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SPEECH OF  
FRANK BERGEN

on

ASSEMBLY BILL, No. 167

Before the Committee of the House of Assembly  
on Railroads and Canals

FEBRUARY 27, 1911

# Speech of Frank Bergen

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Railroads and Canals. February 27, 1911.

*Mr. Chairman:*

A week or so ago—I think it was on the fifteenth of this month—a hearing was accorded by a committee of the Senate on all the utility bills pending in the present legislature. The hearing was attended by a large number of gentlemen interested in the corporations mentioned in the bills, and by many others, anxious about the value of securities issued by such corporations, and concerned for the welfare and prosperity of our state. I should have been glad if your committee had sat with the senate committee on the fifteenth—a course I understand that is sanctioned by precedent—in order that you might have had the benefit of the very interesting and instructive discussion of the bills from various standpoints. Unfortunately the remarks of those who took part in the discussion were not fully taken down; but notes of the substance of some of the speeches were taken and have since been printed. I will ask permission, at the close of my remarks, to submit them to you for consideration. At the same time I will venture with some hesitation to submit another document in the hope that it may aid the present discussion. It is a speech that I delivered nearly three years ago before a committee of the senate on the utility bills then pending. In looking over it recently it occurred to me that some of it is still relevant to the questions now under discussion. I am glad to observe that the intervening time has

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withdrawn the acrimony from the debate. The good common sense of the people is asserting itself, and by common sense I do not mean the current notions of the hour, but common sense as defined by Everett—"the final judgment on great practical questions to which the mind of the community is pretty sure, eventually, to arrive." And this definition indicates the value of deliberation in dealing with great problems that concern the state.

I am informed that the attention of your committee is now confined to Assembly Bill No. 167, introduced by Mr. Egan—the other bills on the same subject having been laid aside or withdrawn. I wish to discuss two aspects of that bill, first the general policy relating to so-called public utilities which will be established in this state if the bill should pass, and, secondly, the means provided in the bill itself by which it is proposed to execute that policy.

This bill if passed will commit the state to the policy of state and municipal ownership of public utilities, at least as long as the law shall remain in force. This is not a mere prediction, much less a warning; but a fact that has been demonstrated by experience here and elsewhere during the past five or six years. I will not turn aside to discuss the merits of municipal ownership with its plausible arguments and disappointing results. All I care to say about it now is this: the people have given no mandate to this legislature to ordain and establish that policy. Nothing of that kind appears in any political platform promulgated prior to the last election when there was deep searching of heart and brain to find issues to please the people. What the people would say about it if the question should be broadly submitted, I will not undertake to foretell. At present the trend of public sentiment is against it. Such a revolutionary policy should not be adopted until the people have approved it after full discussion in a political campaign.

The facts that support my statement that the passage of this bill would establish the policy of state and municipal ownership in this state are these: There is a law in force over in the state of New York similar to the bill now under consideration. It was enacted in 1907—four years ago—and I am told—and I have inquired several times because I doubted the accuracy of the answer—that during the four years since that act has been on the statute books of New York there has not been a single public utility corporation organized to construct a plant of any kind which would be subject to the utility law if its plant came into existence in that state. Not one. Think of it. The great Empire State of the Union, with its nine millions of people, its territory two-thirds as large as England, by legislation of this character has stopped absolutely the investment of capital in new enterprises and the construction of public utilities, which we all know are so essential to the comfort and convenience of the people. That is not all. The mere anticipation of that kind of legislation has prevented the organization of a single corporation in this State during the last five years for any of the purposes for which companies mentioned in this bill are formed.

So it is not a prophecy or a mere hasty statement to say that the passage of this bill, with clauses in it to which I will call attention by and bye, will prohibit, as long as it remains on the statute books of this state, the construction of a single public utility by means of private capital.

