

ment has been in the hands of men who, while they could not stamp out liberty in England itself, have been able to control the foreign policy of the British Empire and to make it a policy of force and imperialism. Ireland has fought England through the centuries because the spirit of independence planted in the hearts of that heroic people before the first invasion of their country has never been allowed to die.

The British policy in Ireland deserves the condemnation of the world. It is without warrant in law or morals. It is founded on falsehood and greed and, unless arrested, it can come to no issue except the extermination of the Irish people. The sympathy of the American people is and should be with Ireland in this struggle. I am deeply concerned to know what we can do to make that sympathy effective.

There is only one way in which we can effectively express our sympathy for Ireland and that is by our vote on this resolution.

This Congress will not close without a test vote upon the issue of recognition of Irish independence. On that day no Senator or Representative who respects the principles which made us a nation will vote to deny Ireland's claim to freedom.

There is no mistaking the issue. It is the irrepressible, irreconcilable conflict between imperialism and representative democracy. Born of greed and tyranny, imperialism is the deadliest enemy of self-government.

On this issue every American citizen—every lover of liberty in the wide world—should stand with the Irish people for the independence of Ireland.

If no other Senator desires to speak on the joint resolution at this time, I ask that it be referred to the Committee on Foreign Relations.

The VICE PRESIDENT. Is there objection? The Chair hears none, and it will be so referred.

SUBMARINE CABLES.

Mr. KELLOGG. Mr. President, I move that the Senate proceed to the consideration of the bill (S. 535) to prevent the unauthorized landing of submarine cables in the United States.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill, which had been reported from the Committee on Interstate Commerce with amendments.

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

The VICE PRESIDENT. The Secretary will call the roll.

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

| | | | |
|----------------|----------------|-------------|--------------|
| Ashurst | Hale | McKinley | Simmons |
| Ball | Harris | McNary | Smoot |
| Broussard | Harrison | Moses | Spencer |
| Bursum | Jones, N. Mex. | Nelson | Stanfield |
| Calder | Jones, Wash. | New | Stanley |
| Cameron | Kellogg | Norris | Sterling |
| Caraway | Kendrick | Oddie | Sutherland |
| Coit | Keyou | Overman | Trammell |
| Culberson | Keyes | Philpps | Underwood |
| Cummins | King | Pittman | Walsh, Mass. |
| Curtis | Knox | Polindexter | Walsh, Mont. |
| Dial | Ladd | Ransdell | Warren |
| Dillingham | La Follette | Reed | Watson, Ga. |
| Ernst | Lenroot | Robinson | Watson, Ind. |
| Fletcher | Lodge | Sheppard | Wills |
| Frellinghuysen | McCumber | Shields | Wolcott |
| Gooding | McKellar | Shortridge | |

The VICE PRESIDENT. Sixty-seven Senators having answered to their names, a quorum is present.

Mr. KELLOGG. Mr. President, this is a bill to prevent the unauthorized landing of cables in the United States or any of the possessions of the United States, to authorize the President to issue licenses for such cable landings or to issue such licenses upon conditions. The bill was introduced in the spring of 1920, and at the beginning of the last session of Congress the Interstate Commerce Committee authorized a subcommittee to hold hearings and investigate the subject and to report a bill to the Senate. Extensive hearings were held, which have been printed. The facts are simple, and I think in a very few moments I can make an explanation of the bill, and if any Senators then desire to ask questions I shall be very glad to answer to the extent of my ability.

The power to issue licenses for the landing of cables has been exercised by the President for more than 50 years, through the Secretary of State or Attorney General. It was exercised by Secretaries of State Fish, Evarts, Blaine, Bayard, and Root, and by Attorneys General Griggs, Knox, Wickersham, and McReynolds. During the administration of President Cleveland two Secretaries, Secretary Gresham and Secretary Olney, declined to issue licenses for want of power, claiming that the President had no implied power as the Chief Executive of the Nation to issue such licenses or to prevent cable landings, but

since that time the power has been exercised by acquiescence of cable companies and other officials.

The power is now questioned by the Western Union Telegraph Co. on two grounds: First, that the power to regulate commerce is by the Constitution conferred upon the Congress, and that until the Congress acts and confers that power upon some administrative board or executive the power can not be exercised by any officer of the United States.

Second, that the Western Union Co. having accepted the act of 1866—which I shall not stop to explain, as I believe Senators generally understand it—granting the right to telegraph companies to lay their wires along the post roads of the United States and under the waters of the United States, the Congress had acted, and therefore the Western Union, until Congress should otherwise provide, had a right to lay its cables.

It is also claimed that the President has no such implied power, because the Congress has conferred upon the Interstate Commerce Commission various powers in relation to the regulation of cables, telegraphs, and telephones, and therefore it is an exercise of power which excludes any presumption that the President has an independent power as the Chief Executive of the Nation.

The United States court in New York has held that while the executive officers of the Government have exercised the power for many years, based upon what is known as the Midwest Oil decision, that it may be, in the absence of any action by Congress at all, the President would have that implied power at least as to foreign cables. But the court concludes that the Congress having assumed jurisdiction over the subject of cables, therefore the President has no such power.

