THE RAILROAD QUESTION.

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BY

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No. 1

MR. CHAIRMAN:—There are many reasons why I appear before a Rochester audience with feelings of peculiar satisfaction. The second speech which I ever made in this State upon political questions was delivered here, and since that time I have twice addressed this people; not upon political occasions, but upon subjects which have within two years come to have an intimate and permanent relation with political topics. Upon each of those occasions my reception here has been most friendly, and dissenting criticism has been generous in its expressions. Nor can I be unmindful of the hearty support which was given me by this county in the last Republican State Convention after the name of your distinguished fellow citizen, Gov. Armstrong, had been withdrawn.

This year is what is known as the "off year" in politics. The delirium of the last presidential campaign has passed away. The overwhelming expression of public sentiment which decreed last fall that the Republican party should hold the reins of power for four years more, has settled the issues of that campaign, so that for the present their interest is merely historical. This audience, so exceptionally large for a year such as this one is, is drawn together, not because matters of national moment are to be the subject of discussion and deliberation, but because the people are gravely interested in matters of the deepest concern to our own State, matters with which, as yet, national politics have little or nothing to do.

The convention which lately met at Owatonna has declared in its platform that the leading issues which have hitherto divided the people of the country into political parties have ceased to exist and it is therefore unwise to continue the old political organizations. The Owatonna Convention, as preliminary to its work of resurrection, decrees the dissolution of all former parties, declares them dead and gives them Christian burial. I fully subscribe to the propriety of this sentence as to the Democratic party. In law disappearance for seven years raises in all courts a presumption of death, and no one can object to the heirs taking out letters of administration, and dividing the estate.

But, seriously, it is fallacious to maintain that because the original questions upon which a party was founded, have been settled in its favor, the party itself deserves to cease to be. The test is, do the principles upon which the party was originated contain such appliances of universal application as fit it to deal with new questions as they may arise? If this question is answered affirmatively, then so long as any party, Republican or Democratic, remains true to the axiomatic principles out of which it was constructed, that party will survive to deal with new questions as they arise in the endless progression of political events. And the Democratic party does not by any means consider itself a corpse. In other States it is remarkably lively for a mummy. In New York it has betaken itself to its ancient fastnesses under its time-honored leaders, and has refused to consort longer with its unnatural allies of last year, the Liberal Republicans. In that State the Democracy has held its convention, and the deserted Liberals have met also in convention at Elmira, a dispirited band of one hundred and forty, deserted

"By those in former bounty fed."

In Kentucky the same process of separation has been witnessed. So in Wisconsin. In Ohio, under the lead of their ablest champion, Senator Thurman, the Democratic party as a party have withdrawn into its former intrenchments, and has reformed its disorganized ranks upon the old lines, repudiating the concubine Hagar of Liberalism with her Ishmaelitish sons. It is only in States like Iowa and Minnesota, where it has no hope of success by independent action, that the farce is kept up of alliance with the dissatisfied members of the Republican party. The Democracy of Minnesota is a paradoxical kind of a corpse. Owatonna says it is dead: the corpse says so too, and sits upon its coffin to read the epitaph which has been written for it by stranger hands, says "it is good," lies down again; rolls itself up in its shroud; its members moaning "we are ghosts, we are ghosts." This party has simulated death in the hope of future advantages, and the Owatonna convention was manipulated by Democratic politicians in the interest of a party which still lives, notwithstanding its protestations of decay and death. And whenever there shall be in Minnesota, as in New York and Ohio, the hope of success by the disintegration of the Republican party by its prodigal waste of strength in these unnatural alliances, between these parties of many marriages and no offspring—the phenomenon now witnessed in New York and Ohio will be exhibited here, and the Republican who has abandoned his party will find no refuge except in captivity to his ancient foe.

The pretense of the Owatonna convention, that parties have ceased to exist, is a false one. Both of the parties which have striven for the last fifteen years for supremacy, still live. The one so strong as to be wasteful of its strength, the other weak but hopeful in the use of those last resources of weakness, fraud and cunning.

I have said that the issue of this canvass are purely matters of State concern. What are these questions? They consist in the consideration of what are the precise relations of the railway companies to the State; what is the foundation of this extraordinary claim of the companies that they, the creatures of the State, are superior to their creator and beyond its control; what power does the State retain; has it any power, or has it irrevocably abdicated its sovereignty by profligate and wanton acts of legislation? In briefer terms the problem is now to deal with these great monopolies so that while violating no right, the people may be assured that their rights shall remain inviolable.

Recurring to what has been said before, I confidently assert that the Republican party, by virtue of the original principles out of which it grew, by virtue of all of its traditions and all of its acts, has peculiar—yes, exclusive—claims to be the fittest instrumentality by which the popular demand for reform is to be fulfilled.

Why, it sprang from an uprising of the people against a monopoly much akin to that which confronts them to-day. It is

within the memory of the youngest voter in this house when the institution of slavery occupied towards the people a relation analogous to that which is to-day occupied by the corporations. Slavery was a corporation almost within the legal definition of the word. It was an artificial institution. It was composed of a few corporators. It had perpetual succession. It claimed inviolable privileges and exclusive rights. It was a gigantic monopoly. To that peculiar system of labor was dedicated one-half of the national farm. South of a line drawn midway, from east to west across the land, free labor did not and could not go. It claimed equality of right in the territories, and, grown strong and grasping, it finally claimed the right to legal existence in all the States. Personal liberty became a tolerated alien in her own heritage. The unoccupied public lands were shut against free labor by the persistent refusal of this monopoly to permit the passage of homestead laws. Like the monopolies with which we deal today, this institution took to itself the functions of sovereignty. It set up the Presidency at vendue to any Didius who would give to its prætorian cohorts the most lavish promises of reward. It sat supreme in legislative halls. It worked upon the officers of the law until grave judges in their delirium spoke strange words, not knowing what they said. Through it the honor of the soldier was tarnished, like a sword disgraced. Through it wise men of science manipulated the skulls of forgotten Pharaohs and driveled about inequality of race and consequent inequality of rights—those rights which God gave equally and absolutely to all—all this it did until it was all in all. It took one step too far. The people, under the leadership of the Republican party, rose in their might against it, and the institution—the corporation—went under the waves of the Red Sea of war, and "sank like lead in the mighty waters," there, thanks be to God! to rest forever and ever.