I have still more evidence in support of my statement as to the effect of the passage of such a bill. Two years ago, after some agitation, a bill was passed by the legislature of this state permitting street railroad and trolley companies to carry freight and express packages. The people, especially in the rural districts, thought that if they could have their express matter and light freight brought to their doors by

means of the trolleys it would be a public convenience and a saving of labor and expense. It is done in many states, but is not done here except on one little road along the Atlantic coast. The legislature generously passed an act allowing street railroad companies to equip their railroads with cars and other appurtenances necessary to carry on the freight and express business, and they have an absolute right to do it now without asking the consent even of the municipalities in which their tracks are located. The legislature has said we will not trouble you to do that, to haggle and bother and dispute with the towns about the terms, and make agreements with different towns would probably conflict with each other, so they gave the power as broadly as the statute could make it, and the legislature had absolute power to grant the right. That act has been on the statute books for two years, and yet no street railroad company in this state has induced any man with money to invest to put in a dollar in any enterprise to equip a street railroad for operation to carry freight or express matter. It simply confirms what I have said before as to the effect of this legislation in New York, and the effect of the fear or threat of similar legislation in this state. This is a large and important question, gentlemen, and it strikes me that it ought to be considered carefully by every member of the legislature, interested as you all are in the welfare and prosperity and convenience of the people of New Jersey.

There is another striking effect of legislation of this character. It necessarily makes monopolies of every public utility corporation that now exists. Under it competition is utterly impossible. No gentleman, nor band of gentlemen, will organize a corporation to operate under such legislation as this, even where there is no competition, much less will they attempt to enter into competition with companies already entrenched in the business. Now the current political fetish of the hour is the adoration of competi-

tion. To establish and maintain competition in interstate commerce as a national policy was the sole purpose for which the Sherman Act was passed more than twenty years ago. I will not argue whether regulated monopoly or competition is better in the long run for the people; all I say is that the legislation now proposed by this bill not merely commits the state to the policy of state and municipal ownership in so far as additional plants of the character described in the bill are required, but it will make an absolute monopoly of every public utility corporation that now exists in the state, because, as I said, there is and can be no competition, because nobody else will engage in the business under such a law as this.

Having said so much about the general features of this proposed law, I will call attention to some of its sections. At the end of section two the bill states: "The Governor may remove any commissioner for or without cause." This is not a very important point, I admit, but indicates at least the haste with which this bill must have been compounded. Now I assume that no gentleman occupying the office of governor of this state would ever remove a citizen from such a responsible and conspicuous office as a utility commissioner under this act without cause. I cannot imagine a governor doing that. Therefore, it seems to me that no commissioner, in practice, would be removed under this act without cause, and if an attempt should be made to remove him for cause he would be entitled to notice, and a hearing to ascertain the facts, and to the judgment of the governor upon the question whether he should be dismissed from the office or not for the cause alleged. But it has been held distinctly in this state in the case of *The State v. Pritchard*, arising in Jersey City, that the removal of a public officer is a judicial act, and cannot be done by the governor. Our constitution prohibits the governor from exercising a judicial function. We have a court of impeachment, and the only way to remove a

it is alleged that there is some injustice or excess in the rates charged by a public utility corporation. To leave it as it is would invite or at least permit any one of the millions who patronize utility corporations in this state, to plunge the municipality where he lives, and the state perhaps, and the corporation into one of those long, expensive and often futile controversies over rates or discriminations, or something of that kind.

The next section to which I wish to refer is on page 5, sub-division (c) of section 17. That is a clause of very doubtful validity, in my judgment. It purports to give the commission power to compel a utility corporation "to establish, construct, maintain and operate any reasonable extension of its existing facilities." That is, the commission might say to the street railroad company here in Trenton, we think it would be a good plan to have a street railroad constructed to Lambertville. The directors of the company, and the stockholders of the company, might say we don't think it would be a prudent investment. And those who must put up the money to pay the expense of such an extension certainly ought to have something to say about it. Under this section as drawn they have nothing to say, or rather can say nothing about it; and if that provision can be enforced, which I doubt, it would in effect compel citizens interested in a public utility corporation to take money out of their pockets against their will and invest it in a business enterprise against their judgment. Now is that right? I think that clause ought to be amended, if it is left in, so as to provide that the party or municipality which insists that an extension shall be made against the judgment of the companies should at least guarantee the legal rate of six per cent. as a net income on the money invested in the extension. It certainly ought not to be left as it is.

