N. C. RATE LIGITATION

(Continued from Page Three.)

was suit to determine the whole controversy.

Had the action of Judge Pritchard been unprecedented, as claimed, or contrary to the approved practice of the courts, there was a simple remedy to which the defendants might have resorted for redress. The Chief Justice of the United States is, under the rules of the Supreme Court, assigned as a circuit judge to this fourth judicial circuit There are nine of these circuits in the United States. Each of the nine Supreme Court judges is assigned to one of them. This is done by virtue of the statute of the United States so requiring it. The Chief Justice can preside at his pleasure over any court in this circuit, or hear matters in chambers, as a circuit judge. The defendants could have moved before the Chief Justice on a few days' notice, to the other side, to vacate the order of injunction as having been improvidently granted. There is recent precedent for such a course. It will be recalled that a few years ago, the United States district judge for the eastern district of this State, in a suit in equity before him, appointed receivers for the Atlantic and North Carolina Railroad Company, the controlling stock of which the State owned. The counsel for the railroad and the State immediately moved before the Chief Justice to strike out the order appointing the receivers in the case, because the court was without jurisdiction to have issued it. He entertained and granted the motion. It was all accomplished in a very few days. A similar motion in the case could have been made before the Chief Justice as to the orders of Judge Pritchard in the railroad suits. If his orders were unauthorized and unprecedented, the Chief Justice would have vacated them; if they were made in a proper exercise of judicial discretion, he would have refused to strike them out. There was danger in this course. If the Chief Justice had approved Judge Pritchard's course, it would have been an assurance to the public of the propriety of his order; if he had not, the subject would have been dropped from the public mind.

In either event, there would have been no opportunity for a grand-stand play as defenders of State sovereignty in the limelight of public agitation.

PART II.

THE SUITS IN THE SUPERIOR COURT.

The rate bill provided that it should take effect on the 1st day of July, 1907. The order of injunction in the Circuit Court was signed on the 29th day of June. It enjoined the corporation commission and Attorney General from putting the statutory rates into effect. Later, on July 6th, on the filing of a supplemental bill by the Southern Railway, the Federal Court further enjoined certain individuals, who had instituted penalty suits against the Southern Railway since the first injunction, and made them parties to the original suit. It further enjoined all other persons, individuals and corporations, from instituting or further prosecuting any suit, or other proceedings, civil or criminal, against the complainant, for the recovery of any penalty or punishment under the said act, or under any law of North Carolina because of failure of said complainant or its employes to put into effect the freight or passenger rates provided for in the legislative act.

At the opening of the Superior Court of Wake county, at Raleigh, N. C., on Monday, July 8th, His Honor Benjamin F. Long, judge presiding, charged the grand jury in effect, that the penalty clause of the rate bill was a criminal statute of the State; its enforcement could not be enjoined by the lower Federal courts until declared unconstitutional; and they should present any railroad or its agents selling tickets at more than the two and a quarter cent rate provided in the act. The grand jury, on July 16th, indicted the Southern Railway and its ticket agent, Mr. T. E. Green, for violations of the act. The indictments were returned ten days after the supplemental bill of complaint of the Southern Railway and the further order of the Federal Court, enjoining prosecutions, civil or criminal, were filed in the clerk's office at Raleigh.

The indicted parties were put on trial the next day and convicted. The counsel for the Southern appeared for defendants. It was insisted that the court should not proceed with the trial, because the Federal Court's jurisdiction had first attached and the defendants by order of that court had been permitted to sell tickets at the existing rates. The proceedings in the Federal Court were filed with the Superior Court as the basis of a plea to its jurisdiction. The presiding judge overruled the plea, and held the act to be contsitutional on its face.

The parties were convicted and the court imposed fines upon the Southern Railway of $30,000 and upon the ticket agent of $5.

NEWSPAPER COMMENTS.

