

TO PROVIDE REVENUE FOR WAR PURPOSES

HEARINGS

BEFORE THE

COMMITTEE ON FINANCE UNITED STATES SENATE

SIXTY-FIFTH CONGRESS

SECOND SESSION

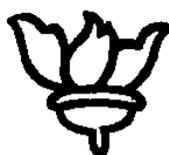
ON

H. R. 12863

TO PROVIDE REVENUE, AND FOR OTHER PURPOSES

Printed for the use of the Committee on Finance

PART 3



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TO PROVIDE REVENUE FOR WAR PURPOSES.

TUESDAY, OCTOBER 8, 1918.

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met, pursuant to call, at 10 o'clock in the committee room, Senate Office Building, Senator F. M. Simmons presiding, having under consideration House bill 11283, "to provide revenue, and for other purposes."

Present, Senators Simmons (chairman), Williams, Smith of Georgia, Thomas, Gore, Jones, Gerry, Nugent, Robinson, Penrose, Lodge, McCumber, Smoot, La Follette, Townsend, and Dillingham.

STATEMENT OF MR. THOMAS A. RUSSELL, VICE PRESIDENT OF THE RUSSELL MOTOR CAR CO., BUFFALO, N. Y.

Mr. RUSSELL. Mr. Chairman, I wish to deal with only two sections, which seem to bear rather heavily on companies of the character of the one I represent.

The first one is section 234, subsection 8, which contains the clause providing for amortization of buildings, machinery, equipment, or other facilities, constructed, erected, installed, or acquired on or after April 6, 1917, for the production of articles contributing to the prosecution of the war. It is the last three lines of that clause to which I desire especially to refer.

Senator SMOOT. You mean as to the 25 per cent?

Mr. RUSSELL. Yes.

Senator SMOOT. That has been stricken out, I will say for your information.

Senator JONES. We did not put any limitation in.

Mr. RUSSELL. Then, gentlemen, I feel that that is very fair. In our experience in Canada in this munition work the amount that is to be written off for amortization may vary all the way from almost nothing to a hundred per cent. There are many lines of manufacture of munitions in which the plant at the conclusion is really salvageable at practically nothing. But if you have stricken that out so that it will be left to the discretion of your officers, that is very fair.

Senator TOWNSEND. Do I understand you appear here for the Canadian Government?

Mr. RUSSELL. No, sir; there are a number of Canadian firms who have, more or less at the request of the Ordnance Department, established plants in the United States for the manufacture of articles they had had special experience on in Canada in munition work, and

these are United States firms now. I am speaking for a United States company with headquarters in Buffalo.

Senator SMOOT. What is the name of your company?

Mr. RUSSELL. The Russell Motor Car Co., a Canadian company.

Senator SMOOT. Making what?

Mr. RUSSELL. It was a Canadian company making motor cars and bicycles. It established a plant at Buffalo for the manufacture of special munitions for the Navy, and later for the Ordnance Department.

Senator SMOOT. What was it?

Mr. RUSSELL. In this case it was gun mounts for the United States Navy.

Senator TOWNSEND. That is what you are building now?

Mr. RUSSELL. That is what we are building now in Buffalo.

Senator TOWNSEND. Are you manufacturing any automobiles?

Mr. RUSSELL. None. We hope to make it a permanent business in the United States, and that we will have a United States company purchase the plant, equipment, and machinery and have substantially \$2,000,000 invested in it.

Senator TOWNSEND. Do you have some contracts with the United States Government?

Mr. RUSSELL. Yes; with the United States Navy for the manufacture of gun mounts, and also with the Ordnance Department.

Senator THOMAS. You are not making any gun mounts for the Army?

Mr. RUSSELL. No.

Senator SMITH. Yours is a United States corporation?

Mr. RUSSELL. Yes, sir. The other clause to which I desire to call attention is section 326, page 61, subsection 5 (b), which reads:

As used in this title the term "invested capital" does not include (1) borrowed capital, or (2) intangible property (other than patents and copyrights) paid in for stock or shares on or after March 3, 1917.

The distinction is sharply drawn in this bill as between companies which were organized before March 3, 1917, and those organized afterwards.

I feel that it would be fair and also safe if the same distinction should be allowed to the officers who have to administer the act in respect of companies organized after March 3, 1917, as in the case of companies organized prior to that. If the matter requires any investigation as to the value of the intangible property that was transferred and paid for in stock, it is certainly much easier to investigate and satisfy the commission as to whether the shares so issued were issued for a valuable consideration or not. I have in mind, necessarily and directly, my own company, the Russell Motor Car Co. This is what happened when the discussion took place, and I leave it to you to judge whether it is fair.

Negotiations took place between the parent Canadian company and the Navy Department with regard to the construction of these important naval gun mounts. The original intention was to make them in Canada. The Navy, for reasons which we believed were quite good, thought this was an article which ought to be manufactured in the United States, and they urged that we should establish a United States company, come to the United States, and build them

in the United States with United States labor and material. We did so, and this is what we did: The parent company undertook to provide a plant, to provide the machinery, to provide the organization, to provide the capital immediately required, to guarantee the purchasing by the new company, as it was an unknown company, being new, and therefore might have some difficulty getting credit, to guarantee its bank advances, to agree to put up such further money as was required by the business, agree to guarantee to the surety company the performance of the contract. It took machinery which was in operation in its Canadian plant, lifted it bodily out, and transferred it to the United States, replacing that machinery later in Canada, so that the work could immediately get into progress.

The capital was issued; the money was paid in. No amount was paid, as is very ordinarily paid, for the brokerage or issuance of that capital. If one had the choice, for the successful performance of that contract, of putting on this side the direct tangibles that were put in, and of putting on the other side the intangibles—the organization, the speed, that was possible by reason of taking from Canada what was there and getting it immediately available—any of us would say this intangible property contributes much more to the successful carrying out of that contract than this tangible property, which you can get somewhere else.

It does seem to me that under those conditions it is rather unfair to definitely and irrevocably restrict it so that nothing shall count in that case as invested capital except the bright, shining gold dollars that were put in it.

So my suggestion is that that discrimination between companies organized before March 3, 1917, as distinguished from those organized afterwards should be wiped out, and the discretion left, as you have left it in regard to amortization, to your board that has to deal with it, and let them judge whether the intangible property is worth the shares issued for it or is worth anything.

Senator TOWNSEND. Do you call this a foreign corporation?

Mr. RUSSELL. No, sir; it is a United States corporation.

Senator TOWNSEND. Do you refer to section D?

Mr. RUSSELL. No; to section 2 (b), lines 15 to 19, on page 62. It would also affect lines 1 and 2, at the top of the page. If my suggestion were received, it would affect that by cutting out "prior to March 3, 1917."

The CHAIRMAN. Is there anything further you desire to say to the committee?

Mr. RUSSELL. Nothing, unless there is some question to be asked with reference to it.

The CHAIRMAN. Do you propose to furnish a written brief?

Mr. RUSSELL. We will be very glad to do so.

Senator THOMAS. I am very sure we have two or three on the subject from Canadian interests and also from American concerns doing business in Canada.

(Thereupon, the hearing being concluded, the committee proceeded to executive business.)

TO PROVIDE REVENUE FOR WAR PURPOSES.

FRIDAY, OCTOBER 11, 1918.

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10.30 o'clock a. m. in the committee room, Senate Office Building, Senator F. M. Simmons presiding, having under consideration H. R. 11283, "To provide revenue, and for other purposes."

Present: Senators Simmons (chairman), Williams, Smith, Thomas, Gore, Jones, Penrose, Lodge, McCumber, Smoot, La Follette, Townsend, and Dillingham.

Present also: Mr. M. L. Requa, general director, and Norman B. Beecher, counsel, of the Oil Division, United States Fuel Administration.

STATEMENT OF MR. M. L. REQUA, GENERAL DIRECTOR OF THE OIL DIVISION, UNITED STATES FUEL ADMINISTRATION.

The CHAIRMAN. Mr. Requa, we had reached for consideration a section of the bill which relates to a tax upon gasoline, and it was suggested that probably you might help us about that with some information, and we have sent for you for the purpose of hearing what you have to say with reference to the oil situation.

Senator GORE. Mr. Chairman, in that connection I would like to say that I hope the committee will hear Mr. Requa, not only on the gasoline tax, but also on the necessity of incorporating some provision in the bill that will permit the wildcatters, or the developers, to sell properties that they have developed.

The CHAIRMAN. I understood that Mr. Garfield, and probably Mr. Requa, wanted to be heard generally upon the oil question, and we will let Mr. Requa make his statement in an orderly way, and when he has finished his general statement Senator Gore or any other member of the committee may direct any inquiries to him that he sees fit.

Mr. Requa, will you proceed with your statement?

Mr. REQUA. Do you want me to discuss the gasoline tax first?

The CHAIRMAN. Primarily, that is the subject we are discussing. That has been reached in our consideration of the bill and put over to hear from you. I understand that members of the committee want to hear from you in reference to the oil situation generally also.

Mr. REQUA. Of course, a discussion of the oil situation generally would probably involve quite a lengthy statement. I would be very

glad to answer any questions or to make a general statement, covering a few moments, as briefly as I can.

The CHAIRMAN. After you have made your statement with reference to gasoline, probably Senator Gore will address to you some questions that will elicit the information that he especially desires and that other members of the committee especially desire.

Mr. REQUA. I have been impressed for a number of years with the seriousness of the problem of petroleum so far as the future requirements of the United States are concerned. In 1915 I prepared a monograph on the subject, correlating the information in the hands of the Bureau of Mines and the United States Geological Survey. That was published as a Senate Document at the request of Senator Phelan, and set forth the statistics as gathered by the two governmental departments. The conclusions I reached at that time were that if you assume the unknown areas of the United States to be discovered as equally as extensive as those that are now known, and assume an annual consumption of 400,000,000 barrels of oil, we have in the United States petroleum sufficient to last for about 28 years. Keep in mind that that is assuming the quantity in area and productivity unknown equal to the areas that are now known.

Senator LODGE. Does that include the shale oil?

Mr. REQUA. That does not include oils from shales. I might say, in passing, that if you were to produce from oil shale a quantity of petroleum equivalent to that now being produced in the United States, you would be moving a tonnage daily considerably in excess of the total coal tonnage moved; in other words, you would have an industry here that would be larger than the present coal-mining industry.

Senator PENROSE. What account do you take of the Mexican production?

Mr. REQUA. May I just say one thing before I answer that question?

Senator PENROSE. Certainly.

Mr. REQUA. I prepared a series of diagrammatic curves showing the increase in consumption of petroleum in the United States, and over a series of years commencing with 1861 and including 1917, they show an average annual increase of $9\frac{1}{2}$ per cent of the previous year. If you take the period from 1904 to 1914, you will get an average annual increase of 8.54 per cent. On that basis, the requirements for this year of new petroleum, in addition to the quantity that was produced last year, would amount to somewhere between 25 and 30 million barrels of new oil. In other words, we have to take out as much as we took last year and have to add 25 millions more to it to equal the normal requirements.

Taking those curves it is curious to note how nearly the plotted average follows the actual results that happened. I have a set of them with me to show the situation. I wrote some time ago a memorandum for Chairman Kitchin setting forth something of this problem, but I found he was so overwhelmed that it was not possible for him to consider them, and I took it to Mr. Adams, who was equally overwhelmed, and I never got anywhere on this question of the petroleum problem, and particularly the part that Senator Gore has mentioned.

(Mr. Requa thereupon explained one of the diagrams to the chairman of the committee.)

Senator SMOOT. Mr. Requa, may I ask you whether the estimate of the production of oil is made by yourself, or is it made by the Geological Survey?

Mr. REQUA. I have taken the history of past years as tabulated by the Geological Survey, and have used that as a basis.

Senator SMOOT. The reason I asked that is for the purpose of learning from you whether the estimated amount of oil can be arrived at any more accurately than the estimated amount of coal that could be produced in the country. Which is the most difficult?

Mr. REQUA. I think that the quantity of oil produced is susceptible of very accurate figures, for the reason that it passes through certain agencies, and the statistics of those agencies—the pipe-line companies and refineries—are available.

Senator SMOOT. Twelve years ago the Geological Survey, together with the Forest Service, led us to believe that in 28 years from that time all of the coal of the world would be exhausted, provided they produced as much coal in the years to come as they had that particular year. Of course, that prediction was based upon estimates made by them that have beyond a question of doubt proven false. You say that in 28 years—which is the same number of years Mr. Pinchot and the Geological Survey said the coal would last—oil will be exhausted. I wondered how you arrived at that estimate—that the oil of the country would be exhausted in 28 years.

Mr. REQUA. You can arrive at it in this way, by taking the total number of acres of oil territory and applying a known factor of barrels of oil per acre. It is pretty well established what the average extraction will be, and, using that as a basis, you can check those figures fairly satisfactorily. Of course, from the nature of the problem it is not susceptible of any absolutely accurate demonstration. All that you can get are indications. The survey have made an estimate that considerably less than 1 per cent of the coal of the country has been exhausted and about 40 per cent of the petroleum. We do know, of course, that the rate of increase of consumption in recent years has been fairly accurately tabulated, and on that rate of increase we will require 25,000,000 barrels more this year than we had last year, and that will grow at a tremendous rate in the future. My own belief is that the growth of the use of petroleum products has not yet reached a maximum.

Senator SMOOT. We can always know definitely the amount of increase. But what I was thinking of was how it was possible to say what the production of oil is going to be for the future.

Mr. REQUA. You know that there are a certain number of acres of oil territory in the United States that are known as such, and you know that the average production of an acre of oil land will be about so many barrels. That will give you a rough estimate of the total contents of that land. If you assume for the future an area equal to that—

Senator McCUMBER (interposing). There is the point. I want to know about why you assume that there is an area equal to that.

Mr. REQUA. I simply assume it for the purpose of discussion. I said, provided you find an area or areas that, in total, amount to as much as we know already exists.

Senator McCUMBER. Is there any fair indication that there are the same number of acres that will probably produce oil as have produced oil in the past?

Mr. REQUA. It is very difficult to say. I think probably it may be found that there will be a quantity equivalent to what we have already produced, and perhaps somewhat more. But, viewed from any standpoint of national welfare, it behooves us to watch our petroleum resources with the greatest possible care.

Senator THOMAS. We know that the shales of the West, enormous in extent, are rich in oil, and we also know that if they could be made available, there would be no threat of a famine in oil. Do you not think that the way to avoid this difficulty, or one way, would be for the Government to encourage, instead of preventing, the development of our oil shales?

Mr. REQUA. I do not think the time has come yet for the use of the oil shales, because the cost per barrel will be considerably more than the cost of petroleum, and, further, because of the great resources of Mexico.

Senator THOMAS. Just at present, of course, cost is subordinate to the needs of the article. But the Government is also practically preventing the exploitation and discovery of oil in the known oil regions of the public domain, for instance, in California and in Wyoming. Does not the policy of the Government with regard to that line of development tend to make this crisis in oil more acute than it otherwise would be?

Mr. REQUA. I wonder if you would pardon me if I did not go into that particular discussion—

Senator THOMAS (interposing). Perhaps it is a question which you, now being a Government official, do not care to answer.

Mr. REQUA. I would rather not.

Senator THOMAS. But I want the record that is now being made to show—and I asked the question for that purpose—that one of the elements producing this menace in our supply of oil is the policy of the Government itself, which, notwithstanding that the statutes are abundantly liberal on that subject, practically places an embargo upon the investigation and prospecting of the public domain and the location of oil wells, a system which seems to be as indefensible as any policy the Government ever entered upon.

Senator JONES. The point you make, Senator Thomas, seems to me does not quite reach the point which Mr. Requa was trying to make; that is, a shortage of supply regardless of its production. Your point, it seems to me, is limited to the present supply only.

Senator THOMAS. No. If that was the impression made, I have been unfortunate in my statement. We need oil now worse than we ever needed it in the history of the United States, or in the history of the world. As a consequence we need every available source of supply, to the end that this war may be vigorously and properly prosecuted. The point I have in mind is that the present exigency is vastly more important to us as a Nation than the extent of the general supply of oil, and the number of years that we may depend upon it in the future. We want oil now.

Senator JONES. That is what I thought you were getting at, the present necessities. But that would not affect the point which Mr. Requa was trying to emphasize.

Senator THOMAS. It would not affect the amount of oil in sight or 30 years.

and the probable supply we may be able to secure for the next 28

Mr. REQUA. I think the new Ranger field in Texas will for the time being take care of the shortage that may exist.

Senator LODGE. In the visible oil supply—I say “visible” because the area is already known—you estimate that there are only 14 years’ production?

Mr. REQUA. It would probably run somewhere a little in excess of that.

Senator LODGE. You said double it, upon the possibility; but upon the actual visible area you can only count on 14 years’ production?

Senator GORE. It would be a little more than that, because the last 14 years would assume a larger consumption.

Senator SMOOT. Then, that would be less than 14 years?

Senator JONES. Oh, no; Senator Gore is right.

Mr. REQUA. In 1897 we produced only about 60,000,000 barrels. In 1907 that had grown to 160,000,000 and in 1917 to about 340,000,000.

Senator LODGE. The point as made by Senator Thomas is that we need oil at this moment urgently. There never was such a need, which is owing to the war. With the shortage of oil existing there are only two ways of meeting the difficulty. One is by reduction of consumption and the other is by increase of production. Is it impossible to increase the production?

Mr. REQUA. No, sir.

Senator LODGE. Is it not better to increase the production than to cut down the consumption in such a way as by stopping the use of automobiles, for instance, tending to paralyze the business of the country?

Mr. REQUA. It takes considerable time, Senator, to bring an oil field into a producing stage. This new Ranger field in Texas we anticipate will have a production of 100,000 barrels a day within nine months, and will very materially help this situation. There is in reserve storage in the country about 100,000,000 barrels of oil that can be counted as available. There is something more than that, but you can not get it all. We drew last year twenty-odd millions from that stock, and in addition to that imported 30,000,000 from Mexico. This year I think we will probably draw 30,000,000 from that stock, depending somewhat upon how much is brought in from Mexico.

Senator GORE. It is expected largely to increase that Mexican importation, is it not?

Mr. REQUA. The Mexican importation depends entirely upon the tank steamers available for the purpose of transporting the oil.

Senator LODGE. You spoke of the enormous transportation required by the shales. Are they unable to get the oil from the shales at the places where the mine, or whatever it is, is opened?

Mr. REQUA. I said, if you mined oil shales the tonnage material moved to produce a quantity of oil equivalent to that we are now consuming would amount in tonnage to more than the entire coal-mining tonnage of the United States at the present time.

Senator LODGE. Why do you have to move the shale?

Mr. REQUA. You do not have to move the shale, you have to take it out of the mine and treat it in a retort, extract the oil in the form

of vapor, and precipitate that again, distill it back, passing through coils in water.

Senator TOWNSEND. Is it a fair proposition to state that we are going to produce from shale an amount of oil equivalent to all the coal now produced in this country?

Mr. REQUA. You will some day.

Senator TOWNSEND. I am talking about now. We are seeking an additional amount of oil necessary. How much extraction would that require?

Mr. REQUA. The additional amount of oil necessary can be very much more easily brought from Mexico than it can be produced from the shales of the United States.

Senator LODGE. I do not quite understand about the transportation.

Senator GORE. Senator Lodge, I do not think Mr. Requa mentioned transportation. He said "tonnage."

Mr. REQUA. I meant the tonnage mined.

Senator LODGE. I want to get it clearly.

Senator JONES. "Handled" is what he means.

Senator LODGE. Transportation certainly is railroad transportation. If the shales are not transported you transport nothing but the oil. Moving the tonnage is simply taking it out of the mine?

Mr. REQUA. Taking it out of the mine and treating it through the refinery.

Senator LODGE. That would be done at the place, would it not?

Mr. REQUA. That would be done at the place.

Senator LODGE. Then it would be only taking the shales from the mine to the place where they are treated?

Mr. REQUA. That is all.

Senator McCUMBER. But the amount of tonnage that would be taken out and so treated would be about equivalent, as I understand you, to all of the tonnage of coal now transported?

Mr. REQUA. Now mined.

Senator LODGE. I wanted to bring that out.

Senator TOWNSEND. Provided you get all the oil we use from the shale?

Senator SMOOT. Of course, the expense of mining the shale would not be the same as the expense of mining the coal. You take the shale in Utah. There are simply great mountains of it, and they would handle it the same as they do the Utah copper. They would blow down the side of a mountain, take it in and handle it, at perhaps not to exceed 10 or 11 cents a ton. It could be easily handled for that. But you can not mine coal for that.

Senator GORE. Mr. Requa, is it your judgment that it is practicable now to obtain from shale the supply of oil required?

Mr. REQUA. No, sir.

Senator SMOOT. No; it is not. In fact, there is no successful plant running now producing oil from shale; not one in the United States.

Senator GORE. That was my impression.

The CHAIRMAN. If there is such a shortage in production, why are not those mines being operated?

Mr. REQUA. The shale mines?

The CHAIRMAN. Yes. I am not from the West, and do not know anything about this question.

Mr. REQUA. Because of the oil that is in storage, and because of the tremendous quantities that can be brought from Mexico, if we had the tank steamers to bring it.

The CHAIRMAN. Your answer, then, is that it would be more expensive to produce oil from shale than it is to get it from our mines, and from Mexico?

Mr. REQUA. Correct.

Senator SMOOT. There is another element you ought to put in there, too, that they are waiting now for this leasing bill. The Government will not give title to the shale lands, and the only way they can be obtained is by securing a lease from the Government, and that is what they are waiting for.

Mr. REQUA. Permit me to say that we made very strenuous efforts in my department last winter to help the passage of that leasing bill. We believed it was very necessary. We did everything we could, and only abandoned our efforts because the case appeared to be hopeless.

Senator JONES. What is the difference in price between oil at the present time and the cost of oil produced from shale?

Mr. REQUA. The point I wanted to make about the shale in drawing that comparison, was to show the tremendous amount of labor and the tremendous amount of material that would have to be utilized in making that available. There is another interesting comparison that I can cite there. I am told that at the present time the average coal miner is mining about 900 tons of coal per annum. One-man power per annum applied to the oil fields of Mexico can produce, transport and deliver into consumption in the United States not less than the equivalent of 8,000 tons of coal per annum. In other words, one-man power can produce, transport, and deliver ten times the heat units that the coal miner can mine and land at the mouth of the shaft. I would like to go upon record here as saying that, in my judgment, petroleum is the most necessary mineral product in the world, and the proper handling of it perhaps the most vital problem that we have to consider, not only at the present time, but following the war period.

