

EDITORIAL NOTES.

The serious situation at Chicago and at other points throughout the West has given rise to a most unnecessary and unprofitable discussion as to the right of the President of the United States to take the action which the Chief Executive has just taken. Laying aside the question of authority to carry out the omnibus injunction issued to restrain interference with the mails and with interstate commerce, which has become a matter of secondary importance, it is now under the terms of the Federal Statute (§ 5336 of the Revised Statutes) that United States troops are guarding and protecting the railroad property. The Statute reads as follows: "If two or more persons in any State or Territory conspire to overthrow, put down or to destroy by force the Government of the United States, or to levy war against them, *or to oppose by force the authority thereof, or by force to prevent the execution of any law of the United States*, or by force to seize, take or possess any property of the United States contrary to the authority thereof, each of them shall be punished by a fine of not less than \$500 and not more than \$5000, or by imprisonment with or without hard labor for a period of not less than six months nor more than six years, or by both such fine and imprisonment."

The words of the Statute are clear, it is only a question of the amount of evidence that sufficient provocation exists for the resort to the strongest means of enforcing the law, and this question is one which the authorities must determine. Surely it cannot be necessary to wait until an irreparable amount of damage has been done before the forces of the law are put into operation. Laws are passed to prevent crime as well as to punish criminals. It might just as well be argued that a would-be murderer cannot be arrested until his object has been accomplished or that a conspiracy is not indictable

until the plot has been completely consummated as that force cannot be employed to quell a practical insurrection during its continuance. If in the opinion of the President, under the advice of the Cabinet, the local authorities are unable to maintain the peace and take care of property within their jurisdiction, it becomes necessary for the citizen to look to the government to which he owes primary allegiance for the protection which somehow and somewhere is certainly guaranteed him.

The demand by the leaders of the labor disturbance, and by many of its sympathizers in various parts of the country, that Mr. Pullman, or representatives of the Pullman Company, shall submit the questions which have been made the excuse for the present unfortunate state of affairs to "arbitration," is a misuse and abuse of a legal term which is well calculated to confuse and unsettle the minds of superficially informed persons. *Arbitration* is the submission of a dispute between two parties to a third party agreed upon by the disputants. The arbitrator's status is simply that of a court and jury combined, and it is his duty to not only find upon the facts, but also to render a decision in accordance with the law.

The submission of the so-called dispute between Mr. Pullman and his employés would avail nothing; the legality of the former's position is too clear.

As Mr. McMurtrie said in his able address, entitled "Arbitration of the Demands of Labor," "So long as the so-called arbitrator can do no more than suggest, or advise, or counsel, there is nothing whatever of arbitration." It may be wise or foolish to follow the advice, but so long as there is no duty to obligation whatever resulting, we may lay this aside as a remedy, it is not arbitration."

The annotations have been reduced in number this month¹ in order to allow for the publication in whole of Governor

¹The number of annotations will be made up in the subsequent issues of the Magazine.

Russell's very able and interesting paper, which in the form of an address was delivered before the Yale Law School at the recent Commencement. Governor Russell traces very clearly the development of constitutions and presents a strong argument against the present tendency to incorporate into those expressions of fundamental principles a large number of laws or rules governing particular states of facts. These laws, as a matter of truth, represent the popular will or feeling with regard to such facts for the time only, and their presence in constitutions, although acceptable enough at the time of their insertion only tends to weaken at some future time that part of the system of government which should always be regarded as the most stable—the foundation.