

in that end of the tunnel. Going into particulars, I made notes of the cost of each ticket, the routes, number of stop-overs and baggage. Then I made what a certain Contributing Editor would call an "important announcement."

"You assert," I said to Mr. Pompous Man, "that railroads can't afford to carry passengers at less than 3 cents a mile."

"And I know what I'm talking about," he yelled.

"Of course you do, or you wouldn't say it. Now, there are eight of us here, and all will want breakfast on the train tomorrow morning. You say you are taking a spin around the country looking for investments, and I'll offer you one. We will calculate our total mileage on the tickets we have, and the average cost per mile or per 1,000 miles for us all. If the average cost for all of us is as much as 2 cents a mile, or \$20 per 1,000 miles, I'll buy the breakfasts for us all; but if we are paying less than \$20 a thousand miles, you pay for the breakfasts. Do you agree?"

"No, sir; I never gamble."

"But where's the gamble?" I asked. "You say the roads can't and don't carry passengers at 2 cents a mile, and say you know what you are talking about. So it looks like a sure thing for you. But if you won't take that, I'll offer you another investment. If three of us eight are paying as much as 2½ cents a mile, I'll buy the breakfasts; if three of us are paying as much as 3 cents a mile, I'll pay for the breakfasts and lunches. But if less than three are paying as much as 2½ cents, then you buy the breakfasts, and if less than three are paying 3 cents a mile, you buy the breakfasts and lunches. Is it a go?"

No, he wouldn't invest. A sporty-looking young traveling man thought he wanted something like that, but I winked him out of it. I wasn't fishing for him. Anyway, just out of curiosity, we figured it out, and here you see the mileage and the rate per 1,000 miles for each of the eight:

Mileage.	Per 1,000 Miles.
6,846.....	\$16.43
6,492.....	17.82
4,864.....	16.55
3,975.....	17.09
3,578.....	18.23
2,496.....	19.50
1,152.....	26.90
772.....	25.91

Mr. Pompous Man had the lowest rate. The two of us who had the highest rate had no trunks; the others had trunks. The six with the lowest rates were entitled to have their trunks taken off trains 91 times and put back on trains 91 times.

And yet some State railroad commissions say Judge Hook was—well, discourteous—when he smothered the Oklahoma law with an injunction.



For the convenience of Business, the "mob" and the ears-to-the-groundlings, the Federal courts should codify their judicial legislation under three grand, sinaitic divisions: 1. You Must. 2. You may. 3. You shant. This is necessary to shoo away the horrid specter of socialism, which is disturbing the

sleep of Taft, and to preserve the present glories of corporation-judge government, because:

1. In view of the strictly fresh, fresh, and cold-storage decisions of the Federal courts, "Business" doesn't know how many felonies it may commit before having a \$2.65 fine slapped on it.

2. The mob is getting too frisky, and must be taught its place.

3. The ears-to-the-groundlings are "out on a limb" more than half the time, guessing at the next guess of a court, and wondering how the next higher court will guess on the lower court's guess. It's almost as hard a game as trying to find some wool in a protected all-wool undershirt.

W. G. EGGLESTON.

INCIDENTAL SUGGESTIONS

PULLING THE SUPREME COURT'S TEETH.

Madison, Wis.

Mr. Leubuscher's proposal* for "pulling the Supreme Court's teeth" by depriving it of all appellate jurisdiction is, while perfectly practicable, so heroic a remedy as to be almost worse than the disease. As Mr. Leubuscher points out, such an innovation would result in conflicting decisions on questions of constitutionality by the numerous inferior courts (or rather, under the present judicial organization, by the nine Circuit Courts of Appeals); but it would also result in conflicting decisions on other substantive points of Federal law on which it is essential that there be one settled law. No one who is familiar to any extent with the legal history of this country can deny that the Supreme Court, whatever may be one's opinion as to the propriety of its exercise of the veto on "unconstitutional" laws, has played an important and beneficent role in unifying the law, and particularly the Federal law, of the country. The advantage, in any judicial system, of a single supreme appellate tribunal is too obvious to require further comment; and this advantage Mr. Leubuscher's plan would destroy.

The power of Congress to strip the Supreme Court of all its appellate jurisdiction, and to create appellate courts other than the Supreme Court, contains, however, possibilities of another kind. There is nothing in the Constitution to prevent Congress from stripping the Supreme Court of all appellate jurisdiction and then setting up another tribunal, to be called let us say, the Court of Appeals, and vesting all the appellate jurisdiction now exercised by the Supreme Court in this Court of Appeals. Of course such a Court of Appeals, like any court, would have power to declare any law unconstitutional; but inasmuch as its existence would be dependent solely on statute, so that its judges could at any time be removed merely by an act abolishing the court, and other ones appointed, by virtue of another act recreating the court (as was done with all the Federal courts in 1801), this court would occupy a much less independent position, and would be much more careful of running counter to the pronounced current of

*See The Public of November 24, 1911, page 1193.

public opinion, than is the Supreme Court. Congress, as is well known, possesses one instrument of control over the Supreme Court—its power to increase the number of judges in that court to any extent and thereby “pack” the bench; and, as is also well known, there is good ground for believing that the act of 1870, increasing the number of judges from eight to nine, was passed for that purpose. The suggestion I here make is along the same line, but offers immeasurably greater possibilities of control.