Senator PENROSE. I wanted to know, Mr. Requa, the annual product of the Mexican petroleum which we import into this country.

Mr. REQUA. We imported about 30,000,000 barrels last year. We imported at the rate of 90,000 barrels a day for the first six months of this year. But that has increased since because of additional tank steamer facilities. The quantity that can be imported from Mexico is not determined accurately. It has been stated by some optimistic oil men that they can at the present time, from the existing wells in Mexico, output a quantity equal to the entire present output of the United States. I am not prepared to say that that is true. But I am quite sure that they can produce three or four times as much as is being produced at the present time.

Senator PENROSE. Have you made any estimate as to the time when the Mexican field will be exhausted?

Mr. REQUA. It is entirely impossible to determine.

Senator PENROSE. Is not the fact that we are dependent on a foreign nation, at a great distance, for a very large percentage of our consumption, a reason for providing in this revenue bill some means

of stimulating the American field as much as possible during this war period?

Mr. REQUA. I think it is necessary that every encouragement should be given to the American oil industry to produce in the future.

Senator GORE. That was the point I was coming to a moment ago. You stated you did not think we could rely on the extraction of oil from shale to meet the present emergency. Then we must either rely on the production of oil from Mexico or on the development of the United States field.

Mr. REQUA. Or the withdrawing of the reserve stocks.

Senator GORE. I wanted to hear you discuss the method by which we might stimulate the production in our field, and what obstacle we might remove by legislation.

Mr. REQUA. I think it is very desirable that the leasing bill should be finally passed in some form.

Senator SMOOT. We could stimulate it very much more quickly without having any leasing bill, but letting the mining laws take their course. That would stimulate it, if you wanted it quickly. You know that the Government will not allow it, so that I agree with you that the leasing bill ought to be passed just as quickly as possible.

Mr. REQUA. I might say, in reply to that, that my own personal opinion is that the handling of the whole problem in the United States in the past has been without any defense whatever. We have wasted one of our greatest assets in a manner that has no justification whatever. There has been no intelligent supervision of it at all.

Senator PENROSE. In what way has it been wasted?

Mr. REQUA. Because of the method of production, line drilling of wells, the fact that when oil was cheap they stopped drilling and the price went up, and then everybody rushed in and began to drill again, and produced a flood of oil that was practically thrown away to a very considerable extent. The oil of California that they are to-day burning as fuel oil contains from 15 to 25 per cent of the best lubricating stock in the United States, being burned up in the boilers.

Senator GORE. Of course the leasing bill does not come under the jurisdiction of this committee. What I had directly in mind was what might be done in connection with this revenue bill to remove the obstacles from the path of the development of the oil industry, as to whether the bill as it passed the House sufficiently recognizes the hazardous nature of the oil industry, and whether there are amendments which might be adopted that would recognize that hazard, which would result in the stimulation of development.

Mr. REQUA. My impression is that the bill as passed by the House does not meet the situation.

Senator GORE. I will say that I have prepared and submitted from time to time a number of amendments. Here are two I will pass to you. I do not know whether you have had a chance to look over them sufficiently to have formed any mature judgment about it.

Senator PENROSE. I would suggest that you have your amendments inserted in this part of the record, Senator Gore.

Senator GORE. Yes; I will ask that they be inserted here. One was prepared by the expert of the department and the other by a committee representing the industries affected. If you can submit any comments on them at this time, Mr. Requa, we would be glad to

hear from you, and if you can submit any suggestions hereafter for the improvement of the amendments we would be glad to have them.

(The amendments referred to by Senator Gore are as follows:)

AMENDMENT Intended to be proposed by Mr. GORE to the bill (H. R. 12863) to provide revenue, and for other purposes, viz: On pages 15 and 16 strike out all of paragraph (10) and insert the following:

(10) (a) In the case of mines, oil and gas wells, other natural deposits, and timber a reasonable allowance for depletion and depreciation of improvements, according to the peculiar conditions of each case, based upon cost plus costs of development, including costs of exploration subsequent to January first, nineteen hundred and seventeen, not otherwise deducted: *Provided*, That in the case of such properties acquired prior to March first, nineteen hundred and thirteen, the fair market value of the property (or of the taxpayer's interest therein) on that date shall be taken in lieu of the cost. (b) In the case of producers of or prospectors for oil or natural gas there shall be deducted in addition to the above a reasonable allowance for hazard not to exceed twenty per centum of the value (at the well) of the oil or gas withdrawn during the taxable year. (c) In the case of producers of or prospectors for ore taken or to be taken from short-lived mines to be ascertained or classified by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, there shall be deducted in addition to the above a reasonable allowance for hazard not to exceed twenty per centum of the value (at the mine) of the ore withdrawn during the taxable year. (d) The allowance in all the above cases shall be made under rules and regulations to be prescribed by the commissioner with the approval of the Secretary. In the case of a nonresident alien individual deductions under this paragraph shall be allowed only as to property within the United States.

AMENDMENT Intended to be proposed by Mr. Gore to the bill (H. R. 12863) to provide revenue, and for other purposes, viz: On pages 15 and 16, strike out all of paragraph 10 and insert the following:

(10) (a) In the case of mines, oil and gas wells a reasonable allowance for depletion; (b) a reasonable allowance, if necessary, for a reserve which, added to the depletion deduction allowed under (a), shall make the total deduction for the ore, oil, or gas withdrawn during the taxable year equal the estimated cost of the discovery and development in the ground (exclusive of the cost of physical property) of a like quantity, such estimated cost to be fixed by the Commissioner of Internal Revenue and to be based on the average cost of each mining, oil, or gas district, as shown by available data from the previous taxable year: *Provided*, That the total amount returnable through depletion shall equal the capital originally invested, or in case of property acquired prior to March first, nineteen hundred and thirteen, the fair market value of that date plus, in either case, the costs (after January first, nineteen hundred and eighteen) of discovery and development (exclusive of the cost of physical property) not otherwise deducted: *And provided further*, That the amount, if any, of such reserve allowed under (b), when used for any other purpose than additional prospecting or developing or the payment of indebtedness thus previously incurred, shall be included in net income; (c) in the case of mines, oil and gas wells a reasonable allowance in all the above cases to be made according to the peculiar conditions in each case, and under rules and regulations to be prescribed by the commissioner, with the approval of the Secretary. In the case of leases the deductions allowed by this paragraph shall be equitably apportioned between the lessor and the lessee.

Mr. REQUA. If it is possible, I should like to comment upon this, with the understanding that I have not had sufficient time or opportunity to discuss this or any other amendment intelligently. At the time I went to Mr. Kitchin I found him so overwhelmed that it was not possible for him to give the time. Dr. Adams was in very much the same predicament. What I should like to do after discussing this would be to call into conference in my office a number of individuals, and spend perhaps a day or two days sitting down and doing

nothing but discussing this problem. I think it is one of the most important problems that is before the American people.

Senator LODGE. It is.

Mr. REQUA. And before making any final answer, I should like very much to have a conference with these men, and sit down and see if we can not agree on some final recommendation to be made to this committee.

The CHAIRMAN. I do not know what amendment Senator Gore handed you, but before that amendment was handed you, you had made the statement that you did not think the House bill dealt wisely with this question. I think if you have no objection to doing so, it would be very well for you to point out to the committee the respect in which you think the House bill fails to meet the situation.

Mr. REQUA. May I be permitted to ask the counsel of the Law Division to answer your question? He has been more familiar with this legislation than I have.

The CHAIRMAN. Yes; if he is present.

Senator JONES. In view of the fact that Mr. Requa desires to consider the matter to some extent, would it not be advisable to pass this matter over until that shall have been done?

The CHAIRMAN. If Mr. Requa feels that it is necessary to have further conference before his views have crystallized into a policy and plan, I think we ought to give him the opportunity to have that conference before we ask him these questions. I had assumed Mr. Requa had definite views about this matter.

Mr. REQUA. I have, Mr. Chairman.

The CHAIRMAN. And that he was willing to give the committee the benefit of his suggestions. But if your reference to a conference means that you want further to examine and reconsider the question, I think we ought to wait until you have the conference.

Mr. REQUA. I will be very glad to discuss this amendment as offered by Senator Gore, and give my views upon it.

Senator GORE. What I had in mind, as I understand you have in your mind, is the policy and the object to be accomplished. What I want you to discuss at this time is the general policy of stimulating production, and as to how the House bill failed in that regard, and make general statements as to how we could proceed.

Senator LODGE. We have the solicitor here to whom Mr. Requa has referred, and I should like to hear him.

Senator JONES. Before we go into that, may I ask, Mr. Requa, what the object is in keeping a reserve? Is it to meet such an emergency as we have now or the ordinary emergency, which arises during the course of a year or two?

Mr. REQUA. You mean the reserve of stored oil?

Senator JONES. Yes.

Mr. REQUA. That reserve of stored oil is a relic of the last period of flush production. It is the reservoir that supplies the country when prices have gone down and drilling ceases. Then, when the swing takes place again, and prices go up, that reservoir ceases to act, and instead of outputting they put oil back into it.

Senator JONES. It is used, then, to stabilize prices?

Mr. REQUA. It is not.

Senator TOWNSEND. Who holds this reservoir? Who has charge of it?

Mr. REQUA. It belongs to the various oil companies. I have a list of the owners of the stored oil in the United States.

Senator TOWNSEND. Is it under the control of the Government?

Mr. REQUA. No, sir.

Senator GORE. Another point in that connection is that each refiner feels obliged to keep a reservoir on hand in order to guarantee a continuous operation of his plant.

Mr. REQUA. That stored oil is, as a matter of fact, in the hands of few people.

Senator SMITH. Did you not really mean that the storage took place when the prices were low, and when the prices were high they drew on the stored supply?

Mr. REQUA. The storage takes place following a period of high prices, when they have an excess production, and then the prices begin to decline at that period, and they keep putting oil into storage until the thing equalizes itself.

Senator SMITH. As the prices go down?

Mr. REQUA. As the prices go down; yes.

Senator LODGE. Then when oil is scarce they are not adding?

Mr. REQUA. When the oil is scarce they are drawing on it.

Senator LODGE. You stated it the other way, and I thought it was an oversight.

Mr. REQUA. It was an error.

Senator PENROSE. I suggest you correct the notes on that when you look over it.

Mr. REQUA. I might make one reply in addition to what I said to the effect that the oil was not under the Government. As a matter of fact, there is no provision that puts it under the Government at the present time, but it is at the disposal of the Government. I have recently arranged that 20,000 barrels a day of that stored oil should be taken out of storage and allocated to some small refiners who were without oil, and if that is not enough, I will ask that they allocate 20,000 barrels more. So to that extent the oil is under Government supervision.

Senator PENROSE. How many day's supply is there, on an average, stored up—a month's supply?

Mr. REQUA. At the present moment?

Senator PENROSE. How does it average during the year?

Mr. REQUA. The storage of crude oil on hand at the present time is equivalent to about five months' requirements. That has fluctuated from 1907, when it was about eight months' supply, up to 1915, when the peak was reached, when there was about nine months' supply, and now it has declined and is about five months' supply.

Senator PENROSE. And how does the storage of gasoline average? How much is in stock?

Mr. REQUA. Gasoline is short. It is not possible to produce and carry gasoline for any long period because of the evaporation. The oil is carried in the form of crude oil, and even in that form there is considerable evaporation of the light ends, so that the oil in storage loses a certain quantity of the gasoline it contains.

Senator PENROSE. I understand that. Does the average, then, amount to about 30 days for gasoline?

Mr. REQUA. The storage of gasoline runs up during certain seasons of the year and runs down at other periods. You have on file, I think, a report of the Bureau of Mines going somewhat elaborately into the storage by months of gasoline.

Senator THOMAS. Has the Government fixed a price upon petroleum or its products?

Mr. REQUA. There is a posted price at present of \$2.25, based on the Mid-Continental field. That price is controlled by the posted figure, and that posted figure is made by the pipe-line companies.

Senator THOMAS. At the direction of the Government or on their own initiative?

Mr. REQUA. It is being held there at the present time by my request.

Senator PENROSE. Will you state about the amount of stored gasoline? Does it average 30 days?

Mr. REQUA. For the whole year?

Senator PENROSE. Yes; day in and day out, or month in and month out.

Mr. REQUA. It will average probably more than that during the winter months.

Senator PENROSE. Does it average 30 or 60 days in the winter months; or what is the average?

Mr. REQUA. The storage peak this year was about 11,000,000 barrels in the month of April, and the monthly consumption is about between 5,000,000 and 6,000,000 barrels.

Senator PENROSE. Then there was a large surplus of gasoline?

Mr. REQUA. There was on the 1st of April more gasoline than there was on the 1st of July or August or September.

Senator PENROSE. Have you any figures available to show the consumption of gasoline and the surplus gasoline unused during the last six months?

Mr. REQUA. Yes, sir.

Senator PENROSE. Can you furnish that to the committee?

Mr. REQUA. I can, but I do not happen to have it here. I have with me at the moment a tabulation which shows the condition of gasoline stocks as of the 16th, the 23d, and 30th of September. On the 30th of September we had a total of 2,893,000 barrels of motor gasoline and 152,000 barrels of aviation gasoline.

Senator PENROSE. In excess of consumption?

Mr. REQUA. No, sir; total storage. That was something less than two weeks' supply.

Senator GORE. What was the first figure?

Mr. REQUA. 2,893,000 barrels of motor gasoline and 152,000 barrels of aviation gasoline.

Senator PENROSE. You mean stored?

Mr. REQUA. That is, in stock. That is the total available stock of the country, exclusive of the Pacific coast, which is not included in these figures.

Senator JONES. That would only be about two weeks' supply, would it not?

Mr. REQUA. Probably; perhaps a little less.

Senator PENROSE. Was it that condition which brought about the Sunday order—to conserve that stock?

Mr. REQUA. It was largely due to that condition.

Senator PENROSE. Did you say you had something different from the Sunday-closing proposition?

Mr. REQUA. We are considering a request for voluntary conservation of gasoline during the week.

Senator PENROSE. In what way, I do not quite understand?

Mr. REQUA. Asking the consumers of gasoline to burn less gasoline during the week. For instance, if you have two automobiles and are burning 100 gallons, we will be glad to have you cut that to 50 gallons and run one car, or reduce it to 75 gallons. We are asking a 20 per cent conservation. It is purely voluntary, simply a request, asking the public to conserve. We believe it can be done, and we believe we can build up during the winter sufficient reserve stock to carry through the summer period.

Senator PENROSE. And that would permit you to open up on Sunday again?

Mr. REQUA. That would permit us to open up on Sunday. We have hopes that at least a week from this coming Sunday will be the last of the gasolineless Sundays.

Senator PENROSE. I think you will meet a very earnest cooperation on the part of consumers if that was done.

Mr. REQUA. Of course, that request was an emergency matter, for this reason. There has been a difference of opinion all summer in the oil industry as to whether they were going to be able to get through with the gasoline production or not, one faction contending that there would have to be conservation some time, and the other that there would not. My position was that I would not make any move until it was absolutely necessary, believing that the reduction of the use of gasoline during the summer would be in the nature of a calamity to a great many people, especially all the summer resort people who went on their vacations in the summer, and my effort was to get away from any disturbance of existing conditions until the very last, not only as related to gasoline but to all other products of petroleum. My whole thought has been to disturb nothing that it was not absolutely necessary to disturb; so that this gasoline order did come suddenly from the standpoint of the public, but it was simply the culmination of an all summer discussion which was held up until the very last moment.

Senator LODGE. Is there not a large amount of waste in the use of gasoline in motors, such as washing the car and that sort of thing?

Mr. REQUA. I think there is, and we have a department that has taken up that question and is endeavoring to get at the public and urge elimination of that.

Senator LODGE. Because that could be absolutely stopped.

Mr. REQUA. One great waste is allowing automobiles, and especially trucks, to run when standing idle. Trucks have no starters on them and the drivers of them, as well as the drivers of taxicabs, allow them to run.

Senator PENROSE. I think you could begin with very great advantage with the trucks in the Quartermaster's Department. They consume a great deal of gasoline and are most wasteful in the way it is used, and I think you might well begin there with those enormous trucks that travel over the highways every day.

Senator GORE. It seems to me the discussion has made it pretty clear that there is an imperative necessity for an increased supply of petroleum, and it is also pretty clear that the present supply is not adequate and a shortage is threatened. That raises a question as to how we can encourage the production, and where there is any legislation that discourages it what we might directly do to encourage production on the basis of the hazard to the industry and not as mere favoritism to the industry.

Senator TOWNSEND. Would not the solicitor's statement as to the inadequacy of the House bill answer that question?

Senator GORE. It would clear the ground, then, for constructive suggestion.

The CHAIRMAN. I think we might limit the further discussion of it to its application to the bill before us.

Senator LODGE. I would like to hear the solicitor on that very point.

STATEMENT OF MR. NORMAN B. BEECHER.

Mr. BEECHER. The method of stimulating production which we feel at present the House bill does not encourage, and in fact greatly discourages, is the prospector, the wildcatter, the pioneer, who has heretofore been largely relied upon to bring in new fields and to discover new oil supplies. Under the bill as passed by the House, substantially all the profits of the wildcatter if he makes a strike are taken from him. Depletion allowance is based not upon the value of his property when he has made the strike, but upon the cost of the property to him—and not the cost of all of his efforts to produce the property, but the cost of the particular property in which he makes a strike. The result of it is that he might perhaps invest \$500,000 in prospecting and discover nothing. Finally he invests \$50,000 in the drilling of a single well and brings in a \$500,000 property. Under the House bill he is allowed to take out of his taxable income—allowed, in other words, as a depletion—the \$50,000, the cost of that particular well. He is not allowed either to take account of the \$500,000 wasted in previous development and prospecting work, nor is he allowed depletion upon the value of the particular well which he brought in. He is allowed depletion upon its cost and not its value. That method of depletion is not subject to the same criticism when it comes to the man who buys the well from him for \$500,000. There the depletion based upon cost, as the House bill provides, does enable a man to get back out of his property that which he has put into it; but not so with the discoverer and prospector, the wildcatter.

Senator THOMAS. For the information of the committee I will say that the term "wildcatter," which is one of reproach, means in the matter of oil prospecting what the term "prospector" does as applied to those who search for metals in the ground. The wildcatter in the oil industry is the prospector for new deposits of oil.

Mr. BEECHER. I had that feeling, being a stranger to the oil business when I came to the oil division, and I tried to eliminate "wildcat" from my expressions, but all the oil men I came in contact with laughed at me.

Senator LODGE. They are, as a matter of fact, genuine prospectors and discoverers?

Mr. BEECHER. Genuine prospectors and discoverers and pioneers.

Senator LODGE. And they want to be encouraged as far as you reasonably can?

Mr. BEECHER. Exactly; and they are the class of men who have practically been put out of business by the oil tax to-day.

Senator GORE. And on that account they are indispensable to the progress of the oil industry?

Mr. BEECHER. It is indispensable that it be done by some one. It has always been done very largely by the small men, by the small interests, by the real pioneers. Those men can no longer afford to engage in that pursuit. I do not think wild-cattling will altogether stop; in the nature of things it can not, but if you pass your bill as it is to-day, it can only be done by the wealthy, the rich companies, whose total investment and whose total income is such that they can afford to engage in the business because the results of their successful strikes are not such a large percentage of the total capital that they have invested.

Senator GORE. They can absorb the losses?

Mr. BEECHER. They can absorb the losses, and also receive their profits without paying nearly all of them in taxes; and we do not think that it is a desirable thing, even if it did not otherwise decrease production, to drive the entire business of prospecting and pioneering for oil into the hands of large companies. We want to preserve the small men and companies who want to engage in that business and ought to engage in it in the future.

Senator GORE. Would you suggest some amendment to be incorporated in the present bill that would enable the prospector to keep in business?

Mr. BEECHER. Yes. It is a gambling proposition, and he can not continue to engage in that gamble if the bill remains as it is.

Senator GORE. Can not you spread the risk over the business?

Mr. BEECHER. Absolutely not.

Senator GORE. And have the losses assumed in the oil business as they are in the life insurance and fire insurance businesses, where you can not run the business without them?

Mr. BEECHER. Only with this difference: The losses there can be reasonably averaged and are relatively small, compared with the enormous risk of the prospecting business.

Senator GORE. Life and fire insurance companies set aside an amount to absorb the total losses. Is it not wise to enable the prospector to absorb his losses?

Mr. BEECHER. Absolutely necessary, if he continues in business at all.

Senator GORE. Of course, when a man loses and never makes a strike the Government can not do anything for him, but where he has a loss and afterwards a strike we can enable him to reimburse himself out of his business.

Mr. BEECHER. You can allow him to get a fair and reasonable proportion of the profits, and you can not make that proportion the same as in other businesses, such as banking, and the like.

Senator GORE. It is due to the nature of the business.

Mr. BEECHER. It is not a difference merely in degree, as I have heard suggested; it is a total difference in kind and class.

Senator McCUMBER. Have you considered the length of time you would go back in making these allowances for losses? Suppose here is one prospector that has been prospecting 10 years before he gets anything, and another 2 years, and another 6 months; what would you select as a reasonable length of time?

Mr. BEECHER. I do not think that I would advocate going on and allowing these losses in that form at all, but I would allow a depletion based upon the actual value of his strike, of his success, and not upon the particular money put in to obtain that success.

Senator GORE. Have you looked over this amendment that is before you?

Senator McCUMBER. I wish you would explain that last statement. I do not understand it.

Mr. BEECHER. Under the House bill if a man invests \$50,000 in driving a well and obtains a \$500,000 property, his depletion is based not upon the \$500,000 but upon the \$50,000 which it cost him in that particular property. I would allow him to have a depletion based not upon the \$50,000 but upon the value of the property when he has brought it in, namely, \$500,000. That is the case with the party who secures the property subsequently or at any time buys the property for \$500,000. He gets the same profit and he gets a depletion allowance on his \$500,000, but the man who discovers it at an expense of only \$50,000 gets no depletion upon the value of that property, the \$500,000, but only on his \$50,000, which it actually cost with respect to this particular property.

Senator LODGE. The man who discovers it does not, whereas he has expended \$550,000 before he gets a profitable well.

Mr. BEECHER. In some cases that is not true, but on the average it is probably true, because the price which a well brings is in general about the same as the total average of the cost of producing those wells.

