# The Nation.

*NEW YORK, THURSDAY, DECEMBER 2, 1909.*

## The Week.

The tariff question has been so wisely and so definitely settled, the mouths of the remonstrants have been so emphatically stopped, the ultimate consumer has been so unmistakably persuaded of his own non-existence, and the country's desire to be let alone has been so forcibly expressed, that just three months after the enactment of the wisest, safest, and best tariff measure this country has ever known, the standpat champions are facing the dread possibility of a reopening of the tariff discussion in Congress. That the call to battle is sounded from within the ranks of true believers in Aldrich and Cannon, only makes the situation worse. The prospect of a tariff war with Canada is bothering the Administration. The men who shape our tariff laws for us have so got into the habit of taking for granted the submission of a free and valorous people that the possibility of a foreign nation refusing to do likewise seems scarcely to have entered into their consciousness. Hence we have the challenge to Canada, flung out in sublime indifference to the fact that to-day Canada can get on better without us than we without her. We sell Canada manufactures nowadays and buy raw products from her. War with such an opponent would mean that our protected interests had been robbed in the house of their friends.

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There was an undeniable appropriateness in asking Speaker Cannon to make an address before the Knife and Fork Club of Kansas City. He has always been able to rival the gentleman whom Thackeray saw dining on a Mississippi steamboat, and of whom the novelist testified that "the play of his knife was fearful"; while the fork that the Speaker uses is by preference a pitchfork. He had glorious sport in describing the insurgent Republicans as so many Lucifers flung over the battlements of Heaven. If they are not "read out of the party"—and Mr. Cannon denies that he has attempted to read them out—they ought, he declares, to take themselves out and no longer remain as so many traitors in the camp. What the Speaker would like is a nice little, tight little party, in which discipline would always be perfect, and in which no members would have such queasy stomachs as not to be able to swallow his alliances with Tammany, and his other pretty ways. Whether such a party could ever carry an election or not, is a question with which the Speaker does not vex his righteous soul. But he is going to be the most loyal supporter of President Taft, let no man doubt of that. On this point, Uncle Joe's words were effusive to the point of being suspicious.

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The gathering of eleven hundred New Yorkers at the dinner of the Economic Club, last Monday night, to listen to the exposition of the Monetary Commission's work and purposes by its chairman, was a most wholesome sign of the times. Remodelling of a bank and currency system is commonly esteemed a dry and technical topic, and a long address on that theme, in which the problem itself is canvassed without even specific discussion of the political programme of the Commission, is not what is usually classed as material for an after-dinner speech. Yet this large audience listened with the closest attention to Senator Aldrich's analysis of banking practices as the Commission had found them here and abroad. Senator Aldrich frankly stated that no banking bill has yet been drawn up for Congressional consideration, and that in fact the Monetary Commission itself has not yet agreed, even in principle, on the solution which it will recommend. That Senator Aldrich personally favors a Central Bank of Issue has long been known, and was easily to be inferred from his address, notwithstanding the fact that he carefully abstained from recommending that recourse as a probable solution. Our readers are aware of our own feeling that the plan of a Central Bank must be approached with the utmost caution and reserve, until three important considerations have been made clear, viz., its actual relations to existing banks, its possible relation to politics, and the question not only of its nominal but of its certain independence of promoting and speculating influences in finance. We do not feel ourselves ready to subscribe unreservedly to Mr. Aldrich's conclusion that, because the central banks of England, France, and Germany have no political entanglements, therefore a central bank of the United States could have none. Nor, until we know how such immunity is to be guaranteed, should we feel confident in the freedom of such an institution from the influences which have at times so balefully perverted the functions of our life insurance companies and even of our banking institutions.

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In answer to the question, "Will Congress investigate the Sugar Trust?" Representative Payne is quoted as saying:

> I don't think it will. The matter is being pretty thoroughly investigated now. An investigation by Congress will depend on whether the Federal district attorney cannot do it more effectively than Congress.

