THE LEGISLATIVE HISTORY OF THE CAPPER-VOLSTEAD ACT

by

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Submitted to the Department of History and the Faculty of the Graduate School of the University of Kansas in partial fulfillment of the requirements for the degree of Master of Arts.

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CHAPTER I. THE DEVELOPMENT OF CO-OPERATIVE MARKETING ASSOCIATIONS

The men of the soil have taken their cue from modern commercial and industrial enterprise. Co-operation and at times, combinations have modified certain forms of competition. There have been many agrarian leaders who looked forward to a day not far distant when farmers' co-operative organizations of nation-wide scope will bring about fundamental modifications in the distributive system for food products and when the middleman will be reduced to a factor of minor importance, and the middleman's profit divided between the consumer and the producer. So important have these co-operatives become that the Nation has taken cognizance of them. Their defense against the operation of the Sherman anti-trust law is one of the most important political problems of the farmer. The penalty for failure in this is serious. The farmer manages his enterprise on a small margin of profit in spite of the fact that it is an occupation subject to the hazards of the weather as well as those of the law of supply and demand. The smallness of profit plus the character of rural living conditions has caused a considerable movement from the farms to the cities. This has operated against American agriculture more than mere number would imply, because in general it has been the more able men who have left the farmer group to live in the cities and
to try their fortune in enterprises offering greater margins of profit. The farmers co-operative movement has for its object the making of farming more profitable. Then too the most important single economic factor tending to hold the able young men on the farms are co-operatives. To destroy them would menace the food supply of the Nation which now must be increased by better and more intelligent farming instead of by an increase in the farming area.

As a result of uncertainty regarding the legal status of agricultural co-operatives, the activities of the department of justice toward co-operative marketing associations were very discouraging as far as the general outlook of agriculture in the United States was concerned. As a result of these activities agitation for a law establishing the legal status of the co-operative associations was begun. The culmination of this agitation in the passage of the Capper-Volstead Act is set forth as completely as possible in the following pages.

However before this can be done it is necessary that a co-operative marketing association be defined and some of the early history of such associations be set forth. Co-operation, though not difficult of definition is such a common place term that its use more ably defines it. Generally speaking co-operation is the working with others for a common benefit. A co-operative association is one in which the members form an agency through they conduct their business for their greatest mutual advantage. To
be co-operative, it must be formed of producers, exclusively, and managed by them, and the benefits must be returned to them in proportion to the patronage of each. The capital necessary to create the agency and its facilities should be contributed by the members in proportion to the use which each makes of it. Also, the capital contributions of each member should be kept progressively proportional to the individual shipments, or purchases, or other uses made of the agency, as nearly as this may be done. It is easy to confuse a co-operative association and a capital-stock corporation because the latter is operated on the same principle as the former, the essential difference being that a capital-stock organization is operated for profit, the earning capacity of the capital invested is the basis of administration, of control, and of the distribution of earnings. The co-operative association, on the other hand is founded for the mutual benefit of its members, while the earnings, or profits, are returned, not on the basis of the capital which each member has contributed, but rather on the volume of his shipments, or his purchases, or are proportional to any other use he makes of the association.

Co-operation began some 300 years ago among dairy farmers in Switzerland. These farmers learned that they could greatly reduce the labor of cheese making by forming groups and delegating the making of their cheese to one of their number. This was co-operative production.
but is soon led to co-operative marketing, as they discovered that traders would pay higher prices for large quantities of cheese of uniform quality than they would for individual lots of varying qualities. This movement no doubt profitable was ephemeral and the present co-operative movement was started in England during the early part of the nineteenth century. It grew out of the movement started by Robert Owens to better conditions among agrarian folk by teaching them scientific farming.

The present co-operative movement, or the Rochdale movement began in the little town of Rochdale, England in 1844. Twenty eight weavers, poverty stricken came together and formed a society to raise capital and start a store of their own to supply their principal personal and family needs. This is the first consumer co-operative society and this type of co-operation has enjoyed a considerable growth in England, Scotland and Wales. Following the early struggles of the Rochdale pioneers the movement gained considerable headway and spread to continental Europe. There it made its greatest growth in France, Germany, Russia, Italy, and Denmark.

In Germany there grew up the second type of co-operative societies known as credit societies. These are better referred to as co-operative banks. The pioneers in this field are Herr Schulze, Mayor of Delitzsch, and Herr F. W. Raiffeisen, burgomaster of a group of villages round Neu-wied. Following a year of general distress in 1848 and 1849 Schulze formed a Friendly Society for relief in sick-
ness, and also an association of shoemakers for the purchase of raw materials. In 1850 he founded in Delitzsch-Eilenberg the first loan society because he saw that the lack of good credit was at the root of the small man's helplessness and that this credit could only be provided for if the small man by self-help organized himself to obtain it. Herr Raiffeisen founded the first co-operative society for the aid of farmers in Germany in 1849, at Flammersfeld in the Westerwald. The members however were wealthy philanthropists who sold cattle to unorganized farmers at easy rates, they were not farmers themselves. Later in 1862 he founded a society at Anhausen, in which the borrowing farmers were themselves the members.

In Denmark co-operation has become so thoroughly incorporated in the agricultural life of the nation that the great majority of all selling of agricultural products and purchasing of farm supplies and equipment is now done through co-operative organization. Co-operative selling is the third type of co-operation and is the type which has found most favor with those persons engaged in the agricultural industry.

Co-operative marketing in the United States began as it did in Europe with the dairy farmers. The first experiments were undertaken in this country as early as 1810, in the State of Connecticut where an attempt was made to make and sell butter co-operatively. The first successful results in co-operative marketing were attained in
1841, by a group of dairy farmers in Wisconsin. During that year several farmers began the co-operative production of cheese. These earlier efforts at co-operative continued but were interrupted by the Civil War, and the decade following the war had practically closed before any appreciable progress was made.

In 1867 Oliver Hudson Kelley, a clerk in the office of the Commissioner of Agriculture at Washington, founded the Grange, an organization to bring about better conditions for farmers. This organization though chiefly social in its undertakings saw fit in its fight against monopolies to pursue a course along economic lines. Accordingly in 1873, Grange stores, usually but not always embodying the Rochdale plan sprang into existence everywhere and soon were doing a thriving business. The buying of farm machinery and supplies was pooled into community orders and special rates were obtained from manufacturers or wholesalers who could be induced to make this concession. Soon these community orders were being grouped into county orders and within another year whole states were buying farm machinery and certain supplies as a single unit. Co-operative methods were also applied to the marketing of certain farm crops and co-operative creameries and elevators became familiar objects in many states. Large storage and sales pooling houses were also established to handle the wool crop and tobacco crop for Grange members.

The Grange at last decided to enter the manufacturing field itself. In Iowa where the Grange was particular...
larly strong and had early established an agency for co-operative buying, the refusal of harvester manufacturers to sell at wholesale prices was met by a decision of the Grange to make its own harvester. A plant was purchased and for a time machines were manufactured and sold at about one half what other harvesters cost. In 1874, about 250 of these machines were made and prospects looked bright. Deceived by the apparent success of the Iowa Grange in its manufacturing ventures, the National Grange decided in 1874 to embark upon the manufacture of agricultural implements on a large scale. In 1875, there was a crash, the Iowa harvester factory failed and bankrupted the state Granges. Other failures followed, local Granges disbanded for fear they might be held responsible for the debts incurred. This crash cast a dark cloud over co-operative activity for sometime, however, other farmer organizations were formed and fostered co-operative societies or organizations operating on co-operative principles.

From 1900 to 1917, there is a noticeable revival of interest in co-operative associations. The Farmers' Union founded in 1902 was well established in twenty states by 1914. The Union emphasized the co-operative and other economic features rather than the social and educational. Co-operative stores in considerable numbers were owned and in 1910 the Farmers' Union had a system of warehouses in every cotton growing state in the South. It was claimed that there were more than a thousand cotton warehouses under control where the farmers stored their crops and on
occasions held them for fair values. The aim was for the cotton farmers, through their association to keep absolute control of their crop until it reached the spinners either in Europe or America. The Ancient Order of Gleaners organized in 1907 the Gleaner Clearing House Association, each local had a clearing house manager and sometimes a branch clearing house, through which any member or local may make shipments to the central clearing house. Another farmers' organization, The Equity, deserves much credit for developing co-operative effort on sound, though relatively small basis at a time when the reaction from the failure of the early farm organizations had created the feeling that farmers would never again be able to successfully organize along economic lines. This organization studied the local needs of a community and stated a type of co-operative best suited to meet these needs.

In stopping to consider the activities of these early co-operative marketing associations in an attempt to outline their policies two of them are readily discernible. The first is their open price policy, the second is the stimulation of economic efficiency. Nearly all economic institutions consider a monopoly or the control of prices of their products essential to their success. This does not hold true in the case of early farm organizations because they made no attempts to control the prices of products except to the extent that they endeavored to secure a fair profit over and above the cost of production. There were no attempts on the part of milk producers in
the New England States to establish a universal price along the Atlantic coast. The grain growers of the west did not attempt to control the wheat market through price fixing activities. These early organizations were local, local in the sense that they were attempting to eradicate the "middleman", secure better railroad rates receive a good price for their grain from local elevators. They believed that through co-operation they would command a more uniform price for all the farmers in a community thereby preventing agents of large corporations bargaining with them individually and consequently paying them his price and not the price they asked for which only guaranteed them the cost of production and a fair return for their labor.

Farmers did not begin their fight for better and more uniform prices as soon as they established co-operative associations, but inaugurated among themselves a movement along educational lines. They intended to be in a position to have valid qualification which would substantiate their claims. To do this the farmers' quest for economy and efficiency brought co-operative activity into three general fields, of first, operation of actual production; second, the purchase of goods for services used either in carrying on his farm business or in household consumption; and third, the selling of his product.

The first and third items are interwoven since marketing frequently involves productive processes such as butter making, packing, drying, storage, conditioning, or other processes which sometimes are done on the farm or a sub-
sidiary, operated by it for the service of the grower members. The modern farmer finds himself involved in a productive process which, if efficiency is to be secured, demands a variety and frequently a size of capital equipment in excess of the carrying capacity of the one-man farm and a labor specialization quite outside the scope of the individual farm personnel. Functional specialization has developed in the United States and to a much lesser extent in foreign countries to meet this emergency. One of the earliest was the thresher ring, which brought steam power to the ordinary small farm. The latest developments along this line are silo-filling and power-spraying of and organizations, cow-test associations and even co-operative budding, pruning, packing, fungating enterprises and in several cases investigational work. All of these services which the producer gets cheaper or better by providing them for himself on a co-operative basis, or in many instances which he could not get at all if he relied on the profit-seeking enterprises of outsiders.

The growth of co-operative marketing in the United States during recent years is noteworthy. Beginning after the Civil War co-operative marketing has had a rather checkered career. For about thirty years, ending in 1901, co-operation was strictly in the experimental stage. The greater part of the development, such as there was, came from the Grange or Farmers Alliance inspiration. So far as number of companies was concerned there was a considerable showing made during these years, and in not a few instances the results were gratifying. The real trouble
was a lack of acquaintance with the working principles of co-operation. Almost anything embodying the sharing of profits among a group bent on effecting a savings will work as long as the enthusiasm is at its height. All manner of gaps may be bridged temporarily by the combined efforts of the interested parties. In the early co-operative undertakings there was no uniformity as to the ownership of stock; no adequate provision for paying dividends on any basis other than that of stock owned; no plan of voting except on the basis of stock. In the short the co-operative companies were nothing other than corporations, the stock of which was mainly in the hands of farmers.

Furthermore, the co-operative companies of this early period in almost no instances had any business connection either adequate or safe from the standpoint of their aspirations and attainments. Almost all of the companies established by farmers before 1901 were strictly local in their scope of operation. They were able when things went well to effect local savings in buying or selling, but they seldom or never developed any considerable amount of bargaining power than by way of finding the best available market at the time, spreading sales over a season, or standardizing goods. It is surprising to know that out of 6000 farmers' companies reporting to the Bureau of Agricultural in Economics the year of its origin, only a small per cent dated back of 1901. The greater sham of all those which did report having had a beginning in their early period were dairy associations, principally
co-operative creameries and cheese factories. In both of these early types there was a minimum of co-operation present, yet it is altogether a mistake to suppose that the co-operation involved in these undertakings was not genuine or important. In fact, it was both.

During the second period, 1902 to 1912 inclusive, co-operation made a distinct growth. The dairy organizations continued to increase, but the larger numbers added to the list consisted of grain companies. These companies were held together by loose organizations. The local companies did their own buying and selling best they could. Hence, local evils were about all they were in a position to attack. However, the circumstances were such that a great deal of coherence was developed by these companies. They learned, and part of them practised, rational methods of distributing the profits and the patronage dividend became prevalent. This is the introduction of idea of price making by control of supply.

In the third period, 1913 to 1921, inclusive, co-operation grew by leaps and bounds. There was a great increase in the number of isolated local companies, with a corresponding growth in some form of federation, or at least of companies centering their trade in some common agency, as livestock shipping companies, local, but with a co-operative commission firm to which shipments might be made.

The time of most rapid development of co-operative development was from 1912 to 1921. The outstanding in these ten years was in an expansion of the grain, fruit,
and vegetable, and especially the livestock marketing associations. This enormous growth is the result of natural economic changes brought about in this country during a period of trade expansion. Agriculture the basis in industry of our nation had to keep pace with other industries. To do this was the means or salvation of the farmer, not to do it meant that it only was a matter of time before the farmer would become a victim of the rising cost of living and join the band of country folk who were now engaged in some economic pursuit in the large cities that offered a greater profit for his labor. The farmer through co-operation during this period attempted to do four things: first, effect an adjustment between prices of products he sells and prices of products he buys; second, an adjustment between prices he sells and taxes; third, and adjustment between prices of things he sells and public debts; and fourth, an adjustment between prices of things he sells and private debts.

