# GOV. TOOLE'S MESSAGE

(Contiued from Page Six.)

other than those adopted by the state board of text book commissioners, shall be deemed guilty of a misdemeanor.

From this it is evident that the book concerns whose books have been adopted have fastened their text books upon the state until a new commission, or other tribunal, is created with power to contract. The result is, that the monopoly thus created may fix its extortionate price, at its own pleasure, and the public, under the pains and penalties of a criminal statute, must buy at these prices.

With the state thus tied hand and foot it is not probable that any affirmative legislation will be asked by the book companies, but it is obvious to me, as it must be to you, that if the public interests are to be conserved, it is imperative that the present law requiring the continued use of such books must be repealed and provision made by which new contracts can be entered into and enforced without question.

The state is under the highest obligation to carry out such contracts to the letter. Every taxpayer contributes to the general purpose, and the beneficiaries, are, in a sense, the wards of the state, and whatever they are entitled to under the law should be vigorously looked after. They are to be our successors in the main affairs of life, so that every one who has the interest of mankind at heart must look gravely to the educational facilities afforded the children of the state.

If the court should finally decide that the state was not permitted to recover except for actual damages, our loss might be great on account of the difficulty and uncertainty in many cases of making proof. To obviate such embarrassment and secure to the beneficiaries a faithful performance of any contract which may be entered into hereafter, I recommend that the law be so amended that a failure to comply with the contract shall be deemed and held to be sufficient ground to recover the amount named in the bond, securing the same as fixed damages.

## ELECTION OF SENATORS.

Two years ago the people of this state adopted a joint resolution proposing an amendment to the Constitution of the United States providing for the election of United States senators by a direct vote of the people.

I urge the adoption of a similar joint resolution at this session, and trust that a demand so responsive to the great popular heart will continue to be agitated and pressed with renewed vigor until every obstacle now entrenched behind the ramparts of privilege and power shall be overcome, and thus disprove, in a measure, the offensive aphorism that, while all free government is democratic in theory, it is necessarily aristocratic in fact.

Governor Sayers of Texas, in his last annual message referring to this subject, said:

"Under present methods our representatives in the senate of the United States are elected by a majority of the members of the legislature. This system represents the compromise which was yielded by the champions of a popular government to those who entertained a profound distrust of the intelligence and conservatism of the people. In those early days it was thought that a legislature, itself elected by a popular vote, would be able to exercise greater wisdom in the selection of senators than the people at large. But a comparison of the results in legislation that have attended the different methods of electing our representatives in congress and our senators discloses no reason why we should fear the change or why we should not abandon the old and resort to a new method more in accord with the spirit of a government founded on the will of the people and responsive to a widespread sentiment."

## DIRECT LEGISLATION.

I know nothing more in accord with the genius and spirit of American institutions than what is properly known as "direct legislation." It had its birth Switzerland. It is the very essence of government by the people. It fosters and encourages the formation and exercise of deliberate and independent judgment upon the part of the voter, instead of a perfunctory, blind following of disloyal, dissembling and designing leaders.

It is the sure defense of the people against misrule and oppression. It is the beacon light of safety when public servants are recreant to their trusts and defy public opinion. It is our hope for the present, our refuge and safe anchor for the future. It is the sure weapon with which to put to flight the briber and the lobbyist, and drive them, like Hagar, to the wilderness.

It is the sure defense of the people sality with which private interests take precedence over public interests. It has been successfully tried in South Dakota and Utah, and has been lately adopted in Oregon.

It is no longer an experiment in the United States. It exists to a greater or less degree in every state in the Union. It is already applied in matters which we consider the highest concern of the citizen, such as the removal of state capitols and county seats; the issue of state, county and municipal bonds; the adoption of city charters, local option, municipal ownership of public utilities, etc., etc.

Manifestly, the truth is, if the people are fit to delegate power, they are fit to exercise power primarily. It is alleged, whether true or false it is not my purpose to affirm or deny, that political excesses far beyond the limit of law or morals have afflicted us while yet in the early youth of our existence as a state, and that instead of holding public officials to a strict accountability, a false charity for every frailty biennially relaxes the public morals until the very idea of public duty is almost effaced. It cannot be said that this stigma attaches to the lawmaking power alone. The executive and judicial departments have not escaped similar criticism during this strenuous period in our history, when corporate greed and sordid wealth are testing to the last degree the metal and manhood of men. No false pride on our part should induce us to gloss over long-continued and widespread accusations, by merely characterizing them as malicious or mendacious. By pride the angels fell.

