Lorenzo Dow Lewelling

MESSAGE OF L. D. LEWELLING, GOVERNOR TO THE LEGISLATURE OF KANSAS, 1895.

DELIVERED JANUARY 9, 1895.

MESSAGE.

To the Senate and the House of Representatives:
One of the ablest of my predecessors was so struck with the anomaly of requiring the governor but recently elected, instead of the retiring governor, to communicate to the legislature information which presupposes not only time to examine the numerous reports of state officers and departments but actual experience and observation impossible to any but the actual executive, that he proposed the enactment of a law requiring the retiring governor to prepare and submit the biennial message of the executive to the legislature. Until his election is assured, a newly-chosen governor cannot reasonably be expected to give to state affairs more attention than is ordinarily given by a patriotic private citizen; and, besides, he has not been compelled to meet questions nor to deal with difficulties which confront the actual executive, and with which the latter must have become familiar. My own experience in first coming to this office confirmed the wisdom of my predecessor's views, and I deem it no less due to my successor and to you than required of me by the constitution that I shall communicate to you such information as I possess, and make such recommendations as two years in the governor's office have suggested. In doing this, I shall forget, and ask you to forget, that the retiring governor and the majority of the members of one of your constituent bodies differ in political opinions. I shall speak as the governor of Kansas to the chosen representatives of the people, and trust that this message may be received and considered in the spirit in which it is conceived. Devotion to the whole people of Kansas, not regard for party, should control us here, however widely we may differ in our allegiance to party where party allegiance may honorably control.
The constitutional requirement that the governor shall, at the commencement of every session of the legislature, "communicate in writing such information as he may possess in reference to the condition of the state, and recommend such measures as he may deem expedient," obviously contemplates a document which shall be of practical value to the legislature when considering legislation, and which shall present in condensed form the information which must otherwise be looked for through numerous and voluminous reports, and in the records and files of the executive department. Such a document should contain information and computations upon which the legislature may confidently rely, and thus be saved the time and trouble of original investigations and computations. It has been my endeavor to convey such information, and I have, therefore, made suggestions under heads, as far as possible, corresponding with the work of your usual standing committees so that each division shall contain what pertains to the work of the particular committee, and nothing else.

STATE AFFAIRS

Before the close of this session of the legislature, March 15, 1895, $36,500 of state bonds issued in 1875 to pay the expenses of repelling an Indian invasion will mature. They are held by the permanent school fund. Permanent improvement bonds, to the amount of $70,000, issued in 1866, will mature July 1, 1896--before a tax levied by the present legislature for their payment can be collected under the present law governing taxation. The permanent school fund holds $38,000 of these bonds; individuals and corporations hold the remaining $32,000. No sinking fund has been levied since 1886, and there is in the state treasury but $362.22 with which to pay these two series of bonds aggregating $106,500. The state treasurer recommends a direct appropriation from the general revenue to take up both issues of bonds and save unimpaired the credit of the state. In this connection, it might be well to remember that various counties in the state owe the state treasury no less than $88,961.26, the sum of about $54,500 of which is due from two counties alone. Attention has been more particularly called to this matter under the head of assessment and taxation, but it is mentioned here because it may suggest a source from which to draw a portion of the funds needed for the redemption of the bonds mentioned above. Under the head of assessment and taxation will also be found some other suggestions bearing upon the subject of state revenues, to which it might be well to refer in this connection.

Two other issues of state bonds of $100,000 each, one issued July 1, 1867, to aid in the construction of the penitentiary, the other issued on the same date, for the completion of the east wing of the state capitol, and aggregating $200,000, will mature July 1, 1897. The permanent school fund holds $85,000 of these bonds--$50,000 of the penitentiary bonds, and $35,000 of the statehouse bonds. Then, July 1, 1898, there will be due bonds to the amount of $20,000 issued in 1868 for the construction of the insane asylum at Osawatomie; and July 1, 1898, another series of bonds issued in 1868 to aid in the construction of the penitentiary--$50,000, and another series of bonds--$150,000--issued 1868 for the completion of the east wing of the statehouse, $200,000 all together, will mature. Forty-one thousand dollars of this issue of penitentiary bonds and $66,000 of the statehouse bonds are held by the permanent school fund, $107,000 in all. The state university fund holds $9,000 of the penitentiary bonds. Eighty-four thousand dollars of this issue of statehouse bonds are held by individuals or corporations. Six months later, January 1, 1889, two more issues of bonds, aggregating $159,000, will mature; $70,000 issued to complete the east wing of the statehouse, and $89,000 issued for a military contingent fund, both issues having been made January 1, 1869. One hundred and thirty-four thousand dollars of these bonds is held by the permanent school fund.

Thus, this legislature and the next must make provision for the payment of bonds to the aggregate amount of $685,500, to mature within the period of four years. There will then remain outstanding but $103,000 in state bonds, which will mature in 1908 and 1909. The payment of the bonds maturing within four years will throw back into the permanent school fund for reinvestment no less than $420,500 which must in some way be made productive. Every issue of these bonds bears 7 per cent. interest, which, in the aggregate, amounts annually to $47,985. The state treasurer recommends that this legislature shall provide for the levy of a small tax to accumulate a sinking fund for the redemption of all bonds coming due during the present century, except those falling due next March and the series maturing July 1, 1896, concerning which special provision must be made.

In view of the necessity of making preparations for the payment of such an amount of indebtedness within so short a time, and in view of the further fact that the severe and long-continued industrial depression compels all but those in receipt of fixed incomes to carry economy almost to the point of parsimony, and also in view of the imperative requirements of

the various public institutions, no appropriation should be made at this session for which the greatest immediate necessity does not exist. Whatever can wait should be made to wait until we shall have paid off our state indebtedness, or until times shall have improved. Especially should no more be expended on the statehouse than may be indispensable to fit up rooms actually needed and to protect the work already done. The disposition to expend money for mere show should not be indulged by the state when the people are obliged to forego all but necessities. The Senate chamber, which remains idle 20 months out of two years, would provide commodious quarters for the supreme court until the next biennial session; and were the supreme court removed to the Senate chamber, the rooms now occupied by that court could be used by the librarian.

