WASHINGTON, April 20.—The Appalachian and Western States Lumbermen say that the Federal Forests bill is dead, for this session, at least.

It received its knock-out blow on Friday when the House Committee on Appropriations, on the question of its constitutionality was referred, reported that the appropriation contemplated was unconstitutional, and the opponents of the bill received this decision as a signal for action. Whether or not it will be brought up at other times is a matter for the outcome of the Congressional elections, but little hope is entertained for it now in a Republican House.

Judge Jenkins, Chairman of the Committee, in reporting the bill, took a shot at some of the states to prove that the Federal government has no congressional justification on the question of states' rights, and Federal trespasses.

The report of the committee which is in the nature of a legal opinion setting forth why the bill is unconstitutional.

**Report of Judicial Committee**

No money can be constitutionally appropriated from the Federal treasury for a special purpose, the proper discharge or exercise of a Federal function. It has now settled that the Federal government is a government of granted, enumerated powers, under which authority it is "appropriate and plainly adapted" to the effective practical exercise of the grant of a certain power, with a certain limitation. Colorado, 206 U. S., 88.

Congress is not the subject-matter of a Federal appropriation. The only question to be determined is, as stated by Judge Jenkins, whether the proposed act is appropriate and plainly adapted to its effective practical exercise, and the limit of such exercise is the exercise of the determining faculties. The fact that the project is a large one does not reach the threshold of the discussion in determining whether Congress has power to appropriate. It is only in the fact that it involves immense values, affects millions of acres of land in several states, and involves the interests of the respective states, that the presence of these states is brought into the consideration. Like all other measures involving the exercise of power by the Federal government, this is a question of the extent to which the Federal government is plainly adapted to its effective and practical exercise.

In view of the tying desire for Federal control, but this consideration has no weight here in determining the exercise of the determining faculties. The fact that the project is a large one does not reach the threshold of the discussion in determining whether Congress has power to appropriate.

It is, however, claimed that the project comes fairly within the scope of these purposes, and that the exercise of the power for the accomplishment of these purposes may with any propriety be referred.

Can the bill be held to be constitutional? Moreover, it seems clear that the government can only constitutionally appropriate for a special purpose, which clearly constitutes a public use, and there is no question in its constitutionality that it also has the right to acquire by the exercise of eminent domain the property necessary to its public use, except for a public use. Measured by this standard the project fails. There is no public use. On the contrary of any nature of public use.

First of all, it has not been found, and, so far as can be seen, it also has not been called to any grant of power to the Federal government to acquire property for a public use. The bill provides for the acquisition of such land by the United States for national purposes, and there are no provisions in such an act to acquire any grant of property. Colorado 206 U. S., 88; H. R. 10456, H. R. 10457—they are identical in terms—is clearly the only power to keep up and reconstitute any appropriation. The purpose upon which they are predicated by the states, or otherwise, to remove such obstruction from the streams that have their sources in such watersheds. It is true, as asserted, that any appropriation is constitutionally constitutional, and Congress has the right to appropriate the same, but it does not follow that Congress can appropriate any for the purpose of making the streams navigable. The appropriation is constitutional. The appropriation allows the acquistion of property for the navigable point in a public river or highway. The appropriation is constitutional. The appropriation allows the acquisition of property for the development of energy, but it must not be in the public interest. The appropriation is constitutional.

The question of the constitutionality of the appropriations is not involved in the bill. Some time ago Brandegee favorably

*to Kansas v. Colorado (supra), where the court denied*