That is one of the reasons why there has been an absolute stoppage of the investment of capital in this state and in the state of New York in new utility enterprises, because no capitalist, no banker, dares to invest his own money or the money deposited with him for investment, in a business enterprise subject to such a provision as that, which may or may not, after years of litigation, turn out to be valid.

Then in sub-division (f) of section 17, on page 6 of this bill there is a provision relating to depreciation accounts. I must admit that I am not well instructed in matters of account, but as I read that sub-division it calls for a general rule whereby depreciation accounts shall be kept by all companies classified under the act. Now then, take a company newly formed, with its plant in good order, with all modern facilities installed, that company needs a very different depreciation account from an old company in a dilapidated condition and the kind of a depreciation account suitable for corporations in one locality would differ widely from those operating in other localities, perhaps, and yet under the broad sweeping language of this section, no matter where located all utility corporations must keep the same kind of a depreciation account and keep the same kind of a depreciation fund, whether needed or not.

Then in sub-division (f) of section 18, on page 7, there is another provision which I think has been condemned as invalid by the court of appeals of the state of New York in adjudicating upon a similar provision in the New York act. That section purports to depose the directors of the company, nullify their judgment as to what investments should be made of the company's capital, and to substitute for their judgment the opinion of the utility commissioners, who have no interest whatever in the financial welfare of the corporation; and as I recall the case of the Delaware and Hudson Canal Company, which is also a railroad company, the court of appeals held that it was not the object and purpose of the New

York statute and was beyond the power of the legislature to depose the board of directors from the management of the company in which their funds were invested and the funds of the stockholders, whom they represented, and substitute in their place and stead three or five commissioners who necessarily were not well informed as to the condition of the affairs of the company, and had no interest whatever in its financial success.

Again, the 19th section of the bill, at the bottom of page 8, is an extremely important one. Let me read it:

“No public utility corporation, domestic or foreign, shall hereafter purchase or acquire, take or hold, any part of the capital stock of any other public utility corporation organized or existing under or by virtue of any law of this state, unless authorized so to do by the board. No stock corporation of any description, domestic or foreign, other than a public utility corporation, shall purchase or acquire, take or hold, except as collateral security, more than ten per centum of the total capital stock of any public utility corporation organized or existing under or by virtue of any law of this state. Every assignment, transfer, contract or agreement for assignment or transfer by or through any person or corporation to any corporation in violation of any of the provisions hereof shall be void and of no effect. No such transfer shall be made on the books of any public utility corporation. Nothing herein contained shall be construed to prevent the holding of stock heretofore lawfully acquired.”

Now see how that affects the corporation which I represent. The Public Service Corporation of New Jersey was organized nearly eight years ago under the general corporation act. Its object was to rescue a lot of public service corporations that were in a deplorable condition financially, to re-construct their properties, rehabilitate their plants, in order that they might be made valuable and capable of rendering bet-