Bonds of the city of Lawrence to the amount of $100,000, issued in 1870, to aid in erecting the state university, lie in the state treasury as part of the invested permanent school fund of the state. Nothing has been paid on these bonds, neither principal nor interest, since 1884. In 1883, the legislature passed an act releasing the city of Lawrence from its liability, upon the payment of the amount paid by the school fund commissioners for the bonds, and requiring the board of regents to issue to the school fund commissioners a like amount of bonds running 20 years, the interest thereon to be paid annually from the income of the university endowment fund. The act also reduced the rate of interest until such release to 4 per cent. per annum (See session law of 1883, chapter 42, page 84.) But, although nearly 20 years have passed since the enactment of the statute, the city of Lawrence has not accepted its provisions, and the bonds remain in the state treasury. As the constitution forbids diminution of the permanent school fund, it is doubtful whether the provision reducing the rate of interest was legal, but the city of Lawrence not having attempted to carry out its part of the agreement, it is hardly fair that the state should be held to the other part, whether originally valid or not. As the bonds were issued as an inducement to secure the location of the university in that city rather than elsewhere, there is no good reason why they should not be paid. The city of Lawrence obtained an advantage over competing localities by agreeing to pay the sum of $100,000 toward the construction of the university; and by every principal of fair dealing it should pay as it agreed. But if the bonds are not to be paid, they should be canceled and surrendered, and an appropriation should be made to reimburse the school fund, which the constitution declares shall not be impaired. True, this would be exacting from the taxpayers of the entire state the bonus by the offer of which the city of Lawrence gained an advantage over the remainder of the state, but either the city of Lawrence or the state itself should make fruitful these dead bonds now lying in the treasury.

Fraudulent bonds to the amount of $15,000 have been lying worthless in the treasury for 20 years. The school fund should be reimbursed to the amount of the original cost of these bonds, with interest to this time, and the bonds themselves should be destroyed. As long ago as 1876 a legislative committee recommended this course, and it has been recommended regularly since.

WAYS AND MEANS

At the close of the last fiscal year, there remained in the state treasury to the credit of the general revenue fund a balance of $66,478.50. We may reasonably expect that the fees and state taxes to be received, added to this balance, will make the general revenue available for the current fiscal year about $2,000,700. Against this as liabilities stand appropriations aggregating $1,054,758.69. So that we may estimate a probable balance of some $900,000 subject to appropriation by the present session of the legislature, and which may be taken into account in providing for the next

state tax levy.
The state treasurer, in his recommendations, calls attention to defects in some appropriation bills heretofore enacted, in not providing specific conditions under which warrants were to be drawn. More care should be given to the enrollment of bills. An egregious and very serious blunder was made in the enrollment of the bill passed by the last legislature making an appropriation for the girls' industrial school at Beloit. The enrolled bill made the appropriation $1,200, instead of $12,000, and, but for the transfer of $5,000 from the governor's contingent fund, the school at Beloit must have been closed for some months in consequence of this blunder. The amounts should be written out in full, not trusted to figures alone, and certainly correct enrollment should be assured in some way.
As fixed by the state board of equalization, the total value of the taxable property of the state in 1894 was $337,501,722.
The reports from some institutions not having been received, it is impossible at this date to give the aggregate amount of estimates for the next two years.

ASSESSMENT AND TAXATION

The treasurer's report shows that the various counties owe the state the aggregate amount of $88,961.26 delinquent taxes, nearly $40,000 of which is due from two counties alone. The indebtedness should be collected or the accounts balanced on the books of the treasury. As the total amount of state revenue must, of course, be made good by other counties, the toleration of such delinquencies results in favoritism to the delinquent counties, and, as time has not made this favoritism equitable, some measures should be taken to compel the payment of these withheld taxes, even though some of them have been delinquent for many years, so that justice, as nearly as is now practicable, shall be done to other portions of the state whose burdens during all these years have been correspondingly increased. Every dollar thus justly exacted from counties which have shirked their share of the public burden in the past will lessen that much the burdens of others in the future.
It has been customary, but whether required by the constitution is for you to determine, for the legislature to fix, not merely the amount, but the rate of the state tax levy, except for the maintenance of the university. As this action precedes the new assessment, the legislature must, of course, base its rate upon the assessment rolls of the preceding year, and each year the gross amount required of each county has to be determined by the state board of equalization and certified to by county clerks, so that each county clerk may determine the rate for his county and put it upon the tax rolls.
The state treasurer recommends that the legislature shall merely fix the aggregate amount to be raised by taxation for state purposes, leaving the rate to be determined each year by the state board of equalization upon the assessment for that year. The rate instead of the amount could be certified to by the county clerks and put upon the tax rolls at once. This appears to be a sensible, businesslike suggestion. Again, the actual receipts may often fall short of the levy because of the law permitting counties to claim credit for double and erroneous assessments. The law should be so changed that the state's revenue shall promptly be paid, and paid in full, leaving the counties to bear the consequences of their own errors of assessment and to carry their own delinquent lists. Then the state levy would produces the exact amount necessary to cover the state's requirements, and no county shirk its burdens and cast them upon others, by allowing delinquencies to accumulate year by year and be forgotten. Let the state's taxes be paid in full at

all events. Inability to meet obligations promptly is a much more serious matter to the state than to a county.

In this connection your attention is called to the request of the regents of the university that a fixed rate of three-fourths of one mill be levied annually for university purposes, so that the amount will grow with the wealth of the state and with the requirements of the institution. Should the legislature require the assessment of property at its actual value, or rather compel it, for it is already required, of course the proposed university rate would be too high.

Property should be assessed at its actual value. It is said that, were any county to comply with the law, the remaining counties would throw upon these the burden of state taxation. The legislature should, therefore, make the compliance safe for counties disposed to be honest. This must be done by giving the owners of property a strong selfish motive for returning it at its actual value. Suppose it should be provided that, in any kind of legal controversy over any kind of property, as for the collection of insurance, or other obligations, the valuation put upon it on the assessment roll for the year to which the controversy related should, as against the owner or custodian at that time and purchasers since, be conclusive as to its actual value: every property owner would be eager to have it properly assessed. Very soon property improperly assessed would prove to be unsalable at a fair price, and cupidity would learn a lesson for the future.

Suppose that it should be provided that no action of any kind, not even a criminal prosecution, should be maintained without production of a certified copy of the assessment list showing that the property had been listed for taxation as of the preceding March, or proof that on the 1st of March the property was nowhere within the state, and had not been removed therefrom to evade taxation: every owner of property would be eager to have all his property listed. And such a provision would be just. No man should be given the protection of courts and of the police who dishonestly evades payment of his reasonable share of the expense of maintaining them.

To avoid publicity as to private affairs, which would arise from the filing by banks with the county clerk of a list of obligations held, every bank might be required to send to the bank commissioner a list of all obligations held by it on the 1st day of March, with an estimate of the actual cash value of each obligation; and require it to return only the aggregate of these estimated values to the assessor without given details; it might also be provided, that no action should be had upon any obligation, or renewal of any, held by a bank or banker on the preceding 1st day of March without the production of the certificate of the bank commissioner that such obligation was duly listed at the value stated, and that no judgment should be rendered for more than the estimated value, if such estimate was not bona fide.

These are but hints of a general plan which might be worked out, and which would reverse existing conditions and make property owners eager to be taxed, instead of eager to escape taxation. Those laws are always best executed which give a strong motive for obedience in the first instance, instead of relying upon the fear of only possible punishment.

