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Appeal to Reason.

J. A. WAYLAND

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How Railroads Angle for Millions With Federal Judges as Bait

Judge Philips says he organized the famous Tampico Fishing Excursion; Judge Pollock says the Railroad Attorneys did the "inviting." Be that as it may, it is not disputed that the RAILROADS PAID THE BILL and that pending litigation before these distinguished jurists was decided in FAVOR OF THE RAILROADS and against the dearly beloved people. Draw your own conclusions--which is all that is left in the hat for the common folk to draw.

Kansas City Times.
An unexpected incident preceded the departure of Gardiner Lathrop, general solicitor of the Santa Fe system, and a party of friends for Tampico, Mex. Judge J. H. Durkee had invited seven friends to go with him on a tarpon fishing expedition. J. H. Durkee took a basket of game to Mr. Lathrop's private car as a gift to one of the party. J. H. Durkee, state game warden, intercepted the basket and confiscated the contents, including two geese, nine snipe and half a dozen prairie chickens. The snipe and the geese were returned, but Mr. Durkee retained possession of the chickens. The personnel of the party were:
Judge John C. Pollock, United States district judge for Kansas.
Judge John F. Philips, United States district judge for the western district of Missouri.
Judge Smith McPherson, United States district judge for the southern district of Iowa.
Gardiner Lathrop, general solicitor for the Santa Fe system, Chicago.
Samuel W. Moore, general solicitor for the Kansas City Southern railroad, Kansas City.
Judge O. M. Spencer, general attorney for the Burlington, St. Joseph, Dr. Jabez N. Jackson, Kansas City.
W. N. McLeod, one of Senator Warren's law partners.

By GEO. H. SHOAF,
Staff Correspondent Appeal to Reason.

The foregoing news item was given obscure publication in the Kansas City Times, Kansas City, Mo., in its issue of Monday, January 29, 1906. Harmless enough on the face of it, this item, when carefully read and pondered, is seen to convey information of a significant and far-reaching character. The reporter who wrote the item, and the paper that published it, did not, perhaps, at the time realize its import. It was given as a matter of news and was printed as an incident of every-day occurrence. Had it not been for the confiscation of the contraband game the fact of the trip would never have been discovered.

Briefly, Gardiner Lathrop's private car was attached to a train at the Union station, Kansas City, Mo., and with the party of federal judges and railroad lawyers, departed for Tampico, Mex., Sunday night, January 28, 1906, at 10:30 o'clock. The car and the party returned to Kansas City on the night of Tuesday, February 13th, two weeks later. On the return trip, it is reported, one of the distinguished excursionists, in a fit of drunkenness, fired his revolver at another member of the party, but missed, the bullet ploughing its way through the end of the car.

There were other doings of a character that would not look well in the columns of the Appeal. We are not dealing in the mud and slime of capitalism. We leave that for the respectable journals of the Privileged Phutes.

Object of the Trip.
It is enough, then, simply to declare the fact of the journey of debauchery, taken by three federal judges and three railroad lawyers, on a car equipped with wines, edibles and cigars, the expense of which was pro-rated by the railroad systems which later benefited by decisions rendered by the judges to the detriment of the interests of the people of Kansas, Missouri and Iowa. It is not here the purpose to describe the scenes and experiences aboard the car; how three imported chiefs were kept busy supplying the party with viands logical to the tastes of lawyers and judges whetted for service by multitudinous brands of booze; how the clink of the double eagle played at poker responded to the rhythmic movements of the car as it sped on its mad chase through the night; how, after tiring of this sport, lawyers and judges were tucked in their berths by porters furnished by powerful railroad corporations; nor will the shooting scrape, in which one of the jurists narrowly escaped death, be recounted. These scenes can better be imagined than described.