Whether inspired by malice or mendacity, cupidity or stupidity, or whether in it all there is a grain or more of truth, the fact remains that our proud escutcheon has been tarnished and our influence for the future more or less impaired. To me ordinary prudence suggests and state pride demands that no step be omitted which will tend to remove every pitfall for the weak and every weapon for the wicked. When such safeguards have been thrown around those in authority, the occupation of the briber and lobbyist will have disappeared, and then all the innuendoes, inveracities, insinuations and suspicions which the imaginations of the malignant can invent or supply will never hurt or annoy us.

If such a change is made in our fundamental law as will permit the people at the ballot box to approve or reject certain legislation, those having private interests to serve will not infest these chambers or obstruct the public business. Moreover, the legislature and the executive will exercise more care as to the nature of the measures passed and approved if the voters have the power to demand that their voices be heard at the ballot box directly upon these measures.

I accordingly recommend the submission of a constitutional amendment providing for direct legislation in substanee and form like the Oregon amendment, which is as follows:

"Section 1. The legislative authority of the state shall be vested in a legislative assembly, consisting of a senate and house of representatives, but the people reserve themselves power to propose laws and amendments to the constitution, and to enact or reject the same at the polls, independent of the legislative assembly, and also reserve power at their own option to approve or reject at the polls any act of the legislative assembly.

"The first power reserved by the people is the initiative, and not more than 8 per cent of the legal voters shall be required to propose any measure by such petition, and every such petition shall include the full text of the measure so proposed.

"Initiative petitions shall be filed with the secretary of state not less than four months before the election at which they are to be voted upon.

"The second power is the referendum, and it may be ordered (except as to the laws necessary for the immediate preservation of the public peace, health or safety) either by petition signed by 5 per cent of the legal voters, or by the legislative assembly, as other bills are enacted. Referendum petitions shall be filed with the secretary of state not more than 90 days after the final adjournment of the session of the legislative assembly which passed the bills on which the referendum is demanded. The veto power of the governor shall not extend to measures referred to the people.

"All elections on measures referred to the people of the state shall be had at the biennial regular election, except when the legislative assembly shall order a special election.

"Any measures referred to the people shall take effect and become a law when it is approved by a majority of the votes cast thereon, and not otherwise.

"The style of all bills shall be: 'Be enacted by the people of the state of Oregon.'

"This section shall not be construed to deprive any member of the legislative assembly of the right to introduce any measure.

"The whole number of votes cast for justice of the supreme court at the regular election last preceding the filing of any petition for the initiative or for the referendum shall be the basis on which the number of legal voters necessary to sign such petition shall be counted. Petitions and orders for the initiative and referendum shall be filed with the secretary of state, and in submitting the same to the people and all other officers shall be guided by the general laws and the act submitting this amendment until legislation shall be especially provided therefor."

The foregoing amendment was adopted by the people of Oregon at the state election last June by a majority of about eight to one, the demand for this amendment having been in the platform of both political parties in Oregon. Should the legislature see fit to submit such an amendment to the people of Montana, I would suggest that the general appropriation bills be included among the exceptions to the referendum portion of the amendment.

I would suggest also that our ballot law be so amended that all measures or questions referred to the people at regular elections be printed on a separate ballot.

As is readily seen, the direct legislation amendment adopted by the people of Oregon is unlike the direct legislation amendment bills hitherto introduced in this state in this important respect:

The adoption of the usual form of amendment bill would send to the ballot box a vast amount of measures and material, all of which might be beneficial and none objectionable even to 5 per cent of the voters. Under the Oregon amendment, on the contrary, no measure passed by the legislature is submitted to the people unless it is objectionable to 5 per cent of the voters.

The certainty that 5 per cent of our intelligent electors would petition for a referendum upon a measure injurious to the public interests would deter corporations and others from attempting to use the legislative body to promote private ends and pass bills contrary to the public welfare.