The issues which the party dealt with ceased to exist; and upon the theory of the framers of the Owatonna platform it was then fitting that the Republican party should cease. But it did not pass away. Upon the return of peace the problem of reconstruction arose, and found in the principles of the Republican party ample formula for its solution. It is rehearsing familiar history to detail what was done. It is sufficient to say that the results of the war were assured by constitutional guarantees, bitterly contested, but now supreme and unquestioned. The question of reconstruction being thus a settled issue, the logic of the Owatonna platform would call for the immediate dissolution of the party which had thus carried these great questions to such a triumphant conclusion. But the party survived. It found that the internal revenue system, which was endured patiently during the time of war, was felt to be too onerous for the time of peace. It modified that system of taxation, it restricted the subjects of taxation, it diminished the number of revenue officials. It also from time to time put upon the free list or reduced the duties to which they had been subject, many of the commodities upon which the tariff had necessarily been extremely heavy. While doing all this it steadily reduced the national debt, thereby making possible still further reductions of taxation. It also devised and maintained a currency so stable and so secure in the confidence of the people that the cyclone which a few days ago strewed Wall street with the wrecks of stately fortunes was scarcely felt in the West. No merchant failed, no legitimate business suffered more than a momentary check in a revulsion which had its phototype in 1857, when every business interest in the country was paralyzed by the shock which required years for recovery. The Republican party was equally successful in its adjustment of grave complications with foreign powers. The cruisers of Great Britain, sailing under the flag of the Confederacy, had laid waste our commerce aud swept away our mercantile marine from the seas. For this was Great Britain brought to account: not upon the battle-field, but in that serene tribunal of the nations, which held its sessions under the shadow of the mountains of the oldest of republics. Judgment went in our favor, and the damages were collected; while at the same time there was settled, more definitely than by treaty, those grave questions of international obligations out of which that litigation arose.

And the party has survived the successful result of all these efforts. And it will survive until it abandons those principles by which it has been sustained for so many years. When it does abandon them it deserves to die. But it is a novel doctrine that the doom of a great political organization follows as a logical sequence from the success with which the efforts of that organization have been attended. As well argue that the righteous judgments of a court are sufficient reasons for its adjournment *sine die*.

The Owatonna platform is clamorous for legislative regulations of freights. But the Republican party had regulated them by law two years before the new party was born, and a court whose members were elected by the Republican party, has declared these regulations valid. The Owatonna platform demands that the expenses of the litigation between the citizens and the railroad company, in cases arising out of these regulations, shall be born by the State, and it is a matter of fact, that the Republican legislature of 1873 did appropriate money to pay counsel, whose arguments tended to secure the decision by which these regulations were sustained. Will it be claimed that for these acts the party must be led out to instant execution?

I have said this much about the permanency of parties, for the purpose of sustaining the assertion which I now make, that the Republican party, by virtue of the very principles upon which it was founded, is possessed of ample resources for the adjustment of the present complications in which are involved the relations of the people toward these corporate monopolies. It has grappled with them in Minnesota, and even while this discussion is going on, a congressional committee is gathering materials for more comprehensive and efficient legislation on the subject than any State can give.

To proceed now to matters of more immediate interest. What are the relations of the railroad companies toward the people of the State; to what extent has the State lost its power of regulation and control; and, if it has any such power, in what manner can it be exercised?

The answer to all of these questions is involved in the circumstances out of which the railroad system of Minnesota has grown. In the early territorial days the means of transportation consisted solely of the wagon road. That simple fact made the settlement of the country very difficult. Indeed, it practically fixed the limits of settlement within the area over which it would pay to haul wheat by team to the river. To hasten the growth of the country the nation granted to the territory of Minnesota many millions of acres. The territory was then called upon to grant acts of incorporation and to confer upon these institutions thus created by it the lands which it had received from the United States. These railroad companies said, in substance, to the people, "permit us to share with you the execution of that duty which has ever been an attribute of sovereignty of all States in all ages, namely, the duty of constructing highways; assist us to perform this duty by granting lands for that purpose which will in time reimburse us for constructing the roads; assist us still further by delegating to us, upon the theory that we, like the State, are public bodies, two essential attributes of your sovereignty, the right to take private property for our uses, and the right to levy and collect tolls upon the highways which we shall construct; grant us the exclusive right to occupy and operate these highways to the exclusion of competition; discriminate in our favor in the way of taxation so that we shall not be embarassed by local burdens, such as county, town, school or road taxes, but be permitted instead to pay into the treasury of the State a per centum upon our earnings. Do all this, and we, in consideration thereof, will exercise these public functions in trust for the popular use. We will substitute for the wagon road the most finished and costly result of modern civilization, and upon the roads thus to be built by us we will become common carriers for hire, subject to the common law duties of common carriers, and also subject to the duties imposed upon us by way of trust, which we will assume in consideration of the extraordinary concession which we ask." With every one of these demands the State complied. It parted with these attributes of sovereignty, and the railroads assumed them upon the theory that the companies were by and through them delegated powers to subserve a public use, and in the execution of the trust were to operate the roads and use their franchise in such a way that the public good, and not the public injury, should be subserved and accomplished. A trust more formal and better defined could not have been created by the most elaborate form of written conveyance and contract. And from this relation the obligations of the trustee were no less binding than in transactions of a similiar nature which affect private and individual interests only. The State creates an artificial being—a corporation—for the purpose of enabling it to perform the trust; and the fact that the corporation is at the same time to use these franchises for private profit, does not abate one jot or tittle from its obligation toward the public.