But this is not at all the question. If a Congressional investigation at this time would involve any risk of interfering with the effectiveness of the criminal prosecutions, it should by all means be put off to a later day; but the prosecutions, while the most urgent thing now in hand, cannot possibly cover all the ground of this portentous scandal, and cannot in some respects search as deeply. We all hope that Mr. Stimson may succeed in getting one or more of the real criminals—the big men in the Trust—behind the bars, but it is only too certain that a great part of the rascality will prove to be beyond the reach of legal punishment. The country has a right to know the full truth of the case, and to fix the guilt of those responsible for this great body of corruption, both in business and in politics. Congress only can bring out this truth. Senator Culberson and Senator Borah have declared most emphatically for a Congressional investigation, and there is every reason to expect that it will be urged upon the Senate. The only proper qualification of the demand is that expressed by Senator Borah, that it should be made subject to the necessities of effective prosecution of the criminal cases.

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The State Department's "waiting" attitude towards Nicaragua is rather a peculiar policy, if its purposes are as pub-

licly given. The chances of Zelaya's being kicked out of the Presidency by Estrada are considered so good at Washington that it has been decided to let Estrada avenge upon his rival the execution of the two Americans, Cannon and Groce. This is in strange contrast with the earlier announcements of the awful things we were going to do to Zelaya. The State Department at that time had a good section of the press behind it. If, backed up by popular opinion, Washington has as yet done nothing, the implication is that it has insufficient information to proceed on, or that the information it has secured does not make out a good case for us. The American soldier of fortune and professional trouble-maker is not the proudest product of our civilization in tropical countries. If Spanish-American revolutions were not so plenteously officered by natives of this country, and if Spanish-American revolutions were not so frequently backed by the sympathies and money of American residents, there might be fewer upheavals in Spanish-America. If Groce and Cannon belonged to the stormy petrel class, our hands are by so much weakened. If their execution was a violation of international law, the State Department should demand reparation without delegating Estrada to get it for us.

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Interested as we have long been in the modernization of the navy yards, we have felt that any reform to be thoroughgoing must begin with the Department itself—that is, with the eight bureaus. Now Secretary Meyer strikes a genuine blow at the faults of the bureau system by planning to abolish one of them in its entirety—the Bureau of Equipment—and grouping all the others in two divisions. In one of these are placed all the bureaus dealing with the human material of the navy, the Bureau of Navigation, the Bureau of Medicine and Surgery, the office of the Judge-Advocate-General, and the Bureau of Supplies and Accounts. In the other are to be found the Bureaus of Steam Engineering, of Yards and Docks, of Construction and Repair, and of Ordnance. This change has repeatedly been urged by Secretaries of the Navy and boards of officers, and cannot be too highly commended from the point of view of theory. Whether a closer coördination and coöperation of all the bureaus and both divisions will be obtained under the new system, time alone will show. But Mr. Meyer is not content with thus stirring up the "mossbacks" of the Navy Department. He has created a long-needed division of inspection and a division of operations of the fleet which will, it is to be hoped, provide for the systematic training of the crews and their officers in minor and advanced tactics. Abolishing the Board of Construction, which has been of little use save to formulate and demand of Congress great schemes of naval expansion, Mr. Meyer has provided an "advisory council" of four officers, the chiefs of the four divisions of material, personnel, inspection, and operations, who will become *de facto* a small "general staff" for the Secretary. Both in the Civil War and in that with Spain it was necessary to create such a council after the outbreak of war. Unquestionably, this arrangement will place enormous power in the hands of the four "aides" to the Secretary, as the new advisers are to be called. But here, again, everything will depend upon the unselfishness and devotion of the men in the highest places.

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In the navy yards, Mr. Meyer has compromised. He has not adopted the Newberry reforms *in toto*, which seemed to us based on common-sense and accepted business practice. He has instead established two divisions in the navy yards, one of hull and one of machinery. It is only fair to add that this is in line with some foreign practice, and that the head of each division will report to the officer in charge of the navy yard, who is, hereafter, to be chosen with an eye to his especial qualifications. It would obviously be unfair to the Swift Board and to Mr. Meyer to pass upon this plan before it has had a chance to demonstrate its advantages. A single manufacturing department must always be superior to two, in theory. It remains to be seen if, in practice, the navy-yard situation warrants a division. Great economies and a marked increase in efficiency accompanied the Newberry plan, and ought, in any event, to be maintained. We are glad to note, therefore, that the installation of a modern bookkeeping system is to be continued, and that technical officers will be kept at the head of the navy-yard divisions.

