North Carolina Rate Litigation and Agitation Constitutional Relations of State and Pederal Courts-Com-

cause violators of law to be prosecuted in the courts, but it cannot direct the conduct or coerce the courts. The courts can neither make nor execute the law. It can adjudge the law and decree how it shall be executed. The eighth section of article first of our

State constitution declares that: "The legislative, executive and judicial powers of the government ought to be free, separate and distinct from each

other legislative, executive and judicial departments of government each have limited grants of power. The constitution, State and Federal, alone embodies the supreme will of the people. These three separate de-partments, each within the limits of the power granted them in the constitution, act as a check and balance upon each other in the administration of government. The system is the distinctive feature of all the constitutions of the several States and the nation. And it is within the grant of the constitutional power of them that the courts may declare all acts in violation (before he finally passed upon its con-of the organic law to be void, and to istitutionality; appointed a special enforce by their decrees the protection guaranteed to personal and property rights by the constitutional mandate.

THE BASIC PRINCIPLES.

There are certain basic principles that control the State and Federal governments in their relation to each other, which seem to have been entirely overlooked in certain gubernatorial proclamations and editorial discussions of the rate litigation and agitation It is well to consider them; for a frequent recurrence to fundamental

the determination of that question.

THE REVENUE BILL.

revenue bill that the railroads of this S. 307. This principle was recognized of the United States. They brought cases." their suits in the Federal courts before Judge Simonton. He had attest-ed his fidelity to the Joctrine of

President Cleveland. He issued his inbefore he finally passd upon its conmaster to take evidence, but required

the railroads to pay on the basis of the old assessment and give bond for the the act of the Legislature until its come to this in North Carolina that a validity could be determined. There man who believes himself to be agwas no sensational proclamation . at grieved by an act of the Legislature, the time about States' rights. After Governor Aycock became Governor, without his consent and over his pro-the case was compromised. The fact test, is to be arraigned and assailed

principles is essential to preserve the blessings of liberty and as well the blessings of liberty and as well the frequencies of south Carolina, himself purpose of settling his grievance? Every bligant is entitled to exercise of his rights, when asserting them, in that is entitled to exercise the believes they bless the constitution of the United States and the laws which shall be frequencies the enforcement of the leventh amendment of the state which shall be state the state enforcement of the leventh amendment of the state the state deformment of the leventh amendment of the state is the constitution." McGhee and straining the enforcement of the legis- may be the more competently and im- Fink, as receivers of the Memphis and partially heard. It is unwise, unjust Charleston Railroad, brought a bill in lative act of this State. AS TO THE SUITS BEFORE THE and simply subversive of a constitu- equity in the United States Circuit tional right to denounce the railroads Court against the State of Alabama, contains were ceded to the Federal UNITED STATES CIRCUIT COURT. for this act of entering the Federal William C. Oates as Governor, and

QUESTION OF FACT.

United States, and issued injunctions neither can it do that which in law prohibiting its enforcement, pending amounts to a taking of private prop- ground of the controversy."

erty for public use without just compensation, or without due process of law.' Railroad commission cases The Legislature of 1899 adopted a Stone v. Farmers L. & T. Co.) 116 U.

States' rights by four years of active editorial discussion of this question is under the penalty clause; that so far a duty to perform. warfare in the Confederate army. He that the railroads have been denounc-has become prominent as a leader of ed for going into the Federal courts, the suit was in effect, a suit against his people in the serious conditions in South Carolina under the reconstruc-tion. He was a Democrat, and was appointed to the judicial office by place, the proper forum for the pro-which declares: "The judicial power tection of personal or property rights of the United States shall not be conjunction against the authorities of the under the constitution of the United strued to extend to any suit in law or State of North Carolina, prohibiting States in an equitable proceeding is equity commenced or prosecuted the enforcement of this revenue bill, the Federal Court, for, at last, the against one of the United States by Supreme Court of the United States a citizen of another State or by citiis the final court to determine the zens or subjects of any foreign State." question. In the second place, hav- It was also contended that, as the act ing a right to enter the Federal courts, did not charge specifically the Attorthe exercise of that right is not a sub- ney General or the corporation comthat and the new assessment, if the ject for condemnation. It is a matter missioners with any duty to enforce act enjoined should be held valid. of preforence for the complainants; the act, they could not be enjoined, This was setting aside, temporarily, in this case, the railroads. Has it certainly not as far as the Attorney general were concerned. The defendants relied on the case of Fitz v. Mcany steps by means of judicial proremains, however, that it was an ex- for exercising his constitutional right coedings, in execution of a State stat-