Whenever any of these companies have perverted or abused this trust, they became at once liable to the corrective interference of the Legislature and the courts. They can be mulcted in penalties, or the more radical remedy of a forfeiture of their franchises can be applied. It costs no more to haul a bushel of wheat than it cost last year. The railroad companies are bound both by the duties of common carriers, and by that more comprehensive obligation that they will exercise their franchises for the public benefit. Such confederations as that which recently by an arbitrary edict, fulminated in other States, advanced rates on wheat three cents per bushel, are conspiracies at common law, and are not only such violations of the immemorial code, but of the compact between the companies and the State, that the State has the right to demand of the courts judgment that the charters of these companies be declared forfeited. If this is done, the artificial being which has wrought these injuries ceases to exist. The power which raises or lowers rates ceases at once to be, and the property belongs to the stockholders or creditors. But these persons are individuals, and have no immunities or privileges such as the corporation had. Their immunities and privileges have been forfeited, and the States own them absolutely. If the creditors or stockholders desire to continue to operate the road, and attempt to do so as a corporation after such a forfeiture, the power of the courts is ample to restrain them by injunction, quo warranto or by sequestration.

To operate the road as individuals, were that practicable, they become necessarily subject to legislative control, to an unlimited extent. But such a mode of operation is demonstrably impracticable. They must be reclothed with corporate power. They must apply to the State for this reinvestiture. The State can regrant upon such terms as it chooses to impose. It can prescribe as conditions of the grant that it shall exercise the very power which the companies say it cannot exercise now, claiming, as they do, that the immunities of which I have spoken are vested rights, inviolably lodged in their corporations by the chartered compact which called them into being. Or if they choose to reorganize under the general laws of the State, then the power of the State is undoubted to the utmost extent which the people under the smart of unbearable grievances, can claim. I am perfectly satisfied that there is not a railroad company in Minnesota whose franchises are not subject to foreiture for flagrant, repeated and provable malversations and abuse. Such a forfeiture will possibly leave the State free to change the present system whereby taxes are commuted for tribute money, and it would most undoubtedly vest in the State full power of control over these difficult questions of rates, consolidation and competition. I know that the companies, when this sweeping remedy has been threatened, threaten in their turn to meet it by drawing off trains and by

other vexatious retaliations. Such acts are further acts of abuse which will make the remedy more certain and complete. Pending the judicial proceedings in which the remedy is sought, the court could secure the operation of the roads by sequestration and the appointment of receivers to operate them, pending the litigation, just as the Southern Minnesota has been operated for the last ten months by Mr. McIlrath, the receiver appointed by the United States Circuit Court.

This remedy is no new device. It has always existed at common law. By the statutes of Minnesota, upon complaint filed by direction of the Attorney General, any District Court has the power to restrain by injunction any corporation from exercising unlawful powers, or any individual from exercising any corporate rights not granted to them by law. By these statutes it is the duty of the Attorney General to bring action in the name of the State, for the purpose of vacating the charter, or annuling the existence of a corporation, whenever such corporation,

First—Offends against any of the provisions of the act or acts creating, altering or renewing such corporations; or,

Second—Violates any provision of law by which such corporation forfeits its charter by abuse of its powers; or,

Third—Whenever it has forfeited it privileges or franchises by failure to exercise its powers; or,

Fourth—Whenever it has done or omitted any act which amounts to a surrender of its corporate rights, privileges or franchises; or,

Fifth—Whenever it exercises a franchise or privilege not conferred upon it by law.

Such are the vast powers of the State under the one head of remedy.

It is amazing how history repeats itself; and it does sometimes seem as if there is no new thing under the sun. More than one hundred years ago a company of English adventurers, partly by force, partly by fraud, planted themselves in East India. They gradually acquired commercial and political supremacy over a country larger than France in area and population. It was a land into which from a time antecedent to all history the precious metals had been flowing in an unreturning stream. It had a literature, philosophical, poetical and dramatic, which was old when Homer was a babe. It was the seat of the highest type of oriental civilization. In many of the provinces every instrumentality by which human industry works out material greatness was in full and active play. These private subjects, just as the corporators of the modern railroad companies have done, had obtained from the Parliament of Great Britain corporate franchises, under the authority of which they used their relations to the new land for purposes of private gain, and at the same time exercised functions of government and sovereignty. The result was that in a few years that opulent country was reduced to beggary and desoaltion by the extortionate rapacity of the corporation. Little by little successive concessions of governmental power were obtained from the native rulers and from the home government, until it was found that all of the essential elements of sovereignty had been transferred to a board of directors which held sessions in London, as modern directors do in remote financial centers. This board made war and peace and carried on trade. It established a pliant judiciary, committed in advance to the sanction of all that the gluttonous rapacity of the directors could crave. It had in the person of Hastings the finest and most unscrupulous administrative talent, and in the person of Clive it commanded the most pre-eminent military genius. The outraged people of Hindostan called upon the English government for redress in a voice which resounded across the sea, and at last pierced the dull, cold ear of complacent Senators. The company, setting an example which modern companies have followed, opposed to the reform which was threatened the pretence that it was consecrated to immunity in wrong doing by the "vested rights" conferred upon it by its charters. This proposition was opposed by the massive understanding of Fox, and by the magnificent genius of Burke—that most marvelous of men who has lived since Francis Bacon—whose oceanic expanse of intellect circumfused the most remote lands, the most alien interest, and made their needs and their resources such perfect ingredients of his own mental organization, that he seemed to have acquired them by inspiration and not by research. He swept away the argument of vested rights by overpowering demonstration that these abused rights and privileges were in the strictest sense a trust, of which it is the very essence to be rendered accountable, and even totally to cease, when it substantially varies from the purposes for which alone it can have a lawful existence.

