

CURRENT TOPICS

SENATOR BAILEY OF TEXAS, speaking in the senate on the railway rate question, delivered what is universally conceded to be one of the great speeches in American history. It will be remembered that President Roosevelt and other advocates of rate legislation have all along insisted that the important matter in rate legislation was to guard against delay in the taking effect of the rates. Opponents of railway legislation pretended only to be anxious to guard against the unconstitutionality of the law and to do justice to all parties. They insisted upon what they call "an ample court review provision." They wanted it made clear not only that after the interstate commerce commission had fixed the rate the railroad could appeal, but that the rate could be held up by an order of court pending the decision of the case appealed by the railroads.

THE PROPOSED AMENDMENT known as the Long amendment and introduced by the senator from Kansas, which amendment it has been claimed was agreed upon at the White House conference, provided not only for appeal after the commission had fixed the rate, but explicitly conferred upon the circuit court the authority to issue an order suspending the rate. Several senators who have been regarded as eminent constitutional lawyers and who have also been regarded as hostile to rate legislation have insisted that provisions such as is contained in the Long amendment were necessary to the life of the proposed measure. But several weeks ago Senator Bailey created quite a stir among these constitutional lawyers. While admitting that the railroad had the right to appeal, he flatly declared that congress had power to deny to the inferior United States courts the right to suspend the order of the interstate commerce commission pending the final decision in cases arising under the proposed law. In Senator Bailey's memorable speech delivered April 10, he undertook to sustain his contention and, even in the opinion of many who heretofore took issue with him, succeeded.

SENATOR BAILEY POINTED out that congress has exercised the power to abridge the rights of the courts to punish for contempt or to issue writs of mandamus, asserting that the courts have no inherent power and that "it is the duty of the federal courts not to make the law for congress, but to obey the law that congress makes for them." He added: "If congress has the right to restrict the power to punish for contempt, in God's name has it not the right to limit the power of injunction which has been so greatly abused by so many federal judges?"

REFERRING TO "THOSE utterings of recent years which seem to proceed on the theory that there should be no restrictions upon the judiciary," Mr. Bailey said: "This is the first government that ever conferred upon the judiciary the power to annul legislation. God knows that ought to be enough power to confer upon any nine men; we are ninety, they are nine. I would not encroach upon their power; I would hold myself unworthy if I permitted them to encroach upon mine." Referring to Mr. Knox's quotations from the text books on jurisprudence, he said that "the senator forgets that they were discussing the law as it is, and that it is as it is because congress wills it so," the point being that the legislative branch of the government is supreme in the law-making and court-regulating function. "Happily the senator from Pennsylvania reduces the whole question to our point when he says congress can say when, but not how, the judicial power shall speak." And Mr. Bailey declared that he was quite willing to accept that view.

ACCORDING TO THE Texas senator Messrs. Knox and Spooner misconceived the theory under which congress established the inferior court. He pointed out that if so disposed congress could disestablish every one of the inferior courts. He declared "the power to create and the power to destroy must include the power to limit." In support of the plea that the legislative authority is not curtailed, he called attention to the fact that with reference to the inferior

courts no limitation is put upon congress as to the number, their jurisdiction or their power.

MR. BAILEY QUOTED from one text writer showing "the circuit courts possess no power not conferred by congress." He quoted a case decided by Chief Justice Marshall involving a law suspending the writ of habeas corpus, in which he said that the courts can not issue a writ of habeas corpus, except upon the authority of a written law. "And," he said, "the senators tell us that congress has no power to put a limitation on the injunction power of the court." As a matter of practical convenience, he said a railroad company could better afford to sue 10,000 shippers for the difference in rate in case of a final decree favorable to them than 10,000 shippers could afford to sue the company. He asserted that in more than one decision the supreme court has held that the inferior courts have no "inherent function," as contended by Mr. Knox. He quoted an opinion in which was made the statement that congress had withheld jurisdiction.

MR. BAILEY SAID that he desired that justice be done to all. He wanted railroad rates to be fixed with a view of providing just compensation, but he demanded that the findings of the commission stand until a final decision should be reached, and he believed that such an amendment would have the effect of forcing the railroads to assist in bringing about an early trial. Mr. Bailey was generally congratulated at the conclusion of his speech, and Senator Hale of Maine, republican, expressed the opinion that good results would come from Mr. Bailey's argument. Mr. Bailey said that he hoped republican senators would agree with the democrats upon this amendment, adding: "Then we might have a new national emblem in the big stick and the pitchfork."

