S. C., title 35, sec. 33), is amended by adding at the end thereof the following sentence: "No plant patent shall be declared invalid on the ground of noncompliance with this section if the description is made as complete as is reasonably possible."

SEC. 3. The first sentence of section 4892 of the Revised Statutes, as amended (U. S. C., title 35, sec. 35), is amended to read as follows:

"SEC. 4892. The applicant shall make oath that he does verily believe himself to be the original and first inventor or discoverer of the art, machine, manufacture, composition, or improvement, or of the variety of plant, for which he solicits a patent; that he does not know and does not believe that the same was ever before known or used; and shall state of what country he is a citizen."

SEC. 4. The President may by Executive order direct the Secretary of Agriculture (1) to furnish the Commissioner of Patents such available information of the Department of Agriculture, or (2) to conduct through the appropriate

bureau or division of the department such research upon special problems, or (3) to detail to the Commissioner of Patents such officers and employees of the department, as the commissioner may request for the purposes of carrying this act into effect.

STATEMENT OF HON. FRED S. PURNELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. PURNELL. Mr. Chairman and gentlemen of the committee, the bill that is before you for consideration is H. R. 11372, introduced by myself in the House and by Senator Townsend in the Senate, the purpose of which is to provide for plant patents.

I have no set statement to make to the committee, and such brief remarks as I shall make I want to preface by this statement: During the last 10 years particularly all of us have given a lot of serious thought and consideration to the proposition of putting agriculture on a complete parity, in so far as it is possible to do so, with industry and labor. This is another step, in my judgment, in the direction of giving agriculture equal opportunity with industry. The purpose of this bill, as is disclosed by the reading of it, is to amend two sections of the existing patent law so as to provide for the issuance of patents to inventors or discoverers of new plants, new developments in horticulture.

I think I could perhaps give you as plain an idea as any by saying that if these amendments are adopted—or rather, if this bill is passed—sect on 4884, for instance, which we are seeking to amend, will read as follows:

> Every patent shall contain a short title or description of the invention or discovery, correctly indicating its nature and design, and a grant to the patentee, his heirs or assigns, for the term of 17 years—

I am reading now from existing law—

> of the exclusive right to make, use and vend the invention or discovery—

This part we wish to add to existing law, so that it will read—

> including in the case of a plant patent, the exclusive right to asexually reproduce the plant throughout the United States and Territories thereof, referring to the specification for the particulars thereof.

And so forth and so on.

To get back to the purpose of the bill, let me say that the bill if enacted into law will remove the existing discrimination between plant evelopers and industrial inventors. The purpose of the bill is to afford agriculture, so far as is practicable, the same opportunity to participate in the benefits of the patent system as have been given industry, and thus assist in placing agriculture on a basis of economic equality with industry, which is really a repetition of what I have already stated.

This proposed legislation has been given very general indorsement, and we are all particularly proud to have the indorsement of one of America's, one of the world's foremost inventors, Thomas A. Edison. Sometime ago he sent a telegram expressing his views upon this proposed legislation, in which he very tersely, I think, stated this whole case. He said this:

> Nothing that Congress could do to help farming would be of greater value and permanence than to give to the plant breeder the same status as the mechanical and chemical inventors now have through the patent law. There are but few plant breeders.

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I want you to note this last sentence in his telegram:

"This will, I feel sure"—referring to this bill—"give us many Burbanks."

It is not necessary to dwell at length on the service that has been rendered this country by Luther Burbank. His service is known to almost every schoolboy, and likewise it is also known that men who devoted their life to studies similar to Burbank, died in comparative poverty, while a man may go out and invent some new, effective mousetrap and amass a fortune.

I was also very much impressed a few days ago with a telegram which exhibited to me by Mr. Stark, and which I think he will elaborate upon later, from Mrs. Burbank, the widow of Luther Burbank. In this connection, in order that the record may have the proper sequence, I just want to read this telegram. I did not intend to read all of it; Mr. Stark was going to put it in, but since he has handed it to me I just want you to listen to the reading of this telegram from Mrs. Burbank, which came voluntarily, was not solicited at all. She merely learned of the introduction of this bill and the proposal to give the same right to plant breeders as are now enjoyed by industrial inventors, and she sent this telegram:

Have just received welcome news congressional activity looking to protection of plant breeders and producers of new fruits by patent. As you probably know, this was one of Luther Burbank's most cherished hopes. He said repeatedly that until the Government made some such provision for insuring experimenter or breeder reasonable protection, the incentive to creative work with plants was slight, and independent plant breeding would be held back to the great detriment of horticulture. In one manuscript he writes—

She evidently has dug up some of Luther Burbank's manuscripts dealing with this very subject, and it seems like a voice from the tomb here when we are considering this particular measure—

"I have been for years in correspondence with leading breeders, nurserymen, and Federal officials, and I despair of anything being done at present to secure to the plant breeder any adequate returns for his enormous outlays of time, energy, and money. A man can patent a mousetrap or copyright a nasty song, but if he gives to the world a new fruit that will add millions to the value of earth's annual harvests, he will be fortunate if he is rewarded by so much as having his name connected with the result. Though the surface of plant experimentation has thus far been only scratched, and there is so much immeasurably important work waiting to be done in this line, I would hesitate to advise a young man, no matter how gifted or devoted, to adopt plant breeding as a life work until America takes some action to protect his unquestioned rights to some benefit from his achievements."

If you think this statement useful in awakening interest or precipitating action, I am sure Mr. Burbank would have been glad to think that it would be so employed.

That is signed by Elizabeth Burbank.

In addition to the indorsement which I just read from Mr. Edison, Thomas A. Edison, who enjoys distinction in the other field which has had protection, innumerable indorsements have come in voluntarily, which I shall not read you, but will ask permission, Mr. Chairman, to place in the record indorsements from former Secretary of Agriculture Mr. Jardine, who in a brief statement says that one of the greatest needs of agriculture to-day is more plants capable of producing bigger yields of superior quality without entailing additional overhead cost: "Our plant breeders in time are capable of bringing this about if given the protection contemplated in your measure."

A splendid indorsement from Commissioner A. W. Gilbert, of the department of agriculture of Massachusetts. Another signed by Leonard Barron, horticulture editor of Doubleday-Doran publications, Country Life and the American Home, and director of the Horticultural Society of New York. Another from David Fairchild, Bureau of Plant Industry, Department of Agriculture. Another from Richard Wellington of the New York State Agriculture Experiment Station. Another from Stanley Johnson, superintendent of the Michigan State College.

Here is a resolution passed by the National Horticultural Council, indorsing it.

Here is a splendid letter from the National Grange. Another from the American Farm Bureau Federation. Another by T. K. Talbert, head of the Agricultural Department of the University of Missouri. Another from E. F. Cole, of Virginia. A splendid letter from Edward A. Rumeley, of New York City, part of which I want to read. He goes ahead to state that he was very much interested in an article appearing in the paper some time ago relative to this proposed measure. He says:

"Col. Francis W. Parker, a patent attorney of the city of Chicago, trustee of the University of Chicago, now deceased, has made a study of this problem and was always keenly interested in it. He felt that some day the patent law would be amended so as to give the man who developed new forms of plant or animal life an opportunity to control reproduction. Some 25 years ago, while studying medicine in Germany, an interesting incident came to my attention. At a flower show a rose grower had developed a new rose and had exhibited it, but before doing so had seared the unsprouted buds with a hot wire, to prevent his exhibit roses from being used to reproduce this new development. Not very long thereafter a competitor of his appeared with a large quantity of the same roses on the market. It was found that this competitor had taken some of the exhibit roses and found one or two eyes that had not been destroyed and reproduced the strain. This was taken before a sort of German trade commission and there declared to be unfair competition. The competitor was compelled to turn over the profits that had accrued to him, and destroy the entire stock he had acquired in this somewhat surreptitious manner.

As a pupil of Weissman I have been long interested in the problems of improving the forms of plant life. I am convinced that all that has been accomplished in multiplying plant and animal life to make it more serviceable to human interest is small compared with the undeveloped potentialities that exist, and that our present arrangement, which largely removes personal incentive and makes plant breeding a matter of philanthropy or of the public purse, is the fact that has held much more rapid progress in check.

He also makes some reference to Mr. Hill from my State, who is a very famous breeder of roses and says that some 20 years ago he told him that he could use his particular abilities and skill in creating new forms of plant life only to a limited extent, because of the deficient protection for the results of his efforts. and the inability to recoup in subsequent sales for the money that he invested.

I have letters of indorsement from a number of others here that I shall not read.

I took the liberty last night, gentlemen, of sending to all of you—or yesterday afternoon—a copy of the report which was filed in the Senate with the companion bill to my bill, which was introduced by Senator Townsend. That is one of the finest reports I ever read. I can say that because I had nothing whatever to do with it. Of course, it came from the Senate side. I think maybe the gentleman sitting along here some place who prepared it—I think Mrs. Lee perhaps had something to do with it—but anyway, I commend the reading of that report to your very careful consideration.

Now, gentlemen, I have stated briefly here what I regard as the purposes of this bill, and Mr. Starke and the Commissioner of Patents

and a number of others who are interested are here, and I regret to state that I must now leave to meet another engagement. I would like for Mr. Starke to take charge now and introduce another witness or two, if he sees fit, and the Commissioner of Patents is here and I know you will want to talk to him about this.

A lot of work has been done on this matter. I claim very little if any credit for it. A lot of work has been done in order to make this constitutionally sound and make it do the thing we want to do without stepping on anybody's toes or without giving the man who runs over into his neighbor's yard and finds an unusual plant of some kind, an opportunity to exploit it. Amendments have been introduced and adopted since the original introduction of the bill, which I think have very materially strengthened it; some valuable suggestions contributed by the commissioner have been carried out so that, in my judgment, the bill as it is now drafted, with the very possible exception of another amendment that may be offered and to which we have no objection, represents a sound measure and will do, in my judgment, the thing that we are trying to do.

I do not believe—I say modestly, and I am proud to have my name connected with this bill, although I have not had a great deal to do with the preparation of it—but I dare say that few bills have been introduced in the last decade that really are of such tremendous importance as this bill, and I hope you gentlemen will give it the serious consideration that you do give to such legislation as this, and that it may be reported out.

The CHAIRMAN. Mr. Purnell, the first bill that was introduced, 9765, was sent to the Commissioner of Patents and to the Secretary of Commerce, and on March 12, I received a reply from the Secretary of Commerce reading as follows:

DEPARTMENT OF COMMERCE,
Washington, March 12, 1930.

Hon. ALBERT H. VESTAL,
House of Representatives, Washington, D. C.

MY DEAR MR. VESTAL: This department is very much in favor of any bill that will put agriculture on the same basis as industry with respect to patents. It is anxious to help and does not wish to find itself in a position in which it may appear to be antagonistic to the proposed legislation embodied in S. 3530.

The Patent Office is very strongly of the opinion that the bill in its present form is not constitutional; but, before going on record to this effect, I am calling your attention, unofficially, to the attached memorandum from the Commissioner of Patents on the subject, hoping that by some amendment or modificaton the bill may be put in such shape that, when it goes through, it will actually accomplish what is intended.

If you have good opinion contrary to the commissioner's views, I suggest you take the matter up with him, as I know he is as anxious as we are to be helpful and not obstructive in this matter.

Very sincerely yours,

R. P. LAMONT,
Secretary of Commerce.

DEPARTMENT OF COMMERCE,
UNITED STATES PATENT OFFICE,
Washington, March 8, 1930.

Memorandum for Secretary Lamont.

As requested, I have given careful study to the bill, S. 3530, which is intended to extend the benefits of our patent system to certain agricultural discoveries.

It is my understanding that the purpose of this bill is to "give to agriculture and horticulture the same privileges that have been enjoyed by industrial inventors and discoverers during the last century" by making it possible to

protect by patent any new and distinct variety of asexually reproduced plant other than a tuber-propagated plant and other than a plant which reproduces itself without human aid.

This office is in full sympathy with every effort made to aid agriculture and horticulture, and if the patent laws can be amended in any way to accomplish this end the office is anxious to cooperate. For many years past patents have been granted for methods of grafting, etc., but the present patent law does not make it possible to grant patents for plants asexually reproduced.

The amendment to section 4886, Revised Statutes, as proposed by S. 3530, provides (1) that a patent may be granted to anyone who has invented or discovered any new and distinct variety of asexually reproduced plant (with certain exceptions) and (2) to anyone who finding an "already existing" plant reproduces the same asexually.

However sympathetic I am with the purpose of the proposed changes in the statute, I am constrained to suggest the possibility that in passing such a bill Congress may be exceeding the powers granted by the Constitution. This is particularly so with respect to the proviso at the end of the bill, which permits patents to be granted covering item No. 2 above referred to for a "thing already existing" when reproduced asexually.

The Constitution (Art. I, sec. 8) gives to Congress the power to grant exclusive rights to only two classes of persons, namely, authors and inventors.

The courts have uniformly held that a valid patent can be granted only for an invention. In the case of Thompson *v.* Boisselier (114 U. S. 1) the Supreme Court of the United States said that the beneficiary under the provisions of the Constitution must be "an inventor and he must have made a discovery," and further, that the thing for which he seeks a patent must "under the Constitution and the statute, amount to an invention or discovery."

A full discussion of the question with reference to what is a "constitutional invention" is found in the decision of the Circuit Court of the District of Columbia in the case of In re Kemper, MacArthur's Patent Cases, page 1, written in 1841 by Justice Cranch.

It may be doubted whether a valid patent can be granted for a plant even if it is a new variety, when that plant is reproduced by operation of nature, aided only by the act of the patentee in grafting it by the usual methods, and a very serious question arises as to whether the definition given to the words "invention" and "discovery" in the proviso in the bill, namely, that they shall be interpreted "in the sense of finding a thing already existing and reproducing the same as well as in the sense of creating," does not go beyond the power which the Constitution grants to Congress. Under that proviso the person who is given the right to get a patent, if the found variety is new, has done nothing whatever in any way toward creating that variety. In fact, under this proviso any one "finding" a plant a half a century old could, if he is the first to asexually reproduce one like it merely by the usual grafting methods, obtain a patent and prevent anyone else from likewise asexually reproducing that plant from a cutting taken from the original plant.

It is thought that this question of constitutionality should be very carefully considered by the congressional committees.

If the proviso were omitted, it is true that it would not carry out all of the purposes of the proponents of the bill as set forth in certain literature which has been submitted to this office, since it would not encourage our citizens generally to be on the lookout for varieties produced by natural processes; that is, by nature's accidental cross pollination of two varieties of any given plants. It would, however, lend encouragement to agriculture in that it would stimulate plant breeders, nurserymen, and horticulturists to new efforts in producing new and useful varieties when such varieties are created, for example, by cross pollination resulting from human efforts as distinguished from the accidental cross pollination not caused by human efforts.

In view of the doubt above expressed, it is strongly urged that instead of amending section 4886, Revised Statutes, which is the present fundamental patent statute and the basic authority for the present granting of patents, the proposed amendments should be presented not as a substitute for but merely as supplemental to section 4886, and phrased, for example, by stating that subject to the provisions of sections 4886 and 4887, Revised Statutes, a patent may be granted to a person who has invented or discovered any new and distinct variety, etc., following the language of S. 3530. (See the bill hereinafter suggested.)

If this course is followed, and the new act or any part thereof should eventually be held unconstitutional, it would in no way endanger or affect the validity of present section 4886, Revised Statutes, our fundamental law.

I should further suggest that the passage of this bill will undoubtedly create many administrative difficulties. If it does what its proponents believe it will, a large number of patent applications would be filed in this office, which would add a great amount of work, entailing larger appropriations. Further, and more important, there at once arises the difficulty of defining in a written document which must be printed, both as constituting part of the patent and as constituting a publication available for search and distribution, the differences which identify a new variety from previously known varieties. For example, if that difference exists only in the color of the bloom, then in order to describe that difference it would seem that a colored print of some sort would have to constitute a part of the patent.

If it is not possible by ordinary descriptions of the physical qualities of the plant, or the fruit, or the bloom, or all three, to so accurately define this new variety that it can be differentiated from all known varieties and from all subsequently created new varieties, then it is difficult to see how a patent to be granted would comply with the other provisions of the statutes, namely, that the inventor must describe his invention in full, clear, concise, and exact terms. (R. S. 4888.)

In other words, section 4888, Revised Statutes, requires one who obtains a patent to file in the Patent Office "a written description of the same, and of the manner and process of making, constructing, compounding, and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which it appertains * * * to make, construct, compound, and use the same."

In many instances (if not all) it may be found that no description could be written that would enable any one to identify so as to reproduce from that description (without the extraneous aid of physical cuttings or slips grafted in accordance with the usual methods) the new variety, as the only way asexually reproduced varieties can be reproduced is from a physical cutting or slip from the new variety itself. To state the matter in another way, if after the new variety were produced, and then reproduced asexually, an application for patent was filed with the most explicit description that it is possible to furnish, and all the plants containing such a new species were destroyed, as for example by fire, then there would be no way whatever of reproducing this new species. The written description filed in the Patent Office would be useless and hence could not satisfy the conditions of section 4888, Revised Statutes.

In view of the foregoing it may be found advisable to add an additional section 3 somewhat as follows:

"SEC. 3. That with respect to patents granted under the provisions of this act they shall not be declared invalid on the ground of noncompliance with section 4888 of the Revised Statutes where the description is made as complete as is reasonably possible."