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tion of a tax imposed by the State fares and freights, the State cannot United States. Having jurisdiction, as stitutional and Section 1113 of the Re-Legislature, because alleged to be a require a railroad company to carry said by the Supreme Court in the visal, should be read as one act, each violation of the constitution of the persons or property without reward: above cited case, it "can make a com- being the law of the State, and, thus prehensive decree covering the whole construing them, the corporation commission and Attorney General were specifically charged with the enforce-CONTENTION OF DEFENDANTS. ment of the rate bill. Therefore, this

It was the contention of the dewas not a sult against the State, as fendants that, while the Circuit Court the State had no interest in the ultihad jurisdiction of the parties to the mate result, as the rights only of the State alleged discriminated against in Dow v. Beidelman, 125 U. S. 680, suit, the taw was self-excluding, and railroads and the traveling public them-in violation of the constitution and has been re-affirmed in other an injunction, if granted as prayed for were in question, but it constituted a A REMARKABLE FEATURE. The most remarkable feature of the ditorial discussion of this question is

THE REAGAN CASE.

The Reagan case was a suit in equity in the United States Circuit Court, Texas, wherein the Farmers' Loan & Trust Co. were complainants and the the State railroad commissioners, the Attorney General and Great Northern Railroad Company were defendants. The complainants alleged the rates put in effect by the railroad commission, under the authority of the Texas statute, were confiscatory, and obtained a perpetual in-junction against the defendant railroad from putting or continuing in effect the rates, and against the railroad commission and Attorney General of Texas from instituting any suits for penalties under the act. The act provided that any railroad or agent who received more than the stated rates, Ghee (172 U. S., 576). The doctrine should be fined not tess than \$100 or of that case is that: "A suit to restrain officers of a State from taking more than \$5,000. The doctrine of the case is that: "A suit to restrain the



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made in pursuance thereof (Con, Art. 6). It was adopted, "in order to form a more perfect Union." The powers it government by the different States. This instrument is as binding on the State as upon the national authorities. It is equally as binding as the State constitution upon the citizens and officials of this State. This instrument provides for the three co-ordinate branches of the government, the executive, the legislative and the judicial, as also does the State constitution. The Congress of the United States cannot logislate in violation of its provisions. The Executive of this nation cannot dischey its mandates. It is the province of the Federal courts to interpret the extent and meaning of this constitution and to adjudge when Its provisions have been violated The acta of Congress, although expressing the popular will at the time of their passage, not infrequently have been declared yoid by the Federal courts because in violation of the national constitution. In the same manner, the constitution of the State of North Constitution of the Sinte of North clairs had neutral a fail come upon Caroling is the supreme law of this entitled to a fair profit or income upon Sinte subject only to the provisions of the value of its property, nol its wa-mined by the statutes of the particu-ed a large number of indeterments had the United States. It was adopted by popular vote. There could not be written into it, even by popular vote, a provision which would violate any of the terms of the constitution of the United States, for the reason that the State has previously ceded to the national government all the powers enumerated in that instrument The sixth it for the convenience of the public. zection of article first of the State con-

stitution contains this chuse "That every citizen of this State owes paramount alleglance to the constitution and government of the United States and that no haw or ordinance of the State in contravention or subversion thereof can have any binding one of the powers that the States have