In addition to the states that have already adopted direct legislation, I would call attention to a resolution adopted by the State Bar association of Pennsylvania last July. The resolution was introduced by an eminent member of the Bar association, Judge White, and is as follows:

"Whereas, the referendum principle in legislation is engaging the serious attention of thoughtful public men and many legislatures, and has been adopted by constitutional amendment in the state of Oregon by more than a two-thirds majority at the general elections there, June 2, last; therefore,

"Resolved, That the committee on constitutional amendment is hereby instructed to examine and report to this association at its next meeting as to the wisdom and practicability of suggesting an amendment to the constitution of the commonwealth, embodying the principle of referendum, as shall be deemed most practicable, thus having certain bills passed by the legislature referred to the people for a vote before they shall become a law."

Speaking in favor of his resolution, Judge White said:

"There is discontent among our people, as well as bitter criticisms and denunciation of legislature. It is not confined merely to metropolitan newspapers, but finds utterance and sympathy in very high quarters. It is wise that the Bar association take cognizance of this public discontent. It is said pressure and influence are used in the passage of acts in the legislature, and some say there is corruption. I do not affirm that, but I do say that suspicions are current that such influences are used in the passage of iniquitous legislation. What would be the result if statutes should be left to the votes of the people by the referendum? I do not think the result would be either anarchistic or confusing or tend to dethrone our constitution."

An initiative and referendum amendment to our constitution, similar to the Oregon amendment, would not change our present methods of lawmaking, so long as the lawmaking bodies remain true to their obligations. They would continue to draft, consider and enact laws, as they now do, and no reference to popular vote would be made, if no bad measures were passed and no good ones were put o death or pigeon-holed. But under the amendment suggested, if the legislative body enact a bad law and the governor sign it, 5 per cent of the voters could enforce its submission to popular vote, with the result that the law would not be operative until the people had voted on it; and if the majority voted against it, it would not become operative.

So, if for any reason or on account of any influence a good measure were pigeon-holed by the legislature, then 8 per cent of the voting population could demand that it be submitted to a popular vote. If a majority voted against it, it would be dead. If a majority voted for it, it would become a law, whatever might be the influences opposed to it. It would seem that every one who has at heart the interests of his state, ought to be in favor of abolishing the lobby and the so-called "legislative boss."

Concerning these individuals, I quote with approval the words of Governor Cummins in his message to the Iowa legislature in 1902:

"The professional lobbyist has, I regret to say, become one of the features of legislative assemblies. Do not understand me to suggest that the halls of legislation should be inaccessible to either the individual or corporation. The lobbyist, however, who is for or against anything for hire, whose mission is to promote one measure or defeat another, who haunts the chambers of legislation and taints its atmosphere with his corrupt designs, who sends for members for interviews in the cloakroom, who carries a tally sheet and watches the roll call, who shadows the members at their homes and hotels, injecting at all hours and all places his poison into the public service, is a criminal whose approach is an insult, and to whom the doors of the capitol should never swing inward."

The initiative and referendum would abolish both. It is urged against the initiative and referendum that if it were adopted only a few of the voters, comparatively, would vote on the questions submitted. I believe this would not be true if the measures so submitted were placed on separate ballots as already suggested. One admirable feature of direct legislation is that it would often accomplish good results without being used.

Before concluding this subject, I wish to disclaim in emphatic language any reflection or knowledge which would justify reflection upon this assembly or any member of it. I speak for the future—a future pregnant with fears and hopes. No man can tell what the unrestrained modifications now going on in the world of finance, commerce and transportation may bring forth, what riff-raff the ebb and flow of politics may drift into places of honor and public trust. Against these contingencies, it seems prudent to prepare while we may, for a system which will put into the possession of the people the constitutional machinery by which 8 per cent of the voters can resurrect a good measure which has been summarily pigeon-holed, and by which 5 per cent of the voters could stop the operation of a bad law until the sovereign people can pass upon it at the ballot box. This, in my opinion, would be an effective check on the killing of good bills, and the passage of bad ones.

Direct legislation has been in operation in South Dakota several years, yet it has never been appealed to; a fact urged against the measure, but, in reality, a strong argument in its favor.

It remains, just he same, "a flaming sword" in the hands of the people, constantly reminding the unscrupulous lobby and the designing "boss," that there is a reserve power which, when the occasion demands, can and will be brought into requisition.

## PRIMARY ELECTION LAW.

Direct nominations at a primary election are just as essential as direct legislation.

Instead of delegating to others the power to represent the citizen in convention, why not give the citizen power to vote directly at the primary for his choice of candidates for office?