FEES AND SALARIES

The fee grabbing of local officers, and especially of the justices of the peace and the officers of the courts, has reached such proportions that those who practice it maintain a lobby to prevent legislation reducing fees or substituting salaries for them. Something must be done to stop the growing evil; it cannot much longer be endured. A rapidly developing public sentiment demands that all officers shall be paid fixed salaries, reasonable in amount, and not be permitted to grow rich in a term or two by fleecing the people. We do not permit district judges to charge fees to be

turned into the treasury, and there is really no more reason why a justice of the peace should do so. The difference is only in the amount involved in the litigation, and one would suppose that if either should charge fees it would be the district judge rather than the justice of the peace, who holds a supreme court as to the poor who cannot appeal. If judges should not charge fees, clerks of the courts should not, as they are a part of the machinery. Justice should be absolutely free. A righteous government might, with propriety, even provide, at public expense, a thorough legal adviser for the poor.

If it shall be said that litigation would thus be increased, the objector may be referred to so eminent an authority as Herbert Spencer, who has written at more length in support of the contrary opinion.

CHARITABLE INSTITUTIONS

The report of the trustees of the state charitable institutions will be laid before you. It has not yet reached this office. In it you will find complete and detailed information of the needs of these various institutions, together with information of a general character for the benefit of the public. The institutions embraced in this report are as follows: State insane asylum, Topeka; institution for the education of the deaf and dumb, Olathe; institution for the education of the blind, Kansas City; state asylum for idiotic and imbecile youth, Winfield; soldiers' orphans' home Atchison; Osawatomie insane asylum, Osawatomie; and industrial school for girls, Beloit.

The successful care and management of these institutions should be matters of great concern to every intelligent citizen of the state. Their existence marks an era of progress in the development of Christian civilization and a desire to approximate perfection in their administration should be the commendable zeal of true statesmanship. And for this very reason it is of the utmost importance that the law governing these institutions should be revised. There are many reasons for such revision which cannot be enumerated here, but one of the most imperative is the crying need that the control of all charity organizations of the state should be nonpartisan. Should your honorable body at the present time do nothing more than rescue these institutions from the influence of partisan politics, you will have at least done that which should commend you to future generations.

THE PENITENTIARY

The report of the directors, warden and other officers of the penitentiary will furnish you with a detailed statement of the receipts and expenditures, as well as the requirements and condition of the institution, with such recommendations as in their judgment seem necessary to safely and profitably operate the institution. During the biennial period just ended the penitentiary has at times reached the point of being self-supporting. It is your province to ascertain at whose expense, and the correct solution of that question will suggest urgent reasons for remedial legislation, involving contract labor, competition with free labor, especially mining labor, and the right of society to deprive even a convict of the fruits of his labor.

In dealing with the crime problem, the facts are overwhelmingly against further legislation that is purely punitive in its objects and results, or that takes cognizance of the offense to the exclusion of the offender. It is time that a foundation was laid for a nobler superstructure than that which has for its corner stone the elements of vengeance, retribution, and retaliation. The imprisonment of the offender is primarily for the protection of society, and reformation is the surest and safest

means of protection.
The correction of the evils surrounding the questions of prison labor and pernicious prison methods, and the establishment of proper reformatory influence for our criminal class, will necessitate wise legislative action, involving a revision of our penal laws and criminal procedure; a knowledge of the best methods of prison reform as demonstrated by modern prison science, such as the practical workings of the indeterminate sentence and the parole system; the completion of the state reformatory, at Hutchinson, and other matters of equal importance. Should your duties prevent your giving this subject consideration sufficient to accomplish the solution of these questions satisfactorily to yourselves and the demands of equity and justice, you should at least create a commission authorized and empowered to prepare and report to you a plan for the improvement and government of this important institution, to the end that the best interests of society may be subserved, and our state take first place among these commonwealths whose best thought and best energies are expended in an effort to practice a broader humanity and accomplish a much-needed reform.

THE STATE REFORMATORY

The legislature of 1885 made an enactment providing for a state reformatory for male criminals between the ages of 16 and 18. A structure at Hutchinson exists in an unfinished condition, although $260,000 has been expended in its erection
There can be no question as to the wisdom of establishing such institutions, when the financial resources of a state are sufficient to justify the cost of erection and maintenance. An appropriation should be made sufficient for the completion and occupancy of the present buildings.

INSURANCE

The report and tables of the insurance commissioner disclose some interesting if not startling facts. They show that the people of Kansas paid, during 1893, premiums to foreign insurance companies doing business in the state as follows:

For fire insurance	$1,929,915.68
Life insurance	1,293,209.64
Accident insurance, etc.	128,581.17
Total	$3,351,706.49

During the same period, the losses incurred by foreign companies in the state were as follows:

Fire	$1,068,444.78
Life	495,017.00
Accident, etc.	79,949.40
Total	$1,640,411.18
Excess of premiums over losses incurred	1,711,295.31

Some comparisons may aid us to understand what these figures really mean. The excess of premiums over losses incurred, not paid merely, would entirely pay for the construction of the

statehouse, as it now stands, in a little less than one year and two months. It exceeds by more than 25 per cent, the total state tax levy for 1894. It exceeds by nearly $200,000 the aggregate of appropriations for the fiscal year 1894. It exceeds by more than $100,000 double the amount of the entire bonded debt of the state at this time. Suppose this large surplus were retained in the state by the encouragement of home companies: would it mean nothing to the people? And the report of the commissioner shows that the excess of premiums over losses has been substantially the same, annually, for a period of eight years; so that, during the period since 1886, we have sent out of the state, for insurance, more than $13,000,000 more than has come back for losses. While we paid to foreign companies $3,351,706.49, in 1893, the total income of home mutual fire insurance companies was $94,094.91; and the premiums paid the Kansas company for life insurance aggregated $139,565.12; total paid to home companies, $233,660.03.

In view of these facts, I cannot agree with the commissioner's recommendation that coroners should investigate fire losses. It seems to me we should not assist foreign companies to still further increase honest policy holder's difficulty in securing an honest adjustment of the loss against which he has paid to be insured, and thus increase still more the surplus of premiums over losses of which the state is constantly drained. We should rather exclude foreign companies entirely, learn to take care of our own insurance, and thus stop this annual drain. Were such a duty imposed upon the coroner, every foreign insurance company would have an interest in the local politics of every county in the state, and a motive would be presented for the further corruption of the ballot. The insurance companies would deem it to their interest to elect coroners who would be trusted to favor the companies rather than the assured.

Such legislation would not reduce the cost of insurance to the people of Kansas, but would furnish foreign insurance companies an additional means of vexing or frightening policy holders, or of subjecting them to the law's delays, until men burned out and in sore need of money could be forced into an unfair settlement of losses. It would be better to leave the insurance companies to protect themselves by proper inquiry into the character of the men before insuring them, than to provide an additional means of covering with suspicion of arson every man who dares to claim payment of the insurance for which he has paid.

