The Commoner.

ISSUED WEEKLY

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RUDYARD KIPLING'S "IF"

Amid all the present day tumult a Commoner reader sends a copy of Rudyard Kipling's poem entitled "If" with the notation, "To W. J. Bryan, with compliments of B. A. Plummer." The poem follows:

If you can keep your head when all about you
  Are losing theirs, and blaming it on you;
If you can trust yourself when all men doubt you,
  But make allowance for their doubting, too;
If you can wait and not be tired by waiting,
  Nor being led about give way to lies
Or, being hated, don't give way to hating,
  And yet don't look too good, nor talk too wise;

If you can dream, and not make dreams your master,
If you can think, and not make thoughts your aim,
  If you can meet with triumph and disaster,
And treat those two imposters just the same;
  If you can bear to hear the truth you've spoken
Twisted by knaves to make a trap for fools,
  Or watch the things you gave your life to, broken
And stoop and build 'em up with worn-out tools;

If you can make one heap of all your winnings,
  And risk it on one turn of pitch-and-toss,
And lose, and start again at your beginning,
  And never breathe a word about your loss;
If you can force your heart and nerve and sinew
  To serve your turn long after they have gone,
And so hold on when there is nothing in you,
  Except the Will which says to them "Hold on."

If you can talk with crowds and keep your virtue,
  Or walk with kings, nor lose the common touch;
If neither foes nor loving friends can hurt you,
  If all men count with you, but none too much;
If you can fill the unforgiving minute
  With sixty seconds' worth of distance run,
Yours is the Earth and everything that's in it,
  And—which is more—you'll be a Man, my son.

—Rudyard Kipling.

Federal Court and Railroad Managers

Grant G. Martin, attorney-general for Nebraska, speaking before the Lincoln Commercial club, delivered an exceptionally interesting address relating to federal courts and railroad management. For the reason that the address relates to a recent federal court decision of general concern it will be interesting to Commoner readers everywhere.

Mr. Martin's address was as follows:

The trend of railroad management is to get away from state regulations. The federal courts are inclined in that direction. The effect of their late decisions is to bestow upon the general government exclusive jurisdiction over all matters, affecting the means, instruments, facilities and rates of transportation companies conducting a business in more than one state. This system would enable the general government to usurp control over local traffic and rob the state of its inherent power to control and regulate its internal commerce and the means and instruments which conduce to the same. So far as transportation companies operating in two or more states are concerned, they necessarily act in a dual capacity and render a dual public service. They perform a service originating and terminating within the state and also a service of an interstate character.

Now the dual character of this public service requires a dual system of regulation, the one subject to the state and the other subject to the nation. While the general government is permitted to reach within the limits of all the states and exercise regulating powers to promote and protect commerce among the states, numerous decisions have committed the supreme court of the United States to the proposition that each state has the inherent power to regulate all commerce within its limits of purely an internal character. The state has no right to invade the domain of the federal government, neither has the latter any right to invade the domain of the state.

In this connection I shall refer to some provisions of the federal constitution and the early decisions of the supreme court of the United States in relation thereto. I do this for the reason that inferior federal court decisions are tending to federal regulation rather than state control of public carriers. Sec. 8 of Art. 1 of the constitution provides that congress shall have power to regulate commerce with foreign nations, and among the several states and with the Indian tribes.

It does not say that congress shall have power to regulate commerce in the several states, but among the several states. In discussing the phrase "among the several states," Chief Justice Marshall said: "The completely internal commerce of a state, then, may be considered as reserved for the state itself." "The internal commerce of a state, that is, the commerce which is wholly confined within its limits, is as much under its control as foreign or interstate commerce is under the control of the general government."

Article 9 of amendments to constitution provides that the enumeration, in the constitution, of certain rights shall not be construed to deny or disparage others retained by the people.