The progress of the trial of the case was reported in the newspapers with all the sensationalism that could be made to accompany it. The Governor addressed an open letter to the Superior Court judges of the State, calling upon them to charge the grand juries in the State, notwithstanding the Federal Court's injunction, to indict the railroads and their employes for violations of the penalty clause. The News and Observer, in its issue of July 3d, declared:

"Judge Pritchard's injunction is not worth the paper it is written on, if every man charged more than two and a quarter cents for a ticket brings suit against the North Carolina Railroad and the Western North Carolina Railroad. A State law demands greater reverence than an unauthorized Federal injunction."

A more conservative paper of the State declared:

"This great State of North Carolina, heir to more than three centuries of honorable past, and striving toward a splendid future, has been treated with disdain by a Federal judge, at the instance of certain chronically malcontent railroad companies."

It was announced by the press that His Honor Judge Pritchard, the United States Circuit judge, was on his way from Asheville to Raleigh, to issue a writ of habeas corpus. Editorially, The News and Observer, the apparent organ in this matter of the Governor, said:

"Will a Federal Court judge attempt to coerce a judge of the Superior Court of North Carolina to prevent the enforcement of the criminal laws of this State? The question will be answered to-day, in all probability. Will the State of North Carolina get down on its knees in the presence of this Federal judge, who is expected to stay proceedings in the State courts, contrary to the express provisions of the laws of the United States, which place positive limitations upon the powers of the Federal judiciary?"

STATE READY TO RESIST.

Later, under the headlines, "Let the Issue Be Met," it called upon the good people of Wake county to resist, with force, the attempt, if made. The Governor has since announced in the press that the tension was so great that he would have ordered out the State Guard in defense of the State court's position, if any effort had been made by Federal authority to take the prisoners. Judge Pritchard did not disclose the purpose of his visit to Raleigh. No petition of habeas corpus was filed asking the release of the ticket agent, Green, and of course, no writ issued. The Superior Court judge, while in the progress of the case, took the prisoner within his personal custody, to strengthen, presumably, the court's hold upon him, and to resist more effectually the writ of habeas corpus, if one should be issued. Later, other indictments were found at this term of the Superior Court, the spirit of which finds illustration in the report of The News and Observer under the headlines: "Federal Injunctions Don't Stop Wake County Juries."

At about the same time, other agents of the Southern were arrested by the police magistrate of the municipal court of Asheville. On petition, the circuit judge issued a writ of habeas corpus, but before it could be served, the police magistrate discharged the prisoners. While Judge Pritchard was at Raleigh, the police magistrate re-arrested the same agents, tried, convicted and sentenced them to thirty days on the roads. This proceeding rather illustrated the nursery rhyme: "When the cat is away, the mice will play." On his return to Asheville, Judge Pritchard had the prisoners brought before him, on a writ of habeas corpus, held the section of the rate bill containing the penalty clause to be unconstitutional, in a well-prepared opinion, and discharged them. Later still, Mr. Finley, the president of the Southern Railway, was arrested by the Asheville police magistrate, and at once released by the Federal Court.

There were other pleas entered in the case of the agent, Green, at Raleigh, before the Superior Court, which are not pertinent to this discussion. One of these was that the act was confiscatory and in violation of the fourteenth amendment. Defendants moved for a continuance, in order to offer evidence upon the fact that the rates prescribed by the Legislature were unremunerative and therefore confiscatory. Appeals were entered by the defendants in the Green case, and by the State in the habeas corpus suit at Asheville.

CONTENTIONS OF STATE.

The contention of those who justify the course of the Superior Court is that the penalty clause of the act is a criminal statute; the order of the Circuit Court of the United States did not enjoin, as a fact, the prosecuting officers and grand juries of the State; if it had, the Federal Court did not have power in an equity case to restrain State officers in the prosecution of a criminal statute; the act on its face is constitutional, and, until declared unconstitutional by a court of competent jurisdiction, the duty rests upon the Superior Courts of the State, regardless of the Federal Court's injunction to enforce the law.

