

THE STATE'S POWER OVER CORPORATIONS

Findlay, O., June 12, 1911.—Editor Commoner: Now that the federal judiciary and department of justice have fully demonstrated, in the Standard Oil and Tobacco trust cases, their impotency, or at least, disinclination to afford the people any effective measure of relief against the oppressions of private monopoly, it remains for the states to demonstrate whether or not they are equally impotent.

The authentic history of the development of this evil of private monopoly, clearly shows that it was by means of prostitution of corporate forms, fictions and ideal entities, as instrumentalities in monopolistic combination, that these evils have grown up and been fostered and perpetuated, and without the prostitution of which they could never have been created, and could not be continued.

The first move of the monopoly pirate when he starts out to capture or scuttle an industry is to get control of the principal corporations engaged in it, after which he creates, or scuttles such other corporations as he requires to perpetuate or operate his monopoly.

It is by these means, the prostitution of corporate forms, corporate laws and ideal fictions, that he conceals his identity, and up to date, has succeeded in rendering abortive every remedy designed or contrived for the relief of his victims, whether these victims be some individual, some class, or the public at large.

These corporate laws, agencies and fictions, these ideal entities, are the creatures of state legislation; and that which the state can create, that it can control, or if need be, destroy.

Since the unfortunate decision of the Dartmouth college case by Judge Marshall in the United States supreme court, holding in effect that the charter of a corporation was a contract binding upon the state, which was a vested property right within the meaning of the constitution, and hence inviolable by the state which granted the charter, most of the states, including Ohio, have provided in their respective constitutions, the bill of rights, their organic laws, in substance, that all powers created and conferred by legislative authority, including that of being a corporation, holding corporate property, or exercising corporate functions, should be subject to revocation by the same authority by which they were created.

Private monopoly is not only "indefensible and intolerable" but was condemned as against the wise public policy of the common law before our government was formed, and it was this same declaration of public policy which dictated the enactment of state anti-trust laws by the legislative authority of many, if not most of the states. These state anti-trust statutes are more drastic, at least, more comprehensive, than the Sherman law of congress.

"That a corporation is a legal entity, apart from the natural persons who compose it, is a mere fiction, introduced for convenience in the transaction of its business, and of those who do business with it; but like every other fiction of the law, when urged to an intent and purpose not within its reason and policy, may be disregarded. But the fiction can not be abused. A corporation can not be formed (or used) for the purpose of accomplishing a fraud or other illegal act under the guise of the fiction, and when this is made to appear the fiction will be disregarded by the courts, and the acts of the real parties dealt with as though no corporation had been formed, on the ground that fraud vitiates everything into which it enters, including the most solemn acts of men."

This is a literal quotation from the supreme court of Ohio, but is supported by numerous other authorities and approved text writers, and is in accord with sound and settled principles of jurisprudence.

This then is the settled law in dealing with those who attempt to prostitute corporate laws, forms and ideal fictions. A corporation is a corporation, in contemplation of law, only so long as her incorporators keep her within the legal channel of corporate navigation; but the moment they put her hull into the waters of monopolistic piracy, she is less than nothing.

When once this wholesome doctrine is understood and applied by the bench and bar of this country, the problem of private monopoly is solved, and the remedy apparent (on the legal side) and the failure to appreciate and apply it has wrecked every anti-trust campaign to date.

Corporate fictions and agencies being as we have seen, the indispensable instrumentalities of private monopoly piracy, whether it is demonstrated that a gang of business pirates can not use a corporation in the manner in which the law tolerates its use, the only thing left, or

necessary for the state is to take the corporation away from them, just as she takes gambling appliances from the gambler, or whisky from the illicit vendor.

It is perfectly competent for the general equity jurisdiction of any state whose people are being oppressed by means of corporate fictions, created by, or operating within her territorial boundaries, to decree the liquidation of these fictions, and divest them immediately of their physical holdings, by means of the ordinary receiverships, and at once disarm all private monopolies within her domain, and this upon common law principles and irrespective of so-called anti-trust legislation, which, with the possible exception of their criminal features, are but declaratory of the common law.

These "malefactors of great wealth" who thus persistently prostitute corporate laws, seem to have concluded, and not without reason, that they have indeed outgrown the laws and the legal administration of the states whose laws they prostitute, and whose people they oppress, and I am fully persuaded that from the moment they become aware that the legal department of some central state, upon whose corporate laws the perpetuity of their institutions imperatively depends, is after them in earnest (rather than in forms for public deception) there will be little delay, and much less difficulty in admonishing them that they are at least one size smaller than the laws of their country, and that the day of reckoning is at hand.

This is the problem of all problems if government by, for and of the people, rather than the private monopolist is to survive. Yours for the people's rule.

