Commission, or any person affected by an order of the Commission, the right to go into any circuit court of the United States and by mandamus or otherwise secure the enforcement of the order. But in such proceedings the right of the carrier or other person who is made defendant in the proceedings is limited to the question as to whether or not the order was regularly made, and not as to its lawfulness.

Mr. NEWLANDS. What section is it?

Mr. KNOX. Section 15, I believe.

Whatever the intentions of the framers of this bill may have been, they have succeeded in producing a measure which permits an administrative body to make orders affecting property rights, gives no right to the owners of the property to test their lawfulness in the courts in a direct proceeding, denies the right to challenge their lawfulness in proceedings to enforce them, and penalizes the owner of the property in the sum of $5,000 a day if it seeks a supposed remedy outside of the provisions of the bill by challenging either its constitutionality or the lawfulness of the acts performed under its provisions.

The conclusion to which I am irresistibly led for the reasons and upon the authority I have given is that such a measure is unconstitutional.

Mr. President, as Congress is now dealing for the first time with the proposition to confer upon its Commission the power to examine and readjust rates, it is instructive to observe the manner in which some of the States have dealt with the question of court review, as applied to the acts of their own State railroad commissions exercising similar powers. With the view of ascertaining to what extent such provisions are incorporated in the laws of these States, and also of learning the nature of such provisions, I recently caused to be prepared a statement showing the provisions in their statutes with regard to the review of the orders of State railroad commissions; and believing that this information would prove of value in the determination of the similar question now before this body, I presented the memorandum to the Senate, and it was made a Senate document.

That statement refers to the statutes of 16 States. It is, of course, impracticable for me to refer at length to each of these statutory provisions, but they have been summarized as follows:

In all the right of court review is affirmed, in some more comprehensively granted than in others, but in none wholly ignored. In Alabama the courts may examine into the reasonableness and justice of a commission's order, and appeal may be carried up to the supreme court of the State. The Arkansas statute allows the justice of the railroad tariff to be passed upon judicially. While the Florida law vests the railroad commission with judicial powers, it also provides that appeals "by either party" from judgments, orders, and decrees of inferior courts shall be to the same extent that appeals lie "in similar cases and suits brought under any other law of the State." Indiana provides for an appeal by "a dissatisfied company or party" to its highest tribunal. Kansas has a similar provision, and there, too, the courts may inquire whether the rate prescribed by the commission is "reasonable and just." Parties in interest may carry their case up to the supreme court of Louisiana "without regard to the amount involved."

In Minnesota the right of appeal to the supreme court is elaborately provided for. Mississippi also guards the right, and declares that in trials of cases "brought for a violation of any tariff of charges as fixed by the commission, it may be shown in defense that such tariff so fixed was unreasonable and unjust to the carrier." Missouri gives the reviewing court, if it holds and decides that the challenged order of the railroad commission was not lawful, the power and right, "without reference to the regularity or legality of the proceedings of said board or of the order thereof," to proceed "to make such order as the said board should have made." Here is a "court review" with a vengeance! North Carolina allows appeals to be carried to its supreme court. So do North Dakota and South Dakota. Texas also grants to either party dissatisfied with the commission's order the benefit of judicial review practically unrestricted. Virginia, to expedite decision, has enacted that all appeals from the commission "shall lie to the supreme court of appeals only." Washington permits any railroad or express company "affected" by an order of the railroad commission to test its lawfulness in the superior court. In the Wisconsin law it is set forth that dissatisfied parties may begin an action in the circuit court of the State to vacate the order of the commission, which is made the defendant, and the court may pass upon the lawfulness or reasonableness of the commission's requirement.

It will be seen from this outline, and more particularly from the document above referred to, known as Senate Document No. 247, of the present session, that the legislatures of these States have deemed it necessary to incorporate in their statutes specific provisions for review, or to provide for defense against the enforcement of orders which are deemed by the carriers to be unjust or unreasonable.

Now, Mr. President, if such provisions are necessary in the legislation of States possessing complete original sovereign power over the subject, hampered by no limitations except such as are contained in their own constitutions and imposed by the fourteenth amendment of the Constitution of the United States, *a fortiori*, they are necessary in an act of Congress which rests upon the delegated power of commercial regulation.

I can not but think there is some difference in the plenitude of the respective powers of the State and nation arising not only out of the source of the power but out of the difference of the relations of the two sovereignties to the subject upon which the power operates.

The right of a railroad to establish public highways and to take tolls for the transportation of persons and property is a right derived from the States who delegate to private enterprise a public function. The right of a State to exercise free control over the operations of a railroad and the charges for its service grows out of its dominion over an institution it has created to perform a function of the State.

The right of Congress is found in the constitutional power to regulate commerce among the States, which the great Chief Justice said:

> Is the right to prescribe the rule by which commerce shall be governed.

The purpose of these observations is not to throw doubt upon the power of Congress to confer upon the Commission the powers proposed in this bill—of this I have no doubt—but to confirm the view that in dealing with the subject greater caution should be observed in guarding the rights of those upon whom its provisions are intended to operate, because of the difference in the radical relations of the States and the nation to the subject and to emphasize the suggestion that it would be unwise to omit in national legislation that which seemed necessary in State legislation.

It could be contended, if it were admitted that Congress could not establish a schedule of rates, that Congress could lawfully enact the main proposition of this bill. I do not believe that an act to regulate rates, to secure their reasonableness and uniformity, necessarily depends upon Congressional power to establish rates; it could safely rest upon the power to prescribe a rule to govern rates when established. Congress's power to regulate the construction of a bridge across a navigable stream does not depend upon its power to build the bridge.

Is there not a difference between establishing rates and establishing a rule that they shall be reasonable and nondiscriminatory? The power to regulate commerce includes the power to remove restrictions upon commerce; and unreasonable, extortionate, and discriminating rates and practices amount to a restriction, an obstacle, an obstruction.

The decision in the Northern Securities case is precisely put upon the ground that Congress has power to prescribe the rule of freedom of competition and that the incidental interference with corporations created by a State in the enforcement of the rule does not suggest an attempt to assume control over them for any other purpose. The court said in that case:

> The means employed in respect of the combinations forbidden by the antitrust act, and which Congress deemed germane to the end to be accomplished, was to prescribe as *a rule* for interstate and international commerce (not for domestic commerce) that it should not be vexed by combinations, conspiracies, or monopolies which restrain commerce by destroying or restricting competition, etc.

Similar provisions for a judicial review, or for judicial investigation of complaints, are also to be found in nearly all of the bills upon the subject of rate regulation that have been introduced during the present session of Congress, to wit:

H. R. 296, introduced by Mr. RICHARDSON of Alabama, December 4, 1905, provides (sec. 4) for a review by the circuit court.

H. R. 469, introduced by Mr. HEARST December 4, 1905, provides (secs. 9 and 10) for a court of interstate commerce, which shall have exclusive jurisdiction to review all orders of the Interstate Commerce Commission, and that any party aggrieved may file a petition for review, such review to include the justness, reasonableness, and lawfulness of the order.

H. R. 4425, introduced by Mr. TOWNSEND December 6, 1905, provides (sec. 7) for review by the circuit court.

H. R. 8414, introduced by Mr. SULZER December 15, 1905, provides for judicial review (p. 2, lines 20 to 25).

H. R. 8999, introduced by Mr. OLCOTT December 18, 1905, provides for a judicial review (p. 3, lines 3 to 10).

H. R. 10098, introduced by Mr. HOGG January 4, 1906, provides