From such conditions as these came the need of a radical change. It was apparent that some system must be evolved whereby the producers would benefit. Certain factors are essential to such a system. In order to distribute his products scientifically, the producer should be served by an efficient information service; his products should be standardized and made known to the buying public; he should be assured of an average price for the entire season instead of being compelled to gamble price for the large profits or large losses, his packing costs should be reduced by large scale purchases of material, and the
most efficient transportation services should be at his disposal, he should be able to obtain credit at reasonable rates.

Working alone the farmer is helpless to develop along these lines. He has not the facilities to grade and inspect his own product; he does not produce enough to create a reputation beyond the limits of his private trade, or to warrant any great expenditure in securing information as to market conditions and prices, or to finance a campaign of educational advertising. Through the application of the economic laws of supply and demand, and increasing returns the farmers endeavored to accomplish these objects. Thus, the principles of co-operation were applied to the greatest problem of agricultural economics the problem of marketing farm products from 1900 to 1921.
CHAPTER II. THE EVOLUTION OF NATIONAL POLICY TOWARD CO-OPERATIVE MARKETING ASSOCIATIONS.

From the earliest times monopolies and contracts in restraint of trade have been generally regarded as opposed to the best interests of the whole people, depriving them in many instances of their livelihood and also enhancing the prices they must pay for necessaries. The common law of England condemned all monopolies in any known trade or manufacture and declared void all grants of special privileges whereby others could be deprived of any liberty or be hindered in their lawful trade, and the common law of England constituted the jurisprudence of the United States. It was brought by the colonists to this country and was established here so far as it was applicable to their conditions. When the colonists separated from the mother country no privilege was more fully recognized or more completely incorporated into the fundamental law of the country than that every free citizen was entitled to pursue his happiness by following any of the known established trades and occupations of the country, subject only to such restraints as equally affected all others. This equality of right led to solemn constitutions against "perpetuities and monopolies," which had been feared and fought by the English forefathers since the days of Queen Elizabeth. The hereditary anti-monopoly attitude so solemnly expressed in these early constitutions and statutes has been firmly maintained by the American mind generally throughout American history. While this was true it was also true that industrial and agri-
cultural concentration had been steadily taking place, but the earliest steps were short and halting. It was not until the late seventies and early eighties that the combination movement began in the manufacturing world. By the end of the eighties individual plants, averaged for whole industries in the United States had grown toward giant stature. The large plants in such industries were already listing their capital in the millions. Thus the mere size of individual plants began to attract general public attention. It needed only that the new trust plan uniting many large plants into the Standard Oil Company in 1882, should be followed by like combinations in other industries started the monopoly cry against manufacturing enterprises. Both of the great political parties in 1888 declared against trusts and industrial combinations, and it soon became evident that the general public had been thoroughly aroused against the new form of monopoly, and anti-trust legislation state and national was a swift consequence. By the Act of July 1890, called the Sherman Act, Congress for the first time exerted its paramount authority so as to make every species of business conducted in the United States to a common rule. The subject matter of that common rule was the method of organizing trade and industry and as subsequently applied to agriculture.

The provisions of this act applicable to agriculture are sections one and two. Section one reads: Every contract combination in the form of trust or otherwise, or conspiracy, in restraint of trade of commerce among the several
Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. 15. Section two reads:

Every person who shall monopolize or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or the foreign countries shall be punished by fine not exceeding five thousand dollars or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. 16.

Sections three, four, five, six, seven, and eight pertain to trusts in territories of the District of Columbia, persons engaged there in guilty of misdemeanors, penalties, jurisdiction of the United States circuit courts in such cases, the procedure and manner in which hearings are to be conducted, issuance of temporary restraining orders and how persons damaged by trusts, etc., can recover their losses.

This law is applicable to all sorts of business organizations, co-operatives included. However there have relatively few prosecutions under this law as compared with those under state laws.

As early as 1891, a mild producer's organization operating in Chicago was involved in litigation and attacked as an illegal combination under the Illinois anti-trust law. This case, down ultimately came to the Supreme Court of Illinois which handed down a decision which made it clear that co-operative marketing arrangements ran counter to the prevailing interpretation of common law principles and the provisions of anti-trust statues. The most important case involving co-operative marketing or collective bargaining is commonly referred to as the Decorah case. The decision of the court in this case had wide effect upon farmer organization and retarded their pro-
gress considerably. The case is woven around the complaint of a local hog buyer at Decorah buying hogs for the Chicago market. He charged that the actions of farmers in selling their hogs through a society were attempting to drive him from the field. The decision of the Iowa Supreme Court confirms his charges in the following words:

"Monopolies have always been odious at common law, and all contracts, arrangements, or agreements in restraint of trade or of free competition were void. It was not necessary under the common law that the monopoly be perfect, as it was a tendency rather than its ultimate effect which the law reproved. As a rule a contract which creates such a monopoly as to put it in the power of such combination to raise or lower prices is invalid. A contract or arrangement between persons in a given business whereby they seek to control the price of the article of is invalid, especially when the article in question is of necessity or in general use."

"Whilst originally all contracts in restraint of trade were illegal, some exceptions were introduced into the common law and the rule now seems to be that such contracts are not illegal save when unreasonable in character are the doctrine of restraint as applied to the early cases has been broadened, and all contracts in unreasonable restraint of competition are now understood to be in restraint of trade... "He who was commodities to sell in the market has the same right to competition among buyers as the purchaser has to competition among sellers."18

Although it is true that the by-laws of the association covering the maintenance charge used the word "forfeit" and likewise the association was operated on a basis of outright purchase from the farmer and sale for the account of the society rather than merely shipping the products of the members and remitting to them the proceeds less cost of handling, the strictly co-operative character of the enterprise was compromised by the fact that non-members products were also handled. Other similar decisions were handed down in the Turnip seed case and also in a case against Georgia peach growers. Yet in none of these cases was any account taken of the fact that the
organizations were local in character and shipped to terminal markets where prices were made in competition with producers of all other sections.

As a result of these unfavorable decisions toward co-operative handling, processing and marketing of farm products, agriculturists were skeptical in regard to forming marketing associations and those that did exist always labored under the threat of prosecution and were unable to develop to their fullest extent. Dairy farmers, however, continued to form associations and bear the brunt of all prosecution in order that sentiment might gradually be built up that would lead to modification of the Sherman law as it applied to them and their fellow farmers.

The Anti-trust sentiment of the country expressed in the Sherman Act of 1890, was accentuated almost a quarter of a century thereafter in the enactment of the Clayton Act and the Federal Trade Commission Act in 1914, both of which are supplementary to the Sherman Act. The whole tenor of both acts is toward preventing control of a large proportion of an industry by any combination so that it becomes a menace to competitive conditions. Two classes in the country were most insistent in demanding this legislation—labor organizations and farmer, and yet both, under certain limitations were expressly exempted from anti-trust laws. Section six of the Clayton Law provides: "That the labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof.
nor shall such organizations, or the members thereof, be held or be construed to be illegal combinations or conspiracies in restraint of trade under the anti-trust laws." 19

The exemptions conferred upon the exempted classes a large field for co-operative effort, if the powers were utilized along sound economic lines and with due regard to the rights of consumers. Before, however, co-operative associations can be brought within the obvious requirement of the section it must affirmatively appear first that, it is a "labor, agricultural, or horticultural," organization; second, that it is "instituted for the purpose of mutual help"; third that it does not have capital stock; and fourth that it is not conducted for profit." These are four serious limitations which did little less than modify the intent of the act as far as the farmers under anti-trust legislation. Another factor which placed the farmers in doubt as to the opinion of the Supreme Court toward co-operation was the opinion of the Chief Justice Taft in the Truax case. His opinion is titled, "The Anti-trust Act and the Supreme Court" and was given out shortly before the passage of the Clayton Act. He said: "Attempts are being made in Congress to exclude from the operation of the anti-trust act trade unions and farmers. I hope this will never be done. It will be legislation establishing a privilege for a class that is supposed to be powerful in votes, without any real reason for the distinction. A law with a similar exemption was passed by the legislature of Illinois. It was held by the United States Supreme Court to be invalid because it denied to all the people of Illinois, the equal protection of the laws. While that case was under the fourteenth amendment, which prevents a state from denying equal protection of the laws to any persons within its jurisdiction, it would be a question whether the Supreme Court might not find in the first eight amendments to the Constitution a prohibition upon congressional legislation having similar unjust operation." 20
This opinion of Mr. Taft doubtlessly had a great effect upon those who read it, yet in the public mind at least, whether the Supreme Court shall finally so interpret or not—organized farmers and laborers are exempt from Government interference under the Sherman law. The sole effect of section six of the Clayton act as far as farmers' organizations were concerned was to establish the legality of such organizations per section so that they could not be dissolved if they were truly co-operative organizations intituted for the purpose of mutual help, without capital stock, and if they were not operated for profit.

In 1915, the Office of Markets under the direction of Mr. Brand, after having examined the existing state of co-operative legislation drew up a measure titled "Suggestions for a State Co-operative Law Designed To Conform To Section Six of the Clayton Act." The act provided for non-stock, non-profit associations and emphasized the personal character of membership there in. In was also provided that only persons engaged in agricultural or horticultural pursuits could become members of such associations and these members were to have one vote, regardless of capital stock, and there was to be no voting by proxy.

The drafters of the bill likewise thought it feasible to provide a fixed and working capital which meant that members only were obligated to contribute to the financial support of the association. This bill as drawn with its several limitations reduces co-operative associations to the agency type of dealing.
Hence, it never received the real attention of national legislators because it was supposedly drafted to be enacted by state law and legislatures and the changing conception in regard to state law at this time paved the way for the bill to be easily ignored. The Department Bill went far toward meeting the legislative deficiencies of the time and was adequate for the purposes of horticultural associations and would provide marketing activities for co-operative enterprises which had been operating prior to this time, but because of its rigidity would not provide the necessary flexibility needed in any co-operative measure that was to be enacted that would withstand the legal attacks co-operative associations were subject to, and at the same time coincide with the new idea as to what a national co-operative marketing law should do.

Nothing better illustrates this change of attitude toward the co-operating marketing of agricultural products than the enactments of several federal laws which indirectly encourage the forming of co-operating marketing association and facilitate their workings. The first Federal measure of this nature was passed in 1914 and is commonly referred to as the Cotton Futures Act. The act provided among other things for the promulgation of uniform standards for grade and staple, and the dissemination of market price quotations. Farmers were encouraged to act co-operatively in the marketing of their cotton by dealing in futures. A more important of act affecting cotton growers was passed in 1916 and is called the Federal Warehouse Act. The primary purposes of this law are to encourage the proper storage of agricultural products, to eliminate
loose, unsound and illegal practices in ware-
housing, and to develop a form of warehouse receipts
acceptable to bankers generally as security for loans.
Under it the Secretary of Agriculture is given auth-
ority to licenses approved public warehousemen for
storage, who are of good character, who file an acc-
ceptable bond, and who are willing to subject themsel-
ves to strict federal supervision. The law provides
for licensed weighers, graders, inspectors, and sam-
plers, and for the issuance of warehouse receipts
containing specific information as to weight, grade
conditions, and identification marks so that the
holder of the receipt can tell from current market
reports what the product is worth whether the holder
be the owner or the banker who loans on the receipt.
Warehouse receipts may not be issued until the pro-
duct is actually in the warehouse, and the product
may not be removed except upon surrender and cancell-
ation of the receipt. Both negotiable and non-ne-
gotiable receipts are issued. The Federal Ware-
house Act has broadened the source of credit avail-
able to the farmer. It enables the farmer to bor-
rrow more freely at low interest rates, and thus make
it possible for him, either individually or through
co-operative associations, to merchandise staple com-
modities in an orderly way rather than by dumping
them on the market at harvest time or when pressed
by local creditors.

The Federal Farm Loan Act of 1916 created the
Federal Farm Loan system. Federal land banks were set up in twelve districts throughout the country. The banks were provided originally with a capital of $750,000 each, most of which was provided by the Government. They were authorized to make loans on farm mortgage security for periods ranging from five to forty years. As a result of this act farmers are able to secure the working capital of their co-operative marketing associations. The banks themselves become co-operative institutions in that the law includes a provision by which the borrowers take a certain amount of stocks in the land banks and in time the government capital will be paid off in this way. A second advantage to the farmer of this loan system is that his mortgage loans may be placed for a long period of time, which avoids the necessity of renewing them every three to five years and of paying new commissions and incidental charges.

The Smith-Leyer Act passed in 1914 was an epoch making event in agricultural development. By its provisions was established the office of the county agent whose subsequent activities led to the formation of farmer groups in every county in almost every agricultural state in the Union. County agents became the impetus needed for the unbridled development of the opinion among farmers that in "Union there is strength," and that co-operation was the means to this end. The Farm Bureau backed this measure implicitly while it was running the gamut of legislative procedure in Congress and thru this office the county demonstrator
went to work. Education through actual demonstration was the method employed by these agents and their immediate success was assured, if they received the co-operation of farmers. The bill establishing this office of county agents made available the funds necessary for the rapid extension of the County Agent system into every agricultural county of the nation. It represents an attempt to aid the farmers through Federal and State financial aid the one depending upon the attitude of the other.

The War Finance Corporation Act passed in 1918 established a corporation to assist in financing various activities connected with the conduct of the World War. In May, 1920 the activities of the Corporation were suspended on the assumption that its original purpose had been served. Owing to the depression of 1920, the activities of the Corporation were revived "with the view of assisting in the financing of the exportation of agricultural and other products in foreign countries," and in August of the same year the Corporation was further authorized to make advances to financial and other institutions, including co-operative marketing associations which had advanced credit for agricultural or livestock purposes.

