plain that the method of designating the derivative or preparation is one of those matters properly to be determined by a general rule applicable to all such cases; the purpose of section 3 being to enable the three Secretaries to specialize, for practical purposes, the general language of the act, so as to adapt it to the circumstances of particular cases arising in its enforcement. Until such action shall be taken it would seem that the effective enforcement of this provision with respect to "derivatives" or "preparations" will be virtually impracticable.

In answer to your second question, therefore, I advise you that a rule or regulation requiring the name of the parent substance to follow that of the derivative would be within the power of the board constituted by section 3 of the act; but that, in the absence of such a rule, no offense would be committed, under the act, by the omission of the name of the parent substance, nor could the article in such case be dealt with as misbranded for that reason alone.

I remain, sir,

Yours, very respectfully,

CHARLES J. BONAPARTE.

The SECRETARY OF AGRICULTURE.

COMMISSIONER OF CORPORATIONS—RIGHT OF SENATE COMMITTEE TO ASK FOR INFORMATION.

The Commissioner of Corporations is not permitted by section 6 of the act of February 14, 1903 (32 Stat. 828), creating the Department of Commerce and Labor, to disclose the data and information collected by him or his predecessors under that section, unless by the special direction of the President, and this notwithstanding the request is made by a subcommittee of the Senate.

He should, however, immediately present such a request to the President, submit to him, if practicable, all the documents containing relevant information upon the subject referred to, and obtain his instructions as to what part, if any, of such data is suitable for publication by direction of the committee preferring the request.

DEPARTMENT OF JUSTICE,

January 22, 1909.

SIR: I have the honor to acknowledge the receipt of your letter of this date, by direction of the President, asking my

opinion on a question set forth in your letter, in substance, as follows:

"I was subpœnaed to appear before the subcommittee of the Senate Committee on the Judiciary on January 22 at 10 a. m. at the Capitol. A copy of the said subpœna is hereto annexed. On appearing there, after some preliminary discussion, I was asked to furnish to the subcommittee certain information in regard to the United States Steel Corporation and the Tennessee Coal, Iron and Railway Company, presumably in my office, obtained by me as Commissioner of Corporations. I stated in substance that it had been the uniform construction of the Bureau, placed from the beginning of its operations upon its organic act, and also my personal opinion, that the necessary implication of section 6 of that organic act, February 14, 1903, prohibited me from giving to anyone, or making public in anyway, the information obtained by me as Commissioner of Corporations, except through and upon the direction of the President. I then stated that I desired an opportunity to lay this question before the Attorney-General for determination as to whether the construction above outlined was correct or not."

In this connection you furnish we with the following memorandum showing the view taken of the question by one of the Senators serving on the subcommittee of the Committee on the Judiciary before which you appeared:

"Senator KITTREDGE. Speaking personally, I think this committee is entitled to have every particle of information which he (the witness) has in his office, either by way of personal knowledge, books, records, papers, confidential information, or otherwise; that as between this committee of the Senate and his office, there is no confidential bar possible to be interposed.

"The CHAIRMAN. I think you had better limit that, Senator Kittredge, to the inquiry which the Senate has authorized us to make with relation to the Tennessee Coal and Iron Company and the United States Steel Corporation.

"That is understood, of course, Mr. Chairman."

The act approved February 14, 1903, and entitled: "An act to establish the Department of Commerce and Labor" (32 Stat. 825, 828) contains the following provision, being part of section 6 of the said act, by which it is provided that there shall be in the Department of Commerce and Labor a bureau to be called "The Bureau of Corporations" and a Commissioner of Corporations, who shall be the head of said Bureau.

"The said Commissioner shall have power and authority to make, under the direction and control of the Secretary of Commerce and Labor, diligent investigation into the organization, conduct, and management of the business of any corporation, joint stock company or corporate combination engaged in commerce among the several States and with foreign nations excepting common carriers subject to 'An act to regulate commerce,' approved February 4, 1887, and to gather such information and data as will enable the President of the United States to make recommendations to Congress for legislation for the regulation of such commerce, and to report such data to the President from time to time as he shall require; and the information so obtained or as much thereof as the President may direct shall be made public."