It would involve no additional expense. If the primaries of all political parties were held at the same time and places, before the same judges, with the names of all the candidates printed on a ticket of uniform size and color, or upon one ticket such as now prevails at general elections, the possibility of one political party controlling the nomination of another political party would be removed; the temptation to corrupt the voter would be largely withdrawn and the elector's choice be registered beyond question.

The method by which a person becomes a candidate, the manner of placing his name on and printing the ticket and all the details of a system of direct nominations is to be found in the laws of the state of Minnesota.

Massachusetts has introduce it in its senatorial and representative districts. It has grown in popular favor until the "Outlook" for November 1, 1902, referring to the experience of Massachusetts, says:

"What appeals to the public in this reform is the quick settlement of the strife, the justice done to all parties, the prevention of political trickery in convention, and the dethronement of the professional politician. Already the success of this system has led to a demand for extension of the law, and it is seriously proposed to carry it so far as to discontinue even the state convention itself, with its historic associations."

I recommend the amendment of the present election laws so that the Minnesota system may be substantially enacted in Montana.

## OTHER REFLECTIONS.

By the same parity of reasoning employed in the three last subjects considered, the people should elect all important officers of the state government.

Under the law, as it now stands, the governor of the state appoints the state examiner, state inspector of mines, state coal mine inspector, state boiler inspector, commissioner of agriculture and labor, state veterinarian, register of the state land office, state land agent and game warden.

These are all offices of high rank, having to do with most important parts of the public service. The election of these, as well as all other officers by popular suffrage is not only consistent with the safety of the people, but it belongs to them as a right and duty.

The czar of Russia appoints his officers according to his sovereign pleasure for he is regarded by his subjects as the source of all political power. But the proposition that all power is inherent in the people needs no elucidation in Montana.

It has been well said that the right to choose their own officers in the first place and in the second place the exercise of this right in frequent elections are the two prominent characteristics of a free people.

The right itself distinguishes our government from a despotism; the frequent exercise of the right distinguishes it from an elective monarchy.

It does not militate against the argument to say that the power has seldom, if ever, been abused by a governor of this state, or that, as must be conceded, the present incumbents of the appointive officers referred to, are men of the highest character and integrity, possessing the necessary qualifications for faithful and efficient public service. It is the system that is reprehensible—a system which is inconsistent and inharmonious with the genius and spirit of our institutions in its attempt, without reason or necessity, to mingle and fuse together disagreeing elements of a democracy and a monarchy.

In short, in my opinion, executive appointments or patronage, if you please, and popular sovereignty are antagonistic elements in our form of government, and ought to be abandoned. It is on general principles like these, rather than for special reasons, that I recommend the election by the people of these important officers.

In keeping with the views here expressed, I indulge the hope that any office of importance created by this or any subsequent legislature wid not be made the subject of appointment by the executive or otherwise, but that provision will be made for the election of the person to fill the same at the next ensuing general election, and in all cases where the constitution does not otherwise provide, and it is deemed desirable to fill any vacancy temporarily, I suggest that the bill creating any office, board or commission, designate the person, board or commission to fill the same temporarily and until the next general election.

The duties imposed by the constitution upon the executive generally and in the matter of appointments specially are accepted with all the responsibilities that instrument expresses or implies, but there does not appear to be any reason why, until a general election is held, the legislative department should not assume whatever responsibility attaches to a temporary appointment of any officer whose office is created by it.

[The governor devotes some attention to the subject of smelter smoke in the Deer Lodge valley, and says that legislative action seems necessary, but he makes no definite recommendations.]

## CORPORATIONS.

The convention that framed the constitution of this state was composed of able and patriotic citizens. They put forth an instrument which, in its most important provisions, is abreast with modern constitutions and recent amendments to those of some of the older states. It goes without saying that its spirit and object should prevail as the organic law of the state.

Among these provisions, article XV, section 11, reads in part as follows:

"And no company or corporation formed under the laws of any other country, state or territory, shall have or be allowed to exercise or enjoy with this state any greater rights or privileges than those possessed or enjoyed by corporations of the same or similar character created under the laws of the state."

This is only just and reasonable. We may safely concede that a state has power to discriminate between its own domestic corporations and those of other states so far as the right to do business within its jurisdiction is concerned, at least when such corporations are not engaged in interstate commerce.

When once the right of a foreign corporation to do business is lawfully established, it follows that domestic corporations rightfully engaged in the same or similar business under the same circumstances and conditions, cannot be denied the same remedial rights and privileges enjoyed by foreign corporations.