There is no doubt that the case of Fitz vs. McGehee, which has been so often cited and discussed, lays down the general proposition that the officers of the State cannot be restrained from prosecuting violations of the criminal statutes. But every general proposition has its limitations. It is not held in Fitz vs. McGehee, nor has it ever been held, that the Federal Court may not restrain criminal prosecutions in the State courts, in aid of its own jurisdiction, when that jurisdiction had first attached. It will be observed by a careful analysis of Fitz vs. McGehee that the complaint was originally brought to declare void a statute of the Alabama Legislature of February 9th, 1905, and to restrain the Attorney General from instituting or prosecuting any indictment or criminal proceeding against any one for violating the provisions of the act. The act prescribed toll rates on a bridge operated by the receivers of a railroad, and made it a misdemeanor to charge a higher rate than that fixed by statute. Later, in the progress of the trial, the receivers, who were the complainants, filed a supplemental bill, in the same cause, alleging that other prosecuting officers of the State had instituted prosecution against the toll-keepers, under an act of the State of Alabama of 1885 (Code 4151), which they did not allege to be unconstitutional, but did allege the prosecutions were wrongful as being in violation of the order appointing them rebelvers and of the court in restraining the Attorney General as to the act of February 9th, 1895.

FITZ-M'GEHEE CASE.

Again, the Alabama acts discussed in the case of Fitz vs. McGehee were not a part of a scheme of freight regulation, but were independent statutes creating a misdemeanor and affixing a punishment, being solely and independently criminal statutes, whereas, the penalty clause of the North Carolina act is a part of a scheme of freight regulation, and involved in the controversy presented in the Federal Court. In Fitz vs. McGehee, the court said: "There were no exceptional or extraordinary circumstances in these cases to have justified the interference by the circuit court."

In the North Carolina Railroad suits, the jurisdiction of the Federal Court had attached to the subject matter for the purpose, (quoting the language of Justice Brewer), of making "a comprehensive decree concerning the whole ground of the controversy," before the State suits were begun.

The subject matter of the cases presented in the Federal Court, whose jurisdiction first attached, was the same subject matter presented in the State Superior Court, whose jurisdiction, if any, attached subsequently. The Supreme Court of the United States, as late as 1903, has decided in the later case of Prout vs. Starr (188 U. S., 537), quoting its own language, that: "The jurisdiction of the Circuit Court could not be defeated or impaired by the institution by one of the parties, of subsequent proceedings, whether civil or criminal, involving the same legal questions in the State court."

There is no escape from the force of the application of this decision, except upon the theory that the criminal prosecution in the State Superior Court was not by one of the parties to the suit in the Federal Court. There is no question of the guilt of the defendants, if the act is constitutional, but whether or not it is constitutional is a question being investigated by a court of competent jurisdiction, and all proceedings brought subsequently in any other court ought to have been stayed, pending the final termination of the issue in the court that first took jurisdiction. If there was doubt of the jurisdiction, the doubt should have been resolved by the court whose jurisdiction was subsequently invoked, in favor of the court first taking jurisdiction, while the case was pending, and the Appellate Court allowed to determine it on appeal.

His Honor Judge Fred Moore took the proper ground, it appears to the writer, when he charged the jury at Winston that, if they knew of any violations of the law, it was their duty to present them to the court, but, if presentments were made, he would advise that the cases be continued until the constitutionality of the act was determined by the Federal Court, which had concurrent jurisdiction and the matter under advisement.

DIGNITY OF LAW.

It is essential to the dignity of the administration of the law through the courts that unseemly conflicts between them should be avoided.

In the Encyclopedia of Pleading and Practice, a work of high authority, in Volume 12, at Page 151, the author states the law as follows:

"It is a settled rule that when two courts have concurrent jurisdiction over a particular subject matter, the one which first takes cognizance of a cause falling thereunder will retain the jurisdiction throughout, to the exclusion of the other, and until final determination."