JOHN D. ROCKEFELLER, the oil trust magnate who has been dodging process servers since December, 1905, has returned to his old-time haunts. New York newspapers say: "Mr. Rockefeller was beaming with good humor when he arrived. He met newspaper men and photographers with a laugh, actually posed for his picture, slapped a reporter on the back and told him that John D. Rockefeller had never been nervous in his life. Mr. Rockefeller celebrated his return by sending a check for \$100 to a farmer living near the Rockefeller estate, who lost a horse and cow and several tons of hay by fire."

SPEAKER CANNON recently wrote to a friend at East Liverpool, Ohio, predicting revision of the tariff schedules. In a newspaper interview the speaker says that he did not write that letter for publication, although he has no objection to its being made public. He says he does not believe a majority of the people at this time desire to interfere with present conditions, but that the time will come when a general revision will be entered on. He says that democrats insist on immediate revision of the tariff, and adds: "If a majority of the people demand immediate general revision they will elect a majority of the members of this house in favor of immediate general revision."

THE LAFOLLETTE delegation was denied seats in the republican national convention and branded as irregular, and now, according to newspaper dispatches, Senator Lafollette has been barred from federal patronage. A Washington dispatch to the Chicago Record-Herald, a republican paper, follows: "Senator Spooner is monopolizing Wisconsin patronage, and friends of Senator Lafollette are beginning to ask why the president so completely ignores him in distributing plums. They point out that Senator Lafollette probably is more strictly in accord with the popular policies of the president than any other man in the senate, yet he has been allowed no voice in the patronage. There is a bitter division among the republicans in Wisconsin, and all of the men selected for office by Spooner have been opponents of Lafollette. Today the senate confirmed the nomination of E. W. Keyes, former republican boss in Wisconsin

and now a leader of the 'stalwarts' as postmaster at Madison, where Spooner and Lafollette both reside. In sending Keyes' nomination to the senate the president added that of Henry C. Kress to be postmaster at Manitowoc and William Case to be postmaster at Mauston. Both are anti-Lafollette men, and while their nominations were made at the instance of the representatives from their districts, they are distasteful to the junior senator. The recent appointments of Judges Sanborn and Charles and of Consul Wilder also favored men not in harmony with the Lafollette wing of the party. Senator Lafollette mildly opposed the appointment of Wilder, but did not take advantage of his right to make a fight against it on the floor of the senate. His friends, however, say he may be forced to make a fight for what he considers his rights, in order to sustain his prestige."

THE STUDENTS AT the University of Wisconsin have what is called "The Black Friars' Comic Opera Company." Extensive arrangements have been made for the entertainment to be given this year. The words and music of the operas were contributed by members of the school. Two bright young men spent considerable time in the preparation of the ditties to be used on this occasion, and the students were highly elated because of the excellence of the work done by these young authors. But a Chicago dispatch to the Lincoln (Nebraska) News says: "The faculty could not see the humor of a song about tainted money, and accordingly they gave the directors of the opera company strict orders to have that bit of touching verse excluded from the program." Following is one verse and the chorus of one of the songs to be excluded by order of the faculty:

We have freaks from far and near, most of them from near,
Some brought home by Professor Starr, but many made right here.
Money, yes, money, it is their pay,
But they are careful not to say or do
Anything John D. won't like;
Professors need it too.

CHORUS.

Money, oh, money, strange it may seem,
Tainted or sainted, just so it's green.
Money, yes, money, 'twas ever so;
At the Midway varsity they take to dough.

Newspaper dispatches say: "The objection of the faculty was that it mentioned the name of the founder, John D. Rockefeller, and spoke of him in a disrespectful manner. They also said that it would be unwise to let such a song be sung at a public performance which is under the supervision of the school. The words 'tainted or sainted, just so it's green,' were also objected to on the ground that the university had accepted no tainted money."

THERE ARE NOW at least nine generally recognized aspirants for the republican presidential nomination, and the New York Evening Post says the greatest of these is unquestionably Fairbanks. The Post adds: "With all the leisure of the vice presidential office at his command, he has built, perfected, and extended the most workmanlike political machine, probably, that a candidate ever possessed two years and three months before the nominating convention. The prophecies of his enemies have regularly come to naught. He has blocked their plans, he has carried off their spoils, and still the wrath of Heaven does not descend to consume him. In fact, nothing seems to touch him. All the boomers of other presidential candidates use him as a standard of comparison. No one ever heard a Taft man, for instance, say that his candidate was gaining ground faster than Shaw, or Root, or Foraker. No; if he wants to make the ultimate claim, he says that Taft is outstripping Fairbanks, and the Shaw men, the Root men, and the Foraker men, in their most optimistic moods, can say no more for their standard-bearers. The flame of Fairbanks enthusiasm is as impossible to extinguish as the phosphorescence of a fish."