force. Thus, the constitution of the United. States is as binding upon the public officials of this State, who, upon entering office, take an oath to obey it. and upon each citizen of the State, who, when he registers as an elector. takes an oath likewise to obey it as is the State constitution; in fact. the more so, as it is the paramount law, The repeated assertion that, if the courts may set aside the acts of the Legislature, the sovereign rights of the State will be abrogated and the derived from it. of the State will be abrogated and the justify unreasonably low rates for do- the light of the Federal decisions and nestle want of knowledge of the constitufions of both the State and the United alone, upon the ground that the car- cuit couris. States. The Legislature is not the supreme governing power of the State. is merely a co-ordinate power of as rates are concerned, the State has the State government. It can pass no law, either in violation of the State or fy unreasonably high rates on domesnational constitution. It must legisfate with direct reference to and in subordination to each. If it trans- on its inter-State business. So far as United States circuit judge, said; cends its power, it is within the province of the courts to declare its acts the institutional as an invasion of that instrument in which alone is embodied the supreme will of the peo-

This power in the court to set aside the acts of the Legislature as being in violation of the constitutional manfate has been exercised both by the State and Federal courts from the foundation of the government. If I am correctly advised, the first State in the Uni Rholp Union to assert the doctrine was Island, and the second State in the Union to assert it was North Carolina. In fact, the claim has been its expenses are provided for out of, made for this State that it was the a common fund: and first its capifirst to assert the doctrine.

THE JUDICIAL POWER. The constitution of the United States

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The suits brought by the railroads in regard to the rate bill are instituted courts. by the Southern Railway Company, a Virginia corporation, a citizen of a different State from that of the respondents, and by certain stockholdphia, citizens of a different State, found such to be the fact, to obagainst certain State officials (not the tain an order upon the board of trans-These suits allege, setting out facts provided in the North Carolina statthat, if the passenger and freight by the Attorney General and other are put into effect, they practically respondents in the case of Smyth v. confis ate their income upon intra- Ames, (169 U. S., \$19), afforded a rem-State business. The fact may or may edy at law in the State court; but, not be true; this is a fact which the says the United States Supreme Court: Federal Court has directed to be investigated.

The Supreme Court of the United rights of one entitled upon any ground States has held that a railroad is to invoke the powers of a Federal calculations as to the reasonableness of rates to be charged by a corporaunder tion maintaining a highway legislative sanction must be the fair value of the property being used by NO POWER TO FIX RATE.

It must be borne in mind that the

Legislature has no power to fix any rate or in any manner control the inter-State business of the railroads. The right to control this business is These rates are regulated through the Ames:

sons and property wholly within its intelligent lawyer knows this, transportation, rier is earning large profits on its inter-State business, over which, so far States, in the case of Smythe v. Ames, no control. Nor can the carrier justitic business on the ground that it will be able only in that way to meet losses rates of transportation are concerned. domestic business should not be made

to hear the losses on inter-State busisument that a railroad line is an entirety; that its income goes into and

talization is on its entire line within; and without the State, can have no application where the State is without

remedy at law for the protection of

ever the established principles and company who should receive allowed to sue at law in a State court able toll, to be determined

on the same cause of action."

And. limits must be determined without yet, his failure to do so has been made reference to the inter-State business the subject of newspaper criticism, The State cannot determine the questions involved, in are thus stated: considered the procedure of the United States cir-The Supreme Court of the United

wherein it elaborately reviews the auprevious decisions in cases similar to those pending in this State before the

SUPREME COURT DECISION. "In these cases the plaintiffs, stock-

ness, nor the latter the losses on do- holders in the corporations named, mestic business. It is only rates for ask a decree enjoining the enforcethe transportation of persons and ment of certain rates for transporta-