We invited before the committee the chief officers of the cable companies, Mr. Carlton and other officials of the Western Union, Mr. Mackay and some other officials of the Commercial Cable Co., and Mr. Root and other officials of what is known as the All-American Cable Co., which has lines of cable to South America. They were all heard. They all admitted the necessity for—in fact, recommended—some such legislation. The Western Union Co. recommended that the power be conferred upon the Interstate Commerce Commission. The committee did not see fit to do so, for this reason: This power is in all countries, so far as I know, an executive power, which has been exercised by Great Britain, France, and other countries; second, it is an executive power which has been exercised here; third, it is necessary in nearly all cases, especially of the landing of cables running to foreign countries, that negotiations take place between this Government and foreign Governments as to conditions upon which such cables will be allowed to land in foreign countries and the conditions upon which they will be allowed to operate. It seemed impossible, therefore, to confer this power upon the Interstate Commerce Commission, but by the amendments reported to the bill the Senate will see that we have not taken from the Interstate Commerce Commission any of the powers heretofore granted to it.

I do not think it is necessary for me to go into the origin of the contest between the Government and the Western Union Co. It grew out of this situation: The Western Co. is a British company running from Great Britain through the Azores to Brazil, and from Brazil into Argentina and across the continent to Chile.

The Western Co. has a monopoly in Brazil until 1933; that is, a monopoly in laying cables between all ports in Brazil, which is necessarily a monopoly, because no other foreign company can afford to build an independent line to each separate port in Brazil.

The Western Union Co. undertook to lay a cable from Miami, Fla., to the Barbados Island, where it was to meet the line of the British company, which was to lay a cable from Brazil to the Barbados, making a through line from the United States to Brazil. Because the Western Co., the British company, had a monopoly in Brazil and would not give up the monopoly, therefore, the State Department refused a license to the Western Union Co. to connect with them.

I am not going to discuss the merits of the controversy which arose, although it will be seen by the testimony that we have not refused landing licenses to American companies because they connected with other companies which had monopolies in foreign countries over which our cable companies and our Government had no control. Notably the Commercial Cable Co., which reaches China and Japan, were compelled to make terms with a company organized in Holland, I believe, but owned by the British and the Dutch and having a monopoly in China. The All-American Cable Line, which runs from New York to Cuba, from Cuba to Colon and Panama, down the west coast of South America, and then across to Buenos Aires, with a line up to Brazil, has a monopoly running from 3 to 10 years in various

countries on the western coast of South America. The All-American Cable Co. also has a line crossing Mexico to the Pacific and connecting with its lines in South America. That company was permitted to land.

There have been several American lines, and perhaps some foreign lines, which have cables in this country which have not heretofore taken out a license, but which are operating under permissive grants and so forth, and not regular licenses fixing any terms or conditions.

The French company has two lines of cable to New York. It also bodily took one of the German lines, cut the end connecting with New York, and attached it to its line to New York, and is now operating its line between the United States and France. France does not grant to the American companies the same rights which French companies enjoy in the United States. For instance, an American cable running to France can only connect at the shore with the French post-office telegraph lines and must do business over those lines as a separate and independent concern, while the British lease to our cable companies the lines from the shore to London and permit the officers of American companies to run the offices, to have exclusive use of land lines, and to treat them as their own; so one may take a message in London to an American cable company and send it to the United States without handling by a foreign company. That is not permitted in France. We believe the Government here should have the power to insist that American cable companies shall have the same rights in foreign countries as foreign cable companies have in the United States.

I am not going into the question of the importance of the development of our cables and radios. The committee also took a large amount of testimony on the subject of radios, but that bill is not before the Senate. However, it developed in the hearings that there is a great dearth of American news in South America, in China, and in Japan. The committee summoned before it the general manager of the Associated Press, the general manager of the United Press, and the general manager of the Universal News Service. I shall not take the time of the Senate to explain the details of their testimony, but it shows a most pressing need for cable and radio communication with all parts of the world and especially with South America.

I should like to call the attention of the Senate to a letter written to me by the American manager of La Prensa, which is the largest paper in South America, having a daily circulation of 220,000. With the permission of the Senate, I send the letter to the desk and ask that it be read.

Mr. KENYON. Where is the paper published?

Mr. KELLOGG. The paper is published in Buenos Aires. I should like to have the letter read, except the postscript at the end.

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

The reading clerk read as follows:

LA PRENSA,
Buenos Aires, January 28, 1921.

HON. FRANK B. KELLOGG,
Chairman Subcommittee of the
Senate Interstate Commerce Committee,
Washington, D. C.

DEAR SIR: I would request that you call to the attention of the subcommittee the very inadequate cable service prevailing at present between the United States and South America.

La Prensa, the most influential newspaper in Latin America, having an average daily circulation of 220,000 copies, receives such a limited amount of news from the United States these days that they are beginning to question our sincerity in furthering trade relations between the United States and South America.

Very frequently, I am informed, that for some reason beyond the control of the All-American Cable Co. it is impossible for this cable company to accept any words for that particular day. Other days I am limited to 20, 30, 40, and so on upward to 100, with an outside limit of 300 words, and when it is considered that for many years it was customary for this office to send to La Prensa an average of 4,000 words daily it becomes apparent that this limited service is of little value to a newspaper with the circulation of La Prensa. Just a few market reports is the sum total of my service.

For more than 20 years prior to January 1, 1920, all European news for La Prensa was sent via London, New York, Buenos Aires; therefore, the news that was passed on to South America went through my office under my direct supervision, and I was very careful to see that no news passed on that might in any way be construed to reflect on our business methods or conflict with our policy to further pleasant relations between the two Americas. This service, due to delays when relayed from the United States, is now sent direct from London to Buenos Aires.

