passage, cannot be safely predicted. But that it would be wise to have it first passed upon after argument by a tribunal the equal of the best appellate courts. In this country, seems to me very clear. Then would our statute law be developed with wisdom and caution, instead of being ground out from a legislative hopper at the rate of 500 laws a month, as has been done in more than one State this year.

CRAZE OF AMBITION.

You cannot move legislators crazed with ambition. But the people can, and will do so when they fully understand the situation. And we need never fear they will not understand it after a time. But the people should be informed now. Do not forget, however, that if you attempt it, you will be denounced by the demagogue and cartonned by the yellow press. a and cartooned by the yellow press, a fate which has come to the few who have appealed to reason and to justice. These tactics have enforced silence upon many whose hearts have prompted them to point out the dan-ger of government by passion. But they cannot keep silent the earnest lawyers of this country for a minute after they have determined that duty calls them to speak out. God grant that the hour of that determination

A paper on the "Fundamentaal Defect in the Act to Regulate Commerce" was prepared by Charles A. Prouty, of Vermont, a member of the United States inter-State commerce commission. As Mr. Prouty was unable to attend the convention, it was read by Judge William H. Staake, of Philadelphia.

MR. PROUTY'S ADDRESS. The most important question before this country to-day is the regulation of its railways. For the last two years this has been the foremost political issue, and it will probably occu-

py that place until settled.

When the Stourbridge Lion, the first locomotive ever operated in the United States, was brought over from England, and set upon the rails prepared for it by the Delaware & Hudson Ca-nal Company, the significance of the railroad was little comprehended. It has come to be the principal means of physical communication. Whoever today possesses these avenues of transportation with the right to impose whatever tolls he may elect, holds the commercial dominion of this land; for he can determine where business shall be done, by whom it shall be done, and he can appropriate to himself an undue share of the profits. The railway is now our main highway. Since it must be used by all, and since preference in its use gives to the favored one an advantage over his competitor, even to the point of final extinction, it follows that this highway must be public, otherwise we have in process of time a nation of commercial masters and slaves.

THE GRANGER MOVEMENT.

As soon as experience began to make this obvious, attempts to secure to the public its rights in these highways also began. The first serious eftowards railway regulation in this country originated in the so-called Granger movement in the 70's. The method adopted was usually the establishment of a commission with authority to fix the rate, either absolute or maximum, which the railway might charge, and the constitutionality of this method as applied to State business, was sustained by the Su-preme Court of the United States in

The same court held that with respect to inter-State traffic the State could exercise no control even over that part of the haul entirely within the State, since the authority had been reserved by the commerce clause of the Federal constitution to Congress. That body acting upon this intimation of the court, in 1887 enacted, for the regulation of inter-State railway operations, the act to regulate commerce, which has been much altered and strengthened by the amendments of June, 1906.

has been generally adhered to by the States, and the same plan was selected well in the States, and the commission idea must probably be applied to the regulation of rates by the national government; but it often happens that what gives satisfaction in a small way proves unsuitable when applied to larger operations. I have felt that the present plan of the act to regulate commerce should be substantially modified, and desire to call your attention to what seems to me a funda-

mental defect in that act. MUST BE PUBLIC HIGHWAYS.

Every discussion of this subject should begin with a clear apperhension of the problem. The railway has come to take the place of a public highway, and some method must be found to make it such. This means that the government must see to it that our railways are open to all mempers of the public alike, and that the further, and see that the facilities provided are adequate. But these highways, while public in

their use, are private in ownership, and the capital invested has been put there upon the representation that it shall be allowed to earn a return, private property may be taken against therefore, the government must also protect the individual in the same way when that highway has use of these avenues of transportation, it must also protect the individ- own interest, or as a measure of selfual in the enjoyment of his property. An examination of the present act to regulate commerce shows that the athors of this statute had in mind both these ideas. The affirmative provisions of that act are, that charges for services rendered shall be reasonand that no undue discrimination be made between different per-Otherwise stated, these high-shall be open to the whole public alike, and upon fair terms. To secure benefits there are certain requirements with respect to the publiation and observance of tariffs, the keeping of accounts, etc., and severe penaltics are provided for infractions

Here then is a clear recognition of the first idea. It is the affirmative of the inter-State commerce ommission to see that railways do not impose upon the public unreasonable or discriminative charges.

of statute. A commission is created

and that commision is required by

the terms of the act to enforce its

THE COMMISSION'S DUTIES. A further examination of the statue shows that the second idea is also resent. This commission is not merecharged with the duty of enforcing the act, but is also constituted a quesi-judicial tribunal with authority to sit as arbitrator between the rail-road and the people. The act pro-vides that any party may complain to the commission that a railway subject

Force them? No-aids them. Ramon's reatment of Liver Pills and Toric Pellets arengthens the liver and digestive ortans to that they do their own work and fortifies your constitution against future south. Entire treatment 25c. Co. Prevent Headache.

to be reduced, nor their practices con-demned, until after a full opportunity to be heard.