Senator McCUMBER. Assuming that the average prospector who secures a well worth \$500,000 has probably expended \$500,000 in getting it?

Mr. BEECHER. No; I would not say that of an individual man, but his class has.

Senator McCUMBER. Take it as an average.

Mr. BEECHER. Exactly.

Senator McCUMBER. There would not be any question of repaying whatever he may have actually expended in one or two or three years.

Mr. BEECHER. No; I should not say that. I do not think that would accomplish the desired result. It is necessary, in order to have speculation continue, that the man who makes the strike shall have the benefit of the losses of all others engaged in the business. He has got to have the fruit of his success.

Senator JONES. Is there any method for appraising the value of discoveries of this kind?

Mr. BEECHER. You mean in law?

Senator JONES. No; in fact.

Mr. BEECHER. Yes; I do not think there would be any very great difficulty in arriving at a fair valuation. Commercially it can be arrived at. A man brings in a well producing a certain number of barrels a day in a certain field, and that commands a market price more stable than the price of stocks.

Senator JONES. In principle we would eliminate from taxation the prospector altogether and begin our system of taxation at the point of production and consider that as the going business subject to taxation from the time we get production.

Mr. BEECHER. No; I hardly would put it that way, Senator. You do not eliminate your prospector from taxation; you merely make the same allowance for depletion that you make to the man who purchases from him.

Senator JONES. In effect does not that result in what I stated, that the prospector himself as to the feature of prospecting would pay no tax at all and that the point of revenue would begin after it was a going concern, or, in other words, after the prospector had developed a property which is a going concern, which is the same as in the case of a man who would buy a newly brought-in well and would start business?

Senator GORE. The depletion would be spread over a period of years.

Senator JONES. We eliminate the prospector from all taxation so far as the profit as a mere prospector is concerned, and your plan would begin the taxation with the operation of the well, and accept it as of its then value for purposes of taxation and get our income from its operation thereafter. I am not prepared to say you have not established a perfectly sound thing here, but I want to make it perfectly clear that is so if I have comprehended your position.

Mr. BEECHER. I would want to think that over to see how it worked out. I would not like to answer yes or no as to what should be ad-duced from my argument.

Senator JONES. I am inclined to think you have furnished an absolutely sound basis for handling the proposition, but I wanted to analyze it and get it in just a little different form of statement.

Mr. BEECHER. I think you probably have it correctly, but I can not follow it so as to express a definite opinion upon it off-hand.

Senator JONES. I can not see why a prospector who brings in a well worth \$500,000 should pay any greater tax on that than the man who buys it for \$500,000 and begins its operation.

Mr. BEECHER. Quite right.

The CHAIRMAN. I want to call your attention now to one amend-ment which this committee has already adopted, with reference to the depletion allowance, having eliminated practically the House provision with respect to that matter, and then I want to call your attention to another amendment which has been prepared for the committee providing for an additional allowance, I think, somewhat along the lines that you have been discussing, and then ask you to give your opinion of those two amendments if the latter is adopted as meeting the situation. The first amendment we have adopted with reference to depletion allowances, and it is intended that this should take the place of the House provision which is found on page 15 of the bill, line 22, is to strike out the House provision and insert this provision. This amendment has already been agreed upon by the committee:

(10) In the case of mines, oil and gas wells, other natural deposits, and timber, a reasonable allowance for depletion and for depreciation of improve-ments, according to the peculiar conditions of each case, based upon cost plus cost of development. *Provided*, That in the case of such properties acquired

prior to March first, nineteen hundred and thirteen, the fair market value of the property (or of the taxpayer's interest therein) on that date, shall be taken in lieu of the cost; such reasonable allowance in all the above cases to be made under rules and regulations to be prescribed by the commissioner with the approval of the Secretary. In the case of nonresident—

Senator GORE. That last provision is immaterial.

The CHAIRMAN. This amendment has been prepared for the committee under its direction after discussion, and in addition to that the following:

In the case of any oil or gas well, in addition to the depletion allowance herebefore authorized, a reasonable reserve for the replacement by additional prospecting and development of the oil and gas withdrawn during the taxable year, not to exceed, (a) the amount, if any, by which the depletion allowance for such well for the taxable year is less than it would have been if determined on the basis of the average depletion allowance per unit of output for the preceding taxable year for the district in which such well is located, or (b) twenty per centum of the value of such oil or gas at the well, to be determined so far as may be by the posted price thereof for the district. Such reserve shall be determined, invested, and accounted for under rules and regulations prescribed by the commissioner with the approval of the Secretary. Losses incurred in any taxable year in additional prospecting and development shall be defrayed from and charged to such reserve; any excess of such losses over the amount of such reserve may be deducted in computing the net income of the taxpayer for such taxable year, and any balance not so deducted may be added to the capital account of the taxpayer for the purpose of determining depletion allowances or the amount of gain or loss in case of sale or other disposition.

Now, we would like very much to have your views about the adequacy of these two provisions to meet your criticism.

Mr. BEECHER. That is a good deal to keep in one's head. I will do the best I can with it.

The CHAIRMAN. Suppose you read that over carefully.

Mr. BEECHER. I have kept it in mind as you went along. So far as the amendment which you have adopted is concerned, I do not think that takes care at all, or only to a very limited extent, of the prospectors and wildcatters, because it requires that the depletion be based upon cost plus cost of development, and, therefore, while satisfactory to take care of the situation of the man who buys the property, it does not take care of the man who discovers it. That cost is only a small fraction of the actual value of the property.

Senator GORE. I distributed an amendment this morning intended to cure that very difficulty by inserting after "development" "including cost of exploration since January 1, 1917."

That would meet the point you are calling attention to, Mr. Beecher.

Senator TOWNSEND. That is not what he had in mind at all.

The CHAIRMAN. Do you give any significance to these words in the amendment to which I have referred: "allowance for depletion and depreciation of the amount according to the peculiar conditions of each case, based upon cost plus cost of development"? You do not think the words "cost of development" would embrace anything but the cost of the development of the mine which finally turned out the oil?

Mr. BEECHER. It seems to me clear that it would not, Senator.

Senator SMOOT. I want to ask you whether you are connected with the National Petroleum War Service Committee?

Mr. BEECHER. I am counsel of the Oil Division of the Fuel Administration and have no connection with any outside body.

Senator SMOOT. What is the National Petroleum War Service Committee?

Mr. BEECHER. That is a committee of the oil industry which was originally formed under the Council of National Defense, and, then, at the request of the oil director, was continued, enlarged, and made representative of all branches of the industry for the purpose of acting as a point of contact between the Oil Division and the industry, and also to afford to the Oil Division the opportunity to secure investigation, advice, and knowledge of the entire industry.

Senator SMOOT. I received this morning a suggested amendment as the result of a joint conference of the representatives of the American Mining Congress and the National Petroleum War Service Committee. That is the amendment that those two organizations have jointly recommended. Before I came here I telephoned this morning asking if that was the last conference held and whether these suggested amendments cover the points in every particular, and, if adopted, they would meet the wishes of the National Petroleum War Service Commission, and they said yes. Here is the amendment, if you want to look at it.

Mr. BEECHER. I have already seen it.

Senator SMOOT. Does that meet the situation?

Mr. BEECHER. I do not think I am prepared to express an opinion. I think it certainly greatly helps the situation, but if you are asking whether I think that that is exactly what you should adopt, I would not like to say yes or no.

Mr. REQUA. That is why I was asking that we be given an opportunity for two or three days' discussion.

Senator SMOOT. I guess you agree with me that that agreement has been arrived at between the oil producers and the National Petroleum War Service Commission.

Mr. BEECHER. This is the result of a report of a committee of the National Petroleum Committee, as I understand.

Senator SMOOT. I think you ought to have the time granted and go over that report.

Senator THOMAS. A large number of proposed amendments covering this question have been offered and printed. I have several in my hand, being those I referred to a few moments ago, and which I introduced at the request of Mr. Thompson and Mr. Doheny, representing the views of a committee, which I think have been giving very careful attention to that feature of the bill, and I would suggest that Mr. Beecher and Mr. Requa take notice of all these amendments and see if they can not work from them some scheme which will be reasonably satisfactory. These have a general family resemblance.

Senator PENROSE. This amendment of Senator Gore embodies the latest view.

The CHAIRMAN. I think we want the witness first to give us his views with reference to this amendment which we have already adopted. We want to know his views with reference to the sufficiency of that amendment. Then we want to know his views with reference to the sufficiency of the proposed amendment that has been drafted at our instance, and then I think we can take up these other

amendments that have been offered by members of the committee, or by other Senators.

Senator SMOOT. I think they ought all to be referred to him.

Senator THOMAS. The one we have adopted is an involved affair.

Senator GORE. There are several points we can bring out while the witness is here. We are not trying to press him to a final draft, but there is no use to assume that there is nothing else we can bring out at this point.

The CHAIRMAN. I think we ought first to examine him on the amendment we have already adopted.

Senator GORE. I think so, too. The amendment I passed down to you, Mr. Beecher, has a clause different from the copy read by the chairman, including "the cost of exploration." Have you that copy there?

Mr. BEECHER. Yes.

Senator GORE. I wish you would see if that phrase does not meet the point you were discussing when these questions were propounded.

Mr. BEECHER. I think not, Senator, because it would only apply. I take it, to the cost of exploration of the particular individual; and therefore if a prospector were lucky and made a strike at his first attempt he would be in exactly the situation which I think ought to be avoided; he would have a depletion, based on \$50,000, with a property worth half a million. You notice that covers cost of exploration from a certain date.

Senator GORE. I assume that would cover the general expense of exploration.

Mr. BEECHER. I think you ought to have, in addition to that, a provision which will meet the case of every man engaged in the prospecting business, whether he has been in the business of prospecting since January 1, 1917, or not. I want to start them to-day and to-morrow and still make it worth while to engage in the business.

Senator GORE. Where they make a find they ought to be allowed a reasonable amount to reimburse themselves.

Senator JONES. I think we have developed a very clear thought here, and that is, the prospector who develops the oil well and sells it ought to be put in a class by himself and some provision made to take care of that fellow in a reasonable way and consider the transaction from the point of production as distinct from the business of prospecting. Now, if we can segregate those classes, it seems to me, then we have found some reasonable basis for dealing with this industry.

Senator GORE. That is a definite line of demarcation.

Senator JONES. In other words, to take the prospector who discovers his well and try to adjust his tax on any theory of depreciation or depletion or cost of discovery, it seems to me, is entirely beyond the realm of equity and justice to the various prospectors. Now, if we can take our prospector and say that when he discovers a well we will consider that transaction as entirely distinct from the operation and depletion of the thing thereafter, we are on solid ground. That prospector ought to have the benefit of the risk he took, in some shape. We might do it by saying that fellow shall not be subjected to any excess-profits tax: we might say the income tax shall apply

to that fellow in a peculiar way, because it is a business *sui generis*; it is not a thing you can class with anything else in the world, whether prospecting for metal or gold or copper. He simply takes a risk which is enormous, as the witness has said, under the present bill. It is a case of where he has no opportunity to win, but he has many chances out of a hundred to absolutely lose.

The CHAIRMAN. I want to see if I understand you. You mean if a man is engaged in prospecting, he finally succeeds in getting oil. Well, now, he sells.

Senator JONES. I think, if he sells, the price he gets for it covers that.

The CHAIRMAN. You assume, in the selling price, that he would include all the losses sustained in unfortunate ventures?

Senator JONES. Whether many or few; yes, sir; and to adjust our excess-profits tax and our income tax for that fellow on a basis which will give him a reasonable inducement to proceed in his business as prospector.

The CHAIRMAN. Let me assume he does not sell; he keeps the property?

Senator JONES. Then he keeps it at the value at which he would sell, and from that time on and with that business asset treat it in the same way as if he had purchased it from himself.

The CHAIRMAN. In case he does not sell and we impose a tax upon it, he finally, after many efforts and failures, having succeeded in locating oil, it becomes subject to this tax, and you would regard his property as worth not only what the well he has developed is worth to the man who is operating it, but you would regard it as whatever that may be worth, plus all the losses that he sustained.

Senator JONES. I would make no reference to loss or cost of prospecting at all. I would take the value of the property when it becomes a producing concern as his investment from that time forward, but he ought at that period to pay some income tax; he ought to pay out of that value which he has acquired by virtue of his discovery, and it ought to be considered at some price or on some basis to be subject to the income tax. In other words, take it as if he had sold to himself from the time he began to produce.

Senator McCUMBER. Then suppose a prospector sinks the first well for \$50,000 and gets a well worth a million dollars. Now, here is another man that sinks one in the same vicinity at the same cost, and he sells his for a million dollars. Now, the person to whom he sells for a million dollars is allowed to deduct, we will say, each year 20 per cent. He will deduct each year 20 per cent; it will take five years before he will get his capital back, and he is allowed to make that deduction; but the other fellow who put in but \$50,000 into his venture instead of a million dollars is allowed to take out on the basis of a million dollars and does not in fact pay any tax whatever until he has taken a clean million dollars out of that well. That does not seem to me to be exactly fair.

Senator JONES. Here is the point: It seems to me wherever you take into consideration the cost of discovery you are on an absolutely unsound basis, for the reason that the fellow who spends only \$50,000 in the discovery of the well and it was the first venture he had can sell it for \$1,000,000 and let the other fellow have his depletion.

Senator WILLIAMS. I feel very much interested in this discussion, and I am very anxious to hear the amendment that the gentlemen have proposed with a view to curing the difficulty to which they have called our attention; but it has not been read to the committee yet, and I would like to hear it so that we might consider it.

Senator TOWNSEND. They can debate these questions afterwards.

Senator WILLIAMS. If we know what we want we can debate on the merits of it. Have you an amendment drawn up that you think would cure the evils to which you call our attention?

Mr. BEECHER. That is what Mr. Requa said he would like to do after a conference with Dr. Adams and others and an attempt to harmonize and after getting the benefit of all the amendments that have been proposed.

Senator WILLIAMS. I suggest that these gentlemen be requested to do that and bring the amendments when they have them in proper shape.

Senator TOWNSEND. In the meantime let us hear what criticism he has to make on the House bill.

The CHAIRMAN. The question I think the witness has started to answer was, first, as to his criticism of the House bill and whether our amendment which we had adopted met that criticism as to depletion allowance and whether the additional amendment proposed by Dr. Adams for the department and in consultation with the committee meets his views with reference to the additional provisions that should be made.

Mr. BEECHER. I think the additional amendment proposed by Dr. Adams goes far to cure the situation. I think, as a matter of off-hand opinion, that it is unfortunate, because it does not take into account the actual value of each particular property and give the depletion allowance which each man is justly entitled to, but adopts a general depletion allowance, the average for the district; and, furthermore, imposes an arbitrary additional limitation of 20 per centum of the value of such oil or gas at the well. Both of those things, I think, are unfortunate. Furthermore, the man whom I am particularly interested in encouraging is, I am told, apt to be a very practical man. Before he starts to engage in this hazardous business he wants to know, and is entitled to know, pretty accurately where he is going to come out if he does succeed. Under the provisions of this proposed amendment—I am not criticising the form of the amendment—it is left uncertain, and can not be determined until after the year is over just what the tax is going to be and what depletion allowance he is going to have. So I believe that any amendment should be drawn more specifically so that it would enable a prospector to know in advance how he is going to come out if he does succeed. If he does not succeed he is not worried with tax matters.

Senator GORE. I have introduced an amendment covering that phase of the situation and authorizing a reserve to cover that, but it exacted a good deal more in behalf of the oil producers than the one which you have in your hand. This was offered as a very conservative proposition. I have another proposition which goes to the situation you suggest. I passed a copy up to you. Section (c) subdivision (b) is based on the House provision in section 320. It makes three changes. It applies the House provision to individuals as well

as corporations. It raises it from 10 to 20 per cent and makes "at the well" the point instead of in the ground. I was trying to follow as closely as I could the House bill. Was there anything further on that particular amendment?

Mr. BEECHER. I do not think so.

Senator GORE. I want to call your attention to another that provides for the discoverer who finds oil and does not sell. The amendment I am passing to you provides for the discoverer who does sell. The present system freezes that property in a man's hands when he finds oil on it.

(Several amendments were subsequently submitted by Senator Gore and are here printed in full, as follows:)

AMENDMENT Intended to be proposed by Mr. GORE to the bill (H. R. 12863) to provide revenue, and for other purposes, viz: On page 7, after line 15, insert the following.

In the case of oil and gas wells bona fide sold by the individual owner and discoverer thereof, the surtax shall be computed under this section, but shall not exceed twenty per centum of the net income from such sale.

AMENDMENT Intended to be proposed by Mr. GORE to the bill (H. R. 12863) to provide revenue, and for other purposes, viz: On page 53, line 5, after the period, insert the following:

In case of oil and gas wells bona fide sold by the corporation owner and discoverer thereof, the tax imposed by section three hundred and one shall not exceed twenty per centum of the net income from such sale.

AMENDMENT Intended to be proposed by Mr. GORE to the bill (H. R. 12863) to provide revenue, and for other purposes, viz: On page 8, section 212, at end of section, add two new subdivisions as follows:

(c) If any taxpayer produces evidence satisfactory to the commissioner that a loss sustained in the taxable year nineteen hundred and seventeen either (1) in the production of ore, oil, or natural gas, or (2) in prospecting for ore, oil, or natural gas, was not deducted in computing the net income for that year, the amount of such loss may be added to the capital account of such taxpayer for the purpose of determining depletion allowances or the amount of gain or loss in case of sale.

(d) If for any taxable year ending after January first, nineteen hundred and eighteen, a taxpayer sustains a net loss either (1) in the production of ore, oil, or natural gas, or (2) in prospecting for ore, oil, or natural gas, the amount of such net loss shall be deducted from the net income for the preceding taxable year, and the income or excess profits or war profits taxes imposed by Act of Congress for such preceding taxable year shall be reassessed accordingly. Any amount found to be due to the taxpayer on the basis of the reassessment shall be immediately credited or refunded to the taxpayer in accordance with the provision of section two hundred and fifty-two. Any excess of such net loss over the net income for such preceding taxable year may be added to the capital account, as in cases under subdivision (c).

AMENDMENT Intended to be proposed by Mr. GORE to the bill (H. R. 12863) to provide revenue, and for other purposes, viz: In section 327, on page 64, line 4, after the word "business," insert a semicolon and the following:

(4) Or where, because of the time or manner of its organization or by reason of ultraconservative accounting, the corporation would by the operation of section three hundred and twenty-six be placed in a position of substantial inequality as compared with representative corporations engaged in a like or similar trade or business.

AMENDMENT Intended to be proposed by Mr. Gore to the bill (H. R. 12863) to provide revenue, and for other purposes, viz: On page 39 strike out lines 1 to 15, inclusive, and insert in lieu thereof the following:

(9) (a) In the case of mines, oil and gas wells, other natural deposits, and timber, a reasonable allowance for depletion, according to the peculiar conditions in each case, based upon cost including costs of improvement and development (but in the case of such properties acquired prior to March first, nineteen hundred and thirteen, such allowance shall be based upon the fair market value of the property, or the taxpayer's interest therein on that date).

(b) In the case of any oil or gas well upon which operations shall have been first begun after January first, nineteen hundred and eighteen, and for which the taxpayer shall keep and make a separate accounting, the entire net income derived therefrom may be utilized as a deduction for depletion until the capital actually invested in such well has been fully returned; and thereafter during the first three calendar years in which it is operated, such net income shall (at the option of the taxpayer), in addition to the taxes under existing law and under this Act, but in lieu of the tax imposed by section three hundred and one, be taxed at the rate of fifteen per centum without benefit of the specific exemption of \$3,000 authorized in Title II. The provisions of subdivision (b) of this paragraph shall not apply to income received in the form of royalties, nor to any oil or gas well upon which operations shall be commenced after the termination of the present war with the Imperial German Government.

(c) The deduction authorized in this paragraph shall be made under rules and regulations to be prescribed by the commissioner, with the approval of the Secretary. In the case of a foreign corporation such deductions shall be allowed only as to property within the United States.

AMENDMENT Intended to be proposed by Mr. Pittman (for Mr. Thomas) to the bill (H. R. 12863) to provide revenue, and for other purposes, viz: In section 234 strike out all of subdivisions (a) and (b) of paragraph (9) and insert in lieu thereof the following:

(9) In the case of mines, oil and gas wells, (a) a reasonable allowance for depletion; and (b) a reasonable allowance to replace the ore, oil, or gas withdrawn during the year equal to the estimated cost of replacement of a like quantity in the ground, to be fixed by the commissioner upon the basis of the average cost of such replacement in each general district, the allowance under (b) to be reduced by any allowance under (a) for each taxable year: *Provided*, That any amount of the aggregate allowance under (b) when used for any purpose other than prospecting, developing, or acquiring additional deposits shall be included in net income.

AMENDMENT Intended to be proposed by Mr. PITTMAN (for Mr. THOMAS) to the bill (H. R. 12863) to provide revenue, and for other purposes, viz: In section 214 strike out all of subdivisions (a) and (b) of paragraph (10) and insert in lieu thereof the following:

(10) In the case of mines, oil and gas wells, (a) a reasonable allowance for depletion; and (b) a reasonable allowance to replace the ore, oil, or gas withdrawn during the year, equal to the estimated cost of replacement of a like quantity in the ground, to be fixed by the commissioner upon the basis of the average cost of such replacement in each general district, the allowance under (b) to be reduced by any allowance under (a) for each taxable year: *Provided*, That any amount of the aggregate allowance under (b) when used for any purpose other than prospecting, developing, or acquiring additional deposits shall be included in net income.

AMENDMENT Intended to be proposed by Mr. PITTMAN (for Mr. THOMAS) to the bill (H. R. 12863) to provide revenue, and for other purposes, viz: After line 7, on page 68, add a new section, as follows:

SEC. 337. In the case of a bona fide sale of mines, oil or gas wells, or any interest therein, by a corporation owner thereof, the tax computed under this title shall not exceed twenty per centum of the selling price.

Mr. BEECHER. I think, Senator, that it is very important that there should be some provision which will enable the prospector to sell his property without having substantially all of it taken in taxation.

with the result that he does not in fact sell, and inasmuch as a small prospector and discoverer is ordinarily not financially or otherwise equipped to develop his property, the result is that the discoveries lie idle, a situation which will rapidly create an evil which ought to be corrected.

Senator GORE. They lie idle when they ought to be under high-pressure development. I wish you would read that.