These principles are as potential to-day as they were then. The power of the people is yet almighty in its resources of redress. The giant which confronts them is but a projection; it is but the shadow of the people. Its threatening gestures, like those of the spectre of the Brocken, are but the exaggerated motions of a phantom, which only is because the very object which it threatens has painted it in grotesque vastness of proportions against a background of mist, uncertainty and confusion.

But this power of forfeiture does not exhaust these resources. There are other reasons why the State has legislative power over the question of rates. These companies were chartered by the Territorial Legislature. Some of their charters contain provisions which attempt to authorize the directors to fix tolls and rates in such amounts as they shall see fit; others of these charters are silent upon this power. But in both cases the companies confidently assert, are asserting it to-day in the courts, that they have the unrestricted and inviolable power to tax the people for carrying their productions in such sums as they, the companies, think fit. One company claims this power because its territorial charter gives it in terms. Another company whose charter contains no provisions upon the subject, claims it as a necessary, uncontrollable incident of its right to construct and operate a

road. For the purposes of this branch of the discussion merely, I will concede that there was a time when both of these propositions were correct. But I maintain that that time terminated when the territory was succeeded by the State. The territorial charter conferred upon these companies the right to condemn private property for public use. In other words, the territory delegated to the companies a function of its sovereignty; for the right of eminent domain, which is the legal form of expression, for this power of condemnation is a sovereign right, and is as much a function of government as is the right to levy taxes or to make laws. While the territory existed every proceeding to condemn private property was in reality an act of the territory —of an existing sovereignty. But when the State was created, the sovereignty of the territory was utterly extinguished. It became as defunct as the Southern confederacy. There was left no residuum of sovereign power by which, under the sovereignty of the territory, the right to condemn could be worked out by delegation of territorial functions of sovereignty. The companies must look to the new political power. That which succeeded was the State. The State can grant or withhold the right to use its sovereign power for purposes of condemnation for right of way. This absolute power to grant or to deny totally, carries with it the power to grant that right upon conditions, and if the companies get their right of way by using the delegated sovereignty of the State, they take that right subject to the conditions. Now, the constitution of Minnesota provides that lands may be taken for public way for the purpose of granting to any corporation the franchise of way for public use, and it provides in the same sentence, in which this right is granted, that all corporations being *common carriers,* enjoying the right of way in pursuance of the provisions of this section, shall be bound to carry the mineral, agricultural and other productions and manufactures *upon equal and reasonable terms.* There is not a railway in this State which has not acquired every inch of the right of way by condemnation, since the constitution was framed; and what I maintain, that the companies, having invoked constitutional benefit, take it coupled with the constitutional burden. In other words, they cannot, as they have done, invoke the sovereignty of the State for this purpose, and, having obtained its advantages, deny their obligation to do those acts which the constitution prescribes that they shall do as equivalents for their advantages.

I am aware that the constitution also provides that all contracts, both of individuals and corporations, shall continue on as if no change of sovereignty had taken place. But if the provisions of the territorial charters which gave to the companies the right to use the sovereignty of the territory to this end were unqualified contracts, they were contracts with the territory which no longer exists. The State which succeeded has not assumed them. On the contrary it, the new sovereignty, has declared that that sovereignty cannot be used for these purposes except upon conditions which did not exist before. To say that this may be true, but that the companies may condemn the right of way under the territorial authority without reference to the constitution, involves the solecism of maintaining that there are still two sovereignties in existence in this State, namely, the territory and the State. It also involves the absurd proposition that the legislature of a territory can so delegate away its sovereign powers as to not only abdicate them irrevocably, but also to put a barren sceptre into the hands of its successor, the State. It has never yet been held that a territorial legislature has this power, or has it yet been held that the legislature of the State itself can, under the guise of grant or contract, barter away the functions of sovereignty so that succeeding legislatures shall have no power of legislation upon the subjects concerned in the transaction. The truth is that the State had the right to delegate the right of eminent domain, or to refuse to delegate it. Had it refused, there would have been no right of condemnation remaining in the companies, for the territory was defunct. The State did confer this right, coupled with conditions which are binding, from the very fact that the companies have claimed the beneficial privileges.

Here, then, we have in the constitution itself the very obligation which the companies deny. What follows? Simply the application of the maxim that when a constitutional right is granted in terms, there is also granted by implication to the State the power to make that right effectual by legislation. Upon this principle the power to incorporate the United States' bank was sustained; so was the power to pay the internal revenue laws; so was the power to raise armies by conscription in the dire extremity of the nation; so was the power to grant lands, or to expend money directly for internal improvements. And upon this principle can be planted, as upon a rock, the power of the State to prescribe tolls and rates in order to compel these corporations "to carry the mineral, agricultural and other productions or manufactures upon equal and reasonable terms." A Republican legislature has enacted a law which prescribes these tolls and rates, and that law has been sustained by the Supreme Court of the State a year before the Owatonna party was born or thought of.

But concede for the purpose of another branch of the discussion to which we will proceed, that these rights survived in the companies to the fullest extent after the formation of the State. All this may be true, and still by subsequent transactions—by modifications of the original power—these rights may have suffered abatement in this respect. It is well known that, in 1858 these companies mortgaged to the State of Minnesota, not only their property, but themselves. In another form of expression, they mortgaged to the State their road, their lands, their incorporal franchises, among which was this franchise which they pretend gives them the right to impose such rates as they should prescribe, whether reasonable or unreasonable. It is a matter of familiar history that the State foreclosed

this mortgage, and at the sale, purchased the things and rights mortgaged. The State thus became sole corporator. It became the owner of the franchise to levy tolls, and succeeded to all of the rights of the companies in this respect, unless it, the State, was under some disability. The State being the sole-corporator, must obey its own constitution. If the State had gone on to construct and operate these roads, which provision of the law would it have been bound by; the provisions of the old charter which allows the corporation to impose such tolls, reasonable or unreasonable, it may determine, or could it be bound by the provisions of its own constitution which provides that these rates shall be fair and reasonable? The State did not undertake to construct or operate their roads, but it granted to the present corporations all the franchises which it was competent to grant. But in so doing the State could grant no greater power or franchise than itself could exercise, and if the State was bound by its constitution in regard to this matter of rates, it could not by the force of grant give to the grantee more than the grantor had. The power which was in the companies to levy tolls was merged in the State by the power of alienation, and was annihilated by the constitutional disability of which I have spoken.

