THE VALUE OF LEGISLATIVE HISTORY OF FEDERAL STATUTES.

Congressional procedure provides for the printing of a bill upon its introduction in either house, for its reference to a committee where it is publicly discussed by its friends and opponents and testimony is taken as to its good and bad effects, and for a report by this committee to the house in which it originated, which usually changes or revises the bill. A special report of those favoring and opposing the bill is sent to each member of the house, with a copy of the hearings on the bill. The bill is then placed upon the calendar, and, when reached, equal time is allotted to its proponents and opponents to discuss it, at which time the bill is usually amended. It is then engrossed, as amended, read three times, and voted upon, and, if passed, is sent to the other house of Congress, where similar action is taken. Differences between the two houses, if any, are taken up by a conference committee, composed of members of both houses, who make a report to their respective houses, which must be accepted by both houses before the bill is passed. The records of these proceedings constitute a part of what is generally known as the "legislative history" of the bill or statute.

In the course of the trial of cases in the courts, or their presentation before the various and ever-increasing administrative agencies of the government, where the rights of individuals are at stake, there frequently arise questions either concerning the objects and purposes of statutory provisions, or concerning the meaning of the words in which those provisions are set forth. In such cases the courts or administrative agencies must either determine by construction the application of the clauses in dispute, or fix by interpretation the meaning of the words and phrases in which they are expressed. The words "construction" and "interpretation" are here used synonymously, as they are today generally so used.

The object of this article is to show to what extent the legislative history of a Federal statute will be considered in its construction or interpretation.

At the outset we are met with the limitation expressed by Mr. Justice Brown in *Hamilton v. Rathbone* [1] in this language:

"The cases are so numerous in this court to the effect that the province of construction lies wholly within the domain of ambiguity that an extended review of them is quite unnecessary."

This language was lately reaffirmed by Mr. Justice Day, in delivering the opinion of the court in *Caminetti v. United States,*[2] who said:

"Where the language is plain and admits of no more than one meaning, the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion."

In two cases [3] the Supreme Court has referred to the complete legislative history of statutes before it for construction, but it has been held that the legislative history of an act cannot be used as a probative force to change the plain meaning of words which Congress employed in framing it,[4] or to create a doubt where none existed before,[5] and that no aid can be derived from the legislative history of another act passed nearly six years after the one in question.[6]

The object sought in the interpretation of a law is the intention of the legislature which enacted it. Judge Sanborn, of the Circuit Court of the Southern District of Iowa, says:

"No rule of construction, no course of proceeding, is more helpful to a court, in rightfully interpreting a law, than to put itself in the place of the legislative body which passed it, at the time of its enactment, with a complete knowledge of the legislation on its subject at that time, and then to seek, in the light of that legislation, the purpose for which it was passed and the evil it was intended to remedy." [7]

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[1] 175 U. S. 414, 421.

[2] 242 U. S. 470.

[3] Ches. & Pot. Tel. Co. v. Manning, 186 U. S. 238, 242-4; United States v. Pfitsch, 256 U. S. 547, 559-61.

[4] Lederer, Coll. v. Real Estate Title Ins. & Tr. Co., 295 Fed. 672 (C. C. A. 3d, 1924), affirming 291 Fed. 265.

[5] Work v. United States *ex rel.* Rives, 295 Fed. 225 (D. C. 1924).

[6] Penn Mutual Life Ins. Co. v. Lederer, Coll., 252 U. S. 523.

[7] *In re* Clerkship of Federal Court, 90 Fed. 248, 251.

The thought thus expressed by Judge Sanborn has lately had the approval of Mr. Chief Justice Taft.[8] Legislative histories of Federal statutes may, therefore, be resorted to only in order to determine the intention of Congress when an ambiguous statute is before the court for construction. Since all parts of the legislative history of a statute do not have equal weight, consideration will be given to the extent to which the courts have resorted to the various parts of these legislative histories.

The Constitution of the United States[9] provides that each House shall keep a journal of its proceedings, and by Section 895 of the Revised Statutes it is provided that certified copies of these journals shall have the same force and effect as the originals would have if produced and authenticated in court. The Supreme Court has in a number of cases made use of these legislative journals in its effort to determine the legislative intent of an act before it for interpretation.[10]

While technically speaking they are not a part of the legislative history of the statutes, extensive use may be made of confidential preliminary drafts of bills, and of communications submitted to the various committees of Congress, even though they are not contained in the committee hearings or reports on the bill. These are available in the files of the committees which considered the bill, and may also usually be found in the files of the legislative counsel of the House and Senate, respectively, where may generally be found the best legislative histories of Federal statutes. To have such materials readily accessible serves not only to discourage declamations urging that the court must seek the intent of Congress unaided save by the face of the statute, but also to further the will of Congress and prevent unnecessary, and often less expedient, judicial legislation.[11]

It is not unusual for Congress to enact legislation to remedy evils brought to its attention by means of petitions. In con-

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[8] Stafford v. Wallace, 258 U. S. 495, 513.