Mr. BEECHER. The amendment which Senator Gore suggests imposing upon sales by the owner a tax which will not exceed 20 per cent of the net income, would initiate that result. The only suggestion I would make would be that it should be limited specifically to the original discoverer or prospector.

Senator GORE. That has been interlined so that it reads as follows:

In case of oil and gas wells bona fide sold by the corporation owner and discoverer thereof, the tax imposed by section three hundred and one shall not exceed twenty per centum of the net income from such sale.

I have changed the amendment that way, limiting it to the discoverer, because he is the man we want to relieve.

Mr. BEECHER. I think some such provision as that is highly necessary. Otherwise we will have discoveries and no successful developments.

Senator TOWNSEND. I wish you would proceed and tell us about the House bill.

Mr. BEECHER. I think, Senator, perhaps I have pretty well exhausted myself and you on that score.

Senator TOWNSEND. You have not exhausted us.

Mr. BEECHER. It simply does not take care of the wildcatter in any way, and I may say further that I feel that the oil industry as a whole, because of the peculiar character of the business, is entitled to certain special considerations, which other business is not entitled to receive. In other words, the oil producer—and I am now not merely referring to the prospector—is using up his capital every year. He is forced to do that. To-day it would be much more profitable under existing taxes for the oil producer to let his oil remain in the ground and produce it at a time when taxes will not be taken out of it. He does not do it in many cases, inspired, I believe, by patriotic motives, and, furthermore, he could not. We could not permit him to do it at this time; he is forced to produce.

Senator TOWNSEND. Are you aware of the opinion expressed to the House Committee on Public Lands by the Assistant Attorney General regarding this suggestion you are now discussing? That opinion is that if a man does not possess sufficient capital to develop his mine after he locates it, its location is prima facie fraudulent; but if he has sufficient money for the purpose it is valid. That is literally what he stated.

Senator THOMAS. You are joking.

Senator TOWNSEND. Indeed, I am not.

Mr. BEECHER. I was not aware of the opinion, but I do not think you want my comment.

Senator THOMAS. I am going to ask you to take these amendments to which I have referred and ask you to consider them in connection with the others.

Senator TOWNSEND. I understand that the witness and Mr. Requa have been requested to take all of these amendments and put them

in such form as they think would be satisfactory to meet the points they have in view and present them to us at the earliest opportunity.

Senator WILLIAMS. And I would like to request that when they do that they give us as brief a brief as they can as to the reasons the amendments submitted to them do not suit, and why they think the one they submit will suit, because, with this constant interruption, I have not been able to get the thread of the argument.

Senator THOMAS. I would like to have this amendment, suggested by the American Mining Congress and the oil committee, considered by Mr. Beecher and Mr. Requa at the same time.

The CHAIRMAN. I understand the suggestion of the Senator from Michigan to be that we ask Mr. Requa and Mr. Beecher to take all of these amendments that have been offered by various Senators, and out of them prepare an amendment which they think meets the situation, and, in addition to that, that they file with the committee a brief stating the reasons why they think this particular amendment they have drawn will meet the requirements.

Senator TOWNSEND. I did not mean, Mr. Chairman, they would have to follow these amendments. I wanted to submit them to them to look over and then let them present their ideas.

Senator WILLIAMS. And so that they can analyze the amendments and state to us why they thought they were not sufficient or went too far.

Senator GORE. Would it not be well to request Mr. Adams to cooperate with them in this?

The CHAIRMAN. I think Mr. Adams has presented an argument which incorporates his views, and I think to call him into conference with these gentlemen might possibly result in bringing about confusion.

Mr. ADAMS. I think you had better let us present our arguments independently.

The CHAIRMAN. The committee wants to take the views of all of you gentlemen and the proposed amendment that each presents, and we will be able to decide upon that which we think is best.

Mr. BEECHER. When do you think you would like to have this presented?

The CHAIRMAN. What is the earliest time you could present it?

Mr. BEECHER. It is something I want to take time to do in the best way I can, and I do not think we ought to hurry too much. I should think we would say Wednesday, if that would be satisfactory.

The CHAIRMAN. Very well, I think that will do.

Mr. REQUA. Would it be of any benefit to the committee if I filed the same argument I used before the House committee?

Senator LODGE. That could be put in the testimony.

The CHAIRMAN. Senator Gore, did you desire to ask about a 2-cent tax on gasoline?

Mr. REQUA. Of course, that is a tax on a necessity. Gasoline is not a luxury. I presume that not less than 60 per cent, and possibly 80 per cent, of it is used for necessary purposes. That is the only point I had in connection with that.

Senator GORE. Would not a tax on coal be just as justifiable as a tax on gasoline?

Mr. REQUA. I think it would.

Senator THOMAS. If we put a tax on all corporation sales, including necessities, that would equalize it.

Mr. REQUA. If you tax all necessities, you can tax gasoline, but if you put a tax on gasoline as a luxury that is a mistake.

Senator GORE. Do you not think that as a source of industrial power it is objectionable to put such a tax on it?

Mr. REQUA. It is an increasing source of industrial power. Forty-five per cent in value of the entire products of petroleum are represented in gasoline.

Senator JONES. How about kerosene?

Mr. REQUA. That is a necessity just as much as gasoline; perhaps more so, because I do not know of any purpose kerosene is used for that could be called a luxury. There is an indefinite amount of gasoline which is used as a luxury. It is very difficult to determine, because in my own case, in driving up here or to the departments, I could not get along without it, and I might take that same machine and drive around Rock Creek Park, and then it would become a luxury.

Senator GORE. Just as in the case of a tax on consumption, a 2 cent tax on gasoline would go to the ultimate consumer?

Mr. REQUA. It undoubtedly would go to the ultimate consumer.

The CHAIRMAN. Your position is that we should not impose a tax on gasoline because it is a necessity?

Mr. REQUA. I have no views as to whether you should tax a necessity, but I say that if it is taxed it would be taxing a necessity.

The CHAIRMAN. In other words, you think if we do not propose to tax necessities, then we ought not to tax gasoline?

Mr. REQUA. You could tax coal with the same justification.

The CHAIRMAN. If it is our policy to tax necessities that becomes a different proposition?

Mr. REQUA. Yes, sir. I am not expressing any opinion as to the wisdom of a tax at all.

The CHAIRMAN. I think you have made that very clear.

(Thereupon, at 12.35 o'clock p m., the committee proceeded to other business.)

TO PROVIDE REVENUE FOR WAR PURPOSES.

TUESDAY, OCTOBER 15, 1918.

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met, pursuant to adjournment, at 10.30 o'clock a. m., in the committee room, Senate Office Building, Senator F. M. Simmons presiding, having under consideration H. R. 11283, "A bill to provide revenue, and for other purposes."

Present: Senators Simmons (chairman), Williams, Smith, Thomas, Gore, Jones, Gerry, Nugent, Penrose, Robinson, McCumber, Smoot, La Follette, Townsend, Lodge, and Dillingham.

The CHAIRMAN. Gentlemen of the committee, we were to hear Dr. Garfield this morning. Senator Penrose especially asked the privilege of asking you some questions this morning, Doctor.

STATEMENT OF HON. HARRY A. GARFIELD, UNITED STATES FUEL ADMINISTRATOR.

The CHAIRMAN. Dr. Garfield, there was a request from your department that we give you a hearing with reference to this matter of oil and gas, and Mr. Requa has made a statement in regard to them, but I do not know whether you want to supplement what he has said in regard to these matters or not.

Dr. GARFIELD. No, Senator; Mr. Requa made what representations to you we care to make, and there is nothing I wish to add. I looked over with him the matter of the three suggestion of his recommendations. He has presented them to you better than I could. I have made no request that I be permitted to offer suggestions to the committee personally.

The CHAIRMAN. I supposed that was so, but Senator Penrose expressed a desire to have you come before the committee.

Senator PENROSE. Dr. Garfield, all I wanted to ask you was in connection with the testimony of Mr. James H. Allport, beginning on page 474 of the hearings. He is one of a very large number of coal operators who have been to see me, representing that unless the revenue bill is modified on lines similar to what the committee is contemplating doing for the oil people there will be a decrease in production of 10 per cent, and assuming it was your desire to have the maximum of production, and because of your great familiarity with the coal situation, I want to know just what you would advise in connection with revenue legislation on the lines that Mr. Requa advised in connection with oil. He candidly stated to the committee that wildcat operators ought to be taken care of, and he made a very

concise statement to the committee. I do not know whether you have seen it.

Dr. GARFIELD. I have not seen it yet, Senator.

Senator PENROSE. It is short. I do not know whether you have time to just glance through it or not.

Dr. GARFIELD. I presume I appreciate substantially the basis of it, for the matter was expressed, so far as my own views go, in a letter I wrote to Mr. Roper on the 17th of August, 1918, in which I made certain suggestions which Mr. Allport told me were in line with the suggestions he had made here, so I take it the thought was the same.

Senator PENROSE. It impressed me very largely that they need some kind of relief in the revenue bill very much on the lines of the oil people, or else production will be curtailed.

Dr. GARFIELD. Yes. The difficulty, as you know, is the hazardous character of the coal business, as it is with oil. It is a question of degree between the two, and complaints have come to us throughout the year that the excessive cost of machinery necessary to extend operations, as well as to open new mines, is preclusive if it must be capitalized as the law now stands. The thought that I had to convey to Mr. Roper was this, that some change, or some provision should be made so that charges to profit and loss, rather than to capital, of certain expenses of upkeep, due to the war, ought to be permitted. If an operator is compelled to buy his mining machinery at these excessively high prices and then is not permitted to write that excess cost off, he simply will not buy his additional machinery; he will get along with the old machinery as far as he can.

Senator SMOOT. Did I understand you to say that it was your opinion that the cost of the entire machinery should be immediately charged to profit and loss?

Dr. GARFIELD. No, Senator; only that part that represents the excessive cost due to the war.

Senator SMOOT. Do you think it ought all to be charged off the first year?

Dr. GARFIELD. I should charge it off very promptly. The first year would, I think, be too rapid. I approach it from this standpoint: In the enterprises with which I have been associated where there is excessive cost we have charged up against capital the usual amount, and then all the excessive amount we have charged directly to profit and loss; that has been the way of entering up those expenses for our own account, wholly outside of the question of tax legislation. I refer to a time prior to the war. Conservatively conducted business, as you know, of course, has customarily made that distinction.

Senator SMOOT. In ordinary time, when there was no tax imposed, that was left entirely to the judgment of the man managing the business or corporation, or his private business. Now, of course, if it is all charged off, the Government of the United States loses all of its taxes.

Dr. GARFIELD. It should not be all charged off, but only that part charged off that represents the high cost due to the war.

Senator LODGE. Mr. Allport's suggestion, on page 480 of the hearings, puts it in this way. He says:

3. The cost, above prewar figures, of all improvements and developments made to increase output, including all labor, machinery, material, and supplies required for same. The cost of such improvements, at prewar figures, to be charged to capital account.

Senator PENROSE. I think this statement of Mr. Allport is very important.

Senator SMOOT. That agrees with Dr. Garfield's statement as to that part of his recommendation.

Dr. GARFIELD. I do not know, Senator, whether you care for it, but on the 17th of August in my letter to Mr. Roper, pursuant to a conversation between us, I expressed my own thought in three items.

Senator LODGE. I wish you would read that letter.

Dr. GARFIELD. It is dated August 17, 1918, and is addressed to Mr. D. C. Roper, Treasury Department, and is as follows:

Pursuant to our conversation of yesterday, I beg to submit for consideration of those now engaged in study of the proposed revenue bill the following suggestions concerning the coal-mining industry. The Fuel Administration is exerting its every effort to increase the production of coal. We dare not at the present time take any step that will seriously affect that increased production. On the other hand, I realize fully the necessity of the Treasury Department in making provision for the enormous expenses of the war and sympathize with the policy of taxing war profits to fullest limit. As I see the question of taxation and its effect upon this problem, I appreciate that it touches upon a question which has been discussed by the management of every considerable enterprise, namely, whether certain expenditures should be charged to capital or to profit and loss account. Conservatively managed coal properties have invariably charged to profit and loss expenses for upkeep of the mine, for replacements, and for all of those outlays which do not add to the output of the mine. On the other hand, exploiters of the public, or men ignorant of sound economic principles, have capitalized expenditures of this kind. I assume that this has been fully discussed in its application to business generally by those who have the revenue bill in charge. Specifically, I desire to urge upon the framers of the bill the adoption of the following principles.

(1) That operators be permitted to charge to operating expenses all extensions or replacements required to maintain output.

(2) That of expenses incurred to increase output, operators be required to charge to capital account only that part of the cost of improvements and developments remaining after charging to operating expense the excess of those costs above prewar figures.

(3) That to guard against excessive amortization of war costs a specific provision be incorporated in the bill providing for a revaluation or appraisal of properties and equipment after the war.

How these principles should be phrased I am unable to suggest, for I have seen nothing more than newspaper reports of the proposed wording. If the above principles are recognized, the wording will not prove difficult. The matter is so important to the problem of production with which the Fuel Administration is dealing that I shall be greatly obliged if you will inform me concerning the wording of the sections of the proposed bill bearing upon the taxation of excess profits and of amortization.

I realize the nice balance which must be preserved in order to secure the necessary income for the Government. It is, of course, obvious to the Treasury officials that taxation which consumes more than the excess profits of the mines will necessarily retard development, decrease production, and reduce the tax returns for ensuing years.

Senator PENROSE. Have you read on page 480 of the report the four recommendations of Mr. Allport?

Dr. GARFIELD. I have not, Senator.

Senator PENROSE. Take the first one, "All extensions required to maintain output, including the cost of all labor, materials, machinery, and supplies," and so on with the next three. I would be entirely willing, Mr. Chairman, if it meet your approval and the

approval of the committee, to refer this matter to Prof. Adams and have him confer with Dr. Garfield about it. All I want is to relieve that situation in the bituminous production, and I take it for granted that your bureau is equally interested in securing maximum production.

Senator THOMAS. I think that matter is applicable as well to other forms of mining, and particularly to oil.

Senator PENROSE. That was brought out with reference to oil.

The CHAIRMAN. Senator Penrose, I would suggest that before we refer it to Mr. Adams we discuss the matter and determine about the lines upon which we wish an amendment of the provision to be drawn.

Senator PENROSE. That would be entirely right; and then their recommendation would be discussed.

Senator JONES. It seems to me that the statement of the witness here, Mr. Allport, and the statement in the letter of Dr. Garfield both assume that the after-the-war prices will recede to the prewar figures. Now, I do not believe that there is any certainty that prices will immediately, or perhaps ever, recede to the prewar basis; but that there may be a decrease in the prices to some extent I think there is possibly no serious question. But what is troubling me is the taking of prewar figures in an ironclad way as the basis for charging for this excessive cost, and I should like to get your views, Doctor, as to whether or not there might be some intermediate cost taken there and some elasticity given to that situation; or, in other words, whether there is any definiteness about the statement or the thought that after the war the cost and value, as measured in dollars, of these materials, improvements, and equipment will go back to prewar figures, and whether or not we should at this time assume positively that that thing will occur and take the prewar basis as an ironclad, straight-jacket proposition?

Dr. GARFIELD. I should say, Senator, clearly you are right; we should not do that, and in my letter the third numbered paragraph contained a provision which I intended to be applicable to that situation. In other words, a revaluation after the war, a reappraisement, would correct whatever mistake had been made in assuming prewar figures as the basis. To my mind it would not matter very much if it were deemed advisable to provide the prewar basis plus a percentage which you could hit upon as representing reasonable prewar costs, but the difficulty of that is obvious. At least it seems to me to be quite as reasonable to adopt the prewar figure—say, the average of the three years prior to the war—and then after the war was over, as I said, to prevent a heavy amortization beyond reason, revalue your property.

Senator JONES. A suggestion has been made to the committee, and I am rather strongly impressed with it, that there should be a reasonable allowance for amortization and some method provided for a refund of taxes later, in the event that it should prove that these costs had exceeded the prewar figure, or nearly so, and that we should not now assume that this thing will happen, but make provisions so that, if as a matter of fact it does happen, there will be relief.

Senator WILLIAMS. If the Senator will pardon me, we would not assume we could fix any definite rule right now whereby the decrease in price could be measured, but leave it to be treated as an accomplished fact after it has been accomplished.

Senator JONES. What I would like to get your opinion on is whether or not if we make provision in this bill for readjustment of this matter when the difficulty actually arises, that assurance in the bill will give sufficient encouragement to the coal miner to go ahead and increase his production.

Dr. GARFIELD. It is difficult to say, Senator. I realize that the public mind generally leans to the view that when the Government has once taken by way of taxes money from an individual or corporation, it is probable that the money will never be seen again by the individual or corporation.

Senator McCUMBER. Or at least that it is exceedingly difficult to get it back?

Dr. GARFIELD. Yes.

Senator JONES. We are confronted with this problem not only with respect to coal mines and oil wells, but the merchants of the country are coming in here and wanting an opportunity to write off the valuation of their stocks on hand, assuming that after the war the value of the merchandise will recede to where it was before the war; and so with every ramification of business we are confronted with the same problem and we are called upon to deal with it in a way that will not deter business, will not cripple the industries, and at the same time will be fair to the Government in the way of getting revenue.

Senator WILLIAMS. And will stimulate production.

Senator JONES. There is none of us who wants to injure any of these businesses; we want to stimulate them all and at the same time be fair to the Government.

Senator PENROSE. I agree with what Senator Jones says, and I will cheerfully vote for any provision for merchants or manufacturers. The coal proposition, however, is preeminently a war essential, and I think is worthy of a special discussion. Of course, I do not know what we will be able to do on general matters, and I called the attention of the committee to this solely and simply on the ground of securing the maximum production of a war essential, and I am willing to leave the matter entirely to the Treasury experts and Mr. Garfield to determine what will secure that maximum with due regard to the revenue. Of course, a great many operators have come to me, coming from a coal State, and operators from other States, West Virginia and Ohio and others, and I think Mr. Allport is looked upon as an expert and expresses their views in these four statements which he gave to the committee. I am perfectly willing to vote for and help pass a general provision. I do not think anybody ought to be taxed on his losses, but coal is preeminently a war essential.

The CHAIRMAN. It strikes me that we could deal with those questions raised by Mr. Allport and by Mr. Garfield more satisfactorily and more scientifically through a deduction in the way of a reasonable allowance for amortization, instead of dealing with it by way of specific deductions allowed because of this thing and because of that thing in connection with the operation of the mine or in its equipment. I do not know, but it strikes me and I would like to ask Dr. Garfield's opinion about it—that the suggestion of Mr. Allport you have read to Dr. Adams could be embraced in a proper allowance for amortization.

Mr. ADAMS. Not all of them, Mr. Chairman. I think the provision to allow cost extension as expense, as phrased by Mr. Allport, could well be taken care of under existing law, even, in a fair way. I think that is not a bad rule. I think the extra cost of machinery installed since the beginning of the war ought to be taken care of under the amortization provision, but I think especially the allowance for the hazard would have to be authorized if you conclude after investigation that it is desirable and wise, and for the moment I have forgotten Mr. Allport's recommendation.

The CHAIRMAN. There are four of them.

Mr. ADAMS. I have mentioned three of them.

Senator SMOOT. The other is, all extensions required to maintain output.

Mr. ADAMS. I think that could be taken care of in a way satisfactory to the industry under existing law. I think that is bound up in proper accounting for the industry. I would be doubtful of this: "All machinery installed to replace human labor, including the cost of installation." I think that is very doubtful and should not be done without very explicit direction to do so from Congress.

Senator PENROSE. That applies especially to the coal operator.

Mr. ADAMS. The excess in cost of machinery over prewar cost could be met under amortization.

Senator WILLIAMS. As to new machinery, does not the man really save money by installing it, or he would not install it? It is a substitute for labor and saves his labor cost. Is not that your reason for believing it ought not to be put in as part of amortization? It is a part of the man's additional profits.

Dr. GARFIELD. Theoretically, what we ought to allow under the amortization provision is the excess of the cost over what it is worth to that producer at the conclusion of the war or when these special abnormal conditions have passed. It is going to be very difficult. We will do the best we can with it, and what is wise and right, it seems to me, is provided for in your amortization provision.

Senator THOMAS. Would there be any objection to use as a basis of that the prewar cost?

Dr. GARFIELD. I do not think there is any likelihood that we shall return to prewar costs in a short time after the war.

Senator THOMAS. The difficulty would be largely minimized by taking the prewar cost as a basis.

Dr. GARFIELD. I think your amortization provision will allow us to make the best possible determination of the value of the equipment after the war. It is so worded that readjustment can be made up or down in case we are wrong. I refer to the present provision of the House bill as amended by you.

Senator SMOOT. Analyzing the suggestion of Mr. Allport, it simply means this, that there be deducted from gross earnings all expenses required to maintain output of machinery installed to replace human labor, all of the improvements and developments made to increase output—that is, cost above prewar figures for them, and then the hazard allowance. Now, it seems to me that the first one of the extensions required to maintain output should not include the whole cost of that; we ought to give a percentage, I think. I do not believe there is anything in the installing of machinery to replace human labor.

Senator PENROSE. There is in the coal business.

Senator SMOOT. You can make cheaper output by machinery than by hand labor.

The CHAIRMAN. It would be very good to pick out any important industry that does not use machines of that character.

Senator SMOOT. The third proposition is reasonable and I think ought to be granted, and I would go as far as Dr. Garfield, as I do not believe in even putting it upon the basis of a prewar figure, and that covers all improvements and developments made to increase output. That is not to maintain output. They want the whole of the cost not only to maintain output, but to increase the output of all that we want and need so badly during this war. I would be perfectly willing to give him every dollar of the cost of the improvement and development of that property to increase that output and base it upon the prewar period cost. That, I think, is a splendid thing. The fourth provision is providing for the hazard, and I think we take care of that very much better in the House provision than we do here as suggested.

Senator PENROSE. I am not wedded to Mr. Allport's recommendations, and he, of course, was not familiar with what the committee had in mind, and all these points are illuminating when brought out in this discussion.

Senator THOMAS. Dr. Garfield, I would like to call your attention to a statement of Mr. James, on page 335 of the record. He speaks of an amendment to—

234-A, on page 36, which provides, "That in computing net income there shall be allowed as deductions," etc., and among others, deduction No. 8, which appears at page 37, which provides:

"In the case of buildings, machinery, equipment, or other facilities, constructed, erected, installed, or acquired, on or after April sixth, nineteen hundred and seventeen, for the production of articles contributing to the prosecution of the present war, there may be allowed a reasonable deduction for the amortization of such part of the cost of such facilities as has been borne by the taxpayer, but not again including amounts otherwise allowed under this title for depreciation, exhaustion, or wear and tear."