There are other reasons why the power of the legislative control exists in regard to rates, of which time does not permit the discussion. But from the considerations which have already been adduced, I am satisfied that the power which was exercised by the Legislature of 1871, and which has been sanctioned by the court of the State, rests upon an undoubted constitutional basis. The question is not so much now, what power the State has, but it is rather, how may these unquestionable powers be most effectively used? No law ever yet executed itself. The highest officials will be powerless in this business, unless they are sustained by an overpowering public sentiment, not fitful and wavering in its manifestations, but strong, persistent, uniform and enduring. I believe that there is such a sentiment, and I look with entire confidence for the most beneficial results from its action.

In what I have said my remarks have been limited to State action. But a moment's reflection will show that the power to work complete relief is not in any one State. Our jurisdiction ceases at the boundary line, but these companies are not bounded by such imaginary divisions. We may prescribe rates for Minnesota which will benefit us little in many most important particulars. Our wheat seeks the seacoast, and in its transit passes through five States, with powers as absolute as our own. As it passes from State to State, it manifestly yields such tribute as may be exacted by those who, under the authority of that State, control the roads. As a matter of fact, however, to such an extent has railway consolidation grown, that these powers are concentrated in the hands of a few private individuals in the great monetary centres. The recent advance of three cents a bushel for carrying wheat was dictated from Wall street to the western roads. Minnesota may apply its laws so far as its own territory is concerned, but it must be remembered that each bushel of wheat goes far beyond our boundaries, and is practically tolled by the carriers at the end of the route.

We may be driven to seek the aid of a power whose jurisdiction embraces all the territory occupied by the railroads of the country. That power is the United States, and to its constitution we can look for authority to administer a comprehensive remedy. That instrument gives to Congress the power to "regulate commerce with foreign nations, *and among the several States.*" The power to regulate commerce with foreign nations is one, the exercise of which is coeval with the adoption of the constitution. The power to regulate commerce among the several States has remained dormant for the reason that until very recently there has been no occasion for its employment. As to commerce with foreign nations, the exercise of the power of regulation has become so much a matter of course, that we seldom inquire into its origin. Harbors have been built on the seaboard; breakwaters have been constructed; customs have been imposed, and there has been an infinite variety of legislation on this subject. The other power is just as unquestionable. These powers are measured only by the necessities which call them into action. And if there has arisen in the land a commercial power, or instrumentality, such as the railroad company, which regulates commerce between the States at its own discretion in such a manner as to be inimical to the prosperity of both producer and consumer—if, in other words, this irresponsible regulation destroys commerce in the true sense of the word and makes both producer and consumer mere feudatories of the instrument of commerce—if the companies raise rates when crops are abundant and prices high, not upon any principle of compensation, but upon the principles of an extortionate system which takes from the producer much, simply because he has much to take from—then it is time that this dormant power should be exercised to its fullest extent. That these evils exist is most unquestionable. The people are taxed to pay dividends, not upon the actual cost of construction, or what that cost should be, but upon what construction has cost when performed by thieving rings, who are themselves monopolizing parasites upon the body of the huge monopoly. The people are taxed that dividends may be paid upon stock, watered and diluted stock, which represents nothing but the rapacity of the company and the patient endurance of the people. The earnings of the Milwaukee and St. Paul Company, since it advanced its rates are stated, for the entire month of September, 1873, to have been in round numbers, $1,100,000 against $800,000 for the September of 1872, but when the unexampled abundance of the crop presses so severely upon its means of carriage that it cannot carry as fast as it receives, it advances its rates, and by this regulation of commerce assists to tax the farmers of Minnesota alone, over $600,000. "Commerce among the several States" has been left to regulate itself, under the idea that the law of supply and de-

mand would produce competition. The tendency has been the reverse. Consolidation has been so far perfected, that ticket agents and freight agents meet in their conventions, as in a Congress, to legislate upon this question of commerce. Their companies have entered upon the exercises of sovereign functions in this matter. They enact the law, they declare and enforce the penalties, secure—more secure than any Legislature ever was—in their perfect immunity from regulation and control.

Under the power to regulate commerce with foreign nations, Congress has imposed duties, which in many instances, have led to the creation of monopolies. But here, in regard to our internal commerce, is a corporation levying duties more onerous than all our tariff would be, were they increased four fold.

If it is practicable for the State of Minnesota to legislate upon the subject, why should not Congress, grasping this question in all of its bearings, from centre to extremities do the same thing? It has the power, and its exercise has become a matter of duty. If the companies can, by combining their knowledge and experience of rights and resources, adjust a system of uniform rates to which all lines shall be subject, surely the government can obtain the same information and do the same thing. Into the question will enter one consideration which does not embarass the companies apparently, and that is what sum can they carry for, and at same time secure reasonable returns from their investment.

There are yet other methods through which it is thought the federal power can assert itself. It has been proposed by Mr. Adams, I think, that the government shall own and operate through lines. The objection to this scheme is that it is altogether too paternal. It involves an increase of the army of federal officers altogether too great to be contemplated with any feeling of satisfaction.

It is also proposed that the government shall own through lines and lease them. To this it is objected that the lessee will be the same monopoly in another form, having exclusive right to operate the road.

