congress so decides. Their exports and imports may be taxed as congress pleases, their inhabitants may be excluded from the nation to which they are part if congress wills it, their local affairs may be regulated wholly from Washington by a government in the selection of which they have no voice. The native inhabitants of this territory are the dependent subjects of a "republic" whose boast it has been that none of its people are subjects but all are citizens. These results are now either definitely determined by the supreme court or follow logically from its decisions. Whether congress and the people who make congressmen will permit this course of empire to go on remains to be seen. But the supreme court has decreed that imperial power is not wanting. As England is to her crown colonies, autocratic and irresponsible, so congress may be to ours.

Congressman Grosvenor, of Ohio, sends out to the press a deserved criticism of Congressman Burton, of the same state. Mr. Burton having declared opposition to the ship-subsidy measure, to which Senator Hanna is devoting his peculiar talents, Mr. Grosvenor says that "the greatest scheme of subsidy ever entered upon in the United States" is the river and harbor appropriations, to which Mr. Burton is devoted. Since Mr. Burton professes to oppose the ship-subsidy upon principle, Mr. Grosvenor is clearly right in charging him with inconsistency. The river and harbor appropriations are subsidies, just as truly so as the ship subsidy would be. In the one case as in the other the fund is a public fund, collected from all the people and expended for the benefit of a few. The river and harbor subsidies are for the benefit of land owners near the places improved, their land being thereby increased in value, while the ship subsidies are to be for the benefit of Senator Hanna's ring. Otherwise there is no difference. Mr. Grosvenor, therefore, is entirely consistent in favoring both measures. His is the consistency of grab. Mr. Burton, on the other hand, is inconsistent. Millions upon millions of dollars, the expenditure of which he advocates in his river and harbor measures, have no better justification than the proposed ship subsidy millions, and that is no justification at all. The congressman who goes in for appropriations, should pattern after Grosvenor and Hanna. He should leave his squeamishness between the leaves of his family Bible.

As we noted last week (p. 536), Mayor Johnson, of Cleveland, has won the first point in the Ohio supreme court in his fight against the state board of equalization, which (pp. 386, 406, 467) refused to exercise its power to increase the appraisement of railroad property for purposes of taxation. This decision does not touch the merits of the question. The only point involved was whether the proceedings against the board to compel it to exercise the power of increasing railroad assessments should be begun in the lower courts and carried up for review or might be brought at once in the highest court. It was discretionary with the highest court to decide either way, and it has granted Mayor Johnson's application. Unfortunately, some partisan bias was noticeable in the court, especially on the part of Judge Shook. He was indiscreet enough to ask Mayor Johnson's lawyer, Judge Babcock, and with a tinge of sarcasm, if the object of the proceeding was to compel the board to exercise its judgment. As courts concededly have no right to regulate the judgment of quasi-judicial tribunals, the animus of the question was obvious. But Judge Babcock readily gave a reply to which no retort was possible. "Not its judgment," he replied, "but its powers." This object of the proceeding was so evident that the good faith of the question could hardly be defended without reflecting upon the intelligence of the questioner. When, however, all the judges came to pass upon the application, they granted it, and the question of the power of the state board to increase the tax assessments of railroads in Ohio will soon be argued and decided by the supreme court of that state.

In the course of his argument in behalf of the Cleveland mayor, upon this application for leave to sue originally in the supreme court, Judge Babcock made a forcible nontechnical point. After discussing the importance of speedily disposing of a fiscal question so momentous, he said:

> **Weightier than questions of revenue are questions of social justice. No property can long be safe from the ruthless assaults of turbulent classes which turns outlaw in the presence of the taxing officers of the state. For the middle class to bear its own burdens and those of corporate wealth also, is surely to undergo absorption in time. But 12 per cent. of the wealth of the land is in the hands of 88 per cent. of the people. If this narrow dyke of property is washed away by unequal taxation the ruin which will result finds a parallel when the sea breaks through the dykes and submerges the fair fields of the Netherlands. I have said this to give emphasis to the importance of this application. If it sounds like the language of alarm, I will steady it by the words of ex-President Harrison.**

He then quoted from the address delivered three years ago at Chicago, in which Mr. Harrison used this language, expressive of a sentiment and a warning which must not be lightly ignored:

> **The men who have wealth must not hide it from the tax gatherer, and plant it on the street. Such things breed a great discontent. All other men are hurt. They bear a disproportionate burden. Mr. Lincoln's startling declaration that this country should not continue to exist half slave and half free may be paraphrased to-day by saying that this country cannot continue to exist half taxed and half free. * * * If there is not enough public virtue left in our communities to make tax frauds discreditable, if there is not virility enough left in our laws and the administration of justice in our courts to bring to punishment those who defraud the state and their neighbors, is there not danger that crimes of violence will make insecure the fortunes that have refused to contribute**

ratably to the cost of maintaining social order?