We are asking permission to insert after the word "production," in line 22, on page 37, the words "or transportation by inland waterways."

He had specific reference to some 42 barges which his company was using in the transportation of coal and which had been carried away by the ice, and caused a loss of \$167,000. Do you think that amendment is a proper one?

Dr. GARFIELD. I have not given it enough thought, Senator, to be wise about it. My first thought is that it is not, but I do not know.

Senator SMOOT. I think the specific case is this, that the ice carried all they had in the river when it broke away, and it took all of the barges and coal landings; the river swept them away.

Dr. GARFIELD. And this was a replacement of necessary equipment?

Senator THOMAS. This was on the Ohio River. He said it cost them \$167,000 to replace the barges and make the type of buildings, machinery, or equipment or other facilities, and he suggested that there be included in those items the facilities used for transportation on inland waterways.

Senator JONES. It seems to me a case of that sort might be taken care of on the principle which we have heretofore discussed to some

extent, to allow from profits of this year losses in the conduct of the business sustained during last year, or, in other words, replace the capital which has been destroyed out of the current earnings before you consider profits for taxation. I think that should be done in the case of this coal man which is referred to. He was prosecuting his business, and in the prosecution of it he suffered a loss of capital.

Senator SMOOT. He suffered a loss of nearly all of it.

Senator JONES. I do not know what the percentage was, but at any rate, whatever the loss was, it was a loss of capital, and I do not see why that capital should not be replaced before we begin to charge taxes on the profits.

Dr. GARFIELD. I think that is right. My first thought went the other way, because I did not see the clear import of the provision. To tax the replacement outlay would be, as Senator Penrose said, taxing losses.

Senator PENROSE. Yes; this is to avoid taxing losses.

Senator THOMAS. I think that word "production" would include "transportation." It may be well to say so.

Senator SMOOT. That was asked Mr. James. I suggested that, and he thought it was doubtful whether it did or not, and wanted those words to go in, and I see no reason why they should not go in.

Senator PENROSE. I think the adjustment of this revenue bill to the actual conditions of the coal and oil business constitutes one of the most important questions in the bill, and I do not care how the result is reached, I am going to abide by the decision of Dr. Adams, after discussion by the committee, in anything that will secure the maximum of both those industries.

Senator GORE. Has Dr. Garfield discussed the question of gasoline at all?

Senator PENROSE. No; we have not reached oil yet. I can readily understand Mr. Allport is not familiar with the other phases of the matter, but if this suggestion could be considered in connection with the other phase of the question and his thought, so far as reasonable and proper, put into the bill, I think it would be desirable.

The CHAIRMAN. We discussed these questions when Mr. Requa was here, and Mr. Requa, in collaboration with Mr. Beecher, is to prepare an amendment along the lines of his discussion. We suggested that Dr. Adams, who was present during the discussion of that, prepare an amendment if he did not think the situation was met from his viewpoint by the amendment he had already proposed.

Senator GORE. I was talking to Mr. Requa this morning. He hopes to be ready Wednesday.

Senator SMOOT. That applied only to oil.

The CHAIRMAN. Yes; but I thought incidentally we discussed coal and asked them to cover that.

Senator PENROSE. Are Mr. Beecher's activities confined to oil, or do they include coal also?

Dr. GARFIELD. Oil, Senator. I have in the legal department of the administration necessarily to depend upon those familiar with coal and those familiar with oil, and Mr. Beecher is the attorney who devotes all his attention to the oil matters, and I asked him, under Mr. Requa's particular direction, to take whatever steps were necessary.

Senator PENROSE. Mr. Beecher is a very capable man, indeed.

The CHAIRMAN. You say he has not charge of the coal division. Could he not draft an amendment to be suggested to the committee in collaboration with whoever has charge of the coal division, and bring both amendments at the same time?

Senator PENROSE. Who is the attorney?

Dr. GARFIELD. Mr. Alden, of Chicago, is attorney in general. I have not any one assigned to coal as I have Mr. Beecher to the oil question, because, as you appreciate, there was a rather special knowledge required for oil. Mr. Alden and his assistants look after the situation generally.

Senator PENROSE. You could take this up with Mr. Beecher yourself and confer with him?

Dr. GARFIELD. Certainly. I did ask Mr. Beecher, when first the question came up, if he would be responsible to keep us informed as to both coal and oil, although his particular business is looking after the oil end.

The CHAIRMAN. You have definite ideas as to how this matter should be dealt with, and you could confer with your attorney and submit amendments along those lines that you care to present to us.

Senator PENROSE. I take it for granted you want to advise the committee along lines which will secure the maximum production of oil and coal.

Dr. GARFIELD. Precisely.

Senator PENROSE. You have been resorting to every imaginable device to bring about that result, and now we are confronted with this condition in this revenue bill.

Dr. GARFIELD. Yes.

The CHAIRMAN. If you will do that, Doctor, we will be very much obliged to you.

Senator PENROSE. Would it be well for you to send for Mr. Allport and get his views on it?

Dr. GARFIELD. Oh, yes; he is in the office all the time. He is one of the engineers who has been advising me.

Senator GORE. I want to ask the doctor about a tax on gasoline.

Dr. GARFIELD. I wish to say that I have not given specific attention to tax matters in oil because I have left that to Mr. Requa and Mr. Beecher, only asking them to conform to the general propositions we have been discussing.

Senator GORE. Mr. Requa expressed his views on the subject of taxation of gasoline when he was here the other day. I did not know whether you would care to submit any views personally.

Dr. GARFIELD. No; I would only reflect his views.

Senator PENROSE. A number of geologists have spoken to me—maybe they do not know all that they think they do—but they raised the point that an undue amount of coal has been shipped to the middle northern States, Wisconsin and Minnesota, when peat might have been utilized in that locality, and I merely wanted to ask the question whether that is a practical suggestion—whether peat could be used as fuel there and the coal conserved to that extent and the car equipment conserved.

Dr. GARFIELD. I think not, Senator. Rather than use the peat in the Northwest, naturally one would turn to lignites. They are there

in abundance. The difficulty is with the transportation rates. If the railroads should see fit to adjust their rates so that lignite might be carried east, a great saving could be made, because it would enable us to withhold coal produced in Illinois, and, indeed, farther east than that, which now moves west. But I have talked with the Railroad Administration officials about it, and they do not see their way clear to change the rates so as to make that possible.

Senator PENROSE. Has this peat any practical value as a fuel?

Dr. GARFIELD. Yes; but no way has yet been discovered to make it commercially useful in large quantities. I have had very full investigations made by the Bureau of Mines and by our own engineers of this matter. Mr. Josiah Quincy, of Massachusetts, called my attention many months ago to the matter. Then I found that there was a process that is now being employed in England and arranged to have a Mr. Coates come here, which he did, and I went into the whole matter of the commercial use of peat, thinking of New England especially, hoping that we might bring it into commercial use, but I found the cost per ton was preclusive.

Senator PENROSE. That may be; but commercial methods have been largely upset during the war, particularly economic methods. I refer more to the utilization of peat in the locality where it can be produced.

Dr. GARFIELD. Where it can be sundried; but that is necessarily a slow process and limits the quantity.

Senator PENROSE. These charges raised the point that we are wasting energy shipping coal to places where peat is located, when people living there could use peat instead.

Dr. GARFIELD. They can, in a small way, but no way has been discovered better than sundrying. We have no practical machinery for drying peat that is known.

Senator TOWNSEND. Have you gone into this matter thoroughly?

Dr. GARFIELD. Very carefully, through my engineers.

Senator PENROSE. I concede that peat could not commercially be sent to New England.

Dr. GARFIELD. We have more peat there than we know what to do with.

Senator PENROSE. But could it not be used in localities where it is plentiful, instead of shipping bituminous coal?

Dr. GARFIELD. Not to meet industrial purposes; it could in domestic ways.

Senator WILLIAMS. Peat has been used in one way or other in England for 200 years. Have they been able to use it for commercial purposes?

Dr. GARFIELD. This factory that has been set up at Dumfries, Scotland, a small factory, started to produce it for commercial use; but they found the only real use was to extract certain things for war manufactures, and they are therefore not using it as fuel except in the factory itself.

Senator SMOOT. How much coal from the East is shipped to the Pacific coast?

Dr. GARFIELD. I should say not a ton to the Pacific coast; certainly, very little.

Senator SMOOT. Is there none going through the Panama Canal?

Dr. GARFIELD. No; none to speak of for our Pacific coast.

Senator SMOOT. There is a good deal of eastern coal going to South America, is there not?

Dr. GARFIELD. Some. There ought to be more coal going to South America.

Senator SMOOT. Is it on account of shipping that the coal from the Pacific coast is not sent to South America, instead of coal from the East, where it is needed so badly?

Dr. GARFIELD. Coal has been sent from Washington State down there. I had several shiploads sent down to Chile.

Senator SMOOT. I spoke of that because the coal mines in Utah to-day are working three days a week because they have no market for their coal. They are asking for a market. They have asked for one, and, I think, I have referred to your department several petitions asking that they be allowed to ship coal to San Pedro, and there load it upon barges and take it to Chile and South America. No action has been taken in the matter. We could relieve the situation in the East, as far as the shipment of coal in the East to South America is concerned, if that could be done. Have you studied that question at all?

Dr. GARFIELD. Yes. It may have been the communication from you which I had investigated. That communication asked that the Utah coal shipped in that way be considered and I had advice as to what could be accomplished.

Senator SMOOT. Utah could produce twice as much coal as she is now producing.

Dr. GARFIELD. There are four sources of relief for eastern coal. One is the coal from the State of Washington; another is coal by the Warrior River from the Alabama fields down to Mobile and out that way; and still another source of supply is from Haiti. That is the newest proposal that has been made to me, and that is the shortest way.

Senator LODGE. Are there deposits of coal in Haiti?

Dr. GARFIELD. There are valuable coal fields there, I have been informed, and the coal is there in such abundance that I am assured by the president of a transportation line that it can be loaded there at 25 cents a ton at port.

Senator PENROSE. A bituminous coal?

Dr. GARFIELD. Yes; and in quantities to supply South America and Panama, and I have started to have that investigated, because if that is correct there is a supply that would be better than any other. I have only the statement that has been submitted to me by the people who are interested. It must be checked up by the Bureau of Mines.

Senator WILLIAMS. I had occasion to hear some time ago about it, but I could not get an analysis of the coal which showed that it had the proper quality.

Dr. GARFIELD. The analysis submitted to me would indicate a valuable coal; not of the grade of Pocahontas coal, but a good steam coal.

The CHAIRMAN. Doctor, we are very much obliged to you.

Dr. GARFIELD. Then it is your desire that an amendment be suggested for your consideration on both coal and oil?

The CHAIRMAN. Yes, sir. We will next hear from Mr. B. C. Keith. It was suggested, Mr. Keith, that you were familiar with the administration of the Harrison Act and would be familiar with the details and purposes of the amendment proposed to section 6 of the act. I assume that probably many of the amendments were put in at the suggestion of the department. Will you briefly give the committee information as to the difficulties that have grown up under the present law and state why you want these amendments?

STATEMENT OF MR. B. C. KEITH, DEPUTY COMMISSIONER OF INTERNAL REVENUE.

Mr. KEITH. I have had charge of the direct supervision of the administration of that act since April, 1915; it became effective March 1, 1915. During the three years and six months it has been in operation we have endeavored to administer it as we thought Congress intended it to be administered as a regulatory measure, and in those cases that have been taken to the courts—one to the Supreme Court and others to the circuit court of appeals—the courts have uniformly decided the law had to be construed as a revenue measure. The only revenue provision in the bill is section 1, which provides for registration of every person dealing in or dispensing narcotic drugs and the payment of \$1 special tax per annum. That is the only provision in the original act from which the original police powers of the narcotic act are derived, and we have found it very difficult to administer. Under the present law the registration provision and a special tax of a dollar a year are really the only revenue provisions that give us any authority or police powers at all. The police power is very tenuous and slight, extending from the registration fee of \$1 to the man who has not registered or who we might find has an abnormal quantity of these drugs in his possession. So we practically have no provision under the present law to reach anybody except those registered or required to register, and if any man has not so registered and is illicitly dealing in these drugs we have got to prove the fact that he should be registered and the transaction upon which the registration is predicated before we can even bring a case against him.

The CHAIRMAN. You want the registration broadened so as to reach everybody that deals in these drugs?

Mr. KEITH. We want to broaden it by separating into classes those people who deal in it, such as druggists, who dispense it; physicians, who prescribe it; the manufacturers of the drugs; those who deal in them at wholesale, and then the stamp tax which is proposed. This is to carry the revenue provision and the police power down to the ultimate consumer, if possible. The object of the amendment is to extend the revenue provision so that we can proceed against a man who has in his possession—the man we find in the street—a large quantity of this drug, so that we can proceed against him without having to prove that he is a dealer. Under the original act there was a provision, section 8, making it unlawful for a person to have in his possession any of these drugs unless he be a registered person or obtained it in a certain manner from a registered person. The Supreme Court decided that that did not apply

to anybody except those required to register, a fact which took the strength out of the law as to the police powers of the law affecting unregistered persons.

The CHAIRMAN. Is that the only change of this law, extending the registration provision so as to embrace such persons as you have described, and this language requiring a stamp upon the package?

Mr. KEITH. And the repeal of section 6.

The CHAIRMAN. What is section 6?

Mr. KEITH. Section 6 exempts—

Senator THOMAS. I can read it:

SEC. 6. That the provisions of this shall not be construed to apply to the sale, distribution, giving away, dispensing, or possession of preparations and remedies which do not contain more than two grains of opium, or more than one-fourth of a grain of morphine, or more than one-eighth of a grain of heroin, or more than one grain of codeine, or any salt or derivative of any of them in one fluid ounce, or, if a solid or semisolid preparation, in one avoirdupois ounce; or to liniments, ointments, or other preparations which are prepared for external use only, except liniments, ointments, and other preparations which contain cocaine or any of its salts, or alpha or beta eucaine or any of their salts or any synthetic substitute for them: *Provided*, That such remedies and preparations are sold, distributed, given away, dispensed, or possessed as medicines and not for the purpose of evading the intentions and provisions of this act.

The CHAIRMAN. You want to repeal that?

Mr. KEITH. Yes.

Senator PENROSE. What would be the effect of that repeal?

Mr. KEITH. It would simply bring within the taxation provision of the amended act and within the general regulatory provision all preparations containing any quantity of these narcotic drugs.

Senator GORE. And would not prohibit their sale as medicine?

Mr. KEITH. No, sir.

Senator McCUMBER. In other words, you could not get them unless you went to a doctor?

Mr. KEITH. Yes.

Senator McCUMBER. Then, if I have to face that window and the light until I can not keep my eyes open and they get inflamed and I want a little medicine that I can get at a drug store that contains a little bit of one of these drugs, I have got to pay a doctor \$10 for a prescription to get that. That was the objection placed against the repeal of it.

Senator PENROSE. In addition to that, there are a long line of proprietary medicines, maybe 50 or 100 years old, that you would have to get a doctor's prescription for.

Mr. KEITH. Paragoric, Bateman's Drops, and Godfrey's Cordial.

Senator PENROSE. Take cough medicines.

Mr. KEITH. All cough medicines containing amounts of narcotic in excess of the amounts specified in section 6 come under the law.

Senator PENROSE. Then, the proprietary medicines could not be dispensed except on a doctor's prescription?

Mr. KEITH. No, sir.

Senator WILLIAMS. Those proprietary medicines that contain over the percentage provided in the law?

Senator SMOOT. Oh, no.

Senator WILLIAMS. You want to do away entirely with the percentage line of demarcation?

Mr. KEITH. The exemption line.

Senator TOWNSEND. May I ask why you want that done?

Senator WILLIAMS. Are not there a whole lot of perfectly harmless things that are used for the eyes and for the throat, and upon the teeth by the dentists, which fall below this percentage to which the present law refers?

Mr. KEITH. Senator, I do not think there are preparations used on the teeth that contain drugs that would come under the law.

Senator WILLIAMS. I said used by dentists.

Mr. KEITH. Well, they could get them anyway under the amended law, but there are no exempt preparations that are used for the treatment by the individual of his own eyes.

Senator WILLIAMS. Or the nose or the throat.

Mr. KEITH. There are cough preparations, but cocaine is not exempted in any quantity. If it contains one-tenth of a grain or one-twentieth of a grain of cocaine, there is no exemption.

Senator TOWNSEND. Suppose we had reached a point where we had agreed as to what it would be; I want to know why he proposes to amend that; what harm comes now from the administration of the law as it is? There must be some object they have in mind in repealing that section 6, and I was wondering why the department requests it.

Mr. KEITH. One reason is the fact that the Public Health Service and the medical associations, and even a section of the druggists' association, have recommended it.

Senator GORE. Of course, the medical people would want it.

Mr. KEITH. Some sections of the druggists' association have recommended the repeal of this, because the indiscriminate use of preparations containing these limited amounts has had a harmful effect upon the health of people and has created conditions that lead to drug addiction in certain sections of the country; and, furthermore, it offers a loophole, this section 6, for evasion of the law, because any man can put down on his record that, as a dealer or manufacturer, he purchased so many ounces of any of these narcotics, and can report all of them converted into exempt preparations, and can sell them in a subterranean way, and we would not be able to trace it.

Senator McCUMBER. The objection is to say that you must go to a doctor for every little remedy that contains any of these medicines in such a small quantity.

Senator THOMAS. There is a palliative for asthma made at Mount Giliad, and is said to be effectual for that purpose. It does not pretend to be a cure. Under this you would practically put that establishment out of business?

Mr. KEITH. No, sir; because that is a cocaine solution. It contains 5 grains of cocaine to the fluid ounce, and there is no exemption under section 6, so it would not affect that. They had to comply with the law and sell it on receipt of order forms of people duly registered. They can not send it out on receipt of an order from any individual, accompanied by a symptom blank. Under the interpretation the department places on this law, anybody in a locality who held any of these narcotics could not conduct alleged sanitoriums, and doctors that were operating alleged cures for drug addiction could not sell them on receipt of mail orders from the patient, but they would have to sell them in the manner prescribed by the law, upon

order forms received from duly registered people, so they are barred from operating under that provision.

Senator WILLIAMS. In so far as a doctor's prescription is required, the matter to which Senator McCumber was referring, would or would not one prescription for a given remedy be sufficient, or would there have to be a fresh prescription every time the man wanted to use it?

Mr. KEITH. A fresh prescription.

Senator LODGE. Every time he wanted to get a remedy he would have to have a fresh prescription.

Senator THOMAS. Mr. Brockmeyer is attorney for one of the interests affected by this measure. He was before a subcommittee several years ago of which Senator Williams was chairman, and which had charge of what was known as the Harrison narcotic bill. Senator Lodge asked this question:

Your objection to this thing is its wording, that it sweeps away all of that?

Mr. BROCKMEYER. It wipes it out entirely.

The CHAIRMAN. Was not that unintentional?

Mr. BROCKMEYER. No, sir; it was apparently deliberate; and perhaps it might be well, for your information, to say that this was brought about by the Deputy Internal-Revenue Commissioner, Mr. Keith, and his assistant Dr. Reese, who was charged in the administration of the Harrison law regulations, with preparing this bill, submitting it to Mr. Rainey, who adopted it for them and introduced it in the House; and then before the bill was reported to the House, when we got copies of the bill and asked for a hearing, Mr. Moore, of Pennsylvania, told us that it was unfortunate, that we were too late; that the bill had been incorporated in the revenue bill without a hearing; whereas three years ago, due to the kindness and indulgence of your committee here and of Mr. Burton Harrison, of the Ways and Means Committee, we were given practically a year with Dr. Harrison Hamilton Wright fully considering all this, and Dr. Wright explained it to the retail druggists and later went on record as joining one of the speakers in his opinion this morning, and Br. Black has asked that the tax in medicines be made 4 per cent rather than 2, for the reason that although the consumer pays the tax the druggist is vitally interested, and that no tax shall be imposed that will have the effect of decreasing the volume of his business. We feel that if an exorbitant or unduly high rate is imposed in addition to all the other costs, the high cost and advanced costs of drugs, and many other items, the business of the druggist will become so small that it will be difficult for him to continue.

Place this 10 per cent tax proposed in the bill on proprietary preparations. Of course you understand every preparation made by a druggist according to his own formula, not only patent medicines, but everything made by a druggist in his own shop and according to his own formula, is under this tax, because the provision in the law is so broad as to include that.

Is it a fact, to your knowledge, that this substitute for section 6 was prepared by your department and that Brockmeyer and those he represents had no opportunity to be heard?

Mr. KEITH. Senator, Mr. Brockmeyer knew the attitude of the department for the past three years. The Secretary in his annual report for 1915 emphatically recommended, urgently recommended, the repeal of section 6. In so far as the preparation of the bill is concerned, Mr. Rainey, who offered the amendment, is chairman of the special narcotics committee appointed by the Secretary of the Treasury and has had access to certain information which has been obtained from investigations of this.

Senator GORE. What Rainey is that?

Mr. KEITH. Henry T. Rainey, of Illinois; and it was on the basis of his information that Mr. Rainey said he proposed to introduce an

amendment. I consulted with him, and I think the drafting expert probably drafted the amendment as it finally went into the bill. As to Mr. Brockmeyer's statement that the department drafted it, I ask that Mr. Rainey answer that.

Mr. ROBINSON. What is the materiality of this controversy?

Senator THOMAS. It is not particularly material, except for the assertion of Mr. Brockmeyer that his side of the question was not given a hearing before the committee.

Senator SMOOT. When section 6 of the Harrison Narcotic Act was under consideration by the subcommittee of this committee, consisting of Senator Williams, Senator Thomas, and myself, we had the leading doctors of the United States before us; we had the representatives of the leading druggists, of the wholesale druggists and the retail druggists, of the hospitals, of nearly every conceivable organization that uses this class of goods, and it was unanimously agreed that the quantities named in section 6 here if used within a fluid ounce could have no ill effect upon any person in any way, and could not be the basis of forming a drug habit if they confined it to the amount provided in section 6. We did not act hastily in the matter at all. Do you mean to say now that those same people have changed their minds, that this amount used in a fluid ounce will create the drug habit?