In a lecture which I delivered some three years ago, before these questions had entered into politics, I suggested that the most feasible plan would be for the government to acquire through lines under the right of eminent domain. Keep them in repair just as the State keeps the wagon roads in repair, and permit every individual, association or corporation which owns or can control locomotives and cars, to run them on these roads in competition. This idea has been subjected to considerable discussion and criticism, which have tended to confirm its soundness in my mind. I believe the nearer these roads can be approximated in their use to the common highways, the nearer we shall be to the result to which we are surely moving. The State of Minnesota owns its wagon roads, keeps them in repair, and they are the means of an untrammelled competition.

The United States owns the Mississippi river and its navigable tributaries. It keeps them in repair, and upon them there is competition of the most intense character. The State of New York owns the Erie canal, keeps it in repair, and every one who chooses competes in the business of carriage. But it is said that a railroad is too complex a machine to be handled in this manner. Let us see if the tendency even under present management is not towards the end which I have indicated. There are organizations for carrying freight, such as the Blue Line, which do not own a foot of railroad, but which do own thousands of cars which are hauled daily over every railroad in the land. They control their cars and pay the companies simply for motive power and use of track. On every considerable road in the country Mr. Pullman runs his private cars, so sumptuously equipped and furnished that they are almost homelike as to comfort. He pays the company simply for motive power and use of track. The United States mail is carried in cars specially set apart for it, wholly under the control of the postal authorities. The Express companies occupy the same relations toward their cars. In England, as I am informed, one railroad runs its trains to terminal points over connecting lines as a matter of right, upon certain conditions of course, as to compensation to the company whose track is thus used. Trains are run every day from Chicago to New York, which in their passage travel over several lines which have confederated for this purpose. To take an instance precisely apposite, there was a time during the war when our government occupied and operated perhaps one-fifth of the railway system of the country. It transported with ease and safety immense armies of men and incalculable quantities of freights. What is more important in this connection is the fact that while it was so doing it also, under proper restrictions, permitted these roads in many instances to be run over by trains exclusively devoted to private business. These things were done under the management of Thomas Scott, then a colonel in the army, who managed the system with the same Napoleonic grasp and precision as that with which he now wields the complicated business of the Pennsylvania Central and its many dependencies. If such a system was practicable then, why is it not practicable now?

We see now in the instances which I have cited the state of things. One company owns lines and motive power and hires them out. The monopoly has in many instances ceased to be a monopoly of owning the cars in which the freight is carried. It has become a monopoly of the tracks and of the machinery of traction simply. Roads which formerly competed have come under one management. What valid reason is there why the trains of any other road cannot be run over these lines subject to control by one management as to number, time of departure, rates of speed and other rules which pertain to the duties of a train dispatcher? If the roads can be run on by any other line the monopoly is still as great as it ever was, if only one line has the sole right to furnish locomotives to haul the trains. Why should there be a monopoly of the forces of traction any more than there should be monopoly of the cars which are drawn? It would be a similar condition of

things if on all the wagon roads in Olmsted county, while many men owned wagons, some one man had the exclusive right to furnish horses to draw them. The train under the plan supposed, must be run so as to insure safety. How does the fact that one company owns one train and another company owns another, militate against safety, provided each must run at certain times and under regulations? These regulations are applied now with great exactness, as the telegraph book of any train dispatcher will attest. Suppose the government to own a through line, open to as many trains as can occupy it, no matter where they come from, why cannot it prescribe rules for the running of these trains, if that is the only difficulty? Every railroad in the country does it to-day for itself.

It has been objected that this plan involves the necessity of costly depots, to be erected and maintained at the expense of the government, who must provide the men to conduct them. The objection is not a valid one, conceding it to be well founded as to the fact. But it is not well founded. Leave the depot and elevator business to private enterprise, where it ought to be, even under the present system. The government builds no warehouses along the rivers, or at the harbors. Private enterprise does that. The government, it is objected under the plan proposed, would be obliged to employ an army of conductors, brakemen and engineers. But this cannot be so. It employs no steamboat captains, no pilots, no engineers for river traffic. It licenses engineers and pilots, and they are paid by those who hire them.

For purposes of illustration suppose the Winona and St. Peter road was so managed to-day. There are along its line granaries filled to bursting with perhaps five million bushels of wheat. The car capacities of this road are so restricted that they are totally inadequate to move this crop in any reasonable time. Where two or three freight trains traverse this road daily, ten could be run with perfect safety. But no other institution except this road can put a locomotive or car thereon. In the case imagined, suppose that some southern railroad has cars and locomotives unemployed by reason of failure of crop, or it not being ready for transportation, or from any other cause. The manager of the Galveston road, for instance, seeking employment for his idle stock, is aware of the state of things in Minnesota which I have described. He is at liberty to put a train upon this road and compete against all comers for the privilege of carrying our productions, just as the ship-owner sends his vessel to ports where freights are abundant. But there would be competition not only between different railroad companies sending their cars onto this public line. Private enterprise would take hold of the business. To own a train of cars and an engine is no different thing from owning a ship. Under the circumstances supposed the corrective forces of competition would be brought into full play, a force which now has no practical existence in the railroad system of the country.

I am aware that to acquire such through lines, or to build them, involves enormous outlays, but that fact is of no moment when it is considered that the amount which rapacity now filches from production would probably suffice to pay for the line in a very short time.

I do not advance this theory with any stubborn pride of opinion. I am only anxious to assist in some small degree the popular mind to reach sound conclusions, and I shall feel amply rewarded if anything that I can suggest will tend to that end. The whole subject is too vast for any satisfactory discussion in the time to which a speaker is restricted, and I pass unwillingly from its consideration to touch upon a matter of personal interest to myself as a candidate.