It is also suggested that in order to avoid any doubt as to the scope of the protection that a patent of this kind would give to the patentee, the bill should provide that the grant of the exclusive right to make, use, and sell, as provided for in section 4884, Revised Statutes, should be construed to cover the reproduction of the plant. This suggestion is made because the word "make" in the statute is usually understood to mean the construction by human activity whereas these plants are reproduced by growth, a person only putting the graft or scion, for example, in such a position, in the tree to be grafted upon, that it will grow.

In order to carry out the suggestions above made as to embodying the provisions in a separate bill, it is thought that this bill should be drawn to read as follows:

"A BILL To provide for the granting of patents for certain specified varieties of plants

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That, subject to the provisions of sections 4886 and 4887 of the Revised Statutes (U. S. Code, title 35, sections 31 and 32), any person who has invented or discovered any new and distinct variety of asexually reproduced plant except a tuber-propagated plant and except a plant which reproduces itself without human aid, may, upon payment of the fees required by law, and other due proceeding had, obtain a patent therefor: *Provided*, That the words "invented" and "discovered" as used herein shall, in regard to asexually reproduced plants, be interpreted to include invention and discovery in the sense of finding a thing already existing and reproducing the same as well as in the sense of creating.

"SEC. 2. That in every patent issued under the provisions of section 1 of this act the grant of the exclusive right to make, use, and vend the invention or discovery as provided in section 4884 of the Revised Statutes (U. S. Code, title 35, section 40) shall be construed to include the right to reproduce the patented invention.

"SEC. 3. That with respect to patents granted under the provisions of this act they shall not be declared invalid on the ground of noncompliance with section 4888 of the Revised Statutes (U. S. Code, title 35, section 33) where the description is made as complete as is reasonably possible."

While the foregoing bill is submitted merely as an improvement in the form of the bill it must be understood that this bill is subject to the same comments regarding constitutionality as have been made with respect to S. 3530.

And, further, the recommendation is made that the proviso in section 1 be entirely omitted.

THOMAS E. ROBERTSON, *Commissioner.*

I have gone over this matter with the Commissioner of Patents, and as a result this new bill has been introduced, which I think meets all the objections of the Secretary of Commerce and the Commissioner of Patents. I do not think the committee desires to spend a great deal of time on the matter, and these gentlemen here can file briefs if they desire, but the committee would like to hear the Commissioner of Patents on this question.

Mr. PURNELL. Just one word in addition. Mr. Lee is here, and he is thoroughly familiar with the legal aspects of the bill and what has been attempted, or what we are attempting to do here.

The CHAIRMAN. You have no objection to the amendment that is proposed by Mr. Townsend?

Mr. PURNELL. Which provides that plants which have been introduced and have been on public sale prior to the approval of this act shall not be subject to patent? No; there is no objection to that going in there.

Mr. LANHAM. In other words, it is not the intention to make this retroactive.

The CHAIRMAN. Now, Mr. Commissioner, we will be glad to hear you.

STATEMENT OF THOMAS E. ROBERTSON, COMMISSIONER OF PATENTS

Mr. ROBERTSON. There is no objection, I will say, if the committee wants to do it, to this usual section, which is number 5 in the Senate bill, relative to the separability clause. If you want to put in the constitutional provision, there is no objection.

The CHAIRMAN. What you would like to do, Mr. Purnell, and what I think the committee would want to do, is to report out a bill here practically in the same language as it was reported out by the Senate?

Mr. ROBERTSON. I would be delighted to have it the same way, if it meets the approval of the committee.

The CHAIRMAN. All right, Mr. Commissioner.

Mr. ROBERTSON. Mr. Chairman, I can only repeat what the Secretary of Commerce has said. The Department of Commerce and the Patent Office are in full sympathy with every effort made to aid agriculture. We did have some very serious objection to the bill as originally framed, but the bill as it passed the Senate has removed those objections. To remove the objection to the bill as it is now before you in the House, it would need, as Mr. Purnell has just suggested, the addition of section 5 from the Senate bill to this

bill. That would remove our objection and the fear that if, by any possibility this bill when enacted, should be declared unconstitutional, we do not want to run the risk of our fundamental patent statute being declared of no effect. Now, by putting in this section 5——

Mr. LANHAM (interposing). That is in the Senate bill?

Mr. ROBERTSON. That is in the Senate bill.

Mr. PURNELL. We have no objection to that.

Mr. ROBERTSON. Mr. Purnell has already said he has no objection. Section 5 is merely the reservation placed on many bills, reading as follows:

> If any provision of this act is declared unconstitutional, or the application thereof to any purpose or circumstance is held invalid, the validity of the remainder of the act, and the application thereof to other purposes or circumstances, shall not be affected thereby.

In other words, we do not want, by having this part—the part which relates to granting patents on plants—incorporated in our fundamental patent statute and run the risk of that whole statute being declared invalid merely because of the presence of this one phase of it.

Mr. LANHAM. We could obviate that by simply reporting out the Senate bill, incorporating this amendment suggested by Mr. Purnell.

Mr. ROBERTSON. Yes, that will remove the objection of the Patent Office, and as a matter of policy I think it would be well to adopt the phraseology that Senator Townsend suggested, and which was just suggested by Mr. Purnell, which will remove the objections of nursery men in the fear that plants already in existence might be covered by this bill.

Mr. LANHAM. This bill introduced in the House by Mr. Purnell is exactly the same as the Senate bill, except that it does not have section 5 included?

Mr. ROBERTSON. That is right.

Mr. LANHAM. Then if this bill were reported with section 5 of the Senate bill included, together with the amendments suggested by Mr. Purnell, which came from Senator Townsend, then that would fix the matter so far as the Patent Office thinks, in as good condition as it could be made?

Mr. PURNELL. And with the further suggestion, Mr. Lanham, that neither bill contains this additional suggestion, which is agreeable to both sides.

Mr. LANHAM. That is the one suggested by Senator Townsend?

Mr. PURNELL. Yes.

Mr. LANHAM. I make the motion, Mr. Chairman, that we report this out favorably, adding section 5 of the Senate bill thereto, and also incorporating the amendment suggested here by Mr. Purnell. do not see any reason for prolonging the hearing, if the commissioner approves.

The CHAIRMAN. I will put the motion.

(The motion was put and carried.)

The motion is carried. The bill is reported. Mr. Purnell, the hearing is completed. We will adjourn until next Friday morning.

(Whereupon, at 11.10 o'clock a. m. the committee adjourned until 10 o'clock a. m. Friday, April 11, 1930.)

ADDENDUM

House Report No. 1129, Seventy-first Congress second session

PLANT PATENTS

APRIL 10, 1930.—Referred to the House Calendar and ordered to be printed

Mr. VESTAL, from the Committee on Patents, submitted the following

REPORT

[To accompany H. R. 11372]

The Committee on Patents, to whom was referred the bill (H. R. 11372) to provide for plant patents, have considered the same and report thereon with amendments, and, as so amended, recommend that the bill do pass.

As to the two committee amendments, one adds to the bill the usual separability clause and the other eliminates from the scope of the bill patents for varieties of plants which were introduced to the public prior to the approval of the Act.

I. PURPOSES OF THE BILL

The purpose of the bill is to afford agriculture, so far as practicable, the same opportunity to participate in the benefits of the patent system as has been given industry, and thus assist in placing agriculture on a basis of economic equality with industry. The bill will remove the existing discrimination between plant developers and industrial inventors. To these ends the bill provides that any person who invents or discovers a new and distinct variety of plant shall be given by patent an exclusive right to propagate that plant by asexual reproduction; that is, by grafting, budding, cuttings, layering, division, and the like, but not by seeds. The bill does not provide for patents upon varieties of plants newly found by plant explorers or others, growing in an uncultivated or wild state.

STIMULATION OF PLANT BREEDING

To-day the plant breeder has no adequate financial incentive to enter upon his work. A new variety once it has left the hands of the breeder may be reproduced in unlimited quantity by all. The originator's only hope of financial reimbursement is through high prices for the comparatively few reproductions that he may dispose

of during the first two or three years. After that time, depending upon the speed with which the plant may be asexually reproduced, the breeder loses all control of his discovery. Under the bill the originator will have control of his discovery during a period of 17 years, the same term as under industrial patents. If the new variety is successful, the breeder or discoverer can expect an adequate financial reward. To-day plant breeding and research is dependent, in large part, upon Government funds to Government experiment stations, or the limited endeavors of the amateur breeder. It is hoped that the bill will afford a sound basis for investing capital in plant breeding and consequently stimulate plant development through private funds.

In addition, the breeder to-day must make excessive charges for specimens of the new variety disposed of by him at the start in order to avail himself of his only opportunity for financial reimbursement. Under the bill the breeder may give the public immediate advantage of the new varieties at a low price with the knowledge that the success of the variety will enable him to recompense himself through wide public distribution by him during the life of the patent. The farmers and general public that buy plants will be able promptly to obtain new improved plants at a more moderate cost.

No one has advanced a just and logical reason why reward for service to the public should be extended to the inventor of a mechanical toy and denied to the genius whose patience, foresight, and effort have given a valuable new variety of fruit or other plant to mankind.

This bill is intended not only to correct such discrimination, but in doing so it is hoped the genius of young agriculturists of America will be enlisted in a profitable work of invention and discovery of new plants that will revolutionize agriculture as inventions in steam, electricity, and chemistry have revolutionized those fields and advanced our civilization.

On this point the late Luther Burbank has said:

> I have been for years in correspondence with leading breeders, nurserymen, and Federal officials and I despair of anything being done at present to secure to the plant breeder any adequate returns for his enormous outlays of energy and money. A man can patent a mousetrap or copyright a nasty song, but if he gives to the world a new fruit that will add millions to the value of earth's annual harvests he will be fortunate if he is rewarded by so much as having his name connected with the result. Though the surface of plant experimentation has thus far been only scratched and there is so much immeasurably important work waiting to be done in this line I would hesitate to advise a young man, no matter how gifted or devoted, to adopt plant breeding as a life work until America takes some action to protect his unquestioned rights to some benefit from his achievements.

The only possible objection to such a measure as the present bill might come from a few propagators who would wish to continue their custom of unfairly appropriating the life work of the plant developers who have contributed their time and funds but have been helpless against this form of piracy under existing laws. The history of the men who have originated, developed, and introduced new plants of inestimable value to humanity and have died in poverty, amply demonstrates that this practice should be outlawed.

The committee fully concurs in the statements of leaders of agriculture who have expressed the opinion that this is one of the most constructive measures ever proposed for the permanent benefit of agriculture.

ECONOMIC BENEFIT TO AGRICULTURE AND THE PUBLIC

The food and timber supply of the Nation for the future is dependent upon the introduction of new varieties. Many millions of Federal and private funds are annually spent in combating disease through plant quarantines, disinfection, spraying, and other methods. The phony peach disease has threatened the important peach supply of Georgia and the welfare of one of the most important industries of that State. The chestnut blight has wiped the eastern forests clean of the valuable chestnut tree. The white-pine blister rust threatens the white-pine forests. The plant pathologist has through his experiments attempted with but slight success to combat these plant diseases. But an equally valuable means of combating plant disease is the development of new disease-resistant varieties by the plant breeder. The bill proposes to give the breeder the incentive to develop such varieties without the aid of Federal funds.

Similarly, the development of drought-resistant and cold-resistant varieties of plants is of great importance to agriculture. An apple with greater resistance to cold is one of the demands of the northern portion of the country. We must look to the plant breeder for an acceptable substitute for rubber. The improvement of medicinal plants is an unexplored field. The spectacular development of new classes of plants, such as the loganberry and many of Burbank's products, is only a small part of the economic benefit to the country afforded by successful plant breeding.

No one will question the fact that new varieties of food, medicinal, and other economic plants may be an important factor in maintaining public health and in promoting public safety and national defense. Thus the food supply of the Nation, both from the viewpoint of the producer and the user, is of vital importance, and insurance against failure in that supply is necessary to public safety and national prosperity. Plant breeding and discovery, while in its infancy, is fundamentally connected with the Nation's food supply, and will, if encouraged and developed, be of incalculable value in maintaining public health and prosperity, and in promoting public safety and the national defense. Finally, plant patents will mean better agricultural products that will give the public more actual value for its dollar.

II. Bill Generally Advocated

The proposed legislation has been generally advocated. The Secretary of Agriculture, whose letter appears in full in Appendix A to this report, states that—

> The proposed legislation would appear to be desirable and to lend far-reaching encouragement to agriculture and benefit to the general public.

Mr. Thomas A. Edison states that—

> Nothing that Congress could do to help farming would be of greater value and permanence than to give to the plant breeder the same status as the mechanical and chemical inventors now have through the patent law. There are but few plant breeders. This [the bill] will, I feel sure, give us many Burbanks.

Mrs. Luther Burbank has telegraphed as follows:

> Informed that Congress is considering bill to protect through patent machinery the rights of plant breeders and experimenters to a share in the commercial returns of their discoveries in fruits and flowers. I hasten to acquaint you

with Luther Burbank's very strong feeling in this connection. He said repeatedly that until Government made some such provision the incentive to creative work with plants was slight and independent research and breeding would be discouraged to the great detriment of horticulture. Mr. Burbank would have been unable to do what he did with plants had it not been for royalties from his writings and from other by-product lines of activity, but it must be remembered that most plant breeders and experimenters do not reach posts where any such revenues are available to them until too late in their lives to help them in financing their extremely expensive work. If Mr. Burbank were living I know he would be in forefront of the campaign to secure protection for other devoted men giving their lives to this service to mankind.

The proposed legislation has been indorsed by former Secretary of Agriculture Jardine, the National Horticultural Council, the American Association of Nurserymen, the American Farm Bureau Federation, the National Grange, and many State commissioners of agriculture, experiment station officials, and individual growers and nurserymen. The Commissioner of Patents approves the bill as amended by the committee.

III. Explanation of Provisions of Bill

CLASSES OF NEW VARIETIES

New and distinct varieties fall into three classes—sports, mutants, and hybrids.

In the first class of cases, the sports, the new and distinct variety results from bud variation and not seed variation. A plant or portion of a plant may suddenly assume an appearance or character distinct from that which normally characterizes the variety or species.

In the second class of cases, the mutants, the new and distinct variety results from seedling variation by self pollenization of species.

In the third class of cases, the hybrids, the new and distinct variety results from seedlings of cross pollenization of two species, two varieties, or of a species and a variety. In this case the word "hybrid" is used in its broadest sense.

All such plants must be asexually reproduced in order to have their identity preserved. This is necessary since seedlings either of chance or self-pollenization from any of these would not preserve the character of the individual.

These cultivated sports, mutants, and hybrids are all included in the bill, and probably embrace every new variety that is included. The exclusion of a wild variety, the chance find of the plant explorer, is in no sense a limitation on the usefulness of the bill to those who follow agriculture or horticulture as a livelihood and who are permitted under the bill to patent their discoveries.

PATENT GRANTS RIGHT OF ASEXUAL REPRODUCTION ONLY

Whether the new variety is a sport, mutant, or hybrid, the patent right granted is a right to propagate the new variety by asexual reproduction. It does not include the right to propagate by seeds. This limitation in the right granted recognizes a practical situation and greatly narrows the scope of the bill. Whether the new variety is a hybrid, mutant or sport, there is never more than one specimen of it produced except through asexual reproduction. For example, without asexual reproduction there would have been but one true McIntosh or Greening apple tree.

These varieties of apples could not have been preserved had it not been through human effort in the asexual reproduction of the two original trees. They could not have been reproduced true to the type by nature through seedlings. The bill, therefore, proposes to afford through patent protection an incentive to asexually reproduce new varieties. Many varieties of apples equally as valuable as the McIntosh or Greening have undoubtedly been created and disappeared beyond human power of recovery because no attempt was made to asexually reproduce the new varieties. The present bill by its patent protection proposes to give the necessary incentive to preserve new varieties. On the other hand, it does not give any patent protection to the right of progagation of the new variety by seed, irrespective of the degree to which the seedlings come true to type.

DISTINCT VARIETIES

On the other hand, in order for the new variety to be distinct it must have characteristics clearly distinguishable from those of existing varieties, and it is immaterial whether in the judgment of the Patent Office the new characteristics are inferior or superior to those of existing varieties. Experience has shown the absurdity of many views held as to the value of new varieties at the time of their creation.

The bill authorizes the grant of a patent only in case the new variety is distinct. In order for a variety of plant to be distinct it is not necessary that it be a variety of a new species. A variety of plant may be patented if it is a new and distinct variety either of an existing or of a new species, or if it is an entirely new species of plant.

The characteristics that may distinguish a new variety would include, among others, those of habit; immunity from disease; resistance to cold, drought, heat, wind, or soil conditions; color of flower, leaf, fruit, or stems; flavor; productivity, including ever-bearing qualities in case of fruits; storage qualities; perfume; form; and ease of asexual repfoduction. Within any one of the above or other classes of characteristics the differences which would suffice to make the variety a distinct variety, will necessarily be differences of degree. While the degree of difference sufficient for patentability will undoubtedly be a difficult administrative question in some instances, the situation does not present greater difficulties than many that arise in the case of industrial patents.

In specifying the differences in characteristics the Patent Office will undoubtedly follow the practice among botanists in making use of verbal descriptions and photographic and other reproductions, taking some known plant as a basis of comparison. Modern methods of identification, together with such amplification thereof as may reasonably be expected, will render it possible and practicable to describe clearly and precisely the characteristics of a particular variety. When this can not be done by an applicant for a patent, the variety is not clearly distinguishable as a distinct variety, and no patent would issue.

Of course, allowance must be made for those minor differences in characteristics, commonly called fluctuations, which follow from variations in methods of cultivation or environment and are temporary rather than permanent characteristics of the plant.