Mr. KEITH. It will satisfy the drug habit; and they made that statement. I assume, at the time the original law was under consideration. Since this law has been in force we have attempted to enforce that provision of section 6 which says they are exempt only so long as they are used and possessed for medicinal purposes, and we have not been able to get the courts to even consider a case, and we have found in certain communities of this country where the use of these preparations has to a large extent displaced alcohol, certain sections where they drink Bateman's Drops, Godfrey's Cordial, and paregoric in lieu of ordinary alcoholic stimulants. It has the toxic effect of the opium plus the stimulating effect of the alcohol. Those facts were not known before, because there had never been any opportunity of collecting them at the time the first law was under consideration; but during its enforcement during the past three years and a half we have seen these conditions, have had reports from all over the country concerning these conditions.

Senator SMOOT. You say they are used for the narcotics in them. Why go to the extent of buying expensive articles like this for narcotics if the alcohol is not what they are after; why do not they go and buy Coca-Cola at a soda fountain and get their narcotics?

Mr. KEITH. I do not think it has been shown that Coca-Cola has cocaine in it. There is a general belief that there is some.

Senator THOMAS. It has been judicially determined that it has none.

Senator SMOOT. It has the same effect; it has caffeine.

Senator PENROSE. What sections do these practices abound in?

Mr. KEITH. There is no particular section that it is confined to. I do not mind stating that on the Eastern Shore of Maryland we found people drinking as many as 3 dozen bottles a day; there is one family I heard about, with a father 80 years old, and I had a special investigation made in their case, and they used from 3 to 4 dozen

2-ounce bottles a day of Bateman's Drops and paregoric for which they paid \$1.25 a dozen, and the retail grocery stores sold them.

Senator PENROSE. How much alcohol do they contain?

Mr. KEITH. From 42 to 50 per cent.

Mr. ROBINSON. How much opium?

Mr. KEITH. One and nine-tenths grains per fluid ounce.

Senator McCUMBER. Do you not think it is for the vanilla and lemon extracts that they get it, to a certain extent?

Mr. KEITH. It may be in certain cases, but in Maryland and Virginia, along the eastern shore, and other sections of the country, West Virginia, and perhaps throughout the Middle West, the use of these exempted preparations, paregoric, Bateman's Drops, and Godfrey's Cordial have become so prevalent that even retail druggists have quit making them up and selling them and the business has been taken over by the grocery stores.

Senator McCUMBER. You are attempting to meet a few cases by depriving millions of people of the remedies they have in daily use. Let me give you an instance. I knew a couple of old gentlemen that got as drunk as they could have gotten by any kind of liquor by boiling their tea down so that it was almost bitter, and they got drunk on tea. I would not deprive the American public of tea because a few people can boil it down to such an extent that they could really get drunk on it.

Senator JONES. Would this affect patent medicines or proprietary medicines?

Mr. KEITH. Both, I should say, Senator. It is repeat orders of proprietary medicines and patent medicines that make them valuable. If a man only sold one bottle, the first sale, and did not have a subsequent sale for them, he would not be in the business long, and anything that fixes a desire for those preparations containing exempt quantities of narcotics means just that much more business.

Senator THOMAS. I think your remedy would be to repeal prohibition.

Senator TOWNSEND. Have you any reason to believe they have increased during the last few years?

Mr. KEITH. A great deal of reason to believe so.

Senator TOWNSEND. How extensively?

Mr. KEITH. According to the druggists' associations' own records, I saw a report made recently by a committee of the retail druggists' association, that they had increased 114 per cent.

Senator TOWNSEND. In what time?

Mr. KEITH. In the past two years.

Senator THOMAS. Do you think that is due to the existence of the drug or the alcohol?

Mr. KEITH. I think to the drug, because they can secure their alcohol in certain localities.

Senator TOWNSEND. They do not have to take this to get alcohol in Maryland. It would not be to get the alcohol that those people you were speaking about would buy these, would it?

Senator GORE. On the eastern shore it might be.

Mr. KEITH. I would not say so.

The CHAIRMAN. Did any part of the protest against this come from the prohibitionists?

Mr. KEITH. I have not heard of any protest.

The CHAIRMAN. Have the doctors protested to any great extent against it?

Mr. KEITH. Against the repeal?

The CHAIRMAN. No; the section.

Mr. KEITH. No; not so far as I know.

The CHAIRMAN. Have the doctors represented to you that any great evil has grown out of the liberty allowed under this section?

Mr. KEITH. I think the answer to that will be found in the letter of the Surgeon General of the Public Health Service, speaking for the United States Government's official medical organization. I do not know just what he says, but I think he expresses certain views upon the subject.

The CHAIRMAN. Here is what he says in his letter [reading]:

MY DEAR MR. RAINEY: I have carefully considered the bill, H. R. 12787, introduced by you to amend the Harrison Narcotic Act. I realize thoroughly the difficulties which attend the devising of an ideal measure of this kind. Nevertheless, I am of the opinion that the bill, as introduced by you, gives the Government much better supervision and control of the production and sale of narcotics in the United States than the present act.

I have long been convinced of the injury which has been caused by the unrestricted sale of compounds containing small quantities of narcotic drugs. I am therefore in favor of the proposed elimination of section 6 of the present act. I feel that the slight inconvenience caused by the repeal of this section will be very greatly outweighed by the benefits to national health which will be secured.

I am, very truly, yours.

RUPERT BLUE, *Surgeon General.*

Senator PENROSE. My observation convinces me that the Harrison Act is openly violated, and that in the large cities, at any rate, the addicts do not have to resort to a patent medicine; they can buy heroin under the nose of the internal-revenue inspectors.

Mr. KEITH. That, unfortunately, is true in certain localities, but I think the Government is getting control of the situation in those localities.

Senator PENROSE. I have not seen any sign of it in any large city that I have visited in the United States. I only want to bring out the point that a large increase in the sale of these habit-forming drugs is attributed to patent medicines, while I think a large part is due to the open sale of such drugs.

The CHAIRMAN. One reason that they use them is to get alcohol, and the second is that you have cut off their supply of narcotics they heretofore used and they are using these that have only a small quantity and they can buy free of restrictions of the law, and both classes are using these probably because they can not get the narcotics they have been accustomed to.

Senator LODGE. Suppose you have no narcotics but only alcohol, would you reach them?

Mr. KEITH. Not in this act; but under the law no distilled spirits that had any narcotics could be used, and that is what we are trying to have done—to make this a revenue measure, so that we can reach these bootleggers and everybody who have these drugs in their possession—and we feel that if section 6, with the exemption provision, is allowed to remain in the law it offers a loophole for evasion by covering up records of sales for exemption preparations where, as a matter of fact, they may be sold straight.

Senator SMOOT. The object of this is to compel every American citizen who wants to buy a liniment or a patent medicine that they have used previously to pay double, and in some cases the doctor will charge three or four times what the medicine will cost.

The CHAIRMAN. Clearly, that is an objection. I want to ask if there is not some other way in which you could reach this matter without requiring a doctor's prescription every time a patient needs it.

Mr. KEITH. I do not see how it could be done without an exempting provision. The druggists now have a suit pending in the Supreme Court to further extend the exemptions of section 6. They lost it in the lower court and carried it up to the Supreme Court of the United States, where they are contending that the exemptions provided under section 6 apply to prescriptions written by a doctor, calling for not exceeding the amount specified in section 6, that they can be refilled without a further prescription. The logical result of such a contention would mean that prescriptions calling for narcotics containing the exempted amount could be filled without reference to the law.

Senator SMOOT. You do not think the court would hold that?

Senator LODGE. What evidence have you from the medical profession that these are now habit-forming drugs?

Mr. KEITH. The evidence of the use of these drugs by addicts.

Senator LODGE. No; I mean scientific evidence; I mean from doctors.

Mr. KEITH. Senator, there has been very little scientific study made of drug addiction. There are very few men in this country who have made such a study. The surgeons of the city of New York, the surgeons of the penal institutions, have made a study of 12,000 cases; the surgeon in charge of the State prison in Joliet, Ill., has made a study of it, and just a few physicians here and there have made any complete study of the subject, so there is not any definite scientific conclusion as to the establishment of drug addiction from the use of these exempt preparations.

Senator LODGE. What I want to get at is whether there is any good medical opinion from doctors of high standing that the amount exempted now constitutes a habit-forming drug.

Mr. KEITH. I think it is recognized—I have not the medical authorities here—that any amount of a narcotic drug used regularly is an addiction.

Senator LODGE. Two years ago they testified before Senator Williams's committee that, sold in such quantities, they did not constitute a habit-forming drug. I am referring to doctors of standing; I am not referring to Government officials; I mean medical men whose opinion is worth something, and I want to know if they have changed their opinion.

Mr. KEITH. I could not answer that, as I am not a medical man myself, but the Public Health Service, I think, has some opinion upon that subject which goes to show that these exempted preparations are habit forming. It is the establishment of a toleration for the drug and the constant use of it that creates addiction, not the quantity.

Senator LODGE. I want to know whether it is merely an administrative demand or whether it is backed up by the best medical opinion of the country.

Mr. KEITH. I think you will find in Surgeon General Blue's letter that that is the case.' He expresses a general opinion there.

Senator SMOOT. When the question was before the committee there were thousands of letters asking for this legislation, and there were doctors that appeared before the committee that had studied it and had made a study of it for years and years, and they testified that this was what was necessary. Now, to-day there is not one of those doctors, and there is not a letter here that I know of asking for the repeal of this. It was entirely by the department.

Senator PENROSE. I am deeply impressed with this situation as being inherent. There are many towns in Pennsylvania and all over the United States where you can not get a doctor to-day, and I have 20 telegrams to-day asking me to see the War Department and get doctors from the camps and send them to these towns in Pennsylvania. Take the man shaking with a temperature of 103, threatened with the grip, and he can not get a Dover's powder, a remedy recognized all over the country, having been used for maybe 50 years, and he can not get that remedy without a doctor's prescription.

Mr. KEITH. He can not under the present law.

Senator PENROSE. I know that. The present law is absurd enough. That man has got to wait around and maybe die, and at the juncture he can not even get an undertaker. It leads to a still more absurd conclusion, to my knowledge.

Senator TOWNSEND. Senator Smoot suggested something a moment ago, and he said: "They want this." I am wondering who wants this.

Senator SMOOT. The Internal-Revenue Department.

Senator TOWNSEND. I thought you inferred it was wanted because there was money in it.

Senator SMOOT. The Internal-Revenue Department. I think if I was the owner of a drug store I would want this, particularly if every person in the city had to go to a doctor and get a prescription, and I could charge on that prescription what I wanted to.

Senator SMITH. I do not think the druggists want it repealed. Nearly all of the druggists sell a great deal of these things under section 6 and sell them generally to their customers.

Senator SMOOT. But now they would have a prescription and get three or four times as much.

Senator WILLIAMS. I take it, Senator, that the men from the department want it for ease of administration.

Senator McCUMBER. Would the extension of the provision as you have suggested it, to cover every person who deals in these narcotics, of itself be a great assistance to you, even though you did not repeal section 6?

Mr. KEITH. Yes; it would be of great assistance with the stamp tax. It would give us a revenue measure in fact, then; but there would always be that loophole if you have that exemption there for quantities to be sold through illicit channels.

Senator McCUMBER. I believe in taxing that, but not in repealing section 6.

Senator WILLIAMS. If you could tax it, even though it were for a lower percentage, the connection between the administration of the revenue office and the article would be established?

Mr. KEITH. Yes, sir.

Senator WILLIAMS. Without requiring them to go to a doctor?

Mr. KEITH. That is true, but how you could do it without bringing it within the provisions of the law I can not understand.

Senator GORE. Do you think you could provide for it by allowing so much in a limited time, or that a person could not sell more than so much within a limited time?

Mr. KEITH. It is possible; I have not studied that phase of it.

Senator THOMAS. It is provided here to limit it that way; he could limit it.

Senator LA FOLLETTE. I thought Mr. Keith manifested some hesitation about laying before the committee the extent to which this evil has grown since the enactment of this law. If he has information that he can give the committee on that subject, it need not be taken down. I would like to hear it.

Senator WILLIAMS. Is not a good deal of this apparent increase merely apparent, and owing to the fact that because of the law and the number of people we are continually finding out about who are taking these things, you know of a great many cases you did not know of before?

Mr. KEITH. That is true, that we had no accurate figures, no data, regarding the number of addicts until the law was passed, and since we have been enforcing this law we have gotten very accurate information which we did not have before.

Senator WILLIAMS. All addicts to habit-forming drugs conceal the fact as far as they can.

Mr. KEITH. Until they get so far gone as to lose any sense of shame.

Senator WILLIAMS. And after the law was enacted you had the machinery whereby they were discovered?

Mr. KEITH. We did discover them, but we frequently discover new ones, where the habit has been created since the law was enacted.

Senator SMOOT. Since prohibition

Mr. KEITH. I am not in a position to state that, Senator.

(Thereupon, at 12.20 o'clock p. m., the committee proceeded to other business.)

TO PROVIDE REVENUE FOR WAR PURPOSES.

FRIDAY, OCTOBER 18, 1918.

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met, pursuant to call, at 2.30 o'clock p. m., in the committee room, Senate Office Building, Senator F. M. Simmons presiding, having under consideration H. R. 12283, to provide revenue, and for other purposes.

Present: Senators Simmons (chairman), Williams, Smith, Thomas, Gore, Jones, Gerry, Nugent, Robinson, Penrose, Lodge, McCumber, Smoot, Townsend, and Dillingham.

Present also: Mr. M. L. Requa, general director, and Norman B. Beecher, counsel, of the Oil Division, United States Fuel Administration.

The CHAIRMAN. Mr. Requa, the committee will be glad to hear from you in reference to the amendments which you have to offer.

STATEMENT OF MR. M. L. REQUA, GENERAL DIRECTOR OF THE OIL DIVISION, UNITED STATES FUEL ADMINISTRATION.

MR. REQUA. We have had several meetings, Mr. Chairman, with Dr. Adams, as the result of which Mr. Beecher has the form of several amendments which I will be glad to have him present to you. I do not know that Dr. Adams and ourselves are in exact accord. I think the difference largely is because of the fact that I was born and raised in the West, and am particularly sympathetic with the prospector, who spends the most of his life chasing around behind a burro and ends in the potter's field. Occasionally he does make a strike. My thought was that he should be permitted to reap the benefit of that strike or, perhaps, if you please, sell the property to himself without being taxed, and his taxes should commence after he had proved himself successful.

Mr. Beecher, I think, will make a brief presentation.

MR. BEECHER. The first amendment is No. 24, to amend section 234.

SENATOR LODGE. No; the first one is an amendment, on page 7, after line 15—amendment No. 21.

MR. BEECHER. If the committee would just as leave, I would like to take up No. 24, because that is the one which presents the main principle.

SENATOR DILLINGHAM. What page does that amend?

MR. BEECHER. It strikes out lines 23 to 25 on page 23. But it is inserted on page 39 in lieu of lines 1 to 15.

Senator SMOOT. This is the principle, and then the other amendments are suggested simply to carry out this principle?

Mr. BEECHER. In general. It is the principal amendment, at all events.

Senator JONES. Suppose you read that. I do not believe the members of the committee have read it.

Mr. BEECHER. On page 39 strike out lines 1 to 15 and substitute the following:

In the case of mines, oil and gas wells, and other natural deposits, and timber, a reasonable allowance for depletion and depreciation of improvements, according to the peculiar conditions in each case, based upon cost, including cost of development not otherwise deducted: *Provided*, That in the case of such properties acquired prior to March first, nineteen hundred and thirteen, the fair market value of the property (or the taxpayer's interest therein) on that date shall be taken in lieu of cost.

That is simply the amendment as already adopted by the committee.

Senator GORE. It has been agreed to that far?

Mr. BEECHER. It has been agreed to up to that point, as I understand. This is new:

And provided further, That in the case of mines, oil and gas wells, discovered by the taxpayer and not acquired as the result of purchase of a proven tract or lease, where the fair market value of the property, as determined in the manner hereafter provided, is materially disproportionate to the cost, the depletion allowance shall be based upon the fair market value of the property at the date of the discovery, or, at the election of the taxpayer at the conclusion of that or any subsequent year, such reasonable allowance in all the above cases to be made under rules and regulations to be prescribed by the commissioner with the approval of the Secretary. In the case of leases the deductions allowed by this paragraph shall be equitably apportioned between the lessor and lessee. In the case of a foreign corporation, the deductions under this paragraph shall be allowed only as to property within the United States.

Senator THOMAS. They are presented alternatively?

Mr. BEECHER. No; this is all one amendment.

Senator THOMAS. Nos. 23 and 24 are both the same?

Mr. BEECHER. There are four amendments which we have prepared, which are intended to cover the entire situation. They are not alternative.

Senator ROBINSON. Does the adoption of those depend upon the adoption of the one you have just read?

Mr. BEECHER. No.

Senator WILLIAMS. But they are parts of the same purpose, are they not?

Mr. BEECHER. They are parts of the same purpose, in general, to enable a prospector to continue with prospecting and discovering oil.

Senator WILLIAMS. I suggest that we hear them all, so that we will have them in our minds.

Senator McCUMBER. I wish Mr. Beecher would first explain what he means by this phrase in his amendment which he has just read, which occurs on the second page:

Where the fair market value of the property, as determined in the manner hereafter provided, is materially disproportionate to the cost.

Mr. BEECHER. "As hereafter provided?"

Senator McCUMBER. Yes.

Mr. BEECHER. That means the market value either at the date of the discovery or at the election of the taxpayer at the conclusion of that or any subsequent year.

Senator McCUMBER. I do not just quite understand that. I supposed this was to cover and protect these men who go out prospecting.

Mr. BEECHER. It is.

Senator McCUMBER. There is nothing here about an allowance for their time or money expended previous to the discovery.

Senator TOWNSEND. No; it did not intend that.

Mr. BEECHER. No. That is supposed to be covered by the valuation which is allowed of their property after it has been discovered.

Senator McCUMBER. That is the reason I do not know what you mean by "in the manner hereafter provided."

Mr. BEECHER. That is fair market value. Unless there is something that limits the fair market value, it will be impossible to say at what period you are to take the fair market value. The provision is that it be valued either at the time of the discovery or, at the taxpayer's election, at the conclusion of that or any subsequent year. The purpose of that was this: In the case where the taxpayer brings in a well, and at that time any valuation is regarded by him as being unfair because as yet the development is not such as to reasonably show what the property is worth, if he elects to do so, he may at that period not have any valuation, and his depletion allowance will be based upon what he can show as to actual cost. Where his property has reached the stage of development where he considers that it may be fairly valued he can then ask, at the end of that year or any subsequent year, that his property be valued, and from that time on he has the benefit of a depletion allowance based upon such valuation.

Senator TOWNSEND. Suppose in that case the ore or the oil, or whatever it is, at the date he elects has of itself materially increased over what that product was worth—the same amount—on the day the tax was levied?

Mr. BEECHER. On the day of the discovery?

Senator TOWNSEND. The day of the discovery, I would say; yes.

Mr. BEECHER. I suppose that possibly some provision should be made that the value be taken, so far as the point you raised is concerned, as of the date of the discovery.

Senator TOWNSEND. It seemed to me as though that might be a very important element.

Senator SMOOT. State that again, if you please, Senator Townsend.

Senator TOWNSEND. He has the right to elect to take his valuation in any subsequent year.

Mr. REQUA. But only once.

Senator TOWNSEND. Only once. Suppose that the time he elects five years afterwards to take the valuation of his property the raw material itself has increased materially over what it was at the time the discovery was made?

Mr. BEECHER. Of course, on the other hand, if it has decreased, he loses. It was not the intention to have that given any effect one way or the other. The idea was simply to provide a time in which he could develop his property to a condition where its value could be fairly determined.

Senator SMOOT. It is not very likely that he would let it go over for five years with the amount of taxes that he would have to pay under this bill.

Mr. BEECHER. It seems quite incredible.

Senator SMOOT. He could not do it.

Senator JONES. I was going to suggest that you might strike out "or any subsequent year" and let him do it at the date of discovery or within the year.

Mr. BEECHER. The only danger in regard to that, Senator, that occurred to me was this: Suppose he made his discovery the middle of December of a given year.

Senator JONES. "Or the subsequent year," then; not "any subsequent year," but "the subsequent year."

Mr. BEECHER. I think that might be a good change.

Senator JONES. I was going to suggest that it seems to me there ought to be a time fixed when that could be done, instead of leaving it open to such an indefinite period.

Mr. BEECHER. I think that is a good suggestion, although the very fact that every minute he does not have it valued he is paying this enormous tax is, I think, such a practical prohibition that no man could afford to speculate in the manner you suggest.

Senator TOWNSEND. Is it enormous? How do you fix the tax in the first instance?

Mr. BEECHER. On the cost of his investment.

Senator SMOOT. If he is lucky, the tax may be three or four times what it costs him to discover it.

Senator GORE. He is taxed on cost.

Senator SMOOT. Yes. He would never let a year go by.

Senator ROBINSON. Mr. Requa said in his statement that there was some lack of unanimity of opinion between him and Dr. Adams concerning the form the amendment should take. As a matter of fact, does this amendment represent an agreement between you, or does it represent the conclusion that you yourselves reached?

Mr. REQUA. We thought the best way to do would be to present both, and the committee could then proceed in its own way.

Senator ROBINSON. Does this represent yours or theirs?

Mr. REQUA. This represents ours.

Senator WILLIAMS. Do the subsequent amendments you propose, that are part of the common purpose, modify to any extent what you have already read?

Mr. BEECHER. No, sir. The subsequent amendments impose, one, a limit of 20 per cent upon the tax payable in the event of sale by the prospector—two amendments to cover that, both as to individuals and corporations—and the fourth amendment enables the Secretary of the Treasury to give a constructive capital to the prospector in the same manner as he is permitted to give it in other cases where the income is materially disproportionate to the capital invested, as otherwise computed in the act.

Senator WILLIAMS. We can consider what you have already offered, then, independently of the balance; and if we adopt or refuse the balance, it would not affect this?

Mr. BEECHER. No; I think not. It is all part of a plan.

Senator WILLIAMS. Because I was thinking that if they were all together and pursuing a common purpose, perhaps it might be well that we hear them all before we act upon any.

Senator GORE. They merely constitute a part of a scheme to accomplish a purpose.