There is one resource which might and should be availed of to make such horrors as that of the Cherry mine impossible. The Department of Commerce and Labor would be exercising a function that is wholly salutary, and would be performing a plain duty, if it instituted a thoroughgoing investigation of the subject, and laid down the conditions which ought to be insisted on by the laws of every State in order to secure proper protection for the lives of the miners. The practice of other countries, especially Germany, is far ahead of ours, and American public opinion, if authoritatively informed on the subject, would insist that the present conditions should no longer exist. The plea that the expense of taking proper measures would be prohibitory may safely be pronounced worthless in advance. With the many agencies concentrating public opinion upon the right treatment of problems of this kind, there can be no doubt that, with the guidance of the Federal Government, the necessary legislation could be secured in all our mining States.

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The defeat of the proposed prohibition amendment in Alabama, known as the Comer amendment, is important as the first serious setback sustained by the anti-saloon wave which has swept over the South in the past few years. The majority against it is decisive, being reported as more than 20,000 in a total vote of about 100,000. The political prestige of Gov. Comer, and the political future of Judge Weakley, whom he had fixed upon as his successor, were staked on the issue, and the contest was intense. The result is one more illustration of the fact that sudden changes in fundamental matters are seldom so complete as they seem on the surface, and that it is wise to allow time for the setting in of a reaction before concluding that the change is permanent. A special interest attaches to the outcome on account of the reported intention of Mr. Bryan to declare for prohibition as a paramount issue. First rate "paramounts" are rare birds, and the Nebraska gentleman will have to wait a long time before he can catch another as lively as was the silver paramount under the peculiar conditions of 1896.

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Gov. Fort's strong opposition to the establishment near Lakewood, New Jer-

sey, of a sanatorium for the treatment of incipient cases of tuberculosis, undoubtedly reflects local sentiment. People everywhere resist the building near them of hospitals for the treatment of infectious diseases. The Lakewood protest is only one of many of the kind. Our readers will recall how strenuously the proposal to found a hospital for consumptives in Sullivan County was withstood by the residents there. This is natural, but it is none the less unreasonable, and, we might almost say, inhuman. The danger is greatly exaggerated in all such cases. Under proper regulation the exposure to infection is very slight. But even if it were not, can we deprive sufferers of what may be their one chance for life? It is a lamentable thing that our very scientific advance in the knowledge of the causes and nature of maladies like tuberculosis seems to implant a new instinct of dread or cruelty regarding those afflicted. No one hesitated in the old days of ignorance to care for consumptives under conditions which were far more dangerous to others than the location of a preventorium near-by could possibly involve. The change to the modern aversion and alarm is neither pleasing nor creditable. It makes the tender mercies of science to look cruel.

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The report of football casualties for the last day of the season is seven severely injured, of whom three may die. Five of the accidents occurred in a single Western game, in which the players evidently took football seriously. They have at least rendered a service in giving a final demonstration of the danger of the present game. But there should be no let up in the agitation for a radical overhauling of the rules because the season is over. The Rules Committee's meetings are held in December and January, and the final changes are sometimes not made until well into the spring. Hence the necessity for keeping after the committee from now on in order that they shall not be deceived into thinking that the outcry during the playing season was merely newspaper agitation and public hysteria. Never before has the feeling against football been so deep and widespread; never have the college authorities heard more directly and frequently from alumni and parents of students.

Mr. Roosevelt's words of congratulation on Commander Peary's achievement should bring home to people's minds the true question that has been raised by Dr. Cook's claims. The matter at issue has been no ordinary affair of personal rivalry; it was something in which all the world, and especially this country, had a real stake. "I am inexpressibly rejoiced," writes Mr. Roosevelt, "at his [Peary's] wonderful triumph, and proud beyond measure as an American that this—one of the great feats of the ages—should have been performed by a fellow-countryman of ours." This is the feeling with which we should all have been filled, and which would have been echoed throughout the world, had not attention been turned from the glory of the achievement to the question of the genuineness of Dr. Cook's asserted priority. It will be impossible ever to reëstablish the state of mind that would naturally have prevailed in the absence of this controversy; the thing has been hopelessly cheapened and belittled. This injury, not simply to Peary, but to all the world, and especially to all Americans, Cook has done by his imposture, if he is an impostor.