But why should not the state, through its insurance department, provide safe and punctual insurance for the people? The insurance department might be used by such persons as choose to use it for the purpose of mutual insurance. It could be done without any cost to the state, and the insured would be at no risk of peculation of officers of a corporation. A bureau in the department could be readily supported out of the fees, and county clerks and township trustees could act as local agents. A justice of the peace in the immediate locality could investigate every loss and transmit its report to the insurance department, which could make an assessment, as fraternal societies do in case of death, and transmit the proceeds at once.

MUNICIPAL INDEBTEDNESS

The municipal indebtedness of the state, shown by the returns of the state auditor's office, aggregated, July 1, 1894, $37,616,717.70, a decrease of $201,037.30 since the biennial report of 1892.

PROHIBITION AND OTHER MATTERS

The old notions as to dealing with the liquor traffic are not applicable to the prevailing state of things. The people have no longer the isolated saloon to combat, but must grapple with a gigantic whisky trust. Nor is this all. The public sentiment which in our principal cities nullifies the prohibitory law is not the sentiment of the dissolute, as those who denounce the law's nonenforcement are so prone to assume. It is the sentiment of the men of property, and, therefore, of influence in their communities. Emerson, with acute observation, declared that "what the owners wish to do, the whole power of property will do; either through the law, or else in defiance of it." It is not that the men themselves wish to patronize saloons, for not a few active opponents of prohibition are abstemious; but business men believe the liquor traffic "helps business;" taxpayers believe licenses from saloons would lighten the burden of direct taxation; and landlords believe saloons would afford profitable and punctual tenants for now tenantless rooms and buildings.

Business men and lawyers, visited by men of consequence from other states where drinking is fashionable, desire, in the interest of business, to hospitably entertain their guests, and to this end establish fashionable clubs where liquors are dispensed. Many gentlemen who do not drink patronize these clubs, as elegant places for talking over business affairs with out-of-town customers, dealers, or clients, and, of course, contribute toward paying for the liquors brought in by express from without the state. Prominent members and supporters of fashionable churches belong to such clubs. Social entertainments given in the club parlors are attended by gentlemen and ladies of fashionable society; and because of its social prestige, as well as its opportunities for good-fellowship, membership is coveted by officers charged with the law's administration, not even judges scorning the privilege.

The public sentiment which stays the hands of local officials is thus made up. At bottom, it is a "business," a money-making sentiment. It is not whisky, but money--business--with which the war has now to be waged. Such a war can only be waged by taking all profit out of the liquor traffic; and this can be done only by having the government become the sole dispenser of liquors, selling them at actual cost.

Prohibitory methods may be the best methods for the present, but recent experience indicates that this law was not intended to operate upon all classes alike. The thoughtless failure of your executive to make this important distinction has led to a great deal of tribulation to police commissioners and the policemen they appointed

In one city especially, while the pulpit and the press were clamoring for a stricter enforcement of this law, the new chief of police, soon after his appointment, searched the premises of a certain club patronized by influential gentlemen, and arrested some of the managers and took them before the police judge in the most ordinary manner. Immediately the city was in commotion. The most ultra-prohibition newspaper in the city bitterly denounced the police for interfering with gentlemen, for whom the law was not intended; and the clergymen who had been most clamorous for a stricter enforcement of the law now devoted themselves to the vituperation of the misguided officials who had presumed to try to keep whisky out of saints who sat in pews and paid to sit there. A district judge decided that, as only a certain percentage of the members used the club as a saloon, the remaining abstemious percentage sanctified the entire premises and extracted the evil principle of illegality from the liquor dispensed there; and that, in not properly regarding this plain distinction between this club and other clubs, the police had acted illegally. The police commissioners were consequently sued for damages enough to furnish the statehouse. The executive and attorney general were guilty of another serious blunder of similar character. Not dreaming that the law meant to punish only crap shooters and poker players, the attorney

general, encouraged by the executive, proceeded to Kansas City, Kas., and there caused the arrest and commitment of certain gentlemen whose gambling was to that of the ordinary gambler as the volume of sugar-trust business is to that of a village bootblack; gentlemen who were, in short, conducting lotteries with large incomes and small outlay. But this, too, proved to be an outrage. The outraged citizens whose business had been thus interfered with obtained writs of habeas corpus and were released, the local jurist deciding that this profitable species of gambling is not unlawful; that the gambling laws apply only to common gamblers.

Sheriffs and county attorneys, within whose jurisdiction are the principal cities of the state, seem, for the two years last past, to have entirely forgotten the existence of the prohibitory law, until during the recent political campaign, and, when they acted at all, did so, as a rule, in hostility to the police, instead of acting in harmony with them.

Indeed, the experience of the retiring executive has been not different from what it might have been had be been sent here by some alien power to govern the state as a conquered province. He was elected by a majority of the sovereign people, yet not for a single hour has he had the loyal support of all the citizens as the governor of the state. Proceedings in quo warranto had to be resorted to in order to install appointees to the board of railroad commissioners.

Every attempt by the executive to disband a company of the national guard, as companies had been hitherto disbanded, and as the supreme court afterwards declared he had full right to disband them, was met by mutiny, instigated by a published letter of the ex-adjutant general. In one instance, a probate judge assumed, by injunction, to stay the arm of the supreme executive of the state in the exercise of his power as commander in chief of the militia.

In another case, at Topeka, an injunction was applied for, but refused, only after full argument, however; while, through a local newspaper, the captain of the company to be disbanded mutinously declared his intention of resisting at the point of the bayonet the muster-out order of the commander in chief.

These are but instances. On any occasion, inferior judges, disregarding the courtesy due from each department of government to the other, stood ready to issue restraining orders, ex parte, directed to the executive or to subordinates who were his instruments in carrying out executive mandates. In taking leave of the office, the executive expresses the hope that his successor may find that the people by whose votes the retiring chief magistrate was elected know how to be citizens as well as partisans, and are patriotic enough to be loyal to any man chosen by the people to be their governor, no matter what his or their political faith may be. Instead of having the support and assistance of county officers in the enforcement of the laws, the police of the principal cities have had to contend with their open hostility.

Under such circumstances, it would be strange, indeed, if the prohibitory law had been more strictly enforced by the retiring administration than by any of its predecessor; yet it has been denounced, by the very people who sought to thwart its endeavors, for not having done more in this direction than previous administrations in supreme control of every department of the government and loyally seconded by the people.

But the prohibitory amendment will remain part of our constitution till superseded by nationalization of the liquor traffic. The determination to control this business is stronger to-day than ever before, and eventually the traffic will be forced to submit to the popular will. Whoso thinks otherwise mistakes the sentiment of the people. The whisky trust is but an integral part of that yet more monstrous trust--the organization of centralized wealth--whose aim is to make artificial property more sacred than life or liberty. The people are awakening to the danger that threatens them and will overcome that monster, and, with it, will overcome the liquor traffic, too.

