

home and live off from my parents with my brothers and sisters like we used to do when my father was getting only half of what Mr. Townsend proposes, and we were very happy then.

Come now, Mr. Chairman, give us young fellows a break by supporting our parents so they can support us.

Yours truly,

C. G. KELLEY.

I think that gives us a pretty good idea of what the practical effects of the bill would be, if it were enacted.

The next witness is Mr. James A. Emery, of Washington, D. C., representing the National Association of Manufacturers. We will be glad to hear your statement at this time, Mr. Emery.

STATEMENT OF JAMES A. EMERY, REPRESENTING THE NATIONAL ASSOCIATION OF MANUFACTURERS, WASHINGTON, D. C.

Mr. EMERY. Mr. Chairman and gentlemen of the committee, the National Association of Manufacturers, an organization of men engaged in the transformation of materials into thousands of forms in all States of the Union, has had a very deep interest in the subject before this committee over a long period of time.

They have followed the previous studies of this question, made both by committees of the Senate in 1928, and by the select committee of the Senate in 1931, reported in 1932, and they agreed with the conclusions that were then stated by the select committee of the Senate in 1932, to which there was no dissent. That was that the subject of unemployment insurance which was immediately before them, was not within the scope of congressional authority by direct action.

They agreed with the proposals made by the Senate Committee on Education and Labor in 1928, as reported by Mr. Couzens, which went into the matter quite extensively, as to the relative suggestions made by that committee at that time.

They are entirely in sympathy with the objects that are here sought to be attained, and that is to provide practical means of security against the major hazards of life that arise from unemployment, old age, accident, sickness, and death.

They, however, realize the practical difficulties as well as the legal difficulties that are here presented.

In the plan immediately before the committee today, I venture to call your attention to the operating effect, as we perceive it, of the kind of tax here proposed which, we believe, would be injurious rather than beneficial to the objectives which the committee has in mind.

And, as to the proposal immediately involved in the alleged tax, we believe that when you examine it you will find it is not legally a tax at all; it does not give a legal basis for a tax, and I think you will perceive from an examination of the major cases that have been presented on that point that there are very serious objections to be offered to an exercise of congressional power of this character for this purpose.

In introducing this practical note into the discussion after you have heard from so many social authorities, we believe we are approaching it from the standpoint that was so well defined by Francis Place, who was called the radical tailor in his day, and who was described by Macauley as the first radical of England and the

man who has probably made greater contributions to reform in labor laws than any other man of his day.

Francis Place said:

Every man who greatly desires the well-being of his species * * * has no doubt felt * * * repugnance * * * at finding himself compelled to abandon, as it were, the notions he would fain indulge without alloy, and to descend to calculations and comparisons of losses and gains, of trade, commerce, and manufacture, of the nature of rents, profits, and wages, the accumulation of capital, and the operation of taxes. But he who would essentially serve mankind has no choice; he must submit himself patiently to the pain he cannot avoid without abandoning his duty.

Mr. LEWIS. Was that a quotation from Macauley?

Mr. EMERY. No; that was a quotation from Francis Place.

The background against which a consideration of a new tax burden permanent in character and as extensive as the one here proposed to this committee is a very serious one indeed, and one with which you are fully familiar, and I will only recapitulate it in brief.

We have a national debt of approximately \$32,000,000,000, which, added to the State and local debts, to be met by these tax payments, brings us a total of national indebtedness at the present moment of \$48,000,000,000, with carrying charges that amount substantially to a billion and a quarter, exclusive of the amount of the sinking fund required to be accumulated for the retirement of the bonds.

It is estimated that the private short-term and long-term debts of private debtors in the Nation is in the neighborhood of \$215,000,000,000. We are faced with a Federal and local expenditure this year of approximately \$14,500,000,000.

That is the picture with which we are confronted in the carriage of the debt of the Nation at the present time when we are dealing with the subject of unemployment. It is to that that I address myself in connection with this bill because the principle applied to that will equally apply to other portions of the bill under discussion.

So, let us remember, gentlemen, that there are many forms of unemployment, and that the answer to that is the restoration of private operation and private business on its normal scale. So there is a continuous pursuit of opportunities for employment by employers and until the employers can find markets for their goods they cannot themselves employ others.

I assume that this committee realizes that the encouragement of private employment in every proper normal way is the thing to be desired. That upon the revival of that private employment we predicate largely the expenditure of public money in the effort to stimulate our return to a normal condition, which is that men give employment to others by taking the risk of either profit or loss.

The burden of the tax in the carrying out of any form of business becomes a serious part of it. However, Mr. Chairman, I want to call attention to the character of the tax here proposed. It is the first time in the history of the United States that a pay-roll tax has been proposed, which is a tax which, in its nature—and I speak of the tax to secure the funds for unemployment compensation—is a gross income tax on the earnings of the employee and on the employer, and it is in the nature of an excise tax, for the privilege of employing others, which privilege of employing others has always been regarded as one that the Government should promote and en-

courage. A survey of the whole early history of the United States will show in the operation of the States especially, the evident desire to encourage others to assume the risks of a pay roll.