Independent of the state constitution, the duty of a state under a republican form of government to give equal remedial rights is as imperative as that it impose equal burdens and obligations.

But the rights and privileges referred to in our constitution, imply not only equal exemption with others under like conditions from charges and liabilities of every kind, but equal accessibility to the courts for the prevention or redress of wrongs and the enforcement of rights.

Under existing laws foreign corporations can remove cases on account of diversity of citizenship, from the state to the federal courts; and thereby compel its adversary, whether an individual or a domestic corporation, to pursue litigation outside of the country or district of his or its residence, and, in case of appeal outside the state, to San Francisco if not to Washington when no federal question is involved, and in many instances where the same cannot be done by a citizen or a domestic corporation. It would seem to follow that such burdens should not be imposed and such discriminations permitted under the spirit of our constitution.

It is not perceived how this inequality can be obviated, unless it be by requiring foreign corporations to become domiciled or citizens of the state as a condition precedent "to do business" in this state. It is believed, however, that when this is done, they can or ought to go into the federal courts upon precisely the same grounds and conditions as a citizen of the state or a domestic corporation, and no other.

They would only lose their identity as foreign corporations in that respect, and would be allowed the same rights and privileges as domestic corporations and no greater, as contemplated by the fundamental law of the state.

With as liberal and inviting laws for local corporations as afforded by other states, it cannot be said that this would, in any manner, hamper or embarrass foreign corporations. It is unfortunately true that many foreign corporations while nominally located elsewhere are virtually transacting all of their business within our state, and for these privileges they ought to have no advantage over the domestic corporation.

For those reasons I recommend the enactment of appropriate legislation to domesticate all foreign corporations doing, or which may herefater do, business in this state.

Perhaps one of the most inexcusable inequalities between foreign and domestic corporations violative of their principle which declares in favor of "equal rights to all and special privileges to none," is in the amount of fees required to be paid to the state under the present law. The following fees may be collected of domestic corporations:

"For recording and filing each certificate of incorporation, and each certificate of increase of capital stock, he shall charge and collect the sum of 50 cents on each $1,000 of the capital stock of any company or corporation, provided that whenever the capital stock of any corporation shall exceed $1,000,000 he shall charge the sum of 25 cents on each $1,000 of the capital stock in excess of $1,000,000; provided that he shall charge and collect from each company or corporation not less than $20 for recording and filing each certificate of incorporation and each certificate of increase and capital stock; which sum shall increase the fee of issuing the certificate of incorporation or include the certificate of increase of capital stock where the capital stock is $20,000 or less; provided, however, that no company or corporation shall be required to pay a fee in excess of $1,000 for filing its articles of incorporation or certificate of increase of capital stock."

While fees which can be collected of a foreign corporation are as follows:

"X. For filing each certified copy of the charter or articles of incorporation of any foreign corporation, $20.

"XI. For filing each notice of appointment of agent, $5.

"XII. For filing each annual or semi-annual statement of any foreign corporation, $5."

In other words a domestic corporation with a capital stock of $1,000,000 must pay to the state $503, while a foreign corporation capitalized for the same sum and for the same purpose has to pay only $30.

This is too flagrant an injustice to require more than a suggestion to secure its correction. The fees should be the same. Such modification would increase the revenue of this state immensely. This last subject is considered in the annual reports of the state examiner and secretary of state and to which your attention is called.

## RAILROAD MERGERS.

Since the adjournment of the last legislature, public attention has been largely attracted to a merger or an attempted merger of the three principal lines of railways in this state.

Interest, in a greater or less degree, concerning this subject, exists in Minnesota, North and South Dakota, Idaho and Washington as well as in this state.

In November, 1901, Hon. S. R. Van Sant, governor of Minnesota, undertook to organize opposition to the scheme of consolidation as vowed by its formidable promoters.

To this end he called a convention of governors and attorney generals of the several states I have mentioned to meet in this city on December 29, 1901, which accordingly met at the executive office at Helena, and at which convention all the above-named states, except North Dakota, were represented. The convention continued in session three days, during which time valuable information was furnished and much interesting discussion was had upon the subject under consideration.

The occasion was improved to cultivate a closer acquaintance and friendship between the officials of the various states who had honored Montana by their distinguished presence, and which it is believed will eventuate in mutual good to our neighboring states as well as to ourselves.