It is obvious from the language of this provision, first, that the Congress contemplated at the time of its enactment a possibility and even probability that some part of the information thus collected by the Commissioner of Corporations might be of a character which justice to the parties interested and also the public interest might require to be deemed confidential. Secondly, that the Congress intended the President should judge whether any portion of the information and data obtained by the Bureau of Corporations, in accordance with the terms of the law, should or should not be made public. The information in question might involve the private affairs and trade secrets of citizens engaged, as members of corporations, joint stock companies, or corporate combinations, in commerce among the several States and with foreign nations; and these circumstances, as well as the language of the act itself, justified the assumption that it was enacted with appropriate

regard to the spirit as well as the letter of the Fourth Amendment to the Constitution, providing that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

This construction is, according to my information, sustained by uniform and consistent departmental practice. The urgency of the present matter has not permitted a careful inquiry as to precedents, but two of great cogency are furnished by the experience of this Department. In the prosecution of the cases against the so-called "beef trust" during the incumbency of Attorney-General Moody, and in the prosecution of the "tobacco trust" since I have been Attorney-General, the counsel in especial charge of these two cases, respectively, who were, of course, appointed and sworn officers of this Department, requested access to the information collected by your Bureau, with a view to its use in the said prosecutions, and on each occasion, after careful consideration of the language and reasonable intendment of the law, it was decided that the data in your possession were so far confidential in character that such inspection, although in the interest of the administration of justice and conducted by counsel of the highest standing as well as intrusted with important public duties, would be inappropriate; and such access was therefore in each case refused, the President not having passed, and it being impracticable that he should pass personally, upon the propriety of such inspection in regard to the class of data to be investigated.

The legislative history of the measure shows that the same view of the effect of the clause was taken during the debates which preceded its adoption. When it was before the House of Representatives in Committee of the Whole, Mr. Mann, of Illinois, said:

"Mr. Chairman, the report of the bill from the committee provides for a Bureau of Corporations for the very purpose of providing an *Executive* agency on publicity."

During a discussion of the conference report in the House, on February 10, 1903, Mr. Richardson, of Alabama, criticised the provision by saying:

"The purpose and object of this measure or of this substitute is to enable the President of the United States to do what? To take, under the supervision of the Secretary of Commerce and Labor, action against the trusts? No. It is to provide a way to gather such information and data as will enable the President of the United States to make recommendations to Congress for legislation. * * * When the President picks up the data, under the qualifications and limitations that I have explained, he is to come back to Congress and ask for additional legislation."

Again, the same speaker said:

"I appeal to the honest construction that any man will give to the ordinary English language—what does that mean? 'As much thereof as the President may direct shall be made public.' He can suppress all data, every scintilla of information. He can hold it secret and stand pat and say and do nothing, and no law can move him."

In the same debate, Mr. Ball, of Texas, said of this provision:

"It creates a Bureau of Corporations at a considerable expense to gather information for the President, who makes public such as he sees proper."

And, finally, Mr. Smith, of Kentucky, said in that same connection:

"I apprehend that this provision of the amendment which says it shall lie in the discretion of the President as to what shall be made public of these reports would preclude the Commissioner from laying before Congress what the official report developed in his investigation."

It is not necessary to pass upon the question whether the last-named gentleman was correct in the construction he placed upon the act. This is not the case of a demand in the form of a joint resolution or otherwise made by the Congress for access to the information which you thus hold. On August 23, 1854, Hon. Caleb Cushing, then Attorney-General, advised the Secretary of the Interior as follows (6 Op. 680):

"Joint resolutions of Congress are not distinguishable from bills, and, if approved by the President, or if duly passed without the approval of the President, they have all the effect of law.

"But separate resolutions of either House of Congress, except in matters appertaining to their own parliamentary rights, have no legal effect to constrain the action of the President or of the Heads of Department."

And, in that opinion, Attorney-General Cushing used the following language (pp. 684, 685):

"But the Constitution has not given to either branch of the legislature the power, by separate resolution of its own, to construe, judicially, a general law, or to apply it executively to a given case. And its resolutions have obligatory force only so far as regards itself or things dependent on its own separate constitutional power.