ter service to the public than in the past. Some seven or eight years ago that company raised at first ten million dollars in cash, issued its stock, sold it at one hundred cents on a dollar, and with that money undertook the task of rehabilitating the properties I have referred to; and it was supposed at that time that ten million dollars would be sufficient. As a matter of fact more than forty million dollars have been put in down to date, and the end is not yet in sight. The method by which these underlying companies get the money to improve their plants is to issue their stock to the Public Service Corporation, which buys it. The Public Service Corporation borrows the money, giving a mortgage, to secure its bonds, or issues stock to its stockholders and gets the money, and then takes that money and pays for the stock of the street railroad company, the electric light company and the gas company, and with that money those companies continue the work of enlarging, extending and improving and rehabilitating their property. Under this proposed statute that must stop instantly; and we need at least five million dollars a year to continue the work of which I have spoken. The Public Service Corporation was organized as I said a little less than eight years ago—I think May or April, 1903. It has already expended more than forty million dollars of new money, cold cash, collected from its stockholders, and borrowed on bond and mortgage in the rehabilitation of these properties which it controls. How can these companies get five million dollars a year, for at least five years in the future to continue that work, if such a clause as this is put in the statute books of New Jersey? It simply prohibits the work. Stops it—just as completely as the statute of New York, commonly and unjustly called the Hughes bill, put an end to new enterprises of a public utility nature.

The next section to which I wish to call your attention is section 21, on page 9. That section states: "No highway shall be constructed across the tracks

of any railroad company at grade, nor shall any railroad company or street railway company lay tracks across any highway, so as to make a crossing at grade, nor shall any railroad or street railroad company lay tracks across any other railroad or street railway, without first obtaining therefor permission from the board; *provided, however*, that this section shall not apply to the replacement of lawfully existing tracks." This provision assimilates street railways to steam railroads. Why, the very plan of a street railroad requires it to be laid on the surface of streets, and necessarily crosses other streets every few hundred feet in cities, and at frequent distances everywhere. This bill proposes, as I understand it, to treat street railroads as steam roads. It is inconsistent with the end and purpose and object of street railroads.

Then there is another section, section 23, which provides for the filing within thirty days after the passage of the act a list of officers and directors, trustees, executive committee, &c., with the secretary of the commission. Substantially that information is filed in obedience to law by every corporation annually in the office of the secretary of state, and it would seem to be unnecessary to require a company to file two statements containing the same facts, in offices in the same building.

I will now pass on, Mr. Chairman, to sections 32, 33, 34, and 35; and these sections, in order that they may be clearly in mind, I should like to read one after the other.

"Section 32. In default of compliance with any <sup>other</sup> other of the board the person or public utility affected thereby shall be subject to a penalty of one hundred dollars per day for every day during which such default continues, to be recovered in an action of debt in the name of the state, and observance of the orders of the board shall be enforced by mandamus and injunction in appropriate cases."

That statement as to mandamus is perfectly correct and unobjectionable. It is the proper, orderly, regular

and civilized way of testing a right and enforcing a duty.

Section 63 says: "Any person who shall perform, commit or do, or participate in performing, committing or doing, or who shall cause, participate, or join with others in causing, any public utility corporation or company to do, perform or commit, or who shall advise, solicit, persuade, instruct, direct or order any officer, agent or employe of any public utility corporation or company to perform, commit or do any act or thing forbidden or prohibited by this act, shall be guilty of a misdemeanor."

Section 34 is this: "Any person who shall neglect, fail or omit to do or perform or who shall cause or join or participate with others in causing any public utility corporation or company to neglect, fail or omit to do or perform, or who shall advise, solicit, persuade, instruct, direct or order any officer, agent or employe of any public utility corporation or company to neglect, fail or omit to do any act or thing required to be done by this act, shall be guilty of a misdemeanor." "Any person"—that you see is personal. I believe in the current notion that guilt is personal because corporations are made up of persons, and persons operate corporations.

Section 35 is shorter still. It is levelled at the corporation itself: "Any public utility corporation which shall perform, commit or do any act or thing hereby prohibited or forbidden, or which shall neglect, fail or omit to do or perform any act or thing hereby required to be done or performed by it, shall be guilty of a misdemeanor." Section 36 I will make the subject of separate comment.