But a pay-roll tax, such as is here proposed, is a tax which, in its operating effect, has many of the characteristics of the tax which this committee has previously rejected, and that is a sales tax; because a pay-roll tax will operate as a cumulative tax. It will operate through every pay roll that is affected by its imposition, from the raw material to which it is first addressed all the way to the finished product which passes into the hands of the consumer, according to the number of operations, until the article finally reaches its ultimate user.

And not only that, but it will operate also relatively speaking, in terms of percentage, according to the relation between the labor cost of the product and the tax itself. Thus, Mr. Chairman, if we examine the average statistical picture of the labor cost in any particular process, we will discover that that cost itself will run from the neighborhood of 4 percent up to as high as 80 percent as the average cost of any given product or service.

In service industries like transportation and communication, the chief cost is the cost of the labor.

In various forms of manufacture I believe at the present moment the moving-picture industry has the highest labor cost, representing over 70 percent.

So you will perceive that the relation of the tax in terms of percentage will depend entirely upon the amount of the labor cost in the dollar of production, and that it will run from 4 cents to 80 cents in the dollar of production cost.

I say it is a cumulative cost. It must operate from the time that the raw material is first produced until the time when the product which comes out of it is sold to its ultimate consumer. It will repeat itself over and over again in the cost of the operation, and therefore it will have many of the factors of a sales tax. It has everything in it of the character of a sales tax but without any of the virtues which a sales tax possesses.

I say that with reference to the tax that can be transferred, but I think it would be a delusion to believe that a tax of this kind in many instances can be transferred. It cannot. It cannot be transferred at all to the whole range of price articles, articles manufactured to sell at a substantially fixed price.

Take, for instance, the products made for sale in the 5-and-10-cent stores, where the margin is such a small amount that it is impossible to transfer any cost of this kind.

Furthermore, Mr. Chairman, there is a provision in this bill that differs entirely from the provision in the measure which was before you last year, the reasons for which I confess we have been unable to note.

That is that while the pay-roll tax for the purpose of raising funds to be used for old-age assistance is leveled against the pay roll, it is confined to nonmanual workers at a top of \$2,500 a year; however, the pay-roll tax for the purpose of providing compensation for unemployment extends to the entire pay roll.

The pay roll is made of wages, and wages are described as any remuneration which may be provided or given by the employer.

Last year, when this same bill was before you, it contained in section 1 this limitation:

Pay roll shall mean the amount of all wages paid by the employer during the taxable year to persons employed by him in employment subject to this act; except that pay roll shall not include the wages paid to a person employed by the employer within such year on a minimum fixed salary basis of \$250 or more for each month in which the person was thus employed.

You will find in the sixth title of the bill before you that there is no such limitation.

One of the practical effects of that would be that where you have dispersed activities under the control of a single business, the executive offices or the sales force located in one State, and the operation of the industrial end, or the manufacturing end carried on in another State, that the result of an unlimited pay roll tax would be that one State would tax the pay roll of the executive and the sales force and the others would tax the industrial and producing force in one or more other States.

Assuming that you intended to assure the recovery of the pay roll tax by the State which enacted legislation in compliance with the uniform standard provided by the Federal Government, there is no State which could enact legislation in which there could be any recovery for the like tax by the Federal Government against the executive pay rolls in another State.

So much for the operating effect of a pay-roll tax, as such.

I call that to your attention because I assume it is the purpose of this committee in the legislation which is before it, and the circumstances which are to govern the legislation, if it is to be enacted—the purpose of it is to encourage and not to discourage employment.

As soon as you begin to tax pay rolls you make everyone pay a new tax. And every time you are in a manufacturing industry, in which machines are used, you are encouraging it, if it is within the power of the industry to do it, to enlarge its mechanical as distinguished from its personal operation.

So the net effect of the tax is to encourage to some extent the avoidance which would express itself in mechanization as against human employment, by enlarging the tax burden of the taxpayer.

So, Mr. Chairman, if the primary purpose here is to put an urge behind the entire recovery effort in which the industry of this Nation has joined, and undertake to multiply and increase employment, a tax, the purpose and effect of which is to tax pay rolls, will have a distinctly opposite effect from that intended by the recovery program, to spread employment.

Is this pay-roll tax, in the form in which you levy it, a tax?

Let me, before concluding that feature of it, undertake to direct your attention to the condition of the country to which you have addressed yourselves. I just venture to point out to you that since 1930 the consolidated corporate income-tax returns of the United States—and I use that because it is the information supplied by the

Treasury and most readily reflects the condition of the country—show a net return during that period, in the year 1932, for which we have the most complete returns, the consolidated corporate income-tax return for that year, as a business picture of the United States, will show a net deficit in excess of five and a half billion dollars, so far as our business is concerned.

So that is the condition in which the business of the country finds itself as it looks forward to the situation in which you propose permanent legislation of the kind which is before you today.

Now, as to the nature of this tax, sir. I take it it is well known to you that everything that is called a tax is not necessarily one, as was said in the case of the United States versus One Ford Coupe Automobile.

Mr. HILL. Will you give us the page and volume of that case?

Mr. EMERY. That is found in the case of the *United States v. One Ford Coupe Automobile*, in 272 United States, page 321.