Article 10 of amendments to the constitution provides the powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Article 11 of amendments to the constitution provides: The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state. The meaning of this amendment is plain. The state of Georgia had been sued in the supreme court of the United States by a citizen of another state. The court entertained the action. This decision led to the adoption of the Eleventh amendment and its purpose was to prevent the states from being sued by citizens of another state. The Eleventh amendment is no new thing, it was adopted in 1798.

Our own court has held (opinion by Judge Sullivan) that "the judicial power of the United States does not extend to actions brought by individuals or corporations against a state. The Eleventh amendment to the federal constitution would be effectually emasculated if it were permissible to enjoin or coerce the agents through which a state performs its corporate functions." (State vs. C. R. I. & P. R. R. Co. 61 Neb. 545.)

Again, our court held that "the circuit court of the United States is without jurisdiction to enjoin a state from the enforcement of its own laws; that which the federal court is without power to do directly it can not accomplish indirectly." (State vs. C. R. I. & P. R. R. Co. 62 Neb. 123.)

"Wherever one, by virtue of his public position under the state government, acts in the name and for the state, and is clothed with her power, his act is her act." Ex parte Virginia 100 U. S. 339; Carter vs. Texas U. S. 442. But see 118 U. S. 194.

Seventy years ago the supreme court of the United States held that the powers reserved to the several states extend to all the objects which, in the ordinary course of affairs, concerned property and the rights of property of individuals, as well as to the internal order, improvement and prosperity of the state. King vs. American Transportation company 1 Flipp (U. S.) 1, 14 Fed. Cas. No. 7. 787. As late as the 123 U. S. reports the supreme court of the United States said: "The very object and purpose of the Eleventh amendment was to prevent the indignity of subjecting a state to the coercive process of judicial tribunals at the instance of private parties. It was thought to be neither becoming nor convenient that the several states of the union, invested with that large residuum of sovereignty which had not been delegated to the United States, should be summoned as defendants to answer the complaints of private persons, whether citizens or aliens, or that the course of their public policy and the administration of their public affairs should be subject to and controlled by the mandates of judicial tribunals without their consent, and in favor of individual interests." In re Ayers, 123 U. S. 504, date, 1887.

In order to circumvent the purposes of this Eleventh amendment public carriers have devised the scheme of having their stockholders begin suit in the federal courts against the companies themselves and the attorney general of the state to enjoin the enforcement of state regulations. This in spirit is an action against the state because the attorney general acts only in behalf of the state. Under the state constitution and the laws of the state he is the law officer of the state. To prevent him from enforcing the laws of the state affecting public carriers is to stop all machinery of the state government in relation thereto.

In recent years the federal courts have gradually broken away from their original holdings referred to and are now committed to the proposition that a suit against the law officers of the state who are trying to enforce the laws of the state is not a suit against the state. These latter decisions in effect abrogate the Eleventh amendment to the constitution.

Under these constructions the Eleventh amendment serves no useful purpose. The original theory of the federal constitution was that state courts construe state laws in the first instance with the right to review in the supreme court of the United States. Under present holdings many state enactments are enjoined by federal courts before they are considered by state courts. Thus the federal courts have become places of refuge for every man or interest who sees fit to assail state enactments. It is true that the federal courts hold that suits against state officers are not suits against the state when such officers are seeking to enforce unconstitutional laws, but this is answered by saying that a federal court ought to have jurisdiction of the subject matter of the suit at the time the suit is commenced and ought not to entertain a suit upon the assumption that state officers are seeking to enforce unconstitutional acts.

The decision in the Minnesota rate case is revolutionary in the extreme. People who comprehend its far-reaching effect upon the rights of the state are astounded. If congress had brought forth a measure which struck down the right of the states to regulate their internal commerce, every state in the union would have been aroused.

This decision is revolutionary because it holds that the Minnesota rate reductions, though applying only to commerce within the state, interfere with interstate commerce, and, hence violate the federal constitution. For over one hundred years, the supreme court of the United States has held that the states had exclusive control over their internal commerce. During all that time, practically all railroad regulation