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Though the weight of numbers in the House of Lords was thrown against the budget by a vote of 350 to 75, it cannot be denied that the weight of argument in the upper chamber has been decidedly against both the constitutionality and the wisdom of rejection. No one speaks with more legal authority than Lord James of Hereford, and this eminent Conservative made a reasoned protest against the plan of the majority of the peers. When we reckon in Lord Cromer, Lord Balfour of Burleigh, and Lord Rosebery, on the same side, we begin to see what a preponderance of intellect and statesmanship the "lords from the wild" were counted upon to swamp by mere number of coronets. The spectacle lends point to the contention of the Conservative *Daily Telegraph* that the House of Lords ought to be reconstituted in such a way that really able peers should not be swept away by a brute majority of noble nobodies. Lord Morley's powerful speech of last Monday cannot be brushed aside merely because he is a member of the Government. It was a delicious stroke of satire by which he called Lord Lansdowne the Hampden of the present day. There may well have been in this a slanting reference also to Rosebery's comic suggestion that the Lords were withstanding taxation without representation.

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The relations between Church and State in France enter on an acute stage, curiously enough, with the accession of M. Briand to power. It was M. Briand who carried the Separation Law of 1905 through the Chamber, and who, as Minister of Public Instruction and Worship, was concerned with the application of the law and the supplementary legislation of 1906. The Minister was then attacked by the extreme anti-clericals on the ground that his attitude toward Catholicism was too conciliatory. Now that he is Premier, the time would seem to have come for establishing a lasting peace between the Government and the Church. Instead, we have the bishops taking the field against the Government's policy in primary education, and the organization of a Catholic party is seriously discussed. Have the bishops been led to believe that M. Briand may be driven into making concessions? That would be a risky step for the new Prime Minister to take, facing as he does, within his own party, the Combes faction of rabid anti-clericals: a faction that is strong, and alert, and hungry for power.

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At the Parliamentary election recently held in Norway, women for the first time voted for the candidates, and were themselves eligible for election. This revolution was accomplished, writes a correspondent of the Paris *Figaro*, with the same calm which prevailed when Norway detached itself from the sister-kingdom. At Christiania, for example, something under forty thousand women ("twenty-three thousand married women and fifteen thousand spinsters") took part in the election of members of the Storthing, yet there was "no outcry in the streets, no posters on the walls." They order elections more noisily in France: if no more wisely. Perhaps the tranquillity with which the innovation was effected is partly traceable to the long participation by the women of Norway in the communal elections—and to the circumstance that they have also served as members of the municipal councils.

*THE SUPREME COURT VACANCY.*

There has been no denial of the statement, first explicitly made by the Washington correspondent of the *Evening Post*, that President Taft intends to appoint Judge Lurton to succeed the late Judge Peckham in the Supreme Court. Indeed, the President has been avowedly conferring with members of the Senate Judiciary Committee for the purpose of discovering whether the confirmation of Judge Lurton would be opposed. There is no objection that we have heard of except on the score of age. Judge Lurton is a Democrat, but might well be selected to succeed a Democrat. His judicial record, with which President Taft is personally acquainted, is declared to have been honorable, and we know no reason to doubt it. But he is sixty-five years old; and it is gravely open to question whether any man of his age should be named for the Supreme Court, especially in view of the present composition and needs of that body.

