THE FREE PASS QUESTION.

AN OPINION BY JUDGE PARKER OF THE SUPREME COURT.

He Decides That the Railroad Commissioners and Their Clerks Are Entitled to Free Passes, Under the Law Creating the Board, When on Official Business—The Decision Believed to Apply to Other State Officers—An Appeal.

ALBANY, Jan. 4.—To determine the question as to whether, under the amended Constitution, railroad companies could be required to transport the officers and agents of the Railroad Commission, when on official business, on passes signed by the Secretary of State, in accordance with section 160 of the Railroad law, a test case was yesterday argued before Justice Alton B. Parker, at Kingston, upon stipulated facts in an application for a mandamus to require the Secretary of State to issue such transportation as heretofore. The application for a mandamus was granted, and Secretary of State Palmer forthwith issued several passes to employees of the Commission and annual passes to the Commissioners and the Secretary of the Commission. Justice Parker in his opinion says:

"By chapter 353 of the Laws of 1882 the Legislature created a Board of Railroad Commissioners and defined and regulated its powers and duties. In addition, it surrendered by that act the authority to assess upon the railroads of this State a sum not to exceed $50,000 a year to defray the salaries of the Commissioners and pay the necessary expenses of the Board. By the same act it undertook to provide that in addition to the $50,000, the actual and necessary cost of transportation upon all railroads actually visited or inspected by the Commissioners, their officers, clerks, experts, and agents in the course of a due performance of the duties enjoined by law, should be borne by the railroads so visited or inspected.

"To accomplish this result the statute provided that 'in the discharge of the duties of their office they should be transported over the several railroads in the State of New York free of charge, upon passes signed by the Secretary of State; they may employ and take with them experts or other agents whose services they may deem to be temporarily of importance and who shall also be transported, while on such duty, free of charge upon passes signed by the Secretary of State.'

"From the time of the appointment of the Railroad Commissioners under the act referred to, down to Jan. 2, 1895, the Commissioners have proceeded in the discharge of the duties by law commanded. The sum necessary to pay the expenses of the Board, not exceeding $50,000 a year, have been assessed upon the several railroads in this State by the Comptroller, and the assessments paid. The Secretary of State has issued such passes in pursuance of the act as the Railroad Commissioners have requested, and the passes have been recognized by the railroads affected by them. But the application made to the Secretary of State on Jan. 2, 1895, to issue passes in accordance with the statute was refused, the reason assigned being that article XIII., section 5, of the Constitution of the State of New York, which went into effect Jan. 1, 1895, prohibits the issuing of such passes. It reads:

"'No public officer or person elected or appointed to a public office under the laws of this State shall directly or indirectly ask, demand, accept, or receive for his own use or benefit, or for the use or benefit of another, any free pass, free transportation, franking privilege or modification or commutation of telegraph or telephone rates from any person or corporation, or make use of the same himself or in conjunction with another.'

"In view of the statute to which we have referred, the limitation of the provision commanding a public officer not to accept or receive a pass or free transportation 'for his own use or benefit,' is significant. The office of the word 'own,' when following a possessive pronoun, is to emphasize or intensify the idea of a peculiar or especial interest. It suggests, what was undoubtedly the intention of the framers of this constitutional provision, that the practice of giving passes to public officers for their individual use and to save them from personal expense, should be stopped; but the power of the Legislature to provide for the necessary travelling and other expenses of public officers while engaged in public business should not be abridged.

"This provision of the Constitution must not only be construed in the light of existing public statutes, but it will be presumed that it was drafted with full recognition of them. Section 160 of the general railroad law provided that neither the Railroad Commissioners nor their secretary, clerks, agents, employees, or experts should accept, receive, or request any pass from any railroad in this State, for themselves or for any other person. Section 168, on the other hand, declared that such officers in the discharge of their official duties should be transported over the railroads of this State free of charge upon passes signed by the Secretary of State. In short, the statute prohibited the public officers named from accepting passes for their own use, but authorized them to use a pass issued by the Secretary of State for the public use.

"So this provision of the Constitution prohibits these, as well as all other public officers, from accepting free passes for their own use or benefit, but it does not prohibit them from accepting passes from the Secretary of State, providing for their transportation while engaged in public business, as it was clearly would do so if it were intended to annul the provision of section 160 relating to that subject.

"Other reasons might be presented tending to show that the provisions of section 160 are not controlled by the section of the Constitution pertinent to passes, but as the view given seems to be fully adequate, a further discussion will not be undertaken.

"Several state officials who have read the opinion think that under it any State official may take with a pass when on public business.

The Attorney-General's Department will take an appeal to the General Term from the order of Judge Parker, that a final decision may be reached interpreting the provision of the Constitution referred to.

MILITIA OFFICERS' PASSES.

Must They Be Surrendered in Obedience to the New Constitution?

The discussion regarding the variety of persons affected by the new constitutional provision against the use of passes over railroads by State officers has developed, and attention has been directed to the fact that many more persons have had the benefit of passes than any one had supposed. A class who fear that they will be cut off from riding about the State free are National Guard officers. Of course the question whether these men will be so affected will depend upon whether they come under the legal definition of State officers. The term is defined in the statutes of the State, in chapter 681, article I., section 2, as follows:

"The term State officer includes every officer for whom all the electors of the State are entitled to vote, members of the Legislature, Justices of the Supreme Court, Regents of the University, and every officer appointed by one or more state officers or by the Legislature, and authorized to exercise his official functions throughout the entire state, or without limitation to any political subdivision of the State, except United States Senators, members of Congress and electors for President and Vice-President of the United States.

"The term local officer includes every other officer elected by the electors of a portion only of the State, every officer of a political division or of a municipal corporation of the State, and every officer limited in the exercise of his official functions to a portion only of the State. The office of a State officer is a state office. The office of a local officer is a local office."

Under this provision applies to a man holding a commission in the National Guard a question which is now bothering a considerable number of persons who have been accustomed to travel for nothing or who desire to enjoy the privilege. The words of the new constitutional amendment, which may affect them, are:

"No public officer, or person elected or appointed to a public office under the laws of this State, shall directly or indirectly ask, demand, accept or receive or request any pass from any railroad in this State, for themselves or for any other person. Section 160