Other measures which have helped to stimulate the activities of co-operative marketing associations are the Food Control Act of 1917 and the Agricultural Credits broadened the powers of the War Finance Corporation, while the food control act laid strong prohibitions on any action tending to enhance the cost of food, but made express ex-
tion of farmers.

Co-operative associations being able to influence state legislatures more easily than congress had secured the enactment of special co-operative laws in five states by 1900. Since and including 1917, thirty states have passed statutes especially designed for the incorporation of co-operative associations. Since 1917, progress has been made more rapid, and in 1928 there was only a single state in the United States, Delaware, which did not have at least one single law government of co-operative associations.

The first co-operative law passed in Michigan in 1865, and was clearly designed for the organization of co-operative stores, but in 1875 was amended to include agricultural and horticultural associations. Since the passage of this law the objectives of more recent legislation have been changed and these are embodied in the California Laws of 1895 and 1908. The law of 1895 provides for a "co-operative association for the transaction of any business, whether for profit or not, or for the promotion of any educational, industrial, benevolent, social or political purpose." These laws represent a distinct departure from the Rochdale principles of co-operation and under their terms California has built up a great volume of successful and apparently permanent co-operative marketing associations.

The Kentucky law of 1906 was the outgrowth of a movement to hold the tobacco crop and thereby resist the depression of the market price of tobacco. The therefore
was not an enabling act providing for the organization of a co-operative marketing machinery, but was designed to define certain practices, such as pooling, as being valid and legal within the state.

As a result of the single tax colonization enterprise in Alabama among a group of followers of Henry George in 1893 there was enacted in 1909 a co-operative law similar to the California law yet having its origination in an altogether different purpose. It was for the establishment of a non-stock type of association embodying the fraternal idea. The influence of this statute on co-operative law in the United States is evidenced by the fact that an association formed under it was concerned in a decision which has frequently been cited in co-operative litigation. The case is Ex parte Baldwin County Producers Corporation, 203 Ala., 245, 83 So. 64 (1919)

In spite of the interest of farm organization in co-operative marketing it was not until 1911 that farmers really took lead in a wide spread movement to secure laws which such organizations could be most advantagley set up. During this year Wisconsin passed a law with two new features, a voting by mail clause and a special provision for the distribution of earnings on the patronage dividend plan. Up to this time co-operative laws had simply permitted associations to make such by-law provisions as they might see fir concerning the distribution of dividends.

The State of California is to be credited with having given to the co-operative movement its most significant
leaders. They are Mr. Weinstock, head of the California Division of Markets, Mr. Lubin, who was associated with Mr. Weinstock and later established the Internation Institute of Agriculture at Rome, and Mr. Aaron Sapiro. Space will not permit a lengthy discussion of the activities of these three men, however, it is necessary to discuss the activities of these men, Mr. Aaron Sapiro in regard to the "Standard Marketing Act." Mr. Sapiro who had served from the beginning as legal council for the state market commission of California, undertook the task of adopting the raisin grower's contract to the needs of various associations dealing with non-perishables and to secure its fuller recognition by the courts. In the prospection of this work Mr. Sapiro became convinced that it was necessary to secure statutory provisions recognizing such contracts and authorizing vigorous measures for their enforcement. He therefore set about drafting such a measure as would meet the needs of this situation. His activities led to the amendment of existing Oregon laws in 1921 at the time the Oregon Grower's Co-operative organization was completed. However, the organization of cotton associations in several of the Southern States had been undertaken and, as an aid to such organization along lines considered necessary by Mr. Sapiro, a comprehensive measure drafted by him on the basis of his California and Oregon experience was presented first to the Legislature of Texas and shortly thereafter to the legislatures of several other southern states. This measure was adopted by several states in
1921 and altogether by thirty seven states of the Union by 1923.

A careful analysis of this measure reveals its distinctive features to be first, a clear statement of the public policy of any state in which the act might be passed; second, it anticipates and offsets legal objections that might be raised in the process of adjudication of this law on the ground that it is in effect class legislation, and third, authorizes associations with capital stock as well as those without.

The Ohio law passed in 1921 as a result of the humiliation and inconvenience to which the officers of an Ohio milk producers association were submitted in a case against the association contains certain distinctive features which make it an interesting link between earlier laws and subsequent Federal legislation. It anticipated the Capper-Volstead act in providing a special agency for review of the acts of associations and it vested regulatory power in the state public utilities commission.

Hence, we conclude that the legislators have not fairly the question whether a particular type of strong association was to be permitted, and have answered this question in its affirmative, but they have not been able in the law to place definite limits upon the operations of these organizations such as would safeguard the public from any possible harm. In a few instances co-operative legislation itself has specified that the associations formed there under should be for the purpose only of carrying out leg-
imate and proper functions, "or should be permitted to seek profitable prices only so long as they were fair and reasonable" or did not "unduly enhance" the cost. In many other cases, however, the law has merely the tacit understanding, no doubt, that its actions, like those of other business organizations or individuals, would be subject to review by the courts.
CHAPTER III. THE CAPPER-VOLSTEAD ACT IN THE 66th CONGRESS, 1919 to 1921.

The circumstances leading up to the introduction of the Capper-Hersman bill at the first session of the 66th Congress parallel to a great extent the circumstances which led to the introduction and passage of co-operative measures by state legislatures. The continuous intimidation of members of co-operative marketing associations by threats of prosecution under the anti-trust laws, state and national, created in them a desire to have a show down on this vital question.

In 1918, the Chicago Milk situation reached a point where it was no longer possible to sell milk and milk products profitably without fear of prosecution. At this juncture the Illinois State Food Administrator appointed the Chicago Milk Commission to investigate and remedy existing conditions. The problem involved in this situation is the one of securing an adequate supply of pure milk for Chicago, and is primarily an economic problem.

As long as there remained large sections of the producing field around Chicago unexploited, and as long as the distributive organization was on a competitive price basis, the economic problem of milk production and distribution never became acute. Evidences of the impending struggle appeared in the conditions in Boston and New York, where investigations were deemed necessary to break the growing monopolistic power of the milk dealers. It may now be seen that they were only preliminary to the crisis that
occurred during the summer and autumn of 1917. This crisis
developed in various large cities from the Atlantic to the
Pacific, and led to many investigations. The situation in
Chicago being representative of the whole movement is here-
in set forth in detail.

A brief survey of the factors at work to bring on the
crisis in the Chicago district will afford a background up-
on which to throw the details of the inquiry. There are
three dominating factors in the situation; first, the rise
of the large dealer or distributor in the city; second, the
growth of the Milk Producers' Association to a position of
control in the Chicago zone; and third, the milk war.

Thirty five years ago there was said to be as many as
2,700 distributors in the city, and in 1906 there were more
than 1,300 such distributors. By 1911, the tendency toward
concentration was apparent. At that time there were ten or
twelve large dealers who handled almost two-thirds of the
milk coming to Chicago. The rest, it was estimated was in
the hands of between 1,200 and 1,500 small dealers. By 1917,
the number of dealers was reduced to 668, and two companies
were distributing forty per cent of the total.

There were several results following from this concen-
tration of control, namely, first, it became possible to off-
ero better service; second, the large companies sent their
own inspectors into the field to help the dairyman protect
his herd from disease, to insure against lapses between the
rare visits of the municipal inspectors, and to guard against,
as far as possible, infection and contamination at the source;
third, better equipment was set up at the bottling plant along with better transportation facilities, and better equipped receiving stations; fourth, the growth of an increased bargaining power and the savings and economics of large scale business were secured. While keen competition in service existed within the city, these large distributing companies made only a single basic offer to the producers. This was not a fixed price, but only another instance of a standard price driven to this common basis by the ruthless competition in service. There came to be known in the trade a Chicago price.

To match this concentrated control over distribution there arose in the producing area an organization of dairymen known as the Milk Producers' Associations. It has grown by an accretion of local or county associations until by 1918, its claim to membership was well over fifteen thousand. It reached out into all parts of the Chicago zone; in fact, it consisted of the majority of producers in this area. While it was not single in its purpose, to fight the distributors, that was fundamental in securing a unifying motive. Subordinate interest was found in getting a better bread of dairy cows, in determining a balanced ration for the herd, in keeping accounts and in exchanging ideas on topics connected with the dairy business.

It was in the spring of 1916 that the association first made itself fold. Milk contracts are made in the Chicago district for six month periods, one running from May, to September, the other from October to April inclusive. Con-
tracts for the first period are called winter contracts.
One of these is the pasture season; the other, the feeding
season. Dairies are also classified on this basis into sum-
mer and winter dairies. At the beginning of these two con-
tract periods a price is fixed for the ensuing six months.
In the spring the price runs on a butter-fat basis, on what
is called a cheap milk price. The reason for this is that
pasture is cheaper than other feed, and that butter is made
from the surplus of this season and stored for the winter
market. The surplus is vital with the distributor. These
six months' prices must be high enough to cause a suffi-
cient flow of milk to the city, and at the same time low
enough to reach the purchasing power of the masses. At the
contract making time in April, 1916, the Milk Producers'
Association demanded an increase in price for whole milk,
and when their demand was refused proceeded to cut off the
supply for the Chicago market by labor union methods. They
got their price and milk to the consumer rose from eight to
nine cents per quart. In April, 1917, there was another
struggle, a milk war, it was called, with further threats of
boycott, and again the milk dealers submitted to the pro-
ducers demands with a subsequent increase of milk per quart
to the consumer. In October, 1917, there was a further in-
crease in the consumers cost as a result of negotiations
between distributors and producers which was followed imm-
ediately by an outcry from the consumer.

At this juncture the State Food Administrator was pre-
vailed upon to take the matter in hand, and he appointed
the Chicago Milk Commission, consisting of representatives of the producers, distributors, and consumers. It was the duty of the commission to name a price at which milk may be sold by producers in the Chicago district, which price shall cover the cost of production and a reasonable profit thereon. The same principle was to apply to the distributor; there was to be a determination of the cost of distribution and a reasonable profit to the distributor. The commission induced the producers and dealers to accept a compromise price in November, 1917, a final decision as to a fair price was to be rendered until January 1, 1918. This decision was not rendered until late in February, however by August the situation had worked out nicely although producers got a raw deal during the preceding winter months.

The unexpected aftermath of this situation came April 18, 1919, when Deputy United States Marshals stepped into the offices of the Milk Producers' Associations at some twenty-five different points in Illinois, Indiana, and Wisconsin, and served notices upon the secretaries of the associations thus summoned represented some 16,000 farmers. This investigation by the grand jury was then outcome of the conflict between the milk producers, distributors, and consumers of the city of Chicago. Over a year ago when the price of milk was so far below the cost of production that dairymen were being rapidly driven out of business, representatives of the various associations got together, and with the aid of competent men from the University of Illinois and elsewhere, they worked out very carefully the cost of producing milk under the conditions then prevail-
ing, and decided upon the price which it would be necessary for them to secure in order to remain in business. They were threatened with prosecution at the time, but after a time their pride was adopted and the people of Chicago continued to get milk.

The action which was begun in Chicago was for the purpose of prosecuting the milk producers under the Sherman anti-trust act as being combinations in restraint of trade. The prosecutor charged that the consumer had not been getting the benefit of the increased productions, which is contrary to the law of supply and demand. The prosecutor undoubtedly was under the influence of persons who thought that the producer is under obligation to sell his milk only as milk and has no right to convert it into butter, and cheese, even though he may get more for his product in that way than by selling it as whole milk. At the trial evidence was introduced to prove that members of the Milk Producers' Association had conspired against other non-members producers of milk and had waylaid them while they were hauling milk to the large plants, and also threatened them with punishment if they should deliver the milk. Eight officers and members of the association were on trial and in October, 1919, were found not guilty after the trial had lasted for two months.

This case was of interest to the farmers of the entire nation, because the question at issue was whether the farmers have the right to bargain collectively. Do they have the right to act together in the form of voluntary associations, investigate the cost of growing crops of producing and give them a fair profit? In the final analysis the
question is whether the farmer has a right to bargain collectively, as the labor-unions do for the price at which he shall market his labor. For milk and other farm products represent simply the labor of the farmer who has produced them. It was years before the right of the laboring men to bargain collectively was recognized and evidently the farmer must go through the same fight, although, according to existing laws, he now had that right. At least, up to the present time, there was no law which required the farmer to sell his grain as grain rather than in the form of live stock, or to sell his milk as milk rather than as butter and cheese. If the Sherman law had been twisted so as to apply in this case, the sooner the farmer knew it the better. The result of this prosecution though favorable to the farmer brought the matter to a head and the farmer assuming the aggressive side began a fight to the finish.

The leaders of the National Milk Producers' Federation brought the matter up before the National Board of Farm Organization at a meeting in 1918. A committee was appointed by the National Board of Farm Organizations which drafted a bill and had it introduced in Congress. On May 28, 1919, Senator Arthur Capper, the junior Senator from Kansas, introduced in the Senate a bill that later became known as the Capper-Hersman bill. Its official title was "A bill (Sen. 845) to amend section 6 of the act of October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes." The bill was referred to the Committee on the Judiciary, because the
Committee on Agriculture and Forestry, to which it was more likely to have been referred was unable to give it any consideration.

This same bill was introduced in the House of Representatives by Representatives Hersman and Barbour of California. As in the Senate it was referred to the Committee on the Judiciary for a like reason. The committee began a series of hearings attended by members of the American Farm Bureau Federation, National Milk Producers' Federation and others interested in the passage of the bill. Among the persons summoned to testify before the committee were Mr. Aaron Sapiro who said very frankly that "from the standpoint of basic economic theory there is not any distinction between the production of one thing that is essential to life and the production of another thing that is essential to life." But, he said, "from the standpoint of practice, and in the many particulars from the standpoint of experience of this country it has been shown that the farmer is the most helpless person commercially except with the aid of the Government or co-operative associations, that this country has ever known." This testimony is illustrative of that taken from persons aware of the plight of the farmers and who fully realized the necessity of changing existing law thereby alleviating the conditions of agriculture in the United States.