"Any other view of the subject would result in the absurd conclusion that a separate vote of either House could repeal or modify an act of Congress. For, as the Supreme Court well said, in one of the cases before cited, a head of Department 'must exercise his judgment in *expounding* the acts and resolutions of Congress under which he is, from time to time, required to act.' That exposition of the law, conscientiously made by him, and with the aid of the law officer of the Government, is the law of the case. If the question be one of judicial resort, the exposition of the statute by the Supreme Court will constitute the law. But, if it be a mere executive question, then the exposition of the particular Secretary, or of the Attorney-General, is just as much the law, and, as such, binding on the conscience of the head of Department, as any other part of the statute, which may happen to be of unquestionable import, and so not to require exposition. In fine, it becomes the law; that is, the authorized construction of the legal intendment of the act of Congress. That ascertained legal intendment of a statute can not be authoritatively changed by a separate resolution of either or of both Houses; but only by a new act of Congress."

If this be true as to the want of authority on the part of either House of the Congress to constrain the discretion of

the head of an Executive Department exercised under the provision of an existing law, it must be still more clearly true with respect to such an attempt when the discretion has been vested in the President himself. I am therefore compelled to advise you that, according to the proper construction of section 6 of the act to create a Department of Commerce and Labor, it is not permissible for you to disclose the data and information collected by you or by your predecessor as head of the Bureau of Corporations, unless by the special direction of the President; and I am confirmed in this view because the law itself furnishes not only to the Congress, but to either House thereof, another method of obtaining such information as may be needful in the discharge of its public duties. Section 8 of the same act, after directing " that the Secretary of Commerce and Labor shall annually at the close of each fiscal year make a report in writing to Congress," adds (32 Stat. 829):

" He shall also from time to time make such special investigations and reports as he may be required to do by the President, *or by either House of Congress*, or which he himself may deem necessary and urgent."

It is, however, of obvious propriety that each branch or department of the Government shall do all that in it lies to facilitate and render effective the labors of another branch or department in the discharge of its appropriate public duties. You have been requested by a subcommittee of the Senate to furnish it information in your possession to aid in the discharge of a duty imposed upon it by a resolution of the Senate. It appears to me clearly appropriate that you should immediately call this request to the attention of the President, submit to him, if practicable, all the documents containing relevant information upon the subject referred to, and obtain his instructions as to what part, if any, of such data is suitable for publication by disclosure to the subcommittee of the Senate. I say this without reference to the cogency of the subpœna served upon you. This calls for the production of " all papers and documents in your possession, custody, or control as Commissioner of Corporations, or otherwise, relating in any manner to the United States Steel Corporation *and* the Tennessee Coal,

Iron and Railroad Company." While, in the interpretation of legal documents "and" is often construed "or," and *vice versa*, nevertheless, in view of the terms of the resolution under which this investigation is in progress and of the language of the Fourth Amendment to the Constitution above quoted, it is my opinion that you were clearly right in construing the said subpœna as requiring only the production of such documents as related to *both* of the two corporations named; and I understand you did produce a printed copy of the one document in your possession having these characteristics, the said document being itself a printed copy of the same issue.

I remain, sir,

Yours, very respectfully,

CHARLES J. BONAPARTE.

The COMMISSIONER OF CORPORATIONS,
Department of Commerce and Labor.

PAYMASTERS' CLERKS—OFFICERS OF THE NAVY.

Paymasters' clerks are "officers of the Navy" within the meaning of the act of May 13, 1908 (35 Stat. 128), which provides for the retirement of officers of the Navy who have been in the service thirty years.

DEPARTMENT OF JUSTICE,
January 22, 1909.

SIR: I have the honor to acknowledge the receipt of your letter of December 17, 1908, in which you ask my opinion on the question whether a paymaster's clerk is an "officer of the Navy" within the meaning of the act approved May 13, 1908, providing for the retirement of such officers (35 Stat. 128). That act contains the following provision:

"When an officer of the Navy has been thirty years in the service, he may, upon his own application, in the discretion of the President, be retired from active service and placed upon the retired list with three-fourth of the highest pay of his grade."

The question submitted by you is a very narrow one, involving simply the determination whether a paymaster's