Wm, C. Fitz is Attorney General of The Nebraska statutes authorized that State. The bill alleged the act of any railroad company to show, in a the Alabama Legislature, approved proper action brought in the Supreme February 9th, 1905, prescribed maxi-Court of the State, that the rates pre- mum rates to be charged on a cerers of the Atlantic Coast Line Itali- scribed by the statute were unjust tain bridge which, as receivers, the read Company, residing in Philadel- and unreasonable, and, if that court complainants owned and operated, and the act declared should the owners. lessees or operators of the bridge, or Governor), and, in the Coast Line portation permitting the rates to be their agents collect a higher rate for case, also against the Coast Line, raised. There is no such special remedy any person, they should forfelt to such person twenty Jollars for each offense. claimed to support their contentions ute. This remedy, it was contended to be recoverable before any justice of the peace. The rates so fixed amounted to confiscation and the penalty had the effect to deter the plaintiffs from questioning the valid-ity of the act. The act of February of the peace. The rates so Axed rates prescribed by the Legislature State officials of Nebraska, who were amounted to confiscation and the ty of the act. The act of February 9th, 1905, was alleged to be repug-"The adequacy or inadequacy of a States, because it confiscated the comnant to the constitution of the United plainant's property and denied to them the equal protection of the laws. In tered stock nor its actual cost, but ar State in which suit may be been brought against their toll-keepupon the value of its property, or, as brought. One who is entitled to sue ers, under certain sections of the Alain the Federal Circuit Court may in- bama Code, which in effect prescrib-voke its jurisdiction in equity when- ed that any agent of a toll bridge from rules of equity permit such a suit in travel over such bridge more than the that court; and he cannot be deprived rate fixed by its charter, or, if the of that right by reason of his being charter did not specify any unreasonby a jury

must, on conviction, be fined not more THE SUITS IN FEDERAL COURT Than one bundled domain. The than one hundred dollars. The validprosecutions thereunder were alleged The recent railroad suits were to be wrongful and in violation of properly constituted in the Circuit complainants' constitutional rights. It Court of the United States. The rail- was further alleged that these indictgranted to the national government, roads entered that court by virtue of ments were in contempt of the order a constitutional right. It was no con- of the court appointing the receivers, inter-State commerce commission, tempt of the State courts, in any view, and in violation of the order in the Says the Supreme Court. In Smythe that the Bilgants elected to proceed case enjoining the Governor. Attorin the Federal courts. Having elect- ney general and all persons from "In our judgment, it must be held ed to bring the suit in this forum, the prosecuting any suit or proceeding that the reasonableness or unreason- circuit judge had no power to surableness of rates prescribed by a render his jurisdiction and remand complainants, of their own motion, State for the transportation of per- the case to the State tribunal. Every Mamissed the bill as against the State and the Governor. The court held, although the State and Governor had been diamissed as parties thereto, the done by the carrier, or to the profits He had to proceed with the case and case was in effect a suit against the The reasons for its decisions

REASONS FOR DECISION.

"As a State can act only by its officers, an order restraining those officers from taking any steps, by thorities, after citing a number of its means of judicial proceedings, in execution of the statute of February 9th, 1895, is one which restrains the State itself, and the suit is as much against the State as if the State were named as a party defendant on the record. If the individual defendants held possession or were about to take possession of or to commit any trespass upon any property belonging to or unproperty between points within the tion, upon the ground that the statute violation of the latter's constitutional State that the State can prescribe; and prescribing them is repugnant to the rights, they could not resist the judiwhen it undertakes to prescribe rates constitution of the United States. Un- cial determination, in a suit against not to be exceeded by the carrier, it der the principles which in the Feder- them, of the question of the right to must do so exclusively with reference al system distinguish cases in law from such possession, by simply asserting to what is just and reasonable, as be-tween the carrier and the public, in the United States, sitting in equity, hold, the property in their cases in a respect of domestic husiness. The ar- can make a comprehensive decree officers of the State. In the case sup-A Catarrh Cure That Cures. While there have been many al-leged catarrh cures which have made marvelous claims only to re-sult in disappointment for the sufferer, there are thousands who will

and without the state, can have no application where the State is without suthority over rates on its entire line, and can only deal with local rates and make such regulations as are neces-sary to give fust compensation on lo-cal business." The constitution of the United States provides, expressly, that: "No State shall make or enforce any isw which shall abridge the privileges" Have been privileges of the state in a thing of the state state. "No state shall make or enforce any isw which shall abridge the privileges

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