The convention was a harmonious one and resulted, among other things, in the unanimous adoption of the following resolution:

"In our opinion, the consolidation, or threatened consolidation of the Great Northern, Northern Pacific and Burlington railway systems in the several states through which they run as parallel and competing lines, is contrary to sound public policy, and also, with the exception of Idaho, is in violation of the constitution or laws of said states; and mindful of the obligation which the law imposes in such cases upon the officials of the several states here represented, we hereby give our unqualified approval and endorsement to any proper and suitable proceedings which may be instituted in any court having jurisdiction by the sovereign state of Minnesota or any other state affected thereby, designed to speedily and finally test and determine the validity of such consolidation or threatened consolidation, and further,

"We unanimously protest against any combination or consolidation which restricts or stifles free competition in the trade or commerce of the country."

The last clause of this resolution finds ample approval in an opinion of the supreme court of this state from which I extract the following:

"Without rivalry of railroads monopoly might group up, and, to bring the dangers of destroying competition before us, that remarkable development could be stayed by the consolidation or amalgamation of railroad corporations owning competing lines.

"The maxim, 'Competition is the life of trade,' forms the basis of the constitutional prohibition against consolidation of rival railroads."

Touching this matter, Governor Cummins of Iowa, addressing the legislature of that state in 1902, said:

"Competition is the paramount law of industrial life. It may, and very often does destroy; but in my judgment it must exist in full vigor if we do not desire the government to assume the power of fixing the prices of industrial products.

"It must be clear that if a single corporation owned and controlled all the transportation facilities of the United States, it would be absolutely necessary for the government to prescribe and enforce rates for transportation service. It is equally clear that if a single corporation controlled the manufacture of the important commodities required by modern life, and the monopoly was likely to be long continued, it would be necessary for the government to fix the price at which such commodities should be sold. It cannot be successfully denied that every consolidation even though it does not draw in all the products in which it deals, narrows the field of competition."

The state of Minnesota subsequently instituted a suit in the supreme court of the United States to prevent the alleged merger, which was dismissed for want of jurisdiction.

Washington and Montana, however, occupied a different position from Minnesota, so that either of these states could maintain an action by which the right to consolidate could be determined without running counter to the jurisdictional question raised in the Minnesota case. Soon thereafter the state of Washington instituted a proceeding similar to that brought by Minnesota, which is now pending and undetermined in the supreme court of the United States. I would gladly have taken the initiative in behalf of this state and brought such a suit as Washington did, but having no appropriation available for payment of the large expenses consequent upon assembling witnesses in the East, in what was sure to be a protracted trial and procuring additional counsel which a case of such magnitude would require, I readily yielded the right of way to the state of Washington, as I was obliged to do or call an extra session of the legislature to provide for such expense—a course which did not seem to me to be prudent in view of the willingness of Washington to proceed.

It is hoped and believed that the spirit of the resolution adopted by the convention of governors and before referred to will find complete and full vindication and approval in the final decision of the pending case by the supreme court of the United States.

## RAILROAD COMMISSION.

I recommend the passage of a law creating a state railroad commission.

Section 5, article 15, of our constitution provides that:

"All railroads shall be public highways and all railroads, transportation and express companies shall be common carriers and subject to legislative control by law rates of charges for the transportation of passengers and freight by such companies as common carriers from one point of the state to another."

A commission to be elected by the people should be invested with as ample powers as this provision of the constitution will warrant.

Another provision of our constitution worthy of mention is to be found in section 6 of the same article, forbidding such companies, or the lessees or the managers thereof from consolidating their stock, property or franchise with any other such company owning, or having under its control, a parallel or competing line. It likewise forbids such companies from uniting their business or earnings with any other and prohibits any officer thereof from acting as an officer of any other such company owning or having control of a parallel or competing line.

Among other inhibition found in the constitution is the following in section 7 of the same article:

"No railroad or transportation or express company shall be allowed to charge, collect or receive, under penalties which the legislative assembly shall prescribe, any greater charge or toll for the transportation of freight or passengers to any place or station upon its route or line than it charges for the same class of freight or passengers to any more distant place or section upon its route or line within this state."

I will not conscientiously approve of legislation which will be oppressive or unjust to any person or property in this state, but I shall insist that all persons, whether natural or artificial, yield obedience to the constitutional requirements referred to.

