in a governmental and not in a pecuniary sense."

The court distinguishes the class of cases, where the State officials are made parties, that in effect are suits against the State, from those where the defendants are also State officials, which do not constitute suits against the State. "The first class is where the suit is brought against the officers of the State, as representing the State's action and liability, and thus making it, though not a party to the record, the real party against which the judgment will so operate as to compel it to specifically perform its contracts." The other class is "where a suit is brought against defendants who, claiming to act as officers of the State, and under the color of an unconstitutional statute, commit acts of wrong and injury to the rights and property of the plaintiff acquired under a contract with the State. Such suit, whether brought to recover money or property in the hands of such defendants, unlawfully taken by them in behalf of the State, or for compensation in damages, or, in a proper case where the remedy at law is inadequate, for an injunction to prevent such wrong or injury, or for a mandamus, in a like case, to enforce upon the defendant the performance of a plain legal duty, purely ministerial, is not, within the meaning of the eleventh amendment, an action against the State."

REASONING OF COURT.

The reasoning of the court in this case is thus stated:

"So far from the State being the only real party in interest, and upon whom alone the judgment effectively operates, it has, in a pecuniary sense, no interest at all. Going back of all matters of form, the only parties pecuniarily affected are the shippers and carriers, and the only direct pecuniary interest which the State can have arises when it abandons its governmental character and, as an individual, employs the railroad company to carry its property. There is a sense doubtless, in which it may be said the State is interested in the question, but only a governmental sense. It is interested in the well-being of its citizens; in the just and equal enforcement of all its laws; but such governmental interest is not the pecuniary interest which causes it to bear the burdens of an adverse judgment. Not a dollar will be taken from the treasury of the State, no pecuniary obligation of it will be enforced, none of its property affected by any decree which may be rendered. It is not nearly so much affected by the decree in this case as it would be by any injunction against officers staying the collection of taxes, and yet a frequent and unquestioned exercise of jurisdiction of courts, State and Federal, is in restraining the collection of taxes, illegal in whole or in part."

The case of Smyth v. Ames (169 U. S. 466), was a suit in equity in the Circuit Court of the United States of Nebraska. The complainants were citizens of Massachusetts, and stockholders in certain railroads, who were named as defendants with certain citizens of Nebraska and the Attorney General, Secretary of State, Auditor of Public Accounts, State Treasurer, and Commissioner of Public Lands, constituting the board of transportation of Nebraska. The act of Nebraska permitted the board of transportation to fix rates, which it did. The suit was to restrain the enforcement of the rates. An injunction was obtained, restraining the railroads from putting in effect the rates prescribed, and the State officials from prosecuting any suits in violation of the penalty clause of the act. The Supreme Court of the United States affirmed the decision of the lower court and held the Nebraska law of 1893 to regulate railroads, classify freight and fix rates, etc., to be void, as repugnant to the United States constitution, "as prohibiting railroads in that State from receiving reasonable and just compensation, and depriving them of property without due process of law and of the equal protection of the laws."

In this case it was said by the court: "It is the settled doctrine of this court that a suit against individuals for the purpose of preventing them as officers of a State from enforcing an unconstitutional enactment to the injury of the rights of the plaintiff, is not a suit against the State within the meaning of that amendment." And, at a time when so much is said in this State about the reverence due to legislative enactments, it may be appropriate in this article to further quote the eloquent vindication by Mr. Justice Harlan of the duty and power of the courts in upholding the fundamental law.

JUSTICE HARLAN'S VINDICATION

"No one," he says, "we take it, will contend that a State enactment is in harmony with that law simply because the Legislature of the State has declared such to be the case; for that would make the State Legislature the final judge of its enactment, although the constitution of the United States and the laws made in pursuance thereof are the supreme law of the land, anything in the constitution or laws of any State to the contrary notwithstanding. The idea that any Legislature, State or Federal, can conclusively determine for the people and for the courts that what it enacts in the form of law, or what it authorizes its agents to do, is consistent with the fundamental law, is in opposition to the theory of our institutions. The duty rests upon all courts, Federal and State, when their jurisdiction is properly invoked, to see to it that no right secured by the supreme law of the land is impaired or destroyed by legislation. This function and duty of the judiciary distinguishes the American system from all other systems of government. The perpetuity of our institutions and the liberty which is enjoyed under them depend, in no small degree, upon the power given to the judiciary to declare null and void all legislation that is clearly repugnant to the supreme law of the land."