I am often in receipt of information of great value to the buyers of merchandise or other products from the United States, such as the large exporters or merchants here in the States desire to inform the buyers in South American countries the importance of making immediate purchases, which would result in a big saving to them, for often the replacement cost is greater than the prevailing prices, but due to the limited service it is impossible to send these advices. This lack of service might, and probably does, militate against the chances of our exporters developing trade with South America, for we must consider that the representatives from foreign countries are not hampered in their business dealings with the South American countries. As we have in the

United States to-day a need for an outlet for our surplus production, I consider it vitally important that we have a service capable of handling a sufficient number of words to cover at least the most important news—news that should promote a better understanding between the two countries.

I have been informed that there are ways and means of supplementing the cable service to South America, but for some reason on the part of our Government rights are not granted to improve the present inadequate service.

Please bear in mind that the service now going direct to South America from London would in all probabilities pass through my hands for revision.

Thanking you for any steps you may take in this matter, I am,

Very truly, yours,

ROBERT R. ROBERTS.

Mr. FLETCHER. Mr. President, may I interrupt the Senator?

The VICE PRESIDENT. Does the Senator from Minnesota yield to the Senator from Florida?

Mr. KELLOGG. I yield.

Mr. FLETCHER. Section 6 of the bill reads:

That no vested right shall accrue to any Government, person, or corporation under the terms of this act that may not be changed, modified, or amended by the Congress.

That would seem to leave it possible for vested rights to be obtained subject only to being modified or changed. The question I should like to ask the Senator is whether or not he would be willing to strike out the word "vested" in line 14, and insert the word "rescinded" before the word "changed" in line 16, so that it would read:

That no right shall accrue to any Government, person, or corporation under the terms of this act that may not be rescinded, changed, modified, or amended by the Congress.

Mr. KELLOGG. I do not think I shall have any objection to that if the Senator will let it go until I reach that section, as there are various committee amendments that I should like to take up.

Mr. President, one more word about the subject of news, and it will show the great importance of this Government exercising the greatest possible power to encourage American cable and American radio companies to extend their facilities to foreign countries.

The press associations of the United States are practically the only independent, unsubsidized associations in the world. The Reuter, which is a British concern, is said to be subsidized, and the testimony shows that the Havas, of France, is also. Formerly the Wolff, of Germany, as everybody knows, was a subsidized association; and after the news which we had to send to South America had gone through the Reuter or the Havas or the Wolff agency, one would never know that it originated in the United States.

It is of the utmost importance, not only that these countries may know the United States, its institutions, its commerce, its commercial associations, but that they may know its Government, that we should have news agencies that give them what they demand in South America. Every agency testified that it wanted facilities for four or five thousand words a day for the daily newspapers in South America, and could practically get nothing. The same situation exists in China and Japan.

I will say this for the American press associations: They are the most independent and fairest of any associations in the world in sending American news or any news. They are making great strides and great efforts to extend their service to other countries, especially those countries in which we have such a deep interest as we have in the South American countries, and they need all the cable and radio facilities and all the encouragement the Government can give them. I hope that the Congress will see fit in the near future to pass a radio bill, a subject to which I have given a good deal of attention.

It does seem to me, however, as that power is now being questioned, that it must rest in some department of the Government, and I know of no place more appropriate than in the President. He can then call upon the Interstate Commerce Commission, upon the Attorney General, or upon the Secretary of State—who would be the most likely officer to exercise the power under the President—and can grant licenses, as he has in the past, upon conditions which will protect the American Government and the American people and the news service of this country.

After the bill was reported to the Senate a further hearing was asked by a certain cable company, and the Secretary of State also had given very careful consideration to it. Mr. Hughes suggested some amendments, which the committee adopted, one of which has since been changed. If the bill may be read for amendment, I will indicate the amendments as we proceed and the suggestions which I should like to make for further amendment.

Mr. ROBINSON. Mr. President—

Mr. KELLOGG. I yield to the Senator from Arkansas.

Mr. ROBINSON. I should like to ask the Senator from Minnesota a question concerning section 2.

Mr. KELLOGG. Will the Senator wait until we reach that section. I should like to take up section 1 first.

Mr. ROBINSON. Yes; if it suits the convenience of the Senator to do so.

Mr. KELLOGG. I should be glad if section 1 might be read for amendments. I have one additional amendment to suggest.

The VICE PRESIDENT. The Secretary will read as requested.

The READING CLERK. Section 1, with the amendments, reads as follows:

As it enacted, etc. That no person shall land or operate in the United States any submarine cable directly or indirectly connecting the United States with any foreign country, or connecting one portion of the United States with any other portion thereof, unless a written license to land or operate such cable has been issued by the President of the United States: *Provided, however,* That any cable now laid within the United States without a license granted by the President may continue to operate without such license for a period of 30 days from the date of the approval of this act.

Mr. KELLOGG. I ask to perfect the last amendment by inserting "90 days" instead of "30 days." Some of the companies which have cables which have not obtained licenses contend that 30 days is too short a time, and after discussing the matter with the Secretary of State, he thought that 90 days would be fair; and I therefore ask permission to insert "90 days" in lieu of "30 days."

The VICE PRESIDENT. Without objection, it will be so ordered.