EXCEPTION OF TUBER-PROPAGATED PLANTS

The bill excepts from the right to a patent the invention or discovery of a distinct and new variety of a tuber-propagated plant. The term "tuber" is used in its narrow horticultural sense as meaning a short, thickened portion of an underground branch. It does not cover, for instance, bulbs, corms, stolons, and rhizomes. Substantially, the only plants covered by the term "tuber-propagated" would be the Irish potato and the Jerusalem artichoke. This exception is made because this group alone, among asexually reproduced plants, is propagated by the same part of the plant that is sold as food.

THE PREREQUISITE OF ASEXUAL REPRODUCTION

It is not only necessary that the new and distinct variety of plant shall have been invented or discovered, but it is also necessary that it shall have been asexually reproduced prior to the application for patent. A plant patent covers only the exclusive right of asexual reproduction, and obviously it would be futile to grant a patent for a new and distinct variety unless the variety had been demonstrated to be susceptible of asexual reproduction. Of course, theoretically under laboratory conditions it is probable that all plants can be asexually reproduced, but it is hardly to be expected that a patent will be applied for unless at the time of application the plant can be asexually reproduced upon a commercial scale or else there is reasonable expectation that it can be so reproduced in the near future.

COOPERATION WITH DEPARTMENT OF AGRICULTURE

The bill proposes that the President may facilitate the administration of its provisions by the Patent Office through requiring the Secretary of Agriculture, to furnish the Commissioner of Patents with available information in the department, to conduct necessary research, and to detail to the Patent Office technical employees of the department. As to this feature the Secretary of Agriculture states in his letter set forth in Appendix A to this report that—

> As determinations of the newness of varieties could not be made solely upon the basis of descriptive matter and drawings, it is evident that the specimens, photographs, paintings, descriptions, etc., of existing plants, already available in various forms in the Department of Agriculture and elsewhere, will be of great value, increased in due time by extension of such collections of plants and data.
>
> The effective administration of such legislation would require expert personnel, comparable in their lines, with the specialists now employed by the Patent Office. The technical personnel of the Department of Agriculture, although possibly inadequate to meet future demands, would be available in making such determinations as would be necessary in carrying out the purposes of such a law.

APPLICATION TO EXISTING PLANTS

The bill does not permit the patenting of plants that have been in public use or on sale for more than two years prior to application for patent, or (under the committee amendment) that have been offered generally for sale, prior to the approval of the Act. Furthermore, it was considered unnecessary to provide specifically that the bill shall permit the patenting of plants now in process of creation, under observation, under test, or in existence but not yet given to the public,

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as that appears to the committee to be covered adequately by the existing provisions of section 4886 of the Revised Statutes. With reference to plants, the words "in public use or on sale" would apply to the period during which the new variety is asexually reproduced for sale.

IV. Legal Phases of the Bill

The committee is of the opinion after careful consideration that the amendments to the patent laws proposed by the bill fall within the legislative power of Congress under Article I, section 8, of the Constitution—

> To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

Present patent laws apply to—

> any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement thereof * * *.

It will be noted that the laws apply both to the acts of inventing and discovery and this alternative application has been true of the patent laws from their beginning. See, for instance, the patent Act of 1790 (1 Stat. 109). The amendment proposed by the pending bill to care for plant patents likewise applies to "any person who has invented or discovered" the particular variety of plant.

There can be no doubt that the grant of plant patents constitutes a promotion of "the progress of science and useful arts" within the meaning of the constitutional provision. The only question is, Is the new variety a discovery and is the originator or discoverer an inventor?

There is a clear and logical distinction between the discovery of a new variety of plant and of certain inanimate things, such, for example, as a new and useful natural mineral. The mineral is created wholly by nature unassisted by man and is likely to be discovered in various parts of the country; and, being the property of all those on whose land it may be found, its free use by the respective owners should of course be permitted. On the other hand, a plant discovery resulting from cultivation is unique, isolated, and is not repeated by nature, nor can it be reproduced by nature unaided by man, and such discoveries can only be made available to the public by encouraging those who own the single specimen to reproduce it asexually and thus create an adequate supply.

It is obvious that nature originally creates plants but it can not be denied that man often controls and directs the natural processes and produces a desired result. In such cases the part played by nature and man can not be completely separated or weighed or credited to one or the other. Nature in such instances, unaided by man, does not reproduce the new variety true to type.

Furthermore, there is no apparent difference, for instance, between the part played by the plant originator in the development of new plants and the part played by the chemist in the development of new compositions of matter which are patentable under existing law. Obviously, these new compositions of matter do not come into being solely by act of man. The chemist who invents the composition of matter must avail himself of the physical and chemical qualities inherent in the materials used and of the natural principles

applicable to matter. Whether or not he is aware of these principles does not affect the question of patentability. The inventor of the composition of matter may have definitely in mind the new product and definitely worked toward it. On the other hand, as is true of many of the most important inventions, he may accidentally discover the product, perhaps in the course of the regular routine of his work. He does not have to show, for instance, that he mixed the elements and expected them to produce the particular composition of matter. He may simply find the resulting product and have the foresight and ability to see and appreciate its possibilities and to take steps to preserve its existence.

The same considerations are true of the plant breeder. He avails himself of the natural principles of genetics and of seed and bud variations. He cultivates the plants in his own laboratory under his own eye. He may test and experiment with them on a variety of proving grounds. He may promote natural cross-pollination by growing the parent plants in juxtaposition. For instance, because of manual difficulties artificial hand pollination is impracticable in the production of seed of the genus compositae, including such species as dahlias, chrysanthemums, asters, daisies, and the like, and also in the case of many of the small fruits. In other cases hand pollination is unnecessary; natural pollination does equally well. On the other hand, if the periods of the bloom of the two parent plants differ, hand pollination and the camel's-hair brush must be used. Again, orchids, avocados, grapes, and most orchard fruits are subjected to hand pollination. In the case of sports, the plant breeder not only cultivates the plants but may subject them to various conditions of cultivation to encourage variation, as, for example, in some recent developments, the subjection of the plants to the effects of X rays or to abnormal fertilization. Finally, the plant originator must recognize the new and appreciate its possibilities either for public use or as a basis for further exercise of the art of selection. Moreover, it is to be noted that those wild varieties discovered by the plant explorer or other person who has in no way engaged either in plant cultivation or care and who has in no other way facilitated nature in the creation of a new and desirable variety are not within the scope of the bill.

But even were the plant developer's contributions in aid of nature less creative in character than those of the chemist in aiding nature to develop a composition of matter which has theretofore been nonexistent (an assumption which the committee does not believe to have basis in fact and which is here made solely for purposes of argument), nevertheless the protection by patents of those engaged in plant research and discovery would not be beyond the constitutional power of the Congress.

At the time of the adoption of the Constitution the term "inventor" was used in two senses. In the first place the inventor was a discoverer, one who finds or finds out. In the second place an inventor was one who created something new. All the dictionaries at the time of the framing of the Constitution recognized that "inventor" included the finder out or discoverer as well as the creator of something new. Thus Sheridan in 1790 defined "inventor" as "A finder out of something new," and "invention" as "discovery." Kersey in 1708 defined "invention" as "the act of inventing, or finding," and Martin in 1754 defined "to invent" as "to find out or discover."

The word "discover" or "discovery" is given as an equivalent by Cocker in 1715 and 1724, Ash in 1775, Perry in 1795, Entick in 1786, Fenning in 1771, and Barclay in 1841. "To find" or "find out" or "finding" as a synonym of invent or inventor, was noted by Rider in 1617, Holy-oke in 1649, Coles in 1724, Johnson in 1824, Kendrick in 1773, Martin in 1754, Kersey in 1708, Sheridan in 1790, Ash in 1775, Cocker in 1715 and 1724, Entick in 1786 and 1791, Fenning in 1771, and Coxe in 1813.

The distinction between discovering or finding out on the one hand and creating or producing on the other hand, being recognized in the dictionaries current at the time of the framing of the Constitution, it is reasonable to suppose the framers of the Constitution attributed to the term "inventor" the then customary meaning. That they did not ignore the meaning of inventor as "a discoverer or finder out" is furthermore indicated by the fact that in the Constitution itself the framers referred to the productions of inventors as "discoveries."

With the development of the patent laws and modern industry the meaning of the word "inventor" as a creator of something new became the prevailing use and, while both meanings of inventor are still recognized in such modern dictionaries as Murray's New English Dictionary, Webster's New International Dictionary, and the Century Dictionary and Encyclopedia, the meaning of inventor as "a finder out or discoverer" is now considered obsolete or archaic. However, it seems to the committee that the meaning to be attached to the term "inventor" as used in the Constitution must be the meaning in general use at the time of the framing of the Constitution rather than the meaning prevailing in present-day usage.

Furthermore, there are many instances where the provisions of the Constitution have been held to embrace affairs which, while literally within the meaning of a constitutional phrase, were not conceived of by the framers at the time that the Constitution was written. For example, the power to regulate interstate commerce, which was then mainly by horse or by rowboat or sailboat, is now held by the courts to cover regulation of steam transportation, telegraphic communication, and even radio communication, matters beyond the wildest dreams of the framers of the Constitution.

An indication of the construction that the courts are likely to place on the word "inventor" in the constitutional provision can be found in their construction of the words "author" and "writer" in the same paragraph. The Constitution gives Congress power—

> To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

Under this provision the original Act of May 31, 1790 (1 Stat. 124), allowed copyright of maps and charts as well as books. By successive legislation this right was extended to include photographs, statues, models, and designs. (See, for instance, 35 Stat. 1075.) It might well be doubted whether map makers, chart makers, photographers, sculptors, modelers, and designers were "authors," and whether maps, charts, photographs, statues, models, and designs were "writings," but the constitutionality of this legislation has been sustained from the beginning. Thus in Lithographic Co. *v.* Sarony (1883, 111 U. S. 53) it was contended that a photograph was not a

writing nor the production of an author, but the Supreme Court sustained the statute allowing a copyright for photographs.

As to copyrights there was doubt on two words, "authors" and "writings," which certainly do not have in ordinary speech such broad meanings as Congress and the Supreme Court have given them. But the court had no difficulty in sustaining a sufficiently liberal construction. As to patents the doubt is only as to the one word, "inventors." The word "discovery" aptly describes the situation when a new and distinct variety of plant is found and "inventors" is certainly as elastic a word as "authors." It is not to be expected that the courts would place themselves in the position of impeding the progress of the science and useful art of agriculture by holding to so narrow a definition of the word "inventor" as to find that the proposed legislation was undoubtedly beyond the power of the Congress.

APPENDIX A. LETTER OF SECRETARY OF AGRICULTURE

[NOTE.—The letter of the Secretary of Agriculture is addressed to the proposed legislation as originally introduced as H. R. 9765 of the present session. There are, however, only minor differences between that bill and the bill reported by the committee.]

DEPARTMENT OF AGRICULTURE,
Washington, D. C., March 17, 1930.

Hon. A. H. VESTAL,
House of Representatives, Washington, D. C.

DEAR MR. VESTAL: I acknowledge your letter of March 12, asking for our opinion regarding H. R. 9765, to amend section 4886, of the Revised Statutes, introduced by Congressman Purnell.

The evident purpose of this bill is to encourage the improvement of some kinds of cultivated plants, both through breeding and discovery of better varieties, by granting to the breeders or finders of new and distinct varieties of such plants the exclusive control over the reproduction of their creations and discoveries, presumably for the same period of years now covered by patents on inventions. This purpose is sought to be accomplished by bringing the reproduction of such newly bred or found plants under the patent laws which at the present time are understood to cover only inventions or discoveries in the field of inanimate nature. This it is proposed to accomplish by amending section 4886 of the Revised Statutes so as to make it possible to patent "any new and distinct variety of an asexually reproduced plant other than a tuber-propagated plant or a plant which reproduces itself without human aid." The operation of the present law is understood to rest upon the filing by the inventor of such properly authenticated verbal descriptions, designs, drawings, or other descriptive matter as will fully disclose the nature of his invention or discovery, thereby enabling one skilled in the art to which it relates to make effective practical application of the invention or discovery.

Bill H. R. 9765 proposes in effect to authorize the patenting of certain distinguishable forms of plants which are capable of reproduction and multiplication through the operation of physiological processes with human aid.

Page 2, lines 8 to 13, which in the bill read as follows, "*Provided*, That the words 'invented' and 'discovered' as used in this section, in regard to asexually reproduced plants, shall be interpreted to include invention and discovery in the sense of finding a thing already existing and reproducing the same as well as in the sense of creating," interpreted in the light of agricultural and horticultural experience and history, would appear to make possible the patenting of the reproduction of any new and distinct variety wherever discovered, provided it meets the other specifications of the bill.

This possibility of reward would undoubtedly influence the public to be more observant of plants and thus tend to prevent the waste of many valuable new varieties which occur naturally but are now lost to mankind through neglect or lack of appreciation of their value.

As determinations of the newness of varieties could not be made solely upon the basis of descriptive matter and drawings, it is evident that the specimens, photographs, paintings, descriptions, etc., of existing plants, already available in various forms in the Department of Agriculture and elsewhere, will be of great value, increased in due time by extension of such collections of plants and data.

The effective administration of such legislation would require expert personnel, comparable in their lines with the specialists now employed by the Patent Office. The technical personnel of the Department of Agriculture, although possibly inadequate to meet future demands, would be available in making such determinations as would be necessary in carrying out the purposes of such a law.

The proposed legislation would appear to be desirable and to lend far-reaching encouragement to agriculture and benefit to the general public.

Yours very truly,

ARTHUR M. HYDE, *Secretary.*

APPENDIX B. TEXT OF BILL

[NOTE.—The following sets forth the text of the bill as it would appear with the committee amendments adopted. The italics indicate the changes to be made in the existing patent laws.]

A BILL To provide for plant patents

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 4884 and 4886 of the Revised Statutes, as amended (U. S. C., title 35, secs. 40 and 31), are amended to read as follows:

"SEC. 4884. Every patent shall contain a short title or description of the invention or discovery, correctly indicating its nature and design, and a grant to the patentee, his heirs or assigns, for the term of seventeen years, of the exclusive right to make, use, and vend the invention or discovery (*including in the case of a plant patent the exclusive right to asexually reproduce the plant*) throughout the United States and the Territories thereof, referring to the specification for the particulars thereof. A copy of the specification and drawings shall be annexed to the patent and be a part thereof.

"SEC. 4886. Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvements thereof, *or who has invented or discovered and asexually reproduced any distinct and new variety of plant other than a tuber-propagated plant,* not known or used by others in this country, before his invention or discovery thereof, and not patented or described in any printed publication in this or any foreign country, before his invention or discovery thereof, or more than two years prior to his application, and not in public use or on sale in this country for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law, and other due proceeding had, obtain a patent therefor."

SEC. 2. Section 4888 of the Revised Statutes, as amended (U. S. C., title 35, sec. 33), is amended by adding at the end thereof the following sentence: "*No plant patent shall be declared invalid on the ground of noncompliance with this section if the description is made as complete as is reasonably possible.*"

SEC. 3. The first sentence of section 4892 of the Revised Statutes, as amended (U. S. C., title 35, sec. 35), is amended to read as follows:

"SEC. 4892. The applicant shall make oath that he does verily believe himself to be the original and first inventor or discoverer of the art, machine, manufacture, composition, or improvement, *or of the variety of plant,* for which he solicits a patent; that he does not know and does not believe that the same was ever before known or used; and shall state of what country he is a citizen."

SEC. 4. The President may by Executive order direct the Secretary of Agriculture (1) to furnish the Commissioner of Patents such available information of the Department of Agriculture, or (2) to conduct through the appropriate bureau or division of the department such research upon special problems, or (3) to detail to the Commissioner of Patents such officers and employees of the department, as the commissioner may request for the purposes of carrying this act into effect.

SEC. 5. Notwithstanding the foregoing provisions of this act, no variety of plant which has been introduced to the public prior to the approval of this act, shall be subject to patent.

SEC. 6. If any provision of this act is declared unconstitutional or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the act and the application thereof to other persons or circumstances shall not be affected thereby.

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PURNELL, Fred Sampson, (1882 - 1939)

PURNELL, Fred Sampson, a Representative from Indiana; born on a farm near Veedersburg, Fountain County, Ind., October 25, 1882; attended the common schools and the high school at Veedersburg; was graduated from the law department of Indiana University at Bloomington in 1904; was admitted to the bar the same year and commenced practice in Attica, Fountain County, Ind.; city attorney of Attica 1910-1914; resumed the practice of his profession; unsuccessful candidate for election in 1914 to the Sixty-fourth Congress; elected as a Republican to the Sixty-fifth and to the seven succeeding Congresses (March 4, 1917-March 3, 1933); unsuccessful candidate for reelection in 1932 to the Seventy-third Congress and for election in 1934 to the Seventy-fourth Congress; resumed the practice of law in Attica, Ind.; moved to Washington, D.C., in April 1939 and served as an attorney in the General Accounting Office until his resignation on October 1, 1939; died in Washington, D.C., October 21, 1939; interment in Rockfield Cemetery, near Veedersburg, Ind.

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71ST CONGRESS
2D SESSION

H. R. 9765

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 11, 1930

Mr. PURNELL introduced the following bill; which was referred to the Committee on Patents and ordered to be printed

A BILL

To amend section 4886 of the Revised Statutes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4886 of the Revised Statutes be, and the same is hereby, amended to read as follows:

"SEC. 4886. Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvements thereof, or any new and distinct variety of asexually reproduced plant other than a tuber-propagated plant or a plant which reproduces itself without human aid, not known or used by others in this country, before his invention or dis-

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covery thereof, and not patented or described in any printed publication in this or any foreign country, before his invention or discovery thereof, or more than two years prior to his application, and not in public use or on sale in this country for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law, and other due proceeding had, obtain a patent therefor: *Provided*, That the words 'invented' and 'discovered' as used in this section, in regard to asexually reproduced plants, shall be interpreted to include invention and discovery in the sense of finding a thing already existing and reproducing the same as well as in the sense of creating."