Section 114 of the Federal Judiciary Act provides that "when any judge of any court of the United States resigns his office, after having held his commission as such at least ten years, and having attained the age of seventy years, he shall, during the residue of his natural life, receive the same salary which was by law payable to him at the time of his resignation." Later acts provide for retirement, with pension, on the ground of physical disability, short of ten years' service. Now, of course, there is no direction here that a President shall not appoint a judge who is above sixty years of age, but it is at least a fair implication that Congress expected every Federal judge to be capable of serving ten years before retiring at seventy. We believe that when Mr. Edmunds was Chairman of the Judiciary Committee of the Senate, he and his able colleagues, such as Senators Hoar and Thurman, insisted upon a strict construction of the statute; they would not report favorably the nomination of any Federal judge upwards of sixty. The Judiciary Committee of the present Senate, which is decidedly weak in its Republican membership, may not follow that precedent. In fact, it is announced that Senator Borah, who is probably the best lawyer among the Republican members, though his name is at the bottom of the list, has already seen the President and has agreed to waive his objection to Judge Lurton on the ground of age. It is to be presumed, therefore, that Mr. Taft can secure Lurton's confirmation, if he makes a point of it. But that will not alter the misgivings of many persons whose only interest is in the strong personnel and continued usefulness of the Supreme Court.

This conviction is not based upon a narrow interpretation of the Judiciary Act so much as upon the general principles which ought to govern, and upon the exigency which exists to-day in the Supreme Court. As a rule, everybody admits that a reasonably long service by the judges of the Supreme Court is desirable. It tends both to heighten its prestige and to give consistency and force to its decisions. If a powerful and dominating mind appears in the Court, as in the case of a Marshall or a Miller, let us say, service during a period of years will give it freer and richer scope, and leave a deeper impress upon our jurisprudence, than would be possible in a short time. And the abler the associates of such a judge, and the longer their term of vigor on the bench, the greater will be the unity and weight of their decisions. All this is elementary, and there is general agreement that Federal judges ought to be under sixty at the time of their appointment. Historically, only six Supreme Court justices have been named at the age of sixty-one or upwards, the oldest being Mr. Lamar, who was sixty-three when appointed.

The greatest actual need of the Supreme Court is the addition of one or two vigorous junior judges. This is not to say that the older justices are incapacitated, or that we ought not to value their old experience. No one charges that their mental powers are unequal to their work. But there is also a physical strain put upon them, from which they ought to get relief at the hands of younger and more able-bodied associates. We refer, of course, to the hard labor which has to be expended upon the preparation of opinions. After the Court has decided in conference what view to take in a given case, there is need of prolonged industry in compiling precedents and examining the authorities and running down the citations in the briefs of opposing counsel, and then of care and pains in beating out the whole in a decision that shall be as lucid in form as it is masterly in substance. A vast amount of this kind of work is constantly thrown upon the Court, and it is obvious that the older judges are not equal to the exertion required.

It is, we know, said of Judge Lurton that he is as robust at sixty-five as most men at fifty-five. But we cannot disregard the law of averages in these matters. If a judge turns out in old age to be a physical wonder, we may thank our lucky stars, but we have no right in advance to count upon his being a physical wonder. In all these things, we have to reckon with the general expectation of life. We cannot go on the supposition that every judge a President names will prove to be an Eldon. And with nothing but regard for Judge Lurton, we think that Mr. Taft would show a keener appreciation of what is lacking in the Supreme Court to-day, if he filled the vacancy with a younger man.

*SECRETARY BALLINGER'S REPORT.*

It is doubtful if any annual report by a Secretary of the Interior was ever watched for as was that published by Mr. Ballinger last Monday. This is due not only to the importance of the matters dealt with, but to the controversy which has been raging, in the press and at public meetings, over the policy of the new Administration respecting what remains of the national domain. We have had a whole series of charges and rejoinders. Subordinates of the President have been almost literally flying at one another's throats. The dispute went such lengths of bitterness that Mr. Taft himself was finally compelled to take notice; and in his long and clear review of the points at issue he definitely referred to Secretary Ballinger's forthcoming report as a document which would cover the whole case in a way to satisfy all reasonable men.

It would be too much to expect that the actual report will make an end of controversy, but it is only fair to say that on the main question it is strong and satisfactory. After reading what Secretary Ballinger sets down about facts and policies relating to the conservation of water sources, it will not be possible longer to assert that there is a quiet official conspiracy on foot to alienate to the public harm public lands which are capable of being used to develop water power. The Secretary, of course with the President's approval,