The constitutional question, then, in the North Carolina railroad suits, was presented for the adjudication of the circuit judge, whether or not they were in effect suits against the State.

Mr. Pomeroy, in his great work, on equity jurisdiction, declares: "It is not enough that the State should have a mere interest in the vindication of her laws, or in their enforcement as affecting the public at large, or as they affect the rights of individuals or corporations, but it must be an interest of value to herself as a distinct entity of value in a material sense," in order to be a suit against the State; "but, on the other hand, where officers acting under an unconstitutional law will injure substantial property rights, an injunction will not be refused merely because they are State officers, and the same is true when they threaten to act in excess of authority."

JUDGE PRITCHARD'S OPINION.

Judge Pritchard held they were not suits against the State. He may or may not have been right. The Supreme Court of the United States alone can finally determine. He had the right, and it was his duty, to rule upon the question.

It may be of interest here to cite from the opinion of the Supreme Court of the United States in Prout vs. Scott (188 U. S., 537), this statement of the law:

"It is the settled doctrine of this court that a suit against individuals, for the purpose of preventing them, as officers of a State, from enforcing an unconstitutional enactment to the injury of the rights of the plaintiff, is not a suit against the State within the meaning of that amendment."

"The constitution of the United States with the several amendments thereof, must be regarded as one instrument, all of whose provisions are to be deemed of equal validity. It would, indeed, be most unfortunate if the immunity of the several States from suits by citizens of other States, provided for in the eleventh amendment, were to be interpreted as nullifying those other provisions which confer power on Congress to regulate commerce among the several States, which forbid the States from entering into any treaty, alliance or confederation, from passing any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or, without the consent of Congress, from laying any duty on tonnage, entering into any agreement or compact with other States, or from engaging in war, all of which provisions existed before the adoption of the eleventh amendment, which still exist, and which would be nullified and made of no effect if the judicial power of the United States could not be invoked to protect citizens affected by the passage of State laws disregarding these constitutional limitations. Much less can the eleventh amendment be pleaded as an invincible barrier to judicial inquiry whether the salutary provisions of the fourteenth amendment have been disregarded by State enactments. On the other hand, the judicial power of the United States has not been infrequently exercised in securing to the several States, in proper cases, the immunity intended by the eleventh amendment. Hans vs. Louisiana, 134 U. S. 10 ;North Carolina vs. Temple, 134 U. S. 22."

AS TO THE CONTENTION ABOUT THE FACT.

It was contended by the railroads as to the facts that, if the act went into effect pending judicial review, they would suffer a great deprivation of their income, and, if they finally prevailed in the litigation their damage would be irreparable, for, in that event, there would be no remedy to them save to sue each passenger to recover back the difference in the price of the ticket sold. Considering that there are perhaps ten thousand tickets sold daily in North Carolina and that the litigation will probably take two years before it can finally be determined by the Supreme Court, the contention of the railroads as to the irreparable damage, if they prevail, is simply unanswerable. On the other hand, by requiring the railroads in selling a ticket at the present rate to issue a coupon for the difference between that rate and the rate fixed by the Legislature, to be redeemed by the railroads if the act is held to be constitutional, the traveling public could be protected against loss. The defendants contended that no injunction should issue as the facts presented to the court did not warrant injunctive relief. There were facts presented to the court by the railroads in support of the allegations of their bills of complaint, on the motion for injunction, showing the rates as fixed by the Legislature would practically deprive them of any income from intra-State business. To the contrary, the defendants presented the reports of the railroads made to the State corporation commission, that tended to prove that the domestic business, at the legislative rates, would be remunerative.

DID NOT PASS ON MERITS.

It is not the purpose of this article to discuss the facts. The circuit judge did not pass upon the merits of the case. It was only necessary at the preliminary hearing that he should be satisfied the issues were made in good faith and that an irreparable damage would be done to the complainants, if their contention finally prevailed, for him to have been justified in making the interlocutory orders he entered. He followed the established practice in referring the case to the standing master to take evidence, when each side could examine and cross examine witnesses, and directed him to find the facts. In the meantime, he continued the injunction, requiring large bonds from the railroads, enjoined the enforcement of the rate bill, and provided for coupons to protect the traveling public. This was the gravamen of his offense to the State officials, the yellow journals and the State's rights doctrinaires. His act was a constitutional exercise of his judicial discretion. The fact that in certain Western circuits the United States circuit judge, in a railroad rate case, refused the injunction, and that in New York another United States circuit judge, in the Consolidated Gas Companies case, granted a similar injunction, is not indicative of what the court should or should not have done in the North Carolina cases. Perhaps the Western judge, on the facts presented to Judge Pritchard in the North Carolina cases, might have granted the injunction. Perhaps Judge Pritchard, upon the facts presented to the Western judge in the case before him, might have refused the injunction. Each case stands upon its own merits and the judge grants or refuses the injunction as he may conclude the facts warrant. It is his duty to prevent any irreparable damage or wrong to either party to a suit before him, pending judicial investigation. It is not essential that he pass upon the facts or declare the act unconstitutional before granting the injunction. He grants it to prevent a wrong being done, pending judicial review. The delay in this review is the delay of the court, which must necessarily investigate the issues joined before determining them.