It is not strange that John R. McLean should be using the Cincinnati Enquirer, which he owns, to rehabilitate himself in Ohio politics. His abandonment of his own county to the Republicans having exhibited him in no very pleasant light to the party he affects to affiliate with, his paper is endeavoring to show that the Democratic candidate for governor last fall, Col. Kilbourne, made a worse showing in the vote of other important parts of the state than he himself had done two years before. But the fact is that Col. Kilbourne carried his own county, Franklin, by 2,270, whereas McLean lost it two years ago; and that he scored a plurality of 115 in Cuyahoga (Johnson's county), which McLean also lost two years ago, running some 14,000 behind the Republican candidate. For many purposes the year of McLean's candidacy cannot be fairly compared with that of Kilbourne's. In the former year Mayor Jones shot like a brilliant meteor athwart the political sky, getting over 3,000 votes in Franklin and 36,000 in Cuyahoga. But this tremendous disturbance of normal conditions affords no explanation of McLean's weakness. The fact remains that Kilbourne has brought his own county of Franklin back into the Democratic column, and that Johnson wrested Cuyahoga for him from the Republicans.

TWO JUDICIAL DECISIONS ON DIRECT LEGISLATION.

Numerous paragraphs have been floating around for the past six months to the effect that the supreme courts of South Dakota and California had "knocked out" state direct legislation in the former state and municipal direct legislation in the latter. Editorials, wise and unwise, have been written in the same connection, on the futility of direct legislation. The exact nature of these decisions, however, has not been explained, but after writing numerous letters and suffering considerable delay, I have received the text of the opinions of the courts and am now able to set forth the exact facts.

I.

To begin with South Dakota, the decision of the supreme court of that state may be found in the North-Western Reporter, vol. 85, page 605. The case is officially described as the State ex rel. Levin et al. v. Bacon et al. Judge Corson writes the opinion of the court.

The case is one to determine the title of members of the state board of charities and corrections. Two Populists had been appointed by the previous governor, and the Republican legislature of 1901 had legislated them out of office. Section 3 of the act doing this declares that this—

is necessary for the immediate preservation and support of the existing public institutions of the state—

and enacts that the act take effect at once.

The defendants contended that this act did not take effect till 90 days after the adjournment of the legislature, because of the direct legisaltion amendment passed in 1898. The relators contended that as the act has an emergency clause, it went into effect immediately.

The significance of this can be seen by reference to the constitution. Section 22 of original constitution says: "No act shall take effect until 90 days after adjournment of session at which it was passed unless, in case of emergency, by two-thirds vote the legislature shall direct otherwise." Section 1 of the constitution as amended, 1898, reads: "Except such laws as may be necessary for the immediate preservation of the public peace, health and safety, support of state government and existing public institutions." The judge in his decision writes with reference to these provisions:

"It seems to be the well established rule in considering any provision of the constitution that the whole is to be examined with the view of arriving at the true intention of each part, and that effect is to be given if possible to the whole instrument. If different provisions seem to conflict, the courts must harmonize them, if practicable, and must lean in favor of that construction which will render every word operative rather than one which makes some words idle and nugatory. . . . . Thus construed, section 1, as amended, would read in addition to the exceptions therein stated, 'and except also such laws as are passed with an emergency clause as provided in section 22.' That such was the intention of the legislature and of the people in adopting it is manifest by the fact that no amendment was made to section 22, and that the amendment applies only to laws not yet in force." Also the legislature of 1899 acted under section 22 as well as that of 1901, and nearly half of the laws passed at these two sessions had emergency clauses. And the former and present governors and executive officers acted under them. The question was not raised, but this fact shows the general presumption that section 22 was still in force. Much business trouble would be caused if the court should hold that section 22 was repealed.

He then declares that—

laws passed under section 22 which contain an emergency clause can go into effect at once.

Also this law declared in it that it was—

necessary for the immediate preservation and support of existing public institutions;

and that—

that declaration is conclusive upon this court, and brings this case clearly within the exception contained in section 1 as amended.

The judge has strained a point when he says that a recent amendment of the constitution is overridden by a part of it adopted long before. If section 22, which says that the legislature by a two-thirds vote can pass laws to go into effect at once, had been a part of section 1 before it was amended, the amendment to section 1, which provides that no laws save a clearly-defined class, shall go into effect under 90 days, and not then if a referendum petition is filed, would clearly have amended out of existence the provision of section 22 quoted. Because section 22 happens to be in another part of the constitution does not make the amendment apply the less to it. The judge has reversed the usual proceeding and made the part passed earlier limit and define the later part. Instead, he should have decided that the part passed later limits and defines the part passed earlier.