But this testimony went unheeded and neither the House of Representatives or the Senate Committee made a favorable report upon the bill before the adjournment of the first session of the 66th Congress.
In reality the fight had just begun as is evidenced by the speech of Senator Capper in which he discussed the great issues before the present Congress. He said, "Our whole system of marketing is faulty. Necessities of life pass through too many hands on their journey from producer to consumer. I hope we shall have legislation that will encourage co-operative purchasing and distribution of food, clothing, fuel, and other necessaries of life." Henry C. Wallace former Secretary of Agriculture, in an editorial shortly after the failure of either, the Senate or House of Representatives committees to report the bill favorable denounced the attitude of Congressmen from agricultural States and advised their constituents to insure as to why the bill had been ignored.

Such action of Congress was not well received by the National Federation of State Farm Bureaus, representing farmers from every sections of the country conferred with President Wilson on August 14, 1919, at which time they expressed their views on the high cost of living—it causes and the remedy. The abnormal and unexampled high prices they said, were not the result of profiteering on the part of the producer, but were attributable to a combination of causes, among which were: profiteering and speculation by the middlemen, extravagance by the public, strikes and stagnation in the production of manufactured goods and prepared foodstuffs. In conclusion they urged as a solution of the problem that capital and labor cooperate with the farmer and if increased production will clarify the situation, the American farmer will jointly unite with
all of his fellow citizens buckle his belt for a most strenuous campaign for production, but he is determined be will not work alone. At a joint meeting of the Senate and House Committees on Agriculture August 16, 1919, Mr. A.M. Loomis, spokesman for the National Board of Farm Organizations, submitted a plan for remedial legislation prepared by the farmers organization and which it was claimed would aid in bringing down the present high prices. The suggestions embodied in the plan included the enactment of laws to define the legality of collective bargaining of farmers.

At a meeting of the American Co-Operative Institute in the city of Chicago September 10, 1919, a resolution was passed to the effect that existing anti-trust laws be amended to permit collective bargaining by farmers, and second that government price fixing necessitated by war conditions should cease immediately, and if it must continue the Government should fix the prices of machinery. Clothing, automobiles, etc., in order to equalize the economic handicaps from which the farmer is suffering.

The American Federation of Farm Bureaus which was organized at Chicago, November 13, 1919, declared its purpose to be protect, promote, and represent the business, social, economic, and educational interests of the farmers of the nation. In the platform that was adopted seven days after its organization it demanded that agricultural interests he accorded the same privileges to co-operate as modern business enterprises now enjoy. To substantiate these demands their line of argument was that the economic laws that compel busi-
ness consolidation also operate in the same way with farmers.

Opposition to legislation favoring farmers and farm interests was rife in the first session of the sixty-sixth Congress and this is evidenced by the fact that the administration did not favor the revival of the War Finance Corporation. The opposition's sole argument found its basis in the statement that the measure for revival of the corporation is uneconomic. That it was plainly designed to defeat the ordinary marketing laws governing markers, and, if it functions as those who are championing it except it to, it will work hardships upon the consumer, who incidentally is considerably more numerous than the class it is intended to benefit. The Secretary of the Treasury, formerly Secretary of Agriculture in his arguments to the Senate attempted to show how the measure was wrong and he was assisted in this endeavor by the governor of the Federal Reserve Board. The fact that the Senate passed the measure points out the trend of agricultural legislation at this time. The failure of the committees to report the Capper-Herdman bill delayed other necessary legislation for the time being but the forces which were set in motion as evidenced by the Senate action on the War Finance Corporation measure were to bring a similar bill into prominence in May, 1920 during the second session of the sixty-six congress.

A more potent force that exerted great influence on the trend of legislation was the agricultural depression of 1920. The depression was characterized by a general collapse in the value of farm products and the value of farm land. The Agri-
cultural boom of 1910 to 1920 brought such a high peak of prosperity to the farmers that the 1920 fall in prices seemed very severe in contrast.

Effects of the depression give a much more vivid picture of its intensity. The average value of farm lands declined about 27 per cent, mortgage encumbrance on farms increased rapidly after 1920, children were kept out of school to work on the farms, yet thousands of farmers were unable to weather the crisis. The number of failures has been gradually increasing since the early years of the depression. Dire economic necessity literally drove hundreds away from the farms.

As an attempt to relieve farmers of some of their economic burden Representative Volstead of Minnesota introduced a bill in the House of Representatives authorizing the associations of producers of agricultural products on April 20, 1920. The bill was referred to the House Committee on the Judiciary. After two weeks had lapsed and no favorable action was taken on the bill Mr. Volstead reintroduced it May 4, 1920, and it was referred to the Committee on the Judiciary a second time. May 7, 1920, the Committee reported the bill without amendment to the House of Representatives. This same day Senator Capper of Kansas introduced a similar measure into the Senate and it was referred to the Senate Committee on the Judiciary.

The report of the House Committee on the Judiciary is as follows:

"The object of this bill is to authorize the pro-
ducers of agricultural products to form associations for the purpose of collectively preparing for market and marketing their products.

Section 1 defines the limits the kind of associations to which the legislation applies. These limitations are aimed to exclude from the benefit of this legislation all but actual farmers and all associations not operated for the mutual help of their members as such producers. Unless each member has but one vote in his association irrespective of the amount he may have invested as capital therein, the association must not pay a dividend to exceed 8 per cent annum. This limitation of 8 per cent is designed to compel payment to the members of as large a part of the proceeds derived from the sale of their products as possible, instead of paying it as a dividend upon the money used as capital. A number of farm associations oppose the payment of any dividend on capital while others insist that they need a capital and must be privileged to pay dividends. Eight per cent was fixed for the reason that in many places money cannot be borrowed at a less rate, and that hence a less rate would prevent some of these associations from obtaining the necessary funds to carry on their business. The aim has been to make provisions of the bill sufficiently liberal so that all co-operative farm associations operated in good faith for the benefit of its members might avail themselves of the provisions of this bill. The bill does not however, compel any association to change its present organization nor does it create any new organizations. Associations will continue to be formed under State laws as heretofore. In states where it is illegal to operate an association such as ones permitted under this bill it will, because of the nature of such association, be practically impossible to operate under this legislation, as the bill only grants the right to operate in interstate and foreign commerce. That is the only power that Congress can confer upon such associations.

Section 2 makes applicable to these associations in a modified form the provisions of the Clayton Act. Briefly, it gives the Secretary of Agriculture power to prevent these associations from exploiting the public. In the event that any association should refuse to comply with the order of the Secretary, a suit may be brought in the appropriate district court to enforce his order. The farmers are not making a chance to oppress the public, but insist business conditions as they exist—a condition that is very unfair under the present laws. Whenever a farmer seeks to sell his products he meets in the market place the representatives of vast aggregations or organized capital that largely determine the price of his products. Personally he has a very little if anything to say about his price. If he seeks to associate himself with his neighbor for the purpose of collectively negotiating for a fair price he is threatened with prosecution. Many of the corporations with which he is compelled to deal are each composed of from 30,000 to 40,000 members. These members collectively do business as one person. This bill, if it becomes a law,
will allow farmers to form like associations, the officers of which will act as agents for their members.

While this bill confers on farmers certain privileges, it can not properly be said to be class legislation. Business corporations have under existing law all the powers and privileges sought by this bill. Instead of granting a class privilege, it aims to equalize existing privileges by changing the law applicable to ordinary business corporations so the farmer can take advantage of it. Instead of granting to farmers a special privilege, it aims to take from business corporations a special privilege that farmers may acquire the status and secure the rights of a business corporation by not deeding their farms to a corporation. That is neither practical nor desirable from any standpoint. Without doing that they cannot associate themselves together for the mutual profit of the members without being threatened with prosecution.

New York, Pennsylvania, Illinois, Wisconsin, Minnesota, and a number of other states have granted the right to form associations such as those contemplated in this bill. But these states cannot confer any right upon their organizations to engage in interstate or foreign commerce. This bill is designed to grant that right. Associations of this kind are common in European countries and have been in operation for many years. Their effect has not been to raise prices to the consumer. In many instances the effect has been the reverse. They have tended to prevent much of the gambling in foodstuffs and to eliminate many of the useless middlemen that stand between the producer, the retailers, and the consumers. It is one of the chief problems of these associations to reach the consumer with as little expenses as possible. Farmers ought to be given a chance to do that. The high cost of living can not be solved by discouraging agriculture. It must be solved by a fair treatment of those engaged in that pursuit. To maintain his self-respect and the dignity of his occupation the farmer must be given an opportunity to deal in selling his products on an equal footing with those whose purchase it. He should be given an opportunity to help solve in a rational and fair way the problems involved in the high cost of living."

The ensuing debate on the bill did little except delay its passage. It was of no consequence because the points of debate were fully explained in the above report. May 28, 1920, Representative Cambell submitted a privilege report from the Rules Committee which included a resolution which by adoption brought before the House the consideration of the bill. Mr. Cambell in addition to this report asked that
debate be limited to thirty minutes, both pro and con. Representatives Igoe and Walsh, of Missouri and Massachusetts respectively objected. After the reading of the bill by the clerk, Mr. Cambell moved the previous question on voting of the rule. The vote as taken, there being no objection, was yeas 262, nays 44, present 1 not voting 120. Therefore two hours instead of thirty minutes was allowed for debate, Representative Volstead of Minnesota for the bill, Representative Igoe of Missouri, against the bill.

The first speaker in favor of the bill was Representative Morgan of Oklahoma who set forth in detail the entire argument in favor of the bill. His speech is very similar to the report of the committee. He put special emphasis upon the fact that this bill does not by direct terms amend section six of the Clayton Anti-trust Act by making a broader and more comprehensive declaration as to the kind and character of co-operative farm organizations which shall not be prohibited by the provisions of any of the anti-trust laws. Representative Evans of Nebraska pointed out the fact that the bill if passed will have a tendency to stop migration from farm to city by affording an adequate wage for farm labor.

The first speaker for the opposition was Representative Walsh of Massachusetts who attacked the bill as class legislation. He declared that the results its authors said would come through its enactment, namely, lower prices to the consumer, were impossible under such legislation. To substantiate this point he observed that state laws had not lowered the cost to any appreciable extent. He also opposed the bill
because the Secretary of Agriculture in his opinion becomes the guardian angel of the farmers, has the say so whether or not men are to be prosecuted in case they have enhanced the prices and lessened competition or restrained trade, and furthermore he contended that there is no provision in the bill by which a complaint may be lodged against a co-operative thereby causing an investigation or prosecution.

Subsequent debate brought out the fact that the power given to the Secretary of Agriculture was judicial power and since the Federal Trade Commission was already exercising this power, why give it to the Secretary of Agriculture. The House at this point in the debate adjourned and the debate was not continued until three days later, May 31, 1920. Several long speeches were made by various Representatives from agricultural states favoring the passage of the bill. The line of argument in these various speeches varies considerably but the significant points are as follows:

There must be given to agriculture compensatory advantage to offset the present economic advantages which industry holds by reason of the fact that it can write into the selling price which it fixes all cost of production plus profit; 53 sec. 1, "The farmers should have the right to set the price upon what they produce as well as the merchants, the manufacturers, or the packers, as long as they are fair and reasonable. 54

After the time of debate expired Mr. Volstead, Chairman of the committee on the Judiciary offered an amendment which read as follows:

"At the end of section 2, add the following: Provided, that nothing contained in this section shall apply to the organizations or individual members thereof described in section 6 of the act entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes, approved October 15, 1914, known as the Clayton Act." 55 Mr. Igoe thereupon made a point of order.
against the amendment and Mr. Volstead moved the previous question on the amendment and final passage of the bill. The chair allowed the point of order against the amendment and Mr. Igoe succeeded in getting the floor and prolonging the debate twenty minutes for each side. Mr. Igoe asked the following questions: "What becomes of an association organized under the first section where a stockholder dies and the stock comes into the hands of someone who is not a producer? What becomes of an association if some one who holds a share of stock should sell to a non-producer?"

Representative Hersman answered the first question by saying, "Under the laws of California an agreement can be made to buy that stock in that co-operative associations can preserve option to buy all stock before a member can sell it. "The second question was allowed to go unanswered. The rest of the debate hinged around the substitution of the Volstead act for the Hersman bill and had little bearing on the real questions at issue.

When the time for debate had expired the question on suspending the rules and passing the bill was taken. Parliamentary procedure was explained by the speaker at the request of Mr. Gard in regard to the legislative status of the present bill if the motion to suspend the rules does not pass. The Speaker pointed out that if the House refuses to suspend the rules and pass the bill it stands with the previous question ordered for a third reading. Yea and Nays were taken on the passage of the bill, after a motion to recommit failed, and
were yeas 234 and nays 58, answered present 3, not voting 132. This vote was final and the bill was accordingly amended and passed by the House of Representatives contained the following provisions:

"Be it enacted, etc., that persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, or fruit growers may act together in associations, corporate or otherwise, with or without capital stock in collectively processing, preparing for market, handling, and marketing, in interstate and foreign commerce, such products of their members; and such producers may organize and operate such associations and make the necessary contracts, and agreements to effect that purpose, any law to the contrary notwithstanding; Provided, however, that such associations are operated for the mutual benefit of the members thereof, as such producers, and conform to one or both of the following requirements:

First: That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein, or,

Second: That the association does not pay dividends on stock or membership capital in excess of 8 per cent per annum.