WAS JUDGE PRITCHARD'S ACT UNPRECEDENTED?

Was Judge Pritchard's act unprecedented?

Let us see. In a very able paper by Mr. Harrison Standish Smalley, Ph. D., of the University of Michigan, published in the "Annals of the American Academy of Political and Social Science," for March, 1907, on the subject of "Rate Control Under the Amended Inter-State Commerce Act," the author discusses the proposed provisions to expedite judicial review. The author says:

"It was generally acknowledged in Congress that, while judicial review is inevitable and in some ways desirable, it nevertheless presents some disadvantageous features.

"The merits of the question, however, were little considered, for the discussion speedily took the form of a so-called constitutional debate. The right of Congress to limit the judicial power was called into question. It was argued that while Congress could create or abolish the Federal Courts, other than the Supreme Court, it could not prevent them while existing, from exercising all judicial functions, both legal and equitable, which existed when the constitution was adopted, and which included the power to issue injunctions. On the other hand, it was contended that Congress in creating any particular courts could confer on them whatever powers it deemed wise. Into the details of these arguments we need not go. The opposition won, and the proposal was defeated. This is very much to be regretted.

* * * * * If may be added that the doubt of its constitutionality is due not so much to the consideration suggested above as to something else. The contention that Congress is without power to limit the authority of the lower Federal courts is not generally accepted as sound, and probably would not be upheld by the Supreme Court. But there is another ground on which the railroads could base their claim to the temporary injunction. There is no doubt that they are entitled, under the constitution, to a reasonable income from their business. And there is no doubt that if compelled for a year or so to operate rates too low to yield that income, they would be in a sorry plight. When the courts had determined that the rates were unreasonably low, their only remedy would be to sue each shipper for the difference between the charge paid and the reasonable charge, and this would result in a multitude of trivial and unprofitable suits. All this has been repeatedly recognized by the courts, which declare that a railroad suffers irreparable injury if it must operate unreasonable rates pending judicial review. Therefore the courts have held that in order to protect the company in its constitutional rights, injunctions must be issued at the outset to stay the enforcement of rates. This right to equitable relief is now firmly established. Thus we find the Supreme Court approving a decree of injunction issued by a circuit courts to restrain the enforcement of rates made by a State commission, although the State law declared that the rates should be in force pending a judicial review. Indeed, we find the court going even farther. In Chicago, Milwaukee and St. Paul Railway Co. vs. Tompkins (176 U. S. 167), a temporary injunction was issued at the outset, but after a thorough trial the lower court declared the rates to be reasonable and denied a perpetual injunction. Upon appeal, however, the Supreme Court directed that the restraining order be continued, pending a final decision of the case. This illustrates how zealous the court is in protecting the constitutional rights of the railroads. In view of the dicta and the practice of the court it may be asserted with some confidence that a statute denying the temporary injunction in rate cases would be overthrown by the court on the ground that, in effect, it prevented the courts from protecting the railroads in their constitutional rights. Nevertheless, it is to be regretted that the action, or inaction, of Congress has prevented a definite determination of this very important question."

SUPREME COURT'S VIEW.

In the case which he cites, of Chicago, Milwaukee and St. Paul Railroad vs. The Railroad Commissioners of South Dakota, the Supreme Court of the United States says:

"Few cases are more difficult or perplexing than those which involve an inquiry whether the rates prescribed by a State Legislature for the carriage of passengers and freight are reasonable. And yet this difficulty affords no excuse for a failure to examine and solve the questions involved. It has often been said that this is a government of laws, and not of men; and by this court, in Yick Wo. vs. Hopkins, 118 U. S., 356, 369, 30 L. ed. 220, 6 Sup. Ct. Rep. 1064: 'When we consider the nature and theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power.'

