The Liberal party, which has been in power for 20 years, under Mr. Ballance, Sir Richard Seddon, and Sir Joseph Ward, has lost its majority, for the new House is composed of 37 Liberals, 37 Conservatives, 3 Labor members, 1 Socialist, and 2 Independents.

Mr. George Fowlds,* who recently resigned his position as Minister for Education, etc., has lost his seat as member for Auckland. The law provides that where no candidate has a majority at an election, a second ballot shall be taken to decide between the two highest candidates. Mr. Fowlds was at the head of the first poll, but not having a majority, a second ballot was necessary, at which he was defeated.

The local option (liquor) vote taken on election day made no alteration to the existing no-license areas.

A vote was also taken on the question of national prohibition of liquor. Fifty-six per cent of the votes were in favor of prohibition, but this was not sufficient to carry it. The law provides that prohibition shall not be carried unless at least 60 per cent of the votes cast are in favor of it.

The triennial conference of the Commonwealth Labor party, at which all the States of Australia are represented, is sitting at Hobart, Tasmania.

ERNEST BRAY.

"HARASSING THE RAILROADS."

Portland, Ore.

"The basis of the general outcry from various railroad commissions against Judge Hook is that he rendered a decision restraining Oklahoma from putting in force the 2-cent-per-mile passenger rate law on the ground that it was unreasonable," says the Portland Oregonian. Yes, some State railroad commissions have "gone over to the mob," and there's no telling when half a dozen more will join the dynamite brigade. And what will become of this country if the Federal Bench is filled with men who write decisions otherwise than in the cold glow of the "light of reason"? Let the agitators beware.

Judge Hook took a judicially reasonable view of the Oklahoma 2-cent law and said it was judicially unreasonable. He said it before there was any opportunity to see whether it was reasonable or unreasonable. But it wasn't necessary for him to demand facts when he had all the fiction that a high-priced railroad legal department could give him. Years ago, when Willie Hook was laboring in the little red schoolhouse and learning how to be a Federal judge, he wrote in his copybook: "Truth is stranger than fiction," and "Be not intimate with strangers."

Of course the Oklahoma 2-cent law was unreasonable, because it interfered with passenger-rate laws enacted from time to time by the railroads. It isn't reasonable to have two or a dozen legislative bodies making laws about the same thing, and the railroads can enact all the passenger-rate legislation necessary for the safety of the public and the profit of the roads. What's the use of having Federal courts if they don't protect the rate-making legislative bodies of the railroads?

Who says the railroads don't legislate and have no right to make laws? Their rates, fares and charges are taxes, aren't they? Then they have the power to tax the people, and do tax them. But the taxing power belongs exclusively to sovereignty, doesn't it? Well, hasn't a sovereign power the right to legislate? You may draw diagrams on a blackboard as big as a ten-acre lot, but you can't make a diagram of a sovereign power, with the right to levy taxes, that has not the power and legal right to legislate.

For years and years the railroad rate-making legislators have been enacting rate laws fixing certain passenger rates at less than 2 cents a mile, and as low as a cent and a quarter a mile. They do that a dozen times a year, every time they make and abrogate "special rates." But when a State tries to fix the maximum passenger rate at 2 cents a mile, then the railroad rate-makers send their attorneys into court to prove that no railroad can keep out of the junk pile unless it charges more than 2 cents a mile.

That is all the more impressive when we remember that the expensive "legal departments" of the railroads are maintained by the excessive freight and passenger rates paid by the public. The people pay the court costs and attorneys' fees of both sides.

Just to show that railroads do carry passengers at less than 2 cents a mile—and therefore can't afford to do so—hearken to this tale of the rail:

Last September I went from Portland to San Francisco, 772 miles, on a Southern Pacific train. After dinner such male passengers as were addicted to the burning of tobacco assembled in the smoking tunnel of the observation car. We had a few rounds of talk about hops, labor unions, lumber and Taft, then the conversation veered around to railroads, to the Spokane rate case and naturally to railroad rates.

Eight of us were bunched as closely as we could get together at one end of the tunnel, and for some minutes we listened in respectful silence to a pompous man who was in an active state of eruption. His fuse had been lighted by a traveling man who ventured to suggest that a passenger rate greater than 2 cents a mile was robbery. Mr. Pompous Man asserted that no railroad can pay expenses unless it charges 3 cents a mile, and that the railroads are "hunted and hounded like criminals by anarchistic, socialistic legislators who are egged on by low, lying yellow newspapers that are trying to destroy the government."

"Do you mean the Government, or railroad government?" asked a Chicago traveling man.

Fearing bloodshed, I asked Mr. Pompous Man whence he came. "N'York," he replied. "And how far are you going on your ticket?" I asked. "Back to N'York." I took a similar census of the others

*See The Public of January 26, page 84.

in that end of the tunnel. Going into particulars, I made notes of the cost of each ticket, the routes, number of stop-overs and baggage. Then I made what a certain Contributing Editor would call an "important announcement."