Had it not been for the unexpected seizure of the hamper of prairie chicken by State Game Warden Rodes at the Union Station just prior to their departure the little jaunt of federal judges and railroad lawyers would never

have been disclosed. J. H. Durkee, a Kansas City coal dealer, at the request, it is said, of a prominent Kansas City hotel man, took the hamper to the depot, and was in the act of transferring it to the car when the game warden approached. The prairie chicken being killed out of season made the bearer amenable to arrest. Durkee was arrested, and, the following day, was fined \$36.65 by Police Judge F. K. Jenney. He was charged with having in his possession game killed out of season. An investigation instituted by H. R. Wamsley, for sixteen years a member of the Missouri state legislature, disclosed that the prairie chicken had been killed in Texas and had been shipped through Oklahoma and Kansas into Missouri. Believing that the federal laws had been violated, Representative Wamsley laid the matter before United States District Attorney A. S. Van Valkenburg, of Missouri, with the demand that action be taken against the violators. *A: this would have involved the judges and railroad lawyers, the United States district attorney refused to act.*

Judges Violate the Law.
"I am positive the federal laws were violated in the prairie chicken incident," said Representative Wamsley to the Appeal to Reason representative. "It is a violation of law to ship certain game from one state to another, and it also is a violation of law to receive game thus shipped. I had it on good authority that the prairie chicken were killed in Texas. The laws of Texas, as well as the laws of the other states, prohibit the shipping of prairie chickens, and the penalty for shipping or receiving these particular birds is a fine of \$200. Justice demanded a fuller investigation of the incident; as it was, Durkee was made the scapegoat for the crowd."

Representative Wamsley had several conferences with Leslie J. Lyons and Cleveland A. Newton, assistants to the United States district attorney, and made every effort to have the shippers and receivers of the contraband game prosecuted, but his efforts were fruitless. *Pollock, Philips and McPherson were United States judges appointed for life, and should any ordinary citizen dare charge them with crime or insist upon their being prosecuted? Not much.* The Kansas City papers treated the matter as a humorous piece of news, featuring the arrest and penalizing of Durkee, and giving as little publicity as possible to Wamsley's efforts to have all the law-breakers apprehended and fined. The return of the judicial party was heralded by the Kansas City press in a simple paragraph announcement.

A Judge Criticizes the Trip.
However, Wamsley's activity, and the fact of the trip, set tongues wagging, and it was not long before "that Tampico trip" was the subject of general conversation in professional and business circles in the larger cities of the three states. George Creel, editor of The Independent, a Kansas City weekly publication, gave the affair a page write-up, which added fuel to the fire of criticism and comment. At last Judge J. McD. Trimble, of Kansas City, Mo., in a public address, was constrained to refer to the Tampico excursion in terms of condemnation. In its issue of February 19, 1906, the Kansas City Times reports as follows:

The range of discussion by the speakers at the regular weekly session of the municipal university yesterday afternoon in the university building included the anti-pass law, franchise granting, the threatened invasion of China by the United States, and John D. Rockefeller. In connection with the railroad pass question Judge J. McD. Trimble referred to the recent pleasure trip to Tampico which three federal judges took as guests of Gardiner Lathrop and two other solicitors for railroads. "I do not think there was anything like corruption intended or apprehended in the invitation and its acceptance," said Judge Trimble. "I do not believe that any one of the judges who was thus entertained would consciously allow the recollection of social favors to influence him in the conduct of cases in which his hosts were interested. I believe if the thought had occurred to them that the public might put an adverse construction upon the affair not one of those judges would have dreamed of going off even on a pleasure jaunt with railroad attorneys. But the fact remains that, no matter how disinterested were their motives,

the action begets distrust in the public mind, and that is enough to condemn it."

Judge Trimble dwelt upon the high standing of all the men in the Tampico party and that by reason of their ascendancy the affair gained greater significance. He said that but for a minor episode, the confiscation by a game warden of six birds intended for the private car, the fact that three federal judges were being entertained by the general solicitors of three railroads probably would never have become public knowledge.

"The distinguished guests were judges in the districts in which one or all of the three railroads represented by the hosts operate. I do not hesitate to say that I believe that those general solicitors would not have invited the men they did had not those men been federal judges. No doubt the invitation was fairly, innocently worded.

"But the men of the caliber of the three judges in question ought and must have known that there was dope in the middle of the sugar-coated bait which was held out to them. While the dope may and probably will not poison them, the people believe it will. Such an affair as the Tampico pleasure jaunt begets in the people a disregard for judges and consequent disrespect for laws. The courts are ours; the laws are ours; we made them both and can unmake them at will."