Section 2. That if the Secretary of Agriculture shall have reason to believe that any such association restraining trade or lessens competition to such an extent that the price of any agricultural product is unduly enhanced by reason thereof, he shall serve upon such association a complaint stating his charge in that respect, to which complaint shall be attached, or contained therein, a notice of hearing, specifying a day and place not less than 30 days after the service thereof, requiring the association to show cause why an order should not be made directing it to cease and desist from so restraining trade or lessening competition in such article. An association so complained of may at the time and place so fixed show cause why such order should not be entered. The evidence given on such a hearing shall be reduced to writing and made a part of the record therein. If upon such hearing the Secretary of Agriculture shall be of the opinion that such association restrains trade or competition to such an extent that the price of any agricultural product is, or is about to become unduly, enhanced thereby, he shall issue and cause to be served upon the association an order, reciting the facts found by him directing such association to cease and desist therefrom. If such association fails or neglects for 30 days to obey such order, the Secretary of Agriculture shall file in the district court in which such association has its principal place of business a certified copy of the order and of all records in the proceeding, together with a petition asking that the order be enforced, and shall give notice to the Attorney-General and to said associations of such filing. Such
district court shall thereupon have jurisdiction to affirm, set aside, or modify said order, and may make rules as to pleadings and proceedings to be had in considering such order.

The facts found by the Secretary of Agriculture and recited as set forth in said order shall be prima facie evidence of such facts, but either party may adduce additional evidence. The Department of Justice shall have charge of the enforcement of such order. After the order is so filed in such district court and while pending for review the district court may issue a temporary writ of injunction forbidding such association from violating such order or any part thereof. The court may upon conclusion of its hearing enforce such order by a permanent injunction or other appropriate remedy. Service of such complaint and of all notices may be made upon such association by service upon any officer or agent thereof engaged in carrying on its business, and such service shall be binding upon such association, the officers and members thereof. Provided:

That nothing contained in this section shall apply to the organizations or individual members thereof described in section 6 of the act entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, known as the Clayton Act."

June 1, 1920 a message from the House of Representatives to the Senate announced that the House had passed an act to authorize associations of producers of agricultural products. Thereupon, the act was read twice by its title and referred to the Senate Committee on the Judiciary. After two days consideration Senator Nelson, Chairman of the committee reported the bill and it was placed on the calendar to be called
up at the first opportunity.

The principal amendment made by the committee was to strike out the words "Secretary of Agriculture" wherever they occur in the bill and substitute therefor the words "Federal Trade Commission." The committee also proposed to amend line 3, page 4, by striking out the semicolon after the word "thereof" and in lieu thereof insert the following words:

"Nothing herein contained shall be deemed to authorized the creation of, or attempt to create, a monopoly, or to exempt any association organized hereunder from any proceedings instituted under the act entitled; "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes, approved October 15, 1914, on account of unfair methods of competition in commerce."

It was felt by the committee that it was safer to leave the supervision of associations provided for in the bill in the hands of the Federal Trade Commission than under the jurisdiction of the Secretary of Agriculture, especially as the commission is already equipped with the requisite machinery to obtain information to carry out the provisions of Section 2 of the bill.

Before the bill was brought up for consideration by the Senate, the Senate adjourned from June 5 to December 14, 1920. In the meantime a Senate sub-committee conducted hearings on the bill which were attended by members of the nationally known farm organizations. The testimony of Mr. G. Carroll Todd, formerly assistant to the Attorney General in charge of anti-
trust cases and a man with perhaps more experience in the enforcement of anti-trust acts than anyone else in this country, clearly depicts the attitude of the people of America toward such legislation. He said, that while all associations of men are subject to abuse, he had always considered that associations of farmers were not subject to the same abuses as associations of capital and that disappointing results would be attained if farmers were dealt with by the same laws.

The time nearing for the holding of national conventions by the leading parties for the election of 1920 led to an early adjournment of Congress on June 5, 1920. Five days later the platform of the Republican party was adopted and as adopted pledged enactment of Federal Legislation favoring the farmer. The section in the platform pertaining to agriculture reads as follows:

"The crux of the present agricultural condition lies in prices, labor and credit. The Republican party believes that this condition can be improved by practical and adequate farm representation in the appointment of governmental officials and commissions; the right to form co-operation associations for marketing their products and protection against discrimination; the scientific study of agricultural prices and farm production costs at home and abroad, with a view to reducing the frequency of abnormal fluctuations; the uncensored publication of such reports; the authorization of associations for the extension of personal credit; a national inquiry on the co-ordination of rail, water and motor transportation with adequate facilities for receiving, handling and marketing food; the encouragement of our export trade; an end to unnecessary price fixing and ill considered efforts arbitrarily to reduce prices of farm products, which invariably result to the disadvantage both of producer and consumer and the encouragement of the production and importation of fertilizing material and of its extensive use." 60

The section of the platform of the Democratic party as adopted July 2, 1920 presents a striking contrast when com-
pared with the platform of the Republican party. In it are cited the bills and acts passed during the years of Democratic control of Congress and allusions are made to the fact that so far the present Republican Congress had enacted no measures favoring rural interests. The next to the last paragraph is of interest in this connection because it pertains to co-operative marketing association legislation.

It reads:

"We favor such legislation as will confirm to the primary producers of the nation the right of collective bargaining and the right of co-operative handling and marketing of the products of the workshops and the farm, and such legislation as will facilitate the exportation of our farm products."

The most significant campaign speech, from an agricultural point of view, was made by the Republican nominee for president, Senator Warren G. Harding, at the Minnesota State Fair at St. Paul on September 6, 1920. He declared:

"The time has come, when as a nation we must determine upon a definite agricultural policy. We must decide whether we shall undertake to make the United States a self-sustaining nation which means that we shall grow within our own boundaries all of the staple food products needed to maintain the highest type of civilization or whether we shall continue to exploit our agricultural resources for the benefit of our industrial and commercial life, and leave to posterity the task of finding food enough, by strong arm methods, if necessary, to support the coming hundreds of millions. I believe in the self-sustaining, independent, self-reliant nation, agriculturally, industrially and politically. We are then the guarantors of our own security and are equal to the task."

Some of the things which ought to be done if we are to put our agriculture on a sound foundation have, Senator Harding noted, been mentioned in the National platform of the party to whose pledged he is committed, and in a recital of these he said; in part:
"First, the need of farm representation in larger governmental affairs is recognized.

"Second, the rights of farmers to form co-operative associations for the marketing of their products must be granted."

Third, the Republican party pledges itself to a scientific study of agricultural prices and farm production costs, both at home and abroad with a view to reducing the frequency of abnormal fluctuations here.

Fourth, we promise to put an end to unnecessary price fixing of farm products and to ill considered efforts arbitrarily to reduce farm product prices.

Fifth, we favor the administration of the farm loan act so as to help men who farm to secure farms of their own, and to give them a long time credit needed to practice the best methods of diversified farming.

Sixth, we do not longer recognize the right of speculative profit in the operation of our transportation systems, but we are pledged to restore them to the highest rate of efficiency as quickly as possible.

Seventh, we are pledged to the revision of the tariff as soon as conditions shall make it necessary for the preservation of the home market for American labor, American Agriculture and American Industry."

There were four other parties actively engaged in the election of 1930, the Farmer Labor Party, the Prohibition Party the Socialist party, and Socialist Labor Party, and each made a bid for the farmers vote by incorporating in their platforms planks similar to those of the Republicans of Democratic parties favoring agriculture. The plight of the farmer was certainly conducive to the growth of a third party. A brief survey of the activities of the Non-partisan league shows that it was essentially a state and not a national organization in that it fought its bitterest fights and conducted its reforms in the various western states. Its expressed objects are to make government actually and fully responsive to the wishes of the common people and to secure economic relief for exploited and oppressed classes—primarily
the farmers—through political actions. Regardless of the fact that the league was active in 13 states, all of them west of the Mississippi River, except Wisconsin, it did not select candidates for the presidential election of 1920 although it scored gubernatorial victories in several states. Realizing that the two National Parties were in a position to aid the farmers, there was no necessity for the league to enter National politics as such. The attitude of the farmers is best revealed by the Farmer Conference held in November, 1920. This conference was attended by members of the National Grange, National Farmers Union, National Milk Producers' Association, International Farm Congress. Their purpose was economic, not political, as is evidenced by the fact that they were seeking to form nation-wide selling organizations to fix the price of farm products not by methods of monopoly, but by emulating the methods of industrial trusts. This was not a repetition of the Granger movement in politics, because the farmers were learning finance from financiers and not teaching politics to politicians. There could be no plainer proof that the farm interests were thinking of economics and not politics than their refusal to unite with labor in a presidential year.

The farmer cast his vote in this election so as to oblige one of the two major parties and therefore be in a position to demand that they live up to the very letter of their platform promises. No matter which party won, it must aid the farmers by enacting legislation favoring his interests.

The third session of the 66th Congress convened December
6, 1920 and eight days later December 14, 1920, Senator Nelson of Minnesota, chairman of the Senate Committee on the Judiciary asked unanimous consent that the Senate proceed to the consideration of House bill 13931, a bill to authorize association of producers of agricultural products. There being no objection the Senate, as in committee of the whole proceeded to consider the bill. Debate upon the bill resulted from a speech by Senator Wing of Utah who said:

“It is apparent from a casual examination of the bill that it modifies in a very material manner the Sherman Anti-Trust Law, and seeks to prescribe a rule of conduct with reference to a large portion of our population which is not to be applicable to their classes. Not only that; it provides, as I interpret the measure that they shall not only be permitted to combine for the purpose of marketing their products, but for the purpose of holding them for an indefinite period in order to secure higher prices, even though such action might constitute a monopoly or restrain trade or be destructive of competition. This bill seems to be subject to the criticism that it is class legislation and seeks to extend benefits and immunities from the provisions of existing law to one class only of our citizens.”

To rebuff this attack upon the bill as contradictory of the Sherman anti-trust law, Senator McCumber of North Dakota addressed this question to Senator Wing:

“I ask the Senator if he thinks the action of the California fruit growers association for instance, in advising the fruit growers association for instance, in advising the fruit growers to raise a kind of fruit which would be marketed at such a time as would not conflict with the fruit growers in Florida, would be guilty of an offense against the Sherman anti-trust law; or if they advise, under the present situation, to withhold their products from market for better prices, or until the products have been sold in other sections of the country, would be a violation of any anti-trust law?

Senator Wing replied: “I think not.”

Senator McCumber continued: “If that be true, then I can not
see how this bill could in any way affect the question of the
violation of the anti-trust law.

The subsequent debating that followed engaged the at-
tention of Senators Borah, Kellogg and Underwood. The conten-
tion being that the bill allowed farmers to evade the Sherman
anti-trust law and would permit various associations to
combine into one association irrespective of their individual
interests. Those Senators favoring the bill pointed out that
public opinion and actions would be against the formation of
such combinations for national as well as international trade.
The debating of the bill on the following day, December 15,
1920 covered the entire text of the bill, however, it lacked
regularity. The major portion of debating time was taken
up as on the previous day by a prolonged discussion of the
relationship of this bill to the Sherman anti-trust law. As
the allotted time drew to a close Senator Pomerene offered
an amendment that was designed to permit the Federal trade
commission to investigate the activities of the membership
of the association as well as the activities of the associa-
tion. This amendment was not adopted because it made the
members of an associations doubly responsible for the actions
of the association.

The bill was finally reported to the senate after the
adoption of the amendments proposed by the Senate Committee on
the Judiciary. After being reported to the Senate Committee
the bill was read a third time and passed.

Upon the passage of this measure Senator Nelson moved
that the Senate request a conference with the House, on the
bill and amendments, and that the conferences on the part of
the Senate be appointed by the chair. The motion was agreed
to; and the Vice-President appointed Senators Nelson, Dil-
lingham and Overman conferees on the part of the Senate.

January 27, 1921, because of illness in his family, Senator
Nelson was excused from the conference committee and Senator
Walsh of Montana was appointed as his successor.

December 20, 1920 the speaker of the House of Representa-
tives appointed as conferees for the House of Representatives
Volstead, Graham and Summers.

The conference committee met from time to time during
the ensuing months of the third session of the 66th Congress
yet no agreement was reached. The members of the Senate Com-
mittee holding to the point of view that the Federal Trade
Commission and not the Secretary of Agriculture should ex-
ercise the power of regulating co-operative marketing asso-
ciations. When Congress adjourned March 4, 1921, the Comm-
ittee as yet had not reached an agreement and in failing to
report the measure to either the Senate or House of Repre-
sentatives, permitted Congress to adjourn without passing the
bill.

Summarizing the activities of the 66th Congress it is
found that little or nothing had been done toward bettering
the conditions of the farmers. This so called "reconstruction
Congress," the first one after the World war had passed meas-
ures favoring big business and its several interests, but apparently Congress had forgotten that "food had won the war" and were willing to see the agrarian section of the nation continue to bear the brunt of the depression. However, it hardly could be expected that this session of Congress would pass any measures that would enroach upon the pledges made by the Republican party in the last election thereby hampering the plans of the new administration.
Chapter IV. The Capper-Volstead Act in the 67th Congress, 1921-23

The enactment of legislation favorable to the agricultural interest in the United States during the four sessions of the 67th Congress is unquestionably to be attributed to the formation of a group of Senators and Representatives, the majority of whom represent the South and West, without regard for party lines, into the so-called Agricultural Bloc. That such an alignment as this was being considered prior to the adjournment of the 66th Congress is evidenced by the speech of Senator-elect Heflin of Alabama during the course of a hearing conducted by the joint Committee on Agriculture on December 5, 1920. He stated that in his opinion the time was ripe for such a combination of Senators from the South and West and Senator Capper of Kansas, who was also present, agreed with him. Mr. Heflin also said in regard to the financial reverses incurred by farmers during the last year:

"I do not think that it is right that the farmers of the West and South suffer this loss. We have the Western and Southern votes to give the relief that is needed, and I think that we should combine to do it. It is an outrage and a crime for this congress, with the power it has, not to come to the aid of the farmers of the West and South, and I don't care what Mr. Harding of the Federal Reserve Board or Mr. Secretary of the Treasury Houston have to say about it."