Again, the same work, in Volume 22, Page 839, the author says:

"Following the general rule that, as between courts of co-ordinate jurisdiction, the one which first obtains rightful jurisdiction over the subject matter of a controversy, must by all other courts be permitted to proceed therein to final judgment. A Federal court having first acquired jurisdiction and custody of property, will maintain and protect its possession against interference by State process, and, on the other hand, if the State court has first acquired rightful possession of the res, the Federal Court will not interfere therewith."

COURT'S WANT OF POWER.

There has been much said in order to show the court's want of power to issue the injunction in regard to Section 720 of the Federal statutes, which reads: "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of the State, except in cases where such injunctions may be authorized by any law relating to proceedings in bankruptcy." This section has never been construed by the court to prevent injunctions being issued in aid of the court's own jurisdiction. The law is stated in the case of the Mercantile Trust & Deposit Company vs. Railroad, in The Federal Reporter, Vol. 109, at Page 6, in these words:

"Repeated decisions have firmly established the principle that, where the injunctive process of a Federal Court is invoked to enforce its own judgment or protect its own jurisdiction, Sec. 720 has no application. French vs. Hay, 22 Wall, 250, and Dietzsch vs. Huidekoper, 103 U. S. 494. In Fisk vs. Railroad Co., 10 Blatchf., 520; Federal Cas. No. 4, 830, Judge Blatchford said: 'The provision of Sec. 5 of the act of March 2d, 1793, that a writ of injunction shall not be granted to stay proceedings in any court of a State, has never been held to have, and cannot properly be construed to have any application, except to proceedings commenced in a State court before the proceedings are commenced in the Federal Court; otherwise, after suit brought in a Federal Court, a party defendant could, by resorting to a suit in the State court, defeat in many ways the effective jurisdiction and action of the Federal Court after it had obtained full jurisdiction of person and subject matter. Moreover, the provisions of the act of 1793, (now Sec. 720, Rev. Stat.) must be construed in connection with the provision of Sec. 14 of the act of September 14th, 1789, that the Federal courts shall have power to issue all writs which may be necessary for the exercise of their respective jurisdictions."

Even as late as 1903, we find the Supreme Court of the United States in the case of Julian vs. Central Trust Co. (193 U. S., 112), saying:

AN UNSEEMLY CONFLICT.

"In such cases where the Federal court acts in aid of its ow njurisdiction and to render its decree effectual, it may, notwithstanding Sec. 720 Rev. Stat., restrain all proceedings in the State court which would have the effect of defeating or impairing its jurisdiction."

It is not probable that either penalty suits or criminal prosecutions would have been brought by individuals, after the injunction had been issued by the Federal Court, had it not been for the urgency of the public press and the insistence of the Governor upon the State Superior Courts ignoring the jurisdiction of the Federal Court and finding indictments. It is to be regretted, the author thinks, with due deference to his high character and marked professional ability, that the presiding judge of the Superior Court did not deem it his duty to continue prosecutions brought before him, until such time as the Federal Court, whose jurisdiction had first attached, might have determined the matter, and avoided the unseemly conflict which has developed in these North Carolina suits.

Had the Superior Court obtained jurisdiction of these cases before the Federal Court had acted, it would have been the plain duty of the Federal Court, out of comity to the State courts, to have declined taking jurisdiction.

HABEAS CORPUS PROCEEDINGS.

The power of the United States Circuit Court, under the circumstances, to have issued a writ of habeas corpus and discharge the persons indicted in the State courts for the violation of the penalty clause has been questioned. His jurisdiction in these railroad suits first attached, and he had issued the injunctions in the cases, before these prosecutions had been commenced. His injunction permitted the Southern Railway to continue the old rates, and enjoined the Atlantic Coast Line Railroad from putting the new rate into effect. The Supreme Court of the United States said, in the case of Fitz vs. McGehee, that:

"Undoubtedly, the courts of the United States have the power, under existing legislation, by writ of habeas corpus, to discharge from custody any person held by State authorities under criminal proceedings instituted under State enactments, if such enactments are void for repugnancy to the constitution, laws, or treaties of the United States. But even in such case we have held that this power will not be exercised, in the first instance, except in extraordinary cases, and the party will be left to make his defense in the State court."