Judge Philips Explains.
As may be imagined the published remarks of Judge J. McD. Trimble increased the growing interest in "the Tampico trip" and the affair was given more elaborate space in the Kansas City papers. Finally the situation became so acute that one of the judges felt impelled to make a public explanation of his conduct. In a signed communication which was printed in the Kansas City Star, Judge John F. Philips wrote:

To the Star: In view of the prominence given to "that Tampico trip" in The Times of this morning I feel constrained to depart from my customary course of silence affecting my conduct as judge, or in any matter official, by begging sufficient space in your paper to make a plain statement of facts.

Responsive to the intense spirit of demagoguery of the hour, a pleasure trip of personal friends is thought to be colored with a sinister purpose on the part of Gardiner Lathrop, as solicitor of the Santa Fe Railway company, to place under obligation three federal judges. In justice to him and the truth I state that the fishing excursion to Tampico was entirely of my initiation.

For four years past I had heard of the rare sport of tarpon fishing at that place. I had enjoyed the recreation of like sport at Arkansas Pass, and desired to test Tampico. As both Mr. Lathrop, and his law partner, Samuel W. Moore, had also fished at Arkansas Pass, some months ago we discussed together our desire to go to Tampico whenever conditions made it practicable. We agreed that if we could get away this month, deemed most favorable for the sport, we would go, provided a companionable party could be organized. As this month approached I renewed the suggestion, and obtained Mr. Lathrop's consent if he could get away from his work.

As I was considered the originator of the excursion he left it largely to me to make up the personnel of the party. I had visited the Yellowstone park in company with Judge McPherson. My personal knowledge of his rare character and social qualities brought him to view, and I urged him to become one of the party, and he did so. Judge Pollock was holding court in my district, while I was doing work on the court of appeals and circuit. As he is specially fond of the sports of field and streams I urged him to go and he consented. Judge Spencer of St. Joseph for a quarter of a century has been my personal friend. A more delightful traveling companion, a more unselfish, big hearted man I do not live. I urged him to go, and he consented. I also invited Dr. Heddens of St. Joseph to go. I had traveled with him through Yellowstone park and knew his worth. He could not go. I invited our fellow townsman, Dr. Jabez Jackson, and he went, as our "friend and physician." Mr. McLeod, attorney of this city, my close personal friend joined us.

It is true that we rode in a special car, just as I would have gone fishing in the private wagon of a friend, standing my proportion of the "grub and bait." From its inception to its close the "outing" was distinctively social in its makeup and character. Whenever I shall avoid my friends of long standing, and they me, because they are lawyers representing railroads and because I am a judge I shall despise myself and the office. If any one thinks that such personal friendships and intercourse

STAND PAT!

In the struggle to maintain a free press in the land of Washington we are approaching a crisis. The issue is as vital to the American people as the issue of life and death. Indeed, with one more step and their liberty destroyed the people were better dead. To live in fetters, the food of parasites and the sport and prey of petty tyrants, is not to live at all but to die by inches, tormented by aspirations impossible to realize and covered with shame and dishonor.

The struggle is therefore one for life itself, and some what may no true man will waver in the conflict.

Comrades, let us present a solid battle array to the enemy! Let us stand pat in the face of every danger and we can not fail!

The courts of the behest of criminal capital have throttled our liberties and threatened to strangle us to death.

The Appeal to Reason has called a halt! Upon that issue it will stake its life.

Stand pat, comrades, and the victory is ours.

cannot be indulged without judicial corruption, subservency or sinister design. I only beg to be allowed to indulge the opinion that such a person judges others by his own conscious lack of virile virtue and integrity. From a life-long acquaintance with Gardiner Lathrop I entertain such opinion of his character and his ideals that I believe him incapable of doing aught to unduly influence a judge or to prevent justice.—John F. Philips.

Commenting on Judge Philips' reply to the criticisms that were leveled at the excursionists, George Creel, editor of The Independent, said:

This paper is glad to see Judge Philips answer, giving, as it does, such a stern rebuke to the modern spirit of demagoguery. Had John D. Rockefeller, or Richard McCurdy possessed one half of Judge Philips' courage, there would be fewer vicious attacks on the great and good and wealthy, and less discontent and malevolence in the breasts of those whom, in lack of better phrase, we may call the "masses."