The specific measure to which Mr. Heflin was referring was the Agricultural Credits Act of 1921 which permitted the War Finance Corporation to extend credit to farmers. Senator Capper also expressed his approval of this stand taken by Senator Heflin, while other Senators from the farming states among them Harrison of Mississippi, Norris of Nebraska, and Kenyon of Iowa, also present were understood to be of like opinion, regarding the proposed combination to force the
Government, to come to the financial aid of the farmers and stockmen of the country. Governor S. R. Mc Kelvie of Nebras-
ka, the principal witness of the day, first expressed the hope for a nation wide co-operation by the farmers, and Mr. Heflin
made his remarks in the course of an endorsement of the views expressed by the Nebraska Executive.

Five months later this agricultural group, later named the Bloc by popular writers, was formed at a meeting called by Senator Kenyon, May 9, 1921, held at the Washington office of the American Farm Bureau Federation, at which twelve Senators met to decide on a program for immediate attention. It included an equal number of representatives of the two leading political parties, principally Senators from the Middle West and South, the great agricultural sections of the United States, where the situation was most acute. Those present were Senators W. S. Kenyon, of Iowa; Arthur Capper, of Kansas; G. W. Norris, of Nebraska; F. R. Gooding, of Idaho; E. F. Follette, of Wisconsin; E. D. Smith, of South Carolina; J. B. Kendrick, of Wyoming; Duncan U. Fletcher, of Florida; Joseph E. Ransdell, of Louisiana; J. T. Heflin, of Alabama, and Morris Sheppard, of Texas.

At this meeting also there were present representatives of government departments, asked in to act as advisers on the program that should be adopted. There were representatives of the farmers who were asked to tell what farmers felt was their outstanding needs. The declaration of purpose by Senator W. S. Kenyon, of Iowa, was that this group give thorough and earnest consideration to the outstanding proposals to the
end of securing action by Congress. Four committees were appointed on the following subjects: Transportation, Federal Reserve Act, Commodity Financing and Miscellaneous agricultural bills.

From the very beginning this movement was non-partisan and a recognition of the economic crisis; an endeavor to outline a plan for an economic readjustment rather than a scheme to gain partisan advantage. It declared for things rather than against them; for harmonizing views, not for creating discord; for co-operation, not antagonism; and for all citizens, not for farmers alone.

The outstanding reason that brought this group together was the fact that the general public and the majority of Congress had not realized that the nation had passed into a new economic era in which the balance between agriculture and other industries must be more carefully safeguarded. From this beginning in May 1921, the group was enlarged to include some twenty-two Senators and meetings were held from time to time at the office of Senator Kenyon.

From the very first Senator Kenyon was recognized as the leader of the group and it was chiefly due to his sincere interest in agriculture and vigorous leadership that the bloc became effective.

A similar movement was started in the House and a group of Representatives with the same purpose and non-partisan objective was organized to represent the leading agricultural districts. This group had not been so thoroughly established
as in the Senate, however, nor did it function in such an effective manner. The agricultural bloc was the result of the conviction which dawned upon the more thoughtful representatives of the farmers that they must unite on a simple and direct program in order to bring the nation to see the needs in the emergency and to act before it was too late.

The bloc was formed for two definite purposes; first, to secure the enactment of legislation promotive of the agricultural interests; and second, to shape legislation in general particularly fiscal statutes, in accordance with the farm bureaus' ideas of economics and equity. In two months the bloc had become the most effective political force in the United States, and in another month had reached the full height of its legislative power. Mr. Grey Silver, Washington representative of the American Farm Bureau Federation, representative of one million farmers was the motivating force behind the bloc and was referred to as the man who runs the Farm bloc on several occasions.

Under the leadership of Senator Kenyon in the Senate the bloc won its first victory by defeating a resolution for the adjournment of the special session of the 67th Congress and following this initial success the bloc was able to secure the passage or rejection of several other measures, favorable or unfavorable to the farmer.

The attitude taken by the administration toward the bloc was one of unfriendliness. Leaders of the Republican party were at a loss to explain fully the actions of their colleagues
and neither were they able to thwart the moves made by bloc members. President Warren G. Harding speaking before the National Agricultural Conference at Washington January 24, 1922, said:

"The whole country has an acute concern with the conditions and the problems which you are met to consider. It is truly a national interest and not entitled to be regarded as primarily the concern of either a class or a section, or a bloc." 71

Thus it can be seen that the administration regarded the activities of the bloc as contrary to the best interests of the nation.

On April 11, 1921, Representative Volstead of Minnesota, chairman of the House Committee on the judiciary and a militant member of the group of Representatives that belonged to the bloc's membership in the House, introduced for the third time in two years a bill authorizing the association of producers of agricultural products. In spite of the fact that this measure bore the same title as previous bills it differed in some respects in order to meet some of the objections that were made in the Senate to the previous measures and other wise to perfect the measure.

This bill was referred to the Committee on the Judiciary and reported from the Committee April 26, 1921, with an amendment accompanied by the following report:

"The Committee on the Judiciary to whom was referred the bill (H. R. 13981) entitled "Bill to authorize association of producers of agricultural products, having considered the same, report it with the recommendation that it do pass with an amendment.

The object of this bill is to authorize the producers of agricultural products to form associations for the purpose of collectively preparing for market and marketing their products. Section 1 defines and limits the kind of associations to which the legislation applies. These limitations are aimed to exclude from the benefit of this legislation all but actual
farmers and all associations not operated for the mutual help of their members as such producers. Unless each member has but one vote in his association irrespective of the amount he may have invested as capital therein, the association must not pay a dividend to exceed 8 per cent per annum. This limitation of 8 per cent is designed to compel payment to the members of as large a part of the proceeds derived from the sale of their products as possible, instead of paying it as a dividend upon the money used as capital a number of farm associations oppose the payment of any dividend on capital, while others insist that they need a capital and must have the privilege of paying dividends. Eight per cent was fixed for the reason that in many places money cannot be borrowed at a less rate, and that hence a less rate would prevent some of these associations from obtaining the necessary funds to carry on their business. The aim has been to make the provisions of the bill sufficiently liberal so that all co-operated in good faith for the benefit of its members might avail themselves of the provisions of this bill. This bill does not, however, compel any association to change its present organization nor does it create any new organizations. Associations will continue to be formed under State laws as heretofore. In states where it is illegal to operate an association such as the ones permitted under this bill, it will, because of the nature of such associations, be practically impossible to operate under this legislation, as the bill only grants the right to operate in interstate and foreign commerce. That is the only power Congress can confer upon such associations.

Section 2 makes applicable to these associations in a modified form the provisions of the Clayton Act. Briefly, it gives the Secretary of Agriculture power to prevent these associations from exploiting the public. In the event that any such association should refuse to comply with the order of the Secretary, a suit may be brought in the appropriate district court to enforce his order. The farmers are not asking a chance to oppress the public, but insist that they should be given a fair opportunity to meet business conditions as they exist—a condition that is very unfair under the present law. Whenever a farmer seeks to sell his products he meets in the market place the representatives of vast aggregations of organized capital that largely determine the price of his products. personally he has very little if anything to say about the price. If he seeks to associate himself with his neighbors for the purpose of collectively negotiating for a fair price, he is threatened with prosecution. Many of the corporations with which he is compelled to deal are each composed of from thirty to forty thousand members. These members collectively do business as one person. The officers of the corporation act as agents of these members. This bill if it becomes law, will allow farmers to form like associations, the officers of which will act as agents for their members.

To illustrate: In marketing of grain, the farmer in the grain raising section of this country usually has to deal with what is known as a line elevator, owned and operated by
a corporation that has an elevator or warehouse at every railway station on the line extending across one or more states. The corporation operating these elevators acts as the common marketing agency for all of them both in domestic and foreign trade. There are a great many so called farm elevators owned by associations of farmers; but as they cannot under existing law combine for the purpose of creating a common marketing agency they are at a great disadvantage. No large mill can afford to deal with these farm elevators as they cannot contract to supply the needs of such a mill at all seasons of the year. As a consequence they are forced to sell to the large terminal elevators companies that usually dominate the so called line elevators.

While this bill confers on farmers certain privileges, it cannot properly be said to be class legislation. Business corporations have under existing law all the powers and privileges sought to be conferred on farm organizations by this bill. Instead of granting a class privilege, it aims to equalize existing privileges by changing the law applicable to the ordinary business corporations so the farmers can take advantage of it. It is no answer that farmers may acquire the status and secure the rights of a business corporation. That is neither practical nor desirable from any standpoint. Without doing that they cannot associate themselves together for the mutual profit of the members without being threatened with prosecution.

This bill directs the Secretary of Agriculture to supervise these associations. The reason for this is apparent when one considers the duties and organization of that department. The Secretary has for many years aided farmers in forming such associations, and his department is thoroughly familiar with the needs and the difficulties under which they always have to struggle. There is in his department a Bureau of Markets that is constantly engaged in studying marketing conditions and prices of agricultural products both in this country and foreign countries. As a consequence he is especially well equipped for the purpose of determining whether the prices charged by an association are excessive. That is one of the duties that somebody must perform to safeguard the public.

If it is not to place a limit upon the size of an ordinary corporation, there certainly is no reason to fear monopoly from farm associations. But in the event that any such association should monopolize trade so as to unduly enhance the price of any agricultural product ample provision is made in the bill to protect the public. The Secretary of Agriculture in a summary fashion can grant relief, and he, with his expert knowledge always at hand, can act more expeditiously than could any other agency. In the event that an association fails to comply by his judgement it can not only be haled into court but a temporary injunction can be granted at once against it.

In the event that associations authorized by this bill shall do anything forbidden by the Sherman anti-trust act, they will be subject to the penalties imposed by that law. It
is not sought to place these associations above the law but to grant them the same immunity from prosecution that corporations now enjoy, so that they may be able to do business successfully in competition with them.

New York, Pennsylvania, Wisconsin, Minnesota, and a number of other States have granted the right to form associations such as those contemplated in this bill. But these States cannot confer any right upon their associations to engage in interstate or foreign commerce. This bill is designed to grant that right. Associations of this kind are common in European countries and have been in operation for many years. Their effect has not been to raise prices to the consumer. In many instances the effect has been the reverse. They have tended to prevent much of the gambling in foodstuffs and to eliminate many of the useless middlemen that stand between the producers, the retailers, and the consumers. It is one of the chief problems of these associations to reach the consumer with as little expense as possible. The high cost of living cannot be solved by discouraging agriculture. It must be solved by fair treatment of those engaged in that pursuit. To maintain his self-respect and the dignity of his occupation the farmer must be given an opportunity to deal in selling his products on an equal footing with those who purchase it. He should be given an opportunity to help solve in a rational and fair way the problems involved in the high cost of living.

Both the great political parties in their last national platforms pledge their support to this legislation.

Amend bill by adding on page 1 or line 4 after the word "dairymen" the word "nutt". 73

On calendar Wednesday, May 4, 1921, the above report was made by Chairman Volstead of the Judiciary Committee. Following this report he called up for consideration by the House the bill. During the course of his argument in support of the bill he was asked in what way does this bill differ from the Clayton Act and he answered this question by saying:

"The Clayton Act does not permit them (co-operative associations) to have any capital stock or operate for any profit. This bill makes it possible for them to have a small amount of stock and to operate to some extent for profit, but the profit must not exceed 8 per cent on their capital." 74

The debate then centered upon the question of class legislation and Mr. Walsh of Massachusetts who had staunchly opposed a similar measure in Congress in 1920 stated the entire
argument against the bill. He said:

"The title as printed is a bill to authorize associations of producers of agricultural products"; but from the argument which has been made and which will be made in its favor it may well be denominates the third chapter in a story entitled "Take care of the farmer and let the rest of the world go hand"; because this is another chapter in special legislation creating a privileged class, and enlarging the privileges heretofore granted to those engaged in producing agricultural products.

The result of this bill will be to permit the growers of agricultural products to create a monopoly for their own goods, and it will set them aside from the operation of the general laws that apply to others entering our commercial life and activities." 75

Mr. Tillman of Arkansas refuted this argument by saying:

"The gentleman from Massachusetts is much disturbed because he is afraid this is class legislation and that the farmer is to be the beneficiary of such legislation. Since when did the statesman from New England become frightened at class legislation? A vast moneyed aristocracy has grown up in that exclusive and cultured section because of class legislation, but be it understood that New England class legislation extends special and profitable tariff protection to her citizenry engaged in manufacturing clothing, shoes, and a thousand other necessary articles and lets the consumer of these products and the farmer "go hang". 76

Mr. Sanders of Indiana raised the question of constitutionality of the bill because of Section 2. He said:

"Under the decision of the Lever act (by the Supreme Court of the United States) this section is plainly unconstitutional, because you have no standard whatever that is recognized by law and that will hold under our Constitution." 77

Mr. Volstead replied to this argument that:

"Section 2 has the approval of the farm organizations. It has been submitted to the attorneys for these organizations and they have not only an entire willingness that it go into the bill, 78 but they have expressed their desire that it remain in the bill.

Mr. Volstead then moved the previous question which was ordered by the Speaker. The question was on the Committee amendment, page 1, line 4, after the word "dairyman", insert the word "nut", and the amendment was agreed to. Following
this the bill was ordered engrossed and read a third time. When the question was taken on the passage of the bill, Mr. Dominick of South Carolina offered a motion to recommit the bill to the Committee on the Judiciary with the instructions to report the same back to the House forthwith with the following amendment: "On page 2, line 1, strike out all of section 2." Mr. Volstead then moved the previous question on the motion to recommit and the vote was taken the result of which was the rejection of the motion. The question was taken on the passage of the bill, and the vote was yeas 295, nays 49, answered present, not voting 84, therefore the bill was passed as amended.