To tolerate in this state any power above the law, or submit to the exercise of privileges, granted by us to corporations, in such manner as to be oppressive or unjust to the people would be to surrender our sovereignty and write ourselves down as amiable idiots, unfit for local self-government.

Our aim should be, in resisting these encroachments, not to oppress nor submit to oppression.

The salaries and expenses of such a commission, at a time when the reduction of public expenses is paramount, may have diverted you from serious consideration of this question, but this need not deter you in going forward in this important work.

This item may be well provided or in the act creating the commission by making it a charge against the franchise and property of such companies. That is to say, the salaries and expenses shall be paid by the state, but the money with which it is paid shall be raised by a special levy therefor against the property of such railroad companies. This is only just, because although railroad, express and transportation companies are private corporations, as distinguished from municipal corporations, their uses are public.

As said by Justice Field, speaking for the supreme court of the United States, in Charlotte, etc., Railroad company vs. Gibbs, reported in the 142nd volume of the reports of that court:

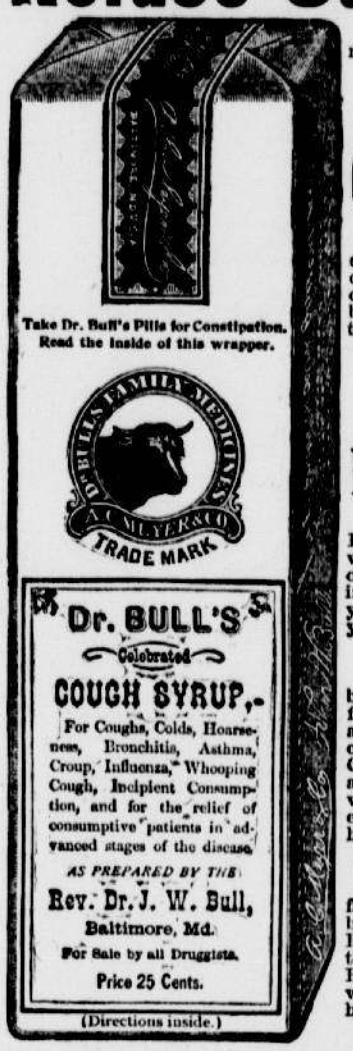
"They are formed for the convenience of the public in the transportation of persons and merchandise, and are invested for that purpose with special privileges. They are allowed to exercise the state's right of eminent domain that they may appropriate for their uses the necessary property of others upon paying just compensation therefor, a right which can only be exercised for public purposes. And they assume by the acceptance of their charters, the obligations to transport all persons and merchandise upon like conditions and at reasonable rates, and they are authorized to charge reasonable compensation for the services they thus perform. Being the recipients of special privileges, from the state, to be exercised in the interest of the public, and assuming the obligations thus mentioned, their business is deemed affected with a public use, and to the extent of that use is subject to legislative regulation. That regulation may extend to all measures deemed essential, not merely to secure the safety of passengers and freight, but to promote the convenience of the public in the transaction of business with them, and to prevent abuses by extortionate charges and unjust discrimination. It may embrace a general supervision of the operation of their roads, which may be exercised by direct legislation commanding or forbidding, under severe penalties, the doing or omission of particular acts, or it may be exercised through commissioners specially appointed for the purpose.

"The mode or manner of regulation is a matter of legislative discretion. When exercised through commissioners their services are for the benefit of the railroad corporations as well as of the public. Both are served by the required supervision over the roads and there would seem to be sound reason why the compensation of the commissioners in such case, should not be met by the corporations, the operation of whose roads and the exercise of whose franchises are supervised.

"In exacting this there is no encroachment upon the fourteenth amendment. Requiring that the burden of a service deemed essential to the public, in consequence of the existence of the corporations and the exercise of privileges obtained at their request, should be borne by the corporations in relation to whom the service is rendered, and to whom it is useful, is neither denying to the corporations the equal protection of the laws, nor making an unjust discrimination against them. All railroad corpor-

(Continued on Page Ten.)


# Refuse Substitutes




Ask for and see that you get the old reliable

## Dr. Bull's Cough Syrup

The one you have always used. It is endorsed by the leading doctors as the only absolutely safe and sure cure for cough, cold, whooping cough, croup, bronchitis or any throat or lung affection.

**It Cures Consumption.**

**IT WILL CURE A COLD**

## In a Night

There is no remedy "just as good" as Dr. Bull's Cough Syrup. The dealer who says so is thinking of his profit only. Don't let a dealer influence you into buying some cheap substitute when your health or the health of some of your family is at stake.