The court called attention to the fact that the use of the word "tax", or imposing a tax burden, does not prove conclusively that the burden is imposed by the tax, just as the statement that an emergency exists does not demonstrate the existence of the emergency. That is a matter for judicial determination, after the legislature has exercised its discretion.

Thus, when the emergency was in existence in connection with the rent cases in the District of Columbia and elsewhere, when it was attempted to continue the rental legislation after the emergency had passed, you will remember that the Supreme Court, in the case of the *Chastleton Corporation v. the Rent Commission of the District of Columbia*, in 264 United States, at page 543, said:

We repeat what was stated in *Block v. Hirsch*, as to the respect due to a declaration of this kind by the legislature so far as it relates to present facts. But even as to them a court is not at liberty to shut its eyes to an obvious mistake, when the validity of the law depends upon the truth of what is declared.

I call that to your attention to make a parallel between the reference to an emergency on the one hand and to a fact on the other, which in the nature of things, does not turn out to be one.

We have two notable cases to illustrate the fact concerning acts of Congress which referred to taxes, which the court said, in effect, were not taxes, but were attempts to regulate the conduct of States, or to tell them to adopt a policy which Congress thought desirable for them. Those are the two cases, one found in 259 United States, at page 41, the *Drexel Furniture Co. v. Bailey*; and the second is the case of *Stafford v. Wallace*, reference to which is also found in 259 United States, at pages 69, 70, and 408.

The first case was a case in which Congress attempted to levy a tax of 10 percent upon the products of labor employed below a certain age, or within a certain limitation as to hours and as to the character of employment, the 10 percent tax being levied in addition to all other taxes due and payable.

The court held in that case—and I quote from the *Drexel Furniture Co. v. Bailey*, in 259 United States, at page 37:

It is the high duty and function of this Court in cases regularly brought to its bar to decline to recognize or enforce seeming laws of Congress, dealing with subjects not entrusted to Congress but left or submitted by the supreme law of the land to the control of the States. We cannot avoid the duty even though it requires us to refuse to give effect to legislation designed to promote the highest good. The good sought in unconstitutional legislation is an insidious feature because it leads citizens and legislators of good purpose to promote it without thought of the serious breach it will make in the ark of our covenant or the harm which will come from breaking down recognized standards. In the maintenance of local self-government, on the one hand, and the national power on the other, our country has been able to endure and prosper for near a century and a half.

In this case the Court invalidated the tax in an 8-to-1 decision, with a written dissent by Mr. Justice Clark, the opinion of the Court being delivered by Chief Justice Taft.

The second case I want to refer to is the case of *Hill v. Wallace* (259 U. S. 44).

There was at issue in that case a tax levied upon the sale, or contracts for the future sale, of grain at 20 cents a bushel, and the court held in the proceeding that grew out of that case that this was not exercising the taxing power of Congress, although it was in the form of a tax, but was intended to undertake to require the grain exchanges to adopt the policy which Congress sought to impose upon them, and that it was not an exercise of the commerce power because those were wholly local contracts made within a single State and made between members of the exchange and citizens of that State.

I want now to call your attention to the decision in the case of *Melton v. Florida*, in 273 United States, in which case the State of Florida, which did not levy an estate tax, undertook to prevent the collection of the estate tax by the United States, on the ground that because it did not have an estate tax it would not be possible for a citizen to receive credit for the tax levied upon any estate in Florida, and therefore it sought to enjoin the Secretary of the Treasury from collecting the estate tax in Florida.

The court declined to permit Florida to procure that injunction against the Secretary of the Treasury or the collector of customs, and pointed out that the policy of Congress with respect to the collection of taxes in the exercise of its power would not depend upon the kind of taxes in the different States, but each State was free to levy the kind of tax it chose.

The second thing it called attention to was that a tax is the compulsory taking of the private property of the citizen for the purpose of the support of the sovereignty or government which levied the tax. That is the test of what constitutes a tax.

When, under the color of taxation, a penalty is levied, or an attempt is made to impose a penalty or to compel an independent sovereignty or individual to pursue a certain line of conduct, and the court takes notice of the fact that what is done is the endeavor to exercise a forbidden power under the color of a permissive power, or to endeavor to control the regulation of production under the guise of levying a Federal tax, the exercise of power cannot be sustained.

If a Federal tax, on the face of it, is not intended to raise revenue, but is intended to control the regulation of the local conditions of production, it is invalid.

As to the tax that is proposed in the bill that is before you, the pay-roll tax, you can yourselves readily answer the question by asking: What is the purpose of this tax?

Is the purpose of this tax to raise revenue for the Federal Government? It is not; but if it were successful in raising revenue for the Federal Government the bill itself would be a failure, because, according to the proponents of the legislation, the tax levied will not be used for Federal purposes, but it will be used by those against whom the State may levy compensation legislation, and receiving credit, and they will return it to them. There is no suggestion, of course, or imputation against the motives of Congress. That is not within the power of any court, and it would not be within the purpose of anyone appearing before you.

What I call attention to is that the proposed statute, as it is worded, defeats its own purpose, which, in this instance, is to raise revenue for the Federal Government, and it carries the evidence that it is not intended to be a taxing statute, but that it is intended to be a regulatory statute.

