

tion the latter was a "shall," the former merely a "may."

#### THE END OF CANNONISM

The House then launched into a remarkable debate. Mr. Clark, of Missouri, Democratic floor leader, said: "It is competent for a majority of the House to do whatever it wants to do. . . . I remember hearing the Speaker say that a majority could pass an elephant through the House!" Mr. Payne, author of the present tariff law, and Republican floor leader, appealed to the members to stand together and uphold the hands of President Taft in the effort to carry out legislation recommended by the Administration, which would be endangered by chaos regarding the rules. But Representative Fish, of New York, immediately scored Mr. Payne for bringing the President's name into the discussion, declaring that the proposed reform was not a menace to the Administration programme, and adding: "If any man can say that the President is opposed to a change in the rules, let him rise in his place." No one accepted the invitation! At the close of the day the Cannon forces thought the situation well enough in hand to move that the House take a recess until the following morning. But the Insurgents and Democrats won by five votes, and the session was continued throughout the night. In order to give time for the regulars to get their forces together, Speaker Cannon had refused to rule on Mr. Dalzell's point of order, on the ground that he must have time to consult precedents, and the regulars made every effort to marshal a majority to sustain his decision when it should come and get rid of Mr. Norris's resolution. During Thursday night scores of members went home. But Speaker Cannon remained at the Capitol, from time to time surrendering the Chair to a trusted lieutenant. The House could do nothing until the Speaker should rule on the pending point of order, and the House could not compel him to rule. Toward morning enough regulars disappeared to break the quorum, and no efforts of the temporary majority could bring enough of these back to make a quorum. The long night's fight was continued

throughout the next day. During the day conferences were held between leaders of the insurgent and regular forces. At four o'clock on Friday the Speaker announced that he was prepared to rule on the point of order, but the House thereupon adjourned until Saturday noon, in order to allow further time for conference. The event recalls Mr. Randall's filibuster, when he was Democratic Speaker, against the Force Bill, and also the Democratic contests with Mr. Reed, the Republican Speaker and the author of some of the rules under which the House does business. Congress is now mindful of Mr. Reed's words, as found in one of his rulings: "If the House thinks that any occupant of the Chair is not carrying out its wishes and is not acting as its representative, the remedy is in the hands of the House." When the House convened on Saturday afternoon, the Speaker ruled that Mr. Dalzell's point of order against the Norris resolution was well taken and that the resolution could not be considered. An appeal was immediately taken from this decision, and on the vote upon it the Insurgent-Democratic forces were victorious by a majority of about twenty. A motion to lay the resolution upon the table was also lost by the same majority; and another motion to proceed with the consideration of the resolution was passed by a vote of 182 to 160. As we go to press, the result of this long and carefully prepared, but at the moment unexpected, attack upon Cannonism seems to be a complete victory. It only remains to be seen what concessions the allied forces may make for the sake of party harmony or of allowing the Speaker to "save his face."

#### THE PROPOSED COURT OF COMMERCE

The Administration bill for the further regulation of railways was last week still before the Committee in the House of Representatives, and, having been reported by the Senate Committee, was under discussion on the floor of the Senate. In an editorial article two weeks ago The Outlook gave a summary of the provisions of this bill, and raised certain questions regarding them. One point, however, which has been mentioned by the minority report on this bill, signed by Senators Cummins

and Clapp, and since then emphasized in the debate in the Senate, The Outlook did not refer to specifically. This is the question as to the extent of the court review. In brief, the question may be put thus: Will the Court of Commerce, if established by this bill, have larger powers in reviewing the acts of the Inter-State Commerce Commission than those exercised by the courts as now constituted? In other words, is the Court of Commerce merely to be an instrument for the segregation of inter-State commerce cases, so that they may be decided expeditiously and expertly, and thus relieve the Circuit Courts of such cases, or is it to be a court with new and enlarged powers which can annul and set aside the administrative orders of the Inter-State Commerce Commission, as the Circuit Courts, except on constitutional grounds, cannot now do? This question is of great importance. It virtually is the question that was discussed in another form in 1906, and then, apparently, definitely decided. At that time there was an attempt on the part of those who were especially concerned for the interests of the railways to secure in the Railway Rate Regulation Bill a provision for a broad court review. Such a provision would have deprived the Inter-State Commerce Commission of a great deal of its power, and would have burdened the courts with a multitude of administrative questions which they would have had to decide, not on administrative, but on judicial grounds and in accordance with judicial theories. Although there was a court review provision enacted, it has had the practical effect of assuring to the railways only the right to bring before the courts the question whether their property had, by the ruling of the Commission, been confiscated. This right the railway would have had in any case under the Constitution. To give to the courts any greater power over inter-State commerce than this would be to lay upon judges the burden of going into the merits of the decisions rendered by the Inter-State Commerce Commission, and would therefore make of the judges administrative officers. Now is presented this Administration measure which materially increases the power of the Inter-State Commerce Commission. It

is presented in response to a great popular demand that the Government shall exercise greater control than it now has over the National highways. Incidentally it establishes a Court of Commerce. If in the establishment of this new court the bill provides for the broad court review which was rejected four years ago, that fact ought to be known. That there is ground for believing that it does so is indicated by what is said in the minority report. There it is declared that when the draft of the bill was revised there was a provision which stated explicitly that nothing in the bill should be construed as enlarging the jurisdiction now possessed by the Circuit Courts and in the bill transferred to the Court of Commerce; but that in the later revision of the bill reported by the Committee to the Senate this provision was omitted. We cannot understand why such a provision should be omitted except on the ground that the bill intends to provide for a broad court review. The Senate should not leave this an open question. The bill should at all hazard be amended by the re-insertion of the omitted provision, distinctly limiting the jurisdiction of the Court of Commerce to that now exercised by the Circuit Courts. Greater latitude of appeal from administrative decisions of the Inter-State Commerce Commission than now exists would be detrimental to the public interest.



THE PINCHOT-BALLINGER  
HEARING:  
MR. GARFIELD'S TESTIMONY

Following Mr. Pinchot, Mr. James R. Garfield, Secretary of the Interior in Mr. Roosevelt's administration and immediate predecessor of Mr. Ballinger, testified at the so-called Pinchot-Ballinger hearing. After Mr. Garfield had been questioned by Mr. Pinchot's counsel and cross-examined by Mr. Ballinger's counsel, Mr. A. P. Davis, Chief Engineer of the Reclamation Service, was called as witness. The testimony of Mr. Garfield and Mr. Davis occupied more than three days, and the record of it, with the documents read and offered in evidence, occupies over four hundred closely printed pages. The testimony which these two experienced men gave was mainly in corroboration and elucidation, reinforced