At the convention held at Owatonna an eminent farmer—Mr. E. St. Julian Cox, of St. Peter—proposed a resolution which has become a part of the platform, in which it is charged that the present Republican candidate for Governor is an enemy to the farmer and a friend to monopoly by reason of subserviency to the railroad companies. This surprised me not a little, for I knew that I had taken advanced ground on these questions long before they became political, and it was generally conceded that my nomination was largely due to the position which I had thus maintained. It seems, however, that this resolution is based upon a vote which I gave while a member of the Legislature of 1867, in favor of extending the time for the construction of a railroad two years.

It is complained of that I did not vote for an amendment regulating the tolls. Well, my esteemed friend Mr. Ayers, who was a member of the same body, voted the same way I did upon the final passage of the bill. But that perhaps is no matter. I will state in answer to this charge, that 1867 is not 1872. In 1867 there was not in Minnesota a north and south through line of railroad. The clamor was for roads at any price, or any terms, and he would have been a bold man and a public mischief at the same time, who would have prevented the building of such roads by obstructive legislation. In regard to this particular road there was this consideration. It was a road destined to run to Winona, along the bank of the Mississippi river. That river has been for years monopolized by a steamboat combination whose exactions had caused the people of the State to meet in convention for the purpose of devising means of relief. As one means to this end, the speedy construction of the river road was demanded. It was intended to be, what it ultimately became, a line competing with the river. I ask close attention to the history of the bill, for it bears with controlling force upon the record of Messrs. Barton and Ayers upon this very road, at the session of 1872. So careful was the Legislature of 1867 to compel this line to be a competing line, that by the express language of the act it provided "that this railroad company shall not have the power to consolidate with any other railroad company within this State." That Legislature knows well enough that so long as this road was independent of consolidation it would necessarily be a competing line. The bill passed, and so the law remained until 1872. In 1871, this road, in violation of the law, sold out to and consolidated with the Milwaukee & Chicago Railway Company, a foreign corporation, which

in its turn is a consolidated member with the Milwaukee & St. Paul Railway Company, another foreign corporation. In 1872 a bill was presented in the House of Representatives, of which Messrs. Barton and Ayers were both members, confirming and ratifying this violation of the law by which the Legislature of 1867 had endeavored to prevent this very consolidation.

It is House file 117, and came up for final passage February 21, 1872, and is reported on page 375, of the House Journal. It is entitled "A bill for an act to confirm the sale of the St. Paul and Chicago railroad to the Milwaukee and Chicago railway company." It passed. "Those who voted in the affirmative were Ayres, Barton." The work of the legislature of 1867 was wholly undone. But the perverse spirit of mischief was not content with simply that. This road, thus sold out to a foreign corporation, did not, in the opinion of these gentlemen, have power enough to regulate freights. So by the act thus voted for by them, it was provided that this road might exercise all the rights and franchises heretofore conferred upon the St. Paul and Pacific railroad company, another corporation. What are their rights and franchises upon this question of freights? It is provided in section 7 of the charter of that company, that "*the board of directors shall have power to establish such rates for the conveyance of persons and property upon its railroad, as they shall from time to time determine, and to charge the same and to levy and collect the same for the use of the said company.*" In this shape the bill went from the House to the Senate, and it raised such a storm there that the attention of these gentlemen must have been attracted to what they had done, if they did not know it before.

Senator Buell, of Houston, rose in his place and said, if he is correctly reported in the St. Paul *Pioneer* of February 25, 1872, "that the St. Paul and Pacific railroad had the power by its charter to regulate rates; that the extraordinary provision should not be extended to other roads. It would eternally bind down the people of the State to this road." A Senator then offered an amendment, (page 329,) Senate Journal) that the rights herein are granted, and this act is passed upon the express condition that the Milwaukee & St. Paul railway company shall at all times carry freight and passengers upon its road at reasonable rates." Senator Childs didn't see what particular force there was in reinacting the Constitution, especially when it was not proposed to strike out of the bill the clause by which the power of the St. Paul & Pacific as to rates were expressly conferred upon this consolidated corporation; and he therefore moved to amend the amendment of the Senator by adding thereto an amendment which was "that the acceptance of this act shall subject the said Milwaukee & St. Paul Railway Company, and all and singular its line or lines of railroad, and all the branch lines of railroad owned, controlled, or operated by said company within this State, to all of the laws, rules and regulations of this State, now in force or hereafter to be enacted, relating to the use and management of railroads; and the maximum rates and tolls for the transportation of freight and passengers over any of the said lines of railroad shall not exceed the maximum rates now or hereafter to be established by law."

This amendment meant business. It proposed to subject this road to the law passed by the Republican Legislature of 1871 prescribing rates, which was then pending in the Blake case in the Supreme Court of the State. Senator Childs' amendment was lost. The amendment offered by the first Senator was carried, and the bill went back to the House perfectly illuminated with discussion and criticism.

It shone bright enough to dazzle a blind man. It did not dazzle the eyes of the Owatonna nominees. It came up again in the House on February 26, 1872—is reported on page 535 of the House Journal: "The question was taken upon the passage of the bill as amended. Those who voted in the affirmative were Ayers, Barton,—"

Here was an excellent opportunity, by presenting Mr. Childs' amendment in the House, to carry out the principles of the Owatonna platform, that "the right to prescribe a rate of tolls and charges is an attribute of sovereignty." Neither of these gentlemen did so, and through their action the bill became a law, and remains so yet, expressly by its terms contracting away the right of the State to prescribe rates, giving that right to the board of directors of a foreign corporation, and nullifying the law of 1872 in relation to rates.

"*Resolved*, That the subserviency of the present candidate for Governor on the Republican State ticket," etc.!!

I can call to mind but one parallel instance of coolness by way of resolution, and that is the resolution of the Democratic convention of Massachusetts, held last month, in which it is solemnly resolved "that the Republican party is responsible for the seduction of Democratic members of Congress to corrupt schemes."