Mr. ROBINSON. Mr. President, during the consideration of the amendments suggested by the Senator from Minnesota, I should like to ask the Senator a question or two.

Mr. KELLOGG. I shall be very glad to answer them.

Mr. ROBINSON. Is it intended, in the event that the President shall fix the terms and conditions respecting the licenses to be issued to those who are already operating cables in the United States connected with foreign countries, to which those countries may not agree, that then they must suspend operations?

Mr. KELLOGG. The President could only enforce that provision in the courts, as the Senator will see from the section which provides for enforcement.

Mr. ROBINSON. That, in my opinion, does not answer the question that I asked. My question was not directed to the method of procedure.

Mr. KELLOGG. It would be necessary for them to suspend operations or comply with the conditions.

Mr. ROBINSON. Under the amendment which the committee has reported, even as modified by the amendment now suggested by the Senator, the President can prescribe any terms or conditions and make them applicable to cables that are already operating in the United States; and if the companies operating them decline to accept those terms and conditions, then by a proceeding in court they can be denied the privilege of further operation.

Mr. KELLOGG. Yes. Let me give the Senator an illustration. Take the French company, which has never complied with its license. Suppose the French company continued to refuse to allow American companies to have the same rights in France that they have in the United States. The President could bring an injunction, if they refused to suspend, to enjoin them until they did comply. I see no other way of enforcing it.

Mr. ROBINSON. Has the Senator considered the legal question involved in connection with this amendment, as to whether it is within the power of Congress to enact this amendment?

Mr. KELLOGG. I do not think there is any doubt about it. I have given it very careful consideration. I think Congress may authorize the Executive to prohibit the landing of any foreign cables or any cables on our shores, if it sees fit.

Mr. ROBINSON. But this question and this amendment apply to cables that have already been landed and to cases where rights may have vested.

Mr. KELLOGG. Yes; and that is exactly the power that the British Government exercised, and they required our cable companies to take out new licenses.

Mr. ROBINSON. But, if the Senator will pardon me, I am not speaking about the power of the British Government or the exercise of power under the British constitution, and I am not antagonizing the Senator; I am asking for information. I am asking if the Senate committee reporting this bill considered the question as to the power of Congress to deny to a cable company already landed and already operating under certain terms and conditions the right to continue to operate in the future?

Mr. KELLOGG. Yes; I think there is no doubt about the power.

Mr. ROBINSON. The Senator, then, is satisfied as to that proposition?

Mr. KELLOGG. I am satisfied.

Mr. ROBINSON. Clearly, I think, in the interest of the Government and the preservation of our foreign relations, it is necessary to regulate the operation of these cables; and I presume the committee reached the conclusion that it could be best done through the instrumentality of the President, who has charge of our foreign relations rather than through some other agency, as, for instance, the Interstate Commerce Commission.

Mr. KELLOGG. That was the opinion of the committee, and we gave very careful consideration to that subject.

Mr. FLETCHER. Mr. President, in order to have the record straight, I presume the Senator means to ask unanimous consent that the formal reading of the bill be dispensed with, and that it be read for committee amendments first.

Mr. KELLOGG. Yes; that was the intention. I thank the Senator.

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

Mr. FLETCHER. Then it is in order to consider the amendments of the committee first. I suggest that they ought to be taken up in their order, beginning with line 3.

Mr. KELLOGG. I should like to ask if there is any objection to the change of the amendment as suggested by me?

The VICE PRESIDENT. The amendment to the amendment was agreed to without objection.

Mr. KELLOGG. Is the amendment itself now agreed to?

Mr. ROBINSON. The Senator from Florida has just called the attention of the Senator from Minnesota to the fact that there is a previous amendment that has not been formally disposed of. The words "or operate," in line 3, constitute a committee amendment, which has been overlooked.

Mr. KELLOGG. I was under the impression that that had been disposed of as we passed along.

The VICE PRESIDENT. The amendment will be stated.

The READING CLERK. The first amendment offered by the committee is, on page 1, line 3, after the word "land," to insert the words "or operate."

The amendment was agreed to.

The READING CLERK. On page 1, line 7, after the word "land," it is proposed to insert the words "or operate."

The amendment was agreed to.

The READING CLERK. On page 1, line 8, after the words "United States," it is proposed to insert a colon and the following proviso:

Provided, however, That any cable now laid within the United States without a license granted by the President may continue to operate without such license for a period of 90 days from the date of the approval of this act.

Mr. KING. Mr. President, before that amendment is agreed to I should like to ask the chairman of the committee, as well as the Senator from Arkansas, what disposition was made of the suggestion made by the Senator from Arkansas with respect to the power of the President to prohibit persons who are now operating from continuing to operate unless they receive a license from the President of the United States?

Mr. KELLOGG. I gave the opinion of the chairman of the committee that the Congress had that power.

Mr. ROBINSON and Mr. CUMMINS addressed the Chair.

Mr. KING. If I may be pardoned, I was not questioning the power, and yet it seems to me that there may be a serious question as to the power of Congress to do that; but it was the question of policy or expediency to which I was addressing myself and the justice of the question.

Mr. ROBINSON. Mr. President, with the indulgence of the Senator from Minnesota and the Senator from Iowa, I will state that my question related to the power of Congress to enact this amendment. The Senator from Minnesota expressed the opinion that it had the power, and stated that after an investigation made by the committee the committee had reached that conclusion. The Senator from Iowa [Mr. CUMMINS] has just made to me a statement which I trust he will repeat to the Senate, which I believe makes clear the fact that the Congress has the power to adopt the amendment.