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2D SESSION H. R. 9488

A BILL

To amend section 4886 of the Revised Statutes.

By Mr. PURNELL

FEBRUARY 11, 1930
Referred to the Committee on Patents and ordered to be printed

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I think is a very mistaken conclusion. I do not agree that the argument of a lawyer in a case which he is prosecuting is at all a guide as to his decisions upon the bench when he may have to pass upon similar cases. An advocate is compelled to present to the court his side of his case with all the strength of his talent, but when he is appointed to the bench, then he exercises his judicial temperament and passes upon the merits of the case.

I remember a distinguished instance that it would not be proper for me here to quote of the position taken by a lawyer as counsel which was afterwards absolutely repudiated by him when sitting upon the bench. That is what we expect from every great lawyer and citizen, and that is what Mr. Hughes unquestionably is. I believe if asked, "Who is the leading lawyer of the United States?" that ninety-nine out of every hundred intelligent men would answer, "Mr. Hughes is the leader of the American bar." And I believe about the same proportion would acclaim his appointment as Chief Justice.

Mr. Hughes has had a magnificent career as a statesman as well as a lawyer, and he is in every way, in my opinion, peculiarly qualified for the position to which he has been nominated.

A leading Democrat of the House of Representatives the other day admirably expressed what I believe is the general feeling of the country when he said:

> I was delighted on yesterday when upon the resignation of the great and much-loved Chief Justice Taft the President without hesitation selected the one outstanding lawyer in the United States to fill the position of Chief Justice.

That expresses, I think, Mr. Hughes's status in public opinion. I believe there is as applicable to him as to any living lawyer the famous words of Daniel Webster:

> When the judicial ermine fell upon the shoulders of John Jay it touched nothing less pure than itself.

Mr. DILL. Mr. President, I should like to know from the leader on the other side whether it is his intention to have a vote on this nomination to-night.

Mr. WATSON. It is the intention to secure a vote to-night, if that be possible.

Mr. DILL. I want to say to the Senator that I wish to discuss the nomination for some time, and I think other Senators want to discuss it. I thought the Senator would probably rather take a recess now than to continue longer in session at this hour.

Mr. WATSON. It is probably as good a time to hear conversation as any other.

Mr. NORRIS. Mr. President, will the Senator yield?

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

Mr. WATSON. I yield.

Mr. NORRIS. I have no disposition to prolong the debate or to put off a vote, but I will say to the Senator from Indiana that there are a number of Senators—and I did not know their intention until recently—who expect to speak. One of them is looking up something, and he told me a few moments ago he had not been able as yet to get what he desires. He wishes to make an examination. If the Senator insists on remaining in session I do not have any doubt that we will have to remain in session for quite a long time, and I do not see any reason why we should continue this debate any later than we usually continue the debate on the tariff bill in the afternoon; and I suggest to the Senator, as it is now nearly half past 5, that we take a recess until 11 to-morrow.

Mr. WATSON. There have been four or five occasions when the Chair was about to put the question, and once no Senator rose.

Mr. NORRIS. There were three or four on their feet the last time.

Mr. BROOKHART. I notified our distinguished leader yesterday that I desired to speak.

Mr. WATSON. I did not know but that the Senator from Iowa had changed his mind.

Mr. BROOKHART. No; I have not.

Mr. NORRIS. I do not see any reason why the session should be prolonged at this hour. There is no attempt to filibuster or anything of that kind.

Mr. WATSON. I understand that.

Mr. NORRIS. The request for a recess now is not an unreasonable request, I will say to the Senator. He may make a motion and take up the question of the nomination anytime he desires to-morrow. If he wants to begin earlier to-morrow, there will be no objection to that.

Mr. WATSON. Let us have the discussion go on for a little while—for 15, 20, or 25 minutes—and see what may develop.

Mr. NORRIS. The debate will not be concluded, I know, by that time.

The VICE PRESIDENT. The question is, Shall the Senate advise and consent to the nomination?

Mr. DILL. Mr. President, I had hoped that we might take a recess now, for two reasons: In the first place, I want a little more time to prepare my remarks; and, in the second place, it is very evident that this discussion can not be completed for some time if we shall remain in session this evening. However, if it is the desire of the Senate to continue the debate I will proceed, although I will say to the Senator from Indiana that, if he only intends to run for half an hour or so, there is no use of continuing the session. If the Senator is going to continue through the night until the debate shall have been concluded, that is another matter; but, as I have said, I should like a little more time to prepare what I have to say. I had not expected to speak to-day, and I do not think that it is unreasonable to ask that we take a recess until to-morrow.

Mr. WATSON. The only reason——

Mr. SMITH. Mr. President——

The VICE PRESIDENT. Does the Senator from Indiana yield to the Senator from South Carolina?

Mr. WATSON. I yield.

Mr. SMITH. May I ask the Senator from Indiana if he will not allow the nomination to go over, because these are some of us who should like to look up some of the matters to which reference has been made this afternoon. The responsibility is on us. The nomination has been rather hastily carried forward since the time it was received. I do not think anything will be lost by giving some of us a little more time to inform ourselves as to the facts.

Mr. WATSON. Mr. President, I move that the Senate recess——

Mr. SMOOT. Mr. President, can we not reach an agreement as to a time for voting? Why not meet to-morrow at 11 o'clock, take up the nomination at 4 o'clock, and agree to vote not later than 6 o'clock?

Mr. NORRIS. Mr. President, let us have no misunderstanding. I have no objection if the Senator from Indiana wants to go into executive session at 11 o'clock to-morrow, and I do not think there will be any objection to that from any quarter, although I do not think we ought to go into executive session that early; but I can not agree at this time to fix an hour for a final vote. I think it is quite apparent that that can not be done.

RECESS

Mr. WATSON. I move that the Senate take a recess until 11 o'clock a. m. to-morrow.

The motion was agreed to; and (at 5 o'clock and 26 minutes p. m.) the Senate, as in open executive session, took a recess until to-morrow, Wednesday, February 12, 1930, at 11 o'clock a. m.

HOUSE OF REPRESENTATIVES

TUESDAY, *February 11, 1930*

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

Direct us, our Heavenly Father, to employ our knowledge and the influence of our position, to which our country has exalted us, in obedient endeavor to do good. Work in us both to will and to do Thy good pleasure. Endow us with a genuine, sincere, honest, and hearty purpose to serve Thee and the Republic. We ask to know Thy will toward us; then may we love to follow it. Then above all the sounds of time will be the note of triumph, for Thou wilt bring us off more than conquerors. In future years the sweetest note of our immortal song shall be: "He hath done all things well." For Thy name's sake, hear our prayer. Amen.

The Journal of the proceedings of yesterday was read and approved.

WOOD PRODUCTS OF VERMONT AND THE TARIFF

Mr. GIBSON. Mr. Speaker, I ask unanimous consent to extend in the RECORD some remarks of my own in regard to certain wood products in my State.

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

There was no objection.

Mr. GIBSON. Mr. Speaker, one of the major problems of the district I represent is the maintenance of our small cities, towns, and rural communities. Many of these are dependent upon some small industry for the employment of such labor as is not engaged in farming. Some are woodworking establishments which purchase raw material in the immediate vicinity and from the farmers. In this way labor is given employment

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on the Allegheny River; with amendment (Rept. No. 651). Referred to the Committee of the Whole House.

Mr. BUTLER: Committee on Claims. H. R. 789. A bill for the relief of Morris Dietrich; without amendment (Rept. No. 652). Referred to the Committee of the Whole House.

Mr. CLARK of North Carolina: Committee on Claims. H. R. 937. A bill for the relief of Nellie Hickey; without amendment (Rept. No. 653). Referred to the Committee of the Whole House.

Mr. IRWIN: Committee on Claims. H. R. 1092. A bill for the relief of C. F. Beach; without amendment (Rept. No. 654). Referred to the Committee of the Whole House.

Mr. CHRISTGAU: Committee on Claims. H. R. 1306. A bill for the relief of Charles W. Byers; without amendment (Rept. No. 655). Referred to the Committee of the Whole House.

Mr. CLARK of North Carolina: Committee on Claims. H. R. 1509. A bill for the relief of Maude L. Duborg; with amendment (Rept. No. 656). Referred to the Committee of the Whole House.

CHANGE OF REFERENCE

Under clause 2 of Rule XXII, committees were discharged from the consideration of the following bills, which were referred as follows:

A bill (H. R. 1592) for the relief of William Meyer; Committee on Claims discharged, and referred to the Committee on War Claims.

A bill (H. R. 3136) for the relief of D. F. Phillips; Committee on the Judiciary discharged, and referred to the Committee on Claims.

PUBLIC BILLS AND RESOLUTIONS

Under clause 3 of Rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. CHALMERS: A bill (H. R. 9753) authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes; to the Committee on Rivers and Harbors.

By Mr. CULKIN: A bill (H. R. 9754) to authorize the erection on the battle field of Sackets Harbor, N. Y., of a monument to Maj. Gen. Jacob Brown; to the Committee on Military Affairs.

By Mr. GRIFFIN: A bill (H. R. 9755) providing for a medal of honor and awards to Government employees for distinguished work in science; to the Committee on the Library.

By Mr. JOHNSON of Washington: A bill (H. R. 9756) to provide for the appointment of an additional district judge for the western district of Washington; to the Committee on the Judiciary.

By Mr. LANKFORD of Georgia: A bill (H. R. 9757) to provide for the preservation of certain churches in the District of Columbia as memorials and shrines, and for other purposes; to the Committee on Public Buildings and Grounds.

By Mr. WOOD: A bill (H. R. 9758) to authorize the Commissioners of the District of Columbia to close certain portions of streets and alleys for public-school purposes; to the Committee on the District of Columbia.

By Mr. ESLICK: A bill (H. R. 9759) to provide for the commemoration of the Battle of Franklin, Tenn.; to the Committee on Military Affairs.

By Mr. HAUGEN: A bill (H. R. 9760) to define fruit jams, fruit preserves, fruit jellies, and apple butter, to provide standards therefor, and to amend the food and drugs act of June 30, 1906, as amended; to the Committee on Agriculture.

By Mr. LEAVITT: A bill (H. R. 9761) to authorize the issuance of patents in fee for Indian homesteads on the Crow Reservation, the Blackfeet Reservation, and the Fort Belknap Reservation in the State of Montana, upon written application therefor; to the Committee on Indian Affairs.

By Mr. LEHLBACH: A bill (H. R. 9762) to provide for the retirement of officers and employees of the legislative branch of the Government, and for other purposes; to the Committee on Accounts.

By Mr. HARE: A bill (H. R. 9763) to amend an act entitled "An act to prevent the destruction or dumping, without good and sufficient cause therefor, of farm produce received in interstate commerce by commission merchants and others, and to require them to truly and correctly account therefor, same being known as the produce agency act"; to the Committee on Agriculture.

By Mr. JOHNSON of South Dakota: A bill (H. R. 9764) declaring Abraham Lincoln's birthday to be a legal holiday; to the Committee on the Judiciary.

By Mr. PURNELL: A bill (H. R. 9765) to amend section 4886 of the Revised Statutes; to the Committee on Patents.

By Mr. SWING: A bill (H. R. 9766) authorizing the Secretary of the Interior to arrange with States for the educatic medical attention, and relief of distress of Indians, and f other purposes; to the Committee on Indian Affairs.

By Mr. ZIHLMAN: A bill (H. R. 9767) for the disposal combustible refuse from places outside of the city of Washi ton; to the Committee on the District of Columbia.

By Mr. EVANS of California: A bill (H. R. 9768) to provi equal pensions for widows of Civil War veterans; to the Co mittee on Invalid Pensions.

By Mr. GRAHAM: A bill (H. R. 9769) to further prote interstate and foreign commerce against bribery and other c rupt trade practices; to the Committee on the Judiciary.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of Rule XXII, private bills and resolutic were introduced and severally referred as follows:

By Mr. BARBOUR: A bill (H. R. 9770) granting a pensi to Lawrence R. Garrison; to the Committee on Pensions.

By Mr. BRIGHAM: A bill (H. R. 9771) for the relief Arthur B. Delano; to the Committee on Claims.

By Mr. BUCKBEE: A bill (H. R. 9772) to provide for amination and survey of Rock River, Ill. and Wis.; to the Co mittee on Rivers and Harbors.

Also, a bill (H. R. 9773) to provide for examination and s vey of Rock River and the Illinois and Mississippi Canal feed Ill.; to the Committee on Rivers and Harbors.

By Mr. CELLER: A bill (H. R. 9774) granting an increa of pension to Margaret McLaughlin; to the Committee Pensions.

By Mr. CRAIL: A bill (H. R. 9775) granting a pension Velzora Brown; to the Committee on Invalid Pensions.

By Mr. CRISP: A bill (H. R. 9776) granting a pension Sallie Mahoney; to the Committee on Invalid Pensions.

By Mr. CULKIN: A bill (H. R. 9777) granting an increa of pension to Minnie Jeffers; to the Committee on Pensions.

Also, a bill (H. R. 9778) granting a pension to Frances H bard; to the Committee on Invalid Pensions.

By Mr. CURRY: A bill (H. R. 9779) authorizing a preli nary examination and survey of the Mokelumne River, Cal and its tributaries, with a view of the control of floods; to t Committee on Flood Control.

By Mr. DOYLE: A bill (H. R. 9780) for the relief of J. Moynihan; to the Committee on Claims.

By Mr. DYER: A bill (H. R. 9781) granting an increase pension to Harriet Hawley Locher; to the Committee on P sions.

By Mr. FITZGERALD: A bill (H. R. 9782) granting a p sion to Lucinda Ridge; to the Committee on Invalid Pensions

By Mr. FREEMAN: A bill (H. R. 9783) granting an increa of pension to Hilma S. Wright; to the Committee on Inva Pensions.

Also, a bill (H. R. 9784) granting an increase of pension Ellen F. Lamson; to the Committee on Invalid Pensions.

By Mr. HARE: A bill (H. R. 9785) for the relief of Elizab Holley; to the Committee on Claims.

By Mr. HOWARD: A bill (H. R. 9786) for the relief Samuel Renville; to the Committee on Claims.

By Mr. HUGHES: A bill (H. R. 9787) granting a pensi Rimon Hudson; to the Committee on Invalid Pensions.

By Mr. WILLIAM E. HULL: A bill (H. R. 9788) to prov for examination and survey of Illinois and Mississippi Ca Ill.; to the Committee on Rivers and Harbors.

By Mr. LANKFORD of Georgia: A bill (H. R. 9789) for relief of Dr. Jefferson Wilcox; to the Committee on Claims.

By Mr. LINTHICUM: A bill (H. R. 9790) for the relief Peter E. Anderson; to the Committee on Naval Affairs.

Also, a bill (H. R. 9791) for the relief of William H. Carr to the Committee on Military Affairs.

By Mr. McLEOD: A bill (H. R. 9792) for the relief of widows of certain members of the police and fire departme of the District of Columbia who were killed or died from juries received in the line of duty, and for other purposes; the Committee on the District of Columbia.

By Mr. ROWBOTTOM: A bill (H. R. 9793) granting an crease of pension to Ollie Alldredge; to the Committee Invalid Pensions.

By Mr. SABATH: A bill (H. R. 9794) granting a pension Joseph Kotrsal; to the Committee on Pensions.

By Mr. SWICK: A bill (H. R. 9795) granting an increase pension to Annie E. Wallace; to the Committee on Inva Pensions.

By Mr. THOMPSON: A bill (H. R. 9796) granting a p sion to George Orlando Spitsnale; to the Committee on Inva Pensions.

71ST CONGRESS
2D SESSION

S. 3530

IN THE SENATE OF THE UNITED STATES

JANUARY 6 (calendar day, FEBRUARY 11), 1930

Mr. TOWNSEND introduced the following bill; which was read twice and referred to the Committee on Patents

A BILL

Amending section 4886 of the Revised Statutes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4886 of the Revised Statutes be, and the same is hereby, amended to read as follows:

"SEC. 4886. Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvements thereof, or any new and distinct variety of asexually reproduced plant other than a tuber-propagated plant or a plant which reproduces itself without human aid, not known or used by others in this country, before his invention or dis-

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2D SESSION
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covery thereof, and not patented or described in any printed publication in this or any foreign country, before his invention or discovery thereof, or more than two years prior to his application, and not in public use or on sale in this country for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law, and other due proceeding had, obtain a patent therefor, *Provided*, That the words 'invented' and 'discovered' as used in this section, in regard to asexually reproduced plants, shall be interpreted to include invention and discovery in the sense of finding a thing already existing and reproducing the same as well as in the sense of creating."

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71ST CONGRESS, 2D SESSION } S. 3530

A BILL

Amending section 4886 of the Revised Statutes.

By Mr. TOWNSEND

JANUARY 6 (calendar day, FEBRUARY 11), 1930
Read twice and referred to the Committee on Patents

X re S. 3530

Congressional Record

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OF THE

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OF

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Mr. McNary; Committee on Public Lands and Surveys, 3549.—Reported with amendment (S. Rept. 832), 10079.—Amended and passed Senate, 10484.—Referred to House Committee on the Public Lands, 10846.—Reported back (H. Rept. 1964), 11149.