"You assert," I said to Mr. Pompous Man, "that railroads can't afford to carry passengers at less than 3 cents a mile."

"And I know what I'm talking about," he yelled.

"Of course you do, or you wouldn't say it. Now, there are eight of us here, and all will want breakfast on the train tomorrow morning. You say you are taking a spin around the country looking for investments, and I'll offer you one. We will calculate our total mileage on the tickets we have, and the average cost per mile or per 1,000 miles for us all. If the average cost for all of us is as much as 2 cents a mile, or $20 per 1,000 miles, I'll buy the breakfasts for us all; but if we are paying less than $20 a thousand miles, you pay for the breakfasts. Do you agree?"

"No, sir; I never gamble."

"But where's the gamble?" I asked. "You say the roads can't and don't carry passengers at 2 cents a mile, and say you know what you are talking about. So it looks like a sure thing for you. But if you won't take that, I'll offer you another investment. If three of us eight are paying as much as 2½ cents a mile, I'll buy the breakfasts; if three of us are paying as much as 3 cents a mile, I'll pay for the breakfasts and lunches. But if less than three are paying as much as 2½ cents, then you buy the breakfasts, and if less than three are paying 3 cents a mile, you buy the breakfasts and lunches. Is it a go?"

No, he wouldn't invest. A sporty-looking young traveling man thought he wanted something like that, but I winked him out of it. I wasn't fishing for him. Anyway, just out of curiosity, we figured it out, and here you see the mileage and the rate per 1,000 miles for each of the eight:

Mileage.	Per 1,000 Miles.
6,846	$16.43
6,492	17.82
4,864	16.55
3,975	17.09
3,578	18.23
2,496	19.50
1,152	26.90
772	25.91

Mr. Pompous Man had the lowest rate. The two of us who had the highest rate had no trunks; the others had trunks. The six with the lowest rates were entitled to have their trunks taken off trains 91 times and put back on trains 91 times.

And yet some State railroad commissions say Judge Hook was—well, discourteous—when he smothered the Oklahoma law with an injunction.

For the convenience of Business, the "mob" and the ears-to-the-groundlings, the Federal courts should codify their judicial legislation under three grand, sinaitic divisions: 1. You Must. 2. You may. 3. You **shant.** This is necessary to shoo away the horrid specter of socialism, which is disturbing the sleep of Taft, and to preserve the present glories of corporation-judge government, because:

1. In view of the strictly fresh, fresh, and cold-storage decisions of the Federal courts, "Business" doesn't know how many felonies it may commit before having a $2.65 fine slapped on it.

2. The mob is getting too frisky, and must be taught its place.

3. The ears-to-the-groundlings are "out on a limb" more than half the time, guessing at the next guess of a court, and wondering how the next higher court will guess on the lower court's guess. It's almost as hard a game as trying to find some wool in a protected all-wool undershirt.

W. G. EGGLESTON.

INCIDENTAL SUGGESTIONS

PULLING THE SUPREME COURT'S TEETH.

Madison, Wis.

Mr. Leubuscher's proposal* for "pulling the Supreme Court's teeth" by depriving it of all appellate jurisdiction is, while perfectly practicable, so heroic a remedy as to be almost worse than the disease. As Mr. Leubuscher points out, such an innovation would result in conflicting decisions on questions of constitutionality by the numerous inferior courts (or rather, under the present judicial organization, by the nine Circuit Courts of Appeals); but it would also result in conflicting decisions on other substantive points of Federal law on which it is essential that there be one settled law. No one who is familiar to any extent with the legal history of this country can deny that the Supreme Court, whatever may be one's opinion as to the propriety of its exercise of the veto on "unconstitutional" laws, has played an important and beneficent role in unifying the law, and particularly the Federal law, of the country. The advantage, in any judicial system, of a single supreme appellate tribunal is too obvious to require further comment; and this advantage Mr. Leubuscher's plan would destroy.

The power of Congress to strip the Supreme Court of all its appellate jurisdiction, and to create appellate courts other than the Supreme Court, contains, however, possibilities of another kind. There is nothing in the Constitution to prevent Congress from stripping the Supreme Court of all appellate jurisdiction and then setting up another tribunal, to be called let us say, the Court of Appeals, and vesting all the appellate jurisdiction now exercised by the Supreme Court in this Court of Appeals. Of course such a Court of Appeals, like any court, would have power to declare any law unconstitutional; but inasmuch as its existence would be dependent solely on statute, so that its judges could at any time be removed merely by an act abolishing the court, and other ones appointed, by virtue of another act recreating the court (as was done with all the Federal courts in 1801), this court would occupy a much less independent position, and would be much more careful of running counter to the pronounced current of

*See The Public of November 24, 1911, page 1193.