"When we recall that, as estimated, over ten thousands of millions of dollars are invested in railroad property, the proposition that such a vast amount of property is beyond the protecting clauses of the constitution, that the owners may be deprived of it by the arbitrary enactment of any Legislature, State or nation, without any right of appeal to the courts, is one which cannot for a moment be tolerated. Difficult as are the questions involved in these cases, burdensome as the labor is which they cast upon the courts, no tribunal can hesitate to respond to the duty of inquiry and protection cast upon it by the constitution."

(R. R. Comm. cases, 116 U. S., 307, sub. nom. Stone vs. Farmers' L. & T. Co., 29 L. ed. 636, 6 Sup. Ct. Rep. 334, 388, 1191; Dow vs. Beidelman, 125 U. S., 680; Georgia R. & Bkg. Co. vs. Smith, 128 U. S. 174; Chicago M. & St. P. Co. vs. Minnesota, 134 U. S., 418; Chicago & G. T. R. Co. vs Wellman, 143 U. S., 339; Reagan vs. Farmers' Loan & T. Co., 154 U. S., 362; St. Louis & S. F. R. Co. vs. Gill, 156 U. S., 649; Covington & L. Turnp. Co. vs. Sanford, 164 U. S., 578; Smyth vs. Aymes, 169 U. S., 466.)

"It is often said that the Legislature is presumed to act with full knowledge of the facts upon which its legislation is based. This is undoubtedly true, but when it assumed from that, that its judgment upon those facts is not subject to investigation, the inference is carried too far. Doubtless, upon mere questions of policy, its conclusions are beyond judicial consideration. Courts may not inquire whether any given act is wise or unwise, and only when such act trespasses upon vested rights may the courts intervene. A single illustration will make this clear: It is within the competency of the Legislature to determine when and what property shall be taken for public uses. That question is one of policy over which the courts have no jurisdiction; but if after determining that certain property shall be taken for public uses, the Legislature proceeds further and declares that only a certain price shall be paid for it, then the owner may challenge the validity of that part of the act, may contend that his property is taken without due compensation, and the legislative determination of value does not preclude an investigation in the proper judicial tribunals. The same principle applies when vested rights of property are disturbed by a legislative enactment in respect to rates."

(Continued on Page Ten.)

If real coffee disturbs your Stomach, your Heart or Kidneys, then try this clever Coffee imitation—Dr. Shoop's Health Coffee. Dr. Shoop has closely matched old Java and Mocha Coffee in flavor and taste, yet it has not a single grain of real Coffee in it. Dr. Shoop's Health Coffee Imitation is made from pure toasted grains or cereals, with Malt, Nuts, etc. Made in one minute. No tedious long wait. You will surely like it. Get a free sample at our store. Miller-Van Ness Co.

Have You Ever

paid a visit to our Mantel Department? If not, you have failed to see some of the handsomest designs in

Hardwood Mantels

ever displayed in the city, and the prices are way down.

Come in the next time you are up street.

J. N. McCausland & Co.

Stove Dealers, Roofing Contractors,

221 S. Tryon Street.

In Making Your Selections

for Wedding or Birthday Gifts you will find it to your advantage to look over our assortment of NEW GOODS—China, Cut Glass, Silver and Art Goods—in the very best and latest designs of American manufacturers.

GARIBALDI, BRUNS & DIXON

Leading Jewelers.

Don't be afraid to give Chamberlain's Cough Remedy to your children. It contains no opium or other harmful drug. It always cures. For sale by W. L. Hand & Co.

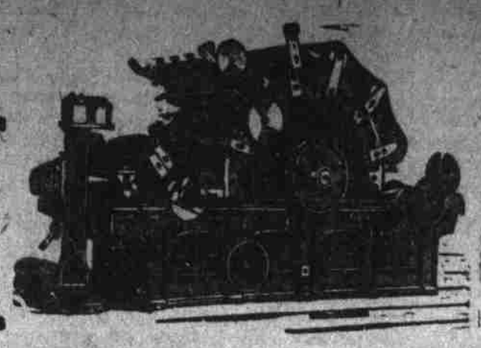
For a Sprained Ankle.

A sprained ankle may be cured in about one-third the time usually required, by applying Chamberlain's Pain Balm freely, and giving it absolute rest. For sale by W. L. Hand & Co.