It would be, in this instance, you gentlemen will clearly admit, a complete failure if it succeeded in raising revenue which the Federal Government retained, instead of raising revenue which the State recaptured if it conformed to the requirements imposed by the Federal Government, carrying out the will of Congress, as laid down in legislation. Therefore, I say it is a regulatory statute.

That is made completely and clearly evident as you pursue the language of the statute itself.

For example, in the Florida case, to which I called your attention, it was perfectly evident that the Congress was not enacting an estate tax for the purpose of endeavoring to get any other State to enact an estate tax. There were only three States in the Union that did not have an estate tax when the legislation was enacted by the Federal Congress; only those three States had not enacted an estate tax. Florida was forbidden to have such a tax by the nature of its constitution. Just as is stated there, there may be no States today which, by the nature of their constitution, would not be permitted to transfer their funds to the Treasury, which would be required as a condition of receiving Federal assistance under this act. That passing remark is merely illustrative of the analogy.

In connection with the estate tax, the regulation of the credit was entirely within the power of the individual who was taxed. In other words, any individual who was obligated to pay an estate tax in any State under the Federal law could recover his credit by his own act; that is, by the payment of that tax to the Government.

Under the legislation that is before you no individual can recover his credit by his own act. His credit would be dependent entirely upon the act of the State and not upon his own act. But the payment of the State tax by the individual authorizes the individual to receive the credit which is provided for in the law.

As you examine this legislation piece by piece—and, of course, the repeated statements of its proponents makes it practically unnecessary—you perceive again and again that the whole legislation,

upon its face, is pointed to one result, and that is to secure State legislation upon a subject on which the States have not legislated and which under the tenth amendment is not only under their control but which they are free to accept or reject.

And what is here proposed is that unless the States do act, a tax will be levied upon their citizens which they cannot recover and which will lessen their taxing power. But with the mere question of the lessening of their taxing power we do not here deal; that is, that the legislation on its face is intended to obtain Federal revenue to be used for Federal purposes, but, as I say, on the basis of this statute it is not intended to raise revenue for Federal purposes, because if the revenue were raised and retained by the Federal Government the legislation would be a failure.

So, paradoxical as it may seem, the success of this bill depends upon its failure to produce revenue for the Federal Government.

I call the committee's attention to this; of course, there are many other forms of taxation to which the committee can address itself.

We have reached the point of recognizing, as we do, that in a situation such as the one presented to us, when the States are unable, out of their own revenues, to provide for the needs of their own citizens, at that point there is justification for direct Federal aid, and that has been accepted by contemporaneous legislation and action, and that situation is here.

I do not want to take the time of the committee to discuss other aspects of the legislation, but in principle what I have directed your attention to represents the three points, it seems to me, in the consideration of the legislation which ought to have your particular attention.

First, that this legislation, instead of having the effect which has been suggested by the distinguished Senator from New York, and by the Secretary of Labor in her appearance, if it is just a minimum tax, is a very trifling matter that will be readily passed on. But the national labor organizations have urged that there should be a provision in the law to the effect that the States should be prohibited from passing any act which would require joint contributions, because obviously then the worker would be taxed twice. He would be taxed by his contribution, and the second time in the price of the product which carries forward the tax.

I wanted to call the attention of the committee to the fact that as a practical matter the tax in many instances cannot be passed on; it will not be absorbed. And, secondly, it is not levied on the basis of ability to pay, because it makes no distinction between business operating at a loss or a profit, so the pay-roll tax will be the same in many businesses, particularly in smaller businesses whose capital has suffered severe losses in the course of this depression, and they have reached the cracking point, where the strain will be too great for them to bear, especially because they may be engaged in a line of enterprise in which the labor cost runs into the higher brackets.

In the third place, I call your particular attention to the nature of the tax itself. By the frequent interpretations of the Supreme Court of the United States, and by the character of this tax, upon its very face it is not intended to raise Federal revenue for purposes under

which the Federal Government may operate; that the very success of the bill itself and the operation of it depends entirely on the failure of the tax it is expected to raise.

Mr. HILL. You are dealing in your statement exclusively with the title of the bill which provides for unemployment compensation?

Mr. EMERY. Yes; I do that particularly in connection with this particular bill because you have two features under the sixth title and they are carried over to some extent into the old-age proposition; but there you have two conditions which have to be met. First, the conditions under which the employer paying the tax may recover credit; and, second, the condition under which the State may receive its installment.

They must be distinguished because, as you examine this statute, you will see that although the State may comply with the requirements which would entitle the employer to recover the credit, the State will not secure the payment of the installments to which it is entitled unless, in addition to that, it shall administer the law so that it complies with the Federal requirements in a way to satisfy the Federal Administrator.

If you will look at these proposals you will see another interesting angle to this under the definition of States in the law. Under that definition it includes the District of Columbia.

The District of Columbia, in order to avail itself of the provisions of this act and become qualified to receive assistance from the Congress, either for the aged or for unemployment compensation, would have to present, and it could not present it in any other way except through Congress, an act which would be submitted to the Federal Administrator to determine whether or not the Congress had complied with its own law and became qualified to receive the assistance which it had provided for others, and in this case for itself.