[9] Art. 1, sec. 5, cl. 3.

[10] Blake, Coll. v. National City Bank of N. Y., 23 Wall. 307; Field v. Clark, 143 U. S. 649, 670; United States v. Burr, 159 U. S. 78.

[11] See 24 Col. L. Rev. 214, 215.

struing the provisions of the Harter Act,[12] the Supreme Court in *The Delaware*,[13] remarked that:

"The exigencies which lead to the passage of the Act are graphically set forth in a petition addressed by the Glasgow Corn Trade Association to the Marquis of Salisbury and embodied in a report of the Committee on Interstate and Foreign Commerce of the House of Representatives. As a part of the history of the times this is a proper subject for consideration. American Net & T. Co. v. Worthington, 141 U. S. 468, 474."

While the petition referred to in this case was embodied in the committee report on the bill, there have been cases where petitions were referred to that were not so included in the committee report. In *Church of the Holy Trinity v. United States*[14] the court referred to the petitions presented to the committees of Congress to show the evil the statute before it for interpretaion sought to remedy, and in *Ogden v. Strong*[15] the court examined the petition to Congress upon which the act was based, and which was made a part of the pleadings, in order to ascertain more clearly the consideration and inducement for the act, so as to determine whether the money paid under the act became a part of an estate. However, in *Thomas v. F. B. Vandegrift & Co.*[16] the court refused to consider a *communication* from a party interested in a statute to the committee in charge thereof, it appearing to the court that Congress had disregarded the communication.

Much information of value to lawyers is to be found in various legal memoranda and briefs prepared for the use of the committees of Congress. These are sometimes prepared by counsel for the various interests affected by the proposed legislation, and sometimes by the legislative counsel of the respective houses of Congress. As an example of the latter there may be cited a one hundred page "Law Memoranda Upon Civil Aero-

[12] 27 Stat. at L. 445.
[13] 161 U. S. 459.
[14] 143 U. S. 457, 464.
[15] 2 Paine 584, 588, Fed. Cas. No. 10, 460 (U. S. C. C.).
[16] 162 Fed. 645 (C. C. A. 3d, 1908).

nautics" printed for the use of the Committee on Interstate and Foreign Commerce of the House of Representatives. Sometimes these memoranda are bound into regular volumes, but always they may be found in the files of the committees considering the bill. In *Penn Mutual Life Insurance Co. v. Lederer*[17] the Supreme Court in its opinion (p. 534) made a marginal reference to "Briefs and Statements Filed With Senate Committee on Finance on H. R. 3321, 66th Congress, 1st Session, Vol. 3, pp. 1955-2094," but it does not clearly appear just what use the court made of them. However, the District Court of New Jersey in *Mutual Benefit Life Ins. Co. v. Duffy*,[18] referring to this action on the part of the Supreme Court, says:

"The marginal reference to briefs and statements filed with the Senate Committee was merely to show that the alleged unwisdom and injustice of excluding one class of corporations from a tax exemption clearly and deliberately allowed had been strongly pressed upon Congress."

Following this statement that court lays down the rule that discussions before a Congressional committee, where no formal report is made in regard thereto, may not be used in determining the meaning of a Congressional statute. Notwithstanding this rule these briefs throw much light upon legal questions not readily obtainable elsewhere. In *United States v. Union Pacific R. Co.*[19] it is recorded that the attorneys for the appellee filed "An argument by Mr. R. B. Curtis before the Senate Judiciary Committee" but the court does not indicate in its opinion to what extent, if any, this argument was relied upon or considered.

It is not infrequently the case, particularly as regards tariff and revenue bills, that many preliminary drafts are made of the bill before it is introduced in Congress. In interpreting various statutes the Supreme Court has in a number of cases[20]

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[17] *Supra*, note 6.

[18] 295 Fed. 881 (D. C. 1924).

[19] 91 U. S. 72, 79.