Again, in the case of Minnesota againstBrundage, the Supreme Court said:

"We have held, upon full consideration, that although under existing statutes a Circuit Court of the United States has jurisdiction upon habeas corpus to discharge from the custody of State officers or tribunals one restrained of his liberty in violation of the constitution of the United States, it is not required in every case to exercise its power to that extent immediately upon application being made for the writ. We cannot suppose,' this court has said, 'that Congress intended to compel those courts, by such means, to draw to themselves, in the first instance, the control of all criminal prosecutions commenced in State courts exercising authority within the same territorial limits where the accused claims that he is held in custody in violation of the constitution of the United States. The injunction to hear the case summarily, and thereupon 'to dispose of the party as law and justice require' does not deprive the court of discretion as to the time and mode in which it will exert the powers conferred upon it. That discretion should be exercised in the light of the relations under our system of government between the judicial tribunals of the Union and of the States, and in recognition of the fact that the public good requires that those relations be not disturbed by unnecessary conflict between courts equally bound to guard and protect rights secured by the constitution. When the petitioner is in custody of the State authorities for an act done or omitted in pursuance of the law of the United States, or of an order, process or decree of a court, or judge thereof; or where, being a subject or citizen of a foreign State, and domiciled therein, he is in custody under like authority for an act done or committed under alleged right, title, privilege, protection, authority or exemption claimed under the commission, or order, or sanction of any foreign State, or under color thereof, the validity and effect whereof depend upon the law of nation; in such and like cases of urgency, involving the authority and operations of the general government, or the obligations of this country to, or its relations with, foreign nations, the courts of the United States have frequently interposed by writs of habeas corpus and discharged prisoners who were held in custody under State authority."

The revised statutes of the United States (Sec. 753) provides:

"The writ of habeas corpus shall in no case extend to a prisoner in jail, unless where he is in custody under or by color of the authority of the United States, or is committel for trial before some court thereof; or is in custody for an act done or committed in pursuance of a law of the United States, or of an order, process, decree of a court or judge thereof; or is in custody in violation of the constitution or of a law or treaty of the United States."

It is clear, then, that by statute and the authority of the Supreme Court of the United States, the Circuit Courts have the undoubted power, upon habeas corpus, under the circumstances, to discharge from the custody, not only of State officers, but of State tribunals, one restrained of his liberty; that it is not called upon to exercise this power in the first instance, but, where the case is urgent and when the petitioner is under arrest for an act done or omitted to be done, by an order, process or decree of a court or judge thereof, the writ will be issued. The previous injunction having permitted the railroads and their agents to sell tickets at the old rate, the arrest and detention of an agent of the railroads was in violation of the express order of a judge of the Circuit Court, and he could be released upon habeas corpus. His Honor Judge Pritchard, in the habeas corpus cases, cited the authorities under which he acted, and adjudged that so much of the rate bill as related to the penalties imposed, was in violation of the constitution of the United States, in that it imposed excessive penalties, that were intended to prevent the railroads from exercising their right to contest the act, and was, therefore, equivalent to depriving them of the equal protection of the laws. It was held, in the Reagan case, that the penalty clause in the act could be declared unconstitutional, as in this case, while the remainder of the act might remain in full force and effect; and whether the portion of the act that fixes the rate will be held unconstitutional, as in this case, while the remainder of the act might remain in full force and effect; and whether the portion of the act that fixes the rate will be held unconstitutional is to be hereafter decided when the special master now taking the evidence shall have made his report to the court.

PART III.

THE RATE LITIGATION.