Those of us who are members of the bar, at least, know that every new statute law is an edge tool, and every statute law on a new subject attempting to deal comprehensively with important matters and running along the border lines of legislative power suggests questions in almost every line, sentence and para-

graph; and I think, if you will look over the development of our jurisprudence, that you will find it takes on the average thirty years for the courts, in the process of litigation, to inform the public and the bar exactly what a statute of that character really means. Take the familiar history of the mechanics' lien law as an illustration. The reason is this: No one by merely reading such a statute and confining his observation to the four corners of the act, can depend on the conclusion drawn from reading its language, although he may understand every word of it. Every statute passed in this country must be read subject, first, to those few underlying principles that support even constitutions themselves, such as that no man can be made a judge in his own cause or that no legislation can take the property of one man and give it to another. Such things as these are underlying principles that need not be incorporated in any statute, because they must be kept constantly in view and respected by every government that undertakes to maintain civilization. Then every statute passed by the legislature of every state in this country must be read in the light of the constitution of the United States, and the amendments to the constitution as they have been interpreted and expounded by the supreme court of the United States in opinions filling more than two hundred volumes.

That is not all. You must then read a new statute subject to the constitution of the state in which it is passed, and if it is repugnant to any provision, or any implication, of the constitution of the state in which it is passed, to that extent it is unenforceable, illegal, and void.

And that is not all yet. In reading and construing a statute law, it must be read in connection with other statutes relating to the same subject, that is, statutes *in pari materia*, as the lawyers say. And then statutes must be read by the changing lights of public policy, and finally in the twilight of the police power, which is growing to be a higher law than the constitu-

tion. So that no one, lawyer or layman, is likely to get any rational idea of the meaning of a statute by simply picking up the pamphlet laws of the year in which it is passed, and reading its language.

My object in reminding you of these things is this: This bill, if it should become a law, like every novel statute of importance running along the border lines of legislative power, bristles with questions that can only be brought before the courts for adjudication in litigation. You cannot take this statute up to the court of errors and appeals next week when it meets, and say to the court I want you to tell the people of this state whether this thing is valid in every particular, and whether every order made under it by the commission can be enforced according to its terms. Why, the court could not answer such a question. They would say we are not here to make any such blanket declaration. We will decide each question as it is presented. But when a controversy arises between a public service corporation and a citizen, or a municipality, under the act, or some one seeks to found a right or set up a defense based upon it, then an issue may be framed, and that question, and that question only, is all that the court can consider or decide. Therefore it will take a generation before anyone can tell the effect, the scope, the meaning, and the consequences of a radical piece of legislation such as is embodied in this bill.

These sections to which I have referred emanated I think from Kansas and Minnesota. Some time in the eighties the legislature of Minnesota conceived the idea that they could pass an act appointing a commission to regulate public utilities and fix rates, and make the judgment of the commission final, so that there could be no appeal to the courts whatever; that what the commission said should end the matter; that it was the be all and end all of the whole business. And the courts of the state of Minnesota sustained that act and said it was a valid exercise of the legislative power of the state of Minnesota. But a railroad

company that had been affected by the act claimed that it infringed the rights of the company under the fourteenth amendment of the constitution of the United States, and in that way a case was taken to the supreme court of the United States at Washington, and that court held that any statute that attempted to slam the doors of the courts in the face of a suitor when he desired to enter seeking protection or redress is unconstitutional and void. That ended that feature of legislation, so far as the state of Minnesota was concerned.

Then another effort was made to accomplish the same purpose—not to shut the doors of the courts absolutely against injured parties as Minnesota had attempted to do, but to make it so dangerous for a party to go into a court of justice if he claimed that he was being injured under such laws, that he would not dare to do it. And that is the origin of these clauses which say that if you do not obey the orders made by the commission, if you do not obey these statutes in every particular, no matter whether they are right or wrong, and yet dare to go into a court of justice and ask for protection, if it should turn out after long litigation, and perhaps by a vote of five to four in the court of last resort, that you are wrong, you forfeit one hundred dollars a day from the date of the order to the final decision of the case.