GEORGE H. PHELPS.

WATCH IT GROW

Mr. Bryan has given instructions that every new subscriber shall receive The Commoner for a period of two years (which will carry it beyond the presidential election of 1912) for the sum of one dollar. Every Commoner reader is asked to secure at least one new subscriber. Many will be able to secure more than one. Everyone, however, may render some aid in this work.

Following are sample letters:

R. L. Whaley, Mo.—Find enclosed \$2.60 to pay for two two-year subscriptions at \$1.00 each, and one yearly subscription at 60c. Please send me more blanks and I shall certainly get all the subscribers I can for The Commoner.

John B. Faltz, Wapakoneta, O.—I have been reading The Commoner ever since it was published and still love to read it, because it can be depended upon to always defend the right. I believe if it was left to a popular vote here in northwestern Ohio a majority of the people would say that all reformation in the democratic or republican parties is due to Mr. Bryan's efforts. Let us give honor to whom honor is due.

J. D. Ingram, Hopkins, Mo.—I just got up a club of fifteen names and sent by W. C. Ingram as I was going west in a few days to look for a location. I will get up a club when I get located. Let the good work go on.

J. B. Guemant, Danville, Va.—I enclose New York exchange for \$1.00 for which please send The Commoner two years to W. W. Childress. This makes twelve new subscribers I have sent you in the last month. If each of your old subscribers would send you as many, it would increase your list very much.

I. P. Heter, Bellevue, O.—Enclosed find money-order for \$1.00 for which please send me The Commoner for two years as advertised and greatly oblige an old republican who is getting his eyes opened.

E. H. Fuller, Colgate, N. D.—I am enclosing \$1.00 for extension of my subscription. I am a republican and have been an admirer of Mr. Bryan since the attitude he took at St. Louis in 1904 and shall closely follow his advice to the democratic party. If they follow him I see no other result than a complete victory for democracy but no hope for it to secure the progressive votes if they flirt with the pirates.

J. F. Gereke, Seward, Neb.—I enclose herewith a draft for \$5.00 for which send The Commoner to the following addresses until after the election of 1912. I am doing all I can for The Commoner and for W. J. Bryan. Give my best regards to W. J. and tell him to go after those democrats in congress who are only there to protect the special interests. Let them be democrats and republicans, but we must know how they stand. That kind-of work has been going on too long. I see the Omaha World-Herald does not agree with Mr. Bryan. I tell my friends that after we licked them we do not

need to compromise. Let him go on with his good work and I think some of these great democrats in congress will soon learn how to behave themselves.