Mr. KELLOGG. I shall be very glad to hear from the Senator from Iowa.

Mr. CUMMINS. Mr. President, I am sure the suggestion that I have to make will be in harmony with the view of the Senator from Minnesota.

Congress has never granted to any person or any officer the right to make a contract with a foreign cable company or with a domestic cable company with respect to landing upon our shores; and, as I look at it, these cable companies that already have landed upon American soil and are operating have no vested right and can have none, for they have not entered upon

their enterprise under any agreement, expressed or implied, but simply a license.

I have no doubt whatever about our right to confer upon the President the authority to terminate this license whenever he sees fit to exercise it.

Mr. KING. I concede that right with respect to foreign corporations or to aliens. But take the case of an American citizen or an American corporation, both of which, say, have been operating a cable for a number of years, without question, without any concession from the Government or any State other than the chart of power upon the part of the corporation. What does the Senator say as to the power of the Federal Government to deny them the right to continue to operate?

Mr. CUMMINS. It might be very unjust and it might be very unwise, and I take it that the President would not act either unjustly or unwise. But my reply with regard to the domestic company is precisely the same as it is with respect to a foreign company. These companies are using their privilege as sovereigns.

Mr. KING. Does the Senator think that domestic corporations and American citizens should be subjected to the same regulation as foreign corporations?

Mr. CUMMINS. Naturally, we ought to be more solicitous about protecting the rights, if they are rights, of a domestic company than a foreign company; although so far as the morals of it are concerned I think there is no difference.

Mr. KELLOGG. I will say to the Senator from Utah I believe there is only one foreign cable now landing in the United States, and that is the French cable, and they ought to be compelled to give the American companies the same rights in France that the French company enjoys here.

Mr. KING. I assent to the proposition just made by the Senator from Minnesota.

Mr. KELLOGG. The other principal companies, like the Commercial and the Western Union and the All-American Co., have received licenses from the President. If he had no authority to give them, this will confirm his authority. There is not any disposition, as far as I know, to interfere with them, but Congress ought to make a general law on the subject.

Mr. ROBINSON. Mr. President, with the indulgence of the Senator from Minnesota, it would seem to me that the same necessity for regulation of the matter exists with respect to all the companies, no matter whether they are owned and operated by American citizens or foreigners. The manner of the regulation is left in the discretion of the President, and the assumption is that he will exercise it wisely and fairly.

I have no further suggestion in connection with this amendment, but there is a suggestion in connection with the next amendment which I should like to make.

The amendment as amended was agreed to.

Mr. WALSH of Montana. Mr. President—

The VICE PRESIDENT. Does the Senator from Minnesota yield to the Senator from Montana?

Mr. KELLOGG. I yield.

Mr. WALSH of Montana. I am interested to know upon what basis the assertion is made that the power vests in Congress to grant a license, or to prohibit the operation without a license. Under what heading does the Senator from Minnesota assign the power?

Mr. KELLOGG. The power of Congress?

Mr. WALSH of Montana. Yes.

Mr. KELLOGG. I think Congress has it under the power to regulate commerce. The courts have so held.

Mr. ROBINSON. In some respects it might also relate to foreign relations, which already the President has the direction of.

Mr. KELLOGG. The courts have held, as the Senator from Arkansas suggests, that quite likely the President might have implied power, under the war power for instance, to prevent a foreign company from landing here at all, if he thought it endangered the United States. But the court held, in the very case I mentioned, that the power to grant a license for the landing of cables and to withhold it was in the Congress of the United States, under the commerce clause.

Mr. WALSH of Montana. By reason of the power to regulate commerce with foreign nations?

Mr. KELLOGG. Yes. In relation to section 2, I sent to the Senator from Arkansas [Mr. ROBINSON] a substitute for the the committee amendment of section 2, and I have a few other copies if any Senator desires to read it.

The VICE PRESIDENT. The Secretary will read the amendment.

The READING CLERK. As a substitute for the amendment proposed by the committee as section 2 insert:

Sec. 2. That the President may withhold or revoke such license when he shall be satisfied that such action will assist in securing rights for the landing or operation of cables in foreign countries, or in maintaining the rights or interests of the United States or of its citizens in foreign countries, or will promote the security of the United States, or may grant such license upon such terms as shall be necessary to assure just and reasonable rates and service in the operation and use of cables so licensed: *Provided*, That the license shall not contain terms or conditions granting to the licensee exclusive rights of landing or of operation in the United States: *And provided further*, That nothing herein contained shall be construed to limit the power and jurisdiction heretofore granted the Interstate Commerce Commission with respect to the transmission of messages.

Mr. KELLOGG. Does the Senator from Arkansas desire to ask me a question with regard to this amendment?

Mr. ROBINSON. Mr. President, the question I want to ask the Senator from Minnesota is this: Will the language under the amendment he now proposes authorize the President to revoke a license granted to one company in order to secure rights for the landing or operation of cables owned or operated by another company in a foreign country?

Mr. KELLOGG. I should not think it would. I can not imagine anything of the kind.

Mr. ROBINSON. Technically, I believe the language as it is offered would grant that power. I am sure the Senator had no such intention—

Mr. KELLOGG. Oh, no.

Mr. ROBINSON. And that the committee had no such intention.

Mr. KELLOGG. I had no such intention.