Mr. HILL. As to the question of the levying of the tax against an employer by the Federal Government under this bill and the credit provision for securing credit to the employer, what is the distinction between that provision and the estate tax, or the credit under the Estate Tax Act to which the taxpayer of the State might be entitled?

Mr. EMERY. In the first place, in the estate tax the Federal Government was levying a tax to increase its own revenue to support its own purposes, and clearly for purposes over which it had complete authority. But in this case it is not levying a tax to secure revenue.

Mr. HILL. We are not attempting to say to the State what it shall do, so far as the Federal Government is concerned.

Mr. EMERY. On the face of the act, you are not attempting to raise revenue for Federal purposes; you are endeavoring to raise revenue and to turn it over because the States have received credit against it.

Mr. HILL. I wanted to question you on this one point: You made two principal points, the first one that deals with the levying of a Federal tax on employers, granting credit to an employer of up to 90 percent of the tax he may pay to the State. And the second is whether or not the tax that the Federal Government levies is for revenue.

Mr. EMERY. Yes.

Mr. HILL. I wanted to direct your attention to the first point and ask you to make the distinction so far as the tax itself and the credit to the taxpayer is concerned. What is the distinction between the provisions of this bill and the provisions under the estate tax as to the credit allowed to the taxpayer under that act?

Mr. EMERY. In the first place, the credit allowed to the employer is dependent upon his own act. In the estate tax that is dependent upon the payment of the tax upon which he receives credit from the Federal Government, and he pays that to the Federal Government.

In this case no act of the employer can recover his credit; he is dependent for the recovery of his credit entirely upon the act of the State of which he is a citizen.

So the purpose of the Federal tax in the case of the estate tax was to raise revenue, and the recovery was directly to the person who paid it, for his own use.

In the second case, the tax is levied against the estate of the employer, and the credit may not be recovered by him by an act on his own part but only by the act of the State. Therefore, the recovery of the credit is dependent upon the determination of the State.

Mr. HILL. Is not that true of the estate tax?

Mr. EMERY. No, sir; because to make a comparison between the two, you would have to make the recovery of the estate tax dependent upon the adoption in the State of the Federal policy proposed for its expenditure.

Mr. HILL. I am talking purely about the taxpayer himself, leaving out of consideration what this does by way of regulation, as you call it, of the State's conduct.

So far as the employer is concerned, he is the taxpayer in this bill, and in the estate tax matter the taxpayer gets credit provided the State levies a tax against his estate; but if the State does not levy a tax against the estate, then he is not entitled to a credit.

In this case, if the State enacts no unemployment compensation law which would require the employer within the State to pay the tax to the State, he would get no credit as against the 3 percent.

Mr. EMERY. There is a provision against double taxation. But in the second place, Mr. Hill, the essentials of a tax are not here present, because it is not a levy for producing revenue; it is to produce or regulate conduct.

Mr. HILL. I will come to that point directly. I wanted to have some light on the first point. I think you have answered it as fully as you can.

Suppose an employer gets full credit of 90 percent against the Federal tax.

Mr. EMERY. Although the levy was never made under the provisions of the bill.

Mr. HILL. Assuming that he gets this credit, and assuming that he gets 90 percent credit, there is 10 percent of the 3 percent that goes into the Federal Treasury. Is that earmarked?

Mr. EMERY. No, sir.

Mr. HILL. It can be used for any Federal purpose, can it not; it is revenue in the Federal Treasury?

Mr. EMERY. If the Federal Government gets it.

Mr. HILL. That is the object of the bill.

Mr. EMERY. I cannot agree that that is the object of the bill. The object of the bill is to get the State to get it—

Mr. HILL (interposing). Under this bill the Federal Government would get at least 10 percent of the 3-percent levy against the employer; is not that true?

Mr. EMERY. Yes.

Mr. HILL. And it might get more.

Mr. EMERY. That would be incidental to the major tax.

Mr. HILL. I am talking about the revenue for the Treasury. It goes in there as revenue for general purposes.

Mr. EMERY. No, the bill has very carefully provided that it will earmark the contribution it will receive from the State, subject to the management and control of the State, but it will not earmark anything it receives.

Mr. HILL. It carries the State's money in a trust fund.

Mr. EMERY. But not the money raised by the Federal Government.

Mr. HILL. The bill provides for a levy of a 3-percent tax on the pay rolls to be paid by employers, regardless of the situation in all the States.

If a State should not enact any unemployment compensation law whereby it would collect a tax from the employers or others to go into that fund, all of the 3 percent levied by the Federal Government would go into the Federal Treasury without any earmarks, go into the general fund, to be appropriated and expended for any purpose which Congress might desire; is not that true?

Mr. EMERY. Yes, sir.

Mr. HILL. Then it is a revenue proposition, is it not?

Mr. EMERY. It is incidentally.

Mr. HILL. And it goes into the general Treasury.

Mr. EMERY. Incidentally.

Mr. HILL. It can be appropriated for any expenditure which Congress may determine upon. Why is it not a revenue tax? You cannot say it is put into the Treasury for any specific purpose.

Mr. EMERY. First, because it is entitled, "A bill to alleviate the hazards of old age, unemployment, illness, and dependency, to establish a social insurance board in the Department of Labor, to raise revenue, and for other purposes."

Mr. HILL. Yes.