It is a fair conclusion from the cited authorities of the highest court of the land that the Circuit Court judge exercised no unusual power and made no unprecedented orders in these suits. It is possible he may be reversed by the Supreme Court of the United States. That great tribunal has reversed the decisions of even the Supreme Court of this and other States.

The agitation which followed upon the Federal Courts' action is one thing that was unprecedented. The writer is not an advocate of the freedom from criticism either of the courts or other public officials. There is a legitimate criticism, however, which has its limitations, and there is an illegitimate criticism that runs to hysteria. The one is prompted by a desire to conserve the right; the other is prompted by the desire of making others, regardless of the right, come to the critics' "way of thinking."

The railroads were denounced for bringing suit in the Federal Court; their act was described as a contempt of the State courts, and a spitting upon State law. The act of the circuit judge was arraigned as high-handed, the grabbing of jurisdiction to favor the railroads, an invasion of States' rights and a reflection upon State sovereignty. The agitation had for its avowed purpose the forcing of the railroads to put into effect the legislative rates, pending any investigation into the validity of the act. The popular indignation was aroused by making it appear that the railroads were defying the laws of the State. The threat by high State officials of more indictments of railroad agents rapidly tended to disorganize the railroad systems of the State. This agitation was boldly championed by the Governor. It may be well to take some further account of its several phases.

In its issue of July 14th, The News and Observer, published at Raleigh, editorially said:

NEWS AND OBSERVER'S VIEWS.

"Judge Pritchard, persuaded into a great error, is grasping at the straws of usurpation in the hope of reclaiming a lost position.

"Having attempted to suspend an act of the State without even the color of finding it unconstitutional, he finds himself faced with the alternative of attempting to enforce an impotent decision or admitting himself to have been in the wrong.

* * * * * * *

"Judge Pritchard's injunction, wrong in the first instance because it had scarcely the shadow of evidence to support it, was, so far as the act of the North Carolina Legislature was concerned, as powerless as the housewife's broom against the sea."

On July 16th the Governor of the State, in a letter addressed to the State Superior Court judges, published in The News and Observer, after calling their attention to certain clauses of the rate bill, had this to say:

"The act of the General Assembly required no action on the part of the corporation commission or Attorney General to give it vitality or to put it into effect. It was self-acting, and on July 1st, 1907, became a law, and the decre of a circuit judge of the United States enjoining the corporation commissioners and Attorney General could or did not prevent its becoming a law. The law is therefore now in effect, and the agents, servants and employes of the railroads, who, since the first day of July have charged, demanded and received a greater rate than 2 1-4 cents per mile have violated the plain letter of the law and are liable to indictment, as well as the higher officials of the roads who advised and directed their agents so to act.

"The decree of the Circuit Court of the United States did not pretend to enjoin the enforcement of the criminal violation of the rate law, and I do not believe our judge, after reading the case of Pitts vs. McGehee, 172 U. S. Reports, page 172, and cases here cited will ever attempt to make so high-handed an order, but will leave the criminal law to be enforced by trials, appeals, etc., as provided by the constitution both of the State and the United States.

"As executive officer of the State it is made my duty to see that the criminal laws of the State are enforced. To do less is to violate my oath. The law is being violated every day. I therefore ask you, as judge of the Superior Court of the State, to properly instruct the grand jury, and to direct the solicitor of your district to send bills against the agents and employes of the railroads or its higher officials thus openly acting in defiance of law."

INTERVIEW WITH GOVERNOR.

In an interview on July 27th, in the same paper in large and bold type, the Governor is reported to have said:

"Being called up at half past 11 o'clock last night Governor Glenn, on being asked if he knew whether or not the Southern Railway officials were on their way from Asheville to Raleigh, presumably to see him, answered:

"'I have no information to that effect. It is needless for them to see me unless they are willing, as a condition precedent to any negotiations, to immediately put the 2 1-4 cent rate into effect, for the rate law must be recognized before I will consider any adjustment. I have been diligently examining the law to-day and I am satisfied that my position is correct, hence I can make no concession that annuls the law.'