Let it be further observed that both these ideas must find expression in whatever system adequately and justly whatever system adequately and justly regulates our railways. A lawyer may be inclined to say that when the government has provided a tribunal before which a complaint can be heard, and by which a remedy can be given, its full part has been done. The agreement of the same than the same transfer and the same transfer and the same transfer and the same transfer and tra prosecute his complaint.

But this entirely overlooks the fact that it is the duty of the government

The railway is a public highway over the railway of defendant, which absolutely essential to the commercial that company declined to observe, and industrial life of this nation. If a railway imposes upon you in common with others an unjust rate, that is not a private but a public wrong, which should be corrected by public authority, and which you as an individual cannot be expected to redress for the benefit of your fellows. Any scheme of regulation which does not embrace this feature will end in fail-

FAIR RETURN FOR CAPITAL. Equally important is it that the private capital invested in these public enterprises should receive fair consideration. This is demanded at once by the dictates of justice, and of selfinterest. This capital has been inupon the understanding that it should be allowed to return. would be the grossest of bad faith, were it possible, to deprive that prop-

erty of the right to a fair return. This is obvious to all. What is not lways so clearly apprehended is the langer of deterring capital from seeking this form of investment in the future. If the demands upon our railways are to be met enormous sums must be expended in extensions and improvements. These expenditures cannot be made out of earnings, they must come largely from new money drawn from the investing public. The ability to obtain this now and hereafter will depend upon the confidence their investment. It is not enough that earnings are ample to-day, if they are likely to be unduly reduced to-morrow. Every system of regulation should therefore assure capital of just treatment.

Let us consider what the jurisdiction of the commission covers. The commission is not a judicial body, and cannot therefore render judgments which are enforced by its own process, but it is empowered to make orders which carriers are required to obey under heavy penalty, and which are therefore equivalent to judgments. First: It may put upon railways subject to the act, by the issuance of orders, certain requirements as to the filing of tariffs, and the keeping of accounts. These refer strictly to the administrative work of the commis-

violation of the act. Third: The important jurisdiction of the commission is found in its authority to prescribe a rate, regulation, or practice for the future.

sion, and need not be considered here.

Second: It may award damages for

NO ADEQUATE REMEDY. The mere awarding of damages for the imposition of an unlawful rate clearly affords the public no adequate remedy. It was this authority of the commission to fix the rate for the future for which President Roosevelt so earnestly contended, and to which the were so bitterly opposed; The commission plan of regulation the act to regulate commerce embrace and while the recent amendments to many other salutary provisions, this same plan was selected is the vital thing. It is the exercise It has worked fairly of this power which will benefit the public and which ,if improperly exercised, will correspondingly injure the railway. It is against the abuse of this authority that the railway needs protection. It is therefore a most important inquiry how far the order of

extent it will be reviewed by the The naming of a railway rate partakes of the legislative rather than the It is fixed by no statute, it is controlled by no precedent, it is established in accordance with no fixed rule. It cannot be determined by the cost of the service, ner by comparison with other rates. Neither the financial condition of the railway, nor the necessities of the shipper, are controlling. All these elements and many others, particularly competition and commercial conditions, must be charges made for their use are taken into account, but when every-reasonable. We must, I think, go still thing is known it is still a question of judgment what the rate shall be. This discretion must be exercised in the first instance by the commission which

the commission is final, or to what

revises that rate. The railway is a public necessity. For this reason in its construction the will of the owner. In exactly the been constructed the public may in its protection, direct as to its operation. It may say what trains shall be run. what rates shall be charged. But just as the railway company could not, in the construction of its railway, appropriate private property without just compensation, so the public cannot, after that railway is constructed, appropriate the private property which without just compensation. In other words it cannot compel the railway to render its service to the public upon such terms as will not yield to its owners a fair return upon the value of property which is devoted to the public use. To do this would be to deprive the railway company of its property without due process of law, in violation of the fourteenth amendment. It would be a taking of private property without just compensation, and in violation of the fift amendment, if the rate is established by Federal authority. This is the ground unon which the Federal court interferes

A COMPLEX QUESTION.