Mr. EMERY. That is the secondary purpose; but the major object of the bill, by the form of the proposal, on its face, is not that.

Mr. HILL. I think we can all take notice of the fact that in order to accomplish the purposes specified in the title it is necessary to have revenue.

Mr. EMERY. Yes, sir; it is necessary for the States to have revenue.

Mr. HILL. I am talking about the Federal Government now. The Federal Government has some part of this, and the revenue received from the Federal tax of 3 percent, whether it is the full 3 percent or whether it is 10 percent of 3 percent less a certain credit which may be allowed to the employer, goes into the Federal Treasury, into the general fund, and it could be paid out by appropriations for Congress for whatever purpose Congress may desire.

Mr. TREADWAY. May I ask one question? Your objection has been largely directed toward the tax feature of this measure, has it not?

Mr. EMERY. The committee has heard so much of the discussion—

Mr. TREADWAY. The drift of your argument is against the provision whereby money is raised to carry out the provisions of the proposed measure; is that correct?

Mr. EMERY. That is on the legal aspect of it. I would extend that. I have called attention to the uncertain character of the tax. In addition, I have called attention to the general condition in which we find ourselves, and the way in which we are approaching it, from so many other different directions, all of which multiply the difficulty of carrying the burden and multiply the difficulty of maintaining employment.

Mr. TREADWAY. If it is found that Congress is inclined to adopt the general provisions of the eight titles included within this bill, have you any suggestions of any other way the expenses can be met?

Mr. EMERY. Of course, that carries one into another and very differing theory of taxation. We strongly believe, and have for a long time, Mr. Treadway, that the unfortunate conflict that exists between State and Federal taxation is leading to overwhelming burdens on the States by virtue of the fact that the Federal Government competes with the State in every field of taxation except the taxation of realty and imports.

Mr. TREADWAY. Could you not to a certain extent put it the other way around, the States compete with the Federal Government in the forms of taxation?

Mr. EMERY. The States have only two sources that the Federal Government does not tax out of which they can raise revenue for support—or only one; that is, realty.

Mr. TREADWAY. I did not mean to interrupt you, but to get back to my inquiry, I recognize for one the merits of the proposition included under these eight titles.

Mr. EMERY. Yes, sir.

Mr. TREADWAY. I personally would very much prefer to see them separated. I doubt very much if we have worked out a practical solution of the problems. But, nevertheless, I do not believe a great many question the desirability of protection against old age or some form of protection against unemployment and aid to mothers and children, and public health, the subject matter of this measure.

Mr. EMERY. That is an objective, as distinguished from a method of accomplishment.

Mr. TREADWAY. Certainly, the objective we approve of; every citizen undoubtedly must. But how to carry out the objective is another question. I gather that you are particularly opposing the method of paying the bill.

Mr. EMERY. Yes, sir.

Mr. TREADWAY. Can you offer us any suggestion of a different method of paying, or would you prefer not to legislate in this way at all?

Mr. EMERY. Temporarily, Mr. Chairman, there is excuse for Federal assistance in relieving indigents, from whatever cause they may exist. I think the bill, if we could suggest it, should be limited to temporary rather than to permanent legislation, until we can under-

stand how it operates. Its division in subjects would greatly help the matter, because it is highly complicated in its draftsmanship by virtue of the relationships established throughout the bill between its varying parts. Some are sandwiched in between others. The separation of the four major subjects of consideration would simplify the consideration of the bill. If, instead of requiring the States to conform to the standards which the Federal Government lays down in the bill, and which in some instances, considered by themselves, I think, are quite unfair, the States would be left free to act, and be given Federal assistance without an endeavor by the Federal Government to undertake to compel them to adopt a policy which seemed good to it as a condition of receiving temporary assistance, I think we can approach it in another way.

In other words, if, to the extent that assistance was given by the Federal Government, the proceeds were taken out of general instead of special taxation, and the attempt was made to approximate a balancing of the budget which would excuse the further taxation that was made, because until we do balance the Budget or approximate the balancing of the Budget or approach it with the cumulative deficit that we now have of nearly \$15,000,000,000, we cannot hope to restore that sense of confidence and that willingness to accept long-term commitments for the future that are essential particularly in the heavier-goods industries to the revival of business therein, and that is the pool of our unemployment today.

Mr. TREADWAY. Let me get you. The lack of confidence on the part of the heavy-goods manufacturers?

Mr. EMERY. The general lack of confidence; that is, the uncertainty that is in the mind of every man today who has to make commitments to the future to carry business forward, according to the nature of his business. I say it is particularly true of the heavy-goods industries, that the commitments have to be for a very much longer term because they are paid very slowly over a period of years and not quickly. Therefore, it is essential to the revival of those industries that there should be such certainty with regard to the public policy that men dare to make those commitments and take the risks that are involved in the conduct of that kind of business.

Mr. TREADWAY. Then I gather that you, representing these industries, consider that the method of procedure under which the Congress is now acting, bringing up new legislation from day to day, no matter where it comes from, is not in conformity with your understanding of the reestablishment of confidence by industry?

Mr. EMERY. No, Mr. Chairman. It must be obvious that with the relationship that public policy has to industrial progress today, the anxieties that are excited by a period of new proposals coming from any source—

Mr. TREADWAY. You think it is the real cause of the depression at the present time, or the lack of revival of business?