"Governor Glenn was then asked if he had given the question of an extra session of the General Assembly any thought during the day. He replied:

"'Yes. In my opinion an extra session, as soon as it could be called, would easily settle the whole trouble, and would be worth ten times its cost to the people of North Carolina, beside giving them both passenger and freight rates that could not be interfered with by the railroads except in the orderly way of first being heard in the State courts.'

"Asked if he had heard anything of the McDowell county cases in which indictments were found against the Southern and its agents, Governor Glenn said:

"'I have been informed by the solicitor that the grand jury had found true bills against the local agent and the Southern Railway. He asked me if he should issue capias instanter, and I told him to serve no capias until Monday, and that I would send him counsel to assist him. Furthermore I said to him, 'Indict the high officials of the Southern Railway, not the agents.'"

The relentless attacks both upon the railroads and the Federal Court which seem to have been supported by popular feeling, coerced the railroads into submission. The News and Observer, in its issue of July 28th, under the captions, "The Railroads Surrender—The Law is Supreme in North Carolina," published the following texts of the agreement:

TEXT OF AGREEMENT.

"1. The railroad puts the 2 1-4 cent rate into effect not later than August 8, 1907.

"2. The State to appeal from the order of Judge Pritchard discharging parties in Asheville on writ of habeas corpus.

"3. The Southern Railway to appeal to the Supreme Court of North Carolina in the Wake county case, and if the case is there decided against it to take the case by writ of error to the Supreme Court of the United States.

"4. That both sides co-operate to have both of said cases advanced and argued together and speedily determined.

"5. The State at its option to indict the Atlantic Coast Line in one case.

"6. All indictments and prosecutions now pending to be dismissed and no other indictments or prosecutions to be instituted for any alleged violation of the law, up to the time the new 2 1-4 cent rate is put into effect under this arrangement, as far as the Governor can control the same.

"7 The Governor to advise all people against bringing any penalty suits pending final determination of the questions involved and ask the people as a whole to acquiesce in this arrangement.

"8. The suit pending before Judge Pritchard to be diligently prosecuted without the State, however, waiving any question of jurisdiction."

EXECUTIVE INTERFERENCE.

The enforced surrender of the railroads was regarded by the press generally as a great victory for the Governor of the State. It may not be prudent to dissent from this popular view. It is believed, however, that the popular opinion rests upon a misconception of the facts and the law. If it were a victory, it was obtained by an utter disregard of the constitutional limitations upon the power of the Executive. The Governor's letter to the Superior Court judges, which he published, was violative of the spirit of the State constitution, which declares that "the legislative, executive and judicial powers of the government ought to be free, separate and distinct from each other." To address a letter to a Superior Court judge advising him of violations of the law is perhaps the privilege of any citizen. The court may or may not accept such suggestion in its charge to the grand jury. For the Governor to publish an open letter, addressed to the presiding judges of the judicial department, which practically assumes to advise and to dictate their actions, was a distinct interference by the executive with the judicial prerogative. If impelled by a sense of duty, the duty would have been amply performed by mailing it without publication. Its publication, even before certain of the judges are said to have received it, was apparently designed to create a popular sentiment in support of the Governor's action.

The perpetuity of our institutions demands that the judicial office shall be above and apart from the influence of popular agitation. They certainly require that this high office shall be entirely free, separate and distinct from executive dictation. The Governor publicly advised one court to ignore the action of another court of concurrent jurisdiction, thus inviting a conflict between them, the decree of either of which he is bound, by his oath of office, equally to respect. The acts of the Legislature are no more entitled to executive respect than are the orders, decrees or processes of the courts, State or Federal, which may suspend legislative acts pending judicial inquiry as to their validity. The responsibility for their suspension or the adjudication of their invalidity is not upon the Executive; it is upon the court. If the court err, the error may be corrected by appeal to a higher court. It is no part of the Executive duty to construe the courts' orders and interpret their decisions nor to interject his official ideas as to the law upon matters pending in court. It is certainly transcending the power and propriety of his office to call on one court to override or ignore the action of another court of concurrent jurisdiction.