[20] United States v. Pfitsch, *supra*, note 3; Penna. R. Co. v. Int. Coal Min. Co., 230 U. S. 184, 198-9; Johnson v. Southern Pacific Co., 196 U. S. 1, 20.

made use of the preliminary drafts of the bill which later became the statute being considered by it, but in *Pine Hill Coal Co. v. United States,*[21] Mr. Justice Holmes, in delivering the opinion of the court, said:

"It is a delicate business to base speculations about the purpose or construction of a statute upon the vicissitudes of its passage."

The learned Mr. Dane, in his "Abridgment of American Law," [22] observes that it is said in many English books that the title of a statute is no part of it because the clerk adds it, but that this reason does not hold in the United States, where the legislature makes the title as much as the preamble or the body of the statute. Although the title may not, strictly speaking, be any part of it, yet it may serve, in doubtful cases, to explain and show the general purport of the act, and the inducement which led to its enactment.

It is said by the Supreme Court in *United States v. Fisher, et al.,*[23] that:

"Where the mind labors to discover the design of the legislature, it seizes everything from which aid can be derived; and in such case the title claims a degree of notice that will have its due share of consideration."

Later, however, it was observed by that court that the title of an act, especially Congressional legislation, furnishes little aid in the construction of it, because the body of the act in so many cases has no reference to the matter specified in the title.[24] This observation was somewhat modified later in *Church of the Holy Trinity v. United States,*[25] where Mr. Justice Brewer said:

"Among other things which may be considered in determining the intent of the Legislature is the title of the Act. We do not mean that it may be used to add to or take from the body of the statute, but it may help in interpreting its meaning."

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[21] 259 U. S. 191, 196.
[22] Vol. 6, p. 598, art. 5, sec. 11.
[23] 2 Cranch 358, 386.
[24] Hadden v. Barney, Coll., 5 Wall. 107.
[25] *Supra,* note 14.

A long line of uniform decisions of the Supreme Court seems to fully sustain the right of the court to look at the title for the purpose of ascertaining the intent of Congress, when the intent is doubtful or obscure from the body of the act.

The changes made in the frame of the bill during the course of passage have been referred to by the Supreme Court. In *United States v. St. Paul M. & M. R. Co.*,[26] Mr. Justice Pitney, speaking for the Court, said that these "may very properly be taken into consideration as throwing light upon the meaning of the proviso."

The hearings held by the committee to which a bill has been referred are usually printed in full, and often contain much more of value than the unacquainted would believe. In *United States v. Union Pacific R. Co.*,[27] Mr. Justice Davis, speaking for the Court, said:

"But courts may, with propriety, in construing a statute, recur to the history of the times when it was passed, and this is frequently necessary, in order to ascertain the reason as well as the meaning of the particular provisions in it."

Following this rule, the Supreme Court in interpreting statutes has often referred to the "Committee Hearings" upon the bills in order to ascertain the history of the times and reasons for the legislation. There are two outstanding instances where this has been done.[28] In *Stafford v. Wallace* [29] it appears that the Chairman of the Committee on Agriculture, in reporting the bill, which became the act there in question, referred to the testimony printed in the House Committee Hearings [30] as showing the contemporaneous history and information of the evils to be remedied upon which the bill was framed. In referring to this Mr. Chief Justice Taft (p. 513) said:

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[26] 247 U. S. 310, 318.

[27] *Supra*, note 19.

[28] Church of the Holy Trinity v. United States, *supra*, note 14; Stafford v. Wallace, *supra*, note 8.

[29] *Supra*, note 8.

[30] 66th Cong., 2d Sess., Committee on Agriculture, Vol. 220-2 and 220-3.

"It is helpful to us, in interpreting the effect and scope of the act, in order to determine its validity, to know the conditions under which Congress acted."

These committee hearings frequently contain valuable briefs and legal memoranda.[31]

After hearings are held and the bill has been considered by the committee, a report is usually, though not always,[32] submitted. These committee reports have been used by the Supreme Court in numerous cases in order to determine the intent of Congress in enacting the statute.[33] In *Binns v. United States*,[34] Mr. Justice Brewer, speaking for the Court, said:

". . . we have examined the reports of the committees of either body with a view of determining the scope of statutes passed on the strength of such reports."

In delivering the opinion of the Court in *Knickerbocker Ice Co. v. Stewart*,[35] Mr. Justice McReynolds said:

"Neither branch of Congress devoted much debate to the act under consideration—altogether less than two pages of the Record (65th Cong., pp. 7605, 7843). The Judiciary Committee of the House made no report; but a brief one by the Senate Judiciary Committee (which is copied in the opinion) probably indicates the general legislative purpose. And with this and accompanying circumstances, the words must be read." (Matter in parenthesis supplied.)

