

# Protest Against Invasion of State's Rights by the Federal Courts

Governor Chester H. Aldrich of Nebraska "started something" in the governors' conference at Spring Lake, N. J., when he attacked the decision of Federal Judge Sanborn in the Minnesota rate case and called for action by the governors.

As the result of Governor Aldrich's address, Governor O'Neal of Alabama moved the appointment of a committee to take such action as may be necessary before the United States supreme court in order that the rights of the states may be properly protected.

The following governors were appointed on the committee: Harmon of Ohio, Hadley of Missouri and Aldrich of Nebraska.

Referring to the Sanborn decision Governor Smith of Georgia said: "If the decision of Justice Sanborn becomes the law of this country," then the twilight zone will so broaden that we will never see daylight again in the regulation of passenger and freight rates. Once this question is decided this way, the states' railroad commissions will be emasculated and then we will return to that condition where the interstate commerce commission will have no control of intrastate rates, and the carriers can do exactly as they please."

The Associated Press gives the following synopsis of Governor Aldrich's address: Governor Chester H. Aldrich of Nebraska, author of the Nebraska railway rate law, addressed the convention on "The Right of the States to Fix Intrastate Traffic Rates." Governor Aldrich made a plea for state authority in the regulation of public utilities, and gave the results of the operation of the Nebraska rate law to illustrate his argument.

"We have just read in a recent decision of nation-wide importance," said he, "where our supreme court has gone into the legislative business. It is now becoming quite the thing for federal courts of inferior jurisdiction to the supreme court of the United States to invade the province and rights of these sovereign states by subterfuge, cunning device, and fallacious reasoning, and then nullify state laws and tie up generally the government of the state, depriving them of their right to control their own internal commerce.

"The right to enact statutes and regulate such corporations to the end that only just and reasonable charges may be made is inherent in a state legislature for that commerce which lies wholly within its borders, and the power and duty to say what is reasonable and just when such an issue is tendered, devolves not upon the legislature, but upon the courts of this land.

"In other words, the idea that courts can legislate either directly or indirectly is repugnant to our entire scheme of government. When a court, in an issue tendered, has said that a certain rate or fixed charge is unjust and unreasonable, then it has used its power to its fullest extent, and the overwhelming weight of authority establishes these propositions, and whenever a court steps outside of this particular province, it is not only autocratic, but may be accused justly of arrogating power and authority that belongs to another department of our government.

"I am here to say that the legislation of today, as carried on and regulated by the several states of this union is, in the main, just and equitable and fair and that railroad companies doing business today under these regulations are prosperous.

"As a notable instance of this, I call your attention to my own state in its regulation of the common carriers therein. I here make the assertion that under the regulation through the freight rate law, the passenger rate law, and the railway commission, the railroads of the state of Nebraska are on a better business basis and on better terms with the people of the state and do business with them more satisfactorily than they have ever done before in the history of their existence.

"Under the two cent fare law, the following

figures will show that the business of this state in passenger traffic has greatly increased.

## STATE FIGURES

	Ticket sales —State.	Conductors' cash ticket collections.
January, February, March and April.		
1908 .....	\$1,348,127.63	\$71,651.56
1909 .....	1,578,812.57	55,372.36
1910 .....	1,621,815.71	66,517.98
1911 .....	1,630,965.02	66,346.35

"The summary for the same months in the same years on all roads in the state shows the following interstate ticket sales and cash fares collected by conductors.

## INTERSTATE

	Ticket sales —Interstate.	Conductors' cash ticket collections.
1908 .....	\$714,841.47	\$10,793.47
1909 .....	844,633.99	11,060.30
1910 .....	963,219.19	8,749.15
1911 .....	915,241.95	7,367.19

"The railway commission of Nebraska has been in force and effect for four years. More than a thousand orders and judgments have been entered during that time by this commission affecting the common carriers and the public. Of the 850 judgments and orders that have been entered by the commission of my state, only two of them have been appealed from. They have forced a better service, have forced the railway companies to build many new depots, to reballast their tracks, to make various connections, have forced them to change time schedules, have made them put on trains and have done innumerable things for the general betterment of the service of the company and the public.

"I know not what other states may do; I know not what other states may think. But I can speak for my own state and say that she demands the right and privilege to be allowed to do things which her sovereignty, her independence and her liberty says she may do.

"I say that my state will not only insist, but it will carry forward, at any and all hazards, its inherent governmental functions and in doing this, it stands in line with an unbroken chain of decisions coming down from the highest judicial body in the land, from the earliest day to the present.

"It will respect courts and court decisions. But as a condition precedent to all this, it demands that court opinions stay within well marked lines and respect the sovereign power of these states in the regulation and control of their own purely internal commerce.