At the very beginning of his reply Judge Philips nails a lie, or rather, rights a misconception. It has all along been supposed that the railroad solicitors invited the three federal judges, but this was not the truth. Judge Philips asked to be taken on the trip. As he says, "the fishing excursion was entirely of my own initiation."

What a fearless admission! What a splendid light does it throw upon the characters of Mr. Lathrop, Mr. Moore and Judge Spencer! Instead of coaxing the judges off on a little jaunt, as the demagogues tried to make us believe, the judges coaxed them. Very likely they did not want to go, and only consented because the jurists could not make the trip without a private car, thus giving a rare exhibition of unselfishness.

This paper believes that Judge Philips' made a splendid answer to an insidious attack. Of course, it could have been more splendid had it not been written under the influence of excitement. For instance, it would have been better had he been more explicit in the matter of "grub and bait." It must be admitted that he is guilty of ambiguity here, for it is indeed difficult to know whether he paid his share of all expenses or not.

The Independent believes of course that the entire expenses of the Tampico trip, private car, food and drink, were shared by all on some equitable pro-rata basis, just as Judge Philips implies. It is suggested, however, that he make one final concession to the "intense spirit of demagoguery" of the exact amount.

The whole affair is regrettable and most unfortunate, and we cannot too strongly rebuke the officiousness of State Game Warden Rodes. But for him all this disgraceful publicity would have been avoided. Still, what is done is done, and the thing to do now is to prevent any recurrence of the affair.

Decisions After the Trip.

At the time these federal judges went to Mexico with the railroad lawyers the constitutionality of the railway freight and passenger rate reduction, as recently passed by the Missouri legislature, was pending in the federal court. The general assembly of Missouri passed a maximum freight law, making a reduction of twenty-five per cent in freight rates upon various commodities of traffic, amounting to about one-fifth of the entire freight traffic of the state. June 14, 1905, the date on which this act of the legislature was to take effect, the railroads doing business in Missouri secured, without notice, from Federal Judge John F. Philips, a temporary injunction, or restraining order, restraining the attorney general of the state and the board of railroad and warehouse commissioners, and a number of shippers along the lines of each road, joined in the suit as defendants, as representatives of the entire class

of shippers, from taking any action to enforce the law. Shortly after this the application for a temporary injunction was heard by Judge Philips and Judge Smith McPherson, who, without argument, granted the same. Following this the attorney general and the board of railroad and warehouse commissioners filed demurrers to the plaintiffs' bill, but the judges, arbitrarily refusing to hear the demurrers, adjourned the court for the summer. In the fall the judges overruled the demurrers, whereupon the defendants filed their answers to the plaintiffs' bill, and sought to secure the filing of replies upon the part of the railroad companies. Instead of the court proceeding with the case without unnecessary delay the attorneys for the railroads and the two federal judges, with the federal judge from Kansas, made the Tampico trip in a private car belonging to the railroad companies.

Upon the return of the party from the fishing trip the replies of the railroad companies to the defendants' answer were filed. Delay followed delay in these legal proceedings during which, meanwhile, the Missouri legislature passed a two-cent passenger law. Later, Judge McPherson, arbitrarily and without notice to the state, issued an order enjoining the railroads from obeying either the two-cent passenger law or the freight rate law. This action on the part of McPherson was endorsed in a series of acts by Judge Philips, and was afterwards affirmed by Judge Pollock.

Judge Pollock Defends Himself.

Throughout the fight between the state government of Missouri and the railroad corporations, as a result of the aid rendered by the federal judges, the railroads scored decisively at every point. While several country papers condemned this betrayal of the people's interests by the judges, the majority of them—especially the republican papers—ignored the matter. Without exception, the big dailies purposely obscured the legal points in order to confuse the public mind; lawyers, and interested shippers, however, saw through the game and understood the rascality of the judges, but fearing to invite the wrath of the lords of the federal bench, not one man dared express his indignation.

In the Kansas City Star, May 4th, of the current year, in an interview defending himself generally in answer to charges in the rate cases made in congress by Representative Murphy, of Missouri, Judge Pollock says:

"As to the fishing trip of three years ago this winter, I have but little to say. I was invited by Mr. Gardiner Lathrop, now general solicitor for the Santa Fe system, a warm personal friend of mine, to go with the party to Tampico, Mex., and was gone two or three weeks as his guest. I was then glad to be his guest, as I always am."