S. 3558—To amend section 8 of the act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1914, and for other purposes, approved March 4, 1913.
Mr. Capper; Committee on the District of Columbia, 3549.—Reported back (S. Rept. 276), 5483.—Passed Senate, 7016.—Reconsidered and restored to the calendar, 7053.—Recommitted to the Committee on the District of Columbia, 7198.—Reported with amendment (S. Rept. 758), 9777.—Debated, 9864, 10082.—Passed Senate, reconsidered, and restored to the calendar, 10083.

S. 3559—Granting an increase of pension to Frances E. O'Brien.
Mr. Blaine; Committee on Pensions, 3549.—See bill H. R. 11588, 8588.

S. 3560—Granting an increase of pension to Leona O'Brien.
Mr. Blaine; Committee on Pensions, 3549.

S. 3561—To amend section 202 of the World War veterans' act, 1924, as amended.
Mr. Blaine; Committee on Finance, 3549.

S. 3562—To authorize the appointment of Chief Machinist William C. Gray, United States Navy (retired), a lieutenant on the retired list of the Navy.
Mr. Tydings; Committee on Naval Affairs, 3549.

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X re S. 3530

Congressional Record

PROCEEDINGS AND DEBATES

OF THE

SECOND SESSION OF THE SEVENTY-FIRST CONGRESS

OF

THE UNITED STATES
OF AMERICA

VOLUME LXXII—PART 4

FEBRUARY 11, 1930, TO MARCH 1, 1930

(Pages 3409 to 4584)



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Congressional Record

PROCEEDINGS AND DEBATES OF THE SEVENTY-FIRST CONGRESS
SECOND SESSION

SENATE

TUESDAY, *February 11, 1930*

(Legislative day of Monday, January 6, 1930)

The Senate met at 11 o'clock a. m., on the expiration of the recess.

Mr. FESS. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

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

Allen	Fletcher	Keyes	Smoot
Ashurst	Frazier	La Follette	Steck
Barkley	Gillett	McCulloch	Steiwer
Bingham	Glass	McKellar	Stephens
Black	Glenn	McMaster	Sullivan
Blaine	Goff	McNary	Swanson
Blease	Goldsborough	Metcalf	Thomas, Idaho
Borah	Gould	Norbeck	Thomas, Okla.
Bratton	Greene	Norris	Townsend
Brock	Grundy	Nye	Trammell
Brookhart	Hale	Oddie	Tydings
Broussard	Harris	Overman	Vandenberg
Capper	Harrison	Patterson	Wagner
Caraway	Hastings	Phipps	Walcott
Connally	Hatfield	Pine	Walsh, Mass.
Copeland	Hawes	Ransdell	Walsh, Mont.
Couzens	Hayden	Robinson, Ind.	Waterman
Cutting	Hebert	Schall	Watson
Dale	Johnson	Sheppard	Wheeler
Deneen	Jones	Shortridge	
Dill	Kean	Simmons	
Fess	Kendrick	Smith	

Mr. SHEPPARD. I desire to announce that the junior Senator from Utah [Mr. KING] is necessarily detained from the Senate by illness. I will let this announcement stand for the day.

I also wish to announce that the senior Senator from Nevada [Mr. PITTMAN] is necessarily absent from the Senate attending a conference in the West relating to the diversion of the waters of the Colorado River. I wish this announcement to stand for the day.

I also desire to announce the necessary absence of the Senator from Arkansas [Mr. ROBINSON] and the Senator from Pennsylvania [Mr. REED], who are delegates from the United States to the Naval Arms Conference meeting in London, England. Let this announcement stand for the day.

The VICE PRESIDENT. Eighty-five Senators have answered to their names. A quorum is present.

BALANCE SHEET OF CHESAPEAKE & POTOMAC TELEPHONE CO.

The VICE PRESIDENT laid before the Senate a communication from Dozier A. DeVane, general counsel of the Chesapeake & Potomac Telephone Co., of Washington, D. C., submitting, pursuant to paragraph 14 of the act of March 4, 1913, creating the Public Utilities Commission of the District of Columbia, etc., a comparative general balance sheet of the Chesapeake & Potomac Telephone Co. for the year 1929, which, with the accompanying paper, was referred to the Committee on the District of Columbia.

PETITIONS AND MEMORIALS

The VICE PRESIDENT laid before the Senate resolutions adopted by the General Court of Massachusetts favoring the restoration to the pending tariff revision bill of the duties on shoes and leather placed therein by the House of Representatives, in order that the shoe and leather industries may be preserved and the American standard of living for the workers maintained, which were ordered to lie on the table. (See resolutions printed in full when presented on yesterday by Mr. GILLETT, p. 3334, CONGRESSIONAL RECORD.)

He also laid before the Senate a resolution adopted by the Council of the American Historical Association, favoring the passage of the bill (S. 3398) to enable the George Washington Bicentennial Commission to carry out and give effect to certain approved plans, which was referred to the Committee on the Library.

He also laid before the Senate resolutions adopted at a mass meeting of the Progressive Farmers of Wisconsin, farm organization, favoring the imposition of higher tariff duties on dairy products than those already proposed to be imposed in the pending tariff revision bill, and the prohibition of the manufacture and sale of oleomargarine, which were ordered to lie on the table.

Mr. ALLEN presented a resolution adopted by the Central Labor Union, of Kansas City, Kans, favoring the passage of legislation granting increased pensions to Spanish War veterans, which was ordered to lie on the table.

Mr. CAPPER presented a petition of sundry citizens of Osawatomie, Kans., praying for the passage of legislation granting increased pensions to veterans of the war with Spain, which was ordered to lie on the table.

Mr. FRAZIER presented petitions of G. H. Anderson and 63 other citizens of Almont, of G. J. Seidlinger and 67 other citizens of Wimbledon, and of J. H. Vonderheide and 72 other citizens of Turtle Lake, all in the State of North Dakota, praying for the passage of legislation granting increased pensions to Spanish War veterans, which were ordered to lie on the table.

APPROPRIATIONS FOR TREASURY AND POST OFFICE DEPARTMENTS

Mr. PHIPPS. From the Committee on Appropriations I report back favorably with amendments the bill (H. R. 8531) making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1931, and for other purposes, and I submit a report (No. 178) thereon.

The VICE PRESIDENT. The bill will be placed on the calendar.

REPORT OF POSTAL NOMINATIONS

Mr. PHIPPS, as in open executive session, from the Committee on Post Offices and Post Roads, reported sundry post-office nominations, which were ordered to be placed on the Executive Calendar.

BILLS INTRODUCED

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. FESS:

A bill (S. 3513) granting an increase of pension to Lucy A. Payne (with accompanying papers); to the Committee on Pensions.

By Mr. SHORTRIDGE:

A bill (S. 3514) to amend section 8 of the food and drugs act, approved June 30, 1906, as amended; to the Committee on Agriculture and Forestry.

A bill (S. 3515) to correct the military record of Joseph N. Williams; to the Committee on Military Affairs.

By Mr. NORBECK:

A bill (S. 3516) authorizing the Secretary of the Treasury to pay Dr. A. W. Pearson, of Peever, S. Dak., and the Peabody Hospital, at Webster, S. Dak., for medical services and supplies furnished to Indians; to the Committee on Claims.

By Mr. SWANSON:

A bill (S. 3517) to reimburse certain individuals for damages by reason of loss of oyster rights in Little Bay, Va., due to the taking of the same by the United States for the purpose of operating thereon a naval air training station (with accompanying papers); to the Committee on Claims.

By Mr. METCALF:

A bill (S. 3518) granting a pension to Frederick C. Manns; to the Committee on Pensions.

By Mr. GREENE:

A bill (S. 3519) to credit certain officers with service at the United States Military Academy; to the Committee on Military Affairs.

By Mr. FRAZIER (by request):

A bill (S. 3520) to promote the production and sale of Indian products and to create a board and a corporation to assist therein; to the Committee on Indian Affairs.

By Mr. GILLETT:

A bill (S. 3521) to convey to the city of Waltham, Mass., certain Government land for street purposes; to the Committee on Public Buildings and Grounds.

By Mr. NYE:

A bill (S. 3522) to amend section 9 of the act entitled "An act for the regulation of radio communications, and for other purposes," approved February 23, 1927 (44 Stat. 1162); to the Committee on Interstate Commerce.

By Mr. THOMAS of Oklahoma:

A bill (S. 3523) for the relief of Denton L. Sims; to the Committee on Military Affairs.

A bill (S. 3524) granting an increase of pension to Jemima A. Taylor (with accompanying papers); to the Committee on Pensions.

By Mr. DILL:

A bill (S. 3525) for the relief of Guy Boggers; to the Committee on Finance.

By Mr. JONES:

A bill (S. 3526) for the erection of a Federal building at Dayton, Wash.; to the Committee on Public Buildings and Grounds.

By Mr. ROBINSON of Indiana:

A bill (S. 3527) granting an increase of pension to Henry Phillips (with accompanying papers); to the Committee on Pensions.

A bill (S. 3528) to amend an act entitled "An act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes," approved September 7, 1916, and acts in amendment thereof; to the Committee on Claims.

By Mr. CAPPER:

A bill (S. 3529) granting an increase of pension to Anna K. Gleitch (with accompanying papers); to the Committee on Pensions.

By Mr. TOWNSEND:

A bill (S. 3530) amending section 4886 of the Revised Statutes; to the Committee on Patents.

AMENDMENTS TO THE TARIFF BILL

Mr. COUZENS submitted an amendment intended to be proposed by him to House bill 2667, the tariff revision bill, which was ordered to lie on the table and to be printed, as follows:

On page 42, line 8, strike out the words and figures "Crystalline graphite, 2 cents per pound" and substitute therefor the words and figures "Crystalline lump, chip, or dust, 20 per cent ad valorem; crystalline flake, 1½ cents per pound," so that the paragraph as amended will read:

"PAR. 213. Graphite or plumbago, crude or refined: Amorphous, 10 per cent ad valorem; crystalline lump, chip, or dust, 20 per cent ad valorem; crystalline flake, 1½ cents per pound. As used in this paragraph, the term 'crystalline flake' means graphite or plumbago which occurs disseminated as a relatively thin flake throughout its containing rock, decomposed or not, and which may be or has been separated therefrom by ordinary crushing, pulverizing, screening, or mechanical concentration process, such flake being made up of a number of parallel lamina, which may be separated by mechanical means."

Mr. FLETCHER submitted an amendment intended to be proposed by him to House bill 2667, the tariff revision bill, which was ordered to lie on the table and to be printed, as follows:

On page 482, strike out lines 24, 25, and 26 in the following words:

"(4) Section 2804 of the Revised Statutes, as amended (relating to limitations on importation packages of cigars)."

Mr. BLACK submitted an amendment intended to be proposed by him to House bill 2667, the tariff revision bill, which was ordered to lie on the table and to be printed, as follows:

On page 43, line 21, paragraph 216 (articles or wares composed wholly or in part of carbon or graphite, wholly or partly manufactured, not specially provided for), to strike out "45 per cent" and insert "10 per cent."

Mr. WALSH of Montana submitted an amendment intended to be proposed by him to House bill 2667, the tariff revision bill, which was ordered to lie on the table and to be printed, as follows:

On page 107, line 18, paragraph 374, to strike out the figure "5" and insert "2," and in line 19, to strike out the figure "9" and insert "3½," so as to make the paragraph read:

"PAR. 374. Aluminum, aluminum scrap, and alloy (except those provided for in paragraph 302) in which aluminum is the component material of chief value, in crude form, 2 cents per pound; in coils, plates, sheets, bars, rods, circles, disks, blanks, strips, rectangles, and squares, 3½ cents per pound."

Mr. COPELAND submitted amendments intended to be proposed by him to House bill 2667, the tariff revision bill, which were ordered to lie on the table and to be printed, as follows:

On page 38, line 19, after the comma, to strike out "$3.40 per ton" and insert in lieu thereof the following:

"Containing above 93 per cent of calcium fluoride, $5.60 per ton; containing not more than 93 per cent calcium fluoride, $8.40 per ton."

On page 45, line 25, after the word "preparations," strike out the comma and the word "and" and insert a semicolon; and on page 46, strike out all of line 2 after the comma and insert the words "when suitable for use and of the character ordinarily employed for the holding or transportation of merchandise; all the foregoing not produced by automatic machine, 75 per cent ad valorem. For the purposes of this subparagraph no regard shall be had to the method of manufacture of the stoppers or covers," so that paragraph 218 (e) will read as follows:

"(e) Bottles and jars, wholly or in chief value of glass, of the character used or designed to be used as containers of perfume, talcum powder, toilet water, or other toilet preparations; bottles, vials, and jars, wholly or in chief value of glass, fitted with or designed for use with ground glass stoppers, when suitable for use and of the character ordinarily employed for the holding or transportation of merchandise; all the foregoing not produced by automatic machine, 75 per cent ad valorem. For the purposes of this subparagraph no regard shall be had to the method of manufacture of the stoppers or covers."

MESSAGE FROM THE HOUSE—ENROLLED BILLS SIGNED

A message from the House of Representatives by Mr. Chaffee, one of its clerks, announced that the Speaker had affixed his signature to the following enrolled bills, and they were signed by the Vice President:

H. R. 2824. An act to amend section 5 of the act entitled "An act to establish a national military park at the battle field of Fort Donelson, Tenn.," approved March 26, 1928;

H. R. 7372. An act to revive and reenact the act entitled "An act granting the consent of Congress to the Highway Department of the State of Tennessee to construct a bridge across the Tennessee River on the Waverly-Camden Road between Humphreys and Benton Counties, Tenn."; and

H. R. 7373. An act to revive and reenact the act entitled "An act granting permission to the State Highway Commission of the State of Tennessee to construct a bridge across the Tennessee River at Savannah, Hardin County, Tenn., on the Savannah-Selmer Road."

UNITED STATES v. MARSHALL L. MOTT—IN THE MATTER OF JACKSON BARNETT, FULL-BLOOD CREEK INDIAN

Mr. WHEELER. Mr. President, I present an opinion of the United States Circuit Court of Appeals, tenth circuit, in the case of the United States of America, appellant, against Marshall L. Mott, appellee, being an appeal from the United States District Court for the Northern District of Oklahoma, which I ask may be published in the RECORD.

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

UNITED STATES CIRCUIT COURT OF APPEALS—TENTH CIRCUIT

No. 136—October term, 1929

UNITED STATES OF AMERICA, APPELLANT, v. MARSHALL L. MOTT, APPELLEE—APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

[January 27, 1930]

Mr. Charles B. Selby, special assistant to the Attorney General (Mr. Seth W. Richardson, Assistant Attorney General of the United States, Mr. John M. Goldesberry, United States attorney, and Mr. Louis W. Stivers, assistant United States attorney, were with him on the brief), for appellant.

Mr. Edwin S. Booth (Mr. Charles B. Rogers was with him on the brief) for appellee.

Before Lewis, Phillips, and McDermott, circuit judges.

Lewis, circuit judge, delivered the opinion of the court.

This suit was brought by the United States in behalf of one Jackson Barnett, a full-blood Creek Indian, to recover of appellee Mott $15,000 face value United States Government bonds, or their proceeds or value if they have been converted. It is alleged that the bonds are the property of Barnett and that they came into the possession of Mott in this way: Barnett was allotted 160 acres out of Creek tribal lands, which proved to be valuable in oil deposits. With the approval of the Secretary of the Interior the land was leased and large sums came into his possession from royalties paid for the oil produced, and these royalties were invested in United States bonds, amounting in face value to more than $1,000,000. The bonds were held by the Secretary of the Treasury. Early in 1923 Barnett and his wife went to Washington, and with assistance of counsel sought to induce the Secretary of the Interior to deliver to them $1,100,000 face value of these bonds, with the understanding that they would be used or disposed of as

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A medium of expression and exchange of thought for advancing and improving the patent system; a forum for the presentation and discussion of legal and technical subjects relating to the useful arts; a means for disseminating a wider knowledge of the workings and advantages of the patent system; a periodical for bringing about a more uniform practice of patent law and through which all interested in developing the patent system might work to a common end.

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Publication of signed articles in this Journal is not to be understood as an adoption by the Patent Office Society of the views expressed therein. The editors are glad to have pertinent articles submitted.

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The First Plant Patent

By Robert C. Cook
Editor, Journal of Heredity

On August 18, 1931, the United States Patent Office issued the first patent to the "inventor" of a new variety of plant, under the amendment of the patent laws signed by President Hoover on May 23, 1930.

Curiously and ironically enough, Plant Patent 1 does not go to a plant breeder at all. Mr. Henry F. Bosenberg of New Brunswick, New Jersey, who has the honor of being granted the first patent on "new and useful improvements in an asexually reproduced plant," is a landscape gardener who bought a number of Van Fleet roses for use in his work. One of these proved to be a bud sport, apparently, and a new variety had been—"invented!" The new rose is exactly the same as the well-known climbing rose originated by Dr. Walter Van Fleet, and bearing his name, except that it is claimed to be everblooming.

From a number of points of view this first patent raises interesting problems. We learn from the *Journal of the Patent Office Society* that Mr. Bosenberg avers under oath that he did nothing to originate the new form; the aberrant plant was one of a number he bought for use in landscape work. The plant showed ever-blooming habits, and buds from it perpetuated the tendency. It was tested four years and found not to revert. Nevertheless in the patent specification he says: "—but the same ever-blooming habits may be attained by breeding this new quality into other varieties of climbing roses." Obviously nothing appears in the record to substantiate this claim. If the plant is a bud mutation, as seems certain, the quality might be "breedable;" more likely it would not. Perhaps there is nothing serious in permitting such unproved and possibly unprovable statements in plant patent applications, but when they are made the basis of so broad a claim ("A climbing rose as herein shown and described") it may influence adversely the value of the plant patent law.