The following day, May 5, 1921, the bill as passed by the House of Representatives was referred, after having been read twice by its title, to the Senate Committee on the Judiciary. Senate sub-committees conducted a series of hearings on this bill at which facts were brought out that showed the necessity of passing the bill. Mr. Milo D. Campbell, President of the National Milk Producers Federation testifying before the sub-committee, declared that Federal attorneys were intimidating farmers with threats of prosecution under anti-trust laws. Mr. Campbell also said that present prices of farm products were due to the activities of middlemen, and milk producers must have the relief contemplated by the bill. A letter from Secretary of Agriculture, Mr. Henry Wallace as read before the committee stated that the House bill under
consideration was of such a nature that it would not relieve farmers of anti-trust law restrictions as members of the committee believed the primary purpose of the bill to be.

Mr. Gray Silver, representative of the American Farm Bureau Federation, and Mr. Ben March, representative of the Farmers National Council, in testifying before the committee urged immediate favorable action on the bill. Mr. Holman, secretary of the National Milk Producers Federation said:

There is great unrest in rural communities. In the opinion of the farmers the collective bargaining bill is the most important bill before Congress. It is permission to help ourselves. We are not asking the Government to sell our crops for us or to make prices for us. All we ask are opportunities equal to those now enjoyed by great aggregations of capital.

Mr. Charles A. Syman, Secretary of the National Board of Farm Organizations said:

"Any monopoly which might develop under the bill would benefit the public. Farmers are now producing economically, applying the teaching of science, and should be permitted to improve their marketing of products."

The conclusion of these hearings the Committee on the Judiciary reported the bill to the Senate with an amendment in the nature of a substitute and submitted a report thereon July 27, 1921. The report read:

"The Committee on the Judiciary to whom was referred the bill (H. R. 2375) to authorize associations of producers of agricultural products, having considered the same, report favorably thereon with the recommendation that the bill do pass with the following amendment:
Strike out all of said act after the enacting clause and substitute therefor the following:

That persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers may act together in associations, corporate or otherwise, with or without capital stock, in collectively handling and marketing in inter state and foreign commerce such products for so marketing the same. Such associations and their members may make the necessary contracts and agreements to effect such purposes; provided, however, That such associations are operated for the mutual benefit of the members thereof, as such producers, and conform to one or both of the following requirements: First,
that no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein, or, second, that the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum; And provided further, That the association shall not deal in products on non-members to an amount greater in value than such as are handled by it for members.

—Nothing herein contained shall be deemed to authorize the creation of, or attempt to create a monopoly, or to exempt any association organized hereunder from any proceedings instituted under the act entitled "An act to create a Federal Trade Commission to define its powers and duties and for other purposes," approved September 26, 1914, on account of unfair methods of competition in commerce.—

The foregoing is a reproduction of the House bill omitting therefrom Section 2, and adding thereto the provision to guard against the establishment of a monopoly in substance like the amendment proposed by the Senate to a like bill which passed the House at the last session, and the further provision to meet an important change appearing in the bill before us, the purpose of which evidently is the permit the associations to deal in the products of non-members. A slight change is made in the language of the bill that its scope may not be so extensive as to be in part without the field of interstate or foreign commerce, the expression "in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce" such products for so marketing the same.

The hearings conducted by the subcommittee have confirmed the members thereof in the conviction the amendment insisted upon by the Senate at the last session is essential for the protection of the consuming public and can do no possible harm to the great body of farmers in whose interest the legislation is demanded.

Inasmuch as it is utterly impossible to establish a monopoly of any of the ordinary farm products, cereals, cotton, live stock, etc., an inhibition of monopoly must be unobjectionable to the producers of such. Moreover, your committee is entirely satisfied that they have no desire or purpose to establish a monopoly. Why anyone should insist, under these circumstances on the enactment of a law which, in terms, would authorize them to do so, your committee finds it impossible to understand.

It is possible, however, to establish a monopoly with respect to farm products which can be produced profitably only in a very limited area, or in the case of highly perishable products, like milk, which will not stand shipment long distances. It would not be in the public interest, your committee believes to permit all producers of milk within the area from which one of great cities is supplied to effect a single organization having thus a monopoly which might not be utilized
to exact extortionate prices of consumers. Your committee sees no good reason why two, three, a half dozen, or a dozen co-operative associations might not properly organized for the purpose of supplying a city with mild, not why, in the case of raisins, for instance, produced only within a limited area in the State of California, a monopolistic organization should be permitted and encouraged, rather than two or three co-operative associations organized and operating on similar lines.

Section 2 of the House bill has for its purpose the alleviation of the evils of monopoly, or those that may follow from authorized combinations by the granting of somethings like supervisory control to the Secretary of Agriculture. It quite generally understood by the Committee when the bill was before it at the last session that this section gave to the Secretary of Agriculture the authority to fix prices. The proponents of this bill, however, repudiate that idea and insist that it is not proper construction of the bill and assert that they are not resolutely opposed to reposing such power in the Secretary of Agriculture. They assert that the bill gives to the Secretary power to declare that a price charged in unreasonable, but gives him no power to fix what is a reasonable price. It is quite likely that even if he were given power to determine what is a reasonable price the provision would be inoperative, as conditions might so change pending a lapse as that the result arrived at would be eminently unjust so far as prices for the future are concerned. However, that may be, the experience of the Interstate Commerce Commission under a similar provision, giving it power to determine what is an unreasonable rate but no power to determine what is a reasonable rate, satisfies your committee that as this provision is construed by the proponents of the bill, and perhaps correctly, it is utterly valueless. If competition is preserved—that is to say, if no monopoly can exist under the act—regulatory provisions are superfluous.

The bill has for its purpose the removal of obstacles, if such be in the Federal statutes, in the way of organization of co-operative farm marketing associations, a purpose with which the majority, at least of your committee is in full sympathy. It may be and probably is true that such associations can not operate with the highest degree of success which your committee would be glad to see attend their efforts, unless they are permitted to deal to some extent in the products of non-members similar in character to those handled for the members. But the protection of the statute ought not to be given to a small number of persons of the classes named in the bill who contribute from their own farms an inconsiderable quantity of the products handled by the association.

A further condition is accordingly added to those set out in the bill as requisite in order that the benefit of the act may be enjoyed namely:

And provided further, That the association shall not deal in products of non-members to an amount greater in value than such as are handled by it for members.

By the terms of the bill the persons mentioned therein
are authorized to associate themselves "in collectively processing, preparing for market, handling and marketing in interstate and foreign commerce such products of persons so engaged," namely, agricultural products. If the processing or preparing for market is not limited to activities of that character, directly connected with interstate or foreign commerce, they would not be within the domain of Federal legislation, and the phrase in the bill "in interstate and foreign commerce" can not be as qualifying "processing," whatever may be the case as to "preparing for market." The language of the bill is accordingly modified, or perhaps transposed, so as to read "in collectively handling and marketing, in interstate and foreign commerce such products for so marketing the same."

Following the making of this extensive report, which is a very conclusive argument for the bill, the bill was referred to the Senate calendar and not brought up for further consideration until the second session of the 67th Congress which convened in December, 1921.

However while this committee was at work, a concurrent resolution calling for an inquiry into the agricultural situation was passed by the Senate on May 31, 1921, and by the House of Representatives on June 7, 1921.

The resolution created a joint commission consisting of five members of the Senate and five members of the House, who would investigate and report to Congress within ninety days on various subjects affecting the industry, among others the cause of the difference between the prices of agricultural products paid the producer and ultimate cost to the consumer, the banking and financial resources of the country, especially as affecting agricultural credits, etc. The commission was instructed to include in its report recommendations for legislation which in its opinion will tend to remedy the existing conditions, and specifically report upon the limitations of
the powers of Congress in enacting relief legislation. The
report of the committee as presented to the Senate on December
14, 1921, recommended among other things the legalization of
co-operative marketing associations, the lowering of freight
taxes on agricultural products and the establishment of agricul-
tural attaches in European capitals. President Harding
cognizant of the fact that farm conditions in the United States
were deplorable incorporated in his annual message to Congress
on December 6, 1921, the following statements:

It is rather
shocking to be told, to have the statement strongly supported,
that 9,000,000 baled of cotton, raised on American plantations
in a given year, will actually be worth more to the produc-
ers than 15,000,000 bales would have been. Equally shocking
is the statement that 70,000,000 bushels of wheat, raised by
American farmers, would bring more money than a billion bush-
els. Yet these are not exaggerated statements. In a world
where there are tens of millions who need food and clothing
which they can not get, such a condition is sure to indict
the social system which makes it possible.

In the main the remedy lies in distribution and market-
ing. Every proper encouragement should be given to the co-
operative marketing programs. These have proven very helpful
to the co-operating communities of Europe.

Take co-operative marketing, American farmers are asking
for, and it should be possible to afford them ample provision
of law under which they may carry on in co-operative fashion
those business operations which lend themselves to that me-
thod and which, thus handled, would bring advantages to both
the farmers and the consuming public."

With these facts concerning the existing situation close
at hand the Senate as in the committee of the Whole began con-
sideration of the bill January 31, 1922. The major portion
of several days were spent debating the measure before it was
amended and passed. The debate was characterized by lengthy
speeches made by both the proponents and opponents of the
bill.

Senator Kellogg of Minnesota had charge of the measure
in the Senate and began the debate by describing the aims and
purposes of the bill. Senator King of Utah began the attack on the bill by asserting that in his opinion the bill did not protect the true basis of co-operation according to paragraph one of the bill. Senator Kellog then pointed out that a phrase contained in this paragraph had embodied in it the fundamental principles of co-operation which is the allowance of only one vote to a member of an association formed under this bill regardless of the capital invested therein. Dividends were to be paid according to Mr. Kellog and there was also to be a practice of refunding any surplus left after the expenses of the association were defrayed.

The outstanding question considered during the course of the debate was raised by Senator Pomerene of Ohio, who contended that monopolization was possible under this measure. Senator Walsh of Massachusetts also said that that is the matter to which he was endeavoring to challenge the attention of the Senate. He further stated that section 2 of the bill does not answer the question of Senator Pomerene in regard to monopolization, and that for all practical purposes might as well be cut out as the Senate substitute bill proposed to do.

Mr. Walsh also read certain parts of the testimony taken at the Hearings of the Senate sub-committee to substantiate his point of view. The testimony read was that of Mr. Lindsay, attorney for the California Raisin Growers' Association, and that of Mr. Miller, president of the National Milk Producer's Association. Mr. Lindsay in his testimony had pointed out in regard to the combination of two milk producing organizations so as
to monopolize the milk trade in any large city, that unless the public as a whole, both producer and consumer, may be advanced by the passage of a law like this, then it should not be passed. Mr. Miller's testimony was that providing such a monopoly was established the benefits accruing from it would be economies and efficiencies beneficial to the general public, however, Mr. Walsh said this is the standard argument usually set forth in support of any sort of monopoly. Senator Kellogg then read a section of the bill which specifically states that in case of monopoly or undue restraint of trade by an association the Secretary of Agriculture was to issue a cease and desist order, which if not complied with, he was to resort to court action.

During the course of debate on this same question on February 7, 1922, Senator Lenroot of Wisconsin read an amendment to the effect that "on page 2, section 2, line 16, strike out the words therefrom and in lieu thereof insert the words "from monopolization or restraint of trade." The purpose of this amendment was to clarify the bill on the question of monopolization, however, no action was taken on the amendment and it was ordered printed and laid on the table.

At the request of Senator Morris of Nebraska the Senate recessed until February 8, 1922, and he made the concluding speech in favor of the bill when the recess was over.

Following the conclusion of the debate Senator Walsh offered two amendments to the bill. The first amendment was "That any person engaged in the same industry shall be admitted to membership in the association on equal terms with
all others;" the second was "that the association shall not
deal in the products of non-members to any amount greater in
value than such as are handled by it for members."

Senator Kellogg opposed this first amendment by saying
that he believed co-operative associations should be allowed
to organize and admit such a number as they see fit, the same
as in the case of other organizations. The question was taken
on this amendment and it was rejected. There was no opposi-
tion to the second amendment so it was agreed to.

Mr. Walsh then proposed a third amendment which read;
"It is proposed to strike out so much of the bill as begins at the
word "in", in line 6, page 1, and ending with the word "commerce"
in line 8, page 1, and to insert in lieu thereof the follow-
ing:
In collectively handling and marketing in interstate and
foreign commerce such products of persons so engaged, and in
processing or preparing for market such products for so mar-
keting the same."

Mr. Walsh said in explanation of this amendment that it
is merely a transposition of language. The bill reads that
persons are entitled to associate themselves "in collectively
processing, preparing for market, handling, and marketing in
interstate and foreign commerce." The question is, What does
the language "in interstate and foreign commerce" modify? Un-
doubtedly it modifies "marketing," and undoubtedly it modi-
fies "handling"; but you can not say "in collectively process-
ing in interstate and foreign commerce," and it is doubtful
if you can say "in preparing for market in interstate and
foreign commerce." Under my amendment the language is changed
so as to read;
"In collectively handling and marketing in inter-
state and foreign commerce such products of persons so engaged,"
and in processing or preparing such products for so marketing
the same.

The language "processing and marketing" is not
qualified by the phrase "in interstate commerce," and therefore
it is too broad. It would include processing for sale and dis-
tribution within the state as well as without the state.

Mr. Kellogg objected to the amendment because the original
bill reads:
"In collectively processing, preparing for market,handling and marketing in interstate and foreign commerce."

And therefore the language of the House bill is perfectly
clear on that point. The question was taken on the amendment
and it was rejected.