AGRICULTURE

The executive renews his recommendation of two years ago that a bureau or department of agriculture be created, to which shall be referred all agricultural and kindred interests, under the supervision of an officer who should be appointed by the governor or elected by the people, and be furnished by the state with all necessary assistants and supplies.

Such a department might be given charge of all matters pertaining to agriculture, horticulture, bee, fish and silk culture, forestry, stock raising, cattle and grain inspection, and protection against epidemics affecting stock.

The office of the state veterinarian is, if not a sinecure, at least a luxury, and should become an emergency office only. An appropriation should be made as usual, but it should be placed in the hands of the governor with power to appoint and pay a state veterinarian whenever any threatened epidemic may render it necessary, and to dismiss him when the danger shall have passed.

Much complaint has reached this office concerning the fees charged by boards of trade for grain inspection under chapter 148 of the session laws of 1891.

Great complaint is also made of the conduct of stock yards. It is alleged that a combination exists between stock buyers and commission men, so that sellers are forced to employ the commission men in order to effect sales, and must then virtually accept whatever price the generous company sees fit to permit them to take. Stock is fed on hay at $20 per ton and corn at $1 per bushel--prices which some are disposed to regard as exorbitant when compared with ruling prices outside the stock yards. A statement sent to this office shows the following stock-yard charges for yardage in 1893:

1,746,828 cattle, at 25 cents	$436,707.00
1,948,373 hogs, at 8 cents.	155,869.84
569,517 sheep, at 8 cents	45,561.36
Total receipts for yardage	$638,138.20

The commissions for selling cattle, etc, about double the stock-yard charges, which makes additional tax on stockmen about double the above amount. Buyers and commission men are in combination, so that one of the latter number must be employed if sale is made. The stockmen are, therefore, at the mercy of the company and in substance have to take what is offered. Apparently, the only way to secure fair treatment for farmers and stock raisers is to provide public elevators and public stock yards, with all modern facilities, and thus establish a public market, under state control, for the principal products our people have to sell. That we may have the unquestioned power to do such needful things for ourselves, and not have the hands of the people tied on every occasion demanding such action, is, perhaps, the most urgent reason why we should have a constitutional convention, for it is doubtful whether anything of the kind, no matter how imperatively demanded, can be done under the present condition.

IRRIGATION

The importance of irrigation is too generally conceded to require its discussion here. The only debatable question is, what legislation should be enacted concerning this urgent necessity of Western farmers? Control of the husbandman's water supply approaches, in importance control

of the air he breathers; and it would be scarcely less cruel in the former case than in the latter to subject him to the almost certain extortions and discriminations of a private monopoly. Fortunately, this has not become a theme for heated partisan discussion, so as to make men obstinate adherents of any particular plan; and none but those selfishly seeking to virtually make merchandise of the very rains and dews of heaven will approach the consideration of the subject with biased minds. What you do at this session in this enterprise, you do not for a day, but for many years to come. Should the control of husbandry be given over to private corporations, our hands will have become tied by the federal constitution, and, no matter how badly the experiment may turn out, nor how oppressive may be the conduct of those who shall have been made the masters of agriculture, we shall be utterly powerless for years to remedy the error, to free the people from the grasp of the monster our own folly will have evoked. Nor could we avail ourselves of improved methods, or new and valuable discoveries or inventions, but must suffer, in order to avoid interfering with vested rights.

If any elaborate scheme of irrigation is to be undertaken at all, it is so imperatively necessary that the people themselves should undertake and conduct the enterprise, that the very thought is startling that it might be given over to private or corporate control; but the executive refuses to believe the legislature capable of such reckless legislation when the happiness of the people is do directly at stake. In the opinion of the executive, no elaborate scheme of irrigation is necessary. The public assistance first required would, perhaps, be a proper survey to locate the underflow, and in this connection you are referred to the following recommendation of the chancellor of the university, which is worthy of consideration:

"The department of geology of this university is thoroughly competent to undertake the geological work for the location of these parts of the semi-arid region which are capable irrigation from underground water. Every dollar expended for this purpose supplementing the resources of the university will accomplish better results than $5 devoted to the establishment of a separate irrigation bureau or commission, or with a new force of scientific workers and field equipments. The state should use the machinery it already has, especially as, in this case, it is of the most modern and effective character."

While conducting such a survey, the state could, in the meantime, establish upon lands it now owns or controls, the soldiers' home at Dodge City, the forestry station at WaKeeney, and the experimental stations of the agricultural college, experimental stations which could, at an early date, so far determine the possibilities and the best practical method of irrigation that farmers might be spared the personal expense of experimentation by availing themselves of the knowledge thus acquired; and these stations could determine, also, by actual tests, in the cultivation, in what kinds of products irrigation may be profitably employed. Such stations have, in fact, been already established by the regents of the agricultural college, as appears from the following extracts from their report, which is submitted for your information:

"The station has recently, at the earnest request of interested persons in the western part of the state, undertaken experiments in irrigation. The limited means at the disposal of the board made it necessary to confine these experiments in extent and locality. Two plants have been secured for trail of irrigation from wells by wind power, with designs to cover all questions of water, supply, adjusting to various crops, and effects of various modes of tillage and handling, in connection with the study of climatic conditions. One of these, at Garden City, is in operation,

with F. W. Dunn in direct charge of experiments, under direction of the station council. A report of details will be given in the annual report of the station. The other, at Oberlin, is being put in shape for early operation next year. Both are under lease to the board of regents for 10 years, if desired, the permanent improvements to revert with the lands to the owners at the expiration of the lease. It seems very important that these experiments should be made as conclusive as possible, and the state may well devote means to these special investigations."

This plan is not ambitious, it is true. It contemplates no more than the location of the underflow, and experimentation with it. But, at present, the state cannot afford to do more than this. The state itself must learn as it progresses; and methods which contemplate the cutting of channels and the providing of reservoirs, if not left for the general government to undertake, should at least be left for future consideration, after future developments shall have given greater knowledge. This plan proposes no large appropriation, the creation of no new board or bureau to begin the whole work anew. It proposes the employment of ample facilities already possessed by the state, under the supervision of trained scientists and specialists already in the service. Partisanship would be avoided by this plan, and a comparatively small appropriation would suffice. Men eminently fitted for the undertaking would be employed, and their employment in such an enterprise would not only be an honorable recognition of them and of their institutions, but would afford valuable opportunities for the practical instruction of those committed to their charge.

LABOR

Your attention is called to a pamphlet put forth by the labor bureau on convict labor. It is a most able and exhaustive discussion of a subject of pressing importance, and no mere brief statement here of its contents could do justice to the masterly treatment of the theme to be found in the report itself.

The system of letting contracts for public work has been largely abolished in England, the public authorities employing and superintending their own labor and buying their own materials. In this way, the contractor and his profits are eliminated; an eight-hour workday has been established; and experience has demonstrated that superior workmanship, with better materials, result without increased expense.