"At all times it asks these courts to do homage to the scheme of representative government and let the courts remember that tyranny clothed in the garb of judicial ermine has features as hideous as though in the hand of a czar."

## INITIATIVE AND REFERENDUM BEFORE THE GOVERNORS

The governors of the various states met in conference at New Jersey. The governors had a particularly interesting time over the initiative and referendum. The New York World says:

The experience meeting of the governors of twenty-four states, with Governor Cruce of Oklahoma as presiding elder, was enlivened by a spirited verbal battle between Governor Wilson of New Jersey and Governor O'Neal of Alabama regarding the "caprice of the majority" and "mob rule," by a spirited attack on the divorce evil by Governor Carey of Wyoming and a pitiful plea for sympathy by Governor Kitchen of North Carolina, who has neither the power of veto, appointment nor removal.

Governor O'Neal and Governor Morris of Montana had read distinctly reactionary papers on the necessity for granting more power to governors, when Woodrow Wilson led an attack on them, in which Governors McGovern of Wisconsin, Aldrich of Nebraska and other western executives joined.

"There is a movement that seems to be gathering strength in certain sections of the union," said Governor O'Neal, "which tends to weaken rather than to strengthen executive authority, and that is the system of initiative,

referendum and recall. The governor has no power to veto or amend law initiated by the people and adopted by referendum. If the law is in violation of the constitution, invades vested rights or destroys individual liberty the only remedy can be found in the courts; and where the system of recall of judges prevails, overthrowing as it does the independence of the judiciary, the courts would degenerate into tribunals organized chiefly to register popular judgment on all legal questions."

## "INSIDIOUS VAGARY"

Governor O'Neal said that it was pleasing to know that this "insidious popular vagary" will meet with the almost unanimous opposition of the American bar. He said that the recall would "convert the public officer into a spineless and servile hireling, stirred by every passing breeze of public opinion, obeying every popular impulse and yielding to every wave of popular passion of prejudice," and spoke with contempt of the "caprice of the majority," a catch word that provoked a storm of criticism.

"I have never seen an instance where the registered will of a majority could properly be called a caprice," retorted Governor Wilson. "Nor is the verdict of the majority 'mob rule,' as it is described by some. A mob is one thing; thousands of people voting in a thousand precincts quite another thing, and there is no chance for confusion of terms. The initiative and referendum, so much discussed, are not designed to change our form of government, but to rejuvenate the methods of it. Any governor is dignified and glorified by going to the people as the source of his power."

Governor O'Neal was on his feet in an instant. "I would rather stand with Hamilton and Madison than with some of the prophets our states are turning out!" he cried. "Let us not forget that the purpose of government is to limit the power of the majority, and of constitutions to protect the minority from the tyranny of the majority. Leaving aside the initiative and referendum, the recall of judges would surely institute mob rule."

## GILCHRIST'S WARNING

"Don't you all forget that the caprice of a majority gave you all your jobs," broke in Governor Gilchrist of Florida, in a soft southern drawl, and for the moment there was peace that followed the laugh from the two hundred men and women in the audience.

## COMRADES

This is not the first time that Mr. Taft has concluded to be a standpatter. He seems now to have gone over, bag and baggage, but it looked so once before. We append a few proofs:

(Mr. Taft at Boston banquet, September 14, 1909.) "Mr. Aldrich, who is the leader of the senate, and certainly one of the ablest statesmen in financial matters in either house, has been regarded with suspicion by many people, especially in the west."

(Mr. Taft at Winona, Minn., September 17, 1909.) "On the whole, however, I am bound to say that the Payne-Aldrich bill is the best tariff bill that the republican party has ever passed. This is a substantial achievement in the direction of lower tariffs and downward revision, and it ought to be accepted as such."

(Mr. Taft's letter to L. B. Swift, March 1, 1910.) "Mr. Aldrich is a great constructive statesman, and he has done much for the good of the country in the legislation he has shaped. Mr. Cannon is a useful man, also, though not so useful as Mr. Aldrich."

(Mr. Taft at Providence, R. I., March 21, 1910.) "I am honored by the presence of your distinguished senators, Aldrich and Wetmore, whose services in assisting me to carry out the pledges of the administration and the party I value most highly."

(Mr. Taft at Washington, April 19, 1910.) "Senators Aldrich and Hale know more about the government of this country than any other man except Cannon."

In trying to fix the president's exact status in his party it is well to remember that, while he sometimes has tried to be agreeable to the progressives, he never has vouched for them as he has for Aldrich and Cannon.

The progressives are men that he is in the habit of criticising. He often reads them out of the party. When he wants something that they can help him to he offers them offices for their friends. It is only when he comes to consider the merits of the standpatters and their tariff revision upward that he deals in superlatives. —St. Louis Republican.