Mr. EMERY. I do not say the cause, but I think it tends to prolong it and obstructs recovery.

Mr. TREADWAY. There has been a suggestion offered, not in the bill, of course, but by a witness, that a lump-sum appropriation should be made by Congress and apportioned in some fair manner to the States. In your judgment would it be preferable to handle

these questions involved in this bill that way, rather than to designate individual appropriations?

Mr. EMERY. You mean temporary or permanent?

Mr. TREADWAY. I suppose what we are setting up is pretty likely to be permanent, is it not?

Mr. EMERY. I do feel entirely different on that, because I do not think that with the inadequate consideration that has been given to this subject matter we are prepared to commit the country to a permanent plan involving such enormous expenditures for the future. The British system, which is most closely allied to our own by virtue of the community of tradition and experience, had 4 years of inquiry before its first legislation was enacted, and after 20 years experience with the legislation the Balfour committee reported after 2 years of further study of their own experience under the plan, and after they had been confronted with insolvency.

Mr. TREADWAY. Then do you feel that the passage of a bill similar to the one before us will increase the retarding of business recovery?

Mr. EMERY. I think the incidental costs to it will be a contributing factor to uncertainty with regard to the future.

Mr. REED. I was very much interested in your statement in regard to the tendency of this bill if enacted into law to lead to the mechanization of industry. How serious do you think that would be, Mr. Emery? How far would it go?

Mr. EMERY. Of course, you cannot speak of that in definite terms, but you can speak of it as an obvious impulse from the circumstances which incite it. That is, if you increase the cost of employment of men, the tendency is to employ a machine which would be less expensive and which would not subject you immediately to a tax. I mean that the more highly mechanized the industry is the more the operation can be performed mechanically, the greater is the temptation to its employment.

Mr. REED. That would be, you feel, the tendency of this legislation?

Mr. EMERY. It would be a tendency in the industries where the labor cost is high. The higher it is, the greater would be the inclination. It depends entirely on the possession of the capital to do it.

Mr. REED. You spoke about these industries running very close to the margin of the cost of production at the present time, and running in the red.

Mr. EMERY. Yes. I speak particularly, too, of highly competitive industries. Take the situation in coal today with competitive fuels, with oil, gas, and water power threatening not merely the throne, but threatening the life of Old King Coal, who long since lost his throne.

Mr. REED. Take the small industries that are having hard work under present conditions even to go at all. If they were faced with a tax, the small industries which are barely existing, they would have no funds, no reserves, no credit to enable them to mechanize their industries. Consequently, they could not bear the burden and could not meet it anyway, could they?

Mr. EMERY. You take small industries where the unit labor cost is high, that is, where the proportion of labor to the cost of the product is great, say 30 or 40 or 50 percent on the cost of the product itself, then when you put on a 1, 2, or 3 percent pay-roll tax, that will operate in accordance with the relation between the labor cost

of the product and the percentage of the tax to create a percentage of the cost as against the labor involved, and may run to 3, 4, or 5 percent, or 20 percent.

Mr. REED. I am very much in sympathy with the objectives of the bill, but I do see the dangers of industry attempting to relieve itself of this cost burden by putting in the machinery that will eliminate literally thousands of men. That has been a very live subject, agitated in Congress for several years, that much of this trouble was caused by the mechanization of industry, the machine age. I can see where this would tend to accentuate that condition.

Mr. EMERY. It tends to accentuate it in the sense that it makes employment too costly, men are driven by the necessity of self-preservation to find a less costly method of sustaining themselves. The moment you begin to consider every additional employee as an additional source of tax, it operates just as in workmen's compensation. When the charges became so heavy in workmen's compensation, it became necessary in industries then to see that healthy men were employed. It meant that a man hesitated to employ a risk not because he did not desire to employ men, not because he was not anxious to do it, but because he could not continue to employ risks under the condition in which his business operated. These are perfectly human considerations, that are the motive powers of human action. I call them to your attention not because men desire to do these things, but because they are forced by the circumstance of public policy to pursue a particular course.

Mr. KNUTSON. Carrying Mr. Treadway's thought a little farther, do you think, Mr. Emery, that a tax on pay rolls is preferable to a manufacturer's sales tax? We are going to get some legislation along this line, you realize that.

Mr. EMERY. I think a frank sales tax is a much fairer tax than the concealed sales tax under any circumstance. I think this operates as a concealed tax. As I say, it will be a tax that will be duplicated and operate like a turn-over tax in accordance with the number of pay rolls that are affected from the raw material up to the finished product.

Mr. LEWIS. Mr. Emery, speaking of the inducement to mechanization that would be supplied by this 3-percent tax—

Mr. EMERY. I speak of it as one feature of it, Mr. Lewis.

Mr. LEWIS. Generally, the mechanization of which we are thinking proves attractive to the employer because of the expenditures which he can eliminate. If he can eliminate a man he is eliminating 100 percent of his wages there. Under the operation of this bill he would be eliminating 100 percent plus 3 percent. I mean that we can reduce this to figures, to percentage. He is under a motive now to mechanize to the degree he can eliminate employees to the degree of 100 of their wages. We will add 3 percent to it. Do you think that mechanization is going to be affected, really seriously affected, by the addition of 3 percent to the present 100 percent?