This reform has been one of the standing and principal demands of labor in this country for 20 years, yet it seems to have secured a scant recognition. Perhaps this is due to the fact that labor organizations eschew politics; but whatever the course may be, the reform has never reached this state. If the board of public works is to be continued, it should directly employ labor for all public buildings and in all public works. Only a few contractors would be inconvenienced, and a much-needed reform would be introduced; the idle laborers of Kansas would be employed to do the public work of Kansas, and no laborers need be imported.

As the majority of the present house and the coming administration were elected largely by the vote of workingmen, and as the majority of the senators is understood to be favorable to such legislation, it is hoped that some much measures as workingmen have so long demanded may be enacted into laws at this session.

In concluding this chapter it may be remarked that a misapprehension seems to exist as to the true design of the office of commissioner of labor statistics. It was not intended that the commissioner should be the official representative of any particular labor organization, nor that

any labor organization should control it or dictate the appointment of its chief. It is a bureau of labor statistics, not of the statistics of organized labor alone. These explanations may not be politic, but they are true.

MINES AND MINING

The act of the last legislature concerning the screening of coal and the payment of wages to miners has been declared unconstitutional by a district court and is, consequently, ignored. The ground upon which it was declared invalid was that it was "class legislation," though the same objection applies with equal force to our mechanic-lien laws and many other statutes, and certainly applies to our laws meant to secure the lives of miners from premature explosions and bad ventilation.

As this law thus overthrown is seriously important to the miners of the state, and desiring to protect the interests of every class, the executive retained Mr. Helm, of Wichita, to assist the county attorney, and paid for his services from the contingent fraud. The case has been appealed, and the legislature should make provisions for having the validity of the law settled by the supreme court at public expense.

The miners complain of the competition of the penitentiary mine, and claim that it helps to reduce the wages of free labor; and also of the more serious competition of railroad mines.

The executive bespeaks a careful consideration of the report of the mine inspector, because, being himself a miner, his report may be regarded as voicing the opinions of the miners as to needed legislation.

THE COAL STRIKE

The act of the last legislature concerning the screening of coal was not, by its terms, to take effect till September 1, 1893; but the generous operators could not endure the delay, and decided to put it into operation at the very beginning of summer. They tendered to the miners, months in advance, a new scale of wages to take away the benefits the new law was designed to confer. In short, they entered into a conspiracy to overthrow and nullify a law of the state. In depositions now on file in the United States circuit court at Fort Scott, operators admitted, under oath, that the deliberate object of the conspirators in tendering the new scale of wages when they did was to provoke the miners to strike.

Having accomplished this purpose, the operators of Cherokee and Crawford counties proceeded to erect private forts, garrisoned with conscienceless mobs armed with Winchester rifles, intended to commit murder in resisting mere trespasses upon lands; an offense which, under the statutes, constitutes manslaughter. Men assembled for such an unlawful purpose to the number of three or more constitute an unlawful assembly--a riotous body; and, when armed as those were, constitute a dangerous mob, and menace the peace of the community. As was to have been expected, these lawless desperadoes were not long in finding a coveted occasion for using the weapons which had been put into their hands, and an exciting affray occurred.

The executive sought to obtain accurate information as to the situation of affairs, and determined to refuse military aid to corporations engaged in an armed revolt against the law of the state, and determined, also, that the only forts on Kansas soil should be those erected by the constitutional authorities of the state or of the general government. He also entertained the opinion that systematic and premeditated murder was not the proper method of testing either the validity or

the propriety of a legislative act, and that private war carried on by armed bodies in time of peace in the proximity of communities of peaceful citizens should not be tolerated as a mode of settling controversies between workingmen and their employers.

Entertaining these nations, the executive ordered the national guard to hold itself in readiness; the intention being, not to aid the conspiring coal companies to crush their oppressed employes, but to prevent armed conflict. Had the national guard gone to the scene at all, the first order would have been to dismantle the private forts, and the next to disarm or disperse every band of armed men in the locality, thus restoring matters to a lawful condition. But, fortunately, military intervention became unnecessary. During the strike, the sheriff of Crawford county swore in as deputies the men brought to him by the operators, and they were armed with Winchesters, not for public service, but to simply act as private guards for coal companies.

The law makes no provision for paying deputies otherwise than by specific fees, and it is made a ground of forfeiture of his office for a sheriff to accept any compensation save what the law specifically allows. Of course, what a sheriff does by his deputy is done by him; and these deputies were undoubtedly paid for their unlawful work. It was alleged that cowboys from the Indian Territory were sworn in as deputies. Surely, a deputy sheriff should be a citizen of the county in which he acts. Some legislation to either prevent or regulate the creation of private armies of deputies is sorely needed.

BANKS AND BANKING

The bank commissioner's recommendations are of such importance and are so thoroughly discussed in his report that it would be unfair to attempt to treat them in the limited space which could be devoted to them here. Doubtless there will be among the members of your committees on banks and banking those thoroughly conversant with the business of banking; and such gentlemen will not need to be advised of the practical importance of the commissioner's recommendations.

FISH CULTURE

As the population of the state increases, food supplies will be more in demand. The propagation of fish provides a wholesome and cheap article of food, and it is extremely important that more attention should be given to this important industry. You are referred to the report of the fish commissioner for valuable information on this subject. A liberal appropriation for the encouragement of fish culture would be a good investment for the state and cannot be too urgently recommended.

COURT OF APPEALS

There is demand for the reapportionment of judicial districts and the creation of a court of appeals. In every proposal for making a court of appeals made public so far, there is a provision for making the finality of the court's decisions depend upon the amount of money involved, or upon the disposition of the court to have its decision reviewed. The present executive himself indorsed this plan in his former message; but further reflection has convinced his it would be unjust; and it is certainly hoped that finality of decision shall not be left at the option of judicial favoritism for particular lawyers or particular litigants or classes of litigants, nor depend upon the

amount in litigation.
The same tribunals and the same procedure should be as open to the poorest as to the richest citizen in the same class of cases. A real-estate case which involves the litigant's all, though of but $500 in value should have the same chance of escaping judicial error or caprice, and reaching justice at last, as a case involving the real estate of a great syndicate, valued at millions. Should a court of appeals be created, its jurisdiction should be final as to cases of the same class, no matter how much is involved nor how willing the judges may be to have it sent higher. Only in this way can equal justice be done to rich and poor.

PUBLIC BUILDINGS AND GROUNDS

The secretary of state calls attention to the urgent necessity for an appropriation for two new boilers for the west wing of the statehouse, and for repairs to the heating apparatus. The old boilers are burned out, and so highly dangerous that the lives of the members of the House of Representatives will be in constant peril until new boilers shall have been put in and the necessary repairs made.
The secretary of state also recommends that the state shall own its own electric-light plant, for lighting the statehouse, a recommendation in which the executive heartily concurs.