Mr. Lenroot offered an amendment which proposed to amend,
line 11, page 2, by inserting after the word "trade" the words
"in interstate or foreign commerce" and to amend line 24, on
the same page, by inserting after the word "trade" the words
"in interstate or foreign commerce." The purpose of this amend-
ment was to remove any possible question concerning the con-
stitutionality of section 2 of the bill, by making it clear
that the scope of the bill is confined to interstate and for-
eign commerce. The amendment was agreed to.

Mr. Lenroot offered a second amendment which read: "on
page 2, line 4, it is proposed to strike out the word "there-
from" and in lieu thereof to insert "from monopolization or
restraint of trade;" and on page 3, line 3 and 4, it is pro-
posed to strike out the word "therefrom" and in lieu thereof
to insert "from monopolization or restraint of trade."

The purpose of this amendment is to clarify the matter
of what the order of the Secretary of Agriculture shall be so
that, if the Secretary of Agriculture finds that there is a
monopolization or restraint of trade, and also an undue enhancement of price, then under the bill he is directed to issue an order, not against the undue enhancement of price, but against the monopolization or restraint of trade. In other words, when these facts exist the order goes against the monopoly, against the restraint of trade, and the command will be that they must desist from such monopolization or restraint of trade; and a mere abandonment of the undue enhancement of price will not be a defense. This amendment was agreed to.

Mr. Pomerene offered an amendment next, which read:

"On page 2, line 2, after the words "shall be", insert: "Taken under any such rules and regulations as the Secretary of Agriculture may prescribe;""

This amendment was offered to clarify the section of the bill that treats of hearings to be conducted by the Secretary of Agriculture in case he believes that an association has violated the law. It was necessary in order that the uncertainty under the phraseology of bill as to how these hearings are to be conducted would be specifically expressed by the language of the bill. The amendment was agreed to.

Mr. Pomerene then pointed out that the amendment offered by Mr. Walsh and subsequently adopted had added a third paragraph to the bill on page one, but in the first line on page 2 the language read "and conform to one or both of the following requirements," hence it was necessary to change this language so as to include paragraph three. Mr. Walsh acting on this suggestion moved that before the language of his amendment insert the words, "And, in any case, to the following": which carried out the intent of the bill and this amendment to an amendment
was agreed to.

Mr. Pomerene then offered an amendment which proposed to change the language of the bill so as to limit the profit farmers will receive from co-operative associations and also determine what the profit is under some methods of doing business. Several Senators objected to this amendment and after they had explained to Senator Pomerene there objections he with

drew the amendment.

Senator Phipps of Colorado offered an amendment which read; "In the House text, on page 1, line 5, after the words "nut or fruit growers may", it is proposed to insert; and where any such agricultural product must be submitted to a manufacturing process, in order to convert it or them into a finished commodity, and the price paid by the manufacturer to the producer thereof is controlled or dependent upon the price received by the manufacturer for the finished commodity by contract entered into before the production of such agricultural product or products, when any such manufacturer may."

Also on page 2, line 1, after word "producers" it is proposed to insert "or manufacturers", as the case may be.

The amendment was later added to as a result of a suggestion of Mr. Broussard of Louisiana. The words "or harvest" were inserted into it.

Mr. Kellogg opposed the amendment because it permits any manufacturer who converts a product into a finished commodity where the price paid by the manufacturer to the producer is controlled by or dependent upon the price received by the manufacturer for the finished commodity to enter into any combination he sees fit. Mr. Norris opposed the amendment because it allowed the manufacturer of a commodity to get a bigger profit from the consumer on the product if he will agree to pay part of the swag to the man who produces it. The question was taken on agreeing to the amendment and it was rejected,
however, Mr. Phipps gave notice that he would renew the amendment when the bill was reported to the Senate.

Mr. Capper offered the final amendment to the bill which proposed:

"On page 3, line 13, after the word "order" and the comma, insert "or enter such other decree as the court may deem equitable," so that as amended the sentence read: "Such district court shall thereupon have jurisdiction to enter a decree affirming, modifying, or setting aside said order, or enter such other decree as the court may deem equitable and may make rules, etc." 106

The effect of this amendment was to provide still further safeguards for the public interest and at the same time not to work a hardship or injure co-operative associations. The amendment was agreed to.

The question was then taken on the passage of the Committee amendment in the nature of a substitute. The purpose of this amendment was to give the Federal Trade Commission regulatory powers over co-operative associations. The yeas and nays were asked for by Senator Walsh and were yeas 5, nays 56, not voting 35, thereby the Senate substitute was rejected.

The amendments were ordered engrossed and the bill was read a third time after which the vote on the passage of the bill was taken. The results of this vote were yeas 58, nays 1, not voting 37, therefore the bill passed the Senate February 8, 1922.

On February 11, 1922 the House of Representatives concurred in the Senate amendments. The bill as passed by both Houses of Congress was signed by the Speaker of the House February 13, 1922, by the Vice-president, February 15, 1922, and by President Harding February 19, 1922.
Chapter 5. CONCLUSION

Perhaps no legislation adopted by Congress has illustrated more strikingly the influence which fear of the West had upon the Senate and House during the 67th Congress in 1921 to 1923, than the act to authorize associations of producers of agricultural products. Standing by itself, the fact that such a piece of legislation could get through the upper branch without serious protest, and by the surprising vote of 58 to 1, brings home with startling emphasis the trend away from the old order of things and the dawning of a new legislative era. Yet it is but one of a series of bills advocated by the agricultural interests and backed by the agricultural book which received favorable action.

The text of the House bill adopted by both Houses and signed by the President as as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America of Congress assembled, that persons engaged in the production of agricultural products as farmers, planters, ranchers, dairymen, nut or fruit growers may act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce, such products of persons so engaged. Such associations and their members may make the necessary contracts and agreements to effect such purposes; provided, however, that such associations are operated for the mutual benefit of the members thereof, as such producers and conform to one or both of the following requirements:

First, That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein, or;
Second, That the association does not pay dividends on stock or membership capital in excess of 8 per cent per annum;
And in any case the following;
Third, That the association shall not deal in products of non-members to an amount greater in value than such as are handled by it for members.

Section 2, That if the Secretary of Agriculture shall have reason to believe that any such association monopolizes or
restraints trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced by reason thereof, he shall serve upon such association a complaint stating such charge in that respect to which complaint shall be attached or contained therein, a notice of hearing, specifying a day and place not less than thirty days after the service thereof, requiring the association to show cause why an order should not be made directing it to cease and desist therefrom. An association so complained of may at the time and place so fixed show cause why such order should not be entered. The evidence given on such a hearing shall be taken under such rules and regulations as the Secretary of Agriculture may prescribe, reduced to writing and made a part of the record therein. If upon such hearing the Secretary of Agriculture shall be of the opinion that such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced thereby, he shall issue and cause to be served upon the association an order reciting the facts found by him, directing such association, or if such association fails to serve such order to cease and desist therefrom. On the request of such association, or if such association neglects for thirty days to obey such order, the Secretary of Agriculture shall file in the district court in which such association has its principal place of business a certified copy of the order and of all the records in the proceedings, together with a petition asking that the order be enforced and shall give notice to the Attorney General and to said association of such filing. Such district court shall thereupon have jurisdiction to enter a decree affirming, modifying, or setting aside said order or enter such other decree as the court may deem equitable, and may make rules as to pleadings and proceedings to be had in considering such order, the place of trial may, for cause or by consent of parties, be changed as in other causes.

The facts found by the Secretary of Agriculture and recited or set forth in said order shall be prima facie evidence of such facts, but either party may adduce additional evidence. The Department of Justice shall have charge of the enforcement of such order. After the order is filed in such district court and while pending for review therein the court may issue a temporary writ of injunction forbidding such association from violating such order or any part thereof. The court may, upon conclusion of its hearings, enforce its decree by a permanent injunction or other appropriate remedy. Service of such complaint and all notices may be made upon such association by service upon any officer or agent thereof engaged in carrying on its business, or any attorney authorized to appear in such proceeding for such association and such service shall be binding upon such association, the officers and members thereof." 111

The Federal Government has fully legalized the formation
of farmers' co-operatives either with or without capital stock. Apparently the only restriction now is, these co-operatives must have a lawful object in mind, and must use lawful means to reach the object. The bill since its passage has not been attacked as class legislation and therefore unconstitutional. The fact that it was referred to in support of the validity of the Bingham co-operative law of Kentucky in the favorable opinion handed down by the Supreme Court of the United States (October term, 1927) creates a presumption that the court as now constituted would not declare the Capper-Volstead act unconstitutional.

The first big field for fundamental improvements in our marketing system by co-operation lies in the services of inspection, grading and standardization. Since there is the greatest diversity in the standardization of fruits and vegetables it is obviously in this field that co-operation has the best opportunity for service and success. The second fundamental benefit from co-operative marketing, when efficiently done and carried through to its logical conclusions is improved production. There is no way to get a good price for a poor product, hence co-operative marketing associations devote their energies to improving the quality of the product produced by the growers.

The incidental advantages and benefits resulting from the passage of the act are: fighting of trade abuses; co-operating with middlemen; securing of market information; developing of bargaining power; and resulting economies in marketing.
The disadvantages under which associations organized under the act will run up against are inherent weaknesses such as: overpromotion, antagonism between co-operatives, use of violence, extravagance, private initiative problem; and certain things co-operatives cannot do such as: fix prices, guarantee cost of production plus a profit, eliminate the middleman, eliminate speculation, cut costs greatly.

However, in weighing the advantages against the disadvantages by taking cognizance of the magnanimous growth of co-operative associations since the passage of the bill and their apparent success it can be readily seen that the advantages outweigh the disadvantages considerably.

The growth of commodity marketing since the Capper-Volstead act went into effect has been enormous. Of the co-operative associations reporting to the Department of Agriculture in 1928, 31% were handling grain, beans or rice, 22% were handling dairy products, 17% were shipping or selling livestock, 11% were receiving, grading, packing or shipping fruits and vegetables, and smaller percentages were handling cotton, wool, poultry, eggs, nuts and other products. One of the highly developed lines of co-operative endeavor is in the selling of fluid milk. Approximately, one-fifth of the fluid milk used in the United States for household purposes was sold co-operatively in 1927. About 60 per cent of this milk was handled through bargaining associations which function chiefly in the determination of the monthly price to be paid by private distributors to the producers. The rest was handled by associa-
tions which received and deliver the milk to private distributors.

Some of the outstanding examples of success in co-operative marketing are the California Fruit Growers' Exchange, whose business totaled $96,000,000 in 1928, the Staple Cotton Growers' Association, whose annual business averages $20 million dollars, the Land O' Lake Creameries, Inc., whose business totaled $48,000,000 in 1928, and the Canadian Co-operative Wheat Producers, Ltd., whose sales of grain in 1928 totaled $283,000,000. In the purchasing field the co-operative Grange League Federation Inc., of Ithaca, New York, and the Eastern States Farmers' Exchange of Springfield, Massachusetts, are the two largest organizations. Both of these specialize in open formula, dairy and poultry feeds, seeds of known origin, and high grade fertilizers. The American Farm Bureau Organizations in 10 states have set up large scale buying associations. A considerable part of the co-operative purchasing is done by supply departments of co-operative selling associations such as those of the California Fruit Growers' Exchange and the Land O' Lakes Creameries, Inc.

Co-operative marketing has, very largely failed with tobacco in the United States and likewise with potatoes, although there are a few organizations which are reasonably successful with potatoes. One group of associations, combined for selling purposes into the Pacific Egg Producers, has been conspicuously successful in the handling of poultry products.

Co-operative marketing of cotton began in 1921, when four
associations were organized and handled 44% of that year's crop. By the 1923 to 1924 cotton season, a total of fourteen cotton cooperatives had organized, and in that year handled 923,562 bales, or 9.2% of the total production. The volume handled in 1925 to 1926 showed an increase but both membership and volume decreased in 1927 to 1928, however by March, 1929 there was an evidence of an increase in both membership and volume.

In grain marketing, the greatest accomplishments have been achieved by farmer's elevators. Progress in terminal marketing by farmers has been slow, but the developments of the last few years have been slow, but encouraging. The eight central marketing associations operating wheat pools handled 12,000,000 bushels of wheat in 1928. The high water mark thus far reached in the wheat pooling in the United States was 27,000,000 bushels by twelve associations in 1923 to 1924.

Another type of terminal grain marketing association, the co-operative commission agency, has come rapidly to the front. These organizations function principally as sales agencies for local farmers' elevators. During the crop year of 1927 to 1928 they handled 36,000,000 bushels of grain for 1,153 elevators.

As an extreme example of what associated effort and large scale organization can accomplish in the field of marketing may be mentioned the Land O' Lakes creameries, Inc., and chain store organizations with which it has made contracts in the east. At present, the gains from this large scale or-
ganization are being most largely realized by the consumers, but it is only a question of time when more of the gain will be reflected back to the producers' organization.


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6. C.R. Fay, Cooperation At home and Abroad, 19.

7. Ibid., 20.


12. E.G. Nourse, The Legal Status of Agricultural Co-operation, 167


15. 26 United States Statutes at Large, 211.

16. Ibid., 2111.


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21. E.G. Nourse, The Legal Status of Agricultural Cooperation, 84

22. 38, United States Statutes at Large, 693


24. 39 United States Statutes at Large, 360.
25. H. C. Wallace, Our Debt And Duty To The Farmer, Ill.
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53. Ibid., 8022.
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74. C. R., 67 Cong., 1 sess., 1032.

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77. Ibid., 1038.

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80. Ibid., 1046.

81. Ibid., 1058.


85. C. R., 67 Cong., 1 sess., 4332.

86. Ibid., 595, 1444.


88. C. R., 67 Cong., 2 sess., 2158.

89. Ibid., 2229.

90. Ibid., 2267.

91. Ibid., 2269.

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93. Ibid., 2269.

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