Mr. ROBINSON. I do not know whether it has any practical value or not. There might arise a case in which it would become important.

Mr. KELLOGG. I will say to the Senator that that was very carefully considered by the Western Union Co. itself, and to that clause they have no objection whatever. They did suggest that when it came to the question of fixing rates and service, we should not take away the power of the Interstate Commerce Commission, which may now fix rates, and that the rates and service should be regulated by the license, and should be confined to the particular lines; but as to the other they had no objection whatever.

Mr. ROBINSON. I did not have in mind the Western Union Telegraph Co., or any other company. I was merely considering the language. It reads:

That the President may withhold or revoke such license—

That is, any license granted to a person, citizen, or corporation to operate a foreign cable—

when he shall be satisfied that such action will assist in securing rights for the landing or operation of cables in foreign countries—

And so forth.

Unquestionably that gives him the discretion to revoke a license granted to one company to operate a cable the other terminus of which is in Great Britain, if he sees fit to do so, and secure the right to land a cable in France, for instance.

Mr. KELLOGG. He should have that right as to the connection of that cable. Otherwise he could not exercise any power at all. Let me give the Senator an illustration. Take the Western Union, which now connects at Barbados with the Western Co., a British company. The Western Co. has a monopoly, and President Grant laid it down in his message that we ought not to grant a landing license to any company having a monopoly in a foreign country. Manifestly the President can say that unless the British company is willing to give up its monopoly, as a condition precedent to connecting with the Western Union, it can not land in this country, or the Western Union can not. I think that is a power which is absolutely necessary.

Mr. ROBINSON. I understand all that, and I think the purposes of the amendment are all right; but take a case like this: Suppose Company A is licensed to operate a cable the foreign terminus of which is in the West Indies, and the Government of France says, "If you will revoke the license of Company A, we will permit Company B to land and operate a cable the foreign terminus of which, as to your Government, shall be in France." Under this legislation the President plainly would have the power to trade off the right of Company A for the benefit of Company B. As to whether he would do that is, of course, a question not likely to arise, because no President probably would exercise that power. It seems to me that such a power is plainly granted in the legislation, but if the Senator from Minnesota is satisfied that that is not the case, after having studied the question, I am willing to take his judgment.

Mr. KELLOGG. I am perfectly satisfied, and I am satisfied that all the companies are of the same opinion; and they gave that careful consideration.

Mr. ROBINSON. It is not a complete answer to the proposition to say that somebody else has considered it. I want the judgment of the Senator from Minnesota.

Mr. KELLOGG. That is my judgment.

Mr. ROBINSON. I know this, that when a proposition is presented to a lawyer he considers it from the angle of the question that, in his mind, is most prominent; but this is a question that very naturally arises from the language of the substitute. The power given the President here is to secure the privilege to land a cable in a foreign country. He may revoke any and all licenses that have theretofore been granted, no matter to whom granted.

Mr. KELLOGG. I do not think he can do it.

Mr. KING. Mr. President, I feel a great deal of timidity in making any suggestion to the chairman of the committee, who has given much consideration to this proposed legislation. I do suggest to him, however, that section 2, as I view it, confers unlimited and arbitrary power upon the President of the United States. I know the Senator will say, and all of us will say, that the President, of course, will not act capriciously or arbitrarily but will seek to do justice in dealing with this important question.

I do suggest to the Senator that it would have been better to prescribe by legislation the terms under which licenses might be obtained and the conditions or contingencies which might lead to forfeiture. As it is now, no corporation knows what must be complied with in order to obtain a license. The rule or regulation prescribed to-day may be departed from to-morrow. The President may announce one policy to-day and to-morrow that policy may be abandoned and an entirely different one prescribed. One administration may suggest one policy and the succeeding administration may prescribe an entirely different one.

Those who are seeking these licenses and these privileges are utterly at sea. They are at the mercy of the Executive, and we all know that the Executive, in the multitude of duties resting upon him, can not bring to bear his personal attention in the consideration of all these matters, and he will be dependent upon some subordinate of the Government. So after all we come down to the proposition that some subordinate of the Government holds in his hands the privilege to grant licenses to those who may seek to land cables upon our shores and holds in his powerful grasp the power to terminate those licenses according to his good will and pleasure. It is too great a power, it seems to me, to confer upon the President, knowing, as we do, that the action must be taken by some subordinate.

Mr. KELLOGG. Mr. President, that suggestion was very carefully considered by our committee, and I tried for a long time to see whether I could draw general regulations which could be automatically complied with, and if the Senator from Utah can do it, he can do better than I can.

I asked the cable companies, through their able lawyers, to suggest to me conditions which could be put in the law with which they could comply automatically, and they said they varied so greatly that they could not do it; and they never did suggest any.

Let me give the Senator an illustration. The first thing that occurred to the committee was that we should make a general rule that no cable should land in the United States which connected with a cable having a monopoly in a foreign country. It immediately was seen in some cases that it not only would operate against American interests, but would be impossible to comply with at all, because the monopoly to the foreign company was neither under the control of the American company nor the American Government, and we found in several cases where it was necessary either to grant such landing licenses or deprive ourselves of cable facilities. There are many other conditions, and I do not believe it is possible to lay down general rules which can be automatically complied with.

Mr. CUMMINS. Mr. President—

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

Mr. KELLOGG. I yield.