Many State commissions establish entire schedules of rates. In these States no charge can be made except in accordance with these schedules, which therefore absolutely limit the earning capacity of the railroad. In such cases the question of adequate earnings becomes, not a simple, but a

complex one.

The inter-State commerce commission does not deal with schedules of rates. It establishes no single rate in the first instance. Raliways initiate their own rates; the commission only prescribes the rates in particular instances. To what extent can the court inquire whether an order of the commission dealing with a single rate deprives the carrier of its property ty years. omplex one.

ernment may regulate our railways, but they have further said that the power to regulate is not the power to destroy. When the action of Legislaregulation, and becomes wanton or destructive, the court will interfere vent other abuses of legislative power.
It seems to me that this will be the rule of the Federal courts in examin ing rates fixed by both State and Fed-eral commissions; and I say this, not-withstanding that a different rule prevalls in nearly every State having a commission, and prevails in consequence of a decision of the Supreme Court of the United States.

What is known as the Minnesota Milk Case, Chicago, Milwaukee & St. to make this highway public, not merely to provide a means by which a citizen may secure these benefits himself; certainly not when those means are in the very nature of things unavailable to the masses.

The railway is a public highway that the common of the railway is a public highway that the common and the Minnesota Milk Case, Chicago, Milwaukee & St. Paul Railway Company vs. Minnesota Commission had established certain rates for the transportation of milk over the railway of defendant, which common the common designation of the common designation.

cation to the State court for a writ of mandamus to compel an observance. Upon the return of this writ the railway offered to show that the rate prescribed by the commission was un-reasonable, and did not yield a vair return.

The court held that no evidence

whatever was admissible, that the action of the commission in fixing the rate was conclusive, and that the only duty of the court in the premises was to issue its mandatory process to compel an observance of that rate. From this decision the railway company appealed to the Supreme Court of the United States, claiming that by the establishment of this rate without opportunity to question its reasonableness in judicial proceedings, it was deprived of its property without due process of law. The court so held. thus in effect declaring the rate of the Minnesota commission unlawful. Mr. Justice Blatchford delivered the opinion of the court, in which five judges concurred. This opinion undoubtedly lays down the rule that reasonableness of rate or schedule of rates established by a commission is

a judicial question, and it was clearly in the mind of the majority that the court might consider the question from the same standpoint as the commission. The exact point decided was that a railway rate established by a commission was in violation of the Federal constitution, unless opportunity was afforded the railway for testing in court at some point, the lawfulness of that rate.

NOT A JUDICIAL QUESTION.

While the decision of the Supreme Court of the United States in this case was undoubtedly correct, while that court has since held that the railway has and must have the right to question in a judicial proceeding the lawfulness of the rate imposed, just as it must have the right to object to the constitutionality of any law which is sought to be enforced against it, I do not think that this court would to-day hold that what is a reasonable rate for the future is a judicial question, except in the sense that I have That court has several times said that the naming of such a rate legislative and duty and that the court, while it may enjoin a rate established by Legislature or commission, cannot itself establish such rate.

My impression is confirmed by two very recent decisions of the Supreme Court, to which I call special atter-

The first in order of time is Texas & Pacific Railway Company v. The Abilene Cotton Oil Company, decided February 25th of the present year. The oil company had brought suit in the proper court of the State of Texas for the recovery of an alleged excessive in Louisiana to Abilene, Texas. Its claim was that the common law ligbility upon a carrier to accord to shippers reasonable rates had not been affected by the act to regulate comthe plaintiff.

The transportation was inter-State, and the rate charged was the regular published inter-State tariff of the railway company. That company insisted that under the act to regulate commerce this rate was presumptively legal, and certainly could not be attacked in the State court.

The decision in this case referred only to the excessive charge, but the same reasoning would apply with equal force to the unduly discriminating charge. The case manifestly holds that in every instance where the commission may, under the fifteenth section, substitute in its judgment a rate, regulation or practice for that force, proceedings must be begun originally before the commis-

The second case to which I especially direct your attention arose upon an order of the railway commission of North Carolina, and is entitled Atlantic Coast Line Company vs. North Carolina corporation having been decided April 29th of the present year. The case was this. For many years there had been a running connection at Selma, in the State of North Carolina, between a certain train upon the Southern Railway and a certain other train upon the Atlantic Coast Line Railway. The Southern had found it necessary to the time of its train, and had thereby broken this connection. The North Carolina commission required the Atlantic Coast Line to advance its time correspondingly for the purpose of restoring the connection. Finally, upon further consideration, it appearing that possibly the Atlantic Coast Line could not fairly be required to shorten its present time, that company was given the alternative of putting on a local train from Rocky Mount, in North Carolina, to Seima. From this order of the commission the railway appealed, and its appeal was tried by court and jury. The jury found that the Atlantic Coast Line could not in-crease the speed of its present train, that the public interest did require the putting on of an additional train. that the cost of operating this train would be \$40 per day, and the prob-able receipts would not exceed \$25 per day. The railroad company in-sisted that the order of the commis-

Why is Sugar Sweet? If sugar did not dissolve in the mouth you could not taste the sweet. GROVE'S TASTELESS CHILL TON-

CHARLSTTE DATLY OBSERVER, AUGUST 27, 1907.