Judge Philips, in his communication to The Star, declared he initiated the trip and invited Pollock; the Kansas judge says he was invited by Gardiner Lathrop. *No matter by whom he was invited, the fact remains that Pollock, with Philips and McPherson, instead of giving the people a square deal in the railroad rate legislation, slapped public sentiment in the face by going off on a fishing excursion with the attorneys for the railroads at a time when he, as well as Philips and McPherson, should have maintained a position of neutrality.* By taking the trip the federal judges definitely declared themselves on the side of the railroads, and against the interests of the people.

Through Kansas, Missouri and Iowa, Pollock and Philips and McPherson, by lawyers and newspaper men, are looked upon as birds of a feather. Continually exchanging jurisdictions and holding courts for one another—it is said, in order to reap the small graft of \$10 a day and expenses which attaches to the exchange—the records show that their decisions and opinions accord beautifully, and that in parallel cases they invariably are of one mind. If one expresses an opinion or hands down a decision the matter is settled and binding upon them all. Indeed, Judge Pollock, in the Warren case, openly

declared he had conferred with judicial colleagues, and that his expressed decision represented the opinion of "higher authority."

Philips' explanation that suggested the trip to the railroads and that every member of the party pro-rated the expenses as to "grub and bait" may sound satisfactory to gentlemen who believe that the interests of the capitalist and laborer are identical, and that the age-long war between wage slaves and their employers can be settled by the contending parties getting on opposite sides of a table and looking each other squarely in the eye, but to the Socialist, and man of independent thought, Judge Philips will have to come again. No man of intelligence will for a moment accept such an explanation. Regardless of what Philips and Pollock may say, the people, when they know the facts, will always believe that the railroad companies, which were affected by the rate legislation, and which benefited by the decisions of the judges, planned the trip, furnished the palatial car, supplied it with rare and costly food and drink, and financed the excursion from its inception to its finale.

Judge Pollock states he was invited by Attorney Lathrop. Why was he invited? A few years previously he was an obscure lawyer in southern Kansas, and would have remained so had not his cunning displayed in serving the railroads recommended him for promotion at the hands of the corporations. Is it for a moment to be supposed that he was made a member of the excursion because of his personal worth? Not a bit of it. Like Philips and McPherson, Pollock was accorded the hospitality of the railroad companies and the use of a private car solely to insure his continued adherence to the interests of the railroads. That trip was taken by the lawyers and judges to perfect the proposition of setting aside the laws and defeating the will of the people of Missouri—a proposition that was successfully put through immediately upon the return of the conspirators from their plotting.

Impeachment or Promotion?

If nothing else were brought to bear, the Tampico trip, and the circumstances connected with it and the results following from it, constitute cause sufficient to warrant the impeachment of every federal judge who participated in it. At the time Representative Murphy, of Missouri, preferred charges against Judges Philips and McPherson, scores of attorneys in the middle west declared that Judge Pollock should be included in the investigation that congress was asked to make. Representative Rucker, of Missouri, stated that Judge Philips ought to have been impeached twenty years ago. Lawyers all over Kansas repeatedly have said that one of the mistakes of Roosevelt's administration was the appointment of Pollock to the federal bench.

Signs are not wanting now, and the story is current in many quarters to the effect that the corporations are actively at work preparing to boost Pollock to the United States supreme court, in the event that Chief Justice McKenna carries out his rumored intention of resigning. The Appeal to Reason, in itself, may not have power to prevent such an outrage, nor can it alone remove Pollock from his present position on the federal bench, but it can publish the facts of his judicial career. These facts, now known to hundreds of lawyers and scores of newspaper men in three states, eventually will become known to countless thousands in every state. On the day this knowledge becomes general the demand now made by this paper will be voiced by the people of the whole commonwealth, and that is, John C. Pollock, judge of the federal court in Kansas, must be investigated by a congressional committee with full power to authorize his impeachment.

Had Roosevelt been one-half as anxious to serve the people as he was to retain the presidency, in the consideration of Pollock's appointment to the judiciary, would he ever have been compelled to recoil with horror from the record of the Kansas judge, and exclaim: "MY GOD! IS IT POSSIBLE THAT WE HAVE SUCH A MAN ON THE BENCH?"