SACO AND PETTEE MACHINE SHOPS

COTTON MACHINERY

Pickers
Revolving
Flat Cards
Railway Heads
and
Drawing
Frames



Slubbing
Intermediate
and
Roving Frames
Spinning Frames
Spoolers
and Reels

A. H. WASHBURN, Southern Agent

CHARLOTTE, NORTH CAROLINA

Exposition Suit Case

Our Great Leader

These Suit Cases are made of clear selected grain Cowhide, russet color, best locks, fitted with both catches and straps, best folding Vienna handles.

Size 22-inch .. .. $5.00.
24-inch .. .. $5.50.
26-inch .. .. $6.00.

We buy this case by the hundred and sell them as we buy them. We save you about $2.00 per case.

We also do well on Bags and Trunks.

GILREATH & CO.

Hand Painted China

Few articles combine more beauty and real usefulness than the artistically designed and beautifully painted China.

The various pieces we are showing are remarkable for their dainty pattern and coloring.

B. A. Southerland

Jeweler

FRANK P. MILBURN & CO.

ARCHITECTS

WASHINGTON. D. C.

What!

You Don't Get It Done Right?

Wear a badly laundered shirt anyhow? Don't do it. Have it done right.

The "Model way" is the right way.

MODEL LAUNDRY CO.,

"Correct Laundering."

West Fifth St. At Church.

'Phone 160.

Delivery Wagons and Harness

Delivery Wagons and Harness

At our shops, 220 N. College street, we build about 30 different styles of business wagons, and you can save about 25 per cent. by buying direct from us, as we have no freight and other expenses that a retail dealer has to pay.

We will build any kind of a wagon to order.

J. W. Wadsworths' Sons Company

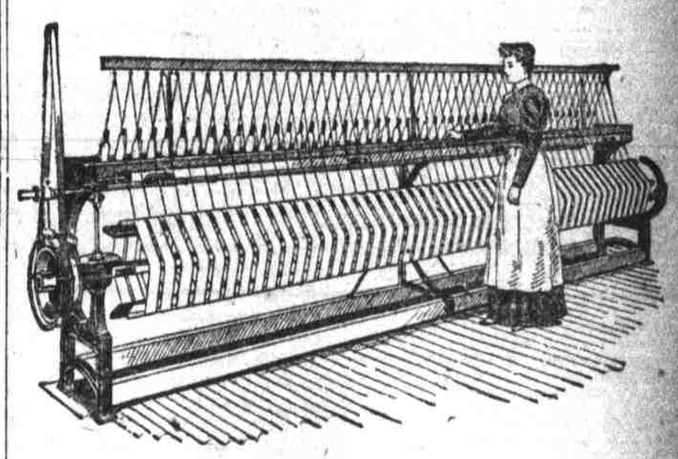
CHARLOTTE, N. C.

The American Machine & Manufacturing Company

Successors to Machinery and Contracting Business of

THE D. A. TOMPKINS CO.

CHARLOTTE, N. C.



YARN REELS

THE KIND WITH THE PATENTED OIL GUARD

Keeps Oil Off the Yarn While Doffing.

Every Machine accurately balanced and tested at speed before shipping.

THE CHARLOTTE SUPPLY CO

AGENTS FOR

American All-Wrought Steel Split Pulleys and "Giant" Stitched Rubber Belting.

We carry in stock Yale and Towne Hoists up to six tons capacity; also a full line of Packing, Pipe, Valves and Mill Supplies.

Going To Build?

DON'T DO IT.

Until you have communicated with and received prices from Hutton & Bourbonnais, who manufacture complete House Bills, Rough and Dressed Lumber, Sash, Doors, Interior Wood Work of all kinds. Bottle Boxes and Packing Cases a specialty. Direct from the forest to the consumer.

Hutton & Bourbonnais, Hickory, N. C.

Dr. E. Nye Hutchison.
J. J. Hutchison.

E. Nye Hutchison & Son

INSURANCE

FIRE,
LIFE,
ACCIDENT

OFFICE No. 9 Hunt Building.
Bell 'Phone 4392.

DR. C. L. ALEXANDER

DENTIST

— CARSON BUILDING —

Southeast Corner

FOURTH AND TRYON STREETS.

Charlotte, N. C. Phone 137.

MACHINERY

For Farm and Factory

Engines

Three kinds, from 12 to 150 H. P.

Boilers

Return Tubular and Portable on skids, from 12 to 150 H. P.

Improved Gin Machinery

Single Gins and Presses and complete outfits of capacity of 100 bales per day and over.

Saw Mills

Four or five kinds, all sizes in use in the South.

Pulleys and Shafting

All sizes, from the smallest to complete cotton mill outfits.

LIDDELL COMPANY

Charlotte, N. C.