The North Carolina commission had found that although the operation of this particular train would be at a loss, the entire business of the Atlantin Coast Line Railroad in the State of North Carolina was conducted at a profit. The Supreme Court referred to this finding of the commission, but did not place its decision upon that ground. The broad holding of the court was that the State of North Carolina might regulate its railways Carolina might regulate its rallways either by direct legislative enactment, or through the medium of an administrative body, and that the regulating requirement, whether statute or comsaion order, would be obligatory upon the railway unless so far arbitrary and unreasonable as to exceed the limits of just regulation. In substance the court said that if an entire schedule largely executive. They can best be largely executive. adequate return upon the property clusive evidence that these rates were in violation of the fourteenth amendarose upon a single rate or a single practice, it could not be conclusively inferred from the mere fact that the cost of the service was more than the amount allowed or received, that the order requiring the rate or practice was void under the due process or equal protection clauses of the constftution. In such case it must appear that the order was so unreasonable and arbitrary as not to be an act of fair regulation. What I have said as to the practical

finality of the decisions of the commission in those cases where that decis-ion represents the exercise of its judgment would result also from the nature of the matters involved. These cannot be readily understood without a certain amount of antecedent knowledge of the subjects embraced. The records in important cases are long and involved, and well-nigh meaningless to a judge. Courts would almost of necessity accept the findings of the commission upon questions of fact, unless they were clearly and unmistakably wrong. It is worthy of note that under the old law, where the entire matter was reviewable, the Supreme Court never reversd the finding of the commission upon a question of fact, and always insisted that the courts should have the benefit of the opinion of this expert tribunal in the first Instance

In the recent argument of a very important case, the attorney for the railways, a gentleman who has been identified with this subject of Federal regulation from its inception, and who has probably given the matter more attention than any other man,

A CHANGED SITUATION. "I desire to direct the attention of of this body. In the future as a prac-Your decision upon questions involving the reasonableness of a rate is

I think he was right. In the case pupils. in which he was speaking, within a range of many hundreds of thousands of dollars, the finding of the commission is undoubtedly conclusive.

It appears from the above cases that no claim looking either to the future, or to the past, with respect to the reasonableness or justice of an ture of the inter-State railway trans-portation of this country. Just what Mr t may mean cannot be stated with from Mr. William Lindsey the brick certainty yet.

hundred miles nearer the Missouri river than Seattle or Tacoma, but the rates to that city fom eastern destinations are higher than to the coast towns.

Spokane alone would be large each year, but this is not the serious thing. Whatever treatment is accorded Spocharge exacted against the protest of kane must be extended to other interthe oil company by the defendant mediate localities. The Union Pacific railway company, for the transporta- system has filed a statement showing tion of cotton seed from certain points that to have applied the rates which it must apply if the contention of Spokane is upheld, would have cost that system upon the business actually handled during the last year \$8 -000,000. To sustain the prayer of Spomerce. The Texas court found the kane would reduce the net revenues E. D. Watt, Sarah, Edna, John D. and rate excessive, and gave judgment for of that system \$8,000,000 annually, which upon a basis of four per cent. amounts to \$200,000,000 in the market value of these properties. And the Union Pacific system is but one of the trans-continental systems which would be affected by this reduction. We have before us now a case brought by the Cattle Raisers' Association of Texas, putting in issue certain advances in rates upon live stock The only question involved is the

the Federal court of last resort, no gists.

commission.