Mr. CUMMINS. When the bill came on for consideration before the committee of which I am chairman I made against it the very point so clearly expressed by the Senator from Utah [Mr. KING]. I would have preferred the organization, if possible, of a series of rules or regulations which would control the discretion of the Executive. In addition to the efforts of the Senator from Minnesota I undertook that task. It is needless to say that I failed utterly. If I had not failed the bill would not be in its present form. I came to the conclusion, and I wish to express it in view of the point made, that it could not be done, that no human being could anticipate the conditions which may exist at some future time between this

country and another or between this country and her own citizens to a sufficient extent to enable him to frame an intelligent guide or rule for the exercise of the power by the President of the United States. I do not believe it can be done, and if we desire the power exercised I think it will have to be practically unlimited.

We did incorporate some limitation, which was the only one that I could find that seemed to me safe to put in at all hazards. It will be noticed that in the section now before the Senate there is a provision that the license shall not contain terms or conditions which will prevent the issuance of other licenses, and, as it is paraphrased in the amendment offered by the Senator from Minnesota, providing that the license shall not contain terms or conditions granting to the licensee exclusive rights of landing or of operation in the United States. After a good deal of consideration, and the Senator from Minnesota was just as anxious as I was to frame a series of rules if it had been found practicable, the committee unanimously determined that it was impossible and could not be done.

I desire while I am on my feet to add a word in regard to the point made by the Senator from Arkansas [Mr. ROBINSON]. I think he is right in his construction of the language, but I do not think it is material for this reason: The language which he quotes will only be operative in the case of the revocation of a license. The President has complete and broad discretion to withhold a license without giving any reason whatever. So that part of the section which says the President may withhold such licenses has no practical operation.

Mr. ROBINSON. May I suggest to the Senator from Iowa that that very case would be presented if, for instance, upon the passage of the bill the President should grant a license to a number of corporations to operate foreign cables and 10 years from now should, on account of our foreign relations with a particular power, being desirous of landing a foreign cable in some particular country, be met with the proposition from the foreign country in which we desired to land the cable that if we would revoke the license under which other cables to other foreign countries were being operated we could have the permission to land this cable and operate it. There might arise a condition whereby the President would have the power effectually to destroy a large amount of property, because the revocation of the license would constitute a destruction of the investment.

Mr. CUMMINS. I agree that it does confer great power on the President, but it relates only to the revocation of a license already issued.

Mr. ROBINSON. Yes; but the power to revoke is universal. The President may revoke any license at any time while the provisions of the bill are in force, so that 10 years from now no matter how many licenses there may be in existence then, if the act is still in force the President can revoke them all in theory in order to secure the landing of one cable in a foreign country. He has that power.

Mr. KELLOGG. Perhaps I do not understand the Senator, but I can state a concrete case as one in which I think the President should have this power, the French cable case, where cables were landed in this country under certain conditions. The understanding was that those cables should exercise the same rights in the United States as United States cables exercised in France. Ought not the President to have the power to say he will revoke their license if the French Government does not give us such rights?

Mr. ROBINSON. I think that is true, but are we not giving him that power, and is it necessary to grant him power to revoke every license of every cable that may be operated only to accomplish the landing of a particular cable? That is my construction, and according to the statement of the Senator from Iowa [Mr. CUMMINS] he agrees with me.

Mr. KELLOGG. I can not imagine the President revoking the license to land cables running to France because some license was revoked covering cables running to South America, but I do not think we ought to whittle down the power, because if we do we will deprive the President of the power necessary to negotiate for rights with reference to American cables.

Mr. CUMMINS. The Senator from Arkansas I think is in error in one respect, and while it is not material to the present question he ought to be set right. As I understand it, the President has not the power and is not given the power to revoke licenses granted under the bill. The Congress reserves the power, but the President is not given the power to revoke licenses.

Mr. ROBINSON. May I read the language of the amendment as now proposed by the Senator from Minnesota, and that is all the reply I can make to that statement:

That the President may withhold or revoke such license when he shall be satisfied that such action will assist in securing rights for the landing or operation of cable in foreign countries.

And so forth. Now the power to revoke relates to every license granted at the time of the revocation, and that power, if the President chooses to do so, can be exercised as to every license granted in order to secure the landing of one cable if in his opinion it is important that that should be done.

Mr. CUMMINS. I think the Senator from Arkansas does not catch my point. I understood him to say that there was a general power of revocation of licenses granted under the terms of the bill. I do not so understand it. The President can revoke any license that we grant under the bill if he finds it necessary to assist in securing rights for the landing or operation of cables in foreign countries or in maintaining the rights or interests of the United States or its citizens in foreign countries, but only for that reason.

Mr. ROBINSON. That is the very point I am making. I say that under that language if the President desires, for instance, to secure the landing of a cable in France he could revoke the license of every company operating a foreign cable, no matter whether the company was owned by American citizens or to what country it was operating. Under that language, in order to secure rights of landing or operating cables in foreign countries, he can revoke all licenses theretofore issued if he thinks it important to do so.

Mr. KELLOGG. The Senator will see that under section 3 the President would have to go into court. It is my intention to propose an amendment which will cover the question of the revocation of licenses so that the President would have to go into court to attain that end the same as he would be compelled to do to prevent the landing. In other words, under section 3 the President can apply to any district court of the United States, and when that section is reached I shall ask to have a few words added to make it a little more clear.

Mr. KING. Mr. President—

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

Mr. KELLOGG. Certainly.