These reports are not only valuable for the assistance they render in the interpretation of ambiguous statutes, but often in

[31] For example, see "Tariff Information, 1921," pp. 4144-4163, containing valuable brief by Judge Marion De Vries of the United States Court of Customs Appeals, on the constitutionality of the flexible tariff provisions of the Tariff Act, 1922.

[32] See Knickerbocker Ice Co. v. Stewart, 253 U. S. 149.

[33] Blake, Coll. v. National City Bank of N. Y., *supra*, note 10; Church of the Holy Trinity v. United States, *supra*, note 14; Bate Refrigerating Co. v. Sulzberger, 157 U. S. 1, 42; Ches. & Pot. Tel. Co. v. Manning, *supra*, note 3; Binns v. United States, 194 U. S. 486, 495; Lapina v. Williams, 232 U. S. 78, 88-9; Caminetti v. United States, *supra*, note 2; United States v. St. Paul M. & M. R. Co., *supra*, note 26; Knickerbocker Ice Co. v. Stewart, *supra*, note 32; Duplex Printing Press Co. v. Deering, 254 U. S. 443; United States v. Pfitsch, *supra*, note 3; Ozawa v. United States, 260 U. S. 178, 191.

[34] *Supra*, note 33.

[35] *Supra*, note 32.

them will be found valuable briefs not to be found elsewhere. The report of the House Committee on Agriculture on the so-called McNary-Haugen Bill [36] contains a fifty-page brief, prepared by the legislative counsel of the House and Senate, discussing the more important constitutional problems involved in the bill, and indicating the constitutional bases for the various provisions of the bill. Had this bill become a law this report would have been invaluable to the lawyers presenting cases involving its constitutionality.

Occasionally Congress appoints special committees to perform some particular function. For example, a special committee was empowered by Congress to enter negotiations with the Indians with a view to the ultimate creation of a state from the lands embraced in what later became the Indian Territory. When a statute relating to the Indian Territory came before the Supreme Court for construction in *Woodward v. De Graffenried*,[37] the Court referred to the reports of this committee [38] and, speaking through Mr. Justice Pitney, said:

"So far as these reports antedate the legislation under inquiry they may of course be resorted to as aids to interpretation, for the Commission was in a very real sense 'the eyes and ears' of Congress in matters pertaining to the affairs in the Indian Territory, and legislation was framed with a special regard to its recommendations."

The reports of the conference committees appointed to adjust the differences between the two houses in bills that have passed both houses come generally within the term "Committee Reports" and likewise may be resorted to as aids in the construction of ambiguous statutes. In *United States v. Pfitsch* [39] the Supreme Court specifically referred to and relied upon the report of the conference committee made upon the act there under consideration.

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[36] House Report No. 631, 68th Cong., 1st Sess.; on H. R. 9033, 68th Cong., 1st Sess.

[37] 238 U. S. 284, 296.

[38] Annual Reports of the Commission to the Five Civilized Tribes.

[39] *Supra*, note 3.

The debates in Congress do not stand upon so substantial a footing as do the committee reports. In *Duplex Printing Press Co. v. Deering*[40] the Supreme Court, speaking through Mr. Justice Pitney, said:

"By repeated decisions of this court it has come to be well established that the debates in Congress expressive of the views and motives of individual members are not a safe guide, and hence may not be resorted to, in ascertaining the meaning and purpose of the law-making body."

The reason for the rule enunciated by Mr. Justice Pitney is well stated by the great Mr. Justice Story in *Mitchell v. Great Works Milling etc. Co.*[41] in these words:

"At the threshold of the argument we are met with the suggestion that when the act was before Congress the opposite doctrine was then maintained in the House of Representatives, and it was confidently stated that no such jurisdiction was conferred by the act as is now insisted on. What passed in Congress upon the discussion of a bill can hardly become a matter of strict judicial inquiry; and if it were, it could scarcely be affirmed that the opinions of a few members, expressed either way, are to be considered as the judgment of the whole house, or even of a majority. But in truth, little reliance can or ought to be placed upon such sources of interpretation of a statute. The questions can be, and rarely are, there debated upon strictly legal grounds, with a full mastery of the subject and of the rules of interpretation. . . . Nor have there been wanting illustrious instances of great minds which, after they had, as legislators or commentators, reposed upon a short and hasty opinion, have deliberately withdrawn from their first impressions when they came upon the judgment seat to re-examine the statute or law in its full bearings."