STATE PRINTING

The statute seems to require that a majority of all the members of each house must concur in the election of a state printer. The question is one of statutory and constitutional interpretation, and the question having been raised by discussions in the press, the incumbent of the office declined to incur the risks of a possible decision against his title, the business interests involved being too great to make it prudent to take any such risk. He, therefore, tendered his resignation, which was accepted. As either the resignation or the previous state of things created a vacancy, the executive appointed the present incumbent to fill the vacancy, and he qualified and is now acting under that appointment.

RAILROADS

The report of the board of railroad commissioners for 1894 has not been received.
The board having no power under the statute to enforce its decisions, and having no right to even entertain any complaint, except as to transportation beginning and ending within the state, and the supreme court of the United States having settled that the federal courts may enjoin the enforcement of a schedule of rates, even when fixed by the legislature, it is rather difficult to perceive of what benefit the board of railroad commissioners can be to the people.

ROADS AND HIGHWAYS

Better roads are sadly needed. How to care for the unemployed is a problem, and it might be wise to devise a plan for giving the opportunity of earning a living by improving the highways. There need be no bonds. Were scrip issued as the work progressed, and in small amounts, receivable for taxes levied to redeem it, the scrip would be worth par, and would serve all the purposes of money. If the desire exists to do what is so imperatively required, the way to

accomplish it can be readily found. At present, not only the sick and helpless, but large numbers of able-bodied men, denied a chance to earn wages, must be supported by private generosity. The public funds are either not available at all for this purpose, or are of a necessity doled out in a way which deters needy and deserving people from applying for assistance. If public work could be undertaken directly by municipalities, perhaps more relief might be afforded.

MILITARY AFFAIRS

The report of the adjutant general will give you detailed information concerning this department of the government, and, as the report contains some matters of importance to the state, your attention is called to it directly, and a detailed statement is therefore unnecessary here.

TRAMPS

Knowledge of social conditions has greatly increased within a decade, and it is now no longer debatable that a large number of men are out of employment through no fault of their own. Yet our statutes in regard to vagrants, enacted in the days of our almost universal ignorance of what is now well known, savagely treat the merely unemployed poor as criminals for being penniless and out of work. In the condition of industry at present prevailing, if never before, these provisions seem almost diabolical.

For this reason the governor, some months ago, issued a circular to police boards directing them not to imprison men for poverty alone; to imprison them only for the commission of some actual crime when guilty of it. The design was to enable men to travel in search of work without being arrested for not having found it. The supreme court, or a majority of the bench, has since decided that these outrageous statutes are constitutional; but might is not always right; and for the very reason that these statutes have been held valid they should at once be repealed or amended. It is too true of the unfortunate poor that "the world is not their friend, nor the world's law."

FEDERAL RELATIONS

Your attention is directed to the increasing tendency of the federal courts to draw to themselves entire administration of affairs of the states, and to constitute themselves general guardians of the state governments. Admitting the sovereign power of the state, through its legislature, to fix rates of transportation, the United States supreme court has decided that, nevertheless, after the members of the House and the Senate have deliberated upon a law fixing such rates and have enacted it into law, with the approval of the governor, a solitary judge sitting as a federal court may disregard the decision of both the legislative and executive branches of the state government, and, for that matter, of the judiciary department also, and, substituting his opinion for theirs as to whether the rates fixed are reasonable, may enjoin the enforcement of the law. By appointing receivers for railroad companies, the federal courts, consisting usually, as I am informed, of but a single judge, abolish as to such companies the state government altogether. The bank commissioner cities an incident which serves to show the arrogant indecency of some of these tribunals towards the sovereign states which impudently keep up the appearance of independent government within the territorial jurisdiction of this almighty judiciary "The officers of a bank," says the commissioner in his report, "surmising from the critical examination made by the commissioner that application would be made by him for the appointment of a receiver,

proceeded to make application in the federal court, and secured the appointment of a receiver, whose bond had been prepared in advance, and who was installed as such receiver by telegraph. This was done without notice to the bank commissioner, under whose supervision the state supposed it had placed its banking institutions.

During the great railway strike of the past summer, the federal courts usurped the power which the constitution of the United States vests exclusively in the executive and legislative departments of the government, and, under their own direction, recruited, armed and turned loose to overrun the state of Kansas a military force subject to neither the President of the United States nor the governor of Kansas, but to the federal judiciary alone. They were called deputy marshals, but were to engage in no service for which any fees have been fixed by congress, and hence their receipt of any compensation what ever was a crime; for an act of congress expressly provides that the "following and no other compensation shall be taxed and allowed" to the United States marshals, and, therefore, fixed specific fees for specific services. Any charge for any service not so specified must be illegal.

The obvious fact was, that these men, armed with Winchester rifles, were not appointed to perform any duties as deputy marshals, but were distinctly understood to be a combination of policeman and soldier, acting under judicial sanction, as the mercenary retainers of certain railroad companies, engaged, through their receivers, in operating the federal courts. No attention whatever was paid to the state executive. No request was previously made of him for the assistance of the militia. The chief magistrate of the sovereign state of Kansas was treated with no more consideration than were the governors of the confederate states by the generals of the federal army, coming for the avowed purpose of subjugation in time of war. It was that Gerry protested in the constitutional convention, when the proposal was made to allow it; it was "letting loose the myrmidons of the United States on a state without its own consent." Worse than that, for the horde of alleged deputy marshals was the dawn of judicial usurpation.

It has been hitherto supposed that armies are to be raised by the legislature and commanded by the executive departments of government; and that courts having heard and decided, the executive is charged to see that the laws are enforced. If a federal judge may raise a force of 10 men, he may raise a force of 10,000, and arm and command them; for if the power exists, he alone is the judge of the extent to which it shall be exercised. This is not a partisan matter, but a patriotic one, and a protest should be made against these usurpations in language so plain and so emphatic that it shall be understood by congress. To excite prejudice and drown the voice of patriotism, those benefited by these outrageous indignities to sovereign states had resources to the suggestion that the doctrine of state's rights went down in the civil war.

Are we to understand, then, that the states are no longer sovereign as to their own territory and their own international affairs? Are they to the government at Washington only as wards to a city? The doctrine disposed of by the fortunes of war was the right of a state to secede and assume to be independent of the union; to throw off its allegiance to the federal government. The doctrine of internal state sovereignty was not invalidated. On the contrary, the reconstruction acts proceeded upon the theory that the victorious union was made up, not of a consolidated people, but of sovereign states.

Regardless of party, all true, loyal citizens of the commonwealth that venerates Brown of Osawatomie, and treasures in its historical society collections the remembrances of other days, when federal troops overran its soil at the behoof of another oligarchy, should speak so vigorously that the dullest official ears shall hear, and understand that no such indignities will be tolerated in the future.

MISCELLANEOUS

Perhaps no episode in contemporary public affairs has been so grossly misrepresented and so egregiously misunderstood as the Kansas legislative struggle of two years ago; and a brief account of that conflict is due to you and to the people.