The Type Plant

If the law is to prove a benefit it must not offer unduly exclusive protection. Is Mr. Bosenberg entitled to a patent on "a climbing rose as herein shown and described, characterized by its everblooming habit?" Is he not entitled rather to protection on "climbing roses arising by asexual propagation *from the plant herein shown and described,* characterized by their ever-

blooming habit?" In practice there might be a world of difference in the two claims. The broader claim appears to give him a monopoly on practically all ever-blooming bud variations or hybrids of the Walter Van Fleet which essentially resemble the parent form except in everblooming habit. Theoretically and practically to do this renders the plant patent law a travesty before it starts, because plants are variable, and there is only one way to bring this matter of plant patents to a focus, and that is by reference to the original plant, or to designate type plants, in the patent specifications. The originator may be given protection for the asexual propagation of the specific plant he has originated, or he may be given more or less mythical protection based on verbal descriptions, which because they are vague promise too much, and very likely in practice protect much less.

From the social point of view the distinction is very important. One form of patent protection is constructive—the other essentially destructive. The owner of a dozen or so vaguely defined patent claims can, if he has the right psychology and money enough to hire a lawyer, cause almost complete cessation of improvement of a given plant. Patents can be acquired by purchase, and not very many would be needed to work wholly unexpected and unjustified hardships.

Conversely the actual linking of the claim to the specific plant gives the plant originator the protection he is entitled to—in a specific and definite form. His rose, *the one that he originated,* is being propagated. It is this that he wants to protect, and the law takes care of that. There is a remote possibility that an indistinguishable form might be originated independently. In the case of bud variations, as in the instance of Plant Patent 1, there is a distinct possibility that similar variations might occur repeatedly, as has happened in the case of the Thompson variation of the Washington Navel orange in California[1] and in other repeating variations.

Are Bud Variations Patentable?

This brings up the question of the patentability of fortuitous bud variations under the law. In the discussion of the law at the time it was enacted it was pointed out that "discover," in the sense intended in the Constitution and in the present patent statute means to *invent* as the word is used today. Obviously Rosenberg in the "origination" of this new form was much more of a "discoverer," in the accepted sense of the word, than an

[1] See Shamel, A. D., et al. Bud Selection in the Washington Navel Orange. *Journal of Heredity* 16:233-241. 1925.

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"inventor." His contribution to the production of the new variety is in no way comparable to that of the originator of the Van Fleet Rose, who spent years of purposeful endeavor to produce the final form[2]. In Van Fleet's contribution we have real inventiveness applied to plant breeding—in distinct contrast to what Bosenberg displayed in noticing that one plant was different from its fellows, and in propagating it.

Another angle that undoubtedly will be considered by the courts is the basic principle of patent law that a patent must represent an improvement that is not an obvious development to a person "skilled in the art." For example, a patentable invention is not deemed to exist when a mechanic increases the rigidity of a machine by the addition of struts and braces. Similarly it might be argued that persons skilled in the art of horticulture have for several thousand years made a practice of propagating aberrant plants that appear spontaneously in their gardens, and that the propagation of a new form appearing as a bud mutation is not an instance of inventive faculty, but an obvious procedure to anyone "skilled in the art."

The only way to test such features of the plant patent law is, of course, to grant the patents and let the matter take its course through the courts. When this is done, it is probable that the courts will construe the law in the light of existing patent decisions, applying these where they *seem* to fit. The granting of patents on bud variations might be argued either way from the point of view of agricultural expediency, but if such patents are held to be valid it would seem to represent a drastic revision of existing concepts of what constitutes inventive faculty, which is the faculty assumed to be stimulated by patent protection.

A Patent an Embodied Idea

In this connection it must be borne in mind that the Courts have consistently held that a patent is essentially *the physical embodiment of an idea.* The *idea* is the basic and essential part of every patent. In many instances new varieties of plants represent just what has heretofore been protected by patent, and as such are clearly patentable. The Van Fleet Rose and this "New Dawn" variations are an excellent example of the distinction. One represents an embodied idea, persistently striven for; the other represents an "accident" and a little

2 "Moreover, it is to be noted that the committee has, by its amendment in striking out the patenting of 'newly found' varieties of plants, eliminated from the scope of the bill those wild varieties discovered by the plant explorer or other person who has in no way engaged either in plant cultivation or care and who has in no other way facilitated nature in the creation of a new and desirable variety."—Senate Committee report on plant patent law.

forethought—nothing more. It may well be questioned whether the Courts will revise their views with regard to this matter to fit the new patent law. Unless there is a complete reversal in this matter, the validity of Plant Patent 1 might also be questioned because of the notable absence of the inevitable brainstorm that is said to be an essential concomitant of every patent. This has no general bearing on the constitutionality of the plant patent clause as a whole, but it might limit the application of the law to valid instances of plant inventions—not to entirely casual "discoveries."

"Products of Nature" Not Patentable

The reaction, if any, of the new patent legislation on the courts is perhaps reflected in two decisions rendered since the law was adopted. In the case of the patentability of ductile uranium the U. S. Court of Customs and Patent Appeals rendered a decision in the following terms: "Uranium is a product of nature, and applicant is not entitled to a patent thereon nor upon any of its inherent natural qualities" (*in re Marden*, 409 O. G. 559). On the same principle patents have been denied on ductile tungsten and ductile thorium, on polished oyster shells, and on oranges treated with borax. The latter decision was rendered by the United States Supreme Court on March 2, 1931, nearly a year after the plant patent law was enacted. In this case, involving very large interests, the Supreme Court reversed the decisions of lower courts and held that an orange dipped in a solution of borax to render the skin mould-resistant was not a manufactured article, and hence not patentable. There has always been a clear distinction maintained between products of nature and manufactured articles.[3]

Whether varieties derived through the exercise of the plant breeders' art will not also be considered products of nature in the same sense as are products of ductile tungsten, a substance not known to occur naturally, remains to be determined. In the last analysis, all chemical and physical properties are inherent in the elements, and therefore "natural." It is a little hard to distinguish the natural property of tungsten that renders it ductile under certain conditions from the natural properties of carbon and hydrogen and oxygen that permit them to combine in various ways to form a vast array of patentable chemical com-

[3] The statute reads: "Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvements thereof, *or who has invented or discovered and asexually reproduced any distinct and new variety of plant other than a tuber-propagated plant,* not known or used by others in this country, before his invention or discovery thereof. * * * * *

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pounds. Unquestionably the genetic elements which go to make up a new form of plant are "natural." Into which category of "naturalness" the courts will conclude that these phenomena of plants should be placed is an extremely interesting problem.

Experiment and "Unexpected Results"

In the field of chemical patents another set of principles appears to apply. Many chemical patents have been granted for combinations that produced unexpected results. In fact, decisions in some of the lower courts have advanced the principle that, in substitution of one material for another in a chemical compound, the new compound is not patentable unless an "unexpected result" be obtained. This seems to be diametrically opposed to the concept that the idea is basic in a patent. An unexpected result is obviously one that occurs in the absence of a deliberate plan or in spite of it. Opposed to this view, the Supreme Court has held that "it does not detract from its [the invention's] merit that it is the result of experiment and not the instant and perfect product of inventive power." The analogy between this situation in chemistry and the production of new plant varieties is striking. While a chance bud variation may be considered to be a natural product, a variety that represents years of application and a great number of experiments with different combinations of plants represents certainly an outcome that can hardly be considered "natural" by any reasonable test.

The importance of bud mutation in the production of new varieties is a somewhat debatable question. In many instances the varieties produced by bud mutation have been variations in color or shape of existing forms. Even if it were held that bud mutations were not patentable for either of the above reasons it would leave the larger field of improvement, that of the production of new forms by hybridization and selection, still subject to patent protection.

It has been suggested that the most important contribution that radiation-induced mutations will make to plant breeding is in the field of asexually reproduced plants.[4] Bud mutations induced by X-rays may be propagated asexually and without regard to lethals and chromosome derangements which would make sexual propagation difficult. One who induces mutations, even though he is not sure just what he is going to induce, is after all definitely experimenting, and the product could hardly be called "natural." A new variety produced by such means is perhaps more an "invention" than one which is found ready to hand in the back yard.

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[4] Stadler, L. J. *Journal of Heredity* 21:31-19. 1930.

It is hoped that these speculations on some of the complexities that are almost certain to arise in administering the plant patent law will emphasize an important fact. Past decisions with regard to patent law seem in many instances to be diametrically opposed to each other. It is still an open question which of these principles will be deemed to apply to plants. An intelligent understanding by plantsmen of the legal complexities which may arise in construing the law is thus a matter of the utmost importance. It would be a calamity to let the early decisions with regard to the plant patent law be made without clear statements by those "skilled in the art" of plant improvement as to what form of patent protection can be expected to stimulate most effectively the art of the plant breeder.

A plant with a new character may be a valuable discovery, but it is not a formula or a contrivance. Nevertheless inventive genius of a high order is often displayed in the production of new forms. New plants may be sought diligently in nature or by making large numbers of artificial hybrids, after the methods of Burbank and Van Fleet, selecting a few desirable forms and destroying great numbers of worthless individuals. The art of the breeder lies in knowing what to look for, and in having the interest to look; and in skill and persistance in the making of crosses. The practical question now to be determined is whether the interest in plant improvement can be rewarded and stimulated through the granting of patents. Much of the success or failure of this experiment, which was only just begun by the amendment of the law, depends on the details of its application, practically all of which have yet to be worked out.

Prize Awarded Dr. Langmuir

A check for $10,000 and a gold medal have been given Dr. Irving Langmuir of the Research Laboratory of the General Electric Co. as the 1931 award of the magazine *Popular Science* Monthly for notable achievement.

A committee of prominent American scientists singled Dr. Langmuir out from hundreds of candidates in recognition of his many contributions to pure and applied science, among which the invention of the nitrogen-filled incandescent electric bulb and the atomic welding process are conspicuous.

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A medium of expression and exchange of thought for advancing and improving the patent system; a forum for the presentation and discussion of legal and technical subjects relating to the useful arts; a means for disseminating a wider knowledge of the workings and advantages of the patent system; a periodical for bringing about a more uniform practice of patent law and through which all interested in developing the patent system might work to a common end.

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Plant Patent Queries

By Robert Starr Allyn *

What is a "plant"?

"A vegetable, an organized living being, generally without feeling and voluntary motion, and having, when complete, a root, stem and leaves."

Is a rose blossom or a peach, a berry or a mushroom or a nut—a "plant" within the law?

Does a United States "Plant" Patent give its owner the right to exclude others from importing or dealing in flowers, fruits or nuts, and if not, why not? Does the patent cover both plant and fruit or flower—or is a Plant Patent like a machine patent limited to the producer and must we have an amendment to the Act to cover the product of the new Plant?

It certainly does not exclude others from reproducing by seed if they can, because the protection is limited to asexually reproduced plants.

If I own a piece of land and you plant a nut which produces an unusual tree and a third party finds a new nut on the tree—who is the inventor, you or I or the third party? If so, why? And if not, why not? Are we joint inventors?

Is the grant of a patent on a tree applied for after two years sale of the fruit barred? If the plant was sold before the passage of the Plant Act is it patentable?

If I produce a new flower by crossing two varieties and you duplicate it by the usual methods, are we joint inventors? If you modify a plant by treating the buds or other parts by X-Ray or otherwise and I reproduce it asexually, who is the inventor?

If you produce a new plant and then patent it and subsequently your supply is destroyed or if you refuse to supply such plants what becomes of your patent? How

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* Patent Attorney, New York, N. Y.

is the public benefited by the patent? Has the progress of the arts and sciences been promoted?

If the new fruit or flower was on the market prior to May 23, 1930 can a valid patent be granted for the "plant"?

Some of these queries sound rather foolish but most of them will have to be answered sooner or later.

Of course, initially the Commissioner of Patents is responsible for the administration of the law and his rules must be satisfactory to the Secretary of Commerce and the President has directed the Secretary of Agriculture to furnish all necessary technical assistance. The Townsend-Purnell Plant Patent Act was passed by Congress and approved by the President on May 23, 1930.

Prior to January 1, 1933 fifty-one patents have been granted.

Of these	Flowers predominate	=	31
	Fruits	=	13
	Berries	=	5
	Nuts	=	1
	Mushrooms	=	1

20 are for roses, 5 are for carnations, 4 are for freesias, 2 dahlias, 5 plums, 4 peaches, 3 cherries, 1 grapes, 2 strawberries, 1 dewberry, 1 barberry, 1 brambleberry, 1 mushroom and 1 pecan.

The earliest filing date of the issued cases is that of Patent No. 2, issued October 13, 1931, filed July 1, 1930 by Frank Spanbauer, of North Kansas City, Mo. This claims "a rose—predominantly distinguished by petals which are scarlet crimson in color, semi-double in appearance and in which the outer petals are inclined to be cordate in shape." This is described as developed by crossing a General Jacqueminot with a Richmond. It will be noted, however, that the claim purports to cover the flower and not the plant! Query—can we safely reproduce the plant or can the owner enjoin a florist who sells cut flowers in New York which were grown in New Jersey by someone else?

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The first patent to be granted August 18th, 1931 on an application of Henry F. Bosenberg, has had considerable publicity. This claims a climbing rose, characterized by its everblooming habit. It is said to be an improvement on the Dr. Van Fleet, to which the new plant is identical as respects color and form of flower, general climbing qualities, foliage and hardiness. The supposed novelty is an "everblooming habit." "The same everblooming habits may be attained by breeding this new quality into other varieties of climbing roses"—how? Not a single word can be found in the patent as to how this quality was attained or how it could be attained? Is this valid? Why was such a statement allowed in the patent? It does not seem to us that the patent complies with Section 4888 of the Revised Statutes. Of course, Section 2 of the Act provides, "No plant patent shall be declared invalid on the ground of non-compliance with this Section (4888) if the description is made as complete as is reasonably possible." This is quite elastic, but the patent seems to have exceeded the elastic limit.

Patent No. 10 also claims exactly the same characteristic of the everblooming habit, but here we find at least an effort to tell how to produce it—i. e., crossing Paul's Scarlet Climber with Gruss an Teplitz. This patent shows scarlet blossoms. Why was this application not placed in interference with the application for Patent No. 1?

Patent No. 28 also claims a climbing rose of everblooming habit. This rose is, however, yellow, obviously not to be confused with the scarlet rose of No. 10.

Roses said to be protected by Patents No. 1 and No. 10 are already being advertised in current newspapers.

Many of the Plant Patents purport to be for "sports" found by the applicant. Again we fail to see how these patents comply with the law. The law as originally proposed provided for patents "to anyone who finding an already existing plant reproduced the same asexually." The Commissioner of Patents in his memo of March 8, 1930 to the Secretary of Commerce plainly indicated that this was of doubtful validity under Article 1, Sec.

tion 8 of the Constitution. The Bill was then amended and the report of the Committee on Patents said, "The Bill does not provide for patents upon varieties of plants newly found by plant explorers or others growing in an uncultivated or wild state." Obviously the asexual reproduction of a sport does not require invention.

The history of the Plant Act plainly shows that it was not intended to protect mere "finds." A sport not created by the act of the inventor is clearly not his invention and he can not make an invention out of it by merely asexually reproducing it by the usual methods. The reproduction does not make a new plant. This is obvious from the fact that in several cases the patentee clearly admits that the original was a sport of a certain variety of plant which was proved to be permanently new by the usual act of asexual reproduction. He has not produced something new from the sport, but has duplicated nature's sport and claims that sport. Patent No. 25 is a good example of this type of patent. A newspaper write-up of this beautiful rose appeared in *The Hartford Courant,* of January 3, 1932, indicating that the rose was one of nature's freaks or sports.

The crossing of two unnamed seedlings and the crossing of an unnamed seedling with the pollen parent Souvenir de Claudius Pernet may sound as if the applicant had tried to comply with Section 4888, but we must confess to complete inability to profit by such a description. And yet these histories are to be found in issued patents.

A failure to give any history of the development may constitute a powerful background for the defense of an independent inventor. Doubtless this feature must have been considered in drafting the application. Either the inventor had no information or preferred to leave the public in the dark, as would appear to be sometimes done by foreign solicitors.

Several patents have been granted for alleged inventions by the late Luther Burbank, who died in 1926. All of these carefully describe the characteristic of the fruit and the trees and carefully claim the trees as distinguished from the fruit but do not even suggest how they

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were produced. One rather naively claims, "The plum tree herein described, characterized by the early ripening period of the fruit, as shown"! Strange to say not only is the early ripening period not "*shown*"—but it is not even mentioned in the specification!

The Pecan Patent No. 47 claims the nut, not the tree. While this is not described as a "sport" it was found "on my father's farm," says the applicant. This was originally rejected as a "mere find." The case, however, was later allowed after the unique argument that "the sudden death of the father was the deciding factor in causing the application to be made out as a single name application." The father planted the nuts, the son observed and reproduced the new variety!

Patent No. 4 was the first utilitarian patent—on a Thornless Dewberry or "Youngberry." "The sport was discovered growing in a ten acre field of Young dewberries with the parent vines heavily covered with thorns and the discovery was made in the summer of 1928 on plant 1 and row 27 in a plot of ground known as Hayden field that is located about one mile west of Chino, California." We suppose they did the best they could to comply with Section 4888, but why did they not tell us what day it was and the weather and how it took two people to discover what already existed? It doubtless is a very useful plant, but does it comply with the law? And again does the patent cover the fruit or only the plant?