Worse than that. The bill goes on to say that not only is the omission—it does not say refusal only—the omission to obey these orders is a penal offense, subject to such a penalty as I have mentioned, but it is also a criminal offense—a criminal misdemeanor, for which anybody and everybody concerned may be tried, convicted and sentenced to the penitentiary, perhaps for a term of years. These provisions are efforts to make it dangerous for a citizen to go into a court of justice, in good faith, upon the advice of counsel seeking to protect his property from injury, or to defend himself against some attack which he honestly believed to be unfounded in law. And that we find

here in a bill introduced into the legislature of the state of New Jersey, when the very first section of the first article of the constitution of this state declares that—"All men are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, and acquiring, possessing, and protecting property." Such a law would look strange by the side of the provision of Magna Charta that courts shall be open to every one, and justice shall not be sold, refused, or denied; and it would look stranger still when compared with those provisions of the constitution of the United States—echoes of the great charter—which declare that due process of law and the equal protection of the laws shall not be denied.

This kind of legislation is something new in this state and in this country. I imagine that you might find something like it among the black letter statutes of the Dark Ages; but for America I am happy to say it is a monstrosity of recent birth, that cannot live long in the atmosphere of a civilized state.

The Supreme Court of the United States a few years ago had occasion to glance at legislation of this character in the case of *Cotting v. Kansas City Stock Yards Co.*, 183 United States reports, at page 79. The state of Kansas had included such a feature in a statute enacted there, and while it was not necessary for the supreme court of the United States in that case to decide as to the validity of it, because the case turned upon another point, yet the late justice Brewer, who wrote the opinion of the court, made this remark which I beg leave to read, although it is quite long, for whatever was written by that eminent jurist is worthy of thoughtful consideration by every one who has occasion to consult the opinions of the supreme court of the United States for instruction. He said this:

"In this feature of the case we are brought face to face with a question which legislation of other states is presenting. Do the laws secure to an individual

an equal protection when he is allowed to come into court and make his claim or defence subject to the condition that upon a failure to make good that claim or defence the penalty for such failure either appropriates all his property, or subjects him to extravagant and unreasonable loss? Let us take some illustrations to suggest the scope of this thought.

“Suppose a law were passed that if any laboring man should bring or defend an action and fail in his claim or defence, either in whole or in part, he should in the one instance forfeit to the defendant half of the amount of his claim, and in the other be punished by a fine equal to half of the recovery against him, and that such law by its terms applied only to laboring men, would there be the slightest hesitation in holding that the laborer was denied the equal protection of the laws? The mere fact that the courts are open to hear his claim or defence is not sufficient if upon him and upon him alone there is visited a substantial penalty for a failure to make good his entire claim or defence. Take another illustration: Suppose a statute that every corporation failing to establish its entire claim, or make good its entire defence, should as a penalty therefor forfeit its corporate franchise, and that no penalty of any kind except the matter of costs was attached to like failures of other litigants, could it be said that the corporations received the equal protection of the laws? Take still another illustration: Suppose a law which, while opening the doors of the courts to all litigants, provided that a failure of any plaintiff or defendant to make good his entire claim or entire defence should subject him to a forfeiture of all his property or to some other great penalty; then, even if, as all litigants were treated alike, it could be said that there was equal protection of the laws, would not such burden upon all be adjudged a denial of due process of law? Of course, these are extreme illustrations, and they serve only to illustrate the proposition that a statute (although in terms opening the doors of the courts to a particu-

lar litigant) which places upon him as a penalty for a failure to make good his claim or defence a burden so great as to practically intimidate him from asserting that which he believes to be his rights is, when no such penalty is inflicted upon others, tantamount to a denial of the equal protection of the laws. \* \* \* But when the legislature, in an effort to prevent any inquiry of the validity of a particular statute, so burdens any challenge thereof in the courts, that the party affected is necessarily constrained to submit rather than take the chances of the penalties imposed, then it becomes a serious question whether the party is not deprived of the equal protection of the laws."