GOVERNOR'S SINCERITY.

The Governor may be accredited with sincerity of purpose, but this letter was a mistake and the victory he has won by championing this agitation is of baneful significance. It is not a triumph over the railroads; it is a triumph over the rights of property. If the Executive, at his pleasure, may arouse popular feeling and reduce to submission so powerful an interest as the railroads, how much more easily could he accomplish the surrender of an individual whose life, liberty or property might be at stake, and force him to the Governor's "way of thinking?" The sober judgment of the intelligent lover of the institutions of his State, upon reflection, will hesitate to approve the recent course of the Executive in this matter. Every tradition and constitutional requirement of the executive office would demand that its action and its counsel should make for the upholding of the orderly procedure of the courts, whether State or Federal, and the one not less than the other.

The vital issue in this litigation, whether or not the rate bill was constitutional, and whether or not it was proper to grant an injunction pending judicial review, was a matter for the courts. The cause having originated in the Federal courts, it should have proceeded in the orderly way to the court of last resort, where it must be finally determined, without interference of the Governor or by courts of concurrent jurisdiction. There was no public exigency and no executive duty that required of the Governor his course of action. It is easy to arouse popular resentment and create popular clamor about supposed rights. It is not as easy to eradicate the poison interjected by popular clamor into the administration of the law.

This fact finds striking illustration in a very recent argument in the Supreme Court. The counsel for the State in these railroad suits, ex-Governor Aycock, in an argument on a motion for a new trial in State vs. Harrison, who was convicted of kidnaping, graphically depicted the popular clamor calling for conviction that surrounded the defendant's trial in the court below, and exclaimed: "The entire record, from beginning to end, discloses the fact that this defendant was not tried but lynched, and it loses none of its danger because it was studiously done under the forms of law."

It may be as truly said that the clamorous spirit of defiance to the orders of the Federal Court, which were made in the orderly procedure of judicial investigation, and the public intimidation of the railroad litigants to the suit "loses none of its dangers because it was studiously done under the form" of executive authority.

Even this victory did not satisfy the Executive. The railroads surrendered, the injunction was modified and the rate was put into effect. The cases were proceeding to trial when the Governor of the State repaired to New York to watch the taking of evidence and endeavored to stop the progress of the suits. He returned to North Carolina and published an interview, as follows:

"I submitted two propositions to Mr. Thom, the Southern's counsel, looking to a settlement, and these are:

"1. To avoid all costs by taking up first the legal propositions, and let the Supreme Court of the United States decide, thus giving us more light to act upon.

"2. To stop the Southern Railway's suit and test the rate fairly, and then if found too low for the roads to appeal to the justness of our people and ask them to remedy the wrong; that it is simply impossible to see if the rate is too low until a fair test for a reasonable time is made.

"In this matter Mr. Thom has promised to see President Finley, of the Southern, and see what the Southern would do.

"If the suit continues, no matter what the result, under the lease by North Carolina to the Southern Railway of the North Carolina Railroad, that decision cannot affect the 2 1-4 cent rate on the North Carolina Railroad and if the Southern continues to harass the North Carolina road, or causes others to do so, it may vitiate the lease.

"I laid this matter plainly before Mr. Thom, as I do not desire to take any advantage of the Southern if it will act within the law as agreed upon in the lease, otherwise I will act as I feel the law directs."

EXECUTIVE HYSTERIA.

Already, has accepted organ had been editorially accusing the attorneys of the railroads of acting in bad faith, in attaching to their petition for a modification of the injunctive order, the letter addressed to the judges by the Governor as evidence of coercion toward the railroads.

It would seem that, with the agreement between the Executive and the railroads, further agitation of this matter—certainly by the Governor—should have ceased. The fact that it did not cease and further interviews were promul-