INCIDENTAL SUGGESTIONS

RESTRAINING THE POWER OF FEDERAL COURTS.

Chicago, August 19.

I am much interested in the subject of your editorial, "Powers of the Supreme Court," in the issue of August 18, at page 842; but it seems to me that you have not touched the most vital point of the subject. The provision referred to in Congressman Berger's bill is in conformity with an express provision of the Constitution and with a previous decison of the Supreme Court.

Secton 2 of Article III of the Constitution provides that, except in the few cases where the Supreme Court is given original jurisdiction, it "shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make." I believe it is generally acknowledged that Congress has power to fix the jurisdiction of the inferior Federal courts which it has established. Consequently it seems that the power lies with Congress to limit the matter upon which the Supreme Court or other Federal courts may pass, except in cases "affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party."

As to the attitude of the Supreme Court in this matter, I am informed that it recognized this power of Congress in a case involving the reconstruction laws, which came up in 1869. Congress had passed an act prohibiting the Supreme Court from passing upon the constitutionality of the reconstruction laws, and that court consequently refused to hear a case involving his point on the ground that it did not have jurisdiction.

It seems that Congressman Berger is better informed upon this point of law than many of the lawyers who have been discussing the "legislative functions" of the courts in the public press, and that this provision in his bill is in entire conformity with the constitutional powers of the Congress. It would seem, too, that much of the complaint that is lodged against the courts for nullifying legislation is misdirected. The remedy, so far as the Federal courts are concerned, lies with Congress, and it is up to that body to see that its own interpretation of the Constitution is not interfered with by any other branch of the government. So long as it acquiesces in the review of its laws by the judiciary, the latter cannot be blamed for exercising that function.

It does not seem to me that the lesser executive officials are in a position to ignore the courts in their execution of the law. Of course, if supported by the President and the army, it would be physically possible for them to ignore a judicial order, but usually they cannot depend upon such support. Actually, the courts are obeyed. Many instances are extant of the interference of Federal courts with the enforcement of State laws, by injunction, as in the case of the railroad-rate acts of South Dakota, Georgia, etc. No doubt similar instances exist where the activities of Federal officials have been restrained by judicial injunction.

The remedy does not appear to lie in the defiance of the courts by executive officials, but in a limitation of judicial power by act of Congress. For instance, Federal courts should be prohibited from interfering in any State affairs, unless brought to them by appeal after decision in the State courts. The issue of injunctions should be very explicitly limited. And in cases where Congress wishes its decision as to constitutionality to be final, it needs only to insert a clause to that effect, as in the bill for old-age pensions. The latter provision is likely to become increasingly popular.

M. G. LLOYD.

NEWS NARRATIVE

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

Week ending Tuesday, August 22, 1911.

Adjournment of Congress.

Without division, the Senate voted on the 19th to close the special session of Congress at 3 o'clock on the 22d. The House having adopted this resolution the final adjournment came on the day and at the hour mentioned.

✤ ✤

The Wool Tariff.

President Taft vetoed the wool tariff bill on the 17th. [See current volume, page 853.]

✤

The principal point of his veto message is opposition to tariff revision until expert evidence is reported by the tariff board authorized by the existing tariff law.

✤

On coming before the lower House for action on the 18th, the President's veto was discussed and the vetoed bill put upon its passage. Although it received 227 votes to 129—a majority of 98 against the veto—it lacked 11 of the necessary two-thirds and therefore failed of passage. Voting with the majority against the veto were 22 progressive Republicans.

✤

The debate had been closed by Speaker Clark. When he left the chair to take the floor, the great political significance of his act was like an inspiration to the Democratic members, and they gave him a tremendous welcome. Their enthusiasm grew as he developed his argument against the veto, and the delight his supporters expressed at the climax of his speech amounted almost to frenzy. They seemed to recognize the Speaker as the Democratic spokesman for the Democratic party against the President, and on the tariff issue, in the approaching Presidential contest.