As I stated, the court did not decide in that case what the legal effect of that provision in the Kansas statute was, because the case turned on another point; but subsequently, in a case entitled *Ex Parte Young*, reported in 209 United States Reports, 123, the court said, at page 147, in passing judgment on a statute which attempted by threatening penalties and imprisonment to make the decision of a public utilities commission final: "A law which indirectly accomplishes a like result [to make a decision of a utilities commission final] by imposing such conditions upon the right to appeal for judicial relief as works an abandonment of the right rather than face the conditions upon which it is offered or may be obtained, is unconstitutional. It may therefore be said that when the penalties for disobedience are by fines so enormous and imprisonment so severe as to intimidate the company and its officers from resorting to the courts to test the validity of the legislation, the result is the same as if the law in terms prohibited the company from seeking judicial construction of laws which deeply affect its rights."

There we have, then, this statement of Justice Brewer, in the *Cotting* case, and the decision of the supreme court of the United States in a recent case,

Ex parte Young, holding that these provisions which say to a corporation or to an individual—because this statute applies to both—that if you dare to go into the courts of New Jersey and solicit protection for your rights, you do it at the risk of bankruptcy and imprisonment, cannot stand in the light of our written constitutions and of principles of justice that are older and stronger than any constitution that was ever written.

Think of such provisions in a statute of the state of New Jersey—a state as famous for the purity of its administration of justice as Westminster Hall. Blot these sections from the bill. They are worse than useless. They can do nothing but provoke litigation of a wasting character; they can have no beneficial effect whatever on the state or any of its inhabitants.

I am a little rusty on criminal law, but I have an impression that there is a statute, or a common law rule, that to obstruct the administration of justice is itself a crime; that is, if a person knows of some litigation going on, and seeks in some way to obstruct it, tries to spirit away a witness, or something of that kind, in order to obstruct the administration of justice, he commits a crime. And yet, is not the design of these sections I have read exactly that—to obstruct the administration of justice in New Jersey? Can they have any other purpose? The courts have said they mean that, and how vicious and worthless they are.

But that is not all. I want to read now section 36: “The performance, omission or doing by any public utility corporation of any act or thing hereby prohibited or forbidden, or the neglect, failure or omission by any such corporation to do or perform any act or thing hereby required to be done or performed by it, shall be sufficient ground for the forfeiture of the charter of such corporation in appropriate proceedings for that purpose instituted by the state.”

If any official commits an error of judgment and does or omits to do something which the courts might find ultimately that he should or should not have done, the charter of the company becomes subject to forfeiture and its property may be destroyed. For that reason when I read the extract from the opinion of Justice Brewer I asked you to give me your close attention while I read his remarks on that feature of the legislation which he was then criticising.

That paragraph, and paragraphs like that, in such legislation is the reason why no man dares to invest, or to advise his friends to invest money in public service corporations where such laws exist or where there is a serious purpose to pass them, or any fear that they may be passed.

Now one word more, and I have done. The Public Service Corporation of New Jersey, and the corporations which it controls, as I said a while ago, have expended a little more than five million dollars a year for the last eight years, and have borrowed money in New York, Philadelphia, and elsewhere and have expended it here in New Jersey in the improvement, enlargement and betterment of these great instruments of public service. While the companies supposed eight years ago that ten million dollars would be sufficient, they have found already that forty million dollars are not sufficient, and that they will need at least five million dollars a year of new money for the next five years, and perhaps longer, before the corporations will be in a position so that they can finance their own operations and be brought to such a state of efficiency that they can render service satisfactory to themselves and to their patrons. How can that money be obtained with such a law as this on the statute books?

Think of this matter, gentlemen, in its broad effect upon the prosperity of the state, and upon the welfare of the people of the state, and do not, I beg of you, crystallize a dying passion into a destructive statute in the second decade of the twentieth century.