Mr. KING. May I inquire of the Senator whether the amendment which he is about to tender will go to the extent of prohibiting the President from revoking a license without applying to the courts?

Mr. KELLOGG. Oh, no; of course, he would have to apply to the courts to enforce it. He may apply to any court in the United States to enforce it.

Mr. KING. He will have the power of revocation without applying to the courts?

Mr. KELLOGG. Oh, certainly; he would have to act first. I ask to have section 2 agreed to, if there is no objection.

The PRESIDING OFFICER. The question is on agreeing to the substitute offered by the Senator from Minnesota.

Mr. KING. Mr. President, I do not intend to attempt while the bill is before the Senate to draft an amendment that I think might cover the point which I suggested a moment ago and to which the Senator from Iowa [Mr. CUMMINS] has just replied. I appreciate the difficulty that one would experience in attempting to meet all the exigencies and contingencies that may suggest themselves with respect to the granting or revocation of licenses; but it does seem to me that there could be some general language employed which would form the basis for the revocation of licenses. The section grants, in my opinion, too much power to the President. There is not sufficient restriction or limitation upon the discretion which may be exercised by him.

The PRESIDING OFFICER. The question is on the substitute offered by the Senator from Minnesota.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

Mr. KELLOGG. In the next section, section 3, after the word "landed" in line 20, I move to insert the words "or is being operated."

The PRESIDING OFFICER. The Senator from Minnesota offers the following amendment, which the Secretary will report.

The READING CLERK. On page 2, line 20, after the word "landed," insert the words "or is being operated," so that it will read "or has been landed or is being operated in violation of this act," and so forth.

The amendment was agreed to.

Mr. KELLOGG. In line 21, after the word "landing," at the end of the line, I move to insert the words "or operation."

The PRESIDING OFFICER. The Senator from Minnesota offers the following amendment, which the Secretary will report.

The READING CLERK. On page 2, line 21, after the word "landing," insert the words "or operation," so that it will read, "shall have jurisdiction to enjoin the landing or operation of such cable," and so forth.

The amendment was agreed to.

The PRESIDING OFFICER. The Secretary will report the next amendment of the committee.

The READING CLERK. The next amendment of the committee is, on page 3, after line 13, to insert a new section, section 6, to read as follows:

SEC. 6. That no vested right shall accrue to any Government, person, or corporation under the terms of this act that may not be changed, modified, or amended by the Congress.

Mr. KELLOGG. The Senator from Florida [Mr. FLETCHER] has an amendment to offer to the amendment of the committee.

Mr. FLETCHER. I move to strike out the word "vested," in line 14, so that it will read, "That no right shall accrue," and so forth, instead of "no vested right shall accrue."

The PRESIDING OFFICER. The Senator from Florida offers the following amendment, which the Secretary will report.

The READING CLERK. On page 3, line 14, strike out the word "vested," so as to read "that no right shall accrue to any Government," and so forth.

The amendment to the amendment was agreed to.

Mr. FLETCHER. I move to amend further in line 16, after the word "be," by inserting the word "rescinded."

The PRESIDING OFFICER. The Secretary will report the proposed amendment to the amendment.

The READING CLERK. On page 3, line 16, after the word "be," insert the word "rescinded," so that it will read "may not be rescinded, changed, modified, or amended by the Congress."

Mr. KELLOGG. If the Senator will pardon me, as to the first amendment, it would have to be a vested right or it could be changed without an act of Congress.

Mr. ROBINSON. But if it is a vested right it can not be changed.

Mr. KELLOGG. I have no objection to it. What is the other amendment?

Mr. FLETCHER. I think we should vest the power in the President to rescind any right that may have been created—to rescind it as well as to modify it.

Mr. KELLOGG. What is the word the Senator wishes to insert?

Mr. FLETCHER. I move to insert the word "rescinded," after the word "be," in line 16, so that it will read:

That no right shall accrue to any Government, person, or corporation under the terms of this act which may not be rescinded, changed, modified, or amended by the Congress.

Mr. KELLOGG. I have no objection to that.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

Mr. KELLOGG. My attention has been called to a statute of the United States providing that no law shall apply to the Philippine Islands unless it is specifically so provided in the act, and the Secretary of State suggested that after the words "Canal Zone," on page 3, line 11, there should be inserted the words "the Philippine Islands." My own judgment is that that is not necessary, but the Secretary of State desires it, and I move that amendment.

The PRESIDING OFFICER. The question is on the amendment proposed by the Senator from Minnesota.

The amendment was agreed to.

Mr. JONES of Washington. I merely wish to ask the Senator from Minnesota a question. In section 4, page 3, line 5, I notice the language reads:

That whoever wittingly commits—

The word "wittingly" struck me as rather an unusual word, the word "knowingly" being ordinarily employed.

Mr. KELLOGG. It means knowingly, but I am willing to change it.

Mr. JONES of Washington. I do not ask that it be changed; I am willing to take the Senator's judgment as to the language; but I merely wish to make its meaning clear in the Record.

Mr. KELLOGG. I move that the word "wittingly" be changed to "knowingly."

The PRESIDING OFFICER. The amendment proposed by the Senator from Minnesota will be stated.

The ASSISTANT SECRETARY. In section 4, page 3, line 5, after the word "whoever," it is proposed to strike out the word "wittingly" and insert "knowingly."

The amendment was agreed to.

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

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