The people's party elected in 1892 its entire state ticket and a clear majority of the Senate, but the state board of canvassers issued certificates of election to enough republican members of the House to give them a quorum, and enable them, if their certificates were conclusive, to organize the House.

The conduct of that canvassing board was so extraordinary that it was publicly and severely rebuked, even by leading republican newspapers, and in a written protest from Hon. Cassius G. Foster, the federal judge of this district. The majorities claimed for several of the persons to whom certificates were thus issued ranged from 5 to 24 votes; and in at least four instances the ballots themselves showed that even these majorities had been obtained by means of false precinct returns. Ballots entirely blank as to the office of representative had had been counted for the republican candidates, as had also ballots bearing the name of the candidate of the people's party.

In one district, where no doubt could exist as to the real intention of the voters, ballots enough were rejected, because of a mistake in the name of the people's party candidate, to give the republican a small majority. In another district a judge of election was, during the process of counting, detected in the very act of substituting republican for people's party ballots, and was publicly rebuked for it at the time. One certificate was based upon returns in which the county clerk had, confessedly, transposed the votes so as to show the defeated republican elected. Another person to whom a certificate was issued was a citizen of Oklahoma, with no more right to sit in our legislature and make laws which he was not to live under than the territorial Indians themselves. In other cases depositions, regularly taken and filed with the secretary of state, showed illegal votes enough to change the result.

Soon after the hour for the assembling of the legislature, two committees rushed to the governor's office and announced two house organizations. The case was not, at that stage, that of two houses. More than 100 members whose seats were in no manner contested were in the hall; but two factions of the one house had set up rival organizations. Neither organization would disband. The Douglass party stood distinctly upon the proposition that persons holding certificates, no matter if wrongly issued, were alone entitled to organize the House. The Dunsmore party stood upon the proposition that, even for the purpose of organization, members of the legislature are to be elected by the people--not by a canvassing board. The governor took abundant time to investigate and consider, and to consult with senators. One of the organizations must be recognized, or the work of legislation could not even begin.

Our constitution does not permit the courts to give opinions, except upon actual cases brought before them by adversary parties. So the Senate and governor were compelled to decide, and to decide in advance of any possible decision by any court. Being forced to decide, they considered the matter upon its merits, instead of upon technicalities, and recognized Mr. Dunsmore as the speaker of the House. Even after his recognition, the people's party members offered to recognize Mr. Douglass as speaker, and abandon their own organization, if the republicans would agree to submit the pending contest cases to the decision of a commission of judges, two of whom should not be people's party men; but this proposition, which appears upon the printed journal of the House, was rejected. The House thenceforth became divided into two distinct bodies, but, by

tacit arrangement, they avoided collision by alternately using the hall.
This arrangement had been in operation a month, and the work of legislation was rapidly nearing completion, when, as the house journal shows, the Douglass house, February 14, 1893, by a series of resolutions, ordered the arrest of the chief clerk of the Dunsmore house for contempt. The effort to make this arrest led to a brief scuffle on Kansas avenue, Topeka, that afternoon, but which was of a trivial character.
The police commissioners and the police of Topeka were republicans, the sheriff of the county was a republican, all the peace officers of the city and county were republicans, and even supposing the Douglass house to have been the most legal body imaginable, it was bound, if assailed, to appeal to these local conservators of the peace. Instead, as its own journal shows, the Douglass house, that very evening, recruited and organized a military body of some 640 men, and put them under the direction of a "commander in chief." Thus, supposing it to have been beyond doubt the actual and entire legislature, the Douglass house usurped a power which the constitution vests exclusively in the executive, and which no legislative body can lawfully exercise.
The rumor that such an irresponsible mob was in process of organization within a single block of the capitol was confirmed that night; and, anticipating a nocturnal attack of some kind upon the capitol, the executive council exercised the power expressly given by statute, and appointed a number of statehouse guards to protect the property the state, and, at the same time, the executive called out the national guard and equipped three companies of provisional militia to preserve the public peace. Next morning, the executive council, guarding against the admission of the extra-legal military body which had been recruited by the Douglass house, instructed the guards to allow no one to enter without tickets, which were to be furnished all certificated members as also to those claiming seats. The Douglass house came in a body, Mr. Douglass being provided in advance with a sledge hammer, and violently overcoming the few guards then on duty, rushed up the stairway and battered in the door of representative hall. A large portion of the mob followed, whereupon the hall was immediately barricaded, and prepared for armed defense against the sovereign people of Kansas, represented by their executive.
Whatever it may have been before, the assemblage in the hall was no longer a legislative body of insurgents, to be dealt with as such in the interest of public tranquillity. The executive still recognized the right of all certificated members to remain in the hall, but sought, with the aid of the militia, to eject the unlawful deputies and sergeants-at-arms. A partisan national guard and a partisan sheriff rendered impotent the power the people in their constitution had vested in the chief executive; a local statutory executive assumed to be above the "supreme executive" of the constitution. Finally, without an adequate military force to give potency to the constitution and the laws, and still seeking to prevent bloodshed and conserve the public peace, the governor entered into negotiations with the independent revolutionary state government calling itself "the constitutional house," and submitted a treaty of peace. It was peremptorily rejected.
At midnight the general solicitor of the Atchison, Topeka & Santa Fe railroad company requested an interview with the governor. At that interview substantially the same proposition which the Douglass house had rejected in the afternoon was agreed upon, and the railway company's general solicitor having sent it to the Douglass house, it was promptly accepted with great enthusiasm. The governor elected by the people had finally discovered the chief executive of the revolutionary state government.
Afterwards the same supreme court which had formerly declared itself without jurisdiction to decide the right to a single seat in the legislature even with both claimants before the court, took

jurisdiction to decide the right to 10 seats in bulk, with neither claimant of either seat before it, and two of the judges sustained the republican house. The Dunsmore house, the Senate and the governor submitted, and a leading republican newspaper remarked editorially: "The railroads, especially, have cause for congratulation; for, if by any chance the supreme court had taken the other shoot, authorized by precedents laid down in the books, and declared the Dunsmore house to have been the de facto organization, a railroad law more stringent than the Iowa statute would have been put into full force and effect."

So ended the conflict of the people against their masters--for a time. The retiring executive has not changed his opinion as to the merits of the controversy, of the propriety of his own acts, nor of the character of the supreme court decision. The episode will become historic as the Bunker Hill of the conflict between man and mammon. By history the executive is willing to be judged. When, as Cornwallis approached to surrender his sword, the victorious continental army broke into a cheer, Washington, checking them, said: "Let posterity cheer for you." The retiring executive will let posterity judge his administration.

With the earnest hope, gentlemen, that your acts at the present session may prove beneficial to the whole people, and "with charity toward all and malice toward none," I bid you adieu.

L. B. LEWELLING, Governor.

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