Let me pursue yet further the record of the Owatonna nominees at that session. We all know to what extent the railroad companies of this State enjoy immunity from taxation. The roads which were incorporated in territorial days obtained charters which authorized them to pay a per cent. in lieu of all taxes. Their lands are untaxed as long as the companies hold them. The citizen builds and pays for the roads, and school-houses, and the odd sections with which the State is tessellated, owned by the companies, do not share these burdens, but get all the benefits of the increase of value of which these improvements are the cause. This is felt now to be a great evil. The St. Paul, Stillwater and Taylor's Falls road received a grant of lands from the State. It was organized under the general laws, and hence its property and their lands were taxable like other property. This road desired relief from the common burden. So the House, in 1872, (page 442 House Journal) passed "a bill for an act to provide for the payment of a per centage of its gross earnings in lieu of all other taxes." "Those who voted in the affirmative were Messrs. Ayers, Barton,—"

The Minnesota and Northwestern road came up for help. It was incorporated in territorial times, and by section 9 of its charter, "the directors of said company shall have power to make all needful rules, regulations and by-laws touching the rates of toll, and the manner of collecting the same."

Here again was an excellent opportunity to refuse legislative favors until the company would consent to be bound by the act of 1871, concerning rates, which all of the companies which have such powers as this one has, maintain is invalid as to them. The opportunity was suffered to pass unimproved. The bill came up in the House on February 9th, 1872. House Journal, page 213. "A bill for an act to amend the charter of the Minnesota and Northwestern Railroad Company." Those who voted in the affirmative were Messrs. Ayers, Barton, ——."

The next in order is the Minnesota Valley Railroad Company. The exceedingly able gentleman who is the president of that road firmly denies that his road is at all bound by the rate act of 1871. It is claimed that it is possessed of one of those inviolable sanctuaries in the way of a charter. Now what did this corporation want of the legislature of 1872? Nothing less than permission to construct a branch railroad from a point on its main line to the south line of Faribault county, with a branch from that branch to another point on the Iowa State line. The bill which passed contained a provision that the provisions of the act incorporating the Sioux City and St. Paul Railroad Company (it is the same road with the Minnesota Valley road) "and all acts amendatory, additional or supplementary thereto, or conferring corporate rights, powers, or privileges enjoyed by said company, so far as may be convenient or necessary for the construction or operation of said branch lines, are declared in force and applicable to the branch line."

Now by the charter of the Minnesota Valley road, it is entiled to all the privileges and franchises formerly owned by the Southern Minnesota, prior to the foreclosure of the mortgage by the State (sec. 1, charter.) This was one of the territorial roads whose descendants claim perfect immunity from all legislation which attempts to control their charges. Making this claim, the descendant asked the Legislature of 1872 for authority to build two branches into a portion of the State as yet untraversed by railroads. Here was another golden opportunity to subject, not only the new lines, but the old one also, to the provisions of the law of 1871—or at least to attempt to do so. No such attempt was made. The bill passed the House Jan. 14, 1872. Page 295, House Journal:

"House File No. 265. A bill for an act to authorize the Southern Minnesota Railroad Company to construct a branch railroad from some point on the main line in Faribault county via Blue Earth City, to the Iowa State line. Those who voted in the affirmative were Messrs. Ayres, Barton—"

The Hasting and Dakota road next appear upon the scene. It is a dependency of the Millwaukee and St. Paul Railway Company and is consolidated with it. It was incorporated in 1857, and claims, of course, absolute power to fix rates and absolute immunity from legislative control. It wanted to save its grant by obtaining an extension of time in which to complete its road. No attempt was made to affix any conditions to the legislation by which this road obtained from the Legislature of 1872 all that it asked. No effort was made to say that you can take relief conditional upon your subjection to the rate law of 1871. The bill passed the House January 25th, 1872; House Journal page 109; "A bill for an act to extend the time within which the Hasting and Dakota Railway Company may build a certain portion of its railway." "Those who voted in the affirmative were Messrs. Ayers, Barton,—"

And now comes the Winona and St. Peter Railroad Company for additional power. This is the road which contested in the courts the validity of the rate law of 1871, claiming that by implication of its charter it is superior to legislative control, and can regulate its own rates at pleasure, as it is doing to-day, and as it did about a month ago, when it joined with the Milwaukee and St. Paul road and added three cents to its rates for wheat. It, too, has been swallowed by a foreign corporation. It wriggles. a smaller serpent in the belly of the Northwestern road—which came over from Wisconsin and swallowed it, from Winona to Lake Campeska. It would naturally be supposed that this read would receive peculiar attentions when it asked that Legislature for legislative favors. Possibly counsel were at that moment arguing the case of Blake against the Winona and St. Peter Railroad Company in a room adjoining the Representative chamber. What did this road ask? Nothing less than permission to build another road from Waseca to the State line. Were the promoters of the of the bill told that theycould not have relief except upon submission to the provisions of the act of 1871 concerning freights, which it was then contesting in the State Courts, and which it has since taken to the Supreme Court of the United States? Not at all. It got all it asked without restriction or dissent, and to make assurance doubly sure as to the power it claims to levy its own freight, the bill contains a provision that "all the provisions of the charter of the Winona and St. Peter Railroad Company, so far as applicable, necessary and convenient, and not contrary to provisions of this act, are continued, and shall be extended to, and be in force for, the construction and operation of the branch road authorized by this act." Continuing in force as to a new road the very law under which the company claimed its exemption from State control.

"Resolved that the subserviency of the Republican candidate for Governor," etc., etc.!!

But I will not tire you further. In conducting this canvass I shall avoid personalities. I am personally acquainted with every candidate upon the Owatonna ticket excepting Col. Stevens. They are men

whom I respect and esteem, and nothing that I shall say shall give them warrant to withdraw the respect, and esteem in which I hope they hold me. In this discussion about consistency, I have proceeded not in anger but with a sorrow which has deepened into abiding grief as the investigation proceeded. I am sorry that Mr. Cox left his agricultural pursuits at St. Peter and made the discussion necessary.