In *Russell Motor Car Co. v. United States*,[42] Mr. Justice Sutherland, in delivering the opinion of the court, said:

"We are referred to the utterances of certain members of Congress in debate, which, it is argued, show that the provision

[40] *Supra*, note 33.
[41] 2 Story 648, 653, Fed. Cas. No. 9662.
[42] 261 U. S. 514, 522.

under consideration was meant to cover private contracts. Whether they come within the rule forbidding resort to legislative debates, *or within the exception* (R. R. Comm. v. C. B. & Q. R. Co., 257 U. S. 563, 588), we need not consider; . . ." (Italics mine.)

From the language used it would seem that the court considers that an exception to the rule forbidding resort to legislative debates was made in the *Railroad Commission* case. But an examination of that case does not confirm such interpretation, as the court there referred to explanatory statements made by members in charge of the bill, which come under a different rule. However, an exception to the rule announced in the *Duplex Printing Co.* case was apparently made in *Standard Oil Co. v. United States*[43] where the Court, speaking through Mr. Chief Justice White, said:

"Although debates may not be used as a means of interpreting a statute, that rule, in the nature of things, is not violated by resorting to debates as a means of ascertaining the environment at the time of the enactment of a particular law; that is the history of the period when it was adopted."

Citing the *Standard Oil* case and the cases of *Johnson v. Southern Pacific Co.*[44] and *Lincoln v. United States,*[45] the Court in *Acklin v. Peoples Sav. Assn.*[46] said:

"While, generally speaking, construction of a statute may not be aided by consideration of discussions in the legislature, yet, when it is seen that the legislation was had with special attention given to the effect of the disputed language, that cogitation by participating members which served to affect the result may be resorted to for definitive purposes. Such is the rule where obscurity in a statute is to be cleared."

And the Court of Appeals of the District of Columbia is apparently of the opinion that recourse may be had to debates in Con-

[43] 221 U. S. 1.
[44] *Supra*, note 20.
[45] 202 U. S. 484.
[46] 293 Fed. 392, 397 (D. C., 1923).

gress for the purpose of aiding in the interpretation of an ambiguous statute. In *Work v. United States ex rel. Rives*[47] the late Mr. Chief Justice Smyth, in delivering the opinion of the court, said:

"While reference may be made to reports of committees of either House, and even to debates in Congress for the purpose of aiding in the interpretation of an ambiguous measure (United States v. St. Paul M. & M. Ry. Co., 247 U. S. 310, 318), there is no authority for considering those sources of information where, as here, there is no ambiguity."

The rule with reference to the use of debates in Congress is applied in the construction of constitutions as well as statutes.[48]

In the course of the debates in Congress attendant upon the consideration of a bill it frequently happens that explanatory statements in the nature of supplemental reports are made by the member of the committee in charge of the bill in the course of passage. The rule that reports of committees of the House or Senate may be regarded as an exposition of the legislative intent, in a case where otherwise the meaning of the statute is obscure, has been extended to include those explanatory statements.[49] But in *Omaha & C. B. Street R. Co. v. Interstate Commerce Commission*[50] the Supreme Court held this rule did not apply to the statements of the chairman of the committee. And, in *De Laski & Thropp Circular Woven Tire Co. v. Iredell, Coll.*,[51] the opinion of the court indicates that it did not very strongly rely upon a statement made by the chairman of the Ways and Means Committee of the House made during the course of the debate upon a revenue act then before the court

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[47] *Supra*, note 5.

[48] Downes v. Bidwell, 182 U. S. 244, 254.

[49] Binns v. United States, *supra*, note 33; Pa. R. Co. v. Int. Coal Min. Co., *supra*, note 20; United States v. Coca Cola Co., 241 U. S. 265, 281; United States v. St. Paul M. & M. R. Co., *supra*, note 26; Duplex Printing Press Co. v. Deering, *supra*, note 33.

[50] 230 U. S. 324, 333-4.

[51] 268 Fed. 377 (D. C., 1920).

for consideration. However, in some recent cases [52] the Circuit Court of Appeals of the Second Circuit has relied upon statements of the chairmen of committees of the House made in the course of debates upon statutes before the court for interpretation.

A more general use of the legislative history of statutes as an aid in determining the legislative intent will serve to materially lessen judicial legislation.

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[52] New York & Cuba Mail S. S. Co. v. United States, 297 Fed. 158, 160 (C. C. A., 1924); United States *ex rel.* Patton v. Tod, 297 Fed. 385 (C. C. A., 1924).