It would appear that the Patent Office has arbitrarily determined that the inventor of a new and distinct variety of Plant can only have a single claim as in Design Patents. The writer has never felt that the rule was fair in Design cases. It is especially harsh in Plant cases. Again Patents Nos. 1 and 10 are horrible examples. As pointed out, the claims of these two patents are substantially identical. If No. 1 was entitled to the claim as drawn it would appear that he should also be entitled to a claim for the modified Dr. Van Fleet, a pink rose. Then the owner of Patent No. 10 should be entitled to a sub-claim limited to the scarlet everblooming climber although his broad claim might be invalid in view

of prior Patent No. 1. In the latter case No. 10 might disclaim his broad claim and still have protection on the scarlet climber. On the other hand, of course, No. 10 with the present broad claim might file a "trick" disclaimer except to the scarlet variety. The writer, however, does not approve trick disclaimers and agrees with Judge Tuttle in Trailer, 54 F. 2nd, 691, that they are invalid. Some day I hope that the Patent Office will decline to accept a trick disclaimer and force a court consideration of a mandamus.

While the horticulturist may have rather definite ideas as to what constitutes an "everblooming habit" we suspect that the legalist will not have any difficulty in developing a serious argument.

Then, too, we shall have nice questions for the experts. "A better flavor" may be an adequate characteristic for a patent, but we wonder who can describe it? Pray tell me, what does an onion taste like? Please describe the odor of the rose which you purchased on the 15th day of June 1932?

The possibilities of humor as to the "flowers that bloom in the spring" etc. are quite unlimited. Who will say that a patent may not be granted for a bread and milk plant produced by crossing a bread fruit tree with a milkweed by the dark of the moon?

An interesting question of infringement may also arise as to two cherry tree patents. The fruit of Patent No. 29 ripens from ten days to two weeks *later* than the true Montmorency and No. 30 ripens ten days to two weeks *earlier* than the Montmorency. As the ripening period, of course, depends upon the soil and climate it would appear necessary to grow a true Montmorency alongside of the alleged infringement in order to make the rather nice comparison.

Many of the flowers are extraordinarily beautiful and some of the patents show wonderful skill of the artist and the reproducer.

It seems clear to us that mere "found sports" are not within the intent of the law—and if they are, that the law transcends the Constitutional authority of Congress.

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It is obvious that many novel and interesting problems may have been started.

It doesn't seem to me that the flower or fruit necessarily goes with the plant, nor do I think Congress intended to protect the product of the plant. The question is, of course, enormously important. Process and machine patents do not protect the products. If it is possible to asexually reproduce the plant from the flower (or such part of the plant as goes with the flower) that is quite another question.

Dr. Joseph Rossman in an article published in the January 1931 issue of this JOURNAL discusses the background of the new law and many of its possibilities and also the Patent Office procedure.

Mr. Robert C. Cook, Editor of the *Journal of Heredity*, has some interesting comments on the subject of Plant Patents published in the *Journal of Heredity* in August 1930 and republished in this JOURNAL in January 1931, accompanied by a list of books on Plant Breeding and Heredity. Mr. Cook also has a very instructive article in the October 1931 issue of his Journal on the First Plant Patent.

Anyone wishing to get a better background of the new law should read up the reports of the Senate and House Committees, which considered the subject, i. e., Senate Report 315, April 2, 1930 on S. 4015, introduced by Senator John G. Townsend, Jr., of Delaware, and the House Report 1129, April 10, 1930, both of the 2nd Session of the 71st Congress, and also the extracts from the hearings of the House, dated April 9, 1930, on H. R. 11372, introduced by Congressman Fred S. Purnell, of Indiana.

Apparently Senate Bill 4015 superceded S. 3530. It also appears that House Bill 11372 superceded H. R. 9765 and that on May 13, 1930 the Chairman of the Patent Committee of the House obtained unanimous consent to take up Senate Bill 4015, which was then passed. A motion to reconsider was laid on the table and the record shows "a similar House Bill was laid on the table." Presumably the latter bill referred to was H. R. 11372.

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Plant Patents

By HARRY C. ROBB *

I HAVE read with considerable interest the articles appearing in the February issue of "The Journal of Heredity" by Robert C. Cook[1] and the March issue of this JOURNAL by Robert S. Allyn embodying critical discussions of the Plant Patent Law. In view of my connection with the origination of this law and the practice involving the same since its enactment, I am moved to discuss certain of the questions raised in the hope that a better understanding may be had of this law.

It is recognized, as has been said, that plants are a very different subject-matter from that of patents which have been granted under the well-known patent statute, but it is believed that in the main, the practice under this new law will not greatly differ from the general patent practice.

There are, of course, a number of controversial points that have arisen and will arise concerning the new plant patent statute, but a study of the intent of Congress as evidenced in the reports of the committees of Congress, and the law itself, will explain many things, and will settle a number of points that are presented in the articles above referred to in the form of critical questions. All of these questions were not raised in Mr. Allyn's article herein discussed, and it is not deemed at all necessary to refer to many of them because a knowledge of the basis of the Plant Patent Law and its intended operation would afford satisfactory explanation alone. There is an old saying something like this: "If you must hammer, build something!" To attempt to belittle and ironically criticise a law sought to benefit the public at large, does not help matters, it seems to the writer.

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* Patent Lawyer, Wash., D. C.

[1] Reprinted in this JOURNAL, April, 1933.

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Representation of a number of plant breeders has led the writer to believe that this law is the basis of long desired protection and is now much appreciated by horticulturists generally.

Plant Patent Disclosures

There seems to be some idea that under the plant law, the plant should be described in such a way that it could be reproduced by anyone after reading over the patent. The framers of this law recognized the futility of such a thing in the face of the part nature plays in the production of new plant varieties. It was for this reason that asexual reproduction of the new variety was made an essential to the *right to a patent,* so that said variety might be preserved to mankind. Obviously, if the new variety and all its reproductions were destroyed, as suggested by one of the above mentioned authors, the patent granted for the same would become useless like many other patents voided for unknown public uses, etc.

The purpose of a full description in the plant patent specification is to enable identification of the variety and determination of infringements thereof.

Mr. Allyn stresses the supposed necessity for and the supposed value of describing the parentage of plants on which patents are issued. He is apparently, and perhaps very naturally, saturated with the theory of mechanical patents but we must necessarily adapt ourselves to changes in modern life and civilization. Plants are not machines and the conditions surrounding agriculture or horticulture are very different from those surrounding industry. The disclosure of the parentage may be helpful in identification, but it is doubtful, if the disclosure of the variety itself can ever be complete. Furthermore, the parentage of plants cannot be definitely determined in many or perhaps most instances. If a new variety of apple is the result of the cross-breeding

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of two identified trees, each of which is perhaps a hybrid of unknown origin, the question may be asked, of what possible benefit to the public is the disclosure of the parentage?

The law only requires that the invention itself shall be fully described and not the preceding art or genus and this applies to plant patents as well as to mechanical patents.

To specify in the patent the location of the original plant of the new variety, as suggested, is not only not necessary but may be an invitation to possible trouble, for it is not everyone who can build cages to preserve trees, etc., under lock and key. There is, of course, the same desirability of retaining the original tree as in the case of mechanical patents to retain the first reduction to practice or model of the invention, but nowhere is such information necessary in the patent document any more than in a mechanical patent.

Sometimes it is difficult to completely describe these plant novelties, especially where the novelty lies in such intangible characteristics as odor, peculiarity of flavor, etc. Comparison with known odors or flavors is helpful where this is possible. Where it is not, the law provides against such defectiveness, by requiring to be done only what is possible to describe.

The authors of the articles mentioned criticised rather severely a number of the patents which have been granted, doubtless overlooking the defects of the new practice and forgetting that the same defects existed in the early mechanical patents. For instance, one of these critics states that the Burbank patents describe quite fully the characteristics of the fruit and trees but fail to suggest how they were produced. Mr. Cook, apparently a plant expert, goes far in the opposite direction and certainly correctly states in his article the answer to this criticism:

> In most cases there is no possibility of a plant breeder being able to describe the process of making a new form

that can be relied upon to make the same form again. The breeder himself could probably not do this.

Besides, except for a few of the early crosses, Burbank never kept a record of the parentage of his plants. It was his theory that this is impossible and impracticable.

One of the claims of the Burbank patents is selected as an object of criticism because it "naively claims, 'The plum tree described, characterized by the early ripening period of the fruit, as shown'." but states that it does not show this period. It is not believed that the claim when properly read states that the period is shown. Perhaps if the comma were removed no objection would be made to the claim. Of course, the specification of this patent described as nearly as possible the time of ripening, not by month and date, it is true, for that would be absurd. That period differs in different localities and so the time is given relative to the ripening periods of the other well-known varieties. That is all that is necessary for a plant breeder.

The attack upon or criticism of the Patent Office and its Examiners relative to the failure to correct the disclosures in the plant patents is not entirely fair. Former Commissioner Robertson has been an ardent advocate of the plant law and has endeavored to administer it to best advantage. Whether or not the present Examiner in charge of the plant cases is a horticulturist or botanist, is beside the question because in the actual procedure the applications have always been referred to the "experts" of the Agriculture Department, and if censure is due because of the efforts of administration of the law under present governmental economies, the blame should be placed where it belongs always taking into consideration possible lack of knowledge of patent practice particularly as applicable to the new law.

It may further be said that counsel in patent causes are rarely experts in every line of industry which they undertake to represent and statements will occur in patents which may seem trivial and unnecessary and even at times incorrect.

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It is also a fact that the Examiners of the Patent Office who handle chemical and electrical cases are not actual chemists or electrical engineers in the majority of instances, excepting as they may be made such by the grant of diplomas for pursuing a study of the branches of these sciences. The majority probably never had any practical experience along the actual lines examined by them.

It would be ideal to have a special division of the Patent Office devoted to the plant patents but such is obviously impractical at this time, however much it may be and is desired. Divisions of the Patent Office are obliged to examine thousands of cases in a year and not less than one hundred as would be the case if a special division at this time was devoted to plant cases. The time may come, no doubt, when a special division headed by a skilled botanist will be required but at the rate plant patents are being secured this much desired end is not in sight.

The fact that a plant inventor is unable, or does not see fit, to use botanical names or highly scientific language in disclosing the invention would not be seized upon by a court of equity to invalidate the rights. Patent documents are intended to be neither literary compositions, scientific discourses nor highly technical papers. The law requires only a reasonable disclosure of the features of novelty of the invention or discovery itself so the public may avail of the invention when the monopoly expires, and, pending that time, recognize with fair accuracy the scope of the monopoly. So much for the disclosure of the plant patents.

As to the subject of plant patent claims, it may be said that no one knows how this law is going to be construed by the courts. Claims are being formulated and introduced into these patents, some by those unskilled in the general patent practice and unacquainted with the difficult problems of claim drafting or scope of claims, and some by skilled practitioners who are more or less guardedly submitting their claims in the light of the restric-

tions of the Patent Office until tests of the propriety of these restrictions have been made. The writer does not approve of the Patent Office restriction to a single claim and from the beginning argued against it, but until this matter can be settled at the instance of an applicant willing to make the test, the restriction must be abided by. As is well known, courts will not decide a moot question.

However, one thing is certain and that is that the law was intended to cover new varieties of plants, not the blossoms, fruit, or nuts thereof. These features may be in any instance the evidence of the novelty and hence it is proper to claim the plant by the characteristics of distinctiveness shown by these products. These characteristics may be set forth in the claims or the latter so drafted as to refer back to the specification for said distinctions. In this latter respect, the plant patent claim is like the design patent claim, under present practice. I am unwilling, however, to concede that in a plant case the patentee must be limited to the extent that the infringing plant must be a Chinese copy or reproduction of the patent disclosure. Many things may be done to affect certain characteristics of reproduced plants and as the committee report states "allowance must be made for those minor differences in characteristics commonly called fluctuations, which follow from variations in methods of cultivation or environment and are temporary rather than permanent characteristics of the plant." Of course, it must be understood that the infringing plant will necessarily be a propagated reproduction of the original patented plant. There is much misunderstanding of this phase of the law. Simply because I cross a Paul's Scarlet with a Gruss an Teplitz, I cannot, by securing a patent for the result, prevent someone else from crossing these same varieties, for nature does not twice perform exactly the same and the product would be recognizably different, certainly in some of the various features, I believe.

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This practically answers the question as to why the claim in Plant Patent No. 10 is the same as the claim in Patent No. 1. The everblooming characteristic bred into the variety of Patent No. 10 is a novelty differing widely from the variety of Patent No. 1. The grant of Patent No. 1 could not preclude the grant of a second everblooming plant patent. No one is entitled to a monopoly for everblooming habits, as they existed long before the law. The language of the claims is the same because in both these instances one has to refer back to the specification for the particular distinctions.

The patentee of Plant Patent No. 10 sought and was entitled to a sub-claim for a red everblooming rose without question, but under the ban of the then Commissioner of Patents who insisted on the single claim practice, this was not granted.

It will be understood from the foregoing, therefore, that no interference could have been set up in these two patent cases, because they were not for the same invention, a requirement of interference practice with which Mr. Allyn is well acquainted. He also knows that design patent claims are all the same insofar as language is concerned, the plant patent claim differing only slightly from the design type. Ultimately, I hope it may radically differ therefrom.

The sale of the fruit of a tree which is patented is not an infringement of that patent, any more than the sale of a product of a process patent is an infringement of the latter. One of the writers referred to above has properly stated this phase of the law.

Joint Inventions

In certain of plant patent specifications there seem to be indications that because one of two or more parties asexually reproduces the new variety, such reproducer becomes a joint inventor. It is true that the law requires asexual reproduction as a basis for the grant of a patent

but the mere act of reproduction does not involve inventorship. Many discoverers and originators of plant varieties would not know how or would not care or be equipped to propagate plants and under such conditions would have a perfect right to have others reproduce the plants, and this without making such reproducer a party to the discovery or invention.

Bud Mutations or Sports

At this point it seems proper to discuss patenting of bud mutations or sports especially in view of Mr. Cook's apparent astonishment "that the Patent Office has been willing to include as an 'inventor' a person who has not even *gone out and looked for the new form.*"

Mr. Allyn also apparently questions the patenting of sports, because "the asexual reproduction of a sport does not require invention." This overlooks the fact that at the time of the adoption of the Constitution and the passage of the first patent act the term "invent, invention or inventor" were synonymous with "discover, discovery or discoverer," and "to find" and "find out or discover." This fact was seriously considered by the House and Senate committees and duly reported to Congress.

It may be helpful at this point to consider the broad purposes of patent laws. They are not enacted principally for the benefit of the patentees, but for the benefit of the public. The inventor or discoverer is granted a monopoly. The owner of a sport starts out with a monopoly. It is his property and he enjoys all the rights of ownership. It may be the most remarkable specimen that has ever come to light. It may be a fruit that would be instantly accepted by a grateful public. Its propagation and wide distribution might be of inestimable public benefit. Nevertheless it is the absolute property of John Doe. No one can deprive him of that property. It cannot be taken even for public use without compensation. His property is protected by the Constitution. He may

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destroy the sport. It is a gift of nature, yes, but not a gift of nature to mankind, generally. It is private property. Its status is similar to that of the ordinary invention when resting in the mind or files of the inventor. The principal question of policy from the standpoint of the public is: how can we break down this private monopoly and secure a supply of these trees or plants? The danger is not that the owner shall have a monopoly for 17 years, but that this sport which the public needs will be withheld, pruned off, or destroyed. The owner may recognize its desirability but from incompetence, indifference or discouragement, may decide that he will not propagate it. The House Committee on Patents fully realized this, and lamented that "many varieties of apples equally as valuable as the McIntosh and the Greening have undoubtedly been created and disappeared beyond human power of recovery because no attempt was made to asexually reproduce the new varieties." The Committee also pointed out that this law "proposes to give the necessary incentive to preserve new varieties."

That sports are within the scope of the bill is indicated by the following line which is found in both the Senate and House Committee reports: "These cultivated *sports*, mutants, and hybrids are all included in the bill." It is impossible to find a clearer expression of the legislative intent. Mr. Allyn apparently fails to see any basic difference between what he terms "mere finds" and a sport which he describes as "nature's sport." Congress did not exclude "mere finds." Whatever the meaning of the word "mere," as there used, it should be remembered that both committees stated that the bill excluded (not "mere finds") but "a *wild* variety, a *chance* find of the plant *explorer*."

Consider on the one hand that the orchardist discovers that one of his trees has developed a sport of perhaps unusual value (provided only that he is protected from piracy if he attempts to put it on the market). That sport, and the tree from which it springs, and the land upon which it grows are all his, and the fate of the sport,

with its attendant public consequences, depends solely upon his sole judgment and decision. He may prune and destroy, or propagate and preserve. On the other hand, "a *wild* variety, the chance find of the plant explorer," (as distinguished from "these cultivated sports" which "are all included in the bill") is not the subject of such ownership, and their fate does not depend upon the sole judgment of the orchardist, and the exigencies of orcharding. The "chance find of the plant explorer," the "wild variety," may be rejected by one observer, who passes on. It is there for those who follow him. Any member of the public may reject it or preserve it. Not so with a cultivated tree on private property. This exclusion of a "wild variety," the Committee points out, "is in no sense a limitation on the usefulness of the bill to those who follow agriculture or horticulture, and who are permitted under the bill to patent their *discoveries.*"

Certainly it cannot be urged that a sport is less valuable to the public than a hybrid. Considering then the end in view, which is the ultimate benefit to the public, and considering the fact that both hybrid and sport are originally private property, there is no sound reason for inducing the owner to part with one and not the other. In neither case has a member of the public the faintest shadow of a right to the plant, whether it is an experimental hybrid or a "gift of nature," and in either case, if the public is to benefit by obtaining a supply, it is necessary to provide some reasonable incentive for the owner to relinquish his natural and complete monopoly and give it to the world. Only those who hope to reap the reward of another's enterprise can complain of the reward which Congress has offered to the owners of these plants. They had nothing to begin with. They are merely prevented from reaping where another has sown. Their "loss" is more than offset by the public gain. Heretofore, as pointed out by the Committee, plant developers "have been helpless against this form of piracy." The profession does not express any solicitude for the few who wish to continue the practice.