**Cured Consumption.**

"Dr. Bull's Cough Syrup cannot be beaten. It is the best on the market; for I was troubled with a bad cough for a long time and the doctor said I had consumption, but I heard of Dr. Bull's Cough Syrup, took it and I was well and cured in a week. I have a boy to whom I give Dr. Bull's Cough Syrup every time required and it always cures him too." Mrs. Lillie Curdie, Donora, Pa.

**Small dose. Pleasant to take.**

The accompanying illustration is a facsimile of the genuine package. Sold by all druggists, large bottles, 25 cents. Be sure that the package you buy has the trade-mark "A Bull's Head." Dr. Bull's Cough Syrup cures speedily and will leave the throat and lungs in a healthy and normal condition.

It contains no harmful drugs.


## MINING APPLICATION NO. 4628.

U. S. Land Office,
Helena, Montana, Dec. 1, 1902.

**Notice is hereby given that James L. Depauli and Fred L. Depauli, whose post-office address is Butte, Silver Bow county, Montana, have this day filed an application for a patent for 1440.3 linear feet, the same being for 460 feet in a westerly and 980.8 feet in an easterly direction from the point of discovery on the Thelmer Depauli Lode, and 405.3 feet, being for 4 feet easterly and 401.3 feet westerly from discovery on the Hannah Lode Mining Claim, situated in Fourth of July (unorganized) Mining District, Jefferson county, Montana, the position, course, and extent, of the said mining claim, designated by an official survey thereof, as Survey Nos. 6677-6720, Fractional Township No. 3 north, Range No. 7 west, a notice of which was posted on the claim on the 21st day of November, 1902, and being more particularly set forth and described in the official field notes and plat thereof on file in this office, as follows, to-wit:**

**On the Thelmer Depauli lode, beginning at the northeast corner, a granite stone, 5x12x6 inches above ground, marked 1-6677 for Corner No. 1, from which Initial Point No. 1, established for surveys in the unsurveyed portion of Fractional Township 3 north, Range 7 west, bears north 13 degrees 34 minutes 14 seconds west, 4261.8 feet; and running thence south 83 degrees 31 minutes west, 1465.3 feet to Corner No. 2; thence south 12 degrees 45 minutes west, 407.5 feet to Corner No. 3; thence south 88 degrees 9 minutes east, 1123.6 feet, to Corner No. 4; thence north 76 degrees 23 minutes east, 312.5 feet to Corner No. 5; thence north 12 degrees 45 minutes east, 538.5 feet to Corner No 1 and place of beginning, containing an area of 16.10 acres, of which 1.34 acres are in conflict with Survey Nos. 6544 and 6545 and not claimed, leaving a net area of 14.76 acres claimed.**

**On the Hannah Lode, beginning at the northwest corner, a granite stone, 6x8x6 inches above ground, marked 1-6720 for Corner No. 1, from which Initial Point No. 1, established for surveys in the unsurveyed portion of Fractional Township 3 north, Range 7 west, bears north 6 degrees 56 minutes 31 seconds west, 4775.8 feet, and running thence south 12 degrees 45 minutes west, 137.5 feet to Corner No. 2; thence north 65 degrees 30 minutes east, 417 feet to Corner No. 3; thence north 12 degrees 45 minutes east, 49 feet to Corner No. 4; thence south 76 degrees 23 minutes west, 370.5 feet to Corner No. 1 and place of beginning, containing an area of 0.72 acres, of which 0.06 acres are in conflict with Survey No. 6546 and not claimed, leaving a net area of 0.66 acres claimed, making a total of 15.42 acres claimed by the above named applicants.**

**On the west of Survey No. 6677 is Survey No. 5723, Bear Paw Lode, Robert McBride, applicant; on the south of Survey 6677 and west of Survey 6720, is Survey 6665, Elmer Remle Lode, Fred L. Depauli et al., applicants; south of Survey 6720 is amended Survey No. 6347, Johanna Lode, Andrew V. Corry, applicant; east of Survey 6677 is Survey 6546, Mount Hope Lode, Johanna Depauli, et al., applicants.**

FRANK D. MIRACLE,
Register.

JOS. H. HARPER,
U. S. Claim Agent.
(First Publication, Dec. 2, 1902.)