IMPEACHMENT RESOLUTIONS

Below will be found the full text of Congressman Murphy's resolutions asking congress to investigate the conduct of certain federal judges who are accused by their actions and convicted by their decisions with selling the people of a great state to the railroad corporations. Murphy is a railroad telegrapher elected to congress from Missouri on the democratic ticket. It has been confidently announced by friends of the judges under fire that the resolutions will not be brought up at the next session of congress. Every weapon, from intimidation to cajolery, will be used and will continue to be used, to prevent this investigation, but Congressman Murphy announces that he will stand by his guns. The power of the readers of this paper can be used to good advantage at this time by bombarding the congressman from their districts and the senators from their states with personal letters urging that the acts of these judges be investigated. The judges may be whitewashed but certain important facts will leak through to the public—all of which will help in the Appeal's campaign against Judicial Tyranny!

HOUSE RESOLUTION 65.

Sixty-first Congress, First Session.—In the House of Representatives, May 3, 1909. Mr. Murphy submitted the following resolution, which was referred to the Committee on Rules and ordered to be printed.

Resolution.

Whereas the general assembly of the state of Missouri passed a maximum freight law, making a reduction of twenty-five per centum in freight rates upon various commodities of traffic, amounting to about one-fifth of the entire freight traffic of the state, and that on June 14, 1905, the date which said act of the legislature was to take effect, the railroads of and doing business in the state of Missouri secured, without notice, from John F. Philips, United States district judge, sitting as judge of the United States circuit court for the western division of the western district of Missouri, a temporary injunction, or restraining order, restraining the attorney-general of the state and the board of railroad and ware house commissioners, and a number of shippers along the lines of each road, joined in the suit as defendants, as representatives of the entire class of shippers, from taking any action to enforce the aforesaid law; that thereafter an application for a temporary injunction was heard by the said Judge Philips and Judge Smith McPherson, a United States judge sitting with the said Philips, who, without argument, granted the same; that shortly thereafter the defendants filed demurrers to plaintiffs' bill, but the said judges, arbitrarily, refused to hear the same, but adjourned the court for the summer, then overruling the same in the fall, whereupon the defendants filed their answers to plaintiffs' said bill and sought to secure the filing of replies upon the part of the railroad companies; that instead of the said court proceeding with the case without unnecessary delay, a number of the leading attorneys for the railroad companies in said litigation, including Gardiner Lathrop, of the Santa Fe system, O. M. Spencer, of the Burlington system, and Sam W. Moore, of the Kansas City Southern, took the said Judges Philips and McPherson upon a fishing trip to Tampico in a private car belonging to the railroad companies, the facts in reference to said trip being made apparent by the action of the state game warden in arresting members of the party for having in their possession game in violation of the laws of the state of Missouri; that upon the return of said party from their fishing trip the replies of the railroad companies to defendants' answer were filed, and a motion was made to appoint a referee to hear the testimony, which was at first denied by Philips, but afterwards granted; that on account of the application for delay on the part of the railroads, the taking of testimony was not begun until the spring of nineteen hundred and six; that, recognizing there were certain technical inaccuracies in the freight law, these defects were cured by the legislature of Missouri, which convened in January, nineteen hundred and seven, in the passing of a new act and which said general assembly at the same session passed a two-cent passenger law, an entirely new act and the first ever passed by the said legislature; that the said railroads having announced that they intended to enjoin, in the suit then pending having relation to the maximum freight law only, by a supplemental bill, both the freight and passenger rate law, the attorney general proceeded in the state courts, upon the thirteenth day of June, nineteen hundred and seven, the day before the last act of the general assembly became a law, to enjoin the railroads from disobeying said laws; that thereafter the said McPherson, arbitrarily and without notice to the state, made an order, without the filing of the supplemental bill, but on the presentation to him of a rough draft of the same, enjoining the railroads from obeying the two-cent passenger law or the freight-rate law, although said railroads had never intended or threatened in any way to obey either of said laws, thereby, by an extraordinary proceeding, destroying the jurisdiction of the courts of the state of Missouri previously obtained; that in the month of February, nineteen hundred and nine, the said McPherson granted an injunction enjoining the

(Continued on Page Two, Fifth Col.)