Senator WILLIAMS. And I say it would be well to hear them all before we act on any number. That is the suggestion I made a while ago.

Senator ROBINSON. Will Dr. Adams now present the differing view of the matter?

The CHAIRMAN. Let us get these four amendments first. They are all part of one scheme.

Senator ROBINSON. He said they were independent of each other.

The CHAIRMAN. I know they are independent, but they are all aimed at one objective.

Senator THOMAS. They are independent, but interrelated.

The CHAIRMAN. Yes. I thought the suggestion was that you read all of your amendments, and if there were any questions by members of the committee, you could answer those and then make your statement.

Mr. BEECHER. I will take up No. 22 next.

Senator LODGE. How about 21?

Dr. ADAMS. That is simply another version of the same thing, practically gets at the same result.

Mr. BEECHER. That was prepared by you, Dr. Adams?

Dr. ADAMS. Yes. I did not know we were going to have two versions.

Senator PENROSE. Then we do not need No. 21, do we?

Mr. BEECHER. I have not read No. 21 yet. I dare say it is better. Perhaps I might read them both.

Senator LODGE. Nos. 21 and 22 are alternative amendments to line 15, page 7.

Dr. ADAMS. I put the No. 21 at a slightly different place. It applies at exactly the same place.

Senator LODGE. One is "page 7 after line 15," and the other is, "after line 15, on page 7."

Senator SMOOT. No. 22, I think, carries out the same idea, Dr. Adams, that the first amendment submitted here does, because it says here, "and not by purchase." In other words, it carries the same plan out, but it only applies to the mine of the prospector.

Dr. ADAMS. Yes.

Senator SMOOT. And I think the second one is worded a little better, if we are going to carry out the scheme suggested.

Dr. ADAMS. That is all right.

The CHAIRMAN. I understood that Dr. Adams did not quite agree with the views submitted by Mr. Beecher, and that he was going to frame some amendments presenting his view, and these gentlemen were going to frame amendments presenting their view, and I understood that what we were doing now was considering the amendments presented by these gentlemen, to get their views. Then we will take Dr. Adams and get his views.

Senator GORE. Mr. Beecher, I wish you would read and discuss your amendments.

Senator WILLIAMS. I move that Mr. Beecher be permitted to present the balance of his amendments, which are part of his scheme.

Mr. BEECHER. Will you then consider No. 22, which is to add after line 15, on page 7, the following:

Provided, That in the case of a bona fide sale of mines, oil and gas wells, or any interest therein, where the property has been acquired by prospecting, exploration, or development work and not by purchase, and where the selling price is materially disproportionate the cost-plus cost of development of the property, the surtax shall be computed under this section, but shall not exceed twenty per centum of the selling price.

I will ask you also to consider No. 27, which is aimed to accomplish the same purpose with respect to corporations that the preceding amendment aims to accomplish with respect to individual owners and discoverers. That is an amendment to section 336, on page 68. On page 68, after line 7, add the following:

In the case of a bona fide sale of mines, oil, and gas wells, or any interest therein, where the property has been acquired by prospecting, exploration, or development work and not by purchase, and where the selling price is materially disproportionate to the cost plus cost of development of the property, the total tax under this title shall not exceed twenty per centum of the selling price.

Those two amendments are intended to enable the prospector who is not in a position financially to develop his own property, where the property ought to be developed, where we need the result of its development, to dispose of his property during this tax period without being compelled to part with so large a per cent of the proceeds of the sale that it would operate as a practical prohibition upon his selling it at all.

Senator THOMAS. And consequently upon its development.

Mr. BEECHER. And he has not the money to develop it, and therefore it lies idle; and I am told that situation does exist to a very considerable extent in discoveries made during this year, and that it will continue in the future unless some remedy is given. I will say, with reference to this proposal, that I understand we are in entire agreement with Dr. Adams, who has prepared another amendment—No. 21. I believe—which is intended to carry out substantially the same thought, only slightly differently expressed.

Senator PENROSE. Which is the best amendment for the committee to adopt—yours or that of Dr. Adams? Could you not both agree on some one proposition?

Dr. ADAMS. Mr. Chairman, what Mr. Beecher has said is entirely true, except that we did not discuss at any great length the application of this to corporations. If the limit is 20 per cent for the corporation income tax, of course it is not needed; the tax can not exceed 20 per cent at all. If the amendment to section 336 would apply to both the excess profits and income taxes, I could not quite agree; I think that limit would be too low. I do not know which you had in mind, Mr. Beecher. You do not need an amendment if it is merely to limit the income tax on corporations, because that is 12 per cent anyhow.

Mr. BEECHER. Quite right.

Dr. ADAMS. If we are going to put a 40 per cent limit on the excess profits and income taxes, I say I could not quite agree to that as a limit for both.

Senator THOMAS. Why not, Doctor?

Dr. ADAMS. The war-profits tax—that alternative tax—if adopted at the House rate, is going to average this year 50 per cent—the aver-

age, not a maximum average. The income tax, in addition to that, is going to make your average tax on the ordinary mercantile, manufacturing, and miscellaneous corporations 56 per cent.

Senator JONES. Fifty-six per cent of what?

Dr. ADAMS. Of the net income.

Senator JONES. Where a well is discovered, would you consider the value of that well as net income?

Dr. ADAMS. Whether that be true or not, Senator, and that is a question that will come up for determination by you gentlemen a little later, if what I have said be true, that there is going to be a maximum for the average taxpayer of 81 or 82 per cent and an average of 56 per cent, to put a 20 per cent maximum on in lieu of that does not seem to me quite fair or right.

Senator THOMAS. The doctor is treating with the business in a general way, because it is sui generis; it is in a class by itself. That being the case, is it fair to discriminate between the corporation which discovers an oil well and drills and the individual who discovers an oil well and drills?

Dr. ADAMS. I am in harmony with Mr. Beecher on the 20 per cent limit to the surtax in the case of the individual prospector, and because I am in harmony with him in permitting the Treasury Department, in that amendment, under the relief section, to apply the average rate appertaining to representative concerns in the same industry to this class of transactions—because he has two amendments affecting the same situation—because I agree with him on both those things, I would prefer to have those things settled first, and then in places where I regretfully am compelled to differ I would like to have it postponed.

Senator PENROSE. Let us adopt what the experts agree on.

The CHAIRMAN. Let us go on with these gentlemen, and let them discuss their amendments, and then we can hear Dr. Adams afterwards.

Senator GORE. Let them designate those on which they agree.

Mr. BEECHER. I was evidently in error about Dr. Adams's agreement with respect to the proposed limitation of 20 per cent, both as to the individual surtax and as to the war-profits and excess-profits taxes on corporations. I understand that we are in agreement, however, as to the individual limitation of the surtax of 20 per cent. As to the other, with respect to corporations, I want to call attention to the fact that it is not a limitation to 20 per cent of net income in any sense. That was the proposal in some of the amendments which had been proposed here, and which were handed to me last week. It is a limitation to 20 per cent of the selling price of the property, which may be a vastly larger per cent, of course, of the net income.

In addition, it is the purpose, as I understand it, not only to encourage this production, through prospecting and development work, which we so much need, but it is the desire, in addition, to secure as much revenue as possible. As a practical matter, if you should adopt such an amendment as we have proposed, I believe the result would be to increase the revenue from taxation. If your wild-catter is to be unable, as he very commonly and usually is, to develop his property—not having the finances to do it—and he can not sell his property without paying the enormous war profits and excess-profits taxes which his peculiar situation would impose upon

him, his property lies fallow until after the war. What happens if you adopt the amendment which we propose? Twenty per cent of the selling price is immediately paid to the Government, the property at once goes into the hands of companies or individuals who have the capital to develop it, and immediately the oil or gas is produced, our needs are met, and the full war taxes and excess-profits taxes are paid by the purchaser of that property upon the production which he secures therefrom.

The fourth amendment which we propose is No. 26. That is an amendment to section 327 (b) (3), page 64, line 6. To make it intelligible I will read the start of the section:

That in the following cases the invested capital shall be determined as provided in subdivision (b) of this section: * * * where capital is a material income-producing factor, but where, because of the fact that the capital employed is in large part borrowed—

Here insert our amendment—

or consists in large part of natural deposits or resources acquired by prospecting, exploration, or discovery, and not by purchase—

The section then continuing—

or the invested capital is materially disproportionate to the net income as compared with representative corporations engaged in a like or similar trade or business.

In all of those cases "the invested capital shall be the amount which bears the same ratio to the net income of the corporation for the taxable year as the average invested capital for the taxable year of representative corporations engaged in a like or similar trade or business bears to their average net income for such year."

The purpose of this amendment is merely to enable the Treasury to apply this rule of constructive capital in the case of the wildcatter, and in determining the invested capital, to apply the same rule to him as in other cases where the income and the capital are materially disproportionate.

Senator GORE. It is the representative industry standard.

Mr. BEECHER. Yes; and, as I understand, in regard to this amendment, though perhaps not as to the precise wording, Dr. Adams is in entire agreement.

Senator SMOOT. That is your set of amendments?

Mr. BEECHER. That is the set of amendments. I have prepared a short statement in regard to the general principle of valuation. With the permission of the committee I will read this short statement.

The effect of the first amendment is to place the prospector and discoverer of oil and gas properties in the same position with respect to taxation as the purchaser of such properties. The first part of the amendment has already been adopted by this committee. That portion beginning "And provided further" provides for a valuation of wildcat properties to be used as the basis of future depletion allowance.

There is no serious practical difficulty in making the required valuation; indeed, such a valuation under the provisions of the amendment already adopted must be made with respect to such properties purchased prior to March 1, 1913.

If you make it as to those properties, of course it is even easier to make it as to properties discovered in the future.

Unless such a valuation is permitted, the prospector and discoverer would be deprived of a very large per cent of the results of his discovery. The prospecting business is of so highly speculative a character and the odds against success so great that it is necessary to allow the prospector the fruits of his success if the prospecting business is to be continued.

If consideration is given only to the case of the individual prospector who has made a success—and I would like to say that in my discussions with Dr. Adams that seems to be the basis of the error of his position, if there be an error, as it seems to me there is—it would obviously be proper that he should pay a tax, the amount of which would be dependent upon the extent of his success, but such a method of taxation would not only, as a practical matter, put an end to prospecting because the net results of success would be so incommensurate with the risk of loss, but overlooks the true facts of the situation. Where one prospector succeeds, nine others fail, and where one prospector secures a property worth ten times its cost to him, nine others lose their entire cost.

In discussing that with Mr. Requa, he said I should have made that nine hundred and ninety-nine out of a thousand.

Considering, therefore, the prospecting industry as an entire class, the profits of the successful prospector should be regarded as only the normal return on his investment.

Senators, that seems to me to be the fundamental basis, aside from the matter of expediency and the necessity of encouraging this business, which justifies such an amendment as we propose. I will repeat that, considering the prospecting industry as an entire class, the profits of the successful prospector should be regarded as only the normal return on his investment.

That is emphasized by what I am told to be the fact, that the total losses in attempting to discover such properties are as great as or greater than the returns of those who are successful.

Senator THOMAS. That is certainly true as to precious-metal mines.

Mr. BEECHER. As such, it is properly subject to the normal taxes, but there are no excess profits or war profits as yet properly subject to taxation.

This principle is carried out by our proposed amendment. From the moment when his success has been attained, the wildcatter pays the same taxes as any other industry. At that moment, the property which he has discovered is valued and he is thereafter given no special consideration in the taxation imposed upon his income therefrom.

I do not know that I should anticipate the amendment proposed by Dr. Adams, but the principle of his proposal, as I understand, is to give special consideration to this industry in the percentage of the tax imposed. I believe that while of course as a matter of expediency it helps toward the end, which is necessary, it is not as sound a theory as that which is proposed in our amendment.

We believe that the amendments which we have suggested proceed upon a more logical theory and are more in harmony with the general principles of taxation embodied in the bill than any amendment which would impose a tax upon the income resulting from prospecting and development work limited to any arbitrary percentage.

It seems to us undesirable to place any portion of the oil and natural gas industry upon a different plane, with respect to rates of taxation, than other industries. These industries are of such a character that they may properly be placed in a separate class with respect to allowances to be made to them, but we believe that when the proper allowances have been made they should then be taxed in the same manner and at the same rate as all other industries.

That is the result of the amendment which we propose. We first find the proper valuation, the proper basis of allowance, and then leave them subject to the same taxation that all other industries have to pay.

(After informal discussion the following occurred:)

Mr. BEECHER. During the time that we have been absent we have been going over this not only with Dr. Adams, but with representatives of the industry, and, although the result of our efforts has not been what many of the representatives of the industry thought was right and what should be adopted, it is my understanding that they are all in agreement.

Senator THOMAS. Mr. Dohemy and Mr. Thompson?

Mr. BEECHER. I referred more particularly to Mr. Dougherty and the committee of which he was chairman—Judge Covington, Judge Shea, and the others. It is my understanding that they are all prepared to adopt this principle.

Mr. REQUA. I think that is quite correct—that the amendments as they stand now, presented by us here, have the indorsement of the industry.

Senator THOMAS. That simplifies it very much.

Senator PENROSE. Are the amendments satisfactory to the producers whom Judge Shea represented when he appeared before the committee?

Mr. BEECHER. That is my understanding. It is now simply a question of determining as between these and the suggestions that Dr. Adams has to make.

Senator PENROSE. I thought very well of Judge Shea's argument and wanted to go along with his ideas as far as I was concerned.

Senator GORE. I think the amendments of these gentlemen and of Dr. Adams would be substantially acceptable to Judge Shea, except as to one point. The House, in section 320, allowed 10 per cent expressly for the hazard of the industry, in the discretion of the department, based on the value of the oil in the ground. The amendment offered by Mr. Beecher and Mr. Requa provides the striking of that out. Judge Shea does not think it ought to be stricken out, because if they get it under other deductions and allowances they would not get it under that. But it is a special provision inserted by the House for hazard in express terms.

Senator PENROSE. If we put that in the whole thing would be fixed up to suit them, would it?

Senator GORE. Yes.

Mr. REQUA. We believe that in making those special allowances that 10 per cent allowance for hazard has been taken care of.

The CHAIRMAN. Senator Penrose, you know we are not here fixing a bill up to suit the industry.

Senator PENROSE. I know that, but we are here to fix up a bill to get the maximum production of oil.

The CHAIRMAN. I know that, and we want to hear the views of the industry and of the department, and we want them to have our own views.

Senator PENROSE. Certainly.

The CHAIRMAN. Generally, when we fix a tax to suit the industry, we fix a tax from which the Government does not get much revenue.

Senator PENROSE. I do not agree with you in that.

Senator WILLIAMS. I suggest we now hear the other side of this. I would like to ask Dr. Adams to what parts of this he objects, why he objects, and what he proposes to substitute for it.

The CHAIRMAN. I do not think it is a question as to the extent to which Dr. Adams differs from these gentlemen, but what amendments he suggests to us as a proper treatment of these industries.

Dr. ADAMS. Mr. Chairman, it seems to me, as it seems to all of you, that there should be something done to limit the income tax upon the prospector when he discovers a property himself. Upon that I have heard no real serious difference of opinion. Whether the amendment should be made in the form suggested in No. 21 or No. 22, or whether it should be put in a separate section, as I have suggested, or tacked on to the surtax section, seems to me a matter that could be passed for the moment. I do not care.

Senator SMITH. You provide in your amendment that you should stop at 20 per cent; that you should not take more than 20 per cent of his production.

Dr. ADAMS. Both these amendments limit the surtax in the case of individual prospectors to 20 per cent of the selling price. That seems to be a fair limit, and, so far as I am concerned, I acquiesce very heartily in the result of such a check. I think that that does a very great deal. So long as the prospector is an individual, I think you have accomplished a great deal by that one thing, and have greatly reassured him. Secondly, in order to dispose of the thing upon which we are in entire agreement, you remember that the excess-profits tax contains a relief provision, which was the famous section 210 last year, which is section 327 in the House bill. Among the classes of cases in which relief could be given, Mr. Beecher, to my mind very properly, includes the case of extraordinary gains derived from the sale of property owned by the discoverer. That, again, in case the prospector or wildcatter were a corporation, would place a limit upon the amount of tax that could be imposed, which limit would be the average tax paid by producers generally, and they do not pay an unusually high tax, as I shall show you hereafter. That method of limiting the war-profits tax or excess-profits tax would line up these gentlemen who are selling their properties and realizing in one year those extraordinary gains; it would tax them just as if this profit were derived from ordinary operation, and that seems to me about enough to do at that point. For instance, if the average profits of an industry, as they were this year, were about 13 or 14 per cent—I mean of their net income when I say per cent, because that is the way we speak of it at the Treasury Department—the man who won extraordinary profits by the sale of a strike or a newly discovered property, instead of paying 60 per cent that he might have paid this year, would have his taxes automatically limited to something under 14 per cent.

That takes care of the corporation under the excess-profits tax. Mr. Beecher has suggested another amendment, out of excess of caution, to the excess-profits tax. The last one which he proposed, which is No. 27, is an amendment to section 836, and that, it seems to me, would limit the war-profits tax to 20 per cent of the selling price. That seems to me a little unnecessary, in view of this other amendment which I last described, which would limit the tax on these extraordinary gains to the average paid by ordinary producers in that industry.

Senator WILLIAMS. Representative concerns.

Dr. ADAMS. Representative concerns; but those representative concerns would be the producers operating under normal conditions, who do not pay, as I shall call to your attention in a moment, a very high average tax. There has been a good deal of misunderstanding on that point, and I wanted to have that point perfectly plain.

Senator JONES. Right there I think I get your point, but I am not sure of it. Assume a man discovers an oil well during the year and sells it, and we will assume for the time being there is 100 per cent profit. It would not be considered 100 per cent profit for the purpose of that tax, but I understand you would consider profits made by the oil industry, and that that was his profit in the oil industry. If he sold the well for a million dollars, and it cost him nothing, we will say, that whole million would be taken as profit, but the amount of tax put on that would simply be the average tax which that industry pays in the usual course of business.

Dr. ADAMS. Exactly.

Senator JONES. That is very much fairer than as I first caught your idea.

Dr. ADAMS. That is the method. I do not greatly differ from Mr. Beecher's suggestion.

Senator JONES. I do not think there would be much difference in the result as between your plan and that of Mr. Beecher.

Dr. ADAMS. I thought it did about enough, that is all.

Senator JONES. In other words, I do not believe that the average profit in the oil industry will probably exceed 20 per cent; I mean the general profits on invested capital.

Dr. ADAMS. I can tell you about that accurately in a moment.

Senator JONES. Very well.

Dr. ADAMS. I do not know whether you want me to discuss the only amendment as to which, as I said, I regretfully differed from Mr. Requa and Mr. Beecher; I say "regretfully" because our conference was so helpful and so amicable that it is a matter of real regret that I can not agree with these gentlemen on it. That is amendment No. 24. Do you want me to discuss that?

The CHAIRMAN. Yes.

Dr. ADAMS. In amendment No. 24 Mr. Beecher and Mr. Requa suggest the change of the depletion allowance. The depletion allowance which we now have is based upon cost. If a prospector goes out with an expenditure of \$15,000 and discovers a well which is worth a million, he thereafter would only be entitled to take back as depletion \$15,000. He would not be entitled to take back the million. That impresses me as a place where some correction may properly

be made and may equitably be asked. I do not think, however, that you ought to do what Mr. Beecher asks. I think it is both wrong in theory and bad and difficult administratively to handle, and does not get just the results you want. As to these great gains of the discoverer, I think they ought to be taxed. I do not think they ought to be taxed fully like other profits are taxed. I do not believe that if a man is in an industry in which he is likely to meet a lot of losses and occasionally get a big gain, we ought to neglect equitably to take account of those losses. I think they should be reckoned. We have done that, however, in that loss amendment, partially. We have done it partially in these two other amendments that I have indorsed, and I think we should do some more. But I do not believe we should say to that man, "If you have spent \$15,000 to discover this, and you discover a property worth a million, we are going to let you count it in as a million dollars," because I think that is too much. I think it is too much for much the same reason that it would be wrong to say that no speculative gain should be taxed. Some speculation is just as essential and appropriate as prospecting. Nobody proposes to tax speculative gains. On the contrary, if you will take care of this element of losses properly there is no kind of income so well subject to tax, that so deserves taxation, as these extraordinary gains of this kind.

In connection with that, you have to consider this: In the first place, there are a great many men who never get any gains to tax, in mining and prospecting. They are fellows who take "fliers," and they take most of the losses. There is another class that sustains an enormous amount of loss and gets proper recognition of that loss. Any concern such as the Standard Oil Co., that is big enough to make profits enough in one section of its business to cover up and absorb these losses, is deserving of no consideration whatsoever. They get it out. I say that not because I have the slightest antagonism in the world to the Standard Oil Co., but whenever a corporation is big enough to have steady gains along year by year, out of which it can charge any losses that it realizes here, there is no reason for special treatment. Mr. Dougherty, for instance, of the Standard Oil Co., can go out next year and spend in prospecting every dollar they have made this year, and lose it, and get full acknowledgment for it as a loss against what would otherwise be taxable income, and the thing is wiped out, accounts even.

Senator JONES. At that point, how would it do in the case of corporations to limit it to corporations engaged solely in prospecting and developing?

Dr. ADAMS. The point I wanted to make about that was this—and the only point I wanted to make, because there is a large substratum of truth, as I see it, in what Mr. Beecher said—you want to get an exact remedy for your precise trouble, and I do not think the kind of allowance that is given here hits the nail on the head. I think you will give it to people you do not want to get it, you will give it in a way you do not want to give it, and you will withhold it from some people who ought to have it. I do not want to get into a criticism of this section. It would not be perhaps fair, inasmuch as Mr. Beecher and Mr. Requa invited me to do all I could to make

it right from the technical standpoint. And yet it is, after all our work, very difficult technically. Just think of it:

That in the case of mines, oil and gas wells, discovered by the taxpayer and not acquired as the result of purchase of a proven tract or lease, where the fair market value of the property, as determined in the manner hereafter provided, is materially disproportionate to the cost.