The concinsion of the whole matter is this. If the inter-State commerce commission is vested with the jurisdiction so troinendous in extent, and of such finality every effort should be made to provide a body adequate to the trust. That commission under the present law is charged with two sets of duties requiring diverse qualifications for their discharge. It stands, first, as representative of the government to see that these highways are in fact public. It is commanded to enforce the provisions of the act to regulate commerce. It must see that rates are reasonable and just; that the practices and regulations of railways are not oppressive; that the pen-aities provided by the act are en-forced. In the near future its powers discharged by a single head, responsible to the executive, and answerable to the spur of popular criticism.

sence a judicial tribunal which hears and decides complaints. The qualifications of such a body are the exact opposite of the other. Its membership should be numerous so that its decisions may be the resultant of independent minds. It should be entirely withdrawn from all political and personal influences, and it should have time for the deliberate consideration of the matters coming before

I very much doubt whether the same body can properly discharge both these functions. In the end it will either become remiss in its exethose, become unfit for the dispassionate performance of its judicial functions. Whatever may have been true questions are not law questions. They in the past the time has come when the commission should be relieved of all its duties except the hearing and deciding of complaints.

REIDSVILLE NEWS ITEMS.

Graded School Opens Next Monday-Coal Vein Being Worked at Another Place-Thirty-Five People At-tend Family Reunion. Special to The Observer.

Reidsville, 'Aug. 26.—(The city schools will open next Monday. Needed repairs, have, been, made in the buildings and they are being thoroughly renovated. The authorities are busy now getting everything in readiness and during this week every detail of preparation for the opening will be perfected. The teachers are a body of well equipped men and wo-

said in substance at the close of his men. The people of Reidsville have argument: the training of their children and every teacher in the schools will strive the commission to the changed situa- to do the kind of work which this tion. In the past I have been able to position justifies. One of the ideals ask the courts to review the indings of the committee and faculty is to have every child in Reidsville in tical matter, I can no longer do so, school and it will push forward with united effort to the accomplishment of this ideal. It is believed the school will open this year with about 1.500

The machinery and force of hands which have been at work at the coal mine at Walnut Cove have been moved to a point near the Southern Railway and Mill creek. It is learned that the object of the move is to make further investigation upon the same inter-State raffway rate, can be origin- vein of coal upon which the miners ally made in any tribunal except the have been at work. A diamond drill inter-State commerce commission, has been ordered and work will com-

time, for example, a complaint by the and will occupy the same within a few city of Spokane. Spokane lies four days and conduct a big machine and general repair shops.

Mr. C. A. Penn has gone to Danville to consult Dr. J. S. Irwin about his condition. His health has not been very good the past Iew weeks and he will take a much-needed rest. An enjoyable family reunion and

plenie was held at Mr. William J. of town, Friday. Thirty-five people were present and enjoyed a sumptuous feast consisting of barbecued meats, Brunswick stew, etc. The following people were present: Bennett, Sr., Misses Mamie and Sallie Bennett, Junius Bennett, William Lindsey and three children, Mr. and Mrs. Marion Watt; R. P. Richardson, III; Mr. and Mrs. R. L. James L. and Robinson Saunders; Mr. and Mrs. Joseph Lindsey, Miss Annie Lindsey, Mr. and Mrs. William J., Lilly May, Ruth, Joseph, Bennett, Earle, Horace, Wallace and Lulu Clark; Kerns Thompson, Miss Annie Barnes and Cor. Third Street

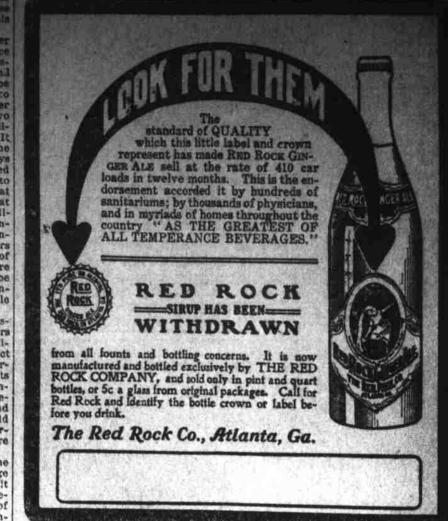
Endorsed by the County. The only question involved is the reasonableness of these rates. While we have no exact information, it is probable that the amount of these advances is from two to three millions of dollars annually.

DECISIONS INVOLVE MUCH.

And these decisions not only involve enormous sums of money, but often determine whether a locality shall do business, or an industry exist. I say to you with confidence that save only the Federal court of last resort, no gists.

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sive follows from the amount and na- was to be suspended is wholly ground- connections with surrounding country. Healthy location. An ideal place to rest and recuperate. Two through trains dally from Charlotte, con-Mr. J. H. Laster has purchased necting at Statesville with trains from Salisbury and Asheville. Special building now occupied by F. W. Way. prices for SEPTEMBER \$5 to \$6 per week. Resident physician in hotel. We have before us at the present nick's carriage and blacksmith shop, For further information, write for booklet to

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