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Duplication of Sports

It is possible that from time to time some sport, or for that matter, hybrid may, for most practical purposes, so closely resemble a patented plant that it would appear to be a duplicate. What happens then from the standpoint of novelty and infringement? Plant No. 1 is patented. Plant No. 2, the so-called duplicate, is simply not a new and distinct variety and may not be patented. We are here ignoring the fact that there may be a number of minor points of distinction which from the standpoint of the public interest in the fruit or flower, or other outstanding characteristics, are of little interest or importance. In the world of competition the owner of the patented plant usually gives to the variety a trade name. In this way, in addition to his exclusive right to propagate afforded by the patent, he adds to his protection, because the exploiter of the unpatented Plant No. 2 would have no right to adopt the same name or otherwise appropriate the efforts and expenditures of the developers of Plant No. 1.

So far as the question of possible accusation of infringement of the patent is concerned, the owner of the unpatented plant has the defense by way of proof that his variety is not a propagation of the patented plant.

Now, of course, if a propagator can independently (with the assistance of nature) produce a duplication of a patented variety, he is free to do so, but the patent law has prevented the flagrant piracy and hijacking of horticultural developments that heretofore discouraged all but the few incorrigible optimists. They can no longer openly appropriate another's labor and expenditures. They may, by all fair methods develop their own plants and build up their own business. This may be in the public interest. The continual threat (amounting to 100% certainty) of piracy under the old system effectually prevented substantial progress in this field of endeavor. That, emphatically, was not in the public interest. The Congressional Committee reports are clear on this point.

Many other questions may have to be answered sooner or later. That is no objection whatever to the law. If the progress of civilization had to await until authoritative answers could be supplied to the doubting, the pessimistic, the imaginative and the sincerely interested, we would still be in the dark ages. When we consider the progress this country has made since the enactment of the Patent Law in 1790 notwithstanding the false accusations and statements of the so-called technocrats we are probably to be congratulated that no one was able to propound to the Patent Office and to Congress all the troublesome questions concerning the application and interpretation of that law that have since been considered by the courts. A mere statement of these problems and the legal bibliography built up as the result thereof the past hundred years would have staggered Congress and would have deterred it from setting sail across this unknown and stormy sea.

The country owes its success to the experimenter—the one who does not know in advance the exact answer to every problem, but who patiently attempts to achieve a result. He cannot anticipate and avoid every difficulty, but he attempts to surmount them when they appear. Is the patent profession to be less forward looking than its clients? Is it to demand a complete answer to every problem before it agrees to carry on for the public good? Is the profession to fear the unknown future merely because it has no cases on all fours? On the contrary, it is confidently expected that it will uphold its traditions and forward, rather than obstruct the beneficent purposes of such a statute. It is hoped that its criticisms, when offered, will be constructive, and intended to forward the purpose of Congress to produce, if possible, as remarkable progress in agriculture and horticulture as has been seen in the industrial field since we took the first step in the direction of patent protection over 100 years ago.

* * *

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In spite of my suggestion above relative to the lack of objection to the law there has just been introduced into Congress by a representative from the State of Texas a bill (H. R. 5392) to repeal the existing Plant Patent Law. The basis of the backers of this bill for objection to it is the old one of creation of monopolies, the same howl that has always been raised by those few of the general public who desire to profit by the efforts and work of others. Apparently those who advocate this bill on the above ground have not discovered that patent monopolies have been in existence for over a century in this country and the grant of these temporary monopolies has not yet destroyed industries. There could be absolutely no valid objection to the monopolistic characteristic of the Plant Patent Law any more than to the general patent statutes governing the grant of mechanical, electrical and chemical patents. The fact that certain varieties of unpatented roses sell at five cents wholesale which may as in many cases retail for 35 or 40 cents and that rose bushes covered by patents sell for one dollar and fifty cents to two dollars each retail does not place these two roses in competition and the law was not intended to do so. The public will have its cheap patented roses when the reward of the originator has been paid in the form of the returns he may acquire during the seventeen years of the grant. This repealing bill will obviously lose its force and effect when the great public benefit derived by the Plant Patent Law is understood.

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A medium of expression and exchange of thought for advancing and improving the patent system; a forum for the presentation and discussion of legal and technical subjects relating to the useful arts; a means for disseminating a wider knowledge of the workings and advantages of the patent system; a periodical for bringing about a more uniform practice of patent law and through which all interested in developing the patent system might work to a common end.

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More About Plant Patents

By Robert Starr Allyn*

IT would appear from Mr. Robb's recent article published in the October issue of the Journal that my previous queries on Plant Patents only scratched the surface. We seem to agree that *many* of the patents thus far issued are probably invalid because they fail to claim the "plants" per se. In trying to cover the fruit or blossoms per se they have overstepped the law. The remedy, of course, is by reissue.

We also seem agreed that the Plant Patent Act is the basis of long needed protection to the inventors and discoverers of new plants. We differ radically, however, as to the scope and adequacy of the law and the way it has thus far been administered. Indeed, if Mr. Robb is correct in some of his conclusions the situation is much worse than I had supposed. If my comments, ironic or otherwise, serve to clarify or improve matters, I shall be more than repaid for my studies. If a house is poorly built or upon poor foundations, it may have to be torn down and rebuilt. Mr. Robb's theory seems to be "don't shoot the performer—he is doing his best." When, however we pay to see a performance we have a right to criticise and as I see it we, as attorneys, have a duty to criticise where we consider it necessary. I am not hampered, however, in my criticism by any interest in the parentage of the Plant Patent Act or in its specific applications.

Mr. Cook's articles on the subject I believe constitute a most valuable commentary. While he does not claim to be a patent expert he has clearly pointed out many of the inconsistencies and errors botanically and otherwise in the Plant Patents as issued. He points out also the dangers in the present divided authority between the Patent Office and the Department of Agriculture. One department can very well say, "I know nothing of Plants" and the other "I know nothing of Patents!" The public pays the bill.

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I can see no reason why with all the experience of more than 100 years in patents we should deliberately go back to the ignorance of the 1800's in drafting and administering a mere amendment to the law in the 1900's. Honest criticism ought to be of use even now.

Mr. Robb is hardly complimentary to the Patent Office Examiners by his implications on the subject of chemists and electrical engineers. Even if some of the Examiners are not professional chemists or engineers when they enter the Patent Office, they at least have been educated in physics and chemistry and must have a very considerable engineering knowledge in order to pass the necessary examinations. I do not recall, however, that botany or horticulture are required subjects. I think it has been customary so far as possible to assign Examiners to work for which they are especially fitted. It would seem that the same sort of selection or assignment should apply to the Plant Patent division. I doubt if there is any other division in the Patent Office where such fundamental errors as pointed out by Mr. Cook could slip through.

I agree with Mr. Robb that the law protects only against pirating plants *per se* and here again I think the law is inadequate. I see no reason why one who has produced a new fruit or flower or vegetable should not be entitled to the same protection as the maker of a new golf ball, lollipop or other food product. The inventor should be able to pursue the copier where the product is sold as well as where the plant is grown. It may be very difficult to prove the plant infringement act but it should be easy to prove duplication of a new product.

I am glad that Mr. Robb agrees with me that the Commissioner has erroneously limited each Plant Patent to a single claim and I hope that others will impress upon the Commissioner their opinions. The rule seems to me purely arbitrary and should be recast.

There are, I am sorry to say, several important points on which I can not agree with Mr. Robb. Some of these are rather abstruse but I think worth consideration.

First: The general purpose of this law can not be so different from that of any other patent and copyright law, namely, "to promote the progress of science and useful arts." The special intent of Congress was to give to plant breeders the same sort of protection as we try to give to inventors of mechanical, chemical and electrical improvements. The mere finding of an existing machine, compound or variety of plant, however, is not an invention or discovery according to our laws. The law as proposed was intended to cover mere finds and the broad provision was stricken out after adverse comment by Commissioner Robertson. The mere finding of a new variety does not make one a plant breeder. If the law does cover a mere find then it ought not make any difference whether the finder is a professional plant breeder or an amateur. I suppose if the "find" were valuable the finder would ipso facto become a professional!

As originally proposed the law would have included the following, "Provided, that the words, 'invented' and 'discovered' as used in this section (4886), in regard to asexually reproduced plants, shall be interpreted to include invention and discovery in the sense of finding a thing already existing and reproducing the same as well as in the sense of creating." This doubtless (if constitutional) would have covered "mere finds"—that is, those newly found varieties, the production of which is due to a freak of nature without human aid. The elimination of this provision was undoubtedly intended to mean that a patent could cover only such new and distinct varieties as were produced by the aid of man.

A new machine or composition is not a patentable invention or discovery under our law unless its creation involves the exercise of the inventive faculty.

Second: Mr. Robb seems to be basically unsound in his understanding of the purpose of the specification of a Plant patent. He treats the subject as if the provision for Plant Patents were a separate section of the law and that the specification and claims should follow rules of their own. I am inclined to believe that they should be provided for by a separate section of the law. Unfortunately, however, they have been injected into sections

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of the law which have been interpreted many times to have quite definite meanings. Mr. Robb says the purpose of the "Plant Patent specification is to enable identification of the variety and determination of infringements thereof." I am anxious to know where he gets authority for this. He also says "the law only requires that the invention itself shall be fully described and not the preceding art or genus." "The law requires only a reasonable disclosure of the features of novelty of the invention or discovery itself so the public may avail of the invention when the monopoly expires and, pending that time, recognize with fair accuracy the scope of the monopoly."

I am surprised that one familiar with the intricacies of the patent law should overlook the requirements of Section 4888 of a written description of the supposed invention or discovery "and of the manner and process of working, constructing, compounding, and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which it appertains, or with which it is most nearly connected, to make, construct, compound, and use the same; * * * and he shall particularly point out and distinctly claim the part, improvement, or combination which he claims as his invention or discovery."

These requirements apply to Plant inventions as well as to all others. It is true that the difficulty of such full, clear and concise descriptions in the case of plant inventions led to the addition of the so-called saving clause, "No plant patent shall be declared invalid on the ground of non-compliance with this section if the description is made as complete as is reasonably possible."

It does not seem to me, however, that a Plant Patent can be valid where *no* attempt whatever is made to furnish any information as to the parentage or method of producing the new variety of plant. Failure to keep a record of the parentage of plants does not speak very well for the scientific spirit of a supposed inventor. It may be annoying—but it is not impracticable or impossible. Of course, if the so-called invention is a mere find the parentage may be unknown—and then in my

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opinion is unpatentable. A true plant breeder should not be excused for slovenly methods.

If some other form of specification is expected in the case of Plant Patents, then the law should be amended. The purpose of a specification is to comply with the law!

Third: The form of many claims which have been approved by the Patent Office in my opinion does not comply with the law. It should distinctly claim the part or improvement which is new—and not by a general reference to the descriptive part. To claim the new and distinct variety of plant as described adds nothing whatever to the specification. Those patents already issued can, of course, be reissued as to the form of claim.

Fourth: Mr. Robb overlooked the basis of my criticism of one of the Burbank patents. The sole novel characteristic of the plum tree claimed was "the early ripening period of the fruit, as shown." I have reread the patent and have not been able to discover any reference whatever to the ripening period either in the drawing or in the description. Such an error should have been detected at least by the Examiner. Furthermore, any plum tree which has an early ripening period would be covered by the claim. The claim, therefore, is broader than the invention and fails to point out the real novelty of the invention, if any.

A similar fault will be found in Patents Nos. 1 and 10 on the Everblooming Climbing Rose. Apparently these plants are not the same and yet the claims are alike which proves that they do not distinctly claim the novel features of the inventions as required by the law.

Fifth: Infringement: In general unauthorized manufacture, use or sale of an invention as described and claimed (or its equivalent) constitutes infringement of the rights granted by the patent, i. e., the right to exclude others. Mr. Robb states, "Of course it must be understood that the infringing plant will necessarily be a propagated reproduction of the original patented plant." Mr. Robb further says, "Now, of course, if a propagator can independently (with the assistance of nature) produce a duplication of a patented variety, he is free to do so, * * * So far as the question of possible accusation of infringement of the patent is con-

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cerned, the owner of the unpatented plant has the defense by way of proof that his variety is not a propagation of the patented plant." If this is a correct interpretation of the law it is most unfortunate. But I do not agree that it is correct. I find nothing whatever in the law to support such an unfair limitation on a Plant Patent. Certainly there is no such defense suggested in Section 4920. If Mr. Robb is correct the patent owner can sue only a plant breeder and must prove that the offending plant was actually asexually reproduced from one of the original patented plants. It will be extremely difficult if not impossible in most cases to prove this. Identity with or equivalency to the patented plant should be proof of infringement (unless licensed). Section 4884 gives to Plant owners the same rights to exclude others from the patented field as to other patent owners and in addition the Plant Patent owner can prevent others from asexually reproducing even from a licensed plant or from any other plant.

If Mr. Robb is correct one may import from abroad the new and patented variety of plant and sell it with impunity. In fact it will be possible to sue only the actual grower. It is true that he does not say this but these conclusions seem to me to inevitably flow from his reasoning. If one must prove that the plant was a reproduction of the original plant it must be that reproduction is the sine qua non of infringement. The growing or sale of a plant in one district which was created in another district would appear to be free. I can not believe that this was the intent of the law makers or the proper interpretation of the law. If it is the law—then the law should be changed to provide adequate protection.

The law quite clearly entitles the patentee to the right to exclude others from making, using and selling the patented invention or discovery and including in the case of Plant Patents the exclusive right to asexually reproduce the invention. It is true that the report of the Congressional Committee on Patents appears to convey the idea that the bill would not cover reproduction from

seeds. The English language in the law, however, is too clear for discussion. If it had been intended to limit the scope of the grant to reproduction from the original it would have been so easy to state it. As it stands either the Congressional Committee gave no thought to the language of the Act or thought that no one would notice that their report and the proposed Act did not correspond. The discussion on the floor of the House and Senate shows that no particular attention was paid to the terms of the proposed law. It would have been scarcely honest to tell the plant breeder that it was proposed to give him the same reward as to the engineering or industrial inventor and then frame the Act so that the plant breeder could not sue a dealer or an orchardist or florist who sold or used plants produced by others.

It is apparent that the Commissioner of Patents does not agree with Mr. Robb on the scope of Plant Patents for the form of the grant to the Patentee is:

> the exclusive right to make, use, and vend the said invention throughout the United States and the Territories thereof.

We can not find here any such limitation as suggested by Mr. Robb.

Sixth: Mr. Robb discusses at some length the importance of protecting the "professional" finders of new varieties apparently upon the theory that such a finder is the owner and therefore entitled to keep his secret. This is certainly contrary to our whole patent system. This theory will account for many of the peculiar cases already considered and leads to absurd conclusions and ridiculous contradictions. If the owner is entitled to a patent then a corporation can apply for a patent. Or suppose one person owns the land and the plant breeder leases it. If the breeder raises an "annual" he may own it. If he creates grafts on old stock trees the breeder does not own the tree. Then I suppose the land owner would be the inventor according to Mr. Robb's theory although he may not even know that there is a new variety of apple on the place. He agrees that the chance find of a plant explorer or a "wild variety" is not patentable but if a cultivated tree produces a sport then the

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owner of the tree is entitled to a patent although the owner has done nothing to create the sport! This seems to me absurd. It seems to me that the plant explorer is more entitled to a patent for his discovery than a mere finder of a natural sport in his own or in a hired garden.

I wonder who, according to Mr. Robb's theory, the inventor is in the case of a new variety created by grafting X on a tree owned by Y.

I have no objection to the grant of patents on sports, mutants or hybrids provided the inventor has done something to create the new variety. I can see no reason to reward the owner of real estate for what accidentally grows on his land—neither do I see why the landlord should be considered the inventor of a new plant which may be grown by his clever tenant. Neither can I see any sound sense in granting a patent to a man who claims to be a professional plant breeder and refusing a patent to an amateur plant lover who performs the same act, i. e., seeing and reproducing something which nature has produced without any thought on the part of the discoverer. I suppose if the amateur decides to become a pro he can get a patent on what he has merely "found."

I am inclined to think that Congress has the power to grant patents on new plants and their products merely found or discovered by the applicant if, in the opinion of Congress, this would promote the progress of science or the useful arts. Congress apparently has the right to define—an author or inventor and to define what a writing or discovery is. It has expanded the general idea of a "writing" to include photographs, phonograph records, etc. The Supreme Court has said that Congress may define "intoxicating liquor" to mean a beverage containing more than one-half of one percent of alcohol. Why can Congress not define "discovery" to include the bringing to public notice of a hitherto unknown plant or its product? In the absence of such definition or declaration by Congress, in my opinion, "mere finds" or discoveries are not patentable. And, by the way, should not plant patents be issued for terms longer than seventeen years because of the fact that asexual reproduction is such a slow process?