Now, think of what that means. We have to make a decision in the case of every man every year he claims that the value of his property is materially disproportionate to the cost. We have to value it; we have to make up our minds whether it is materially disproportionate. If I am forced to do that kind of thing, if the Treasury Department is forced to do it, it ought to be in few instances. But I am afraid that pretty nearly every producer in the industry who does any discovering at all will make a claim and say, "The value of my property is disproportionate to its cost, and this is the value," and we will have to go out and check it. We have a difficult task to perform as it is, and this is a new and a difficult one, and I would like, with all we have to do, to avoid the necessity for it, if possible. Then it goes on to say:

The depletion allowance shall be based upon the fair market value of the property at the date of the discovery or at the election of the taxpayer at the conclusion of that or any subsequent year.

If he wants to take some other year, all right. That is not only exceedingly difficult administratively, so difficult that I fear for the ability of the Treasury Department to handle it successfully and fairly, but that, to my mind, does not do just what you want to do. You want to give the man—I think Mr. Beecher wants to give the man—the benefit of that question of discovery. But this gives him the benefit of depreciation. If oil becomes constantly scarcer in the future, the value of oil wells goes constantly up; these gentlemen will take thereafter the constantly rising price of the market. I do not think the values that come from the future scarcity of articles of that kind are values that ought to be recognized.

Moreover, I think the problem you have to-day, practically, from the standpoint of stimulating production, is one which is not confined to the prospector. The prospector is not the only man we have to deal with. We have large interests, with property in excess of their immediate needs, who are asked by the Government, for patriotic purposes, to develop their property more rapidly than they otherwise would, to take out the oil under this 80 per cent tax, when they would prefer to keep their oil until the tax rates went down, and we are beset with the problem of men who acquire property not by discovery, who are sitting tight on it, and not developing it. So along with your problem of dealing equitably with the prospector you have the problem of stimulating the use, development, and operation where, if people were left to their own natural economic commercial instincts, they would not stimulate it. Having that in mind, it occurred to me that if you gentlemen think this problem is important enough to do this thing I should attend to the case in this way: I should put in a provision to this effect, which is given in No. 23:

In the case of any oil or gas well brought in, or upon which operations shall have been first begun, after January first, nineteen hundred and eighteen, and for which the taxpayer shall keep and make a separate accounting, the taxes

imposed under Titles II and III of this act shall not exceed for any one of the first three calendar years during which such well is operated, forty per centum of the net income derived from such well or from the sale thereof. The provisions of subdivision (b) of this paragraph shall not apply to income received in the form of royalties, nor to any oil or gas well upon which operations shall be first begun after the close of the calendar year in which the present war with the Imperial German Government shall be terminated.

That will say this, "You gentlemen who are in doubt about opening up new wells or developing your property, if you do it at once, and get this oil out, I am going to allow this privilege to you until the close of the calendar year in which the war ceases. You shall have your tax limited to 40 per cent of your income."

It seems to me if you want to encourage, if you fear the industry is being checked, that is the logical, direct, immediate way to do it.

And I want to say one thing more why 40 per cent is taken. I think to a far greater degree than most people realize these special losses in the oil industry are absorbed year by year. I have said to you gentlemen here often that I think the oil business has a real case. I have also said that every member of the Advisory Board in the Treasury Department, including the particular expert on oil, thinks that they overstate their case and exaggerate it. I am forced to say that because that is the impression that is left upon us. The oil industry has borne a burden this year markedly less than the average manufacturing industry of this country. The average manufacturing industry of this country is paying something over 20 per cent as excess-profits taxes alone. The oil industry pays noticeably less than 13 per cent, as an average. Fifty per cent of the average manufacturing concerns are paying over 20 per cent taxes. Over 58 per cent of the oil industry is paying less than 13.25 per cent. The industry is not overburdened at the present time. Its average tax is less than the tax of the manufacturing concerns around this country, and it does not seem to me quite fair. The average, as Mr. McCoy computed from our figures, and as we computed from 11,000 cases this year, is 24.45 per cent of the net income. That is this year. On that same basis I estimate that the average tax under the war-profits tax would be over 50 per cent, somewhere around 51 per cent, and upon 600 cases that I have just newly analyzed that figure is borne out. That is 50 per cent. On top of that will go an income tax of 12 per cent, which is cut in half, because there will be only half of the income left to tax, which will make an average of 56 per cent for the average manufacturing concern. The maximum will be over 80 per cent. I have one case I computed yesterday where the income and excess-profits taxes would be 81 per cent. In the face of that it seems to me enough to do for the oil industry, if these other amendments are adopted, to place a limit of 40 per cent for both taxes.

Senator SMOOR. Should you not say under income taxes 20 per cent, and under war profits or excess profits 20 per cent, and not put it this way?

Dr. ADAMS. The income tax can hardly go above 12 per cent.

Senator SMOOR. You speak of a normal tax, then. I am speaking of an individual. If we put partnerships and individuals with corporations, then, of course, it would be all right. But this may be applied to an individual.

Dr. ADAMS. I had limited both taxes to 40 per cent. Perhaps it would be better to split it.

Senator Smoor. You ought to split it up. He would not fall under the war tax if this bill passes the way it is. It would be all right providing we consolidate and put the corporations and partnerships and individuals together, subject to the war tax and the income tax.

Dr. ADAMS. Are there individuals operating, actually?

Mr. REQUA. Oh, yes.

Dr. ADAMS. Then, perhaps, that should be done. I think perhaps you ought to hear Mr. Requa and Mr. Beecher on what I have said.

Mr. REQUA. I have just a few words to say, Mr. Chairman. I think Dr. Adams and myself are in entire accord as to the ends to be reached. I do not think we are in exact accord as to the method.

I believe it can be summed up perhaps in one sentence that Dr. Adams used when he said he thinks the great profits realized in one year in the form of extraordinary gains should be taxed. My conception of that is that it is not the great profits of one year, but it may be the profits of a lifetime compressed into a period of one year. The mining industry is entirely different from an ordinary manufacturing industry. Dr. Adams has cited the relative rates of taxation. The manufacturing industry comes out at the end of this war with its capital unimpaired. The oil industry comes out with a constant exhaustion of its capital. Our desire is to recognize the actual conditions: that is, those that exist in the West where these men are at work.

We believe that their profits should not be taxed until they have made their success and established themselves, and then that they should be subject to taxation. The risk is great; the profit for the man who wins is great. But there is a large percentage that loses.

In order to persuade the prospector to continue, we believe that there should be held out to him the right to receive the benefit from the great prize when he wins it. There is a great difference between the producing end of the oil business and the refining end, just as there is between the smelting end of the ore industry and the mining end. The West is dotted over with small mines, some of them producing a small amount of ore, others producing a large quantity. Some are showing a loss, some, perhaps, a slight gain, others a good profit. But the ore that goes to the smelter pays the smelting charge, and the smelter is constantly making a profit, because it is operating upon the ore produced by this army of small mines and large mines scattered throughout the West, who average the whole thing up.

The same condition would exist in the oil industry. The purchasers of oil, the refiners, the marketers, have a stabilized business. We are not interested in that feature of it. Our concern applies to the producing end, upon which the entire marketing situation is based. We know, and you gentlemen know equally as well, that there is no substitute for petroleum for lubrication, for use in internal combustion engines, and for illumination purposes, and for use as fuel oil. We believe that it is very necessary to assure the continuity of that flow of material, and we believe that our method will do it more surely than the method that Dr. Adams suggests. We believe it will do it with perhaps a more evenly distributed justice than the method he suggests, and we also believe that there is nothing inconsistent in asking for this valuation, inasmuch as in the first part of the measure it is provided that a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each

case, shall be allowed. There is the precedent that has been established, "the peculiar conditions in each case," and we are simply applying that theory, which I understand has already been adopted by the committee, in suggesting that the fair market value of the property may be based either at the date of the discovery or at the election of the taxpayer at some subsequent year. I think that election of the taxpayer at some subsequent year was the suggestion of Dr. Adams. It is very difficult to tell, when a property is originally discovered, what its ultimate worth may be. I know in the case of the Midway oil field in California the originally discovered well had been brought in and was producing for about a year and a half before there was any great realization as to what the real value of that oil field was, and because of the fact that the depletion must be upon the basis of the original investment, we felt that the owner would want to revalue his property at the earliest possible moment.

The whole question, Mr. Chairman, is a practical one, not of perhaps how we would like to do it, but as to how it must be done to produce the flow of crude petroleum that we must have. I confess that personally I am considerably alarmed over our increasing requirements. The production is becoming more and more difficult each year, the wells are growing deeper, it is requiring more and more capital, and I should regret very much from a practical standpoint to see any taxation applying at the source, which, if we impede it in any way, will of course be felt through the entire industry. The pipe lines, the oil refineries, all the distributing facilities are of no value unless you have the crude material to commence with, and my whole thought has been not to do anything that would in any way endanger that source, but rather to treat them liberally, to encourage them to the extent of continuing and of increasing, because I think that the necessity is quite apparent that the search for oil property must be increased, it must become more intensive if we are to find the supplies necessary to meet our annually mounting requirements.

That has been the basis of my theory, that we encourage in every way the source of the raw material, trusting to the other portions of the industry—to the pipe lines, the refineries, and the distributing end—to supply the necessary valuations upon which to levy the taxes that are necessary.

Mr. BEECHER. Mr. Chairman, in reference to No. 27, which is the amendment which places a 20 per cent limit upon the tax with respect to corporations under the excess-profits and war-profits taxes, Dr. Adams says that he figures that under the section which enables the Treasury to give relief in special cases the tax would be only about 14 per cent in any event, and therefore the amendment which we propose, No. 27, would not be necessary, because that limits it to 20 per cent; and if it is only 14 anyhow, there is no use in having it.

Dr. Adams. I have no doubt, is correct in his conclusion as to what the per cent would be. But why not adopt No. 27? Because, if he is right, it will not take anything away from the Government, but it will have the effect of reassuring a class of men who in general may be described as being "from Missouri." The man who is about to engage in this highly hazardous business, with what appears on the statute books to be a tax of about 72 per cent upon his success, is then told, "Look at this relief section. Under this the Treasury, after

you have made your success, will make a calculation which will make the tax only 14 per cent." He is very apt to say, "I can not see that, and I want to know." Why not let him know by having this provision, which Dr. Adams is ready to approve with respect to the individual, applied to the corporation? It may be unnecessary, but it certainly is harmless, and it reassures this small prospector, who ought to be reassured before he goes in the business.

I had an experience with attempting to reassure that class of men. When I came into the Oil Division last spring I was told that this condition existed and that prospecting was rapidly dying. With the assistance of Dr. Adams's committee I prepared a statement which showed the wildcatter that his tax was not apt to be more than 20 to 25 per cent.

Senator SMITH. This would make it 12 and 20.

Mr. REQUA. No: the amendment we propose would make it 20 per cent. Dr. Adams figures that the tax would not be more than 14 per cent, even without my amendment.

Mr. BEECHER. That statement was circulated, but, as far as I can find, it had no effect except in certain sections where it was published as a ruling by the Oil Division that no tax would be imposed upon the wildcatter.

The CHAIRMAN. The 20 per cent has reference to the proposed law?

Mr. REQUA. Precisely.

The CHAIRMAN. Dr. Adams, when you were speaking about 13 per cent, you were speaking with reference to the average under the present law?

Mr. VALENTINE. Mr. Chairman, as Dr. Adams is out, I will say that that is true—the 13 per cent was the rate under the 1917 law.

Mr. BEECHER. As I understood him, that relief section applied to the returns of the oil industry generally and brings about a tax upon the wildcatter of only about 14 per cent.

Senator SMOOT. No: had done in the past.

Mr. BEECHER. Then I misunderstood him in regard to that. But, at all events, it seems to me if we are going to adopt this 20 per cent in regard to the individual, there is no basis upon which we can make an exception and not apply it to the corporation.

The CHAIRMAN. This particular amendment we are discussing now has reference to the case you spoke of a little while ago, of the discoverer being possibly unable to develop his property and having to sell it in order that it may be developed and used, and in case he sells the property for those reasons at a big price, you want to limit the tax upon the profits made by him in that sale to 20 per cent.

Mr. BEECHER. Not precisely, Mr. Chairman. I want to limit the tax to 20 per cent of the selling price, not of his profits.

The CHAIRMAN. Twenty per cent of the selling price?

Mr. BEECHER. Yes.

Senator SMITH. You take 20 per cent of what he gets for it regardless of what it costs him?

Mr. BEECHER. Regardless of what it costs him to get it. That is the limit I would place upon the taxation.

The CHAIRMAN. Which was to meet that sort of a case?

Mr. BEECHER. Exactly.

The CHAIRMAN. Where he was unable himself to develop the mine, and where he must sell it in order to secure its development and the output that the Government is now so much in need of?

Mr. BEECHER. Quite right. A double result would follow if a tax is made so that he can reasonably sell it: First, we would get the development we need and the oil produced; and, secondly, the Government would get a tax from the man who bought it and produced the oil.

Senator SMITH. You did not propose to limit that to the case of a man who could not go on and work it himself, but could sell, to tax him not more than 20 per cent of what he gets for the property?

Mr. BEECHER. No.

The CHAIRMAN. Now, I understand Dr. Adams is arguing for the committee that under the present law, in the case of a sale of that sort, the total tax would be about 13 per cent.

Mr. BEECHER. Yes.

The CHAIRMAN. If that tax is doubled in this bill it would make 26 per cent. So that the difference between yours and Dr. Adams's proposition is about 6 per cent. Is that correct?

Mr. BEECHER. Correct. It is extremely slight to the Government with regard to the amount of taxation, but it is of great importance in fixing a fast and certain basis of taxation in advance.

Senator SMITH. It is calculated, according to your opinion, to give the Government a great deal more revenue, because there will be more prospecting done?

Mr. BEECHER. Yes.

The CHAIRMAN. Your idea is that the man should be informed how much he has to pay to the Government out of this price that he receives from this sale?

Mr. BEECHER. Yes.

The CHAIRMAN. If you fix the tax at such a per cent of the selling price he knows that definitely. But if it has to be ascertained upon the basis of rendering an opinion of that sort, it is indeterminate so far as he is concerned, and he does not know what it is.

Mr. BEECHER. He does not know where he stands, and in general, the big companies, whom we are not seeking to assist, who will take care of themselves, are pretty apt to know fairly well, but the great mass of prospectors over the country, the small companies and the small men, do not know, and they have not the means of finding out, if anybody else knows.

The CHAIRMAN. The fact that the average tax paid by the industry is 26 per cent does not help him at all, because he does not know whether he is going to be below the average or above the average?

Mr. BEECHER. No. Furthermore, even upon Dr. Adams's figures, it seems to me that this 20 per cent of the selling price is equally favorable to the Government, because his figures are on net income. It is 20 per cent of the selling price.

Senator SMOOT. Mr. Chairman, of course, I may have misunderstood Dr. Adams, but I do not think this proposition is at all analogous to that of Dr. Adams. This is for the sale of the property, and it is not to exceed 20 per cent of the selling price of the property. The figures Dr. Adams gave us were the average taxes col-

lected upon income. There are two different propositions entirely there. One is that the income from the producers of oil in this country, under the law of 1917, produced 13 or 14 per cent. If a case like this had happened under existing law, it may have been a great deal more than 13 per cent, and would have been a great deal more than 13 per cent. It would depend on what profit he made—that is, over and above the cost. But the average of the business, as a whole, was 13 per cent. This is 20 per cent on the selling price. That is different.

Mr. BEECHER. Mr. Chairman, as to the main amendment, in regard to depletion allowance. Dr. Adams says that the big companies, the Standard group, and so forth, are able to go out and prospect, and those costs and losses they sustain in prospecting are allowed as a deduction, and therefore—and I think it is quite true—they do not need this proposed amendment of ours. But I am not seeking it for the benefit of those companies. As I said the other day, I believe if you leave the law as it is in the House bill, a certain amount of prospecting will go ahead just the same, but it will be done only by those big companies, who, by reason of the size of their capital, the size of their income, the diversity of their operations, and their ability practically to insure themselves by the number of operations which they undertake, are able to carry on that business. But what we are particularly presenting in these amendments is a plea for the small wildcatter, the small man, the individual prospector, either as a company or a natural person, who has heretofore done this business. We want him to continue.

The CHAIRMAN. You are speaking about the wildcatter and the man who has just discovered a property and has not developed it. Under this language, in the case of a sale, would he only be subject to this 20 per cent tax on the selling price?

Mr. BEECHER: He would be subject to that on the selling price; yes.

The CHAIRMAN. Why should he get the benefit of that? Why do you not limit that to the sale of a mine that has not been developed, if you want to cover the case you are talking about? Why give the man who has already developed his mine, got it into operation, the benefit of this, in case he sells it and gets a big price for it?

Mr. BEECHER. I think it would be impossible to provide in the tax that the circumstances of the individual should be examined to determine whether or not he was financially able to develop his property, and impose the tax in the one case but not in the other. Furthermore, even in the case of properties where the prospector has gone ahead to develop, in innumerable cases he becomes, particularly in these days, financially unable to continue his development, and it is equally undesirable, from the point of view of the need of production, to have properties which have been partially developed remain in that condition. We want to make every bit of oil property producing to the fullest extent in the shortest possible time.

Senator SMOOT. Mr. Beecher, years ago it was the policy of the Standard Oil Co. to purchase properties, not to prospect. Have they changed that of late?

Mr. BEECHER. I think not in general.

Senator GORE. They purchase in well developed territory, but they do not wildcat.

Mr. BEECHER. I did not mean to intimate that they were now doing a large amount of wildcatting, but if we leave the law as it passed the House the wildcatting can only be done by that class of corporations.

Senator JONES. Mr. Beecher, what is the administrative difficulty of appraising these properties at the behest of the applicant?

Mr. BEECHER. I was just coming to that, Senator.

Senator JONES. I would like to hear you on that.

Mr. BEECHER. Dr. Adams referred to the administrative difficulties. Of course, he is far more competent to speak of that question than I am. But I only want to call your attention to the fact that this same valuation which we seek to have made is, by the amendment which you have already adopted, required to be made with respect to properties acquired prior to March 1, 1913. There would be very few cases, indeed, where it would be necessary, under the additional amendment which we have proposed, to go back as far as that. As to any administrative difficulty arising from the making of the valuation at different times, I am at a loss to understand how it matters. In any case the department is compelled to examine the circumstances of the particular property in making its valuation, and that examination would present neither more nor less difficulties if it was to be made of all wells as of January 1 of a year or at different periods of a year with respect to different wells.

So far as the language here used is concerned, as to the time when the valuation is to be made, I confess that it seems to me not as clearly drawn as it might be. As I originally drafted it, I provided merely that the depletion allowance should be based upon the fair market value of the property, leaving it to the Treasury to determine, by rules and regulations, how that valuation should be made, and when it should be made. I felt they could say that a reasonable period after the discovery would be necessary in order that they could arrive at what would be a fair valuation of the entire property, because obviously the instant you strike oil, nobody can then and there say this property is worth so much. An amount of development work is absolutely necessary, and I felt the industry was safe if it were left to the Treasury to determine when and how that valuation should be made.

In discussing it with Dr. Adams, he said he thought it was desirable to specify the precise time when the valuation should take place, and in an effort to carry out that idea I inserted the provision that it should be made at the date of the discovery, or at the conclusion of that or any subsequent year at the election of the taxpayer.

Senator JONES. Instead of saying that the valuation shall be made at that date, why not say "as of that date"; or, in other words, fix the date for the valuation, but permitting the actual work of making the valuation to be done at some other time?

Mr. BEECHER. I think that would undoubtedly relieve the situation.

Senator THOMAS. If we should enact this No. 24, could the owner of a mine elect, for his taxes for 1918, the date of the discovery, and then for his taxes for 1920 some subsequent year?

Mr. BEECHER. No; there would be but one valuation.

Senator THOMAS. And the election once made is final?

Mr. BEECHER. Is final. Up to the time when he has a valuation, he has a depletion allowance and pays his taxes accordingly upon the basis of his cost.

Senator THOMAS. He can not shift his date with each succeeding taxing year?

Mr. BEECHER. Absolutely not.

Senator GORE. He can not afford to wait very long, because he is paying on the basis of cost in the meantime.

Mr. BEECHER. Yes; I think that is the answer to Dr. Adams's suggestion, that it would afford him an opportunity to speculate on the rise of mineral or oil properties. It would be the most expensive speculation a man ever engaged in if he did.

I hope the committee will not be so much affected by the precise language with respect to when and how the valuation is to be made. What I principally want to present is the plan, the theory, which is embodied in our amendments, and I do not intend to champion the precise language used.

The two theories, Dr. Adams's and our own, are as wide apart as the poles. Our theory is that the increase of value which takes place upon the discovery is only with relation to the wildcatting business, a normal profit on the business. From that time on the wildcatting should bear precisely the same tax as any other industry. It seems to me not only bad in principle, but a dangerous departure, for this committee to attempt to lay down different rates of taxation for different industries. Let them apply, where the circumstances are different, different methods of valuation, different allowances. Let them take account of the fact not only of the highly speculative character of the industry, but of the fact that these are wasting industries, and hence in no respect comparable with the manufacturing or the ordinary industries that come under that act, and let them accordingly fix upon a proper basis of valuation, depletion allowance, and the like. Having done that, it is our suggestion that they be given no discrimination in their favor with respect to the rate of taxation which is to be imposed upon them.

The CHAIRMAN. I want to see if I understood you a little while ago. I am afraid either you misunderstood me or I misunderstood you. I asked you this question, if your No. 27 amendment, making the tax 20 per cent of the selling price, would not apply not only to a recent discovery and development of a mine or oil or gas well, but would likewise apply to a mine or oil or gas well which was acquired, not by purchase, but by discovery in the past, many years ago, and was now and had been for a considerable time in actual operation, with plenty of capital behind it? I understood you to say that it would.

Mr. BEECHER. Yes, sir.

The CHAIRMAN. That it made no difference when the well was discovered, this would apply, although it was discovered long years ago, and has been for a long time in operation with plenty of capital back of it?

Mr. BEECHER. That is true.

The CHAIRMAN. I thought that was what you meant.

Mr. BEECHER. May I just say in regard to that, that of course the tax upon the selling price of a property like that would be a mere trifle, and such instances would be extremely rare.

Senator SMITH. If, in line 4, you put "since January 1, 1918," you would obviate the difficulties suggested by the chairman of the committee, and apply it to encouragement of future development.

Mr. BEECHER. That is true; but you would not cover a great many cases. Where, first, properties were discovered before that time and nothing has been done with them; and, second, they were discovered and now they can not go ahead, and they can not get the capital.

(Whereupon, after informal discussion by the committee, at 4.50 o'clock p. m., the hearing was concluded and the committee adjourned.)