I need hardly add, perhaps, that, in consideration of the existing situation, my suggestion is to be regarded rather as an interesting wrinkle in our Constitutional system than as a practical proposal.

LOUIS MAYERS.



Newport, R. I.

I have been much interested in what has been said from time to time in *The Public* under the head of “Pulling the Teeth of the Supreme Court.”

The question of whether or not the Constitution gives judges the power to set aside laws might be argued forever. It might be urged that if the framers intended that judges should have the power it would have been conferred in express terms, rather than by implication. To this it may be replied that the framers did not dare to confer the power in that manner, but that they meant that the judges should have it, just the same.

But what real difference does it make to us what the framers intended? The fact remains that judges are setting aside laws and have been doing so for a good many years. Do we want the practice to continue? If we do not, what is the best way to put an end to it?

By amendment of the Constitution, would be the obvious answer but for the fact that amendment is so extremely difficult. By appending to acts a clause forbidding judicial annulment has been suggested; by electing Executives who will enforce the laws despite their being pronounced unconstitutional, etc.

I should like to have the following proposition criticised: Let Congress pass a joint resolution to the effect that its Acts and Resolves shall stand until repeal or expiration. If it be necessary, let successive Congresses pursue this course until it becomes thoroughly established that judges are to confine themselves to trying cases under the laws.

It should be remembered that the Legislative Department is fundamental; that Executive and Judicial functions are, or at any rate should be, entirely derivative. Why should it be necessary for us to go round and round Robin Hood's barn, so to speak, in order to put an end to a practice that prevails nowhere else in the civilized world, unless it be in Australia? I have heard that the courts of that country pass upon the constitutionality of laws. Is it true?

H. J. CHASE.



Mrs. Grogan: “Ol hear Kelly was in an automobile accident.”

Mrs. Dooley: “Yis. Little Timmy Riley across th' way threw a brick at wan, and it landed on Kelly's face!”—Puck.

NEWS NARRATIVE

The figures in brackets at the ends of paragraphs refer to volumes and pages of *The Public* for earlier information on the same subject.

Week ending Tuesday, February 13, 1912.

The Manchu Dynasty Abdicates the Chinese Throne.

Three edicts were issued from the Chinese Throne on the 12th. The first proclaimed abdication, the second dealt with the establishment of the Republic, and the third urged the maintenance of peace, and approved of the conditions mutually agreed upon during the late weeks of negotiation by the Imperial Premier, Yuan Shi Kai, and the Republicans. The first edict, whereby the Manchus abdicate a throne they have occupied since 1644, is issued in the names of the little Emperor, P'u-yi, whose “reign title” is Hsuan-tung, and who was just six years and one day old on the date of his abdication, and of the Empress Dowager who is his aunt. It runs as follows:

We, the Emperor of China, have respectfully received today the following edict from the hands of her Majesty, the Dowager Empress: In consequence of the uprising of the Republican army to which the people of the Provinces of China have responded, the Empire is seething like a boiling caldron and the people are plunged into misery. Yuan Shi Kai was therefore commanded to dispatch commissioners in order to confer with the Republicans with a view to the calling of a National Assembly to decide on the future form of government. Months have elapsed and no settlement is now evident. The majority of the people are in favor of a republic. From the preference of the people's hearts the will of heaven is discernible. How could we oppose the desires of millions for the glory of one family? Therefore we, the Dowager Empress and the Emperor, hereby vest the sovereignty of the Chinese Empire in the people. Let Yuan Shi Kai organize to the full the powers of the Provisional Republican government and confer with the Republicans as to the methods of union, assuring peace in the Empire, and forming a great Republic with the union of Manchus, Chinese, Mongols, Mohammedans and Tibetans. We, the Empress Dowager and the Emperor, will thus be enabled to live in retirement, free of responsibilities and cares, and enjoying without interruption the nation's courteous treatment.

In return for his abdication the Republicans make the following pledges to the Emperor:

First—The Emperor shall retain his title and shall be respected as a foreign monarch.

Second—The Emperor shall receive an annual grant of 4,000,000 taels until the currency is reformed, after which he shall receive \$4,000,000 Mexican.

Third—A temporary residence shall be provided