Mr. EMERY. I do not know that I get that.

Mr. LEWIS. If my employer is paying me \$1,200 a year he would be under an inducement now to take a machine that would eliminate that \$1,200 expense. After this bill passed he would be under that same inducement, plus \$36, 3 percent on \$1,200. In other words, he would have \$1,236 to gain instead of \$1,200. Do you think that

circumstance is one that ought to deter a Congress from acting in a situation presenting such peremptory and paramount needs as unemployment in the United States?

Mr. EMERY. If that were the only consideration it would not operate, but it does not happen to be the only consideration. You have many circumstances.

Mr. LEWIS. This is the one that you discussed and that I am analyzing at the moment.

Mr. EMERY. Of course, Mr. Lewis, if you will permit me, you are speaking of it in terms of its effect upon one person, upon the saving of a pay roll by the cost of the tax to one person. Of course, what would be an inducement would be if it affected several hundred persons or several thousand persons.

Mr. LEWIS. The inducement would remain just the same in each case as the present inducement. You are adding only 3 percent to it.

Mr. EMERY. If it affected quite a large number of persons, and was a consideration which, added to others—

Mr. LEWIS. There are, of course, other considerations.

Mr. EMERY. These things are done as the sum of a number of things and not merely because of one thing. That is all I want to make clear.

Mr. LEWIS. In support of the suggestion you spoke of a rather disappointing circumstance in connection with the workmen's accident compensation. It is doubtless true that many worthy persons are denied employment because of the circumstance that the prospective employer regards them as a little more risky on account of age.

Mr. EMERY. No; not on account of age.

Mr. LEWIS. Or on account of other circumstances.

Mr. EMERY. Yes.

Mr. LEWIS. I think accident compensation is costing about 3 percent of wages, if I recall the figures; but in that instance when the employer turns Smith down, Jones is waiting, who can secure the work. In other words, there is a total saving of the 3 percent, if Jones is not risk at all and Smith may prove an actual peril. The gross sum of employment is not reduced. That is true?

Mr. EMERY. Yes.

Mr. LEWIS. The cases are not alike arithmetically?

Mr. EMERY. No. The difference, Mr. Lewis, is that in the compensation case nobody is liable to be subjected to the conditions to which you refer unless he is a physical risk, but in the bill that is here proposed any man who is an applicant for employment becomes a tax risk.

Mr. LEWIS. He would not be employed under any circumstances at an expense of 100 percent of his wages unless he were needed.

Mr. EMERY. No, sir.

Mr. LEWIS. Unless he produced. Adding 3 percent would, of course, affect the situation 3 percent.

Mr. EMERY. Of course, that is only one of the incidents of this tax. We have a number of others here. You have a number of taxes scattered through here, and you have the prospect of a steady increase. Then we have, as we look about, the approach of taxes in many forms from many other directions. So that we are not sitting here in a vacuum considering merely one piece of taxation,

we are not merely considering the cost of a matter like this in the light of the policy proposed to be a very different matter, but when we sit here and face it in the condition in which business finds itself today, with new charges approaching from every direction and with the experience that we have had in the year and a half in the steadily rising costs of operation under the variety of methods that we have been trying out in the endeavor to meet the situation, we have had a continuously steady increase in the cost of production; and I am not looking at this thing from the standpoint of the employer—if I were talking only for his case, it would be a matter of only small consequence. I am talking about the effect of this upon what we are all anxious to get, the general recovery of this country. That general recovery depends upon our ability to enlarge our production, to employ more people, and to cut down and not to raise up the price of goods. Every time we increase the price of goods in a diminishing market we are diminishing the possibility of employing other men, because we are making it more difficult, and not less, to sell goods. Until we can market goods we cannot employ more men. There are no men more anxious to do it than the men whom I represent here today.

Mr. KNUTSON. Mr. Emery, that is just exactly what has been done under the N. R. A., to increase the cost and reduce the buying power of the people, as a rule.

Mr. EMERY. It has operated variously. Of course, you cannot speak of these things generally. They operate in different terms in different industries under different conditions.

Mr. HILL (presiding). There will be other questions by other members. Can you come back at 2 o'clock?

Mr. EMERY. Very well.

Mr. HILL (presiding). We will adjourn until 2 o'clock, when Judge Emery will take the stand again.

(Whereupon the committee at 12:40 p. m., adjourned until 2 p. m. of the same day.)

AFTERNOON SESSION

The CHAIRMAN. The committee will be in order.

Are there any further questions of Mr. Emery?

Mr. Emery, you may be excused for the day, and so far as I know, finally. However, in case any member of the committee desires you to return, we will communicate with you, and, if convenient, you will come back; if not, it will be final.

Thank you for your appearance and the information you have given the committee.

Mr. EMERY. Thank you for your courtesy, Mr. Chairman.

The CHAIRMAN. There being no other witnesses present, the committee will recess until 10 o'clock tomorrow morning.

(Whereupon, at 2:12 p. m., the committee adjourned until 10 a. m., Friday, Feb. 8, 1935.)