

North Carolina Rate Litigation and Agitation

Constitutional Relations of State and Federal Courts—Comments on Executive Interference.

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PART I.

The writer has no interest, direct or indirect, personal or professional, in any railroad company. The views herein expressed are those of a lawyer, and are not those of a politician. The rate litigation in this State has been of interest to me, as a lawyer, and, as a citizen, not without patriotism, the rate agitation has been of concern. The legal questions raised in the order procedure of the courts, have involved a public discussion, hysterical in much of its clamor and reckless in much of its criticism. There is always a calmer mood and a clearer view of the normal situation.

In the present retrospect of the rate litigation and agitation, it is sought in this article to direct attention, if not to secure public consideration, at least to the fundamental principles of our government, State and Federal, which we should not overlook in our public relations under any circumstances.

OUR GOVERNMENT.

Our government is a government of laws, not of men, and nowhere is arbitrary power vested in any man or body of men. It cannot enforce them; it may enforce them in administrative matters. It may cause violators of law to be prosecuted in the courts, but it cannot 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."

The 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 departments, 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 of the organic law to be void, and to 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 relations of each government 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 principles is essential to preserve the blessings of liberty and as well the rights of property.

The supreme law of the United States is the constitution of the United States and the laws which shall be made in pursuance thereof. (Con. Art. 6). It was adopted, "in order to form a more perfect Union." The powers it contains were vested in the Federal 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 coordinate branches of the government, the executive, the legislative and the judicial, as also does the State constitution. The Congress of the United States cannot legislate in violation of its provisions. The Executive of this nation cannot disobey 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 acts of Congress, although expressing the popular will at the time of their passage, not infrequently have been declared void by the Federal courts because in violation of the national constitution. In the same manner, the constitution of the State of North Carolina in the supreme law of this State, subject only to the provisions of 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 section of article first of the State constitution contains the clause:

"That every citizen of this State owes paramount allegiance to the constitution and government of the United States and that no law or ordinance of the State in contravention or violation thereof can have any binding 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 will of the people defeated exhibits a want of knowledge of the constitutions of both the State and the United States. The Legislature is not the supreme governing power of the State. It is merely a coordinate power of the State government. It can pass no law, either in violation of the State or national constitution. It must legislate with direct reference to and in subordination to each. If it transgresses its power, it is within the province of the courts to declare its acts unconstitutional as an invasion of the instrument in which alone is embodied the supreme will of the people.

This power in the courts to set aside the acts of the Legislature as being in violation of the constitutional mandate 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 Union to assert the doctrine was Rhode Island, and the second State in the Union to assert it was North Carolina. In fact, the claim has been made for this State that it was the first to assert the doctrine.

THE JUDICIAL POWER.

The constitution of the United States

... or the citizen of any State...

... The railroad laws, they are deprived, by reason of the rates fixed by the Legislature...

... THE REVENUE BILL. The Legislature of 1899 adopted a revenue bill that the railroads of this State alleged discriminated against them...

... A REMARKABLE FEATURE. The most remarkable feature of the editorial discussion of this question is that the railroads have been denounced for going into the Federal courts...

... AS TO THE SUITS BEFORE THE UNITED STATES CIRCUIT COURT. The suits brought by the railroads in regard to the rate bill are instituted by the Southern Railway Company, a Virginia corporation, a citizen of a different State from that of the respondents...

... NO POWER TO FIX RATE. It must be borne in mind that the Legislature has no power to fix any rate or to manage the business of the railroad...

... THE SUITS IN FEDERAL COURT PROPERLY CONSTITUTED. The recent railroad suits were properly constituted in the Circuit Court of the United States. The railroads entered that court by virtue of a constitutional right.

... SUPREME COURT DECISION. In these cases the plaintiffs, stockholders in the corporation, demanded, ask a decree enjoining the enforcement of certain rates for transportation...

... A Catarrh Cure That Cures. While there have been many alleged catarrh cures which have made marvelous claims...

... covering the whole ground of constitutional law...

... The Circuit Court of the United States had jurisdiction of the railroad suits instituted in this State, first, because the suits were between citizens of different States...

... CONTENTION OF DEFENDANTS. It was the contention of the defendants that, while the Circuit Court had jurisdiction of the parties to the suit, the law was self-excluding...

... THE REAGAN CASE. The Reagan case was a suit in equity in the United States Circuit Court in Texas, wherein the Farmers Loan and Trust Co. were complainants and the State railroad commissioners...

... REASONS FOR DECISION. "As a State can act only by its officers, an order restraining those officers from taking any steps, by means of judicial proceedings...

... The Nebraska statutes authorized any railroad company to show, in a proper action brought in the Supreme Court of the State...

... The Federal Circuit Court may in its jurisdiction in equity whenever the principles and rules of equity permit...

... The Supreme Court of the United States has held that a railroad is entitled to a fair profit or income upon the value of its property...

... The constitution of the United States provides, expressly, that: "No State shall make or enforce any law which shall abridge the privileges...



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