The following named readers have sent in new subscribers: C. C. Gethman, Ia.; Web. M. Rubey, Mo.; Adam Kern, Mo.; David Grubb, Ind.; J. N. B. Gerking, Ore.; A. J. Elsner, Ore.; Chas. Knutson, Ia.; Pete H. Davis, Ill.; E. King, Ark.; S. K. Young, La.; W. C. Parkham, Ark.; Frank Nichols, W. Va.; S. A. Faunkhouser, W. Va.; J. R. Houghton, W. Va.; Gilbert Calhoun, W. Va.; Louis Henne, Tex.; F. H. Alexander, Tex.; F. S. Biggs, Tex.; A. G. Smith, Tex.; Ira B. Taylor, Tex.; R. S. Rike, Tex.; D. S. Lentz, Kan.; G. T. Kerfoot, Kan.; D. S. Halverstadt, Kan.; D. W. Boter, Kan.; Fred W. Davis, Okla.; Wm. H. Shelley, N. Y.; J. L. Bates, N. Y.; E. Thomsen, Cal.; S. M. Cuthbertson, Cal.; E. Lein, Minn.; R. A. Landfair, Minn.; B. N. Jeffers, N. Y.; Lloyd Talbot, W. Va.; Jos. Lawler, Ill.; G. M. Boyles, Wash.; Jno. McPhee, Wash.; Chas. McIlwain, Okla.; P. A. Wolff, Jr., Ia.; J. H. Welsh, Ill.; M. McMillan, N. M.; A. J. Plumer, Neb.; Atha, Hardy, Tenn.; Chas. A. Wear, Ill.; P. T. McGann, Md.; J. W. Arnett, Ill.; W. L. Mann, O.; J. F. Austin, Wis.; W. P. Bishop, Ind.; T. L. Inskip, Kan.; S. P. Pratt, Ark.; Clyde Corby, Mont.; P. J. Mella, Neb.; Perry J. Clark, Neb.; W. Harrington, Neb.; W. P. Gregg, Pa.; J. K. Borcky, Pa.; Adam Kramer, Ia.; Jno. L. Henry, W. Va.; H. D. Kroehnke, Ia.; Chas. Hicken, O.; Jno. A. Heckard, Ia.; T. F. Luckenbill, Ia.; R. W. Johnson, Cal.; Dr. J. N. Coons, Mo.; M. E. Leary, Vt.; W. H. Smith, Ill.; Elisha Yost, O.; J. W. Boeing, N. D.; S. J. Workman, Ill.; Jno. V. Wise, N. J.; J. R. Artherholt, Pa.; T. H. Dinsmore, Colo.; J. A. Draper, Ala.; J. O. Robins, Sr., Miss.; J. L. Skinner, Wyo.; A. R. Linnford, Ark.; Geo. A. Paddock, Minn.; Gus Anderson, Neb.; S. M. Overfield, O.; Ed. O'Donnell, Minn.; Mrs. Emma A. Hoyt, N. Y.; B. F. Davis, Okla.; Fred Bentzer, Cal.; G. W. Lewis, O.; J. B. Gardner, Ill.; W. E. Gozee, N. D.; Mark Scribner, N. H.; Bruce Patterson, Wis.; E. M. Jones, Kan.; O. W. Wills, W. Va.; W. C. Cochran, Kan.; J. K. Borcky, Pa.; J. F. Geneser, Ia.; J. T. Zimmer, Ill.; A. J. Willoughby, O.; S. O. Preton, O.; J. L. Barton, O.; A. J. Marquis, Wis.; J. R. Buchanan, Wis.; E. Durham, Ind.; A. J. Lewis, O.; Jas. C. Fee, Pa.; B. F. Lewis, Mont.; F. E. Pitts, Mich.; I. B. Newkirk, O.; Allison Smith, Pa.; J. H. Eisenberry, Ind.; J. C. Beam, Ill.; E. Partch, O.; Geo. O. Matthews, Tex.; J. R. Walton, Mo.; S. A. Kinsey, O.; W. B. Herndon, Wash.; Wm. Aspinall, O.; J. B. Sweeney, W. Va.; R. G. Wilson, Ark.; J. A. Bailey, W. Va.; S. L. Bryan, Ill.; Thos. Wolf, Pa.; W. S. Smith, N. Y.; J. J. Thomas, Cal.; W. H. Sipple, Mo.; S. A. Hoisinger, N. M.; J. M. McClog, Ia.; Miss M. Ferrick, Minn.; W. P. Craft, Neb.; W. C. Whitwell, Idaho; S. T. Pidegon, O.; T. W. Barkley, Kan.; Allen Cameron, Ia.; J. M. McCullough, W. Va.; J. Powell, Cal.; J. W. Lus, Cal.; Joe Williams, O.; W. H. Hackney, Ind.; H. M. Youngpeters, O.; R. A. Garrett, W. Va.; D. E. Smith, N. C.; J. R. Utter, Mo.; Jeff Grigsley, Ill.; G. W. Williams, Ill.; Perry Huxford, Ind.; J. D. Layne, N. C.; A. J. Glenn, Mo.; J. N. Sutton, Mo.; L. F. Weber, Mo.; B. B. Sharp, Ill.; Mary A. Malone, Kan.; W. B. M. Mitchell, Okla.; W. H. Dickson, Tex.; Wm. Eastman, Idaho; W. M. Leaming, O.; J. T. McFarland, N. Y.; J. W. Fenwick, Me.; S. H. Hamilton, S. D.; A. T. Dunan, Mo.; C. G. Falt, N. D.; C. N. H. Holtan, Minn.; N. Nish, Ia.; A. C. Barney, Minn.; Jno. J. Putnam, Neb.; S. M. Culbertson, Cal.; C. E. Lasley, Ia.; A. J. Colaw, Va.; W. H. Edwards, Ia.; W. Wheeler, Minn.; J. H. Houpt, O.; Lewis Styer, Wis.; L. C. Long, Minn.; W. R. Mathew, O.; Jno. T. Oates, N. Y.; W. E. Ambler, Ia.; S. J. Goodson, Mo.; M. B. Bryant, Kan.; J. C. Yolton, S. D.; Wm. A. Silcott, O.; Fr. Wiechering, N. Y.; W. M. Clemenson, W. Va.; L. A. Wold, Wash.; Geo. T. Pitts, Ky.; Sampson Bass, Mo.; C. D. Kinne, Ill.; R. K. Megown, Mo.

A MAN PLUS \$5?

How many dollars must be added to a man to raise him to the rank of a voting citizen? That is the question that Rhode Island is struggling with. The democrats are trying to remove the property qualification and put the voters of the state upon a level with the voters of other states.

Of course, the republicans of Rhode Island may know the people of the state better than outsiders do, but outsiders are apt to assume that the average man in Rhode Island is equal to the average man in other states, and does not need a plus \$ sign after him to make him fit to vote.